



# Accident Benefit REPORTER

## Auto Insurance Changes

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In December 2002, the Ontario Government passed *Bill 198*, the legislation that modifies automobile insurance legislation in the province. Draft regulations for *Bill 198* were released in late February 2003. This issue of the Accident Benefit Reporter provides comment on some of the important changes to auto insurance law that will be of interest to Health Care Professionals. Full text of the legislation, draft regulations and the accompanying charts can be found on our web site [www.thomsonrogers.com](http://www.thomsonrogers.com) under the "What's New" button.

Thomson, Rogers was invited to make oral submissions to the Government concerning some of these changes on March 4th, 2003. Additionally, a written submission was prepared and submitted on March 14th, 2003. Our written submission is available on our web site.

The final version of *Bill 198* and its regulations is expected to become law in the first half of this year.

Thomson, Rogers is currently working with Health Care Professionals and local Brain Injury Associations across the province to arrange a series of workshops and conferences designed to inform interested parties about the auto insurance changes. A list of currently scheduled events is included in this newsletter. We also suggest that you monitor our web site for further information.

## Statutory Accident Benefit Schedule (SABS) Changes

### Delay of Treatment

A significant concern regarding the new auto insurance regime is that seriously injured motor vehicle accident victims are likely to experience delays of necessary treatment. The following comments highlight some areas of concern for Health Care Professionals in the draft regulations under *Bill 198*:

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## A. Treatment Plans

- The Treatment Plan form (O.C.F. 18) has expanded from three to six pages with significantly more coding requirements.
- There can only be one comprehensive Treatment Plan from a single healthcare facility in any 30-day period within six months of the accident; and only one plan from a single healthcare facility in any 60-day period thereafter. (Section 38 (2.3))
- Practically speaking, insurers may take as long as they wish to approve Treatment Plans (including Treatment Plans for Assessment Expenses), since there is no sanction for failing to deal with them in a timely fashion. (S.38(8.3))
- Victims who suffer WAD I or WAD II (Whiplash Related Disorders) together with other, more serious injuries, may have treatment for the more serious injuries delayed, while proceeding through the PAF protocols for treatment (Pre-Approved Framework, see below). (S.38(2.1))



*David MacDonald*  
Partner

## B. Seven Day Notice Requirement

- Accident victims must provide notice of the accident to their insurer within **seven days** of the accident. (Section 32 (1))
- Where notice is delayed, the insurer can delay approval of initial treatment, attendant care benefits, income replacement benefits, and funeral expenses and visitor expenses for up to 45 days from the date when the application for benefits is submitted. (Section 32 (7))

## C. Assessment Plans

- Insurers shall pay reasonable fees charged for assessment expenses (ie required for completing a disability certificate, Form 1, Treatment Plan, or CAT application).
- Before assessing the patient to prepare a Treatment Plan, the assessing practitioner must submit an Assessment Plan (Form O.C.F. 22) to the insurer. The insurer has two business days to review the Assessment Plan and respond if assessment costs are \$180.00 or less, and five days if the assessment cost is more than \$180.00. (Section 24 (1.3))
- In order to receive payment for assessments completed before insurer approval, the assessing practitioner must demonstrate that the assessment was done because there was “an immediate risk of harm to the insured or a person in the insured’s care”. (Section 24 (1.2) (a) (i))

## Treatment of Modest Injuries

- Victims with WAD I or WAD II impairments will receive treatment under a Pre-Approved Framework (PAF). Funding available for the PAF treatment will be between \$1,200.00 and \$1,500.00, depending on whether a WAD I or WAD II impairment is being treated and whether additional treatment is required for a separate, non-WAD impairment. All treatment will take place within four to six weeks of the accident.
- There will be no DACS or Insurer Examinations while being treated under the PAF. There may only be three assessments without pre-approval; each costing \$180.00 or less and each must be completed by a different health care professional. (Section 24 (1.1) (ii) (A) and (B))



# Designated Assessment Centre Assessments (DACS)

## A. Assessment Plans For Seriously Injured Accident Victims

- Expenses incurred for an examination or assessment conducted without an insurer's approval, are not payable, unless a DAC finds them necessary and reasonable. (Under new Section 24 (1.1))
- Assessments costing more than \$180.00 must be approved or denied within five business days (Section 24 (1.3)). Upon denial, the insurer has an additional seven days to notify the DAC, if the Assessment Plan is not submitted with a Treatment Plan. (Section 30 (7))
- If an insured fails to attend a DAC, no benefit is payable until or unless the insured does attend (Section 42 (8) (a) and (b)). The DAC must begin the assessment within two weeks after receiving the request. (Section 43 (4.1))
- If the DAC requests additional information from the insurer, the DAC centre must deliver its report within seven days of receiving the further information from the insurer. (Section 43 (6.1))
- If a Health Care Professional submits an Assessment Plan with a Treatment Plan, then the insurer has 14 days to give notice approving or denying some or all goods and services contemplated by the Treatment Plan. (Section 38 (8.1))



Leonard Kunka  
Partner

## B. DACS and The PAF

- DACS will not have any role in relation to the Pre-Approved Framework (PAF) for clients who have sustained WAD I or WAD II injuries. However, DAC's will be responsible for determining whether treatment recommendations are reasonable and necessary for victims who continue to suffer symptoms beyond the 4-6 week PAF framework.

## C. DACS and Insurers

- Once an insurer has denied an Assessment Plan, it must notify the DAC within seven days (Section 43 (1) (a)). If the insurer does not notify the DAC within seven days, the insurer must pay the expenses in dispute up to the day the insurer gives notice.
- Upon receipt of the insurer's notice, the DAC must promptly notify the insured person (Section 43 (1) (b)). If the DAC requires additional information, the insured person and/or the insurer shall provide the DAC with that information. However, *Section 43 (2) (a) does not oblige the insurer to do so within any time frame.*
- The DAC must deliver a report within seven days for "assessments":
  - (i) Evaluating whether an assessment is reasonable, or
  - (ii) Determining whether the claimant should obtain additional treatment following PAF treatment, or
  - (iii) Determining if an Assessment Plan is reasonable. (Section 43 (6.1))
- Otherwise, the DAC shall deliver its report within 14 days of the completion of the assessment. (Section 43 (4.1))



- If a Health Care Professional submits an Assessment Plan without a Treatment Plan, the insurer must approve part or all of the Plan within seven days, or deny the Assessment Plan. If notice is not given within seven days, the insurer shall pay for the Assessment expense (Section 37.1 (8)) within 30 days of receiving an invoice.

#### **D. DACS Presumed Correct**

- The draft Regulations provide that, in court proceedings or arbitration hearings, the opinion of person(s) who conduct a designated assessment is presumed correct unless the contrary is shown on a preponderance of the evidence.

#### **E. DACS and Attendant Care**

- Where notice of the accident is provided to the insurer within seven days of the accident and where attendant care benefits have been applied for, the insurer must deny any such application within 14 days of receiving the application or Form 1. (Section 39 (4))
- If the insurer denies the attendant care claimed, the benefits remains payable pending receipt of the DAC report and the insurer shall notify the DAC within seven days of its denial. (Section 43 (1)(a))
- If a DAC is to be completed in relation to attendant care, the DAC must begin the assessment within two weeks after receiving the request for the designated assessment.

#### **F. DACS and Insurer Examinations**

- The person who conducts DACS shall not conduct Section 42 insurer assessments.

## Pursuing Payment Of Outstanding Treatment Expenses

- Treatment providers will no longer be able to take an assignment from the accident victim for the right to mediate, arbitrate or sue for unpaid treatment expenses.

*David F. MacDonald, Partner  
Leonard H. Kunka, Partner*

## Changes to Tort

The following are some of the important proposed changes affecting an innocent accident victim's right to sue an at-fault party (ie. a tort claim) that will be of interest to Health Care Professionals.

#### **Recovery of Health Care Expenses**

Currently, innocent accident victims who have suffered catastrophic injury (as defined by the regulation) can sue for "health care expenses". Health care expenses include medical goods and services, rehabilitation goods and services and care costs. Conversely, innocent accident victims who have not suffered catastrophic injury cannot sue the at-fault party for medical, rehabilitation and care costs.



This restriction in the right to sue has resulted in terrible hardship to a number of innocent motor vehicle accident victims who have suffered serious and permanent injury and impairment. For example, under the current scheme, the innocent victim of a motor vehicle accident who has required an amputation of her leg, by definition, has suffered a non-catastrophic injury. Accordingly, this individual cannot sue for the medical, rehabilitation and care costs that are related to this horrific injury. Rather, the victim's recovery of healthcare expenses is limited to accident benefits (up to 10 years of medical and rehabilitation coverage and a sum not to exceed \$100,000 and up to 2 years of care, such recovery not to exceed \$3,000 per month). In the example provided, the innocent victim cannot recover medical and rehabilitation goods and services after 10 years, she cannot recover more than \$100,000 for her medical and rehabilitation needs and she cannot recover the costs associated with her care after 2 years.

The proposed change under *Bill 198* expands the rights of innocent accident victims to sue for health care expenses. More particularly, innocent victims of a motor vehicle accident can sue for health care expenses if the victim has sustained:

Permanent serious disfigurement; or,

Permanent serious impairment of an important physical, mental or psychological function.

In the context of a tort claim, the definition of catastrophic is no longer operative. This is an important and welcomed change to the current legislative scheme.

### **Pain and Suffering Deductibles**

Our legal system permits innocent victims to sue wrongdoers for compensation. One element of this compensation is to address the victim's "pain and suffering".

In the context of a motor vehicle claim, an innocent victim may sue the wrongdoer for pain and suffering if the victim has sustained permanent serious disfigurement, or alternatively, permanent serious impairment of an important physical, mental and psychological function. If the injury is not permanent and serious, the innocent accident victim has no right to sue for pain and suffering. Even when the victim has suffered permanent and serious injury, claims for pain and suffering are reduced by a \$15,000 deductible.

Importantly, one of the proposed changes under *Bill 198* is to eliminate the deductible in cases where the award for pain and suffering exceeds the sum of \$100,000. In most cases, awards for pain and suffering will not exceed the sum of \$100,000, and as such, the deductible will continue to apply. However, the most seriously injured accident victims will benefit from the removal of the \$15,000 deductible.

Similarly, when an innocent victim has been injured, family members may be entitled to compensation, including compensation for the "loss of care, comfort, guidance and companionship" that the injured party would otherwise have rendered to the family member had the accident not occurred. Currently, there is a \$7,500 deductible that applies to a family member's claim in this regard. In most cases, the deductible serves to eliminate any recovery that a family member might receive for this element of damage. However, the proposed changes under *Bill 198* recommend that the deductible be eliminated in cases where the damage for the loss of care, comfort, guidance and companionship exceeds the sum of \$50,000. Again, very few family members of victims will benefit from this provision. However, in some cases that have resulted in a death, or alternatively, where the victim has suffered a horrific amount of compromise, the proposed change will be of benefit to the victim's family.

*Sloan H. Mandel, Partner*



*Sloan Mandel,  
Partner*



# Bill 198

## Conference/Workshop Schedule

Date/Time	Description	Contact
<b>Tuesday, March 25</b> 8:30 am – 1:00 pm	WORKSHOP - TORONTO Toronto Rehabilitation Institute <i>Bill 198</i> - What the Health Care Professional Needs to Know	Ms. Shenade Walker <a href="http://www.abinetwork.ca">www.abinetwork.ca</a> 416-597-3422 x 3961
<b>Wednesday, March 26</b> 8:30 am - 4:00 pm	CONFERENCE - COBOURG Best Western Motel Issues in Community Re-Entry	Ms. Marg Malloy Four Counties Brain Injury Assoc. 705-741-1172
<b>Friday, April 11</b> 8:30 am – 1:00 pm	WORKSHOP - TORONTO Toronto Rehabilitation Institute <i>Bill 198</i> - What the Health Care Professional Needs to Know	Ms. Shenade Walker <a href="http://www.abinetwork.ca">www.abinetwork.ca</a> 416-597-3422 x 3961
<b>Tuesday, April 22</b> 8:30 am – 1:00 pm	WORKSHOP - MISSISSAUGA Credit Valley Hospital <i>Bill 198</i> - What the Health Care Professional Needs to Know	Ms. Tina Guillbeault Brain Injury Assoc. of Peel & Halton 905-823-2221
<b>Friday, May 2</b> 8:30 am - 4:00 pm	CONFERENCE - SUDBURY Ramada Inn Current Issues in Accessing Care	Ms. Reina Jones Brain Injury Assoc. of Sudbury District 705-670-0200
<b>Thursday, May 15</b> 8:30 am – 1:00 pm	WORKSHOP - ST. CATHARINES Brock University <i>Bill 198</i> - What the Health Care Professional Needs to Know	Ms. Pat Dracup Brain Injury Assoc. of Niagara 905-984-5058
<b>Thursday, May 29</b> 8:30 am – 1:00 pm	WORKSHOP - WATERLOO University of Waterloo <i>Bill 198</i> - What the Health Care Professional Needs to Know	Ms. Patti Lehman Head Injury Assoc. of Waterloo-Wellington 519-579-5300

**Note:**

*Conference and Workshop details and registration materials to be mailed in the near future.  
Event information will also be posted at [www.thomsonrogers.com](http://www.thomsonrogers.com)*

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