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**Official Report  
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(Hansard)**

**Wednesday 17 April 2013**

**Journal  
des débats  
(Hansard)**

**Mercredi 17 avril 2013**

**Standing Committee on  
General Government**

Automobile insurance review

**Comité permanent des  
affaires gouvernementales**

Examen de l'assurance-  
automobile

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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON  
GENERAL GOVERNMENT**

**COMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES**

Wednesday 17 April 2013

Mercredi 17 avril 2013

*The committee met at 1600 in room 228.*

**AUTOMOBILE INSURANCE REVIEW**

**The Vice-Chair (Mrs. Donna H. Cansfield):** It's 4 o'clock. The Standing Committee on General Government is in session.

**COLLISION INDUSTRY  
INFORMATION ASSISTANCE**

**The Vice-Chair (Mrs. Donna H. Cansfield):** Our first presenter is the Collision Industry Information Assistance, with Mr. Norris, the executive director. Mr. Norris?

**Mr. John Norris:** Thank you.

**The Vice-Chair (Mrs. Donna H. Cansfield):** Good afternoon, sir. You have 10 minutes for a presentation. I'll try and give you a heads-up around the last minute, and then a rotation starts with—anybody remember?—Mr. Yurek. You'll have the leadoff on the—

**Mr. Jeff Yurek:** Sure.

**The Vice-Chair (Mrs. Donna H. Cansfield):** Great. Thank you very much.

Mr. Norris, please?

**Mr. John Norris:** Thank you, Madam Chair. Everyone has a copy, I believe, as well.

Madam Chair and members of the committee, thank you for allowing me to speak here today with you. My name is John Norris. I am the executive director of the Collision Industry Information Assistance association, or CIIA. We are the industry trade association for the auto body, collision repair and auto refinish or painting facilities, and their owners and managers, across Ontario.

Our industry association provides programs and assistance such as the Vehicle Security Professional Program—in concert with, in fact, the Insurance Bureau of Canada investigative services—which works on ensuring that security-sensitive information on a vehicle can be used properly in repairing a car and then tracked to be sure it is not used later in any auto theft.

We helped organize and train repair shops for the stolen-and-salvage-vehicle program in Ontario that ensures that damaged, and then rebuilt, vehicles are safe for the roads in Ontario, in this province. Over 385 collision repair facilities are licensed by Ontario to perform these important safety and structural inspections, using qualified, Ontario-trades-licensed technicians.

Most of this work on repairing collision-damaged vehicles in Ontario is paid for by insurers, and we have a history of working co-operatively with government for many years. Today, we wanted to update you on our experiences in dealing with some of those insurers.

We've all heard the horror stories in the last day or so of testimony on the massive increases in claims for injury, remediation plans and clinic billings. Those expenses have increased by some 200% of prior levels. Collision repair costs, however, have dropped from 2004 to 2012. In fact, we're actually charging an auto insurer in Ontario in 2012 1% less for a vehicle repair than in 2004. No wonder not one speaker, from FSCO to insurance groups, has complained about costs of vehicle repairs. Lots of complaints about injury and remedial treatment costs, but nothing on collision repair, only that pricing is stable. In 2004, collision repair costs were 18% of the premium; today it is 10%. Understandably, repair shops are under considerable financial pressure.

You will also notice that I am here by myself today. No one else, not my board of directors or any of the shop owners or managers, is here with me. Why is that? Because they are too scared to be part of this presentation. They worry that without whistle-blower protection, whatever you hear today about insurance practices will mean that their collision repair business will be blacklisted and they'll never be allowed to perform insurance-paid repairs again, leading to the closure of their business. Please understand that many insurers want to do the right thing and look after their policyholders. Some do not, and those are the insurer practices we want to highlight for you.

Let's look at some of the insurers' practices that we see in the field and in our shops every day that cost money and can be changed to reduce costs and provide those monies to reducing premiums.

Number one is parts procurement. Some insurers will demand that a repair shop become a "preferred" shop with them; the insurer will recommend your shop to their policyholder after a vehicle accident, in return for a lowered repair cost. That sounds like a normal business practice transaction. However, the more marketplace dominance that an insurer has in a given region, the more the shop must capitulate and do what the insurer wants, for fear of being blacklisted where the insurer uses their phone-script templates and discussion with policyholders to route customers away from the shop, leaving the shop's business future at risk. If an auto insurance com-

pany was responsible for 40% or more of your shop's volume, the shop owner feels he has little choice but to join the insurer's program.

Now that the insurer has received labour cost reductions, next comes parts. Even though the shop has been buying parts in the local community to fix those vehicles, he is now told by the insurers that that practice must stop. He must only buy parts from suppliers that the insurer orders him to deal with.

This means a shop in Timmins or Sault Ste. Marie is no longer buying their parts locally and getting quick delivery. Now he must order parts from Newmarket or Toronto, and wait four or five days for delivery. Why? Because the insurance company gets a fee from the parts supplier each time this happens.

Some 2% to 3% of every part that's ordered goes to the insurer. Many shops lose their regular profit levels. Parts ordered locally are still possible, but not recommended by the insurer. But that supplier must pay a fee on each part to the insurer. Even if the same part is available immediately locally, the shop cannot order the part locally.

For all that newly acquired cash that the insurer now receives, we have no record of it being used to offset premiums, only to acquire other companies. Shop repair schedules and controls are gone, local suppliers are no longer being used, despite years of good service and value to the shop.

When you realize that some 45% of the repair is in parts, the monies that insurers siphon off from the repair shops and suppliers are dramatic. We believe this practice may be anti-competitive; it certainly reduces local buying, and we can find no evidence that it's being used for premium reduction, only to buy other companies.

**Cheque withholding:** Cheque withholding is a fee of up to 5% that's removed from the face amount of the cheque sent to the collision repair shop to cover the invoice for that repair. For instance, a \$3,000-repair bill that is sent to the insurer for a damaged vehicle repair is forwarded to one of the insurers. They only send the shop a cheque for \$2,850.

A portion of the retained funds are offered to the shop if they continue to stay on the parts procurement program. We don't know what happens to all those 5% withholdings. We have no evidence to suggest that those withheld funds that should be going to the repair shop are going to reducing insurance premiums. With thousands of claims and vehicle repairs, that money adds up quickly.

**Sale of estimate data and secondary billings:** This is worrying; it's expensive, and it's worth \$300 million. The law in Ontario provides that a collision repair shop must provide a repair estimate that's approved in advance by the car owner, and that's fair. Because of increasing technologies, two companies in Canada control the electronic estimating platforms that are demanded by insurers for shops to use. Some of those estimating systems can cost over \$500 a month for a shop to possess and use.

The problem, however, is that no collision repair shop in Canada can own one of these estimating systems; they can only rent or lease them. That means, and it is included in the rental agreement, that the data generated by the electronic estimating system to show to the customer for approval is not owned by the shop, but it's owned by the estimating company, and they sell it.

One insurance industry ad shows that insurers can make an additional \$300 million by using this data to re-bill customers. Once an insurer knows you've had an accident, and didn't report it to them—probably because your insurance broker said not to—then you are in a different risk bracket, and the insurer can then re-bill that motorist for higher premiums. Not only do we consider this a privacy issue, but those additional funds—up to \$300 million—may not be considered by insurers in the same premium pool and not being used to reduce insurance premiums.

**Failure to inspect cash payment settlements for on-road vehicles:** This is another insurer habit we see all the time that's difficult to understand. Ontario auto insurers have an obligation to reimburse a car owner with funds to repair their damaged vehicle—fine. However, in a recessionary-type environment, many of those folks who receive the insurer cheque decide to use an underground repairer or a backyard hacker or, frankly, bang out the dents themselves. Duct tape is seen on more and more cars. Red tape rather than the proper tail light seems to be okay.

Some damaged cars aren't repaired at all, and the money goes for a vacation or a new TV. FSCO should demand that any vehicle—

**The Vice-Chair (Mrs. Donna H. Cansfield):** Mr. Norris, you have one minute left, sir.

**Mr. John Norris:** Thank you—with structural damage or safety-biased damage must be re-inspected by an Ontario-licensed structural vehicle station in Ontario prior to being reinsured for on-road use. No one in Ontario should face a prior-damaged vehicle, not fixed, coming on the highway.

In the interest of time, we've just got some other items that I'll highlight quickly. We've identified the failure to accept our offers to identify fraud. We have all sorts of opportunities on the collision repair side to ask questions of that customer coming in the door. Particularly, were they solicited? Did a chaser tow truck see them? What did the accident salesman—the person from the medical clinic who shows up at the accident—tell them?

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We're recommending standards for facilities, as per the Anti-Fraud Task Force, so that we know that the right shops are being paid, i.e. the properly licensed facilities.

**The Vice-Chair (Mrs. Donna H. Cansfield):** Thank you very much, sir. Mr. Yurek.

**Mr. Jeff Yurek:** Thanks for coming in, John. Good to see you.

**Mr. John Norris:** Thank you.

**Mr. Jeff Yurek:** The Anti-Fraud Task Force that had the report last November mentions regulating the tow

truck industry. Can you speak to that issue, whether you support or reject, or do you have any changes you'd like to see to that?

**Mr. John Norris:** We've had challenges with the tow truck industry for many a year, and we've been able to get local bylaws and police collision reporting centre programs municipally across the province, in various areas. The problem is, as the Anti-Fraud Task Force recognized, it's a mismatch—some police services board activity, some bylaw activity.

There has to be a regulatory investment. I believe that the idea from the Anti-Fraud Task Force of a designated administrative authority makes some sense. It's an opportunity for the industry to step up, for the decent groups within the towing industry to come forward—who have been maligned, frankly, by some of the bad apples they have in their industry. There's a significant number of good towers who could come forward and hopefully make that system work.

We had one very similar for collision repair in 2002 called the Collision Repair Standards Act, which was based on the same idea—that the industry could self-manage. We're hoping that the two could be merged together.

**Mr. Jeff Yurek:** Just going further on that report, about the collection of information about towing expenses and the relationship between the operators, collision repair facilities and health care clinics: You went over that quickly. If you want to touch on those ideas.

**Mr. John Norris:** When we spoke to the Anti-Fraud Task Force, we thought that we would have a great opportunity to be able to help them on their fraud investigation and fraud awareness programs, because the first thing that happens is it comes into our shop. It's the car on the hook that comes in, and it has the \$14,000 tow bill or the \$2,000 tow bill. We get to see those first-hand, and what we're hoping is that FSCO will give us a process, once they're finished, to identify at the shop level how we can do that.

We used to have a document for all of our shops where we could write that down initially. We'd talk to the customer: "Were you assisted by a tow operator? What did he promise you? What was going to happen?" We had that information, and we'd hand that to, at that time, whoever was responsible; it might be municipal councils, it might be a towing bylaw officer, or it might be a police services board. It would be so much easier if we had one simple provincial process where we could handle and get them that data and get them that information from the shops.

We see it first, Jeff. We see it not only with the tower, but we see it with—we call it the accident benefits guy, the guy who shows up at your accident scene and knocks on your window to say, "I know you're not hurt, but tell the police you are, and I'll meet you at the hospital," and offers them cash to make those kinds of decisions. We can find that out.

We can also find out whether the accident has been staged. We're professionals. We've gone to school for

three years. When we put that car up in the air, we're going to know whether that vehicle has been hit today or it's been hit six months ago, and whether that's in fact a staged accident, whether it's really the car involved or it's not, and we can report that. We just need that process with FSCO.

**Mr. Jeff Yurek:** In regards to garages, do you support licensing of the auto garages, standardization? You made a quick reference to Frank Klees's bill—

**Mr. John Norris:** Yes.

**Mr. Jeff Yurek:** —that somehow didn't get royal assent. Can you touch on that?

**Mr. John Norris:** We supported the Ontario Collision Repair Standards Act, as did this House unanimously, in 2002. We think it's still a good time to have it in place. Unfortunately it's not in place at this point. Yes, it provides standards. What it says in that piece of legislation is that if a shop doesn't meet certain standards, both in equipment and in performance, then there are penalties; there are significant penalties.

The other step is a step that we're taking now with the College of Trades to ensure that insurance companies not pay facilities. We heard this time and time again: The problem with fraud in the industry is that it will stop if we stop paying it. If we know that that repair is going to a backyard operation that has no trades-licensed technicians—which is the law in Ontario—then we need to find a way to stop it. Mr. Klees's legislation would insist that that shop could only get paid as part of that package of being able to be compensated by the insurer.

The Ministry of Labour did an inspection last year on shops. They found six oil and lube shops in Barrie doing collision repair work in the back of the oil and lube bays. They had no technical capability, but they were being paid by the insurer. They had no capacity to do it, they had no equipment, and they had no staff. Those cars were so badly repaired that they had to actually write the cars off and, after they paid for the repairs, pay for the cars again to scrap them. It was so difficult a problem.

Insurers continue to pay for activities they shouldn't be paying for, frankly, knowing that they shouldn't be paying for them. If we had a program that we mentioned, yes, that would identify all those errors and all those headaches. Frankly, several hundreds of millions of dollars are paid out unnecessarily.

**Mr. Jeff Yurek:** How much time do we have left there, Chair?

**The Vice-Chair (Mrs. Donna H. Cansfield):** About four and a half minutes.

**Mr. Jeff Yurek:** Four and a half minutes? Good.

At the end of your statement here is "Aftermarket auto parts." Can you just discuss the parts procurement process and touch on that?

**Mr. John Norris:** The parts procurement process is, the insurer will determine who you are going to buy parts from. What we're going to be seeing more and more is that the original equipment parts that are made by the car companies—tested by the car companies to make sure that they're safe—will not be used on your car. More and

more, insurers will start ordering in, and they do now, aftermarket parts. These are parts that may have been tested. They're close. They may not fit well. They may not actually respond in an accident the same way. Those parts are going to be going on your car. You'll see more of them because it's much cheaper to do.

Our position is that they are a viable repair. There's very little difference in structure in a fender, for instance, between one made aftermarket in Taiwan or Bangladesh and one made here by Ford, Chrysler or GM, for instance. There is a significant difference, in our view, in structural or safety parts. We have situations now with insurers so anxious to save money that they're demanding that aftermarket or offshore structural safety parts be put on a vehicle.

We gave an example in there of an aftermarket shock bumper. The insurer demanded that he use an aftermarket shock bumper; these are the shocks that make sure that the airbag goes off at the right time. Airbags are incredibly sensitive, by the thousandth of a second. They have to work properly. They wanted to put an aftermarket, untested bumper in. He refused and simply said, "No, I won't do it. I can't, for safety reasons." He went out and bought a new one from the manufacturer, put it in, only charged the insurer the cheaper price that the insurer wanted to pay, and the insurer blackballed him for a month. They said, "That was an unacceptable procedure. You must use aftermarket when we tell you to use it."

I think we're walking a fine line. We're going to see cars damaged more frequently, and we're going to see people injured more dramatically on the safety, security and structural side. This isn't the fender. This isn't the trunk lid. This is the front bumper, the structural parts of the car that are designed by the manufacturer to react in a certain way in a collision. We're putting on something cheap and plastic from an aftermarket supplier for a structural safety part. It's going to jeopardize all of us, and I think it's going to lead to much higher claims.

**Mr. Jeff Yurek:** Thank you, Chair. We're good.

**The Vice-Chair (Mrs. Donna H. Cansfield):** Mr. Singh.

**Mr. Jagmeet Singh:** Mr. Norris, thank you very much for your presentation. What I'm hearing is a lot of very good insight into what's going on in the industry, and I thank you for that.

I want to propose something to you, if we could go through some of these bad practices, if I can call them that, that the insurance companies are doing themselves, whether it's on the side of policies that they're requiring folks from the collision industry to follow that could jeopardize safety, or it's steps that they're not taking to prevent paying collision centres that aren't actually properly licensed to do the job, or they're not taking the time to investigate the actual claim itself. What's your opinion on, instead of putting that onto FSCO, what if there was a policy in place that insurance companies themselves were responsible to make sure that they double-check who they're paying out the funds to, if the collision centre is a proper centre that's doing proper

work? If folks from the collision industry actually assess the vehicle and say, "Listen, this vehicle was clearly in a staged accident," put the responsibility on the insurance company to make those inquiries before they make payments. What's your position on that?

**Mr. John Norris:** It's a big question. You've got a lot of different portions in there.

Certainly, the insurance company has an obligation, one would think, to make sure that that's properly happening—that they're expending monies properly. Time and again, we see the opposite, and I'm not sure that a change in policy is going to do that. Certainly, removing their 12% return on equity is going to force them to have a look, seriously, at their fraud issues now, where they may have not been looking at them previously. So there's a good opportunity for the insurers to do it.

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Our challenge, at the shop level, is that we don't have a communications format for that. If we see a fraud issue, if we see a damage issue, if we see a staged accident issue, we're not quite sure what to do. Do we call FSCO? Do we call the insurer?

We went to an insurer in Ontario with a \$1.25-million vehicle fraud. It was five staged accidents with previously damaged vehicles. They told us, "It's only \$1.25 million. We're not worried about that. Give us something big."

**Mr. Jagmeet Singh:** Which company? Are you able to say which company said that?

**Mr. John Norris:** It was an issue with the Ministry of Transportation for one the top five insurance companies in Ontario.

**Mr. Jagmeet Singh:** Okay. Fair enough.

If you could list, on a shop-level basis, the major areas where you see the insurance companies not being vigilant in terms of, they're just spending money without being aware of—they're wasting money, basically. What are the top ways that they're wasting money and not being careful about the funds that they're actually paying out?

**Mr. John Norris:** Because insurers will pay anyone and not the actual facilities who are trained and competent and licensed in Ontario with their staff to do the repairs, we're seeing a lot of insurance money going out for facilities that are underground. They're polluting; they're dumping their paints down the sewer. They don't have licensed technicians. They have individuals who have no competency or training to do that repair—bad news. Not only does that hurt the apprenticeship process of hiring new workers, it hurts legitimate shops. These are all undergrounds. They're not paying their taxes. They're not paying the workers' compensation. We're ending up with unsafe vehicles and a poor reputation. That's number one.

They should only be paying legitimate repair—we're talking about legal repair facilities. It's not terribly difficult for these guys. But just those who have licensed technicians, and it's public; it's available on the websites

that we have that now. So they should be paying those and not paying illegal, unlicensed facilities.

There are also some challenges in some of the issues for the stolen and salvage vehicle program. We inspect vehicles, and we find vehicles where insurers have—probably by error—made a mistake. Those mistakes are \$80,000 or \$40,000 mistakes each time. They cost them a significant amount of money.

The other thing we see—and I've never quite understood the logic of this, and please maybe help me to try to understand it. When we inspect a car that has been written off by an insurer, and it's going to go back on the road, we're inspecting it for structural competence. We're trades-licensed people. We want to make sure it's safe—fair enough. At the same time, we're required in Ontario, by law, to check all those—all the parts that went on that car, we need the paperwork for. We need to have on that paperwork the VIN number, the identification number of the car it came from. Those are great ideas because it tracks stolen cars; it tells us where the parts are coming from if they've been stolen from another vehicle.

That's for those that are being rebuilt, but an insurance company that simply says, "We're going to pay you to fix that car," they don't check any of that. So the receipts come in from the auto recycler, and there's no VIN on it. We have no idea if it's stolen; we have no idea if it's not stolen.

In fact, the insurance company can pay for it twice. They can pay for it when the car is stolen and have to reimburse the customer, and then they're paying again to buy the stolen parts back to put on the car because they don't check the VIN codes. They do on a rebuilt vehicle, but not on vehicles that they're paying for.

**Mr. Jagmeet Singh:** Interesting. I wanted to ask you a little bit about—you had a point in here. You weren't able to touch on it when you were going through your presentation, and I think you hinted at it. It was about folks who are afraid to come forward and talk because there's no protection. Maybe you could tell me a little bit about the issues that you see with respect to whistle-blower protection and how you would want to see that improved.

**Mr. John Norris:** We had a call from a shop and I went down to the shop. He said, "Look at this Toyota Sienna van." It's a \$12,000 van. It was being declared a total loss by the insurer. In other words, the insurer wants it scrapped. There was nothing wrong with the van. It had a broken headlight. He could have fixed it for \$200. It's a \$12,000 van. Why would anybody write that off? Why would anybody not repair that?

Then the shop told me, "Well, I was told to put it out back because the insurance company appraiser's brother is coming down and he's going to pick it up as scrap for \$300." So, here's a \$12,000 vehicle that someone has been paid \$12,000 for—somebody has lost that vehicle—and they're going to sell it to his buddy, or his brother in this case, for \$300. That's pretty clearly internal insurance fraud—internal fraud within the company.

That shop was scared silly. He couldn't talk to anybody about that. He could talk to me, but he couldn't bring it up to the insurer because he knew that if he brought that up that would be the end of his relationship with that insurer. He wouldn't be able to get any more work from that insurer. He'd be blackballed. He'd be out of it. He'd have his shop shut down.

That's why whistle-blower protection is so important for us. It's also important for us because when we do an inspection—particularly a salvage inspection, for instance—we have no way of being able to identify to the authorities, whether it's MTO, FSCO or the insurer, without that fear that we're going to have retaliation. There are ways of solving that, and we'd love to discuss it with FSCO on how we could do that.

For instance, you're in the inspection business of a car, and some guy you know who's in the Russian mob comes in and says, "You're going to inspect this and you're going to pass it. That's it. We'll give you 100 bucks; you're going to pass it." "Oh, let me have a look at it." "No, you're not going to look at it; you're just going to pass it." What do we do with that? There's no set process, and if we go back to the insurer or back to the owner of the vehicle, we don't know what's going to happen to them—what's happening to that individual.

**Mr. Jagmeet Singh:** Thank you for that.

I wanted to ask you about—and this ties into what we just talked about—whistle-blower protection. You mentioned a couple of times that if there is a disagreement, if you want to, for example, order a particular part you think would be a better and safer part, and that part procurement issue that if you want to order a part locally because you can get it quicker—for all of these issues, you indicated that if you don't comply with what the insurance company is suggesting or encouraging, it would have a very damaging impact on your business. How prevalent is that? How often does that actually happen? Is it as serious as you're making it sound? If you don't follow through with these practices, that the insurance companies will stop referring business to you—tell me some of the stories about that.

**Mr. John Norris:** I think it's more serious than we know. We've got areas in Ontario where one particular insurance company has a dominant influence, has most of the policies—

**The Vice-Chair (Mrs. Donna H. Cansfield):** Mr. Singh, you have one minute.

**Mr. John Norris:** They simply tell the shops, "You're going to do this. If you don't do this, we know that we can route 70% of your business away by telephone. When we talk to our clients, we're not going to send them to your shop anymore." So that threat of the failure of that shop is enough to get them to toe the line and do what they want to do.

Then, he's now being hit sometimes for rental costs for his customers while he's waiting five days for the part. We have one shop that would go across the road. He wouldn't even have to order it. He'd just walk across the road to the Honda dealer and pick up the bumper. He

can't do that anymore. He has to buy a bumper—same price—800 kilometres away, wait five days and pay for the rental for that because the insurance company gets a fee, a kickback, from that supplier.

The challenge and the frustration is that the shop can't get the work done. It doesn't know when the part's going to come, it doesn't know how damaged it is, it can't complete the estimate and they're not able to deal locally with suppliers they've had for years. The frustration is they've lost control of the business now. An insurer is doing this not because—and I want to make this really clear—it's a better arrangement for the customer or because it's faster to get it out, but for the kickback.

**The Vice-Chair (Mrs. Donna H. Cansfield):** Thank you very much, Mr. Norris. Mr. Balkissoon?

**Mr. Bas Balkissoon:** Thank you, Madam Chair. Thank you for your presentation, Mr. Norris. I have a couple of questions. The first one I had is, in terms of your membership of your collision shops, is membership voluntary?

**Mr. John Norris:** Yes, it is. We currently have 305 members from all aspects, whether they're dealerships, independents, franchise groups—it doesn't matter as long as they're legally in the industry.

**Mr. Bas Balkissoon:** Would you prefer that the government look at some kind of licensing process that is run by the provincial government rather than just a business license from a municipality, and then it would be a more coordinated process?

**Mr. John Norris:** It's an interesting question. It certainly has been looked at in the past. Finance has looked at it, and we've worked with them with the Collision Repair Standards Act. There is no specific licence in Ontario for collision repair shops. We are regulated by 13 different ministries and we do have certain rules we have to meet for some of those ministries, and we're politically active on the environmental side. So that's one way to do it.

The way we had recommended it at the time was a designated administrative authority or a self-management program. It was very specific—Mr. Yurek talked about that—from Mr. Klees's legislation some years ago. That would specifically set who was on the board. There were four members from from government: one from consumer, finance, etc. They would make the decisions as a self-management group. Generally, the self-management programs tend to be tougher on the bad apples within their own industry. We had a \$50,000 maximum fine in that original legislation for someone who wanted to get out of line.

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I like the designated administrative authority; it has worked well with OMVIC and with TICO and with some of the other agencies. I see it really functioning effectively, so that would be my preference. The second would be, yes, a provincial-wide process of regulating collision repair shops, as per, perhaps, the Collision Repair Standards Act—set out those regulations as well.

**Mr. Bas Balkissoon:** I'm just thinking that if you had that regulated body, whatever it may be, if we could get

to it eventually, then these issues that you've mentioned about parts procurement, kickbacks—all those issues could be dealt with.

**Mr. John Norris:** Yes; that's correct.

**Mr. Bas Balkissoon:** With regard to the kickbacks that you mention right now, the fraud task force: You said you appeared before them. I suspect you made a similar presentation.

**Mr. John Norris:** It wasn't as serious as this. It has been getting far more problematic in the six months since then—what's going on in the marketplace. And I can tell you that the insurers would never agree with me that it's a kickback. It's a fee that's charged because people want to deal with them, of course.

**Mr. Bas Balkissoon:** You also said that when you presented at FSCO you were interested in something—I just heard part of it—standards for facilities?

**Mr. John Norris:** Yes.

**Mr. Bas Balkissoon:** You have a model or a package that you could share with us?

**Mr. John Norris:** We actually set a series of standards in 1988 which we've been following. Many insurers use that standard that we set in 1988, as do the governments in Manitoba, Saskatchewan and BC, where there are public insurance programs. So I can easily share that with you. It's not elitist; it's fair, it's reasonable and it means that the vehicle would be repaired safely, which is the key.

**Mr. Bas Balkissoon:** Okay. To your knowledge, the issues with the collision shops, the towing industry, etc.: Do they have similar problems in other provinces, or are you aware of anything that makes it better in the other provinces?

**Mr. John Norris:** We don't have similar problems in some of the other jurisdictions. You've probably heard the stories about Manitoba and Saskatchewan and BC as public insurers.

Manitoba has a very interesting way of handling this problem. What Manitoba has done is said, "If you meet a certain standard, you get"—I think it's \$66.69 an hour—"for your labour." You can still operate in that province if you don't want to meet that standard, but you're going to get half of that. They have a built-in incentive, financially, to move that shop to a higher operating standard to make sure that it's compliant.

**Mr. Bas Balkissoon:** I'm interested in the towing industry because I've heard a lot of negatives about the towing industry.

**Mr. John Norris:** Yes. From the articles we get and the meetings we have in BC, Ontario seems to be the most problematic jurisdiction—particularly the GTA. It's an opportunistic problem. We do not have those problems in western Canada.

**Mr. Bas Balkissoon:** But is your towing licensing process different? Is that why? Or is there something that we need to know here and implement here?

**Mr. John Norris:** The processes are different. You have one insurer, a public insurer, who can put their foot down and make sure that things happen properly. Nor do

they have the huge volume of accidents and traffic we have that's difficult to regulate in a metropolitan area. I think it's frustrating for everyone in this room to drive along the QEW and you see that tow truck behind each bridge; they're just waiting for that opportunity to make some extra dollars. For some reason, we can't seem to regulate that. The other jurisdictions regulate that provincially. We have not done that here in Ontario.

**Mr. Bas Balkissoon:** My colleagues have some other questions of you.

**Mr. Mike Colle:** Good to see you again, John.

**Mr. John Norris:** Thank you, Mike.

**Mr. Mike Colle:** As you know, the NDP party here is saying that one way of fixing everything in the insurance biz is by reducing premiums by 15% in 12 months. Would that help deal with all these issues you raised?

**Mr. John Norris:** I'm not sure what you mean by "would it help deal." All the issues I raised can save insurers significant millions of dollars that could be used for that premium reduction. Right now, our experience and our discussions with the insurers is that they use the money they get from us and they use it for other purposes, not rate reduction—largely to capitalize other companies or to pay the loans they've taken out in buying other insurance companies to get a higher market-place dominance. Certainly the money that's coming from the issues we've raised—if we can solve those, is a significant chunk of millions of dollars that could be used for—

**Mr. Mike Colle:** But could we get rid of all this fraud and kickbacks and all the—

**Mr. John Norris:** If you just cut it down by 15%?

**Mr. Mike Colle:** If you cut the premiums down by 15%.

**Mr. John Norris:** No, you wouldn't get rid of the fraud.

**Mr. Mike Colle:** Okay. The other question—

**Mr. John Norris:** But you could solve some of the fraud to give you the money to get to that 15%.

**Mr. Mike Colle:** So you've got to solve the fraud first.

**Mr. John Norris:** And use the money differently.

**Mr. Mike Colle:** Yes. The other thing is: In terms of the collision auto repair business, aren't there concentric circles in this industry? In other words, the auto body collision shop deals with car rental companies, right? They deal with appraisers. They deal with insurance companies. Who else do they deal with?

**Mr. John Norris:** They deal with the towing companies, the parts firms, the paint companies who provide the paint and the environmental control people, because they're painting cars in an environmentally controlled area with an environmentally sensitive product. So there are others that they interact with.

**Mr. Mike Colle:** I guess the thing is that you cannot just deal—in terms of kickbacks, in terms of fees—with just one aspect of it, because I suspect there are preferred relationships between the car rental companies and the auto collision companies, right? The repair shop will say,

"Here, go up the street to get a discount." Nothing is done just for being boy scouts. There are all kinds of relationships with all these concentric circles. So you'd have to also regulate and police, somehow, all these various component parts of auto collision and related associated partners in this industry.

A very interesting point you made at the beginning, John, is that there has actually been a reduction in the cost of auto repair bills over the last number of years. The amazing thing is that we've got these safer cars and we're reducing collision costs, yet the cost of claims is just going through the roof here in Ontario compared to everywhere else.

**The Vice-Chair (Mrs. Donna H. Cansfield):** Mr. Colle, you have one minute, please.

**Mr. Mike Colle:** Just to restate again, there has been this reduction in your cost over the last number of years, which is quite significant. At one time, I remember, earlier on, one of the driving forces behind higher premiums was that they had to pay for the price of repairing your car, whereas now it's shifted.

**Mr. John Norris:** I don't think anyone is coming to you from the Insurance Bureau of Canada and telling you that repair costs are up. They're not, and I don't think any of the documentation, even from the anti-fraud group, identifies that costs were up on that. They're not. Our costs are consistent; it's the other side, the medical side, that's going to—

**Mr. Mike Colle:** The medical side—so we've had one success here, and that is on the collision repair costs, but on the other hand, there are still problems in getting where you've gotten to even find more savings if there is proper intervention and oversight there.

**Mr. John Norris:** Please understand, Mike: To be honest and fair, we've been cutting back and cutting back and cutting back, to the point where the industry is in very serious financial trouble. If we get hit with a 15% cost reduction because the insurers come to us looking for that 15%, we're in real trouble.

**Mr. Mike Colle:** I agree 100%. That's the biggest fear I have too.

**The Vice-Chair (Mrs. Donna H. Cansfield):** Thank you very much, Mr. Norris. Thank you, Mr. Colle. Thank you, sir. That was an excellent presentation.

**Mr. John Norris:** Thank you.

#### FAIR, ASSOCIATION OF VICTIMS FOR ACCIDENT INSURANCE REFORM

**The Vice-Chair (Mrs. Donna H. Cansfield):** Our next presenter is Ms. Rhona DesRoches, the board chair of FAIR, the Association of Victims for Accident Insurance Reform. Our leadoff, Mr. Singh, will be you. You have 10 minutes for your presentation, and then a rotation starting with Mr. Singh; 10 minutes for each. Would you please introduce yourselves for Hansard?

**Ms. Rhona DesRoches:** My name is Rhona DesRoches. I'm the board chair of FAIR. With me today is Tammy Kirkwood; she's vice-chair of FAIR. And this is Greg Smith; he's a member of FAIR.

**The Vice-Chair (Mrs. Donna H. Cansfield):** Thank you very much. Please begin.

**Ms. Rhona DesRoches:** Thank you for having us. We wanted to talk about what happens when auto insurers rev up their lobbying machine and go looking for legislative and regulatory changes. Accident victims have been the ones blamed for Ontario's broken insurance system and for the allegedly skyrocketing fraud losses. Accident victims often bear the brunt of the endless failed fixes. This has to stop. These allegations of rampant, opportunistic fraud are themselves often fraudulent.

**1640**

The Insurance Bureau of Canada refers to FAIR as a "lobby group." This descriptor was clearly intended to undermine our credibility; being a lobby group, our position could be dismissed as one-sided or a narrow, self-serving view. The truth is, we are a not-for-profit consumer advocacy group for injured claimants on a shoestring budget.

I'd like to point out that the IBC itself is a lobby group. On the IBC website, the IBC describes its role as "anticipating opportunities to identify, shape and influence change in support of members' business needs" and "lobbying the federal and provincial governments to secure changes in public policy and in the business-operating environment that will benefit insurance companies." It is, in other words, a lobby group.

How much does this lobby group, the Insurance Bureau of Canada, receive from auto insurers each year to influence Ontario's auto insurance policy and legislation? How many millions of dollars of our high premiums are used by the IBC to malign claimants rather than assist them?

I want to draw your attention to our broken system of IMEs or independent medical examinations. These are the assessments that adjusters and arbitrators rely on to decide whether an accident victim is entitled to treatment and benefits. It's important that these insurer assessors come as advertised—that being "completely impartial" and "highly qualified"—since the Financial Services Commission of Ontario is prepared to have injured claimants fined \$500 if they refuse to submit to one of these assessments.

Many of Ontario's auto insurers use highly partisan assessors to wrongly paint claimants as malingerers—judges have said so. Ontario auto insurers have repeatedly hired unqualified psychologists to paint brain-injured claimants as faking fraudsters—judges have said so. In doing so, they have undermined the integrity of the entire Ontario auto insurance IME system—judges have said so. Insurers are denying policy benefits to catastrophically injured Ontarians based on fundamentally flawed assessments. FSCO's own arbitrators have said so.

The president of the Canadian Society of Medical Evaluators wrote in a newsletter:

"Dear members and colleagues:

"We have all to realize that times are changing—amateurism, bias and fraud in the domain of IMEs will be

tolerated less and less in the future.... For those of you doing IMEs for years, it is time to notice this approaching shift: the cost of litigation, cost of automobile insurance and lack of quality control of IMEs, leading to public scandals, might soon lead the parties requesting IMEs to be more critical when ... appraising medico-legal credentials of an expert before hiring his/her services."

That was a quote from their newsletter.

These flawed, biased assessments by insurer-preferred vendors are the origin of the accusations of opportunistic fraud aimed towards injured claimants, accusations used to inflate our premiums while reducing benefits.

FAIR is opposed to auto insurance abuse and fraud, whether it be by claimants, treatment providers, preferred insurer medico-legal assessors, lawyers, adjusters, surveillors or anyone else. We dislike faking claimants even more than the insurers because the IBC lobbyists point to these fakers as justification to smear all injured claimants.

FAIR believes, as do the IBC lobbyists, that dishonest treatment providers and assessors should be punished. But unlike the IBC, we believe that dishonest or corrupt vendors of auto insurer medico-legal assessments or IMEs ought to suffer the same fate. We do not see any difference between opportunistic fraud in the form of falsely inflating the value of a claim by exaggerating injuries and impairments, and the opportunism of falsely deflating the value of a claim by dishonestly trivializing and minimizing serious injuries. These are flip sides of the same sort of abuse.

One of the impartial medical experts selected to come up with a more insurer-friendly definition of what counts as catastrophic injury has been described by FSCO's own arbitrators as part of a "dissident" group that has long sought to overturn established law on catastrophic injury. For 20 years, all manner of stakeholders have been lobbying politicians in an effort to shape the issue in a way that benefits their members, and this continued with the catastrophic injury panel, a panel that could not even agree that paraplegia and quadriplegia were a catastrophic injury.

Legislators need to listen to what the Ontario Court judges and arbitrators have to say about these assessments. Judges and FSCO—or Financial Services Commission—arbitrators are not lobbyists. They don't speak to the press, nor do they present to governmental committees such as this. They speak to us through their decisions. And who would know better than them?

I've included some case citations with the materials I'll be leaving with you, and you can always go to our website to see more examples on our IME page at [fairassociation.ca](http://fairassociation.ca).

Some stakeholders would like to downplay this problem, saying that these wrongful accusations of malingering and the denial of benefits are one-off mistakes. But, when one of the auto insurer's preferred vendors of psychological assessments in brain injury cases turns out, after having done over 1,000 insurer assessments, to be completely unqualified to do these assessments, that

should not be dismissed as a one-time mistake. One of the most preferred of all the auto insurers' preferred vendors of second opinions is the recipient of multiple, secret cautions from the College of Physicians and Surgeons for substandard assessments. He once told his licence body that all claimants are fakers. That's a pretty convenient spot to start for auto insurers' shopping for favourable second opinions.

Are accusations of opportunistic fraud, made by an insurance assessor who declares that all claimants are fakers, a sound basis on which to base the IBC lobby group's fraud-loss estimates? This assessor has done thousands of assessments for auto insurers.

The raw data for the IBC's most recent fraud-loss estimate is built up by counting up, one by one, the accusations of fraud made in insurer assessments the likes of these. If the assessments are flawed, substandard, unqualified, under-qualified, highly partisan or otherwise deficient, then the allegations of opportunistic fraud within them are unjust and a sham.

The question is this: When the insurers' lobbyist, the IBC, goes shopping for fraud-loss estimates, does it subtract the dollar value of all the allegations of fraud that, when finally scrutinized by triers of fact—judges and arbitrators—turn out to be completely bogus?

The IBC opportunistic fraud loss is only as good as the totality of the accusations of fraudulent malingering made by the auto insurers' preferred assessors.

The IBC complains about protracted litigation but doesn't acknowledge that the wrongful denial of legitimate injury claims is what's driving up premium costs and the high fees paid to insurer defence and plaintiff lawyers.

A lot of unnecessary costs to premium payers would be erased if auto insurers would honour the promise of coverage instead of playing the fraud card as a litigation defence tactic. There wouldn't be that long lineup of people waiting for hearings at financial services either.

We need to eliminate the rogue medico-legal assessors, on both sides, from the system and punish all dishonest treatment providers and all dishonest insurer assessors equally. The lobbyists want to criminally prosecute rogue treatment providers and assessors, but they want you to ignore the flip side of the problem with insurer-sponsored independent medical examinations.

Some of you may have seen the Insurance Bureau of Canada's lobbying efforts at the front door of the Ministry of Finance. The sign says, "New Session—Same Old Problems," and then proceeds to shape the problem as one that should be fixed on the backs of injured claimants. Making it harder to qualify for catastrophic injury treatment benefits is among the fixes.

We agree that legislators are faced with the same old problem, but we couldn't disagree more with the IBC lobbyists in terms of the nature of that problem. What we see is the same old insurer lobbyist tired and relentless fraud talk—

**The Vice-Chair (Mrs. Donna H. Cansfield):** Ms. DesRoches, you have one minute left.

**Ms. Rhona DesRoches:** Okay. Let me leave you with this observation in terms of the same old, same old. The opportunistic fraud talk you're currently hearing is exactly the same old fraud talk that sparked the rate stability act, legislation brought in not long ago by the Conservative government. They bought into this myth of the omnipresent, malingering opportunist—hook, line and sinker. The promise then, as it is now, is that if you help us crack down on those elusive and mythical fraudsters, we will give you rate stability in return. How did that turn out?

For injured claimants, the more things change, the more they stay the same. Yes, we're into a new session and the same names we were being called that gave rise to the stability act, we are being called again today. The same lobbyists are once again pleading for you to make the changes based on allegations of fraud.

There comes a time when one must ask if we should listen to some different voices, because, clearly, insurers are out of their depth in terms of fixing our vexed auto insurance system. Maybe that's because accident victims aren't really the problem.

**1650**

**The Vice-Chair (Mrs. Donna H. Cansfield):** Thank you very much, ma'am. We'll start our first rotation with Mr. Singh.

**Mr. Jagmeet Singh:** Thank you. You can finish that last sentence, what you were about to say, that maybe accident victims aren't the problem.

**Ms. Rhona DesRoches:** The savings realized by cutting back on all the litigation that begins with these shoddy insurer assessments would be enormous. Purging the rogue assessors and rogue provider assessors would result in lower premiums, and those inflated opportunistic fraud loss estimates that are trotted out by the IBC lobby group would disappear.

I was at the end line anyways. Just we deserve better treatment than this.

**Mr. Jagmeet Singh:** I thank you for your comments. I think it's very important to get the balanced view, to hear from the actual people and advocates for the people who are victims in this province. So thank you so much for that. I really appreciate that.

I want to talk to you a little bit about the same old, same old. Back in 2010, changes were made to the insurance industry regulations, and they resulted in significant slashing of the benefits that we receive. They cut the cap, which used to be \$100,000, for seriously injured people who weren't catastrophic to \$50,000, and they created another cap—that I'm sure you're well aware of—of \$3,500, and this was for the minor injury guideline. About 80%—these are industry numbers—of folks are now being funneled into this category, this minor injury guideline, and the cap is \$3,500.

We've seen, and the IBC admits, that they've saved \$2 billion year by year since this has been implemented overnight essentially in one of the most historic cost savings that we've seen in this province. Despite that historic cost savings and that billions of dollars of

savings, our premiums went up instead of down. It makes us start wondering, if we're saving the industry this much money and it's not bringing our premiums down, what should we do?

But just to get a human side to this, what are your thoughts on what happens to folks who get put into this MIG category, this \$3,500 category, and the fact that some of them who are improperly assessed can't really get out of it? They have to fight, and they never get out of it. What are your views on this, the minor injury guideline? For some folks I'm sure it's fine, but there's a number of people that probably have a different story to tell, and maybe you can tell us a little bit about that.

**Ms. Rhona DesRoches:** Well, I think you have to look at what a minor injury is. For instance, if a person were to hit their mouth on the steering wheel and break off a couple of teeth, already you're out of money. You've got \$3,500. Insurers are also using part of that \$3,500 to pay for IMEs or IEs, so it's actually less than that for a lot of people

There was a decision that came out, I think maybe two weeks ago, *Scarlett v. Belair*. It redefines that the MIG, or the minor injury guideline, is exactly that, because I think insurers have been looking at it as a cap, that there was sort of a defined line that you didn't cross, and that that *Scarlett v. Belair* decision would change that. At least that's how I interpret it, and I'm not a lawyer.

I think there's hope in the past couple of weeks that insurers might be reassessing where they've put all of these people because 80% of people—for instance, if I break my arm, I'm not young, so I might have problems, and I might not be able to get enough physiotherapy at \$3,500. Someone who is 20 who breaks their arm or a teenager, that might be lots. So we're being shoved into a box to fit that \$3,500, and if you're an older person or a person who has other issues that existed before the accident, then you're really going to get shortchanged.

I think when you cut people off at \$3,500, they don't just go away. Accident victims don't disappear. We stop coming out of our house, but we don't disappear. We end up on public welfare. We end up using OHIP, all kinds of different public assistance programs. So the taxpayer pays anyway. Now the insurers have the \$2 billion, accident victims don't have that money anymore, and we're also paying through our social system.

**Mr. Jagmeet Singh:** It's a great point. It came up in a number of times when we were in earlier committee hearings, that shifting of the cost. It's not going to go away; the cost will get shifted on to the public purse. If the insurance companies aren't paying for or covering people who are injured, then the public system will have to take care of that, as in our health care system or other services, or their lives will be permanently—you know, that impairment will last forever, then. In some way or other, it's definitely going to cost the system or cost our society. I think it's a great point.

I'm going to ask one more question and then I'll turn it over to my colleague for another question. Those are the minor injury guidelines, and that's how they've im-

pacted some people. What about the other reduction, the \$100,000 to \$50,000? Do you have any stories or any examples of how that's impacted people and had a significant negative impact on their lives?

**Ms. Rhona DesRoches:** I actually brought two people with me today to speak. Ms. Kirkwood was actually injured within the last few years and can tell you what it actually cost to get better.

Tammy, if you're willing to speak.

**Ms. Tammy Kirkwood:** When you look at the injuries for a victim, those are ongoing. Those are forever. That's a lifetime job. I was injured back in 2008. I'm still in recovery; I'm still in therapy. That therapy costs me \$3,000 a month—just for my therapy. That's without the assessments or the IMEs or other doctors the insurance has tried to send me to. So that \$100,000, it doesn't cover.

Especially in the beginning of a recovery, you need those resources. You need that funding to recover.

**Mr. Jagmeet Singh:** It's often the case that the more care you put in right after the injury is going to determine how likely you are to recover. Is that what you've experienced in your—

**Ms. Tammy Kirkwood:** Very much so. The maximum recovery you can make is in the first two years. I mean, that is the ultimate. That's when my recovery really hit home.

**Mr. Jagmeet Singh:** Thank you for that.

I want to ask one last thing; I just want to make sure we get it covered off. You talked about this a number of times, and I want to make sure that we have your view on it—the independent medical examinations. Normally when you go to see a doctor, you can choose which doctor you want to see. You can choose someone whose work you trust, or who knows you well, or someone who's going to have your best interests in mind and be objective, but can tell you what—you know, to make you better. With respect to the independent medical examinations, you don't have any say whatsoever in who you choose, and their decision is going to really impact the way your coverage goes from that point forward.

What's your feeling on that approach, and do you think that approach works?

**Ms. Rhona DesRoches:** Ms. Kirkwood and I actually sat at the round table discussions for the CAT impairment. We have to do something about these pro-insurer assessors. You can't come out the other end in good shape if there's a level of dishonesty as a claim progresses. You have to have some sort of standard. Sitting around that round table, that's what really drove it home to me. I've always suspected there were no standards, but it drove it home.

Every IME assessor is using their own rules and their own parameters to write that report, and yet a person's quality of life into the future hinges on this report. We actually don't have anything in writing from the Financial Services Commission of Ontario or anywhere that will tell us, "Okay, you must test for this. You need to look for that." There's nothing in place. It's a huge

failure on the part of the Financial Services and it leaves accident victims at risk. That's my belief.

I think we need someone to set some standards, and I think the industry is actually willing at this point—at least that's what they're telling me, that they're willing to set the standards. But they need someone to point the way and they need the Financial Services to accept it.

**Mr. Jagmeet Singh:** Sure.

**Ms. Rhona DesRoches:** We need more communication, I believe, with the Financial Services.

**Mr. Jagmeet Singh:** Thank you. My colleague's going to have a quick question.

**The Vice-Chair (Mrs. Donna H. Cansfield):** Mr. Singh, you have one minute.

**Mr. Jagmeet Singh:** Sure.

**Ms. Teresa J. Armstrong:** Oh, okay. Well, if you have anything left to say, you can go ahead. By the time I ask the question, it'll probably be over. Do you have anything else you'd like to add? Feel free.

**Ms. Rhona DesRoches:** Well, I think every accident victim who's been to an IME—they're not all bad. Sometimes I talk and I think that it comes off as if they're all bad; they're not. There's just a certain core percentage of these IME vendors. They make their living performing these IMEs, and I think when we set some standards, we need to use people to do these IMEs who actually are treating physicians, because then they're closer to the people. They have an understanding of the fallout from this—whereas if all you do is assess, it's a very limited and narrow point of view. That's one of the things that needs to change.

**Ms. Teresa J. Armstrong:** Thank you.

**The Vice-Chair (Mrs. Donna H. Cansfield):** Thank you very much. Mr. Colle.

**Mr. Mike Colle:** I want to thank research for its list of definitions of acronyms. That's been very helpful. We're at 19 and I think we just got a few more today. So if we can keep going, "IMEs"—and I'm going to give you one, too.

Did you ever deal with the DACs in past history? I know we were told back at the turn of the century here that the DACs were the evil empire that had to be eliminated to save money and lower rates and all this kind of stuff. How do you compare the situation pre-DAC and post-DAC? DACs are designated assessment centres, are they?

1700

**Ms. Rhona DesRoches:** Yes.

**Mr. Mike Colle:** With all these IMEs, assessors were—

**Ms. Rhona DesRoches:** Well, I was actually injured in 1994, so I'm familiar with the DAC system. I've attended probably six or eight of them over time. I suppose the one thing that the DAC system had going for it was that there was sort of an oversight because the Financial Services did provide some place for you to at least pick up the phone and complain. I think that's probably one of the reasons that the Financial Services got out of the DAC business or the oversight of the

DACs: It's tacit approval. If you say that we're providing oversight, then you're somehow responsible when these things aren't up to quality. That's how I would read that.

The IMEs now, because there isn't even a loose guideline like there was with the DAC centres—there were, I think, parameters that they would operate in. That doesn't exist with these IMEs. There's no one telling anybody what to do, so it's a free-for-all. It's the Wild West, I've heard it referred to, and hired-gun assessors. It really does apply here because—

**Mr. Mike Colle:** You have all these assessors still taking place, making money—

**Ms. Rhona DesRoches:** Yes.

**Mr. Mike Colle:** —and basically there are more delays. It's assessor versus assessor, and there's no oversight either of the assessors.

**Ms. Rhona DesRoches:** A lot of this has to do with qualifications, whether the assessors have the right qualifications. I actually was unfortunate enough to have a bad DAC assessor. You could at least call the Financial Services, and they would tell you to call the college, and of course the college—whatever they would do is non-transparent; you'd never find out. The assessor continued on business as they liked—that sort of thing. But there was at least this sense of somebody taking mark and taking checks and balances about what was going on. It wasn't real, but there was this feeling of it anyway.

**Mr. Mike Colle:** The feeling that something was happening. And it was very lucrative to own a DAC.

**Ms. Rhona DesRoches:** Very.

**Mr. Mike Colle:** Very lucrative. The thing is, as you know, the NDP is saying, "We can solve a lot of problems in insurance by having this 15% reduction in premiums over the next year." Is that going to help you get better treatment and better protection?

**Ms. Rhona DesRoches:** I don't think it's the same question. I really think that we're paying a lot for insurance, and consumers are probably entitled to that 15% discount. We're just getting really lousy value for the money. As I said in my speech, if this estimate of fraud, which right now stands at \$1.6 billion, is based on these poor assessments—to give you a scenario, if I go to get assessed and the assessor says, "Oh, she's malingering or exaggerating her symptoms," do I become part of that fraud statistic? Because that's where all this money seems to be going. If we could take the \$1.6 billion that's supposedly lost to the fraud and put it back in the system, then we could have the 15% discount. We need to know where the money is going.

Now, I know the Auditor General has said that he was suspicious in 2011. He's coming back in June to take another look at the industry, and if he gets in there and picks at it deep enough and drills down, maybe we'll find out what that \$1.6 billion means and why the money isn't going to treatment. Because we have members, for instance, whose insurer will spend \$20,000 to deny \$6,000 worth of treatment. There's case law where they've spent \$175,000 to deny \$20,000 worth of treatment.

**Mr. Mike Colle:** So you support the 15% reduction in a year?

**Ms. Rhona DesRoches:** I support fixing it and, along the way, it would be nice to have the 15%, but if all we're going to do is say, "Okay, 15%. Everybody go away. Everybody happy"—not working.

**Mr. Mike Colle:** Then you don't fix the mess.

**Ms. Rhona DesRoches:** You have to fix the mess because this problem with IMEs would go right through to a public system. It has been there the whole 20 years I've been watching. It'll be there in 20 unless we address it.

**Mr. Mike Colle:** Yes. The other question—and it's really a comment. I think you've sort of hit the nail on the head. The very DNA of the system right now is sort of set up to be very, very heavy on litigation, confrontation, denial and finger pointing. You know, there's fraud and there are false claims. I think what you're trying to say is that we need to look at what creates this confrontational, expensive system we have here in Ontario and how to get rid of that confrontation. Because I think if we get rid of all the very wealthy people doing assessments all across Ontario around the clock, as they have been—it seems to be very lucrative; if we get rid of all the lawyers who are making—not all lawyers, but I'm sure there are many lawyers—making good money on slips and falls and accidents etc.; and if we get rid of all the insurance companies who spend their time trying to confront the claim, and things are done quickly—you've got a claim, we assess it, an independent person comes in and says, "Yes, you're right. Here's your cheque"—I think we would probably save a heck of a lot of money, aggravation, time. But yet we've got this system built up with all these sorts of silos that fight each other. And then you've got the auto collision and the tow truck industry silos—you know, everything is sort of in a confrontational mode.

Do you agree with me that maybe what we have to do is look at the DNA of auto insurance in Ontario and get rid of this basically confrontational platform that exists here?

**Ms. Rhona DesRoches:** I would agree with you 100%. I think we need to start with these IMEs, because it's that that sparks all of this. That's where it starts to blow up, because you've got the person who's injured and they get a report, and some of these reports are so flawed—I mean, if it wasn't so sad, you would laugh, they're so flawed. Immediately, the claimant says, "I've got to get a lawyer. I've got to fight this because I need the treatment," and then the insurer digs in their feet. It snowballs into huge legal fees and usage of the system, and it's resulted in this big lineup. Some 28,329 people last year had to apply for mediation or arbitration—

**Mr. Mike Colle:** Yes, meditation hell, purgatory.

I can't seem to get this idea of mine across. I've been trying for a long time, saying, "Listen, is it possible that we could, in all the intelligence we have in government and all these wonderful lawyers and insurance companies that are here and these legislators, basically appoint or

authorize, certify, medically approved and sanctioned assessors who are given the authority to assess people and not second-guessed—and not on the basis of the number of clients you get and the calls you get from the insurance companies and the lawyers etc.; that these independent assessors—which, in a way, DACs were supposed to be, and I don't want to have the DAC repetition. So you would have these very qualified, independent medical people who get right in there, look at the claimant and say, "Listen, here's what's to be done. You can get this done right away. Proceed." Is that something we should maybe look at?

**Ms. Rhona DesRoches:** I think so, yes. I think we have to maybe narrow down the choice of the physicians or the assessors. FAIR has put out in the public, in open letters—we have proposed three different ways to clean up the system. One is the three-strikes rule, which is that if a professional witness who's an IME provider—if they have commentary about them from the arbitrators or judges that is negative and talks negatively about their poor quality report, three strikes, you're out: no more testifying, no more of these IMEs. I think that's pretty clear.

**The Vice-Chair (Mrs. Donna H. Cansfield):** Mr. Colle, you have one minute.

**Mr. Mike Colle:** Okay, and I'll look at those—I've looked at them already—but I just want to make another observation here. Right now, we are caught between a rock and a hard place. We are told that all of our problems are because of fraud—fraud, fraud, fraud, as long as I can remember. And then the other bogeyman is the rate, your premium: Your premium's too high. So if we get rid of fraud, and if we can lower your premiums, that would be great. So I think we've got to find something that doesn't have these magic bullets of getting the fraudster and lowering the premiums to where—I don't know to what level people will ever be happy, because it's never going to be enough. Maybe we need to get to a sane middle ground here that says, "It's not about fraud. It's not about premiums. It's about protecting injured people and giving them the accident benefits they deserve in a quick, timely and just way.

**The Vice-Chair (Mrs. Donna H. Cansfield):** Thank you very much, Mr. Colle.

**Mr. Mike Colle:** Sorry for the speech.

**The Vice-Chair (Mrs. Donna H. Cansfield):** Ms. Scott.

**Ms. Laurie Scott:** Thank you very much for appearing today. I think you appeared last time that we were—

**Ms. Rhona DesRoches:** Several weeks ago, yes.

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**Ms. Laurie Scott:** Okay, several weeks ago. I was going to ask—Greg, I don't want to single you out, but I just didn't know if you wanted a chance. I know your case is in the handout that was given to us. But do you have anything to add? It's a terrible story and it is repeating maybe a little bit of what we heard of the frustrations within the system, but do you want to add anything from your personal story where you saw back-

logs, delays, or anything that you want to add from what you had experienced?

**Mr. Greg Smith:** I waited two years to go to mediation and then almost another three years to get to arbitration.

**Ms. Laurie Scott:** And in the meantime, tell me what you needed in those years.

**Mr. Greg Smith:** What we were going to mediation for were my income replacement benefits and employment retraining. In the job I did, I travelled all over Ontario. I was a self-employed consultant. I drove 100,000 kilometres a year, and I can't do that anymore. They had three doctors who said there was nothing wrong with me. A psychologist said that I could return to my job and drive 100,000 kilometres.

**Ms. Laurie Scott:** So you had no chance for any appeal.

**Mr. Greg Smith:** Well, I had to go to mediation.

**Ms. Laurie Scott:** And?

**Mr. Greg Smith:** The mediation lasted 15 minutes. They changed the adjustor twice just before mediation. We had a mediation appointment set. They changed the adjustor three days before mediation. When we got to mediation, she said, "I've just been put on this case. I have no idea what's going on." So the mediator said, "Will you people give them some time?" I said, "I've already waited a year and a half for this." The adjustor said, "Well, then, Mr. Smith, we're going to stick to our guns. We're not going to give you retraining, so you'll have to go to arbitration."

I waited almost three years to go to arbitration. Three days before arbitration, after three months in negotiation, we settled out of court.

I bought the million dollars extra of rehab benefits. You talk about \$3,500? I never got to spend hardly any of that. I used about \$120,000 for rehab. They spent just over \$50,000 in IEs on me.

I had back surgery last May. Three days before I had to go in for back surgery, I received a letter from the insurance company to go—I had a back surgeon do my back. They sent me a letter to say that they wanted me to go to a general practitioner to see whether I needed back surgery.

**Ms. Laurie Scott:** Wow. If there was more—I don't know how we could do it—peer review, say, the medical practitioners: I used to nurse before, and really, there's expertise. You need a back surgeon to do back surgeries, that type of peer review. Do you think that that would help the system, more peer review assessments for assessors?

**Mr. Greg Smith:** We were talking about having guidelines. I went in for one IE where the doctor never laid his hands on me and refused the treatment plan. When I found out about it about 10 days later, I went back to his office and made a bit of a scene, made him put his hands on me, and then he sat there and said, "I don't know what I'm going to do. I've got to change what I wrote on that piece of paper."

**Ms. Laurie Scott:** Do you feel that's a rush for time, or these doctors want to be involved in the process, or they're—

**Mr. Greg Smith:** He had three and a half hours allotted for my IE.

**Ms. Laurie Scott:** Really? The first time he saw you, where he didn't lay his hands on you. And how long were you in there?

**Mr. Greg Smith:** Three and a half hours.

**Ms. Laurie Scott:** And he never laid his hands on you.

**Mr. Greg Smith:** He never laid his hands on me.

**Ms. Laurie Scott:** Okay. That's kind of unexplainable in some way, but yes.

The backlog was mentioned several times. Do you feel that other types of mediators are how to un-jam that system? Because right now—I mean, from many figures, I think there are roughly 17,000, 14,000 in backlogged cases, so their cases are going to have similar waiting times.

**Mr. Greg Smith:** There used to be a rebuttal process. It wasn't great because, again, my treater would put forth a treatment plan. If they didn't agree to it, then they would send it to an outside person to review my treatment plan, write a report and it would go back to my physician and they would have a chance to rebut it. But it would go absolutely nowhere because it was just one against the other.

There aren't any guidelines, so if Joe Blow looks at me and says—my family doctor says, "Greg, yes, I agree you should go for massage therapy or acupuncture," then I think somebody who's known me for 21 years versus somebody who's met me for three hours—I think the guy who's been around for 21 years pretty well knows me.

So, by just saying that we need to put more people in mediation, it just seems like, right now, that's the way the insurance companies are getting rid of the problem for the time being. And in that time, you get no treatment.

**Ms. Laurie Scott:** Yes, that's unacceptable.

**Mr. Greg Smith:** Then, if, for whatever reason, they say, "Oh, we're going to give you treatment," if you miss three months, it takes six months to get you back to where you were when they cut it off. I had a million dollars—actually, \$1.1 million, because it was \$100,000 at that time.

**Ms. Laurie Scott:** Yes. These stories—that's why I wanted to get more of your stories on it. It is quite unacceptable, the process that's gone on.

Now, I know that catastrophic—there has been a definition, and our main guy on insurance, Mr. Yurek, had to leave. But there is a redefinition out there of catastrophic, I believe, by someone, and that's what I just don't know. I don't know if you have had the opportunity to see it.

**Ms. Rhona DesRoches:** I have seen the panel recommendations, the superintendent's report on that, and that's what we talked about at the round table, and it was very, very disturbing, partly because I think the consensus of the room at that round table conference was

that none of it was acceptable. There really wasn't anything in there worth saving.

**Ms. Laurie Scott:** So no one at that round table—

**Ms. Rhona DesRoches:** No.

**Ms. Laurie Scott:** Really?

**Ms. Rhona DesRoches:** So when I see signs like what I'm seeing outside the door of the Minister of Finance saying that we need to get a new definition of catastrophic injury—it's 600 people a year. They're the worst injured of all of us. Why would we ever want to cut their benefits? I think the reasoning behind even proposing that is that they want to give you first \$50,000 and then you can reapply. In other words, it's kind of like how the old insurance was, whether it's \$25,000—no questions asked. If you're said to be catastrophic, you have \$50,000, and when you've used that up—and there's no actual timeline there—you can ask your insurer for more. Okay, well, there's nothing fast in our insurance system except the denial rate. So you drop off, and because we're talking about people who are brain-injured or people who would need attendant care—I don't know why they wouldn't just pay these things and not put that stopgap in there. I think that helps insurers, and people will fall in that gap and they'll never recover—because if I had a brain injury, I'd want to keep going to be the best I could be.

**Ms. Laurie Scott:** Jim McDonell has a question there, so I'll stop.

**Mr. Jim McDonell:** One question: You're having to go through the insurance system because of an automobile accident. Do you find that you'd be treated better if you had just hurt yourself at home and you went through the normal public health system? Is this a deterrent?

**Ms. Rhona DesRoches:** I wouldn't call it a deterrent, but it's apparent to me—and it's as true now as it was when I was injured, which is that because it's such an adversarial system, you lose the focus which should be entirely on, "I've got to get better. I've been injured. What can I do to get better?" Because you have all the adversarial stuff going on around you between your insurer and your injuries and everything, your focus doesn't stay on that. It goes to proving the injury, and this is very, very common. When you talk to accident victims, this is often what I'm hearing.

You can't get that injured running and hitting the wall in the kitchen. So people get diverted from the path, which should always be to get better, maximize your recovery and move on as best you can with your life. Tammy is very much a sample of that. That direction gets lost because your insurer fights you so hard. People are devastated. I think they're psychologically damaged from actually navigating through a claim.

**The Chair (Mrs. Donna H. Cansfield):** Thank you very much for your presentation.

That concludes this meeting. We are adjourned.

*The committee adjourned at 1720.*







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