

THE TREATMENT OF EMPLOYEE BENEFITS IN THE COMPUTATION OF NO FAULT BENEFIT ENTITLEMENTS

Pursuant to sections 6 and 7, of the Statutory Accident Benefits Schedule- Accidents on or after November 1, 1996 ("SABS"), as a general rule, an insured's no fault benefit entitlements are based on:

- 80% of his or her net weekly pre accident income from employment, less
- 80% of his or her post accident employment income, to a maximum of \$400 per week.

Additionally, self employed persons may be entitled to 80% of losses incurred as a result of the accident.

In Crevier La-Marche and Mississqua Insurance (OIC A96-000865), the insured was a nurse who, in addition to her salary, received an employer paid employee benefits package. This benefits package included: a long-term disability plan; life insurance; extended health care; a dental plan; and pension contributions, at an employer cost of \$3,483.60 per annum. In her decision Arbitrator Rotter held that:

- pre Accident employment income included the employer cost of the benefits package, and
- employee benefit contributions by the employer subsequent to the accident date constituted post Accident earned income.

In Prouse and Non Marine Underwriters, Members Of Lloyd's (FSCO A98-000701), arbitrator Makepeace reaffirmed that employment income includes the employer cost of employee benefit premiums, notwithstanding the fact that employee benefits were neither:

- recorded as income on an insured's T-4 slip, or
- taxable as income in the hands of the employee.

Both Crevier La-Marche and Prouse dealt specifically with group or non statutory employee benefits, leading to uncertainty as to whether employment income included statutory employee benefits, specifically employer Canada Pension Plan ("CPP") contributions and Employment Insurance ("EI") premiums.

In the recent decision in Haywood and Pafco (FSCO- A99-000951), arbitrator Renahan clarified that gross income from employment included the employer cost of both statutory and non statutory employee benefits. In his decision he held that:

- employer CPP contributions and EI premiums, form part of the value that an insured receives in exchange for his or her services, and
- since pre accident employer paid employee benefits form part of gross income from employment, benefit premiums paid by an employer after the accident constitute post Accident earned income.

Pursuant to subsection 61(1) of the SABS, net weekly income

is determined as gross income from employment net of source deductions including EI premiums, CPP contributions and "income tax payable by the person under the Income Tax Act (Canada) and the Income Tax Act (Ontario) on the gross annual income from employment". Particularly since certain employee benefits, including: premiums under private health services plans; pension contributions; CPP contributions; and EI premiums, are not taxable, as illustrated by the following example, the impact of the above decisions on no fault benefit entitlements can be significant.

SABS Ref		Employment Income Only	Employment Income Plus Statutory & Non Statutory Benefits
	Employment Income	\$25,000	\$25,000
	Statutory Employee Benefits		
	CPP		\$753
	EI		\$893
	Non Statutory Employee Benefits		
	Drug, Dental & Extended Health		\$2,460
	Employer Pension Contributions		\$1,500
8(3)	Gross Income From Employment	\$25,000	\$30,306
61(1)	Source Deductions (1999 rates)		
	CPP	(\$753)	(\$753)
	EI	(\$638)	(\$638)
	Income Tax	(\$3,988)	(\$3,988)
	Total Source Deductions	(\$5,379)	(\$5,379)
61(1)	Net Annual Income	\$19,621	\$25,227
61(1)	Net Weekly Income	\$377.33	\$485.14
6(1)	Weekly Income Replacement Benefits Payable- 80% Of Net Weekly Income	\$301.86	\$388.11
	% Increase In No Fault Benefit Entitlements		29%

The above-noted article is neither a definitive analysis of the law nor a substitute for professional advice. Readers are cautioned against reliance on the information provided without first seeking detailed professional advice with respect to their or their client's unique situation.