I'd like to thank REHAB First for inviting FAIR to speak and I'd like to thank everybody here for taking the time to hear the consumer's point of view through the eyes of claimants – those who must use the system. For those of you who haven't heard of FAIR Association of Victims for Accident Insurance Reform or FAIR I'd like to go into a little background of who we are and what our goals are.

FAIR is a Not-For-Profit consumer organization whose members are predominately auto accident victims and their family members or supporters. We have Corporate members as well and I hope that some of you attending today will perhaps become new FAIR members. Or that you will encourage your clients and patients to seek us out so that they too can be part of our Voice for change.

Our Board is made up of those with both good and bad experiences with their insurance company and it has provided a blend of experiences, two very different perspectives. It's a stark contrast between those assisted by their insurers and those denied treatment by their insurers.

When I was approached to speak at this seminar, I jumped at the chance; I thought the title 'Reforming FSCO' was daring and it certainly offered a different point of view from which to look at why our system isn't working.

Accident victims always bear the brunt of the Financial Services Commission's endless failed "fixes" aimed at combating the supposed legions of fraudsters. 'Fixes' that the Financial Services Commission of Ontario has either initiated or approved; often without consulting with consumers but usually with extensive consultations with the Insurance Bureau of Canada who lobbies on behalf of Ontario's insurers.

The fraud talk you are hearing now is exactly the same old "fraud talk" that sparked the "Rate Stability" legislation brought in not so long ago. The Conservative government back then bought into the myth of the omnipresent malingering opportunistic claimant - hook line and sinker. The promise then - as it is now - is that if you help us crack down on all those elusive and mythical fraudsters - we will give you rate stability in return. But how did that turn out? Almost immediately after the legislation was enacted the same lobbyists revved up their "fraud talk" and started yet another round of lobbying for more changes - and painting the Rate Stability legislation they had successfully pleaded for as "fertile ground for fraud". It's a cycle that keeps repeating itself with injured accident victims paying the price.

To be fair to Ontario's insurers who are consistently blamed by their own policy holders when things go wrong after a claim goes bad or is contested - it is not entirely their fault. It goes back to the old saying, give an inch and they'll take a mile or people (in this case insurance companies) only get away with what they are allowed to get away with – in other words if there are no consequences, there is no risk and in this case bad behaviour pays. The questions are – how did we get to this level of insurance dysfunction with the highest premiums and the lowest coverage? And why are claims costs so high? This speaks to the dysfunction of the Financial Services Commission who is charged with oversight.

Every business person knows the simple plan that drives any business. You create a service or product that fits a demand. In order to stay in business, you must satisfy your customer or someone else, usually your competition, will do that job and you will quickly be out of business.

Ontario's insurers have none of those worries. We are captive consumers and the quality is as much the responsibility of our legislators and our government as it is of insurers. It is within their promise, and I quote from their website - "FSCO is charged with providing regulatory services that protect the public interest and promote public confidence in auto insurance through its licensing, underwriting, class and rate approval, monitoring and enforcement activities."

With this promise there is the perception of stability and balance in the system FSCO is charged with monitoring. And regulating. And more importantly, enforcement activities. This is simply not happening. There is no stability, no surety of coverage, consumers are at the whim of constantly changing coverage set by continuous challenges to the law in arbitration and in our courts. It's created uncertainty for both insurers and consumers. For consumers it is an adversarial process that itself causes distress and illness for many of those who try to access the benefits they've been promised. FSCO has failed consumers and accident victims – they haven't lived up to their own mandate.

Those whose incomes are derived from representing or treating accident victims must do more to bring awareness about what is happening within this government sanctioned business. Accident victims cannot do this; they are often not able to complain to colleges and to the promised oversight that is nothing more than an illusion - what they encounter is a runaround. There has always been regulation in place that FSCO could have used to create a more fair and just system through unfair and deceptive business practice sanctions. They chose not to do so. And this has created the disequilibrium we are talking about today.

The use of preferred IME vendors has, over the last 2 decades, become one of the most useful 'tools in the toolbox' for insurers. The problem is that if insurers agree to treat then they agree there is an injury. Insurers have consistently used partisan IME providers to deny or minimize MVA victim's injuries as a form of cost containment. It's called deflating an injury, the opposite of inflating a claim. FSCO turns a blind eye to this behaviour which is essentially defrauding accident victims. And this of course leads to claimants initiating a law suit or applying for mediation, they've been wrongfully denied benefits based on a shoddy IME.

FAIR is very concerned that even in the new Anti-Fraud Task Force recommendations the status quo will remain the same - the Financial Services Commission will continue to rely on the various Colleges to oversee the quality of the third party 'independent' medical examinations that accident victims are mandated to attend. Now we'll be fined $500 if we don't attend. The task force recommends "in the interest of patient protection and society in general, we think that health colleges should do more to help allay suspicions and protect the reputation of their members." So it is not as if they are unaware that this IME system is tainted by some in the profession, it's just that they are unwilling to tackle the problem. It is left to the arbitrators and triers of fact, years later when they finally hear the case and after the damage has been done to the accident victim.

Much of the increase in the cost of claims in 2010 was excessive medical examinations or assessments, the majority of which were initiated by insurers and costs increased in 2010 by 176 percent over 2006. This turned the system into a traffic jam of legitimate claimants trying to access treatment and benefits through mediation, many of whom had been denied based on a flawed IME.

What did FSCO do about this disproportionate increase in the denial rate? The level of denials and the bottleneck of mediations had been in the system since 2001 when the FSCO Tribunal Board discussed at their meeting that they should look into "the percentage of claims entering mediation." FSCO did little

to improve access but certainly accommodated insurers by entertaining and endorsing solutions that improved insurer profits while cutting benefits for accident victims. Which, of course, led to higher profits for insurers and even more applications for mediation. Prior to the 2010 MIG, only 20% of accident benefit claims fell under the Pre Approved Framework or PAF. And FSCO knew, that in order for insurance industry profits to increase, that 55 – 65% of accident claims would have to fall under the MIG. And yet somehow the effects of the 2010 MIG with an increase in the turndown rate to accident victims and the subsequent increased mediation and arbitration was not anticipated by FSCO.

So now we have an even bigger crisis – the backlog for hearings and accident victims without treatment. Insurers lucked out on the MIG - according to the NDP insurers got a windfall of profit of over $2 billion last year.

The Financial Services Commission seems to have a problem with keeping up with costs, or assigning costs, and this puts them in a lose, lose situation – being chronically underfunded does not make for good function. As I researched for this speech I looked high and low for where the funding comes from to pay for all the mediation, the arbitration hearings and the motions associated with going through the ADR system. What I found was that the FSCO had failed even its own needs for operational capital. The cost or fee to Ontario's insurers when a claimant files for Arbitration at FSCO has not changed since 1997 and the same $3,000 fee is being charged to insurers today.

Insurers in Ontario must pay a $3,000 fee to FSCO when an accident victim applies for arbitration, but it appears that mediation is at no cost to any party. Well, except the tax-payer of course. Insurers have surely taken advantage of the delays from mediation wait times. And a mere $3,000 for arbitration is a pittance to pay for the denial of a case and a sure postponement of expenses for years. Insurers can save millions of dollars by denying and delaying a claim and there is no financial dis-incentive for them to not continue to do so. FSCO failed to put the public's interest first and it's costing us big.

FSCO has been aware since the fall of 2010 that "it can potentially be upwards of 4 years post-accident for Arbitration hearings to commence" and that it "is not a healthy environment for all stakeholders." When you look at the FSCO Arbitration decisions now, there are many claims that are 6 to 10 years getting to a hearing. In the 90's hearings lasted 2.5 days, now the average is 6 to 8 days. The fundamental purpose of FSCO was for a speedy and timely resolution of accident claims - and now their lack of function is itself an obstacle to their own mandate.

As of March 2013 FSCO is assigning approximately 2,000 mediation files and 500 arbitration files per month to ADR Chambers. As of February 28, 2013, FSCO has assigned 11,930 mediations and 4,971 arbitrations to ADR Chambers.

The cost to the taxpayers in Ontario must be enormous now that there are so many cases waiting to be heard either at FSCO or in our civil courts. The personal costs to claimants is even greater when one must wait years for treatment and benefits, the damage is done when people lose their jobs, their homes, their self-respect and their family's lives are derailed.

We know insurers have lists of preferred vendors that they instruct their adjusters to use when evaluating a claim, and there is a reason that they are 'preferred'. Too many of the Decisions on the FSCO dispute resolution web site are about claimants who are waiting upwards of 8 or more years in to get to a hearing. And how were these cases denied? An IME or independent medical examination. The IMEs in Ontario are too often shoddy reports churned out by biased or partisan physicians whose

fortunes are made from the deep pockets of Ontario's insurers. Hearings are taking longer and are expensive to run while an arbitrator or judge sifts through the stacks of often bogus medical information to determine whether or not an accident victim is entitled to benefits. And still FSCO does nothing to ensure that these IMEs are of any quality or that individuals are not harmed while attending an IME.

Accident victims are traumatised by this 3D effect of Delay, Deny and Defend and it certainly does not propel those injured into wellness, in fact it is the opposite. MVA victims in Ontario have a high rate of psychological issues and post traumatic stress syndrome often develops, not only from the effects of the accident itself but also from the treatment at the hands of their insurer. What will the Financial Services Commission tell you if you complain about a bogus IME? They'll tell you to complain to the appropriate College knowing full well that little to nothing will be done about the IME vendor who is often a repeat offender. The College's interests are those of their members and the public's interest is not always foremost – there is a lack of transparency associated with various complaint systems. There's more about this issue on our website.

The savings realized by cutting back on all the litigation that begins with shoddy insurer assessments would be enormous. Purging the rogue assessor and rogue provider assessors would result in lower premiums. If all insurer medico-legal assessment were completely impartial and done by well-qualified health professionals - who act in full compliance with Ontario's Rules of Civil Procedure as they apply to the "Duty of Experts" – those inflated opportunistic fraud loss estimates trotted out by the IBC lobby group would disappear.

I'm not suggesting that all lawyers or arbitrators and judges ignore the problem, Justice Osbourne called the IME vendors in Ontario 'hired guns' for a good reason and it is the unaddressed fraudulent behaviour of a few IME providers that have contributed to our present backlog for mediation and arbitration at FSCO. Arbitrators have called the IME work product '**inaccurate, failed, misleading, defective, incomplete, deficient, not correct and flawed'** in their decisions. It is because FSCO has failed to take action on this issue that the deplorable quality of some of the IMEs produced for consideration in our courts continues. These IMEs are the very basis on which eligibility to benefits is decided. Insurers have a reputation for IME shopping until they get what they want – minimizing the injury and potential payout. What has it done to the justice offered at FSCO? Wait times for mediation that can last years, then another few years for arbitration and there's no surety that a case will be 'settled' as is the intent. This is eroding public confidence in our insurance system. And this problem of poor quality IMEs would transfer over into any reformed or new insurance system – even if we were to bring in Public auto insurance, the IME issue will still be there.

Accident victims have legal costs now that were not anticipated when No-Fault was introduced. The IME issues that distort the facts of a case have led to protracted litigation. And now MVA victims pay the highest legal fees in Canada. The Law Society of Upper Canada has said there duty is in terms of properly and thoroughly checking and challenging opposing experts when representing litigants and yet these rogue physicians and assessors run circles around accident victims and their representatives. IME vendors are often are unchallenged by plaintiff lawyers. Accident victim reaction to this lack of action on the part of their legal representatives and by the courts in respect to IMEs is initially shock and then outright anger and resentment towards the legal community at large. From a consumer perspective, from those who are unable to find representation or who feel ripped off by their lawyers, there is the belief that both plaintiff and defence lawyers are making an inordinate amounts of money based on the failure to protect accident victims from these predatory IME vendors.

The system is set up to deflect complaints about the IME providers and FSCO ought to step up and stop pretending that there is some real oversight that controls the quality out there. It's up to the legal community to make these complaints to the Colleges and to our government and to not be silent to what is happening to their clients who are likely unable to advocate for themselves. It is inadequate to address the poor quality report that undoes the accident victim's access to benefits years later at an Arbitration hearing. Action needs to be taken upon receipt of the flawed medical report. Some lawyers and medical practitioners do assist their clients to make complaints when they've been scammed by their insurer through a bogus IME report but it's not happening enough. Checking out the IME vendor qualifications before the IME isn't being done either, not by insurers and not by claimant lawyers.

Consumers believe they are covered when they pay their premiums and are blissfully unaware of the risky agreement they've entered into when purchasing coverage. They are unaware of the dysfunctional system insurance is and how complicated and costly it can be to get what they've paid for until they make a claim. They have no idea that over 28,000 people couldn't access benefits last year.

It appears that the only way to get timely justice in our present system is to push back hard against a system that ignores its own regulations. Such as the 60 day time limit regulation at FSCO for access to mediation. Justice James Sloan noted in his decision that FSCO's dispute-resolution services mediation unit had been functioning without timelines and had been doing so for many years. It took some highly motivated lawyers to make FSCO accountable and to force them to stand behind their own regulations – and we need more of this dedication and willingness to make change from the legal community. The insurer / claimant battles are fought individually, each 'win' a mark in jurisprudence, or notch in the belt, and it's not enough to correct our civil litigation system that remains in disrepair. It's allowed dubious, unqualified insurer "experts" to label thousands of seriously injured claimants as fakers.

You may have read Alan Shanoff's article in the Sun this past weekend. I think he said it most succinctly with " save for a few, most self-represented litigants would gladly have a lawyer representing them in court if they could find or afford one or hadn't suffered at the hands of an incompetent one."

The background for the article is The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants Final Report released in May by Dr Julie Macfarlane. MVA victims face a new challenge when so many will have no choice but to litigate for themselves in a system that changes based on the most recent judgement and an evermoving line for qualifying for accident benefits. What will that do to the 'bottleneck' that the Financial Services has failed to address? Self Represented Litigants or SRLs are going to become a bigger problem than we have now even with the Financial Services Commission having hired 50 new Arbitrators and 113 new Mediators to handle the present problems.

So we have a Financial Services Commission that appears to listen to the insurance industry needs and not the consumers they say they are dedicated to protect. We have some IME vendors churning out medical reports that our Arbitrators call flawed or useless. We have accident victims being starved out by insurers and who cannot get treatment or afford a lawyer. All the fruit of the flawed IME. Could it be any clearer that there is an issue with these IME reports? Why wouldn't FSCO do something about these reports and protect the integrity of their own system? Why is there no real dis-incentive for insurers to block and delay claims? Sure we have 'special awards' but this is now everyday behaviour when pretty much half of all accident victims have to apply for mediation in order to access benefits.

We have failed panels that are hastily put together and often without consumer representation endorsed by FSCO. Like the recent CAT Impairment panel whose members were conflicted as to whether paraplegia or quadriplegia qualified for catastrophic impairment. The Financial Services Commission selection for these panels and studies continues to choose the same participants over and over again, the same architects of the failed system we have now.

There is no pro-active attitude at work here, FSCO has left much undone in terms of keeping its own house in order. What about the fact that the transfer payment from Ontario's insurers to our OHIP system to cover costs has remained unchanged since 2006. And in 2006 it was increased from $80 million in 1996 to only $142 million. Since the 2006 adjustment health care costs have risen by 25% and yet FSCO has made no move to make sure that the public care system isn't overburdened by overuse by Ontario's insurers. Accident victims don't just go away when insurers refuse treatment or benefits. These bogus IMEs which are at the core of the problems and delays are the cause of MVA victims ending up on our social programs and it costs more than the cost of timely treatment post accident. There are plenty of stories out there where insurers have spent more to deny a claim than it would have cost to pay for the treatment – I hear the stories every day from our members.

FAIR is advocating for change, for accountability from our government, our legislators, our treatment providers, our legal representatives. We hope that some of you here today will become supporters to this cause, we cannot just sit silently and watch the abuse of our vulnerable citizens. We hope that you will become members or send your clients to our website so they can join. FAIR is made up of volunteers who give their time to promote consumer awareness of these issues and to bring these issues to our government and legislators to seek action and change. We cannot do this alone, we need support from the community of those whose interests lie with accident victims. To steal a quote from Obama – "We are the change we seek" and the time is now.

For consumers and accident victims, and taxpayers as well - The question is no longer what will it cost to reform FSCO – it's better to ask now - what will it cost us if we don't reform FSCO?

Thank you.