

Focus PERSONAL INJURY

Ontario budget lowers boom on the disabled



Patrick Brown

When the Ontario Liberal government announced in April they were “building a fair society for all Ontarians,” they could not have been further from the truth in terms of the disabled.

Out of the blue, the budget included reductions in benefits to car-crash victims who suffer catastrophic injuries such as quadriplegia, paraplegia, amputations, and severe brain injuries. The reductions represent over a million dollars per victim. The sting is even worse given a report from Fred Lazar and Eli Prisman of York University’s Schulich School of Business, which estimates that consumers in Ontario may have overpaid between \$3 and \$4 billion for auto insurance from 2001 to 2013. No wonder the Insurance Bureau of



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Canada applauded the move.

For the last two decades until now, the provincial government of the day has met and consulted with all sides of the legal, insurance, and medical/rehabilitation communities in order to balance the issue of profits and the need to treat auto victims fairly. It’s not an easy task by any means.

When dealing with victims who suffered whiplash and soft tissue injuries (the vast majority of claims), the McGuinty Liberals consulted with all stakeholders. In 2010, despite the outcry of many in the legal and rehabilitation community, they reduced the monetary limit of \$100,000 for medical/rehabilitation benefits to \$3,500

for all minor injuries, which represent the majority of claims within the system. No other province or territory has a lower cap on medical and rehabilitation benefits for these types of injuries. The so-called balance appeared to be either restored, or certainly tipped in favour of the insurance industry. The Lazar report would no doubt support that. The justification given by the government was that they needed to cut benefits to this class of injuries so that funds would be available for those who were in most need, the catastrophically injured. In fact, in 2010 they expanded the definition of catastrophic so people who suffered an amputation of only one limb could qualify for the increased benefits.

Who would have imagined that just five years later the government would turn around and take a million dollars in benefits away from not only the single amputees, but those who are unable to use any of their limbs!

What is even more alarming is that the consultation process afforded to those dealing with whiplash-type injuries in 2010 was never given to this group. In the past, there have been long hours of discussions, drafting, and negotiations by all stakeholders and the government. For the most part, there was a transparent attempt to find the right solution. It was never easy and certainly not rewarding for those involved. But the idea was to make good law.

By acting unilaterally, one can only assume that the government knew that the stakeholders (including many successful insurance

companies and their adjusters) would not support this clawback. To make matters worse for these victims, the government is also seeking to change the definition on who is, and is not, “catastrophically injured.” By asserting they want the definition to reflect “the most relevant scientific and medical knowledge,” it is a given they will be narrowing the definition and making it tougher on these people to qualify.

There is no doubt that the insurance industry needs to be profitable. But how profitable? The Lazar report states that the 2013 return on equity for the average profitable insurance company was 17.5 per cent. Good by any standard.

The average Ontario citizen wants to drive a car and they want lowered premiums. But premiums are going down. The impact of the 2010 changes has not been fully realized. The new overhauled dispute resolution system will come into play in April of next year. This simplified and proportional system of dealing with benefits is expected to save millions in unnecessary costs and expense. Why not see what impact it has?

This change is not a response to fraud or sports medicine clinics popping up at every corner. It is not about lawyers having billboards on the highway. Simply put, this is an unnecessary and unjustified attack on the dignity and independence of the seriously disabled.

Patrick Brown is a partner with McLeish Orlando, past president of the Ontario Trial Lawyers Association and chair of the Ontario Safety League.

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