

COMPENSATION PRACTICE & QUALITY DEPARTMENT

REPLACED by PD#C16-2 June 8, 2009

PRACTICE DIRECTIVE # C16-2

TOPIC: Interim Third Party Business Processes
ISSUE DATE: December 14, 1998
(Amended May 8, 2009)

Purpose:

Outline the interim business processes for referring third party files to Legal Services.

Background:

Legal and Compensation Services staff are in the process of reviewing the business procedures on third party claims. A third party is a person, other than a worker or employer as defined by the *Workers' Compensation Act*, who caused or contributed to the worker's injury. Part of this review involved the study of all third party files referred to Legal Services. This study found that legal action was not pursued in a significant number of cases due to the nature of the case.

Once this review is completed, new business procedures will be developed to address third party referrals and to improve Board Officers ability to make timely decisions. In the interim, temporary business processes are in place for Board Officers to follow when adjudicating possible third party claims.

Assaults:

Only assault files where the assailant can be found responsible, and can pay a Court awarded judgement, will be pursued by Legal Services. It is often hard to prove responsibility for an assault where the event is largely accidental, or results from the actions of a mentally disabled person, or is a minor blow up between two people with no witnesses. Financial recovery is also unlikely where the assailant is a young child, on social assistance, receiving long term institutional care, in prison, or otherwise has little or no income. In some cases, the costs of litigation exceed the likely recovery.

A lawsuit may be pursued, however, in certain situations. For example, particular facts may warrant an action in order to draw attention to an issue. A lawsuit may also be pursued if a worker feels strongly that legal action should be taken. Legal Services will discuss with any injured worker the appropriateness of a lawsuit in their case.

Subject to the above exceptions, the Board generally has focused on the following examples of situations where lawsuits have proven to be unsuccessful or unwarranted:

- a. an assault resulting in less than \$2,000.00 wage loss;

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- b. an assault by an unknown person;
- c. an assault by an institutionalized patient;
- d. an assault by an elementary, junior high or high school student;
- e. an assault by a prison inmate;
- f. an assault by a psychiatric patient;
- g. an assault by a mentally-disabled patient in a half-way house, a care home or on an outing;
- h. assaults by robbers; and
- i. assaults by destitute persons.

Legal Services has established the following procedures to deal with the above cases.

1. Write to the worker using the *Legal Advisory Letter-Assault* form (D0006).
2. Proceed with the adjudication of the claim.
3. Refer to Legal Services only in those cases where:
 - the worker wants to discuss with a lawyer,
 - the worker wishes a lawsuit commenced, OR,
 - there is some aspect of the file specifically where consideration of a lawsuit is warranted.

Board Officers will no longer have to go through the lengthy process of sending out the legal action brochure, awaiting the completion of a third party election form and referring the file to Legal Services.

Animal Bites:

Legal Services will not pursue an animal bite case against a homeowner or animal owner where:

- a. the victim is a veterinary or a veterinary employee, or
- b. the file involves less than \$1,000.00 wage loss.

In each of these cases, Board officers are requested to follow the same procedures as outlined above for assaults, except that the *Legal Advisory Letter-Non-Assaults* form letter (D0005) is sent.

Occupiers Liability:

These cases are usually against the owner of a building or property. Legal Services will not pursue a lawsuit for an occupiers liability in cases where less than \$1,000.00 in wage loss occurs. The same procedures as described above should also be applied to these cases using the D0005 *Legal Advisory Letter-Non-Assaults* form.

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Federal Government Claims:

The Board is not subrogated to the rights of injured workers where those workers are:

- a. employees of the Government of Canada,
- b. employees of a Crown Corporation or Agency of the Government of Canada,
- c. Canadian Coast Guard employees,
- d. Members of the Armed Forces of Canada, or
- e. RCMP officers.

The rights of all these workers are subrogated to the Government of Canada. The Federal Government has its own election forms and pursues its own subrogated lawsuits. No referral to Legal Services is necessary.

Other Referrals to Legal Services

Referrals to Legal Services should continue for all cases involving Motor Vehicle Accidents, Manufacturer's Liability, and those cases to which the new procedures described above do not apply.