

Ontario Amendments**Yes we have no insurance | Marcel Strigberger**By **Marcel Strigberger**

Marcel Strigberger

(January 22, 2019, 8:39 AM EST) -- Ontario's Progressive Conservative government has launched public consultations on amending our motor vehicle insurance laws. The issues if you are an insurer are fraudulent claims and if you are a consumer or accident victim, ever increasing premiums and converse attrition of accident benefits and tort award entitlement.

I note these became hot issues back around 1990 when the initial "no fault" scheme was introduced. Ever since, all three major political parties have had a kick at the can and the results have been that Ontario's premiums are the highest in the country, and insurance company profits have risen monumentally. The insurers cry "fraud" while they count their hefty profits.

It rather reminds me of Lewis Carroll's *Through the Looking Glass*; namely, the lamentations of the walrus as he scoops up the hapless oysters:

"'I weep for you,' the Walrus said,
'I deeply sympathize.'
With sobs and tears he sorted out
Those of the largest size."

Conversely accident benefits have dropped from \$100k to \$3,500 for most accidents, as they fall under the Minor Injury Guidelines.

This means that if you have a nagging back injury that lingers on for a couple of years, your insurer will exercise its magnanimity and pay for rehab treatment such as physiotherapy, chiropractic, or psychological up to a max of \$3,500.

I suppose the previous Liberal regime that invoked this legislation reviewed the matter conscientiously and concluded that if you call some poor accident victim's injury "minor," presto, insurance fraud will disappear. Even the most serious or catastrophic claims have seen the benefits ceiling plummet from \$2 million to \$1 million, in one fell swoop, bada boom bada bing.

And of course most car accident tort injury claims are subject to that \$40,000-ish deductible.

The jury awards you \$41,000 for pain and suffering, you net \$1,000. But not so fast. To get the \$1,000 you have to answer a skill-testing threshold question: Is your injury serious and permanent? And so after spending days in trial, while the jury is out deciding how much your claim for pain and suffering is worth, the defence brings a threshold motion and you are now at the mercy of the trial judge who must decide if you cross the threshold.

The jury awards you that \$41,000 it thinks it is generously awarding you but if your indefinite possible lifetime of aches and pains don't satisfy the test, chances are great you'll also have to kick in big time for the insurance company's legal costs. Gordon Lightfoot might just write a song about this, titled, "That's What You Get for Suin' Me."

And the plaintiffs' lawyers are not even allowed to tell the jury about this deductible. For that matter

they cannot even mention insurance. If they do they likely buy themselves a mistrial. The prehistoric belief that juries are not aware that car owners have insurance is still alive and well in the courtroom. You don't dare mention the I-word. Sure fraud exists but why nail the accident victim by continuously reducing benefits and rights to tort injury compensation? Why not just conduct better fraud control and whack the Ponzis?

I am not optimistic about how this government will move the ball. It would not surprise me if premiums rise further and all benefits and claims disappear.

Some poor lout has a car accident and he calls his insurer asking for treatment funding. The adjuster responds, "Sorry to hear that. But we don't cover that anymore. Too much fraud happening. How else can we help you today?"

Given the problems on the road we all face with distracted driving and the potential for more with the legalization of cannabis and driverless cars, Ontario motorists and pedestrians could be in for an accident Vesuvius. I certainly hope the government gets it right this time, before the lava hits the fan.

Marcel Strigberger retired from his Greater Toronto Area litigation practice and continues the more serious business of humourous author and speaker. Visit www.marcelshumour.com.

Interested in writing for us? To learn more about how you can add your voice to The Lawyer's Daily, contact Analysis Editor Peter Carter at peter.carter@lexisnexis.ca or call 647-776-6740.

© 2019, The Lawyer's Daily. All rights reserved.