MANAGING MOTOR VEHICLE ACCIDENT CLAIMS IN A POST SEPTEMBER 1ST WORLD

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I have never been a big proponent of change although I am told that change creates variety and variety is the spice of life. I acknowledge that some change can be good for the soul, but in our motor vehicle accident insurance law practices, at least in my experience, changes to the SAB's were only good on January 1, 1994 (B164). Change also forces us all to adjust to things we may or may not like and "adjusting" is the operative word when one considers the changes to the SAB's effective September 1, 2010.

I have been working in the motor vehicle accident insurance law industry since 1986 (yes, I was 12) and I have experienced change in the auto insurance industry as each of the various insurance regimes were enacted: OMPP, Bill 164, Bill 59, Bill 198, March 1, 2006 SAB's changes and now, the most recent changes to the SAB's effective September 1, 2010. If one were to draw out each of the individual changes to the legislation on a graph, it would appear like a mountain, where the peak is Bill 164 and from there it has steadily and rapidly declined. We seem to be heading back to the pre-OMPP days, were the weekly income replacement benefit was a maximum of $140.00 per week for two years, the medical and rehabilitation benefits only paid $25,000.00, there was no housekeeping or attendant care; and the bottom line was that there were insufficient funds available to care for individuals injured in a motor vehicle accident. Back in those days, however, as long as liability wasn't an issue, a tort

claim was pretty much a sure thing so we knew, eventually, the client would receive his or her medical and rehabilitation treatment, attendant care, housekeeping and income replacement/lost income and be properly compensated. Not so any more. Not so since OMPP. I will not discuss a comparison of the various insurance regimes in this article, as we all know them and most are redundant to us now. I will do a quick comparison however of the Bill 198 Pre September 1, 2010 vs Post September 1, 2010 Statutory Accident Benefits Schedule:

Coverage	Pre September 1, 2010	Post September 1, 2010
Medical, Rehabilitation and Attendant Care benefits for non-catastrophic injuries	$100,000 for medical and rehabilitation benefits; $72,000 for attendant care benefits, payable for 104 weeks.	$50,000 for medical and rehabilitation benefits, including assessment costs; $36,000 for attendant care benefits over the 104 weeks
Medical, Rehabilitation and Attendant Care benefits for catastrophic injuries	$1,000,000 for medical and rehabilitation benefits; $1,000,000 for attendant care benefits.	$1,000,000 for medical and rehabilitation benefits including assessment costs; $1,000,000 for attendant care benefits.
Caregiver benefit	Up to $250 per week for the first dependant plus $50 for each additional dependant; available for all injuries.	Up to $250 per week for the first dependant plus $50 for each additional dependant; available only for catastrophic injuries.
Housekeeping and Home Maintenance expenses	Up to $100 per week, available for all injuries.	Up to $100 per week, available only for catastrophic injuries.
Income Replacement benefit	80 per cent of net income up to $400 per week.	70 per cent of gross income up to $400 per week.
Dependent Care benefit	Optional Purchase Only.	Optional Purchase Only.

Death and Funeral benefits	$25,000 lump sum to an eligible spouse; $10,000 lump sum to each dependant; maximum $6,000 funeral benefits.	Same.

The September 1, 2010 changes to the SAB's can be considered drastic, as the entitlement to medical and rehabilitation treatment and attendant care treatment has been literally cut in half. The former Pre Approved Framework "PAF" although initially it appeared limiting, was soon by the wayside. The new Minor Injury Guideline "MIG" enforces an even further limitation on a client in that his or her medical and rehabilitation accident benefits are limited to $3,500 regardless of the optional benefits a claimant may have purchased. What exactly a minor injury is, is not even clear to the claims handlers and how to get out the MIG currently remains a mystery. Suffice it to say, the majority of clients are being stuck into the MIG by their claims handlers from the outset which is limiting funding and causing untold frustration to counsel and clients alike.

All of these changes are particularly unsettling when one reviews the new Professional Services Guideline published by FSCO effective July 1, 2011 and notes that all of the service fees have increased yet the availability of funding for treatment has decreased!

The elimination of the housekeeping benefit has proven to be catastrophic to the average client in our communities. That brings me to my next point, the definition of catastrophic also changed (and further change is currently in the discussion process) and further constricts entitlement to a catastrophic designation and therefore, elevated entitlement to benefits.

So, what to do, what to do. Well, I suppose there is not much we can do, other than to adjust and to start thinking outside of the proverbial box. If your client is fortunate enough to have a tort claim, then your creativity is endless. On the other hand, however, if your client does not have a tort claim, his prospects are somewhat more grim.

If your client has a tort claim, then you can go to town. Make sure you have a good "out of pocket" checklist or other means to keep track of client expenses. Teach your client or his caregivers to become good record keepers, and ensure that they keep track of everything from mileage to OTC meds. Record keeping and "documenting" has taken on a whole new meaning and if done right, from the very start of the claim, you will be building a strong pecuniary loss claim to be advanced in tort. One thing to keep in mind, is that even if your client's injuries are not immediately obvious threshold claims (non-pecuniary for general damages) their pecuniary loss claims are not subject to the threshold or the deductible and each and every client should be taught how to keep track of all out of pocket expenses. In the more serious cases, those that are not quite catastrophic in nature but are extremely serious, the $50,000.00 in medical and rehabilitation expenses is going to go quite quickly so try to counsel your client on the merits and disadvantages of "nickel and diming" the insurer. It may be wiser for the client to save the funding for actual medical needs (such as assistive devices, etc.) than to have the client submit all his miscellaneous medical expenses that can otherwise be picked up in tort. Your client is not likely going to understand why there is no funding for the prosthetic for his leg because he has submitted all his numerous parking receipts, mileage receipts, etc. This of course will only become an issue for the more serious injuries that will attract a significant amount of medical treatment over the first few years post accident.

Pursuant to the SAB's attendant care is only available for $36,000.00 (non cat) over the 104 weeks and is available for non catastrophic clients. The care must be "incurred" and the caregiver must sustain an "economic loss" (yet judicially defined). However, not so in tort. There is no cap on the amount your client can claim, nor do the same stipulations apply as to incurred expenses and economic losses.

The same applies to a housekeeping benefit. Although not payable for non catastrophic cases, it still must be an incurred expense for catastrophic cases. Again, no such stipulations apply in tort. A housekeeping claim can be advanced in tort and will in most

cases significantly increase the exposure of the tort insurer given there is no set off from the AB insurer.

For the client that does not have a tort claim, the situation in my opinion is quite dismal. What happens to the individual who sustains significant injuries but not quite catastrophic who has to undergo numerous surgeries, physiotherapy, temporary home modifications (such as ramp), must purchase/rent assistive devices? Some of the same principals will apply as with a client with a tort claim, in that the client must learn not to "sweat the small stuff" and to make efforts to save as much funding as possible for his or her future needs.

In both cases, we as keepers of our clients, should counsel our clients to make wise financial decisions. Make sure they understand how limited the funding is. Ask them to ask themselves not once but twice, if they really benefit from the treatment being provided or are they just involved in the treatment because they think they have to. Remind them that the cost of the assessments all come out of their funding as well, and our clients must understand the value of the services both economically and to their treatment. I guess it all just goes to the issue of economics. Teaching our clients to be wise with the funding, to make better choices of treatment modalities and to preserve their funding for a "rainy day".

We should be managing our motor vehicle accident claims in a post September 1, 2010 world with economic smarts, with creativity and as if we were in a drought, because you never know when it might rain again.