



Citation: Hibbert v Aviva General Insurance, 2022 ONLAT 20-009328/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:

Christos Hibbert

Applicant

and

Aviva General Insurance

Respondent

DECISION AND ORDER

PANEL:

**Derek Grant
Taivi Lobu**

APPEARANCES:

For the Applicant:

Christos Hibbert, Applicant
Karine Hajje, Counsel

For the Respondent:

Jennifer McDonald, Adjuster
Jennifer Cosentino, Counsel

Court Reporter:

Bruce Porter

HEARD by Videoconference: July 5, 6 & 7, 2022

OVERVIEW

- [1] The applicant was involved in an automobile accident on February 13, 2017 and sought benefits pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010 (including amendments effective June 1, 2016)* (the *Schedule*). The applicant was denied income replacement benefits and submitted an application to the Licence Appeal Tribunal - Automobile Accident Benefits Service (“Tribunal”).
- [2] The applicant had applied to the respondent for an income replacement benefit based on reporting of pre-accident employment in both the fitness industry and sound engineering.
- [3] The respondent initially paid the applicant an income replacement benefit of \$245 per week based on information submitted in 2017 describing the applicant’s employment in the fitness industry. The respondent sought further information about the applicant’s work as a sound engineer to determine eligibility for a greater quantum of income replacement benefit.
- [4] However, in August 2018, before eligibility for benefit based on sound engineering work had been determined, the respondent obtained a multi-disciplinary insurer’s examination report assessing the applicant’s medical disability. The respondent decided that the applicant was no longer eligible for any income replacement benefit because of the disability assessment.
- [5] On August 10, 2018, the applicant was notified that the respondent was terminating the applicant’s eligibility for an income replacement benefit as of August 25, 2018.
- [6] When the applicant’s income replacement benefit was terminated in August 2018, the quantum of income replacement benefit had been based only on information submitted in 2017 about the applicant’s work in the fitness industry. The applicant’s pre-accident sound engineering work had not yet been accepted by the respondent, which could have increased the quantum of the weekly income replacement benefit which had been paid.
- [7] The applicant filed this application to the Tribunal.

ISSUES

- [8] At a case conference held May 19, 2021, the parties agreed that the issues to be decided at this hearing were:

(i) Is the applicant entitled to an income replacement benefit (quantum is in dispute) from February 13, 2017 to October 13, 2019?

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

[9] At the three-day hearing in July 2022, the applicant advised that he was claiming income replacement benefits through June 2019, rather than October 13, 2019 as identified at the case conference.

Statutory Requirements

[10] An applicant has a duty under section 33(1)1 of the *Schedule* to provide “any information reasonably required to assist the insurer in determining the applicant’s entitlement to a benefit.” Concomitantly, the onus of proof is on an applicant to demonstrate entitlement to benefits claimed under the *Schedule*¹.

[11] Section 5(1) of the *Schedule* addresses the requirement to pay an income replacement benefit to an insured person within the first 104 weeks after an accident, specifying that an insurer shall pay an income replacement benefit to an insured person who sustains an impairment from an accident that results in a substantial inability to perform the essential tasks of the insured person’s work. Conditions for qualifying include that the person be:

(i) employed at the time of the accident;

(ii) if not employed at the time of the accident, employed for at least 26 weeks during the 52 weeks before the accident; or

(iii) self-employed at the time of the accident.

[12] Section 6(2) states that an insurer is not required to pay an income replacement benefit for the first week of disability. In this case, such benefit would not have been payable until one week after the February 13, 2017 accident.

[13] Section 6(2) also specifies that the benefit will not be paid after the first 104 weeks of disability unless, as a result of the accident, the insured person suffers “a complete inability to engage in any employment or self-employment for which he or she is reasonably suited by education, training or experience.” If the applicant otherwise qualified for the income replacement benefit within 104 weeks after the accident, this is the more stringent post 104 week test which the

¹ *Scarlett v Belair Insurance*, 2015 ONSC 3635 (CanLII) at para. 20.

applicant would have to meet to qualify for an income replacement benefit after February 13, 2019.

THE HEARING

- [14] Both the applicant and the respondent retained the services of forensic accountants to calculate the amount of weekly income replacement benefit payable to the applicant. The respondent retained the services of Williams, Meaden and Moore Inc., Forensic Accountants, (WMM), and the applicant retained ADS Forensics Inc. (ADS).
- [15] At the hearing, the Tribunal heard testimony from the applicant, Jasumati Mistry (the applicant's tax preparation accountant); Lisa Jackson (CPA, CGA with ADS) and April Cugalj (CPA, CA, CFI with WMM).

WORK-RELATED BACKGROUND

- [16] As will be discussed further below, in his 2017 applications for an income replacement benefit, the applicant was presented as an employee at Cornerstone Fitness (personal trainer) and Karma X Wave (sound engineering) from 2016 until the 2017 accident. While the applicant was engaged in fitness and sound engineering work during this period, tax returns for these years which were filed after 2019, characterized the applicant as being self-employed in 2016 and not working in 2017.
- [17] In addition, starting the summer of 2017 the applicant entered a business relationship with Dream More Studio which over the ensuing years involved the applicant's roles as a performer, music producer and beatmaker. The nature of this relationship with Dream More Studio appeared changeable and involved both barter and financial exchange.

ANALYSIS

- [18] If the Tribunal finds that the applicant has discharged his onus of providing income information upon which to calculate the income replacement benefit sought, it will then determine whether he meets the disability requirement for eligibility beyond August 25, 2018, and qualification for an income replacement benefit after 104 weeks.
- [19] Accordingly, the Tribunal will first consider whether the applicant provided information reasonably required to assist in the determination of the income replacement benefit and then address the other issues of eligibility.

[20] The information provided about the basis for the applicant's income replacement benefits varied over time. A brief chronology is set out here.

Income-related information reported to the respondent prior to the termination of benefits in August 2018

[21] On March 1, 2017, the applicant through his lawyer's office submitted an application to the respondent for accident benefits (OCF-1), including an income replacement benefit.

[22] The OCF-1 asked for information about the applicant's work in the past 52 weeks and added "If you were self-employed during the 4 weeks prior to the accident please consider yourself the employer for the purpose of completing this section." The OCF-1 also stated "The amount of your benefit is based on your past income" and asked during which of the three periods an applicant's income was highest: "last 4 weeks (not applicable for self-employed persons)," "last 52 weeks" or "last fiscal year (self-employed only)." The applicant marked "last 52 weeks."

[23] The applicant completed this section by noting that injuries prevented him from working from February 14, 2017. He listed his employment as a part-time sound engineer with KarmaX Wave from April 2016 to present; and as a fitness trainer for two different fitness companies (Orange Theory Fitness and Goodlife Fitness) from 2012 to 2015.

[24] In a subsequent "Accident Benefits Statement" dated April 29, 2017 and signed June 5, 2017, the applicant stated that he was employed with Karma X Wave Incorporated and Cornerstone Fitness, describing his employment details as follows:

- (i) Cornerstone Fitness: since July 2016, working as a General Manager reporting to Troy Shaw identified as Head Trainer, and Alaina Phillips identified as Owner. On location Mondays and Wednesdays from 10 a.m. to 10 pm; Thursdays 10 to 2 and 6 to 10; Saturdays from 10 to 2; responsible for scheduling and clean up, opening and closing, running classes, maintaining equipment, handling supplies, personal training, answering calls and managing staff. Paid a management fee by his employer (not directly by clients) by cheque or cash, typically \$1500 to \$2000 per month. His accountant deducted taxes.
- (ii) Karma X Wave Incorporated: Head Sound Engineer since April or May 2016. Evgeny Boutvilovski was identified as the corporation's manager.

The applicant described his role as recording, mixing and mastering music; managing bookings; and managing the recording studio which also included a store. He stated that he would travel an average of once a month; working every day but Mondays and Wednesdays between 12 and 16 hours, paid monthly at a personal rate of \$60 to \$80 per hour, exclusive of studio rental costs; that his monthly payment from his employer was in the range of \$2500 to \$4000 by cash or cheque, classified as a management fee; and that he had an accountant who kept track of his earnings for tax purposes.

- [25] The applicant authorized two Employment Confirmation Forms (OCF-2s) relating to 2016-2017 work with Cornerstone Fitness and with Karma X Wave.
- [26] The Cornerstone Fitness OCF-2 authorized by the applicant identified him as the general manager and personal trainer for Cornerstone Fitness, from September 18, 2016 to February 2017, with a gross income of \$350 per week for the four weeks before the accident (week starting January 18 through week starting February 8, 2017) and a gross income of \$4000 for 26 weeks of the last 52 weeks worked before the accident. The job description was set out as managing a gym and instructing fitness classes. The contact person was identified as Alaina Phillips, and the OCF-2 was signed by her as vice president on May 26, 2017.
- [27] The Karma X Wave OCF-2 authorized by the applicant identified him as being employed as a sound engineer at Karma X Wave from July 4, 2016 to February 7, 2017 with a gross income of \$875/week for four weeks before the accident and \$14,000 for 28 weeks worked before the accident. The job description was set out as recording, mixing vocals and managing studio schedule. The contact person was identified as Evgeny Boutvilovski and the OCF-2 had his signature as manager, dated June 2, 2017.
- [28] The respondent accepted the information as reported on the OCF-2 regarding the applicant's employment as a general manager and personal trainer with Cornerstone Fitness. The last 4 weeks of pre-accident income as reported in this OCF-2 was used by the respondent as the basis for calculating the applicant's quantum of the benefit at 70% weekly, for a weekly income replacement benefit of \$245 weekly.
- [29] In a letter of June 28, 2017, the respondent indicated that it did not have sufficient information to determine eligibility for benefits from the applicant's work with Karma X Wave. The respondent had not been able to reach the Karma X Wave employer and requested that the applicant provide:

- (i) a written statement clarifying the applicant's employment status at Karma X Wave;
- (ii) whether a return-to-work program had been requested or recommended;
- (iii) a copy of his employer's file; and
- (iv) a job description and/or Physical Demand Analysis.

- [30] In a further letter to the applicant dated December 20, 2017, the respondent reminded the applicant that the information requested about the Karma X Wave employment remained outstanding.
- [31] When the respondent terminated benefits effective August 25, 2018, the applicant had been receiving \$245 per week based on reported employment with Cornerstone Fitness. However, information requested by the respondent about the applicant's employment with Karma X Wave remained outstanding and eligibility for income replacement benefit from this work had not been determined.
- [32] At the hearing, it appeared undisputed that "Cornerstone Fitness" was exclusively the applicant's business, although in his April 2017 Accident Benefits Statement he presented himself as an employee and Alaina Phillips as the owner, and on the OCF-2 filed he again was presented as an employee, of Cornerstone Fitness. Alaina Phillips, who signed the OCF-2 as vice-president, was the applicant's girlfriend at the time.

Income information as reported in 2016 – 2019 tax returns

- [33] In 2020 and 2021, the applicant filed his personal income tax returns for 2016 through 2019. The only income reported by the applicant in these tax returns was in 2016 and in a refiled 2019 return (the initial 2019 return filed showed no income). All income reported on his tax returns was from self-employment. There was no employment income reported in his tax returns as represented on the OCF-2s.
- [34] The tax returns reflected the applicant's financial activity as follows:

2016 Tax Return

1. Gross income from self-employment, (including HST collected/collectible) was reported at \$42,031.41. After claimed expenses, a net income as \$21,871.97 was reported for 2016. The product or service identified for the business was "Fitness Studio."

2. There was no indication of income or activity with Karma X Wave or other sound engineering work in his 2016 return.

2017 Tax Return

3. No income or activity from employment or self-employment was reported in 2017.
4. The applicant through counsel had represented in earlier correspondence, which was entered as evidence in the hearing, that he made approximately \$2,000 in 2017, but because it was only a few weeks before the accident (February 13, 2017), he did not declare the 2017 income on his taxes.
5. At the hearing the applicant testified that he had received e-transfers from Karma X Wave for work in January and February 2017 but he had the impression when filing his taxes that such small amounts were not worth reporting. Jasumati Mistry, the applicant's tax preparer, testified that she advises clients that all income needs to be reported.
6. There is no evidence that the applicant refiled an amended 2017 tax return.

2018 Tax Return

- While a 2018 tax return was filed, it reported no income or business activity.

2019 Tax Return

- The initial 2019 return reported no income but was later refiled. The amended 2019 return had a 2019 Statement of Business or Professional Activities showing applicant's income from July through December from a 50 percent partnership in Dream More Studio. Subsequently, there was a further updated Statement of Business or Professional Activities changing the name of the business from "Dream More Studio" to "Christos Hibbert," but continued to show the same income figures and a 50 percent partnership with Danica Casas (an owner of Dream More Studio). The HST number which the applicant had originally provided for this income belonged to Dream More Studio.

Pre-Accident Income – for 2016

- [35] As set out above, with regard to pre-accident income, the OCF-2s and other information provided to the respondent in 2017 characterized the applicant as employed. However, the pre-accident 2016 and 2017 tax returns filed in 2021, showed him to be self-employed and not working respectively.
- [36] WMM examined the financial records which the applicant had provided in support of the information reported in the 2016 tax return. It found the Gross Sales reported to be comparable to a Sales Journal for Gross Sales from Personal Training and Bootcamps, but it was unable to identify amounts paid to the applicant from Cornerstone Fitness and could not identify any sources of income from sound engineering work. WMM was advised by the applicant that the sales reported were from both the fitness and sound engineering businesses as he had mixed his income sources together.
- [37] WMM noted that if the total sales reported in 2016 of \$42,031 were from two sources, then his Sales Journal was misleading and not reliable.
- [38] WMM examined:
- (i) 42 e-transfer receipts received by the applicant totalling \$12,535 for the period December 25, 2015 to November 30, 2016 noted as fitness payments;
 - (ii) 12 e-transfer receipts received by the applicant totalling \$2,837.10 for the period February 7 to December 19, 2016 noted as music payments
- [39] WMM noted that some of the e-transfers were deposited in a CIBC bank account provided (opened on August 17, 2016); some did not appear as bank account deposits, and pre-August 17, 2016 e-transfers were deposited into another bank account.
- [40] WMM concluded that based on the documentation and representations provided it was unable to determine if the information reported in the applicant's 2016 tax return was reasonable and plausible.

Pre-Accident Income for 2017

- [41] With regard to the applicant's pre-accident income from 2017, four different scenarios were advanced by or on behalf of the applicant:

1. The OCF-2s state that the applicant earned employment income in 2017 from fitness and sound engineering activities.
2. The applicant's tax return state that no income was earned.
3. It was represented to WMM in correspondence dated April 29, 2022 on behalf of the applicant, that the applicant earned approximately \$2,000 in 2017. No verifying documentation or further details were provided in support of this figure.
4. WMM's review of the applicant's available financial/banking records pertaining to 2017 income lead WMM to observe in its May 30, 2022 reporting letter that other variable sums were received by the applicant in 2017 which could not be readily accounted for.²

[42] The applicant testified that he was using his savings and credit card and had financial support from his mother and girlfriend. He indicated that he no longer had access to all of his bank records, that one of the accounts he used had been closed by the bank, and one of the accounts which he used to accept payments for his work was a joint account with his girlfriend at the time.

[43] April Cugalj of WMM testified that WMM's review of the applicant's banking and financial records had been unable to match the transfers into the bank account and assess the income sources. She recounted the measures taken by WMM to

² Specifically, WMM noted the following in the letter of its findings dated May 30, 2022:

- a total of 20 transfers noted in bank statements that six Interac e-Transfer transactions totalling \$519 noted as "Fitness Payments" were received by the applicant between January 1 to February 13, 2017. Three were noted in the applicant's CIBC account and three did not appear as deposits.
- While nine Interac e-Transfer receipts totalling \$5,570.00 appeared for the period February 10 to April 10, 2017 and were noted as "2017 Music Payments," none of these nine amounts appeared as deposits in CIBC banking information provided. In addition, WMM noted five receipts totalling \$3,250 but no e-Transfers were noted in the account for the period March 9 to March 31, 2017, despite five receipts dated in this period.
- Some 20 transfers totalled \$5,800 on the bank statements, however when analyzing the banking information, only seven transfers totalling \$2,300 were deposits into the bank account with the remaining 13 transfers being withdrawn from the account and transferred to another account for which records had not been provided.
- There were also some handwritten notations on the banking information indicating back pay from work done in the two and a half months before the accident. Twenty transfers totalled \$5800 on the bank statements but when banking information was analyzed, only seven transfers totaling \$2300 represented deposits into the bank account. The remaining 13 amounts were withdrawn from the account and transferred to another account.

obtain explanations of the deposits and transfers. She noted that WMM had not received adequate information for the purpose of calculating an income replacement benefit.

Post-Accident Income and Business Activity: Dream More Studio

- [44] The applicant's evidence was that since the accident he did not earn any income until July 2019, at which time he began earning income as a beatmaker and music producer for Dream More Studio.
- [45] There was varying evidence about the applicant's business relationship and income-related activity with Dream More Studio from 2017 through 2019. For example:
- (i) On July 21, 2017, Dream More Studio registered as a general partnership/master business licence and identified the applicant as a 50 percent owner, with Danica Casas being identified as the other owner.
 - (ii) The applicant testified that prior to July 2019 he had a barter arrangement with Dream More Studio and Danica Casas, describing for example that he assisted Danica Casas with referrals of artists in exchange for her promoting him in the US and Canada as an independent artist, supporting his tours and performances
 - (iii) WMM sought financial records from Dream More Studio from July 21, 2017 to October 2019 for verification of the applicant's income. However, the respondent was informed in a February 9, 2022 letter from applicant's counsel that the applicant had never worked with Dream More Studio before 2019 and then only as a beatmaker and music producer.
 - (iv) On February 11, 2022, WMM advised the respondent that as the applicant held a 50 % ownership interest in Dream More Studio with his partner Danica Casas holding the remaining 50 percent, it required financial information from this business from 2017 into 2019 for the purpose of calculating an income replacement benefit.
 - (v) By letter of April 29, 2022, counsel for the applicant advised that Dream More Studio made a big mistake in registering the applicant as a part owner of Dream More Studio in 2017 and that the business had been exclusively owned by Ms. Casas throughout. WMM noted in its May 30, 2022 reporting letter that an affidavit of Ms. Casas, dated April 28, 2022,

stated that she was the sole owner and had erred in identifying the applicant as a 50 percent owner on the business registration. However, Ms. Casas did not appear as a witness at the hearing to offer corroborative evidence or clarify her business and financial relationship with the applicant.

- (vi) Dream More Studio had been identified as the business for the applicant's Statement of Business or Professional activities in his amended 2019 return. The applicant later filed a further amended T2125 changing the name of the 2019 business to "Christos Hibbert" with the product or service described as "media & event production." The applicant took the position that Ms. Mistry made a mistake when she named Dream More Studio as his business when she prepared his 2019 tax return.
- (vii) Dream More Studio's HST number had been used in the applicant's 2019 tax return. In correspondence to the respondent of February 9, 2022, it was stated on behalf of the applicant that this was Ms. Mistry's error.
- (viii) There was a sublease agreement between the applicant and Dream More Studio dated July 1, 2019. According to a May 30, 2022 letter from WMM this sublease agreement was signed by DocuSign Software on February 8, 2022.

[46] The applicant continued to represent a 50 percent partnership interest in his 2019 tax return's reported business income, even after he changed the name of the business activity in his tax filing from "Dream More Studio" to "Christos Hibbert."

[47] The evidence shows that the applicant had a continuing business relationship with Danica Casas and Dream More Studio since 2017, whether on a barter basis or otherwise. The Tribunal finds that the evidence which the applicant has presented about his relationship with Dream More Studio to be inconsistent, incomplete and unreliable. Key elements of this relationship appear to have been retroactively defined in 2022. As indicated, Ms. Casas of Dream More Studio did not appear as a witness at the hearing. No financial records from Dream More Studio for the period of July 2017 to June 2019 were presented in evidence, despite requests made and despite the fact that the 2019 tax filings suggest that the applicant had access to Dream More Studio's financial records.

Post Accident Income: Other

[48] WMM noted that there were unexplained post-accident deposits in one of the applicant's bank accounts which were not payments from the respondent or amounts noted as received from Karma X Wave after the date of the accident for work performed prior to the accident. Specifically, WMM referenced such total deposits as follows:

(i) \$26,661.50 total unexplained deposits from February 14 to December 31, 2017; and

(ii) \$23,165.64 total unexplained deposits from January 1 to December 31, 2018.

[49] While the applicant testified that his then girlfriend and his mother had helped him out financially when he was unable to work, there was no specific and/or corroborative evidence provided in this regard.

[50] The applicant responded to requests for information sought by the respondent's forensic accountants on February 9, 2022 and on April 29, 2022, but as Ms. Cugalj of WWM testified, there were outstanding financial information, inconsistencies and discrepancies in the information provided, unverified deposits in 2017 and 2018. and confusion as to applicant's partnership business. WMM concluded that did not have reliable information upon which to determine an income replacement benefit quantum.

Report of ADS Forensic Accountants

[51] A report requested by the applicant from ADS Forensic Accountants, dated May 19, 2022 concluded that the applicant was entitled to total income replacement benefit of \$54,967.81 from the date of the accident (February 14, 2017) to December 31 2020. This sum did not take into account the income replacement benefit already paid by the respondent (estimated by WWM to be \$21,069.75). The ADS report assumed that the applicant did not work or generate any revenue from February 13, 2017 to May 31, 2019, and it calculated entitlement beyond the June 2019 end date for which the applicant was claiming income replacement.

[52] Even if adjustments were made to address such matters, the ADS report assumed that the information reported by the applicant in his 2016, 2018, 2019 and 2020 tax returns was valid for the purpose of its calculations. There was no verification by ADS of the income information in these tax returns, which were based on applicant self-reporting and had not been audited.

[53] With regard to 2017, ADS chose not to accept the information in the applicant's 2017 tax return which showed no income activity. ADS based its report on the assumption that in 2017 the applicant was engaged in self-employment in sound engineering and fitness services up to the accident on February 13, 2017. ADS supported this approach on the basis that the two OCF-2s (which presented the applicant as working for Cornerstone Fitness and Karma X Wave on 2017) had been signed by third parties.

[54] However, ADS did not consider that one of the third parties who signed the OCF-2 was not at arms-length from the applicant (she was the applicant's girlfriend at the time). The third party whose signature appeared on the other OCF-2 pertaining to the applicant's work with Karma X Wave, Evgeny Boutvilovski, did not respond to the respondent's requests for information. Neither of the signatories appeared as witnesses at the hearing. In addition, the financial information contained in the OCF-2s was not supported by the financial records presented at the hearing.

CONCLUSION

[55] The very issue before the Tribunal turns on the reliability of the income information provided by the applicant. ADS did not assess whether the information it used for the benefit calculations was reasonable or plausible. WMM did so. For this reason, the Tribunal prefers the report and evidence from Ms. Kugalj of WMM to the evidence of Ms. Jackson and ADS. As set out in the WMM report and as stated by Ms. Kugalj in her testimony, the information provided was inconsistent and incomplete to the extent that WMM was unable to calculate an income replacement benefit for the applicant.

[56] While WMM identified financial documentation required from the applicant to calculate the benefit, the applicant has not provided adequate information in response. In addition, individuals who could have corroborated or clarified aspects of the applicant's financial circumstances did not appear as witnesses at the hearing.

[57] The Tribunal finds that the information which the applicant has provided about his income and business arrangements is so inconsistent, unverified and incomplete that the respondent cannot be reasonably expected to rely upon such information.

[58] As stated earlier, under section 33(1)1 of the *Schedule*, an applicant has a duty to provide "information reasonably required to assist the insurer in determining the applicant's entitlement to a benefit." The onus is on the applicant to prove his

income when applying for an income replacement benefit.³ While a self-employed person might not be held to a standard of precision when it comes to recordkeeping,⁴ this does not absolve an individual of the onus to provide credible evidence related to quantum upon which an income replacement benefit can be assessed.

[59] As there is no reasonable evidentiary basis upon which to assess the quantum of an income replacement benefit from February 21, 2017 through June 2019, the Tribunal cannot find that there is an overdue payment of benefits. It is not necessary for the Tribunal to address other questions of eligibility.

INTEREST

[60] As there are no overdue payment of benefits, the applicant is not entitled to interest pursuant to s. 51 of the *Schedule*.

ORDER

[61] The application is dismissed.

Released: October 18, 2022



**Taivi Lobu
Adjudicator**



**Derek Grant
Adjudicator**

³ *18-000729 v Northbridge Personal Insurance Corporation*, 2020 CanLII 14425 (ON LAT), at paras 20, 78-79; *TS v Aviva Insurance Canada*, 2020 CanLII 34431 (ON LAT) 18-002858 at para 12; *17-005616 v. Allstate Canada*, 2018 CanLII 115643 at para. 26.

⁴ *Liberty Mutual Insurance Company v Morabito* as cited in *18-000729 v Northbridge Personal Insurance Corporation*, 2020 CanLII 14425 (ON LAT), at para. 91.