
Response to:

**Consultation on Modernizing Disciplinary Hearings for Insurance
Agents and Adjusters in Ontario**

Submitted by:

FAIR

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September 30, 2013

FAIR Association of Victims for Accident Insurance Reform is a not-for-profit consumer organization whose members are accident victims, their supporters and consumers who have an interest in Ontario's insurance system. Our perspective is one of an end user of Ontario's insurance product and we represent those most affected by ongoing changes to coverage, Ontario's accident victims. We appreciate the opportunity to bring the concerns of Ontario's consumers and auto accident victims to your attention.

We have reviewed the proposed changes in the document 'Modernizing Disciplinary Hearings for Insurance Agents and Adjusters in Ontario' posted on the FSCO website. FAIR supports changes that look to protecting the rights of accident victims through promoting transparency of those who work in Ontario's auto insurance industry.

FAIR often hears from our members about their experiences with Ontario's insurance adjusters and the problems that accident victims encounter when attempting to complain about an adjuster.

It is odd to consider changing the disciplinary process for adjusters when there is no adequate process in place for hearing those complaints in the first place. In fact, we were unable to find any record on the Financial Services website that documents any complaints at any time about any adjuster. Could this lack of openness about complaints have resulted in no complaints being heard officially by the Advisory Board (AB)?

Consumers have developed some well-founded suspicion about some sectors of the insurance industry that are self-regulated - which is to say that these sectors are basically unregulated wild-west sectors who are never held to account. It looks like oversight of Ontario's adjusters falls into that category – otherwise – where are the records of the complaints?

Accident victims will tell you that there is no place to complain – they can't find one.

We are aware of the General Insurance Ombudsman (GIO) and the services they provide in respect to claimant complaints about adjusters. Claimants are particularly unhappy with the complaints system as it now stands and have little trust in an Ombudsman who works within the very company that employs the adjuster who they have an issue with. We are told that their complaints are sloughed off as unimportant and the Financial Services Commission response to this is that they are not able to hear of the complaint while a case is open. This is very unfair to the accident victim whose access to rehabilitation and benefits is dependent on an adjuster being competent to do their job.

Our members complain of a lack of objectivity and feel they are likely prejudiced against by having brought the complaint forward to the Insurance Ombudsman. This hardly promotes trust in the system, in fact, the close relationship between these Ombudsmen and their companies has contributed to a mistrust of the insurance system overall.

Adjusters have taken on a quasi-medical role in adjusting claims since the Minor Injury Guidelines MIG have come into effect in 2010. What was proposed as a minor injury guideline has captured 80% of accident victim claims, many of whom are seriously injured or cognitively impaired. Adjusters now have the power to essentially practice medicine by rejecting the

diagnosis and treatment plans of attending physicians. This has harmed thousands of claimants who have been unable to access timely treatment and whose lives are irreparably damaged by their insurer's denial or delay of their claim by deflating or minimizing their injuries. Accident victims who are abused in this process of wrongful denial believe that Adjusters should be held accountable for their actions with Administrative Monetary Penalties (AMPs) when they fail to comply with rules and regulations. Again, how will the public know that adjusters are accountable when complaints are shuffled under the carpet because the system isn't structured to hear them?

The proposed changes do nothing to address the consumer right to prompt and fair handling of claims when it comes to some adjusters. The Ontario Insurance Adjusters Association states that, "***The adjusters shall so act as to promote public confidence in insurance companies through fair and conscientious dealing, and shall refrain from any fraud, deceit, misrepresentation, dishonest non-disclosure, undue influence or other mischievous practice. The relationship of the adjuster to the company is one of trust and confidence calling for the highest degree of good faith in all transactions.***"

Adjusters acting in bad faith have been documented in the media http://www.torontosun.com/comment/columnists/alan_shanoff/2011/03/18/17672156.html , <http://www.torontosun.com/2011/11/04/adjusters-forgetting-ethics> and in our courts <http://www.fairassociation.ca/the-adjusters/>.

Improving and streamlining hearings for oversight that doesn't exist in a meaningful way is misleading to Ontario's accident victims and to consumers who expect that adjusters ought to act in good faith. In other words - the somewhat more transparent system of the Financial Services Tribunal (FST) hearings with the power to carry through on recommendations or discipline would be a good thing if the cart were not before the horse so to speak.

The balance of protection must always tilt toward the accident claimant who is the most vulnerable of consumers. It would be appropriate that the Superintendent consider on an individual basis whether his/her actions strike the appropriate balance between protecting consumers, and providing access to justice for agents and adjusters.

Thank you for the opportunity to contribute to this process.

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