

Highlights Regarding Implementation of Bill 15

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New Definition for Catastrophic

- Budget document merely says
 - *“The government will amend Insurance Act regulations to update the catastrophic impairment definition consistent with more up-to-date medical information and knowledge...”*
- May 2015 proposals:
 - Vague, but seemed to
 - Incorporate *AMA Guides*, 6th edition, rather than 4th
 - Incorporate recommendations from *Superintendent’s Report on the Definition of Catastrophic Impairment*, at least in relation to combining of mental-behavioural impairments with purely physical impairments – i.e. use of GAF for numerical scores to stack mental-behavioural impairments
- August 26, 2016 (For accidents after June 1, 2016) amendments filed:
 - Maintains use of *AMA Guides*, 4th edition, for certain purposes
 - Requires use of *AMA Guides*, 6th edition, for stacking
 - [Other substantive changes including non-earner duration limited to 2 years with 4 week waiting period, and five year duration for (non-catastrophic) medical rehab]

New Definition for Catastrophic

- Earlier proposals suggested using Global Assessment of Functioning (“GAF”) for mental-behavioural impairments (*AMA Guides*, 6th ed., if used, would permit numerical scores for mental-behavioural impairments, with conversion based on GAF table, to add to WPI score)
- Mental-behavioural impairments will continue to be rated with Chapter 14 of *Guides*, 4th edition
 - 1. ADLs, 2. Social Functioning, 3. Adaption to Work and Work-like Settings, and 4. Concentration, Persistence, Pace
 - Rather than 1 domain with marked or extreme impairment, requirement will be for at least 3 domains with marked impairment or 1 domain with extreme impairment
 - Additional requirement that, in addition to 3 marked or 1 extreme, the *overall* impairment must preclude useful functioning

New Definition for Catastrophic

- New amendments continue use of WPI rating methodology as set out in *AMA Guides*, 4th edition
- BUT, at 3.1 (6), WPI ratings for pure physical impairments (determined in accordance with 4th edition) may be stacked with mental-behavioural impairments which are scored using section 14.6 of *AMA Guides*, 6th edition.
 - Requires administration of
 - BPRS (Brief Psychiatric Rating Scale)
 - GAF (Global Assessment of Functioning)
 - PIRS (Psychiatric Impairment Rating Scale)
 - The score is based on the median score of these 3 test instruments. E.g. a GAF of 41-50 is given a percentage rating of 15 percent WPI .

New Definition for Catastrophic

- TBI- eliminate Glasgow Coma Scale (GCS) method and adopt GOS-E method
 - *Required score- Vegetative after 3 months, or SD+ or SD – after 6 months, or MD- after one year if participated in in-patient neuro rehab in approved facility*
 - *Special rules for those under 18 at time of MVA*
- Changes to definitions for paraplegia, quadriplegia, total blindness, loss of use of one limb

Licence Appeal Tribunal

- Abolition of FSCO Dispute Resolution
- All AB disputes to be adjudicated by LAT
- Historical volume for LAT – about 700 disputes per year
- Historical volume for FSCO DRS – up to 30,000 mediations and 15,000 arbitrations

Licence Appeal Tribunal

- Rules of Practice? Procedure? Implementation April 1, 2016?
- What happens to cases already pending in Superior Court or at FSCO at time of implementation?
 - Wording of revisions to sections 279 – 281 of *Insurance Act*
- Does section 281 completely bar any and all court actions such as those for extra-contractual damages?
 - *“This section applies with respect to the resolution of disputes in respect of an insured person’s entitlement to statutory accident benefits or in respect of the amount of statutory accident benefits to which an insured person is entitled”*

Licence Appeal Tribunal

- Cunningham report :
 - Paper review hearings – within 60 days
 - Expedited in person ½ day to 1 day hearings – within 90 days
 - Full hearings – within 90 days
 - Process supposed to be complete within six months even on complex matters
- Will decisions by paper review on small issues create *issue estoppel / res judicata* problems for both sides on other claims?

Licence Appeal Tribunal

- Fairness vs cost containment and efficiency
- Experience of adjudicators?
 - *Cunningham report noted less important whether it is public or private tribunal ; what matters is that it is staffed with adjudicators “with knowledge and experience on the current and prior schemes..”*
- Recovery of legal expenses for successful party?
 - *Cunningham report supports recovery of legal expenses, especially in favor of those who make reasonable settlement offers that are rejected and against those who abuse the system.*
 - *Legal expenses recoverable on a scale depending how far down the process.*