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Cuff v. TTC Insurance Company Limited, 2026 CanLII 118414 (ON LAT)

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Tribunals Ontario
Licence Appeal Tribunal

Tribunaux décisionnels Ontario
Tribunal d'appel en matière de permis

2026 CanLII 118414 (ON LAT)

Citation: Cuff v. TTC Insurance Company Limited, 2026 ONLAT 25-015056/AABS

File Number: 25-015056/AABS

In the matter of an application pursuant to subsection 280(2) of the *Insurance Act*, RSO 1990, c I.8, in relation to statutory accident benefits.

Between:

Monica B Cuff

Applicant

and

TTC Insurance Company Limited

Respondent

DECISION AND ORDER

ADJUDICATOR: Bernard Trottier, Member

APPEARANCES:

For the Applicant: Monica Cuff, Self-represented

For the Respondent: Stephen Sargent, Counsel

HEARD: **October 27, 2026, by videoconference**

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OVERVIEW

[1] On Sunday, August 6, 2023, Monica Cuff (the "applicant") was a seat-belted, wheelchaired passenger in a para-transit vehicle operated by the Wheel Trans service of the Toronto Transit Commission ("TTC"), when she reported an incident involving a bump while travelling. TTC Insurance Company Limited (the "respondent") disputes that the applicant suffered the impairments she claims because of the accident. The applicant was denied benefits by the respondent and applied to the Licence Appeal Tribunal – Automobile Accident Benefits Service (the "Tribunal") for resolution of the dispute.

ISSUES IN DISPUTE

[2] The issues in dispute are:

(a) Are the applicant's injuries predominantly minor as defined in s. 3 of the *Schedule* and therefore subject to treatment within the $3,500.00 Minor Injury Guideline ("MIG") limit?

(b) Is the applicant entitled to non-earner benefits ("NEBs") of $185.00 per week from August 6, 2023 to date and ongoing?

(c) Is the respondent liable to pay an award under s. 10 of Reg. 664 because it unreasonably withheld or delayed payments to the applicant?

(d) Is the applicant entitled to interest on any overdue payment of benefits?

RESULT

[3] Since no treatment plans are in dispute, I have not considered whether the applicant's injuries are predominantly minor as defined in s. 3 of the *Schedule*.

[4] The applicant is not entitled to NEBs.

[5] The applicant is not entitled to an award or interest.

PROCEDURAL ISSUE

I will not consider whether the MIG applies as a stand-alone issue

[6] I find that the Tribunal has no jurisdiction to determine whether the MIG applies, in the absence of an underlying dispute that requires a determination of whether the MIG applies. As there is no such dispute before the Tribunal in this application, I will not adjudicate whether the applicant is subject to the MIG.

[7] An administrative tribunal has only the powers conferred on it by statute. Section 5.1(4) of the *Licence Appeal Tribunal Act*, S. O. 1999, C. 12, Sch. G, states that "[t]he Tribunal has jurisdiction to determine all questions of fact or law that arise in matters before it."

[8] The *Insurance Act*, RSO 1990, c I.8 (the "*Insurance Act*"), at s. 280, states:

> **Resolution of disputes**
>
> 280(1) This section applies with respect to the resolution of disputes in respect of an insured person's entitlement to statutory accident benefits or in respect of the amount of statutory accident benefits to which an insured person is entitled.
>
> **Application to Tribunal**
>
> (2) The insured person or the insurer may apply to the Licence Appeal Tribunal to resolve a dispute described in subsection (1).

[9] Based on s. 280 of the *Insurance Act*, the Tribunal's jurisdiction is limited to the "resolution of disputes" in respect of entitlement to, or the amount of, accident benefits. There is no provision in the *Schedule* that entitles an insured person to apply for a MIG

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determination, which is a request for declaratory relief. The Tribunal only decides the issue of whether the MIG applies as a threshold issue in an application where entitlement to medical and rehabilitation benefits, provided for in the *Schedule*, is in dispute. The issue of entitlement to NEBs is not contingent upon any finding regarding the MIG. Because there are no medical and rehabilitation benefits in dispute before me, there is no dispute regarding the MIG before the Tribunal. As a result, the Tribunal has no jurisdiction to grant the declaratory relief of a MIG determination, and I will not consider it in this matter.

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The hearing will proceed with the applicant participating by telephone

[10] At the outset of the videoconference hearing, the applicant indicated that she was only able to participate using a telephone that did not have a camera. I note that the applicant did not serve and file an evidence brief. I asked the applicant whether she had a printed copy of the respondent's evidence brief before her, and she replied that she did not. I asked the applicant whether she had access to a computer or a smartphone, to be able to see the other party and any evidence, and she replied that she did not. I also asked the applicant whether she would like to request an adjournment, so that the Tribunal could arrange for her to go to the Tribunals Ontario office in Toronto, where she could participate via computer. The applicant answered that she wished to proceed with the hearing via telephone.

[11] At the case conference of April 24, 2026, the applicant was represented by counsel, and the parties agreed to the timeline for evidence productions, including video evidence. The parties agreed that initial productions would be served 30 days after the case conference, and all other evidence would be produced no later than July 23, 2026. I accepted the respondent's submission that it served its evidence on the applicant within the timeframes ordered at the case conference, as this submission comes from an officer of the court who owes a duty of candour.

[12] On June 19, 2026, the Tribunal issued a Notice of Videoconference Hearing to the parties, with instructions on how to access the videoconference hearing, and with

information regarding how a party may request, via a motion, a written or in-person hearing. The hearing notice also included the Tribunal's *Guide to Videoconferencing Proceedings and Zoom*, which includes sections on participant expectations and best practices for document submission. At no time did the applicant submit a motion to the Tribunal to change the hearing format.

[13] The applicant's counsel was removed as her representative on September 11, 2026. The respondent served the applicant with its evidence brief, comprised of evidence previously served on the applicant, on October 6, 2027, as ordered at the case conference. The applicant has not arranged to have the ability to view the respondent's evidence during the hearing, and she requested that the hearing proceed despite her inability to view the evidence during the hearing. I am satisfied that the applicant had the opportunity to review the respondent's evidence and that she had the opportunity to request a change of hearing format if she desired. Under Rule 12 of the *Licence Appeal Tribunal Rules, 2023*, the Tribunal may hold a hearing in-person, via videoconference, via written submissions, or any combination thereof, as it considers appropriate. In the circumstances, I find that there is no breach of procedural fairness in having the applicant participate via telephone, because that it what she requested. Under Rule 3.1, I ordered that the parties proceed with the hearing, with the applicant participating via telephone, to ensure efficient, proportional and timely resolution of the merits of the proceeding.

ANALYSIS

There was no accident that caused the applicant's claimed impairments

[14] I find that there was no accident that could have caused the applicant's claimed impairments, because the video from the in-vehicle camera of TTC Wheel Trans vehicle no. 718 (the "vehicle"), of August 6, 2023, indicates that the applicant's ride was a normal ride without incident.

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[15] The applicant testified that she has had mobility challenges and used a wheelchair since the 1980s. She testified that she boarded the vehicle in the afternoon of Sunday, August 6, 2023, and that the driver lost control of the vehicle. She testified that the vehicle went about 500 yards off the road and into a ditch, and that the vehicle was stuck in the ditch for over half an hour. She testified that she broke the T1 vertebra in her thoracic spine and tore her rotator cuff, and that she was bed-ridden for two years thereafter.

[16] The respondent directed me to video from the in-vehicle camera of the vehicle, between 1:30 and 4:06 p.m., on August 6, 2023. There is no audio included. The video shows the applicant boarding the vehicle at 1:36 p.m., with the driver securing her wheelchair to the vehicle and her seatbelt attached. Other passengers were already in the vehicle when the applicant boarded. The vehicle made several stops, and other passengers deboarded the vehicle, with assistance from the driver. I did not see the vehicle experience any bump or collision, and the vehicle arrived at its destination at 3:26 p.m., but the applicant refused to deboard. The driver called paramedics, who arrived at 3:57 p.m., and the paramedics escorted the applicant off the vehicle in her wheelchair at 4:01 p.m. The applicant testified that she believed that the video was fabricated.

[17] I accept the respondent's video evidence, because it captures a normal TTC Wheel Trans ride, and I have no evidence before me that the TTC would fabricate in-camera vehicle footage. I find that the applicant is not a reliable historian, because the vehicle did not go off the road and did not go into a ditch. I find that there was no accident that could have caused the applicant's claimed impairments.

The applicant is not entitled to NEBs

[18] Because the applicant did not direct me to any documentary evidence regarding her inability to carry on a normal life as a result of the reported accident, I find on a balance of probabilities that the applicant has not met her onus of demonstrating that she is entitled to NEBs, and therefore they are not payable.

[19] Section 12(1) of the *Schedule* provides that an insurer shall pay NEBs to an insured person who sustains an impairment as a result of the accident, if the insured person suffers a complete inability to carry on a normal life as a result of and within 104 weeks after the accident. Section 3(7)(a) defines a "complete inability to carry on a normal life" as "an impairment that continuously prevents the person from engaging in substantially all of the activities in which the person ordinarily engaged before the accident." The Court of Appeal set out the guiding principles for NEB entitlement in *Heath v. Economical* (2009 ONCA 391) which, generally, focuses on a comparison of the applicant's pre- and post-accident activities. In all cases, the burden of proof lies with the applicant to demonstrate entitlement to NEBs.

[20] The applicant testified that, as a result of the reported accident, she broke the T1 vertebra in her thoracic spine and tore her right rotator cuff, and that she was bed-ridden for two years. The applicant claims that these impairments entitle her to NEBs. The applicant did not direct me to any documents to corroborate her testimony.

[21] The respondent directed me to the insurer's examination report of Dr. Deborah Rabinovitch, general practitioner, dated July 18, 2024, regarding entitlement to NEBs. Dr. Rabinovitch examined the applicant on June 28, 2024 and reviewed the applicant's hospital records and diagnostic imaging from August 6, 2023 to October 17, 2023. Dr. Rabinovitch notes that, in 1984, the applicant sustained a complete T2 spinal cord injury and that the applicant has mobilized indoors with a wheelchair, and outdoors with a scooter, since that time. Dr. Rabinovitch also reviewed the following medical reports provided by the applicant at the time of the assessment:

(a) A report dated January 8, 2013, regarding the applicant's impairments stemming from her 1984 injury;

(b) A report dated March 14, 2013, regarding the applicant's right rotator cuff surgery in September 2012;

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(c) A report dated April 18, 2014, documenting the applicant's previous neck injury and chronic pancreatitis; and

(d) A report dated June 11, 2014, noting the applicant's traumatic brain injury and associated cognitive and memory deficits.

[22] Dr. Rabinovitch's review of the applicant's post-accident medical documentation revealed that the applicant did not suffer any fractures as a result of the reported accident, and that she did not suffer any dislocation or soft tissue abnormality to her right shoulder. Dr. Rabinovitch opined that, from a musculoskeletal perspective, the applicant did not suffer a complete inability to carry on a normal life, compared to her daily activities before the reported 2023 accident.

[23] I find that that the applicant has not demonstrated, on a balance of probabilities, that she suffered a complete inability to carry on a normal life as a result of the reported 2023 accident, because her testimony regarding her vertebral facture and rotator cuff injury is not supported by any medical evidence. I accept the findings and opinion of Dr. Rabinovitch, because they are supported by medical evidence. Also, I find that the video evidence does not support that there was an accident that could have caused the injuries that the applicant claims. For these reasons, I find that the applicant is not entitled to NEBs, and therefore they are not payable.

ORDER

[24] Since no treatment plans are in dispute, I have not considered whether the applicant's injuries are predominantly minor as defined in s. 3 of the *Schedule*.

[25] The applicant is not entitled to the NEBs is dispute.

[26] Since no benefits are payable, the applicant is not entitled to an award or interest.

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[27] The application is dismissed.

Released: November 2, 2026

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Bernard Trottier
Member

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