

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

Date: Tue, Feb 2, 2016 at 8:45 PM

Subject: imagine the irritation after reading the Star article below...is this how government is supposed to work?

To:

Open Letter

SENT TO: Ontario's MPPS and the media

I'm sure you can imagine the irritation after reading the Star article below after spending an afternoon preparing a submission to the pre-budget consultation today.

It gets harder because FAIR keeps saying the same thing, Ontario's auto insurance scheme is broken. We need a public inquiry to fix this.

Some have said we don't spend enough time talking about the cuts to coverage. It's probably because there isn't a consumer organization that devotes themselves to the auto insurance file. It's a complicated subject and thanks to consistent tinkering with wording and stripping away coverage, it's pretty hard to keep up. So why isn't there a consumer group - 9 million drivers and sky high premiums so we need one. Right now.

Brokers are selling policies but according to their comments on an on-line news site, they don't know what to expect. How can they or consumers know anything when words like "reasonable and necessary" to describe rehabilitation resources are being changed to "essential". You can assume that changing that one word will mean that MVA survivors aren't going to get what they need and that one word will be at the core of many a case at the new LAT hearing system. Auto insurance is an industry in constant flux where the only constant appears to be a high turn down rate for claims and victims sloughed off onto the taxpayers who are paying through the nose.

That lack of knowledge and information is working for insurers, not consumers. The 80,000 auto insurance cases in our court systems in 2015 is telling us something. It's telling us insurance isn't working. You don't hire a lawyer and initiate a personal injury claim for fun or to make a few quick and easy bucks. You do it because you have to and can't survive without supports. It's not just about what we pay, it's not just about the coverage we are promised, it's about can we get the benefits when we need it and is it enough?

Do you know that injuries are reduced to a series of numbers? And if your numbers (injuries) don't add up to more than 55% of your whole person impairment WPI, say it is 54%, you will have access to only \$50 thousand for rehab whereas the person at 55% has access to \$1 million? The premium paying public has no idea that if they get hurt they are very likely to end up OW or ODSP. Insurers don't tell you that in the policy and our government isn't tracking this downward to the taxpayer.

It costs victims plenty to hire a lawyer and get what they paid for and rightly expected to get without a battle. Who would guess that you might not be able to get the treatments you need for recovery? Or that treatment/rehab will have to be "essential" after June 1 2016. Or that \$1 million will have to go a lot further since the government has allowed insurers to combine benefits for med/rehab with attendant care so there will be \$1 million after June 1. (currently \$2 million for attendant care and med/rehab). So those worst injured are sacrificed on the word of insurers that they need this cost saving measure. Again, 9 million people potentially at risk with a product that only works half of the time and our courts are already clogged, we need a public inquiry to fix this.

From a victim's perspective, the levels of coverage doesn't mean much if you can't access the benefits. Ask the 80,000 injured and disabled people waiting for court hearings. Some of them have been waiting up to a decade (or more) for their day in court. Ask one of our members, who today finally won his appeal for Canada Pension

Disability after 9 long years when his insurance company let him down. Ask another member who is about to become homeless because she's waited too long for her insurer to step up. Ask those victims who go to the CPSO to complain about their medical assessors who minimized their injuries and whose reports are used to deny that their injuries exist - delay and deny. Ask those victims who are in line with all the others, ask their family members who are their care-givers, if they think Ontario's auto insurance is working or if the efforts of our elected officials is harming them just like Ontario's insurers are trying to do with unqualified or partisan medical opinions.

I hope you'll read our submission below so that our words and our efforts to clean up Ontario's shoddy auto insurance aren't a totally wasted effort. Or a sham as suggested below. Read the decisions, you don't have to believe what we are saying but surely you would trust the words of our judges and arbitrators.

Rhona desRoches
FAIR, Board Chair

www.fairassociation.ca

Finance Minister Charles Sousa taken to task for sham public budget consultations

Opposition MPPs take Finance Minister Charles Sousa to task for early budget they say will make public hearings a pointless exercise.

With Sousa [expected to unveil](#) his fiscal blueprint Mar. 3 or 10, Progressive Conservatives and the NDP said the budget will be out before the legislature's finance committee can report on what Ontarians want to see in it. <http://www.thestar.com/news/canada/2016/02/02/finance-minister-charles-sousa-taken-to-task-for-sham-public-budget-consultations.html>

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

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/qmr5x> - see para 53-125

[Ansari and State Farm](#) [+]₁ 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/q0c3g>

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.