

Automobile Insurance Affordability Plan for Ontario: Next Steps

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Executive Summary

The Government is working to address rising auto insurance premiums. In July 2003, a balanced reform package was released that is designed to ensure that injured people receive the care they need while reducing red tape, fraud and abuse:

- In an effort to end the costs and inconvenience to the claimants of endless assessments of their injuries, we introduced an innovative assessment and treatment program of care for whiplash and related minor injuries. This new program of care is called a Pre-Approved Framework (PAF) and it will provide quicker access to treatment while still allowing health care providers to provide individualized care to meet the specific needs of the claimant.
- We have expanded the definition of catastrophic impairment to cover more serious injuries and also moved to allow the use of analogous measures to those in place for adults so that medical persons can properly assess seriously injured children. For children, the existing scales cannot always be applied.
- We have severely restricted the use of medical examinations by insurers in order to end duplication and reduce costs.
- We are prohibiting cash settlements for accident benefits until one year has passed; allowing injured people to continue to have access to treatment and income replacement.
- We have broadened the definition of unfair or deceptive acts or practices to apply to health care providers and paralegals in the auto insurance system, required claimants to sign treatment plans, and permitted insurers to request a claimant be examined under oath where there is reasonable concern about accident circumstances. These measures will help us better control the fraud that many believe is still costing premium payers money.
- We have introduced a code of conduct for paralegals to protect consumers from unqualified representatives.

The Government is undertaking additional actions which include:

- Increasing the deductibles which apply to awards for pain and suffering from \$15,000 to \$30,000 for *Insurance Act* awards and from \$7,500 to \$15,000 for *Family Law Act* awards.
- Directing the Superintendent of Financial Services to conduct reviews of three major aspects of the auto insurance system:
 - the Designated Assessment Centre system, to ensure quick, cost-effective medical assessments to resolve disputes between insurers and claimants;

- existing and proposed fee schedules used by various health care providers treating auto accident victims, to bring fees down and move them closer to fees charged in the Workplace Safety and Insurance Board (WSIB) system; and
 - rules used by insurers to ensure that insurers are not unfairly denying coverage to consumers; in addition, the Government has directed the Superintendent of Financial Services to require insurers to refile their rates, where appropriate, in light of the savings from this action plan.
- Establishing a Task Force to work jointly with the Ontario Crime Control Commission to deal with auto theft and auto insurance fraud; these are crimes against all policyholders.
 - Inviting the other provinces to share information and expertise to address common interprovincial cost pressures such as theft, fraud and rising health care costs and to discuss possible harmonization of underwriting rules and risk classification systems, resulting in savings for consumers.

The Government is inviting comment on:

- Potential actions to address the rising cost of claims and lawsuits, while expanding legitimate access to the courts, which include:
 - amending the threshold at which an injured person can sue for pain and suffering to focus on severe physical, rather than mental or psychological injuries;
 - expanding an injured person's right to sue for excess health care expenses;
 - eliminating the deductible for pain and suffering awards over \$100,000; and
 - providing protection for persons who may be sued as a result of an automobile accident, even though they were not present at the accident.
- Coordination of disability insurance coverage:
 - consumers who have access to multiple insurance plans (for example, private disability insurance as well as auto insurance) may be paying for coverage they do not require.

The action plan enhances benefits for accident victims while also reducing the cost of insurance. If these reduced costs are not passed on to consumers, the Government will take action, including measures directly targeting auto insurance premiums, to ensure that auto insurance remains affordable and available for Ontarians. These measures could include rate caps, rate freezes or rate roll-backs.

Introduction

Since 1979, auto insurance has been mandatory for Ontario drivers and is purchased from private insurance companies. Auto insurance was made mandatory so that those who were injured by accidents would be assured that the person causing the accident has some resources to pay for recovery and court costs. The Government believes that auto insurance should be readily available, priced fairly, and contain the compensation that is necessary to provide claimants with coverage they might need in the event of an accident. It should provide basic wage loss and care for all injured accident victims, replace damaged property, and ensure that consumers have the right to sue the person who caused the accident for additional damages but only in cases where the effects of an accident are severe.

Like most Canadian provinces, Ontario is experiencing rising auto insurance premiums. On July 2, 2003, the Government announced reforms to address immediate auto insurance cost pressures. But the Government believes that there is more that needs to be done to make sure auto insurance is affordable and fair for all Ontarians. This paper discusses further Government plans to curb premium increases. We are putting these measures forward to seek comment and feedback from Ontarians on these plans.

New challenges in managing insurance marketplaces, including auto insurance, are emerging in Canada and around the world. Ontario is in a good position to deal with those challenges. Just over 100 insurers in the Province are licensed to sell auto insurance, providing consumers with a good choice of basic and tailored optional coverages. Ontario has a well-established set of standards that protect consumers while providing insurers with a stable business climate in which to operate. Ontario also has a comprehensive set of accident benefits that protects everyone, in addition to the right to sue for those with extraordinary losses. This paper shows what Ontario has already done, describes additional initiatives we are undertaking, and seeks input on further potential actions Ontario is considering to maintain the Province's healthy auto insurance marketplace.

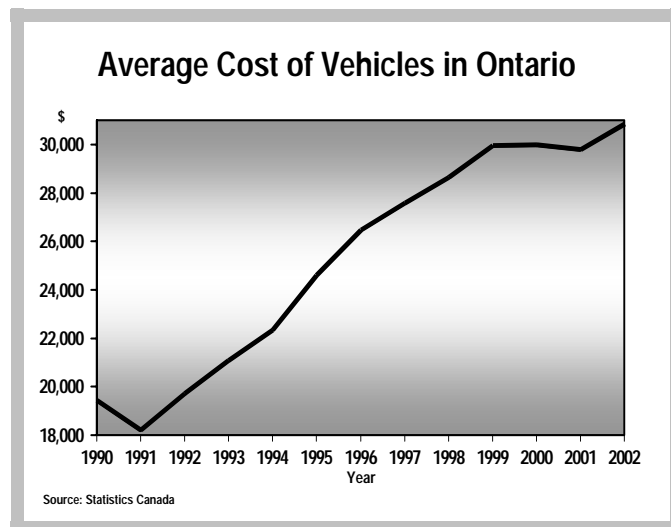
Why Premiums Are Rising

Many factors have affected Ontario's auto insurance premiums. Claims costs across the country have risen recently at a double digit pace. Global developments beyond the control of the Government have increased the pressure on insurance rates.

Interjurisdictional comparisons are difficult due to the differences in what auto insurance covers. Driving conditions also vary across the various provinces. However, Statistics Canada puts the pace of average rate increases in Nova Scotia and New Brunswick at over three times that in Ontario. Alberta and Quebec rates are also increasing faster than Ontario and the Alberta Government has announced that the auto insurance system there will be reformed as soon as possible.

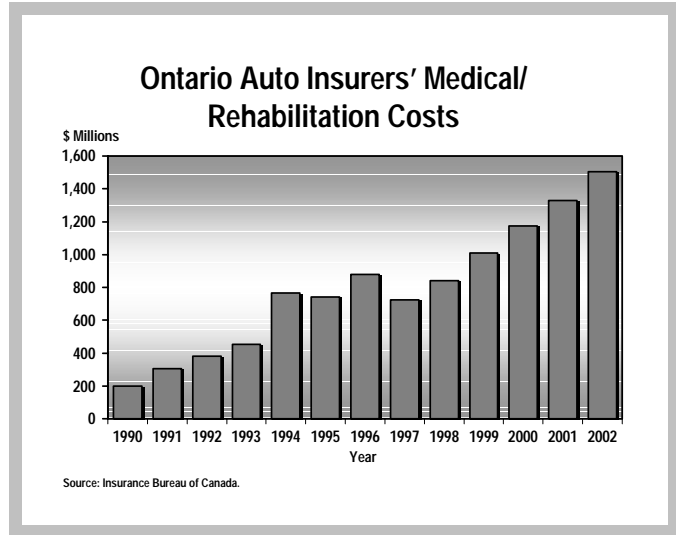
Canadian and Ontario auto insurance claims costs have increased due to:

- Higher cost of vehicle repairs and replacements, partly reflecting a growing number of more expensive vehicles and the more sophisticated nature of repairs, such as those to vehicles with electronic navigation systems. Over the past seven years, the share of total auto sales accounted for by more expensive light trucks and SUVs has also increased from 40.8 per cent to 46.1 per cent. According to the Insurance Bureau of Canada (IBC), the cost of vehicle repairs increased by 34 per cent from 1998 to 2002 while the average cost of new vehicles has risen by 16.5 per cent from 1996 to 2002.



- Higher health care costs associated with insurance claims.

When someone gets injured in an auto accident, they look to the health care component of the automobile policy for medical care and treatment. However, despite the fact that the number of accidents has fallen, medical and rehabilitation claims costs are rising at about 15 per cent per year according to the IBC. In 2002, medical and rehabilitation costs stood at over \$1.5 billion up from just under \$200 million in 1990.



- Higher costs from fraud in the system. The auto insurance industry maintains that approximately 15 per cent of costs arise from fraudulent activity. This figure is supported by the Ontario Crime Control Commission report on auto theft and related auto crimes in Ontario. Unfortunately, auto insurance attracts some who would drain the system of dollars through such activities as "staged" accidents. "Injured" individuals and their collaborators then apply for benefits. Car theft is also prevalent.
- Lower returns from investments. Until recently, insurers had used solid investment returns as a financial cushion against rising claims costs. This Government's 1996 reforms brought on competition among insurers for increased market share, which helped keep premiums low for consumers.

To protect consumers, governments require prudent investment practices by insurers. As a result, insurance companies in Canada are not permitted to gamble with their policyholders' money in the stockmarket. In recent years, decreased investment yields due to low interest rates have reduced the ability of insurers to offset underwriting loss experience across the entire property and casualty insurance sector worldwide.

"Traditionally, insurers subsidize the cost of insurance for consumers with gains from investment markets. However, weak investment markets have curtailed this long standing practice. At the same time premiums have increased to keep pace with rapid claims growth. Improved investment returns will not, by themselves, return the industry to average profitability. Adjusting to a new investment climate and addressing rising claims costs are both required to restore industry profitability."

IBC Perspective: March 2003, Investing Matters!

Ontario Experience and Recent Actions

When automobile insurance became mandatory in Ontario in 1979, a modest benefits schedule was introduced for auto accident victims regardless of who was at fault. This was and still is called the “no-fault” component of the auto insurance system. But in 1979, an accident victim’s access to any meaningful compensation still required going to court - a long and expensive process that often did not benefit Ontario motorists.

Achieving a balance between no-fault benefits and access to the courts has occupied much of Ontario's reform efforts since 1990. This Government has worked to balance no-fault benefits and access to the courts, to protect injured individuals so they recover and return to being productive members of society as quickly as possible, while at the same time allowing some more serious injured Ontarians to sue the person who injured them for damages resulting from the accident. The current auto insurance system has largely met this goal, although recent claim increases show more needs to be done to make this balanced system affordable.

Previous governments reformed the system in both 1990 and 1994, by essentially broadening the no-fault scheme. By 1995, an overly generous no-fault accident benefits schedule with few cost controls and inadequate accountability let medical and rehabilitation claims costs rise by over 270 per cent. Premiums were rising very rapidly.

In 1996, the government moved successfully to control costs. Bill 59, the *Automobile Insurance Rate Stability Act*, (AIRSA) was introduced to restore the delicate balance between no-fault benefits and access to the courts. Ontario continued to maintain one of the best auto insurance compensation packages in Canada - comprehensive, fair, no-fault benefits coupled with access to the courts for recovery of economic losses (over and above no-fault benefits) and compensation for pain and suffering.

AIRSA included measures to discourage fraud and driving without insurance, and was one of the first insurance systems in Canada to establish an Ombudsman to deal with insurance complaints. Competition returned to the marketplace; insurers lowered premiums by an average 12.5 per cent from November 1996 to December 1999.

By 2000, small premium rate increases had occurred as costs began to rise again in some of the liability and physical damage sections of the insurance policy. In response, to help contain increases, the Ontario Government announced the complete phase-out of the five per cent retail sales tax on auto insurance premiums by one per cent per year. No tax will be paid after April 1, 2004.

In another initiative to improve the marketplace for consumers, a private Member's Bill entitled the *Collision Repair Standards Act* was passed in December 2002. Designed to certify and set standards for collision repair shops, the Government requires further time to consider options for implementation before it can be proclaimed. The Government is exploring these options.

On July 2, 2003, the Government announced reforms to immediately address auto insurance cost pressures. These reforms maintain income replacement and medical and rehabilitation benefits while addressing cost pressures affecting car insurers; cost savings can be passed on to consumers. Measures include:

- In an effort to end the costs and inconvenience to the claimants of endless assessments of their injuries, we introduced an innovative assessment and treatment program of care for whiplash and related minor injuries. This new program of care is called a Pre-Approved Framework (PAF) and it will provide quicker access to treatment while still allowing health care providers to provide individualized care to meet the specific needs of the claimant.
- We have expanded the definition of catastrophic impairment to cover more serious injuries and also moved to allow the use of analogous measures to those in place for adults so health care practitioners can properly assess seriously injured children. For children, the existing scales cannot always be applied.
- We have rationalized the use of medical examinations by insurers in order to end duplication and reduce costs.
- We are prohibiting cash settlements for accident benefits until one year has passed, while allowing injured people to continue to have access to treatment and income replacement.

- We have broadened the definition of unfair or deceptive acts or practices to apply to health care providers and paralegals in the auto insurance system. This will help us better control the fraud that many believe is still costing premium payers money.
- We are implementing a code of conduct for paralegals to protect consumers from unqualified representatives.
- We are going after fraud in the system. One initiative will permit insurers to request a claimant be examined under oath where there is reasonable concern about accident circumstances.
- We are improving accountability for all parties by requiring the claimants to sign treatment plans.

Interested readers can obtain more information on the Ministry of Finance website, www.fin.gov.on.ca.

In addition, a number of issues which need further action, in light of emerging pressures in the marketplace, were identified. Major areas of reform are outlined in greater detail on the following pages.

Additional Actions

The recently introduced legislative and regulatory reforms to the Ontario insurance system, through Bill 198 *Keeping the Promise for a Strong Economy Act (Budget Measures), 2002*, and its regulations, will help address cost pressures, fraud and abuse while maintaining the comprehensive benefit package available to accident victims. However, it is very clear that further changes to the system will be needed to ensure that auto insurance remains available and affordable to Ontarians. This Government is committed to continuing its efforts to improve the current system.

REVIEW OF DESIGNATED ASSESSMENT CENTRE SYSTEM

One key element which requires further review is the current system of Designated Assessment Centres (DACs). DACs, introduced in 1994, were created for claimants and insurers to use when they need a neutral third-party assessment of a claimant's injuries and his or her entitlement to certain accident benefits. The objective of the DAC system is to provide the parties in a dispute over payment of benefits with prompt, impartial assessments. Currently there are over 100 DAC facilities across the province in hospitals, medical offices and rehabilitation centres. In the absence of DACs, claimants are more likely to be reliant on insurance companies when it comes to determining claimants' eligibility for benefits.

By providing this information to the parties in a dispute, DACs can be instrumental in facilitating an early resolution of disputes (between insurers and claimants) without the need for further expensive legal action. Recently, concerns have been raised about the timeliness, neutrality, effectiveness and rising cost of DAC assessments.

ACTION: To ensure speedy access to assessments and a strong competitive marketplace, this Government has directed the Superintendent of Financial Services to immediately begin a full review of the DAC system, including governance structures, neutrality, fees, operational standards and reporting time lines. This review is to be completed by October, 2003. In the interim, the Superintendent has been asked to expand the number of DACs. An application process to start the expansion will begin in July.

ESTABLISHING COMPETITIVE AND AFFORDABLE HEALTH CARE PROVIDER FEES

The Province has an extensive network of health care providers who work with people injured in car accidents. In the mid 1990's, recognizing the rise in health care costs and the lack of consistency in treatment care plans for similarly injured claimants, the Government asked automobile insurers and health care providers to negotiate fee schedules. Some efforts were successful; others were not. Health care and rehabilitation costs, particularly for minor injuries such as whiplash suffered in car accidents, are still rising at a rate of 15 per cent per year, despite a reduction in the number of accidents.

The costs of treating minor injuries in the auto insurance system contrast sharply with those under the Workplace Safety and Insurance Board (WSIB). For instance, in the auto insurance system, insurers can be required to pay physiotherapy fees of up to \$60.00 per treatment while the WSIB pays as little as \$18.00. WSIB fees for chiropractic care begin at about \$20.00; there is yet to be an agreed upon fee in the auto insurance system. As well, the WSIB has made progress in developing standard treatment protocols in the form of programs of care on which the new Pre-Approved Frameworks are modeled.

Similar comparisons can be made with other auto insurance systems. In British Columbia, chiropractic care is about \$17.00 and in Saskatchewan it is about \$24 per visit.

Treatment care plans and fees paid to health care providers by automobile insurers can be brought closer to those of other payers. An option could be to model the process for treatment of injured individuals similar to the new programs of care developed by the WSIB.

The Government, in its recently announced regulation package, has established a new process for access to treatment for those with minor injuries such as whiplash, referred to as the Pre-Approved Framework. It allows a health care provider to proceed immediately with treatment for less complex injuries, an important aspect in recovering from an injury. Any treatment over and above a pre-determined level, however, must be approved by the insurer as is currently the case. The DAC system is there to resolve any medical dispute between the insurance company and the claimant. This will begin lowering claims costs. The new process comes into effect in October, 2003.

The Government will continue to ensure that there is a strong and affordable network of health care providers who can provide for the needs of those injured in a car accident. Insurers must be able to rely on a viable system in order to deliver the medical and rehabilitation benefits that their customers require when injured in an accident.

ACTION: The Government has directed the Superintendent of Financial Services to:

- Review the existing five fee and treatment protocol schedules and examine opportunities for harmonizing, where appropriate, with other programs of care for similar injuries and also with the intent of establishing significant cost savings. Professionals with schedules include speech-language pathologists and audiologists; physiotherapists; podiatrists; occupational therapists; and psychologists.
- Establish fee and programs of care schedules where they don't exist. Professionals such as chiropractors, nurses, and massage therapists are in this category.
- Ensure that all fee and programs of care schedules better reflect current and future programs of care in the WSIB system, where appropriate; and take into account fees for comparable services in other jurisdictions.
- Implement a common fee payment system so that fee payments from insurers are more automated and current.
- Implement a common data reporting system so that new programs of care can be based on research using actual data.
- Report to the Minister by October, 2003.

AMENDING THE DEDUCTIBLES WHICH APPLY TO AWARDS FOR PAIN AND SUFFERING

As noted above, a deductible of \$15,000 applies to *Insurance Act* pain and suffering court awards (and \$7,500 for *Family Law Act* awards). The intent of the deductibles is to reduce costs and pressure on the auto insurance system by discouraging lawsuits for minor injuries.

It has been suggested that, over time, court awards for minor injuries have increased and the deductible levels have become less effective.

Therefore, as part of the overall effort to address costs, the Government will be increasing the deductibles for pain and suffering court awards from \$15,000 to \$30,000 for *Insurance Act* awards and from \$7,500 to \$15,000 for *Family Law Act* awards.

REVIEW OF THE DRIVING RISK RULES USED BY INSURERS

Another aspect of the current system which requires further review is the way in which insurance companies rate the risk of each and every driver in the Province. In Ontario, insurers are required to file with the Financial Services Commission of Ontario underwriting rules that the companies will use to describe the circumstances when the insurer intends not to sell or renew an auto insurance policy. The *Insurance Act* prohibits the use of underwriting rules that are subjective, arbitrary, have little relationship to the actual risk borne by the insurer, or are contrary to public policy. Examples of prohibited underwriting rules include rules that deny insurance to people on the basis of religion, race, nationality, ethnic group, and credit history or income. Underwriting rules are key to the availability of affordable insurance.

Once insurance companies have decided to sell a policy to someone, they will use internal risk rating rules to determine what the policy will cost. This process is called risk classification.

The *Insurance Act* sets the standards for risk classification systems. Insurers calculate rates by taking into account various factors (the "risk classification system") that have proven to be directly related to the possibility of a policyholder having an accident, or, for example, having their popular model of car stolen. Insurers must collect enough premiums to cover their claims costs and to ensure that an individual who has been permanently injured will be able to rely, in some cases, on a lifetime of benefits. Factors insurers consider when pricing insurance include the number of speeding tickets an individual accumulates, where they live, and the use and type of car they drive. A combination of factors, such as several speeding tickets coupled with owning a sports car, may mean higher premiums. An at-fault accident may mean even higher premiums. However, this Government believes that inadvertent NSF cheques, or not-at-fault accidents and arbitrary insurer changes in territorial boundaries are not valid reasons to re-assess someone's driving risk.

ACTION: The Government has directed the Superintendent of Financial Services to begin a complete review of the way insurance companies determine the risk of an insured. This review will be completed by October, 2003.

The Government has also directed the Superintendent of Financial Services to require insurers to immediately refile for rates where appropriate to reflect reduced costs arising from the recently introduced reforms.

In the interim, the Superintendent will be providing insurers with flexibility so that an insurer will be able to offer coverage to some consumers despite an underwriting rule saying that they cannot - e.g., too many speeding tickets. In addition, the Superintendent will continue to ensure that consumers are not penalized for not-at-fault accidents. The Superintendent will also take a stronger approach to ensuring that consumers are not unfairly penalized for inadvertent NSF cheques or insurer changes in territorial boundaries.

In recent years the cost and availability of snowmobile insurance has become a serious concern. A snowmobile is considered a motor vehicle and therefore requires an automobile insurance policy. Snowmobile insurance coverage will be included in the underwriting rules review; the intent will be to ensure that the record of a driver, as a snowmobile operator, is appropriately and fully taken into account in setting premiums.

ESTABLISHMENT OF AN AUTO INSURANCE ANTI-FRAUD TASK FORCE

The Government is also very concerned that fraud and abuse have become a significant factor in rising automobile insurance premiums. The Insurance Bureau of Canada has estimated that at least 15 per cent of Ontario vehicle premiums are directly attributable to costs incurred due to fraud and auto theft. The Ontario Crime Control Commission supports this figure.

ACTION: The Government will establish an Auto Insurance Anti-Fraud Task Force which will focus on accident benefit fraud and abuse and will work jointly with the Ontario Crime Control Commission to address all auto insurance fraud.

Future Options

TORT REFORM - THE RIGHT TO SUE

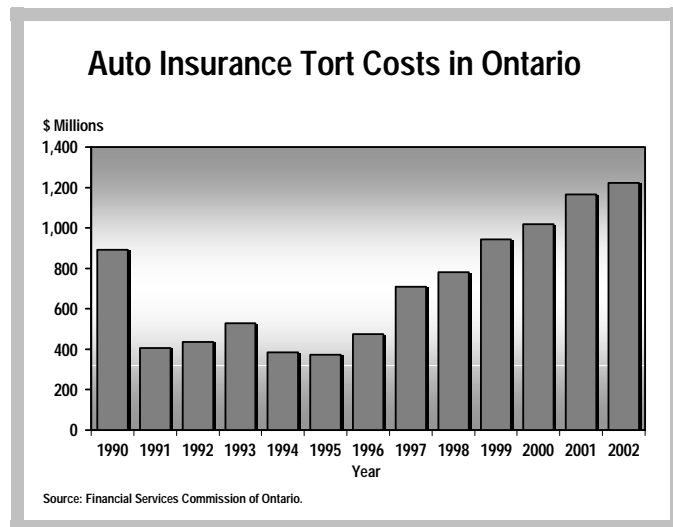
The Ontario *Insurance Act* provides a comprehensive range of benefits for those injured in an accident. These benefits are available whether or not a person has been at fault - in whole or in part - for causing the accident. In addition to "no-fault" benefits, those in the accident who were not-at-fault ("innocent victims") are able to sue for damages in excess of no-fault benefits. Innocent victims can sue the party they hold responsible for certain damages they have sustained; in Ontario, these claims fall within the categories of pain and suffering and economic losses (earning capacity, health care).

In general, jurisdictions with an unlimited right to sue provide a more modest level of accident benefits compared to jurisdictions that have restricted or eliminated the right to sue. This reflects the trade-off between tort and no-fault schemes: tort can provide a high level of compensation but only for those who were not responsible for causing the accident. A basic level of accident benefits is available as a safety net for those who were negligent. In a pure no-fault system, where the right to sue for compensation doesn't exist, all accident victims are compensated regardless of negligence but they may still suffer financial consequences, should their losses exceed the benefits available to claimants.

By providing accident victims with a full range of no-fault benefits plus access to tort, the Ontario auto insurance system gives consumers a balanced approach--quick access to benefits and, for those not at-fault with injuries claimed that exceed the threshold, the right to sue to recover damages in excess of available benefits. The goal of this balance is to help the injured claimant recover as quickly as possible.

In recent years the cost of claims and lawsuits has increased and is clearly a cost pressure on insurance premiums.

The Government intends to introduce tort reforms to address this cost pressure.



REVIEWING THE THRESHOLD AT WHICH AN INJURED PERSON CAN SUE FOR PAIN AND SUFFERING

To sue for pain and suffering damages, a victim's injuries must exceed a certain level. The "verbal threshold" that one must meet to sue for pain and suffering is that a person has sustained a "permanent serious disfigurement" or a "permanent serious impairment of an important physical, mental or psychological function".

The portion of auto insurance premiums that can be attributed to court awards has been rising rapidly in recent years. The insurance industry maintains that, without reform, these costs will continue to put pressure on rates.

During recent consultations, a number of respondents commented that the current threshold has been interpreted by the courts in such a manner that has lowered the threshold to a level at which claims for injuries that were originally not intended to proceed to court and lawsuits that were expected to be prevented by the threshold, are in fact proceeding.

One proposal for streamlining such costs is to reduce the number of individuals who could sue by changing the threshold in the *Insurance Act* to reflect the original intent. It has also been suggested that the right to sue for pain and suffering be limited to those persons who have sustained physical injuries. This would mean that individuals with psychological or mental injuries would no longer be able to sue for pain and suffering.

An alternative way to address rising costs associated with the current serious and permanent threshold is to have it more clearly defined in a new regulation. Currently no definition of serious and permanent impairment exists. The *Insurance Act* allows for such a definition to be set out in regulations. Such a precedent already exists in the *Insurance Act* - the ability to sue for excess health care expenses is dependent on exceeding another threshold, catastrophic impairment, which is defined in regulation. A definition of serious and permanent impairment could assist the courts as well as insurers and injured persons in settling claims. Enactment of a definition to which courts could look when determining whether a person has sustained a serious and permanent injury would be another means of addressing rising costs by reducing the number of individuals able to sue.

In order to address rising costs, should the threshold of serious and permanent impairment be restricted to physical injuries or should the existing threshold be defined in a new regulation?

or

Should the consumer be able to purchase optional coverage that will provide full access to tort without the restriction of a threshold or deductible?

Bill 198, *Keeping the Promise for a Strong Economy Act (Budget Measures)*, 2002, provided for several reforms to the tort system. These sections are awaiting proclamation and were intended to improve a policy holders' access to the courts for certain types of compensation.

Section 120 of Bill 198 contains the following significant tort reform measures:

1. Expanding an injured person's right to sue in court for excess health care expenses.
2. Eliminating the deductibles for pain and suffering awards over \$100,000.
3. Providing protection for those held vicariously liable for an accident.

1. The right to sue for excess health care expenses

Currently, a not-at-fault party can sue for excess health care expenses if their injuries meet the definition of "catastrophic impairment"; very specific criteria are set out to help determine whether a person is catastrophically impaired.

Bill 198 contains a provision that expands an injured person's right to sue for excess health care expenses. It would allow for individuals, to the extent they are not-at-fault, with injuries that meet the same "serious and permanent impairment" threshold that is used for pain and suffering damages, to sue for excess health care expenses.

While this change would provide injured claimants (not-at-fault) with greater access to recover expenses, this also would add costs to auto insurance premiums.

In view of the cost pressures on the auto insurance system, should the Government proceed with this amendment to allow individuals who are not catastrophically impaired, but have suffered serious and permanent impairment, to sue for excess health care expenses?

or

Should this additional coverage be made available to consumers to purchase on an optional basis?

2. Eliminating the deductibles on awards for pain and suffering over \$100,000

Bill 198 proposes to amend the *Insurance Act* to exempt court awards over \$100,000 from the deductible. Currently, the deductible is \$15,000 under the *Insurance Act* and \$7,500 for *Family Law Act* claims. This proposed change received strong support during recent auto insurance consultations but will add cost to auto insurance premiums.

As this tort reform provision adds cost to the auto insurance system, should the Government proceed with eliminating the deductibles on awards over \$100,000 for pain and suffering?

or

Should the exemption apply at a higher level?

3. Protection for those held vicariously liable for an accident

In the *Insurance Act*, the vehicle owners, occupants of the vehicles and those present at the scene of the accident (called "protected defendants") can, when sued for pain and suffering, call upon the claimant to prove that the claimant has sustained a serious and permanent impairment. Everyone else named in a tort action is not protected by this threshold and is referred to as an "unprotected defendant". When suing an unprotected defendant for pain and suffering, the person suing does not have to have sustained a permanent and serious impairment and is not subject to the deductible.

The trend in tort actions has increasingly been to sue others not present at the scene of the accident (for example, employers). It has always been the legislative intent that those "vicariously" liable for a loss not be under a greater legal burden than those persons who were at the scene of the accident.

Bill 198 amended the *Insurance Act* so that those parties, such as employers, who are vicariously liable for the actions of a protected defendant are not held liable for damages beyond the amount for which the employee would be held liable.

This proposal was well-supported during recent auto insurance consultations and will reduce costs in the auto insurance system.

COORDINATION OF DISABILITY INSURANCE COVERAGE

Currently in Ontario, as well as across Canada, consumers have access to different insurance coverages and programs in the event of an accident or injury. This includes auto insurance, workers' compensation, CPP disability benefits, Ontario Disability Support Plan, provincial health insurance, private disability insurance, employer sick leave plans, and supplementary health insurance. Each plan has different eligibility requirements, benefit levels, and premium costs. Further complicating the environment is that auto insurance plans will only pay after benefits are used up under other plans.

Consumers have told the Government that they are paying for coverage that they often do not receive. For example, a significant amount (about \$100) of the average Ontario auto insurance premium covers disability income benefits. A person with disability coverage from their employer who is injured in an auto accident must claim from their workplace plans before claiming under their auto insurer. If those workplace disability benefits are generous, there is often very little that can be claimed under the auto insurance policy. This has raised questions as to why they have to pay for that auto insurance coverage. In addition, the eligibility requirements and disability tests used by various insurers will be different, requiring multiple visits to physicians for medical exams to complete insurance forms.

What can be done to better coordinate overlapping disability insurance coverage?

INTERPROVINCIAL CO-OPERATION AND COLLABORATION

All provinces are committed to look for ways to improve their auto insurance systems to ensure that auto insurance remains available and affordable. The Atlantic Premiers have created a task force to examine harmonizing legislation; Nova Scotia plans to limit benefits for minor injuries; New Brunswick has capped court awards for pain and suffering for minor injuries at \$2,500; Alberta has announced plans for major reforms in that Province. While each jurisdiction has to look at measures that are tailored to their own unique markets, there are opportunities for collaboration that will benefit consumers across Canada.

For instance, harmonization of efforts to share data on identifying costs underlying the rising price of health care treatments and discussion of government strategies to help the marketplace address those costs would assist each jurisdiction to avoid overlap and duplication of efforts.

Similarly, the issue of restricting the right to sue (tort reforms) is another topic for interprovincial discussion and exchange of information. Rising tort claims is a cost driver for provincial systems providing access to tort. Topics which could be covered include the issue of a verbal threshold for pain and suffering claims, and application of a monetary deductible for court awards.

Although much of the co-operation is now informal (for example, insurance regulators contacting one another to exchange information on issues and developments), the Ontario Government is proposing more formal linkages, given the pressures facing the Canadian auto insurance marketplace. The Canadian Council of Insurance Regulators (CCIR), comprised of all provincial and territorial insurance regulators, has undertaken several insurance harmonization initiatives and could be asked to consider ways to better share information.

Ontario is undertaking a review of its current underwriting rules and insurers' risk classification systems. Other provinces are also looking at the filing of underwriting rules. Ontario will share the results of its review with other provinces to initiate further discussions and to begin to explore the possibility of establishing standard practices.

Ontario is calling for a coordinated effort to address vehicle theft and fraud, as well as accident benefit fraud and abuse which would benefit all auto insurance systems, whether privately or publicly delivered.

Conclusion: Action to Ensure Stable Auto Insurance Rates for Consumers

Ontario's auto insurance system is based on private insurers operating in a healthy, competitive marketplace. The Government's reforms are designed to strengthen that marketplace which will in turn benefit consumers by ensuring that insurance remains available and rates are stable.

With the changes that the Government has already put in place in addition to those contemplated (reduced health care fees, tort reforms, improved DAC system, more effective underwriting and rate classification systems, and better control over fraud), insurance companies should be able to reduce premiums to individuals. If insurers do not respond immediately and appropriately by passing on savings to consumers, the Government will take action, including measures directly targeting insurance premiums. These could include rate caps, rate freezes or rate roll-backs.

The Government understands that consumers must be protected from unaffordable premiums. Ontario's economy relies on people getting to their workplaces, and people rely on their cars in their daily lives.

Your views are important as we move forward to strengthen the auto insurance system in Ontario. Please submit written comments by September 15, 2003 to:

Auto Insurance Review Committee
7 Queen's Park Crescent
Frost Building South
Toronto ON M7A 1Y7