

August 11, 2021

FAIR Submission to Financial Services Regulatory Authority (FSRA) Revised Proposed Unfair or Deceptive Acts or Practices (UDAP) rule

FAIR (Fair Association of Victims for Accident Insurance Reform) is a grassroots not-for-profit organization of MVA (Motor Vehicle Accident) survivors who have struggled with the current auto insurance system in Ontario. We are the end users of the auto insurance product and we appreciate the opportunity to have our voices heard.

Our comments are directed toward the auto insurance sector.

We see no substantive changes to the existing UDAP regulations and it is noteworthy that many of the suggestions put forward by various stakeholders during the UDAP consultation earlier this year have been ignored.

The most important aspect of regulation is the follow-through or sanction for an unfair or deceptive act. This step has simply been ignored by FSRA. This leaves a huge hole in protecting consumers.

There are no examples offered for guidance to the individuals and entities that might be affected by a UDAP sanction and this is unacceptable. How are stakeholders or consumers to know what boundaries insurers should not cross if there is no information offered to them by the Regulator? The FSRA website states: "FSRA sets well-understood expectations for regulated persons through clear and organized guidance" but we see no evidence of clear or organized guidance beyond empty wording. [\[1\]](#)

Ontarians expect ALL insurers, large and small, to be held to the same standard and subject to the same regulations and possible outcomes. We are not sure why this inequitable landscape, where the 'big guys' might get a break while smaller businesses could be disadvantaged, is being introduced. This unfair advantage for some, but not all, will create greater uncertainty. We support facilitating innovation and flexibility but that too must always come with oversight.

We do not agree that the new principals-based approach to oversight of auto insurers will protect consumers when it is a low bar that requires companies to adhere only to the spirit rather than the letter of the regulation. It allows large corporations, whose profit margins rest on customer claim denials, a great deal of latitude and in doing so creates uncertainty for consumers who, like the insurers, will have no idea where the boundaries are. There is no proactive element to this latest version of UDAP (as in the past) and it is clear that action will only take place after the unfair or deceptive act. And it may be too difficult to enforce any

sanction because, well, no one knows what the infractions actually are, what will trigger a sanction, or if the size and scope of a business will make a difference.

Everyone, all stakeholders will be disadvantaged but especially injured consumers in an abstract regulatory guessing game at a time when their quality of life and rehabilitation is hanging in the balance. [2] How are claimants or consumers supposed to figure out what constitutes a UDAP if the stakeholders, who ought to know, don't have a clue.

Consumers of auto insurance operate from a place of deadlines, thresholds, and compliance – and all of it has clear consequences for them if they fall out of step. Insurers don't come to Ontarians with 'it would be good if you paid a premium' so why is the regulator giving the industry more latitude to "embed controls within their operations to better regulate themselves"? [3] Insurers are profit driven not people focused and there is plenty of evidence of poor insurer behavior that make it clear this is a system in need of regulatory sanctions not self-regulation.

There's been no substantive attention paid to protecting consumer rights when it comes to their privacy. It is a precarious position that consumers find themselves in when it comes to insurers managing their personal information. There are no safe-guards mentioned in these regulations as we had hoped there would be. This issue has become of greater importance with growing pressure from insurers to sign on to telematics usage based premiums. Insurers are already gathering a huge amount of medical information with latitude to make use of that information as they see fit. This should be reviewed with a modern lens to gauge risk to vulnerable patients and the same goes for the driving information insurers gather with an eye to how that information is shared and used.

Every day Ontario drivers are asked to produce their driver's license at medical examinations so the facility can photocopy their personal information in a direct and clear violation of accepted standards set by the Privacy Commission of Ontario. [6] Then, when leaving the medical exam claimants are asked to sign coercive documents that speak to the quality of a medical exam report that hasn't yet been written in an attempt to manipulate a trier-of-fact somewhere down the road. The latest manipulation is sending out surveys about claimant satisfaction during the course of a claim when the individual is already at the insurer's mercy when seeking rehabilitation supports. All of these acts are deceptive and not in consumers best interests and all appear to lie outside what is listed in the O. Reg. 7/00: UNFAIR OR DECEPTIVE ACTS OR PRACTICES and the UDAP rule. [4] That needs to change.

FAIR supports robust oversight of Ontario's auto insurers and their affiliated partners to ensure consumer confidence through UDAP rules that protect consumers from unscrupulous behavior. Information and education in a transparent system is key to ensuring consumer confidence and to strengthen consumer protection in the insurance sectors FSRA regulates. [5]

Thank you for your attention and for the opportunity to voice our concerns. We look forward to participating in future discussions.

FAIR Association of Victims for Accident Insurance Reform

[1] **Transparent.** FSRA sets well-understood expectations for regulated persons through clear and organized guidance. <https://www.fsrao.ca/regulation/guidance/fsra-guidance-framework>

[2] **ABISS Survey of Auto Insurance Claims Process for Individuals with Communication Disorders After Traumatic Brain Injury** https://c431623c-45a3-4335-ad63-b0038f2a649a.filesusr.com/ugd/ec004f_4f5440867ecb47fd9c2344ecfe290658.pdf

[3] **Ontario's regulator explains how principles-based regulation still has teeth** <https://www.canadianunderwriter.ca/insurance/ontarios-regulator-explains-move-from-rules-to-principles-1004170185/>

[4] 3.(2)7. Requiring, requesting or permitting a person who claims statutory accident benefits or who otherwise claims payment under a contract of insurance to sign, before it has been completed in full, 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 *Statutory Accident Benefits Schedule — Effective September 1, 2010*.

<https://www.ontario.ca/laws/regulation/000007>

[5] **Residents' Reference Panel on Automotive Insurance in Ontario to the Financial Services Regulatory Authority of Ontario (FSRA)** <https://www.fsrao.ca/media/2811/download>

[6] **Protecting your driver's licence**

For the most part, Privacy Commissioners have concluded that writing down the driver's licence number from the card, or photocopying, "swiping" or otherwise reproducing the card itself, cannot be justified. The number may encode personal information, such as the licensee's birth date, and the card contains a photograph, signature and other personal information that is more than what is actually needed for most business purposes.

<https://www.priv.gc.ca/en/privacy-topics/sins-and-drivers-licences/drivers-licences/protecting-your-driver-s-licence/>