



## AUTO INSURANCE UPDATE - NO MORE "DACs"

This memo updates our Memos [#20](#) (Your Motor Vehicle Accident Claim) and [#35](#) (More Auto Insurance Woes). It outlines some procedural changes to the Statutory Accident Benefits (SAB or "no-fault") regulations effective March 1, 2006.

### No More DACs

The Designated Assessment Centres (DAC's) are abolished, as promised by the Liberals in their election campaign. If a medical report is required by the injured person to support his doctor's disability certificate and/or treatment plan, then the insurer must pay for this "section 24 Report". The insurer, if it wishes to dispute the insured's entitlement to SAB, can require its own examination (a "section 42 Report").

### Denial of Benefits

The insurer cannot deny benefits claimed unless it has a section 42 report. For example, if an insurer wishes to deny attendant care or a Treatment Plan, a section 42 assessment must be in its file. Technically, the report does not have to support the denial of benefits; but the new Regulations make it an "Unfair or Deceptive Practice" to deny benefits on the basis of a report that does not support the conclusion.

### Pre-Claim Examination

If the insured is in hospital and has not yet claimed benefits, there is also a "Pre-Claim Examination" available to the insurer.

### Attendant Care

If an insured's disability results in the need for attendant care, a detailed (seven pages of form-filling enjoyment!) form called "[Assessment of Attendant Care Needs](#)" has had to be completed. The rates payable for various and detailed services are set out in the Form, and can now be changed periodically by the Financial Services Commission of Ontario (FSCO).

### Time Requirements

The second main purpose of the regulatory changes, after the abolition of DACs's, seems to have been to impose some serious time requirements on the insurance adjusters who deal with SAB. For one thing, the adjusters cannot delay decisions with the excuse that they are waiting for a DAC assessment. There are specific (and short) time limits for every step in the claims process. The penalty for missing a deadline is that the claimed benefit is payable, at least for the period of delay.

### Catastrophic Impairment

Since 1996, there have been significantly higher benefits payable to a person who suffers "catastrophic impairment" in a motor vehicle accident. The only positive aspect of the

DAC system, in this writer's opinion, was the assessment of catastrophic impairment. The insurer's ability to pick and choose their medical assessor was somewhat circumscribed. Now, the insurers can again select defence-oriented, unsympathetic physicians to do their section 42 reports.

### Rebuttal

The new procedures do provide one way to balance the possible bias of a defence-oriented medical assessor. The injured party's own physician, (or in certain cases, another medical expert) can produce a "rebuttal" report addressing the parts of the section 42 assessment that are in dispute. This writer doubts that this will produce any measurable effect on the insurer's decision to deny a benefit. The "consolation prize" is that the insurer in most cases actually has to pay for the rebuttal report.

### Summary and Comment

Ontario's SAB ("no fault") scheme has again been patched up by some positive procedural reforms, notably the abolition of the expensive DAC system. Insurance adjusters are given serious time limits and will have to exercise some judgment; their job has become quite a bit more demanding.

Automobile insurance in Ontario remains, however, a hotchpotch of complicated procedure for the person injured in a motor vehicle accident. Although in our estimation the demise of the DAC system is a step in the right direction, as plaintiff advocates we would frankly like to see the abolition or radical curtailment of SAB, coupled with the restoration of a full tort system in which the innocent accident victim can obtain at least an approximation of proper compensation. At Fleury, Comery LLP, Greg McConnell is experienced in motor vehicle litigation for plaintiffs. Please do not hesitate to consult us if you or a family member have been seriously injured in a car accident.