

**To: Ministry of Finance**

**Proposed Amendment to O. Reg. 34/10**

**Reducing the Prejudgment Interest Rate to 1.3%**

**14-MOF009**

**Submitted by:**

**FAIR**

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FAIR Association of Victims for Accident Insurance Reform is a not-for-profit consumer organization whose membership is comprised of motor vehicle accident victims and their supporters.

We are very concerned about the proposal to reduce the prejudgment interest rate payable by Ontario's insurers to MVA victims both in the context of Tort claims for those most seriously injured and in respect to the overdue payments on Statutory Accident Benefits (SABs).

We would like to request a meeting with the Minister of Finance to discuss our concerns in person on an issue that affects all Ontarians including Ontario's 9 million drivers.

It is very troubling to see that a punitive measure that exists in the system, other than 'special awards' which are rarely employed, will be so drastically reduced. The reduction of interest on unpaid claims to 1.3%/yr will render the interest ineffective at holding to account those insurers who wrongfully deny claims or who are incompetent at adjusting claims.

Accident victims do not have access to such low interest rates when they borrow the funds to finance their own treatments and rehabilitation and sadly, self-funded claimants are more and more common. Many are on social assistance having gone through all of their savings and are unable to afford any treatment at all, and many are facing a huge struggle to recover.

Claimants would not need to finance their own recoveries if Ontario's insurers were held accountable for their frequently shoddy or often deceptive claims handling practices. There is already little accountability for insurers who behave badly since the interest rate was reduced from 2%/per month to 1% per month on overdue SABs payments in 2010. These are benefits like income replacement, rehab and attendant care.

How much insurer profit is enough and when do accident victims stop paying for insurer misconduct or incompetence?

We have no idea how much money insurers are paying out as prejudgment interest on overdue payments to claimants because the system lacks transparency and the data isn't available to the public.

It is obvious that the amount of prejudgment interest paid out by Ontario's insurers must be significant otherwise they would not be petitioning assistance from the government to reduce the cost. Costs they've created.

Since this is an expenditure that can only be high when insurer wrongful denials (knowingly or not) are equally significant, shouldn't there be some questions asked? Or shouldn't we be looking at correcting what looks like a widespread problem - insurers whose incompetence is so great that they cannot bear the costs or whose claims adjusting practices are so inadequate, that again, they cannot bear the cost.

Ontario's insurers are saying that they have done a bad job handling claims and they would prefer that the victims, whom they've wrongfully withheld payments from, should bear the cost of their ineptitude. It's outrageous.

Prejudgment interest is meant to be both punitive and a deterrent for poor claims handling practices. It is already insignificant when compared to the costs that claimants incur when having to hire legal representation in order to get what they paid for and are entitled to.

The claimant/insurer relationship has always been a David and Goliath scenario and now Goliath asks to be given yet another financial gift, reduced punitive measures for bad behaviour.

Consumers rightly expect insurers to be accountable and to stand behind their contracts of coverage when they need it. When that doesn't happen, MVA victims incur very high legal costs that are not fully recoverable under Ontario's system. At what point do we say it is enough, insurers must treat their customers fairly and insurers must be responsible to clean up their own mess?

Although there is some fraud everywhere and in all businesses including insurance, the high cost of insurance isn't at the feet of victims who are the ones paying for it, the problem belongs to insurers with over assessing victims and overpaying their experts and lawyers to deny legitimate claims. In Ontario the system itself has encouraged the fraudulent behaviour of

those who are supposed to serve the interest of accident victims. And it starts with the insurer.

Some insurers are likely already making substantial income off the funds they withhold from legitimate claimants. They are using bogus medical opinion evidence to deflate injuries and delay and deny claims. It is a systemic abuse of vulnerable people who are left to fend for themselves while their insurer makes out like a bandit by investing their benefits money. Years later when finally ordered by a court to pay up, the insurer will have profited from bullying and abusing their customers and the proposal now is to further reward that behaviour by removing the disincentive.

Our courts are already full of people waiting for hearings, tens of thousands of individuals whose lives have been trashed by the underhanded tactics of the insurance company they paid to assist them in a time of need. Our public systems are already underfunded and overpopulated with unpaid victims while insurance companies gain good PR by making 'gifts' to the food banks that they've made a necessity.

Claim denials will increase and more victims will suffer through partisan insurer medical examinations (IMEs) that are used to facilitate the insurer denial position, all so insurers can invest claimant's money for a high rate of return. Insurers will be incentivised by a reduced prejudgment interest rate on SABs going from 1% per month (12% per year) to 1.3% per year.

It will be Christmas every day for insurers who already enjoy big returns on their investments and it will be a world of pain for MVA victims who are less likely to recover with less resources. Shady IME providers will flourish, our courts will continue to be overflowing and it will be the taxpayer who will bear the cost of the gift to Ontario's insurers.

We ask you to not follow through on this amendment, one that will inevitably harm innocent accident victims, first by encouraging the wrongful denial of their claims and then financially so they won't be able to afford the legal representation to hold their insurer accountable.

Sincerely,  
Rhona DesRoches  
FAIR, Board Chair

