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Section A - Rules of Procedure

PART 1 – GENERAL RULES FOR DISPUTE RESOLUTION

1. INTERPRETATION

- 1.1 These Rules will be broadly interpreted to produce the most just, quickest and least expensive resolution of the dispute.
- 1.2 Where something is not specifically provided for in these Rules, the practice may be decided by referring to similar Rules in this **Code**.
- 1.3 A defect in form or other technical breach will not make a proceeding invalid.
- 1.4 These Rules are made by the Director under the authority of section 21 of the *Insurance Act* and section 25.1 of the *Statutory Powers Procedure Act*.
- 1.5 Subject to the requirements of the *Insurance Act* and the *Statutory Powers Procedure Act*, the Director may make changes to these Rules at any time, if he or she considers it appropriate.
- 1.6 (a) These Rules apply effective May 31, 2001, to all applications for dispute resolution, whenever commenced.
- (b) Despite Rule 1.6(a), these Rules do not apply to an arbitration proceeding in which a pre-hearing was held prior to May 31, 2001, unless the parties agree or an arbitrator orders that they apply.

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2. GUIDELINES

- 2.1 The Superintendent of Financial Services, and previously the Commissioner of Insurance, 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 These guidelines shall be considered when interpreting the *Statutory Accident Benefits Schedule*.

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3. PRACTICE NOTES

- 3.1 The Dispute Resolution Group may issue Practice Notes about policies and administrative procedures. Practice Notes are found in **Section C** of the **Code**.
- 3.2 Practice Notes are designed to guide users in the dispute resolution process at the Commission. However, they are not binding and do not affect the duty of the adjudicator to make decisions based on the circumstances and merits of each case.

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4. DEFINITIONS

4.1 In these Rules:

"accident benefits" means benefits under the *Statutory Accident Benefits Schedule*;

"adjudicator" means the Director or person appointed by the Director under the *Insurance Act* and these Rules to conduct a proceeding requiring the exercise of a statutory power of decision;

"appeal" means an appeal in accordance with section 283 of the *Insurance Act*;

"arbitration" means an arbitration in accordance with section 282 of the *Insurance Act*;

"arbitrator" means an arbitrator appointed by the Director under section 282 of the *Insurance Act*;

"Commission" means the Financial Services Commission of Ontario;

"Director" means the Director of Arbitrations appointed under section 6 of the *Insurance Act* or an employee of the Commission to whom the Director has delegated his or her powers or duties;

"Dispute Resolution Group" means the Dispute Resolution Group of the Commission;

"document" includes written documents, forms, reports, charts, films, photographs, transcripts, videotapes, audio tapes, business 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 to file with the Dispute Resolution Group;

"hearing" means the opportunity to state one's case before an adjudicator in the context of an oral, written or electronic hearing;

"mediation meeting" means a scheduled meeting at which the parties and their representatives attend before a mediator in person, by telephone conference or other forms of electronic technology allowing persons to hear one another;

"mediator" means a mediator appointed by the Director under section 280 of the *Insurance Act*;

"neutral evaluation" means an evaluation under section 280.1 of the *Insurance Act* of the probable outcome of a proceeding in court or arbitration;

"neutral evaluator" means a person appointed by the Director under section 280.1 of the *Insurance Act*;

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

"private arbitration" means an arbitration under the *Arbitration Act*, 1991;

"private neutral evaluator" means a person who has been appointed by the Director under section 280.1 of the *Insurance Act* to perform a neutral evaluation of the probable outcome of a dispute, other than a person appointed to perform the evaluation at the Dispute Resolution Group under **Rule 44** of the **Code**;

"proceeding" means a matter requiring the exercise of a statutory power of decision;

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

"Statutory Accident Benefits Schedule" means any of the following:

- (a) the Statutory Accident Benefits Schedule - Effective September 1, 2010;
- (b) the Statutory Accident Benefits Schedule - Accidents on or after November 1, 1996;
- (c) the Statutory Accident Benefits Schedule - Accidents after December 31, 1993 and Before November 1, 1996; or
- (d) the Statutory Accident Benefits Schedule - Accidents Before January 1, 1994.

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

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5. DISPUTE RESOLUTION SERVICES AND DOCUMENTS

5.1 A person has the right to communicate with the Dispute Resolution Group in French and to receive services in French, as provided in the *French Language Services Act*.

5.2 French language services in mediation, arbitration, neutral evaluation, variation/revocation and appeal are provided at the request of the insured person.

5.3 In mediation, interpretation services in languages other than French and English must be arranged by the party requiring them. The party arranging the interpretation service must pay the cost.

5.4 In arbitration, variation/revocation and appeal hearings, interpretation services in languages other than French and English will be arranged by the Dispute Resolution Group where requested by the insured person and required by the adjudicator. The Dispute Resolution Group will pay the cost of interpretation services required at the hearing.

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

5.6 The Dispute Resolution Group may issue letters of direction, notices and other documents signed by the Director.

5.7 Where these Rules require the delivery of a document by the Dispute Resolution Group, delivery will be deemed to have occurred where:

- (a) one of the methods of delivery permitted under **Rule 7** is used; and
- (b) the document is sent to the last known address of the party, contained in the records of the Dispute Resolution Group.

5.8 If so required by the Dispute Resolution Group, the parties to a mediation, arbitration or appeal shall make use of an electronic scheduling system provided by the Dispute Resolution Group for the purposes of scheduling any hearing, conference, pre-hearing discussion or other meeting referred to in this Code.

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6. FILING

6.1 Where these Rules require a document to be filed:

- (a) the document must be delivered to the Dispute Resolution Group;
- (b) one of the methods of delivery permitted under **Rule 7** must be used; and
- (c) the time frames set out in **Rule 7** apply

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7. SERVICE OF DOCUMENTS

7.1 A document must be served by one of the following methods:

- (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;
- (f) e-mail; or
- (g) 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, telephone number, and (if any) the e mail address (if any) 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; and
- (e) the name and telephone number and (if any) the e-mail address of an individual to contact in the event of a problem.

7.3 The e-mail message to which a document served by e-mail is attached must include:

- (a) the name, address, telephone number and e-mail address of the sender;
- (b) the name of the person to be served;
- (c) the date and time the document is being sent;
- (d)) the name, telephone number and e-mail address of an individual to contact in the event of a problem.

7.4 Service by a party or delivery by the Dispute Resolution Group 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 day delivery is made;
- (b) if a document is served by regular, registered, or certified mail, service takes place on the fifth day after the date the post office stamps the mailed document;
- (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;
- (d) if a document is served by facsimile or e-mail, service takes place on the 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.

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8. CALCULATION OF TIME

8.1 To calculate 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 a statutory holiday, the act may be done on the next day that is not a Saturday, Sunday, or a statutory holiday; and
- (c) filing or service of a document **after 4:45 p.m.** or on a Saturday, Sunday or a statutory holiday will be considered to be made on the next day that is not a Saturday, Sunday, or a statutory holiday.

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9. REPRESENTATION

9.1 A party may represent him or herself or may appoint another person to represent him or herself.

- (a) Only individuals who are licensed to provide legal services or who are exempt

from licensing requirements under the by-laws of the Law Society of Upper Canada can represent parties in the dispute resolution process.

Licensed paralegals are not permitted to represent applicants who are seeking a catastrophic impairment designation. However, lawyers handling claims that involve catastrophic impairment are permitted by the Law Society of Upper Canada to delegate the mediation of subsidiary issues to licensed paralegals employed by their firm. (updated — December 2009)

(b) A party must provide the Dispute Resolution Group with his or her own name, address, telephone number and (if any) e-mail address, and if represented, the name, address, telephone number and e mail address of their representative.

(c) Parties and their representatives must provide the Dispute Resolution Group with written notice of any change of their address, telephone number and e mail address. The Dispute Resolution Group is entitled to rely upon the last known addresses, telephone numbers and e mail addresses contained in its records.

9.2 Subject to **subsection 9.3**, a party who appoints a representative must provide full authorization to the representative to discuss all issues in dispute, to negotiate and to enter into an agreement or settlement of any and all issues in dispute. The Dispute Resolution Group may require written confirmation from the party that a representative has this authority.

9.3 Where an insurer's representative has limited authority to enter into an agreement or settlement, an officer of the company with the requisite authority must attend or be available by telephone for the duration of the mediation, settlement discussion or other proceeding.

9.4 A mediator, neutral evaluator or adjudicator, as the case may be, may adjourn a mediation, neutral evaluation or proceeding, on such terms as he or she considers just, if a party is not present and their representative does not have the requisite authority outlined in subsections 9.2 and 9.3.

9.5 A party who changes his or her representative must promptly notify the former representative, the other parties and the Dispute Resolution Group, in writing, of the name, address, telephone number and e mail address of the new representative. The new representative must also confirm his or her appointment in writing. The Dispute Resolution Group is entitled to rely on the last written notification concerning a party's representative contained in its files.

9.6 A party who is represented and wishes to act on his or her own behalf, must notify the representative, the other parties and the Dispute Resolution Group, in writing, of the decision to act on his or her own behalf.

9.7 A representative who seeks to withdraw from a proceeding must:
(a) provide a written request for withdrawal, with reasons, to the Dispute Resolution Group and all parties to the proceeding;

(b) provide the last known address, telephone number and (if any) e mail address of the represented party.

9.8 Where the party represented provides written consent to the representative's request for withdrawal, the Registrar or an adjudicator shall permit the representative's withdrawal. Otherwise, an adjudicator may permit the representative to withdraw, subject to such terms as the adjudicator considers just.

9.9 An adjudicator may exclude from a proceeding anyone, other than a duly qualified barrister and solicitor, appearing as a representative or agent on behalf of a party, or as an advisor to a witness, if the adjudicator finds that such person is not competent to properly represent or to advise the party or witness or does not understand and comply with these Rules and the duties and responsibilities of a representative, agent or advisor.

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10. PARTY UNDER DISABILITY

10.1 Subject to **Rule 10.2**, a party to a mediation, settlement discussion, neutral evaluation or proceeding is presumed to have the mental capacity to manage his or her property, appoint and instruct a representative, and conduct his or her own case.

10.2 A minor, or a person who has been declared mentally incapable, within the meaning of **Sections 6 or 45** of the *Substitute Decisions Act, 1992*, (SDA) must commence a mediation or other proceeding through:

- (a) the Public Guardian and Trustee or a Court appointed guardian of property under the provisions of the *SDA*; or
- (b) an attorney under a valid continuing power of attorney that gives the attorney authority over all the property of the party; or
- (c) in the case of a minor,
 - (i) a parent with whom the minor resides;
 - (ii) a person with lawful custody of the minor;
 - (iii) a court appointed guardian of the minor's property under the provisions of the *Children's Law Reform Act*; or,
 - (iv) the Children's Lawyer, in the event there is no person available under subparagraphs (i), (ii), (iii) or if there is a conflict of interest between the minor and such person.

10.3 Where an adult party has not been declared mentally incapable under the provisions of the *SDA*, but exhibits signs of mental difficulty during the course of a mediation, settlement discussion, neutral evaluation or proceeding, either party may request a hearing on a preliminary issue, or the Dispute Resolution Group may direct a hearing on a preliminary issue to determine whether:

- (a) the party has the mental capacity to proceed in the dispute resolution process;
- (b) there is an attorney with a valid continuing power of attorney over the party's property; or
- (c) there is a person such as a spouse, same sex partner, near relative, close friend or a professional such as a doctor, lawyer or business entity, such as a trust company, who has made or intends to make arrangements for the appointment of a guardian over the party's property under the provisions of the *SDA*.

10.4 Parties shall be given written notice of the hearing on a preliminary issue to inquire into a party's mental capacity to proceed in the dispute resolution process.

10.5 Where an adjudicator is not satisfied that a party has the mental capacity to proceed in the dispute resolution process, and there is no attorney or person such as described in **Rule 10.3(b) and (c)**, the adjudicator may appoint a spouse, same sex partner or near relative of the party to act on the party's behalf if that person, in the adjudicator's opinion, is suitable, willing and able to proceed in the dispute resolution process and to receive and administer statutory accident benefits on behalf of the party who has exhibited signs of mental difficulty. The adjudicator may place such conditions or restrictions upon appointments pursuant to this section, as the adjudicator considers reasonable and necessary to protect the interests of the person exhibiting mental difficulty, the other parties to the proceeding and the dispute resolution process.

10.6 Where there is no person such as described in **Rules 10.2, 10.3 or 10.5** available to act, the adjudicator may notify the Public Guardian and Trustee to request that appropriate steps be taken pursuant to the provisions of the *SDA*.

10.7 The representative of a person under a disability under **Rule 10.2** or the representative of a party who has been found to lack the mental capacity to proceed in the dispute resolution process under **Rule 10.5**, shall comply with the approval of settlement requirements of Rule 7.08 of the *Rules of Civil Procedure*.

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11. TIME LIMITS FOR MEDIATION, NEUTRAL EVALUATION OR ARBITRATION

11.1 An application for mediation, neutral evaluation or arbitration must be filed no later than **2 years** from the date the insurer provided written notice of a refusal to pay the amount claimed.

11.2 Despite **Rule 11.1**, 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** or within **30 days** after the neutral evaluator, appointed by the Director, reports to the parties in the **Report of Neutral Evaluator**, whichever is later.

11.3 The limitation period is not extended by the issuance of an amendment to a **Report of Mediator** under **Rule 23**.

