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Insurance



Ontario auto insurance system ‘undoubtedly broken,’ personal injury lawyers say

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The Ontario government has begun public consultations on how to reform the auto insurance system for the nearly 10 million drivers across the province. However, personal injury lawyers say “tinkering” with an

“undoubtedly broken” system doesn’t work and complete overhaul is needed.

The “Putting Drivers First” [consultation](#) will end on Feb. 15 and, according to a government release, will coincide with a “review of Ontario’s auto insurance rate regulation system, jointly conducted by the Ministry of Finance and the Financial Services Regulatory Authority of Ontario.” The review will also observe auto insurance systems in other jurisdictions to identify “opportunities to achieve greater efficiencies and introduce more competition.”

“Auto insurance rates in Ontario are among the highest in the country, and action is needed,” said Finance Minister Vic Fedeli, in a statement.

According to a government release, Ontario is working with Parm Gill, the Progressive Conservative MPP for Milton, on a private member’s bill, that if passed, would “eliminate the unfair practice of discriminating against drivers simply based on where they live.” The province is also creating a “regulatory framework that allows for a more modern auto insurance sector, including electronic communications and electronic proof of auto insurance.”



Jasmine Daya, Jasmine Daya & Co.

Jasmine Daya, personal injury lawyer and managing principal of Jasmine Daya & Co., said the auto insurance system is “undoubtedly broken” and the province “essentially” doesn’t have proper tort law for accident victims because of auto insurance deductibles and thresholds.

“The entire purpose of tort law is to provide a civil remedy to individuals who have suffered a loss,” she explained, noting that with the imposed deductible, which has risen from \$15,000 in 2003 to \$37,000 in 2016, plus the annual rate of inflation, accident victims can be left with nothing for their pain and suffering.

For example, she said, “if a jury awards you \$10,000, you don’t get \$10,000 because the deductible is currently just under \$40,000.” Drivers are faced with a similar issue when they have to meet a threshold, she added.

“You have to prove to the court that your injury is permanent and serious. So, if you have a fractured leg,

or a broken leg as a result of a car accident and it gets better and there's no proof of ongoing and permanent serious impairment, you will get nothing. Even if a jury awards you \$50,000, which is more than the deductible, \$50,000 will go down to about \$10,000 after the deductible, but if a judge says you didn't meet the threshold of the 'permanent and serious' test, you get zero," Daya explained, adding that the law is "stacked against" car accident victims.

The erosion of accident benefits is also a concern for Daya as housekeeping and caregiving benefits for accident victims have been removed.

"Those benefits go to help individuals with their day-to-day needs," she said, adding that the income replacement benefit has "thankfully" remained in place. However, that benefit won't assist an accident victim who is a primary caregiver.

"For example, if a stay-at-home mother is involved in a motor vehicle accident, she didn't have a job, so there's no income replacement benefit. But she was caring for the children and now, because of this car accident claim, she has to hire a caregiver for those children. There's no benefit for that. It's a very unfortunate situation for stay-at-home parents or primary caregivers," she stressed.

Accident claimants are also denied access to superior court, Daya noted, which means issues have to be brought to the Licence Appeal Tribunal (LAT), which "does not have the ability to process the volume of claims" and does not award costs.

"If I have to call an expert, and that expert sent me a bill, I don't have any money to pay even though my client's income replacement benefit was reinstated," she said, adding that without costs awarded she can be out of pocket when calling in service providers as witnesses.

Daya added that Ontario's practice of charging different auto insurance rates based on a driver's postal code is "ridiculous" and "unfair." She explained that better insurance fraud prevention is what's needed to help improve the system.

"I think the deductible and the threshold need to be eliminated. It's not a fair system. How can you say we have tort law in Ontario, but then say that there's all these stipulations? That doesn't make it proper tort law. That's not compensating the accident victim for their loss," she said, adding that in Ontario the decreased amounts payable to those with catastrophic impairment is one of the worst aspects of the system.

"People are catastrophically injured, for example, when they have a significant brain injury, amputation, the worst of the worst, and they've had a significant decrease in benefits and amounts they're entitled to receive. There's just not enough available to them," she said, describing it as a sad state of affairs.



Eric Grossman, Zarek Taylor Grossman Hanrahan LLP

Eric Grossman, a personal injury and insurance lawyer who is also a founding partner of Zarek Taylor Grossman Hanrahan LLP, said Ontario has to “go back to the drawing board” and revise the auto insurance system from the “ground up.”

“I don’t believe that the accident benefit system should be reduced beyond the reductions it has already achieved on the basis that those that are catastrophically hurt don’t have enough funds available to them,” he said, adding that there are many areas the government has never reviewed which affect insurers.

He gave as an example not infrequent incidences where insurers pay experts disbursements of \$100,000 or more on a tort claim.

“There don’t seem to be any checks and balances on what experts are allowed to charge on a system that is being really challenged to keep costs down. The same thing goes for plaintiff legal bills. The cost of advertising, which is pervasive in this province for personal injury, is being paid somehow and it’s being paid for by insurers,” he said, acknowledging that this comment may not make him “the most popular guy” in the plaintiffs bar, but it’s an area that hasn’t been tackled yet.

Another significant area that needs to be addressed, Grossman pointed out, is towing and storage.

“The government, in its wisdom, did look at towing and storage at one point. And where there were no provincial regulations on that issue, because it’s municipal, they sought to impose some, but they did a very poor job at it,” he said, explaining that now there are limits on how much a driver can be charged for storage at a facility, the facilities will move the car to another lot if it’s reached its cap.

“Facility A, at the end of their limit says ‘oh, we ran out of room.’ And magically the car goes to facility B, which is arm’s length from facility A, and they start the new tab of storage charges. All of these things come out of the same premium dollar and it’s costing a lot of money,” he stressed.

Grossman is concerned about where the government intends “to go with its review” and noted it’s always the people on the margins being treated unfairly.

“The [government] survey that they put online doesn’t really give any indicators of the nature, or the significance, of the concern,” he said.

When Ontario went to the “most generous of no-fault regimes” across Canada in 1994, Grossman said, it introduced a lot of people into the system.

“I’m talking about lawyers, paralegals and, most importantly, I’m talking about medical/paramedical people,” he said, adding that over time there was a heightened awareness that drivers could sue for claims and certain therapies became delisted from OHIP.

“There are still a lot of people who are badly injured in car accidents and every dollar should go to them for their needs. But for every one of those there’s at least 10 that aren’t badly hurt, or aren’t hurt at all, that are making claims. They haven’t been eradicated. They’ve actually been encouraged by this machine and this machine needs to stop,” he said.

The auto insurance system in Ontario, Grossman explained, is “hard pressed to match what other provinces are doing because of how big of an industry this has become.” The government’s reform will be a “a massive undertaking,” he added, which will take a long time to fix.

Pete Karageorgos, director of consumer and industry relations for Ontario at the Insurance Bureau of Canada (IBC), said the organization is encouraged by the government’s public consultation and hopes it leads to constructive, positive change.

“For a number of years now, as the industry trade association, we have been speaking to Ontarians and we know that there are challenges with the auto insurance system. It needs to be modernized ... [the] regulations are stale and outdated,” he explained, adding that auto insurance needs to be simpler to understand and access.

Reforming the system will be a process, Karageorgos said, adding that primarily governments have “tinkered” with auto insurance rather than “pulling off the Band-Aid and looking to see what the cause of the problem is and trying to address the root cause of the system’s issues.”

“Insurance is like any other business; the costs are going to drive the prices that consumers see,” he noted.

Karageorgos explained that Ontario has some of the highest private health care coverage costs in the country, which impacts the system.

“Based on 2017 data, Ontario is almost \$32,000 for each accident benefits claim,” he said, adding that the Atlantic provinces and Alberta have similar private market auto insurance systems to Ontario, but have much lower claim costs.

“Atlantic Canada has claims that average just under \$10,000,” he noted, explaining that Alberta’s average claim cost is just over \$5,000.

“We have to look at why the injury claims for private health care here in Ontario are higher than anywhere else in the country,” he stressed.

Fraud is another “piece of the puzzle,” Karageorgos added, noting that, similar to Ontario, British Columbia and Manitoba both have issues with insurance fraud.

Another issue that adds to costs is the outdated regulations that insurers have to face, he noted.

“Just look at technology as an example. People use technology now to do so many things, everything from hailing a cab to paying bills online, to ordering food and furniture. But for auto insurance, you can’t even get in Ontario your proof of insurance, your ‘pink slip’ electronically. It has to be a paper copy mailed to you. Nova Scotia is the only province in Canada that allows electronic pink slips,” he said.

The Insurance Brokers Association of Ontario (IBAO), represented by its president, Jeff Gatcke, and CEO, Colin Simpson, were involved in consultations at Queen’s Park in 2018. According to a post on the IBAO website, the association’s key recommendations regarding auto insurance were: to “keep geography as a rating variable; simplify the accident benefit and tort systems to ensure that it is accessible without the need for legal representation in all but the most complicated cases; review and amend the process for approving rates to improve competition and shorten the timeframe to deliver meaningful change; [and] continue to involve the IBAO in discussions on how best to educate consumers on proposed changes.”

“The topic of auto reform is in the minds of many Ontarians. IBAO has been working hard to tackle the excessive costs and inefficiencies that hurt consumers across the province. This has included extensive ongoing consultations with the government and legislature, as well as relevant stakeholders and the public. To that end, we recommend that the government considers the broad richness of our auto product and the current framework within which it is administered with a view to ensuring that consumers receive value from the product,” wrote Gatcke in his address to Queen’s Park.