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## **FAIR Association of Victims for Accident Insurance Reform (FAIR)**

## **Submission to the 2016 PRE-BUDGET CONSULTATIONS**

February 2, 2016

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

[www.fairassociation.ca](http://www.fairassociation.ca)

Thank you for the opportunity to have our voice heard in this pre-budget consultation process.

FAIR is a grassroots not-for-profit organization of MVA (Motor Vehicle Accident) victims who have been injured in motor vehicle collisions and who have struggled with the current auto insurance system in Ontario.

It is a major concern to Ontario's auto insurance claimants and all consumers to see that our coverage has been so severely cut back in order to preserve auto insurer's already healthy profits. The recent round of cuts to coverage are not insubstantial, these cuts are deep and will ultimately affect taxpayers who will be forced to pick up the costs through our social nets and services.

Injured car crash survivors have been the victims in these cuts to coverage. The continued government inaction to address the long standing issues regarding the quality of the medical examinations and the resulting IME reports that are used to delay and deny legitimate claims means that the quality of life for those most injured will be greatly reduced and those victims will be impoverished and marginalized.

There is increasing evidence that Ontario's auto accident victim's medical files are routinely being altered to suit Ontario's insurers need to save money. Portions of medical reports have been removed, manipulated or even changed entirely without the author's knowledge or consent in order to minimize victim injuries. Signatures have been forged or used without permission in some cases. All of these deceitful acts are done to mislead our justice system and to lower claims costs for Ontario's wealthy insurance companies.

Claimants have long known about the deceptive nature of claims handling in Ontario. It's time that our legislators and law-makers acknowledge Ontario's insurance industry fraud, whether it be an adjuster, an assessor, assessment centers, treatment facility or the insurer themselves whose policies support or encourage swindling legitimate claimants out of the coverage they paid for.

Yesterday FAIR put out a press release calling for a public inquiry into the state of the quality of the medical evidence used in Ontario's courts and administrative tribunals. The Ontario Trial Lawyers Association (OTLA) is supporting our call for action to clean up the dishonest system that Ontario's auto insurance has become.

The fight on fraud is only meaningful when all aspects of fraud are examined and that must include the insurers who are the architects of the dysfunctional system that is based on, indeed relies on, these shoddy medical reports and expert testimony.

What are Ontario's legislators going to do about the widespread insurance fraud that has resulted in an explosion in the frequency of these virtually unregulated medical examinations commissioned by Ontario's insurers? It's clear that victims are harmed by this process and the failure to limit the number of examinations has a high cost that is reflected in the premiums we all have to pay. Has the culture of claims denials built on the partisan medical reports become so deeply ingrained in the system and accepted by our lawmakers that it is now a universally accepted business practice?

Access to resources for recovery and benefits is reliant on these assessments of injuries and the failure of the system, the lack regulatory oversight, and the subsequent and predictable overload of cases in Ontario courts and tribunals works only to favour Ontario's insurers. Insurers who are using our courts to delay and deny their own customer's access to what they paid for in the name of higher profits.

Accident victims deserve better and we depend on our government to ensure quality coverage and a reasonable cost and our courts for justice when insurers behave badly. Our call for a public inquiry is not based on trivial issues but looks to protecting the public health and safety when they deal with their insurance company after an injury.

Ontario's consumers expect our legislators to act in the best interests of the people of Ontario and we look to you to enact legislation, even when in the guise of a budget, that protects consumers from fraud and unacceptable business practices that cause harm.

Rhona DesRoches  
FAIR, Board Chair

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**Job One for newly appointed auto insurance Czar David Marshall: Public Inquiry into auto insurance claims medical evidence** <http://www.newswire.ca/news-releases/job-one-for-newly-appointed-auto-insurance-czar-david-marshall-public-inquiry-into-auto-insurance-claims-medical-evidence-567194961.html>

**Ontario Auto Insurance in Crisis: OTLA calls on Wynne Government to call a public inquiry into medical assessments of accident victims** <http://www.newswire.ca/news-releases/ontario-auto-insurance-in-crisis-otla-calls-on-wynne-government-to-call-a-public-inquiry-into-medical-assessments-of-accident-victims-567217211.html>

**Fair auto insurance? That's a stretch – Premiums are too high, benefits are being slashed and insurers are denying valid accident claims**

To say these insurer appointed experts operate under a conflict of interest is stating the obvious.

Yet we do nothing about the problem.

We don't penalize the experts who issue partisan reports.

We don't bar them from continuing to assess victims for insurance companies.

In fact, we allow them to continue earning large fees providing reports and testifying before judges and tribunals in their efforts to minimize the extent of injuries suffered by accident victims. All this to save insurance companies from having to fulfil their financial obligations.

<http://www.torontosun.com/2016/01/30/fair-auto-insurance-thats-a-stretch>

**Third party assessment reports need strict code**

Unless the same zeal is used to strike down this ugly side of the insurance benefit industry, there will always be doubts and suspicion as to whether claimants received a fair, just and uncorrupted result.

<http://www.lawyersweekly-digital.com/lawyersweekly-sample/3531-sample/?pm=2&u1=friend&pg=20#pg20>

### **Arbitrator orders rare special award against insurer**

*Kunka says it also points to **flaws in the assessment and training process of evaluators such as those at Independent Rehabilitation Services Inc.**, the company used by State Farm to build its defence that Waldock was not catastrophically impaired.*

*"Because they relied on **a report that was so obviously defective**, and they blindly relied on that and wouldn't change their position on that, that's what the arbitrator took exception to — an insured should not have to go through all of this," he says.*

<http://www.lawtimesnews.com/201511305093/headline-news/arbitrator-orders-rare-special-award-against-insurer>

**Bruff-Murphy v Gunawardena**, 2016 ONSC 7 (CanLII), <http://canlii.ca/t/gmr5x> - see para 53-125

[Ansari and State Farm](#) [+]. Arbitration, 2014-12-24, Reg 403/96. Final Decision

### **Medical Rehabilitation Benefits/Cost of Examinations**

10. The Respondent submits that given the Treatment Plan of November 5, 2010, was not signed by a health practitioner and part 4 was admittedly "forged", the Treatment Plan should not be considered in the context of this arbitration hearing. Additionally, it was also withdrawn; therefore it is not properly in dispute in this proceeding and is not payable [334]. For the purposes of this Hearing, I find the Treatment Plan, as completed and signed by Ms. Lipka, a registered nurse, is valid. After the report left the hands of Ms. Lipka, the report was altered, for reasons unclear, by others as to her designation. No evidence was introduced at the Hearing to show the assessment was withdrawn.

**Burwash v. Williams**, 2014 ONSC 6828 (CanLII) 2014-11-25 <http://canlii.ca/t/gfdrp>

[10] The Plaintiffs assert that they had no reason to suspect that Cira was involved in the review, revision and editing of draft expert reports until the examination for discovery of Dr. St. Pierre when answers and subsequent productions indicated that Cira may be using third parties to review and revise the Defendants' expert reports.

[24] The Plaintiffs provided documents that indicate that there may have been third party manipulation and alteration of the expert reports that the Defendants will rely upon at trial. Relevancy is established since this issue goes straight to the heart of the Plaintiffs' case and the medical evidence they intend to lead to prove damage

**MC v KE**, 2013 CanLII 55435 (ON HPARB), 2013-09-04 <http://canlii.ca/t/g0c3g>

10. However, the Committee did express concern about the information uncovered during the course of the investigation related to Riverfront having altered the Respondent's report. The Committee noted the "egregious" impact that these changes could have had on the Applicant's entitlement to benefits. In the result, the Committee decided to offer advice to the Respondent about the importance of ensuring that she personally reviews and approves any assessment report she completes prior to the report being issued.

**Macdonald v. Sun Life Assurance Company of Canada**, 2006 CanLII 41669 (ON SC) —

2006-12-13 <http://canlii.ca/t/1q596>

[1] In the course of this jury trial I ruled that Dr. Frank Lipson, who had conducted a defence medical of the plaintiff, not be permitted to testify as an expert witness on behalf of the defence. Dr. Lipson had testified that a medical report purportedly signed by him had not been signed by him. He stated that his signature stamp had been affixed to the report without his authority by an individual at Riverfront Medical Evaluations Limited (Riverfront) the company who had retained him to conduct the defence medical. I made my ruling based on the evidence before me at the time. The case proceeded and the jury ultimately delivered a verdict awarding the plaintiff damages and that verdict has not been appealed. However, in view of the serious allegations that had been made against Riverfront I felt that Riverfront should be given an opportunity to respond before I delivered the full reasons for my ruling.