Accident Benefits for New Lawyers

From OCF-1 to FSCO Mediation

OTLA Ontario Trial Lawyers Association

Greg Monforton and Partners
Injury Lawyers
Notice to the Insurer

- Section 32(1): A person who intends to apply for one or more benefits described in this Regulation shall notify the insurer of his or her intention no later than the seventh day after the circumstances arose that give rise to the entitlement to the benefit, or as soon as practicable after that day.

- Section 32(2): After receiving notice of the collision, the insurer shall promptly provide the person with,
  
  a) The appropriate application forms;
  
  b) A written explanation of the benefits available;
  
  c) Information to assist the person in applying for benefits; and
  
  d) Information on the election relating to IRBs, NEBs, and caregiver benefits, if applicable.
About this Application for Accident Benefits

Please note that all automobile accidents involving bodily injury must be reported to the police. Claims for certain accident benefits must be made within 7 days. Please contact your adjuster for further information.

There are five forms in this package:

- **Application for Accident Benefits (OCF-1)**
  Fill out this form when you are applying for benefits for the first time as a result of an accident, including if you are injured and are applying for income replacement benefits. You may be eligible for weekly benefits even if you were unemployed or retired at the time of the accident.
  This Application for Accident Benefits form must be returned within 30 days after receiving the package. If you are unable to return it within 30 days, submit it to your insurance company anyway and explain why you were not able to complete it within 30 days. Return the original form to the insurance company and make a copy for your records.

- **Employer’s Confirmation of Income (OCF-2)**
  If the insurance company asks you to, please give this form to your employer. This form is completed by you or your representative and by your employer. If you had more than one employer during the past 52 weeks, it is necessary for each employer to complete a separate form. Your insurance company may ask for other proof of income.

- **Disability Certificate (OCF-3)**
  If the insurance company asks you to, please fill out the first section and give this form to your health practitioner (chiropractor, dentist, occupational therapist, nurse practitioner, optometrist, physician, physiotherapist, occupational therapist, speech language pathologist or psychologist). This form is completed by you or your representative and by your health practitioner.

- **Permission to Disclose Health Information (OCF-5)**
  If the insurance company asks you to, please complete this form. The insurance company requires your medical information in order to correctly determine your eligibility for benefits. Health professionals require your written permission to disclose this information to the insurance company.

- **Treatment Confirmation Form (OCF-23)**
  This form must be completed to confirm treatment received under the Minor Injury Guideline for accidents which occurred on or after September 1, 2010, or the Pre-approved Framework Guideline for accidents which occurred prior to September 1, 2010. There are exceptions. Please contact your insurance company to find out if this form is required.

After the insurance company reviews your complete application package, you will be contacted about the benefits you are entitled to receive. If your insurance company needs any additional information in order to process your application, they will contact you.

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**Warning – Offence**

It is an offence under the Insurance Act to knowingly make a false or misleading statement or representation to an insurer in connection with the person’s entitlement to a benefit under contract of insurance. The offence is punishable on conviction by a maximum fine of $250,000 for the first offence and a maximum fine of $500,000 for any subsequent conviction.

It is an offence under the federal Criminal Code for anyone to knowingly make or use a false document with the intent it be acted on as genuine and the offense is punishable, on conviction, by a maximum of 10 years imprisonment.

It is an offence under the federal Criminal Code for anyone, by deceit, falsehood or other dishonest act, to defraud or attempt to defraud an insurance company. The offence is punishable, on conviction, by a maximum of 10 years imprisonment for fraud involving an amount over $5,000 or otherwise a maximum of 2 years imprisonment.

Incomplete or incorrect information may result in your application being denied.
OCF-1

Application for Accident Benefits
OCF-1: Application for Accident Benefits

- Initial application
- Must be submitted within 30 days of receiving the applications forms (section 32(5))
- Includes:
  - applicant’s information,
  - the MVA details,
  - the applicant’s health information,
  - details of insurance available to the applicant,
  - the applicant’s status at the time of the MVA
  - education information for those who are students or finished their education less than one year pre-MVA,
  - details of whether the person was the main caregiver to anyone,
  - details of employment, and
  - details of any collateral benefits available.
Application for Accident Benefits (OCF-1)

Claim Number: 
Policy Number: 
Date of Accident: 

A separate form must be completed for each person who is applying for accident benefits. Completion of ALL sections is mandatory. Your application may be denied if information is incomplete or incorrect. Please print clearly.

Part 1: Applicant Information

Last Name: 
First Name and Initial: 
Gender: [ ] Male [ ] Female 
Birth Date: Year: [ ] Single [ ] Married [ ] Common-law [ ] Widowed 
Month: [ ] Married [ ] Divorced [ ] Widowed [ ] Widowed(m) 
Day: 
Address: 
City: 
Province: 
Postal Code: 
Home Telephone: 
Work Telephone: 
Fax Number: 

You can be reached at: [ ] home [ ] work [ ] other 
Language Spoken: 

What is the best time to reach you: [ ] days of the week [ ] specific time of day 
[ ] Time of day: a.m. [ ] p.m.

Part 2: Applicant’s Representative (If Applicable)

Complete this section only if the applicant injured in the accident is deceased, is a minor, is unable to fill out the form on their own, or has retained you as their representative.

Last Name: 
First Name and Initial: 
Relationship with applicant: [ ] Parent [ ] Guardian [ ] Lawyer [ ] Other [ ] Other Paid Representative 
Address: 
City: 
Province: 
Postal Code: 
Work Telephone: 
Fax Number: 
E-mail: 

Part 3: Accident Details and Health Information

Date of Accident: Year: [ ] Driver [ ] Passenger [ ] Pedestrian [ ] Other 
Month: [ ] Driver [ ] Passenger [ ] Pedestrian [ ] Other 
Day: 
Time of Accident: a.m. [ ] p.m. 
You were a: [ ] Driver [ ] Passenger [ ] Pedestrian [ ] Other 

Accident Location: [ ] Yes [ ] No 
Did the accident occur while you were at work? [ ] Yes [ ] No 
Did you file a claim with the Workplace Safety and Insurance Board? [ ] Yes [ ] No 
Was the accident reported to the police? [ ] Yes (Give details below) [ ] No 

Office Name: 
Badge No.: 
Date accident reported to the police: Year: [ ] Yes [ ] No 

Police Department/Collision Reporting Centre: 
Were you charged? [ ] Yes [ ] No (Give details) 

Give a brief description of the accident. If you suffered any injuries as a result of the accident, describe the cause and extent of the injuries. 

Were you able to return to your normal activities following the accident? [ ] Yes [ ] No 
Did you go to the hospital? [ ] Yes (Give details) [ ] No 

Did you see a health professional? (e.g. physician, chiropractor, physiotherapist?) [ ] Yes (Give details) [ ] No 

[ ] Additional sheets attached
### Part 5: Applicant Status

Which of the following describes your status at the time of the accident?

- [ ] Employed
  - [ ] Employed and working
  - [ ] Self-Employed
- [ ] Not Employed
  - [ ] Unemployed
  - [ ] Unemployed and, have worked 26 weeks in the past 52 weeks
  - [ ] Receiving Employment Insurance Benefits
  - [ ] Retired
- [ ] Student or recent graduate
- [ ] Caregiver

### Part 6: Student Attending School

Were you attending school on a full-time basis at the time of accident or had you completed your education less than one year before the accident?

- [ ] Yes (Give details below)
- [ ] No (Continue to Part 7)

<table>
<thead>
<tr>
<th>Name of School</th>
<th>Date Last Attended</th>
<th>Year</th>
<th>Month</th>
<th>Day</th>
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<tbody>
<tr>
<td>Address</td>
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<td>Province</td>
<td>Postal Code</td>
<td>Program and Level</td>
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Are you now attending school?

- [ ] Yes (Enter date) (Year | Month | Day) (No)

Were you able to return to school after the accident?

- [ ] Yes (Enter date) (Year | Month | Day) (No)

### Part 7: Caregiver

Were you the main caregiver to people living with you at the time of the accident?

- [ ] Yes (Complete information below)
- [ ] No (Continue to part 8)

Were you paid to provide care to these people?

- [ ] Yes (Continue to part 8)
- [ ] No

List the people who you were caring for at the time of the accident:

<table>
<thead>
<tr>
<th>Name</th>
<th>Date of Birth</th>
<th>Year</th>
<th>Month</th>
<th>Day</th>
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</table>

Did your injuries prevent you from performing the caregiving activities you did prior to the accident?

- [ ] Yes (Explain below) From what date? (Year | Month | Day) (No)

Explanation:

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Did your injuries prevent you from performing the caregiving activities you did prior to the accident?

- [ ] Yes (Explain below) From what date? (Year | Month | Day) (No)

Explanation:

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At any period since the accident, were you able to return to caregiving?

- [ ] Yes (From what date?) (Year | Month | Day) (No)

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Additional sheets attached

- [ ] Additional sheets attached
### Part 8
**Income Replacement Determination**

Give details of your employment for the past 52 weeks. Start with your current or most recent employer. If you held more than one position with the same employer, use a separate line for each position. Gross income is before taxes and deductions.

If you were self-employed during the 4 weeks prior to the accident, please consider yourself the employer for the purpose of completing this section.

<table>
<thead>
<tr>
<th>Date</th>
<th>Name and Address of Most Recent Employer</th>
<th>Position/Essential Tasks</th>
<th>No. of Hours Per week</th>
<th>Gross Income for the period</th>
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Did your injuries prevent you from working?
- [ ] Yes (From what date?)
- [ ] Year Month Day
- [ ] No (Continue to Part 9)

At any period since the accident, were you able to return to work since the accident?
- [ ] Yes (From what date?)
- [ ] Year Month Day
- [ ] No

The amount of your benefit is based on your past income. During which of the following periods did you have the highest average weekly income?
- [ ] Last 4 weeks (not applicable for self-employed persons)
- [ ] Last 52 weeks
- [ ] Last fiscal year (self-employed only)

### Part 9
**Other Insurance or Collateral Payments**

Do you, your spouse or anyone you are dependent on (e.g., parents) have any other benefit plan that covers you (e.g., group or private, union, disability, medical or dental, etc.)?
- [ ] Yes (Give details below)
- [ ] No

<table>
<thead>
<tr>
<th>Name of Benefit Payor</th>
<th>Type of Coverage</th>
<th>Policy or Certificate Number</th>
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<tbody>
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</table>

During the past 52 weeks, did you receive any income from a disability plan?
- [ ] Yes (Enter dates)
- [ ] No

<table>
<thead>
<tr>
<th>From: Year Month Day</th>
<th>To: Year Month Day</th>
<th>Total Amount Received</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td>$</td>
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</tbody>
</table>

Are you receiving Employment Insurance Benefits?
- [ ] Yes (Enter date)
- [ ] No

<table>
<thead>
<tr>
<th>From: Year Month Day</th>
<th>To: Year Month Day</th>
<th>Total Amount Received</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td>$</td>
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</tbody>
</table>

Are you receiving Social Assistance Benefits (welfare)?
- [ ] Yes
- [ ] No

[ ] Additional sheets attached
Election of Income Replacement, Non-Earner, or Caregiver Benefits
OCF 10 - Election of Income Replacement, Non-Earner, or Caregiver Benefits

- If an application indicates that the applicant may qualify for more than one specified benefit under Part II, the insurer must (within ten business days) give the insured a notice advising that he or she must elect one of the benefits within 30 days of receiving the notice (section 35(1)).

- The applicant’s election under subsection (1) is final, regardless of any change in circumstances, unless the insured is later deemed Catastrophic (section 35(3)).

- If an applicant is deemed catastrophic as a result of an accident, the insurer shall give the insured a notice that they may re-elect to receive the caregiver benefit if the applicant otherwise qualifies:
  - The insurer has 10 business days after the catastrophic determination to deliver the notice.
  - The insured has 30 days after receiving the notice to re-elect. (section 35 (2)).
OCF-2

Employer’s Confirmation Form
OCF-2: Employer’s Confirmation Form

- A copy of the form is needed for each employment that the injured person held in the 52 weeks pre-MVA

- Sections to be filled out by insured:
  - Background
  - Authorization
  - Date of MVA
  - Election of time period for comparison: 4 weeks or 52 weeks

- Sections to be filled out by employer:
  - Applicant’s income (salary, tips, commission, other monetary compensation)
  - Other benefits available
  - Employment details
  - Employer information
OCF-3
Disability Certificate
OCF-3 – Disability Certificate

• To be completed by the injured person and their health care practitioner:
  • chiropractor, dentist, occupational therapist, nurse practitioner, optometrist, physician, physiotherapist, speech language pathologist or psychologist

• Needs to be submitted with any application specified benefit.

• If the applicant fails to submit the OCF-3, s/he is not entitled to a specified benefit before the OCF-3 is completed (section 36(3)).
OCF-3 – Disability Certificate

- In order to determine if an insured person is still entitled to a specified benefit, the insurer may require an updated OCF-3, but not more often that is reasonably necessary (section 37(1)).

- Once requested, the insured has 15 business days to submit a new OCF-3.
OCF-3 – Disability Certificate

- Use discretion when selecting the health practitioner to fill this out
  - Family Doctor vs Specialist ??

- You need someone who understands both the insured’s diagnoses and limitations
OCF-5

Permission to Disclose Health Information
OCF-5: Permission to Disclose Health Information

- The insurer requires the injured persons medical information to determine their eligibility for benefits.
- Do not use this or significantly limit it.
- The insured is not required to sign it.
OCF-6 – Expenses Claim Form

• Used to claim expenses directly by the insured
• What may be claimed?
  • Medical and rehabilitation treatment that was not billed by a treatment provider using an OCF-21 (ie. medication);
  • Transportation expenses;
  • Lost educational expenses;
  • Caregiver services (optional unless CAT);
  • Attendant care services;
  • Housekeeping services (optional unless CAT);
  • Expenses of visitors; and
  • The cost to repair or replace lost or damage clothing, dentures, glasses, prostheses, hearing aids etc.
OCF-6 – Expenses Claim Form

- All bills or receipts must be attached.
- It is best to get copies from your client or at minimum, ensure they keep copies.
- If your client may be CAT, continue to send these even after non-CAT limits may be exhausted or the time period expires.
OCF-18

Treatment Plans
OCF-18 – Treatment Plans

- Section 38(2):
  - Insurer is not liable to pay medical or rehabilitation benefit, assessment or examination expenses incurred before the insured submits an OCF-18

- Exceptions:
  - Insurer gives insured notice under subsection 39 (1) that the insurer will pay the expense without an OCF-18;
  - Goods or services provided on an emergency basis. Has to be within 5 business days; or
  - Expense is reasonable and necessary and is for,
    i. drugs prescribed by a regulated health professional, or
    ii. goods with a cost of $250 or less per item.
### Part 4: Signature of Health Practitioner

<table>
<thead>
<tr>
<th>Name of Health Practitioner</th>
<th>College Registration Number</th>
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</thead>
<tbody>
<tr>
<td>Facility Name (if applicable)</td>
<td>ABI Facility Number (if applicable)</td>
</tr>
<tr>
<td>Address</td>
<td></td>
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<tr>
<td>City</td>
<td>Province</td>
</tr>
<tr>
<td>Telephone Number</td>
<td>*Extension</td>
</tr>
</tbody>
</table>

*Email Address*

For accidents that occurred before September 1, 2010:

Is this an impairment referred to in a Pre-approved Framework (PAF) Guideline? [ ] Yes [ ] No

For accidents that occur on or after September 1, 2010:

Is this Impairment predominantly a Minor Injury as referred to in the Minor Injury Guideline applicable to the accident? [ ] Yes [ ] No

If Yes, please explain, in accordance with the PAF Guideline, and with express reference to the provisions of the PAF Guideline on which you rely, why this OCF-18 Treatment and Assessment Plan is being submitted instead of an OCF 23 Treatment Confirmation Form:

Send any attachments directly to the insurer

I confirm that, to the best of my knowledge, the information in this Treatment and Assessment Plan is accurate, the Treatment and Assessment Plan has been reviewed with the applicant by the regulated health professional in Part 5, and the goods and services contemplated are reasonable and necessary for the treatment and rehabilitation of the applicant for the injuries identified in Part 6.

I UNDERSTAND THAT IT IS AN OFFENCE UNDER THE INSURANCE ACT to knowingly make a false or misleading statement or representation to an insurer under a contract of insurance.

I FURTHER UNDERSTAND THAT IT IS AN OFFENCE UNDER THE FEDERAL CRIMINAL CODE for anyone by deceit, falsehood, or other dishonest act, to defraud or attempt to defraud an insurance company. This information will be used for processing payments of claims, identifying and analyzing the nature, extent and costs of goods and services that are provided to automobile accident victims, by health care providers, and DETECTING AND PREVENTING FRAUD.

Name of Health Practitioner (please print) Signature of Health Practitioner Date (YYYY/MM/DD)

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### Part 5: Signature of Regulated Health Professional

<table>
<thead>
<tr>
<th>Name of Regulated Health Professional</th>
<th>College Registration Number</th>
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<tr>
<td>Facility Name (if applicable)</td>
<td>ABI Facility Number (if applicable)</td>
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<td>Address</td>
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<td>Province</td>
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<td>Telephone Number</td>
<td>*Extension</td>
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</tbody>
</table>

*Email Address*

I CONFIRM THAT THE INFORMATION PROVIDED IS TRUE AND CORRECT.

I UNDERSTAND THAT IT IS AN OFFENCE UNDER THE INSURANCE ACT to knowingly make a false or misleading statement or representation to an insurer under a contract of insurance.

I FURTHER UNDERSTAND THAT IT IS AN OFFENCE UNDER THE FEDERAL CRIMINAL CODE for anyone by deceit, falsehood, or other dishonest act, to defraud or attempt to defraud an insurance company.

Name of Regulated Health Professional (please print) Signature of Regulated Health Professional Date (YYYY/MM/DD)
OCF-18 – Treatment Plans

- Treatment providers must be clear regarding what the treatment plan is for.

- Ensure that treatment providers include detailed justification for the treatment plan, especially when it is likely to be controversial:
  - physiotherapy treatment plan when the last physiotherapy treatment plan was denied;
  - passive treatment after the first year

- Some treatment providers prefer to do mini-reports with the treatment plan, others just add a page, but ensure that one or the other is done.
Form 1

Assessment of Attendant Care Needs
Form 1 - Assessment of Attendant Care Needs

- Submitted as an application for attendant care benefits.

- Must be completed by a Registered Nurse or an Occupational Therapist.

- Submitted from time to time when the insurer requests an updated form. (section 42(7)).

- The insurer must respond to a Form 1 within 10 business days after receiving it. (section 42(3)).

- An insurer may, but is not required to, pay an expense incurred before a Form 1 is submitted. (section 42(3))
Form 1 - Assessment of Attendant Care Needs

- A new Form 1 may be submitted to an insurer at any time there are changes that would affect the amount of the benefits. (section 42(9))

- If a Form 1 indicates that the attendant care should be increased, the insurer may require an examination under section 44. (section 42(4))

- If the insurer requires a section 44 examination, the insurer must continue to pay the insured person attendant care benefits at the same rate until the insurer receives the section 44 report.
OCF-9

Explanations of Benefits
OCF-9 - Explanations of Benefits

- This form is not mandatory but is still used by many insurers to communicate approvals and denials.
- Advises the insured of the insurer’s response to any application for payment of a benefit.
- Triggers a limitation period if there is a denial.
OCF-19

Application for Determination of Catastrophic Impairment
OCF-19 – Application for Determination of Catastrophic Impairment

- An OCF 19 is submitted to apply for a determination of Catastrophic impairment (section 45(1)).

- The OCF 19 must be completed by a physician;

- However, if the case is a brain impairment only, a neuropsychologist may complete the OCF 19.
OCF-19 – Application for Determination of Catastrophic Impairment

- The insurer must respond to an Application for a Catastrophic Determination within 10 business days after receiving it. (section 45(3))

- An insured will remain entitled to attendant care benefits more than 104 weeks after the accident while they await a catastrophic determination if:
  - Immediately before the application was made, the insured person was receiving attendant care benefits;
  - The Catastrophic Application was submitted less than 104 weeks after the accident.
    (section 45 (4))
Primary change since pre-September 1, 2010 – A psychologist can no longer fill this out.

This poses a problem where the insured may be CAT on the basis of marked impairment.

Other difficulties arise from situations where the specialists have only seen your client for one aspect of his injuries, which alone would not amount to 55% WPI.
Questions

Question break for discussion regarding OCFs and Form 1
Duties and Rights of the Insured

Duties and Rights with Respect to the Provision of Information
Duty of the Insured to Provide Information

- Section 33(1): An applicant shall, within 10 business days after receiving a request from the insurer, provide the insurer with the following:

  1. Any information reasonably required to assist the insurer in determining the applicant’s entitlement to a benefit.

  2. A statutory declaration as to the circumstances that gave rise to the application for a benefit.

  3. The number, street and municipality where the applicant ordinarily resides.

  4. Proof of the applicant’s identity.
Examinations Under Oath

- If requested by the insurer, an applicant shall submit to an examination under oath (EUO) (section 33(2)).

- The insured does not have to undergo:
  - More than one EUO
  - An EUO when they are incapable due to physical, mental or psychological condition

- The insured is entitled to representation

- Time and place convenient for the insured

- Limited to matters relevant to the insured’s entitlement to benefits
Examinations Under Oath

- The insurer must request the EUO within 10 days of the application for the specified benefit (*Williams v State Farm* – section 36(4))
Compliance - Providing Info and EUO

- What happens if the insured does not comply with section 33(1) or (2)?
  - The insurer does not have to pay a benefit during the period of non-compliance (section 33(6)).

- However...

- If insured subsequently complies the insurer shall (section 33(8)):
  a) Resume payment of the benefit, if a benefit was being paid; and
  b) Pay all amounts that were withheld during the period of non-compliance, if the applicant provides a reasonable explanation for the delay.
Duties and Rights in Respect of Insurer’s Examinations
Section 44: Examinations by the Insurer

- Insurer pursuant to section 44(1) may require the insured to undergo an examination.

  - Attendance Required
    - Must provide to the assessing person(s) not less than 5 days prior to the examination relevant documents for the review of the insured person’s medical condition
    - Must attend and undergo all reasonable physical, psychological, mental and functional examinations requested

  - Attendance Not Required
    - Must provide to the assessing person(s) within 5 business days after receiving notice of the assessment provide documents that are relevant or necessary for the review of the insured person’s medical condition
Section 44: Examinations by the Insurer

- Can the insured insist on the examination(s) being recorded?
  - Onus is on applicant to show potential for a *bone fide* concern giving rise to the request.
    - *Vasina v ING Insurance*
    - *Cameron v Pilot*
    - *Peters v Guarantee*
  - If assessor(s) refuse and cancel the assessment(s), the insured has not unreasonably refused to attend the assessment(s).
Duties and Rights of the Insured

Duties in Respect of Continued Entitlement to IRBs, NEBs, or Caregiver Benefits
Determination of Continued Entitlement to IRBs, NEBs, or Caregiver Benefits

- Insurer may discontinue paying a specified benefit to an insured person if:
  
  (a) the insured person fails or refuses to submit a completed disability certificate if requested to do so;
  
  (b) the insured person failed to comply with their duties in respect of IEs;
  
  (c) the insured person failed to comply with their duty to provide information;
  
  (d) the insured person failed to obtain the treatment necessary to permit them to return to some form of employment; and
  
  (e) the insured person failed to make reasonable attempts to return to work. (Section 37(2)).
Duties and Rights of the Insured

Duties in Respect of Payment of Benefits: Section 46.3
Duties in Respect of Payment of Benefits: Section 46.3

- If an insured submits an invoice for payment of goods or services the insurer may request:
  - Confirmation in writing that the goods or services were provided to the insured person.
  - A statutory declaration as to the circumstances that gave rise to the invoice, including particulars as to when, where and by whom the goods or services were provided. (section 46.3(1))

- The insured must provided the requested information to the insured within 10 business days of receiving the request. (section 46.3(2))

- Payment of invoice is not overdue nor does interest accrue during period of non-compliance of insured. (section 46.3(3))
Duties and Rights of the Insured

Duties in Respect of Re-Payment: Section 52
Duties in Respect of Re-Payment

- Insured may be required to repay the insurer where:
  - Benefit was paid in error;
  - IRBs or NEBs were paid where the insured was disqualified from receiving the benefit under Part VII for general exclusions; or
  - IRBs, NEBs, CBs or any other benefit under Part IV to the extent the insured receives payments that are deductible from the benefit. (section 52(1))
Duties in Respect of Re-Payment

- If insured is required to repay:
  - Insurer **must** give notice
  - Insurer **may** give notice that they intend to collect the overpayment by reducing subsequent payments by up to 20% (section 52(2))

- No re-payment can be sought more than one year after the benefit has been paid.
  - Unless paid as a result of wilful misrepresentation or fraud

- If the benefit is a continual benefit, the insured is only required to re-pay the benefits paid in the last year prior to the notice.

- Insurer **may** charge interest
Duties of the Insurer

When Responding to Treatment Plans
Section 38 – Claims for Medical and Rehabilitation Benefits

- When the insurer receives an OCF 18, it has 10 business days to respond with a notice that:
  - identifies the goods and services that it agrees to pay for and those it does not agree to pay for;
  - provides the medical reasons why the insurer considers any goods or services not to be reasonable and necessary;
  - notifies the insured if the insurer requires a section 44 examination; and
  - notifies the insured if the insurer believes that the Minor Injury Guideline applies.

(sections 38(8),(9) & (10))
Section 38 – Claims for Medical and Rehabilitation Benefits

- If the insurer fails to give a proper section 38(8) notice, then:
  - they are prohibited from taking the position that the MIG applies; and
  - they shall pay for all goods, services, assessments, and examinations described in the treatment and assessment plan that relate to the period starting on the 11th business day after the insurer received the application and ending on the day the insurer gives a proper notice.

(section 38(11))
Duties of the Insurer

Determining Eligibility for a Specified Benefit
Determining Eligibility to a Specified Benefit

- Within 10 business days of receipt of the Application for a specified benefit (including an OCF3), the insurer shall:
  - Pay the benefit;
  - Give the insured a notice that it does not believe the insured is entitled and explaining the medical reason for that determination;
  - Give the insured notice that it requires a section 44 examination; or
  - Make a request for information or an EUO under section 33. (section 36 (4))
Examinations for Determining Eligibility to a Specified Benefit

- If the insurer requires a section 44 examination to determine ongoing entitlement to a specified benefit, the insurer shall do the following:
  
  - Give a copy of the report to the insured and to the person who completed the OCF-3 within 10 days of receiving the report;
  
  - Notify the insured of the amount it agrees to pay and the amount it refuses to pay and the medical and any other reasons for its decision within 10 days of receiving the report; and
  
  - Pay the amount it has agreed to pay within 10 business days of receiving the report.

(section 36(7) & (8))
Duties of the Insurer

Determining Continued Entitlement Specified Benefits
Determination of Continued Entitlement to a Specified Benefit

If an insurer wants to determine ongoing entitlement to a specified benefit, from time to time it may:

(a) request a new disability certificate (OCF 3);

(b) notify the insured person that it requires an examination section 44 under; or

(c) do both.

Note: An insurer cannot exercise this right “more often than is reasonably necessary” (section 37(1))
Determination of Continued Entitlement to a Specified Benefit

Under section 37(2), an insurer can discontinue the benefit if:

- The insured person fails or refuses to submit a completed disability certificate;
- The new disability certificate does not support entitlement to the benefit;
- A section 44 examination report has determined that the insured person is not entitled to the benefit;
- The insured has refused to comply with the section 44 examination;
- The insured person has resumed his or her pre-accident employment duties;
- The insurer is no longer required to pay the specified benefit by reason of another section of the SABS, such as:
  - Section 57 – treatment and rehabilitation;
  - Section 58 – employment and self employment; or
  - Section 33(6) – duty of applicant to provide information.
Determination of Continued Entitlement to a Specified Benefit

- If the insured person fails to participate in an IE of a specified benefit and subsequently complies, the insurer shall:
  - reconsider the insured person’s entitlement to the specified benefit; and
  - if the insurer determines that the insured person is still entitled to the specified benefit, resume paying the benefit and pay all withheld amounts if the insured person provides a reasonable explanation for the non-compliance within 10 business days after the refusal to comply.

- If an insured person fails to submit an OCF 3 when requested and subsequently complies, no benefits are payable for the period commencing the 15th business day after the request and ending on the day the person submits the OCF3.
  (section 37(3)&(8))
Section 44 Insurer Examinations

In order to determine if an insured person is or continues to be entitled to a benefit, the insurer may require an insured person to be examined by an assessor of its choosing, but:

- the assessor must be a regulated health professional or have expertise in vocational rehabilitation; and
- the insurer cannot examine the insured more often than *reasonably necessary* to determine entitlement to a benefit.

(section 44(1))
Section 44 Insurer Examinations

Paper Reviews
A section 44 examination may take the form of a paper review, whereby the insurer will provide material to an assessor and the insured is not required to attend. (section 44(4))
Section 44 Insurer Examinations

Proper Notice

If the insurer requires a section 44 examination, it must provide a notice to the insured which states:

(a) the medical and any other reasons for the examination;
(b) whether their attendance is required;
(c) the name and specialization of the assessor; and
(d) The day, time and location of the examination.  
(section 44(5))
Section 44 Insurer Examinations

- If the attendance of the insured person is required at the examination, the insurer is required to provide the notice at least five business days before the examination. (section 44(6))

- The notice may be verbal if a written confirmation is given as soon as practicable afterwards. (section 44(8))

- Notice is effective on the day the insurer faxes the document to the insured’s solicitor. (section 64 (19))

- If the insurer mails the document, notice is effective on the fifth business day after the document is mailed. (section 64 (18))
Section 44 Insurer Examinations

- If the attendance of the insured person at an examination is required,
  - The insurer shall make reasonable efforts to schedule the examination for a day, *time* and *location* that are convenient for the insured person, and
  - The insurer shall provide the assessor with the documentation necessary for the review of the insured’s medical condition at least 5 business days before the examination (section 44(9))
Section 44 Insurer Examinations

- If the examination relates to an application for attendant care benefits, the report of the examination must include an assessment of attendant care needs prepared in accordance with section 42.

(section 44(9))
Duties of the Insurer
Responsibility to Pay Benefits
Timing of Payment of Benefits

- Specified Benefits
  - Every IRB, NEB, or caregiver benefit shall be paid at least once every two weeks, subject to any prepayment of the benefit by the insurer. (section 36(9))

- Medical and Rehabilitation Benefits
  - The insurer shall pay for goods and services it has agreed or is required to pay for under section 38 within thirty days of receiving an invoice for them. (section 38(15))
Overdue Payments

- An amount payable in respect of a benefit is overdue if the insurer fails to pay the benefit within the time required under this Regulation. (section 51(1))

- the insurer shall pay interest on the overdue amount from the date the amount became overdue until it is paid, at the rate of 1 per cent per month, compounded monthly. (section 51(2))
Explanation of Benefits

- When a benefit is first paid or the amount of a benefit is subsequently changed, the insurer shall provide the insured person with a written explanation of how the amount of the benefit was determined. (section 50(1))

- If an insurer denies or reduces the amount of a benefit, they shall provide the insured with written notice of the right to dispute the denial. (section 54)
Periodic Benefit Statements

- The insurer shall deliver benefit statements to the insured person including a statement of:
  - The amount of medical and rehabilitation benefits paid to the date of the benefit statement;
  - The amount of medical and rehabilitation benefits remaining;
  - The amount of attendant care benefits paid to the date of the benefit statement;
Periodic Benefit Statements

- The amount of attendant care benefits remaining;
- The amount paid by the insurer for section 44 examinations to the date of the benefit statement; and
- Such other information as may be required by the Superintendent’s approved benefit statement form.

(section 50 (2) & (3))
Periodic Benefit Statement

- Subject to subsection (5), the benefit statements must be delivered at the following times, unless the amounts paid and remaining have not changed since the last statement was delivered:
  - In catastrophic claims, once per year;
  - Otherwise, once every two months.

(section 50(4) & (5))
Periodic Benefit Statements

- Benefit statements are a good way to keep an eye on the insured’s burn rate to set up alternative funding before the insured runs out of funds.

- Keep in mind the statements of benefits only reflect the amounts PAID and not the amounts approved to date.
Questions

Question break for discussion regarding the Insurer’s Duties
Panel Discussion

Dispute Resolution - FSCO Mediation
Question break for discussion regarding Dispute Resolution