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CONSULTATION DRAFT

ONTARIO REGULATION

to be made under the

INSURANCE ACT

Amending Reg. 664 of R.R.O. 1990

(AUTOMOBILE INSURANCE)

0.0.1 The French version of the definition of “commercial vehicle” in section 1 of Regulation 664 of the Revised Regulations of Ontario, 1990 is revoked and the following substituted:

«véhicule utilitaire» Automobile qui sert principalement au transport de matériaux, de marchandises, d’outils ou de matériel dans le cadre de la profession de l’assuré. S’entend en outre d’un véhicule de police, d’un véhicule de pompiers, d’un véhicule d’école de conduite, d’un véhicule conçu spécifiquement à des fins de construction ou d’entretien, d’un véhicule qui est loué pour une période de 30 jours ou moins ou d’une remorque destinée à être utilisée avec un véhicule utilitaire. («commercial vehicle»)

Commencement: June 1, 2016

0.1 (1) Subparagraph 4 i of subsection 9.1 (3) of the Regulation is revoked and the following substituted:

- i. a statement of the restrictions contained in the settlement on the insured person's right to apply to the Licence Appeal Tribunal under subsection 280 (2) of the Act or appeal from a decision of the Licence Appeal Tribunal,

(2) Paragraph 4 of subsection 9.1 (3) of the Regulation is amended by adding "and" at the end of subparagraph ii and by adding the following subparagraph:

- iii. a statement that the insured person may not apply to the Licence Appeal Tribunal under subsection 280 (2) of the Act with respect to benefits that were the subject of a settlement or a purported settlement unless the insured person has returned the money received as consideration for the settlement.

(3) Subsection 9.1 (8) of the Regulation is amended by striking out "commence a mediation proceeding under section 280" and substituting "apply to the Licence Appeal Tribunal under subsection 280 (2)".

(4) Subsection 9.1 (10) of the Regulation is revoked and the following substituted:

(10) A restriction in a settlement on an insured person's right to apply to the Licence Appeal Tribunal under subsection 280 (2) of the Act or appeal from a decision of the Licence Appeal Tribunal is void unless the insurer complied with subsections (2) and (3) and one of the following conditions is satisfied:

1. The settlement is entered into on or after the first anniversary of the day of the accident that gave rise to the claim.
2. Before entering into the settlement,
 - i. the insured applied to the Licence Appeal Tribunal under subsection 280 (2) of the Act, and
 - ii. if there were applicable rules or procedures of the Licence Appeal Tribunal in respect of case conferences at the time of the settlement, a case conference was held in accordance with the rules or procedures.

(5) Subsections 9.1 (11) and (12) of the Regulation are revoked.

0.2 Section 9.2 of the Regulation is revoked and the following substituted:

9.2 (1) Section 9.1 applies only with respect to settlements made on or after the transition date.

(2) Subsection 9.1 (3), as it read immediately before the transition date, applies with respect to settlements for which written notice under subsection 9.1 (2) was given before the transition date but which were made on or after the transition date.

(3) Section 9.1, as it read immediately before the transition date, applies with respect to settlements made before the transition date, with necessary modifications and the following modifications:

1. Subsections 9.1 (2) to (5), as they read on February 28, 2002, continue to apply with respect to settlements for which written notice under subsection 9.1 (2) was given before March 1, 2002.
2. In addition to a mediation proceeding, subsection 9.1 (8) applies in respect of an application to the Licence Appeal Tribunal under subsection 280 (2) of the Act.
3. In addition to the right to mediate, litigate, appeal or apply to vary an order, subsection 9.1 (10) applies to the right to apply to the Licence Appeal Tribunal under subsection 280 (2) of the Act or appeal from a decision of the Licence Appeal Tribunal.

(4) In this section,

“transition date” has the same meaning as in subsection 283 (5) of the Act. (“date de transition”)

1. Sections 10 to 13 of the Regulation are revoked and the following substituted:

DISPUTE RESOLUTION (SECTION 280 OF THE ACT)

10. If the Licence Appeal Tribunal finds that an insurer has unreasonably withheld or delayed payments, the Licence Appeal Tribunal, in addition to awarding the benefits and interest to which an insurer person is entitled under the Statutory Accident Benefits Schedule, may award a lump sum of up to 50 per cent of the amount to which the person was entitled at the time of the award together with interest on all amounts then owing to the insured (including unpaid interest) at the rate of 2 per cent per month, compounded monthly, from the time the benefits first became payable under the Schedule.

2. The Regulation is amended by adding the following sections:

TRANSITION

19. In this section and sections 20 to 25,

“Director” means the director of arbitrations appointed under subsection 6 (1) of the pre-transition date Act; (“directeur”)

“pre-transition date Act” means the Act as it read immediately before the transition date;

“regulations under the pre-transition date Act” means the regulations under the pre-transition date Act, as those regulations read immediately before the transition date;

“rules under section 21 of the pre-transition date Act” means the rules under section 21 of the pre-transition date Act, as they read immediately before the transition date, as amended by the Director under subsection 20 (4);

“transition date” has the same meaning as in subsection 283 (5) of the Act; (“date de transition”).

20. (1) The following are continued after the transition date:

1. The office of the director of arbitrations appointed under section 6 of the pre-transition date Act.
2. Arbitrators appointed under section 8 of the pre-transition date Act.
3. Mediators appointed under section 9 of the pre-transition date Act.

(2) Section 6, subsection 7 (4) and sections 8 and 9 of the pre-transition date Act apply with respect to the officials referred to in subsection (1).

(3) The powers and duties that the officials referred to in subsection (1) had before the transition date continue, with necessary modifications, for the purposes of proceedings continued under section 21 of this Regulation or that may be commenced under section 22 of this Regulation.

(4) The power of the Director to amend the rules made under section 21 of the pre-transition date Act is continued after the transition date.

21. (1) A proceeding described in subsection (2) that was commenced but not completed before the transition date is continued after that date.

(2) The proceedings referred to in subsection (1) are the following:

1. A mediation under section 280 of the pre-transition date Act.

- 1.1 A proceeding in a court of competent jurisdiction brought in accordance with clause 281 (1) (a) of the pre-transition date Act.
2. An arbitration under section 282 of the pre-transition date Act.
3. An appeal under section 283 of the pre-transition date Act.
4. An application for a variation or revocation of an order under subsection 284 of the pre-transition date Act.

(3) The following apply, with necessary modifications and with the modifications specified in subsections (3.1) and (3.2), with respect to proceedings continued under subsection (1):

1. The pre-transition date Act.
2. The regulations under the pre-transition date Act.
3. The rules under section 21 of the pre-transition date Act.

(3.1) Subject to subsection (3.2), if after the transition date an agreement is entered into under subsection 280 (5) of the pre-transition date Act to extend the time for the completion of the mediation process by more than 30 days, the agreement is deemed to extend the time by 30 days.

(3.2) Subsection (3.1) does not apply if the Director consents to the extension.

(5) For greater certainty, if mediation fails, a court proceeding or arbitration may not be commenced on or after the transition date but the insured person or the insurer may apply to the Licence Appeal Tribunal under subsection 280 (2) of the Act.

22. (1) The following proceedings may be commenced, on or after the transition date, in respect of the arbitrations described in subsection (2):

1. An appeal under section 283 of the pre-transition date Act.
2. An application for a variation or revocation of an order under section 284 of the pre-transition date Act.

(2) The arbitrations referred to in subsection (1) are the following:

1. An arbitration under section 282 of the pre-transition date Act completed before the transition date.
2. An arbitration continued under paragraph 2 of subsection 21 (2).

(3) Subsection 21 (3) applies with respect to proceedings that may be commenced under subsection (1).

23. (1) An evaluation under section 280.1 of the pre-transition date Act that was not completed before the transition date ceases on that date.

(2) For greater certainty, an evaluation under section 280.1 of the pre-transition date Act may not be commenced on or after the transition date.

24. The application of clause 6 (2) (b) of the *Motor Vehicle Accident Claims Act* with respect to disputes described in subsection 283 (2) of the Act is modified as follows:

1. The references in that clause to sections of the Act are deemed to be references to sections 274 and 279 to 287 of the pre-transition date Act.
2. To the extent that the regulations under the pre-transition date Act and the rules under section 21 of the pre-transition date Act applied under that clause prior to the transition date, those regulations and rules apply under that clause.

25. (1) Section 25 of the *Financial Services Commission of Ontario Act, 1997*, as it read immediately before the transition date, and Part II of Ontario Regulation 11/01 (Assessment of Expenses and Expenditures), as it read immediately before the transition date, apply in respect of:

1. Automobile insurance dispute resolution activity prior to the transition date.
2. A proceeding continued or commenced under section 21 or 22 of this Regulation.

(2) For the purpose of applying this section, any references in the *Financial Services Commission of Ontario Act, 1997* or Ontario Regulation 11/01, as they read immediately before the transition date, to provisions of the *Insurance Act* shall be deemed to be references to those provisions as they read immediately before the transition date.

3. The Schedule to the Regulation is revoked.

Commencement

4. [Commencement]