
Response to:

**The Stakeholder Roundtable on Catastrophic Impairment,
Summary of Proceedings** (dated July 2013)

Submitted by:

FAIR

Fair Association of Victims for Accident Insurance Reform
579A Lakeshore Rd. E, P.O. Box 39522
Mississauga, ON, L5G 4S6
<http://www.fairassociation.ca/>

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FAIR Association of Victims for Accident Insurance Reform appreciates the opportunity to participate in the roundtable discussions about the proposed changes to CAT definition. FAIR contributed from the perspective of an end-user and to represent the views of those most affected by the changes recommended, Ontario`s accident victims.

The Superintendent`s report was to have been prepared “*with the objective of making the system more accurate, consistent and fair for seriously injured accident victims*”. Earlier stakeholder reactions to the Panel report were not supportive of many of the recommendations. FAIR agrees that implementing the proposed changes, as they are here, would make circumstances much worse for Ontario`s most injured accident victims but would increase profits for Ontario`s insurers.

FAIR did make an earlier submission with concerns about the original 8 member panel which we felt was not fairly chosen or large enough to include enough qualified members of the medical community or other stakeholders. We questioned the ability of that panel when reports surfaced that two of the eight members did not find that an MVA victim who was either quadriplegic or paraplegic should be classified as ‘catastrophic’. FAIR indicated then, as we do now, that if changes are necessary, and we are not convinced that radical change is required, that a new panel should be struck and that these present recommendations should be thrown away.

1.1 Roundtable Discussion and 1.2 Participants

We were very disappointed to find that there were so few qualified physicians present at the roundtable. In fact there was only one medical doctor among all participants with experience treating and assessing catastrophically injured accident victims. Like the CAT Panel before this roundtable, there was a lack of qualifications at a serious discussion about important policy decisions that affect over nine million drivers.

We found the discussions to be informative but the lack of qualified information provided less value than anticipated and likely added little to the original flawed recommendations. There was agreement that the recommendations were unworkable as presented and that these changes would unfairly punish accident victims. Specifically that the number of MVA victims that would qualify for benefits would be greatly reduced and many who would need assistance would no longer be eligible.

2.1 Challenges associated with the current definition of catastrophic impairment

There is a disparity in the way various participants described how they currently apply the test of disability. Most would welcome clarity of existing tests and Ontario`s MVA victims would welcome standardization and real oversight of IME providers that would eliminate bogus IME reports from the system. The extent of the poor quality medical evaluations used at hearings is unacceptable - injured individuals need to rely on quality IMEs if they are to be used to decide whether or not they qualify for treatment and benefits.

2.2 Combining of physical and psychiatric impairments

FAIR could not speak to the medical issues of the combining of these impairments but our members have strong views about the outcome for them if they are to live with disabling pain. It was shockingly obvious that there are very few qualified CAT assessors in the system right now and relevant training needs to take place.

There are significant ongoing issues with the quality of Ontario's IME providers and the prevalence of poor quality reports in the system has caused a dysfunctional court system. The volume of worthless medical opinions that are harming accident victims and standing in the way of timely treatment is staggering. Accident victims, whose claims are deflated in the process, are awaiting hearings that are now years away and their rehabilitation benefits may have been denied or stalled. There is a lack of solid guidelines for assessors to follow, leading to unqualified or poor quality assessments by vendors who are unsure of the rules and expectations.

There was a further discussion that the exclusion of pain and the failure to address and treat those with pain may well be a constitutional issue.

2.3 Definition of psychiatric impairment

There was clear indication that many participants felt that the Superintendent's recommendations produced a threshold and range of criteria that would be impossible to meet, especially for those in rural areas. It was felt that many of those with pain and serious psychiatric disorders would be left behind if the proposed changes are to be implemented. It was felt that now, before any changes, there are inadequate resources for accident victims and the changed definition would make that situation worse.

There is no consistency in evaluations and genuine concerns about uneven testing. Many accident victims who should be able to access benefits have been denied due to the lack of understanding of testing protocols administered by assessors. These are issues that do need to be addressed now rather than later.

2.4 Definition of catastrophic brain injuries and spinal cord injuries

It was felt overall that there is a real need to have a clearer set of guidelines with clarity of method. There was a need to track children who suffer catastrophic brain injuries and that many of the recommended tests are not fully validated. While FAIR is not qualified to give an opinion on the types of testing protocols it doesn't require expertise to see that the medical professionals who were in attendance were dissatisfied with the recommendations.

Conclusion

FAIR, whose members are the end users or recipients of the treatment funding and testing discussed in the proposal, view these proposals as not in the interests of accident victims. The

changes are a cash saving manoeuvre by Ontario's insurers who stand to pay significantly less rehabilitation dollars to accident victims.

The proposal includes paying seriously injured accident victims \$50,000 and requiring that if they do eventually qualify under some new guidelines, that they request more funds from their insurer. We cannot stress enough the value of timely treatment and that cutting off funds to those most significantly injured will have a negative impact on MVA victims and a positive impact on insurer profits. By raising the threshold for qualifying for more than \$50,000 in treatment so high, Ontario's insurers will guarantee that those who most need it will spend many years in litigation before getting the resources for care that they need. By then many of the windows for recovery will be lost in the wait for coverage and is a disservice to our most vulnerable citizens. The proposal that an accident victim 'request' additional rehabilitation dollars once they are declared Catastrophic is to ignore that the only thing that works fast in our insurance system is the denial of claims.

Overall there was not enough time allotted to discuss all the issues in depth and we see that no further discussions have been scheduled. We hope it is an indicator that the government has been listening to past stakeholder submissions on this issue and will not advance insurer interests and profits by implementing these flawed recommendations. It would be irresponsible to the taxpayer who must shoulder the costs of care when Ontario's insurers decline to do so. These CAT recommendations were clearly prepared as another cost cutting measure for insurers and are a sure way of downloading costs to the taxpayer via social and medical programs. Our government should be looking to protect the interests of Ontarians and not to ensuring higher profits of insurers on the backs of our most injured citizens.

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. No matter how cooperative and interactive the roundtable participants were, it cannot undo the flaws of the original Panel conclusions or the harm it will do to accident victims.

The confusion demonstrated by the FSCO CAT Panel in dealing with this new catastrophic definition should be reason enough to go back to the consultation process. FSCO needs to better accommodate those most severely injured by removing the obstacles to recovery rather than creating new ones.

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