

CHANGE IS COMING TO ONTARIO

by Richard M. Bogoroch

CHANGES TO THE INSURANCE ACT AND THE RULES OF CIVIL PROCEDURE

"Change is the law of life."

JOHN F. KENNEDY,
PRESIDENT OF THE UNITED
STATES OF AMERICA, 1961-1963

On November 2, 2009, the Government of Ontario announced proposed changes to car insurance legislation. The amendments proposed build on recommendations made by the Financial Services Commission of Ontario, and other stakeholders. There is no indication that these changes will lower insurance rates; however, it seems clear that they will not rise in the same manner as they have in the past. It is also evident that limits will be placed on an injured person's entitlement to statutory accident benefits, with little change being made to one's ability to sue in tort (for example, in a personal injury lawsuit against a motorist at fault).

On March 13, 2010 certain changes to the Statutory Accident Benefits Schedule were published in the *Ontario Gazette*. These changes will take effect September 1, 2010. The following page includes a comparison table illustrating both current coverage and the new provisions.



RICHARD M. BOGOROCH

CAR INSURANCE AND THE RULES GOVERNING LAWSUITS

How will injured victims cope with this reduction in benefits?

The new provisions reduce the amount of the medical and rehabilitation benefit from \$100,000 to \$50,000 in non-catastrophic cases. This may be adequate for those who have sustained soft tissue injuries, but in my view, those suffering from orthopaedic injuries, chronic pain or brain damage (non-catastrophic) will be hindered in obtaining treatments essential to rehabilitation/re-integration back into family life, the workplace and society at large.

What are the first steps towards a client's financial security?

Clearly, a proactive and assertive approach must be taken. With a team of 10 lawyers and 25 support staff (including night staff), we have comprehensive resources available to move our cases aggressively to ensure that our clients receive the compensation and benefits to which they are rightfully entitled.

BOGOROCH & ASSOCIATES IS
PLEASED TO ANNOUNCE ITS
10TH ANNIVERSARY

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**BOGOROCH
& ASSOCIATES**

Barristers and Solicitors

Dedicated to improving the lives
of injured victims and their families

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CHANGES TO THE INSURANCE ACT

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STATUTORY ACCIDENT BENEFITS: COVERAGE COMPARISON

Coverage	Current Coverage	New Basic Coverage	New Optional Coverage
Medical and Rehabilitation (non-catastrophic)	<ul style="list-style-type: none"> • \$100,000 (non-catastrophic) • \$1 million (catastrophic) 	<ul style="list-style-type: none"> • \$50,000 • \$1 million (catastrophic) • Coverage includes assessments 	<ul style="list-style-type: none"> • \$100,000 or \$1.1 million • Coverage includes assessments
Medical and Rehabilitation (catastrophic)	<ul style="list-style-type: none"> • \$1 million 	<ul style="list-style-type: none"> • \$1 million • Coverage includes assessments 	<ul style="list-style-type: none"> • \$2 million (option includes attendant care) • Coverage includes assessments
Attendant Care	<ul style="list-style-type: none"> • \$72,000 (non-catastrophic) • \$1 million (catastrophic) 	<ul style="list-style-type: none"> • \$36,000 (non-catastrophic) • \$1 million (catastrophic) 	<ul style="list-style-type: none"> • \$72,000 (non-catastrophic) or \$1,072,000 (non-catastrophic) • \$2 million (catastrophic)
Housekeeping and Home Maintenance Expenses and Caregiver Expenses	<ul style="list-style-type: none"> • Caregiver benefit: up to \$250 per week plus \$50 per dependant; • Housekeeping and home maintenance up to \$100 per week 	<ul style="list-style-type: none"> • Benefits available for catastrophic injuries 	<ul style="list-style-type: none"> • Caregiver benefit: up to \$250 per week plus \$50 per dependant; (non-catastrophic) • Housekeeping and home maintenance up to \$100 per week up to 104 weeks (non-catastrophic)
Income Replacement	<ul style="list-style-type: none"> • Maximum \$400 per week; 80% of net income 	<ul style="list-style-type: none"> • Maximum \$400 per week; 70% of gross income 	<ul style="list-style-type: none"> • \$600, \$800 or \$1,000 per week; 70% of gross income
Death and Funeral	<ul style="list-style-type: none"> • \$25,000 (eligible spouse); \$10,000 (each dependant), maximum \$6,000 funeral expenses 	<ul style="list-style-type: none"> • \$25,000 (eligible spouse); \$10,000 (each dependant), maximum \$6,000 funeral expenses 	<ul style="list-style-type: none"> • \$50,000 (eligible spouse); \$20,000 (each dependant), maximum \$8,000 funeral expenses

If an individual has a personal injury lawsuit arising from a car accident, we seek an advance payment from the insurance company. Advance payments or prepayments (where the insurance company pays down a portion of its obligation on the claim) provide funds which will enable our clients to live in dignity while the claim is ongoing. Further, the advance payment will pay for necessary treatment and rehabilitation which may have been denied by the accident benefit insurer.

How is funding secured?

Beginning on January 1, 2010, changes to the *Rules of Civil Procedure* (the code containing the procedures governing the conduct of Ontario lawsuits) now permit motions for partial summary judgment. Consider the following example: Jim is in a rear-end collision and the at-fault party is convicted of careless driving. In addition

to fractures to the tibia and fibula that led to surgical scarring, our client has suffered internal injuries and a mild brain injury. He has used up the \$50,000 available through his accident benefits insurer, and has not purchased additional coverage. This means that he cannot afford the ongoing rehabilitation necessary for his recovery. As Jim's lawyers representing his pain and suffering or personal injury claim, we would bring a motion in court for an advance payment.

Clearly, Jim is entitled to compensation, since the accident has affected his ability to work and has ultimately led to serious financial loss. Funds would be sought from the insurer or by asking the court to order the insurer to make an advance payment to cover the cost of Jim's ongoing treatment. This is the best possible outcome, as Jim would receive the finances needed to carry on with his treatment, thus leading to a

better quality of life for him. This would be accomplished by the legal team at Bogoroch & Associates working with his caregivers and rehabilitation providers.

On numerous occasions, we have successfully obtained advance payments for those we represent, and we remain steadfast in our commitment and determination to improve the lives of injured victims and their families.

CHANGES TO THE RULES GOVERNING LAWSUITS

Effective January 1, 2010, the following changes took effect:

1. The Small Claims Court limit was increased to \$25,000.
2. The Simplified Rules limit that applies to uncomplicated litigation was increased to \$100,000.
3. Expert opinions, future-care cost consultants, actuaries, economists, and engineers – in short, anyone who serves as an expert – has new obligations imposed upon him/her.
4. Obtaining Summary Judgment should be both faster and easier.

WHAT EVERY EXPERT WITNESS NEEDS TO KNOW

In recent years, there have been a number of judgments where experts were criticized for assuming the role of an advocate instead of as a neutral expert. The new *Rules* require that the expert's role is to assist the court in better understanding the legal issues. (see insets on page 3 and 4)

CONCLUSION

We are witnessing the dawn of a new era in the province of Ontario. Whether this means improvement and progress remains to be seen, however, one thing is clear: the proposed changes to current insurance law will pose a challenge to injured accident victims (non-catastrophic), as accident benefits will be reduced.

AMENDMENT — 53.03(1)

(1) A party who intends to call an expert witness at trial shall, not less than 90 days before the pre-trial conference required under Rule 50, serve on every other party to the action a report, signed by the expert, containing the information listed in subrule (2.1).

O. Reg. 438/08, s.48
[Effective January 1, 2010.]

AMENDMENT — 53.03(2)

(1) A party who intends to call an expert witness at trial to respond to the expert witness of another party shall, not less than 60 days before the pre-trial conference, serve on every other party to the action a report, signed by the expert, containing the information listed in subrule (2.1).

O. Reg. 438/08, s.48
[Effective January 1, 2010.]

ADDITION — 53.03(2.1), (2.2)

(1) A report provided for the purposes of subrule (1) or (2) shall contain the following information:

1. The expert's name, address and area of expertise.
2. The expert's qualifications and employment and educational experiences in his or her area of expertise.
3. The instructions provided to the expert in relation to the proceeding.
4. The nature of the opinion being sought and each issue in the proceeding to which the opinion relates.
5. The expert's opinion respecting each issue and where there is a range of opinions given, a summary of the range and the reasons for the expert's own opinion within that range.
6. The expert's reasons for his or her opinion, including:
 - (i) a description of the factual assumptions on which the opinion is based.
 - (ii) a description of any research conducted by the expert that led him or her to form the opinion, and
 - (iii) a list of every document, if any, relied on by the expert in forming the opinion.
7. An acknowledgment of the expert's duty (Form 53) signed by the expert.
(see next page)

FORM 53 — ACKNOWLEDGEMENT OF EXPERT'S DUTY

Courts of Justice Act
(General heading)

ACKNOWLEDGEMENT OF EXPERT'S DUTY

1. My name is (name). I live at (city), in the (province/state) of (name of province/state).
2. I have been engaged by or on behalf of (name of party/parties) to provide evidence in relation to the above-noted court proceeding.
3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
 - (a) to provide opinion evidence that is fair, objective and non-partisan;
 - (b) to provide opinion evidence that is related only to matters that are within my area of expertise; and
 - (c) to provide such additional assistance as the court may reasonably require, to determine a matter in issue.
4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

Date Signature.....

NOTE: This form must be attached to any report signed by the expert and provided for the purposes of subrule 53.03(1) or (2) of the Rules of Civil Procedure.

November 1, 2008 [Effective January 1, 2010.]

THOUGHTS ON THE MEANING OF LIFE

“Wisdom is the principal thing; Therefore get wisdom; and with all thy getting get understanding.”

PROVERBS 4:7

“A merry heart makes a cheerful countenance.”

PROVERBS 15:13

“The only reward of virtue is virtue, the only way to have a friend is to be one.”

RALPH WALDO EMERSON
1803-1882, AMERICAN WRITER,
POET 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



RECENT & UPCOMING EVENTS CALENDAR

Our firm has enjoyed the ongoing privilege of collaborating with organizations that share our legal and medical interests. Below is a list of recent and upcoming events that our team is affiliated with:

February 19, 2009 Ontario Brain Injury Association – Richard Bogoroch was invited to give an informal lecture to a group of students at Brock University enrolled in the Level 1 Neuro-Rehabilitation Training Program. Richard spoke to candidates on assisting with recovery and function in everyday life following a patient's brain injury.

February 23-24, 2009 The Canadian Institute: “Personal Injury Settlements” – Heidi Brown spoke about “Balancing the Tricky Relationship between Accident Benefits and Tort Claims” from the plaintiff's perspective. Richard Bogoroch led the post-conference workshop on “Drafting Mediation Briefs: Advanced Techniques and Best Practices.”

April 29, 2009 – Richard Bogoroch spoke at the Law Society of Upper Canada's conference on the “Annotated Retainer Agreement.” His talk focused on Contingency Agreements and the issue of Regular Retainers.

September 15, 2009 Kitchener Fibromyalgia Association – Richard Bogoroch and Heidi Brown gave an evening presentation to this group. Richard continues to visit the organization annually.

September 21, 2009 – Osgoode Professional Development held its “5th Annual Personal Injury Law and Practice.” Richard Bogoroch chaired this important personal injury

litigation programme.

October 26, 2009 – Richard Bogoroch gave an evening lecture to the Mississauga Fibromyalgia Association.

October 28-30, 2009 – This year, the Ontario Brain Injury Association held its annual two-day conference in Niagara Falls. Bogoroch & Associates was a generous sponsor of the event and held a booth at the conference.

October 27, 2009 – Richard Bogoroch was a guest speaker at the Canadian Institute's 10th annual conference on “Managing and Litigating Disability Insurance Claims.” The session was entitled, “Successful Strategies for Proving Psychological Disability Claims.”

November 17, 2009 – The Law Society of Upper Canada held its “9th Annual Civil Litigation for Law Clerks.” Richard Bogoroch was invited to speak about “Retainer Agreements and Contingency Fees.”

February 26, 2010 Richard Bogoroch chaired “Litigating Traumatic Brain and Spinal Chord Injury Cases” conference for Insight Conferences.

If you or your organization is interested in a member of our team for a speaking engagement, kindly contact:

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