

AUTO INSURANCE REFORM MORE CHANGES ON THE HORIZON

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On November 2nd, Ontario Liberal Leader Dalton McGuinty presented “Ontario’s Proposed Auto Insurance Reforms” and “Proposed New Options for Drivers Buying Auto Insurance”. These proposals came on the heels of a report by the Financial Services Commission of Ontario (FSCO) in March 2009, “Report on the Five Year Review of Automobile Insurance” (1), available on the CIAA website at www.ciaa-adjusters.ca. The FSCO report addressed all areas of auto insurance; however the main thrust related to accident benefits, trying to stabilize rates. What (or who) has brought us to this point again that change is thought to be needed? Has it been the insurance industry, the consumer, the media? The answer is ... all of them. The industry is concerned about skyrocketing claims costs and reduced profitability; the consumer became vocal about increasing premiums; and the media focused its attention on insurance due to public outcry.

In preparing for this article, I reflected on the changes to Ontario auto insurance since I began adjusting claims in mid-1980. In the 1980’s, Ontario had limited no-fault benefits and was a full tort system. In 1990, OMPP was introduced to stabilize premiums, it drastically increased the level of accident benefits, and became a full no-fault regime with an injury threshold for BI claims. In 1994, Bill 164 was acclaimed which introduced more accident benefits, amended the wording of the tort threshold, and implemented tort injury deductibles. Bill 59 was approved in 1996, reducing benefits but increased the amount of forms to complete. The last change in 2003 with Bill 198 did not change the level of benefits but changed administration and procedure.

The changes since 1990 have done nothing to stabilize rates - in fact, has had the opposite effect. When benefits are increased (which results in higher payouts and expenses), premiums will increase to cover those costs. The changes also did not stop the overwhelming abuse by those individuals and firms who realized they could take advantage and bombarded adjusters with so much paper they were completely buried.

The two proposals, both of which can be found on the Government’s website at www.news.ontario.ca, have a planned implementation date the Summer of 2010. The insurance industry is divided as to whether or not rate stabilization can be achieved. Some industry experts hailed the proposals as “about time” legislation for the consumer, while others highly

criticized the changes as a detriment to consumers that would reduce the level of benefits available and cause undue financial hardship for those who do not have a tort action.

“Ontario’s Proposed Auto Insurance Reforms” (3), contains 17 Measures to Protect Consumers, some of which include:

- ❖ prohibiting objectionable quoting practices including the use of credit scoring;
- ❖ expanding the definition of “catastrophic impairment” to include single-limb amputees;
- ❖ amending Regulation 283/95 to make it more difficult for insurers to deflect claims and ensure claimants receive accident benefits while the issue of liability is resolved;
- ❖ the need for insurance claims departments to better focus on the needs of claimants with serious injuries, specifically training those adjusters;
- ❖ the government would consider amendments to reflect the unique status of public transit services operated by municipal authorities by excluding injuries from no-fault where no collision has occurred.

“Proposed New Options for Drivers Buying Auto Insurance” (4), delves into the actual proposed changes as follows:

ACCIDENT BENEFITS – Figure 1:

COVERAGE	CURRENT COVERAGE	PROPOSED BASIC COVERAGE	PROPOSED CONSUMER CHOICES
Medical/Rehabilitation (non-catastrophic)	<ul style="list-style-type: none"> • \$100,000 	<ul style="list-style-type: none"> • \$50,000 – includes assessments • \$3,500 for minor injuries including assessments 	<ul style="list-style-type: none"> • \$100,000 • \$1 million (includes attendant care)
Medical/Rehabilitation (catastrophic)	<ul style="list-style-type: none"> • \$1 million 	<ul style="list-style-type: none"> • \$1 million includes assessments 	<ul style="list-style-type: none"> • \$1 million – includes assessments
Attendant Care	<ul style="list-style-type: none"> • \$72,000 (2 years @ \$3,000 per month) 	<ul style="list-style-type: none"> • \$36,000 	<ul style="list-style-type: none"> • \$72,000
Attendant Care (catastrophic)	<ul style="list-style-type: none"> • \$1 million 	<ul style="list-style-type: none"> • \$1 million 	<ul style="list-style-type: none"> • Included under the med/rehab option
Housekeeping & Home Maintenance	<ul style="list-style-type: none"> • \$100 per week 	<ul style="list-style-type: none"> • Benefits available for 	<ul style="list-style-type: none"> • \$100 per week

		catastrophic injury only	
Caregiver Benefits	<ul style="list-style-type: none"> \$250 per week plus \$50 per dependant 	<ul style="list-style-type: none"> Benefits available for catastrophic injury only 	<ul style="list-style-type: none"> Up to \$250 per week plus \$50 per dependant
Income Replacement Benefits	<ul style="list-style-type: none"> Maximum \$400 per week or 80% of net weekly income 	<ul style="list-style-type: none"> Maximum \$400 per week or 70% of gross weekly income 	<ul style="list-style-type: none"> Maximum \$1,000 per week or 70% of gross weekly income
Death & Funeral	<ul style="list-style-type: none"> \$20,000 eligible spouse; \$10,000 each dependant, \$6,000 funeral expenses 	<ul style="list-style-type: none"> \$25,000 eligible spouse; \$10,000 each dependant; \$6,000 funeral expenses 	<ul style="list-style-type: none"> \$50,000 eligible spouse; \$20,000 each dependant; \$8,000 funeral expenses
Cost of Examinations/ Assessments	<ul style="list-style-type: none"> \$63.72 to complete forms Rebuttal assessments to address refusals or stoppage (\$450, \$775, \$900) 	<ul style="list-style-type: none"> \$2,000 per assessment by claimant \$200 for any assessment to complete a form by claimant \$2,000 max for s42 Exams Rebuttal assessments eliminated 	<ul style="list-style-type: none"> No options

Figure 1

THIRD PARTY LIABILITY – Figure 2:

COVERAGE	CURRENT COVERAGE	PROPOSED BASIC COVERAGE	PROPOSED CONSUMER CHOICES
Third-Party Liability	<ul style="list-style-type: none"> \$200,000 (mandatory minimum) \$1 million 	<ul style="list-style-type: none"> \$200,000 	<ul style="list-style-type: none"> \$500,000 \$1 million \$2 million
Compensation Through the Courts	<ul style="list-style-type: none"> \$30,000 deductible not-at-fault victims \$15,000 deductible FLA 	<ul style="list-style-type: none"> \$30,000 deductible not-at-fault victims \$15,000 deductible FLA 	<p>REDUCE TO:</p> <ul style="list-style-type: none"> \$20,000 deductible not-at-fault victims \$10,000

			deductible FLA
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Figure 2

What the proposed changes do not address is frequency, severity, and overall expenses. As accident benefits are reduced, capped or removed completely, those claims will be pushed to the minor bodily injury claim, increasing BI costs. Rate stability is not achieved by robbing from Peter to pay Paul.

FIRST PARTY DIRECT COMPENSATION PROPERTY DAMAGE – Figure 3:

COVERAGE	CURRENT COVERAGE	PROPOSED BASIC COVERAGE	PROPOSED CONSUMER CHOICES
Direct Compensation (not-at-fault)	Deductibles: <ul style="list-style-type: none"> • \$0 • \$300 	Deductible: <ul style="list-style-type: none"> • \$500 	Deductibles: <ul style="list-style-type: none"> • \$0 • \$300

Figure 3

FSCO reports profitability for the P&C sector has not been an issue, although there has been a steady decline commencing in 2008, resulting in premium increases. Loss costs have increase exponentially; however premium increases have not kept pace with the rise in claim costs. The Government believes rates will stabilize for the consumer, and allow the P&C industry to recover and maintain its profitability. Ontario will continue to provide the most generous, and most complex, automobile insurance benefits in Canada. However, we must be cognizant that, if changes are made time and time again, and the desired results are not achieved, we need to look at alternatives that take us away completely from “band-aid” solutions.

What does this mean for the independent adjuster? FSCO stated there is a need for proper training of adjusters handling serious injury claims. But training doesn’t stop at the accident benefits level – it must include the bodily injury adjuster. Training for the BI adjuster has, for the most part, faded away, as one simply needs to obtain a copy of the AB file to either make a determination of whether to defend based upon the threshold definition, or to negotiate a settlement. However, with these proposals, the BI adjuster will be faced with more issues that will have a direct impact on investigation, determining quantum, and whether or not to defend or settle. The BI adjuster will need just as much training and assistance as an AB adjuster.

CIAA takes education most seriously, and strives to provide seminars that are timely and will assist adjusters in their day-to-day handling of claims. CIAA Ontario will address this issue

and endeavour to provide our members with the training needed to not only meet FSCO's recommendations, but to put CIIA members at the forefront of the industry.

So now, we wait ... again ...

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- (1) Financial Services Commission of Ontario, "Report of the Five Year Review of Automobile Insurance", March 31, 2009, Toronto ON
 - (2) Incisive Media Seminars, "Litigating Motor Vehicle Accident Claims – Gearing Up for Regime Reform", September 30 and October 1, 2009, Toronto ON
 - (3) Ministry of Finance, Government of Ontario, "Ontario's Proposed Auto Insurance Reforms", November 2, 2009, Toronto ON
 - (4) Ministry of finance, Government of Ontario, "Proposed New Options for Drivers Buying Auto Insurance", November 2, 2009, Toronto ON