

September 15, 2017

Yvan Baker
Parliamentary Assistant to the Minister of Finance
c/o Budget Secretariat
Frost Building North, 3rd Floor
95 Grosvenor Street
Toronto, Ontario
M7A 1Z1

Dear Mr. Baker,

We understand that the ministry is seeking comments on "[Fair Benefits Fairly Delivered: A Review of the Auto Insurance System in Ontario](#)" authored by David Marshall. The Canadian Institute of Actuaries (CIA) has prepared a submission, which is attached, to assist in that review.

Our submission focusses on Mr. Marshall's recommendations that treatment plans for catastrophic injuries be based on an assessment of those injuries by an Independent Examination Centre (IEC); that the IEC assessment be accepted by all parties without dispute; and that the calculation of lump-sum amounts be based on the IEC assessment.

Our proposal is that the government designate Fellows of the Canadian Institute of Actuaries (FCIAs) as experts for the role of calculating such lump-sum amounts. The CIA has demonstrated its ability to meet this responsibility for private pensions where the Ontario Pension Benefits Act stipulates that transfer values are determined in accordance with standards developed by the CIA.

Thank you for taking the time to review our submission. If you have any questions, please do not hesitate to contact Chris Fievoli, CIA staff actuary, communications and public affairs, at (613) 656-1927 or chris.fievoli@cia-ica.ca.

Respectfully submitted on behalf of CIA President Sharon Giffen,

Michel Simard
Executive Director

Submission of the Canadian Institute of Actuaries to the Government of Ontario Consultation on “Fair Benefits Fairly Delivered: A Review of the Auto Insurance System in Ontario”

Introduction

The Canadian Institute of Actuaries (CIA) offers the following comments to the Government of Ontario’s review of the auto insurance system, as presented in David Marshall’s report “Fair Benefits Fairly Delivered: A Review of the Auto Insurance System in Ontario”.

The CIA is the national, bilingual organization and voice of the actuarial profession in Canada. Its 5,000+ members are dedicated to providing actuarial services and advice of the highest quality. The Institute puts the public interest ahead of the needs of the profession and those of its members.

Actuaries are risk management experts. They use mathematics, statistics, and probability to help ensure the financial security of Canadians. Traditional actuarial practice areas include insurance (both life and property/casualty), investments, pensions, actuarial evidence, and enterprise risk management.

Reducing the Costs of Competing Assessments

Mr. Marshall cites the expenses arising from competing assessments of claimants’ injuries as a source of cost in the system that is not devoted to the treatment and recovery of claimants. Further, he cites the delays arising from the adjudication of these disputes as a barrier to prompt treatment, and hence an obstacle to the recovery of claimants from their injuries.

Recommendation 4 of the report proposes that

There should be a minimum of disputes and delays in accessing single lump-sum awards for those who are catastrophically injured. Such awards should be efficiently and quickly determined by an independent examination centre [IEC] and based on objective measures, such as the American Medical Association guide, supplemented, where appropriate, by specialized and well-established guidelines.

These points are reinforced on page 52 of the report, where Mr. Marshall states that “it is essential that the opinion of the IEC be taken as final and not subject to competing opinions from either the insurer or the patient”. On page 53, Mr. Marshall then describes characteristics of the process that would support acceptance by all parties of the finality of such a determination. Along these lines, Mr. Marshall proposes that the process be “completely independent of either the insurer or the patient” and that it be marked by a “high level of competency”.

On page 46 of his report, Mr. Marshall states that “until lifetime care is made available, these claimants should continue to be awarded lump-sum payments. However, the lump-sum payment should be calculated based on the IEC assessment . . .”.

It is our view that acceptance of the lump-sum awards without dispute will require a similar degree of independence and competency on the part of those performing these calculations.

Members of the Canadian Institute of Actuaries bring the following attributes to the task of ensuring the confidence of all parties in the calculation of these lump-sum amounts.

1. Rigorous training in financial mathematics and the financial implications of mortality and morbidity, implemented by a comprehensive education and examination program and ongoing requirements for the continuing professional development of its members.
2. A commitment by the CIA to hold the duty of the actuarial profession to the public above the needs of the profession and its members, as stated in the CIA's first guiding principle. To that end, the CIA is self-regulating and enforces rules of professional conduct through a rigorous discipline process.
3. Standards of practice by which CIA members are to perform their practice. These standards are developed, established, and maintained by the independent Actuarial Standards Board, which in turn is observed by the Actuarial Standards Oversight Council, whose members are selected from outside the actuarial profession to further our commitment to independent oversight of the standard-setting process thus increasing protection of the public interest. Examples of such standards that are highly relevant to this context are those that pertain to expert opinion in the context of an actual or anticipated dispute resolution proceeding, where such expert opinion is expected or required to be independent. Such standards have specific provisions that address the determination of the lump-sum value of pecuniary losses arising from personal injury. Paragraphs .01 and .02 of subsection 4230 of the CIA Standards of Practice prescribe that "the actuary's actuarial evidence work should be independent and objective" and that "the actuary's role as an expert should be to assist the court or other entity in the dispute resolution proceeding in its search for truth and justice, and the actuary should not be an advocate for one side of the matter in dispute." These provisions of the actuarial profession's standards were cited by the Honourable Coulter A. Osborne in his November 2007 review of Ontario's Civil Justice Reform Project, Summary of Findings and Recommendations. These standards were referenced by Mr. Osborne on page 76 of his report as an example of the type of standard that should be consistently applied for all experts in the civil justice system. They have helped establish and maintain public confidence in actuaries as a credible authority in the calculation of lump-sum amounts for pecuniary losses arising from personal injury.
4. Long experience by actuaries in using the work of life care planners and physicians to quantify the costs of future care for those who have suffered personal injury. There are dedicated practitioners in this field whose work is guided by the aforementioned actuarial standards.
5. Annual consultations between the Ontario Ministry of the Attorney General and the CIA, whereby the ministry requests that the CIA validate the ministry's calculation of the discount rate for future pecuniary damages for the coming year, as mandated by Rule 53.09.
6. The Ontario Pension Benefits Act, Regulation 909, Section 19(1) requires that the commuted value (lump sum) for a terminating member of a registered pension plan be based on section 3500 of the standards of practice of the Actuarial Standards Board, published by the CIA. This standard has been in effect for a number of years.

Reducing the Complexity of the Calculations of Lump-Sum Amounts

On page 46 of his report, Mr. Marshall states that a complication of the current system lies in the details of how the benefit for catastrophic impairment is to be calculated, which “results in long and expensive negotiations with claimants”.

The CIA has experience in developing, through recommendations to the Actuarial Standards Board, prescribed calculations that streamline, standardize, and simplify the determination of lump-sum settlements for future streams of obligations for payment.

In particular, the CIA developed a commuted value standard for the determination of lump-sum amounts for the settlement of pension obligations in the event of the death or individual termination of the member of a registered pension plan.

This standard has reduced cost and ambiguity in the determination of these lump-sum amounts. These goals are similar to those sought in Mr. Marshall’s report, for the calculation of lump-sum awards for those catastrophically injured in automobile accidents.

The CIA has a due process mechanism and experience to smooth the path toward establishing such a standard. If CIA members were designated as experts to perform these calculations, the CIA would be able to provide the public with the benefits of standardization, simplification, and hence, cost reduction.

Proposal

We propose that the government designate Fellows of the Canadian Institute of Actuaries (FCIAs) as experts for the role of calculating lump-sum awards for catastrophic injuries, based on Independent Evaluation Centre (IEC) assessments.

Conclusion

We hope that you find this submission helpful. Please do not hesitate to contact Chris Fievoli, CIA staff actuary, communications and public affairs, at (613) 656-1927 or chris.fievoli@cia-ica.ca if you require clarification of any element of the submission.