



# Travel Insurance – Will You Be Defenceless To Enforce Your Right To Coverage?

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**B**efore purchasing a travel insurance policy, determine whether the insurance provider is asking you to waive your future right to defend a subsequent claim.

Travel Insurance policies are legally binding contracts! They are drafted by one party and may be terribly lopsided, leaving the consumer vulnerable to a subsequent unfair claim denial. I am an insurance broker and in no way an expert with respect to contracts nor contract law. However, I have had considerable experience in examining the flow of documentation where travel insurance claims have been denied into the hundreds of thousands of dollars.

**Here Is The Key:** Certain, but not all insurance providers are offering contracts including but not limited to, applications requiring medical questionnaires, wherein the policy language will go something like this: At the time of claim, you've agreed that if you were not eligible for coverage (at the price paid) or due to inaccurate or incomplete information on the original application or medical questionnaire, you're okay with the insurer voiding the contract, at their sole discretion. The presumption is that any inaccuracy is 100% the fault of their customers. So what happens if it isn't? Are you comfortable with waving your rights to contest a claim denied in advance based on the insurer's lack of clarity?

The smorgasbord of exits potentially provided by the medical record, and the insurer's free interpretation of entries, is a concern. The major one is clarifying the advantage insurers have in fitting medical notation from records into their undefined or vaguely defined interpretation of terms. Equally worrisome is that exclusionary clauses in the fine print of policies or undefined initial screen questions, become miraculously well defined after a claim and the medical records are in hand.

Recently, I submitted a 26-page Submission entitled *Travel Insurance: The Urgent Need For Improved Regulation* to the Canadian Council of Insurance Regulators (CCIR), an inter-jurisdictional association of insurance regulators. In this brief, I advocated for reform and an enlightened response from regulators, clients, brokers, governments as well as the insurers themselves to reverse trends detailed in this document where clients may be arbitrarily exposed to unfair voiding of policies. Below are excerpts from that submission:

## **“Travel Insurance: The Urgent Need For Improved Regulation – A Memorandum To The Canadian Council Of Insurance Regulations**

### **1. Executive Summary**

As presently constituted, practices in segments of medical travel insurance are systematically unfair to clients, and lead to financial hardship – in some cases catastrophe – for thousands of Canadians annually. The principal reason for unfairness lies in the requirement that particular applicants for such insurance are required to provide answers to questions on a medical form, which may be frequently vague. In addition, decisions by insurance companies on the validity of a claim by travellers can be based on non-specific, ill-defined or even unspecified criteria.

Based on Cappon's experience, misinformation provided by applicants on medical forms for travel only rarely relates to deliberate prevarication by clients. Instead, the misrepresentation, eligibility and physician consultation clauses in travel insurance contracts provide a mechanism that permits insurers retroactively to dismiss policies as null and void.

Medical travel insurance provisions in Canada are therefore systemically and inherently problematic, regardless of the character or competence of clients and their doctors. The present memorandum analyzes the issue in some detail: it explains why there is an urgent need for improved regulation of medical travel insurance. Through its recommendations, the memorandum shows how regulation may be enhanced, such that the rate of denial is reduced dramatically – without unnecessarily deep intrusion by regulators into the industry.

The principal recommendation is that the requirement of full information and disclosure must apply equally to insurers and their policies - and not only to applicants, who are then left at the whim of insurers whose criteria for claim approval may not be transparent. This memorandum takes the form of a submission to the Canadian Council of Insurance Regulators, together with an admonition that the CCIR review its findings and take the appropriate action in light of its recommendations...

#### 4. Background

Millions of Canadians travel abroad annually. In many cases, the absence of adequate travel insurance for medical issues would render such mobility prohibitively risky. In an article entitled *Just How Many Travel Insurance Claims Are Denied?* (1) Daw acknowledges that the primary reason for denial is invocation by insurers of their right to retroactively declare policies null and void, their contention that policy holders were ineligible or misrepresented at time of application. One company estimated that 55% of claims were denied on this basis. Moreover Daw's article establishes that two major insurers have three main reasons for denials. Among these, the foremost is "the customer not being eligible for the coverage (at the price paid) due to an inaccurate or incomplete information on the application or medical questionnaire." Cappon has written (2) that this "one strike and you're out travel insurance clause" obliges him to counsel snowbirds in particular on their extreme vulnerability to being denied coverage post facto.

It is a singular and troubling fact that most insurers neither provide nor wish to collect data on the rate of such denials. Post facto denial of claims follow a pattern: clients are refused their right to coverage as having been ineligible for insurance at the price paid; or due to inaccurate responses on the application. Denial of claims is associated with three types of policy structures: medical questionnaire; non-medical questionnaire protocols; change of health clause.

The Honourable Robert Wells, Q.C., in his *Second Independent Review, Ombudservice for life and Health Insurance Canada* of the OLHI (3) explains findings that cast light on issues of fairness in medical travel insurance:

- He notes that focus of adjudicators should be on fairness between the complainant and the insurer
- He notes that the underwriting process itself may be inherently flawed as described: "If ... there is a claim, the insurer closely examines all of the circumstances to determine whether or not the claimant's factual disclosures at the time of the application were correct. In medical claims, the examination focuses very much on pre-existing health issues. It is easy for an applicant unfamiliar with travel insurance to miss the significance of some health fact in his or her past, which could be called into question once a claim has been made. Even when an applicant has consulted with his family doctor and been assured that all is well; there may have been latent problems which were not significant to either the doctor or the patient. When such claims are being analyzed by the insurer, it usually engages the services of a medical specialist whose expertise may place the opinions of the family doctor, and thus the complainant, at a disadvantage. That can happen even though the claimant has acted in good faith throughout".

As if all the factors and processes noted in this document were not sufficiently conducive to arbitrary voiding of policies at time of claim, some insurers have taken the further draconian step of obliging senior applicants to complete their medical questionnaire in an informational vacuum. Utilising a pre-scripted telephone interview, a customer service representative from the insurer conducts a 20-minute interview with the applicant. However, the applicant has no prior access to the questionnaire and therefore is also barred from consulting his physician.

The questions may span a lifetime of medical history. Augmenting the likelihood of inaccuracy, the applicant may be refused a copy of the completed questionnaire –even at the time of receipt of her policy certificate. Further aggravating this practice, the policy may include a "change of health clause"; in the instance of a multi-trip plan covering a 365 policy term, it is demanded that the applicant report ill-defined medical conditions for which they have consulted a doctor in the interim. Failure to do so leads to voiding of the policy by the insurer...

#### 5. Current Status

...There is a disincentive against transparency to otherwise reputable insurance providers who would

normally supply requisite information to clients at time of sale. But these companies would expect to pay out higher claims, which in turn necessitate higher premiums charged. Whereas this puts them at a distinct competitive disadvantage, their competitors, operating with inferior ethical standards, are able to offer lower premiums and gain increased market share – while continuing to deny more claims.

In this contextual imbalance, insurers will not be motivated to provide information. Claims may be denied on frivolous criteria which the applicant and their doctor may have deemed clinically insignificant or based on minor pre-existing conditions.”

## Primary Recommendations:

**1.a) - Reciprocal Disclosure Clause:** Misrepresentation and non-disclosure clauses could be made reciprocal, so that the onus would fall upon the insurer at time of application to show transparency in the medical questionnaire and in wording of the policy. Questions and policy interpretations must be sufficiently clear that they elicit accurate responses.

### 1.b) - Causality:

In addition to the above, the misrepresentation clause could be invoked only when a substantial causal connection exists between the faulty information on application and the medical expenses incurred...

## 2 - Mandate collection and publishing of data on denials

We have observed that insurers prefer not to collect data on the prevalence of claim denials based on the issues raised in this monograph. The reasons are: not being explicitly aware absolves them of an ethical responsibility to alter practice; altering practice towards fair and ethical approaches may not be seen as advantages for unethical firms; public relations problems that may ensue.

CCIR is advised to mandate collection and publication of such data, including stratification of these data by demographic group and region, as well as by insurance firm.

## 3 - More explicit warning labels on medical forms

Insurers should be urged to provide more conspicuous warnings of the consequences of incorrect information. In particular, applicants must be clearly informed that any error, even if quite unrelated to the cause of medical problems while travelling, may be used by the firm to declare the policy null and void.

### Excerpt from CCIR's response:

“...Thank you for your thoughtful submission on travel insurance... This has been added to the list of possible strategic initiatives that will be considered in the next few months... your paper will provide valuable background for the working committee...” — Carole Rogers, CCIR chair.

The CCIR's intention is to work on their triennial strategic initiative this summer culminating in their November 2014 report.

**Final Word To Readers:** I suggest you measure the “safety” of travel insurance policies by applying my “Travel Insurance Safety Check” available either on our website at [www.firstrateinsurance.com](http://www.firstrateinsurance.com) or available in my previous *Canadian Moneysaver's* article dated February 2014, entitled *Travel Insurance Claim Denials: The stats are out of the bag!*

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### References

(1) James Daw – “Just How many travel insurance claims are denied?” – Travel Insurance File, October 31st, 2013 <http://travelinsurancefile.com/headlines/just-how-many-travel-insurance-claims-are-denied/>

(2) Bruce H. Cappon – “One Strike And You're Out Travel Insurance Clause” – *Canadian MoneySaver*, March/April, 2012. [http://www.firstrateinsurance.com/global/pdf/One%20Strike%20And%20You%20re%20Out\\_Cappon.pdf](http://www.firstrateinsurance.com/global/pdf/One%20Strike%20And%20You%20re%20Out_Cappon.pdf)

(3) Robert Wells, Q.C. - “Second Independent Review” Ombudservice for Life and Health Insurance. [http://www.olhi.ca/whats\\_new.html](http://www.olhi.ca/whats_new.html)”.

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