

GLUCKSTEIN
& ASSOCIATES_{LLP}

P E R S O N A L I N J U R Y L A W Y E R S

eNews

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Auto Insurance

Reform

The Ontario Government provides consumers
budget choices in Auto Insurance...
choices that affect people in car accidents

2010 Auto Insurance Reform

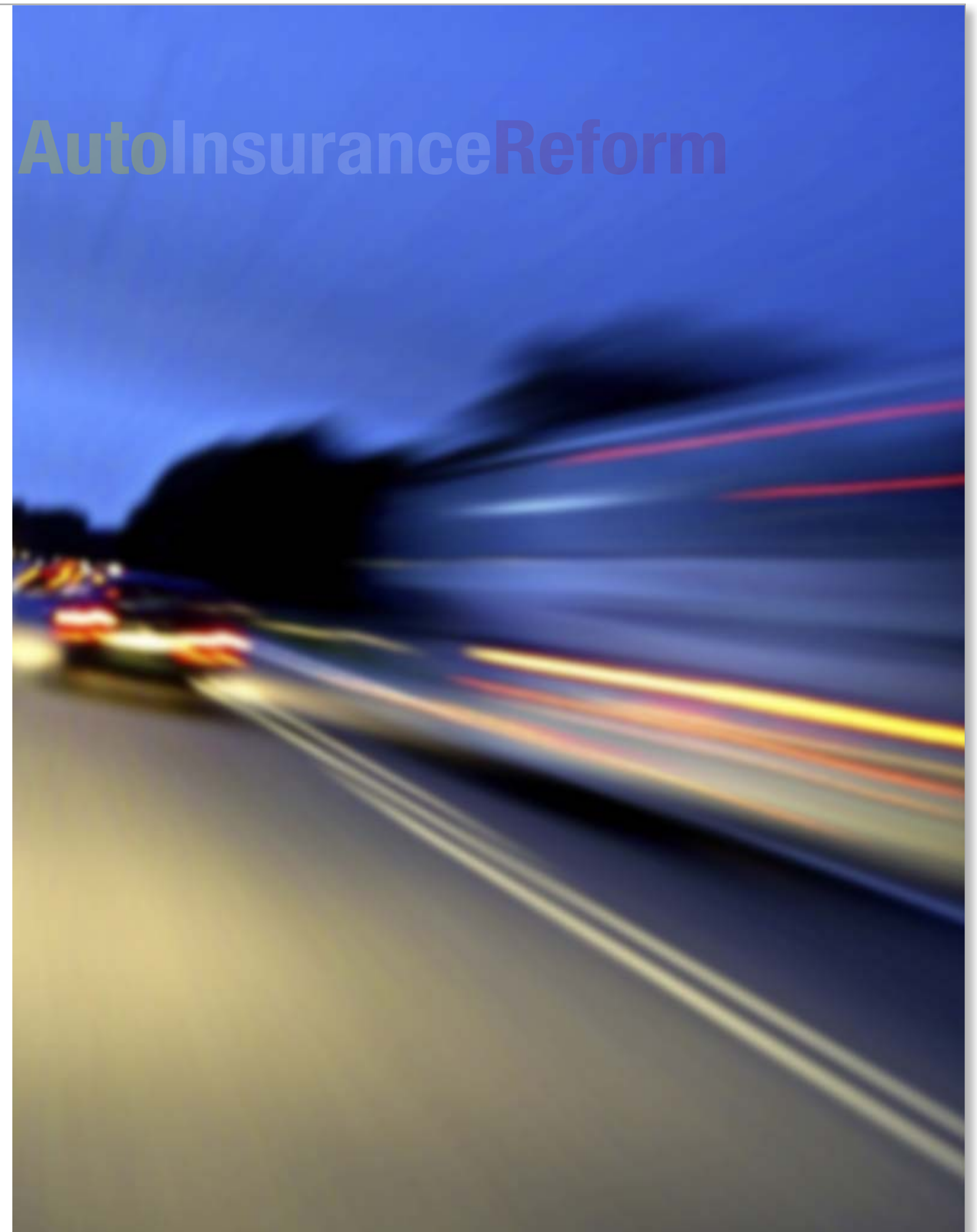
The Ontario Minister of Finance announced changes to the Ontario automobile legislation on November 2, 2009.

In the summer of 2010, drivers will be able to purchase a **basic auto insurance package** with reduced statutory accident benefits.

Unfortunately, drivers who will be most affected will probably opt for basic coverage.

Who will be most affected?

Gluckstein & Associates LLP reviews how reductions in accident benefits **most negatively affects the non-catastrophically injured.**



Statutory Accident Benefits (SABs)

Insured drivers who sustain non-catastrophic injuries are the ones most negatively affected.

The government is creating a basic package of statutory accident benefits that lowers compulsory Medical and Rehabilitation benefits coverage to \$50,000 from the previous amount of \$100,000. Attendant Care benefit coverage will be reduced in half to \$36,000 (with other restrictions) from its previous level of \$72,000.

Although drivers can purchase an optional increase in Medical and Rehabilitation benefits up to \$1 million (which would include \$72,000 for Attendant Care), most drivers would probably opt for the basic coverage.

SABs: Coverage Comparison

The adjacent table, **Chart 1**, (right), compares current statutory accident benefit coverage with the government's proposed basic package, and illustrates choices that consumers would have when buying or renewing their policies.

Ontario Government Web Site :
<http://news.ontario.ca/mof/en/2009/11/ontario-providing-choice-in-auto-insurance.html>

G&A Comments

As you can see, there are major reductions in accident benefits for the non-catastrophically injured claimant. The Medical and Rehabilitation and Attendant Care benefits have been reduced and there have been an elimination of housekeeping

and caregiver benefits (unless you are catastrophically injured). In most cases the at-fault insurer will bear the costs of the reduction in the accident benefit claim.

There were also reductions in the accident benefits available to the person who meets the definition(s) of catastrophic impairment. Assessment costs will be deducted from the medical and rehabilitation benefit and that change will reduce the benefits available considerably.

On a positive note, definitions of catastrophic impairment are to be expanded to include single limb amputees and the evaluation of catastrophic impairment will be restricted to those practitioners who have both training and experience in these cases. However,

Chart 1. SABs Coverage Comparison

Coverage	Current Coverage	Proposed Basic Coverage	Proposed Consumer Choices
Medical and Rehabilitation (Non-catastrophic)	<ul style="list-style-type: none"> \$100,000 (Non-catastrophic) \$1 million (Catastrophic) Costs of assessments does not reduce the amount available 	<ul style="list-style-type: none"> \$50,000 \$1 million (Catastrophic) Coverage includes assessments 	<ul style="list-style-type: none"> \$100,000; \$1 million (\$1 million option includes attendant care) Coverage includes assessments
Medical and Rehabilitation (Catastrophic)	<ul style="list-style-type: none"> \$1 million Costs of assessments does not reduce the amount available 	<ul style="list-style-type: none"> \$1 million Coverage includes assessments 	<ul style="list-style-type: none"> \$1 million Coverage includes assessments
Attendant Care	<ul style="list-style-type: none"> \$72,000/ 2 years (Non-catastrophic) \$1 million Lifetime (Catastrophic) 	<ul style="list-style-type: none"> \$36,000/ 2 years (Non-catastrophic) \$1 million Lifetime (Catastrophic) 	<ul style="list-style-type: none"> \$72,000 (the 1 million medical and rehabilitation option for non-catastrophic injuries will include attendant care)
Housekeeping Home Maintenance and Caregiver Expenses	<ul style="list-style-type: none"> Caregiver Benefit: up to \$250 per week plus \$50 per dependant Housekeeping & Home Maintenance Benefit: up to \$100 per week 	<ul style="list-style-type: none"> Benefits available only for catastrophic injuries 	<ul style="list-style-type: none"> Caregiver Benefit: up to \$250 per week plus \$50 per dependant Housekeeping & Home Maintenance Benefit: up to \$100 per week (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"> Maximum \$1,000 per week; 70% of gross income
Death and Funeral	<ul style="list-style-type: none"> \$25,000 (eligible spouse) \$10,000 (per dependant) Maximum \$6,000 Funeral Expenses 	<ul style="list-style-type: none"> \$25,000 (Eligible Spouse) \$10,000 (per dependant) Maximum \$6,000 Funeral Expenses 	<ul style="list-style-type: none"> \$50,000 (Eligible Spouse) \$20,000 (per dependant) Maximum \$8,000 Funeral Expenses



there is a growing concern about what further changes are to be made to the catastrophic definition of brain impairment.

For both catastrophic and non-catastrophic claimants, the income replacement benefit remains at the maximum of \$400 per week but the calculation of the weekly amount is changed to 70% of gross income (was previously 80% of net income). This would simplify the calculation and save considerable accounting expense.

G&A Opinion

It is our opinion that most people who are in the lower to middle income brackets will purchase the basic package in order to save on the expenses associated with driving. The basic coverage does not adequately protect accident victims and their families with the expenses that are

necessary in most instances of trauma. It is our hope with education that many drivers will purchase the extended coverage which will likely be available at a minimum cost increase. Drivers who have private health and disability plans will also be tempted to purchase the minimum packages. However, they should examine these plans carefully, as most do not cover very much in the event of a serious injury.

In addition, there will be a heavy onus on brokers to explain to their clients the advantages of purchasing the extended coverage. In our opinion, brokers should be urged to carefully explain the options and benefits for extended auto benefits and get written instructions in each case where the insured is unwilling to pay the extra costs.

Assessments

The recent announcement by the Minister of Finance included some changes to cost and protocol for accident benefit assessments. There has been an elimination of assessment costs as a separate category of benefits. As a result all assessment costs will be included under the medical and rehabilitation benefit. There will be a maximum of \$200 per assessment for the completion of an insurer form and a limit of \$2000 per medical assessment under S.24 or 42. Rebuttal examinations are to be completely eliminated. These changes mean that the claimant will not be assessed properly. The reduction in payment for an assessment and reports mean that there will be fewer qualified professionals willing to do proper assessments. The insurers will choose from their stable

of assessors and produce reports that rely on insufficient interview time and template report writing much to the detriment of the injured person.

There will be some changes specifically to Attendant Care assessments. The Form 1 is only to be completed by occupational therapists and nurses who have been trained on its use. However, the problem is that no accreditation process exists at present. In-home assessments would be limited to "seriously" injured claimants and would only be used to evaluate their need for attendant care services and home modifications. There is no definition as yet as to what constitutes serious.

The cost of future care cost reports (FCCR) would not be an expense recoverable under the SABS. FCCRs are extremely expensive and time consuming and in

future will most likely only be commissioned in the event of a valid tort claim or with agreement from the accident benefit insurer for payment.

Adjusters are to be provided with some discretion with the denial of assessment and treatment requests. We are still not certain the extent of their discretion. We believe that this discretionary power will definitely not be favourable to the insured and could lead to unnecessary litigation.

The time frame provided for adjusters to review assessment requests is to be increased from 5 days to 10 business days (the same as the time frame that applies to treatment plans) supposedly to allow for proper claims handling.

Third-Party Liability

The proposed basic automobile insurance policy will include \$200,000 in third-party liability coverage

(the mandatory maximum that now exists). Drivers will continue to have the option to buy \$500,000, \$1 million, \$2 million or another amount in third-party liability.

Third-party liability provides protection to the at-fault driver in an accident, to cover injuries to any other person or their property. According to the Financial Services Commission of Ontario, approximately 99 per cent of drivers currently purchase more than the mandatory minimum \$200,000 in coverage. We doubt that the percentage under these new regulations will be that high.

If you are injured in an accident, your injuries are serious enough and you are not at-fault, you can sue the at-fault driver for pain and suffering. The current deductible that applies to court awards for pain and suffering is \$30,000 (\$15,000 for family

members). There will be no deductibles applicable in fatality accidents under the new regulations.

The new proposal also gives drivers the option to buy additional coverage that would have the effect of reducing the deductible to \$20,000 (\$10,000 for family members). The coverage would apply to the owner as well as the owner's spouse and dependants when they are injured in an accident. This would give innocent people injured in an auto accident greater access to additional financial compensation through the court system. The proposed basic automobile insurance policy will continue to include a \$30,000 deductible (\$15,000 for family members).

Third-Party Liability: Coverage Comparison

The adjacent table, **Chart 2**, (right) compares current third-party liability coverage with the govern-

ment's proposed basic package, and illustrates choices that would be available to consumers who are purchasing or renewing auto insurance policies.

The Deductible

Drivers will now have an option to reduce the deductible that is mandatory for claims valued by a Court at \$100,000 or less. There is a great concern that too many innocent accident victims go uncompensated due to this deductible.

In our opinion, to protect themselves, their family and other passengers as best as the law allows, the insured should purchase the lower deductible option.

Comments

Awards for damages are increasing at a rate greater than inflation. What used to be adequate protection is no longer valid. There have been a num-

Chart 2. Third-Party Liability Coverage Comparison

Coverage	Current Coverage	Proposed Basic Coverage	Proposed Consumer Choices
Third-Party Liability	<ul style="list-style-type: none"> \$200,000 (Mandatory Minimum) \$1 million (Market Practice Coverage) 	<ul style="list-style-type: none"> \$200,000 (Mandatory Minimum) 	<ul style="list-style-type: none"> \$500,000, \$1 million, \$2 million, (other) [Same as current options]
Compensation Through the Court System	<ul style="list-style-type: none"> \$30,000 Deductible (Not-at-fault accident victims) \$15,000 Deductible (Family Members under the Family Law Act) 	<ul style="list-style-type: none"> \$30,000 Deductible (Not-at-fault accident victims) \$15,000 Deductible (Family Members under the Family Law Act) 	<ul style="list-style-type: none"> Reduce to: \$20,000 Deductible (Not-at-fault accident victims) 10,000 Deductible (Family Members under the Family Law Act)

ber of cases recently where assessments of damages have been from \$10 - \$17 million. The \$2 million award is commonplace for someone who has suffered a serious injury. It is our opinion, as it has been for years, that the minimum coverage a person should carry is \$2 million for personal liability. For anyone with assets, they should have an umbrella policy of up to \$10 million if they can afford the premiums.

Future Changes

The government continues to explore additional longer-term measures. Under the legislation, the government is entitled to make regulatory changes from time to time. There is no other jurisdiction in the world that has seen so many changes to motor vehicle legislation over the last 20 plus years. We expect the debate to continue. **G&A**

Web Site and Blog

GLUCKSTEIN WEBSITE

Please stay tuned to our website www.gluckstein.com for any further comments, or changes.

GLUCKSTEIN BLOG

We invite comments on our blog: <http://glucksteinlaw.wordpress.com>

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