



Current Articles 1999 – February

Proposed Changes to the Automobile Policy

In my September column I mentioned that a committee was reviewing the automobile policy and was recommending some minor changes.

On December 3rd, 1998, Bill 90 obtained first reading. Bill 90 is titled the Automobile Insurance Consumer Protection Act, 1998. The Bill did not obtain assent as the government recessed for the holidays. However, it is suggested that the Bill will be re-introduced at the next sitting of Parliament.

The major proposed change is with regard to children injured in auto accidents and by recognizing that rehabilitating children can be more costly when compared to adults. Under the present Statutory Accident Benefits as amended by Bill 59, no one is allowed to sue for excess Medical, Rehabilitation or Attendant Care unless the injuries are deemed "catastrophic" as defined in the SABS. This means that an injured person regardless of age, who has access to the basic medical benefit of \$100,000, cannot sue to recover medical expenses in excess of this limit. The right to sue is available in excess of the \$1,000,000 limit for catastrophic injuries.

Since the cost for medical and rehabilitation may be substantially higher for children, Bi1190 proposes to allow an injured person under the age of 16 to have the right to sue for excess medical expenses, The proposal will require a court to establish that a threshold be met, namely that the victim has sustained a permanent serious impairment of an important physical, mental, or psychological function as a result of the accident. This is the same threshold as amended in Bill 59 for a pain and suffering claim to be allowed. In other words, Bi11 90, suggests that the right to sue for a person under the age of 16 be qualified by the threshold test rather than by the definition of a "catastrophic injury" as defined in the SABS, and that the decision would be made by a pre-trial motion.

Originally, it was thought that the higher Medical, Rehabilitation and Attendant Care Benefits would be obtained for children under the age of 16 automatically from their applicable No Fault SABS. This could be from their parent's insurer or from the insurer of the car in which they were a passenger. In other words it was thought that the Accident Benefits would be amended to the higher limit for children as opposed to the right to sue for excess medical. The draft of the act, however, does not appear to offer this amendment, but this could change at the next Reading of the Bill.

The Bill allows for reasonable and necessary case management services for children who do not suffer catastrophic injuries.

Another proposed change is with regard to the deductibles applicable to the right to sue for pain and suffering. (\$15,000 or \$5,000 in Family Law Act claims). The recommendation is that the deductible will be removed for pain and suffering damages which exceed \$100,000 or damages awarded under the Family Law Act that exceed \$50,000.

Current legislation requires a broker, if requested, to supply the names of all insurers that he represents. The Bill will require agents to tell consumers that they represent only one insurer. This will have a significant impact on the direct writers.

All of the proposed changes will only apply to losses arising from the use or operation of an automobile after the Bill comes into effect. No changes will be retroactive.

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