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Thank you for meeting with FAIR in December to address some of the concerns that accident victims and consumers have with Ontario's auto insurance claims handling practices and the DRS Review. As the Panel indicated, you would be willing to look at further information from stakeholders. We would like to provide the information on which some of our comments at that meeting were based on.

FAIR has concerns about the way insurers view and conduct business with those to whom their product is sold - Ontario's captive consumers. Maybe, because we don't have the choice of whether or not to purchase this product, it is the root cause of the lack of accountability of the industry. This is not to say that there are not good insurers in Ontario, there are, and those who do treat their customers with respect and handle their claims fairly and efficiently don't have a high profile or a large number of hearings/decisions listed on the FSCO Arbitration Unit website.

The IBC, whose mandate is "***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 and their customers***" (http://www.ibc.ca/en/About_Us/index.asp) has an inordinate amount of influence at the Financial Services Commission and the lobbying power to persuade our government to slip in the most recent legislative changes without any public or stakeholder consultation. (http://www.elaws.gov.on.ca/html/source/regs/english/2013/elaws_src_regs_r13347_e.htm) All of these most recent amendments will (again) severely affect MVA victim's access to benefits and only increase insurers' profits while downloading to the taxpayer.

Insurers and their lobby arm, the IBC, appear to feel comfortable to portray their customers in the most derogatory way when they advertise on television and post u-tube videos that paint those who are injured as opportunistic snakes rather than customers who unfortunately have to make use of their policy benefits. http://www.youtube.com/watch?v=UZsCwYu2QfQ

Is the high price of premiums and the high volume of cases in our courts the result of the fraud in the system? While we acknowledge that there is fraud everywhere, in all types of businesses and circumstances surrounding this industry, we do not believe that cutting benefits to curb fraud has been successful in any way other than to better Ontario's insurers' bottom line.

According to the NDP in 2013, insurers made or 'saved' over 2 billion dollars since the Minor Injury Guideline (MIG) was introduced in September 2010. By the end of 2011 there were over 36,000 accident victims who had had to file for mediation in order to to get the rehabilitation and benefits they were promised in their policies. We all pay for excessive and unwarranted litigation in our premiums and in the download to our public systems like OHIP, ODSP and OntarioWorks, people are no less injured, just less cared for. And accident victims, whose insurers have adopted a deny and delay policy, are those who are now waiting for hearings – the very same people who were good customers prior to an accident are now fraudsters and malingers.

When we look at how benefits are denied, it is on the basis of an adjuster decision or/and on the opinion in an IME report. Often insurers will go to great lengths and pay significant sums of money to get an assessor to deflate a claim by way of minimizing an injury.

In some cases insurers over-assess MVA victims causing harm: McQueen V Echelon http://canlii.ca/en/on/onsc/doc/2009/2009canlii66152/2009canlii66152.html, is just one case where an insurer made 21 denials for treatment through assessments in just over 3 years. It's called assessing until you get what you want (stacking) or until the claimant just gives up.

A more recent case exposed just what the costs are in relation to insurer 'professional' or 'expert' witnesses: Blake v. Dominion of Canada General Insurance Co., 2013 ONSC 7445 (CanLII), <http://canlii.ca/t/g26pk. Here the insurer paid its expert witness the sum of ***"$22,000.00 for preparation, attendance and witness of Dr. Dost.***". The trier-of-fact pointed out that an "***area of concern is on top of the costs of Dr. Dost's IME Report which alone cost $8,400.00." and he questioned " What was involved in the preparation of this expert witness? Did he have to go beyond a review of his initial report? These figures are not inconsequential.***"

For the accident victim the question is - what was the $22,000.00 for? How can it cost over $30,000.00 just to get a medical opinion and for the assessor to spend a day in court? FAIR would like to know if these sums for 'expert' medical opinions are included in the high cost of claims and fraud that the industry speaks about in the media.

So when we talk about the cost of claims, we need to place some of the responsibility where it rightly belongs, with the most litigious of Ontario's insurance companies whose cases form the better part of the volume at the Alternative Dispute Resolution Unit. Cases that are too often built on flawed medical opinion evidence provided by assessors who know they will not be held to task by their College oversight for their abuse of vulnerable accident victims. http://policyconsult.cpso.on.ca/wp-content/uploads/2013/11/FAIR-response-to-CPSO-Draft-Transparency-Principles-November-11-13-.pdf

We did put forth a recommendation that a Colorado Model of assessor selection process be considered by the DRS Review Panel to protect accident victims from predatory and often biased or unqualified assessors. We feel this would accomplish two important tasks relative to this review. One, Ontario's vulnerable and injured MVA victims would be able to put faith into the assessment process and that their insurer would send them to qualified assessors whose opinions could be relied on to be an accurate assessment of their injuries. Two, our courts, including the FSCO Arbitration Unit, could rely on the evidence that is used in hearings as being reliable, qualified, independent and unbiased opinion evidence on which to rely on in order to reach a fair and just decision in respect to whether or not an accident victim is entitled to benefits.

Right now accident victims feel afraid, abused, and scammed, not by their health care providers but by their insurers and by the Ontario government and the courts. The adjudication of these cases, in which the quality of timely treatment and recovery is so important, is seen as a corrupt and harmful system based on lies and the ability to 'spin' the issues of entitlement to the extent that making a claim can actually cause harm, both physically and financially.

The courts that hear these auto insurance cases must be seen as impartial and the Triers-of-fact should be respected by the 'expert witnesses' who ply their trade in our halls of justice. Efforts by an 'expert' to deliberately mislead or deceive the courts should be taken seriously and the 'expert' should be held to account when they do so. Much of the backlog and the time consumed in hearing these cases is caused by a system willing to tolerate such behaviour while simultaneously promising that all is well. One wouldn't put up with such deceptive business practices such as rubberstamping medical opinions evidence as

demonstrated in the two cases below in any other setting - at a regular business meeting for instance where 'faking it' isn't tolerated. Why here, in our courts, on whom we rely to dispense justice, are such low standards tolerated? The two cases below are years apart and yet the problem has not been corrected. How many other cases has Riverfront negatively affected with such poor business practices? Our members would like to know - why is FSCO willing to let this deceptive behaviour continue unchecked?

How many times does a Trier-of-fact in Ontario have to point out "***In my view any activity that may tend to detract from this all-important objective diminishes the integrity of the litigation and trial process and should be met with appropriate sanctions designed to send a clear message that such conduct will not be tolerated.***"? (http://canlii.ca/t/1q596 , excerpt below)

At some point FSCO has to acknowledge that the dysfunction of the DRS isn't the fault of crafty accident victims looking for 'rich' benefits. The number of claimants in the system has increased because of the cuts to coverage and the present adversarial and wrongful delay and deny system we have - an auto insurance system that is based on the proliferation of bogus medical reports that has become both the fuel and the shame of our (un)justice system.

Accident victims whose medical reports are biased or unqualified or even tampered with (as is the case with the two decisions below) are not the culprits who benefit from the dishonest system of coverage we have. Nor are MVA victims the cause of the dysfunction at FSCO - they are the victims of deceptive business practices that are reprehensible and remain unaddressed – a failure of the Anti-Fraud Task Force that can be corrected within a restructuring of the DRS and enforcement of the Rules of Civil Procedure.

We have attached links below to support some of the issues we discussed in December 2013. FAIR hopes that this Panel will consider what we have presented, both in writing and in person to this review process and that our recommendation of enhanced oversight for assessors (Colorado Model) will answer some of the many problems accident victims in Ontario face when making a claim.

Thank you for your time, we appreciate that we are able to add to the discussion.

Sincerely,

Rhona DesRoches

FAIR, Board Chair

MC v KE, 2013 CanLII 55435 (ON HPARB), <http://canlii.ca/t/g0c3g> 2013-09-04

7. [...]The Respondent notified the Committee that, through the complaints process, she had discovered that Riverfront Medical Services (Riverfront), the company through which the Applicant's assessment was contracted, had changed the Respondent's report without her prior knowledge or consent.

9. As a result of its investigation, the Committee decided to take no further action, noting that the Respondent reported information that she considered to be accurate and that there did not appear to be any indication that the Respondent intentionally falsified factual information in the

report or that she misrepresented information about the Applicant's abilities during the assessment.

10. However, the Committee did express concern about the information uncovered during the course of the investigation related to Riverfront having altered the Respondent's report. The Committee noted the "egregious" impact that these changes could have had on the Applicant's entitlement to benefits. In the result, the Committee decided to offer advice to the Respondent about the importance of ensuring that she personally reviews and approves any assessment report she completes prior to the report being issued.

Macdonald v. Sun Life Assurance Company of Canada, 2006 CanLII 41669 (ON SC), <http://canlii.ca/t/1q596>2006-12-13

[1] In the course of this jury trial I ruled that Dr. Frank Lipson, who had conducted a defence medical of the plaintiff, not be permitted to testify as an expert witness on behalf of the defence. Dr. Lipson had testified that a medical report purportedly signed by him had not been signed by him. He stated that his signature stamp had been affixed to the report without his authority by an individual at Riverfront Medical Evaluations Limited (Riverfront) the company who had retained him to conduct the defence medical. [...]

[2] I have deliberated for a very long time before delivering these reasons. Although the action out of which the problem arose has long been concluded, this case raises vexing issues as to what role may be properly played by organizations such as Riverfront in the formulation of an expert witness' opinion.

[43] Twenty percent of their physicians conduct their assessments off site in which case the physicians will prepare their reports and send it to Riverfront by fax or other electronic means. Riverfront performs its quality control function and sends the report to the physician for comments if required. After consultation with the physician, the report will be prepared on Riverfront's letterhead and signed by the physician or as in the case at bar a signature stamp is affixed to the report, which is sent to the referring client.

[44] In many cases Riverfront has a signature stamp of the doctor, which the doctor authorizes them in writing to use. Dr. Levy produced a letter dated January 5, 2004 in which Dr. Lipson authorized Riverfront to utilize a signature stamp/electronic signature when issuing assessment reports - "when I am unable to directly provide my signature". The authorization provides that signature stamp would only be used "once I have approved the final copy of my report".

[88] It is stating the obvious that an expert's report delivered for the purpose of compliance with the *Rules of Civil Procedure* and the *Evidence Act* is an extremely important document. Anyone involved in the preparation of such reports must know that courts place a very strong reliance on the contents of these reports and that the proper administration of justice demands that these reports accurately reflect the opinion of the expert who has written them. The requirement in the *Rules of Civil Procedure* and the *Evidence Act* that the expert sign the report is intended to provide assurance that the statements in the report are those of the expert.

[100] Expert witnesses play a vital role in proceedings before the courts both in civil and in criminal matters. In personal injury actions in particular, the evidence of the expert witness may be the determining factor in the resolution of the plaintiff's claim In the case of health practitioners, section 52 of the *Evidence Act* provides under certain conditions, the report may be filed in place of the *viva voce* evidence of the health practitioners. The court is entitled to assume that the report represents the impartial opinion of the expert.

[101] In my view Riverfront in this case, went far beyond what can be considered a proper "quality control" function. While I am not prepared to find that they were motivated by a desire to assist the defendant, nonetheless I find their actions constituted an unwarranted and undesirable interference with the proper function of an expert witness.

[102] The function of an expert witness is to provide an independent and unbiased opinion for the assistance of the court. An expert witness' evidence should be and should be seen to be the independent product of the expert uninfluenced as to form and content by the exigencies of litigation.[2] This principle has often been cited with approval in our courts, and has been considered a factor to be considered in asessing the weight to be given to the expert's testimony. It has occasionally been treated as the basis for the disqualification of the witness entirely.[3]

[103] In my view any activity that may tend to detract from this all-important objective diminishes the integrity of the litigation and trial process and should be met with appropriate sanctions designed to send a clear message that such conduct will not be tolerated.

Jagmeet Singh (MP) talks about the 2 billion profit at line 1650 in the Hansard. http://www.fairassociation.ca/wp-content/uploads/2013/04/FAIR-at-the-Standing-Committee-Automobile-Insurance-April-17-2013.pdf

http://www.newstalk1010.com/News/localnews/blogentry.aspx?blogEntryID=10593876 about 4 minutes into Ms. Howarth's interview she talks about the profit of over $2 Billion.

http://www.torontosun.com/2013/09/20/car-insurance-cuts using the GISA data.

https://www.otla.com/temp/ts_9A69F300-BDB9-505B-D20CC1E63C2C0B739A69F310-BDB9-505B-D90A655A4ED0C4A5/OTLA-MPP-reportcard-final2.pdf Ontario Trial Lawyers Association

Committee Transcripts: Standing Committee on General Government - May 28, 2012 - Automobile insurance review http://www.ontla.on.ca/web/committee-proceedings/committee_transcripts_details.do?locale=en&Date=2012-05-28&ParlCommID=8958&BillID=&Business=Automobile+insurance+review&DocumentID=26372#P58_3428

Mr. Jagmeet Singh: Sir, just to clarify some points, the $1.3-billion figure that's been used has been used for about 20 years, and based on your research, that number doesn't seem to be supported by any research that you have. Is that correct?

Mr. Fred Gorbet: We could not find any research we thought was credible that could support it in today's marketplace.
Mr. Jagmeet Singh: In fact, you can't attribute an actual number to the fraud cost in Ontario; is that correct?
Mr. Fred Gorbet: That is correct.

Mr. Jagmeet Singh: You indicated the types of fraud: organized, premeditated and opportunistic.
Mr. Fred Gorbet: Yes, sir.
Mr. Jagmeet Singh: Amongst those three, if you were able to rank those, would you agree with me that organized fraud—you can just rank it however you think which is contributing the most to fraud of those three.
Mr. Fred Gorbet: I really have no basis to rank them but I would guess—and it is a purely personal guess—that a combination of organized and premeditated is more substantial than the opportunistic, and I could not begin to break down the organized versus the premeditated.
Mr. Jagmeet Singh: So in fairness, your answer is an opinion but you can't base that on any concrete or quantitative analysis.
Mr. Fred Gorbet: That is correct.
Mr. Jagmeet Singh: But it's your hunch that it's organized and premeditated. I would have suggested the same thing as well.
In terms of organized, do you know who that is or do you have a sense of where that's happening or a sense of who is involved in that?
Mr. Fred Gorbet: No, I don't. The only information that's available to the task force on that is, from time to time, press reports about enforcement actions.
Mr. Jagmeet Singh: So we're not able to say with certainty who is the organized crime, if it's one particular crime network or if it's in a particular area or region. It's just based on a colloquial knowledge, when a press release comes out that there's a fraud ring that was exposed. That's what you're basing your knowledge on.
Mr. Fred Gorbet: That's correct.

The IBC commissioned 2 reports and then picked the 1.6B loss from one of them - see the links below to Price Waterhouse and KPMG, both of whom estimated the $ amount of fraud.. Final Anti-Fraud task force report: http://www.fin.gov.on.ca/en/autoinsurance/final-report.html
[5]The KPMG methodology and detailed results are described at**http://www.ibc.ca/en/Insurance_Crime/**
[6]See Status Update, pp. 22–25, at **http://www.fin.gov.on.ca/en/autoinsurance/status-report.html**
[7]The **Ernst & Young report** prepared for the Task Force can be accessed at**http://stage.fin.gov.on.ca/en/autoinsurance/forensic-review-ey.html**