

# Government must ‘start from scratch’ with auto insurance

**By AdvocateDaily.com Staff**

The provincial government needs to stop tinkering with its auto insurance regime and start from scratch if it hopes to achieve the goals of its blueprint for automobile insurance, says Michael Winward, chair of [The Federation of Ontario Law Associations](#) (FOLA).

[Winward](#), a partner with Hamilton law firm [Mackesy Smye LLP](#), was part of the FOLA committee convened to [respond](#) to “Putting Drivers First,” Premier Doug Ford’s government plan for auto insurance reform, which was unveiled as part of its budget earlier this year.

“If these proposals are an indication of what this government is going to do with auto insurance, then they can only expect a similar lack of success that its predecessors had over the last 20 years,” he tells AdvocateDaily.com. “If this government is concerned that Ontario’s auto insurance premiums are the highest in the country, nothing in its current proposal is going to change that.

“Instead of tinkering with the existing system in the hope something will make a difference, what they should be doing is going back to first principles, and thinking about the kind of insurance scheme they want, so they can start building and costing it out from there,” Winward adds.

The key planks of the government plan include restoring the \$2-million limit on benefits for catastrophically impaired accident victims under the [Statutory Accident Benefits Schedule](#) (SABS) and a “care, not cash default” designed to eliminate cash settlements for certain lower value claims.

In June 2016, the previous Liberal government halved the combined limit for attendant care and medical rehabilitation services available under the SABS for those whose injuries were designated catastrophic to \$1 million from the original \$2-million limit, but the new changes will restore the higher amount.

Winward says the four-lawyer FOLA committee — split equally between plaintiffs’ and insurance defence counsel for a balanced perspective — unanimously welcomed the restoration of the old limits for the injury victims most in need of care.

“Catastrophic impairments are frequently life-changing injuries,” he says. “It is totally appropriate to reinstate the \$2-million catastrophic limits but at the same time, doing so will obviously not lead to a reduction in insurance premiums.

“If anything, it’s going to make insurance more expensive, not more affordable,” Winward says.

The care-not-cash proposal has its roots in a report on auto insurance delivered to the Liberal government by David Marshall, the former CEO of the Workplace Safety and Insurance Board.

“It didn’t make any sense then, and it still makes no sense now,” Winward says.

He says that the idea is designed to address a non-existent problem, since the current system already prevents plaintiffs from settling disputes with insurers until 12 months after the accident.

“I could understand it if insurers were dangling money in front of injured people within weeks or months of their accidents, but that’s not the case,” Winward says.

Instead, he says that the proposal would effectively make consumers pay an additional premium to allow them to settle a dispute with their insurer.

“That’s just unprecedented, and would force people to pay for the right to do something they can do now for nothing,” Winward says.

Rather than focusing on tweaks to the existing auto insurance system, the FOLA submission to the Ministry of Finance suggests the provincial government “start from scratch.”

“By ‘starting from scratch,’ we mean that the government must first determine what values it wants in place for the people of Ontario in constructing an automobile insurance regime.

“For example, does the government want a generous system of first-party benefits, regardless of who is at fault for the accident, or does it want a more fault-based system of insurance coverage? Does the government prefer a system of totally optional first-party benefits and if so, how is it going to protect and educate the consumer to ensure that informed insurance coverages are chosen?

“How is the government going to protect those vulnerable road users, such as pedestrians and cyclists, who do not have car insurance?” the authors write.

“Once the government defines the type of insurance system it wants for the people of Ontario, the government can then build its insurance model and, in doing so, determine the costs associated with that model.”