

CHANGES TO THE INSURANCE ACT

EFFECTIVE MARCH 1, 2006

by Richard M. Bogoroch
and Melinda J. Baxter

INTRODUCTION

On March 1, 2006, certain changes to the Insurance Act took effect. The most significant change involves the abolishment of the Designated Assessment Centre (DAC) system. The DAC system allowed for the re-consideration, by a neutral body, of a decision of an insurance company to either refuse a treatment plan, deny a benefit or terminate a benefit. The decision of the DAC was binding on the insurer.

The amendments to the Insurance Act will put an end to the DAC system. A new system will take its place, that, while allowing for review of the decision of the insurer, **significantly limits the options** available to the insured and what is ultimately required by the insurer. It is important that insured individuals understand the different procedural steps that have been put in place.

The goal of this newsletter is to inform injured persons, physicians and other health care providers of the important changes to the Insurance Act and of their impact. **Our commitment to our clients is clear. We will fight**



RICHARD M. BOGOROCH



MELINDA J. BAXTER

hard on our clients' behalf to ensure that they receive what they deserve and that insurers honour their obligations of good faith and fair dealing. It is important to retain counsel promptly after a car accident, especially with the timelines mandated by the recent changes to the Insurance Act.

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BOGOROCH
& ASSOCIATES

Barristers and Solicitors

Dedicated to improving the lives
of injured victims and their families



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1/ INSURER EXAMINATIONS

Similar to the previous legislation, under the new Regulation, an insurer is entitled to conduct an examination for the purpose of **determining an insured's entitlement** to a benefit. However, there are some fundamental changes to the scope and type of Insurer Examinations. Under the **previous legislation**, insurers were not permitted to conduct an Insurer Examination in respect of **medical or rehabilitation benefits**. This **is** allowed under the new legislation. Additionally, the changes to the *Insurance Act* create a new type of Insurer Examination, one that **does not** require the attendance of you, as the insured, and is restricted to a paper review of relevant documentation.

This new type of examination is limited to a few categories of Insurer Examinations, and the choice to proceed by way of paper review is that of the insurer. If this avenue is chosen by the insurer, the assessment of your entitlement to a benefit **may proceed by paper review only**, and **without your direct input**. It is very important that if you are notified that this type of examination is going to occur, you ensure that all relevant documentation is **provided to the assessor**. If you are represented by counsel, it is their responsibility to ensure that this is done.

Required notice by the insurer to you, as the insured, of an upcoming Insurer Examination remains at **5 days**; however, the new legislation allows for **verbal notice**, as long as the insurer confirms, as

soon as practicable, in writing. It is important that you realize that notification may now be provided by **telephone** and that you may not receive written confirmation until very close to the time of the scheduled Insurer Examination, if the written confirmation is sent by regular mail.

The new regulation requires that both **the insurer** and you, **as the insured**, provide all relevant documentation to the assessor within 5 business days of receiving notice from the insurer of an upcoming Insurer Examination. It is imperative that the assessor has in its possession all of the relevant documentation pertaining to the benefit being assessed, especially if the Insurer Examination is limited to a paper review. The assessor conducting the Insurer Examination will also be allowed, pursuant to the amendments, to contact your treating practitioner for up to a 30-minute consultation regarding the benefit that is being assessed and your condition.

2/ ASSESSMENT OR EXAMINATION AFTER DENIAL OF A BENEFIT

Dependent upon the results of the Insurer Examination, if the entitlement to the benefit is denied, you, as the insured, have the **option** of proceeding with a newly structured examination called an **Assessment or Examination after Denial of a Benefit**. The purpose of this examination is to assist in dispute resolution. This examination is a new feature of the amended legislation and a significant change from the DAC system. A significant and unfortunate change is that, even if, as a result of this examination, the

assessor concludes that you are **entitled** to the benefit(s), **the insurer is not required** to adhere to the assessor's recommendations, as they were when the DAC system was in place. We believe this is unfair. Having had you examined by an expert of their choosing, the **insurer can simply ignore the report**. As such, it forces you, as the insured, to proceed with mediation and litigation or arbitration in an attempt to obtain provision of the benefit.

The ability to proceed with this type of examination is **limited in some instances**. In others, this examination is **limited in scope**. For example, if the Insurer Examination was a paper review examination, this examination is also required to be limited to a paper review.

Assessments or examinations after denial of a benefit are generally to be conducted by the *original provider*. The original provider is the author of the treatment plan or the practitioner who supported the payment of the benefit. There are **some exceptions** to this rule. For example, if the assessor who conducted the Insurer Examination is not of the same health profession as the original provider, the insured may choose an assessor of any health profession for this examination. However, **the amount of funding provided by the insurer for this examination is very limited** and as such, the insured may be left with a **very limited range of assessors** who will conduct the examination with the funds provided.

3/ APPLYING FOR BENEFITS – THE BASICS

Income Replacement Benefits, Non-earner Benefits or Caregiver Benefits

When applying for these benefits, you will be required to submit a current **Disability Certificate. Within 10 business days** of receiving the Disability Certificate, the insurer must either pay the benefit or notify you, as the insured, that an Insurer Examination is required. Entitlement to this benefit **cannot be denied until** a report is received from the Insurer Examination assessor. There are **some exceptions** to this general rule.

If an Insurer Examination is scheduled, the **insurer is required** to communicate its decision regarding entitlement and provide a copy of the Insurer Examination report to the insured and their treatment provider within 5 days of receipt of the same. If there is a delay, the insurer is required to pay the benefit or expense until the report is received.

Housekeeping and Home Maintenance Expenses

The same process as outlined above for *Income Replacement Benefits, Non-earner Benefits or Caregiver Benefits*, applies.

Medical and Rehabilitation Benefits

An **insurer is required to respond to a treatment plan within 10 business days** of receipt. The

insurer's response must indicate which goods and services they agree to pay for and which they do not. For those **goods and services not reimbursed**, the insurer must proceed with an Insurer Examination. If an insurer does not respond to the treatment plan within 10 business days, **it is required to pay benefits until they respond**.

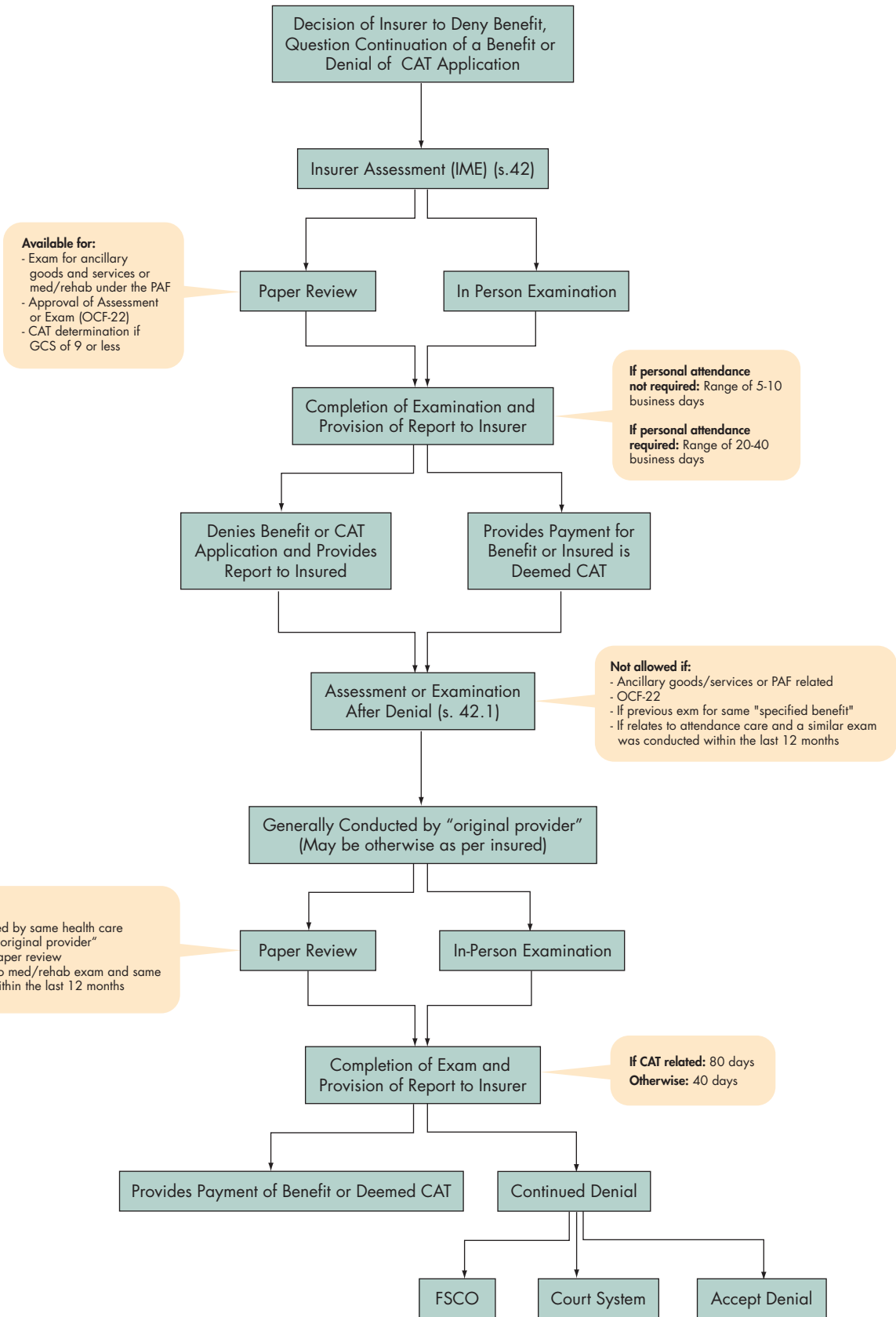
Again, **within 5 business days** of receiving the report from the Insurer Examination assessor, the insurer **must communicate** the results of its decision regarding entitlement and **provide a copy of the report** to the insured and his/her treatment provider. If there is a delay, the insurer is required to pay the benefit or expense until the report is received.

Attendant Care Benefits

To apply for attendant care benefits, you, as the insured, must submit to an **Assessment of Attendant Care Needs. Within 10 business days** of the receipt of the report, the **insurer must pay the benefit**. The insurer may also notify you, as the insured, that you are **required to attend an Insurer Examination, if they are not in agreement with the expenses set out in the report provided**. If the insured refuses or fails to attend the Insurer Examination, the insurer can refuse to pay the benefit. An insurer is not required to pay for benefits incurred prior to the submission of the Assessment of Attendant Care Needs.

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PROCESS OF INSURER EXAMINATIONS THROUGH ASSESSMENT OR EXAMINATION AFTER DENIAL



BOGOROCH & ASSOCIATES: A HISTORY OF CHARITABLE GIVING

Bogoroch & Associates is pleased to be able to give back to the community we live in and to those less fortunate, both here in Ontario and around the world. **Over the past several years, Richard Bogoroch has led the firm's ambitious charitable giving campaign.** We are proud that, since the firm's inception, we have been able to donate substantial sums to deserving charities. **We are particularly pleased that Bogoroch & Associates has been able to assist organizations that provide vital services to our clients.**

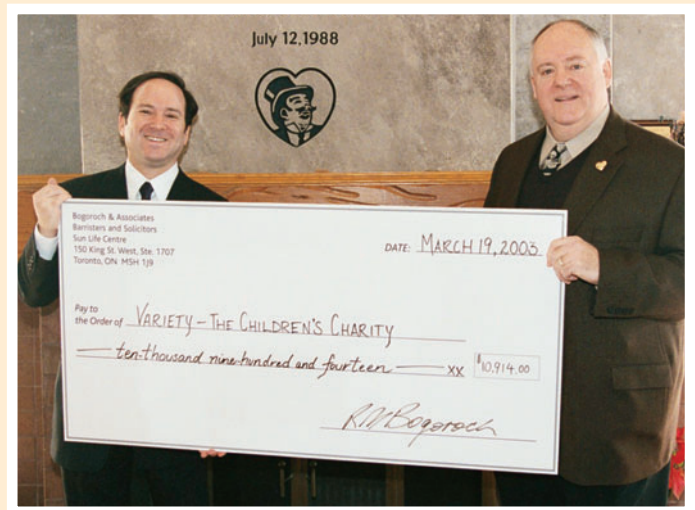
*"We make a living by what we get,
but we make a life by what we give."*

— WINSTON CHURCHILL, BRITISH PRIME MINISTER

Some organizations that have benefited from the Bogoroch & Associates charitable giving program include:

- **St. Michael's Hospital** Head Injury Clinic and the Trauma Neurosurgery Unit has received over **\$50,000.00**.
- **Variety Village**, with the assistance of a **\$10,900.00** donation from Bogoroch & Associates, was able to purchase much-needed gym and exercise equipment for the use, benefit and rehabilitation of individuals suffering from spinal cord injuries.
- We are also pleased to provide assistance and support to the **Ontario Brain Injury Association**, various **community brain injury associations**, **fibromyalgia support groups** and the **National ME/FM Action Network**, among others.
- Bogoroch & Associates has sponsored the **Ontario branch of the Canadian Paraplegic Association's Wheelchair Relay** and supports the CPA-Ontario in a variety of other ways.

The importance of education and sharing one's knowledge to benefit others cannot be overstated. Bogoroch & Associates has established a **\$50,000.00 Renewable Entrance Scholarship at Osgoode Hall Law School** ensuring that two students with good academic standing but limited financial resources will be able to realize their potential and become lawyers. This scholarship will provide two Osgoode students with \$8,325.00 each per year for three years of study.



RICHARD BOGOROCH PRESENTS A CHEQUE TO VARIETY – THE CHILDREN'S CHARITY.

The firm is also pleased to be the sponsor of several education-related travel bursaries. Beneficiaries of these bursaries include **St. Michael's Hospital, the Toronto Rehabilitation Institute's Acquired Brain Injury Service and the Spinal Cord Rehab Program at the Toronto Rehabilitation Institute's Lyndhurst Centre.**

While supporting local charities is an important part of Bogoroch & Associates' philosophy, we also realize that those in need are found in all parts of the world. Through the Red Cross, we have provided financial assistance to the victims of natural disasters, including the **tsunami in South Asia and Hurricane Katrina in the United States.** We have also made various donations in support of medical research.

Richard M. Bogoroch is proud to be a Member of the Board of Directors of the **Safehaven Project for Community Living.** Safehaven is a not-for-profit organization dedicated to providing residential and respite options to children and youth with multiple disabilities and complex medical needs. Bogoroch & Associates is delighted to be affiliated with this important organization.

Bogoroch & Associates' charitable giving program reflects the firm's values and is in keeping with the firm's commitment to strengthen our community and to improve the lives of others.

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Again, **within 5 business days** of receiving the report from the Insurer Examination assessor, the **insurer must communicate the results** of its decision regarding entitlement and **provide a copy of the report** to the insured and his/her treatment provider. If there is a delay, the insurer is required to pay the benefit or expense until the report is received.

NEXT ISSUE

Coming up in our next Newsletter

SUMMER 2006:

FIBROMYALGIA
AND CHRONIC PAIN
LITIGATION



Recent & Upcoming Events Calendar

Bogoroch & Associates are honoured to have the opportunity to interact with groups & organizations on matters of legal interest. *Below is a list of recent & upcoming events:*

April 27, 2006 Osgoode Professional Development "2nd Annual Update-Personal Injury Law and Practice". **Richard Bogoroch** will chair this Continuing Legal Education program which focuses on a review and analysis of leading developments in personal injury litigation. **Heidi Brown** will speak on guardianship issues.

March 28, 2006: **Tripta Chandler** will be participating in a panel discussion at The Canadian Institute's annual "Reducing the Risk of Hospital Liability" conference, focussing on the legal aspects of infectious disease management.

January 27, 2006: **Richard Bogoroch** spoke at the Ontario Trial Lawyers Association meeting on Medical Negligence. Richard discussed *Family Law Act* claims.

December 6, 2005: **Richard Bogoroch** participated in a panel discussion on Bill 198 and the Ever-Changing Threshold Bar.

October 21, 2005: **Richard Bogoroch** spoke at the Law Society of Upper Canada's 5th Annual Civil Litigation for Law Clerks seminar on Common Motions.

September 23, 2005: **Richard Bogoroch** spoke on Cross Examinations at the 2nd Annual Evidence for the Civil Litigator CLE Conference hosted by Osgoode Professional Development.

July 13, 2005: **Richard Bogoroch** was once again invited to lecture at the Osgoode Hall Intensive Trial Advocacy Workshop.

If you or your organization would like a member of our team for a speaking engagement, kindly contact:
Mary Battaglia (416) 341-5606, mbattaglia@bogoroch.com or **Carrie Fine** (416) 341-5625, cfine@bogoroch.com

The information in this newsletter is not, nor is it intended to be, legal advice. You should consult a lawyer for individual advice regarding your own situation. Use of this newsletter does not create a solicitor/client relationship between Bogoroch & Associates and the reader.

THOUGHTS ON THE MEANING OF LIFE

"The first step in the acquisition of wisdom is silence, the second listening, the third memory, the fourth practice and the fifth, teaching others."

— SOLOMON IBN GABRIOL,
(1021-1058) JEWISH POET
AND PHILOSOPHER

"The art of being wise is knowing what to overlook."

— WILLIAM JAMES,
(1842-1910) AMERICAN
PSYCHOLOGIST AND
PHILOSOPHER

"Twenty years from now you will be more disappointed by the things you didn't do than by the ones you did. So throw off the bowlines. Sail away from the safe harbor. Catch the trade winds in your sails. Explore. Dream. Discover."

— MARK TWAIN
1835-1910, AMERICAN WRITER
AND HUMORIST

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