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Section A - Rules of Procedures

PART 6 – GENERAL PROCEDURES FOR HEARINGS

64. Applicability of this part

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

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65. Orders

65.1 An adjudicator will determine the issues before him or her by order and may make an order subject to such terms as he or she considers just.

65.2 An adjudicator may make an oral order with oral reasons where he or she considers it appropriate. The adjudicator will confirm the provisions of an oral order in writing if requested by the parties at the conclusion of the oral order.

65.3 An order which finally decides the issues in dispute will be supported by written reasons.

65.4 The Dispute Resolution Group will deliver a copy of the order and the adjudicator's written reasons, if any, to the parties.

65.5 An adjudicator may, at any time, correct a typographical error, error of calculation, technical error or similar error made in his or her decision or order.

65.6 An adjudicator may at any time clarify a decision or order that contains a misstatement, ambiguity or other similar error.

65.7 An adjudicator may make such orders or give such directions as he or she considers proper to prevent an abuse of process.

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66. Court enforcement of orders

66.1 On written request, the Director will provide a party with a certified copy of an order.

66.2 A party may file a certified copy of an order in the Ontario Superior Court of Justice and the order can be enforced by the Court in the same manner as an order of that Court.

66.3 A party who files an order under **Rule 66.2** shall notify the Director within **10 days** after the filing.

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67. Orders within proceeding: motions

67.1 An adjudicator may make preliminary or interim orders within a proceeding, pending a final order.

67.2 A party may request a preliminary or interim order, at any stage within a proceeding,

pending a final order.

67.3 A party making such a request must, in writing:

- (a) describe the order being sought, the grounds for the order, and provide any documents to be relied on;
- (b) set out the time, date and manner in which the party seeks to have the motion heard; and
- (c) serve this material on the other parties and file it.

67.4 Where a party seeks an order for production against a person who is not a party to the proceeding ("third party"), the party making the request must serve the materials required under **Rule 67.3**, upon the third party and file it together with a **Statement of Service in Form F**.

67.5 Within **10 days** of being served, the responding party and third party, if any, must:

- (a) serve a written response and documents to be relied on; and
- (b) file a copy of the written response and documents

67.6 The adjudicator may determine the request on the basis of the documents and written submissions filed, or in such manner as the adjudicator considers appropriate.

67.7 Before making an order for the production of documents against a third party, the adjudicator shall be satisfied that:

- (a) the parties have made reasonable efforts to obtain the document sought;
- (b) the document sought is in the possession, control or power of the third party;
- (c) the third party has had a reasonable opportunity to respond;
- (d) the document is reasonably required to ensure a just and fair hearing.

67.8 A request for an interim order or an order on a preliminary issue may also be made orally during a pre-hearing discussion, a preliminary conference, or at a hearing, and will be dealt with in such manner as the adjudicator considers appropriate.

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68. **Dismissal of proceeding without hearing**

68.1 Subject to **Rule 68.2**, an adjudicator may dismiss a proceeding without a hearing where the proceeding is frivolous, vexatious or is commenced in bad faith.

68.2 Before dismissing a proceeding under this Rule, an adjudicator shall deliver written notice to all parties of the intention to dismiss the proceeding on the grounds set out in **Rule 68.1**.

68.3 Where a party objects to a dismissal of the proceeding pursuant to **Rule 68.1** or seeks to make written submissions with respect to the dismissal, the party must:

- (a) provide the grounds upon which the party objects to the dismissal of the proceeding, or set out any other issues or concerns, in writing; and
- (b) serve the material upon the other parties and file it within **20 days** of the date of the notice provided under **Rule 68.2**.

68.4 An adjudicator will consider any written objections or submissions received and may make an order on such terms as he or she considers just.

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69. **Settlement**

69.1 The parties may settle any or all issues in dispute at any time, provided at least one year has passed since the date of the accident, or a pre-hearing conference has been completed.

69.2 If a dispute is settled, the Dispute Resolution Group will close its file:

- (a) immediately upon receipt of written confirmation from the parties that the entire matter is settled; or
- (b) **20 days** following notice of the Dispute Resolution Group's intention to close the file on the basis of a reported settlement.

69.3 Where a party objects to the closure of a file under **Rule 69.2(b)**, the party must promptly notify the Dispute Resolution Group and all other parties, in writing, setting out the reasons for the objection.

69.4 Either party may request an adjudicator to issue an order dismissing the proceeding on consent of the parties, upon filing:

- (a) a consent, signed by the parties or their representatives, stating that they consent to the dismissal of the arbitration and confirming that no party to the proceeding is under a disability;
- (b) a signed Settlement Disclosure Notice;
- (c) the written agreement of the parties that the consent order is final and shall not be subject to appeal, variation/revocation, or judicial review; and
- (d) three copies of the consent order, approved as to form and content by the parties, for delivery by the Dispute Resolution Group.

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70. **Withdrawal**

70.1 A party may seek permission to withdraw all or part of a dispute by:

- (a) serving a request to withdraw on all parties; and
- (b) filing the request to withdraw together with a **Statement of Service** in **Form F**; or
- (c) making an oral request to withdraw all or part of a dispute during a neutral evaluation, pre-hearing discussion, settlement discussion, preliminary conference or at a hearing.

70.2 An adjudicator may permit a party to withdraw all or part of a dispute where all parties agree.

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

- (a) permit the withdrawal on such terms and conditions as he or she considers just;
- (b) award expenses to either party as permitted by **Rule 75** and following.

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71. **Inability of an adjudicator to complete a hearing**

71.1 If an adjudicator becomes unable, for any reason, to complete a hearing or issue a decision, the matter may be reheard by a new adjudicator appointed by the Director.

71.2 Where a transcript of the incomplete hearing is available, the Director may notify the parties of the Director's intention to provide a copy of the transcript to the new adjudicator, with a copy to the parties, at the Dispute Resolution Group's expense; where the Director considers it appropriate, or where the parties agree and the Director approves.

71.3 Where a party objects to the use of the transcript by the new adjudicator, the party must promptly notify the Director and all other parties in writing, setting out the reasons for the objection.

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72. **Adjournments**

72.1 A request for an adjournment of a pre-hearing discussion or an arbitration proceeding must be made in writing to the Dispute Resolution Group. A request for an adjournment of

an appeal or variation/revocation proceeding must be made in writing to the Director, or to the person delegated by the Director to decide the matter. Such requests must:

- (a) outline the reasons for the adjournment;
- (b) indicate whether all parties consent to the adjournment; and
- (c) provide alternative dates that are acceptable to all parties

72.2 A request for an adjournment must be served on the other parties and filed **7 days** in advance of the scheduled proceeding or such lesser period of time as the adjudicator may permit.

72.3 In deciding whether an adjournment is appropriate, the adjudicator shall refer to the **Adjournments Policy** found in **Practice Note 9** under **Section C** of the **Code**.

72.4 An adjudicator may adjourn a proceeding on his or her own initiative, or at the request of a party, on such terms he or she considers just.

72.5 An adjudicator may require the parties to attend in person to argue an adjournment, even if it is on consent.

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73. **Summons to witness**

73.1 An adjudicator has the same powers to summons as a judge of the Ontario Superior Court of Justice. The adjudicator may, by Summons to Witness, require a person to:

- (a) attend at or participate in a hearing, and to give evidence on oath or otherwise; and
- (b) produce in evidence documents and things set out in the summons.

73.2 If a person does not attend or participate in a hearing or does not produce the documents listed in the **Summons to Witness (Form N)**, a judge of the Ontario Superior Court of Justice may order that a warrant for the arrest of that person be issued or that the person be punished in the same way as for contempt of that court.

73.3 A **Summons to Witness** must be prepared in **Form N**.

73.4 The party requesting the summons must:

- (a) ensure that the **Summons to Witness** is served personally on the person summoned not less than **5 business days** before the first day of the hearing, or within such shorter time period as the adjudicator considers just;
- (b) pay the person summoned the same fees or allowances as are paid to a person summoned to attend before the Ontario Superior Court of Justice; and
- (c) file an **Affidavit of Service for a Summons to Witness** in **Form O** as proof that the Summons was properly served and that the required fees or allowances have been paid.

See **Practice Note 8** "Attendance of a Witness to an Arbitration Hearing by Summons" found in **Section C** of the **Code**.

73.5 An adjudicator may excuse a witness from the obligation to attend at or participate in a hearing where notice under **Rules 33, 41 and 73.3** has not been provided to the witness.

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74. **Transcripts**

74.1 A hearing may be recorded by a court reporter who has taken an oath or affirmation to report the evidence and proceedings faithfully. The Dispute Resolution Group does not provide reporting services for a hearing. Parties who want a record of the proceedings must make their own arrangements for the attendance of a reporting service, and must pay for this service.

74.2 Where a party hires a reporting service to record the proceedings, the party must:

- (a) inform the other parties and the adjudicator;
 - (b) make the necessary arrangements for the reporting service; and
 - (c) directly pay the person or agency providing the reporting service.
- 74.3 Where a party orders all or a portion of the transcript of a proceeding, the party must:
- (a) inform the other parties and the adjudicator;
 - (b) provide a copy of the transcript to the other party and the adjudicator; and
 - (c) directly pay the person or agency providing the transcript

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75. **Award of expenses**

75.1 An adjudicator may award expenses to a party if the adjudicator is satisfied that the award is justified having regard to the criteria set out in **Rule 75.2**. The items and amounts which may be awarded are found in **Rule 78** and the **Schedule** to the **Expense Regulation** found in **Section F** of the **Code**.

- 75.2 The adjudicator will consider only the criteria referred to in the Expense Regulation found in Section F of the Code. These criteria are:
- (a) each party's degree of success in the outcome of the proceeding;
 - (b) any written offers to settle made in accordance with **Rule 76**;
 - (c) whether novel issues are raised in the proceeding;
 - (d) the conduct of a party or a party's representative that tended to prolong, obstruct or hinder the proceeding, including a failure to comply with undertakings and orders;
 - (e) whether any aspect of the proceeding was improper, vexatious or unnecessary.
 - (f) whether the insured person refused or failed to submit to an examination as required under section 42 of Ontario Regulation 403/96 (Statutory Accident Benefits Schedule — Accidents on or after November 1, 1996) made under the Act or refused or failed to provide any material required to be provided by subsection 42 (10) of that regulation; and
 - (g) whether the insured person refused or failed to submit to an examination as required under section 44 of Ontario Regulation 34/10 (Statutory Accident Benefits Schedule — Effective September 1, 2010), made under the Act, or refused or failed to provide any material required to be provided under subsection 44 (9) of that regulation.

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76. **Offer to settle**

- 76.1 An adjudicator will consider an **Offer to Settle** in connection with an award of expenses provided that:
- (a) it was made in writing, was served on the other parties and contains:
 - (i) the full terms of the **Offer to Settle**;
 - (ii) the date when the **Offer** was served and the time period during which it remained open for acceptance

AND

- (b) the **Offer** was made after the conclusion of mediation and before the conclusion of the hearing, with particular consideration given to any **Offer** served after the conclusion of the pre-hearing discussion or preliminary conference as the case may be, up to 5 days before the commencement of the hearing.
- 76.2 **Response to an Offer to Settle** will be considered provided that:

- (a) it was made in writing, indicates the Offer to which it relates; and
- (b) it was served upon the other parties before the conclusion of the hearing.

76.3 An **Offer to Settle or Response to an Offer to Settle** may be withdrawn at any time before it is accepted, by serving written notice of the withdrawal on the party to whom the offer or response was made.

76.4 An **Offer** or **Response** will expire on the earlier of the expiry date stated in the **Offer** or **Response**, or at the conclusion of the hearing.

76.5 Acceptance of an **Offer** or **Response** must be made in writing and served upon the party making the **Offer** or **Response**, prior to the withdrawal or expiry of the offer.

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77. **Communication of an offer to settle or response to an offer to settle**

77.1 When no party to an adjudication seeks to have an **Offer to Settle** or a **Response to an Offer to Settle** considered by the adjudicator in connection with an award of expenses, the parties will jointly inform the adjudicator of that fact at the conclusion of the hearing; and the adjudicator will make an award of expenses as part of his or her order on the substantive issues in dispute.

77.2 Where any party seeks to have an **Offer to Settle** or a **Response to an Offer to Settle** considered by the adjudicator in connection with an award of expenses, the parties will jointly advise the adjudicator of that fact at the conclusion of the hearing.

77.3 Upon such advice, the adjudicator will determine all issues in dispute, except expenses and issue his or her order.

77.4 The Dispute Resolution Group will deliver a copy of the order (excluding expenses) and the adjudicator's written reasons, if any, to the parties.

77.5 Within **10 days** of the delivery of the order, either party may file any relevant **Offer to Settle** or **Response to an Offer to Settle** which was made in accordance with **Rule 76**, for consideration by the adjudicator in connection with an award of expenses.

77.6 Either party may request an appointment before an adjudicator for an award of expenses or an assessment of expenses in accordance with **Rule 79**.

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78. **Expenses of representatives (Also see schedule to expense regulation found in section f of the code)**

78.1The maximum amount that may be awarded to an insured person or an insurer for legal fees, is an amount calculated using:

- (a) the hourly rates established under the *Legal Aid Services Act, 1998* for professional services in civil matters before the Ontario Superior Court of Justice; or
- (b) the hourly rate referred to in **Rule 78.1(a)** adjusted to include, where appropriate, the experience allowance established under the *Legal Aid Services Act, 1998*

Where an adjudicator is satisfied that a higher amount for legal fees to an insured person is justified, an hourly rate of up to **\$150** may be awarded.

78.2 The maximum amount that may be awarded to an insured person or an insurer for agent's fees is an amount calculated using the hourly rates established under the *Legal Aid Services Act, 1998* for law clerks, articling students and investigators.

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79. **Assessment of expenses**

79.1 Where an adjudicator has issued an order determining all issues in dispute except expenses, and the parties cannot agree on the entitlement to or amount of the expenses of the proceeding, either party may request, in writing, an appointment before an adjudicator to determine expenses provided that the request is made within **30 days** from the date the

decision on all other issues in dispute was issued.

79.2 Where an adjudicator has issued an order of expenses to be paid and the parties cannot agree on the amounts to be paid under that order, either party may request, in writing, an appointment before an adjudicator provided that:

- (a) within **30 days** from the date of the order awarding expenses, the party awarded expenses provides the other party with an account describing each of the expenses claimed, services received and the costs;
- (b) the party ordered to pay expenses **must** promptly provide the other party with a written response to the account, identifying the items in dispute and the reasons for the dispute;
- (c) the party awarded expenses **must** promptly provide the other party with copies of supporting documentation, such as invoices, receipts, computerized dockets or cancelled cheques in respect of the disputed items;
- (d) if a dispute remains, the parties shall serve and file the above materials, together with a written request for an **assessment of expenses** upon all parties to the proceeding and legal counsel or representatives whose time and disbursements are reflected in the expenses sought;
- (e) the Dispute Resolution Group shall notify the parties and their present and/or former legal counsel or representatives whether the assessment will be conducted by way of written submissions, or by an oral or electronic hearing, the date, time and if necessary, the location of the assessment hearing.

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80. **Constitutional question and /or charter issue**

80.1 Where required by the Courts of Justice Act, a party who intends to raise a constitutional question shall serve notice of the 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.

80.2 The notice referred to in **Rule 80.1** 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.

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

80.4 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.

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81. **Waiver of procedural requirements**

81.1 Subject to the requirements of the *Insurance Act* and the *Statutory Powers Procedure Act*, the adjudicator may on such terms as he or she considers just:

- (a) set aside any time limit set out in these Rules for doing any act, serving any notice, filing any document or holding any hearing.
- (b) decide that any Rule does not apply in respect of a proceeding.

81.2 Any procedural requirement set out in the *Insurance Act* or the *Statutory Powers Procedure Act* that applies to a hearing held under these Rules may be set aside with the agreement of the parties and the adjudicator.

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82. **Testimony and civil proceedings**

82.1 An adjudicator shall not be required to testify in a civil proceeding or in a proceeding before any other tribunal respecting information obtained in the discharge of his or her duties.

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