Ontario Insurance Commission
DISPUTE RESOLUTION PRACTICE CODE
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Ontario Insurance Commission
General Inquiries
(416) 250-6714 (local)
(800) 517-2332  (toll free)

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# INTRODUCTION

This Practice Code is a users' guide to the dispute resolution procedures at the Ontario Insurance Commission. The disputes we deal with arise out of claims under the Statutory Accident Benefits Schedule (SABS). **The Rules of Procedure portion of the Code will apply to all new applications as well as existing cases in the dispute resolution process as of August 1, 1995.**
The Practice Code has been organized into 7 sections.
Section A, the Rules of Procedure, has been broken down into 6 parts: General, Mediation, Arbitration, Appeal of Arbitration Order, Variation or Revocation of an Order and General Procedures.
Guidelines on the interpretation and operation of the SABS, issued by the Commissioner are found in Section B.
Section C contains the Practice Notes, which are issued by the Dispute Resolution Group of the Ontario Insurance Commission to explain key elements of the dispute resolution process.

Section D sets out the applicable fees and assessments during the process.
Sections E and F contain the regulations on settlements and expenses, respectively and Section G has copies of all the required forms.
The Code provides guidance for moving through the dispute resolution process. It explains what is required of everyone involved in the dispute and sets out the rules for such matters as the filing of documents, payment of expenses and time limits.
Note that if the Code is found to be contrary to the Insurance Act or any other law or regulation, then that law or regulation will prevail.

The pages of the Code have been three-hole punched so that it will fit a standard 1-1/2 inch binder. This will allow for easy updates such as inclusion of new Practice Notes, which will periodically be issued by the Dispute Resolution Group. Additional copies of the Code and updates may only be purchased from:

Publications Ontario
880 Bay Street
Toronto ON M7A 1N8

QL Systems Ltd.
Marketing Manager
1 First Canadian Place
Suite 930, Box 235
Toronto ON M5X 1C8
phone: (416) 862-7656

or by mail order from:

Publications Ontario
880 Bay Street, 5th Floor
Toronto ON M7A 1N8
phone: (416) 326-5300
(800) 668-9938 (toll free)

Please call for the cost before ordering as pre-payment is required. Cheques should be made payable to the Minister of Finance. Visa and Mastercard are accepted.

Future editions of the CCH, Canada Law Book and Carswell publications which report the Commission's arbitral and appeal decisions will also contain the Code. As well, public libraries will have up to date copies of the Practice Code, available for viewing.

You may obtain a copy of the forms you require from:

Ontario Insurance Commission
Dispute Resolution Group
5160 Yonge Street, P.O. Box 85
North York ON M2N 6L9
phone: (416) 250-6714
(800) 517-2332 (toll free)
fax: (416) 590-7077

Bulk orders of forms are available from printers such as:

Informco Inc.
35 Bertrand Avenue
Scarborough ON M1L 2P3
phone: (416) 285-1700

## SOME ANSWERS TO FREQUENTLY ASKED QUESTIONS BY CLAIMANTS

What kind of disputes can be brought to the O.I.C. for resolution?
Our services help resolve disputes about whether you qualify for benefits under the Statutory Accident Benefit Schedule (SABS), and how much those benefits should be. The SABS deal only with injuries arising out of motor vehicle accidents that occurred on or after June 22, 1990. We do not handle disputes about other types of insurance, such as car damage, personal property and disability insurance. You may only use the services of the Dispute Resolution Group if the benefit in dispute has been claimed from the insurer, and denied.

**What services are offered?**
The Ontario Insurance Commission offers the following dispute resolution services: Mediation, Arbitration, Appeal and Variation/Revocation.

**How do I start the process?**
The first step in the dispute resolution process is **mediation**. To start a mediation you must send a completed **Application for Mediation** to the Ontario Insurance Commission at the address listed on the form.

**MEDIATION**
***What is mediation?***
Mediation is an informal process in which a neutral third party (the mediator) helps the parties resolve the issue(s) in dispute. A mediator works with the parties to find resolutions that are acceptable to everyone involved. Mediators don't take sides and they don't have the power to make decisions. The mediator is there to help the parties clarify the issues and explore options that can lead to a satisfactory outcome. Our statistics indicate that 75% of some or all of the issues in dispute are settled at mediation.

**How much will it cost?**

There is no cost for mediation; the service is free of charge to both sides. However, there is no mechanism to allow you to recover your expenses, including lawyer's fees, travelling expenses etc.

**In what language are services provided?**
Mediation service is available in both English and French. If you require assistance in another language, it is up to you to make those arrangements and pay any associated costs.

**Do I need a lawyer?**
Although a lawyer is not required in mediation, many people feel more comfortable having a lawyer help them with the process.

**Do I have to be there?**
Mediations can be conducted either in person or on the telephone (usually via a conference call). You have a responsibility to participate in the mediation process, whether or not you have a representative. If for some reason (e.g. confinement to hospital) you do not attend your mediation your representative must have full authority to bind you to any agreements which may be made. If your representative does not have this authority, the mediator may adjourn the mediation.

**How long will it take?**
The Insurance Act states that all mediations must be concluded within 60 days. In some cases this limit can be extended on written consent of all parties.

**What documents will I need?**
It is up to you to prove the claim to the insurance company. You should try and provide copies of the best available documentation. For medical disputes, this can include such things as doctor's reports, hospital reports, OHIP records and physiotherapy reports. If your dispute is about the amount of your income, you should be prepared to provide such things as tax returns, financial statements and bank records.

**What if my dispute does not get resolved in mediation?**
If, at the conclusion of mediation there are still issues remaining in dispute you may apply for **arbitration**.

**ARBITRATION**
**What is arbitration?**
Arbitration is a decision making process, similar to court. Some of the advantages of arbitration over court are that it is quicker, less expensive and less formal. However, as in court an independent decision maker (the arbitrator) will listen to the witnesses, review all the evidence and issue a decision. All arbitration decisions are issued in writing. The arbitrator's decision is binding.

**Who can file for arbitration?**
Only the insured person may file for arbitration; the insurance company does not have this right. However, it is important to remember that you may only file for arbitration for a disputed issue that has already been to mediation and failed.

**How do I file for arbitration?**
To commence an arbitration proceeding you must send a completed **Application for Arbitration** to the Ontario Insurance Commission. The **Application** must be accompanied by a $100.00 filing fee.

**How much will it cost?**
Over and above the $100.00 filing fee you will also be responsible for your own expenses such as witness fees, travelling, legal expenses etc. However, in many cases you may recover at

least a portion of these expenses when the arbitrator issues a decision. You should know that legal fees are only recoverable at the Legal Aid Tariff (the amount that a lawyer would be able to charge under Legal Aid). If your lawyer charges more than legal aid rates, then you will be responsible for this additional amount.

As well, if the arbitrator finds that the claim was frivolous, fraudulent, vexatious or an abuse of process then you may be ordered to pay some of the insurer's expenses, up to the amount of the assessment the insurance company has paid ($2,000.00).

**In what language are services provided?**
Arbitration hearings may be held in English or French. Arrangements can be made to provide translation services for other languages, if required.

**Do I need a lawyer?**
Although a lawyer is not required for arbitration, most people are represented throughout this process. Insurance companies are nearly always represented by lawyers at arbitration. You are encouraged to at least consult a lawyer before proceeding to arbitration.

**What documents are required?**
As in mediation, you must have independent documentation (evidence) in support of your claim. The arbitrator can order you to produce and exchange certain documents with the insurance company.

**Do I have to be there?**
You should be present at your hearing. Arbitration hearings are usually held in person either at our office in North York or at other convenient locations throughout Ontario. Sometimes the parties can agree to waive a hearing and the arbitrator's decision will be based on the documents filed and written arguments.

**How long will it take?**
There is no legislated time limit in which arbitration must be completed, after filing. The length of the process, including the hearing and the time necessary to render a decision, will vary depending on the nature and complexity of the case.

## APPEALS

**Can an arbitration decision be appealed?**
Either party has the right to appeal the arbitration decision by filing a **Notice of Appeal** along with a $250.00 filing fee. However, it is very unusual for an arbitrator's decision on facts to be overturned. Most appeals involve the interpretation of legal points rather than a reconsideration of the facts.
Appeals are decided by the Director of Arbitrations or an Appeals Officer.

## VARIATIONS AND REVOCATIONS

**What are variations and revocations?**
If circumstances change after a decision has been rendered (either in arbitration or appeal) then either party may apply to the Director of Arbitrations to have the decision varied or revoked. The cost of this process is $100.00 to the applicant.

**How do I find a lawyer?**
The Law Society of Upper Canada offers a lawyer referral service. For more information, phone (416) 947-3330.

**Where do I get more Information?**
More detailed information is available through the Commission's recorded telephone information service at (416) 250-6714 or toll free at 1-800-517-2332.

# Section A
# RULES OF PROCEDURE

## PART 1 – GENERAL

### 1. INTERPRETATION

1.1 These Rules will be broadly interpreted to produce the quickest, most just and least expensive resolution of the dispute.

1.2 Where something is not provided for in these Rules, the practice may be decided by referring to similar Rules in the Code.

1.3 A defect in form or other technical breach will not make a proceeding invalid.

1.4 Any requirement set out in the Rules may be set aside as provided in Rule 67.

### 2. GUIDELINES

2.1 The Commissioner may publish guidelines on the interpretation and operation of the Statutory Accident Benefits Schedule. Guidelines are found in Section B of the Code.

2.2 The adjudicator will consider these guidelines when interpreting the Statutory Accident Benefits Schedule.

### 3. PRACTICE NOTES

3.1 The Commission may issue Practice Notes to inform persons of the policies and administrative procedures of the Dispute Resolution Group. Practice Notes are found in Section C of the Code.

3.2 Practice Notes are not binding and do not affect the duty of the adjudicator to make decisions based on the specific circumstances in the proceeding.

### 4. DEFINITIONS

4.1 In these Rules:

"accident benefits" mean either:

(a) benefits under the Statutory Accident Benefits Schedule - Accidents Before January 1, 1994, for accidents that happened between June 22, 1990 and December 31, 1993; or

(b) benefits under the Statutory Accident Benefits Schedule - Accidents on or after January 1, 1994, for accidents that happened on or after January 1,1994;

"Act" means the Insurance Act, R.S.O. 1990, c. I.8, as amended;

"adjudicator" means the Director or arbitrator assigned to conduct the pre-hearing, hearing, preliminary conference, appeal or variation/revocation proceeding, as the case may be;

"Commission" means the Ontario Insurance Commission;

"Director" means the Director of Arbitrations appointed under the Act or a person to whom the Director has delegated his or her powers or duties;

"disability" means that the person is mentally incapable, within the meaning of section 6 or 45 of the Substitute Decisions Act, 1992, S.O. 1992, c.30, in respect of an issue in a mediation, arbitration, appeal or variation/revocation proceeding;

"document" includes written documents, forms, reports, charts, films, photographs, transcripts, videotapes, audio tapes, and computer files;

"electronic hearing" means a hearing held by conference telephone or some other form of electronic technology allowing persons to hear one another;

"file" means file with the Registrar;

"oral hearing" means a hearing at which the parties or their representatives attend before an adjudicator in person;

"Registrar" means the Office of the Registrar, Dispute Resolution Group, Ontario Insurance Commission;

"regulations" means regulations made under the Act;

"serve" means the effective delivery of a document to a person as permitted by these Rules;

"Statutory Accident Benefits Schedule" is a regulation made under the Act and particularly means either:

(a) the Statutory Accident Benefits Schedule - Accidents Before January 1, 1994 for accidents that happened between June 22, 1990 and December 31, 1993; or

(b) the Statutory Accident Benefits Schedule - Accidents on or after January 1, 1994 for accidents that happened on or after January 1, 1994;

"written hearing" means a hearing held by means of the exchange of documents whether in written form or by electronic means.

## 5. COMMISSION SERVICES AND DOCUMENTS

5.1 A person has the right to communicate in French, and to receive available services in French from the Commission as provided in the French Language Services Act, R.S.O. 1990, c.F.32.

5.2 The Commission may issue letters of direction, notices and other documents signed by the Registrar.

## 6. FILING

6.1 Where these Rules require a document to be filed:

(a) the document should be delivered to the Registrar;

(b) the same methods of delivery permitted under Rule 7 may be used, except that the Commission does not use a document exchange service; and

(c) the time frames set out in Rule 7 apply.

## 7. SERVICE

7.1 A document may be served by:

(a) personal delivery;

(b) regular, registered, or certified mail;

(c) courier service, including Priority Courier;

(d) facsimile;

(e) document exchange on a person who participates in an exchange service; or

(f) any other manner specified by the Director.

7.2 A document that is served by facsimile must include a cover page indicating:

(a) the name, address, and telephone number of the sender;

(b) the name of the individual to be served;

(c) the date and time the document is being sent;

(d) the total number of pages being sent including the cover page;

(e) the telephone number from which the document is being sent; and

(f) the name and telephone number of a person to contact in the event of a problem.

7.3 Service will be considered to take place within the time frames set out below:

(a) if a document is served by personal delivery, service takes place on the same day that the delivery is made;

(b) if a document is served by regular, registered, or certified mail, service takes place on the fifth day after the day on which the document is mailed;

(c) if a document is served by courier service, including Priority Courier, service takes place on the earlier of receipt, or on the second day after the document is given to the courier by the party serving;

(d) if a document is served by facsimile, service takes place on the same day that the document is sent;

(e) if the document is served by means of a document exchange on a person who participates in an exchange service, service takes place one day after the deposit, if the document is date stamped in the presence of the person depositing the document;

(f) if a document is served by any other means specified by the Director, service takes place within the time specified by the Director.

**8. COMPUTATION OF TIME**

8.1 In the computation of time under these Rules or an order:

(a) where there is a reference to a number of days between two events, they will be counted by excluding the day on which the first event happens and including the day on which the second event happens;

(b) where the time for doing an act under these Rules ends on a Saturday, Sunday, or on a holiday, the act may be done on the next day that is not a Saturday, Sunday, or a holiday; and

(c) filing or service of a document after 4:45 p.m. or on a holiday will be considered to be made on the next day that is not a Saturday, Sunday, or a holiday.

**9. AUTHORITY TO BIND**

9.1 The mediator or adjudicator, as the case may be, may adjourn a proceeding, on such terms as he or she considers appropriate, if the representative of the insurer or insured person is not authorized to bind the party represented.

**10. PARTY UNDER DISABILITY**

10.1 A person under disability or a minor may be required to be represented by:

(a) a litigation guardian;

(b) a guardian of the person's property or personal care as the case may be; or

(c) a court-appointed guardian.

**11. TIME LIMITS FOR MEDIATION OR ARBITRATION**

11.1 A mediation or arbitration must be started no later than:

(a) 2 years from the date the insurer refused to pay an amount claimed; or

(b) as provided in the Statutory Accident Benefits Schedule.

11.2 Despite Rule 11.1, an insured person may apply for arbitration within 90 days after the mediator reports to the parties in the Report of Mediator.

## PART 2 – MEDIATION

**12. OBLIGATIONS OF THE PARTIES BEFORE MEDIATION**

12.1 The insurer and the insured person, or their respective representatives, should contact each other to identify the issues in dispute, clarify the facts, exchange documents relevant to the dispute and discuss settlement, before filing an application for mediation.

**13. APPLICATION FOR MEDIATION**

13.1 An insured person or an insurer may apply for mediation of any dispute about the entitlement of an insured person to accident benefits or the amount of accident benefits that he or she is entitled to receive.

13.2 A party who applies for mediation must file:

(a) a completed Application for Mediation in FORM A, describing the issues in dispute;

(b) a copy of the insurer's written explanation or Explanation of Assessment by Insurer form, if any,

(c) a copy of all available documents that the applicant intends to refer to in the mediation; and

(d) if the applicant is the insurer, the name, address, and telecommunications numbers of the representative authorized to bind it.

13.3 If the Commission receives an incomplete application, the Commission may reject the application and return it to the applicant or their representative.

**14. APPOINTMENT OF A MEDIATOR**

14.1 On receipt of a completed Application for Mediation:

(a) the Commission will send a copy of the application and any documents accompanying the application to the other parties; and

(b) a mediator will be appointed promptly.

**15. RESPONSE TO APPLICATION FOR MEDIATION**

15.1 The party responding to the Application for Mediation may, within 10 days of receiving the application, file:

(a) a response to the issues raised in the Application for Mediation including any additional issues to be mediated;

(b) a copy of all available documents that the party intends to refer to in the mediation;

(c) if the party is represented, the name, address, and telecommunications numbers of the representative; and

(d) if the respondent is the insurer, a copy of the insurer's written explanation or Explanation of Assessment by Insurer form if it was not included in the application and the name, address, and telecommunications numbers of the representative authorized to bind the party.

**16. RESPONSIBILITY TO PARTICIPATE**

16.1 The parties to the mediation and their representatives are expected to make themselves available for mediation within the time frames set out by these Rules, shall participate fully and in good faith in the mediation process as required by the mediator, and shall exchange all relevant documents.

16.2 The failure to comply with Rule 16.1 may result in a mediator reporting to the parties that mediation did not take place.

**17. THE MEDIATION PROCESS**

17.1 Mediation may be conducted in person, by telephone, or by any other means that the mediator considers appropriate.

17.2 The mediator will look into all the issues in dispute and will help the parties settle as many of the issues as possible.

**18. CONFIDENTIALITY DURING MEDIATION**

18.1 All statements and offers to settle made during mediation, except those contained in the Report of Mediator, are made for the purpose of settlement and are not intended to cause harm to any position that the parties may wish to take in any arbitration or court proceeding.

18.2 Where a party to a mediation provides information to the mediator in confidence, the mediator will not disclose the information without the permission of the party, unless required by law to do so.

18.3 If a party provides documents to a mediator in confidence, the mediator will return the documents to the party and the documents will not form part of the mediation file.

**19. TIME LIMITS FOR MEDIATION**

19.1 Mediation will be completed within 60 days of the Application for Mediation being filed.

19.2 Despite Rule 19.1 and subject to Rule 21.1(a), the parties may agree to extend the 60-day time limit even if the initial time limit has expired.

19.3 Where the parties have agreed to extend the time for the completion of a mediation, the parties must:

(a) inform the mediator of the extension; and

(b) confirm the extension in writing to the mediator.

**20. SETTLEMENT OF AN ISSUE**

20.1 The parties may settle an issue at any time during the mediation process.

20.2 Where the parties settle an issue, the settlement may be subject to any legal

requirements governing final settlements, including those set out in the regulations. The regulation that governs settlement is found in Section E of the Code.
20.3 Where the parties settle an issue on their own during the mediation process, the parties will confirm the terms of the settlement with the mediator.

### 21. FAILURE OF MEDIATION

21.1 Mediation has failed on an issue when:
(a) the mediator is of the opinion that mediation will fail and notifies the parties; or
(b) the time limit for mediation, including any extension, has expired and no settlement has been reached.
21.2 If mediation fails on any or all of the issues in dispute, the insurer will provide the mediator with its last offer on any issue that remains in dispute.

### 22. REPORT OF MEDIATOR

22.1 If any of the issues in dispute are settled, the mediator will record the following in the Report of Mediator:
(a) the issues that were in dispute; and
(b) the terms of any settlement.
22.2 If mediation fails on any of the issues in dispute, the mediator will record the following in the Report of Mediator:
(a) the issues that remain in dispute;
(b) the insurer's last offer on any issue that remains in dispute; and
(c) any steps the parties agree to take to help them settle the issues that remain in dispute.
22.3 The Commission will provide a copy of the Report of Mediator to the parties.

### 23. CLARIFICATION OF MEDIATOR'S REPORT

23.1 If a party believes that the Report of Mediator does not reflect the outcome of the mediation, that party should notify the mediator and the other parties in writing with reasons within 14 days of receiving the report.
23.2 After considering the reasons and the comments of the other parties, the mediator may issue an amended Report of Mediator, if the mediator considers it appropriate.

## PART 3 – ARBITRATION

### 24. APPLICATION FOR ARBITRATION

24.1 An insured person may apply for arbitration only after mediation has taken place and has failed on the issues to be arbitrated.
24.2 An insured person applying for arbitration must:
(a) complete and file an Application for Arbitration in FORM B, clearly describing the issues to be arbitrated;
(b) indicate whether they prefer an oral, written or electronic hearing; and
(c) pay the application fee set out in Section D of the Code.
24.3 If the insured person files an incomplete application, or does not pay the required application fee, the Commission may reject the application and return it to the insured person or their representative.

### 25. APPOINTMENT OF AN ARBITRATOR

25.1 On receipt of a completed Application for Arbitration:
(a) the Commission will send a copy of the application to the other parties; and
(b) the Director will appoint an arbitrator.

### 26. RESPONSE BY INSURER

26.1 Within 20 days of receiving the Application for Arbitration, the insurer must:

(a) serve a Response in FORM C on the insured person and any other parties; and
(b) file a copy of the Response together with a Statement of Service in FORM D.

26.2 The Response must include:
(a) a detailed response to all of the issues raised in the application;
(b) a description of the result that the insurer seeks;
(c) the name, address and telecommunications numbers of the representative authorized to bind the insurer; and
(d) whether the insurer prefers an oral, electronic or written hearing.

**27. REPLY BY INSURED PERSON**

27.1 Within 10 days of being served with the insurer's Response, the insured person may reply by:
(a) serving a Reply in FORM E on the insurer and any other parties; and
(b) filing a copy of the Reply together with a Statement of Service in FORM D.

**28. COMBINING APPLICATIONS**

28.1 Where two or more arbitrations are pending before the Commission and it appears that:
(a) they have an issue or question of law, fact, or policy in common; or
(b) the application of this Rule will result in the quickest, most just, and least expensive means to deal with the applications;
the Commission will notify the parties that the arbitrator intends to order that:
(c) the proceedings be combined;
(d) the proceedings be heard at the same time;
(e) the proceedings be heard one immediately after the other;
(f) the proceedings be stayed until after the determination of any one of them;
(g) evidence presented in one proceeding will be applied in another proceeding; or
(h) an order or decision made with respect to one proceeding be applied to the other proceeding.

28.2 Where a party objects to an order being made under Rule 28.1 (c), (d), (g), and (h), the party shall file the objection and provide a copy of it to the other parties.

28.3 The arbitrator may make an order under Rule 28.1 on such terms as the arbitrator considers appropriate.

**29. DIVIDING APPLICATIONS**

29.1 Where the arbitrator considers it appropriate, or where the parties agree and the arbitrator approves, the arbitrator may order that an arbitration application be divided into distinct issues and the arbitrator may make a separate arbitration order on each issue in dispute.

29.2 If more than one final order is made in an application, each order will stand on its own for purposes of an appeal or a variation/revocation proceeding.

**30. EXCHANGE OF DOCUMENTS BEFORE PRE-HEARING CONFERENCE**

30.1 Before a pre-hearing conference, the parties must identify and arrange for the disclosure of documents that are reasonably necessary to determine the issues being arbitrated.

30.2 At least 7 days before the pre-hearing conference, each party must:
(a) exchange the documents in the party's possession that the party intends to rely on;
(b) identify any additional documents that the party intends to obtain prior to the hearing;
(c) identify documents that the party requests from any other party; and
(d) establish reasonable time frames for the production and exchange of the documents referred to in (b) and (c).

30.3 The parties should refer to the Practice Notes for guidance on obtaining, exchanging, and filing documents.

**31. ONGOING RESPONSIBILITY TO EXCHANGE DOCUMENTS**

31.1 The parties have an ongoing responsibility to ensure the prompt and complete exchange of documents including:

(a) serving any updates to the information produced and exchanged under Rule 30;

(b) serving copies of any additional documents obtained by the party that the party intends to rely on;

(c) promptly responding to requests for clarification; and

(d) identifying documents that the party requires from the other parties.

31.2 In addition to the requirements of this Rule and Rule 30, an arbitrator may order the production of any document or the giving of information that he or she considers relevant to the determination of issues in the arbitration, on such terms as he or she considers appropriate.

**32. PRE-HEARING CONFERENCE**

32.1 One or more pre-hearing conferences will be held before an arbitrator who will attempt to resolve the dispute, and will assist the parties to prepare for the arbitration by:

(a) identifying and obtaining agreement as to the issues for arbitration;

(b) obtaining agreement as to facts;

(c) addressing any issues relating to the identification and exchange of documents;

(d) deciding any preliminary objections and procedural problems;

(e) dealing with any requests for procedural decisions;

(f) setting dates for oral or electronic hearings; and

(g) dealing with any other matters that the arbitrator considers appropriate.

32.2 A pre-hearing conference may be held in person, electronically, or by any other means that the pre-hearing arbitrator considers appropriate.

32.3 The Commission will provide reasonable notice of a pre-hearing conference to the parties.

32.4 The pre-hearing arbitrator will confirm the results of the pre-hearing conference to the parties in writing.

**33. HEARING FORMAT**

33.1 On the basis of the Application for Arbitration and Response filed by the parties, the arbitrator may decide to:

(a) hold a written hearing with the consent of the parties;

(b) hold an electronic hearing; or

(c) hold an oral hearing.

33.2 The parties to an arbitration shall be given reasonable notice of the hearing.

33.3 An arbitrator will determine all issues in dispute and such other issues as the parties may agree.

33.4 In a written hearing, all parties are entitled to receive every document that the arbitrator receives in the hearing.

33.5 The arbitrator may not hold an electronic hearing if a party satisfies the arbitrator that holding an electronic hearing instead of an oral hearing is likely to cause the party significant prejudice.

33.6 Rule 33.5 does not apply if the only purpose of the hearing is to deal with procedural matters.

33.7 In an electronic hearing, the parties and the arbitrator must be able to hear one another and any witnesses throughout the hearing.

**34. THE ARBITRATION PROCESS FOR A WRITTEN HEARING**

34.1 Where the parties agree to have a written hearing, the arbitrator:

(a) may, within 30 days after the last day on which the insured person is entitled to file a Reply, request additional materials or written submissions on any issue or matter in dispute from the parties;

(b) may proceed with an arbitration even though a party has failed to file additional materials or written submissions if the arbitrator is satisfied that the party has received the request for additional materials or written submissions;

(c) will make the arbitration order based on the materials and submissions filed;
(d) will not make an arbitration order against a party solely on the failure of a party to file additional materials or submissions; and
(e) will issue a decision on the later of:
(i) 60 days after the last day on which the insured person is entitled to file a reply; and
(ii) 30 days after the last day on which the parties are required to file additional materials or written submissions.

34.2 Where a party does not participate in a written hearing in accordance with the notice of a written hearing, the arbitrator may proceed without the party's participation and the party is not entitled to any further notice in the proceeding.

**35. THE ARBITRATION PROCESS FOR AN ORAL OR ELECTRONIC HEARING**

35.1 The Commission will set a date for the oral or electronic hearing and will provide reasonable notice of the hearing to the parties. In the event of an electronic hearing, the notice will provide information about how the arbitrator will contact the parties.

35.2 Where a party does not attend at an oral hearing in accordance with the notice of an oral hearing, the arbitrator may proceed in the party's absence and the party is not entitled to any further notice in the proceeding.

35.3 Where a party does not participate at an electronic hearing in accordance with the notice of an electronic hearing, the arbitrator may proceed without the party's participation and the party is not entitled to any further notice in the proceeding.

35.4 An arbitration order will not be made against a party only because the party did not attend or participate at the hearing.

**36. EVIDENCE AND WITNESSES**

36.1 The arbitrator will determine the relevance, materiality, and admissibility of the evidence.

36.2 The arbitrator will not admit evidence at a hearing:
(a) that would not be admissible in a court by reason of any privilege under the law of evidence; or
(b) that is not admissible under the Act.

36.3 Every party must provide the Registrar and the other parties with the names of the witnesses that the party intends to call to present evidence not less than 10 days before the first day of hearing, or on such terms as the adjudicator considers appropriate.

36.4 If a party intends to introduce documents that have not been filed, the party must file the document and the information required by these Rules and serve a copy on the other parties as soon as possible, but not less than 10 days before the first day of the hearing, or on such terms as the adjudicator considers appropriate.

36.5 An arbitrator may question a witness on oath or affirmation, and may require sworn statements or dispositions to be made or taken.

36.6 An arbitrator has the power to summon and enforce the attendance of witnesses and require them to give evidence on oath or otherwise, and to produce documents, records, and things.

36.7 The arbitration hearing may be recorded by a court reporter who has taken an oath or affirmation to report the evidence and proceedings faithfully.

**37. SURVEILLANCE EVIDENCE**

37.1 If a party intends to introduce surveillance evidence, including videotapes, photographs, notes, and summaries of surveillance observations, it must be provided with the names and qualifications of the persons who secured the evidence and the dates, times, and places where the surveillance was undertaken.

**38. EXPERT WITNESSES**

38.1 If a party intends to introduce a report by an expert, the name and qualifications of the expert who prepared the report must accompany the report.

38.2 If a party intends to call an expert witness to present evidence at a hearing, that party

must serve and file a document setting out the following not less than 10 days before the first day of the hearing, or on such terms as the arbitrator considers appropriate:

(a) the name and qualifications of the expert witness;
(b) the subject matter of the testimony to be presented; and
(c) the substance of the facts and opinion to which the witness will present.

**39. REFERRALS TO THE MEDICAL AND REHABILITATION ADVISORY PANEL**

39.1 The arbitrator may refer questions related to the medical condition, treatment, or rehabilitation of the insured person to the Director.

39.2 The Director will refer the questions to the Chair of the Medical and Rehabilitation Advisory Panel.

39.3 The Chair of the Medical and Rehabilitation Advisory Panel will refer the questions to one or more medical/rehabilitation advisors who he or she considers qualified to conduct a medical or rehabilitation assessment.

39.4 The medical/rehabilitation advisor may:

(a) report on the basis of the evidence before the arbitrator;
(b) request additional evidence as may be required in his or her opinion to answer the questions; and
(c) require the insured person to submit to an assessment if the advisor considers it necessary.

39.5 The insurer will pay for any medical or rehabilitation assessment.

39.6 The medical/rehabilitation advisor will promptly submit a report to the Commission. The Commission will provide copies of the report to the arbitrator and the parties.

39.7 If a party wishes to cross-examine the medical/rehabilitation advisor on his or her report, the party must notify the Registrar and the other parties within 7 days of receiving the report.

**40. REOPENING OF HEARING**

40.1 The arbitrator may reopen a hearing at any time before he or she makes an arbitration order.

40.2 Rules 33 to 35 apply to the reopening with necessary changes.

**41. ORDERS**

41.1 The arbitrator will determine the issues before him or her by order and may make an order subject to such terms as he or she considers appropriate.

41.2 If the parties settle their dispute during the arbitration process, the arbitrator may issue a consent order where the parties file:

(a) a written request for a consent order signed by both parties,
(b) the terms of settlement agreed on by the parties; and
(c) a written agreement stating that any consent order will not be appealed to the Director.

41.3 At the written request of a party, the arbitrator may issue an order dismissing the arbitration proceeding subject to such terms as he or she considers appropriate.

41.4 Any order finally deciding an issue or the rights of a party will be in writing with reasons.

41.5 The Commission will provide a copy of the order to the parties.

## PART 4 – APPEAL OF ARBITRATION ORDER

**42. NOTICE OF APPEAL**

42.1 A party to an arbitration may appeal an order of an arbitrator to the Director.

42.2 To appeal an arbitration order a party must, within the time limit set out in Rule 44:

(a) complete and file a Notice of Appeal in FORM F;
(b) file a copy of the arbitration order being appealed; and
(c) pay the application fee set out in Section D of the Code.

42.3 The Notice of Appeal must include:

(a) a detailed statement explaining why the arbitrator's order is being appealed;

(b) a description of the decision the party wishes to obtain on appeal, including any request that the arbitration order be suspended, pending the outcome of the appeal;

(c) a list of the documents relied on for the appeal;

(d) an indication as to whether,

(i) a transcript of the arbitration was ordered;

(ii) a transcript was not ordered together with reasons why the transcript is not relevant to the appeal; or

(iii) the hearing was not transcribed; and

(e) a statement whether the appellant wants an oral or electronic rehearing, and if so, explain why an oral or electronic rehearing is requested.

42.4 If a party files an incomplete Notice of Appeal, or does not pay the required application fee, the Commission may reject the application and return it to the party or their representative.

**43. APPEALS OF PRELIMINARY OR INTERIM ORDERS**

43.1 The Director will not hear an appeal of a preliminary or interim order of an arbitrator until an arbitrator has finally decided all of the issues in dispute in the arbitration, unless the order being appealed finally determines the rights of the parties.

**44. TIME LIMITS FOR FILING AN APPEAL**

44.1 Subject to Rule 44.2, the appellant must:

(a) file the Notice of Appeal within 30 days of the date of the arbitration order;

(b) serve a copy of the Notice of Appeal on the parties to the arbitration; and

(c) file a Statement of Service in FORM D.

44.2 The Director may extend the time for requesting an appeal, either before or after the 30-day time limit, if the Director is satisfied that:

(a) there are good reasons for applying for the extension; and

(b) there are apparent grounds for granting relief to the person.

44.3 The Director may extend the time limit subject to such terms as he or she considers appropriate.

**45. TIME LIMITS FOR FILING SUBMISSIONS AND DOCUMENTS**

45.1 Within 15 days of filing a Notice of Appeal, or when a transcript is ordered, within 15 days of receiving the transcript, the appellant must:

(a) serve on the parties all documents and written submissions that the appellant intends to rely on for the appeal; and

(b) file the documents and written submissions together with a Statement of Service in FORM D.

**46. RESPONSE TO APPEAL**

46.1 Within 20 days of being served with a Notice of Appeal, a respondent must:

(a) complete a Response to Appeal in FORM G, providing a detailed response to all matters raised in the Notice of Appeal;

(b) serve the Response on the appellant and any other parties; and

(c) file a copy of the Response together with a Statement of Service in FORM D.

46.2 Within 15 days of receiving the appellant's documents and submissions served under Rule 45.1, or in the absence of such materials, within 15 days of serving and filing the Response, a respondent must:

(a) serve on the appellant and any other parties all the documents and submissions that the respondent intends to rely on for the appeal; and

(b) file all the documents and submissions the respondent intends to rely on for the appeal together with a Statement of Service in FORM D.

**47. REPLY**

47.1 Within 10 days of receiving the respondent's documents and submissions served under Rule 46.2, the appellant may reply by:

(a) serving a Reply by the Appellant in FORM H on the parties; and

(b) filing a copy of the Reply together with a Statement of Service in FORM D.

**48. THE APPEAL PROCESS**

48.1 (a) The Director may appoint a person to conduct the appeal on his or her behalf and to exercise the powers and perform the duties of the Director relating to the appeal.

(b) An order made by a person appointed under Rule 48.1(a) is considered to be an order of the Director.

48.2 The Director will consider only those issues and matters that were the subject of the arbitration proceeding or that were dealt with in the arbitration order being appealed.

48.3 An appeal does not delay the arbitration order taking effect unless the Director orders otherwise.

48.4 The Director may require the parties to participate in one or more preliminary conferences.

48.5 Rule 32 applies with necessary changes to a preliminary conference held under this Part.

48.6 A preliminary conference may also be held for the purposes of:

(a) setting dates for any oral submissions;

(b) obtaining instructions on the ordering and filing of transcripts and other documents; and

(c) such other purposes as the Director considers appropriate.

48.7 The Director may decide the appeal:

(a) as a written proceeding on the record;

(b) with or without oral or electronic submissions;

(c) by way of a rehearing of the issues before the arbitrator; or

(d) by any combination of the above, as the Director considers appropriate.

48.8 The record includes the Notice of Appeal, the Response to Appeal, the Reply, the written submissions of the parties, any documents submitted by the parties, the record of the arbitration proceeding, and the transcript of the arbitration proceeding, if it was transcribed.

48.9 If the Director decides that he or she requires oral or electronic submissions or specific issues to be reheard, the Director will issue a Notice of Hearing to the parties.

48.10 The Director may proceed with an appeal even though a party has failed to file documents or written submissions, if the Director is satisfied that the Notice of Appeal has been sent to that party.

48.11 Where a Notice of Hearing has been sent to a party, and the party does not attend at the oral rehearing or participate in an electronic rehearing, as the case may be, the Director may proceed with the appeal in the absence of the party and the party is not entitled to any further notice in the proceeding.

48.12 The Director will not make an order against a party only because the party has not made written submissions, filed materials, attended or participated at a rehearing, or made oral submissions.

**49. REFERRALS TO THE MEDICAL AND REHABILITATION ADVISORY PANEL**

49.1 Rule 39 applies with necessary changes to any questions the Director may refer to the Medical and Rehabilitation Advisory Panel.

**50. INTERVENTIONS**

50.1 The Director may request persons who are not parties to an appeal to make submissions on any issue of law arising in an appeal, and participation will be on such terms as the Director considers appropriate.

50.2 Persons who are not parties to an appeal may apply to make submissions on an issue of law arising in an appeal.

50.3 A person who wishes to make submissions on issues of law arising in an appeal must complete and file an Application for Intervention in FORM I.

50.4 An Application for Intervention must include:

(a) the applicant's reasons for wishing to participate;

(b) a summary of the applicant's submissions on the issues of law; and

(c) copies of documents the applicant intends to rely on.

50.5 Within 10 days of receiving an Application for Intervention, a party may indicate that he or she supports or objects to the intervention by:

(a) filing their comments; and

(b) sending a copy of their comments to the applicant.

50.6 The Director may:

(a) determine the application on the record;

(b) require the applicant to make oral submissions; or

(c) consider any written materials submitted by the parties and the applicant.

50.7 The Director may permit the intervention on such terms as he or she considers appropriate.

**51. ORDERS OF THE DIRECTOR**

51.1 The Director will determine issues before him or her by order and may make an order subject to such terms as he or she considers appropriate.

51.2 If the parties settle their dispute during the appeal process, the Director may issue a consent order where the parties file:

(a) a written request for a consent order signed by both parties; and

(b) the terms of settlement agreed on by the parties.

51.3 At the written request of a party, the Director may issue an order dismissing the appeal subject to such terms as he or she considers appropriate.

51.4 Any order finally deciding an issue or the rights of a party will be in writing with reasons.

51.5 The Commission will provide a copy of the order to the parties.

## PART 5 – VARIATION OR REVOCATION OF AN ORDER

**52. APPLICATION FOR VARIATION/REVOCATION**

52.1 Either the insured person or the insurer may apply to the Director to vary or revoke an arbitration order or an order of the Director.

52.2 A party seeking to have an arbitration order or an order of the Director varied or revoked must:

(a) complete and file an Application for Variation/Revocation in FORM J;

(b) pay the application fee set out in Section D of the Code;

(c) serve a copy of the application on the other parties; and

(d) file a Statement of Service in FORM D.

52.3 The Application for Variation/Revocation must include:

(a) the reasons for the variation or revocation, as the case may be; and

(b) a copy of any documents the applicant intends to rely on.

52.4 The Commission may reject the application and return it to the applicant or their representative if:

(a) the application is incomplete or the applicant does not pay the required application fee; or

(b) the application is in respect of an order that has been appealed, and the appeal is pending.

**53. RESPONSE TO THE APPLICATION FOR VARIATION/REVOCATION**

53.1 A party may respond to an Application for Variation/Revocation by:

(a) serving a Response in FORM G on the applicant within 20 days of receiving the application; and

(b) filing a copy of the Response together with a Statement of Service in FORM D.

**54. REPLY**

54.1 Within 10 days of receiving a Response, the applicant may reply by:

(a) serving a Reply in FORM H on the parties; and

(b) filing a copy of the Reply together with a Statement of Service in FORM D.

**55. THE ADJUDICATOR IN THE VARIATION/REVOCATION PROCESS**

55.1 The Director may,

(a) decide the Application for Variation/Revocation;

(b) appoint the arbitrator who made the arbitration order or another arbitrator to determine the application; or

(c) appoint a person to hold the variation/revocation proceeding on his or her behalf and to exercise the powers and perform the duties of the Director in relation to the proceeding.

**56. APPLICATIONS INVOLVING PRELIMINARY OR INTERIM ORDERS**

56.1 The Director will not hear an application to vary or revoke a preliminary or interim order of an arbitrator until an arbitrator has finally decided all of the issues in dispute in the arbitration or application, unless that order finally determines the rights of the parties.

**57. PRELIMINARY CONFERENCE**

57.1 The parties may be required to participate in one or more preliminary conferences.

57.2 Rule 32 and Rule 48.6 applies with necessary changes to a preliminary conference held under this Part.

**58. THE VARIATION/REVOCATION PROCESS**

58.1 The adjudicator may decide the Application on the basis of the written submissions or, in his or her discretion, may require an oral or electronic hearing or submissions.

58.2 Where an oral or electronic hearing or submissions are required, the Commission will provide reasonable notice of the hearing to the parties.

**59. REFERRALS TO THE MEDICAL AND REHABILITATION ADVISORY PANEL**

59.1 Rule 39 applies with necessary changes to any questions the adjudicator may refer to the Medical and Rehabilitation Advisory Panel under this Part.

**60. ORDERS**

60.1 The adjudicator may vary or revoke the order and make a new order if he or she considers it advisable and is satisfied that:

(a) there has been a material change in the circumstances of the insured;

(b) evidence not available on the arbitration or appeal has become available; or

(c) there is an error in the order.

60.2 An order may apply to the past or the future.

60.3 If the parties resolve their dispute during the variation/revocation process, the adjudicator may issue a consent order where the parties file:

(a) a written request for a consent order signed by both parties;

(b) the terms of settlement agreed on by the parties; and

(c) a written agreement stating that any consent order will not be appealed to the Director.

60.4 At the written request of a party, the adjudicator may issue an order dismissing the variation/revocation proceeding subject to such terms as he or she considers appropriate.

60.5 Any order finally deciding an issue or the rights of a party will be in writing with reasons.

60.6 The Commission will provide a copy of the order to the parties.

## PART 6 – GENERAL PROCEDURES

### 61. APPLICABILITY OF THIS PART

61.1 This Part applies to all arbitrations, appeals, and variation/revocation proceedings.

### 62. TRANSCRIPTS

62.1 Where a party hires a reporting service to transcribe the proceedings, the party must:

(a) inform the other parties and the adjudicator;

(b) make the necessary arrangements for the reporting service; and

(c) pay the cost directly to the person or agency providing the reporting service.

### 63. LANGUAGE SERVICES

63.1 A person has the right to communicate in French, and to receive available services in French from the Commission as provided in the French Language Services Act, R.S.O. 1990, c.F.32.

63.2 An adjudicator may require interpretation services to be available at any proceeding.

63.3 Where interpretation services are provided, the interpreter must make an oath or affirm that he or she will truly and faithfully translate the evidence.

### 64. ORDERS WITHIN PROCEEDINGS

64.1 An adjudicator may make preliminary or interim orders within a proceeding pending the final order.

64.2 A party may, by notice, request that the adjudicator decide a procedural or substantive issue that arises during the course of a proceeding.

64.3 A request made under Rule 64.2 must be in writing and must be:

(a) served on all of the parties; and

(b) filed together with a Statement of Service in FORM D.

64.4 The request will be dealt with in the manner that the adjudicator considers appropriate.

64.5 The Director may appoint a person to deal with the request on his or her behalf and an order made by that person will be an order of the Director.

64.6 A request for an order may also be made orally during a pre-hearing conference, a preliminary conference or at a hearing, and it will be dealt with as the adjudicator considers appropriate.

### 65. ADJOURNMENTS

65.1 Requests for adjournments prior to the commencement of the hearing will be dealt with by the Registrar.

65.2 An adjudicator may decide to adjourn a hearing on his or her own initiative, or on application by a party. The adjournment may be subject to such terms as the adjudicator considers appropriate.

65.3 In deciding whether an adjournment is appropriate, consideration may be given to the adjournments policy set out in Section C of the Code.

### 66. WITHDRAWAL

66.1 An applicant may seek permission to withdraw all or part of an application:

(a) by serving on the parties a request to withdraw the application that is signed by the applicant or the applicant's representative; and

(b) by filing the request to withdraw the application together with a Statement of Service in FORM D; or

(c) at the hearing.

66.2 The adjudicator may permit an applicant to withdraw all or part of an application if the other parties agree.

66.3 Where a party does not agree to the withdrawal, the adjudicator may:

(a) permit the applicant to withdraw on such terms as the adjudicator considers appropriate;

(b) where the applicant is the insured person, require the applicant to pay the insurer an amount not more than the amount the insurer is required to pay the Commission to participate in the hearing, if the adjudicator decides that the withdrawal is an abuse of process.

**67. RELIEF**

67.1 The adjudicator may on such terms as he or she considers appropriate:

(a) set aside any time limit set out in these Rules for doing any act, serving any notice, filing any document or holding any proceeding;

(b) decide that any Rule does not apply in respect of a proceeding.

67.2 The Director may make changes to these Rules at any time if he or she considers it appropriate.

**68. WAIVER OF PROCEDURAL REQUIREMENTS**

68.1 Any procedural requirement set out in the Insurance Act or the Statutory Powers Procedure Act, R.S.O. 1990, c.S.22, as amended, that applies to a hearing held under these Rules may be set aside with the agreement of the parties and the adjudicator.

**69. CONSTITUTIONAL QUESTIONS AND/OR CHARTER ISSUES**

69.1 A party who intends to raise constitutional questions shall serve notice of a constitutional question on the other parties and on the Attorney General of Canada and the Attorney General of Ontario at least 15 days before the day on which the question is to be heard by the adjudicator.

69.2 The notice referred to in Rule 69.1 must clearly set out the reasons for the question and any evidence that the party intends to rely on must be attached to the notice.

69.3 The Attorney General of Canada and the Attorney General of Ontario may intervene in the proceeding.

69.4 A constitutional question refers to the following circumstances:

(a) the constitutional validity or constitutional applicability of legislation, of a regulation or by-law made under legislation, or of a rule of common law, is in question;

(b) a remedy is claimed under subsection 24(1) of the Canadian Charter of Rights and Freedoms, in relation to an act or omission of the Government of Ontario.

**70. SUMMONS**

70.1 The adjudicator may require a person by summons:

(a) to attend at or participate in a hearing, and to give evidence on oath or otherwise; and

(b) to produce in evidence at a hearing documents and things set out in the summons.

70.2 A Summons must be in FORM K.

70.3 The party requesting the summons must ensure that:

(a) the summons is served personally on the person summoned as required by the summons; and

(b) the person summoned is paid the same fees or allowances for attendance at or otherwise participating in the hearing as are paid to a person summoned to attend before the Ontario Court (General Division).

70.4 The person who served the summons must file an Affidavit of Service in FORM L as proof that the summons was served and that the required fees or allowances have been paid or offered to the person being summoned.

**71. EXPENSES**

71.1 The adjudicator may award expenses to the insured person as permitted by the regulations, subject to such terms as the adjudicator considers appropriate. The items and maximum amounts are found in Section F of the Code.

71.2 In considering whether expenses should be awarded to the applicant and the amount

to be awarded, the adjudicator may take into account any failure by the applicant to comply with these Rules.

**72. FRIVOLOUS AND VEXATIOUS PROCEEDINGS OR ABUSE OF PROCESS**

72.1 If an insured person commences a proceeding that is, in the opinion of the adjudicator, frivolous, vexatious, or an abuse of process, the adjudicator may order the insured person to pay the insurer up to the amount the insurer is required to pay the Commission to participate in the proceeding.

**73. ENFORCEMENT**

73.1 On request, the Commission will provide a party with a certified copy of any order.

73.2 A party may file a certified copy of any order in the Ontario Court (General Division) and the order can be enforced as if it were a Court order.

73.3 A party who files an order under Rule 73.2 shall notify the Commission within 10 days after the filing.

73.4 At the request of the insured person, the Commission will file a copy of any final order in the Ontario Court (General Division) and the order can be enforced as if it were a Court order.

# Section B
## GUIDELINES

# Guideline for Identifying Self-employed Individuals

This guideline is issued pursuant to Section 268.3 of the *Insurance Act*.

This guideline should be used when it has already been established that the individual is employed, but it is unclear whether the individual is self-employed or what the relationship is between the individual and an employer. Under the *Statutory Accident Benefits Schedule (SABS)*, self-employment income is treated differently than employment income.

For the purposes of the SABS, an individual is considered to be self-employed if the business he or she derives his or her remuneration from is not incorporated under any law. For example, sole proprietorships and partnerships are considered to be self-employment situations. If the individual derives his or her remuneration from an incorporated business, then he or she is considered to be an employee of the corporation.

**Note**

If the insurer chose to use the income tables published by the Ontario Insurance Commission (OIC) to calculate income replacement benefits, then the individual must ***only*** have self-employment income. If the individual has income from both employment and self-employment, then the detailed calculation method must be used.

**Definitions**

Business An activity that is carried on for profit or with a reasonable expectation of profit, including a profession, a calling, a trade, a manufacture or undertaking of any kind, an adventure or concern in the nature of trade, or a service.

Employee An individual who is hired to perform pre-determined tasks/work in a business in exchange for remuneration.

Employer An entity, such as a corporation, group of individuals or a single individual, who hires another individual(s) to perform pre-determined tasks/work in a business in exchange for remuneration.

Purchaser An entity, such as a corporation, group of individuals or a single individual, that enters into an agreement or contract for service(s) with another individual in exchange for a negotiated remuneration.

The following sets out indicators of self-employment in two situations:

## 1. TRADITIONAL SELF-EMPLOYMENT SITUATION

**The Individual:**

- is an owner of an unincorporated sole proprietorship or a partner in a partnership (other than a limited partner).
- has an established location where business transactions take place.
- participates in the everyday operations of the business (not just an investor or receiving remuneration for purposes of income splitting).
- determines own method and schedule for accomplishing tasks.
- determines own hours and may not necessarily work a set number of hours per period (i.e. 40 hour week).
- negotiates the price(s) of product(s) or fee(s) for service(s) with the customer or client with the exception of regulated fields (i.e. physicians).
- determines the annual income as his or her profit from the business according to the *Income Tax Act (Canada)* and *Income Tax Act (Ontario)*.
- is ineligible for regular Unemployment Insurance (UI) benefits.
- contributes the employer and employee contributions to Canada Pension Plan (CPP) for his or her own pension plan.
- collects and remits all taxes to different levels of government according to each respective tax legislation (i.e. GST, PST, source deductions from employee(s)).

**In the case of a sole proprietorship:**

- has control over:
  (1) the hiring and dismissal of employee(s),
  (2) the wage level and hours of work of employee(s),
  (3) the method by which employee(s) accomplish work, and
  (4) executive decisions surrounding the business.

**In the case of a partnership:**

- has some or all control, depending on agreements with his or her partner(s) over:
  (1) the hiring and dismissal of employee(s),
  (2) the wage level and hours of work of employee(s),
  (3) the method by which employee(s) accomplish work, and
  (4) executive decisions surrounding the business.

Examples: (1) owner/operator or partner of a restaurant, convenience store, etc.
(2) physician in private practice

## 2. CONTRACT OF SERVICE SITUATION

**The Individual:**

- has contract work with no long-term or permanent relationship to a specific purchaser.

- is providing the actual service(s) which may be performed at one or more locations for one or more purchasers over the same period of time.

- determines own method and schedule for accomplishing tasks.

- determines own hours and may not necessarily work a set number of hours per period (i.e. 40 hour week).

- negotiates fees for services provided to the purchaser.

- has a business-relationship with a purchaser(s) evidenced by a contract or agreement, either written or oral, express or implied, usually providing some sort of labour.

- does not hire any employees.

- is ineligible for regular UI benefits.

- contributes the employer and employee contributions to CPP for his or her own pension plan.

- determines the annual income as his or her profit from the business according to the *Income Tax Act (Canada)* and *Income Tax Act (Ontario)*.

Examples: 1) Independent cleaners
2) Independent truck driver
3) Handyman
4) Limousine driver

# Guideline for Statutory Accident Benefits Applications, the Claims Process and the Mediation Process

This Guideline is issued pursuant to Section 268.3 of the *Insurance Act*.

The purpose of this Guideline is to help insurers and claimants understand their rights and responsibilities when dealing with statutory accident benefit claims. Above all else there is an obligation on both insurers and insured persons (referred to as "claimants" in this guideline) to act fairly with each other in making an application for benefits and in processing claims. The full and timely exchange of information by both insurers and claimants is critical.

However, insurers must limit their requests to information that is related to the claim. Likewise, claimants must give an insurer the information that the company needs to establish the nature, extent and continuing validity of a claim. Claimants must not withhold any information, delay, make more difficult or impossible the insurer's evaluation of the claim. Set out in the sections called "Principles For Statutory Accident Benefits Applications And The Claims Process" and "Principles For The Mediation Process" are the details of the rights and responsibilities of the parties. This Guideline applies equally to all insurers, claimants and their representatives and is to be considered in any decision involving the interpretation of the *Statutory Accident Benefits Schedule (SABS)*.

Claimants should realize that unreasonable actions will delay payments and can lead to denial of benefits without access to court or arbitration.

Insurers should realize that unreasonable actions are treated as unfair practices and may lead to penalties under Section 282(10) of the *Insurance Act*.

## PRINCIPLES FOR STATUTORY ACCIDENT BENEFITS APPLICATIONS AND THE CLAIMS PROCESS

### Insurers' Responsibilities

- Inform claimants about the kind of accident benefits that are available under the *SABS*, let claimants know all the procedures to be followed and documentation needed when applying for benefits. When asked, insurers must give a copy of the *SABS* without charge to any person entitled to benefits.

- Give claimants the application for benefits package and other applicable forms, and help claimants complete all forms.

- Provide claimants with specific requests for additional relevant information.

- Make sure that all requests for information from claimants and third parties are relevant to the claimant's entitlement to benefits.

- Evaluate all applications for benefits fairly and quickly.

- Let claimants know about all decisions made concerning their claim within the times specified in the *SABS*, give the reasons for those decisions, and make sure that payments due to claimants are made within the times specified in the *SABS*.

- Pay for reasonable measures to reduce or eliminate the effects of any disability resulting from injuries sustained by a claimant in an accident and to help their reintegration into their family, the labour market and the rest of society.

- Cooperate with representatives retained or appointed by claimants to help claimants with their claims.

- Make sure notices to claimants are in writing and in plain language.

- Make sure requests for a claimant to undergo an assessment or examination are to obtain necessary information.

- Make sure assessors or evaluators who are asked by the insurer to examine a claimant accommodate the claimant when scheduling appointments to minimize inconvenience to the claimant.

**Claimants' Responsibilities**

- Complete all forms promptly.

- Give their insurer all reasonable relevant information asked for by the insurer to prove their entitlement to benefits.

- Give true and accurate information.

- Give third parties the right to release information about them needed by insurers to evaluate their claim for benefits.

- Take part in treatment and rehabilitation that will allow them to start or return to work, or shorten their period of disability.

- Cooperate with representatives retained or appointed to help insurers evaluate claims.

- Promptly let their insurer know about any change in their situation affecting their entitlement to benefits (under normal circumstances, this should be done within 14 days).

- Take part in assessments or examinations that their insurer is allowed to ask for under the *SABS* including those done by designated assessment centres (DACs).

- Give notice (under normal circumstances, notice should be given within 2 days) to their insurer and the assessor or examiner when they cannot attend a scheduled appointment and give reasons why they cannot attend.

- Give any person allowed to examine or assess the claimant under the *SABS*, the information that is reasonably necessary to do the examination and allow third parties to also give out such information.

- Agree to have reports produced by persons allowed to examine the claimant under the *SABS* given to their insurer.

## PRINCIPLES FOR THE MEDIATION PROCESS

### A) Responsibilities of claimants wanting to apply for mediation services

- completed an application for benefits and all forms in full; and

- take part in any assessment or examination required under the *SABS*, and give the information needed for an assessment under the *SABS*.

**B) Responsibilities of insurers and claimants before using mediation services at the Ontario Insurance Commission**

- clarify the facts;
- identify the issues in dispute according to both of them;
- discuss and arrange for the timely exchange of relevant documents; and
- make reasonable efforts towards reaching a settlement.

**C) Other responsibilities of claimants**

- personally take part in the mediation process.

Commissioner's Guideline No. 2/95
Ontario Insurance Commission
June 1, 1995

# Section C
## PRACTICE NOTES

Ontario Insurance Commission
Commission des assurances de l'Ontario
Dispute Resolution Group / Groupe de réglement des differends

PRACTICE NOTE 1
NOTE PRATIQUE 1

This practice note is intended for use by claimants

## USING MEDICAL EVIDENCE TO SUPPORT YOUR CLAIM FOR ACCIDENT BENEFITS

### WHEN DO I NEED A MEDICAL CERTIFICATE?

When you claim any accident benefits from your insurer you need a certificate from a qualified medical practitioner of your choice. The insurance company will use this certificate in assessing your claim.

The medical certificate should be prepared using the form the insurance company sends you with the Application for Accident Benefits. The form asks for information on the cause and nature of your injury, any long-term disability or permanent injury, a treatment plan and an estimate of how long your injuries will prevent you from doing your regular activities.

Practitioners who are qualified to do the examination include medical doctors, psychiatrists, psychologists and other specialists, such as chiropractors and dentists.

You may need more detailed medical reports if a dispute arises about your benefits. For example, a detailed physiotherapy plan may be helpful when negotiating rehabilitation benefits.

### WHAT IS AN INSURER'S MEDICAL EXAMINATION?

The Statutory Accident Benefits Schedule outlines the circumstances in which your insurance company can ask you to go to an insurer's medical examination (IME). Your insurance company can ask you to go to one or more other doctors – ones it chooses – for the IME. It is allowed to do so "as often as is *reasonably necessary*."

If you are asked to attend an insurer's medical examination, here are some things to remember:

• If you fail to attend the examination, the insurance company can terminate your benefits until you attend. You cannot commence mediation if you haven't made yourself available for an IME.

• If you can't go, notify your company right away because the company will still have to pay the doctor if you don't show up.

• The insurer's medical examination is usually an assessment of your current medical condition and treatment needs.

The insurance company is required to:

• Consider your convenience and particular situation when scheduling medical appointments, and give you reasonable notice of the appointment.

• Provide copies of the examination report to you and/or your family doctor.

## WHAT IF I WANT ANOTHER OPINION?

If you wish to get a medical report from a doctor you choose to respond to the insurer's report, you are responsible for paying for this report. In some cases your insurance company may pay your expenses.

## DESIGNATED ASSESSMENT CENTRES

Designated Assessment Centres (DACs) have been approved by the Commission to provide independent assessments of your medical, rehabilitation and attendant care needs. The centres can also assess your earning capacity and the types of employment that are possible for people with various physical and psychological conditions.

DACs can conduct assessments at the request of the claimant or the insurance company. They provide a speedy, neutral way to evaluate claims.

The Statutory Accident Benefits Schedule sets out the conditions under which your insurance company can require you to undergo an assessment.

In summary, these include:

• if the insured person claims medical expenses (other than eyewear, dentures or transportation expenses) incurred more than 8 weeks after the accident; or if the insurance company has already paid out more than $2,000 in medical benefits;

• if the insured person applies for social rehabilitation or vocational rehabilitation expenses, or for attendant care benefits; and

• if the insured person is claiming attendant care benefits and has not been assessed within the past year and the accident occurred more than two years ago.

• if the insured person rejects the insurance company's assessment of pre-accident or post-accident earning capacity (for claims over two years in length);

If the insurance company wishes to stop payment of your weekly income benefits, you can give written notice that you wish to be assessed at a DAC. Both an IME and a DAC report can be used as evidence in mediation or arbitration of a dispute about benefits.

This is a brief summary of a complex topic. Please refer to the Statutory Accident Benefits Schedule for more precise information.

For more information, see Practice Note #4, *Exchange of Documents for an Arbitration Hearing*, which describes the medical documents required for an arbitration hearing.

## HOW DO I GET MORE INFORMATION?

For more information, ask for our booklets on Mediation and Arbitration.

Our telephone numbers are:
• from Toronto, call (416) 250-6714
• from outside Toronto, phone 1 (800) 517-2332

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*August 1995*

Ontario Insurance Commission
Commission des assurances de l'Ontario
Dispute Resolution Group / Groupe de réglement des differends

PRACTICE NOTE 2
NOTE PRATIQUE 2

This practice note is intended for use by claimants

# REACHING A SETTLEMENT WITHIN THE DISPUTE RESOLUTION PROCESS

## WHAT IS A SETTLEMENT?

A settlement is an agreement between an insurance company and an insured person that finally ends a dispute about the insured person's entitlement to one or more benefits under the Statutory Accident Benefits Schedule. You can settle one or more issues while others remain in dispute.

## WHAT IS A RELEASE?

When you reach a settlement, you may be asked to sign a release form. The release is an agreement with the insurance company that in exchange for the agreed-upon amount you will not make any further claims concerning the disputes that are being settled. Once you sign the release, and two business days have passed, you have no further right to re-open the issue.

## WRITTEN NOTICE

Your insurance company must provide you with the following before you enter into an agreement that finally ends your claim or dispute about entitlement to one or more benefits:

• A description of the benefits that are available to you under the Statutory Accident Benefits Schedule and any other benefits that may be available under your specific insurance contract;

• A description of the impact of the settlement on all of these benefits, including a statement explaining that the settlement limits the right to mediate, litigate, arbitrate, appeal, or in any way vary the terms of the settlement;

• A statement telling you that you have two business days after reaching the agreement to change your mind and deliver a written notice to the insurance company cancelling the settlement; and

• A statement of the tax implications of the settlement, if any.

## Can I Change My Mind?

You have two business days to change your mind after agreeing to a settlement. You must tell the insurance company in writing that you want to do so within two business days. After the two days, the settlement is binding on you and the insurance company.

## Obligations

Both sides in the dispute are required to live up to the terms of the settlement. The agreement can be enforced through the courts.

## Does the Ontario Insurance Commission have any Role in Negotiating Settlements?

Mediators help the parties negotiate terms of settlement. Settlement is also discussed at an arbitration pre-hearing, and can be discussed by the parties at any time during arbitration. However, OIC mediators and arbitrators do not get directly involved in preparing and signing releases or ensuring that the terms of the settlement are followed.

## What if I want a legal opinion?

You do not need a lawyer to negotiate a settlement, but in many circumstances a lawyer's advice on settlement terms can be helpful. If you have any concerns about signing a release, get legal advice.

## How do I get more information?

For more information, ask for a copy of our booklets on Mediation and Arbitration

Our telephone number is:
• from Toronto call (416) 250-6714
• from outside Toronto, phone 1 (800) 517-2332 (toll free)

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PRACTICE NOTE 3
NOTE PRATIQUE 3

This practice note is intended for use by claimants and Insurers

## AUTHORITY TO BIND

This Practice Note applies to all insurance companies and any insured person who will be represented by someone during mediation or arbitration.

### WHAT IS AUTHORITY TO BIND?

Anyone representing an insurance company or an insured person at mediation or arbitration will be discussing and negotiating terms of settlement of disputes about accident benefits. A representative who has "authority to bind" has been given the power to act on behalf of the party being represented without having to go back to consult or get instructions.

A lawyer or an employee representing an insurance company must have the authority to change the company's position based on the evidence presented at a mediation or arbitration by the insured.

Authority to bind does not just concern financial issues. The representatives must be able to speak and negotiate on all issues.

It is essential for people claiming benefits to be at the mediation or arbitration proceeding to hear and discuss settlement offers and give instructions to any representative.

### WHAT HAPPENS IF THERE IS NO AUTHORITY TO BIND?

If you are unable to attend (if, for example, you are confined to hospital), the mediator or adjudicator can adjourn a proceeding if the representative of any party involved is not authorized to bind that party to an agreement. The adjournment can be on whatever terms the mediator or adjudicator considers to be appropriate.

In some cases, this can be as simple as a quick discussion between a lawyer and client. In more extreme cases, it can mean a postponement of the hearing.

## WHY IS AUTHORITY TO BIND SO IMPORTANT?

If the representatives do not have authority to bind, a settlement discussion can break down into a series of statements like "I'll have to check that with my client." This can lead to drawn-out, fruitless discussions that waste the time of everyone involved.

### WHAT FORM DOES THE AUTHORITY HAVE TO BE IN?

The authority to bind can be verbal or in writing.

## HOW DO I GET MORE INFORMATION?

For more information, ask for a copy of our booklets on Mediation and Arbitration

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PRACTICE NOTE 4
NOTE PRATIQUE 4

This practice note is intended for use by claimants and Insurers

# EXCHANGE OF DOCUMENTS FOR AN ARBITRATION HEARING

This Practice Note outlines the role of supporting documents in an arbitration and explains when those documents should be produced and shared.

## A. DOCUMENTS

Documents that the arbitrator may order to be produced vary with the issue in dispute, but can include the following:

*1. Where disability benefits are in dispute*

• **Clinical notes and records of physicians** who attended the applicant during the year leading up to the accident and after the accident.

• **Hospital records** if the applicant has received treatment at a hospital in the year before the accident or after the accident.

• **An OHIP statement** detailing which physicians have provided services to the applicant in the year before the accident and during the period since the accident if it is unclear who has treated the applicant.

• **Records of the Workers' Compensation Board** if the applicant was receiving workers' compensation benefits at the time of the accident or in the preceding year.

• **Reports and clinical notes of any medical examination of the applicant requested by the insurance company** under the *Statutory Accident Benefits Schedule*.

• **Medical reports in the possession of the insurance company**, such as a *Form 4* standard medical report.

• **A copy of any surveillance videotape or photographs and a summary of surveillance observations** made by the insurance company, if the company intends to use the information at the hearing.

*2. Where the amount of benefits is in dispute*

• **Certified income tax returns** from Revenue Canada for the year before the accident, and the year of the accident.

• **Financial statements** for the year before the accident and the year of the accident in the case of self-employed applicants. In certain circumstances, more detailed raw financial documentation may be required.

• Any **application for Canada Pension Plan disability benefits** and a **copy of the granting letter**, if it appears that the applicant has applied for or received these benefits.

• A **copy of any health or disability insurance policy**, if it appears that the applicant had coverage at the time of the accident, and a **copy of any application form or granting letter**.

• Certain **employment records**, such as a job description (where disability is in issue) or payroll record, for the year before the accident.

## B. PROCEDURES

Parties to an arbitration are expected to share all documents they expect will be necessary to decide the issues in dispute.

**This document exchange should be worked out between the parties and their representatives as soon as possible.** The documents should be exchanged before the pre-hearing.

The parties should contact each other and

• disclose what documents in their possession they intend to use as evidence;

• arrange to give the documents to the other side;

• request any documents that they think they require from the other side; and

• arrange to obtain and share documents from third parties.

As a general rule, the party asking for the document is responsible for paying the cost of getting it. When an the insurance company arranges to collect documents directly from a third party, it must have the applicant authorize the collection beforehand. The company must give copies of any documents it obtains to the applicant as soon as possible.

Where the parties to the arbitration cannot agree which documents to exchange, the pre-hearing arbitrator will rule on what is required.

Where third parties (like hospitals or doctors) are asked to supply documents, the arbitrator will insist that parties make their own reasonable efforts to obtain the documents before issuing an order to the third party to release the documents. One exception to this practice is a request for information from OHIP where, to speed up the process, an arbitrator will make an order at the parties' request. The pre-hearing arbitrator has the final say on what documents must be

produced or exchanged.

The arbitration process is designed to be relatively informal and quick. It does not have the broad discovery and disclosure processes of the court system. Parties to an arbitration can participate most effectively by promptly disclosing all relevant documents well before the date of the arbitration pre-hearing.

## HOW DO I GET MORE INFORMATION?

For more information, ask for our booklets on Mediation and Arbitration.

Our telephone numbers are:
• from Toronto, call (416) 250-6714
• from outside Toronto, phone 1 (800) 517-2332

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*August 1995*

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PRACTICE NOTE 5
NOTE PRATIQUE 5

This practice note is intended for use by claimants and Insurers

# THE ARBITRATION PRE-HEARING DISCUSSION

All parties to an arbitration **must** participate in a pre-hearing discussion of their case before the actual arbitration hearing. This discussion takes place shortly after the applicant receives the insurance company's *Response*.

## WHY DO WE HAVE A PRE-HEARING DISCUSSION?

The pre-hearing discussion gives the parties an opportunity to talk with an arbitrator about the case before the hearing. The arbitrator will help to:

• attempt to settle some or all of the issues in dispute

• clarify the issues left in dispute

• explain the rules of the hearing

• review what witnesses and evidence will be brought to the hearing

• decide which documents should be exchanged if the parties cannot agree

• set a mutually convenient date and location for the hearing.

## DOES EVERYONE MEET IN PERSON?

The pre-hearing discussion can be held in person or by telephone conference call.

Whether the discussion is in person or by telephone, both the applicant and the representative from the insurance company should take part. Arbitrators have noted that the absence of parties from the pre-hearing frequently impedes settlement discussions — even when the parties are represented by legal counsel who participate in the pre-hearing on their behalf.

Clients who cannot participate in person are expected to be available to participate in the pre-hearing discussion by phone.

An arbitrator will chair the discussion. The arbitrator who chairs the pre-hearing discussion will *generally not* be the one who hears the case.

## WHAT DO I BRING TO THE PRE-HEARING DISCUSSION?

*Don't wait* for the pre-hearing discussion to begin preparing your case.

Get updated medical information, financial documents, or recent tax returns before the pre-hearing discussion.

**Parties should exchange copies of all the documents they intend to use at the actual hearing before the pre-hearing discussion. (See Practice Note 4, Exchange of Documents for an Arbitration Hearing.)**

If documents haven't been exchanged in advance, please bring along two sets of photocopies: one for the arbitrator and one for the other party. These photocopies will be exchanged at the pre-hearing.

The arbitrator will ask about the witnesses who will be called during the hearing. Witnesses typically provide information about the accident, about the applicant's employment and income, or about the applicant's medical condition.

## HOW LONG AFTER THE PRE-HEARING DISCUSSION UNTIL THE HEARING?

At the pre-hearing, the arbitrator will set a convenient date for the hearing. Generally, this date will be about two months after the pre-hearing discussion. Once this date is set, changes will only be made in special circumstances. (See Practice Note 7 for information on adjournments.)

You must have all your papers, updated medical reports and witnesses ready for the hearing date set.

## HOW DO I GET MORE INFORMATION?

For more information, ask for our booklets on Mediation and Arbitration.

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PRACTICE NOTE 6
NOTE PRATIQUE 6

This practice note is intended for use by claimants and Insurers

# How to summons a witness to an arbitration hearing

If you need a witness to attend an arbitration hearing you must arrange two things: the summons, and an affidavit attesting to the summons.
First, the witness must receive a summons (called a Summons to Witness) to the hearing and a payment for attending. Next, the person who delivers the summons must file an affidavit (swearing that the summons and witness fees were delivered in person) with the Ontario Insurance Commission (OIC).

## SUMMONSING A WITNESS

**Step 1: Getting the proper forms**
If you wish to summons a witness, get a *Summons to Witness* form from the OIC. The OIC can mail or fax the form to you, or it can be picked up in person. If you wish to have a witness at your hearing, you should start this process as early as possible before the hearing date.

Step 2: Filling out the form
Be sure you include all necessary information on the *Summons to Witness* form before you pass it to your witness:
• your name
• the name of the insurance company
• the name of the arbitrator
• the name of the person receiving the summons
• a list of the documents the witness should bring to the hearing
• the date, time and place of the hearing
• the Commission's file number

Step 3: Delivering the form
The summons must be delivered to the witness in person. You or your representative can deliver the summons, or you can hire a process server (check your Yellow Pages). You must also be sure to pay the witness at this time.

## CALCULATING PAYMENT TO THE WITNESS

The standard witness fee is $50 a day for each day of the hearing the witness attends. But an expert witness, like a doctor or an accountant, often charges more. You are also responsible for paying travelling expenses to the witness. These vary:
• If a witness lives in the city where the hearing is held, you are responsible for $3 per day in travelling expenses.
• If a witness lives outside of the city but within 300 kilometres, you must pay 24 cents a

kilometre each way.

• If the witness lives more than 300 kilometres from the hearing, you must pay travel expenses equalling the minimum return air fare, plus 24 cents a kilometre, each way, from the witness's home to the airport and from the airport to the hearing.
• Overnight accommodation and meals can be up to $75 per day.
Remember, the witness must receive payment when he or she receives the summons.

## IMPORTANT

Be sure you keep your copies of the summons and of the money order or cheque that goes to the witness for fees and expenses. At the end of your hearing, you can ask the arbitrator to award you your costs for witness fees, travel expenses and swearing the Affidavit of Service. In most cases, you will be reimbursed for these expenses. (For more information, see Practice Note 8 on Expenses.)

## GETTING AN AFFIDAVIT OF SERVICE

Before the hearing, the OIC must receive a signed affidavit (called an *Affidavit of Service*) swearing that the witness was handed the summons in person and paid to attend the hearing. The affidavit can be delivered to the OIC in person or by regular, registered or certified mail. It can also be faxed to the OIC as long as the original is mailed in. (See the box at the bottom of this page for mailing address or fax number.)
In the *Affidavit of Service*, the person who delivered your summons swears an oath that he or she has personally handed the summons to the witness. Swearing, or affirming, is done in front of a commissioner of oaths such as a lawyer, notary public, or a designated law clerk or paralegal. Forms will be available wherever you find a designated commissioner of oaths. You may have to pay the commissioner of oaths for this service.

## WHAT HAPPENS IF A WITNESS DOESN'T SHOW UP FOR THE HEARING?

If your witness does not attend, fails to stay, or does not bring the documents listed on the summons, you may not be able to prove your case.

What happens next depends largely on whether the summons and the affidavit were properly prepared and delivered. The arbitrator will review the affidavit to ensure that everything that needed to be done was properly done. If your copies of the documents show that the witness was summonsed properly, the arbitrator may grant an adjournment and set another hearing date. Or the arbitrator may apply for a sheriff's warrant to have the witness brought to the hearing. Having your witness attend the hearing may be critical to your case, so it's vital you summons your witnesses properly and keep copies of all documents.

## HOW DO I GET MORE INFORMATION?

For more information, ask for our booklets on Mediation and Arbitration.
Our telephone numbers are:
• from Toronto, call (416) 250-6714
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PRACTICE NOTE 7
NOTE PRATIQUE 7

# Adjournments

The Ontario Insurance Commission has an obligation to conduct arbitrations efficiently and speedily. Parties are contacted and agree to pre-hearing and hearing dates well in advance of the dates set. Therefore, adjournments are granted only sparingly once a hearing date has been set.

## WHEN WILL ADJOURNMENTS BE GRANTED?

Requests for adjournments will only be considered in three circumstances:

• in cases of personal emergencies, such as serious illnesses or deaths in the family

• for valid reasons relating to the hearing itself, such as an imminent settlement, or medical or other critical evidence that is unavoidably delayed

• when the hearing date conflicts with a lawyer's trial date that was set **before** the arbitration hearing date was set.

## WHEN WILL ADJOURNMENTS BE REFUSED?

Adjournments will normally be refused if they do not fall into one of the three categories above. Common circumstances in which adjournments are refused include the following:

• scheduling conflicts for the parties or their lawyers (except for conflicts with trial dates as noted above)

• where the parties have not made reasonable efforts to comply with undertakings and orders made at the pre-hearing.

## NOTICE REQUIREMENTS

Seven days notice is generally required for an adjournment request. The request should be made in writing to the Registrar, outlining the reasons an adjournment is required. The party making the request must provide alternative hearing dates that are acceptable to both parties.

Requests made on less that seven days notice may be dealt with in extenuating circumstances. The request should be made in writing to the Registrar, explaining the reasons for the request and the extenuating circumstances. The Registrar may deal with requests on less than seven days notice by a conference call.

### THE NEW HEARING DATE

The party requesting the adjournment should contact the other parties involved in the hearing to arrange acceptable alternative dates before asking for the adjournment. It is advisable to provide more than one alternative date, so that the arbitrator can avoid conflicts with other hearings.

An adjournment *sine die* (that is, with no new hearing date set) will be granted only in extraordinary circumstances (for example, a severe, long-term illness).

### HOW DO I GET MORE INFORMATION?

For more information, ask for a copy of our booklet on Arbitration.

Our telephone numbers are:
• from Toronto, phone (416) 250-6714
• from outside Toronto, phone 1 (800) 517-2332

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*August 1995*

# Section D
# FEES AND ASSESSMENTS

## Fees and Assessments

### 1. FEES

1.1 An insured person who applies for arbitration must pay a fee of $100.
1.2 A person who appeals an arbitration order must pay a fee of $250.
1.3 A person who applies for variation/revocation of an arbitration or appeal order must pay a fee of $100.

### 2. INSURER ASSESSMENT

2.1 An insurer that is named as a party to an arbitration proceeding will be assessed $2,000.
2.2 An insurer that is named as a party to an arbitration appeal will be assessed $500.
2.3 An insurer that is named as a party to a variation/revocation proceeding will be assessed $500.
2.4 Where a proceeding is consolidated with another proceeding, the insurer will be assessed only once.
2.5 An insurer that does not pay an assessment will not be considered a party to the proceeding for the purposes of these Rules and will not receive any further notice of the proceeding.

### 3. PAYMENT OF FEES AND ASSESSMENTS

3.1 Application fees must be paid at the time of filing.
3.2 Assessments must be paid by the insurer at the time of filing.

3.3 Application fees may be paid by cash, cheque or money order.
3.4 All cheques and money orders must be made payable to the order of the MINISTER OF FINANCE.

# Section E
# SETTLEMENT REGULATION

## EXCERPT FROM REGULATION 664 OF R.R.O. 1990, AS AMENDED BY ONTARIO REGULATION 780/93 made under the INSURANCE ACT

SETTLEMENTS - STATUTORY ACCIDENT BENEFITS

9.1 (1) In this section, “settlement” means an agreement between an insurer and an insured person that finally disposes of a claim or dispute in respect of the insured person's entitlement to one or more benefits under the *Statutory Accident Benefits Schedule*.

(2) Before a settlement is entered into between an insurer and an insured person, the insurer shall give the insured person a written notice that contains the following:

1. A description of the benefits that may be available to the insured person under the *Statutory Accident Benefits Schedule* and any other benefits that may be available to the insured person under a contract of automobile insurance.

2. A description of the impact of the settlement on the benefits described under paragraph 1, including a statement of the restrictions contained in the settlement on the insured person's right to mediate, litigate, arbitrate, appeal or apply to vary an order as provided in sections 280 to 284 of the Act.

3. A statement that the insured person may rescind the settlement within two business days after the settlement is entered in to by delivering a written notice to the insurer.

4. A statement that the tax implications of the settlement may be different from the tax implications of the benefits described under paragraph 1.

5. If the settlement provides for the payment of a lump sum in an amount offered by the insurer and, with respect to a benefit under the *Statutory Accident Benefits Schedule* that is not a lump sum benefit, the settlement contains a restriction on the insured person's right to mediate, litigate, arbitrate, appeal or apply to vary an order as provided in sections 280 to 284 of the Act, a statement of the insurer’s estimate of the commuted value of the benefit and an explanation of how the insurer determined the commuted value.

6. A statement advising the insured person to consider seeking independent legal, financial and medical advice before entering into the settlement.

(3) A settlement may be rescinded by the insured person, within two business days after the settlement is entered into, by delivering a written notice to the insurer.

(4) If the insurer did not comply with subsection (2), the insured person may rescind the settlement after the period mentioned in subsection (3) by delivering a written notice to the insurer.

(5) A restriction on an insured person’s right to mediate, litigate, arbitrate, appeal or apply to vary an order as provided in sections 280 to 284 of the Act is not void under subsection 279(2) of the Act if,

(a) the restriction is contained in a settlement; and

(b) the insurer complied with subsection (2). O.Reg.780/93,s.7

# Section F
# EXPENSE REGULATION

## EXCERT FROM ONTARIO REGULATION 664, R.R.O. 1990 made under the INSURANCE ACT

SCHEDULE
DISPUTE RESOLUTION EXPENSES
*(Subsection 282 (11) of the Act)*

1. The filing fees paid by the insured person when applying for arbitration, appealing the order of an arbitrator or applying to vary or revoke an order may be awarded.

2. (1) The legal fees payable by the insured person for the following matters may be awarded:
   1. For all services performed before a hearing.
   2. For the preparation for an arbitration, an appeal or a variation hearing.
   3. For attendance at an arbitration, an appeal or a variation hearing.

(2) The maximum amount that may be awarded for legal fees is the amount calculated using the hourly rates established under the *Legal Aid Act* for professional services in civil matters before the Ontario Court (General Division).

(3) For the purposes of subsection (2), the hourly rate may be adjusted to include, in appropriate circumstances, the experience allowance established under the *Legal Aid Act* for more experienced solicitors.

3. (1) The agent's fees payable by the insured person for the following matters may be awarded:
   1. For the preparation for an arbitration, an appeal or a variation hearing.
   2. For attendance at an arbitration, an appeal or a variation hearing.

(2) The maximum amount that may be awarded for agent's fees is the amount calculated using the hourly rates established under the *Legal Aid Act* for law clerks, articling students and investigators.

4. The amount of the following disbursements made by or on behalf of the insured person may be awarded:
   1. For long distance telephone, facsimile and other telecommunication charges.
   2. For typing, printing and reproducing copies of documents.
   3. For the delivery, by mail or courier, of items relating to the arbitration, appeal or variation hearing.
   4. For other out-of-pocket expenses incurred in furtherance of the arbitration, appeal or variation hearing.

5. (1) The amount of the following witness fees paid by or on behalf of the insured person may be awarded:
   1. For the attendance of witnesses, in accordance with subsection (2).
   2. For the attendance of an expert witness who gives opinion evidence at the arbitration or hearing or whose attendance is necessary, in accordance with subsection (3).
   3. For a report prepared by an expert, provided to the other parties to the arbitration or hearing and necessary for the conduct of the arbitration or hearing, in accordance with subsection (4).

(2) The maximum amount that may be awarded for the attendance of a witness is the amount of the attendance allowance for the witness that may be allowed under Rule 58.05 of the rules of court as a disbursement.

(3) The maximum amount that may be awarded for the attendance of an expert

witness is $200 per hour of attendance, up to a maximum of $1600 per day.

(4) The maximum amount that may be awarded for a report prepared by an expert is $800.

6. (1) The amount of the following expenses made by or on behalf of the insured person, his or her attendant, if one is required, his or her lawyer and his or her agent may be awarded:

1. For travelling expenses, in accordance with subsection (2).

2. For overnight accommodation and meals, in accordance with subsection (3).

(2) The maximum amount of travelling expenses that may be awarded for a person,

(a) for an arbitration or a hearing that takes place in the municipality in which the person resides is the amount incurred by the person for each day of his or her necessary attendance at the arbitration or hearing;

(b) for an arbitration or a hearing that takes place outside the municipality in which the person resides and within 300 kilometres of his or her residence is the lesser of,

(i) 30 cents per kilometre for one return trip between the person's residence and the place in which the arbitration or hearing takes place, or

(ii) the amount incurred by the person;

(c) for an arbitration or a hearing that takes place 300 or more kilometres from the person's residence is the lesser of,

(i) the amount of the return economy airfare for the person plus 30 cents per kilometre for one return trip between his or her residence and the airport and for one return trip between the airport and the place of the arbitration or hearing, or

(ii) the amount incurred by the person.

(3) The maximum amount that may be awarded for overnight expenses and meals is $150 per night for each overnight stay required for the person.R.R.O. 1990, Reg. 664, Sched.

# Section G
# FORMS

Form A - Application for Mediation
Form B - Application for Arbitration
Form C - Response to an Application for Arbitration
Form D - Statement of Service
Form E - Reply by the Applicant for Arbitration
Form F - Notice of Appeal
Form G - Response to Appeal
Form H - Reply by the Appellant
Form I - Application for Intervention
Form J - Application for Variation/Revocation
Form K - Summons
Form L - Affidavit of Service