

'FAIR – supporting auto accident victims through advocacy and education'

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Mr. Brian Mills, Superintendent of Financial Services
Financial Services Commission of Ontario
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Sent by email

Cc – Heather Driver, FSCO Policy Unit
Krista Zingel, Compliance Officer, Licensing and Market Conduct Division

Dear Mr. Mills

My name is Rhona DesRoches and I am the Board Chair of FAIR Association of Victims for Accident Insurance Reform. We are a not-for-profit whose members are predominately MVA victims and their supporters.

In the past two weeks FAIR has been confronted with some fairly basic questions from accident victims who are unable to locate the answers on the FSCO website, the IBC website or anywhere on the internet.

I sent one question into the contact center and it was 12 days before I received a response.

There are a number of FAIR members with older claims and who are still collecting SABs and of course the Insurance Act has changed so many times that is very difficult to be certain about what does and doesn't apply. The indexation statement that is on the FSCO website and that is sent to claimants at the beginning of each year is very misleading despite the asterisks beside the indexed amounts **(1)**. We were unable to locate the relevant information on the FSCO website. Why are insurers not made to give an accurate statement of med/rehab benefits available to their customers during the course of a claim? There is a big gap between \$1 million med/rehab dollars available and \$1,483,379.20 worth of coverage and it shouldn't be a guessing game whether you have indexed coverage or not.

During that 12 day period of waiting for an answer FAIR was confronted with yet another question that dovetailed to our first question and to which, again, there didn't seem to be an answer. That second question was regarding FSCO oversight in respect to insurers sending out bi-monthly statements to claimants **(2)** to keep them apprised of what rehab and attendant care dollars insurers had spent on their behalf. Most of the victims we asked were not receiving this statement. This was an Anti-Fraud Task Force recommendation that was to be implemented some time ago and was to enable victims to have the knowledge about the limits on their policies as well as allowing them to track their remaining

coverage based on providing claimants with information regarding their benefit limits. In other words, if insurers were sending out the bi-monthly statements then victims would know exactly how many dollars of coverage they had because that limit level is part of the Standard Benefit Statement and that first question wouldn't have been necessary.

When I inquired about the regulatory role of FSCO in ensuring that the bi-monthly statements are going out I was told that if "a claimant has not received a statement, this would be non-compliant with the Insurance Act, and could be reported in the form of a complaint to FSCO."

I shouldn't need to point out that it isn't the mva victims responsibility to monitor Ontario's insurers, or that victims who are unaware that they should be receiving these statements in first place are very unlikely to complain because they are in the dark. This is a compliance issue when it comes to very basic claimant information and likely a very effective tool in fighting the types of fraud that re-victimizes claimants during the course of a claim. We would think that FSCO would take compliance on this issue of fighting fraud through insurer disclosure to their customers very seriously and not be relying on victims to inform them.

The lack of information available to claimants is indeed pushing up the cost of insurance in Ontario when even the most simple of questions doesn't have a direct and straightforward answer. Keep in mind that MVA victims are not at their optimum operating capacity post accident and spending hours to search for an answer isn't possible for many individuals.

So when confronted with what appeared to be yet another fairly simple question regarding "how much medical information do I have to disclose to my insurer" came up – it didn't sound as if it would be too difficult to direct that person to the information from either the Insurance Act or on the FSCO website.

Unbelievably, we were unable to find a definitive answer to how much medical information insurers are entitled to request when a person makes a claim. In fact we found that the past 3 years of practice notes **(3)** relating to medical document disclosure say that particular section is "currently under advisement". The most recent information we could find was from 2012, 3 years ago. How long will 'advisement' take and what are claimants supposed to respond to insurers when demands are made for their personal medical information? How much medical information insurers are entitled to is not on the disclosure forms **(4)** themselves, nor is it anywhere on the FSCO website that we could find aside from instructions **(5)** in relation to claims at mediation and arbitration.

FAIR does not give legal advice but we would think that such fundamental a question would be anticipated by FSCO and that this information should be readily available so that individuals who may not need a lawyer don't have to get one just to get the basic information they need to progress through the claims process. Insurer request for medical information is a standard procedure during the course of adjusting a claim and what is required and allowed should be clearly and concisely stated. So, for the past 3 years, approximately 160 -180,000 mva claimants, a population the size of a city in Ontario, have not have access to some pretty basic information such as how much and what medical information their insurer is entitled to.

When the industry talks about inflating claims and costs to claimants it is worth some attention to what is undeniable in just these past few weeks, that the system itself, the convoluted and unreadable 65 page long Insurance Act **(6)** and the lack of essential information to claimants is adding to the costs of

insurance in Ontario if one must consult a lawyer no matter how simple or small a claim may be. It follows that this starts the adjusting of a claim on an adversarial note.

It is an acceptable low level of information available, on the FSCO website or supplied to claimants by the insurer they paid to assist them, that is contributing to the volume of claims in the system and which eventually plays out in our courts.

As the Superintendent at FSCO it must surely fall under your mandate to ensure that the public service of Ontario is effective in serving the public in a non-partisan, professional, ethical and competent manner? **(7)**

Claimants in Ontario are often dealt with in a dishonest and unethical manner **(8)** and are routinely defrauded out of the benefits they paid for. Coverage levels are under constant attack by Ontario's insurers and consumer/victim concerns have fallen on deaf ears **(9)** but surely the intent of FSCO is not to cause harm by failing to provide the necessary basic information to vulnerable mva victims.

FAIR has consistently brought up the issue of how little information consumers have about auto insurance and how the complex system should require that FSCO provide a help-desk for self represented claimants. I look forward to hearing back from your office about what FSCO will do to correct this harmful lack of information.

Regards

Rhona DesRoches

FAIR, Board Chair

FAIR Association of Victims for Accident Insurance Reform <http://www.fairassociation.ca/>

(1) 2015 Indexation Percentages under the Statutory Accident Benefits

Schedules <https://www.fSCO.gov.on.ca/en/auto/autobulletins/2014/Documents/A-16-14-3.pdf>

(2) Standard Benefit Statement

<http://www.fSCO.gov.on.ca/en/auto/autobulletins/2013/Documents/A-09-13-1.pdf>

(3) 2013, 2014, Practice Note 1: Using Medical Evidence to Support Your Claim for Accident Benefits

Note: This Practice Note is currently being revised. <http://www.fSCO.gov.on.ca/en/drs/DRP-Code/Documents/DRPC-Fourth-Edition-Collected-JAN-2014.pdf>

(4) <http://www.fSCO.gov.on.ca/en/auto/forms/Documents/SABS-Claims-Forms/1225E.pdf> the form does not state how far back the medical documents are supposed to go.

(5) <http://www.fSCO.gov.on.ca/en/drs/DRP-Code/Pages/practicenote-4.aspx> **Practice Note 4: Exchange of Documents – disclosure as it relates to cases in dispute – 1 year – there is no date on this page**

(6) Insurance Act http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_100034_e.htm

(7) Financial Services Commission of Ontario Act, 1997 http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_97f28_e.htm#BK7

5. (1) There shall be a Superintendent of Financial Services appointed under Part III of the *Public Service of Ontario Act, 2006* who shall be the chief executive officer of the Commission. 1997, c. 28, s. 5 (1); 2006, c. 35, Sched. C, s. 43 (1).

Powers and duties

(2) The Superintendent shall,

- (a) be responsible for the financial and administrative affairs of the Commission;
- (b) exercise the powers and duties conferred on or assigned to the Superintendent;
- (c) administer and enforce this Act and every other Act that confers powers on or assigns duties to the Superintendent; and
- (d) supervise generally the regulated sectors. 1997, c. 28, s. 5 (2).

Public Service of Ontario Act, 2006 http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_06p35_e.htm#BK2

Purposes of this Act

1. The following are the purposes of this Act:

- 1. To ensure that the public service of Ontario is effective in serving the public, the government and the Legislature.
- 2. To ensure that the public service of Ontario is non-partisan, professional, ethical and competent.

(8) What's in Your Medical File??? <http://www.fairassociation.ca/wp-content/uploads/2014/12/more....pdf>

(9) FAIR –who we are <http://www.fairassociation.ca/who-we-are-activities-and-actions/>