

FAIR response to the Dispute Resolution System Review



to Kathleen, Charles, Deb, autoinsurance, Michael, ahorwath-qp, tim.hudakco, lalbanese.mpp, tarmstrong-qp, ted.arnott, bbalkissoon.mp., bob.baileyco, toby.barrettco, rbartolucci.mp., lberardinetti., gbisson, jbradley.mpp.co, scdryden, dcansfield.mpp., mchan.mpp.co, bchiarelli.mpp., ted.chudleigh, steve.clark, mcolle.mpp.co, mcoteau.mpp.co.....276 more

MEDIA RELEASE

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The recently released Dispute Resolution System Review final report does not address the abuse of Ontario's accident victims and our courts by assessors who intentionally minimize or deflate an injury so Ontario's insurers can deny claims. Despite the DRS review being the forum most suited to impose criteria regarding medico-legal expert witnesses, and the place to set standards, the issue will remain a core problem affecting every accident victim.

Tighter scheduling and timelines, both welcome changes, will not make the system fairer if the quality of the evidence at hearings remains so low.

The medical opinion evidence in respect to Ontario's vulnerable and often cognitively impaired accident victims should be of the utmost importance and of the highest quality to satisfy our courts who must decide whether or not an injured person is entitled to benefits. There is no more important evidence than that and it is central to the recent mediation backlog - too many legitimate claims indiscriminately turned down by insurers based on questionable medical reports.

There are references in the DRS report regarding the quality and the lack of regulatory oversight for medical assessors on pages 22 and 23 but no remedy is offered by this Panel other than at #18 where **“Arbitrators should ignore evidence that is not fair, objective or non-partisan and, in such instances, the expert should not receive compensation for appearing as a witness.”**

The report ignores that flawed medical opinions would affect a case all the way through the system and in fact, beyond hearings for those who find themselves having to apply for ODSP and CPP when they are turned down by their insurer.

Justice Cunningham has said **“I believe unambiguous evidence-based guidelines will likely be more helpful to arbitrators than a roster of medical consultants”**. That comment reveals that Justice Cunningham didn't recognize that some of the very same ‘medical experts’ that sit on the MIG Minor Injury Treatment Protocol Project (MITPP) and the Catastrophic Impairment Expert Panel are the very same ‘medical experts’ who, under the DRS recommendation at #18 would **“not receive compensation for appearing as a witness”** on more than one occasion. One only has to search the FSCO public arbitration and appeals decisions web page or the FAIR website to find many examples of the two ‘experts’ whose evidence was questioned by the trier-of-fact.

Various FSCO Arbitrators have commented in respect to these ‘experts’ stating that one is a “dissident” whose views were “rejected” when, on more than one occasion, he commented outside of his area of expertise. Arbitrators have said that the physician was “not acting as an impartial medical expert” and in another instance the opinion evidence was viewed “with caution” and that the “report was of little assistance”. The other assessor has been said to “not inspire any confidence” and that the work product “assessment process itself was so flawed in its conception as to amount to no assessment at all” and that “his conclusions lend little credibility” or that the “opinion is misinformed” and “I place no weight on this evidence”.

So those who would not be acceptable as an expert witness at FSCO hearings are good choices for setting policy through their work as consultants on panels set up by FSCO and the Minister of Finance?

A reminder that 2 of the 8 Catastrophic Impairment Expert Panel members did not believe that quadriplegia and paraplegia were catastrophic injuries and were willing to restrict access to benefits to seriously injured accident victims so Ontario’s insurers could reduce payouts to accident victims.

Real and substantive change needs to take place regarding the quality of medical opinion reports/witnesses. This report avoids addressing this harm caused by poor quality medical assessments and evidence while at the same time restricting the parameters on the length of the reports used at hearings. It is a disservice to injured accident victims that rely on this system to say we don't care if it's a qualified or partisan report but keep it short and under a certain amount of pages. And don't worry, if the report is flawed, an Arbitrator will make sure the assessor won't get paid. How does that improve the system?

We have pointed out that purging Ontario's rogue assessors who produce sub-par reports for use in our courts is a win-win situation for claimants, insurers and the courts. The priority should be that justice is seen as fair and untainted and the continued use of these bogus IMEs by our courts has created a structural bias that undermines justice in the eyes of the public. It is not too much to ask that accident victims be accorded the same rights to fair and timely justice with qualified expert witnesses at hearings as is the right and expectation any other citizen in Ontario.

We expect our government and our legislators to do a far better job protecting the interests of our most vulnerable citizens and we expect to be treated fairly and with dignity in our courts.

FAIR Association of Victims for Accident Insurance Reform

DRS FINAL REPORT <http://www.fin.gov.on.ca/en/autoinsurance/drs-final-report.html#framework>

[Recommendations for Changes to the Definition of Catastrophic Impairment, Final Report of the Catastrophic Impairment Expert Panel to the Superintendent, April 8, 2011 \(Version 2 with Erratum\)](#)

Questions put to the CAT Panel on pages 27 and 28:

A.1.3 Question 3. The current definition of “catastrophic impairment” includes paraplegia or quadriplegia. Do you agree that an individual who is injured in a traffic collision and becomes paraplegic or quadriplegic is catastrophically impaired?

The Expert Panel reached consensus (75%) and agreed that paraplegia or quadriplegia are catastrophic impairments.

A.1.7 Question 4. The current definition of “catastrophic impairment” includes the amputation of an arm or leg or another impairment causing the total and permanent loss of use of an arm or a leg. Do you agree that an individual who is injured in a traffic collision and suffers arm or leg amputation or another impairment causing the total and permanent loss of use of an arm or a leg is catastrophically impaired?

The Expert Panel reached consensus (75%) and agreed that the amputation of an arm or leg or another impairment causing the total and permanent loss of use of an arm or a leg is a catastrophic impairment.