

SECTION "B" BENEFITS - AN EXPLANATION

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WHAT IS A "SECTION B"?

Benefits that are described in "Section B" of the standard automobile policy of Nova Scotia. These are "no fault" benefits that became mandatory on July 1, 1983, prescribed by s.140(1) of the Insurance Act of Nova Scotia. These benefits include medical, rehabilitation, loss of income, death and funeral expenses, and other benefits later.

WHY DO WE NEED SECTION B?

To ensure quick compensation for persons injured in motor vehicle collisions. There is no need to prove that anyone else was in the wrong to collect these benefits; hence "no fault" benefits. These provide early and interim financial relief to persons injured in car collisions.

ARE YOU COVERED?

- (a) Any person while an occupant of the insured vehicle;
- (b) Any pedestrian who is struck, in Canada, by the insured automobile;
- (c) The insured and, if residing in the same premises as the insured, members of his family while occupants of any other automobile or while pedestrian struck by other automobiles.

WHOSE INSURANCE COMPANY PAYS?

(a) Injured Driver / Passenger in own car - deal with your own insurance company;

(b) Insured Passenger in someone else's automobile, deal with company that insured the automobile; (c) Insured Pedestrian / Cyclist - deal with company that insured car that struck you.

If automobile not covered by insured - (b) and (c) above can look to "own" insurer for benefits.

IF (a), (b) and (c) above have no motor vehicle liability insurance - cannot claim Section B Benefits.

WHAT DO YOU GET?

1. MEDICAL REHABILITATION EXPENSES AND FUNERAL EXPENSES

A. Medical and Rehabilitation:

Includes all reasonable expenses incurred within four years from the date of the accident as a result of such injury for necessary:

(1) medical service;

(2) surgical service;

(3) dental service;

(4) chiropractic service;

(5) hospital service;

(6) professional nursing service;

(7) ambulance service;

(8) another service under the Health Service and Insurance Act;

(9) such other services and supplies which are, in the opinion of the physicians of the insured'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 \$25,000.00 per person, which can include:

- traveling expenses for medical treatment or physiotherapy;

- hospital telephone rental; - cost of water pik to cleanse teeth while wired for dental purposes;

- hair transplants;

- physiotherapy treatment;
- eyeglasses;
- additions to the home of the parents of a quadriplegic.

Some examples of expenses disallowed by Courts under (9) above:

- waterbeds;
- jacuzzis;
- costs of medical and legal reports.

B. Funeral Expenses:

Costs related to burial.

2. DEATH BENEFITS AND LOSS OF INCOME PAYMENTS

A. Death Benefits:

Single payments to survivors of households, the amount depending upon the status of the deceased at the time of death:

- (a) Head of Householder - one with greater income from employment in the year preceding the date of the collision: \$10,000.00 payment;
- (b) Spouse of Head of Householder - must have cohabitated continuously for at least one year immediately preceding the collision: \$10,000.00 payment;
- (c) Deceased was "Dependent": \$2,000.00 payment.

N. B. IF the deceased was head of household and left two or more survivors - sum payment is increased \$1,000.00 for each survivor other than the first.
Example: Wife, 2 children - Amount - \$10,000.00 + \$1,000.00 + \$1,000.00 = \$12,000.00

B. Loss of Income

(1) Criteria:

- (a) Insured must be disabled: entitled to weekly loss of income payments where:
 - (i) such person was employed at the date of accident;
 - (ii) Own occupation coverage: within 30 days from the date of the accident, and as a result of the accident, the insured suffered substantial inability to perform the essential duties of his occupation or

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employment for a period of not less than 7 days;

(iii) Any occupation coverage: no payments shall be made for any period in excess of 104 weeks. Exception: IF, at the end of the 104 week period, the claimant has established that the injury continuously prevents such person from engaging in any occupation or employment for which he is reasonably suited by education, training or experience, insurer will make weekly payments for the duration of such inability to perform the essential duties.

(b) Insured must be disabled as a result of the accident.

(c) Insured must have been employed at the time of the accident:

(i) actively engaged in an occupation or employment for wages or profit at the date of the accident; or (ii) IF 18 years of age or over and under the age of 65 years, so engaged for any 6 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.

(2) Amount of Weekly Payments:

Insured entitled to the lesser of:

(a) \$140.00 per week; or

(b) 80% of the insured's gross weekly income from employment, less any payments received by or available to the person by law under any wage or salary continuation plans [Example: less CPP benefits, group insurance benefits, but not welfare payments.]

3. SPECIAL PROVISIONS, DEFINITIONS AND EXCLUSIONS

A. Limitation Period

Insured person or his agent must give written notice of the claim within 30 days from the accident or as soon as practical thereafter and proof of claim within 90 days from the accident or as soon as is practical thereafter.

Courts have held: Time begins to run when the plaintiff could first have brought action. Benefits were to be paid within 30 days of receipt of proof of loss. Plaintiff could not sue until expiration of the 30 day period, so limitation period was effectively one year and 30 days from the date the proof of loss was filed.

Cause of action renews itself after every monthly entitlement.

Burden of Proof: appears to be on the insured to continue to furnish proof of continuing disability in order to continue to receive weekly loss of income benefits for 30 day intervals.

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B. Release Provisions

Covered under s. 140(s) and s. 146(2) of the Insurance Act of Nova Scotia.

Operate to favour a defendant in an action with a deduction in the amount of all Section B benefits which have been paid or are available to the plaintiff.

Onus of proving payment or availability rests with the defendant.

If plaintiff has advanced Section B claim and has been refused, he can include the expenses or losses in his tort claim.

SUMMARY

The Plaintiff should always make demand for accident benefits.