

FAIR Association of Victims for Auto Insurance Reform
579A Lakeshore Rd. E. P.O. Box 39522
Mississauga, ON L5G 4S6
<http://www.fairassociation.ca/>

Submission to the 2014 Pre-Budget Consultations

January 23, 2014

Thank you for the opportunity to bring the issues facing Ontario's injured drivers to the attention of Ontario's Legislators.

Ontario's Motor Vehicle Accident (MVA) victims want to know what our government is doing to make sure that the insurance system in Ontario works and that we have adequate coverage at a reasonable price.

We'd like to hear why the Legislature has silently slipped in the latest changes to Ontario's auto insurance coverage without any consultation, debate or discussion with the public or stakeholders other than Ontario's insurers. Why is it that the levels of coverage and the system itself consistently moves farther away from its original purpose to provide quality coverage at reasonable rates for Ontario's drivers. [1]

We'd ask if democracy and debate were on holiday in December 2013 when these drastic changes were passed – changes that will limit access to care that affects those who are the most injured. There is, or should we say was, case law that defined incurred expenses that insurers did not agree with but is that a reason to circumvent thoughtful discussion and debate in order to bolster Ontario's insurance industry profits? [2]

Does our government think that is ok that those affected by the most recent changes will be denied decent care? Is it ok that family members of victims will not be getting adequate financial assistance unless they give up their employment? Or that the victim's family may even be on the hook for the costs of 24/7 care because the fight to get those benefits is often a long and expensive process? [3]

We'd like to know why, with every change and tinkering that the Legislature passes into law, the result is to further punish innocent car accident victims through less and less coverage - and in doing so it serves to dramatically increase insurance industry profits. It's bad enough that those who insure us portray us as snakes and scammers, is it fair that our government has such disregard for those who desperately need assistance and proper care? [4]

When will factual information be imparted to the public so they know that 85% of those who are injured every year will only be covered for the amount of \$3500.00 for treatment and rehabilitation? And what about the information that the \$3500.00 allowed is really only about \$2200.00 after your insurer takes out the cost of medical examinations? Instead of misinformation – when will the public get the facts about the coverage we have? When will the public be told that the amount that many drivers are paying for car insurance premiums is more than they would be able to collect if they were injured? [5]

Why has nothing been done to reign in some of Ontario's insurers whose business practices are harming injured drivers by delaying and denying legitimate claims? How long does the line-up have to be for hearings in our court systems before the government would acknowledge that the system is in crisis? Why are we not making changes that protect accident victims? Are you aware that these thousands of claims have been turned down on the basis of often questionable medical examinations or an adjuster making a decision without any medical background at all?

When is the government going to inform the taxpayers that due to their legislative changes we now have a public funded system where Ontario's insurers are not actually providing decent coverage but rather skimming huge profits off the top of the premiums and downloading the care of accident victims to the taxpayer who foots the bill through our social nets.

When will the public be told that less than half of those injured will be able to access treatment without an expensive and exhausting fight with their insurance company? [8]

We'd like to know why the Minister of Health and our government has done nothing to regulate the assessors who examine and provide expert evidence to our courts in respect to the extent of accident victim's injuries? [6]

Why has nothing been done to protect innocent accident victims from predatory assessors whose college oversight has failed thousands of patients who are denied treatments through the IME process? We'd like to know why these same poor quality assessments are accepted by our courts and why nothing has been done to clean up the proliferation of biased and unqualified medico-legal opinion evidence in our courts. A system built on dishonesty can hardly be depended on to provide justice. [7]

Is the Legislature aware that these same dishonest and biased medical opinions continue to affect accident victims long after they've been denied treatment when the victim applies for ODSP or CPP?

According to the DRS report in October 2013, there were 25,329 injured accident victims in 2013 who could not access the promised coverage after an accident and had applied for mediation? Is our government concerned that up until October of 2013 there were an additional 10,752 cases awaiting a hearing for Arbitration at the Financial Services Commission and an additional 23,521 cases (2012) on the docket at Ontario's Superior Court. Are our elected representatives aware that 45% of these claims are for medical benefits and these are seriously injured people who are kept from recovery when rehab is stalled? [8]

Is there no concern that these cases often take 6 to 8 years to resolve and in that time motor vehicle accident victims are put under great stresses when the focus should be on recovery and return to work? Is our government aware that sometimes it can take years to get to a hearing and that an Arbitrator can take as long as two years to come to a judgement and in that time an accident victim is left in limbo? [9]

Are Legislators aware that, through no fault of their own, auto accident victims are losing their homes and going into debt just to put food on the table? Families torn apart by the crisis of an unexpected accident find they have no way to overcome all the obstacles this industry has created in order to block access to treatment with the help of this Legislature.

When this Legislature is lobbied by the IBC do you forget that the war on fraud is based on figures that are unsubstantiated and that the Chair of the Anti-Fraud Task Force has testified to this government's Standing Committee that the estimate of \$1.3 billion dollar loss to fraud wasn't based on "any concrete or quantitative analysis"? [10]

Does the legislature have any misgivings or concerns about a system that has physician assessors offering reports for use to decide benefits that includes pretending that a person's leg has been amputated when it hadn't? Is it ok because that way the insurer who hired the assessor could save money by pretending she already had a prosthesis and therefore was less injured and so not entitled to higher coverage – a sort of 'cut off your leg' so the insurer can save a buck? [11]

Is it ok that insurers will spend ten times what a treatment program costs just so they can block it? Is it ok to send an accident victim to 20 plus assessments until a report that an insurer likes is achieved? [12]

Is there a concern that doctor's signatures are rubberstamped and reports changed and that this has been going on for almost a decade without the problem being addressed or vulnerable accident victims being protected from such duplicitous behaviour? [13]

Is it OK for insurers to pay an assessor \$22,000.00 to prep him for court on top of another \$8,400.00 for a medico-legal report? Are these amounts built into the figures the government and the public are told are claims handling costs? [14]

Are you aware that every time Ontario's insurers are given a free pass in paying the costs of care of an accident victim that the costs are passed to the taxpayer? Accident victims don't just go away when an insurer wrongfully denies a claim, they go on the public system. Our health care system is not designed for this type of use – programs most needed for timely treatment of brain injuries, time sensitive treatments or long term therapies needed to maintain function or return to work.

At some point our government has to acknowledge that the dysfunction of the auto insurance coverage in Ontario isn't the fault of crafty accident victims looking for 'rich' benefits. The number of claimants in the system has increased because of the cuts to coverage and the poor choices of our government and legislators to put insurer interests above those that would benefit the accident victims and the taxpayer. The present adversarial and wrongful delay and deny system we have is shameful - an auto insurance system that is based on the proliferation of bogus medical reports that has become both the fuel and the shame of our justice system and a source of abuse for vulnerable injured and disabled accident victims.

Thank you for the opportunity to bring our concerns forward.

FAIR Association of Victims for Accident Insurance Reform

[1] http://www.e-laws.gov.on.ca/html/source/regs/english/2013/elaws_src_regs_r13347_e.htm

[2] Henry v. Gore Mutual Insurance Company, 2012 ONSC 3687 (CanLII), <<http://canlii.ca/t/frtzx>>

[3] **S.M. and Intact Insurance** [+]
Arbitration, 2013-11-08, Reg 403/96
The Applicant is claiming attendant care benefits in the amount of \$6,000.00 per month from June 7, 2008 onwards, less amounts paid by Intact. According to the testimony of Ms. Quintal (the adjuster who has handled the file since May 22, 2009), the Insurer has paid attendant care benefits to the Applicant as follows:

Monthly Amount Paid for Attendant Care	Period
\$ 6,000.00	July 4, 2008 – October 31, 2008
\$ 5,012.03	November 1, 2008 – September 30, 2009[6]
\$ 304.71	October 1, 2009 – November 30, 2009
\$ 1,884.96	December 1, 2009 onwards

[4] <http://www.youtube.com/watch?v=UZsCwYu2QfQ>

[5] <http://www.fairassociation.ca/2014/01/who-sets-our-rates-and-what-the-industry-doesnt-want-you-to-know/>

[6] CPSO Transparency Project http://policyconsult.cpsso.on.ca/?page_id=2420 and <http://policyconsult.cpsso.on.ca/wp-content/uploads/2013/11/FAIR-response-to-CPSO-Draft-Transparency-Principles-November-11-13-.pdf>

[7] <http://www.fairassociation.ca/wp-content/uploads/2013/12/FAIR-response-to-the-Ontario-Dispute-Resolution-System-Review-Interim-Report-December-2-2013.pdf>

[8] <http://www.fin.gov.on.ca/en/consultations/auto/request-for-submission-interim-report.html>

[9] **Macedo and Allstate Insurance** [+] Arbitration, 2013-12-12

<https://www5.fSCO.gov.on.ca/AD/4083> Heard - January 9-12, 16-17, 19, 24-25, 2012, Decision rendered December 12, 2013

[10] **Committee Transcripts: Standing Committee on General Government - May 28, 2012 - Automobile insurance review** http://www.ontla.on.ca/web/committee-proceedings/committee_transcripts_details.do?locale=en&Date=2012-05-28&ParlCommID=8958&BillID=&Business=Automobile+insurance+review&DocumentID=26372#P58_3428

Mr. Jagmeet Singh: Sir, just to clarify some points, the \$1.3-billion figure that's been used has been used for about 20 years, and based on your research, that number doesn't seem to be supported by any research that you have. Is that correct?

Mr. Fred Gorbet: We could not find any research we thought was credible that could support it in today's marketplace.

Mr. Jagmeet Singh: In fact, you can't attribute an actual number to the fraud cost in Ontario; is that correct?

Mr. Fred Gorbet: That is correct.

Mr. Jagmeet Singh: You indicated the types of fraud: organized, premeditated and opportunistic.

Mr. Fred Gorbet: Yes, sir.

Mr. Jagmeet Singh: Amongst those three, if you were able to rank those, would you agree with me that organized fraud—you can just rank it however you think which is contributing the most to fraud of those three.

Mr. Fred Gorbet: I really have no basis to rank them but I would guess—and it is a purely personal guess—that a combination of organized and premeditated is more substantial than the opportunistic, and I could not begin to break down the organized versus the premeditated.

Mr. Jagmeet Singh: So in fairness, your answer is an opinion but you can't base that on any concrete or quantitative analysis.

Mr. Fred Gorbet: That is correct.

Mr. Jagmeet Singh: But it's your hunch that it's organized and premeditated. I would have suggested the same thing as well.

In terms of organized, do you know who that is or do you have a sense of where that's happening or a sense of who is involved in that?

Mr. Fred Gorbet: No, I don't. The only information that's available to the task force on that is, from time to time, press reports about enforcement actions.

Mr. Jagmeet Singh: So we're not able to say with certainty who is the organized crime, if it's one particular crime network or if it's in a particular area or region. It's just based on a colloquial knowledge, when a press release comes out that there's a fraud ring that was exposed. That's what you're basing your knowledge on.

Mr. Fred Gorbet: That's correct.

[11] **D.B. and Economical Mutual [+]** Arbitration, 2013-10-02

<https://www5.fscs.gov.on.ca/AD/4048> "Economical insists that D.B. be rated as the equivalent of an amputee, as she has declined to follow medical advice recommending a below knee amputation.... D.B. does not know what to do. Prosthetics and physiotherapy are not possible because she cannot afford them and no one can assure her that she will be able to walk after an amputation.... The foundation of Dr. Paitich's WPI rating was flawed in that he refused to assess D.B. as she appeared in his office but instead, persisted in treating her as an amputee, which is not in keeping with the Guides. He compounded his error by not rating D.B.'s chronic neck, shoulders and low back pain, her scarring and skin condition, her hernia and daily use of opioid medications."

[12] McQueen V Echelon <http://canlii.ca/en/on/onsc/doc/2009/2009canlii66152/2009canlii66152.html>

[13] **MC v KE, 2013 CanLII 55435 (ON HPARB)**, <<http://canlii.ca/t/g0c3g>> 2013-09-04

7. [...]The Respondent notified the Committee that, through the complaints process, she had discovered that Riverfront Medical Services (Riverfront), the company through which the Applicant's assessment was contracted, had changed the Respondent's report without her prior knowledge or consent.

10. However, the Committee did express concern about the information uncovered during the course of the investigation related to Riverfront having altered the Respondent's report. The Committee noted the "egregious" impact that these changes could have had on the Applicant's entitlement to benefits.

Macdonald v. Sun Life Assurance Company of Canada, 2006 CanLII 41669 <http://canlii.ca/t/1q596>

[1] In the course of this jury trial I ruled that Dr. Frank Lipson, who had conducted a defence medical of the plaintiff, not be permitted to testify as an expert witness on behalf of the defence. Dr. Lipson had testified that a medical report purportedly signed by him had not been signed by him. He stated that his signature stamp had been affixed to the report without his authority by an individual at Riverfront Medical Evaluations Limited (Riverfront) the company who had retained him to conduct the defence medical. [...]

[101] In my view Riverfront in this case, went far beyond what can be considered a proper "quality control" function. While I am not prepared to find that they were motivated by a desire to assist the defendant, nonetheless I find their actions constituted an unwarranted and undesirable interference with the proper function of an expert witness.

[14] Blake v. Dominion of Canada General Insurance Co., 2013 ONSC 7445 (CanLII), <<http://canlii.ca/t/g26pk>> "\$22,000.00 for preparation, attendance and witness of Dr. Dost."....."area of concern is on top of the costs of Dr. Dost's IME Report which alone cost \$8,400.00..... What was involved in the preparation of this expert witness? Did he have to go beyond a review of his initial report? These figures are not inconsequential."

Final Anti-Fraud task force report: <http://www.fin.gov.on.ca/en/autoinsurance/final-report.html>

⁵The KPMG methodology and detailed results are described at http://www.ibr.ca/en/Insurance_Crime/

⁶See Status Update, pp. 22-25, at

<http://www.fin.gov.on.ca/en/autoinsurance/status-report.html>

⁷The **Ernst & Young report** prepared for the Task Force can be accessed

at <http://stage.fin.gov.on.ca/en/autoinsurance/forensic-review-ey.html>