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FAIR Association of Victims for Accident Insurance Reform

Submission to: 2017 Pre-Budget Consultation, February 15 2017

FAIR is a grassroots not-for-profit organization of MVA (Motor Vehicle Accident) victims who have been injured in motor vehicle collisions and their supporters. Thank you for the opportunity to have our concerns heard.

Budgets should be about public money, economics and governance, not about enhancing Ontario's auto insurance industry profits by downloading their costs to taxpayers. The insurance landscape in the province is in a state of chaos. The system is broken and every day more car accident victims are left behind, impoverished and without resources.

Over the past several years we have seen the volume of claims in Ontario courts skyrocket as the level of coverage plummeted. Insurers are spending \$32 million a year lobbying government while offering less in coverage under the guise of keeping the costs of premiums down and with exaggerated claims of fraud in the system.

We need to address the core question of how so many claims end up in our courts and what that is costing the province's taxpayers who pay when insurers don't. So far the focus has been how best to assist insurers and not MVA victims. It has led to the creation of the LAT AABS when the Financial Services Commission could no longer handle the volume of cases at the Dispute Resolution System.

Without regard to the Charter rights of the injured and disabled, the LAT AABS was shoved through and further cuts to coverage implemented without thought as to how that would affect vulnerable members of our society. We now have hearings by telephone, no transcripts, and under-qualified adjudicators.

193. It is respectfully submitted that Justice Cunningham, in his report, has conflated the concepts of timely and cost effective resolution and access to justice. Many routine disputes (for example, over a denied treatment plan) can be dealt with justly by an administrative tribunal of no particular expertise. However in complex and high value accident benefits disputes (including determinations of catastrophic impairment and entitlement to Income Replacement Benefits) the procedural and substantive safeguards, the full range of remedies available to a judge, and the guarantee of independence and impartiality of the Superior Court of Justice have been denied to severely and catastrophically disabled accident victims. This denial has had an adverse impact on these individuals, and has perpetuated and extended the historical denial of equal access to government services to them in violation of s. 15 to the Charter. **Charter Challenge factum**
<http://ow.ly/eQgn308XPaO>

Consumers and perhaps legislators are unaware of the volume of claimants that end up on OW or ODSP and in the public healthcare system that isn't prepared for their needs. People might not know that there's a time limit on accessing rehabilitation/attendant care benefits as of June 1, 2016 and that the volume of injured and disable people the taxpayer will have to fund is about to dramatically increase.

An auto insurance rule change that took effect the day an Ontario man suffered severe injuries in a crash has left his family on the verge of bankruptcy as he goes through an expensive and drawn-out rehabilitation process. ***Auto insurance rule change costs injured man millions in rehab support*** CBC, Oct 11, 2016 <http://ow.ly/Wiz430756Ts>

Consumers might not know that there is already a deficit in the transfer of funds from insurers to the Province to cover the OHIP costs of victims. Or that the shortfall in what insurers pay to the Province is costing the taxpayer a quarter of a billion dollars every year – money the government has failed to pick up from insurers despite repeated direction from Ontario's Auditor General.

With a total of 69,724 incidents in 2013/14 this amounts to a total present value (net actuarial liability) of \$383,099,805 for MVAs that occurred in 2013/14. ***HSPRN Report, "Cost of Public Health Services for Ontario Residents Injured as a Result of a Motor Vehicle Accident"***

In 2005, our audit of the recovery of health costs resulting from accidents led us to conclude that the Ministries of Health and Finance did not have satisfactory policies and procedures in place to monitor the adequacy of the initial \$80-million annual assessment. Subsequently, the government increased the annual assessment in September 2006 to about \$142 million. ***2011 Annual Report of the Office of the Auditor General of Ontario*** <http://ow.ly/2cGV307S61I>

The cost to the taxpayers is significant when insurers don't pay up and when they challenge every other claim. Insurers talk incessantly about the high cost of claims and say nothing about their part in driving up the cost of premiums.

The average premium paying driver wouldn't know that the 50% of claims denied means that in 2016 there were 59,956 auto insurance related cases in our civil courts and an additional 25,000 plus hearings at the Financial Services Commission of Ontario and the LAT. These are unpaid accident victims whose lives and whose access to recovery resources have been put on hold while they wait for their insurer to do the right thing or for their cases to be heard.

The immediate question is how can this be happening? What has gone wrong that there are so many unpaid and underpaid car accident victims? How can we fix this system that is eroding both our public healthcare and derailing our justice system?

There have been dozens of changes since No-Fault insurance was launched 27 years ago and not one of the band-aid solutions has benefited or increased access to recovery for Ontario's MVA victims but every change has added more dollars in the pockets of insurers.

Accident victims know how we got here and how their claims are turned down and it's at the core of the chaos and court backlog that is Ontario's auto insurance today.

From start to finish, the 'independent' or insurer medical exam (IME) is a flawed process designed to cause harm and to stand in the way of recovery in order to save insurer dollars. Recovery benefits hinge on these third-party medical expert reports and testimony so without honest evidence, there can be no recovery and no justice for victims, only added costs to taxpayers.

In personal-injury lawsuits that are by nature adversarial, "independent medical examiners" like him are supposed to be above the fray — highly regarded professionals who assess patients impartially. But the decisions critiquing Bail were among a series in recent years to paint many of those doctors and other experts as "hired guns" whose appraisals inevitably give insurers what they want — a reason to deny the injured benefits. ***Hired gun in a lab coat: How medical experts help car insurers fight accident claims*** *National Post* January 5, 2017 <http://ow.ly/n12E307LiPu>

Ontario insurers are lobbying and putting pressure on the government to cap what personal injury lawyers will be able to charge victims for their services — a move that will only harm victims, deny access to justice and be a win-win for wealthy insurance companies. Insurers have continued to deny 50% of claims and this has put our courts and our social nets under great pressure. Insurers continue on with their fake war on fraud and it has resulted in a fake promise of coverage for too many victims.

This is not to say that legal costs aren't too high, they are. Or that fraud doesn't exist when it does. But the cure for both of those problems is not cutting resources for victims; the answer lies with asking why and how so many claims are denied in the first place and what should we do about insurers downloading to our public supports while charging the highest premiums in Canada.

Don't let insurers obfuscate the real issue with unpaid accident victims which is how the medical opinion evidence generated by Ontario's insurers derails legitimate claimants and foists them onto public supports by standing in the way of recovery resources. This is why and when the need for legal representation — when the claim is wrongfully denied. Ask why all these claims are denied and how lowering the pre-judgment interest payable on wrongfully denied claims has incentivized insurers to deny more claims so they can take advantage of investment opportunities with a high rate of return. What is built into high premiums is insurers own legal costs to deny all these claims and one insurer has already put their legal costs in front of government in 2014.

"In 2013, Aviva paid \$44 million to its own lawyers to handle claims in dispute—that means either in litigation in the court system or in dispute through the FSCO DRS system." ***Karen Ots, Aviva, Queen's Park*** November 5 2014 <http://ow.ly/cJMs3092EBp>

Wouldn't it be easier to fix the flaw in the system, the bogus IMEs, than to burden the taxpayers with the costs of all the disputed claims? Fix the systematic abuse of vulnerable claimants through shoddy and biased insurer medical examination reports and testimony and many of the problems will simply no longer exist.

We are asking the Minister of Finance to put in place a moratorium on making any new changes to auto insurance until the Ontario Colleges that regulate IME providers put meaningful oversight and enforcement in place that protects victims from unscrupulous third party medical 'experts'.

We would ask that no arbitrary cap be placed on lawyer's fees that would reduce access to justice for unpaid victims.

We would ask that a public inquiry into the quality of medical evidence used in our courts and tribunals as articulated in our 2016 petition actually take place so that the harm to car accident victims and injured workers in Ontario stops and we can have reliable quality medical opinions that can be counted on.

We would ask the government to consider whether Ontario's private auto insurance scheme is working in the best interests of Ontario drivers and taxpayers and what needs to be done to correct the financially disastrous course we are on when the public is already paying the majority of the costs of MVA victims.

Respectfully

Rhona DesRoches
FAIR, Board Chair

FAIR letter to CPSO in respect to IME quality and bias Jan 12 2017 <http://www.fairassociation.ca/wp-content/uploads/2017/01/CPSO-letter-re-IMEs-and-Forms-Jan-12-2017.pdf>

The lawyer, the insurer's medical assessor, the lawsuit and anti-SLAPP legislation <http://ow.ly/AkMS3092lvA>

59,956 auto insurance related cases in our civil courts <http://ow.ly/7w0G3092GZ6>

Petition for a Public Inquiry 2016
<http://bit.ly/1UCMUn2> and <http://bit.ly/1RVIJ7P>

- The failure of Ontario's courts and judges to ensure that medical expert witnesses are in compliance with the Rules of Civil Procedure. Too many experts act as hired guns for insurers.
- The overuse and abuse of our courts by Ontario's auto insurers to delay payments to legitimate claimants. Currently about half of all claims are initially denied by auto insurers.
- The improper and wasteful expenditure by insurers of hundreds of millions of insurance premium dollars on medical reports to fight their own clients' legitimate claims.
- The role of Ontario's regulatory colleges in failing to meet their obligations to the public through the lax application of standards.
- The cost to the Ontario taxpayers for financial and medical support for MVA victims whose claims have been fraudulently denied by Ontario's insurers who commission poor quality or partisan medico-legal reports.

<http://www.fairassociation.ca/wp-content/uploads/2016/06/Inquiry-into-Medical-Evidence-petition.pdf>
and <http://www.fairassociation.ca/>