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FAIR Association of Victims for Accident Insurance Reform (FAIR)

Submission to the Proposed By-Law Amendment: Posting of Quality Assurance Committee SCERPs

February 10, 2016

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

www.fairassociation.ca

FAIR is a grassroots not-for-profit organization of MVA (Motor Vehicle Accident) victims who have been injured in motor vehicle collisions, their care-givers and supporters.

For many auto accident victims their biggest obstacle to recovery is the CPSO members who are the third party vendors of medical opinion evidence for Ontario's auto insurers. Whether it is auto insurance MVA claims, WSIB claims, Long Term Disability claims or Canada Pension Plan Disability claims, what Ontario's medical opinion 'experts' say in their reports and testimony can have a profoundly negative effect on recovery outcomes for very seriously injured individuals.

The opinion-for-hire College members have managed to avoid accountability to the public through the anonymity of the secret college cautions and SCERPs. This has allowed insurers to handpick their preferred vendors; medical opinion experts who flourish because their work allows insurers to deny legitimate claims for recovery resources. These assessors, who act with impunity, are permanently in good standing with CPSO because there is no meaningful enforcement for their transgressions or negative outcome when the public is in the dark about their shoddy work and the harm they cause.

In 2015 there were 80,000 auto insurance related cases on the docket in Ontario's courts and too many of these cases have been turned down based on poor quality medical reports and the partisan testimony of some of Ontario's medico-legal experts, your members.

The situation for MVA victims in Ontario can only be described as dire at this point and on February 1, 2016 FAIR put out a press release calling for a public inquiry into the quality of the medical evidence used in Ontario's courts and tribunals.

FAIR's call for an inquiry was quickly supported by the Ontario Lawyers Association (OTLA) who are calling for a public inquiry into medical evidence and reports used in insurance claims because their clients must "contend with a system of medico-legal experts who distort evidence - including court reports - in a bid to satisfy insurance company clients"

Last month the Ontario Federation of Labour (OFL) and Ontario Network of Injured Workers' Groups (ONIWG) called for Ontario's Ombudsman to launch a full investigation into the denial of claims by the routine rejection of the advice of treating physicians in favour of the contradictory diagnoses of 'paper doctors'.

It's a problem for injured and disabled Ontarians across the province and for the treating physicians who are doing their best to assist their patients while another segment of your membership works against them and their patient's recovery.

Protecting the public's health and safety when they deal with the medical community should always be first priority. Transparency should include oral and written cautions, remedial cautions and SCERPs.

Respectfully,
Rhona DesRoches
FAIR, Board Chair
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Job One for newly appointed auto insurance Czar David Marshall: Public Inquiry into auto insurance claims medical evidence <http://bit.ly/1UCMUn2>

Ontario Auto Insurance in Crisis: OTLA calls on Wynne Government to call a public inquiry into medical assessments of accident victims <http://bit.ly/1RVIJ7P>

OFL, Injured Workers and Medical Professionals File Official Request for Ombuds Ontario Investigation into the WSIB <http://ofl.ca/wp-content/uploads/2016.01.29-OmbudsSubmission-PUBLIC.pdf>

M.L. v G.D., 2015 CanLII 46 (ON HPARB), <http://canlii.ca/t/gft8q>

The Applicant's Counsel submitted that the Applicant is a "company doctor" and that the Committee is attempting to "put a square peg in a round hole" by considering that the Applicant is bound by the College's *Third Party Reports* policy. He submitted that the Committee's further investigation was flawed when it started with the premise that the Applicant is bound by this policy.

Bruff-Murphy v Gunawardena, 2016 ONSC 7 (CanLII), <http://canlii.ca/t/gmr5x> [122]...He failed to honor his obligation and written undertaking to be fair, objective and non-partisan pursuant to R. 4.1.01. He did not meet the requirements under R. 53.03. The vast majority of his report and testimony in chief is not of a psychiatric nature but was presented under the guise of expert medical testimony and the common initial presumption that a member of the medical profession will be objective and tell the truth.

Fair auto insurance? That's a stretch – Premiums are too high, benefits are being slashed and insurers are denying valid accident claims

To say these insurer appointed experts operate under a conflict of interest is stating the obvious.

Yet we do nothing about the problem.

We don't penalize the experts who issue partisan reports.

We don't bar them from continuing to assess victims for insurance companies.

In fact, we allow them to continue earning large fees providing reports and testifying before judges and tribunals in their efforts to minimize the extent of injuries suffered by accident victims. All this to save insurance companies from having to fulfil their financial obligations.

<http://www.torontosun.com/2016/01/30/fair-auto-insurance-thats-a-stretch>

Third party assessment reports need strict code

Unless the same zeal is used to strike down this ugly side of the insurance benefit industry, there will always be doubts and suspicion as to whether claimants received a fair, just and uncorrupted result.

<http://www.lawyersweekly-digital.com/lawyersweekly-sample/3531-sample/?pm=2&u1=friend&pg=20#pg20>

Arbitrator orders rare special award against insurer

*Kunka says it also points to **flaws in the assessment and training process of evaluators such as those at Independent Rehabilitation Services Inc.**, the company used by State Farm to build its defence that Waldock was not catastrophically impaired.*

*"Because they relied on **a report that was so obviously defective**, and they blindly relied on that and wouldn't change their position on that, that's what the arbitrator took exception to — an insured should not have to go through all of this," he says.*

<http://www.lawtimesnews.com/201511305093/headline-news/arbitrator-orders-rare-special-award-against-insurer>