

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



**FAIR Association of Victims for Accident Insurance Reform**

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Submission to: Contingency Fee Reforms Consultation  
Advertising and Fee Arrangements Issues Working Group  
Law Society of Ontario  
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Submitted via email

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FAIR Association of Victims for Accident Insurance Reform is a grass-roots not-for-profit organization of MVA survivors and their caregivers/supporters who are dedicated to supporting Ontario's car accident victims through education and advocacy.

Thank you for the opportunity to have our perspective heard regarding contingency fee reforms as put forth in your Working Group document.

There appears to be a huge gulf between the expectations of consumers and what is proposed in the CFA reforms consultation paper. It's apparent that consumers were likely not consulted along the way and the proposals not tested on the average person who might find themselves in an uncommon situation where they would be considering a CFA.

Some of the information is repeated in both the draft CFAs and the Know Your Rights document and yet still manages to be unclear. The language in the variations set out in the Working Group's proposal might not be easily understood by those without any legal background and taking into consideration that MVA victims are often physically in pain and cognitively challenged.

There are problems with word definitions. Example: "permitted disbursements" – this isn't clear. It's not clear if there are non-permissible disbursements that are not mentioned. Disbursements are already an issue for accident victims to understand and ultimately people are often surprised by the costs of the disbursements at the time of billing.

The discussion on how to handle the disbursements and whether interest is paid on these amounts just makes the situation worse for the reader. There is also a void of instructions for lawyers who are

spending what is essentially their client's money through disbursements. There is no information such as when should clients be advised about how much is being spent on their behalf. How much interest is going to be paid and to whom isn't adequately covered in the proposal, nor is whether and/or when the client needs to be advised as these expenses mount up. There's a shortage of detail on this essential part of billing.

By the time the reader gets to the possible calculations for what that CFA actually is at the point of invoicing the average person would simply lose track as there is too much information to process. One is left with the question of how many ways a 20% CFA could possibly be contorted to equal an inflated amount in excess of 20%. This math and possible approaches to calculate the CFA just is not acceptable when the normal interpretation of a percentage payment would actually equal that percentage at the end of the day. According to this proposal there's even an option to pick a 'higher amount' for the higher billing fee. A percentage fee really isn't a percentage you can count on if it never equals and always exceeds the promised percentage.

There is a lack of clarity regarding the time limitation to have a bill assessed. Wording such as "It is important that you do not wait too long to start the review process. If you begin more than one month from the time you received your lawyer's bill, you will have to get permission from a judge of the Superior Court of Justice to have the bill reviewed" is not as impactful or as easily understood as "Clients have 30 days to apply to have the bill assessed. After 30 days it will only be possible with the permission of a court justice." Instructions for accessing the Assessment Office of the Ontario Superior Court of Justice should also be included in the invoice package as we see there is very limited information on the LSO website.

There's a need for greater detail on presenting the final CFA invoice that includes:

1. having the lawyer attach a copy of the original CFA to the final invoice given that many years may have passed since signing the CFA agreement,
2. the placement of the notice of how to assess a bill as it is an important consideration to protect the public and enhance trust,
3. photocopying the insurer settlement cheque so that clients are absolutely clear about the financial dealings done in their name.

While it is understood that there is some urgency to define CFAs given the recent negative media attention on contingency fees, it is not a good reason to forge ahead and finalize this version of the CFA documents and legislation needed to provide clarity to consumers. These forms are too long and too difficult to understand and from beginning to end, this version of the CFA is lacking. It begins without a typical 'cooling off' period and ends with consumers paying a fee in an amount they couldn't possibly have anticipated.

CFAs promote access to justice for many injured Ontarians who would otherwise be left behind when their insurer fails to stand behind their contract. It's important that the CFAs be fair and transparent agreements. We hope the Working Group will focus on ensuring that the public understands clearly what the CFA they've signed means and that lawyers understand that their obligation is to stick to an agreed amount in a way that promotes trust through transparency. Our members are the users of these agreements and we would be more than happy to participate further to achieve a workable and acceptable CFA agreement.

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