

## Committee Transcripts: Standing Committee on Finance and Economic Affairs - March 21, 2013 - Pre-budget consultations

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### FAIR

**The Chair (Mr. Kevin Daniel Flynn):** Okay, let's call to order again. Our next delegation is Rhona DesRoches and somebody else who's going to be introduced from FAIR, the Association of Victims for Accident Insurance Reform. You get 15 minutes. You can use that any way you see fit. If there's any time left at the end of your presentation within the 15 minutes, we'll go to a question-and-answer session. This time, the questions will come from the NDP. Outside of that, the time is all yours to use as you see fit. Okay?

**Ms. Marianne Reichert:** Thank you, sir.

**The Chair (Mr. Kevin Daniel Flynn):** Thanks for coming.

**Ms. Marianne Reichert:** My name is Marianne Reichert. I'm with Rhona DesRoches, and I'm here as the board member of FAIR, but also as a victim. I did a presentation about nine months ago, and in my view, nothing really has been done to help us or others.

The NDP thinks that they're helping people by demanding a reduction in premiums, but they totally ignore the accident victims in the process. A premium reduction is fine, but they should be fighting against changes to the cat definition, and making insurers provide transparent information about their financial situation and accountable for their actions. Those issues are just as important as premium reductions. The fact is that insurers have a guaranteed return on their investment and that claimants receive only a fraction of it at the end of the day.

I would like to share our story with you, which I call "from well to hell."

My husband was involved in a car accident in 2007 and ever since has been going through countless medical assessments, in particular the ones for his cat declaration. We are now in our sixth year. Our 16-year-old twin daughters need counselling, and I need counselling, because we are all emotionally hurt.

My husband needs so much treatment and rehabilitation, recommended by experts, and yet we have to wait now for the arbitrator at FSCO to decide whether Jörg is catastrophic or not—and only because the four insurer doctors say he's not, questioning all other numerous experts who say that Jörg is catastrophic. Jörg has been disabled and absent from his business and all social life ever since the accident. The consequence is that his family—our daughters and myself—is too. We do not do anything, because Jörg cannot and we do not have the money.

By the way, Jörg and I were the founder and executive of Mövenpick Marché for 28 years. We enjoyed a wonderful and busy life. It was not his fault being T-boned by a young driver.

What the insurers do to the claimants is shameful. What is obvious is that the truth is, we are at the mercy of the insurance companies, their counsels and doctors, and they starve you. They starve us.

We have lost everything by now—all of our RRSPs; we just lost our house, any savings and more. Not only have we been totally isolated, but we are financially ruined.

Only with the support of family and friends are we making it; otherwise, we would have to live in a shelter. Not even our friends in prison have to go through this because someone—the government—is concerned about them to provide proper food, entertainment and shelter with heat.

No one can ever imagine what it means to live such a life. We have been hounded by creditors. They deserve to be paid. We can't pay because insurance doesn't pay. I have one court date after the other. I sit in court every two days. We are exposed to summary judgments. This is different from what we were before. It is absolutely horrible, and I cannot understand why we have to go through this. Who gives the insurers the right to deal with victims that way? There's no explanation and no excuse.

The insurer's self-serving delay tactics by questioning Jörg's integrity, by ignoring the numbers and specialist assessments, by declining treatments and payments, is insulting, wrong and harmful. They wait the victims out financially and morally until they give up and throw in the towel, pass away or depart any other way this life before any settlement or award was achieved, or just face the financial reality of being ruined.

The only solution, in my view, to ensure protection, is that the insurers must step up and pay the victims a monthly allowance to continue their financial lifestyle until all is settled.

Regarding the catastrophic declaration, there's only one way to approach this: to protect the victim as a whole and stop questioning highly qualified medical experts when they determine that the victim is catastrophically impaired. I urge you today—and I thank you for listening—to stop ignoring the victims and include them in your decision-making. They deserve your fullest attention.

Thank you for listening. I will pass it on to Rhona now.

**The Chair (Mr. Kevin Daniel Flynn):** Just so you know, Rhona, you've got about nine minutes, almost 10 minutes, left to go.

**Ms. Rhona DesRoches:** I can talk fast. I'm Rhona DesRoches and I'm the board chair of FAIR. What's wrong with auto insurance in Ontario? Well, ask any accident victim such as Marianne. It isn't just about premiums; it's about the quality of the coverage we get when we really need it.

It seems to be entirely lost on the government that a significant chunk of the increased auto insurer profits that it wants to claw back from insurers as a premium reduction is the result of the wrongful denial of policy benefits to some of Ontario's most seriously injured and sometimes catastrophically injured accident victims.

As of January, Ontario has just over 28,000 people waiting for mediation or arbitration. This is unacceptable. Consumers are being sold a product that we are legislated to purchase, one that holds the promise of security after a car accident, but only works for about half of the people when they need it.

In 2010, insurers limited claims for minor injury to \$3,500, down from a previous level of \$100,000, and now 85% of accident victims find their benefits capped at this level, even those with serious injuries. Adjusters are denying claims without a physician, and in effect are taking over the role of a medical practitioner, a role for which they haven't been trained.

There is concern with the proposed changes to the catastrophic impairment guidelines. The cat impairment panel's own reports reflect that their understanding of catastrophic injury was very limited. Some of the panel members did not agree on a very important question. When asked about paraplegia or quadriplegia, two of the eight-member panel did not agree that those injuries met the criteria of catastrophic.

For Ontario's seriously injured accident victims, this panel response to a simple question is just not acceptable, and it calls into question every recommendation that this panel has made. The superintendent himself noted that the panel had trouble understanding the issues, and yet he's made no move to strike another new or more qualified and balanced panel.

Our Liberal government seems intent on pushing through the anti-fraud task force recommendations. In the process, they too have quickly adopted the estimated fraud figures. In fact, Mr. Gorbet, who chaired the anti-fraud task force, testified last spring, I think to this committee, that the task force could not find any research they thought was credible to base the fraud amount on. So the unfair reduction of treatment and benefits continues without foundation and serves only the insurer's needs. What is Ontario getting in return? We're getting a significant download of expenses to the taxpayer through our social programs such as OHIP and welfare, and now people have nowhere to go. They have nowhere to go for assistance, they are without treatment and they are impoverished.

Underlying these problems is one that has existed since no-fault was first implemented, and one that would exist even if we were to turn to a public system today. The wrongful denial of policy benefits to injured claimants based on shoddy independent medical exams, or IMEs, is a big problem for us accident victims. Even the president of the Canadian Society of Medical Evaluators recently wrote that the Ontario auto insurance IME domain is at risk of public scandal due to the inferior quality of "amateurish, biased and fraudulent" medico-legal assessments. You don't have to take FAIR's word for this; IME reports are described by arbitrators at financial services as "inaccurate, failed, misleading, defective, incomplete, deficient, not correct and flawed." Could it be any clearer that there is an issue with these IME reports?

These are reports that insurers routinely rely on, knowingly or not, to disqualify many legitimate claimants. Highly vulnerable accident victims are captive consumers of these IMEs or independent medical assessors. If injured auto accident victims fail to submit to these insurer examinations, their policy benefits are suspended and they are forced to pay a fine of \$500.

Shouldn't these assessors come as advertised by the auto insurers: highly qualified, completely impartial and well-respected by their licensing body? Is it fair for auto insurers, financial services, the colleges and the assessors to hide secret college cautions related to previous flawed assessments from vulnerable accident victims?

The college and the Minister of Health have stated recently that in the interests of public safety, the college needs to disclose the names of the private clinics that have failed inspections. If willing consumers at clinics deserve this sort of transparency and disclosure, why, then, are auto accident victims being denied the same? Why can't Ontario auto insurers annually disclose the amount each assessor has been paid? This is done in British Columbia so the public will be alerted to the potential for bias when assessors become completely beholden to auto insurance. This is happening here: not the disclosure, but being beholden.

A "three strikes" method of purging the insurance system of biased or substandard IMEs was proposed and ignored. This would require that the colleges do their job of oversight in a more transparent way, and this would protect accident victims from dishonest practitioners.

Ontario's accident victims deserve better. Our regulators should be ashamed that vulnerable accident victims are so ill-protected. The question now is, what are we going to do about it? Insurers have pocketed a lot of money as a result of these changes in 2010—about \$2 billion in savings last year alone and an estimated \$4.14 billion in the P and C insurance industry this year. Think about what these savings will do to our public safety net. Accident victims don't just disappear; they just get kicked to the curb. But someone still has to pay. We'll pay through welfare, and we'll pay in other ways.

I hope this panel takes an interest in what's happening to auto accident victims. We matter, and we shouldn't be treated like this. It's shameful, absolutely shameful.

**The Chair (Mr. Kevin Daniel Flynn):** Thank you very much. We've got about three minutes left, and the questions this time go to the NDP. Michael?

**Mr. Michael Prue:** I remember arguing about this bill a couple of years ago. I made a statement, and I never forgot what I said: Any fool can sell an inferior product for less money. We were talking about the insurance industry at that point. Liberals were so darned proud of what they were doing, reducing all the benefits, and I remember the finance minister standing in his place and talking about this as well. Well, this has come home to roost.

I heard the first deputant say they didn't like the NDP position on trying to give some of that \$2 billion back. Obviously, you want that to be spent on the victims. But how do we spend that on the victims when the policies they've signed say they're not entitled anymore?

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**Ms. Rhona DesRoches:** It's a bit like throwing the baby out with the bathwater. At this point, it's a series of band-aid movements: "Let's fix this little area and let's fix that area." What we've done is left really vulnerable citizens open to an unfair situation.

I really think with \$2 billion, you can still reduce the cost of premiums. No one so far has really looked closely. I know the Auditor General was already in to the auto insurance industry in 2011, and he has said recently that he's going back in June. Someone needs to dig into those numbers because when they had it reduced, what they were saying was that insurance claims in Toronto were costing \$56,000. We don't know what those numbers actually mean. Is that the cost of the representation? Is that the actual cost of treatment? We don't know.

We need the Auditor General to get right in, get down, get dirty and find out. What we've got here now is not really worth saving. I made some suggestions here, but the bottom line is that we need to work on this.

**Mr. Michael Prue:** Okay. You don't have to convince the NDP about this; you don't. But when I asked the insurance guys the other day—they were here in the Legislature—what do you mean by "There's so much fraud," the examples they gave me of fraud were chiropractors and doctors and people recommending all kinds of treatments that were unnecessary. That was the fraud. It wasn't the fraud that I understand, people faking accidents and other things. The fraud they thought was in the system was the professionals recommending things that weren't necessary. Would you comment on that?

**Ms. Rhona DesRoches:** Well, I would agree. A lot of this comes through the IBC, the Insurance Bureau of Canada. They work for insurers, so it's in their interests to make us believe that fraud is everywhere, and there is a little bit of it everywhere. But a year ago, the fingers were being pointed directly at auto accident victims.

Anybody who has been in this system—and Marianne will attest to this: It's very difficult to get payment for treatment. It's very difficult to get income replacement benefits. In my own experience, and I have a husband who was seriously injured, it took nine years. The amount of time that it takes to get what you deserve is far too long, and when the insurers are continually pointed at fraud—and it's unsubstantiated. There's always going to be a little bit of it. We can't stop it all. But when you start doing the math with \$2 billion, it just doesn't add up.

**The Chair (Mr. Kevin Daniel Flynn):** Thank you very much for being here today. You were listened to. I think everybody who heard the presentation understood what you were talking about. Thank you for being here.

**Ms. Rhona DesRoches:** Thank you.

**Ms. Marianne Reichert:** You're welcome and thank you.

**Mr. Michael Prue:** And by the way, Mövenpick is a great restaurant.