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THE ANNOTATED INSURANCE ACT OF ONTARIO

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HIGHLIGHTS

This release features the addition of recent Licence Appeal Tribunal decisions in Appendix C15.

Licence Appeal Tribunal Decisions *including*:

The applicant was involved in an automobile accident on October 11, 2018, and sought benefits pursuant to the *Statutory Accident Benefits Schedule (Schedule)—Effective September 1, 2010 (including amendments effective June 1, 2016)*. The applicant was denied benefits by the respondent insurance company and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (?Tribunal?). The applicant was seeking compensation to cover the cost of assessments and treatments for chronic pain and psychological issues stemming from injuries sustained in the accident, however the respondent raised a preliminary issue to be considered before the substantive issues in the applicant's claim. The respondent claimed that the applicant had failed to attend reasonably necessary psychological and psychiatry insurer's examinations ("IEs"), which had been rescheduled multiple times due to non-attendance and pursuant to a request from the applicant's legal counsel. The respondent argued that it was significantly prejudiced in its ability to assess the applicant due to her failure to attend these IEs. The applicant claimed that her non-attendance was because some of the appointments had been scheduled during a time when she was a "recluse" due to a miscarriage she had suffered a few months prior. She then failed to attend some later appointments in 2020 due to the fact that she was pregnant and considered high-risk and was advised not to attend any in-person appointments due the risk of contracting Covid-19. The Tribunal found that the applicant had not provided sufficient reasons for her non-attendance, and further, that the respondent's requests were reasonable and conformed with s. 44(5) of the *Schedule*. As a result, the application was dismissed: *Sandhu v. Dominion of Canada General Insurance Company (Travelers)*, 2023 CarswellOnt 15231.

The applicant was involved in an automobile accident on June 19, 2020, and sought benefits pursuant to the *Statutory Accident Benefits Schedule—Effective September 1, 2010 (including amendments effective June 1, 2016)*. The respondent insurance company denied the application, and the applicant applied to the Licence Appeal Tribunal ? Automobile Accident Benefits Service (the "Tribunal") for resolution. The preliminary issue at hand was whether the applicant was entitled to receive an income benefit replacement ("IRB") from the respondent insurance company. The respondent argued that the applicant was not entitled to receive an IRB, as s. 31(1)(a)(i) of the *Schedule* provides that an insurer is not obligated to pay an IRB to a person who was driving at the time of an accident, if the driver knew or reasonably ought to have known that they were operating the automobile while it was not insured under a motor vehicle liability policy. On May 29, 2020, the respondent had sent a letter via registered mail to the applicant informing him that the respondent was unable to provide insurance coverage, and that the existing policy would become invalid within 15 days. Pursuant to Statutory Condition 11 (1.1) of O. Reg 777/93 under the Insurance Act, an insurer may give notice of termination for reason other than non-payment by registered mail. While the applicant argued that the policy was terminated for non-payment of his premium, the Tribunal found no evi-

dence of this. The Tribunal held that the applicant's policy therefore became invalid at 12:01 on June 16, 2020, three days before the accident. Given that the applicant was 50 years old at the time of the accident and had been living and driving in Ontario for decades prior, the Tribunal held that he reasonably ought to have known that, on the day of the accident, he was driving his vehicle without the necessary insurance, and was therefore not entitled to an IRB: *Reyes v. The Co-Operators Insurance Company*, 2023 CarswellOnt 14856.

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