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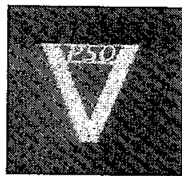

Causidicus veritas quod justicia

PARALEGAL SOCIETY OF ONTARIO

Ontario's Authoritative Advocate For Paralegal Professionals

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Mr. Willie Handler
Senior Manager
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Financial Services Commission of Ontario
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July 11, 2008

Dear Mr. Handler,

This submission is being made on behalf of the Paralegal Society of Ontario.

It has become quite apparent over the many years we have remitted submissions on Auto Insurance, attended hearings and spoke personally with yourself and the responsible Minister(s), that much of the decision making is done at the behest of the insurance companies.

We realize that they have a formidable lobbying group and are on a continuing quest to reduce claim payments in an effort to increase profits. However, while they have been enjoying very profitable margins at the expense of the public, those who have suffered injuries and substantial losses of income have continued to incur decreases in compensation and rights.

While the No-Fault insurance scheme has been in force in this Province since June of 1990, the vast majority of the public still does not know that there are severe restrictions on claims for pain & suffering and that they have been paying for coverage which has decreased in value over the years while their premiums continue to increase.

Our proposals for change address the current inadequacies and complexity of the current system.

Regulation 664

3. Section 9.1 of the *Regulation*:

Subsection 10 (b) – One year restriction on Accident Benefit claim settlements.

Issue:

This was perceived as a direct attempt to limit the cash flow of representatives currently involved in handling Accident Benefit claims on behalf of the claimant, and hence, put them out of business. Although proposed as an "anti-fraud" measure, there was no explanation as to how this would curb fraudulent claims. There was no requirement for an insurer to settle at any time prior to this change. There are currently many insurers who restrict their claims adjusters from settling Accident Benefit claims with paralegals. There is nothing that forces insurers to enter into settlements with claims that they perceive as fraudulent. Many insurers also tried to initiate early settlement of claims to curb higher long-run costs.

The effect of the change has been to increase the inventory of claim files for every adjuster in the Province. This has devastating results. As stated by Eric Gunnell, assistant vice-president of claims at St. Paul Canada in the January 2003 issue of the Canadian Underwriter, in describing the current climate for claims adjusters in this Province: "*The demands on staff are tremendous…*". "…*we in claims management begin to recognize a serious issue in our business: the loss of staff*". "*One might suggest this shortage of skilled claim personnel in the industry is a direct result of the industry. As regulations changed, as did the no-fault system, we began to see people leaving AB claim handling and in fact in some cases leaving the industry. People were burned out, fed up, over worked, and underpaid*".

The restriction has made mediations within the first year redundant. This inability to resolve disputes now means far more arbitrations and court actions at a much larger cost to insurers, claimants and the Province.

We are unable to see any advantage in this amendment to any stakeholder.

Solution:
If this Government insists a restriction must be in place, it should not be longer than 3-6 months from the date of the accident. At least it provides the consumer an earlier time frame in which their dispute with the insurer can be resolved and at significantly lower costs to all parties.

*NOTE: The above submission was also made 5 years ago. We believe that the past 5 years has demonstrated that we were absolutely correct. The Government continues to hire more mediators and arbitrators as a result of the previous changes. This was certainly of no benefit to either the consumer or the Government.

Section 398 of the Act, subsection 2;

Problem:
It is biased and prejudicial against paralegals (especially since we now have to meet the new regulatory requirements and are members of the Law Society).

Solution:
Subsection 2 should read " A person is exempt from subsection 398 (1) if, "they are licenced members, in good standing, of The Law Society of Upper Canada".

Proposed changes to the Statutory Accident Benefit Schedule:

SIMPLIFICATION:
The *Regulations* need to be simplified in order to reduce disputes. By reducing disputes, insurers will save hundreds of millions of dollars in legal fees and administrative costs.

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1) Revoke/repeal the changes made to section 24 of the SABS to allow insured's access to alternative medical opinions.

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2) Set fees for medical reports. Both under section 24 and for insurer examinations. (i.e. $500 for an orthopedic report, $600 for an in-home assessment, $60 disability certificate, etc.). Limit the amount of assessments. Thus reducing insurer costs and disputes regarding charges.

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3) Set fee maximums for treatment/rehabilitation for non-catastrophic claims (i.e. a maximum of $1500 for the first 4 weeks of treatment, $1200 for the 2nd four week period, $1000 for the 3rd four week period, and $750 thereafter to a policy maximum of the current $100,000 or ten years). Not only will this eliminate disputes regarding costs, they allow an insurer to better and more accurately set their reserves.

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4) Change the calculation of the weekly benefit entitlement to be a percentage of the gross income, not the current calculation based on the net income. This greatly reduces the insurer's expenses for the need for accountants or accounting programs to calculate the benefit.

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5) Self-employed individuals should be able to elect a flat rate benefit (i.e. $400/month) and pay their premium accordingly as is done with disability policies. This would also save the insurers thousands in accounting expenses and legal costs.

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6) Section 33 needs to be totally rewritten as insurers are abusing this section resulting in the long delay of benefit entitlement payments. It should be specific to what exact

information an insurer is entitled to. This section has led to an unreasonable delay in benefit entitlements, costly disputes and abuse by insurers.

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7) Housekeeping and Caregiving benefit/expenses. This is another large area of dispute. The sections should identify what information is to be provided on the receipts submitted to the insurer for reimbursement. (i.e. name of service provider, address of service provider, dates of service, time of service, rate per hour). Many insurers are insisting on statements from service providers prior to providing any reimbursement. While insurers should be allowed to communicate with the service provider (by letter should be sufficient), they should not be entitled to take statements from them as they are not a party to the contract of insurance. It does not occur with other service providers. This should be stated within the respective benefit sections. **In the alternative**, set flat rate benefits, as it was under Bill 164 and Bill 68. Again, this will reduce disputes and hence the associated costs.

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8) Allow individuals to elect either WSIB or Accident Benefits, if both systems apply. Currently one can only elect Accident Benefits if they are going to make a tort claim. This would also eliminate many costly disputes.

We trust any further amendments will include our participation and expertise. Thank you for the opportunity to present our views herein.

Yours very truly,

Gary M. Spector
On behalf of the Paralegal Society of Ontario