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FAIR Association of Victims for Accident Insurance Reform (FAIR)

Submission regarding FSCO's Draft 2017 Statement of Priorities

Sent to:

Chief Executive Officer and
Superintendent of Financial Services
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May 26, 2017

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www.fairassociation.ca

Thank you for the opportunity to submit on the FSCO 2017 Draft Statement of Priorities. Our comments will be on auto insurance issues only.

Accident victims look forward to the implementation of the Financial Services Regulatory Authority (FSRA) with the hope that a new oversight system will better inform the public, improve the quality of auto insurance and ensure that injured Ontarians receive the coverage they paid for. As consumers wait for the new (FSRA) Secretariat to take form we hope that the FSCO will take action on contemporary issues affecting consumers.

It isn't just about what we pay for auto insurance; it's about what we are getting for the money. It is the acknowledgement that when insurers fail to pay MVA victims, the taxpayer is footing the bill through social supports and for the court hearings claim denials generate. MVA victims are finding their policies are empty promises and their lives are turned upside down as they go without adequate recovery resources they've paid for.

When we talk about rejecting fraud, we must also include the actions of insurers in claims handling; to not do so fails the consumers who find out too late how adversarial and dishonest the claims system is. Dishonest and deceptive claims practices must be addressed as they happen and as they come to the attention of FSCO so regulatory problems are not addressed in Ontario's over-worked and underfunded courts and tribunals. These are regulatory problems, not legal challenges and yet victims are paying through legal costs to hold their insurer to account.

Medical evidence issues continue to poison claims due to lack of accountability at the College regulatory level. Consumers and especially injured MVA claimants should be informed when insurers make use of false or manipulated medical information in their claims handling. It is this lack of information and recognition of the fraudulent behaviour of some insurers that undermines confidence in auto insurance, erodes justice, and most importantly has created an environment that encourages claims denials that stand in the way of recovery. Questionable and dishonest medical opinions are at the core of this broken system and though we brought our petition regarding medical evidence to legislators at Queen's Park late last year, we have yet to see any action to reign in the poor quality medical reports and evidence used in accident claims.

The newly created LAT hearings system is suffering growing pains that victims and taxpayers are paying for. Telephone hearings, the lack of opportunity to challenge experts, no transcripts, confusion around possible appeals, dismissals of claims when the 10 page limit is exceeded, and victims burdened with paying their full legal costs even as insurers have wrongfully denied their claims are just some of the current issues. Though FSCO might view these concerns as justice issues, it is part and parcel of the promise of coverage and quality of product. When consumers find coverage isn't there when needed it becomes a lack of accountability on the part of insurers and a failure of regulation. This is a problem that should not wait for the formation of the FSRA and falls within FSCO's mandate to "protect the public interest and enhance public confidence in the sectors it regulates."

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Treating consumers fairly means that insurers should not have been allowed to circumvent the Charter right of injured Ontarians to access Ontario's courts in the first place. The volume of unpaid claims will not be fixed by creating bargain basement justice at the LAT that appears to be serving insurers, not victims. It is because of this failure of FSCO to view the 'claim' part of the financial interaction between consumers and insurers as an important part of the purchase that has led to insurers having normalized using our courts as a part of the process to deny too many claims.

We recently informed the Superintendent about The Personal insurance using car accident victims' credit reports in injury claims adjusting, a practice that the Federal Privacy Commissioner found unacceptable. We have no way of knowing whether other Canadian provincial insurance regulators were notified of this unacceptable claim practice or even if other Ontario insurers have been advised to cease using credit reports to 'adjust' injury claims. Consumers should know this sort of information in order to protect their privacy.

MVA victims cannot wait for the FSRA or for the outcome of the Charter Challenge of the LAT, or for Ontario's regulatory Colleges to do the right thing. Auto insurance claimants are operating in a system where there is a lack of honest evidence and little hope of justice. It is a system that punishes the injured and rewards those that would stand in the way of recovery.

The recent David Marshall report "Fair Benefits, Fairly Delivered" provided the needed information on all that has gone wrong for claimants in Ontario and points out that "Since it is mandatory for drivers to purchase automobile insurance, there is a corresponding responsibility on government to create a marketplace where fair benefits are fairly delivered at a reasonable cost". Responsibility should not be deferred until new oversight is developed.

We look forward to further action on the part of FSCO to ensure that public confidence is restored in a system to assist vulnerable, injured Ontarians access the benefits they fairly paid for in good faith.

FAIR Association of Victims for Accident Insurance Reform

- **FAIR Letter to CPSO Jan 12 2017 re IMEs and Forms** <http://www.fairassociation.ca/wp-content/uploads/2017/01/CPSO-letter-re-IMEs-and-Forms-Jan-12-2017.pdf>
- **Hired gun in a lab coat: How medical experts help car insurers fight accident claims** <http://news.nationalpost.com/news/hired-gun-in-a-lab-coat-how-medical-experts-help-car-insurers-fight-accident-claims?lsa=2a71-139d>
- **FAIR letter to Brian Mills April 28 2017 re use of credit reports in claims** <http://www.fairassociation.ca/wp-content/uploads/2017/04/FAIR-letter-to-Brian-Mills-April-28-2017-re-use-of-credit-reports-in-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>
- **Campisi Charter Challenge of the LAT - Factum** <http://www.fairassociation.ca/wp-content/uploads/2017/02/Charter-Challenge-of-LAT-Factum-of-the-Applicant.pdf>

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