



**Citation: Richards v. TD General Insurance Company, 2021 ONLAT
20-001799/AABS - PI**

**Released Date: 07/05/2021
File Number: 20-001799/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:

Jacob Richards

Applicant

and

TD General Insurance Company

Respondent

PRELIMINARY ISSUE DECISION

ADJUDICATOR: Lindsay Lake

APPEARANCES:

For the Applicant: Brennan Khaler, Counsel
Sherilyn Pickering, Counsel

For the Respondent: Matthew Owen, Counsel

HEARD: By Way of Written Submissions

OVERVIEW

- [1] The applicant, Jacob Richards, was injured in an automobile accident on December 2, 2016 and sought benefits pursuant to the *Statutory Accident Benefits Schedule – Effective September 1, 2010*¹ from the respondent, TD General Insurance Company, under an insurance policy held by his father, Keith Richards.
- [2] The respondent denied the applicant’s claim for non-earner benefits (“NEBs”) and occupational therapy services. As a result, the applicant submitted an application to the Licence Appeal Tribunal – Automobile Accident Benefits Service (the “Tribunal”).
- [3] At the case conference held on October 23, 2020, a preliminary issue was raised regarding whether the transitional provision in s. 2(1.2) of the *Schedule* applied to Keith Richards’ insurance policy that was in place at the time of the accident. Specifically, the Tribunal was asked to determine if Keith Richards’ insurance policy was entered into or renewed before June 1, 2016 such that the applicant would have access to the amount and duration of accident benefits, including NEBs, as set out in the pre-June 1, 2016 *Schedule*. As a result, a written preliminary issue hearing was scheduled.

PRELIMINARY ISSUE

- [4] The following preliminary issue is to be decided:
 - (i) Does s. 12 of the *Schedule*, as it stood on the date of the accident, apply to the applicant’s claim for NEBs? In other words, was Keith Richards’ insurance policy entered into or renewed before June 1, 2016?

RESULT

- [5] I find that the insurance contact that was in place on the date of the accident was a new insurance contact between Keith Richards and TD General Insurance Company that was entered into on April 28, 2016. Therefore, s. 12 of the *Schedule* as it read prior to June 1, 2016, and not as it read on the date of the accident, applies to the applicant’s claim for NEBs.

¹ O. Reg. 34/10 (the “*Schedule*”).

ANALYSIS

[6] On April 28, 2016, the respondent sent Keith Richards the following documents:

- (i) An Auto Insurance Renewal notice stating that his insurance policy would automatically renew on June 14, 2016 and set out the total annual premium of \$1,175.00. This document also asked Keith Richards to contact the respondent to make any changes to his coverage;
- (ii) A document outlining changes to the policy as a result of the June 1, 2016 changes to the automobile insurance system in Ontario. This document noted that, “These changes only apply to auto insurance policies issued or renewed on or after June 1, 2016,” and that the Keith Richard’s policy automatically has the new lower standard benefits that will take effect on the policy renewal date;
- (iii) Correspondence enclosing the “automobile insurance renewal documents,” which noted that the policy was moving to a new insurance company within TD Bank Group, TD General Insurance Company, upon renewal. This correspondence also advised that the policy would renew automatically on the effective date of June 14, 2016;
- (iv) An Automobile Renewal Invoice dated April 28, 2016 for \$1,175.00 with the effective date of June 14, 2016. The Terms of payment portion noted that the first withdrawal would be on June 1, 2016 in the amount of \$99.26;
- (v) Motor Vehicle Liability Insurance Cards, effective June 14, 2016 and expiring on June 14, 2017; and
- (vi) A Certificate of Automobile Insurance showing the policy time period of June 14, 2016 to June 14, 2017, with the effective date of June 14, 2016.

[7] The applicant’s position is that the contract of insurance that was in place on the date of the accident was entered into and renewed on April 28, 2016 based on the documents provided by the respondent as set out above. The applicant also submitted that the date that the policy came into effect is of no meaning or relevance.²

[8] The respondent disagreed and submitted that the contract of insurance that was in place on the date of the accident was renewed on June 14, 2016.³

² Submissions of the Applicant on the Preliminary Issue, para. 21.

³ Respondent’s Submissions on the Preliminary Issue, para. 4.

- [9] The determination of whether Keith Richard's insurance policy was entered into or renewed before June 1, 2016 determines the amount and duration of certain accident benefits that the applicant may be entitled to under the *Schedule*. This is as a result of the transitional provisions in the *Schedule* which provide that certain provisions of the *Schedule* as they read immediately before June 1, 2016, including s. 12 regarding NEBs, apply in respect of contracts *entered into or renewed* on or after September 1, 2010 and before June 1, 2016.⁴
- [10] NEBs under s. 12 of the *Schedule* prior to June 1, 2016:
- (i) Were not payable for the first 26 weeks after the onset of the complete inability to carry on a normal life;
 - (ii) Were increased in the amount payable to \$320.00 per week after two years post-accident if the applicant was enrolled in an educational program at the time of the accident and the applicant in this matter was a college student at the time of the accident; and
 - (iii) Had a possible duration of entitlement for the applicant's life.
- [11] Post-June 1, 2016, s. 12 of the *Schedule* was amended by reducing the waiting period to receive NEB payments from 26 weeks to 4 weeks and capped the benefit at two years post-accident.
- [12] I find that Keith Richard's contract for insurance was entered into on April 28, 2016 and became effective on June 14, 2016 for the following reasons:
- (i) The insurance contract documents that were provided to Keith Richards on April 28, 2016 were not, despite the many references contained therein, a renewal of Keith Richard's previous insurance policy because the new policy was not between the same parties as the prior contract. The respondent clearly provided notice to Keith Richards that the new policy would be between him and a different entity, TD General Insurance Company, rather than the previous insurance entity of TD Bank Group;
 - (ii) *Patterson v. Gallant*,⁵ a decision relied upon by the respondent, is distinguishable on the facts in this matter. In *Patterson*, the insurer sent certain documents to an insured person prior to the expiry of their current insurance policy which stated that the insurance policy would be renewed only if the renewal premium was paid.⁶ In this matter, Keith Richards was advised that his policy would automatically renew

⁴ *Schedule*, s. 2(1.2).

⁵ [1994] 3 S.C.R. 1080 ("*Patterson*").

⁶ *Ibid.* at page 1083.

and that he was only required to contact the respondent if he required any changes to be made to the contract;

- (iii) There is also no evidence before me that Keith Richards requested any changes to the insurance contract provided to him on April 28, 2016 and, therefore, I find that Keith Richards agreed to the terms of the insurance policy contract as of April 28, 2016;
- (iv) I find that the effective date of the coverage under the contract does not determine when the contract was entered into. The effective date is only of consequence because it is the date following the date that the previous insurance contract expired;
- (v) I also disagree with the respondent's submissions that "two separate and distinct, yet identical, motor vehicle liability policies between identical contracting parties cannot co-exist solely due to the operation of transitional provisions in the *Schedule*"⁷ for two reasons. First, the policies are not identical and are not between identical contracting parties as discussed in paragraph [12](i) above. Second, two insurance contracts were in existence at the same time in this matter – it was only the benefits provided for under the policy entered into on April 28, 2016 that were not in effect until June 14, 2016. I agree with the applicant's submissions that the payment of the premium being due on June 1, 2016 is also evidence that the policy was in existence into prior to the June 14, 2016 effective date;
- (vi) I am also not persuaded by the numerous Financial Services Commission of Ontario ("FSCO") Bulletins submitted by the respondent because they are not binding upon me⁸ and also because they do not assist in determining when the new policy between Keith Richard and TD General Insurance Company was entered into as some speak to when a policy was *issued*, which is not the wording used in s. 2(1.2) of the *Schedule*; and
- (vii) I do not need to consider the principles of statutory interpretation in this matter because there is no ambiguity to resolve regarding the words in s. 2(1.2) of the *Schedule* given my finding above that the April 28, 2016 documents constituted a new contract for insurance.

CONCLUSION

- [13] The insurance contract that was in place on the date of the accident was a new insurance contract between Keith Richards and TD General Insurance Company and it was entered into on April 28, 2016. Therefore, s. 12 of the *Schedule* as it

⁷ Respondent's Submissions on the Preliminary Issue, para. 27.

⁸ *F.R. and Dominion of Canada General Insurance Company*, 2020 CarswellOnt 8408 (ON LAT Reconsideration) at paras. 13-18, Applicant's Reply Book of Authorities, tab 3.

read prior to June 1, 2016, and not as it read on the date of the accident, applies to the applicant's claim for NEBs.

OTHER PROCEDURAL MATTERS

- [14] In accordance with the Tribunal's October 23, 2020 Case Conference Report and Order, I order that within **30 days** of the release of this preliminary hearing decision, the parties shall contact the Tribunal to schedule a resumption of the case conference to schedule the hearing of the substantive issues in dispute.

Released: July 5, 2021

**Lindsay Lake
Adjudicator**