



## **BRAIN INJURY VICTIMS ARE HIT HARD**

**James R. Howie  
Adam K. Wagman  
Howie, Sacks & Henry LLP  
Personal Injury Law**

As we anticipated, people who suffer brain injuries have been very significantly affected by Bill 59, the Automobile Insurance Rate Stability Act. In this article we will describe the effect this new system has on people who suffer from brain injuries, and suggest how service providers can help to ensure that patients receive the maximum amount of care permitted by the *Statutory Accident Benefits Schedule*.

The *Schedule* has created a two-tier system of benefits. The tier that an injured person fits into is based on whether or not they meet one of the definitions of "catastrophic impairment".

The difference between the two tiers is enormous. If a person is judged catastrophically injured, they are entitled to the services of a case manager, \$6,000.00 per month for life (to a maximum of \$1,000,000.00) in attendant care benefits, up to \$1,000,000.00 in medical and rehabilitation benefits, and \$100.00 per week for life in housekeeping and home maintenance benefits. However, a person who is not deemed catastrophically impaired cannot get the services of a case manager, is only eligible for \$3,000.00 per month for two years in attendant care benefits, \$100,000.00 within ten years in medical and rehabilitation benefits, and \$100.00 per week for two years in housekeeping and home maintenance

benefits. As you can see, the question of whether someone has suffered a catastrophic impairment is really a "million dollar question".

In order to qualify as having suffered catastrophic impairment (leaving aside other injuries), a person with a brain injury must have been assessed as 9 or less on the Glasgow Coma Scale within a reasonable period of time after the accident by a person qualified to give a Glasgow Coma Scale test. Also, they may qualify if they are rated 2 or 3 on the Glasgow Outcome Scale, through a test administered at least six months after the accident.

The Glasgow Coma Scale is relatively straightforward, and the score should be obvious in the ambulance call report or hospital records. One problem with the Glasgow Coma Scale is that it is not a good indicator of the amount of rehabilitation that the person will require. Sometimes a person with a Glasgow Coma Scale of 9 or less is able to significantly recover in a short period of time, while a person with a higher initial Glasgow Coma Scale score may require years of expensive rehabilitation. In short, this test is too arbitrary to be of much use.

Unfortunately, while the Glasgow Outcome Scale is a much better indicator of the amount of rehabilitation that a person requires, the bar has been set too high to usefully assist those with moderately severe head injuries. Glasgow Outcome Scale of 2 or 3 includes only those who are in a vegetative state or who have a severe disability, and as a result, many people with significant brain injuries will be left with the lower level of available benefits. This lower level is woefully inadequate for any injured person who needs more than a moderate level of treatment.

How does a brain injured person get assessed as "catastrophically impaired"?

A comprehensive knowledge of the definition of catastrophic impairment will

permit service providers to help their patients receive the higher tier of benefits. One can focus not only on the Glasgow Coma Scale and the Glasgow Outcome Scale, but also on another impairment test of "55 percent or more impairment of the whole person" or a class four or five impairment due to mental or behavioural disorder, in accordance with the AMA Guide. These tests are also done at least six months after the injury, and using the AMA Guide successfully is based partly on detailed record keeping by various service providers. Just about every imaginable impairment of every body part is listed in the Guide, and service providers must be vigilant to keep accurate and complete records. An injured person may have a few main complaints, but even the most minor of complaints should be recorded. Even the smallest of problems may add extra percentages to the total overall impairment rating.

In cases where it is clear that an injured person will not be defined as having a catastrophic impairment, it is important that the service providers turn their minds at an early stage to how best to use the available \$100,000.00 in medical and rehabilitation benefits. We all know how quickly this money can be used up, especially in the area of brain injury, and some hard choices should be made at the very early stages to best use the available limits for the victim's advantage.

The government is aware that the definition of catastrophic impairment has had a very significant impact, and we are pleased to report that recently the government, by amendment to the Act, eliminated for children under 16 the effect of "catastrophic impairment" limitations in lawsuits brought against at fault drivers. Now, all children who sustain a permanent, serious impairment will have the right to sue for all their health care expenses. It is not known at this time whether or not the government will make a similar change to the *Statutory Accident Benefits*

*Schedule.* Adult victims of head injury continue to require vigilant service providers and effective legal counsel to assist in recovering all available and appropriate benefits.