
Response to:

**The Superintendent's Report on the Definition of Catastrophic
Impairments in the Statutory Accident Benefits Schedule** (June 12, 2012)

Submitted by:

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INTRODUCTION

FAIR (Fair Association of Victims for Accident Insurance Reform) is a grassroots organization of MVA (Motor Vehicle Accident) victims who have been injured in motor vehicle collisions and who have struggled with the current auto insurance system in Ontario.

Our members lives, as a result of these MVAs, have been turned upside down by brain injury, loss of limbs, need for surgery and reparative therapy, long-term debilitating injuries, loss of time from work, loss of jobs and sometimes loss of independence

FAIR (Fair Association of Victims for Accident Insurance Reform) wants to see reforms to auto insurance legislation that will improve the way in which all MVA victims, particularly those with traumatic injury, are treated and cared for under provincial insurance legislation. Not only are FAIR members faced with the challenges of overcoming and adapting to injury, we are also faced with an insurance system that does not fairly provide consumers with needed rehabilitation coverage and benefits.

FAIR gives a voice to the thousands of people in Ontario who have become amongst the most vulnerable people in our province.

AREAS OF CONCERN

Legal Definition or Medical Definition

The starting position of the Catastrophic Impairment Expert Panel (the Panel) is that ***“catastrophic impairment is not a medical entity; rather, it is a legal entity which defines a point along the medical spectrum of impairment severity”***. This is troubling news to that individual who is struggling to come to terms with severe injuries and whose life has been turned upside down through no fault of their own. For that person, their predicament is entirely medical and the purpose of seeking rehabilitation and benefits is to facilitate their return to normal life or as close to that as possible.

The Panel recommendation to separate physical and psychological injuries in determining the CAT threshold will leave many of Ontario’s vulnerable auto accident victims without adequate or timely treatment. Hacking away at the current benefits available to the most injured of Ontarians does not meet the stated aim of the Panel ***“to improve the fairness and predictability of the process for determining catastrophic impairments”***. The already overloaded public health care system is ill-prepared to handle an influx of traumatically injured MVA victims who have been denied reasonable and necessary care by their insurer.

FAIR believes that the confusion demonstrated by the FSCO Panel in dealing with this new catastrophic definition should be reason enough to go back to the consultation process. FSCO needs to re-evaluate,

reconsider, and reform the legislation to better accommodate those most severely injured. Remove the obstacles to recovery rather than creating new ones and to ensure that MVA victims do not ‘fall between the cracks’ by passing the responsibility onto an already overburdened public health care system.

Other Physical Impairments

Pain

Discounting pain, not allowing pain to quantify as impairment in the equation or sum and total of a person’s injury is to ignore a major part of a person’s ability to function in society. To relegate those who suffer from chronic pain or fibromyalgia or chronic fatigue syndrome back to the dark ages of psychiatric classification is to leave those patients, for whom their injuries are life-changing or catastrophic, without the tools to get back to function. Further claimant obstacles have also been suggested to prove injury when recommending that patients must already be in treatment to qualify for benefits.

There seems to be some confusion in the position of the Panel, one moment finding support “*in the AMA Guides an allowance for pain is included in the rating allocated to each impairment. Therefore, should pain be rated separately and added to the other impairment ratings, it would amount to double counting for pain.*” on page 14. In this instance acknowledging and accepting that pain is included in the equation.

Immediately following this admission of allowing pain as part of the illness or injury to be included, on page 15, “*The Panel finds that there is no scientific evidence that mental or behavioural impairment ratings based on the AMA Guides are valid or reliable. The Guides do not specifically address psychological impairment and rely heavily on the functional limitations experienced by the claimant. I accept the Expert Panel’s recommendations to limit this section of the definition to psychiatric impairments.*”

The Superintendent’s report reads that “*The Panel had trouble understanding how combinations of physical and psychiatric conditions that independently do not meet the criteria for catastrophic impairment could be equated to a severe injury to the brain or spinal cord or to blindness.*” This should not give rise to the reasoning that therefore these two types of impairments, physical and psychiatric, should not be permitted to be combined to represent the whole person’s level or extent of injury. A lack of understanding by the Panel is exactly that, a lack of information, and this should lead to a reconsideration and re-evaluation if proposed changes are to result in an improved “*fairness and predictability of the process for determining catastrophic impairments.*” as was the stated purpose of the recommendations. The Panel instead chose to ‘cherry-pick’ those parts of the AMA Guidelines that best suit the purpose of shutting out those accident victims whose chronic pain, when disallowed, will leave them farther away from the ever higher threshold to qualify for treatment and benefits and farther away from achieving maximum recovery.

Interim Benefits

FAIR believes that the erosion of benefits, the cuts introduced in 2010, leaves many of those with serious injury unprotected. These MVA victims are often without attendant care and are those claimants who have not purchased these optional benefits. Claimants who are left critically unprepared, and even with access to timely treatment, they will quickly go through the proposed \$50,000.00 coverage and will ultimately be left without rehabilitation. There are tens of thousands of injured Ontarians waiting for hearings at the Financial Services Commission, some with serious injuries, casualties of the FSCO war on fraud. We believe more study is needed about the possible outcome of the changes and the impact this will have on the outcomes for vulnerable MVA victims.

Management of Interim Benefits

FAIR disagrees with the concept that doctors have the time or ability to manage and oversee other health professionals or that they would be willing to act as unpaid adjusters for the insurance industry. FAIR notes that previously family doctors were considered partisan and their opinions discounted to be pro-patient. In this new proposal doctors are now tasked as the gatekeepers to treatment and this will put additional strain on the health care system and slow down timely delivery of necessary goods and services. Many Ontarians do not have a family physician and this will additionally put stress on our public system when patients must use emergency physicians to access treatment.

Assessor Qualifications and Experience Requirements

There are several references in this report that refer to the current issue of assessor bias and inconsistent or inaccurate reports prepared by the medical community. Substandard IME reports are not adequately dealt with by the Panel and this issue requires further discussion. The Superintendent suggests that upgrading Evaluator physician skills to produce better quality reports be sidelined in favour of speedy changes with the hope that the present assessors will be up to snuff in a year or so.

Ignoring the widespread abuse of MVA victims with substandard medical reports and failing to address the issue within this report or the Anti-Fraud Task Force mandate does not make the problem any less important to those legitimate claimants who are unfairly denied treatment and benefits.

The Superintendent makes it clear that these proposed changes are intended to build on the 2010 reforms and not reverse those changes. This has led to the Panel's failure to consider that those 2010 reforms have resulted in approximately 40,000 injured Ontarians having to wait for hearings in order to access benefits and treatment. The volume of legitimately injured people having to wait up to two years for hearings should not be ignored; it is the result of a failing system, a system that needs overhaul, not building on. It

is at this point that the FSCO must look at how all of these claimants have been denied benefits and ask how many of those denials are the result of sub-standard IME reports prepared by insurer friendly physicians.

Panel Selection

A cursory review of the Panel member qualifications reveals the reasons for the difficulties encountered in this process. There is only one member of the 8 person panel that has the qualifications required to evaluate catastrophic patients. Several members have close IBC connections and two members appear to own assessment centers. It is not FAIR's intent to accuse the Panel of bias but we do point out that the perception of bias is as damning as actual bias and this has discredited the findings and recommendations of the Panel.

FAIR believes that a new Panel ought to be created, one with qualified and experienced members who have a background in catastrophic injuries. The Alliance Community of Medical and Rehabilitation Providers has endorsed a submission by a Panel of Experts and FAIR supports their suggestion that more balanced review take place before any changes be initiated. FAIR believes that such a panel should include the claimant perspective. Thus far consultations, panels and committees have come and gone without consumer or claimant involvement. Claimants are the core of these discussions, it is they who must accommodate to these changes and their perspective should be central to these decisions.

FAIR members have recently testified to the Standing Committee on General Government Automobile Insurance Review in respect to the difficulties catastrophically injured MVA victims encounter when making a claim for benefits. Ms. Riechert and Ms. Sulit presented two entirely different experiences in accessing benefits. One person able to access treatment and one experience where catastrophic coverage is decreased and then denied. Their stories, both good and bad outcomes, ought to be considered by this Panel or one convened in the future.

Conclusion

Given that ***“The goal of this review should be to ensure that the most seriously injured victims are treated fairly”*** then the FSCO must acknowledge that this has not been accomplished with a panel that lacked the expertise necessary to arrive at a fair definition. Catastrophic and indeed all MVA victims deserve the best possible chance of attaining maximum recovery. That will not be achieved through these proposed changes. A more comprehensive and detailed study and review of the implications of such drastic changes that will affect the most vulnerable members of our society should be undertaken by FSCO.