FAIR Association of Victims for Accident Insurance Reform
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October 11, 2013

Sent by email to Minister of Finance: AutoInsurance@ontario.ca

MOF Auto Insurance, Alternative Dispute Resolution Review

Hi,

We would like to thank you for including FAIR in the dialogue regarding the review of Ontario's ADR system. We do have something to add relative to our discussion on Tuesday.

Further to providing assistance with accident victims filling out forms - there are many people who have cognitive and/or physical deficits as well as those with significant difficulties with the English language, all of whom require assistance. There is a need for this service and given the complexity of the forms, it should be FSCO who provides this assistance. Forms should be available to the victim with guidelines on how the forms are used with samples provided. As the trend towards self-representation gains momentum, an easy to navigate system, updated regularly, could reduce time and costs for both parties.

Claimants should be able to track the progress of their claim through the system, possibly by a tracking number. Cases now take so long getting to a hearing that lawyers sometimes 'lose track' of claimants due to the delay.

Timelines need to be established regarding Arbitration hearings. There are many accident victims who are waiting 6 to 8 years to have their cases heard now and with so many cases in the system, accident victims have a right to know that the system is broken. An estimation of the length of time claimants must wait for a hearing should be established so they can make informed decisions about using our civil courts or the ADR to pursue their claims.

Regarding expediting claims. We hear many stories about items that should be covered but insurers have declined to make payment on. Things like eyeglass replacement or other hard goods that MVA victims lose or have damaged at the time of collision. There is a significant problem for many accident victims regarding prescription costs and therapy treatments. We think that there is a solution for these issues that lies outside of Arbitration - it could be as simple as a system much like small claims or landlord tenant hearings. It should be a system that does not require legal assistance, one that a claimant can navigate on their own and without the necessity of legal representation if they choose. Exchange of information and hearings could possibly be done in writing which would likely be ideal for some accident victims. If an insurer has wrongfully withheld payment from a claimant under a set amount (possibly $750 - $1000) then there would be a penalty levied with the possibility that it could prejudice the insurer at a later hearing. One should not have to go to Arbitration over a pair of glasses or minor treatments or benefits that clearly fall within the guidelines.

We find that the present Adjuster complaint system isn't working for claimants. Many feel that they are prejudiced against because of the close relationship between the insurance company's Ombudsman and the very company whose Adjuster they are complaining about. This is all the more important as Adjusters have now taken on a quasi-medical role with the application of the MIG and the direction a claim takes when they take on the unqualified role of physician/assessor. Their decisions early in the claims process have far reaching effects for claimants and closer scrutiny of their work is critical. Better training and oversight at this level would provide consistency and likely reduce claims that proceed to hearings. Better communication between adjusters and accident victims is beneficial to ensure understanding of claimant's needs. Putting in place a functioning adjuster complaint/resolution system would provide solutions that do not require Arbitration. Our submission to the Modernizing Disciplinary Hearings for Insurance Agents and Adjusters in Ontario on September 30, 2013 regarding the circular and inefficient system of complaints regarding adjusters: http://www.fairassociation.ca/wp-content/uploads/2013/10/FAIR-submission-to-Consultation-on-Modernizing-Disciplinary-Hearings-for-Insurance-Agents-and-Adjusters-in-Ontario-September-30-2013.pdf

Real and substantive changes to the ADR system must include improving the access to justice as well as ensuring that real justice is possible, in other words, protect the integrity of the ADR whose purpose was for a fair and and timely resolution of accident claims - and now the lack of function is itself an obstacle to that mandate. Our courts are backlogged with cases often built on flawed medical opinions bought and paid for while triers-of-fact are burdened with having to sort out which reports are useful and which opinion evidence is biased and an abuse of the IME process. A recent case highlights how an adversarial relationship between a catastrophically injured accident victim and the insurer who commissions a poor quality report (and then stands by it in the face of good evidence) leads to unnecessary hearings. **D.B. and Economical Mutual** [+] Arbitration, 2013-10-02, Reg 403/96.

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.

Sincerely,
Rhona DesRoches
FAIR, Board Chair
http://www.fairassociation.ca/