OTLA Ontario Trial Lawyers Association

OTLA Submission in Response to David Marshall's Report "*Fair Benefits Fairly Delivered*"

Solutions and Recommendations for future reform initiatives

September 15, 2017

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The Ontario Trial Lawyers Association (OTLA) is pleased to provide input to the Parliamentary Assistant to the Minister of Finance on David Marshall's April 2017 report on Ontario auto insurance *Fair Benefits Fairly Delivered: A Review of the Auto Insurance System in Ontario* ("the Report").

OTLA was formed in 1991 by lawyers acting for plaintiffs. Our organization has more than 1,500 members. Our purpose is to promote access to justice for all Ontarians, preserve and improve the civil justice system and advocate for the rights of those who have suffered injury and losses as the result of wrongdoing by others, while at the same time advocating for safety initiatives. OTLA members uphold the highest standards of professional conduct as set out in the voluntary OTLA Code for the benefit of their clients, the courts and tribunals where they appear, and the communities which they serve.

Executive Summary

OTLA agrees that wholesale changes to auto insurance in Ontario are required. To achieve this fundamental change in auto insurance, a balancing of the "3 Ps" of auto insurance – Protection, Premiums and Profits – is required. We need an insurance system that delivers prompt and just protection to injured people in exchange for affordable premiums that also provide fair and reasonable profits for insurers.

In our June 2016 submission to David Marshall, OTLA wrote that we welcomed a complete overhaul of Ontario's auto insurance system.

At the time, we sounded the alarm about a system that was "seriously out of balance and [was] no longer meeting the needs of Ontario's drivers and accidents victims."

Since auto insurance is mandatory, there is a responsibility on government to ensure that victims of car accidents are covered by a system that prioritizes their medical recovery.

The Report is an important first step to identifying some of the flaws within the current auto insurance system. We do have some additional recommendations and comments that we are grateful to highlight in this written submission.

Firstly, OTLA believes there is a need for greater transparency and reporting of the profits enjoyed by the automobile insurance industry. While the Report emphasizes the costs of the existing system to the insurance industry, and the impact on consumer protection and premiums, we wish to stress the important of the third "P" which is profit. Any analysis to improve the existing system must include an accounting of profits by the insurance industry to justify premiums, changes in coverage, and costs/delivery of services.

No business can ever be revised by simply looking at the expense side of the ledger while ignoring the revenues. This is no less true when considering cost leakages from the auto insurance system in Ontario.

There have been substantial reductions to the auto insurance product since 2010, and yet, some insurers claim they cannot afford to reduce premiums. Before any meaningful discussion can take place to overhaul the existing system, profits made by automobile insurers as a result of these cuts need to be subjected to greater transparency and scrutiny. Similarly, this review should also take into account how years of insurance cuts have impacted government services such as OHIP, Ontario Works and Ontario Disability Support Program.

Secondly, we note that the Report employs outdated data in many instances to support its recommendations. Before the government considers any further changes to the system, current data from the General Insurance Statistical Agency (GISA) needs to be studied and considered. A review of the most recent GISA data would indicate that reductions in both Tort and the Statutory Accident Benefits Schedule (SABS) have generated substantial savings for the insurance industry. That reality is not is reflected in the Report.

The Tort and SABS regimes operate concurrently, and any proposed change to one unavoidably impacts the other. In order for fair benefits to be fairly delivered, a global and holistic analysis of both the Tort and SABS regimes must be undertaken.

Given the inherent inequality of bargaining positions between an insured and an insurer, any auto insurance system must also ensure adequate protection for consumers. The changes to the SABS enacted in 2016 eliminated the right of an injured person to challenge an insurer's denial of his or her benefits in an Ontario Court. These changes also eliminated an injured person's right to claim legal costs if successful at the Licence Appeal Tribunal (LAT), where all accident benefits disputes are now required to be adjudicated.

Protection for consumers who are injured in car crashes should include immediate access to medical and rehabilitation benefits without being subjected to the stress and delay involved with excessive and unnecessary insurer medical assessments. Consumers should also have access to a fair procedure to resolve disputes and challenge unfavourable decisions by insurers, and an appeal procedure, if necessary, all in accordance with the principles of natural justice. An injured person can, and should, be able to access legal counsel to manage any disputes related to non-payment of accident benefits. The importance of access by injured people to legal advice and representation in these circumstances cannot be overstated.

The SABS should also promote and foster independence for the injured consumer to, if desired, ultimately sever the relationship with his or her insurer by opting to settle on a

lump-sum basis, thereby allowing the injured person to determine his or her own course of rehabilitation and recovery. This point was made strongly by the Association of Victims For Accident Insurance Reform (FAIR) during their oral submission to Mr. Marshall and Mr. Baker on August 15, 2017, and OTLA agrees with their position.

Through this written submission, we identify supportive recommendations that will lead to a greater simplification of Ontario's auto insurance system. These recommendations are focused on providing affordable, simple, easy-to-access treatment and financial support to injured people.

Accident Benefits Coverage

The combination of a no-fault system and access to recovery in Tort should provide fair benefits and full compensation for innocent victims. When accident benefits were expanded in 1990, the original rationale proposed for limiting the right to sue in Tort through the operation of a verbal threshold, held the premise that enhanced and comprehensive no-fault benefits would more than offset these restricted Tort rights. In practice, no other province in Canada with a Tort system has imposed the substantial restrictions on the rights to sue of innocent accident victims that we experience here in Ontario.

OTLA Recommends:

We concur with the Report's recommendation that there can be no further cuts to the Statutory Accident Benefits Schedule.

Reduction of Catastrophic Impairment funding

The reality is that in Ontario, benefits continue to be cut.

For example, in 2016, amendments to the SABS cut the available medical, rehabilitation and attendant care benefits for catastrophically injured people from $2 million to $1 million. The savings to the insurance industry from this significant change were certainly not reflected in the GISA data considered in the Report (the Report referenced 2014 and 2015 data), so it is expected that insurer profits will rise even higher when the newer CAT claims move through the system. Insurance companies' reduced economic support for Ontario's most seriously injured and vulnerable accident victims will now push their extensive healthcare needs on to taxpayer-funded programs, such as OHIP and ODSP.

The Report also does not take into account other changes to the system that were recently implemented to reduce insurer costs, for example, the transfer of the dispute resolution system to the LAT. Anecdotally, lawyers who specialize in representing parties in SABS disputes unanimously agree that the number of claims within the new system is far less than under the Financial Services Commission of Ontario (FSCO) regime.

The current regime also precludes family members from being remunerated for acting as caregivers for their loved ones, unless they have suffered an economic loss, for example, leaving an existing job. It forces injured people to hire help outside the home, because insurers will not fund attendant care if it is performed by a family member who was not receiving an income before the car crash. We frequently hear from our clients that they would prefer family members to care for them, but the present system often precludes families from being funded to provide ongoing care for each other.

We agree with the objectives of reducing disputes and delays in accessing benefits, and that the SABS must be simple. We also agree that the most seriously injured accident victims should be prioritized within the system and be able to access adequate coverage.

Definition of Catastrophic Impairment

We agree that the existing system to qualify for catastrophic impairment is complex, cumbersome and plagued by delay. The current definition of catastrophic impairment, recently amended in June 2016, has restricted the number of people who are deemed to be catastrophically impaired and is even more complicated than its predecessor, in particular with respect to traumatic brain injuries, paraplegia and tetraplegia. While experts author reports and argue about interpretation of guidelines, seriously injured people are being denied care and treatment, which impedes their recovery, causes them to go into debt, and often worsens their condition, both mentally and physically. The process of determining who meets the criteria must be simplified, and the delay must be reduced.

Consideration should be given to returning to the Glasgow Coma Scale to assess the extent of brain impairment. It is a straightforward test, and less complex than the current Extended Glasgow Outcome Scale.

In addition to delays built into the SABS, there are no sanctions for insurers who fail to respond to an application for determination of catastrophic impairment in a timely manner.

Similarly there is no deadline by which assessments must be completed, or by which an assessor's report must be completed following an assessment. It is not uncommon for

people to wait longer than a year, just to be able to dispute the denial of the catastrophic impairment designation.

A new system must address this delay by imposing meaningful deadlines that are accompanied by monetary sanctions to the insurer for delaying. Costs should be available to the insured if it is determined that an insurer has wrongfully denied a benefit.

A new system must also address costs. A detailed assessment for a determination of catastrophic impairment can cost an injured person as much as $25,000. At present, insurers face no adverse legal cost consequences or penalties if it is determined that they have wrongfully denied a claim. The absence of a sanction is creating an incentive for insurers to delay and/or deny payment to their insureds regularly and often.

Lump sum accident benefit settlements should be permitted

We disagree with the recommendation in the Report to eliminate lump sum accident benefits settlements between an injured person and his or her insurance company. The victims' rights group FAIR has stated that a lump sum settlement provides the injured person with autonomy. It affords closure and the freedom to make decisions independent from one's insurer. OTLA supports FAIR's position, and strongly urges the government to continue to allow injured people to reach agreements with their insurance companies to settle their claims on a lump sum basis.

Programs of Care Model

In our June 2016 submission to Mr. Marshall, we wrote that the insurance system in Ontario allows for, and actually encourages, far too many disputes. We noted that 50% of all victims are denied treatment and forced to attend insurance medical examinations.[1]

The problem, as is described in the Report, is "the singular inability of participants to agree on what constitutes an appropriate medical diagnosis and treatment for injuries." The Report suggests the implementation of Programs of Care.

While we agree that there are far too many disputes, we strongly disagree with the Programs of Care approach.

[1] Ontario Trial Lawyers Association, "OTLA Response To The Draft CTI Guideline And The CTI Guideline Appendix", 2015

Ontarians should be free to choose a rehabilitative plan in consultation with their treating health care practitioner. The Common Traffic Injury (CTI)-based Programs of Care model takes away that choice and dictates when and how much treatment should take place.

Injury diagnosis and treatment is the responsibility of every treating health care professional. The requirement to compel a patient into a specific class of injury (in all but the most serious of cases) in order to receive a pre-approved treatment protocol will be frustrating for primary health care providers. Many will likely, and understandably, be reluctant to pigeon-hole their patients before treatment has even begun.

These CTI-based Programs of Care are only as good as the science that supports them. Research that is focused on directing policy in an insurance-based compensatory system is rarely free of bias, either in terms of the mandate or the underlying funding for the research. It is noteworthy that the CTI Guideline was developed with extensive input from representatives of the insurance industry, but with no input from victims' rights advocates. OTLA has already prepared and submitted to the government its commentary and submissions regarding the difficulties with the CTI Guideline, and would be pleased to provide another copy of our submissions.

Injury diagnosis, treatment and recovery is, and always should be, an exercise based on the individual. CTI-based Programs of Care take control over a patient's rehabilitation away from the treating physicians.

CTI-based Programs of Care with a pre-approved, non-disputable treatment protocol will problematically have the effect of eliminating an individual's right to develop his or her own rehabilitation program, while at the same time denying the injured person any recourse to challenge this funding model. The end result is that instead of their care costs being covered by their automobile insurance, many Ontarians will be forced to rely on taxpayer funded programs including OHIP, ODSP and Ontario Works.

This one-size-fits-all approach to healthcare can be seen in the present Workplace Safety and Insurance Board (WSIB) system. This model of care has been highly controversial for injured workers, by arbitrarily capping treatments for some of the most common workplace injuries, and providing financial incentives to treating health care providers for deeming workers fit to return to work. OTLA recommends deference be given to the medical opinions of treating physicians who are more familiar with the injured person's medical history and in a better position to oversee treatment recommendations and implementation.

Independent Examination Centres

Along with the Program of Care model, the Report also recommends a system of Independent Examination Centres (IEC), which would involve empowering a roster of doctors at hospital-based examination centres to make binding determinations regarding the health care and treatment needs of injured people. While we agree that accident victims should be subjected to fewer insurer examinations which are time consuming, exceedingly costly, and a barrier to meaningful treatment, we strongly disagree with a plan that imposes a binding outcome on an injured victim without any recourse to challenge medical opinions.

The Report relies heavily on the WSIB model which is described as "successful"; however, numerous problems have been identified with the WSIB system. For example, treating doctors with patients in the WSIB system report increasing concern that the unique needs of individual patients relative to their specific medical histories are often being ignored in favour of the one-size-fits-all model, and that this somewhat generic approach to treatment will often not lead to the best medical outcomes. The proposed IEC model and current WSIB system appear to be predominantly focused on cost-savings rather than patient treatment and recovery. These difficulties are discussed in the article "The role of health-care providers in the workers' compensation system and return-to-work process: Final Report", Institute for Work and Health, December 2016.

The Report has not provided any evidence to suggest that accident victims will be better served by having a binding opinion regarding treatment needs determined by an IEC, rather than by following the treatment recommendations from his or her family doctor, occupational therapist or case manager. Rather than relying upon treating physicians for their expertise, experience and guidance, these recommendations risk alienating treating physicians from the medical assessment process.

It is a dangerous precedent to eliminate an insured's right to challenge the opinions of facilities, which respectfully, can never be truly independent. The concept of a zone of deference for the opinion of a non-treating medical assessor is therefore concerning and problematic, especially when this opinion may become binding in the context of a lawsuit. An established body of case law and the Rules of Civil Procedure establish a framework for the admissibility of expert evidence in Ontario Courts. Any proposed changes to these fundamental legal principles would undoubtedly require the consultation and involvement of the Ministry of the Attorney General and numerous other stakeholders.

There is no need to tamper with the way medical experts are managed within the Tort system. Providing some medical experts with a zone of deference will limit the ability of parties to present evidence at trial, and will also limit the ability of a judge or jury to weigh the evidence fairly.

OTLA Recommends:

The opinions of treating physicians should determine the extent of accident benefits payments required for injured people.

In Tort actions, the status quo should be maintained: parties should be permitted to obtain expert medical opinion to comment on the medical status of an injured person, without being bound by any assessor's zone of deference.

Control over medical treatments following injury

OTLA maintains that injured people should have more control over their medical treatments in the acute phase following an injury.

Millions of people in Ontario access health benefits through their private work insurance every year. In doing so, it is not necessary to retain a lawyer or seek legal advice. Not one of them has to call an insurance adjuster to negotiate payment. Not one of them has to attend an insurance medical examination. As long as the treatment falls within the terms and limits of the healthcare insurance policy, it is paid.

The automobile no-fault system in Ontario ought to be designed in a similar vein. If injured people were able to manage their own medical treatment from an approved list of services up to a predetermined amount, the need for insurer assessments would be removed, along with the hundreds of millions of dollars insurers spend every year assessing these claims.

As the number of points of conflict between an insurer and its insured decrease, there will be a corresponding reduction in the number of accident benefits disputes, to the point where lawyers should not need to be routinely required to assist with no-fault accident benefits claims. The insurers will also enjoy further savings by avoiding the need to regularly hire their own legal counsel to fight these claims.

OTLA Recommends:

The focus for Ontario's injured people should be on reasonable, easy-to-access treatment and financial support.

A reasonable basic level of treatment funding should be available for all non-catastrophic injuries, with a claim mechanism to extend benefits beyond this basic level if, in the opinion of the treating health care practitioner, more treatment is necessary.

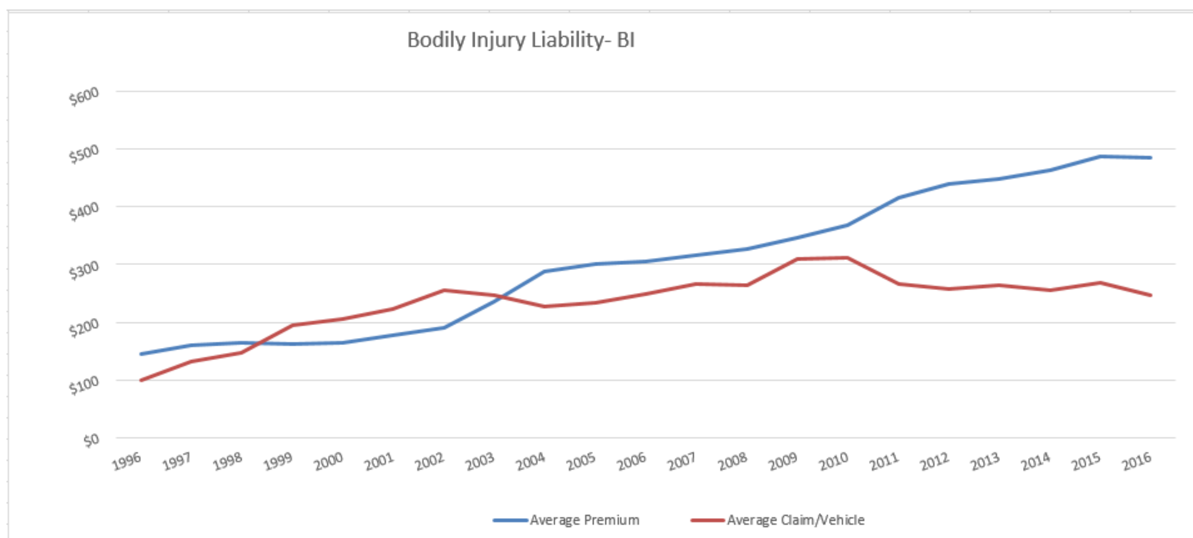
Assessments, and a dispute mechanism, should only be engaged when the basic level of treatment funding is exhausted.

Improvements to the Tort System

As previously noted, the Report unfortunately relies on outdated data to incorrectly conclude that Ontario has a problem with high Tort costs. Any comparison of Bodily Injury (BI) to Accident Benefits (AB) must be made on the basis of claims costs and insurance profitability. Such a comparison shows that BI costs are in fact *less* than AB costs – not the other way around.

Claims have fluctuated over the years, but have been declining steadily for the past seven years, according to publicly available GISA data. Over the same period of time, average BI *premiums* have increased dramatically – from about $350 to nearly $500 per policy.[2]

As suggested earlier, it is extremely important to utilize the most recent data when analyzing costs and premiums. The 2016 BI data just released by GISA and displayed in the graph below, demonstrates that the average BI claim cost in 2016 was $247 per insured vehicle – exactly the same as it was in 2003![3] Taking into account inflation, claims costs are actually significantly lower today than they were 13 years ago. Conclusions based on old, inaccurate data tend to be flawed and, unfortunately, that is the situation with the section of the Report which relied upon inaccurate data when discussing the cost of BI claims.



Source: GISA Loss Ratio Exhibits, Ontario, 2016

[2] General Insurance Statistical Agency 2016 Actual Loss Ratio Exhibit Private Passenger Automobile Excluding Farmers Ontario
[3] General Insurance Statistical Agency 2016 Actual Loss Ratio Exhibit Private Passenger Automobile Excluding Farmers Ontario

Over the same period of the past seven years, the loss ratio (claims/premiums) has dropped from 79% to 51%. Far from being a problem, BI is a leading profit center for the insurance industry in Ontario. Currently BI coverage is the most profitable, mandatory auto insurance coverage sold in Ontario.

To calculate the leakage associated with BI profit, we considered that the Regulator, FSCO, allows insurers to make a 5 per cent return on premiums for their reasonable profit. And, FSCO also allows for reasonable insurer expenses of 25 per cent of premiums as part of the industry's cost structure. When those reasonable expenses are added to the claims costs, the total premium that should be levied comes to an average of $353 per insured vehicle.

In light of the average $486 premium currently charged for BI coverage in Ontario, one can conclude that insurers are profiting by charging $133 more on average for every single insured vehicle in the province – all 7.3 million vehicles – than is deemed to be both fair and reasonable. This results in gross excess profitability leakage in the order of just over $1 billion per year– in BI coverage alone!

We note that the York University Schulich School of Business researchers retained by OTLA concluded that insurance companies, in 2015, earned on average 10.7 per cent return on equity, a figure far in excess of the 5.5 per cent deemed to be reasonable based on current financial and economic conditions.

We note further that this research was conducted because insurers are not required to publicly report profits on auto insurance on a province-by-province basis. Profits are reported on all lines of business, that is, on an aggregate basis for all of Canada. Individual insurers in Ontario will target a specific level of profitability as part of their detailed rate filing with the Regulator, but are permitted to hide that information from consumers for proprietary and/or competitive reasons.

Accordingly, there is little transparency on the part of Ontario auto insurers with respect to one of the most significant sources of leakage in the system, namely, profit. Detailed and complex calculations are required on the part of independent experts to determine industry profitability.

If insurer profits are part of the consideration for the auto insurance system, and they certainly have been for the past 25 years, why then should there be any question about what those profits are and how they are determined?

The primary goal of the new Financial Services Regulatory Authority (FSRA) should be the protection of consumers. In addition to monitoring premium rate increases, the Regulator

must ensure that consumers of auto insurance, who have become the victim of an accident(s), obtain the benefits to which they are entitled under the legislation.

The new Regulator must have the ability to obtain transparent information from insurers. For example, any auto insurer wishing to obtain a rate increase from the Regulator ought to provide five years of audited financial statements, to help the Regulator determine the necessity of rate increases. Furthermore, the Regulator must have investigative authority to verify information and ensure consumers are protected.

OTLA Recommends:

Greater regulatory oversight of insurance profitability.

Designing a transparent reporting system, with verifiable information, so that premiums can be set accordingly.

Consideration should be given to establishing an independent rate setting agency that is accountable to the citizens of Ontario, in the best interest of consumers. That role could be fulfilled by FSRA.

Historical cuts to Accident Benefits with no corresponding expansion in Tort

The Report further states that “it seems that the **generous** benefits in the no-fault portion of the system are not having the effect of reducing the amounts awarded under Tort claims…” [emphasis added]. OTLA believes that the description of the no-fault system as “generous” is in fact inaccurate, considering the cuts to benefits since 2010.

Accident Benefits cuts since 2010

1. Reduction of medical, rehabilitation and attendant care benefits available for catastrophically injured people from $2 million to $1 million.
2. A more restrictive definition of catastrophic impairment, thereby limiting the number of people able to obtain higher levels of medical, rehabilitation, housekeeping and attendant care support.
3. Elimination of Housekeeping and Home Maintenance.
4. Elimination of Caregiving Benefits for non-catastrophic injuries.
5. The advent of the Minor Injury Guideline and its $3,500 cap for Medical/Rehabilitation Benefits (benefits were previously at $100,000 per claim).
6. No Attendant Care for non-catastrophic injuries beyond 2 years, even though the injuries may be long lasting and significant.
7. The requirement of an economic loss in order to obtain Attendant Care Benefits.

8. The collapse of medical rehabilitation benefits from $100,000 to $50,000 (in 2010), and then in 2016 the amalgamation of attendant care benefits (previously available for life up to a maximum of $3,000 per month) and medical rehabilitation benefits to total only $65,000 in coverage for an injured person.
9. The timeline for when medical and rehabilitation benefits can be funded by the insurer reduced from 10 years to 5 years.
10. The prejudgment interest paid on overdue claims wrongfully denied by the insurance company has been reduced from 2 per cent compounded monthly to an amount in keeping with the Courts of Justice Act, roughly 0.8% at present- significantly lower than the amount insurers have been earning in investments.
11. The elimination of lifetime non-earner benefits of $185 per week; now limited to $185 per week for two years.
12. The elimination of the lifetime non-earner benefit for students of $320 per week; now limited to $185 per week for two years.
13. The loss of the insured person to sue or to claim costs (including legal fees and disbursements incurred to obtain medical records and reports) at the LAT when benefits have been wrongly denied by the insurer.

These tremendous cuts have all taken place with no corresponding enhanced opportunities for innocent victims to recover their real, actual losses in Tort. In fact, the ability to recover damages in Tort has been significantly decreased.

Corresponding Tort reductions

1. The language of the threshold that an injured person must cross in order to be able to sue has prevented the majority of injured innocent accident victims from being able to sue to obtain compensation for their injuries.
2. A monetary threshold of $30,000 was increased in 2003 which disappeared for general damages claims over $100,000. In 2015, the deductible was increased to an indexed amount (currently $37,385.17) and the deductible now only disappears in claims where general damages are greater than $124,616.21.[4]
3. Prejudgment interest for Tort claims has been reduced from 5 per cent to approximately 1.3 per cent, again, insurers are earning more than 1.3 per cent in their investments.
4. Innocent accident victims can only claim 70 per cent of loss of income (down from 100 per cent) between the date of the accident and the date of the trial.

[4] FSCO Bulletin, "2017 Automobile Insurance Legislated and Regulatory Adjustments and Optional Indexation Rates Under the Statutory Accident Benefit Schedule" December 15, 2016

Before we further reduce the procedural or substantive rights of victims (through the proposed Programs of Care and IEC model for medical assessments) the government should investigate why their past initiatives have not resulted in rate stability for Ontarians.

OTLA's submission last year to Mr. Marshall involved non-severable recommendations regarding both the AB & Tort sides of claims arising from motor vehicle accidents. In effect, OTLA expressed a willingness to discuss certain restrictions on the AB system in exchange for a fairer and more traditional Tort system that would eliminate the use of a verbal threshold. OTLA strongly supports the goal of a robust insurance scheme that delivers proper accident benefits and Tort damages to innocent injured people not at fault for their injuries.

Unfortunately the recommendations in the Report regarding the Tort system are largely procedural, and do not address the real injustice faced by accident victims pursuing Tort actions.

OTLA Recommends:

The government should undertake a thorough and comprehensive review of the Tort and AB system, taking into account current GISA data and light of the recent addition cuts to the auto product.

As a cost savings measure, in the past OTLA has endorsed increasing the Simplified Procedure monetary limit to amount to $250,000; and eliminating jury trials for Simplified Procedure actions.

Unfortunately, the Report recommendations regarding Tort are very narrow, and do not directly deal with the real issue in the Tort system, namely the restriction on the ability for innocent accident victims to obtain compensation through the operation of the verbal threshold and the deductible. Not only is there is no analysis of the financial impact of the threshold or the deductible, but that the Report does not make a single mention of either the threshold or the deductible beyond a passing description of basic coverages.

In his review of the civil justice system ten years ago, Mr. Justice Coulter Osborne specifically pointed to the dual operation of the threshold and deductible in auto insurance, and noted that "both work to restrict access to the courts by providing an economic disincentive to making a claim."[5] It is unclear why the review and recommendations for changes to the Tort system in the Report did not mention Justice Osborne's report, or the tremendous reduction in compensation to injured people caused through the operation of the threshold and the deductible in Tort claims. Mr. Justice

[5] Civil Justice Reform Project: Summary of Findings & Recommendations", Honourable Coulter A. Osborne, (November 2007) at tab 18 "Automobile Negligence Claims"

Osborne specifically suggested that a review of the deductible and the threshold would be appropriate as part of the statutory review of the insurance product. This review should have examined these restrictions and whether there is still a need for such drastic reductions in Tort and Accident Benefits given the current levels of profitability being enjoyed by automobile insurance companies.

The role of lawyers

OTLA has significant concerns about the Report's recommendations dealing with the regulation of lawyers. These recommendations would duplicate and infringe on the jurisdiction of the Law Society of Upper Canada and the Ministry of the Attorney General. The solicitor and client relationship has nothing to do with the insurer's obligation to properly and fairly deliver accident benefits to injured people. The Law Society has already taken measures to address issues relating to advertising and referral fee payments, and is presently working on a standardized contingency fee agreement that will be used by all lawyers in Ontario. The Law Society has been actively addressing these issues and OTLA understands that the working group will be making recommendations to Convocation in the fall of 2017 following broad consultations.

OTLA Recommends:

The Law Society of Upper Canada should be permitted to continue its current efforts to further regulate and enforce the advertising, referral fee arrangements, and contingency fee arrangements used by lawyers in Ontario.

Conclusion

We are grateful to contribute our ideas and proposals to the Parliamentary Assistant to the Minister of Finance in response to the Report. David Marshall's inquiry and report have started an important conversation and we look forward to working with all stakeholders to continue this dialogue. While Mr. Marshall correctly identifies that our auto insurance system is broken, many of his suggested solutions will not achieve the goals of reducing transaction costs, limiting disputes, creating certainty for consumers and insurers alike, and ensuring fairness for the 60,000 Ontarians who are involved in car accidents every year.

We are deeply committed to helping develop solutions to the significant challenges in Ontario's beleaguered auto insurance system. We have identified some such solutions, but also significant areas where further work needs to be done. The availability of relevant, transparent and accurate data will be key to ensuring that reforms are

appropriate. This is especially true in light of the multitude of changes that have recently been made to the system, the full effects of which are only now beginning to be felt and reflected in the data.

Our goal is to bring about an improved and stable auto insurance product which includes both no-fault Accident Benefits and a fair Tort system. We want to help ensure that insurance premiums are more affordable over the long term, while providing easy and quick access to treatment and justice for those who have been injured in auto accidents. Reforms to our system should be based upon the principles of simplicity and certainty and should avoid unintended consequences, including negative impacts on other government-funded programs within the Ministry of Health and the Ministry of Community and Social Services. We look forward to continuing to work with Government in order to achieve all of these goals.

Summary of OTLA Recommendations

1. We concur with the Report's recommendation that there can be no further cuts to the Statutory Accident Benefits Schedule.
2. The opinions of treating physicians should determine the extent of accident benefits payments required for injured people.
3. In Tort actions, the status quo should be maintained; parties should be permitted to obtain expert medical opinion to comment on the medical status of an injured person, without being bound by any assessor's zone of deference.
4. The focus for Ontario's injured people should be on reasonable, easy-to-access treatment and financial support.
5. A reasonable basic level of treatment funding should be available for all non-catastrophic injuries, with a claim mechanism to extend benefits beyond this basic level if, in the opinion of the treating health care practitioner, more treatment is necessary.
6. Assessments, and a dispute mechanism, should only be engaged when the basic level of treatment funding is exhausted.
7. Greater regulatory oversight of insurance profitability.
8. Designing a transparent reporting system, with verifiable information, so that premiums can be set accordingly.
9. Consideration should be given to establishing an independent rate setting agency that is accountable to the citizens of Ontario, in the best interest of consumers. That role could be fulfilled by FSRA.
10. The government should undertake a thorough and comprehensive review of the Tort and AB system, taking into account current GISA data and light of the recent addition cuts to the auto product.
11. As a cost savings measure, in the past OTLA has endorsed increasing the Simplified Procedure monetary limit to amount to $250,000; and eliminating jury trials for Simplified Procedure actions.
12. The Law Society of Upper Canada should be permitted to continue its current efforts to further regulate and enforce the advertising, referral fee arrangements, and contingency fee arrangements used by lawyers in Ontario.