

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



FAIR Association of Victims for Accident Insurance Reform

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Mr. Brian Mills, Superintendent of Financial Services
Financial Services Commission of Ontario
5160 Yonge St, 17th Floor, P.O. Box 85
North York, ON, M2N 6L9

Sent by email

Dear Mr. Mills

I am writing on behalf of Ontario's auto accident claimants and their right to privacy and control over their personal information.

A recent PIPEDA decision (link below) and the resulting story in the National Post has revealed that Ontario's auto insurers and not just The Personal Insurance Company who was the subject of the attached investigation, are using victims' credit reports during the auto insurance claims process.

The Federal Privacy Commissioner report states that the Commission "is unable to find that a reasonable person would consider The Personal's collection and use of credit score for preventing and detecting fraud during the auto insurance claim assessment process to be reasonable".

The Personal confirmed that it had collected credit scores for the purpose of handling accident benefit claims and that it routinely seeks consent from accident victims to access their credit scores in a fashion found to be less than open in respect to policies and practices by the Privacy Commissioner. Ultimately no meaningful consent is being obtained.

Our members are concerned not just with the lack of transparency of insurers when they gather this type of information but also the use of the information as leverage in the decision making process of insurers during claims handling. Invasive insurer tactics such as this is taking advantage of vulnerable MVA victims who will have a 'hard' hit on their credit rating at a financially insecure moment. Insurers would also possess financial knowledge about a claimant that may increase their prospects of knowing which victims are more likely to settle their claims for less than the claim is worth.

The Personal Insurance agreed to refrain from collecting and using credit scores during the claim assessment process by April 22, 2017 and to conduct "a comprehensive review of its current procedures and processes" in accordance with recommendation 73(b) of this decision later this year. It begs the question – if the Personal has made use of the credit information of Ontario's car accident victims in this way, how many other insurers are as

well? Steve Kee of the IBC has confirmed that “some companies may use credit information to ‘identify and detect’ fraud” and the Personal confirmed that they use a fraud detection model that included using credit reports “at the point of filing an accident benefit claim to triage claims” and that the use of credit scoring “may result in a faster claim settlement”.

Who have insurers been sharing this personal information with? Private investigators? Medical examiners? MVA victims have very little control over their files once a claim is made and there is an important issue of meaningful consent in how The Personal and other insurers handle the claims process itself.

Ontario’s auto insurers should be reminded that they are subject to Canada’s privacy laws and that consumers expect their claims handling practices to be transparent and above board when it comes to the protection of their privacy. This use of credit reports is not an acceptable fraud fighting tool but it is an ‘intrusion upon seclusion’ issue. Such deceptive claims handling practices need to be discouraged in Ontario’s troubled and dysfunctional auto insurance industry.

We would respectfully request that your office investigate whether The Personal Insurance Company has complied with the PIPEDA directive which was “conditionally resolved” in the PIPEDA decision. It is important that a formal Advisory notice be sent to all of Ontario’s auto insurers to cease collecting and/or using this private financial information gathered on their customers during injury claims.

I look forward to hearing back from your office in respect to our concerns.

Sincerely,

Rhona DesRoches

FAIR, Board Chair

From the Office of the Privacy Commissioner of Canada (PIPEDA) <http://www.fairassociation.ca/wp-content/uploads/2017/03/Letter-from-Office-of-Privacy-Commissioner-of-Canada-re-use-of-credit-information-in-auto-insurance-claims.pdf>

The PIPEDA report <http://www.fairassociation.ca/wp-content/uploads/2017/03/Office-of-Privacy-Commissioner-of-Canada-report-re-use-of-credit-scores-in-auto-claims-handling.compressed.pdf>

What the federal privacy watchdog did after an insurer pried into crash victim’s credit rating/National Post <http://news.nationalpost.com/news/canada/insurer-violated-crash-victims-rights-by-accessing-his-credit-score-federal-watchdog-rules>

Calgary interview on 770 Newstalk with Rhona DesRoches about use of personal information and credit reports in claims adjusting to air on Monday, March 3, 2017 <http://www.newstalk770.com/>

Breach of Privacy: “Psychological Battery” and ‘intrusion upon seclusion’ <http://www.litigate.com/breach-of-privacy-psychological-battery>