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March 18, 2021

Financial Services Regulatory Authority of Ontario
25 Sheppard Avenue West
Suite 100
Toronto, ON M2N 6S6

**Re: Notice of Proposed Rule and Request for Comment - Proposed Rule
[2020-002] *Unfair or Deceptive Acts or Practices***

Introduction

The Law Society of Ontario (“LSO”) appreciates the opportunity to comment on the Financial Services Regulatory Authority of Ontario’s (“FSRA”) Proposed Rule [2020-002] *Unfair or Deceptive Acts or Practices* (“UDAP”) under the *Insurance Act* (the “Proposed Rule”). The LSO supports FSRA’s goal of making the supervision of conduct in Ontario’s insurance system more transparent, dynamic and flexible.

Section 439 of the *Insurance Act* prohibits UDAP, which is currently prescribed in Ontario Regulation 7/00 (the “Regulation”). FSRA proposes to revoke the Regulation and introduce a set of principle-based rules. Section 3(4) of the Regulation contains an exemption for lawyers and paralegals with respect to activities that constitute practising law or providing legal services. The idea is that the UDAP-related conduct of lawyers and paralegals would be addressed by the LSO rather than FSRA. We understand that the government’s intention is to keep the existing exemption in place in the Proposed Rule. Our key concern is that the exemption has not been carried over in full to the Proposed Rule. Our comments on this issue are set out below in greater detail. To be clear, the LSO is only asserting regulatory authority over lawyers and paralegals who are practicing law or providing legal services (i.e., not providing a separate service).

Exemption for Lawyers and Paralegals

The exemption in s. 3(4) of the Regulation provides as follows:

(4) This section does not apply to a lawyer or paralegal with respect to activities that constitute practising law or providing legal services as authorized under the

Law Society Act. However, paragraph 6 of subsection (2)¹ always applies with respect to lawyers and paralegals. O. Reg. 15/13, s. 1 (2).

The exemption in s. 2(3) of the Proposed Rule reads as follows:

2(3) Section 2(1) does not apply to conduct by a lawyer or paralegal with respect to activities that constitute practising law or providing legal services, as the case may be, as authorized under the Law Society Act which results in the outcomes listed in sections 6(1)², 6(2)³ and 6(3)⁴.

We are pleased to see that the exemption in the Proposed Rule refers to the outcomes listed in sections 6(1), 6(2) and 6(3). However, we believe that the exemption should also extend to the outcomes set out in sections 6(4) and 6(5). These sections provide as follows:

6(4) With respect to auto insurance, a claimant signing or being asked to sign a claims form or other document that is required to be in a form approved by the Chief Executive Officer or any form or document that is specified in a Guideline applicable for the purposes of the Schedule before the goods or services related to such a form or document have been provided.

6(5) Information, being communicated about the business, billing practices or licensing status of a person who provides or offers to provide goods or services to a claimant which a reasonable person, in the position of the intended recipient, would consider false, misleading or deceptive.

We understand that s. 6(4) is meant to capture the conduct of medical service providers with respect to claims forms or other documents. Further, FSRA's view is that lawyers and paralegals would not be involved in the filling out of such forms or documents. In the LSO's experience, however, it is possible for legal services providers to participate in the completion of these types of documents. For example, a lawyer acting for a client who does not speak English or French might help the client to fill out a claims form. As such, we believe the exemption in s. 2(3) of the Proposed Rule should be expanded to cover s. 6(4) in recognition that the LSO is the appropriate authority to address such conduct when it is undertaken by lawyers or paralegals.

Similarly, we believe that the exemption should also extend to s. 6(5). As with s. 6(4), we understand that FSRA contemplated that a medical professional would convey the information described in s. 6(5). We note, however, that it is possible for a lawyer or paralegal to be implicated by, for example, acting as an intermediary between the insurance company and the medical services provider with respect to the delivery of

¹ Paragraph 6 of subsection (2) of the Regulation relates to the failure to disclose a conflict of interest to a person who claims statutory accident benefits or to an insurer.

² 6(1) Consideration being paid or sought for goods or services in connection with a claim under a contract of insurance which were not provided to a claimant or were provided in a substantially deficient manner.

³ 6(2) A referral fee being solicited, demanded, paid or accepted in connection with goods or services provided to a claimant.

⁴ 6(3) Unreasonable consideration being paid or sought for goods or services provided to a claimant.

such information. Consequently, in our view, the exemption in s. 2(3) of the Proposed Rule should be expanded to capture s. 6(5).

Finally, we note that our recommended expansion of the exemption is consistent with how the current Regulation is drafted and would therefore preserve the status quo. We believe that the Proposed Rule should accord with the existing Regulation, thereby maintaining the current situation.

Thank you for considering our comments. If you have any questions regarding this matter, please do not hesitate to contact me.

Yours truly,

A handwritten signature in black ink, appearing to read "Teresa Donnelly". The signature is fluid and cursive, with a large initial "T" and "D".

Teresa Donnelly
Treasurer