

# Royal



# Gazette

## Part II Regulations under the Regulations Act

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*Printed by the Queen's Printer*

Halifax, Nova Scotia

Vol. 27, No. 22

November 14, 2003

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### *NOW AVAILABLE*

The fourth issue of the 2003 subscription year of the Folio<sup>®</sup>-based Nova Scotia Regulations CD-ROM, containing the consolidated regulations of Nova Scotia and the quarterly sectional index of regulations, is now available from the Office of the Registrar of Regulations. For information or subscription please call (902) 424-6723 or visit our website at <[www.gov.ns.ca/just/regulations/cd](http://www.gov.ns.ca/just/regulations/cd)>.

**N.S. Reg. 178/2003**

Made: October 23, 2003

Filed: October 27, 2003

By-laws of the Association of Professional Engineers

Order in Council 2003-436 dated October 23, 2003  
Amendment to regulations made by the Association of Professional Engineers  
and approved by the Governor in Council  
pursuant to clause 6(1) and Section 32 of the *Engineering Profession Act*

The Governor in Council on the report and recommendation of the Minister of Justice dated October 3, 2003, and pursuant to clause [subsection] 6(1) and Section 32 of Chapter 148 of the Revised Statutes of Nova Scotia, 1989, the *Engineering Profession Act*, is pleased to approve the making by the Association of Professional Engineers of Nova Scotia of amendments to the by-laws of the Association approved by the Governor in Council by Order in Council dated May 29, 1946, in the manner set forth in Schedule "A" attached to and forming part of the report and recommendation, effective on and after October 23, 2003.

**Schedule "A"**

**Be It Resolved** that the following be and the same is hereby adopted as a By-law of the Association of Professional Engineers of Nova Scotia and that the Secretary be and he is hereby authorized and instructed to forward the same to the Governor in Council for approval.

2003

**A By-Law to Amend the By-Laws of  
The Association of Professional  
Engineers of Nova Scotia**

- 1 Section 3 of the By-laws of the Association of Professional Engineers of Nova Scotia is amended to create a subsection (1) by the addition of the number and brackets "(1)" immediately following the number "3".
- 2 Section 3 of the said By-laws is further amended by the addition, immediately following subsection (1), of the following subsection:
  - (2) The notice referred to in subsection (1) may be given by mail, by notice published in an Association publication sent to the membership of the Association, or by electronic or other means or combination of means as determined by resolution of the Council.
- 3 Clause (b) of subsection (2) of Section 6 of the By-laws is amended by repealing the first sentence thereof and substituting for it the following:
  - (b) The Secretary shall not later than the 10<sup>th</sup> day of June in each year advise the membership by letter, by any Association publication sent to the membership of the Association, or by electronic or other alternative means or combination of means determined by resolution of the Council, that nominations from the membership at large will be received by the Secretary of the Association up to the 10<sup>th</sup> day of July of the same year.
- 4 Section 6 of the By-laws is further amended by the addition, immediately following subsection (5), of the following subsection:
  - (6) Notwithstanding subsection (3), the voting referred to in subsection (3) may be conducted by electronic or other alternative means or combination of means authorized by resolution of the Council, in which event all other requirements of this Section shall apply with necessary adaptations.
- 5 Subsection (4) of section 21 of the By-laws is repealed and the following is substituted therefor:

- (4) Assessments of members for payments, other than annual dues, required to cover ordinary, special or extraordinary expenditures necessary to further any of the objects of the Association, may be made after approval by two-thirds majority of the members voting by letter ballot, or by electronic or other alternative means or combination of means authorized by resolution of the Council, following the passing of a resolution for such assessment by the Association or Council.

6 Clause (b) of subsection (2) of Section 21 of the By-laws is repealed and the lettering of the subsequent clauses of subsection (2) is changed from (c), (d) and (e) to (b), (c) and (d), respectively.

**This is to certify** that the By-laws of which the foregoing is a true copy were duly passed by a majority of over two-thirds of the valid ballots in accordance with the provisions of Section 32 of Chapter 148, R.S.N.S. 1989, the *Engineering Profession Act*.

**Given** under the hands of the President and the Secretary of the Association of Professional Engineers of Nova Scotia under the corporate seal of the said Association this 28<sup>th</sup> day of June, A.D. 2003.

sgd: *A.J. Darrell*  
President  
Association of Professional Engineers of Nova Scotia

sgd: *Len White, P.Eng.*  
Secretary  
Association of Professional Engineers of Nova Scotia

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**N.S. Reg. 179/2003**

Made: October 31, 2003

Filed: October 31, 2003

Registered Nurses Regulations

Order in Council 2003-452 dated October 31, 2003  
Amendment to regulations made by the Council of the College of Registered Nurses of Nova Scotia  
and approved by the Governor in Council  
pursuant to Section 8 of the *Registered Nurses Act*

The Governor in Council on the report and recommendation of the Minister of Health dated October 6, 2003, and pursuant to Section 8 of Chapter 10 of the Acts of 2001, the *Registered Nurses Act*, is pleased to approve the making by the Council of the College of Registered Nurses of Nova Scotia of amendments to the *Registered Nurses Regulations* approved by the Governor in Council by Order in Council 2001-625 dated December 21, 2001, in the manner set forth in Schedule "A" attached to and forming part of the report and recommendation, effective on and after October 31, 2003.

**Schedule "A"**

I certify that the **Council of the College of Registered Nurses of Nova Scotia**, at its meeting on September 24, 2002, carried a motion to amend the Registered Nurses Regulations made by the Board on July 12, 2001, and approved by the Governor in Council by Order in Council 2001-625 on December 21, 2001, in the manner attached.

Signed at Halifax, Halifax Regional Municipality, Nova Scotia this 18 day of September, 2003.

**Council of the College of Registered Nurses of Nova Scotia**

Per: sgd: Lynda Casey  
Lynda Casey, MN, RN  
President, College of Registered Nurses of Nova Scotia

**Amendments to the *Registered Nurses Regulations*  
made by the Council of the College of Registered Nurses of Nova Scotia  
pursuant to subsection 8(1) of Chapter 10 of the Acts of 2001, the *Registered Nurses Act***

- 1 Section 2 of the *Registered Nurses Regulations* approved by the Governor in Council by Order in Council 2001-625 dated December 21, 2001, is amended by adding the following clauses immediately after clause (e):
  - (ea) “conditional licence” means a conditional licence to practise nursing issued pursuant to subsection 8(3);
  - (eb) “continuing competency” means the ongoing ability of a registered nurse to integrate and apply the knowledge, skills, and judgement required to practise safely and ethically in a designated role and setting;
  - (ec) “continuing competence program” means a program approved by the Council that focuses on promoting the maintenance and enhancement of the continuing competence of registered nurses throughout their careers;
- 2 (1) Subsection 8(2) of the regulations is amended by
  - (a) striking out the period in subclause (b)(v) and adding “; and”; and
  - (b) adding the following clause immediately after clause (b):
    - (c) has completed the requirements of a continuing competence program.
- (2) Section 8 of the regulations is further amended by adding the following subsections immediately after subsection (2):
  - (3) An applicant for entry in the active-practising class referred to in subsection (2) who satisfies the criteria in subsection (2), except for clause (c), is deemed to be eligible for licensing in the active-practising class for the purposes of clauses 6(d) and 7(2)(f) and shall be
    - (a) issued a conditional licence by the Executive Director to give the applicant time to satisfy the requirement of clause (2)(c); and
    - (b) entered into the active-practising class on the condition that the applicant satisfy the requirement of clause (2)(c) during the term of the conditional licence issued pursuant to clause (a).
  - (4) A conditional licence expires on the earlier of
    - (a) 3 months after its effective date; and
    - (b) the date on which the applicant satisfies the requirement of clause (2)(c).
  - (5) ~~A~~ [An] applicant to whom a conditional licence has been issued is permitted to engage in the practice of nursing until their conditional licence expires pursuant to subsection (4).
  - (6) A conditional licence shall not be issued by the Executive Director to an applicant more than once during any licensure year.

(7) The Executive Director shall keep a record of all conditional licences.

- 3 Clauses 10(1)(a) and 12(1)(a) of the regulations are amended by adding “or holds a conditional licence” immediately after “class”.
- 4 The regulations are further amended by adding the following Section immediately after Section 31:

**Confidentiality of self-assessment tool**

**31A (1)** In this Section,

- (a) “legal proceeding” means
- (i) an investigation under Section 34 of the Act,
  - (ii) a proceeding before the Complaints Committee under Section 35 or 36 of the Act, or
  - (iii) a hearing before the Professional Conduct Committee under Section 41 of the Act;
- (b) “self-assessment tool” means any document or information prepared by a registrant for the purpose of the continuing competence program; and
- (c) “witness” means any registrant or officer, director or employee of the College and any other person who, in connection with or in the course of a legal proceeding, is called upon to provide information, to answer a question either orally or in writing or to produce a document, whether under oath or not.
- (3) In a legal proceeding, no person is authorized to disclose or is required to disclose any information or documents relating to the content of a registrant’s self-assessment tool without the express consent of the author.
- (4) The provision by a registrant of a copy of a self-assessment tool is not, by itself, deemed to be consent for the purposes of subsection (3).
- (5) Subject to subsection (6), a witness in a legal proceeding must answer any question or produce any document that the witness is otherwise bound by law to answer or produce.
- (6) A witness in a legal proceeding, whether or not the witness is a party to the proceeding, is excused from
- (a) providing any information obtained by the witness regarding a registrant’s self-assessment tool; and
  - (b) producing any document regarding a registrant’s self-assessment tool.
- (7) Subsection (6) does not apply to original medical and hospital records pertaining to a patient.

**N.S. Reg. 180/2003**

Made: October 31, 2003

Filed: October 31, 2003

Nova Scotia Insurance Review Board Regulations

Order in Council 2003-455 dated October 31, 2003  
Regulations made by the Governor in Council  
pursuant to Section 16AA of the *Insurance Act*

The Governor in Council on the report and recommendation of the Minister responsible for the *Insurance Act* dated October 30, 2003, and pursuant to Section 16AA of Chapter 231 of the Revised Statutes of Nova Scotia, 1989, the *Insurance Act*, is pleased to make regulations respecting the Nova Scotia Insurance Review Board in the form set forth in Schedule "A" attached to and forming part of the report and recommendation, effective on and after November 1, 2003.

**Schedule "A"**

**Regulations Respecting the Nova Scotia Insurance Review Board  
made by the Governor in Council pursuant to Section 16AA of  
Chapter 231 of the Revised Statutes of Nova Scotia, 1989, the *Insurance Act***

**Citation**

1 These regulations may be cited as the *Nova Scotia Insurance Review Board Regulations*.

**Location of hearings**

2 The Board may hold hearings anywhere within the Province as determined by the Chair.

**Expense recovery**

- 3 (1) In addition to the Board's power to fix fees under subsections 106(4) and 157(9) of the *Insurance Act*, the Board may make levies under subsection 16H(1) of the *Insurance Act* to recover the direct or indirect costs incurred by the Board in conducting an examination, including a hearing, while exercising the functions, powers or duties conferred or imposed under subsection 16B(2) of the *Insurance Act*.
- (2) The levies made by the Board under subsection (1) may include the cost of retaining experts and legal counsel to provide the Board with advice, including testimony, on technical and legal matters.
- (3) The levies made by the Board under subsection (1) must be paid to the Board, in such proportions as the Board determines, by the insurers whose rates, risk-classification systems or other practices are the subject of the examination or hearing.

**Examination into gender as risk-classification factor**

4 The Board must conduct an examination into the use of gender as a risk-classification factor by insurers and report the results of its examination to the Governor in Council no later than November 1, 2004.

**N.S. Reg. 181/2003**

Made: October 31, 2003

Filed: October 31, 2003

## Automobile Insurance Contract Mandatory Conditions Regulations

Order in Council 2003-456 dated October 31, 2003

Regulations made by the Governor in Council  
pursuant to Section 159 of the *Insurance Act*

The Governor in Council on the report and recommendation of the Minister responsible for the *Insurance Act* dated October 30, 2003, and pursuant to Section 159 of Chapter 231 of the Revised Statutes of Nova Scotia, 1989, the *Insurance Act*, is pleased to make regulations respecting the mandatory conditions and benefits that must be included in an automobile insurance contract, in the form set forth in Schedule "A" attached to and forming part of the report and recommendation, effective on and after November 1, 2003.

**Schedule "A"**

**Regulations Respecting the Mandatory Conditions that Must be  
Included in an Automobile Insurance Contract  
made by the Governor in Council pursuant to Section 159 of  
Chapter 231 of the Revised Statutes of Nova Scotia, 1989, the *Insurance Act***

**Citation**

1 These regulations may be cited as the *Automobile Insurance Contract Mandatory Conditions Regulations*.

**Mandatory conditions required by Section 112 of the Act**

2 The mandatory conditions required by Section 112 of the *Insurance Act* to be included in every automobile insurance contract are set out in Schedule 1.

**Benefits to be included**

3 The benefits required by Section 140 of the *Insurance Act* are mandatory conditions that must be included in every automobile insurance contract, and are set out in Schedule 2.

**Minimum levels of benefits as optional supplements**

4 The minimum levels of medical, rehabilitation, loss of income, death and funeral expense benefits and other benefits that insurers must offer to insureds as optional supplements to the benefits required to be in contracts are set out in Schedule 3.

**Schedule 1  
Mandatory Conditions**

In these mandatory conditions, unless the context otherwise requires, the word "insured" means a person insured by this contract whether named or not.

- 1 (1) *Material change in risk* - The insured named in this contract shall promptly notify the insurer, or its local agent, in writing, of any change in the risk material to the contract and within his knowledge.
- (2) Without restricting the generality of the foregoing, the words "change in the risk material to the contract" include
- (a) any change in the insurable interest of the insured named in this contract in the automobile by sale, assignment or otherwise, except through change of title by succession, death or proceedings under the *Bankruptcy Act* (Canada);

and, with respect to insurance against loss of or damage to the automobile,

- (b) any mortgage, lien or encumbrance affecting the automobile after the application for this contract;
  - (c) any other insurance of the same interest, whether valid or not, covering loss or damage insured by this contract or any portion thereof.
- 2 (1) *Prohibited use by insured* - The insured shall not drive or operate the automobile
- (a) unless he is for the time being either authorized by law or qualified to drive or operate the automobile;
  - (b) while his license to drive or operate an automobile is suspended or while his right to obtain a license is suspended or while he is prohibited under order of any court from driving or operating an automobile;
  - (c) while he is under the age of sixteen years or under such other age as is prescribed by the law of the province in which he resides at the time this contract is made as being the minimum age at which a licence or permit to drive an automobile may be issued to him;
  - (d) for any illicit or prohibited trade or transportation; or
  - (e) in any race or speed test.
- (2) *Prohibited use by others* - The insured shall not permit, suffer, allow or connive at the use of the automobile
- (a) by any person
    - (i) unless that person is for the time being either authorized by law or qualified to drive or operate the automobile,
    - (ii) while that person is under the age of sixteen years or under such other age as is prescribed by the law of the province in which he resides at the time this contract is made as being the minimum age at which a license or permit to drive an automobile may be issued to him;
  - (b) by any person who is a member of the household of the insured while his license to drive or operate an automobile is suspended or while his right to obtain a license is suspended or while he is prohibited under order of any court from driving or operating an automobile;
  - (c) for any illicit or prohibited trade or transportation; or
  - (d) in any race or speed test.
- 3 (1) *Requirements where loss or damage to persons or property* - The insured shall
- (a) promptly give to the insurer written notice, with all available particulars, of any accident involving loss or damage to persons or property, and of any claim made on account of the accident;
  - (b) verify by statutory declaration, if required by the insurer, that the claim arose out of the use or operation of the automobile and that the person operating or responsible for the operation of the automobile at the time of the accident is a person insured under this contract; and
  - (c) forward immediately to the insurer every letter, document, advice or legal process received by him from or on behalf of the claimant.

- (2) The insured shall not
    - (a) voluntarily assume any liability or settle any claim except at his own cost; nor
    - (b) interfere in any negotiations for settlement or in any legal proceeding.
  - (3) The insured shall, whenever requested by the insurer, aid in securing information and evidence and the attendance of any witness, and shall co-operate with the insurer, except in a pecuniary way, in the defence of any action or proceeding or in the prosecution of any appeal.
- 4 (1) *Requirements where loss or damage to the automobile* - Where loss of or damage to the automobile occurs, the insured shall, if the loss or damage is covered by this contract,
- (a) promptly give notice thereof, in writing to the insurer, with fullest information obtainable at the time;
  - (b) at the expense of the insurer, and as far as reasonably possible, protect the automobile from further loss or damage; and
  - (c) deliver to the insurer within ninety days after the date of the loss or damage a statutory declaration stating, to the best of his knowledge or belief, the place, time, cause and amount of the loss or damage, the interest of the insured and of all others therein, the encumbrances thereon, all other insurance, whether valid or not, covering the automobile, and that the loss or damage did not occur through any wilful act or neglect, procurement, means or connivance of the insured.
- (2) Any further loss or damage accruing to the automobile, directly or indirectly from a failure to protect it as required under subcondition (1) of this condition, is not recoverable under this contract.
  - (3) No repairs, other than those that are immediately necessary for the protection of the automobile from further loss or damage, shall be undertaken and no physical evidence of the loss or damage shall be removed
    - (a) without the written consent of the insurer; or
    - (b) until the insurer has had a reasonable time to make the examination for which provision is made in mandatory condition 5.
  - (4) *Examination of insured* - The insured shall submit to examination under oath, and shall produce for examination, at such reasonable place and time as is designated by the insurer or its representative, all documents in his possession or control that relate to the matters in question; and he shall permit extracts and copies thereof to be made.
  - (5) *Insurer liable for cash value of automobile* - The insurer shall not be liable for more than the actual cash value of the automobile at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated according to that actual cash value with proper deduction for depreciation, however caused, and shall not exceed the amount that it would cost to repair or replace the automobile, or any part thereof, with material of like kind and quality; but if any part of the automobile is obsolete and out of stock, the liability of the insurer in respect thereof shall be limited to the value of that part at the time of loss or damage not exceeding the maker's latest list price.
  - (6) *Repair or replacement* - Except where an appraisal has been made, the insurer, instead of making payment, may, within a reasonable time, repair, rebuild or replace the property damaged or lost with other of like kind and quality, if, within seven days after the receipt of the proof of loss, it gives written notice of its intention to do so.

- (7) *No abandonment; salvage* - There can be no abandonment of the automobile to the insurer without its consent. If the insurer exercises the option to replace the automobile, or pays the actual cash value of the automobile, the salvage, if any, shall vest in the insurer.
- (8) *In case of disagreement* - In the event of disagreement as to the nature and extent of the repairs and replacements required, or as to their adequacy, if effected, or as to the amount payable in respect of any loss or damage, those questions shall be determined by appraisal as provided under the *Insurance Act* before there can be recovery under this contract, whether the right to recover on the contract is disputed or not, and independently of all other questions. There shall be no right to an appraisal until after proof of loss has been delivered and until a specific demand therefor is made in writing.
- 5 *Inspection of automobile* - The insured shall permit the insurer at all reasonable times to inspect the automobile and its equipment.
- 6 (1) *Time and manner of payment of insurance money* - The insurer shall pay the insurance money for which it is liable under this contract within sixty days after the proof of loss has been received by it or, where an appraisal is made under subcondition (8) of mandatory condition 4, within fifteen days after the award is rendered by the appraisers.
- (2) *When action may be brought* - The insured shall not bring an action to recover the amount of a claim under this contract unless the requirements of mandatory conditions 3 and 4 are complied with nor until the amount of the loss has been ascertained as therein provided, or by a judgment against the insured after trial of the issue, or by agreement between the parties with the written consent of the insurer.
- (3) *Limitation of actions* - Every action or proceeding under the contract against the insurer in respect of a claim for indemnification for liability of the insured for loss or damage to property of another person or for personal injury to or death of another person shall be commenced within three years after the liability of the insured is established by a court of competent jurisdiction and not afterwards. Every other action or proceeding against the insurer under the contract in respect of loss or damage to the automobile shall be commenced within three years from the time the loss or damage was sustained and not afterwards.
- 7 *Who may give notice and proofs of claim* - Notice of claim may be given and proofs of claim may be made by the agent of the insured named in this contract in case of absence or inability of the insured to give the notice or make the proof, such absence or inability being satisfactorily accounted for or in the like case, or if the insured refuses to do so, by a person to whom any part of the insurance money is payable.
- 8 (1) *Termination* - This contract may be terminated
- (a) by the insurer giving to the insured fifteen days' notice of termination by registered mail, or five days' written notice of termination personally delivered;
- (b) by the insured at any time on request.
- (2) Where this contract is terminated by the insurer,
- (a) the insurer shall refund the excess of premium actually paid by the insured over the *pro rata* premium for the expired time, but, in no event, shall the *pro rata* premium for the expired time be deemed to be less than any minimum retained premium specified; and
- (b) the refund shall accompany the notice unless the premium is subject to adjustment or determination as to amount, in which case the refund shall be made as soon as practicable.
- (3) Where this contract is terminated by the insured, the insurer shall refund as soon as practicable the excess of premium actually paid by the insured over the short rate premium for the expired time,

but, in no event shall the short rate premium for the time expired be deemed to be less than any minimum retained premium specified.

- (4) The refund may be made by money, postal or express company money order, or by cheque payable at par.
  - (5) The fifteen days mentioned in clause (a) of subcondition (1) of this condition commences to run on the day following the receipt of the registered letter at the post office to which it is addressed.
- 9 *Notice* - Any written notice to the insurer may be delivered at, or sent by registered mail to, the chief agency or head office of the insurer in this Province. Written notice may be given to the insured named in this contract by letter personally delivered to him or by registered mail addressed to him at his latest post office address notified to the insurer. In this condition the expression "registered" means registered in or outside Canada.

## Schedule 2

### Mandatory Medical and Rehabilitation Benefits, and Accident Benefits in Motor Vehicle Liability Policies

#### Accident Benefits Section

The Insurer agrees to pay to or with respect to each insured person as defined in this section who sustains bodily injury or death by an accident arising out of the use or operation of an automobile:

#### Subsection 1 - Medical, Rehabilitation and Funeral Expenses

- 1 All reasonable expenses incurred within four years from the date of the accident as a result of such injury for necessary medical, surgical, dental, chiropractic, hospital, professional nursing and ambulance service and for any other service within the meaning of insured services under the *Health Services and Insurance Act* and for such other services and supplies which are, in the opinion of the physician of the insured person's choice and that of the Insurer's medical advisor, essential for the treatment, occupational retraining or rehabilitation of said person, to the limit of \$25,000 per person.
- 2 Funeral expenses incurred up to the amount of \$1,000 in respect of the death of any one person.

The Insurer shall not be liable under this subsection for those portions of such expenses payable or recoverable under any medical, surgical, dental, or hospitalization plan or law or, except for similar insurance provided under another automobile insurance contract, under any other insurance contract or certificate issued to or for the benefit of, any insured person.

#### Subsection 2 - Death Benefits and Loss of Income Payments

##### Part I - Death Benefits

- A. Subject to the provisions of this Part, for death that ensues within 180 days of the accident or within 104 weeks of the accident if there has been continuous disability during that period, a payment - based on the status at the date of the accident of the deceased in a household where a head of the household, spouse or common-law partner or dependants survive - of the following amounts:
  - (a) head of the household - \$10,000;
  - (b) spouse of the head of the household - \$10,000; and
  - (c) dependant within the meaning of sub-subparagraph (ii) of subparagraph (b) of paragraph B - \$2,000

In addition, with respect to death of the head of the household, where there are two or more survivors spouse or common-law partner or dependants the principal sum payable is increased \$1,000 for each survivor other than the first.

B. For the purposes of this Part,

- (1) “spouse or common-law partner of the head of the household” means the spouse or common-law partner with the lesser income from employment in the twelve months preceding the date of the accident.
- (2) “dependant” means,
  - (a) the spouse or common-law partner of the head of the household who resides with the head of the household;
  - (b) a person,
    - (i) under the age of 18 years who resides with and is principally dependent upon the head of the household or the spouse or common-law partner of the head of the household for financial support,
    - (ii) 18 years of age or over who, because of mental or physical infirmity, is principally dependent upon the head of the household or the spouse or common-law partner of the head of the household for financial support, or
    - (iii) 18 years of age or over who, because of full-time attendance at a school, college or university, is principally dependent upon the head of the household or the spouse or common-law partner of the head of the household for financial support; or
  - (c) a parent or relative,
    - (i) of the head of the household, or
    - (ii) of the spouse or common-law partner of the head of the household,  
residing in the same dwelling premises and principally dependent upon the head of the household or the spouse or common-law partner of the head of the household for financial support.
- (3) The total amount payable shall be paid to a person who is the head of the household or the spouse or common-law partner of the head of the household, as the case may be, if that person survives the deceased by at least 30 days.
- (4) The total amount payable with respect to death where no head of the household or spouse or common-law partner survives the deceased by at least 30 days shall be divided equally among the surviving dependants.
- (5) No amount is payable on death, other than incurred funeral expenses, if no head of the household or dependant survives the deceased by at least 30 days.

### **Part II - Loss of Income**

Subject to the provisions of this Part, a weekly payment for the loss of income from employment for the period during which the insured person suffers substantial inability to perform the essential duties of his occupation or employment, provided,

- (a) such person was employed at the date of the accident;

- (b) within 30 days from the date of the accident and as a result of the accident the insured person suffers substantial inability to perform the essential duties of his occupation or employment for a period of not less than seven days;
- (c) no payments shall be made for any period in excess of 104 weeks except that if, at the end of the 104 week period, it has been established that such injury continuously prevents such person from engaging in any occupation or employment for which he is reasonably suited by education, training or experience, the Insurer agrees to make such weekly payments for the duration of such inability to perform the essential duties.

**Amount of Weekly Payment** – The amount of a weekly payment shall be the lesser of,

- (a) \$140 per week; or
- (b) 80 per cent of the insured person's gross weekly income from employment, less any payments for loss of income from employment received by or available to such person under,
  - (i) the laws of any jurisdiction,
  - (ii) wage or salary continuation plans available to the person by reason of his employment, and
  - (iii) subsection 2A,

but no deduction shall be made for any increase in such payment due to a cost of living adjustment subsequent to the insured person's substantial inability to perform the essential duties of his occupation or employment.

For the purpose of this Part,

- (1) there shall be deducted from an insured person's gross weekly income any payments received by or available to him from part-time or other employment or occupation subsequent to the date of the accident;
- (2) a principal unpaid housekeeper residing in the household not otherwise engaged in occupation or employment for wages or profit, if injured, shall be deemed disabled only if completely incapacitated and unable to perform any of his or her household duties and, while so incapacitated, shall receive a benefit at the rate of \$70 per week for not more than 12 weeks;
- (3) a person shall be deemed to be employed,
  - (a) if actively engaged in an occupation or employment for wages or profit at the date of the accident; or
  - (b) if 18 years of age or over and under the age of 65 years, so engaged for any six months out of the preceding 12 months and in these circumstances shall be deemed to have suffered loss of income at a rate equal to that of his most recent employment earnings;
- (4) a person receiving a weekly payment who, within 30 days of resuming his occupation or employment is unable to continue such occupation or employment as a result of such injury, is not precluded from receiving further weekly payments;
- (5) where the payments for loss of income payable hereunder, together with payments for loss of income under another contract of insurance other than a contract of insurance relating to any wage or salary continuation plan available to an insured person by reason of his employment, exceed the actual loss of income of the insured person, the insurer is liable only for that proportion of the payments for loss of income stated in this policy that the actual loss of income of the person insured bears to the aggregate of the payments for loss of income payable under all such contracts.

### Subsection 2A - Supplemental Benefits Respecting Accidents Occurring in Quebec

This subsection comes into force and is effective only in accordance with a written agreement between the Government of Nova Scotia and the Government of Quebec or an agency thereof.

A. For the purposes of this Part,

- (a) “accident” means an event occurring in Quebec resulting in damage caused by an automobile, or by the use of an automobile, or by the load of an automobile, including damage caused by a trailer;
- (b) “bodily injury” means physical, psychological or mental injury including death as well as damage to the clothing worn by the victim at the time of the accident;
- (c) “resident of Nova Scotia” means any person,
  - (i) who is authorized by law to be or to remain in Canada and is living and ordinarily present in Nova Scotia, and
  - (ii) who meets the criteria prescribed in Division II of O.C. 374-78 made under the *Automobile Insurance Act* (Quebec), which apply with necessary modifications,but does not include a person,
  - (iii) who is merely touring, passing through or visiting Nova Scotia, or
  - (iv) who is, at the time of an accident in Quebec, the owner or driver of, or a passenger in, an automobile registered in Quebec;
- (d) “person insured in Quebec” means a resident of Nova Scotia who is
  - (i) any person while an occupant of the described automobile or of a newly acquired or temporary substitute automobile as defined in this policy,
  - (ii) the insured and, if residing in the same dwelling premises as the insured, his or her spouse or common-law partner and any dependent relative of either while an occupant of any other automobile,
  - (iii) any person, not the occupant of an automobile, who is struck by the described automobile or a newly acquired or temporary substitute automobile as defined in this policy,
  - (iv) the named insured, if an individual, and his or her spouse or common-law partner and any dependent relative residing in the same dwelling premises as the named insured, not the occupant of an automobile who is struck by any other automobile,
  - (v) if the insured is a corporation, unincorporated association, or partnership, any employee or partner of the insured for whose regular use the described automobile is furnished, and his or her spouse or common-law partner and any dependent relative of either, residing in the same dwelling premises as such employee or partner, while an occupant of any other automobile,
  - (vi) any employee or partner of the insured for whose regular use the described automobile is furnished, and his or her spouse or common-law partner and any dependent relative of either, residing in the same dwelling premises as such employee or partner, while not the occupant of an automobile who is struck by any other automobile, and
  - (vii) any other person who,

- a. is the occupant of an automobile, or
- b. not being the occupant of an automobile, is struck by an automobile,  
driven by a person insured in Quebec as defined in sub-subparagraphs (i) to (vi) of this subparagraph.

B. With respect to bodily injury, as a result of an accident, to a person insured in Quebec the insurer agrees to make payments under this Part in the same amount and form and subject to the same conditions as if such person were a resident of Quebec as defined in the *Automobile Insurance Act* (Quebec) and the regulations made under that Act and entitled to payments under that Act and those regulations except that any reference in the *Automobile Insurance Act* (Quebec) to a Quebec enactment or a pension plan shall be replaced by a reference to the Nova Scotia enactment or pension plan which the Lieutenant Governor in Council of Nova Scotia declares to be an equivalent enactment or pension plan.

Notwithstanding anything to the contrary, an exclusion or limitation existing in this Schedule B or in the general provisions, definitions and mandatory conditions of a contract of automobile insurance shall not apply to a person insured in Quebec as defined in this subsection 2A.

### **Subsection 3 - Special Provisions, Definitions, and Exclusions of this Section**

**(1) “insured person” defined**

In this section, the words “insured person” mean

- (a) any person while an occupant of the described automobile or of a newly acquired or temporary substitute automobile as defined in this policy;
- (b) the insured and, if residing in the same dwelling premises as the insured, his or her spouse or common-law partner and any dependent relative of either while an occupant of any other automobile; provided that,
  - (i) the insured is an individual or are husband and wife,
  - (ii) such person is not engaged in the business of selling, repairing, maintaining, servicing, storing, or parking automobiles at the time of the accident,
  - (iii) such other automobile is not owned or regularly or frequently used by the insured or by any person or persons residing in the same dwelling premises as the insured,
  - (iv) such other automobile is not owned, hired, or leased by an employer of the insured or by an employer of any person or persons residing in the same dwelling premises as the insured,
  - (v) such other automobile is not used for carrying passengers for compensation or hire or for commercial delivery;
- (c) in subsections 1, 2 and 2A of this section only, any person, not the occupant of an automobile or of railway rolling-stock that runs on rails, who is struck, in Canada, by the described automobile or a newly acquired or temporary substitute automobile as defined in the policy;
- (d) in subsections 1, 2 and 2A of this section only, the named insured, if an individual and his or her spouse or common-law partner and any dependent relative residing in the same dwelling premises as the named insured, not the occupant of an automobile or of railway rolling-stock that runs on rails, who is struck by any other automobile; provided that

- (i) such person is not engaged in the business of selling, repairing, maintaining, servicing, storing, or parking automobiles at the time of the accident,
  - (ii) that automobile is not owned or regularly or frequently used by the insured or by any person or persons residing in the same dwelling premises as the named insured,
  - (iii) that automobile is not owned, hired, or leased by an employer of the insured or by an employer of any person or persons residing in the same dwelling premises as the named insured;
- (e) if the insured is a corporation, unincorporated association, or partnership, any employee or partner of the insured for whose regular use the described automobile is furnished, and his or her spouse or common-law partner and any dependent relative of either, residing in the same dwelling premises as such employee or partner, while an occupant of any other automobile of the private passenger or station wagon type; and
- (f) in subsections 1, 2 and 2A of this section only, any employee or partner of the insured, for whose regular use the described automobile is furnished, and his or her spouse or common-law partner and any dependent relative of either, residing in the same dwelling premises as such employee or partner, while not the occupant of an automobile or of railway rolling-stock that runs on rails, who is struck by any other automobile; provided that,

in respect of (e) and (f) above,

- (i) neither such employee nor partner or his or her spouse or common-law partner is the owner of an automobile of the private passenger or station wagon type,
- (ii) the described automobile is of the private passenger or station wagon type,
- (iii) such person is not engaged in the business of selling, repairing, maintaining, servicing, storing, or parking automobiles at the time of the accident,
- (iv) such other automobile is not owned or regularly or frequently used by the employee or partner, or by any person or persons residing in the same dwelling premises as such employee or partner,
- (v) such other automobile is not owned, hired, or leased by the insured or by an employer of any person or persons residing in the same dwelling premises as such employee or partner of the insured,

in respect of (e) above only,

- (vi) such other automobile is not used for carrying passengers for compensation or hire or for commercial delivery.

(2) **“physician” defined**  
“Physician” means legally qualified medical practitioner.

(3) **Exclusions**

- (a) Except as provided in subsection 2A, the Insurer shall not be liable under this section for bodily injury to or death of any person,
  - (i) resulting from the suicide of such person or attempt thereat, whether sane or insane,
  - (ii) who is entitled to receive the benefits of any worker's compensation law or plan,
  - (iii) caused directly or indirectly by radioactive material;

- (b) The Insurer shall not be liable under subsection 1 or Part II of subsection 2 of this section for bodily injury or death,
  - (i) sustained by any person who, at the time of the accident, was driving or operating the automobile while in a condition for which he is convicted of an offence under paragraph 253(a) (impaired driving) or paragraph 253(b) (breathalyzer offence) or under or in connection with circumstances for which he is convicted of an offence under subsection 254(2) (refusing road-side test) or subsection 254(3) (refusing breathalyzer) or section 255 (impaired driving causing bodily harm) of the *Criminal Code* (Canada) unless he establishes that impairment by alcohol or drug was not the proximate cause of the accident, or
  - (ii) sustained by any person driving the automobile who is not for the time being either authorized by law or qualified to drive the automobile.

**(4) Notice and proof of claim**

The insured person or his agent, or the person otherwise entitled to make claim or his agent, shall,

- (a) give written notice of claim to the Insurer by delivery thereof or by sending it by registered mail to the chief agency or head office of the Insurer in the Province, within 30 days from the date of the accident or as soon as practicable thereafter;
- (b) within 90 days from the date of the accident for which the claim is made, or as soon as practicable thereafter, furnish to the Insurer such proof of claim as is reasonably possible in the circumstances of the happening of the accident and the loss occasioned thereby;
- (c) if so required by the Insurer, furnish a certificate as to the cause and nature of the accident for which the claim is made and as to the duration of the disability caused thereby from a physician.

**(5) Medical reports**

The Insurer has the right and the claimant shall afford to the Insurer, an opportunity to examine the person of the insured person when and as often as it reasonably requires while the claim is pending, and also, in the case of the death of the insured person, to make an autopsy subject to the law relating to autopsies.

**(6) Release**

Notwithstanding any release provided for under the relevant sections of the *Insurance Act*, the Insurer may demand, as a condition precedent to payment of any amount under this section of the policy, a release in favour of the insured and the Insurer from liability to the extent of such payment from the insured person or his personal representative or any other person.

**(7) When moneys payable**

- (a) All amounts payable under this section, other than benefits under Part II of subsection 2, shall be paid by the Insurer within 30 days after it has received proof of claim. The initial benefits for loss of time under Part II of subsection (2) shall be paid within 30 days after it has received proof of claim, and payments shall be made thereafter within each 30-day period while the Insurer remains liable for payments if the insured person, whenever required to do so, furnishes prior to payment proof of continuing disability.
- (b) No person shall bring an action to recover the amount of a claim under this section unless the requirements of provisions 3 and 4 of this subsection are complied with, nor until the amount of the loss has been ascertained as provided in this section.
- (c) Every action or proceeding against the Insurer for the recovery of a claim under this section shall be commenced within one year from the date on which the cause of action arose and not afterwards.

**(8) Limitation on benefit payable**

Where a person is entitled to benefits under more than one contract providing insurance of the type set forth in subsection 1, 2 or 2A, he or his personal representative or any person claiming through or under

him or by virtue of the *Fatal Injuries Act* or the *Survivorship Act* may recover only an amount equal to one benefit.

In so far as applicable the general provisions, definitions, exclusions and mandatory conditions of the policy also apply.

### Schedule 3

#### **Mandatory Accident Benefit Coverages Required to be Available as Optional Supplementary Benefits**

The optional supplementary accident benefits that insurers must make available to insureds must be in the same form as the mandatory benefits prescribed by Schedule 2, with the following changes:

- (a) in Subsection 1 - Medical, Rehabilitation and Funeral Expenses
  - (i) “25,000” in paragraph 1 must be changed to “50,000”, and
  - (ii) “1,000” in paragraph 2 must be changed to “2,500”;
- (b) in Subsection 2 - Death Benefits and Loss of Income Payments
  - (i) Part I - Death Benefits:
    - (A) “10,000” in subparagraphs A(a) and (b) must be changed to “25,000” in both instances,
    - (B) “2,000” in subparagraph A(c) must be changed to “5,000”, and
  - (ii) Part II - Loss of Income:
    - (A) “140” in subparagraph (a) under the heading “Amount of Weekly Payment” must be changed to “250”,
    - (B) “70” in paragraph (2) must be changed to “100”, and
    - (C) “12” in paragraph (2) must be changed to “52”.

**N.S. Reg. 182/2003**

Made: October 31, 2003

Filed: October 31, 2003

## Automobile Insurance Tort Recovery Limitation Regulations

Order in Council 2003-457 dated October 31, 2003  
Regulations made by the Governor in Council  
pursuant to Sections 5, 113B and 113C of the *Insurance Act*

The Governor in Council on the report and recommendation of the Minister responsible for the *Insurance Act* dated October 30, 2003, and pursuant to Sections 5, 113B and 113C of Chapter 231 of the Revised Statutes of Nova Scotia, 1989, the *Insurance Act*, is pleased to make regulations respecting limitations on damages arising from the use or operation of an automobile in the form set forth in Schedule "A" attached to and forming part of the report and recommendation, effective on and after November 1, 2003.

**Schedule "A"****Regulations Respecting Limitations on Damages Arising From the Use or Operation of an Automobile made pursuant to Sections 5, 113B, and 113C of Chapter 231 of the Revised Statutes of Nova Scotia, 1989, the *Insurance Act*****Citation**

1 These regulations may be cited as the *Automobile Insurance Tort Recovery Limitation Regulations*.

**Definitions for purposes of Section 113B of *Insurance Act***

2 For the purposes of Section 113B of the *Insurance Act*,

- (a) "net loss of earning capacity" means total loss of earning capacity or loss of future income less that portion of probable future income that would be paid by a plaintiff in
  - (i) income and payroll taxes,
  - (ii) employment insurance or similar costs,
  - (iii) union or professional dues, and
  - (iv) pension contributions, including Canada Pension Plan contributions;
- (b) "net income loss" means total income lost less that part of total income that would have been paid by a plaintiff in
  - (i) income and payroll taxes,
  - (ii) employment insurance or similar costs,
  - (iii) union or professional dues, and
  - (iv) pension contributions, including Canada Pension Plan contributions;
- (c) "non-monetary loss" means any loss for which compensation would be payable, but for the *Insurance Act*, that is not an award for
  - (i) lost past or future income,
  - (ii) diminution or loss of earning capacity, and

(iii) past or future expenses incurred or that may be incurred

as a result of an incident, and for greater certainty excludes valuable services such as housekeeping services.

**Total amount recoverable for non-monetary losses**

- 3 (1) For the purpose of subsection 113B(3) of the *Insurance Act*, the total amount recoverable as damages for non-monetary losses of a plaintiff for all minor injuries suffered by the plaintiff as a result of an incident must not exceed \$2,500.
- (2) In subsection 113B(3) of the *Insurance Act*, “personal injury” does not include a coma, chronic pain, serious burn, or amputation of a major limb.

**Discount rate for calculating loss or damage from bodily injury or death**

- 4 (1) For the purpose of Section 113C, the discount rate for calculating loss or damage from bodily injury or death is 3.5%.
- (2) Effective January 1, 2005, the discount rate for each calendar year may be based on the difference between the rate set for Government of Canada bonds and the consumer price index for the previous 12 months.

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**N.S. Reg. 183/2003**

Made: October 31, 2003

Filed: October 31, 2003

Automobile Insurance Prohibited Risk-Classification Factors Regulations

Order in Council 2003-458 dated October 31, 2003  
Regulations made by the Governor in Council  
pursuant to Section 159 of the *Insurance Act*

The Governor in Council on the report and recommendation of the Minister responsible for the *Insurance Act* dated October 30, 2003, and pursuant to Section 159 of Chapter 231 of the Revised Statutes of Nova Scotia, 1989, the *Insurance Act*, is pleased to make regulations respecting the factors that are prohibited from being included in a classification for risk for automobile insurance in the form set forth in Schedule “A” attached to and forming part of the report and recommendation, effective on and after the dates set out in the regulations.

**Schedule “A”**

**Regulations Respecting the Factors that are Prohibited from being  
Included in a Classification of Risk for Automobile Insurance  
made pursuant to Section 159 of Chapter 231 of the  
Revised Statutes of Nova Scotia, 1989, the *Insurance Act***

**Citation**

- 1 These regulations may be cited as the *Automobile Insurance Prohibited Risk-Classification Factors Regulations*.

**Prohibited risk factors**

- 2 An insurer is not permitted to include in a risk-classification system for automobile insurance any risk-classification factor that, in the opinion of the Board
- (a) is subjective;
- (b) is arbitrary;

- (c) bears little or no relationship to the potential risk to be assumed by the insurer; or
- (d) is contrary to public policy.

**3 (1)** An insurer is not permitted to include the following factors as risk-classification factors in a risk-classification system for automobile insurance:

- (a) any claim resulting from an incident for which the insured was not at fault;
- (b) any claim that was made more than 6 years before the year for which the contract is to be issued;
- (c) a lapse in coverage under a contract of automobile insurance for a period of less than 24 months, except as provided in Section 4;
- (d) age;
- (e) marital status;
- (f) whether or not a person who would be an insured is covered by
  - (i) a medical, surgical, dental or hospitalization plan, or
  - (ii) an income continuation plan, a sick leave plan
 or any other arrangement or plan providing coverage for benefits that, in the absence of the arrangement or plan, the insurer would be required to pay for under Schedule 2 of the *Automobile Insurance Contract Mandatory Conditions Regulations*; and
- (g) membership in an organized group, except as provided in Section 5.

**(2)** For greater certainty, the inclusion of risk-classification factors that reflect driving experience does not contravene clause (1)(d).

**Lapse in coverage**

**4** An insurer is permitted to use a lapse in automobile insurance coverage for a period of less than 24 months as a risk-classification factor for automobile insurance if,

- (a) the insured is convicted of a contravention of Section 230 of the *Motor Vehicle Act* respecting driving without a motor vehicle liability policy; or
- (b) the lapse in coverage resulted directly or indirectly from
  - (i) the suspension of the insured's driver's licence as a result of a conviction for an offence related to the use or operation of an automobile, or
  - (ii) an accident, or a conviction for an offence related to the use or operation of an automobile, if the insured did not inform the insurer of the accident or conviction and the accident or conviction would likely have led to the insured being charged a higher premium.

**Membership in an organized group**

**5 (1)** An insurer is permitted to use membership in an organized group as a risk-classification factor for automobile insurance if the group is

- (a) a group of employees, which may include retired employees, of the same employer; or

- (b) a group of persons that is
  - (i) a labour union,
  - (ii) a professional or occupational association,
  - (iii) an alumni association, or
  - (iv) a non-profit organization that has been in existence for at least 2 years, except an organization that is formed primarily for the purpose of purchasing or providing goods or services.
- (2) A group referred to in subsection (1) may also include
  - (a) spouses and common-law partners of members of the group; and
  - (b) any child of members of the group or of their spouses or common-law partners, if the child is under 25 years of age and ~~who~~
    - (i) resides in the same dwelling as a member of the group or the spouse or common-law partner of a member of the groups, or
    - (ii) attends an educational institution on a full-time basis.
- (3) An insurer is not permitted to use a risk-classification factor for automobile insurance that results in the exclusion from coverage of a member of an organized group referred to in clause (1)(a) if
  - (a) the insurance is sold under a group marketing plan, as defined in Section 6; and
  - (b) coverage is for a personal use private passenger vehicle, as defined in the plan of operation established by the facility association.
- (4) An insurer is not permitted to use a risk-classification factor for automobile insurance that results in the exclusion from coverage of a member or associate member of an organized group referred to in subsection (1) if
  - (a) the insurance is sold under a group marketing plan, as defined in Section 6; and
  - (b) coverage is for a private passenger vehicle, as defined in the plan of operation established by the facility association.
- (5) An insurer is not permitted to use either of the following circumstances as a risk-classification factor for automobile insurance if it would result in a change in the classification of an insured before the next renewal date of the insured's policy:
  - (a) termination of a group marketing plan as defined in Section 6; or
  - (b) the insured ceasing to be a member or an associate member of an organized group referred to in subsection (1).
- (6) Except as provided in subsection (5), no element of a risk-classification system that uses membership in an organized group referred to in subsection (1) may be applied to an insured who ceases to be a member or associate member of the group.

**Group marketing plan**

- 6 (1) In this Section, "group marketing plan" means

- (a) an arrangement between an insurer and a group of employees of the same employer to market automobile insurance to members of the group;
  - (b) an arrangement between an insurer and an employer to market automobile insurance to a group of employees of the employer; or
  - (c) an arrangement between an insurer and a group referred to in clause 5(1)(b) to market automobile insurance to members of the group.
- (2) An insurer is not permitted to sell automobile insurance under a group marketing plan if any person is required to purchase insurance under the plan or is subject to a penalty for failing to purchase insurance under the plan.
- (3) An insurer, agent or broker selling automobile insurance under a group marketing plan must not accept an application for insurance coverage from a person unless the insurer, agent or broker has made full and fair disclosure to the person of all features of the group marketing plan and the insurance coverage, including
- (a) the group marketing plan's provisions relating to group discounts, policyholder services, termination of the plan and termination of eligibility; and
  - (b) the financial interests in the group marketing plan of the person or body that entered into the plan with the insurer.
- (4) A person who collects premiums under a group marketing plan, other than an agent or broker, must provide adequate administrative facilities for the collection of premiums and is deemed to be the agent of the insurer for the purposes of collecting premiums.
- (5) All premium funds received or receivable by a person under a group marketing plan, other than by an agent or broker, are deemed to be trust funds held for the benefit of the insurer.
- (6) A person who receives or is entitled to receive premium funds under a group marketing plan must not assign, pledge, mortgage or in any way charge the funds.
- (7) An assignment, pledge, mortgage or other charge of premium funds contrary to subsection (6) is void.

**Effective date**

- 7 (1) Except as provided in subsection (2), these regulations come into effect on November 1, 2004.
- (2) These regulations come into effect for the facility association on April 1, 2004.