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Committee Transcripts: Standing Committee on General Government - April 17, 2013 - Automobile insurance review

FAIR, ASSOCIATION OF VICTIMS FOR ACCIDENT INSURANCE REFORM

The Vice-Chair (Mrs. Donna H. Cansfield): Our next presenter is Ms. Rhona DesRoches, the board chair of FAIR, the Association of Victims for Accident Insurance Reform. Our leadoff, Mr. Singh, will be you. You have 10 minutes for your presentation, and then a rotation starting with Mr. Singh; 10 minutes for each. Would you please introduce yourselves for Hansard?

Ms. Rhona DesRoches: My name is Rhona DesRoches. I'm the board chair of FAIR. With me today is Tammy Kirkwood; she's vice-chair of FAIR. And this is Greg Smith; he's a member of FAIR.

The Vice-Chair (Mrs. Donna H. Cansfield): Thank you very much. Please begin.

Ms. Rhona DesRoches: Thank you for having us. We wanted to talk about what happens when auto insurers rev up their lobbying machine and go looking for legislative and regulatory changes. Accident victims have been the ones blamed for Ontario's broken insurance system and for the allegedly skyrocketing fraud losses. Accident victims often bear the brunt of the endless failed fixes. This has to stop. These allegations of rampant, opportunistic fraud are themselves often fraudulent.

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The Insurance Bureau of Canada refers to FAIR as a "lobby group." This descriptor was clearly intended to undermine our credibility; being a lobby group, our position could be dismissed as one-sided or a narrow, self-serving view. The truth is, we are a not-for-profit consumer advocacy group for injured claimants on a shoestring budget.

I'd like to point out that the IBC itself is a lobby group. On the IBC website, the IBC describes its role as "anticipating opportunities to identify, shape and influence change in support of members' business needs" and "lobbying the federal and provincial governments to secure changes in public policy and in the business-operating environment that will benefit insurance companies." It is, in other words, a lobby group.

How much does this lobby group, the Insurance Bureau of Canada, receive from auto insurers each year to influence Ontario's auto insurance policy and legislation? How many millions of dollars of our high premiums are used by the IBC to malign claimants rather than assist them?

I want to draw your attention to our broken system of IMEs or independent medical examinations. These are the assessments that adjusters and arbitrators rely on to decide whether an accident victim is entitled to treatment and benefits. It's important that these insurer assessors come as advertised—that being "completely impartial" and "highly qualified"—since the Financial Services Commission of Ontario is prepared to have injured claimants fined $500 if they refuse to submit to one of these assessments.

Many of Ontario's auto insurers use highly partisan assessors to wrongly paint claimants as malingerers—judges have said so. Ontario auto insurers have repeatedly hired unqualified psychologists to paint brain-injured claimants as faking fraudsters—judges have said so. In doing so, they have undermined the integrity of the entire Ontario auto insurance IME system—judges have said

so. Insurers are denying policy benefits to catastrophically injured Ontarians based on fundamentally flawed assessments. FSCO's own arbitrators have said so.

The president of the Canadian Society of Medical Evaluators wrote in a newsletter:

"Dear members and colleagues:

"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 ... appraising medico-legal credentials of an expert before hiring his/her services."

That was a quote from their newsletter.

These flawed, biased assessments by insurer-preferred vendors are the origin of the accusations of opportunistic fraud aimed towards injured claimants, accusations used to inflate our premiums while reducing benefits.

FAIR is opposed to auto insurance abuse and fraud, whether it be by claimants, treatment providers, preferred insurer medico-legal assessors, lawyers, adjusters, surveillors or anyone else. We dislike faking claimants even more than the insurers because the IBC lobbyists point to these fakers as justification to smear all injured claimants.

FAIR believes, as do the IBC lobbyists, that dishonest treatment providers and assessors should be punished. But unlike the IBC, we believe that dishonest or corrupt vendors of auto insurer medico-legal assessments or IMEs ought to suffer the same fate. We do not see any difference between opportunistic fraud in the form of falsely inflating the value of a claim by exaggerating injuries and impairments, and the opportunism of falsely deflating the value of a claim by dishonestly trivializing and minimizing serious injuries. These are flipsides of the same sort of abuse.

One of the impartial medical experts selected to come up with a more insurer-friendly definition of what counts as catastrophic injury has been described by FSCO's own arbitrators as part of a "dissident" group that has long sought to overturn established law on catastrophic injury. For 20 years, all manner of stakeholders have been lobbying politicians in an effort to shape the issue in a way that benefits their members, and this continued with the catastrophic injury panel, a panel that could not even agree that paraplegia and quadriplegia were a catastrophic injury.

Legislators need to listen to what the Ontario Court judges and arbitrators have to say about these assessments. Judges and FSCO—or Financial Services Commission—arbitrators are not lobbyists. They don't speak to the press, nor do they present to governmental committees such as this. They speak to us through their decisions. And who would know better than them?

I've included some case citations with the materials I'll be leaving with you, and you can always go to our website to see more examples on our IME page at fairassociation.ca.

Some stakeholders would like to downplay this problem, saying that these wrongful accusations of malingering and the denial of benefits are one-off mistakes. But, when one of the auto insurer's preferred vendors of psychological assessments in brain injury cases turns out, after having done over 1,000 insurer assessments, to be completely unqualified to do these assessments, that should not be dismissed as a one-time mistake. One of the most preferred of all the auto insurers' preferred vendors of second opinions is the recipient of multiple, secret cautions from the College of Physicians and Surgeons for substandard assessments. He once told his licence body that all claimants are fakers. That's a pretty convenient spot to start for auto insurers' shopping for favourable second opinions.

Are accusations of opportunistic fraud, made by an insurance assessor who declares that all claimants are fakers, a sound basis on which to base the IBC lobby group's fraud-loss estimates? This assessor has done thousands of assessments for auto insurers.

The raw data for the IBC's most recent fraud-loss estimate is built up by counting up, one by one, the accusations of fraud made in insurer assessments the likes of these. If the assessments are flawed, substandard, unqualified, under-qualified, highly partisan or otherwise deficient, then the allegations of opportunistic fraud within them are unjust and a sham.

The question is this: When the insurers' lobbyist, the IBC, goes shopping for fraud-loss estimates, does it subtract the dollar value of all the allegations of fraud that, when finally scrutinized by triers of fact—judges and arbitrators—turn out to be completely bogus?

The IBC opportunistic fraud loss is only as good as the totality of the accusations of fraudulent malingering made by the auto insurers' preferred assessors.

The IBC complains about protracted litigation but doesn't acknowledge that the wrongful denial of legitimate injury claims is what's driving up premium costs and the high fees paid to insurer defence and plaintiff lawyers.

A lot of unnecessary costs to premium payers would be erased if auto insurers would honour the promise of coverage instead of playing the fraud card as a litigation defence tactic. There wouldn't be that long lineup of people waiting for hearings at financial services either.

We need to eliminate the rogue medico-legal assessors, on both sides, from the system and punish all dishonest treatment providers and all dishonest insurer assessors equally. The lobbyists want to criminally prosecute rogue treatment providers and assessors, but they want you to ignore the flip side of the problem with insurer-sponsored independent medical examinations.

Some of you may have seen the Insurance Bureau of Canada's lobbying efforts at the front door of the Ministry of Finance. The sign says, "New Session—Same Old Problems," and then proceeds to shape the problem as one that should be fixed on the backs of injured claimants. Making it harder to qualify for catastrophic injury treatment benefits is among the fixes.

We agree that legislators are faced with the same old problem, but we couldn't disagree more with the IBC lobbyists in terms of the nature of that problem. What we see is the same old insurer lobbyist tired and relentless fraud talk—

The Vice-Chair (Mrs. Donna H. Cansfield): Ms. DesRoches, you have one minute left.

Ms. Rhona DesRoches: Okay. Let me leave you with this observation in terms of the same old, same old. The opportunistic fraud talk you're currently hearing is exactly the same old fraud talk that sparked the rate stability act, legislation brought in not long ago by the Conservative government. They bought into this myth of the omnipresent, malingering opportunist—hook, line and sinker. The promise then, as it is now, is that if you help us crack down on those elusive and mythical fraudsters, we will give you rate stability in return. How did that turn out?

For injured claimants, the more things change, the more they stay the same. Yes, we're into a new session and the same names we were being called that gave rise to the stability act, we are being called again today. The same lobbyists are once again pleading for you to make the changes based on allegations of fraud.

There comes a time when one must ask if we should listen to some different voices, because, clearly, insurers are out of their depth in terms of fixing our vexed auto insurance system. Maybe that's because accident victims aren't really the problem.

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The Vice-Chair (Mrs. Donna H. Cansfield): Thank you very much, ma'am. We'll start our first rotation with Mr. Singh.

Mr. Jagmeet Singh: Thank you. You can finish that last sentence, what you were about to say, that maybe accident victims aren't the problem.

Ms. Rhona DesRoches: The savings realized by cutting back on all the litigation that begins with these shoddy insurer assessments would be enormous. Purging the rogue assessors and rogue provider assessors would result in lower premiums, and those inflated opportunistic fraud loss estimates that are trotted out by the IBC lobby group would disappear.

I was at the end line anyways. Just we deserve better treatment than this.

Mr. Jagmeet Singh: I thank you for your comments. I think it's very important to get the balanced view, to hear from the actual people and advocates for the people who are victims in this province. So thank you so much for that. I really appreciate that.

I want to talk to you a little bit about the same old, same old. Back in 2010, changes were made to the insurance industry regulations, and they resulted in significant slashing of the benefits that we receive. They cut the cap, which used to be $100,000, for seriously injured people who weren't catastrophic to $50,000, and they created another cap—that I'm sure you're well aware of—of $3,500, and this was for the minor injury guideline. About 80%—these are industry numbers—of folks are now being funneled into this category, this minor injury guideline, and the cap is $3,500.

We've seen, and the IBC admits, that they've saved $2 billion year by year since this has been implemented overnight essentially in one of the most historic cost savings that we've seen in this province. Despite that historic cost savings and that billions of dollars of savings, our premiums went up instead of down. It makes us start wondering, if we're saving the industry this much money and it's not bringing our premiums down, what should we do?

But just to get a human side to this, what are your thoughts on what happens to folks who get put into this MIG category, this $3,500 category, and the fact that some of them who are improperly assessed can't really get out of it? They have to fight, and they never get out of it. What are your views on this, the minor injury guideline? For some folks I'm sure it's fine, but there's a number of people that probably have a different story to tell, and maybe you can tell us a little bit about that.

Ms. Rhona DesRoches: Well, I think you have to look at what a minor injury is. For instance, if a person were to hit their mouth on the steering wheel and break off a couple of teeth, already you're out of money. You've got $3,500. Insurers are also using part of that $3,500 to pay for IMEs or IEs, so it's actually less than that for a lot of people

There was a decision that came out, I think maybe two weeks ago, Scarlett v. Belair. It redefines that the MIG, or the minor injury guideline, is exactly that, because I think insurers have been looking at it as a cap, that there was sort of a defined line that you didn't cross, and that that Scarlett v. Belair decision would change that. At least that's how I interpret it, and I'm not a lawyer.

I think there's hope in the past couple of weeks that insurers might be reassessing where they've put all of these people because 80% of people—for instance, if I break my arm, I'm not young, so I might have problems, and I might not be able to get enough physiotherapy at $3,500. Someone who is 20 who breaks their arm or a teenager, that might be lots. So we're being shoved into a box to fit that $3,500, and if you're an older person or a person who has other issues that existed before the accident, then you're really going to get shortchanged.

I think when you cut people off at $3,500, they don't just go away. Accident victims don't disappear. We stop coming out of our house, but we don't disappear. We end up on public welfare. We end up using OHIP, all kinds of different public assistance programs. So the taxpayer pays anyway. Now the insurers have the $2 billion, accident victims don't have that money anymore, and we're also paying through our social system.

Mr. Jagmeet Singh: It's a great point. It came up in a number of times when we were in earlier committee hearings, that shifting of the cost. It's not going to go away; the cost will get shifted on to the public purse. If the insurance companies aren't paying for or covering people who are injured, then the public system will have to take care of that, as in our health care system or other services, or their lives will be permanently—you know, that impairment will last forever, then. In some way or other, it's definitely going to cost the system or cost our society. I think it's a great point.

I'm going to ask one more question and then I'll turn it over to my colleague for another question. Those are the minor injury guidelines, and that's how they've impacted some people. What about the other reduction, the $100,000 to $50,000? Do you have any stories or any examples of how that's impacted people and had a significant negative impact on their lives?

Ms. Rhona DesRoches: I actually brought two people with me today to speak. Ms. Kirkwood was actually injured within the last few years and can tell you what it actually cost to get better.

Tammy, if you're willing to speak.

Ms. Tammy Kirkwood: When you look at the injuries for a victim, those are ongoing. Those are forever. That's a lifetime job. I was injured back in 2008. I'm still in recovery; I'm still in therapy. That therapy costs me $3,000 a month—just for my therapy. That's without the assessments or the IMEs or other doctors the insurance has tried to send me to. So that $100,000, it doesn't cover.

Especially in the beginning of a recovery, you need those resources. You need that funding to recover.

Mr. Jagmeet Singh: It's often the case that the more care you put in right after the injury is going to determine how likely you are to recover. Is that what you've experienced in your—

Ms. Tammy Kirkwood: Very much so. The maximum recovery you can make is in the first two years. I mean, that is the ultimate. That's when my recovery really hit home.

Mr. Jagmeet Singh: Thank you for that.

I want to ask one last thing; I just want to make sure we get it covered off. You talked about this a number of times, and I want to make sure that we have your view on it—the independent medical examinations. Normally when you go to see a doctor, you can choose which doctor you want to see. You can choose someone whose work you trust, or who knows you well, or someone who's going to have your best interests in mind and be objective, but can tell you what—you know, to make you better. With respect to the independent medical examinations, you don't have any say whatsoever in who you choose, and their decision is going to really impact the way your coverage goes from that point forward.

What's your feeling on that approach, and do you think that approach works?

Ms. Rhona DesRoches: Ms. Kirkwood and I actually sat at the round table discussions for the CAT impairment. We have to do something about these pro-insurer assessors. You can't come out the other end in good shape if there's a level of dishonesty as a claim progresses. You have to have some sort of standard. Sitting around that round table, that's what really drove it home to me. I've always suspected there were no standards, but it drove it home.

Every IME assessor is using their own rules and their own parameters to write that report, and yet a person's quality of life into the future hinges on this report. We actually don't have anything in writing from the Financial Services Commission of Ontario or anywhere that will tell us, "Okay, you must test for this. You need to look for that." There's nothing in place. It's a huge failure on the part of the Financial Services and it leaves accident victims at risk. That's my belief.

I think we need someone to set some standards, and I think the industry is actually willing at this point—at least that's what they're telling me, that they're willing to set the standards. But they need someone to point the way and they need the Financial Services to accept it.

Mr. Jagmeet Singh: Sure.

Ms. Rhona DesRoches: We need more communication, I believe, with the Financial Services.

Mr. Jagmeet Singh: Thank you. My colleague's going to have a quick question.

The Vice-Chair (Mrs. Donna H. Cansfield): Mr. Singh, you have one minute.

Mr. Jagmeet Singh: Sure.

Ms. Teresa J. Armstrong: Oh, okay. Well, if you have anything left to say, you can go ahead. By the time I ask the question, it'll probably be over. Do you have anything else you'd like to add? Feel free.

Ms. Rhona DesRoches: Well, I think every accident victim who's been to an IME—they're not all bad. Sometimes I talk and I think that it comes off as if they're all bad; they're not. There's just a certain core percentage of these IME vendors. They make their living performing these IMEs, and I think when we set some standards, we need to use people to do these IMEs who actually are treating physicians, because then they're closer to the people. They have an understanding of the fallout from this—whereas if all you do is assess, it's a very limited and narrow point of view. That's one of the things that needs to change.

Ms. Teresa J. Armstrong: Thank you.

The Vice-Chair (Mrs. Donna H. Cansfield): Thank you very much. Mr. Colle.

Mr. Mike Colle: I want to thank research for its list of definitions of acronyms. That's been very helpful. We're at 19 and I think we just got a few more today. So if we can keep going, "IMEs"—and I'm going to give you one, too.

Did you ever deal with the DACs in past history? I know we were told back at the turn of the century here that the DACs were the evil empire that had to be eliminated to save money and lower rates and all this kind of stuff. How do you compare the situation pre-DAC and post-DAC? DACs are designated assessment centres, are they?

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Ms. Rhona DesRoches: Yes.

Mr. Mike Colle: With all these IMEs, assessors were—

Ms. Rhona DesRoches: Well, I was actually injured in 1994, so I'm familiar with the DAC system. I've attended probably six or eight of them over time. I suppose the one thing that the DAC system had going for it was that there was sort of an oversight because the Financial Services did provide some place for you to at least pick up the phone and complain. I think that's probably one of the reasons that the Financial Services got out of the DAC business or the oversight of the DACs: It's tacit approval. If you say that we're providing oversight, then you're somehow responsible when these things aren't up to quality. That's how I would read that.

The IMEs now, because there isn't even a loose guideline like there was with the DAC centres—there were, I think, parameters that they would operate in. That doesn't exist with these IMEs. There's no one telling anybody what to do, so it's a free-for-all. It's the Wild West, I've heard it referred to, and hired-gun assessors. It really does apply here because—

Mr. Mike Colle: You have all these assessors still taking place, making money—

Ms. Rhona DesRoches: Yes.

Mr. Mike Colle: —and basically there are more delays. It's assessor versus assessor, and there's no oversight either of the assessors.

Ms. Rhona DesRoches: A lot of this has to do with qualifications, whether the assessors have the right qualifications. I actually was unfortunate enough to have a bad DAC assessor. You could at least call the Financial Services, and they would tell you to call the college, and of course the college—whatever they would do is non-transparent; you'd never find out. The assessor continued on business as they liked—that sort of thing. But there was at least this sense of somebody taking mark and taking checks and balances about what was going on. It wasn't real, but there was this feeling of it anyway.

Mr. Mike Colle: The feeling that something was happening. And it was very lucrative to own a DAC.

Ms. Rhona DesRoches: Very.

Mr. Mike Colle: Very lucrative. The thing is, as you know, the NDP is saying, "We can solve a lot of problems in insurance by having this 15% reduction in premiums over the next year." Is that going to help you get better treatment and better protection?

Ms. Rhona DesRoches: I don't think it's the same question. I really think that we're paying a lot for insurance, and consumers are probably entitled to that 15% discount. We're just getting really lousy value for the money. As I said in my speech, if this estimate of fraud, which right now stands at $1.6 billion, is based on these poor assessments—to give you a scenario, if I go to get assessed and the assessor says, "Oh, she's malingering or exaggerating her symptoms," do I become part of that fraud statistic? Because that's where all this money seems to be going. If we could take the $1.6 billion that's supposedly lost to the fraud and put it back in the system, then we could have the 15% discount. We need to know where the money is going.

Now, I know the Auditor General has said that he was suspicious in 2011. He's coming back in June to take another look at the industry, and if he gets in there and picks at it deep enough and drills down, maybe we'll find out what that $1.6 billion means and why the money isn't going to treatment. Because we have members, for instance, whose insurer will spend $20,000 to deny $6,000 worth of treatment. There's case law where they've spent $175,000 to deny $20,000 worth of treatment.

Mr. Mike Colle: So you support the 15% reduction in a year?

Ms. Rhona DesRoches: I support fixing it and, along the way, it would be nice to have the 15%, but if all we're going to do is say, "Okay, 15%. Everybody go away. Everybody happy"—not working.

Mr. Mike Colle: Then you don't fix the mess.

Ms. Rhona DesRoches: You have to fix the mess because this problem with IMEs would go right through to a public system. It has been there the whole 20 years I've been watching. It'll be there in 20 unless we address it.

Mr. Mike Colle: Yes. The other question—and it's really a comment. I think you've sort of hit the nail on the head. The very DNA of the system right now is sort of set up to be very, very heavy on litigation, confrontation, denial and finger pointing. You know, there's fraud and there are false claims. I think

what you're trying to say is that we need to look at what creates this confrontational, expensive system we have here in Ontario and how to get rid of that confrontation. Because I think if we get rid of all the very wealthy people doing assessments all across Ontario around the clock, as they have been—it seems to be very lucrative; if we get rid of all the lawyers who are making—not all lawyers, but I'm sure there are many lawyers—making good money on slips and falls and accidents etc.; and if we get rid of all the insurance companies who spend their time trying to confront the claim, and things are done quickly—you've got a claim, we assess it, an independent person comes in and says, "Yes, you're right. Here's your cheque"—I think we would probably save a heck of a lot of money, aggravation, time. But yet we've got this system built up with all these sorts of silos that fight each other. And then you've got the auto collision and the tow truck industry silos—you know, everything is sort of in a confrontational mode.

Do you agree with me that maybe what we have to do is look at the DNA of auto insurance in Ontario and get rid of this basically confrontational platform that exists here?

Ms. Rhona DesRoches: I would agree with you 100%. I think we need to start with these IMEs, because it's that that sparks all of this. That's where it starts to blow up, because you've got the person who's injured and they get a report, and some of these reports are so flawed—I mean, if it wasn't so sad, you would laugh, they're so flawed. Immediately, the claimant says, "I've got to get a lawyer. I've got to fight this because I need the treatment," and then the insurer digs in their feet. It snowballs into huge legal fees and usage of the system, and it's resulted in this big lineup. Some 28,329 people last year had to apply for mediation or arbitration—

Mr. Mike Colle: Yes, meditation hell, purgatory.

I can't seem to get this idea of mine across. I've been trying for a long time, saying, "Listen, is it possible that we could, in all the intelligence we have in government and all these wonderful lawyers and insurance companies that are here and these legislators, basically appoint or authorize, certify, medically approved and sanctioned assessors who are given the authority to assess people and not second-guessed—and not on the basis of the number of clients you get and the calls you get from the insurance companies and the lawyers etc.; that these independent assessors—which, in a way, DACs were supposed to be, and I don't want to have the DAC repetition. So you would have these very qualified, independent medical people who get right in there, look at the claimant and say, "Listen, here's what's to be done. You can get this done right away. Proceed." Is that something we should maybe look at?

Ms. Rhona DesRoches: I think so, yes. I think we have to maybe narrow down the choice of the physicians or the assessors. FAIR has put out in the public, in open letters—we have proposed three different ways to clean up the system. One is the three-strikes rule, which is that if a professional witness who's an IME provider—if they have commentary about them from the arbitrators or judges that is negative and talks negatively about their poor quality report, three strikes, you're out: no more testifying, no more of these IMEs. I think that's pretty clear.

The Vice-Chair (Mrs. Donna H. Cansfield): Mr. Colle, you have one minute.

Mr. Mike Colle: Okay, and I'll look at those—I've looked at them already—but I just want to make another observation here. Right now, we are caught between a rock and a hard place. We are told that all of our problems are because of fraud—fraud, fraud, fraud, as long as I can remember. And then the other bogeyman is the rate, your premium: Your premium's too high. So if we get rid of fraud, and if we can lower your premiums, that would be great. So I think we've got to find something that doesn't have these magic bullets of getting the fraudster and lowering the premiums to where—I don't know to what level people will ever be happy, because it's never going to be enough. Maybe we need to get

to a sane middle ground here that says, “It’s not about fraud. It’s not about premiums. It’s about protecting injured people and giving them the accident benefits they deserve in a quick, timely and just way.

The Vice-Chair (Mrs. Donna H. Cansfield): Thank you very much, Mr. Colle.

Mr. Mike Colle: Sorry for the speech.

The Vice-Chair (Mrs. Donna H. Cansfield): Ms. Scott.

Ms. Laurie Scott: Thank you very much for appearing today. I think you appeared last time that we were—

Ms. Rhona DesRoches: Several weeks ago, yes.

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Ms. Laurie Scott: Okay, several weeks ago. I was going to ask—Greg, I don’t want to single you out, but I just didn’t know if you wanted a chance. I know your case is in the handout that was given to us. But do you have anything to add? It’s a terrible story and it is repeating maybe a little bit of what we heard of the frustrations within the system, but do you want to add anything from your personal story where you saw backlogs, delays, or anything that you want to add from what you had experienced?

Mr. Greg Smith: I waited two years to go to mediation and then almost another three years to get to arbitration.

Ms. Laurie Scott: And in the meantime, tell me what you needed in those years.

Mr. Greg Smith: What we were going to mediation for were my income replacement benefits and employment retraining. In the job I did, I travelled all over Ontario. I was a self-employed consultant. I drove 100,000 kilometres a year, and I can’t do that anymore. They had three doctors who said there was nothing wrong with me. A psychologist said that I could return to my job and drive 100,000 kilometres.

Ms. Laurie Scott: So you had no chance for any appeal.

Mr. Greg Smith: Well, I had to go to mediation.

Ms. Laurie Scott: And?

Mr. Greg Smith: The mediation lasted 15 minutes. They changed the adjustor twice just before mediation. We had a mediation appointment set. They changed the adjustor three days before mediation. When we got to mediation, she said, “I’ve just been put on this case. I have no idea what’s going on.” So the mediator said, “Will you people give them some time?” I said, “I’ve already waited a year and a half for this.” The adjustor said, “Well, then, Mr. Smith, we’re going to stick to our guns. We’re not going to give you retraining, so you’ll have to go to arbitration.”

I waited almost three years to go to arbitration. Three days before arbitration, after three months in negotiation, we settled out of court.

I bought the million dollars extra of rehab benefits. You talk about $3,500? I never got to spend hardly any of that. I used about $120,000 for rehab. They spent just over $50,000 in IEs on me.

I had back surgery last May. Three days before I had to go in for back surgery, I received a letter from the insurance company to go—I had a back surgeon do my back. They sent me a letter to say that they wanted me to go to a general practitioner to see whether I needed back surgery.

Ms. Laurie Scott: Wow. If there was more—I don’t know how we could do it—peer review, say, the medical practitioners: I used to nurse before, and really, there’s expertise. You need a back surgeon to

do back surgeries, that type of peer review. Do you think that that would help the system, more peer review assessments for assessors?

Mr. Greg Smith: We were talking about having guidelines. I went in for one IE where the doctor never laid his hands on me and refused the treatment plan. When I found out about it about 10 days later, I went back to his office and made a bit of a scene, made him put his hands on me, and then he sat there and said, "I don't know what I'm going to do. I've got to change what I wrote on that piece of paper."

Ms. Laurie Scott: Do you feel that's a rush for time, or these doctors want to be involved in the process, or they're—

Mr. Greg Smith: He had three and a half hours allotted for my IE.

Ms. Laurie Scott: Really? The first time he saw you, where he didn't lay his hands on you. And how long were you in there?

Mr. Greg Smith: Three and a half hours.

Ms. Laurie Scott: And he never laid his hands on you.

Mr. Greg Smith: He never laid his hands on me.

Ms. Laurie Scott: Okay. That's kind of unexplainable in some way, but yes.

The backlog was mentioned several times. Do you feel that other types of mediators are how to un-jam that system? Because right now—I mean, from many figures, I think there are roughly 17,000, 14,000 in backlogged cases, so their cases are going to have similar waiting times.

Mr. Greg Smith: There used to be a rebuttal process. It wasn't great because, again, my treater would put forth a treatment plan. If they didn't agree to it, then they would send it to an outside person to review my treatment plan, write a report and it would go back to my physician and they would have a chance to rebut it. But it would go absolutely nowhere because it was just one against the other.

There aren't any guidelines, so if Joe Blow looks at me and says—my family doctor says, "Greg, yes, I agree you should go for massage therapy or acupuncture," then I think somebody who's known me for 21 years versus somebody who's met me for three hours—I think the guy who's been around for 21 years pretty well knows me.

So, by just saying that we need to put more people in mediation, it just seems like, right now, that's the way the insurance companies are getting rid of the problem for the time being. And in that time, you get no treatment.

Ms. Laurie Scott: Yes, that's unacceptable.

Mr. Greg Smith: Then, if, for whatever reason, they say, "Oh, we're going to give you treatment," if you miss three months, it takes six months to get you back to where you were when they cut it off. I had a million dollars—actually, $1.1 million, because it was $100,000 at that time.

Ms. Laurie Scott: Yes. These stories—that's why I wanted to get more of your stories on it. It is quite unacceptable, the process that's gone on.

Now, I know that catastrophic—there has been a definition, and our main guy on insurance, Mr. Yurek, had to leave. But there is a redefinition out there of catastrophic, I believe, by someone, and that's what I just don't know. I don't know if you have had the opportunity to see it.

Ms. Rhona DesRoches: I have seen the panel recommendations, the superintendent's report on that, and that's what we talked about at the round table, and it was very, very disturbing, partly because I

think the consensus of the room at that round table conference was that none of it was acceptable. There really wasn't anything in there worth saving.

Ms. Laurie Scott: So no one at that round table—

Ms. Rhona DesRoches: No.

Ms. Laurie Scott: Really?

Ms. Rhona DesRoches: So when I see signs like what I'm seeing outside the door of the Minister of Finance saying that we need to get a new definition of catastrophic injury—it's 600 people a year. They're the worst injured of all of us. Why would we ever want to cut their benefits? I think the reasoning behind even proposing that is that they want to give you first $50,000 and then you can reapply. In other words, it's kind of like how the old insurance was, whether it's $25,000—no questions asked. If you're said to be catastrophic, you have $50,000, and when you've used that up—and there's no actual timeline there—you can ask your insurer for more. Okay, well, there's nothing fast in our insurance system except the denial rate. So you drop off, and because we're talking about people who are brain-injured or people who would need attendant care—I don't know why they wouldn't just pay these things and not put that stopgap in there. I think that helps insurers, and people will fall in that gap and they'll never recover—because if I had a brain injury, I'd want to keep going to be the best I could be.

Ms. Laurie Scott: Jim McDonell has a question there, so I'll stop.

Mr. Jim McDonell: One question: You're having to go through the insurance system because of an automobile accident. Do you find that you'd be treated better if you had just hurt yourself at home and you went through the normal public health system? Is this a deterrent?

Ms. Rhona DesRoches: I wouldn't call it a deterrent, but it's apparent to me—and it's as true now as it was when I was injured, which is that because it's such an adversarial system, you lose the focus which should be entirely on, "I've got to get better. I've been injured. What can I do to get better?" Because you have all the adversarial stuff going on around you between your insurer and your injuries and everything, your focus doesn't stay on that. It goes to proving the injury, and this is very, very common. When you talk to accident victims, this is often what I'm hearing.

You can't get that injured running and hitting the wall in the kitchen. So people get diverted from the path, which should always be to get better, maximize your recovery and move on as best you can with your life. Tammy is very much a sample of that. That direction gets lost because your insurer fights you so hard. People are devastated. I think they're psychologically damaged from actually navigating through a claim.

The Chair (Mrs. Donna H. Cansfield): Thank you very much for your presentation.

That concludes this meeting. We are adjourned.

The committee adjourned at 1720.

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