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## Despite delay, catastrophic definition may still be overhauled



PERSONAL INJURY

As the Ontario government continues to consider an overhaul of its definition of "catastrophic impairment," (CAT), a fear exists that efforts over the last 15 years to establish consistency and predictability in applying the test will be lost, says Toronto plaintiff's personal injury lawyer **Darcy Merkur**.

At this year's annual Back to School conference on Sept. 12, Merkur provided an update on the topic by revisiting his 2012 paper titled The Anticipated Changes To The Definition of "Catastrophic Impairment" And Its Expected Impact.

The proposed changes were delayed after a campaign by victim advocates, says Merkur, noting the government continues to entertain the idea of a new definition.

"A close look at the draft wording of the proposed new CAT definition makes it clear that there will be major differences of interpretation on how to properly apply the various tests and thresholds referenced," he says. "The fear is simply that it will be another 15 years before we reach any level of predictability and consistency in the application of the new anticipated CAT definition and that clients will suffer in the interim."

The new definition was expected to include the introduction of multiple new medical tests with controversial thresholds, along with the elimination of the simple GCS test, says Merkur, partner with **Thomson, Rogers**.

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“Thankfully, the government appears to have backed off the requirement for catastrophic impairment claimants to have been admitted as in-patient at a rehabilitation facility and thankfully the government is contemplating an automatic CAT designation for children with traumatic brain injuries,” he says.

“However, client advocates remain concerned that the anticipated CAT definition will cause extreme uncertainty regarding CAT designations and will cause significant delays in accessing necessary and crucial rehabilitation services.”

While the process has been delayed, “We must all get ready to respond to the expected initiative to revisit the CAT changes,” says Merkur.

“It seems like a virtual certainty that the CAT definition will again be debated as part of the firm mandate to reduce auto insurance premiums.”

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