

ONTARIO REGULATION 381/03

made under the

INSURANCE ACT

Amending O. Reg. 461/96

(Court Proceedings for Automobile Accidents that Occur on or after November 1, 1996)

Filed: September 18, 2003

Note: Ontario Regulation 461/96 has previously been amended. Those amendments are listed in the Table of Regulations (Legislative History) which can be found at <http://www.e-laws.gov.on.ca>.

1. Ontario Regulation 461/96 is amended by adding the following sections:

DEFINITION OF PERMANENT SERIOUS IMPAIRMENT OF AN IMPORTANT PHYSICAL, MENTAL OR PSYCHOLOGICAL FUNCTION

4.1 For the purposes of section 267.5 of the Act,

“permanent serious impairment of an important physical, mental or psychological function” means impairment of a person that meets the criteria set out in section 4.2.

4.2 (1) A person suffers from permanent serious impairment of an important physical, mental or psychological function if all of the following criteria are met:

1. The impairment must,
 - i. substantially interfere with the person’s ability to continue his or her regular or usual employment, despite reasonable efforts to accommodate the person’s impairment and the person’s reasonable efforts to use the accommodation to allow the person to continue employment,
 - ii. substantially interfere with the person’s ability to continue training for a career in a field in which the person was being trained before the incident, despite reasonable efforts to accommodate the person’s impairment and the person’s reasonable efforts to use the accommodation to allow the person to continue his or her career training, or

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- iii. substantially interfere with most of the usual activities of daily living, considering the person's age.
- 2. For the function that is impaired to be an important function of the impaired person, the function must,
 - i. be necessary to perform the activities that are essential tasks of the person's regular or usual employment, taking into account reasonable efforts to accommodate the person's impairment and the person's reasonable efforts to use the accommodation to allow the person to continue employment,
 - ii. be necessary to perform the activities that are essential tasks of the person's training for a career in a field in which the person was being trained before the incident, taking into account reasonable efforts to accommodate the person's impairment and the person's reasonable efforts to use the accommodation to allow the person to continue his or her career training,
 - iii. be necessary for the person to provide for his or her own care or well-being, or
 - iv. be important to the usual activities of daily living, considering the person's age.
- 3. For the impairment to be permanent, the impairment must,
 - i. have been continuous since the incident and must, based on medical evidence and subject to the person reasonably participating in the recommended treatment of the impairment, be expected not to substantially improve,
 - ii. continue to meet the criteria in paragraph 1, and
 - iii. be of a nature that is expected to continue without substantial improvement when sustained by persons in similar circumstances.

(2) This section applies with respect to any incident that occurs on or after October 1, 2003.

EVIDENCE ADDUCED TO PROVE PERMANENT SERIOUS IMPAIRMENT OF AN IMPORTANT PHYSICAL, MENTAL OR PSYCHOLOGICAL FUNCTION

4.3 (1) A person shall, in addition to any other evidence, adduce the evidence set out in this section to support the person's claim that he or she has sustained permanent serious impairment of an important physical, mental or psychological function for the purposes of section 267.5 of the Act.

(2) The person shall adduce evidence of one or more physicians, in accordance with this section, that explains,

- (a) the nature of the impairment;
- (b) the permanence of the impairment;
- (c) the specific function that is impaired; and
- (d) the importance of the specific function to the person.

(3) The evidence of the physician,

- (a) shall be adduced by a physician who is trained for and experienced in the assessment or treatment of the type of impairment that is alleged; and
- (b) shall be based on medical evidence, in accordance with generally accepted guidelines or standards of the practice of medicine.

(4) The evidence of the physician shall include a conclusion that the impairment is directly or indirectly sustained as the result of the use or operation of an automobile.

(5) In addition to the evidence of the physician, the person shall adduce evidence that corroborates the change in the function that is alleged to be a permanent serious impairment of an important physical, mental or psychological function.

(6) This section applies with respect to any incident that occurs on or after October 1, 2003.

2. Section 5 of the Regulation is revoked.

3. This Regulation comes into force on the later of the day it is filed and October 1, 2003.