

Report tackles auto insurance fraud

Suggestions include requiring more information on claims denials

BY JUDY VAN RHIJN

For Law Times

Crime Stoppers is the latest partner in the war on insurance fraud as it partners up with the Insurance Bureau of Canada to funnel anonymous tips to the police and the bureau's investigative services department. The efforts come as the auto insurance anti-fraud task force issues its final report with recommendations for changes to prevention, detection, enforcement, and regulatory roles.

It was troubling trends in claims costs that prompted the Ontario government to appoint a task force to assess the extent and nature of fraud in the province's auto insurance system. While the number of personal injury collisions reported between 2006 and 2009 decreased, the volume of injury claims during the same period increased and the cost of an average claim rose by 43 per cent. During the same period, examination and assessment costs increased by 228 per cent and by 2010, the average injury claim in Ontario was almost five times more than the average injury claim in other provinces despite the fact that auto accident injury patterns don't vary dramatically across Canada.

The final report released on Nov. 22, 2012, endorsed a multi-faceted approach. It stated that everyone has a role to play in fighting auto insurance fraud, including health-care practitioners, lawyers, paralegals, tow-truck operators, collision repair facilities, and those in the insurance and brokerage industries. It also referred to organizations that regulate professional behaviour, such as the Law Society of Upper Canada and the regulatory colleges that oversee health practitioners.

Ralph Palumbo, Ontario vice president of the bureau, found the final report very comprehensive and pertinent. "They spent 16 months listening to many stakeholders," he says. "They hit just about every area. It reinforces that as Ontarians, we all have an interest in fighting fraud. People think it's up to the insurers, police, and government, but when you look at it in its totality, it has a material impact on premiums. The report underlines that it diverts resources away from government and law enforcement and hurts people with legitimate claims."

Palumbo notes that the report outlines many practical suggestions and best practices. He highlights the licensing of health-care clinics as an important suggestion. "I don't want to disparage professionals treating accident victims, but too many are abusing the system. Another key area that needs to be tightened up and regulated is the towing industry."

Palumbo also approves of better collaboration with consumers through whistleblowing protection. "We held various townhall meetings over the summer. People say they saw this or suspected that, but few had reported it. Maybe they didn't know how or were worried about liability or a defamation action. Maybe they are reticent because there are nasty, nasty people involved in motor vehicle fraud."

Stacey Stevens, partner at Thomson Rogers, agrees that for the most part, the report contains very good recommendations. She was happy to see some pro-claimant suggestions to protect legitimate claims and curtail insurers' abuse. The report noted that as a result of the September 2010 benefit changes, some legitimate claimants are experiencing increased uncer-



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tainty and delay with respect to the processing of their claims. "Every time we turn around, they are making changes to limit benefits available," says Stevens.

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The task force suggested requiring insurers to provide a full explanation when refusing to pay for treatment, assessment or other benefits, addressing the huge backlog of mediations, and introducing appropriate protocols for treatment of minor injuries.

Stevens particularly approves of a recommendation requiring an explanation as to how insurers choose and assess service providers and independent medical examiners. "One of the things we see a lot of is bias, more so on the tort side than the accident benefits side. The insurers all have a list of preferred providers. This requirement could be very interesting and effective."

One recommendation that Stevens regards as "unfortunate" is the charging of a cancellation fee

of \$500 if a claimant fails to attend an appointment. "Just because someone doesn't attend doesn't mean they're committing an act of fraud. There could be a variety of reasons." She is concerned that insurers will get to decide what constitutes reasonable notice of an inability to attend. "Will adjusters treat that just like they treat denial of claims and treatment plans where they just say it's not reasonable and necessary?" she asks.

Stevens also worries some of the committees forming as a result of the report will have no legal representation on them. She cites the makeup of the implementation committee as having all insurer representatives and nothing on the other side. "It should include a variety of stakeholders: consumer representatives, service providers, and lawyers," she says.

For the moment, the report has landed in political limbo. "We live in strange political times," says Palumbo.

"When the legislature is back, I think this will be a priority. All three parties are in agreement that something needs to be done. Some changes require legislation, some require regulatory change, and some they can start implementing right away to get short-term wins. I'm quite optimistic that the government will do it."

When it comes to prevention, the report recommends an education campaign endorsing a "learning moments strategy" at points where consumers come into contact with the system. For detection, it supports the creation of a new organization that will analyze auto insurance claims using advanced data analytic technology to identify suspicious cases of organized and premeditated fraud for further investigation.

"Through data analytic soft-

ware, we can link the bad actors, find them, and find who they operate with," says Palumbo. "We then provide the information to the police and Crown."

For this purpose, the task force wishes to enhance the fraud-detection capabilities of health claims for auto insurance, an automated system of communication between health-care providers and the insurance industry that allows health professionals to view how their professional credentials are being used. "As long as we are protecting personal information, there is lots of data that can be used for fraud analysis," says Palumbo.

Stevens says it will be interesting to see what the legislature comes up with to address privacy concerns. "There will need to be some changes to the legislation if they are pooling information. All of a sudden, your details are going to be randomly exchanged."

The bureau has already started making changes based on the recommendations and is urging others to do the same. "It is incumbent on the health profession to step up and root out fraud," says Palumbo.

"I know their resources are stretched but I think most professionals would want to know their professional organization is actively working to keep fraudsters out."

Another major player will be the Financial Services Commission of Ontario, which may be on the receiving end of substantially increased authority and powers as it transforms from being the regulator of the auto insurance industry to the regulator of the auto insurance marketplace.

"We said if you're going to give powers to FSCO, it must be funded properly," says Palumbo. "It's obvious to everyone that it's an issue."

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