



# Insurance Bulletin

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## AUTOMOBILE INSURANCE REFORM IN ONTARIO: FIFTH TIME THE CHARM?

Stephen R. Moore

On Monday, the provincial government announced some 41 proposed changes to the automobile tort and accident benefits regime in Ontario. These changes amount to either the fifth version of tort and accident benefits reform in Ontario since 1990 or the second tweaking of the Bill 59 regime, which came into force in the Fall of 1996. It is difficult to provide a comprehensive overview of the proposed changes as no draft legislation or regulations were included in the Finance Minister's briefing package. Accordingly, the following is a brief overview of the most important of the proposed changes. We will need to follow it up with a more detailed analysis once the industry consultations are completed and we have had an opportunity to review the proposed legislation.

Most of the proposed changes affect the Statutory Accident Benefits ("SABS") Regime but there are some proposed changes that are relevant to tort compensation. Additionally, several other proposed changes will affect the methodology that insurers can use for setting rates, the deductibles for direction compensation and a few other areas as well.

The government posted two documents on their website yesterday one entitled "[Proposed New Options for Drivers Buying Auto Insurance](#)" and the other entitled "[Ontario's Proposed Auto Insurance Reforms](#)" which outline all of the proposed changes.

It is anticipated that these reforms will not take effect until next summer.

### Tort Reform

The proposed tort reform is actually quite limited. First, the \$15,000.00 deductibles that applies to claims for loss of care, guidance and companionship under the *Family Law Act* will be eliminated for fatalities. It is unclear if the \$30,000.00 deductible that applies to claims for general damages would also be eliminated for an injured person who subsequently succumbs to those injuries.

Consumers will have the option of buying down the current deductibles of \$30,000.00 for general damages and \$15,000.00 for *Family Law Act* claims to \$20,000.00 and \$10,000.00 respectively. It is unclear who would be entitled to the benefit of these optional coverages once they are purchased by the named insured. I suspect that few consumers will actually choose to purchase this optional coverage.

### Statutory Accident Benefit Reform

The bulk of the reforms proposed by the government would effect the accident benefits.

At the present time for non-catastrophic injuries the maximum coverage for medical/rehabilitation benefits is \$100,000.00 and for attendant care is \$72,000.00. The proposed basic coverage will reduce the medical/rehabilitation coverage to \$50,000.00 and the attendant care to \$36,000.00. It appears that consumers can choose to buy optional coverage that will increase the medical/rehabilitation benefits for



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He has authored a number of papers dealing with a variety of insurance and personal injury issues. Over the last twelve years he has lectured and written extensively on Bills 59 and 198 (Ontario's automobile tort reform legislation) including authoring chapter 5A in the Oatley-McLeish Guide to Motor Vehicle Litigation. Over the past two years he has been one of the province's leading commentators on Bill 18 which re-wrote the vicarious liability rules for the owners of leased and rented vehicles.

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non-catastrophic injuries to \$100,000.00 and the attendant care coverage to \$72,000.00. These new amounts include the costs of assessments.

I find the announcement with respect to the proposed benefits for catastrophic injuries confusing. Currently, a catastrophically impaired individual is entitled to \$1 million of medical/rehabilitation benefits and \$1 million in attendant care expenses. It appears that someone who suffers a catastrophic impairment now may only be entitled to a combined \$1 million for both medical/rehabilitation benefits and attendant care. The explanation of these amounts is rather confusing and therefore it is still unclear to me whether the total medical/rehabilitation and attendant care benefits under the proposed plan are actually half of what is currently available. This amount also includes the cost of assessments.

The definition of "catastrophic impairment" will be expanded to include single limb amputees. It is also being proposed that the definition of catastrophic impairment may be redefined after consultation with the medical community.

It appears that the government will attempt to limit a injured person's entitlement to medical/rehabilitation benefits (including assessments) to \$3,500.00 for some unspecified interim period after an accident.

The current caregiver benefit and home maintenance expense coverage will only be available

for catastrophically impaired individuals. Unless changes are made to the definition of catastrophic impairment in many cases the entitlement to such benefits may not be made until more than 2 years following the accident. Consumers will be able to purchase optional coverage for non-catastrophic injuries which is similar to that which is currently mandatory.

The basic income replacement benefit continues to be \$400.00 but now is capped at 70% of gross income instead of 80% of net income. This change should make it significantly easier to calculate the entitlement. Consumers can purchase optional coverage which increases the maximum benefit to \$1,000.00.

Consumers can now purchase an optional death benefit which increases coverage from \$25,000.00 to \$50,000.00 for eligible spouses and to \$20,000.00 for each dependent. It will also increase the funeral expense entitlement from \$6,000.00 to \$8,000.00.

There are a number of other changes to the rules contained in the SABS Schedule which I will not detail. However, a couple merit special mention. Insureds will no longer be able to compel their insurers to pay for a medical/legal report to respond to an insurer's examination. The cost of insurer assessments will be capped at \$2,000.00. The cost of accounting reports will also likely be capped and the cost of future care reports would not be recoverable under the Schedule at all.

The interest on overdue payments will be reduced from 2% to 1% per month compounded.

Finally, it appears that the government may eliminate no-fault benefit entitlement for passengers on public transit services who are injured in incidents that do not actually involve collisions.

#### Automobile Insurance Rates

The government intends to prohibit what it refers to as “objectionable quoting practices” including the use of credit scoring. At the current time the Financial Services Commission of Ontario will not approve a rate plan which uses credit scoring to determine rates. It appears that credit scoring may now be banned for unregulated rates such as those which apply to fleets. There is no suggestion in the two documents posted yesterday that credit scoring will be prohibited in other lines of business such as property insurance.

No element of a risk classification system will be permitted to use past claims where the driver was 25% or less at-fault for the claim.

#### Concluding Comments

There are a number of other proposed reforms in the two papers. Several of them will require further consultation with a number of groups before their final form takes shape.

Until we see the final form of these reforms it is impossible to provide much insight on how they will work. It appears that most of the reforms really amount to tinkering with the SABS Schedule. What impact this tinkering will have on the cost of insurance in this province is unclear. The changes to the tort reform package currently in place are very minor and I would not expect them to have much impact on tort damage awards. However, to the extent that the SABS are being pared back, those costs will be shifted to the tort side of the ledger. Again, it is unclear how significant this transfer of costs from the SABS to tort will be.

We look forward to updating you on these proposed reforms as more information becomes available. ■

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