

Catastrophic Clarity

On the eve of the FSCO Catastrophic Impairment Roundtable, I would like to offer some thoughts which hopefully will provide clarity to the issue of the redefinition of Catastrophic Impairment.

It is important to remember that Catastrophic Impairment is a legal definition not a medical one. Therefore what does or does not represent catastrophic impairment cannot be based on "science" nor can it be based on medical opinion. That is the essence of the discussion at hand.

Much of what is being contemplated in the redefinition is an attempt to cloak Policy as Science. If it is Policy to change the definition, so be it. FSCO should be honest and declare its intent to the 12 million Ontarians affected by the anticipated changes (not just the 9 million licenced drivers, as pedestrians are also affected by these definitions). If we cannot afford to pay for catastrophic injuries as they are defined within the present premium umbrella, then the IBC and FSCO should admit that there needs to be Policy change to address this.

The recent FSCO Roundtable was struck to examine three aspects of the recommendations of the Expert Panel: namely, combining physical and psychiatric impairments; the definition of psychiatric impairment itself; and the definitions of catastrophic brain injuries and spinal cord injuries.

The new definitions suggested by the Expert Panel direct that physical impairments cannot be combined with psychiatric impairments and, particularly, that impairment from traumatic brain injury cannot be combined with mental and behavioural impairment arising from an auto accident. I must again point out that the "interpretation" of the AMA Guides in auto insurance legislation is a legal exercise not a medical one. There is a statutory directive to utilize the AMA Guides in impairment scoring. Because the AMA Guides are incorporated into the SABS, judicial interpretation, not Expert Panel interpretation cloaked as "science", is mandated. So the question of whether the AMA Guides allows these combinations is not a matter for "scientific" analysis by an "Expert Panel"; it is a judicial interpretation of the Statutory Accident Benefits Schedule and clear jurisprudence has already been established on this issue.

I am concerned that many stakeholders are continuing to suggest "me too" agendas for change of the definition. Not only is this a futile exercise, I question fundamentally whether any change in the present definition is even necessary as the definition only affects about 1% of all claimants. Given that there are 60,000 claimants in the system each year, that means only 600 or so individuals are affected by the definition and more likely than not about half of them will clearly meet any reasonable catastrophic definition due to such things as severe brain injury, quadriplegia, amputations, etc. These need no interpretation. That leaves a few hundred claimants over whom this whole fight is evolving. For an insurance scheme that is supposed to be "remedial", this hardly seems the reason for wholesale definition change.

What about the psychiatric catastrophic threshold requiring a Global Assessment of Function (GAF) of 40 or less? To me the introduction of this new draconian definition is an unfortunate agenda-driven attempt to exclude mental illness in all but the most profoundly severe forms. If that is what the government wants to do, it should be straightforward and it should explain its intention honestly as a matter of Policy to the 12 million Ontarians who may be at risk. So far this has not been done.

Regarding the third issue, namely the definitions of catastrophic brain injury and spinal cord injury, I have already indicated in my submission to FSCO regarding the Expert Panel's report in 2011 that I applaud the Panel's innovation in these areas. I have come to recognize from the submissions of others, however, that there may be significant reasons to review these definitions further.

It has taken eighteen years to accumulate the existing jurisprudence that is finally providing clarity to the interpretation of the definition as it stands. If the purpose of the definition change (as stated by FSCO), is to "clarify" how to apply the SABS, expect another 18 years before we get to the point we are at now in achieving that clarity.

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