Response to KPMG – Ontario Ministry of Finance Automobile Insurance Transparency and Accountability Expert Report Survey

Submitted by:

FAIR

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Thank you for the opportunity to participate in the KPMG – MOF 2014 Survey regarding the state of Ontario's auto insurance.

FAIR Association of Victims for Accident Insurance Reform is a not-for-profit consumer organization made up of accident victims and their supporters and we advocate for the fair treatment of all accident victims in Ontario. Our perspective is one of the end users of Ontario's insurance product and we represent those most affected by changes to coverage and access to treatments and benefits, Ontario's accident victims.

We note that these questions are not geared toward the interests of accident victims but are directed towards insurance industry interests and profitability. This isn't surprising since we, and other non-insurance company stakeholders were not asked to comment on the April 2014 Automobile Insurance Transparency and Accountability Interim Report when it was released in the Spring of 2014. It's very disturbing that accident victims, who make up half of the equation of balanced coverage and are the very reason that first party auto insurance benefits exist, haven't been consulted until this point in a study about auto insurance. Surely, we who pay the premiums and who use the product should be of the greatest concern and not an afterthought in a survey put out at the last minute and at a time when a significant response is highly unlikely.

We understand that KPMG has been contracted to look at some specifics at the request of the Ministry of Finance (MOF). The fact that our government hasn't seen fit to include the interests of accident victims, how they are treated in the system or their recoveries and outcomes has been reflected in many of the recent committee reports coming from the MOF.

We have not had the time to study the KPMG Automobile Insurance Transparency and Accountability Interim Report in any depth and it is only at this late date that we are asked to contribute in a very limited way which is an indication of how little value is being put on the claimant's perspective.

We would certainly be willing to meet with KPMG to discuss the other half of the equation, Ontario's accident victims and their access to the coverage they paid for.

Topics and Questions

1. *In September 2010, the Government of Ontario introduced major reforms to the Ontario automobile insurance system with the intent to control insurance costs, increase choices available to consumers, and simplify processes in the automobile insurance system. How have you or your members been affected by the auto insurance reforms that were introduced in September 2010? Would it be possible to provide a qualitative assessment?*

2. *Have you analysed the impact of the 2010 auto insurance reforms on your members? If so, would you be prepared to discuss your findings? Would it be possible to provide the results of such quantification?*

Response to 1, 2

The 2010 reforms were intended to control insurer costs without regard to the outcome for Ontario's accident victims. The protocols were not yet established and we are currently told that the Minor Injury Guideline study is in the works and will be available in a few years. The 2010 reforms were rushed through without the detail necessary to clearly establish what the Minor Injury Guidelines would mean and this has led to many more claims being denied while the finer points are still being figured out. The uncertainty has caused greater hardship and stress for accident victims whose access to benefits is being denied with much greater frequency post 2010.

Injured accident victims find the forms onerous and complicated and changes to the legislation only cause further confusion. We now have a system so complicated that it requires legal advice even if the injury is fairly minor.

The intent may have been to "increase choices available to the consumer" but the reality is that our coverage is now much lower and there are many more obstacles in the way of recovery post 2010. Those "choices" turned out to be the poor level of coverage we've had since 2003 but now we are required to pay extra for the same coverage as an option.

Consumers continue to shop price point and there has been little education for the end user who knows little about the real price of recovery if injured in a MVA. The government has failed to take on this duty to inform and educate. Instead, FSCO has left the Insurance Bureau of Canada, a highly partisan lobbying organization, in charge of informing the public about the benefits of Ontario's insurance coverage. One can hardly blame the organization for spinning tall tales about the quality of coverage in Ontario while exaggerating the extent of the fraud in the system, after all it is their mandate to take advantage of "anticipating opportunities to identify, shape and influence change in support of our members' business needs".

Consumers remain unaware of the low level of coverage they've purchased until it is too late and they need to use it. About half of all claims are denied and consumer confidence in Ontario's insurance system has never been so low. Resentment is growing in respect to being forced to buy what many consider an inferior product with coverage they can't count on.

The 91,818 claims were that denied and ended up in the DRS mediation system between 2010 and 2013 represents a shocking number of people unable to access the benefits they need to recover. The public is becoming aware that they are not getting what they paid for and that our government appears to have a greater interest in the health of our auto insurers' bottom lines than they do for the health of the citizens of Ontario.

Many legitimately injured MVA victims are stuck in a claims system that often lasts for many years, even decades. For scores of victims it is an empty promise that "FSCO provides timely, cost effective dispute resolution services for claimants and insurers who disagree about entitlement to statutory accident benefits or the amount of benefits" when their claim is stuck in the system and they are without treatment or supports.

Much of the increases in costs to insurers since the demise of the DAC system in 2003 are the result of over assessing accident victims through the use of unregulated, often poor quality or highly biased Insurer Medical Examinations IMEs and this certainly predates the 2010 changes. See page 28 of the FSCO 2009 5 Year Review http://www.fsco.gov.on.ca/en/auto/5yr-review/Documents/FiveYearReviewReport.pdf

FAIR has continually brought the issue of the quality of the medical reports and testimony on which a claimant's access to benefits is decided to the attention of our government. We have appeared at Queen's Park hearings and our members have also responded individually to these consultation processes in regards to the lack of independence and quality of the medical examinations.

According to the Insurance Bureau of Canada's own estimate, by 2007 they found that *"for each dollar spent on treatment, another 60 to 80 cents were spent on assessments"*. More recent data on the IBC website and in the experience of our members, significantly more money is being spent on assessing a victim's injuries, often through a poor quality examination that denies the injury, than the cost of the treatment that the victim is seeking.

The cost of these assessments and expert testimony are out of control as evidenced in 2013-12-04 Blake v. Dominion of Canada General Insurance Co., 2013 ONSC 7445 (CanLII), http://canlii.ca/t/g26pk where the trier-of-fact had to put the brakes on with *"Those disbursements post June 10th, 2010 are problematic in two areas; the photocopying of $4,432.27 and $22,000.00 for preparation, attendance and witness of Dr. Dost." and "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. Again with detail a greater appreciation can be made beyond the overall reaction to the immensity of the bill."* We would point out that the cost of this expert is in excess of what most claimants can expect to get from their auto insurer for income replacement in the course of a year. These costs would add up quickly when so many denied claims are in the system.

These assessments are often without standards or regulation and IME reports are described by arbitrators at financial services as *"inaccurate, failed, misleading, defective, incomplete, deficient, not correct and flawed"* in many cases. Insurers and plaintiffs alike are bearing the cost of the lack of regulation regarding the IMEs in the system but it is the claimant who is the party most damaged by the lack of oversight. In a recent decision, D.B. and Economical Mutual [+] Arbitration, 2013-10-02 the arbitrator finds that *"It is understandable that D.B. is reluctant to consent to a lower limb amputation when she is uncertain about the result. I attach no weight to the WPI rating assigned by SOMA, which was based on an amputation D.B. has not had. Dr. Paitich also insisted that D.B. could walk with a single point cane and an air cast but I was presented with no evidence to support that assertion."* What does it cost an insurer to use an IME to misrepresent the seriousness of an injury in order to achieve a lower score of disability and reduce payment to the victim? Why should we continue to pay for reports that are unacceptable?

These substandard IME reports are the medical documentation that insurers routinely rely on, knowingly or not, to disqualify many legitimate claimants who ultimately apply for hearings. Highly vulnerable accident victims are captive consumers of these IMEs or independent medical assessors and vast sums of money are paid for opinion evidence.

There are many good assessors out there but unfortunately, since the end of the FSCO oversight of the Designated Assessment Centers the industry has evolved into a wild west of questionable and often unqualified medical opinions. Injured auto accident victims who fail to submit to these insurer examinations, no matter what their assessor's reputation is, will find their policy benefits are suspended and they will be forced to pay a fine of $500.00 under the guise of fighting fraud. The government, the regulatory bodies that oversee these assessors and our courts have failed to improve the quality of the evidence used to decide benefits and it is a shameful way to treat the vulnerable, often cognitively impaired victims. In Alladina v. Calvo, 2014 ONSC 2550 *"The Plaintiff submitted that the court should exclude a health practitioner from conducting a defence medical assessment when it finds, on the balance of probabilities, that the proposed assessor is not competent, biased or that there is a reasonable apprehension of bias."* The claimant was ordered to attend for examination anyway for a report that most likely will be contested, again, using up resources unnecessarily to get a medical report prepared by a particular vendor-for-hire medical expert.

It is not the claimant that over assesses their injuries and are contributing to the higher costs; it is the insurers who commission these bogus reports and then denies benefits based on these reports that are contributing to the higher volume and costs of disputed claims.

Ontario's accident victims have become more stressed with reduced benefits that are harder to qualify for, harder to obtain and their recovery is impacted by the dysfunction in the system. We

note that in recent months almost 70% of arbitration hearings are from MVAs in 2009 and 2010. This means that claims are still taking 4 to 5 years to work through the system. Once turned down for benefits, victims are impoverished and their treatments and recovery are stalled. These individuals don't just disappear – when turned down by their insurance company; people end up on welfare, ODSP and CPP Disability. This has put extreme pressure on our social systems where many necessary treatments are not available and this simply protracts the recovery process, driving victims deeply into debt in order to afford treatment.

In November 2012, the Automobile Insurance Anti-Fraud Task Force issued its final report about costs of fraud and recommendations. Its recommendations involved multiple stakeholders such as the government, the Financial Services Commission of Ontario, insurers, health regulatory colleges, Law Society of Upper Canada, Workplace Safety and Insurance Board, Ontario Health Insurance Plan and Canada Revenue Agency. The 38 recommendations are classified under four headers:

- *Prevention;*
- *Detection;*
- *Investigation and Enforcement; and*
- *Regulatory Roles and Responsibilities.*

3. *Have the recommendations made by the Anti-Fraud Task Force in November 2012 and the actions that the Government and industry have taken since then affected you or your members? Would it be possible to provide a qualitative assessment?*

4. *Have you quantified the impact of these anti-fraud measures on your members? If so, would you be prepared to discuss your findings? Would it be possible to provide the results of such quantification?*

5. *Have you or your members implemented a program to combat auto insurance fraud? If so could you please provide a short description of the program?*

Response to 3, 4, 5

FAIR is opposed to auto insurance abuse and fraud, whether it is done by claimants, treatment providers, preferred insurer medico-legal assessors, lawyers, adjusters, surveillors or the insurance company they've paid to assist them. We acknowledge that there is fraud in every business but for legitimate accident victims, it is very often they who are the victims of the fraud. The concept of reducing benefits in order to make the system less enticing to fraudsters has caused harm to both the system and to the victims.

We are extremely concerned about the distortion of facts that has resulted from the Anti-Fraud Task Force report. The attempt by the IBC to substantiate the $1.2 (or 1.3) billion dollar loss to fraud that the industry had used as an excuse to overcharge on premiums for over 20 years is a failure to recognize that this is an industry that isn't minding their dollars and cents but rather spending like it's Christmas because they managed to pull off the tall tale of fraudsters lurking around every corner scamming billions from honest drivers. If the industry is to be believed that this loss of over $24 billion over two decades occurred then we must also see that Ontario's insurers were willing to lose an enormous amount of money and just simply bill the consumer for the loss rather than addressing the problem. Now the injured and disabled auto accident victims are expected to pay the price for this massive inefficiency and incompetence of the industry under the guise of making the system less lucrative to scammers by limiting benefits to all accident victims.

The KPMG report to the Anti-Fraud Task Force led to further IBC tales of a $1.6 billion dollar a year loss to fraud even as the report from KPMG on the FSCO website clearly states that losses were estimates of a $769 million to $1.56 billion loss. Perhaps to an industry with money to burn and claimants they don't intend to pay, a difference of $40 million dollars in an estimate has little meaning, but to those over 91,000 unpaid accident victims in the last 3 years, $40 million is a lot of treatment and benefits.

We would question the independence of this current Transparency report when KPMG has worked so closely with the IBC prior to being hired to do this report for the Ministry. It just doesn't pass the smell test when you've been hired to independently comment on issues to which you've previously contributed to in such a significant way.

The attempt to solidify the fraud dollar numbers led to an intensified war on claimants under the guise of a fight on Fraud creating a climate of distrust between claimants and their insurers. Once a legitimately injured MVA victim is criminalized by calling them a fraudster or malingerer and been mistreated through excessive and often abusive insurer IMEs it is unlikely that the victims will be forgiving especially as it is they who are financially punished for their insurer's denial through a dragged out and dishonest auto insurance scheme. Not only is coverage inadequate but consumer protection is non-existent. The concerns of FAIR members can be found at page 5 of our submission to the Anti-Fraud Task Force: http://www.fin.gov.on.ca/en/autoinsurance/submissions/Fraud_Task_Force_FAIR_final_submission_Aug_27_12.pdf

The Anti-Fraud Task Force Report failed to take seriously the abysmal state of Ontario's IME system and the fraud that is perpetuated against the accident victims when medical reports are inadequate or biased. According to our government, the only stakeholders in the system who are exempt from the need to be honest are the insurers themselves.

Because of the deliberate and successful attempts to keep Ontario's accident victims in the dark about the IME process and the biased reports in the system FAIR has established a website with pages specifically devoted to insurer tactics to disqualify claimants through the bogus IME system insurers have created as a way to deny and delay legitimate claims and payouts.

http://policyconsult.cpso.on.ca/?page_id=2420

http://www.fairassociation.ca/the-independent-medical-examination-imeie/

http://www.fairassociation.ca/ime-providers-adverse-comments/

In February 2014, Justice Douglas Cunningham released his final report and "recommendations regarding systemic causes of and solutions to the mediation backlog, potential changes to current structure, delivery model and process, the addition of a dispute prevention process for the system and other issues related to the viability of the DRS". The 28 recommendations are centered on seven principles with respect to dispute resolution system (i.e. timeliness, proportionality, accessibility, predictability, streamlining, costs and culture).

6. *How have you or your members been affected by the Ontario automobile Dispute Resolution System? Would it be possible to provide a qualitative assessment?*

7. *Have you analysed the impact of the Ontario automobile Dispute Resolution System on your members? If so, would you be prepared to discuss your findings? Would it be possible to provide the results of such quantification?*

8. *How will you or your members be affected by the recommendations in Justice Cunningham report? Would it be possible to provide a qualitative assessment?*

9. *As part of the 2013 Ontario Budget, Government initiated the Auto Insurance Cost and Rate Reduction Strategy. The key elements of the Strategy pertain to anti-fraud measures, an average automobile insurance rate reduction target of 15%, licensing of health care providers in the automobile insurance system, transformation of the automobile insurance Dispute Resolution System and creation of a transparency and accountability mechanism in the form of an independent annual report by outside experts on the impact of auto insurance reforms introduced to date on both costs and premiums". What steps have you or your members already taken to reduce costs that would affect the automobile insurance product?*

10. *What are you or your members planning to do by mid 2015 to reduce costs that would affect the automobile insurance product?*

11. *Could you identify any issues that would prevent you or your members from reducing costs that would affect the automobile insurance product?*

12. *Are there any further actions that the Government can implement to help you or your members to reduce costs that would affect the automobile insurance product?*

13. *Are there any further actions that the other stakeholders can implement to help you or your members to reduce costs that would affect the automobile insurance product?*

14.

Response to 6, 7, 8, 9, 10, 11, 12, 13

Accident victims have been at the mercy of a system without timelines, deadlines, oversight and without any meaningful regulation enforcement. Many of our members have had an active open file for a decade or more, some are approaching the 20 year mark. For an accident victim, the costs of managing their legal dispute with an insurer, over such a long period of time is itself a form of injustice. Most consumers are unaware that Arbitration may not be the end of the claim road and that the future may well hold additional medical examinations and hearings, all of which have a cost associated, whether it be financial or the emotional stress of the claim.

FAIR did articulate our member's concerns in a letter to the DRS panel following the final report: http://www.fairassociation.ca/wp-content/uploads/2014/01/FAIR-letter-to-the-DRS-Panel-January-15-2014.pdf

Regarding question #9, 10 – there is no content here to pay even a nod as to how these proposals in the Rate Reduction Strategy affects accident victims. The question ought to be reformed and redirected toward our government and our legislators. What will our government do to make sure that we are adequately covered in case of an accident? What will our government do to ensure that the costs of these auto accident related claims do not become a burden to the public and taxpayers who may not even be drivers? What steps should our government take to reduce the impact on those most seriously injured when rate reductions so quickly become aggressive claims handling tactics in order to make the 15% rate reduction viable? What is the government doing to encourage insurers to streamline their businesses, better train their adjusters in claims handling practices, and most importantly, to control their own costs?

KPMG is asking what accident victims can do to reduce costs? How much more are the disabled supposed to contribute to Ontario's insurers' coffers? Why aren't insurers reducing the frequency of assessments, and why does the cost of assessments continue to outstrip the cost of treatments and rehabilitation? Why is there no oversight for these medical examinations so that the information that insurers and claimants alike rely on is reliable and relevant instead of just a cash cow for pro-insurer doctors and assessors?

Miscellanea:

14. What uncertainties in the Ontario automobile insurance system are affecting you or your members?

15. What issues do you or your members see as contributing to the uncertainty in the Ontario automobile insurance system?

16. Have you analysed the impact of the uncertainties in the Ontario automobile insurance system on your members? If so, would you be prepared to discuss your findings? Would it be possible to provide the results of such quantification?

17. Do you have any insight as to how these issues may be mitigated? Could you identify any action steps that could be taken to alleviate the uncertainty in the Ontario automobile insurance system?

18. Do you believe that the auto insurance marketplace in Ontario is sufficiently competitive and efficient in providing affordable premiums to consumers?

19. Have you or your members been affected by the following recent appeal decisions:

- *a. Scarlett v. Belair?*
- *b. Pastore v. Aviva?*
- *c. Henry v. Gore Mutual?*

If so, would you be able to provide a quantitative or qualitative assessment of how you or your members have been affected?

20. Do you have any other comments?

21. Does your organization wish to remain anonymous in the 2014 Report as described in our cover letter?

Response to Questions 14, 15, 16, 17, 18, 19, 20, 21

Ontario's auto insurance is an increasingly unstable and unpredictable product that has become unmanageable or dysfunctional over the last two decades. With every change to coverage, every threshold put in place, more uncertainty and more cases in dispute. Accident victims have taken no role in initiating or implementing these changes that cause confusion and delays, insurers have.

Ontario's insurance scheme has become a wild west of sorts, a system where anything goes when it comes to the mistreatment of accident victims because insurers feel free to abuse their own customers with impunity. Ontario's assessors don't fear the wrath of their own college oversight knowing that any complaints will be quashed or kept secret and out of the public's eye. And even the Financial Services DRS Unit allowed the backlog in mediation to get out of hand with a massive number of claims backed up and didn't feel obligated to inform the public

that Ontario's auto insurance had failed to serve over 35,000 people (over half of the MVA victims that year) in just one year alone. This is not an industry that is accountable.

It isn't enough to tighten the guidelines when it comes to the hearings about claims denied, the fix at the end of the road after a series of injustices is itself another wrong, another abuse. By the time people get to hearings they have already lost the window of opportunity for timely treatment, they have lost much, much more – their ability to support themselves, their dignity, their relationships and personal lives are forever changed.

Our members feel that they have been sacrificed on the insurance industry's altar of profits and sadly it seems the government and our legislators are holding the blade.

The public knows nothing concrete about how these estimates of costs are created and what they include. Does the cost of expensive legal representation to deny, delay and defend against legitimate claimants work its way into those claims costs? What are those legal costs now with tens of thousands still waiting for hearings at FSCO? Is that what is the driving force behind the proposed reduction of interest insurers will have to pay to claimants whose claims were wrongfully denied for years while they waited for a hearing?

Consumers need coverage that comes in a form that they can read and understand, not 18 kinds of forms to fill out that necessitates the hiring of a legal representative. They need clear and concise definitions of what is and isn't covered by insurance. They need their government to stop entertaining and enacting every wish list that the Insurance Bureau of Canada and their members dream up as a way of slashing coverage. The constant tweaking of coverage and initiating changes solely to limit access for claimants has created a level of poverty for claimants who are caught in the cross-fire of insurers pushing the limits to force the government to make the changes they desire.

The three sample appeal decisions highlight just how difficult it is for a person to get the coverage they paid for and in the case of Scarlett v. Belair we can only guess at what it has cost that MVA victim financially to get the coverage he paid for in the first place. Essentially accident victims are being made to pay for the defining of the legislation when the system isn't clear about what is and isn't included in the MIG. How unfair is that to the innocent and now likely very poor victim? It doesn't inspire a sense of confidence when insurers can limit payouts with legislation prepared specifically to undo court decisions as was done with Ontario Regulation 347/13.

We cannot fathom why our own government has such disrespect and displays such a lack of concern for the injured and disabled in Ontario.

We cannot imagine why a catastrophically injured person has their disability calculated in minutes of care, and converted to a dollar benefit based on pre-determined, government set hourly rates which don't reflect the real costs of these services in the real world. We cannot understand why our government is allowing the insurer's interests to trump those of the taxpaying public who eventually has to pick up the costs.

It is up to our legislators to take the time and make the effort to be sure that what they are being sold by the insurance industry as a great idea to control fraud isn't really just a way of reducing costs for the insurers. Slashing coverage began before the proposed 15% reduction was proposed and insurers and the IBC have co-opted what is clearly seen as overcharging Ontario's drivers and using the reduction as an excuse to hack away at coverage.

In the final analysis Ontario has cut benefits so severely that accident victims are living well below the poverty line with inadequate income replacement at $400/wk and this undoubtedly affects their ability to recover when they are in a lose, lose situation. Victims are often left to find their own road to recovery and even that is made more difficult by biased medical opinions in their files. Ontario's and even the federal programs are the dumping ground for the thousands left without options when their insurer denies their coverage. It's a significant download and we think that something ought to be done about it before the public systems crash with victims left behind by the insurer they paid to assist them.

We have no issues with regulations that discourage fraud such as those in place for treatment providers. There is a problem with making the system more expensive to operate within when FSCO charges fees to register these treatment providers as often those who are in either rural areas or who are highly specialized and only occasionally treat victims may choose not to pay these user fees and it will affect victim care and treatment.

The regulations governing the actions of insurers are non-existent. Insurers are not held accountable in the present system. That needs to change if there is to be confidence in our auto insurance scheme.

IME providers, and the treatment providers must have better oversight than at present, either pressure needs to be put on the existing regulatory Colleges to do their job or the government should scrap self-regulation and take over themselves in order to ensure that the public's interest and safety is a number one priority.

Excessive and expensive medical examinations need to stop, claimants do not need to be tested repeatedly for injuries supported by their personal physicians and treatment providers – it causes harm. These examinations need to be highly qualified and reliable since the system relies on this opinion evidence to decide benefits. High standards need to be put in place and monitored. There should be a meaningful, open and transparent complaints system available to victims to ensure this – see above comment.

Ontario's no-fault auto insurance program has wandered far away from its original purpose and had so many thresholds, bits and pieces added and benefits stripped away that it barely resembles what we signed up for, reasonable coverage at a reasonable cost. Ontario ought to be looking at alternatives that would serve the public better; it is after all a system with a purpose, to serve Ontario's accident victims.

We have no issue with this response being public.

Rhona DesRoches
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FAIR Association of Victims for Accident Insurance Reform