



May 6, 2016

The Hon. Charles Sousa
Minister of Finance
Ministry of Finance
7th Floor, Frost Building South
7 Queen's Park Crescent
Toronto, ON M7A 1Y7

Dear Minister Sousa:

Re: Final Report of the Minor Injury Treatment Protocol Project (“MITPP”)

The Ontario Bar Association Insurance Law Section (“the Section”) understands that the Ministry of Finance (“the Ministry”) and the Financial Services Commission of Ontario (“FSCO”) continue to consider next steps relating to the Final Report of the Minor Injury Treatment Protocol Project titled "Enabling Recovery from Common Traffic Injuries: A Focus on the Injured Person" (“the ERCTI Report”), which was released last year.

As Section Chair, I would like to provide you with additional comments from our members on the ERCTI Report, which we believe should be taken into account in further decisions. We appreciate the opportunity to make these comments and look forward to assisting the Ministry on any future decisions relating to this issue.

The Ontario Bar Association

Established in 1907, the OBA is the largest legal advocacy organization in the province, representing more than 16,000 lawyers, judges, law professors, and students. OBA members are on the frontlines of our justice system in no fewer than 39 different sectors, and in every region of the province. In addition to providing legal education for its members, the OBA assists government with dozens of legislative and policy initiatives each year - in the interest of the public, the profession, and the administration of justice.

This submission was formulated by the OBA’s Insurance Law section, which is comprised of over 450 lawyers who act for plaintiffs and defendants, and whose clients include individuals and corporations whose rights and interests are affected by legislation relating to motor vehicle injuries.



Background

In our view, the goal of reviewing medical research to assist with treatment and rehabilitation as a result of injuries sustained in motor vehicle collisions is laudable. By way of historical context, this review is a continuation of a government decision in the early 1990's to introduce a new plan for auto insurance. This new plan was designed to enhance accident benefits, in exchange for reduced tort access, thereby creating a "social safety net" where benefits could be obtained at low cost.

The ERCTI Report aims to provide background information for the anticipated review of the Statutory Accident Benefits Schedule, and, in particular, the guideline for treatment of specified symptoms. Any such review will follow the previous schemes known as the Pre-Approved Framework ("PAF") and the Minor Injury Guideline ("MIG"). The Working Group has reviewed the Common Traffic Impairment ("CTI") Guideline seeking to implement the report's conclusions.

Methodology

Given that the ERCTI Report is designed for the purpose of determining appropriate treatment for all persons injured in any North American motor vehicle collision where the Ontario accident benefit scheme would apply, our view is that the methodology employed must meet the rigorous scientific standards necessary to provide the proper foundation for future treatment.

The absence of any consideration for those injuries where symptoms last more than the stated 6 month time period is troubling, both in terms of the determination of appropriate treatment and the absence of a protocol to transition these injuries out of the Type I category. In our view, the decision to include for the first time psychological injuries and the review of the treatment provided by psychologists, in the absence of representation by a practicing clinical psychologist and a review of all psychological treatment, may prove problematic.

The Section recommends that the submissions received from all stakeholders in response to the ERCTI Report be taken into account by FSCO and the Ontario government prior to proceeding with any regulatory changes.

Scope of Type I Injuries

The Section has serious concerns about the significant expansion of the injuries categorized as Type I. In our experience, the absence of a significant loss of anatomical alignment or loss of structural integrity for injuries such as mild traumatic brain injury and posttraumatic psychological symptoms would not appear to be determinative of the treatment reasonably required. We are concerned that the expansion of the injuries listed in Type I can only lead to increased transaction costs.



Exclusionary Clause Language

The language used in the CTI Guideline to determine exclusions lacks clarity, and significant transaction costs would be incurred in order to determine which impairments are excluded. Greater clarification is recommended.

The exclusion of psychologists from the health professionals that the CTI Guideline permits to initiate and coordinate goods and services may prove problematic. The guidelines do not address psychological treatment, and seek to determine which impairments are categorized as Type I injuries without input by a psychologist.

Other Language

The expansion of the symptoms, particularly those involving a brain injury and psychological consequences from motor vehicle collisions in a capped treatment protocol, may significantly impact on the injured seeking to recover from the symptoms. Those injured persons who do not receive appropriate treatment within the *Insurance Act* scheme will most likely resort to government-funded resources.

The CTI Guideline omits the monetary limits for the treatment of Type I symptoms. This absence makes any determination as to whether the proposed guideline provides satisfactory and appropriate treatment in accordance with the original concept of the “social safety net” difficult to determine. Further changes may result in greater transaction costs. The lack of clear language can lead to greater expense. It is recommended stakeholder input be obtained, once the proposed monetary limit is stated.

Conclusion

Once again, the OBA appreciates the opportunity to comment on the ERCTI Report and the CTI Guidelines. We encourage the government to carefully consider the stakeholder responses with respect to the methodologies and conclusions raised in the report. We also would be pleased to work with you on how to achieve your objectives for a fair and balanced system.

Yours truly,

Audrey P. Ramsay, Chair
OBA Insurance Law Section Executive