

FAIR Response to the Anti-Fraud Task Force Report

FAIR (Fair Association of Victims for Accident Insurance Reform <http://www.fairassociation.ca/>) is a not-for-profit consumer organization dedicated to improving the way all Motor Vehicle Accident (MVA) victims are treated and cared for under Ontario's insurance legislation.

FAIR is pleased to review the Final Report of the Anti-Fraud Task Force Steering Committee. We presented to the Task Force in person and in writing and we are encouraged to see in the Final Report that the panel was listening to many of the issues brought forward by FAIR. The committee recognizes that their "recommendations should not make things worse for legitimate claimants". It is a sign that the panel has acknowledged the dire circumstances that more than half of all accident victims find themselves experiencing when making a claim.

FAIR believes that those claimants caught in the unrealistic cap for treatment are no better off since the report has been released. The plight of those in line waiting for hearings at the Financial Services Commission of Ontario (FSCO) has been largely ignored in the recommendations by the Task Force report. This report looks only toward the future leaving those in the system with unrealistic and limited access to treatment and benefits.

FAIR does not agree that "the most effective way to deal with fraud is to cut off the flow of funds". Limiting needed benefits to legitimately injured Ontarians is not an effective tool to combat fraud. FAIR is disappointed that the Task Force did not take the opportunity to undo the obvious damage happening to claimants who are the casualties of this war on fraud. According to accepted statistics, opportunistic fraud overall is estimated to be from 9% to 16% and yet 85% of accident claims are now capped at \$3,500.00 for treatment and rehabilitation. If that were not bad enough, the expense of assessments is deducted from that amount leaving very little left for actual treatment and rehabilitation. There is no indication that less 'lucrative' benefits for injured auto accident victims has resulted in less fraud. What we do see is a marked increase in claims backing up the system and significantly higher profits to insurers since the implementation of the 2010 Minor Injury Group (MIG) qualification.

FAIR supports many of these new Task Force recommendations that reflect our core message for the government to take specific steps to ensure that fraud is curtailed and that legitimate accident victims not be a target. The Task Force has recognized that many legitimate accident victims have been caught up in the net cast to capture fraudsters and that a more robust and timely dispute resolution process needs to be in place. We agree with the recommendation that the FSCO should be assisted by an advisory board to implement these new changes. The FSCO should be independently reviewed to see how well they are handling their new responsibilities.

FAIR members believe that substandard Independent Medical Exams (IMEs) are far more widespread than suggested by this committee on page 86 and that claimants are suspicious of IMEs with good reason. The idea articulated by the task force that the effects of unqualified or biased reports are associated to just those individuals who have spoken out is troubling. The Task Force might have chosen instead to review some of the complaints and the rulings that are on the public record and that FAIR members pointed out to the committee. The Task Force is dismissive of the extent of the problem with IMEs when they minimize and trivialize the examples given by FAIR. To suggest that the examples before the committee were anecdotal misses the point. An IME provider who has been found to have written a substandard or biased report has likely done more than one such report. Some IME vendors do thousands of reports each year and thousands of individuals may have been affected. One must look to past decisions on the record to see if other claimants have been improperly diagnosed or have had unqualified IME reports used at hearings to disqualify them. FSCO must also look ahead to make sure that an IME provider no longer has the opportunity to cause harm to legitimate claimants through insurer driven reports.

FAIR believes that the obvious deference accorded IME physicians is evident in the Unfair or Deceptive Act or Practice (UDAP) sanctions. UDAP sanctions provide the opportunity to fine either health care clinics or assessment centers and physicians who provide substandard IME reports. The Task Force has recommended that only healthcare workers and not individual physicians be subject to prosecution and criminal charges creating a layer of protection for some but not all IME providers. Why should a physician who writes a flawed IME be excluded from criminal charges if the report written is fraudulently produced to disqualify a legitimate claimant? The Task Force has not pursued the question of how many of these pro-insurer IME providers are on the roster at the Canadian Society of Medical Evaluators (CSME) whose 2011 newsletter clearly indicates that they themselves are aware of the problem in "**...We have all to realize that times are changing - amateurism, bias and fraud in the domain of IMEs will be tolerated less and less in the future. For those of you doing IMEs for years, it is time to notice this approaching shift: the cost of litigation, cost of automobile insurance and lack of quality control of IMES, leading to public scandals, might soon lead the parties requesting IMES to be more critical when the appraising medicolegal credentials of an expert before hiring his/her services....**" Why would this task force not request information from the CSME who are clearly aware that some of their members who produce the IMEs are hired guns for the insurance industry?

FAIR did raise the concern to the Task Force that the complaints process for MVA victims about IME vendors was inadequate and dysfunctional. Ontario's overseeing regulatory colleges do not always link like or similar complaints together, instead preferring to treat each complaint individually. This has eliminated any possibility of

tracking the IME vendor's patterns of bad behavior. The record shows that there is often a failure on the part of the claimant's legal representatives to make inquiry of the colleges to be sure that the IME provider is even qualified to offer an expert opinion at a hearing. FSCO's own Arbitration Unit Decisions reflect that these questions about qualification are often not asked. This has led to IME reports by a particular physician accepted by an Arbitrator on one day and yet on the next day, when confronted by a more motivated or practiced lawyer, the IME provider's reports are disallowed as unqualified, substandard, biased or flawed. This uneven acceptance of questionable IME reports must be addressed within the Arbitration Unit if there is to be any faith that the system is fairly treating all claimants whose cases are heard.

The recommendation on page 19 that insurers should publicly disclose how they choose or assess the performance of their preferred IME examiners will make some difference. Consumers should be encouraged to bring their concerns forward with a new process that would make registering a complaint simple and easy to access. We feel that the recommendation that the FSCO report insurers to the public who fail to comply with mandatory complaints-handling issues to be very encouraging.

The Task Force recommendation that the regulatory colleges work together to establish guidelines to improve quality will only work if those regulatory bodies are encouraged to push toward greater transparency. The various colleges have a very poor record of public disclosure about the complaints made about their members. The Ministry of Health should be a participant in the proposed oversight as it is they that must set in motion higher standards and enforcement to ensure that the public's interest and well-being is paramount. This will guard against further erosion in the public's faith that the care they receive from the physicians and health providers they are sent to are competent.

FAIR is satisfied that the Task Force has carefully considered the possible unfair advantage to insurers and potential abuse of accident victims in their recommendation that insurers not be afforded broader civil immunity. FAIR agrees with the Task Force view that the present system be enhanced with the development of new protocols is sufficient without the need for blanket immunity.

FAIR agrees that the evidence based treatment protocols for MIG and the Catastrophic (CAT) Impairment classification need to be completed in order to decrease the backlog for hearings. While we agree it should be done as quickly as possible it has become clear over time that the make-up of the CAT panel has produced some distrust that they can come to an acceptable solution for a definition. A rushed report will not be of assistance.

FAIR agrees with the recommendation that Health Claims for Auto Insurance (HCAI) represents a valuable tool in tracking potential fraud. The licensing and oversight of

health clinics that treat and assess auto accident claimants will improve the industry standards of care and accountability to claimants.

FAIR does not agree that the \$500.00 cancellation penalty to claimants who fail to attend a medical examination is fair nor should it be considered as an effective tool against fraud.

FAIR does not agree that consent for sharing of a claimant's personal information should be embedded in the application form for auto insurance benefits. This takes advantage of vulnerable accident victims who may not be aware that their private information will be shared with any number of unspecified individuals. We will take interest in the proposed consultation with the Ontario Privacy Commissioner to ensure that automobile accident victims are not taken advantage of and that their rights to privacy are protected.

Overall, the Anti-Fraud Task Force recommendations are largely a thoughtful and targeted approach to combating fraud in the insurance industry with the exception of the proposed guidelines for IME providers. These new guidelines resemble very closely the failed DAC system. The FSCO is proposing the same hierarchy, FSCO provides assurance by way of clinical directors attestation that all is well with IME and healthcare providers but will rely on the regulatory colleges to provide them with the information of who is or isn't doing an adequate job. FSCO knows full well that the colleges, who are focused on patient safety and quality of care, are not equipped, nor are they willing, to investigate these types of complaints.

The Anti-Fraud Task Force Steering Committee has exhibited a willingness to interact with all the stakeholders and should be commended for having done so. FAIR appreciates the opportunity to have expressed consumer concerns about Motor Vehicle Accident victims to the Anti-Fraud Task Force and we look forward to being part of the consultation process in the future. We agree that the proposed implementation panel should include a consumer representative and we would be more than willing to participate in the committees that this report suggests.

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