

No Crash, No Cash

Schedule 21 of Bill 173 – *Better Tomorrow for Ontario Act (Budget Measures), 2011* amended sections of the *Insurance Act* significantly impacting public transit vehicles. The Bill received Royal Assent on May 12, 2011, bringing these changes into force.

Section 267.5(6.1) of the *Insurance Act* now provides as follows:

- (6.1) Same, public transit vehicles** – In respect of an incident that occurs on or after the date this subsection comes into force, subsections (1), (3) and (5) do not protect the owner or driver of a public transit vehicle if it did not collide with another automobile or any other object in the incident.

Section 268(1.1) of the *Insurance Act* now provides as follows:

- (1.1) Exception, public transit vehicles** – Despite subsection (1) and the *Statutory Accident Benefits Schedule*, no statutory accident benefits are payable in respect of an occupant of a public transit vehicle, in respect of an incident that occurs on or after the date this subsection comes into force, if the public transit vehicle did not collide with another automobile or any other object in the incident.

Section 224(1) defines “public transit” and “public transit vehicle” as follows:

“public transit” means,

- (a) any service for which a fare is charged for transporting the public by automobiles operated by or on behalf of a municipality or a local board as defined in the *Municipal Affairs Act*, or under an agreement between a municipality and a person, firm or corporation, but does not include special transportation facilities for persons with disabilities or transportation by special purpose facilities such as school buses or ambulances, and

- (b) any service prescribed by regulation to be public transit, in the circumstances and subject to the terms, conditions, provisions, exclusions and limits prescribed by the regulation,

but does not include any service prescribed by regulation not to be public transit, in the circumstances and subject to the terms, conditions, provisions, exclusions and limits prescribed by the regulation;

“public transit vehicle” means an automobile while being used for public transit.

As a result of the amendments, passengers injured on a public transit vehicle that has not collided with an automobile or other object are no longer entitled to claim statutory accident benefits as a result of the incident.

Additionally, the owner and driver of the public transit vehicle are no longer protected defendants, and are therefore not entitled to the benefit of the provisions of the *Insurance Act* that impose the threshold, deductible and protections from liability for income loss, loss of earning capacity and health care expenses.

It appears that these amendments are intended to eliminate claims for accident benefits for transit passengers who allege that they have sustained injury where no collision has occurred, such as when the public transit vehicle starts or stops suddenly or when the individual has tripped and fallen on the bus.

While these changes will likely reduce the cost of accident benefits paid out by the insurers of public transit vehicles, there may be a corresponding increase in the number of tort actions commenced as a result of such incidents, as minor claims will no longer be eliminated by the threshold and deductible provisions. No accident benefits will have been paid, and therefore will not be deducted from the claims for income loss and health care expenses. Although, the amounts paid out these tort claims may ultimately be equivalent to, if not higher than the total payouts made before the amendments, the payments will be made on a deferred basis. The insurers of public transit vehicles will have an opportunity to contest liability and argue contributory negligence on the part of the injured person to eliminate or reduce the claims, an opportunity not available to them under the no-fault regime.