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User Submitted Case Conference Report

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LICENCE APPEAL TRIBUNAL

TRIBUNAL D'APPEL EN MATIÈRE DE PERMIS

Safety, Licensing Appeals and Standards Tribunals Ontario

Tribunaux de la sécurité, des appels en matière de permis et des normes Ontario

Ontario

Tribunal File Number: **17-004945/AABS**

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

Between:

Kamaljit Brar

Applicant

and

Aviva Insurance Canada

Respondent

CASE CONFERENCE REPORT

Adjudicator: **Deborah Neilson**

Appearances:

For the Applicant: Nathan Tischler, Counsel

Peter Murray, Counsel

Eric Winkworth, Counsel

For the Respondent: Peter Yoo, Counsel

Held by Teleconference: February 26, 2018

OVERVIEW

[1] The applicant was involved in an automobile accident on January 27, 2014 and sought benefits pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010 (the "Schedule")*. The applicant was denied certain benefits by the respondent and submitted an application to the Licence Appeal Tribunal - Automobile Accident Benefits Service ("Tribunal").

[2] The parties participated in a case conference on February 1, 2018, but were unable to resolve the issues in dispute. A hearing was scheduled for six days commencing on June 25, 2018 and a further case conference was scheduled for February 23, 2018 to address the parties' requests for productions from each other. The parties were unable to complete their submissions on February 23, 2018 due to time constraints and because the respondent served and filed submissions on the productions it requested from the applicant on the morning of February 23, 2018. Another case conference was scheduled for February 26, 2018 to allow the parties to complete their submissions and to provide the applicant with an opportunity to review the respondent's submissions.

ISSUES IN DISPUTE FOR THE HEARING

[3] The parties agreed at the case conference on February 1, 2018 that the issues to be decided at the hearing are as follows:

(i) Has the applicant sustained a catastrophic impairment as defined by the *Schedule*?

(ii) Is the applicant entitled to attendant care benefits:

a). In the amount of $5,152.57 per month recommended by Lauren Oakell in an attendant care needs Form 1 dated 2015 for the period from March 29, 2017 to date and ongoing?

b). What was the amount of attendant care incurred by the applicant?

c). Is the attendant care deemed to have been incurred?

(iii) Is the applicant entitled to payments for cost of examinations for a rehabilitation benefit in the amount of $2,000.00 for a psychological assessment recommended by Dr. Vitelli of Caring Rehab in a treatment plan dated July 16, 2015, denied by the respondent on July 30, 2015?

(iv) Is the applicant entitled to payments for cost of examinations in the amount of $2,000.00 for a psychological assessment recommended by Dr. Romeo Vitelli, psychologist, in a treatment plan dated May 1, 2015, denied by the respondent on May 8, 2015?

(v) Is the applicant entitled to payments for cost of examinations in the amount of $2,200.00 for an in-home attendant care assessment recommended by Lauren Oakell in a treatment plan dated March 22, 2017, denied by the respondent on April 10, 2017?

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

(vii) Is the applicant entitled to an award under Ontario Regulation 664 because it unreasonably withheld or delayed payments to the applicant?

CASE MANAGEMENT

[4] The parties consented to all procedural matters except for a number of production requests.

[5] Rule 9.1 of the *Licence Appeal Tribunal (LAT) Rules of Practice and Procedure, Version 1 (April 1, 2016)* (the "*LAT Rules*") states that the Tribunal may at any stage in a proceeding order any party to provide such further particulars or disclosure as the Tribunal considers necessary for a full and satisfactory understanding of the issues in the proceeding. *LAT Rule* 9.3(e) states that a party may seek an order from the tribunal requiring the other party to disclose any document or thing the Tribunal considers relevant to the issues in dispute. Under *LAT Rule* 3.1, the *Rules* are to be liberally interpreted to facilitate a fair, open and accessible process, to allow effective participation by all parties, and ensure efficient, proportional, and timely resolution of the merits of the proceeding.

[6] The Tribunal has an obligation to ensure a fair, just, expeditious and cost efficient determination of every case on its merits. The Tribunal prefers to adjudicate matters on a complete evidentiary basis. The Tribunal is also mindful of the consumer protection nature of the *Schedule* to persons injured in automobile accidents in Ontario.

[7] My orders for the production requests and my reasons are as follows:

(a) Documents the Applicant Requested from the Respondent

(i) A complete copy of the accident benefit file of the respondent with respect to the applicant's motor vehicle accident dated January 27, 2014: **The respondent shall provide the applicant with a list of the documents in its file as specified below at paragraph 11.** With the agreement of the applicant, the respondent is not required to itemize documents that are subject to solicitor client privilege and the applicant will not assert that privilege has been waived by the respondent by listing the privileged documents. My reasons for the Order are the respondent advised, and the applicant confirmed, that it has already produced copies of the non-privileged portions of the file up to July 2016. The respondent is prepared to produce an index of the non-privileged portions of the accident benefit file to

the applicant for the applicant to review and advise what documents are missing from her file as long as the applicant reciprocates by providing the respondent with a list of the non-privileged documents in her counsel's file.

I find that the accident benefit file, specifically the correspondence that sets out the reasons for why the claims in issue were denied, is relevant to the applicant's claim for an award under Ont. Reg.664. However, I also agree with the respondent that it should not be required to produce documents it has already produced, the reserve information nor any privileged documents. The applicant's request is too broad in scope as I am prohibited under s.5.4(2) of the *Statutory Powers Procedure Act*[1] (the *"SPPA*") from ordering the production of privileged documents. I do not have authority to order the production of documents that are not relevant. The applicant claims that the respondent has an onus to prove that the documents that it is asserting privilege over are, in fact, protected by privilege. It is premature for the respondent to prove the documents it is asserting privilege over are privileged until it first identifies those documents. Once the respondent produces a list of the documents it claims are privileged and lists the type of privilege, the applicant may then challenge the respondent's assertion of privilege over the documents. It is at that point that the respondent is required to provide some evidence that the documents are privileged.

(ii) <u>The clinical notes and records, any draft reports of all s. 44 insurance medical examiners who assessed the applicant:</u> **The respondent shall request the clinical notes and records of the insurer's examination ("IE") experts whose evidence, whether written or oral, the respondent is relying on at the hearing and provide the non-privileged portion of the clinical notes and records or proof its best efforts to obtain the clinical notes and records to the applicant by April 25, 2018. The clinical notes and records include all non-privileged correspondence between the applicant and the assessors and the IE companies who employ the assessors.**

My reasons for the order are that I agree with the applicant's submission that the notes and records are relevant and contain the facts and information upon which the IE experts based their opinions. That information is also found in the IE reports, but the IE assessor's clinical notes and records will disclose whether or not the IE assessors' reports have been changed by the assessment company and the notes and records The IE reports that the respondent relied on to deny the benefits in issue are clearly relevant to the issues in dispute for the hearing. The clinical notes and records of those IE assessors are relevant to the weight the hearing adjudicator may attribute to the evidence of those IE assessors.

[1] *Statutory Powers Procedure Act*, RSO 1990, c S.22

Although the respondent's experts reviewed the other IE reports and may have commented on them, I am not convinced by the applicant's submissions that the clinical notes and records of all the IE assessors who prepared reports dealing with claims for benefits that are not in issue are relevant. The facts and information those assessors relied on in forming their opinions are set out in their reports. If those reports are not before the hearing adjudicator, the hearing adjudicator need not be concerned about their weight and whether or not the IE assessment companies changed the reports. For this reason, the respondent is not required to produce the clinical notes and records of those IE assessors who are not testifying or if the respondent is not relying on their reports at the hearing.

(iii) Any correspondence between the above mentioned insurance medical examiners, the vendors (Centric Health and Viewpoint), and the respondent: The correspondence would form part of the clinical notes and records of the IE assessors or the complete AB file and addressed in paragraphs (i) and (ii). I find the reasoning in *Campeau v. Liberty Mutual Insurance Company* [2] of assistance. This is a Financial Services Commission of Ontario ("FSCO") decision submitted by the applicant that held that, so long as the expert remains in the role of a confidential advisor, there are sound reasons for maintaining privilege over documents in his possession. Once he becomes a witness, however, his role is substantially changed. His opinions and their foundation are no longer private advice for the party who retained him, but are for the assistance of the trier of fact. Essentially, any litigation privilege that may have attached is waived. However, the privilege that attached to any correspondence with the lawyers remains privileged.

I find that insurer's examinations are conducted for the purpose of adjusting the applicant's claim in accordance with the *Schedule*. According to the reasoning in *Campeau v. Liberty*, the only correspondence that the respondent's counsel would have with the IE assessors would be for the purpose of the hearing. It would be rare for an insurance company to pay for its legal counsel to adjust claims. For this reason, **any letters between the respondent's counsel and the IE assessors over which the respondent asserts privilege are not producible.**

(iv) Copies of all surveillance and investigation documents in the possession of the respondent: **If the respondent conducts any surveillance on the applicant, the respondent shall provide the applicant with the particulars of the surveillance within 10 days of the receipt of the investigator's report and/or the surveillance video. If the respondent intends to rely on any surveillance evidence at the hearing, the respondent shall produce to the applicant the complete surveillance**

[2] *Campeau v. Liberty Mutual Insurance Company* (FSCO A00–000522, March 12, 2001)

videos and reports in its possession by June 11, 2018. The respondent's counsel advised that the respondent does not have any surveillance. **If the respondent conducts surveillance on the applicant, it has agreed to produce the particulars of the surveillance to the applicant.** However, if the respondent intends to rely on surveillance evidence at the hearing, it would have to waive any privilege it claims over the surveillance. Under such circumstances, where litigation privilege is waived, it would be unfair and prejudicial to the applicant to allow the respondent to submit evidence at the hearing that it did not produce to the applicant in accordance with the LAT Rules.

(v) Information with respect to the reserves of the respondent on this accident benefits claim: **The respondent is not required to produce any information about its reserves in this file.** The applicant claims that the reserve information is relevant to the award claimed under Ont. Reg.664. She relies on the FSCO decision of *Nigro and State Farm* (FSCO A99–000656, April 28, 2008) for the proposition that if an adjuster suggested through the reserve information that there was a potential for significant exposure for the insurer, a refusal to pay benefits may not have been reasonable since it did not reflect even the adjuster's own appreciation of the claim. I am not convinced by the applicant that reserves have any relevance to the issues in dispute. I am not bound by FSCO decisions and the courts and FSCO have consistently resisted motions for production of reserve information and I adopt the reasoning in *Osborne v. Non-Marine Underwriters, Lloyd's of London*,[3] which states that an insurer's internal estimation of its monetary exposure regarding the risk is not pertinent to the insurer's conduct in assessing and responding to the claim of an insured. Blair R.S.J. in *Osborne* stated that a plaintiff would have an unfair advantage in knowing how much an insurer estimates a claim is worth and might have a feeling of entitlement to a settlement in that amount, especially since the reserve is nothing more than an intelligent estimate of the risk as a whole. The Director's Delegate in the FSCO appeal decision of *Uka v. Aviva Canada Inc*.[4] interpreted this to mean that the Court was concerned with whether an insured would be confused into thinking that the amount of the reserves equals the amount of the benefits payable. In *Mamaca v. Coseco,*[5] Master Dash held that, absent extraordinary circumstances, reserve information will not be produced. Master Dash found that there was evidence of bad faith acts by Coseco in a document over which litigation

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[3] *Osborne v. Non-Marine Underwriters, Lloyd's of London*, 2003 CanLII 7000 (ON SC), [2003] O.J. No. 5500 (S.C.J.) at paragraphs 21 and 22,

[4] *Uka v. Aviva Canada Inc.* (FSCO Appeal P08-00036, July 16, 2009)

[5] *Mamaca v. Coseco Insurance Company*, (2007) CanLII 9890 (ON SC) upheld on appeal at 2007 CanLII 54963 (ON SC), except for the rejection of the Master's determination that the only way an insured can ascertain whether her claim was treated in good faith is to review the insurer's internal file. Leave to appeal denied 2008 CanLII 30312 (ON SCDC).

privilege was asserted. Master Dash ordered the document produced, but with the reserve information blacked out or redacted. On appeal, MacDonald J. found that Master Dash was correct in allowing the insurer to delete the reserve information. In other words, the evidence of bad faith in *Mamaca v. Coseco* did not amount to an extraordinary circumstance.

The Tribunal does not have jurisdiction to deal with bad faith claims. However, in a similar vein, there is no evidence before me that qualifies this case as being extraordinary such that reserve information is relevant to the claims in issue and in particular to the Ont. Reg.664 award. The applicant alleges that the benefits could have been denied because of the way reserves were set. However, at first glance, the respondent's denials of the claims in issue appear to be based on the information provided by the IE assessors. No evidence was provided to me or pointed out to me that indicates the insurer withheld benefits unreasonably or otherwise, such that there are extraordinary circumstances that warrant disclosure of the reserve information or that convinces me that there is reason to take a different approach than the courts or FSCO. There is no indication in the particulars of the applicant's claim for the Ont. Reg. 664 award of anything to do with reserve information. The allegations of misconduct in the applicant's particulars are merely allegations, not evidence. For these reasons, any documents the respondent produces may have the reserve information redacted.

(vi) Copies of any policy manual in the possession of the respondent with respect to the adjustment of catastrophic impairment claims: **the respondent is not required to produce a policy manual.** The respondent's counsel advised that to the best of his knowledge, the respondent does not have a policy manual for adjusting catastrophic claims other than the *Schedule.* Even if the respondent did have a manual, I am not convinced that it would be relevant to an award under Ont. Reg.664 in any event. Whether or not the applicant is entitled to an award is dependent upon whether the respondent unreasonably withheld or delayed payments to the applicant. A determination of an unreasonable withholding or delay will be made based on the timelines and tests set out in the *Schedule* and not on whether the respondent complied or did not comply with some manual that may or may not exist.

(vii) A copy of all OCF-21s with respect to invoices paid to the insurance medical examiners with respect to the applicant's claim: **the respondent is not required to produce the invoices for its IE assessors.** The applicant submits that if the respondent paid more than the $2,000, the respondent would have an advantage over the applicant. A payment over $2,000 may sway the IE assessors to provide biased opinions. I am not convinced that the amount an expert is paid is relevant to the issues in dispute. The

applicant will have an opportunity to test the thoroughness or bias of the respondent's experts when her counsel cross-examines them at the hearing on their reports and clinical notes and records. The Tribunal is not the proper forum to deal with issues or concerns about whether the respondent pays more for its assessors than s.25 of the *Schedule.*

(viii) All electronic and non-electronic communication within the respondent's file, including all e-mails and phone call notes: This is already addressed in paragraph (i). Under Rule 2.8 of the *Licence Appeal Tribunal (LAT) Rules of Practice and Procedure, Version 1 (April 1, 2016)* the definition of "document" includes data and information recorded or stored by any means, including in electronic form. Therefore, it is not necessary for me to make another order because my order for production pertaining to the complete accident benefit file in paragraph (i) addresses all electronic and non-electronic communication.

(b) Documents the Respondent Requested from the Applicant

(ix) The clinical notes and records, correspondence and any draft reports, of all treating health practitioners as well as all section 25 medical examiners who assessed the applicant: **Upon confirmation by April 10, 2018 that the respondent will pay for the cost of obtaining the documents, upon receipt from the respondent by the applicant's counsel by April 10, 2018 of cover letters to the health practitioners requesting their records and of authorizations for the applicant to sign for production of those documents to the applicant's counsel, both prepared by the respondent, the applicant shall sign the authorizations and the applicant or her counsel shall send the original authorizations and the request letters to the assessors who conducted assessments under s.25 of the *Schedule* and who will be testifying at the applicant's hearing and to the clinics and/ or health practitioners whose treatment plans are in issue. The applicant shall provide the respondent with copies of the documents produced or proof of her best efforts to obtain the documents by May 2, 2018.** I find those documents are relevant for the same reasons that the clinical notes and records of the IE assessors are relevant. The applicant submits that, unless the documents were not requested by the respondent under s.33 of the *Schedule*, I should not find that the clinical notes and records are relevant to the issues to be determined at the hearing. The applicant submits that support is found under s.5.4 (1.1) of the *SPPA,* which states that the Tribunal's power to make orders for disclosure is subject to any other Act or regulation that applies to the proceeding.

The applicant also relies on s.280(4) of the *Insurance Act,* which states that the dispute is required to be resolved in accordance with the *Schedule.* I do

not agree with the applicant that this means that if the respondent did not request the information pursuant to s.33 of the *Schedule* when adjusting the claim, that the information is not relevant. Section 33 deals with the obligations on the insured person to provide information requested by the insurer and the consequences to an insured person if she ignores those obligations when a proper request for information is made by an insurer. Section 33 of the *Schedule* does not set out the authority of the Tribunal to order disclosure and production of documents. That power is found under s.3 of the *Licence Appeal Tribunal Act*, [6] which states that the Tribunal is required to hold the hearings and has all the powers that are necessary or expedient for holding hearings[7].

I find that the provisions in s.5.4 (1.1) of the *SPPA* and s.280(4) of the *Insurance Act* mean that when the Tribunal determines a person's entitlement to accident benefits, the tests for entitlement and quantum are to be obtained directly from the applicable *Schedule*. I find that to the extent s.33 of the *Schedule* contains a test of relevancy for disclosure, it is in the reference to "any information reasonably required to assist in determining entitlement to a benefit." This is a fairly broad test. The applicant provided no case law or pointed to anything in the *Schedule* to support her submission that the Tribunal is limited in applying this broad test of relevance for the purpose of ordering disclosure if an insurer fails to request documents pursuant to s.33 of the *Schedule* that are relevant to issues in dispute before the Tribunal. I find that the limitation to the Tribunal's power to order disclosure suggested by the applicant is contrary to s.3 of the *Licence Appeal Tribunal Act.*[8] Just because an insurer has enough information to deny a claim, does not mean that once that denial becomes an issue in dispute slated for a hearing, that the insurer is not entitled to further information that supports its denial or that such information is not relevant for the hearing adjudicator to determine entitlement. To limit the powers of the Tribunal in the manner suggested by the applicant would also mean that the Tribunal does not have the power to determine relevance, only the insurer does. Such reasoning is not supported by the *SPPA*, the *Licence Appeal Tribunal Act,* the *Insurance Act* or the *Schedule*.

(x) The applicant's prescription summaries from three years pre-accident to present: **The applicant shall produce copies of the prescription summaries in its possession to the respondent by April 9, 2018 and shall order updated summaries and produce the updated prescription**

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[6] *Licence Appeal Tribunal Act,* 1999, SO 1999, c 12, Sch. G

[7] See also *LAT Rule 9.1,* which states that the Tribunal may at any stage in a proceeding order any party to provide such further particulars or disclosure as the Tribunal considers necessary for a full and satisfactory understanding of the issues in the proceeding.

[8] I am also persuaded by s.34 of the *SPPA*, which states that if there is a conflict, the *SPPA* takes precedence over any other Act, rule, provision or regulation unless expressly provided for in the other Act, provision, regulation or rule.

summaries or proof of her best efforts to obtain them to the respondent by May 2, 2018. The applicant's counsel advised he already has copies of the applicant's prescription summaries up to 2016. I agree with the respondent's submissions that the prescription summaries are relevant to the issues in dispute. The applicant submits that if the documents were not requested by the respondent's IE assessors, that they are not relevant. The applicant relies on a policy issued by the College of Physicians and Surgeons of Ontario (CPSO), Policy #2-12 that requires assessors such as IE assessors to ensure that they have obtained and reviewed all available clinical notes, records and opinions relating to the person assessed. If, despite reasonable requests, an assessor is missing documents, this fact should be noted in the assessor's report. I find any failure of an IE or s.25 assessor to comply with the CPSO's policy goes to the weight that a hearing adjudicator may attach to an assessor's evidence. I do not find that assessor's compliance or non-compliance with the CPSO's policy governs my determination of what is relevant. If it did, I would be giving up my adjudication power to the IE assessors. The documents that the applicant attached to her application disclose that she has been prescribed medication for her depression, anxiety and chronic pain. The issue of whether the applicant sustained a catastrophic impairment will largely be dependent upon the extent of her psychological impairment. The prescription summaries will show whether the applicant has filled out prescriptions that were made for her psychiatric diagnosis, what medications she has tried and when. This information is relevant to the weight the hearing adjudicator will give to the opinions of the applicant's catastrophic assessors compared to the IE assessors and the timing of their assessments. I also agree with the reasoning in the *Cook v. Ip*, [1985] O.J. No. 209, Ontario Court of Appeal decision. In that case, the Court considered the question of the privacy and confidentiality of medical records and the relevance of those records in a personal injury action. The Court there held that privacy can no longer attach to a plaintiff's medical records after they have begun an action seeking damages for personal injuries. This includes documents in a plainitff's possession that are relevant to an issue in the proceeding and which may be helpful to the other party. The applicant submits that *Cook v. Ip* is distinguishable because it was decided under the *Rules of Civil Procedure* when proportionality did not govern the interpretation of the *Rules of Civil Procedure.* I agree that proportionality is a consideration for me when ordering production of documents. However, I still find that *Cook v Ip* is binding on me when dealing with the balance of privacy considerations and the production of relevant documents. The respondent is facing exposure of of its policy limits increasing from $50,000 to $1,000,000. For these reasons, I find that an order for the production of documents that the applicant's counsel already has in his possession and requiring the applicant ot request updated documents is proportional to what the applicant is claiming.

(xi) Invoices from the applicant's attendant care providers: **The applicant shall request the invoices from the applicant's attendant care providers and provide them, or proof of her best efforts to obtain them, to the respondent by May 2, 2018.** I find the invoices are directly relevant to the issue of what amount of attendant care expenses were incurred.

(xii) A list of the non-privileged documents pertaining to the applicant in the possession of the applicant's counsel: **The applicant shall produce a list of documents as specified in paragraph 11 below.** I find the applicant more than likely has documents in her control that are relevant to the issues in dispute, that have been requested by the respondent and that the applicant has not produced. For example, the applicant refused to produce prescription summaries requested by the respondent. However, her counsel admitted at the case conference that he had the applicant's prescription summaries in his file up to 2016. The list of documents will indicate whether the applicant or her counsel already have some of the other documents in their possession that have been requested by the respondent. This is relevant to the applicant's submissions that she would suffer hardship by having to produce all the clinical notes and records of her treating practitioners and her s.25 assessors because of the cost involved in obtaining the documents requested by the respondent.

[8] The applicant, in her submissions, raised an issue of the cost of obtaining the documents requested by the respondent. I accept that it would be a hardship for her to absorb the cost charged by the non-parties for producing documents that the respondent has requested. I have no power to order costs unless the applicant acts unreasonably, in a vexatious or reprehensible manner under *LAT Rule* 19. There is no suggestion by the applicant that the respondent has acted in such a manner. The respondent submitted that "costs" in the *LAT Rules*[9] refers to a lawyer's hourly rate or contingency fee and not disbursements, which are the expenses such as photocopying costs, long distance charges, or filing fees. The respondent's counsel undertook to seek the respondent's instructions on whether to pay for the expenses charged by the non-parties to produce the documents requested by the respondent. My orders for the applicant's productions are, except for the documents that the applicant and her counsel already have, subject to confirmation that the respondent has agreed to pay for the cost of obtaining the documents.

[9] The applicant submitted that the respondent should also pay for the administrative costs incurred by the applicant for the support staff at her counsel's office to write the request letters to obtain the documents. The applicant relies on the *Human Rights Code*, RSO 1990, c H.19 and submits that she has a disability that prevents her from being able to go to her pharmacies or treatment providers and request her records. She submits that she is unable to

[9] *LAT Rule* 19 deals with costs. There is no definition for "costs" in either the *LAT Rules* or the *SPPA*.

provide the invoices for her attendant care because she has a motivation disability. Therefore, the administrative staff for her lawyer must make the requests for her and, as a result, she incurs a liability. The applicant submits this liability is not a legal cost contemplated under *LAT Rule* 19. The applicant submits that her lawyers' administrative staff are providing the accommodation the *Human Rights Code* requires the respondent to provide for the applicant because of the respondent's contractual relationship with the applicant. The applicant submits the respondent should pay this and that it would not cause the respondent undue hardship to do so.

[10] The respondent has asked that it be provided with an opportunity to address the applicant's submissions on the *Human Rights Code* submissions before I make a decision because the first time it was mentioned was at the case conference on February 26, 2018. For this reason, and in order that I may make an informed decision, I will allow the applicant and the respondent to serve and file written submissions on the applicant's submissions that the respondent ought to pay for the costs of her lawyers' staff in obtaining the documents requested by the respondent. The parties shall also address why the respondent should pay the costs rather than provide the applicant with authorizations for the documents requested by the respondent that she may sign and return to the respondent with the undertaking that the respondent provide copies of the documents it obtains to the applicant. The parties shall serve and file their written submissions and case law on the *Human Rights Code,* the liability incurred by the applicant on requesting the documents sought by the respondent and why providing authorizations does not address the issue as follows:

Applicant's submissions and evidence due: **April 10, 2018**.
Respondent's submissions and evidence due: **April 16, 2018**.

(i) The applicant's and respondent's submissions shall not exceed 10 pages, double spaced, 12 point, Arial or Times New Roman font. The page limits are exclusive of evidence and case law. I may not consider submissions which exceed the page limits.

(ii) Submissions must make pinpoint reference to the evidence and law by tab and page number and, where available, paragraph number.

[11] The applicant and the respondent shall exchange with each other and file with the Tribunal by **April 10, 2018**, a list of documents in a form similar to a sworn affidavit of documents dealing with documents in their respective files pertaining to the applicant. The lists shall include sections listing those documents not provided to the other party because they are not arguably relevant, because privilege is claimed over them and because the deemed undertaking rule in Rule 30.1.01 of the *Rules of Civil Procedure* applies to them. The parties may see the originals of the productions upon request to the other party's counsel of those documents that are not listed in the section dealing with documents that are not

relevant, that are privileged or are subject to Rule 30.1.01 of the *Rules of Civil Procedure.*

DOCUMENTS FOR THE HEARING

[12] The parties must exchange and file with the Tribunal indexed copies of evidence that they plan to use at the hearing by **June 11, 2018.**

(i) No additional or new evidence may be submitted for use at the hearing beyond the date in this paragraph.

(ii) The documents shall be limited to those relevant to the issues in dispute and that the parties will refer to in the hearing.

(iii) Document pages must be consecutively numbered, tabbed or bookmarked and indexed with the name of the author of the document, the page number, the author's occupation and date of the document.

(iv) The parties are encouraged, but not required, to produce a joint document brief and/or an agreed statement of facts.

(v) The documents filed by the parties with their application, response or for the case conference will not be part of the evidence at the hearing. Documents that the parties wish to rely on must be resubmitted to be used for the hearing.

(vi) The parties shall bring a hard copy of the documents to the hearing for the aid of the hearing adjudicator.

(vii) The hearing adjudicator will be the final decision-making authority regarding the above noted requirements.

HEARING DETAILS

[13] An in-person hearing is still scheduled to commence on **June 25, 26, 27, 28, 29, 2018** and **July 3, 2018** from **9:00 a.m. to 5:00 p.m. at Toronto**.

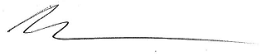
[14] Subject to my Orders dated March 26, 2018, all previous orders made by the Tribunal remain in full force and effect.

OTHER PROCEDURAL MATTERS

[15] The parties are reminded that if a party that wishes to record a hearing (including by court reporter), requests for permission must be made in writing to the Tribunal at least 10 days prior to the hearing and the request must be copied to the other party.

[16] If the parties resolve resolve any or all the issues in dispute, the applicant shall immediately advise the Tribunal in writing.

Released: April 3, 2018



Deborah Neilson, Adjudicator