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FAIR Association of Victims for Accident Insurance Reform (FAIR)

Submission regarding FSCO's Draft 2016 Statement of Priorities

May 31, 2016

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

www.fairassociation.ca

Thank you for the opportunity to submit on the FSCO 2016 draft Statement of Priorities. Our comments will be on auto insurance issues only.

The Financial Services Commission of Ontario's (FSCO) legislative mandate is to provide regulatory services that protect the public interest and enhance public confidence in the sectors it regulates. As motor vehicle accident victims who use the insurance product it's clear that the public's interest isn't being served and it has resulted in a loss of confidence in the regulator and the insurance product.

This failure to address the needs and concerns of tens of thousands of unpaid claimants/consumers in the system has led to an astonishing volume of claims at FSCO Dispute Resolution System and Ontario's civil courts. That lack of regulatory action to protect vulnerable claimants from predatory insurers will carry over into the new Auto Accident Benefits System (AABS) for auto insurance claims going forward. There is no doubt that our insurance system is badly broken and it is an unavoidable reality that a new system of LAT (AABS) hearings isn't going to be the fix.

It's notable that in the 2016-17 FSCO list of focus efforts there is no mention of consumer satisfaction. We now have an unreliable auto insurance scheme that simply downloads costs to unsuspecting taxpayers because when insurers don't pay, victims don't just go away, they go on our social supports.

If "The financial services sector is of significant importance to Ontarians and to the health and well-being of both provincial and national economies" then action must be taken now to protect the taxpayers of Ontario. Insurers are spending more to assess injuries than on treating them because medical assessments are the key to quick claims denials. Once denied, the taxpaying public must take over even though, by the Minister of Finance's HSPRN report, the public is already paying more for medical attention for victims than insurers do in the first 2 years post accident. This amounts to almost a quarter billion dollars each year that insurers are not paying. There has also been a significant increase in the volume of MVA victims dependent on Ontario Works and the Ontario Disability Support Program since the last cuts to coverage in 2010.

Clearly consumer protection and the public's interest should be paramount when it comes to auto insurance. It undermines public confidence when recovery funding isn't flowing to the victims who really need it at the same time as insurer dollars are going to support political parties.

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Responses to questions:**Influence the development of provincial, national, and international regulatory policy**

Auto insurance, whether private or public, is sold across the country and internationally. We support the principles in the OECD's G20 High Level Principles on Financial Consumer Protection. This will provide greater transparency and update Ontario's definition of consumer protection.

At this time Ontario's consumer protection for auto insurance consumers is virtually non-existent. The insurance product is failing for about 50% of those who have to use it. That's unacceptable. Consumer/victims interests need to be of the highest priority and there should be consistency across the country in respect to insurer accountability.

<http://www.oecd.org/daf/fin/financial-markets/48892010.pdf>

<http://www.oecd.org/daf/fin/financial-education/G20EffectiveApproachesFCP.pdf>

Enhance the collection, use, and sharing of market intelligence

Data analysis and research from sources outside the Insurance Bureau of Canada and Ontario's insurers is needed in order to understand why Ontario has such high insurance rates and why we find Ontario courts backlogged with almost 100,000 auto insurance related cases on the docket. Accurate accounting of where billions of premium dollars has gone has not been achieved with insurer self-reporting.

Raise awareness of FSCO's actions in the financial services marketplace

Information shared with the public about mandated insurance quality and coverage should not be solely coming from sources such as the Insurance Bureau of Canada (IBC) who lobby for Ontario's insurance companies and whose interests are best served by painting a rosy view to the consumer by avoiding facts.

The letter template provided to Ontario's insurers by FSCO in respect to the insurer obligation to inform their customers about the June 1 2016 cuts to coverage was a disservice to consumers. The use of words like 'choices' encouraged a misleading feeling of security and left consumers to figure out the loss of coverage on their own. Because of this lack of clarity in the FSCO template letter, insurers totally failed to mention the deep cuts to coverage. Links to a website with better information are inadequate for those who do not have internet access.

A study by the Insurance Brokers Association of Ontario found that less than half of Ontarians know about the June 1 changes and only 1 in 5 Ontarians surveyed knew any specifics about the cuts to their coverage. There is a responsibility on the part of FSCO, and the government that legislates consumers to buy insurance, to make certain that the information in the public forum is accurate and available.

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Provide adequate disclosure of information to enable informed decisions by consumers and pension plan members

There is a failure to regulate the medical assessors in the insurance system. The FSCO continues to rely on Ontario's secretive and often inadequate regulatory colleges to provide oversight for medical opinion vendors whose reports and testimony are central to victim's access to promised benefits. It isn't good enough to say – take your insurer to court if they don't pay. Medical reports are often shunned at hearings as being of low standards or highly partisan and therefore useless to the trier-of-fact. The entire system relies on expert opinions to come to a decision about access to recovery benefits. It is unclear why FSCO has strict regulations for the service providers who invoice insurers and yet nothing in place to regulate the gatekeepers to treatment and resources, the insurer medical examination (IME) providers.

It's worth noting that the IBAO report stated that 17% of consumers felt that insurers themselves were the primary cause of insurance fraud and it is an indicator that oversight is lacking. If we all paid for hydro and the lights only came on for half of the customers, there would be outrage but because disadvantaged and injured consumers only find out about the poor quality of coverage after an injury, too little is being done.

Maintain a pool of qualified members to adjudicate hearings

Consumers need to hear about what FSCO is doing to protect vulnerable accident victims from predatory insurers who are using medical information to wrongly deny legitimate claims.

Though the DRS Unit is winding down – it should not mean that FSCO takes no interest in how the billion dollar business of insurance operates in Ontario. It is a dishonest and dysfunctional system where everyone but the insurer is held to account and it's time for that to change if for no other reason than to protect the taxpayers of Ontario.

Rhona DesRoches
Board Chair
FAIR Association of Victims for Accident Insurance Reform

HSPRN report <http://www.fairassociation.ca/2016/03/hsprn-report-cost-of-public-health-services-for-ontario-residents-injured-as-a-result-of-a-motor-vehicle-accident-3/>

The quality of medical opinions used at Ontario auto insurance hearings:
Bruff-Murphy v Gunawardena, 2016 ONSC 7 (CanLII), <http://canlii.ca/t/gmr5x> see para 53-125
Daggitt v Campbell, 2016 ONSC 2742 (CanLII), <http://canlii.ca/t/gpqm3>

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