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PREAMBLE

INTRODUCTION

The **Dispute Resolution Practice Code ("Code")** is a user's guide to resolving disputes between consumers and insurers involving statutory accident benefits claims under the *Insurance Act* and the *Statutory Accident Benefits Schedule ("SABS")*.

The **Code** is published by the Dispute Resolution Group of the **Financial Services Commission of Ontario** ("FSCO" or the "Commission"). Although there have been previous editions of the Code, this edition is the first published by the Dispute Resolution Group as part of FSCO.

FSCO is responsible for regulating the insurance sector as well as other financial service sectors in Ontario, namely, pensions, credit unions and caisses populaires, cooperatives, mortgage brokers and the loan and trust sectors. It is an arm's-length agency of the Ministry of Finance. FSCO provides regulatory and direct services that protect the public interest and enhance public confidence in the regulated sectors.

FSCO was established on July 1, 1998, under the *Financial Services Commission of Ontario Act, 1997*. It amalgamated the operations of the former Ontario Insurance Commission, the Pension Commission of Ontario and the Deposit Institutions Division of the Ministry of Finance.

The **Code** creates rules for timely, cost-effective and fair dispute resolution services provided through FSCO's Dispute Resolution Group. The rules of procedure in this **Code** apply to new applications as well as cases already in progress. The rules have been made after extensive consultations with users of the dispute resolution system.

THE SERVICES OF THE DISPUTE RESOLUTION GROUP

The Dispute Resolution Group at the Commission provides mediation, neutral evaluation and arbitration services. There is also a process for appealing arbitration orders on a question of law, and a process for varying or revoking orders.

If consumers and insurers are unable to resolve disputes about statutory accident benefits, the first step in the dispute resolution process is mediation. Mediation of such disputes is mandatory in Ontario and must be conducted through the Commission before the dispute can proceed to arbitration or court. The insured person is charged no fee for mediation. However, each party must pay for its own expenses, which may include lawyer's fees, travelling expenses, accounting services, and additional medical reports.

Mediation is an informal process in which a mediator helps parties involved in a dispute to clarify issues and find solutions that lead to a satisfactory outcome. The Mediation Unit of the Dispute Resolution Group has established a successful record in mediation, achieving full or partial success in over 75 percent of mediations. In December 1998, the Unit was awarded the prestigious Amethyst Award for outstanding achievement by the Ontario Public Service.

If the dispute remains unresolved after mediation at the Commission, the insured person has a number of choices. He or she can continue to negotiate directly with the insurance company. Alternatively, the insured person can opt for arbitration at the Commission, private arbitration, private neutral evaluation or a court action. Each option has its own rules, and the insured person may not be able to switch from one system to another. For example, once an action has been commenced in court, the insured person may not be able to switch to arbitration at the Commission, or *vice versa*.

ABOUT THIS CODE

This Code will help the parties move through the Commission's dispute resolution process. It explains what is required of everyone involved and sets out rules for such matters as the filing of documents, time limits and payment of fees and expenses. Of particular importance are the rights and responsibilities of insurers and claimants when dealing with statutory accident benefits claims. These rights and responsibilities are outlined in **Guidelines B 2-1** and **B 3-1**, which may be found in **Section B** of the **Code**.

It is important to note that the specific types of benefits, amounts, and eligibility requirements for benefits, will differ depending on when the motor vehicle accident took place.

If the accident occurred:	The applicable legislation is:
On or after September 1, 2010	<i>Insurance Act</i>, R.S.O. 1990, c.l.8, as amended, including amendments under Bill 16, <i>An Act to Implement 2010 Budget measures and to enact or amend various Acts</i>; and <i>Statutory Accident Benefits Schedule-Effective September 1, 2010</i>, Ontario Regulation 34/10 [referred to generally as the New SABS]
On or between November 1, 1996 and August 31, 2010	<i>Insurance Act</i>, R.S.O. 1990, c.l.8, as amended, including amendments under Bill 59, <i>the Automobile Insurance Rate Stability Act</i>, 1996, and Bill 198, <i>the Keeping the Promise for a Strong Economy Act (Budget Measures)</i>, 2002; and <i>Statutory Accident Benefits Schedule — Accidents On or After November 1, 1996</i>, Ontario Regulation 403/96, as amended, including Ontario Regulation 35/10 setting out the transitional rules for accidents that occur before September 1, 2010 [referred to generally as the Old SABS].
On or between January 1, 1994 and October 31, 1996	<i>Insurance Act</i>, R.S.O. 1990, c.l.8, as amended, including amendments under Bill 164, the <i>Insurance Statute Law Amendment Act</i>, 1993; and <i>Statutory Accident Benefits Schedule — Accidents After December 31, 1993 and Before November 1, 1996</i>, Ontario Regulation 776/93, as amended [referred to generally as Bill 164 SABS].
On or between June 22, 1990 and December 31, 1993	<i>Insurance Act</i>, R.S.O. 1980, c.218, as amended, including amendments under Bill 68, the <i>Insurance Statute Law Amendment Act</i>, 1990, consolidated by the <i>Insurance Act</i>, R.S.O. 1990, c.l.8, also known as the Ontario Motorist Protection Plan ("OMPP"); and <i>Statutory Accident Benefits Schedule — Accidents Before January 1, 1994</i>, Ontario Regulation 672/90, as amended [referred to generally as Bill 68 SABS].

These rules DO NOT apply if the accident occurred on or **before** June 21, 1990.

If any provision of the **Code** is found to be contrary to the *Insurance Act* or any other law, then that law will prevail.

HOW THIS CODE IS ORGANIZED

The **Code** has been divided into 7 sections.

Section A, the **Rules of Procedure**, consists of General Rules for Dispute Resolution at the

Commission: Mediation, Arbitration, Neutral Evaluation, Appeal of an Arbitration Order, Variation or Revocation of an Order, as well as General Procedures for Hearings.

Section B contains **Guidelines** issued by the Superintendent of the Financial Services Commission of Ontario (FSCO) and the former Commissioner of the Ontario Insurance Commission on the interpretation and operation of the SABS.¹

Section C contains **Practice Notes**, which are issued by the Dispute Resolution Group 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.

Section G has copies of all the required **forms**.

For general information on mediation, neutral evaluation, arbitration, appeal, and variation/revocation, see **"Some Answers to Frequently Asked Questions [FAQS] by Claimants"**, which may be found in this **Introduction** section.

*This section includes guidelines issued by the FSCO's predecessor, the Ontario Insurance Commission, as well as FSCO, and may make reference to the Ontario Insurance Commission and/or the Commissioner. Where reference is made to the Ontario Insurance Commission and/or Commissioner, these should be read as FSCO and/or Superintendent.

SOME ANSWERS TO FREQUENTLY ASKED QUESTIONS [FAQS] BY CLAIMANTS

What disputes can be brought to the Dispute Resolution Group at the Commission?

Our services help resolve disputes about whether or not you qualify for benefits under the *Statutory Accident Benefits Schedule (SABS)*, and how much those benefits should be. You may use the services of the Dispute Resolution Group if an accident benefit has been claimed from your insurance company, and denied. 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 between two or more insurers over which insurer is responsible for the payment of statutory accident benefits. These disputes must be referred to private arbitration under the *Arbitration Act*, 1991.

How do I start the dispute resolution process?

The first step is **mediation**. You must send a completed **Application for Mediation (FORM A)** to the Dispute Resolution Group. (See **Part 2** of the **Rules – Mediation**.)

MEDIATION

What is mediation?

Mediation is an informal process in which a neutral third party (the mediator) helps the parties resolve the issues in dispute. Mediators work with the parties to find acceptable solutions. They help clarify the issues and explore options that can lead to a satisfactory outcome. Mediators don't take sides and they don't have the power to impose decisions. Our statistics indicate that most disputes are settled at mediation.

How much will it cost?

There is no cost to the insured person for mediation. However, you must pay for your own expenses, such as lawyer's fees, travelling expenses, accounting services, and additional medical reports.

In what languages are mediation services provided?

Mediation services are available in both English and French. French language services are provided at the request of the applicant. Interpretation services in other languages must be arranged by the party requiring them. The party arranging the service must pay the cost.

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.

Should I be there?

Yes. Mediation can be conducted either in person or on the telephone (usually by conference call). You

have a responsibility to personally participate in the mediation process, even if you have a representative. If for some extraordinary reason you cannot participate, your representative must have full authority to enter into an agreement or settlement at mediation on your behalf. If your representative does not have this authority, your mediation may be delayed.

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 the parties.

What documents will I need?

You should try to provide copies of the best available documentation about your case.

For medical disputes, this can include such things as doctor's reports, hospital reports, and physiotherapy reports. If your dispute is about the amount of your income, such things as tax returns, financial statements and bank records can be helpful. See **Practice Note 4** "Exchange of Documents" under **Section C** of the **Code**.

Each party may ask the other for relevant documentation. If you fail to produce requested documents that the mediator considers necessary for settlement discussions, this will be noted in the mediator's report.

What if my dispute is not resolved in mediation?

If some issues remain unresolved at the end of the mediation, you have a number of choices. You may continue to negotiate with your insurance company directly. Alternatively, you can opt for arbitration at FSCO, private arbitration, neutral evaluation or court action.

NEUTRAL EVALUATION

What is neutral evaluation?

Neutral evaluation is a process where a neutral third party (the neutral evaluator) provides the parties with an assessment of the issues in dispute, as well as an opinion on the likely results if the dispute were to proceed to arbitration at FSCO or to court. This assessment is intended to help the parties settle their dispute at an early stage.

How do I obtain neutral evaluation?

Neutral evaluation is offered either privately or as part of the arbitration process at FSCO. You and your insurer may agree to refer your dispute to a private (non-FSCO) neutral evaluator. The mediator may also make a referral to private neutral evaluation. See **Practice Note 5** "Mediator Referral to Private Neutral Evaluation" under **Section C** of the **Code**. Upon the written request of the parties, the Director of Arbitrations will appoint a person selected by the parties to conduct a private neutral evaluation.

If you want neutral evaluation at FSCO, you must file for arbitration and both parties must agree to neutral evaluation. See **Practice Note 6** "Neutral Evaluation at the Financial Services Commission of Ontario" under **Section C** of the **Code**.

How much will it cost?

Private evaluators set their own rates. FSCO is not responsible for the costs of private neutral evaluation and the terms of payment and cost must be negotiated between the parties and the selected evaluator.

Although there is no additional charge to the insured person for neutral evaluation conducted at FSCO, the insured person must pay the **\$100** filing fee for arbitration.

What if my dispute is not resolved through neutral evaluation?

If you participated in private neutral evaluation, and the **Report of the Neutral Evaluator** has been issued, you may choose arbitration at FSCO, private arbitration under the *Arbitration Act*, or court. If you completed neutral evaluation at FSCO, and all the issues did not settle, your file will normally be fast-tracked directly to an arbitration hearing, without the necessity of a pre-hearing discussion.

ARBITRATION AT FSCO'S DISPUTE RESOLUTION GROUP

What is arbitration?

Arbitration is a decision making process, similar to court. The advantages of arbitration over the court process are that it is quicker, less expensive and less formal. The arbitrator will listen to the witnesses called by each side, review all the evidence filed at the hearing and make an order that is binding on both sides.

Who can apply for arbitration?

Only the insured person may apply for arbitration; the insurance company does not have this right. You may not apply for arbitration unless you have first gone to mediation with your dispute.

How do I apply for arbitration?

You must complete an **Application for Arbitration (FORM C)** and send it to the Dispute Resolution Group, together with your **\$100** filing fee.

How much will it cost?

Over and above the **\$100** filing fee, you will also be responsible for your own expenses, such as witness fees, travelling and legal expenses, accounting services, additional medical reports and experts' fees. An arbitrator may award the expenses of a proceeding to either the insured person or the insurer. In awarding expenses to either party, the arbitrator will consider the factors described in **Rules 75 and 76** and under the **Expense Regulation** found in **Section F** of the **Code**.

In some cases the insured person may recover some or all of the expenses of the arbitration from the insurer, if the arbitrator so orders. Expenses awarded by the arbitrator are recoverable only up to the maximums set out in this **Code** under **Rule 78** and under **Section F** Schedule to the Expense Regulation. Legal fees are only recoverable at the rates set out in this **Code** under **Rule 78**. If your lawyer or agent charges more than these rates, you will be responsible to pay your lawyer directly for any additional amount.

In certain cases, the arbitrator may award the insurance company a portion of its expenses which the insured person will be responsible for paying. See **Rule 75** and the **Expense Regulation** found in **Section F** of the **Code**.

As well, if the arbitrator concludes that your claim was frivolous, fraudulent, vexatious or an abuse of process you may be ordered to pay an additional amount up to the amount of the assessment the insurance company has paid. See **Fees and Assessments** found in **Section D** of the **Code**.

In what languages are arbitration services provided?

Arbitration hearings may be held in English or French. French language services are provided at the request of the applicant. Interpretation services in other languages may also be provided by the Dispute Resolution Group, as requested by the applicant and required by the arbitrator. The Dispute Resolution Group will pay the cost of interpretation services required at the hearing.

Do I need a lawyer?

A lawyer is not required for arbitration, but many people are represented. Insurance companies are nearly always represented by lawyers at arbitration. You are encouraged to at least consult a lawyer.

What documents are required?

As in mediation, you should have independent documentation about your claim. You and the insurance company should have already exchanged the relevant documents prior to attending a pre-hearing conference. These documents must ultimately be provided to the arbitrator at the pre-hearing and hearing. If necessary, an arbitrator at the pre-hearing may order the production of other important documents. It is in the best interests of both parties to comply with an order for production in a timely manner. See **Practice Note 4** "Exchange of Documents", under **Section C** of the **Code**.

Should I be present at the arbitration hearing?

Yes. Arbitration hearings are usually held in person at FSCO's offices in Toronto or at locations throughout Ontario. Sometimes the parties can agree to waive an oral hearing and the arbitrator's decision will be based on the documents and written submissions filed.

How long will the arbitration hearing take?

The length of the arbitration process will vary depending on the nature and complexity of the case. The average length of an oral hearing at the Dispute Resolution Group is between two and three days.

APPEAL, VARIATION / REVOCATION

What should I do if I think the arbitrator's decision is wrong?

If you think that an arbitrator's decision is wrong, two possible procedures are available. First, you can **appeal** the decision, but only where the arbitrator made an error of law. You will not be allowed to appeal simply because you think the arbitrator should have accepted your evidence instead of the other party's.

A **Notice of Appeal (FORM I)** must be filed within **30 days** of the date of the arbitration decision. The filing fee is **\$250**. Appeals are decided by the Director of Arbitrations or a delegate (Director's Delegate).

The second option is an **Application for Variation/Revocation (FORM L)**. This process is appropriate where the insured person's situation has changed since the arbitration hearing, where new evidence has become available that was not available for the arbitration hearing, or where there is some clear error in the arbitration decision. The filing fee for an **Application for Variation/Revocation** is **\$250**.

How do I find a lawyer?

The Law Society of Upper Canada offers a lawyer referral service. For more information, phone 1-900-565-4577 (a \$6.00 fee is charged), and check the Law Society's website at: www.lsuc.on.ca, and choose option "Public Legal Information".

USER ADVISORY GROUPS TO THE DISPUTE RESOLUTION GROUP

The Dispute Resolution Group is fortunate to have two user advisory groups who meet with members of the Dispute Resolution Group's senior management at regularly scheduled meetings throughout the year. The Bar-Dispute Resolution Group Forum ("Counsel Forum") is comprised of lawyers and other representatives who regularly appear on behalf of claimants or insurers within the dispute resolution system. The other group, Companies Forum, is comprised of ADR representatives and claims people from most of the major automobile insurers in Ontario. The members of Companies Forum regularly handle disputed accident benefit claims within our system.

These user groups meet regularly and provide valuable insight and suggestions to the Dispute Resolution Group to ensure that it continues to provide just, flexible, cost effective and efficient dispute resolution services. Further information concerning meeting dates and the minutes of these two advisory groups is available through the FSCO website at www.fSCO.gov.on.ca

GENERAL INFORMATION CONCERNING THE TIME LINES FOR THE SERVICES OF THE DISPUTE RESOLUTION GROUP

1. An insured person or an insurer may apply for mediation of a dispute about an insured person's entitlement to accident benefits where a claim has been denied by the insurer or the time period for the insurer to respond to the claim has elapsed (**Rule 12.1**).
2. An **Application for Mediation** in **FORM A** must be filed with the Dispute Resolution Group no later than **2 years** from the date the insurer provided written notice of a refusal to pay the amount claimed (**Rule 11**).
3. An **Application for Mediation** in **FORM A**, completed in accordance with the requirements of **Rule 12.2**, will be registered and assigned to a mediator within 3 weeks of its receipt.

 Due to a backlog that resulted from the significant increase in applications, FSCO is currently unable to meet the timelines for assigning completed applications to a mediator. FSCO has implemented a number of initiatives to ease the situation, however, the current pressure is expected to continue into 2012. FSCO is working to apply additional measures to reduce the backlog.
4. Mediation will be concluded within **60 days** of the registration of the completed **Application for Mediation** (**Rule 19**).
5. A **Report of Mediator** (**Rule 22**) will be issued within **7 business days** of the conclusion of mediation.
6. An **Application for Arbitration** in **FORM C** must be filed with the Dispute Resolution Group no later than **2 years** from the date the insurer provided written notice of a refusal to pay an amount claimed. However, an insured person may file a completed **Application for Arbitration** within **90 days** after the mediator reports to the parties in the **Report of Mediator** (**Rule 11**).
7. An **Application for Arbitration** in **FORM C** will be registered and assigned to an arbitration case administrator within **5 business days** of receipt of an **Application** completed in accordance with **Rule 25.1**.
8. Dates for holding an arbitration pre-hearing discussion (**Rule 33**) will be available to the parties within **6 to 8 weeks** from the registration of a completed **Application for Arbitration**.

- 9. Dates for holding an oral arbitration hearing will be available to the parties within **4 to 6 months** from the conclusion of the pre-hearing discussion.
- 10. An oral arbitration hearing is generally concluded within **3 days**.
- 11. An arbitration order from an oral hearing will be issued within **60 to 85 days** from the conclusion of the oral hearing.
- 12. A written arbitration hearing is generally concluded within a **60 day** period (**Rule 38**).
- 13. An arbitration order from a written hearing will be issued on the later of:
 - (a) **60 days** after the last day on which the insured person is entitled to file a **Reply by the Applicant for Arbitration**;
 - (b) **30 days** after the last day on which the parties are required to file additional materials or written submissions (**Rule 38**).
- 14. A **Notice of Appeal** in **FORM I** on a question of law, must be filed within **30 days** of the date of the arbitration order being appealed (**Rule 52**).
- 15. A decision in the appeal will be issued within **60 to 85 days** from the conclusion of the oral or written appeal hearing.
- 16. A request for an **Assessment of Expenses** must be made within **30 days** from the date the order of the arbitrator was issued (**Rule 79**).
- 17. An order on an **Assessment of Expenses** will be issued within **60 to 85 days** from the conclusion of the oral or written hearing on expenses.

HOW DO I GET INFORMATION?

More detailed information is available through the Dispute Resolution Group's recorded telephone information service at (416) 250-6714 or toll free at 1-800-517-2332 or FSCO's website at www.fSCO.gov.on.ca