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## DRS report is too weak, accident victims group FAIR says

SWEEPING reforms recommended for Ontario's auto injury dispute resolution system don't go far enough, according to an accident victims' group.

FAIR, the Association of Victims for Accident Insurance Reform, said the final report by former judge Douglas Cunningham (Thompson's, last week) was thoughtful, but it didn't address the value and the quality of medical evidence used at dispute hearings.

"The medical evidence and medical opinions in respect to Ontario's vulnerable and often cognitively impaired accident victims should be of the utmost importance and of the highest quality to satisfy our courts who must decide whether or not an injured person is entitled to benefits," FAIR chair Rhona DesRoches told Thompson's.

"There is no more important evidence than that in a case."

Ms. DesRoches said there are references in the report to the quality and the lack of regulatory oversight for medical assessors, but no remedy is offered.

"Yet this issue is central to the very reason for the recent mediation backlog — too many cases indiscriminately turned down by insurers based on questionable medical reports. The possible recourse that 'the expert should not receive compensation for appearing as a witness' if their evidence is not 'fair, objective or non-partisan' does nothing to protect accident victims.

"(Nor does it) stop the abuse of the court system by insurers who hire the assessors explicitly to minimize or deflate an injury so they can deny a claim. And then, of course, the claim ends up in the system, the medico-legal reports used again at various levels of hearings and the accident victim is forced to cover the costs of disputing what should have had some quality control in the first place."

Ms. DesRoches said real and substantive change needs to take place regarding medical opinion reports and witnesses.

"A tighter, more streamlined system will do a lot to assist accident victims whose treatment and rehabilitation is held up by delays in our courts when their insurer wrongfully denies their claim."

She said FAIR is encouraged that from a claimant's perspective, the recommendations to stream or triage claims according to type and the level of injury are promising.

FAIR said that the public would benefit from a wholesale review of the Statutory Accident Benefits System, which is long past due.

"We have a system right now that is so complicated that legal representatives must 'specialize' in order to be current to all of the changes and expectations and it has become unmanageable for the average person to navigate let alone a disadvantaged accident victim," Ms. DesRoches said.

"We are disappointed to see that the system is not prepared to put in place some assistance for accident victims who are unable to afford legal representatives to assist them in understanding the requirements for presenting their cases.

"With each change to legislation and reform, there are new obstacles for injured divers to overcome. It is interesting to note that this report underscores what FAIR has been saying — that these constant reforms that insurers lobby for have not stabilized costs but only added to insurer profits and higher legal costs to claimants whose coverage has fallen to an all-time low.

She said an accident victim operates in a world of uncertainty from the moment they make a claim, and the continual changes to coverage only enhance the unpredictable nature of the claims process.

In its response to Mr. Cunningham's interim report last December, FAIR argued against a proposal to discontinue publication of arbitration decisions, but said claimants' names should be withheld.

"We are disappointed that our suggestion of anonymizing claimant's names has been ignored in this review as it is a lot of very personal information put out in a public forum. Protecting vulnerable accident victims would have caused no hardship or increased costs to this review or the system."

FAIR also took issue with a recommendation that experts "should be required to certify their duty to the tribunal and to provide fair, objective and non-partisan evidence.

"Arbitrators should ignore evidence that is not fair, objective or non-partisan and, in such instances, the expert should not receive compensation for appearing as a witness."

Ms. DesRoches noted the report acknowledges that there are serious issues regarding regulations, oversight, impartiality, objectivity and the lack of independence associated with these professional witnesses.

"It doesn't really provide protection for the innocent accident victim.

"It's not enough to say that 'experts (IEs or IMEs) should be required to certify their duty to the tribunal and to provide fair, objective and non-partisan evidence.' FAIR had proposed a system of qualifications for these medical examiners that would ensure accurate medical reports on which the system relies to make determination of entitlement to benefits.

"It is not enough to say that arbitrators should ignore evidence that 'is not fair, objective or non-partisan' or that a professional medical opinion vendor-for-hire simply not be paid for a flawed opinion."

She said FAIR appreciates the recommendation that the government reach out to health professional associations, " but unless or until these select IE assessors are held accountable and barred from peddling their poor quality reports, accident victims will remain vulnerable."

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