

From: **FAIR (fair association of victims for accident insurance reform)** <fairautoinsurance@gmail.com>

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Subject: Regarding your Cost of Justice Project

Hi

My name is Rhona DesRoches and I am the Board Chair of FAIR Association of Victims for Accident Insurance Reform - a not-for-profit that advocates for fair treatment of Ontario's accident victims.

I was just reading an article in Legal Feeds by Yamri Taddese regarding your study of the ill effects of the lack of access to justice on Canadian's health. I've taken a look at your website and from what I understand the study surveyed 3000 individuals across Canada.

I'm wondering if your ongoing study will include car accident cases in the civil courts? According to recently released statistics from StatsCan there are currently 61,063 auto insurance related cases that are in Ontario's civil courts. According to the latest data there are an additional 34,075 mediation or arbitration cases pending at the Financial Services Commission of Ontario Dispute Resolution System (DRS) unit. That's a total of 95,138 unresolved MVA claims that are in Ontario's courts alone and these are all people with physical injuries, often cognitively impaired and facing serious challenges in overcoming traumatic injury. An indication of the dysfunctional legal climate in Ontario is that the volume of auto insurance cases before the civil courts in Ontario is up 42% since 2009/2010 according to the StatsCan website, an increase in cases that is far greater than the other provinces who were part of the survey.

Victims must deal with their insurance company and comply with Ontario's legislation that requires attendance at third party for-hire medical expert assessments arranged by their insurer where a victim's injuries are more than likely minimized or deflated in order to control insurer pay-outs. This leads victims back to their own treating physicians who continue to try and help their patients - just because your insurer's bought and paid for opinion vendors say there is nothing wrong or have minimized an injury doesn't mean you are magically made better. In fact, the opposite is more likely to be true. Hobbling treating practitioners and favoring insurer driven medical opinions in our courts works against the health of MVA victims and significantly impacts health care costs through repeat doctor visits along the way to undoing the damage done by insurer medical 'experts'.

According to the Ontario auditor General's report in 2011, about half of all auto accident claims in Ontario are turned down by Ontario's insurers. On average that would be around 30,000 injured people each year who are injured and whose health is made worse by the lack of timely access to treatment and by the often vindictive treatment at the hands of their insurer. So victims, without basic funding (income replacement) often face bankruptcy and often have no access to needed rehabilitation. They are unable to reach their maximum recovery and they know it; they know it while its happening to them, and that they are losing the window of opportunity so they are definitely at a higher risk of developing psychological issues. Many victims suffer from PTSD and it isn't always from the accident trauma itself but is caused by the protracted claims experience while they wait for justice in our courts.

Ontario's insurance companies have a delay and deny business model that causes serious harm to those who find they must use the insurance product. I have yet, in my capacity of assisting these individuals, to meet a MVA victim, including myself, that wasn't harmed psychologically at the hands of the insurer that denied their legitimate claim.

Your study is based on the economic costs of one extra visit per year to deal with stresses related to having a court case. From my experience in dealing with MVA victims I can tell you that there would be multiple of visits per year to treating physicians while going through Ontario's No-Fault Auto Insurance system. Victims are required by law to attend at insurer medical examinations (IME) many times during a claim and there is a proliferation of biased medical experts in the system whose partisan reports have been prepared for use in our courts. An accident victim will often wait 5 to 8 years to finally get to a hearing and the longer it takes to get there the more money is made by those who serve them, Ontario's insurers, defense and plaintiff lawyers, and medical assessors. Some victims are sent to up to 47 IMEs during the course of a denied and delayed claim and there would be an equal or greater number of medical visits through our public systems. OHIP, welfare and Ontario Disability Support Program (ODSP), all pick up the tab when insurers fail to pay.

The dysfunctional auto insurance scheme in Ontario is based on, and indeed dependent on, these bogus and substandard medical opinions to delay and deny claims and the subsequent backlog of cases in our courts is the result. Ontario's third party medical assessors oversight consists of self-regulatory colleges who protect their member interests over the public's interest and so that secrecy and protection is a fundamental problem. The lack of fiduciary duty to MVA claimants, who are considered clients and not patients, and to whom the physician owes no duty of care further marginalizes the accident victim. The lack of transparency and regulatory oversight from Ontario's colleges is at the core of the court dysfunction (and that is a necessity to Ontario's insurers) has contributed to the lack of public trust in this abysmal and virtually non-existent oversight is chronicled in CPSO's ongoing consultation on transparency.

So when looking to examine the user-centered perspective to understand the connections between the law and legal problems there would likely not be a better sample to look at than Ontario's auto accident claimants who are stuck in a system that criminalizes and punishes them at every turn while denying timely access to justice. All while Ontario's elite and privately paid physician assessors put up obstacles in the way of their achieving wellness and whose boldly biased and often unqualified opinions are given a free pass by their colleges which allows them to continue to sabotage both victims and our courts with impunity in a system that causes medical harm.

Ontario's answer to the court backlog is to pass Bill 15 and a Licensed Appeal Tribunal (LAT) system of hearings without correcting the underlying dishonesty in the system. The future looks bleak for victims who will be simply shoved through the dishonest system faster.

I look forward to further updates on your study and hope that you will include MVA victim circumstances and outcomes in your upcoming material. If I can be of assistance in respect to your study, please let me know. I've included links below that substantiate the facts and figures of what I've

said above and much of the information can also be accessed on the FAIR website at <http://www.fairassociation.ca/> I've also included the link to Ontario's Insurance Act, a document that virtually guarantees that one must hire legal representation to get through the system.

Best regards
Rhona DesRoches
FAIR, Board Chair

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2014 - 61,063 active court cases/Ontario/auto accident <http://www5.statcan.gc.ca/cansim/a47>

2013 - DRS Interim Report 23,323/mediation and 10,752/arbitration

http://www.fin.gov.on.ca/en/consultations/auto/request-for-submission-interim-report.html#_Toc371082800

Ontario Auditor General 2011 report on Auto Insurance http://www.auditor.on.ca/en/reports_en/en11/301en11.pdf

Current College of Physicians and Surgeons of Ontario CPSO consultations in respect to transparency at:

http://policyconsult.cpsso.on.ca/?page_id=5062 <http://www.cpsso.on.ca/Policies-and-Publications/Consultations> and http://policyconsult.cpsso.on.ca/?page_id=4981

HCDB 2014 Report with stats on MVA victims <http://www.fairassociation.ca/wp-content/uploads/2015/02/HCDB-standard-report-2014h1-final.pdf>

Resolving auto insurance benefit disputes stacked against public

<http://www.torontosun.com/2015/01/24/resolving-auto-insurance-benefit-disputes-stacked-against-public>

<http://www.fairassociation.ca/wp-content/uploads/2014/11/Before-you-pass-Bill-15.pdf>

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

<http://www.fairassociation.ca/wp-content/uploads/2014/12/more....pdf>

<http://www.fairassociation.ca/choosing-a-lawyer/>

<http://www.fairassociation.ca/wp-content/uploads/2015/02/Whats-in-YOUR-legal-bill2.pdf>

Insurance Act ONTARIO REGULATION 34/10 STATUTORY ACCIDENT BENEFITS SCHEDULE — EFFECTIVE SEPTEMBER 1, 2010 Consolidation Period: From January 1, 2015 to the e-Laws currency date. O. Reg. 236/14. http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_100034_e.htm#BK61

Legal pains: The cost of justice includes physical health <http://www.canadianlawyermag.com/legalfeeds/>
