

Citation : *Prestidge v Definity Insurance Company*, 2025 NBKB 200

IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF MONCTON

BETWEEN:

JACKLYN PRESTIDGE

APPLICANT

- and -

DEFINITY INSURANCE COMPANY, a body corporate

RESPONDENT

DECISION

BEFORE: Justice Maya Hamou

DATE OF HEARING: September 2, 2025

DATE OF DECISION: September 2, 2025

APPEARANCES: Marie-Eve Nowlan and Chantal Thibodeau, K.C., counsel
appearing on behalf of the Applicant
Ronald J. Savoy, counsel appearing on behalf of the Respondent

OVERVIEW

1. The Applicant, Jacklyn Prestidge, was involved in a motor vehicle accident and as a result of the accident has undergone physiotherapy and massage therapy treatments. Residing in Moncton, the Applicant travels for physiotherapy to 639 Pinewood Road (approximately 10 kms from home) and for massage therapy to 700 St. George Boulevard (approximately 2 kms from home).
2. The Respondent, Definity Insurance Company, issued the Applicant a Standard Automobile Policy, which under the provisions of the *Insurance Act*, RSNB 1973, c. I-12, includes mandated wording. The provisions of the Standard Automobile Policy, specifically Section B – Accident Benefits provide that reasonable expenses arising from bodily injury resulting from the accident will be paid by the insurer for listed services. The Standard Automobile Policy and the *Insurance Act* do not define “reasonable expenses”; they do not identify transportation costs, nor do they identify an applicable kilometric rate for transportation costs.
3. Since the date of the accident, the Respondent has made and continues to make payment under Section B – Accident Benefits for the costs of transportation at the rate of \$0.30/km for the Applicant to attend physiotherapy and massage therapy treatments.
4. The Applicant seeks the costs of transportation at a rate of \$0.57/km for the entire benefit period, arrears from the date of the accident and costs for the Application. In support of its Application, the Applicant presented evidence of the kilometric rate applicable for provincial and federal employees using their vehicles for work related travel.
5. The Respondent does not dispute the Applicant’s entitlement to transportation costs to and from medical services, but states that the kilometric rate is within the discretion of the insurance company.
6. On the evidence presented in this case, the Court finds the kilometric rate of \$0.30/km is reasonable and the Court does not find that the Respondent has exercised its discretion in an arbitrary, capricious manner or in bad faith.
7. The Court agrees with the position of the Respondent and dismisses the Application with costs for the following reasons.

ANALYSIS

Is the kilometric rate of \$0.30/km for transportation costs to attend medical services reasonable? And may the Court impose a kilometric rate of \$0.57/km for transportation costs to medical services?

8. The provisions of the Standard Automobile Policy, specifically Section B – Accident Benefits, provide that reasonable expenses arising from bodily injury resulting from the accident will be paid by the insurer for listed services.

(1) The insurer will pay with respect to each insured person who sustains bodily injury as a result of an accident **reasonable expenses** resulting from the accident within the benefit period set out in clause (2) for,

(a) necessary medical, surgical, dental, chiropractic, ambulance, hospital, or professional nursing services;

(b) any other necessary service within the meaning of entitled services in the Hospital Services Act or the Medical Services Payment Act; and

(c) other goods and services, which, in the opinion of the insured person’s attending physician and in the opinion of the insurer’s medical advisor, are essential for the treatment, occupational retraining or rehabilitation of the insured person.

[Emphasis added]

9. As a starting point, “reasonable expenses” is not defined in the Standard Automobile Policy or in the *Insurance Act*. Further, the Standard Automobile Policy and *Insurance Act* contain no outlined obligation to pay for transportation costs nor do they outline kilometric rate for transportation costs.
10. The Applicant relies on *AXA Insurance Company v Rolfe* as authority for the proposition that transportation costs are included in “reasonable expenses”. However, a review of the entire paragraph quoted shows a more nuanced proposition. Chief Justice Drapeau (as he then was) provided guidance on contractual interpretation of insurance contracts and observed that trial and appellate courts in other provinces found that expenses incidental to the procurement of medical services, such as transportation were generally covered. The New Brunswick Court of Appeal did not make a judicial pronouncement to the effect that transportation costs to and from medical services were included in “reasonable expenses” of the Standard Automobile Policy (*AXA Insurance Company v Rolfe*, paragraph 3).

25 It is axiomatic that courts are not at liberty to ascribe to contractual wording a meaning that it cannot reasonably bear. The same holds true with insurance policy wording, including no-fault auto insurance wording. That said, whenever the wording of an insuring provision, whether legislative or contractual, is open to more than a single reasonable interpretation, courts should opt for the one that benefits the insured (see *Amos v. Insurance Corp. of British Columbia*, [1995] 3 S.C.R. 405 (S.C.C.)). Examples abound of applications of that approach to provisions with wording similar to that of Subsection 1(1). Thus, despite the absence of explicit wording on the subject, courts have generally held that expenses incidental to the procurement of Subsection 1(1) services, such as the cost of related meals, lodging and transportation, are covered (see *Carroll v. Citadel General Assurance Co.*, [1983] I.L.R. 1-1640 (Ont. Div. Ct.) at 6297; *MacKay v. Rovers* (1987), 41 D.L.R. (4th) 193 (N.S. C.A.) ; and *Petersen v. Bannon* (1991), 1 C.C.L.I. (2d) 232, [1991] B.C.J. No. 499 (B.C. S.C.)).

11. In any event, the question of entitlement to compensation for transportation is not the question before this Court as the Respondent has accepted to pay transportation costs. The question is whether that kilometric rate is reasonable and whether the Court may impose a kilometric rate.
12. First, in support of its contention that the Court should impose a kilometric rate, the Applicant relies on the three-page transcript of an undefended and unreported decision in the matter of *Hilary Bradley v TD Insurance*, FM/99/2023 (January 18, 2024). In that case, the Applicant sought a determination that \$0.22/km was not a reasonable kilometric rate for transportation costs. The Court took judicial notice of the federal and provincial kilometric rate and set the kilometric rate to \$0.57/km. The presiding Justice specifically stated that he was not setting a guideline on kilometric rates moving forward and that cases should be decided on a case-by-case basis; specifically refusing to make a sweeping pronouncement. Further, in *Hilary Bradley v TD Insurance*, the Court did not outline the evidence submitted by the Applicant or the consideration of the Standard Automobile Policy language, the *Insurance Act* or jurisprudence. It is perplexing that the Applicant's counsel would rely on this case to suggest an established judicial pronouncement on a kilometric rate considering the Court's clear and unequivocal comments.
13. The Applicant spent considerable pages of its brief arguing this Court was bound by the decision *Hilary Bradley v TD Insurance* as a matter of judicial comity through the application of horizontal stare decisis. Considering the case was undefended and unopposed with no analysis of the legal issues, the Court does not consider itself bound by the decision found in a three-page transcript, which includes the appearance and the decision. The principles of

horizontal stare decisis contemplate that decisions made without full consideration will not be binding (*R v Sullivan*, 2002 SCC 19 at paragraph 75).

14. Secondly, neither party identified a case in which the courts set a generally applicable kilometric rate for transportation costs. In *Carroll v Citadel General Assurance Co.*, 1983 CarswellOnt 1442, the Ontario Divisional Court in a four-paragraph decision stated that travel expenses of an identified amount were reasonable and necessarily incurred to receive medical services.
15. Third, the Respondent relied on the case of *Crotty v Aviva General Insurance Company*, 2024 NLSC 54 which considered whether a “reasonable expense” under the Standard Automobile Policy include the payment of transportation costs at a certain rate. The case involved a request for certification of a proposed class action requiring insurers to provide reimbursement for transportation costs to and from medical appointments as “reasonable expenses” under the Standard Automobile Policy. The Court dismissed the request to certify the class action however made some comments about entitlement to transportation costs, which in that case were set at a rate of \$0.25/km.
16. I concur with the comments of Justice Khaladkar of the Court of King’s Bench of Newfoundland in *Crotty v Aviva General Insurance Company* at paragraph 35 and 36 to the effect that the decision as to whether transportation costs should be reimbursed is discretionary and must be defined by the insurer, and that if an insured is dissatisfied with the decision the insurer could have resort to the courts to determine whether claimed expenses were reasonable under the circumstances. I also concur with the comments of Justice Khaladkar in paragraphs 95 to 100 wherein the Court states that the discretion as to the kilometric rate rests with the insurer provided the discretion is not exercised in an arbitrary or capricious manner or made in bad faith.

35 I believe travel costs fall within the term “all reasonable expenses”. I am further of the opinion that the decision as to whether the travel costs should, or should not, be reimbursed is discretionary and must, in the first instance, be defined by the insurer. If the injured party is dissatisfied with the decision of the insurer then they would have resort to the courts to determine whether claimed expenses were reasonable under the circumstances.

36 I am fortified in this conclusion by looking at the practice in terms of the amount that is paid, on a per kilometer basis, for traveling expenses. Here, in Newfoundland and Labrador, the Defendant pays \$0.25 per kilometer. That is a number arrived at by the Defendant – in the exercise of its discretion to pay for traveling expenses. There are no facts alleged in the

amended Statement of Claim to support the proposition that the mileage rate is mandated by the regulatory authority.

[...]

95 I agree with the submissions of counsel for the Defendant that **none of the Standard Automobile Policies contain any provisions for any or all travel costs. Each and every one of them is completely silent on the topic of transportation costs.** What each of the policies do talk about is “all reasonable expenses” related to necessary medical and rehabilitation services.

96 **Who determines “reasonable expenses”? In my opinion, the Defendant has the discretion to decide what is reasonable.** Reasonable expenses are not limited to costs of transportation. They could include specific equipment required by an injured insured that is required for medical or rehabilitative purposes or a myriad of things. It wouldn’t make sense to list each item of potential reimbursement, including transportation costs, separately. The term “all reasonable expenses” covers everything and, in the event of a dispute as to what is reasonably necessary, there are avenues for resolving the dispute – including court.

97 The regulatory authority has input annually as to the base premiums to be charged for automobile insurance policies. The regulatory authority dictates the aggregate maximum limit that can be paid out as Section B – in some jurisdictions the maximum is \$25,000, in others it is \$50,000. However, I cannot imagine that the regulatory authorities engage in a line-item by line-item analysis of how the aggregate premium will be composed. As Mr. Wang testified, regulators are keen to ensure that insurers’ profit margins remain within acceptable bounds. How those profit margins are attained is within the operational purview of each insurer.

98 **If the insurer has the discretion to determine a reasonable expense, then it has the discretion to set, for example, the rate to be paid for travel expenses.** In this jurisdiction Aviva General Insurance Company set the rate at \$0.25 per kilometer. Should it have been \$0.25 or \$0.55? Who decides? **It is clear to me that it is the insurer who decides what rate will be paid – at least in the first instance.**

[...]

100 A breach of discretion cannot give rise to a suit for damages, in a breach of contract context, unless the discretion is exercised in an arbitrary or capricious manner or is made in bad faith.

[emphasis added]

17. It is not for the Court to set a kilometric rate applicable to Standard Automobile Policies. Setting of kilometric rates is the role of the legislator or insurance companies, not the Court. The Court is tasked, upon request of the insured, to determine if an expense constitutes a

“reasonable expense” and tasked with determining whether the discretion of the insurer is exercised in an arbitrary, capricious manner or in bad faith.

18. As to reasonableness, the Court finds that a reasonable kilometric allowance will vary based on location and circumstances – a set kilometric rate for transportation costs is not contemplated in the *Insurance Act* or in the Standard Automobile Policy. In this case, other than the distances travelled (10 kms return to physiotherapy and 2 kms return to massage therapy), the Applicant has provided no evidence with respect to vehicle costs or vehicle expenses. The Applicant made a passing reference to insurance, fuel costs, registration fees, inspections fees, maintenance and repairs; all of which are expenses incurred as part of automobile ownership and operation. There is no evidence upon which this Court can assess the “unreasonableness” of the current kilometric allowance offered by the Respondent. The Court only has evidence of the distance travelled to attend medical services, which is a very short distance within the city limits. On this basis, the Court finds the kilometric rate of \$0.30/km is reasonable in the circumstances of this case.
19. As to the exercise of discretion by the insurer, the Applicant provided no evidence of reproachable conduct on the part of the Respondent. The Applicant relied on the Respondent’s alleged failure to follow *Hilary Bradley v TD Insurance*, which the Court addressed above. The Applicant also suggested it is a matter of fairness to apply the kilometric rate applicable to provincial and federal employees engaging in work related travel. However, the Court disagrees with this contention. Employment related travel policies and section B indemnification are two completely different things. The Court does not find that the Respondent has exercised its discretion in an arbitrary, capricious manner or in bad faith.
20. The Court is not satisfied that the Applicant has established a need for the Court’s intervention in the circumstances of this case.

DISPOSITION

21. The Application is dismissed with costs of \$1000 payable to the Respondent.

Justice Maya Hamou
Court of King’s Bench of New Brunswick