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

FAIR Association of Victims for Accident Insurance Reform 579A Lakeshore Rd. East, PO Box 39522 Mississauga, ON, L5G 4S6 <u>http://www.fairassociation.ca/</u>

June 29, 2015

To: Minister of Finance, Financial Institutions Policy Branch, Insurance Policy Unit Proposal # 15-MOF011

#### FAIR Submission regarding Proposed Amendments to Insurance Act Regulation 34/10

FAIR Association of Victims for Accident Insurance Reform is a not-for-profit organization of MVA victims and their supporters who are concerned about and have struggled with the current auto insurance system in Ontario. FAIR works toward changes to auto insurance legislation that will improve the way all MVA victims are treated and cared for under provincial insurance legislation.

Ontario's auto insurance coverage has now reached a new low with the latest proposed cuts to coverage. Although the statement put out by the Ministry talks about reducing costs in Ontario's auto insurance system through "more choice in purchasing auto insurance coverages to suit their needs" it really is much more accurate to portray these latest cuts to coverage as 'enhancing and contributing to insurers profits by way of ignoring the needs of injured and vulnerable Ontarians'.

It's very clear to the public that Ontario's wealthy insurers have a special place with the current government, one that speaks to the concept that our own government need not inform the public about the product that we are forced to purchase. What other business in Ontario has this special status? We can think of no other that is allowed to collect funds for a product or write a contract with consumers, then reduce or diminish the value of that product at any time during the course of that contract, and not have to offer a refund or even inform their customer.

We need a better system of informing the public of what they are and are not entitled to. The general public also has little knowledge of what rehabilitation and recovery costs are and this too is indicative of a lack of information.

Why is the Ministry, as the regulator, not ensuring that consumers have adequate information about what they are purchasing and what little coverage Ontario insurance now offers us? Is it fear of a healthy discussion about whether this insurance product serves its purpose? What about if the public finds out how limited the coverage is and that more likely than not they will end up on public supports such as ODSP or welfare or CPP Disability? Consumers should know that much and that the reality is that about half of all MVA claims end up in our courts to get what they paid for. Ontario now has an illusion of coverage and getting injured is likely a life sentence of poverty with the path to recovery blocked by insurers whose only concerns is profit, profit and more profit.

Why is it that our government is so concerned with insurance industry profit and not the wellbeing of Ontario citizens?

We ask that the government put a moratorium on initiating these new cuts to coverage. Surely the interests of Ontario's vulnerable accident victims and the serious cuts the government is considering is deserving of some interest and focused attention by this government? Taking into account that a recent report points to Ontario's insurers making many more billions of dollars in profit than they've reported to either the government or the public, is it not time to ask why victims must do with less and less coverage and why the tax payer is picking up the tab? Insurers in Ontario are not suffering financially, victims are, their families are, their caregivers are, their children are, their communities are, and the public support systems are.

Since No-Fault Insurance was adopted in Ontario, there have been many changes to the original Insurance Act and in just the last 5 years, since the 2010 reforms, there have been over two dozen changes to legislation. All of these changes have been requested by insurers, not victims, and each of these cuts and bits and pieces that favour insurers have harmed victims, made their recovery much more difficult and costs have increasingly been passed on to the unsuspecting tax-payer. New thresholds and categories have created more work for the legal community and have clogged up our courts while victims often wait a decade to get what they paid for. Some victims never get the treatment they need because some specialized treatments just aren't part of the public medical system and some recovery windows are time sensitive and are lost while insurers delay claims.

Ontario's insurers have simply found it more and more profitable to fight claims and download the expense of victims onto the public supports because the government has done nothing to stop it. This can only get worse with less and less coverage for the expenses of an injury coming from the insurers and with shorter windows to collect on those benefits that are the key to recovery and function for victims.

The proposed changes will only increase the number of claims ending up in our courts because insurers will have a newly crafted excuse to challenge a claim. We know this because insurer denials increase each and every time the legislation changes so there will be more and more cases in dispute.

There should be a fair and informed consultation about these proposed changes and how that will affect victim outcomes and what this will cost our already underfunded public systems.

Consideration should be given to our courts being abused in this way by insurers who are delaying payouts when there are already over 61,000 insurance related cases on the docket in Ontario courts. An additional tens of thousands more victims are waiting at FSCO DRS to have their cases heard. Dodging claims through the abuse of our courts has costs to our medical system as well; it shouldn't be ignored that Ontario's auto insurance scheme dysfunction is harming the health of accident victims. Instead of recovery, victims find themselves in a battle with the business they paid to help them. Legislation shouldn't make it easier for big business to abuse their customers; it should protect the interests of everyday Ontarians. Insurers shouldn't be rewarded for the delay and deny of legitimate claims with a lower interest penalty payable to victims, they should be held accountable.

FAIR comments on:

The 2015 Ontario Budget committed to further reduce costs in Ontario's auto insurance system, bring these costs more in line with other provinces, and provide Ontario consumers with more choice in purchasing auto insurance coverages to suit their needs. Amendments to Insurance Act Regulation 34/10 (Statutory Accident Benefits Schedule - Effective September 1, 2010) will be proposed to:

• Change the standard benefit level for medical and rehabilitation benefits to \$65,000 (from \$50,000) and include attendant care services under this benefit limit. An option will be provided for consumers to increase this coverage to up to \$1 million;

Ontario's insurers know full well that consumers are not 'buying up' on these benefits. Only a small fraction of individuals buy the extra coverage and that is likely the result of the deceptive advertising put out by the IBC that has misled consumers into believing that we have the 'richest benefits' in Canada. What we actually have is the poorest coverage in Canada and a slim chance on collecting what we paid for without a fight. Ontario has an auto insurance claims turn-down rate that Ontario's Auditor General has been pointing out as concerning to the FSCO for many years that needs addressing. FAIR has spoken out extensively on the quality of the medical examinations in the system that are at the core of the backlog of unpaid claims in our courts.

# • Reduce the standard duration of medical and rehabilitation benefits from 10 years to five years for all claimants except children and those with catastrophic impairments;

There are two problems with this limitation on ability to collect. First, many victims wait more than 10 years to get to court to hold their insurer accountable. Since some of Ontario's insurers require that these costs must be 'incurred' before an insurer will pay, it is very unlikely that victims have tens, or even hundreds of thousands of dollars tucked away in case they are injured in an MVA. In fact, most consumers believe the IBC rhetoric that we have the richest benefits and have no idea that they have such little coverage. Nor is the average consumer aware that it is so difficult to access funding for recovery or that their insurer will often stand in the way of their recovery in order to save money by challenging their claim. Second, this disregards the fact that serious injuries require more attention and rehabilitation for function and daily living activities as claimants get older and require more care.

• Include attendant care services with the \$1 million medical and rehabilitation benefit for catastrophic impairments, and provide the option for additional coverage of \$1 million, for \$2 million in total coverage;

There is no issue with combining these two levels of coverage so that there can be more options for victims in how to best utilize these funds toward recovery. Cutting the benefit in half isn't acceptable no matter how convoluted the language. Half is half. The government knows people aren't buying up while they already have such (fake) rich benefits. Instead, why is the government not pushing for an 'opt out' for a discount on coverage instead. This would serve those who already have extra health benefits through their work. This slash to coverage is put in such a misleading way in this document that it is shameful. The play on words to make it sound as if the 'option' is a gift instead of sleight of hand to remove half of the coverage for the most injured among us is very deceptive.

## • Eliminate the six month waiting period for non-earner benefits and limit the duration of non-earner benefits to two years after the accident;

This is a serious loss of coverage for victims as it was already a small and inadequate amount of income for victims to recover with. With only two years to collect on this benefit there will be an increased reliance on our public systems going forward.

## • Require goods and services not explicitly listed in the Statutory Accident Benefits Schedule to be "essential" and agreed upon by the insurer; and

While seeming a small tweak to a single word, this will create more disputed cases in the system. Insurers will likely find a wide range of reasons to deny claims between the present 'reasonable and necessary' qualification and what will now be 'essential'.

• Update the definition of catastrophic impairment (CAT) to reflect the most up to date medical information and knowledge. Amendments will be proposed based on the Superintendent's Report on the Definition of Catastrophic Impairment in the Statutory Accident Benefits Schedule, subject to modifications. Proposed updates include:

Paraplegia or quadriplegia: Revise the definition with updated detailed criteria and new diagnostic tools;
Total and permanent loss of use of an arm or leg: Revise the definition with detailed criteria and new diagnostic tools dealing with impairment of ambulatory mobility;

- Total blindness: Update the definition by adding reference to 20/200 visual acuity threshold (legal blindness);

- Traumatic brain injury: For adults, eliminate Glasgow Coma Scale (GCS) and adopt the Extended Glasgow Outcome Scale (GOS-E) as the clinical assessment tool; for children under age 18 adopt use of King's Outcome Scale for Childhood Head Injury (KOSHI) as the clinical assessment tool;

- Allow for automatic CAT designation of children in certain cases;

- For mental and behavioural impairments, revise the definition to include updated detailed criteria and new diagnostic tools; and

- Combination of impairments: For other physical impairments not listed retain current definition and adopt new diagnostic tool (6th Edition of AMA Guides to the Evaluation of Permanent Impairment) for quantifying mental and behavioural impairments for the purposes of combining.

There has not been enough consultation on these proposed changes to CAT and what has been presented so far has been found to be largely unacceptable by stakeholders at the 2013 Cat Round Table. The report from the CAT Panel should have been rejected for many reasons including that the Expert report was written by an unacceptably small group of individuals, only one of whom was qualified to assess catastrophically injured MVA victims. FAIR did participate in the CAT consultation process. There are not enough details released on these proposed changes to be able to make a truly informed comment. These are serious and deep cuts that will have life-changing repercussions for vulnerable and very seriously injured MVA victims. Legislation should be clear and not described as "subject to modification" or without details – how can we possibly respond to that?

Ontario's auto accident victims deserve better. They deserve quality medical examinations performed by qualified medical professionals whose expert opinions should be without bias and in the best interests of victim recovery and not insurer profit. Honest adjustment of their claims through addressing their injuries with an eye to recovery should be a given, not some sort of lucky roll of the dice where every medical examination is an insurers opportunity to slant the playing field in their favour. It is a disservice to those injured who have the right to fair and honest medical opinions regarding their injuries. Why can't the government make that happen?

We ask that our government push the pause button on the proposed changes and review the information that has recently been put in front of them in regards to insurer profits. There needs to be better information about victim recovery post the 2010 reductions and whether Ontario's insurers deserved to get those reductions in 2010 and profit billions on the backs of the injured. It may be the time to review whether Ontario should continue with the present private industry No-Fault coverage going forward. It isn't working for victims and they are the half of the equation that counts and the half that is being left without the resources and tools for recovery.

Hundreds of people, victims, their families, caregivers and treatment providers, their legal representatives and concerned citizens came out to rally against these cuts to coverage on June 3<sup>rd</sup>. Your government was presented with a petition with over 20,000 signatures from concerned Ontarians asking you to reconsider these cuts to SABs. Surely their voices means something, and surely you heard their message that was chanted loud and clear at Queen's Park: **Victims before Profit**.

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