

Winds of Change Blowing for the Insurance Industry

Tom Macmillan
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There are few news stories that arouse the imaginations of the Ontario electorate as insurance reform. One can only assume that tweaks to the *Insurance Act* regulations will be the talk of the summer, from patios to cottage docks. All joking aside, however, it is clear that some of the proposed changes are significant for consumers, and will likely trigger some heated debate amongst those in the industry.

Currently the government is in consultation with various groups, including representatives of the insurance industry, and with lawyers who practice personal injury law. A chapter in the provincial budget outlined an ambitious breadth of changes, many of which are still in the very preliminary stages of being considered.

Here is a brief breakdown of some of the changes outlined in the provincial Budget:

Move to digital

There is a clear focus on modernizing the process of purchasing insurance and making claims, a push to simplify the online and digital process that consumers find confusing. There is also a focus on ushering in electronic proof of auto insurance. These changes look to be a priority for the government, and if successful, should make things easier on consumers of insurance right away.

Optional benefits

As it currently stands, consumers can opt into increased benefits through their insurance plan, including increased amounts for income replacement benefits, and health care benefits, all in the event that the consumer is in an accident. In the Budget the government is proposing increasing the breadth of options that insurers can provide to consumers.

Practically-speaking, this would allow consumers to better tailor their insurance to fit their preferences. While one school of thought is that consumers will automatically default to the lowest-cost coverage, that is does not appear to be the case under the current regime, where the minimum third party liability limits are \$200,000, but almost everyone elects for coverage of \$1 million or more.

Car subscription services

One interesting proposal comes in response to the increasing popularity of short-term vehicle subscription services such as Zipcar or Car2Go. These services allow members to simply hop into cars which are parked at convenient locations throughout the province, and just drive off, paying by account based on the amount of time used.

One government proposal is to allow for vehicle subscription services that include insurance, which would certainly be a boon to this growing market.

Medical treatment providers

The government is weighing into the controversial world of medical assessments for those involved in accidents. There are a number of issues on this topic, many of which have become prominent news stories.

There are cries that medical assessors retained either by insurance companies or plaintiffs are not objective. There have also been some high profile criminal investigations into fraud by clinics that feed off the accident benefits system.

The proposed changes to this program are varied, but include:

- overhauling the licensing system for health service providers to reduce regulatory burden and fraud;
- lower fees charged by treatment providers; and
- reform the medical assessment process.

This third item relates to concerns over medical assessor objectivity. It is not clear at present how the government hopes to accomplish this, but more may be revealed following ongoing consultations with stakeholders.

Increased accident benefits limits

It seems like only yesterday that the default combined limit that an injured individual could recover for attendant care and medical/rehabilitation benefits was reduced from \$2 million to \$1 million (2016, for those keeping score at home). Well, the government is keen on turning back that clock, and increasing this limit back to \$2 million.

This is good news both for seriously injured individuals who would not normally have opted for increased benefits, and for insurance companies that will collect premiums on this adjusted amount.

Increase in Simplified Procedure jurisdiction

There has been talk for many years of increasing the monetary limit for cases brought under the rules for simplified procedure. The government is keen to make this happen, although few details were provided in the budget documentation.

Before personal injury lawyers run to begin issuing all of their claims under the simplified procedure, however, it should be noted that in the past when this change has been proposed, it came with procedural restrictions, such as:

- a cap on the costs recoverable at trial at \$50,000;
- a cap on the disbursements recoverable at trial at \$25,000;
- a cap on the number of days of trial at 5 days;
- examination in chief only by way of affidavit; and
- a rigorous application of the three-expert rule.

Of note, the government just recently passed legislation that mandates that the issues of fact and assessment of damages in actions proceeding by way of simplified procedure, shall be tried without a jury.

In the event that the monetary jurisdiction for simplified procedure matters is increased, along with all or some of the above changes, it will be interesting to see whether more plaintiffs will elect to proceed by way of simplified procedure.

As it stands, a good number of actions settle at or below \$200,000, and the temptation for plaintiff counsel to take avail themselves of some of the strategic advantages of proceeding under this rule – such as limited examination for discovery and the lack of a jury – will make for a some interesting decisions when issuing a claim.

At the very least, there would be clear advantages to litigants of smaller matters to bring their actions under a faster and more cost-effective procedure, without the bloating of a standard trial.

It is safe to say that most of these changes are not on the immediate horizon, but the fact that the government has already begun consultations on these Budget issues is indicative of a will to move on them. At the very least, cottage country will surely be buzzing with talk of this legislative change – at least once talk of the Raptors' run has subsided.