

# Reduced coverage concerning: lawyers

BY MARG. BRUINEMAN

For Law Times

A new definition of catastrophic impairment and reduced coverage for motor vehicle accident victims is causing widespread concern among personal injury lawyers.

They say a stricter determination of what qualifies as catastrophic means fewer people will be able to access necessary care, rehabilitation and assistance.

As of June 1, 2016, an accident victim is considered to have catastrophic injuries based on the Glasgow Outcome Scale, instead of the Glasgow Coma Scale for brain impairment.

That requires imaging to show there was brain damage. Previously, an assessment was required and there was no need for proof from imaging.

Toronto personal injury lawyer David Preszler calls the changes "very, very restrictive."

"Instead of it being a simple test where your level of consciousness after an accident is decreased, now you've got to essentially prove not only that you've got bleeding or something going bad in your brain but also you've got an outcome that's considered severe or disabled," says Preszler.

"These are huge changes to the brain injury criteria of the statutory accidents benefits schedule that are going to make it much harder for people with brain injury to qualify for catastrophic impairment."

The more restrictive test may eliminate injuries that don't show up on imaging, says Preszler.

That includes more minor brain injuries that result in severe nausea and post-concussive syndrome, he says, and can cause chronic headaches and ringing in the ears.

Preszler is also concerned that children injured in accidents need to be admitted as in-patients in a public hospital to now be deemed catastrophic and have imaging prove they've experienced injuries such as bleeding on the brain.

To qualify, injured children must also receive neurological rehabilitation in a pediatric facility, he says.

However, Preszler says, the problem is there are only a few pediatric facilities in the province, mostly concentrated in Central Ontario.

Preszler says people living outside of those major centres may, therefore, not qualify for catastrophic impairment under the new changes.

The revised statutory accident benefits also reduce the amount of money available to those who have suffered catastrophic impairment in crashes, say lawyers.

Previously, those determined to have catastrophic injuries could get up to \$1 million for medical costs and rehabilitation



Darryl Singer says changes to the Statutory Accident Benefits Schedule 'boggle the mind.'

costs, and another \$1 million for attendant care. The total amount has been cut in half, so now there is only \$1 million available for both combined.

Before the changes, those who suffered non-catastrophic injuries were also able to access up to \$50,000 for medical costs and rehabilitation costs, and another

\$36,000 for attendant care, for a total of \$86,000. Now, that has been reduced to a total of \$65,000.

The new definition is based on the December 2011 "Superintendent's Report on the Definition of Catastrophic Impairment in the Statutory Accident Benefits Schedule," which was based on the work of an expert panel.

Ministry of Finance spokesman Scott Blodgett says the changes were aimed at balancing the needs of injured claimants with more affordable auto insurance rates.

And, he says, Ontario's standard limit for these benefits is the most generous among Canadian provinces with privately delivered auto insurance.

But Markham, Ont. personal injury lawyer Darryl Singer says the cuts to the Statutory Accident Benefits Schedule "boggle the mind."

"When we talk about catastrophic, we're talking about

people who are never going to work again, you may be talking about people who are never going to walk again, you may be talking about people with traumatic brain injury, you may be talking about people who need around-the-clock care for the rest of their lives," says Singer.

Philippa Samworth, a partner with Dutton Brock LLP who practises insurance defence law, says the new definition in the Statutory Accident Benefits Schedule is helpful because it is objective and allows two different assessors to come to the same conclusion.

Samworth says due to the changes to the Statutory Accident Benefits Schedule, accident victims may exhaust all their benefits before any tort disputes are resolved.

This is a problem, because it means there could be a gap period after the immediate accident benefits run out for an injured person and when an outstand-

ing lawsuit is settled.

People could have no benefits while they wait for their tort case to wend its way through the courts.

That leaves the accident victims access to only the provincial health system, she says, which may not cover all their needs.

"Now, what might happen, and I think this is a problem, is that everything is being shortened down. So you have a shorter time period to receive these [accident benefits], you have less money available to you, so you're going to run out faster.

So even if you have a good claim against the driver that struck you and they have a large liability policy to cover your needs, there's going to be a gap between when your accident benefits coverage runs out and you move into recovering in your tort claim, because the tort just doesn't move as quickly," she says. **LT**

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