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## **FAIR Association of Victims for Accident Insurance Reform**

### **response to:**

**Review of the Mandates of the Financial Services Commission of Ontario, Financial Services Tribunal,  
and the Deposit Insurance Corporation of Ontario**

December 14, 2015

FAIR (Fair Association of Victims for Accident Insurance Reform) is a grassroots not-for-profit organization of MVA (Motor Vehicle Accident) victims who have been injured in motor vehicle collisions and who have struggled with the current auto insurance system in Ontario. We support auto accident victims through advocacy and education.

Thank you for the opportunity to express our views regarding the Review of the Mandates of the Financial Services Commission of Ontario, Financial Services Tribunal, and the Deposit Insurance Corporation of Ontario.

We will be commenting only on FSCO as it relates to auto insurance.

It is convenient to say that FSCO is lacking in respect to governance structure and accountability when they obviously suffer from a lack of resources to fulfill their mandate. This is the duty of the government, the legislators, and particularly the Minister of Finance, to make sure that regulation is followed with enforcement. It is the government's responsibility to see that the funding needed is there and that the will to adequately regulate the auto insurance sector in respect to the quality of customer service is present and a part of the daily operations.

Chronic underfunding and overuse of the DRS system by insurers has drained resources and there's no reason to expect that the volume of claims and the corresponding volume of complaints about some insurers will change anytime soon without a change in perspective on the government's part.

Consumers have no meaningful protection from insurers who are often entrenched in denials based on poor policy and poor claims handling practices. In the past decade it has been a tsunami of unpaid claimants ending up at the FSCO DRS unit and our civil courts looking for the coverage and benefits they paid for. The central cause of the dysfunctional system is still not being addressed – why are there so many unpaid claims in the system and how do we fix it? A new regulatory body doesn't fix the problem with claims handling. And the newly created Licensed Appeal Tribunal (LAT) system will likely be much like the transfer of mediation hearings over to the Arbitration Unit – it is simply transferring the problem of too many claims to handle. There are still an unacceptably high number of unpaid claims in the system – more than there should be and it needs to be fixed. Avoiding the fundamental problems with the medical assessments at the core of all these cases simply transfers the longstanding 50% denial rate for auto insurance claims elsewhere.

The credibility of the FSCO regulatory regime has been undermined by the too close relationship of the government with the Insurance Bureau of Canada lobbyists and our legislator's inability to act in the best interests of Ontarians. The insurance industry story is all that is being heard and that story is always about profit, profit, profit. Decisions are based on insurers needs rather than what the 9 million drivers in Ontario need. The FSCO's failure to act to protect consumers/victims has resulted in the perception that FSCO is unable or unwilling to undertake effective enforcement of existing regulations but even more damaging is that the government appears to be under the thumb of Ontario's insurers. Protecting vulnerable accident victims from the unfair and fraudulent actions of some insurers should be a higher priority than saving insurers more money every year by slashing coverage.

The public needs to be aware of insurer fraud through the misuse of the medical assessment process to deny claims and the real level of their coverage. It is past due to bite the bullet and come up with an Insurance Act that serves its purpose to provide affordable quality coverage and not just Ontario's insurance companies' profitability. The Act should be understandable to anyone and not just those with

legal training, after all, we all buy insurance and we should understand what it is we are buying, what the insurer's responsibilities are and what consumers should expect.

As it stands now the public sees auto insurance as a scam that our government is in on. Words like 'corrupt' and terms like 'in the pockets of insurers', 'on the take' shouldn't be used to describe the government's role in ensuring we have the auto insurance coverage we need.

## **II Preliminary Recommendations**

We would agree that Ontario's goals and priorities should be made more explicit in the legislation as should the agencies' mandates and the way they are empowered and directed to pursue the government's priorities. Any deficits regarding transparency and accountability should be identified and addressed in order to restore confidence from the public.

We would have concerns about the selection process regarding a board of directors who may be authorized to make rules on their own even as limited by the statutes.

### **Specific Recommendations – Mandate**

#4a-e . The proposed Financial Services Regulatory Authority (FSRA) recommendations do not make it clear where the "self funding" would come from for the new regulatory agency. Insurers? The taxpayer? The Minister of Finance?

Ontario's MVA victims would benefit should a new agency utilize its statutory powers to adequately, firmly and consistently enforce provisions and, in particular, prohibitions against fraudulent activities or behaviours that harm consumers. It isn't enough to have words on paper, there must be action to address ALL fraud, including that of insurers and their providers who use and abuse the insurer medical examination (IME) process to delay and deny claims.

We fully support the proposal that the mandate be based on the 10 principles in the OECD's G20 High-Level Principles on Financial Consumer Protection. This will provide greater transparency and a consumer perspective that is needed to update Ontario's outdated definition of consumer protection.

#6, 7, 8, 9. This mandate should consider the danger of relying on other forms of self-regulation. Though the DRS hearings are being phased out after March 31, 2016, there are continued problems with the FSCO reliance (and now the newly formed Licensed Appeal Tribunal (LAT)) on Ontario's various regulatory Colleges to ensure the quality of victim's medical assessments. College self-regulation is often viewed by the public as no-regulation-at-all and in the case of the IMEs it has negatively affected the public's perception of both Ontario's insurers and FSCO. There is a lesson to be learned from the actions of some of the third party vendors of medical opinions and the lack of action on the part of their self-regulatory Colleges. CPSO is a good example of how the lack of meaningful regulation and enforcement to protect MVA victims has caused harm. Their failure is directly related to self-regulation and it is the oversight that FSCO relies on when the arbitrators hear expert medical evidence. That failure to protect, on the part of CPSO and then by FSCO, is substantially contributing to the excessive volume of court cases that plague Ontario auto insurance.

#10. The problems that exist today in respect to the volume of unpaid claimants in the system and the backlog in our courts could possibly have been avoided if consumers had a viable place to complain about their treatment at the hands of the insurer they paid to assist them. It is a large problem that has thus far been under the radar since there has been no meaningful FSCO oversight and complaints have been spread across various Ombudsman offices and regulatory Colleges. Victims are not satisfied at the end of the complaints process and the public has been kept in the dark about the level of consumer/victim dissatisfaction. These complaints about auto insurer fraud by way of deflating injuries should be tracked and handled at one point of service, and the public should be made aware of these problems with accessing coverage. The auto insurance file is significant and there are in excess of 25,000+ unsatisfied customers each year and it certainly appears that the best option, given the volume, would be to have this as a separate agency dedicated to auto insurance alone.

#12. Ontario's auto insurers have done an abysmal job at handling the ordinary auto insurance claims of Ontario's insured drivers. With about 20,000 new mediation and arbitration claims at FSCO (Sept 2015) this year and an additional 61,000 auto insurance claims in Ontario civil courts it is abundantly clear that insurers are unable to competently handle the administration and funding of the Motor Vehicle Accident Claims Fund. This is an industry focused on profit not claims handling.

### **Governance**

#13. Our concerns are in relation to self-funding and the independence of any Board of Directors. Ontario's auto insurers, through their lobbying group the Insurance Bureau of Canada, have a habit of exerting undue influence over legislation that favours the industry and not the consumers who are paying for it. In fact the long road to the dysfunctional place we find ourselves in today is a direct result of insurers lobbying our government and our legislators and the industry's propensity to mis-inform the public through the media with statements such as 'Ontario has the richest benefits in Canada'. Very clear regulation about insurer participation within the structure of governance will be necessary in order to preserve function that considers consumer rights.

#15. It is long past time to have consumer input in the rule-making authority governing auto insurance in Ontario for the reasons stated above.

#16. While the FSRA retention of funds from penalties sounds like a good idea, there should be a specific amount set aside for the sole purpose of educating the public about auto insurance specifically. At present all information about auto insurance flows from the insurance industry itself and that has caused many problems for consumers once they use the product. Painting a pretty picture about one's business isn't anything new but when it comes to the health and well being of injured and disabled Ontarians, deceptive statements about coverage have a life-long impact. We believe the insurers should have to pay the costs of informing the public but not actually do the job of imparting the information which should be left to an impartial information scheme performed outside the government and the insurers. We cannot stress enough that the Insurance Act needs to be redone so the ordinary person can understand it and this will go a long way to increase consumer awareness.

### **Structure**

The recommendation for greater consultation with stakeholders for input in respect to oversight will contribute to a more balanced system. The recommendation that each 'bay' or 'entity' have its own Superintendent focusing on issues unique to that industry should promote greater transparency and accountability.

FAIR would fully support an 'Office of the Consumer' to focus on the needs of the public but would recommend going further and suggesting that each of the individual entities should have such an office focused on the unique needs of that particular group. Certainly the auto insurance sector is one plagued with problems and complaints from consumers who are, by the nature of their injuries, disadvantaged in a system that barely functions to serve their needs. In other words, the volume of problems would require focused attention from an 'Office of the Consumer' dedicated solely to the auto insurance file.

If there is to be a focus on consumers going forward then any 'fraud compensation fund' would have to include the right of victims to recover their losses when their insurer uses fraudulent means to disqualify a claim.

### **Tools, Means and Regulatory Approach**

The system we have now in Ontario is highly slanted to favour Ontario's insurers. It is this pro-insurer saturated environment that has brought us to this point where coverage is 'hit and miss' and benefits are inadequate because consumers are in the dark about their purchase.

Of great concern is that the picture painted in this report highlights the need for consumer input but the fear is that once again the IBC and Ontario's insurers will exert too great an influence to make a fair and balanced system that serves consumers possible. These various boards and entities should all have a significant presence of non-insurer members in order to create the balance presently missing in the system today. Why not create a Consumer Insurance Bureau, one that actually is focused on the consumer and the MVA victim and that would represent the over 9 million drivers in Ontario?

Whistle blower protection is a positive step in the right direction - it will always come down to the will of any organization to live up to the regulation and to take action when necessary. Thus far, insurers have escaped all accountability and the implementation of requiring the disclosure of all costs of products and services is a step in the right direction. We hope to see something that resembles the expense disclosure of the publicly run auto insurance system in British Columbia.

Ontario's accident victims are in desperate need of a fair and balanced system that acknowledges and addresses their needs and concerns about access to recovery resources. We look forward to the next step in that process and to further consultation.

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