

Personal Injury

FOCUS

Ontario cuts auto insurance costs by reducing coverage

The Ontario Minister of Finance has announced changes to Ontario automobile insurance designed to avoid large premium increases by stripping down the basic auto insurance coverage.

While the changes provide consumers with options to purchase enhanced benefit packages at additional cost, based on the current experience with these unpopular enhanced benefit packages, it seems unlikely that consumers will choose to replenish their diluted coverage by paying the extra premiums for expanded optional coverage.

Most car owners will have reduced basic auto insurance coverage and, as a result, many seriously injured accident victims will end up with access to significantly diluted protection. Moreover, those without direct access to their own automobile insurance policy will only be eligible for the reduced minimum basic auto insurance coverage.

The much anticipated announcement comes some seven months after the *Report on the Five Year Review of Automobile Insurance* was delivered by the Financial Services Commission of Ontario (FSCO). While many of the FSCO recommendations were adopted, some important ones were ignored to the detriment of accident victims (such as the suggestion to reduce the tort deductibles) and some were improved to



**DARCY
MERKUR**

the benefit of accident victims (such as the suggestion to reduce the medical and rehabilitation benefits available in non-catastrophic cases to \$25,000).

One positive change for access to justice is the long overdue elimination of the statutory deductible in fatality claims. The arguments used to justify a deductible on pain and suffering awards could never justify the application of a deductible in cases of fatality, which was harsh and inappropriate.

Another positive change is the slight expansion of the definition of "catastrophic," which will now include single-limb amputees. Fortunately, at least for now, there has not been a substantial erosion of catastrophic benefits, although the limits will now include all assessments costs.

On the negative side, seriously injured, but not catastrophic, accident victims will suffer due to the substantial reduction in the benefits available to them. While the vast majority of non-catastrophic claims never require anything close to the available accident benefit limits, many non-catastrophic cases are extremely serious, requiring extensive and

long-term rehabilitation and attendant care. For an attempt to address abuse at the lower end, the changes will have the undesirable effect of harming some with objectively serious injuries who were not really a target of reform.

The reductions in non-catastrophic injury claims amount to more than a 50 percent reduction in the benefits available. The reductions include: a reduction in the medical and rehabilitation benefits to \$50,000 (from \$100,000), a reduction in the attendant care benefits available to \$36,000 (from \$72,000), the elimination of housekeeping benefits (there was a maximum of \$10,400) and the elimination of caregiver benefits (it was \$250 per week, plus \$50 per dependant). In addition, all assessment costs are now to be deducted from the available medical and rehabilitation benefits.

Proponents of improved access to justice will be disappointed to note that the changes failed to adopt all of the FSCO recommendations for easing tort restrictions. With respect to the deductible against pain and suffering awards, the government decided to introduce an unwieldy option to "buy down" the deductible from \$30,000 to \$20,000, by paying an extra premium.

Brokers face an almost impossible task of explaining this to consumers. At a minimum, the consumer would have to understand the verbal threshold and its defining regulation before appreciating the impact of a deduct-

awards of \$100,000 or less.

Because of the reduced accident benefits available in non-catastrophic cases, some innocent accident victims will face an extended gap period between the expiration of their accident benefits and the resolution of their tort claims. Advance payment requests to fund ongoing rehabilitation will become the norm in these situations and, hopefully, insurers will recognize the utility in assisting plaintiffs to mitigate their damages by funding their ongoing rehabilitation. Plaintiff's lawyers will be forced into expedited tort claims to reduce the length of the gap period.

For those with non-catastrophic

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Ontario automobile legislation and the Ontario Statutory Accident Benefits Schedule, including: restricting which health care professionals can conduct catastrophic impairment assessments and who is eligible to complete attendant care assessments; capping costs on assessments; capping costs on insurer examinations; and capping costs for completion of various forms. Other changes include reducing the interest rate chargeable on overdue accident benefit payments to one percent per month compounded monthly (from two percent per month compounded monthly) and limiting the benefits available in soft tissue injury cases to a maximum of \$3,500 worth of treatment and assessments.

The changes have not yet been drafted into regulations. The proposed regulations are expected to be circulated in the winter of 2010 and the implementation date for the changes has been announced as the summer of 2010.

While the changes may reduce costs to insurers, this will be at the expense of the seriously (but not catastrophically) injured car accident victims and at the expense of consumers called on to pay higher premiums for needed protection. ■

Darcy Merkur is a partner at Thomson, Rogers in Toronto, practising plaintiff's personal injury litigation, including plaintiff's motor vehicle litigation. He has been certified as a specialist in civil litigation by the