

***Ontario Auto Insurance – Recommendations for Protecting Consumers and Taxpayers  
from Delay, Deny and Download***

**FAIR submission to 2023 Ontario Pre-Budget Consultation**

February 14, 2023



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

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**Sent by email to: Standing Committee on Finance and Economic Affairs**

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

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## **FAIR submission to 2023 Ontario Pre-Budget Consultation**

### **Ontario Auto Insurance – Protecting Consumers and Taxpayers from Delay, Deny and Download**

FAIR Association of Victims for Accident Insurance Reform is a grass-roots, not-for-profit organization of car accident survivors and their supporters. Thank you for the opportunity to present our views.

Ontario's 2023 Budget comes at a time of great challenges for both the government of Ontario and for consumers. We face record inflation, rising basic costs, food insecurity, a critical lack of shelter, escalating medical costs, shortages of medical workers, and a growing demand for social supports.

Why are we, a group of car crash survivors, talking about Ontario's social supports? Well, because that's where most seriously injured car crash survivors end up – struggling with deep poverty, without adequate care or rehabilitation and many are without hope. It's hard for consumers to believe that our government legislates us to purchase expensive auto insurance coverage that fails on such a large scale or that we call it private auto insurance when, every year, and with every cut to coverage, Ontario taxpayers pick up more of the costs for the care of injured people.

Did you know that half of Ontario's homeless population has a brain injury? Statistics show that just over 40% of all brain injuries in this province are the result of a car crash injury. Coverage that isn't there when you need it most translates into a personal disaster pretty quickly so poverty and homelessness is a real risk for Ontario drivers if they are injured. The impact of rich auto insurers downloading their injured customers onto the public purse is easy to see and much of it can be traced back to insurers turning down legitimate claims and getting away with it because there are no consumer safeguards in place to protect claimants. The system operates on poorly crafted and often biased medical reports made possible by, not a lack of regulation, but by a failure to sanction practitioners whose sole income comes from insurers looking to deny injuries.

The term the 'system is rigged' truly has meaning here. Shaking down the taxpayers to pay for MVA survivors is a profitable business and it's been done very effectively through many cuts to coverage and small changes to wording. The result is a wave of unpaid MVA survivors looking for rehabilitation benefits banging on Ontario's Tribunal doors and it's had the effect of undermining even the appearance of justice.

Taxpayers would be surprised to know that whatever happened at one of the Licence Appeal Tribunal Auto Accident Benefits Service (LAT AABS) hearings today has consequences going forward for any claim they might make. Knowing what you are entitled to is a moving target in Ontario. The decision today leverages the Licence Appeal Tribunal Adjudicators who appear more adept at following a bad decision today than they are bound by legislation. Sadly, Ontario's legislation provides no tools for insurer accountability at the LAT. Legislation punishes the most injured drivers by imposing a 'Deductible' of \$44,367.24. This is money insurers just keep from the settlement of the most injured people in Civil court cases for pain and suffering (Tort) in a system that keeps the insurer's name from public view and the 'Deductible' information from Juries. Juries that insurers insist on using, even during Covid19, because Juries are easy to dupe with their 'experts' and a secret Deductible they aren't told about is a powerful tool to discourage consumers from even looking for accountability. Current legislation punishes the injured and rewards insurers who fail to live up to their contracts while pocketing record profits.

In the 2022 Budget the government of Ontario confirmed their commitment to the 2019 Blueprint for Putting Drivers First and promised to fix auto insurance. We are still waiting for the med/rehab cap of \$1 million for

the most injured people to be increased to \$2 million. A promise to crack down on fraud made in the 2022 Budget suggested that insurers would be required to provide the Financial Services Regulatory Authority the information and data they gather on fraud for FSRA's consideration. There was no mention of insurer fraud and we would point out that if insurers consider inflating injuries to be a fraud then surely the common insurer practice of deflating injuries must also be considered an act of fraud that also needs to be addressed.

The recent Auditor General report pointed out that some insurers are overusing the LAT hearings system in a quest to deny more claims and that it may be happening in an unfair manner worthy of FSRA's attention. This too, should be viewed as an unfair business practice that deceives customers into believing they've purchased insurance coverage they can count on. These methods of denials are not accidental and insurers are not held to a high standard of professionalism at LAT hearings where almost 16,000 unpaid car crash survivors ended up looking for justice just last year. Absence of accountability or perhaps incompetence has reached the level where some insurers just cannot be relied on to even follow the basics of informing their customers by providing proper notices of denials. It is a complete breakdown in adjusting claims fairly.

It was clear in the Auditor General's report that the Regulator, FSRA, has few options to make the changes that are needed to course-correct the auto insurance problems we have in Ontario. The changes we need to protect consumers must come through legislation.

### **Protect Consumers**

In order to improve auto insurance, promote public confidence and most importantly to protect consumers we recommend the government introduce consequences for insurers who fail to follow legislation or those who behave badly and abuse their customers. Under the previous government disincentives such as substantial interest payable to claimants who were left without proper care or access to rehabilitation were reduced to the point of insignificance. "Special Awards", an amount paid to claimants resulting from the actions by insurers who mistreated their injured customers during the claim process is no longer applied and instead insurers are routinely excused by the Licence Appeal Tribunal (LAT) with "**an insurance company is not held to a standard of perfection**" which is essentially a free pass for bad claims management. Now, a sanction of a 'Special Award' is only in relation to insurer behaviour during the actual hearing process. That leaves the door open for insurers to abuse customers during the entire claims process. These are vulnerable consumers who are seriously injured or brain injured and who are seeking supports they paid for. Insurers generally face lenient Adjudicators at the LAT because there are no structural methods for accountability in the current system.

### **Protect Taxpayers**

Ontario has the lowest Minor Injury Guideline (MIG) cap in Canada. With only \$3500.00 allowed for med/rehab available to most injured drivers this puts an additional burden on Ontario's various social supports systems. Injured accident survivors don't just go away because they can't get the rehabilitation they need, they simply get downloaded onto our overburdened medical system and failing social supports. When insurers don't pay, the taxpayers do and insurance companies are experts at holding onto their dollars while pillaging Ontario's coffers through denying and downloading.

Because our current legislation puts a thumb on the scale of justice it has effectively shut Ontario's injured claimants out of any hope of recovering their losses or even accessing the treatment they need for recovery. Many will have to depend on our social supports for the rest of their lives. A large number of injured Ontario

car crash survivors end up on Ontario Works and/or Ontario Disability Support Program that provides such inadequate funds for care that it leaves people homeless and begging on our streets.

### **Protecting our Health**

Insurers have made record profits in recent years even before Covid19. Despite this windfall of cash, Ontario drivers continue to pay very high rates and insurers continue to search for avenues to charge consumers higher premiums while providing less care options. Current legislation favours insurers and provides little consumer protection so this has blocked claimants from accessing treatments for recovery. Many specialized treatments, especially protocols for brain injuries, are simply not available in our public OHIP system.

The entire personal injury system relies on medical reports that are more harmful than helpful and the medical experts who prepare medical reports and who testify in our courts are protected by their regulatory Colleges whose interest in the harm done in auto insurance cases is limited by design. This lack of oversight and care means a person can be assessed many dozens of times and still not have a medical report that is useful in terms of mapping out a path to recovery.

If you are seriously injured in a car crash that you'd have to rely on your insurer for help with, you'd likely find yourself on OW and ODSP after your insurer denies your claim. Or, if your family income is too high, you'd simply be kicked to the curb with no supports at all. None of this promotes good recovery.

16,000 injured Ontarians found themselves in the queue at the LAT AABS last year. About 1% of all claimants end up in our Civil courts too and they are looking for greater support than their insurer is willing to give. They are the seriously injured claimants who might pay a Deductible and incur significant legal fees to get coverage they've paid for. Treatment is everything when a person is injured and timing is often the important factor in success. People at the LAT will wait almost 2 years to get through that system and even before Covid19, the wait in our Civil Court system was trending at over 5 years to get to a hearing. Delayed hearings mean delayed access to rehabilitation and that translates into poorer outcomes for many MVA survivors.

About 80% of claimants will be captured by the Minor Injury Guideline (MIG) that will limit medical and rehabilitation costs at \$3500.00. Consumers think they have \$1 million in coverage but the truth is only a few will ever get that amount, and there are thresholds to meet to get access to that funding. Anything over that \$3500 MIG threshold cap will likely mean you'll have to go to the LAT.

A car crash survivor in Ontario will spend a significant amount of their time and energy chasing their insurer when they should be concentrating on recovery. Some will lose their homes in the process and most will never financially or physically overcome the barriers Ontario's broken auto insurance system will present them with.

### **Recommendations:**

**Reinstate meaningful pre-judgement interest sanctions** that existed under the Financial Services Regulatory Authority Dispute Resolution system. This was a system where insurers paid a substantial fee for bringing a dispute forward to discourage them from overuse of dispute resolution. Insurers were also sanctioned with significant interest at 2% per month on overdue payments to claimants that provided a dis-incentive to delaying or denying a claim without reasoning.

**Make wider use of the 'Special Award'** that is a percentage of the amount a claimant should have already received. The award was and should be based on sanctioning an insurer for failing to properly adjust a claim during the entire claims process and not just behaviour in a few meetings at the LAT.

**Reinstate the practice of awarding successful claimants a portion of their legal cost** at the LAT AABS if they are successful at holding their insurer to account for failing to assist them after a car crash. The current practice of claimants bearing their legal costs is undermining access to justice and punishes claimants for holding their insurer to account.

**Increase the Minor Injury Guideline** to reflect the real cost of care in 2023.

**Investigate the option of removing thresholds (MIG and CAT)** since a significant number of cases at the LAT AABS are about getting out of the MIG to access more rehabilitation dollars or about proving an injury is CATastrophic. These 'thresholds' are one of the many changes to No-Fault that continues to backlog courts and undermine recovery. Thresholds stand in the way of accessing timely treatment.

**Increase scrutiny on insurer assessment centers(IME/IE) and their billing practices** would result in savings for insurers and taxpayers. Much of the systemic insurer (not consumer) fraud in claims is centered around the Insurer Medical Examination (IME or IE) process. It's here where costs go up because insurers have deep pockets and the ability to keep assessing a claimant until they get a medical opinion they like. Insurers have preferred vendors from a pool of assessment centers that are financially dependent on insurer dollars and IME/IEs have no regulator or meaningful oversight.

**Create a process for appealing LAT decisions** that respects the right to justice for ALL Ontarians.

**Eliminate the secret 'Deductible' of \$44,367.24** that insurers keep from Civil court settlements when a threshold isn't met. Juries should not have this relevant information kept from them and Judges should never be asked to be dishonest with a Jury to protect an insurance company.

**List insurers by name on court documents** to enable consumers to make informed decisions about what insurers they can trust to properly address their claims if they are injured.

**Review and adjust the Healthcare transfer dollar** amount payable by insurers toward Ontario's healthcare costs. This amount of transfer was designed to cover the costs to taxpayers incurred by injured auto insurance claimants has not been indexed or even adjusted in more than a decade and the loss to taxpayers funding OHIP is significant while insurers pocket the billions of dollars for care they should pay for.

**Consider assigning insurers as payors of first resort** after a car crash since their status as payor of last resort is the underpinning of downloading claimants onto the public purse. This has created a sense that Ontario's auto insurance is a safety net when it is a system dependent on public resources that are undeniably inadequate.

**Increase Income Replacement Benefits (IRB) and Non-Earner Benefits (NEB)** to reflect the real cost of living and reinstate indexing of the IRB which is currently below the poverty line at 70% of a claimants income and maxes out at \$400/wk.

**Introduce sanctions for insurers who behave badly both at the LAT AABS and at the Civil Court level** and post those sanctions publicly to promote transparency and accountability to improve the system.

Ontario drivers deserve coverage they can count on. Taxpayers deserve to have their dollars spent wisely. There is a way to get to quality coverage but it means insurers must pay up and they must be sanctioned if they don't. Ontario needs to acknowledge that our auto insurance is increasingly more public than private and ensure we aren't paying twice for this very poor coverage.

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