

Bill 171: Changes to the Dispute Resolution System **Denying accident victims due process and the right to appeal**

While we welcome the majority of the recommendations in Justice Cunningham's final report on the Dispute Resolution System that forms the basis for the Legislative changes, there is one glaring deficiency in the proposed new system – denying accident victims access to the Courts.

What if you or a loved one is injured in a car accident? It happens to approximately 60,000 people in Ontario every year. If it hasn't already happened to you, it has probably happened to someone you know or a constituent who has come to your office for your help.

Your constituents probably think that our insurance system in Ontario will make sure that they are treated fairly, get the rehabilitation that they need to get better, and make sure that their losses are covered, right? Wrong!

The Government is proposing to hand out another gift to huge insurance companies, at the expense of all insurance policyholders and accident victims. Bill 171 was also intended to make significant changes to the way in which accident victims can pursue a dispute when insurance companies wrongfully deny benefits. While we welcome the majority of the recommendations in Justice Cunningham's final report on the Dispute Resolution System that forms the basis for the Legislative changes, there is one glaring deficiency in the proposed new system – denying accident victims access to the Courts.

How would the changes affect you if you were injured?

Currently, accident victims have the right to go to Court or to arbitration to dispute this wrongful denial. But under the proposed Legislation, the right to sue will be taken away entirely and require claimants to advance claims to the License Appeal Tribunal in the Ministry of the Attorney General. This is denial of access to justice for Ontarians when they are most vulnerable due to injury.

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We have been historically blessed in Ontario with open courts and with the right of citizens to seek redress in the courts for wrongs committed by others and for denial of benefits by insurance companies.

In the name of efficiency, expediency and costs savings to the insurance industry, the government is proposing to wipe out recourse to an independent judicial system that safeguards the fundamental rights of citizens, and to replace the courts with a tribunal. There can be no intellectual justification for locking the courthouse doors. It is a false pretence to suggest this will provide cost savings to the insurance industry and reduce insurance premiums.

What happens if you're injured and you can't work and the insurance company refuses to pay your income replacement?

You can't sue!

Our complex system makes it extremely difficult for people to access the benefits that they are reasonably entitled to. This proposed change will make sure that more victims just give up because they can't afford the fight. At least, that's what insurers are counting on.

What if you are hurt and your doctor prescribes treatment, but your insurance company refuses to pay for that treatment?

You can't sue your insurer!

What if your insurance company treats you so badly that you should be entitled to punitive damages?

You still can't sue your insurer, so they will get away with this terrible behaviour!

Instead, you will take your case to a new arbitration system. While that new system may be appropriate to handle many of the disputes in the system, it certainly is not appropriate for all of them. One of the significant disadvantages of this new system is that, if you are successful in proving that the insurance company should have paid your benefits, the insurance company is forced to pay only a tiny fraction of your legal costs (unlike the Court system). So, even if you win, you actually lose!

If you were injured and it was someone else's fault, you now have to pay a lawyer to bring two entirely different cases, in two entirely different systems: one in Court against the person who injured you, and this new arbitration against your insurance company who denied your benefits. You now have huge extra legal costs, and two different legal proceedings, one in the Court system and one in the arbitration system! Doesn't it make sense to allow an accident victim the right (that they currently have) to bring the two claims together in Court and to vastly reduce the costs they have to incur?

None of these changes has anything to do with fighting fraud, but everything to do with making it easier for insurance companies to wrongfully deny benefits, delay settlements and make it harder for you to collect what you are rightfully owed. Our complex system makes it extremely difficult for people to access the benefits that they are reasonably entitled to. This proposed change will make sure that more victims just give up because they can't afford the fight. At least, that's what insurers are counting on.

Slashing the Interest Rate Paid to Innocent Victims

It's the latest gift to highly profitable Ontario auto insurance companies, the latest slap in the face for innocent victims, and the latest reason for backlog in our Courts

Bill 171 would change a 30-year-old rule that has been so important to those who have suffered injuries in Ontario. "Prejudgment interest" on pain and suffering damages is intended to compensate an innocent victim when the negligent person's insurance company delays paying those damages. Basically, it ensures timely payment for pain and suffering damages by insurance companies to innocent victims. No one can argue with the fact that timely resolutions are in the best interest of both sides of any dispute.

The Ontario Trial Lawyers Association is speaking out against these changes and advises MPPs to oppose this section of the proposed Legislation. Do not think about this in terms of a vague legal provision that only applies to the 60,000 Ontarians hurt in accidents every year. What if you suffer a serious injury because some drunk driver runs a red light and smashes into your car? Here's how the proposed new law would affect you:

It's a(nother) gift to insurers!

The amendments introduced earlier this month, under the guise of Fighting Fraud and Reducing Automobile Insurance Rates, were presented as a money-saving initiative for insurers. Clearly, the change in the interest rate has nothing to do with fighting fraud. In reality, this change is nothing more than another gift to Ontario's already profitable insurance sector on top of the recent substantial cuts to benefits that have already netted insurance companies billions of dollars in profits. And it is another unfortunate Legislative initiative of late introduced without any consultation or any consideration for auto accident victims.

Let's be clear – there was not one shred of evidence provided to any stakeholder to explain how much (if anything) this is going to reduce insurance premiums. But it is going to cost you money and put a lot more money into the pockets of insurance companies.

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In reality, this change is nothing more than another gift to Ontario's already profitable insurance sector on top of the recent substantial cuts to benefits that have already netted insurance companies billions of dollars in profits.

It gives insurers an incentive to delay!

Currently, insurance companies are required to pay 5 per cent interest on whatever you are owed for pain and suffering. So, if you have a serious injury and you are owed \$50,000 for pain and suffering and the insurance company delays paying for three years, they have to pay \$7,500 in interest. That's not a lot, but at least it is something to compensate for the delay, and it serves as an important incentive for insurers not to purposely delay settlement of your claim.

Insurers invest the money that you pay in premiums and, according to the federal regulator, they made about 4 per cent per year on these investments in 2012. So, if these provisions are passed and the prejudgment interest rate is reduced to 1.3 per cent, the insurance companies stand to earn 2.7 per cent profit on your money for every year that they put off settling with you. It's really just simple math! Don't forget – that money belongs to you, and the insurance company will directly profit from *not* paying you the money you are entitled to for years. There is no incentive for them to settle at all.

It denies justice to innocent accident victims!

In addition to continuing to line the pockets of wealthy insurance companies, this will delay your case. If you have heard how backlogged some of our Courts are now, imagine what will happen if insurers can delay payments for years with no financial penalty! It means that fewer cases will settle at an early stage, more cases will

have to be set for trial, more judges will be needed to conduct extra pre-trial conferences, and this will have to lead to even longer backlogs. And this of course will come at a significant cost to our justice system.

Do lawyers and injured victims delay cases to take advantage of additional interest at 5 per cent?

This is absurd.

The idea that lawyers or victims would not want to settle a case expeditiously is frankly so ludicrous as to defy logic. There is absolutely no appreciable financial incentive for any lawyer or victim to delay settlement. People have bills to pay now. They have mortgages and everyday expenses like food, transportation and childcare. There is no basis in common sense or logic to suggest that people would sacrifice their own well being, and that of their families, to get a bit of extra interest, years down the road.

In addition, insurers have always been at liberty to make an "advance payment". Even before a final settlement, the insurer can send the injured person part of their damages for pain and suffering and immediately stop the interest from accruing on that payment. If the interest rate at 5 per cent was too high for insurers, you would think they would be making advance payments all the time to save some money. So, ask the insurers how often they have made advance payments in the past decade? The number of cases is very low – less than 1 per cent of cases.

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