

Appendix B

Unfair or Deceptive Acts or Practices – Blacklined with DSC Rule Changes

1 Interpretation

1(1) In this Rule,

- (i) “Act” means the *Insurance Act*, R.S.O. 1990, c. I.8, as amended,
- (ii) “Affiliated insurer” means an insurer that is considered to be affiliated with another insurer under s. 414(3) of the Act,
- (iii) “Authorized representative” means a person who is authorized by another person to act on such person’s behalf,
- (iv) “Claimant” means a person who claims statutory accident benefits or who otherwise claims any benefit, compensation or payment under a contract of insurance,
- (v) “Contract of insurance” means,
 - (a) for a contract of life insurance, has the meaning ascribed to such term in s. 171(1) of the Act,
 - (b) for a contract of accident and sickness insurance, has the meaning ascribed to such term in s. 290 of the Act, and
 - (c) for a contract of insurance not referred to in (a) or (b), has the meaning ascribed to “contract” in s. 1 of the Act,
- (vi) “Credit information” means information about a person’s creditworthiness, including a person’s credit score, credit-based insurance score, credit rating and information about or derived in whole or in part from such individual’s occupation, previous places of residence, number of dependants, educational or professional qualifications, current or previous places of employment, estimated income, outstanding debt obligations, past debt payment history, cost of living obligations and assets,
- (vii) “Declination grounds” means the grounds on which an insurer is authorized under the Act to decline to issue or to terminate or refuse to renew a contract of automobile insurance or to refuse to provide or continue a coverage or endorsement,

(vii.1) “Deferred sales charge” means,

(i) a fee or charge that the insured with respect to an individual variable insurance contract is required to pay under the individual variable insurance contract because the insured,

(a) makes a withdrawal from a segregated fund, or

(b) changes the sales charge option that applies to any investment in a segregated fund under the individual variable insurance contract,

and where the fee or charge is calculated based on a percentage of the amount that is withdrawn or affected by the change, and/or the original cost of the units redeemed or affected by the change, according to a predetermined calculation or schedule set out in the individual variable insurance contract,

(ii) a fee or charge that the insured with respect to an individual variable insurance contract is required to pay under the individual variable insurance contract because the insured does not make payments when required under the individual variable insurance contract,

(iii) a fee or charge that the insured with respect to an individual variable insurance contract is required to pay that is described in the individual variable insurance contract by one of the following terms, or a term substantially similar to any of these terms,

(a) deferred sales charge, DSC, DSC sales charge, DSC charge, DSC fee,

(b) low-load sales charge, low-load charge, low-load fee, low sales charge,
or

(c) back-end sales charge, back-end load, back-end charge, back-end fee,
or

(iv) any fee or charge a reasonable insurer would consider to be a deferred sales charge,

provided however and despite the foregoing, a deferred sales charge does not include,

(a) a fee or charge the insured is only required to pay at the time they deposit funds to the individual variable insurance contract,

(b) a fee or charge the insured is required to pay because the insured moves money among investment options within the individual variable insurance contract more often than the individual variable insurance contract permits without charge,

(c) a short term trading fee the insured is required to pay if the insured withdraws money from the individual variable insurance contract, or moves money among investment options within the individual variable insurance contract, within 90 days of investing the money, or

(d) a market value adjustment the insured is required to pay that is calculated based on changes in interest rates, but not based on compensation an agent received with respect to the investment,

(vii.2) "Individual variable insurance contract" means an individual contract of life insurance under which the insurer's liabilities vary in amount depending upon the market value of a specified group of assets in a segregated fund. Individual variable insurance contract includes a provision in an individual contract of life insurance under which policy dividends are deposited in a segregated fund,

(vii.3) "Person" has the meaning ascribed to such term in s. 438 of the Act,

(viii) "Prohibited factor" means,

(a) any reason or consideration that, under section 5 of Regulation 664 of the Revised Regulations of Ontario, 1990 (Automobile Insurance), made under the Act, insurers are prohibited from using in the manner described in that section,

(b) any fact or factor that, under section 16 of Regulation 664 of the Revised Regulations of Ontario, 1990 (Automobile Insurance), insurers are prohibited from using as elements of a risk classification system, or

(c) any other factor that the Authority determines is an estimate of, a surrogate for or analogous to a prohibited factor referred to in clause (a) or (b),

(ix) "Reasonable person" means a reasonable and prudent person in the same or similar circumstances as, and in the position of, and/or with the same licensing status of, the person in question, having regard to any applicable professional standards, best industry practices or codes of conduct, who has full knowledge of all and any relevant facts or circumstances,

(x) "Schedule" means the Statutory Accident Benefits Schedule — Effective September 1, 2010 and all previous Statutory Accident Benefit Schedules for which there are active claims,

(x.1) "Segregated fund" has the meaning ascribed to such term in s. 1(1) of O. Reg. 132/97: VARIABLE INSURANCE CONTRACTS,

(xi) "Substantially deficient" means that the delivery of goods or services fell below the standard required in the oral or written agreement to provide those goods or services to an extent or in such a manner that a significant part or the whole

of the goods or services was unfit for the purposes intended from the perspective of a reasonable person who is in the position of the intended recipient of those goods or services,

- (xii) “Unreasonable consideration” means an amount being paid or sought for goods or services provided to a claimant that a reasonable person, in the position of the provider of those goods or services, would not charge or seek, or would not expect a reasonable person who is in the position of the recipient of the goods or services, to accept.
- 1(2) In addition to s. 1(1) of this Rule, if a term or phrase used in this Rule is defined in the Act, that definition shall apply for the purposes of this Rule.
 - 1(3) For greater clarity, in determining what amounts to a reasonable person who is an insurer, the reasonable person will be deemed to have a level of knowledge and expertise commensurate to that insurer’s nature, size, complexity, operations and risk profile.
 - 1(4) If a person has committed an unfair or deceptive act or practice, then every director, officer, employee or authorized representative of that person shall be deemed to have committed an unfair or deceptive act or practice if that director, officer, employee or authorized representative,
 - (i) causes, authorizes, permits, acquiesces or participates in the commission of an unfair or deceptive act or practice by the person, or
 - (ii) fails to take all reasonable care in the circumstances to prevent the person from committing an unfair or deceptive act or practice.
 - 1(5) References in this Rule to a form approved by the Chief Executive Officer are deemed to include the last form approved by the Superintendent for the purposes of the relevant provision prior to the day section 22 of Schedule 13 to the *Plan for Care and Opportunity Act (Budget Measures), 2018* came into force until the Chief Executive Officer approves a subsequent form for the purposes of this section.

2 Unfair or Deceptive Act or Practice

- 2(1) For the purposes of the definition of “unfair or deceptive act or practice” in section 438 of the Act, conduct, including inaction or omission, which results in, or could reasonably be expected to result in the outcomes, events or circumstances set out in s. 3 through s. ~~1240~~ of this Rule is prescribed as an unfair or deceptive act or practice.
- 2(2) For the purposes of determining what conduct, including inaction or omission, could be reasonably expected to result in the outcomes, events or circumstances set out in s. 3 through s. ~~1240~~ of this Rule,

- (i) if the action or conduct, including inaction or omission is committed by,
 - (a) an agent, broker, adjuster, insurer or any director, officer, employee or authorized representative of an agent, broker, adjuster or insurer, or
 - (b) any person, or any director, officer, employee or authorized representative of that person, who provides goods or services to a claimant which are fully or partially expected to be paid for through the proceeds of insurance, including for greater clarity and without limitation, automotive repair, towing and storage services,

then an outcome, event or circumstance will be deemed to be reasonably expected if it would be expected by a reasonable person in that person's business or profession with full knowledge of all and any facts and circumstances that person knew about or, with reasonable diligence under the circumstances, ought to, have known, or

- (ii) if the action or conduct, including inaction or omission, is committed by a person not listed in (i) then an outcome, event or circumstance will be deemed to be reasonably expected if it would be expected by a reasonable person in that person's position with knowledge of all and any relevant facts and circumstances that person knew about or ought to, with reasonable diligence under the circumstances, have known.

- 2(3) S. 2(1) of this Rule does not apply to conduct by a lawyer or paralegal with respect to activities that constitute practising law or providing legal services, as the case may be, as authorized under the *Law Society Act* which results in the outcomes listed in in s. 6 of this Rule.

3 Non-Compliance with Law

- 3(1) The commission of any act prohibited under the Act, or under any regulation or Authority rule made under the Act.
- 3(2) Any provision of the Act, or a regulation or Authority rule made under the Act, not being complied with resulting in the unfair treatment or unfair discrimination of a person.
- 3(3) Non-compliance with any requirement under the Act or a regulation or Authority rule made under the Act, by the subject of an examination or purported examination.

4 Unfair Discrimination

- 4(1) Any unlawful or unfair discrimination, including any contravention of the Ontario *Human Rights Code*, in the provision or administration of insurance, or goods or services related to insurance, including,

- (i) between individuals of the same class and of the same expectation of life, in the amount or payment or return of premiums, or rates charged for contracts of life insurance or annuity contracts, or in the dividends or other benefits payable on such contracts or in the terms and conditions of such contracts, or
- (ii) in any rate or schedule of rates between risks in Ontario of essentially the same physical hazards in the same territorial classification.

5 Unfair Claims Practices

- 5(1) Unreasonable or unfair resolution or delay in the adjudication, adjustment or settlement of any claim, including but not limited to,
- (i) treating a claimant in an arbitrary, capricious or malicious manner,
 - (ii) not acting in good faith,
 - (iii) seeking a result which is inequitable or inconsistent with a claimant's rights under the contract,
 - (iv) imposing unreasonable or unfair costs or expenses on the (1) claims handling or dispute resolution processes, (2) goods or (3) services,
 - (v) communicating in an untimely manner or misrepresenting the rights of a claimant or obligations of an insurer under the contract, or
 - (vi) any adjuster or insurer not following fair, simple and accessible claims handling procedures or not providing a claimant timely, clear, comprehensive and accurate information about the status of its claim, the process for settling its claim or reasons for a decision made respecting its claim.
- 5(2) With respect to automobile insurance,
- (i) non-compliance with the Schedule, including but not limited to,
 - (a) payment for goods or services not being made, or
 - (b) the cost of an assessment not being paid,without reasonable cause, within the time period prescribed in the Schedule,
 - (ii) the making of a statement by or on behalf of an insurer for the purposes of adjusting or settling a claim if that insurer knows or ought to know that the statement misrepresents or unfairly presents the findings or conclusions of a person who conducted an examination under section 44 of the Schedule, or

- (iii) a conflict of interest not being disclosed to a person who claims statutory accident benefits.

6 Fraudulent or Abusive Conduct Related to Goods and Services Provided to a Claimant

- 6(1) Consideration being paid or sought for goods or services in connection with a claim under a contract of insurance which were not provided to a claimant or were provided in a substantially deficient manner.
- 6(2) A referral fee being solicited, demanded, paid or accepted in connection with goods or services provided to a claimant.
- 6(3) Unreasonable consideration being paid or sought for goods or services provided to a claimant.
- 6(4) With respect to automobile insurance, a claimant signing or being asked to sign, before it has been fully completed, any form or any other document that is required to be in a form approved by the Chief Executive Officer or any form or document that is specified in a guideline applicable for the purposes of the Schedule.
- 6(5) Information being communicated about the business, billing practices or licensing status of a person who provides or offers to provide goods or services to a claimant which a reasonable person who is in the position of the intended recipient would consider false, misleading or deceptive.

7 Incentives

- 7(1) Payment, rebate, consideration, allowance, gift or thing of value being offered or provided, directly or indirectly, to an insured or person applying for insurance,
 - (i) as an incentive or inducement for a person to take an action or make a decision relating to an insurance product which would not, considering the options generally available in the marketplace, be recommended as a suitable action or decision by a reasonable person licensed to sell such an insurance product,
 - (ii) which is otherwise prohibited by law,
 - (iii) in a manner which a reasonable person licensed to sell such a product would not consider to be clearly and transparently communicated to intended recipients or applied consistently,
 - (iv) in a manner which involves unfair discrimination or contributes to an anti-competitive practice, including but not limited to, tied selling or predatory pricing,

- (v) as an incentive or inducement to purchase, renew or retain an insurance product, which provides coverages within the classes of life or accident and sickness insurance, or
 - (vi) if related to automobile insurance, which is based, in whole or in part, on, or is calculated by reference to, prohibited factors.
- 7(2) For greater clarity, s. 7(1)(i) to 7(1)(v) of this Rule also apply to any payment, rebate, consideration, allowance, gift or thing of value being offered or provided, directly or indirectly, as an incentive or inducement to purchase, renew or retain automobile insurance.
- 7(3) An agreement being made or offered to be made, directly or indirectly, for a premium to be paid that is different from the premium set out in the contract of insurance.
- 7(4) For the purposes of this section, clear and transparent communication includes but is not limited to providing an explanation of how the amount or value of any payment, rebate, consideration, allowance, gift or thing of value is calculated.
- 7(5) For the purposes of this section, a gift or thing of value will not be considered an incentive or inducement if that gift or thing of value is a good or service reasonably related to reducing the risk insured by the contract of insurance to which it is related.

8 Misrepresentation

- 8(1) A person receiving information, promotional materials, or advice in any form, including audio, visual, electronic, written and oral means, which a reasonable person in the position of such recipient would consider to be inappropriate, inaccurate or misleading, respecting,
- (i) the terms, benefits or advantages of any contract of insurance issued or to be issued,
 - (ii) an insurance claim, the claims process or whether a policy provides coverage, or
 - (iii) any comparison of contracts of insurance.
- 8(2) A person being charged for any premium or fee other than as stipulated in a contract of insurance.

9 Prohibited Conduct in Automobile Insurance Quotations, Applications or Renewals

- 9(1) Unfair treatment by an agent, broker or insurer to a consumer with regard to any matter relating to quotations for automobile insurance, applications for automobile insurance, issuance of contracts of automobile insurance or renewals of existing contracts of automobile insurance, including but not limited to,

- (i) variance of formal or informal processes and procedures which make it more difficult for certain persons to interact with an insurer, broker or agent for the purpose of discouraging or delaying such persons from applying for, renewing or obtaining automobile insurance,
 - (ii) using credit information or a prohibited factor,
 - (iii) asking or requiring a person to provide consent to the collection, use or disclosure of any credit information, other than for the sole purpose of considering whether to provide premium financing,
 - (iv) applying any other information in a manner that is subjective or arbitrary or that bears little or no relationship to the risk assumed or to be assumed by the insurer,
 - (v) misclassifying a person or vehicle under the risk classification system used by an insurer or that an insurer is required by law to use,
 - (vi) making the issuance or variation of a policy of automobile insurance conditional on an insured having or purchasing another insurance policy,
 - (vii) engaging in unfair discrimination,
 - (viii) treating a consumer in an arbitrary, capricious or malicious manner,
 - (ix) not acting in good faith or behaving in a way that causes consumers to have a reasonable apprehension of bias, or
 - (x) communicating in an untimely manner or misrepresenting the rights of a claimant or obligations of an insurer under the automobile insurance contract.
- 9(2) Credit information about a person being collected, used or disclosed in any manner in connection with automobile insurance, other than,
- (i) for the limited purposes, if any, described in the form of application for insurance approved by the Chief Executive Officer under s. 227(1) of the Act, or
 - (ii) in accordance with the consent obtained in compliance with applicable privacy laws of the person to whom the information relates.

10 Affiliated Insurers

- 10(1) An agent, broker or insurer providing a quote or renewal for automobile insurance from an insurer, and not offering the lowest rate available from amongst that insurer and its affiliated insurers.

10(2) In this section “lowest rate available” is the lowest rate amongst an insurer and its affiliates which is reasonably available to be offered to an insured or potential insured, having regard to all of the circumstances, including but not limited to,

- (i) each insurer’s declination grounds,
- (ii) each insurer’s rates and risk classification systems,
- (iii) each insurer’s method of distribution, or
- (iv) whether the insurers only recently became affiliated.

11 Deferred Sales Charges – New Individual Variable Insurance Contracts

11(1) An insurer issuing an individual variable insurance contract on or after June 1, 2023, under which a person can make an investment that may be subject to a deferred sales charge.

11(2) For the purposes of s. 11(1) of this Rule, an insurer is not considered to “issue” an individual variable insurance contract where a person has an existing individual variable insurance contract with the insurer and the insurer issues a replacement individual variable insurance contract on the same terms and conditions, except any changes required by applicable tax or pension laws, including issuing a contract in connection with,

- (i) converting a registered retirement savings plan to a registered retirement income fund contract,
- (ii) converting a locked-in retirement account to a life income fund contract, or
- (iii) transferring ownership of the individual variable insurance contract.

12 Deferred Sales Charges – All Individual Variable Insurance Contracts

12(1) An insurer amending an individual variable insurance contract, or exercising a right under an individual variable insurance contract, to add, withdraw or change a sales charge option on or after June 1, 2023, if, as a result,

- (i) the individual variable insurance contract may permit or require an insured to pay a deferred sales charge, or
- (ii) a reasonable person would believe a deferred sales charge under the individual variable insurance contract becomes less favourable to the insured, including any change that,

(a) increases the amount of the investment which is or may be subject to a deferred sales charge,

(b) increases the duration of a deferred sales charge,

(c) increases the amount payable in any given circumstances under a deferred sales charge, or

(d) extends the circumstances that trigger payment of a deferred sales charge.

12(2) An insurer accepting a deposit to an individual variable insurance contract on or after June 1, 2023, that may be subject to a deferred sales charge if the insurer has the right under the terms of the individual variable insurance contract to remove deferred sales charge as a sales charge option and instead accept deposits under a different sales charge option.

12(3) An insurer accepting a deposit to an individual variable insurance contract on or after June 1, 2023 and applying a sales charge option to the deposit other than a deferred sales charge option, if the insurer and insured had agreed that a deferred sales charge would apply to the deposit, but the insurer has withdrawn the deferred sales charge option for future deposits, unless and before the insurer applies the new sales charge option,

(i) the insured receives written disclosure from the insurer reasonably designed to help the insured choose a suitable sales charge option, and which at a minimum includes,

(a) a list of sales charge options the insured may choose among,

(b) a description of how each applicable sales charge option works,

(c) the percentage amount of any initial sales charge under each applicable sales charge option,

(d) a description of the relevant management expense ratios, including,

(i) any different charges for different guarantee options,

(ii) what the management expense ratios include, and

(iii) how management expense ratios affect the insured's returns on their investments, and

(ii) either,

(a) the insured agrees to the new sales charge option applying to the deposit, or

(b) a reasonable time elapses, during which the insured does not notify the insurer of the insured's choice of sales charge option, after the insurer

(i) provides the required disclosure,

(ii) notifies the insured of the default sales charge option, and

(iii) notifies the insured of the time until that default sales charge option will apply.

12(4) An insurer accepting a deposit to an individual variable insurance contract on or after June 1, 2023, that may be subject to a deferred sales charge, unless the insured receives written disclosure from the insurer, before the insurer accepts the deposit, that is reasonably designed to help the insured understand the sales charge options available to them and whether making a deposit on a deferred sales charge basis is suitable for that insured.

4113 Coming into Force

~~41(4)~~13(1) This Rule will come into force on the later of the date that section 1 of Schedule 5 of the *Protecting the People of Ontario Act (Budget Measures), 2021* comes into force and 15 days after the Rule is approved by the Minister.