



ENCON Group Inc.
Telephone 613-786-2000
Claims Facsimile 613-238-7180
Toll Free 800-267-6684
www.encon.ca

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Claims Process

What to Expect When You Report a Claim to ENCON

This document provides an overview of the claims and litigation process.

ENCON's Claims Commitment

The value of your insurance policy can be measured by the ability of the ENCON claims team to respond promptly and effectively to claims. To obtain the full benefit of our claims service, it is important that you understand the claims process and what is expected of you throughout the life of a claim.

While this publication provides you with a basic understanding of the claims process, it is not an exhaustive review. All members of the ENCON claims team are available to answer your questions and guide you through the claims process.

Buying insurance is easy. The difficulty is having a claim made against you. That's when you need the assistance and experience that the ENCON claims team can provide.

It is important to appreciate that on average, it can take four to five years for a lawsuit to be resolved. Often the life of the claim is prolonged because the parties are unable to look at the claim objectively. We believe that it is essential for you to gain a strong understanding of the facts and the exposure you face in a claim.

We have written this document to help you, our insureds, understand the claims and litigation process—what happens when you report a claim to us and what to expect as our team works with you in your defence.

The ENCON Claims Team Members and Their Roles

The ENCON Claims Analyst

The claims analyst is a trained insurance specialist with experience in claims management. The role of the claims analyst is to advise you of the coverage that your insurance policy provides for a particular claim and to answer any questions you may have about coverage or your role in the defence of a claim. The claims analyst will also evaluate the claim and determine the best method of bringing it to a final resolution. The claims analyst will direct any investigation or litigation necessary for the defence of the claim. As part of that process the claims analyst will appoint adjusters, experts and/or lawyers, as necessary, for the defence team.

Your Role

We ask you to participate in the investigation and defence of any claim made against you. This means you must advise the ENCON claims analyst and the adjuster and/or lawyer of any information you have about the claim. Once you are made aware that a claim *will be or has been made against you*, it is important that you gather all documents related to that claim in order to be able to provide such documentation to the adjuster or lawyer. **It is your obligation to preserve all documents in your possession or control that could be potentially relevant to the claim (i.e., minutes of meetings, correspondence, memoranda, etc.).** This obligation extends to electronic documents.

You will be asked to meet with the members of the defence team so that they can prepare your defence. If the claim is made in the form of a legal action, you must attend examinations for discovery, any mediation, pre-trial settlement conference or trial, as requested.

Most of our professional liability policies require that we first obtain your consent before settling a claim. However, that consent cannot be unreasonably withheld if we have been presented with a reasonable offer to settle.

If your policy reflects that you have purchased coverage subject to a deductible, you must pay that amount to ENCON when payment is requested.

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A Tip About Deductibles

Depending on the size of the deductible, some insureds treat it as a contingent liability and set aside funds well before the payment may be required. In some cases, you may have purchased a policy where the deductible is applicable to defence costs and in other cases it applies only to any settlement made or judgment awarded against you. Either way, it forms part of your contractual commitment to ENCON's insurers.

Service Providers

We use the term "service providers" to refer to our panel of adjusters and lawyers who specialize in the defence of claims made under ENCON's programs. These professionals work with you and the claims analyst as part of the defence team. You will be required to interact with the service providers at various times throughout the life of your claim. It is important to remember that these service providers are only involved in the defence of your claim. They are not involved in any aspects of coverage. If you have any questions about the coverage provided by your policy, please contact a claims analyst.

The Claims Process

Once the claims analyst has confirmed that your insurance policy provides coverage for the claim that you have reported, the claims analyst will appoint the defence team to act on your behalf.

If the claim is not presented in the form of a lawsuit, the claims analyst may appoint one of our adjusters to investigate and work with you to bring the claim to final resolution. If the claim is made in the form of a legal proceeding, counsel will be appointed as a member of the defence team.

You will play a role in developing the strategy for resolution of your claim. As the claim progresses, the lawyer or adjuster assigned to your file will develop a proposed resolution strategy which will be included in their reports. There will be opportunity to discuss this strategy and to provide feedback as the claim develops.

The following is an overview of the major stages of a legal proceeding. If you have any questions about this process during your defence, the lawyer appointed to defend you will be pleased to be of assistance. You can also contact your designated claims analyst.

Examinations for Discovery/Interrogatories: Each party to a lawsuit is generally entitled to ask each other questions under oath. Lawyers will be asking the questions. Anything you say is recorded and can later be introduced as evidence as to the content.

Sometimes, the examinations are conducted in writing rather than orally. These are generally known as Interrogatories.

Interlocutory Motions: In some cases, it may be necessary for your defence counsel to file a motion during the course of the litigation for the purpose of narrowing the legal issues or possibly in an attempt to have the claim dismissed without proceeding to trial. This proceeding takes place in a courtroom in the presence of a judge. Evidence is usually submitted through sworn affidavits. In most cases, you will not be required to attend the hearing of the motion but it may be necessary for you to swear an affidavit in support of the motion. Counsel will discuss this process with you well in advance of the motion.

Pre-trial Settlement Conference: This is a forum mandated by the legal system that requires the parties to attend before a judge in an attempt to see if the claim can be settled. Your claims analyst may attend this proceeding with defence counsel; you will also be asked to attend.

Mediation: This can be either court-ordered, legislated (and, therefore, mandatory) or voluntary. It is a very common and extremely effective method of dispute resolution where a neutral third party facilitates settlement of a claim. Generally, your claims analyst will attend mediation on your behalf with defence counsel. The claims analyst may also suggest that you attend mediation.

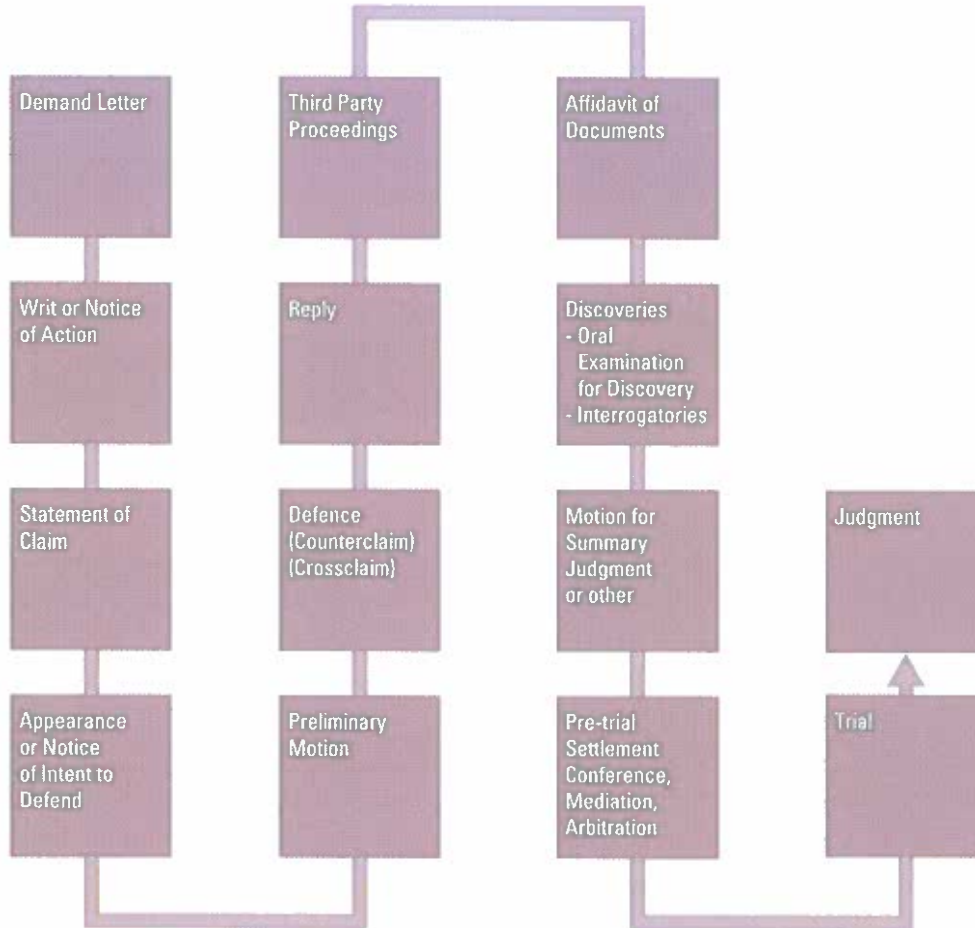
Trial: A trial is a formal proceeding that takes place in a courtroom in the presence of a judge. The lawyers for each party present documentary and oral evidence through the sworn testimony of witnesses. You will, in most cases, be required to give oral evidence and be subjected to cross-examination on that evidence by opposing counsel if your claim proceeds to trial. There may be a right of appeal from the decision of a judge.

Arbitration: Arbitration provides an alternative to trial. It is not part of the judicial process, rather it is a process that the parties choose to have their dispute decided for them outside of the traditional legal process. Generally, the parties choose the arbitrators. Arbitration is less formal than a trial. There may be a single arbitrator or a panel of arbitrators hearing and deciding the case. Usually the arbitrators have some experience with the subject matter of the dispute and that is why the parties choose them. The lawyers for the parties present documentary and oral evidence to

the arbitrator(s) through the sworn testimony of witnesses. The parties must agree to be bound by the decision and there is usually no right of appeal from an arbitrator's decision.

We understand that navigating the claim process can be difficult. Rest assured that our trained claims professionals are here to help you every step of the way. If you have any questions concerning a claim or a claim situation, please contact the Claims department for confidential advice.

Stages in the Litigation Process*



**This is an outline of the major stages of a legal proceeding that are required by provincial legislation. In some provinces, mediation is mandatory, whereas in others, it is voluntary.*

Mediation and arbitration are resolution processes that may be alternatives to trial in order to resolve disputes.



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To view some typical claims examples, please visit our website – www.encon.ca/claimsexamples