

OTLA Submission to Financial Services Regulatory Authority (FSRA)

Proposed FY2022-2023 Statement of Priorities

October 29, 2021

The Ontario Trial Lawyers Association (OTLA) is pleased to provide input to the Financial Services Regulatory Authority of Ontario (FSRA) regarding its proposed FY2022-2023 Statement of Priorities and corresponding budget.

OTLA was formed in 1991 by lawyers acting for plaintiffs. Our purpose is to promote access to justice for all Ontarians, preserve and improve the civil justice system, and advocate for the rights of those who have suffered injury and losses as the result of wrongdoing by others while, at the same time, advocating aggressively for safety initiatives.

OTLA frequently comments on legislative matters and has appeared on numerous occasions as an intervener before the Court of Appeal for Ontario and the Supreme Court of Canada.

Introduction

OTLA welcomes the opportunity to comment on FSRA's proposed priorities and budget. As OTLA stated in its 2021 Pre-Budget submission to the Ontario government, available [here](#), Ontario's auto insurance system is fundamentally broken. It is out of balance and no longer meets the needs or expectations of Ontario's drivers and accident victims. The basic principles and goals underlying an effective automobile insurance system must include transparency, simplicity and certainty for the consumer.

At the outset, OTLA notes that it agrees with FSRA's stated priorities of strengthening consumer focus, enabling innovation and modernizing systems and processes. OTLA also applauds the development of a Strategic Framework and the following four pillars developed within that framework:

- **Pillar #1:** Operative effectively to be a high-performing regulator
- **Pillar #2:** Transform our regulatory processes to make evidence-based and risk-based decisions
- **Pillar #3:** Attract talent and evolve our culture to achieve priorities
- **Pillar #4:** Protect the public interest to enhance trust and confidence in the sectors we regulate

In order to implement the stated priorities, OTLA strongly recommends that FSRA focus its efforts on consumer education and transparency with regard to insurer profits and insurance rates. This is the only way to adequately protect consumers. OTLA's submissions will focus on sections 1 to 4 of the proposed Statement of Priorities.

Section 1: Strengthen Consumer Focus

OTLA supports FSRA's priorities of strengthening consumer focus, creating new opportunities for consumer participation, and enabling consumer stakeholders to participate in more FSRA policy and rule development. In fulfilling these goals, OTLA recommends that FSRA provide specifics as to how these goals will be met, including target dates, specific consumer stakeholders to contact and timetables of meetings. It is imperative that all consumer groups be included and that their input be meaningfully considered.

OTLA is encouraged to see, as stated in FSRA's Statement of Priorities, that the establishment of the Consumer Office and the Consumer Advisory Panel have been positive steps for FSRA in engaging with consumer stakeholders. OTLA recommends continued strengthening of the Consumer Office and Consumer Advisory Panel in support of the public interest.

OTLA is also pleased to see comments in the Statement of Priorities about the importance of bringing an equity lens to its work with a focus on the consumer vulnerability that has been made clearer during the pandemic.

OTLA recommends that FSRA also strengthen consumer focus by ensuring:

- better education for consumers regarding optional benefits; and
- transparency in auto insurance rates and insurer profits.

First, optional benefits must be accompanied by clear, straightforward education. Automobile insurance in Ontario is a compulsory product. It is also an expensive product. For many consumers, at the time they are purchasing or renewing their automobile insurance, their primary concern is the cost of the premium. They assume they are protected and that they will be covered in the case of an accident. Citizens trust the government to ensure that insurance offers adequate protection and coverage. When an accident happens, many are surprised to find out that is not the case.

Ontario already has consumer choice in automobile insurance, in the sense that all drivers must have a base, standard policy and then there are optional benefits beyond the base policy. Consumers are rarely told about the optional benefits available to them or, if they are told, the explanation is long and complicated and pricing is not provided. These long, complicated explanations are often ignored by the consumer. The consumer often assumes that all necessary information was provided to them during their conversation with the insurer representative. Unfortunately, these conversations often do not include the risks of not purchasing additional coverages.

In order to ensure consumers are protected, optional benefits and the potential importance of same should be explained to them in clear, straightforward language. The risks of not purchasing additional coverages can be significant. The standard policy, which has been eroded over the years, does not provide adequate coverage for many Ontarians.

Second, consumer interest should be the primary consideration when setting and explaining how and why auto insurance rates are set. Consumers should be provided with clear data regarding insurer profits and profit increases. Transparency regarding how insurance rates are approved is essential since insurance coverage is mandatory. The factors being considered, including profitability, and the data submitted by insurers should be made public and available to all consumers. The consumer should be provided with information so that he or she can clearly understand why premiums may increase generally. On an individual basis, currently premium increases occur with no explanation required to the consumer to justify the increased rate. A clear explanation should be required to justify the individual increase in rate from year to year for any consumer. These should not be generic explanations but rather detailed explanations as to why that particular consumer's premium has increased.

Sections 2 & 3: Enabling Innovation and Modernizing Systems and Processes

OTLA supports technological innovation and the modernization of systems to improve efficiencies, service, and the user experience. However, the goals and implementation outlined in FSRA's Statement of Priorities are vague and it is unclear how the proposed changes will be implemented and how the planned outcomes will be achieved.

Transparency is of utmost importance, specifically as it relates to the collection of data and implementation of online and electronic processes. If the intended goal is to streamline and simplify the user experience, we submit that the consumer must be aware, and properly informed, of how their engagement in the process may affect their insurance coverage. The concern is that what might appear as a simple "self-service" consumer choice at the time insurance is purchased can have a greater consequence to the insured if they are involved in an accident and that specific coverage is needed but not provided because of that initial choice. The consumer must appreciate the purpose and value of an optional benefit to be in position to make an educated and responsible choice. We reiterate the concerns highlighted in Section 1 of these submissions.

With respect to the proposed implementation of advanced online/web-based information sharing and transactional processing tools, we submit that this implementation must be mindful of consent and security issues. Consumers should be informed of what personal information is being collected or exchanged and for what purpose their personal information will be used.

There are also inherent concerns with electronic methods of communication with consumers. Privacy issues arise in web-based systems. Electronic correspondence is also perceived to be informal, less reliable, and more susceptible to interference than traditional methods. E-mail filters and security settings may prevent the e-mail correspondence from appearing in the insured's inbox or being brought to their attention. We submit that there should be informed and meaningful consent to every online system that affects the consumer, especially as it pertains to digital document processing and digital signatures. OTLA outlined similar concerns in our response to the proposed amendments to the *Insurance Act* and Regulations 777/93, 34/10, 676 and 95, regarding electronic communication with insureds and the delivery of electronic notices to terminate coverage. Those submissions can be found [here](#).

Section 4: Property and Casualty (Auto) Properties

4.1 Implement a New Strategy for Reforming the Regulation of Auto Insurance Rates and Underwriting

FSRA's mandate includes contributing to public confidence and promoting transparency and disclosure of information. OTLA is of the view that public confidence has been eroded due to shrinking coverage, drastically reduced benefits and excessive premium increases.

The realized profit provision for Ontario auto insurers in 2020 has been reported to be 27.6%. ***This is more than five times the target of 5%***. It is expected that a similar profit will be reported in 2021 due to premium increase approvals, a dramatic decline in claims due to the pandemic and reduced coverage and benefits afforded to Ontario drivers and accident victims. Consumers should not be paying increased rates while insurers collect profits that far exceed the target.

OTLA agrees that there is a need to enhance the ability of consumers to make informed decisions. The consumer must be confident that FSRA is indeed operating within a principles-based approach to regulation and supervision of the insurance industry. Transparency must be the key.

Consumers should be able to easily obtain data related to auto insurance rate approvals and, with this information, compare rate increases throughout the year and from previous years. The new reporting structure, through the Auto Insurance Consumer Hub, altered the way auto insurance rate approvals are reported. Previously, through the Financial Services Commission of Ontario (FSCO), auto insurance rate approvals were released quarterly allowing for interested stakeholders to track the approvals. While attempting to be more transparent and consumer-friendly, in fact, the change in reporting structure makes it impossible for consumers to compare rates.

Consumers should be provided with clear data regarding insurer profits and profit increases. Transparency regarding how insurance rates are approved is essential since insurance coverage is mandatory. The factors being considered, including profitability, and the data submitted by insurers should be made public and available to all consumers. The consumer should be provided with information so that he or she can clearly understand why premiums may increase generally.

On an individual basis, currently premium increases occur with no explanation required to the consumer to justify the increased rate. A clear explanation should be required to justify the individual increase in rate from year to year for any consumer. These should not be generic explanations but rather detailed explanations as to why any particular consumer's premium has increased.

4.2 Develop Recommendations and Act on Reforms of the Auto Insurance System

OTLA supports the detection, deterrence and elimination of fraud in automobile insurance; however, as noted in its July 2021 submission to the Ministry of Finance (MOF) and FSRA on the Proposed Fraud and Abuse Strategy for the Auto Insurance Sector, found [here](#), the MOF stated in its Consultation Paper that “insurance fraud and abuse’ is neither defined in legislation nor regulation, nor is there an accurate quantification of the size and scope of fraud and abuse”. While the development and implementation of initiatives to reduce fraud and abuse is a laudable goal, it is entirely unclear how fraud is being defined and how much fraud actually exists in the system. Insurers have failed to make this information publicly available. Up-to-date data on fraud should be made public on an ongoing basis, with a clear definition of fraud being utilized by insurers in their reporting.

Insurers cite fraud as the primary reason for increases in premiums. It is a convenient argument but is not currently backed by clear, up-to-date information on the true extent of fraud in the system. Transparency is vital on this issue. Consumers should be provided with explanations of how FSRA and the insurance industry is detecting tracking and preventing fraud. The consumer expects that with current technology and the use of various tools to track all insurance transactions, fraudulent transactions can be tracked and prevented.

OTLA agrees with the proposal to develop Health Service Provider supervisory reforms so long as those efforts maintain consumer choice regarding health care providers. Details of OTLA's position

on the specific question raised by the MOH and FSRA regarding the use of Preferred Provider Networks is set out in the July 2021 submission noted and linked above.

4.3 Ensure the Fair Treatment of P&C/Auto Consumers

OTLA applauds FSRA's initiatives to ensure the fair treatment of P&C/auto consumers. It supports taking steps to monitor P&C/Auto conduct, including supervision, deterrence and encouraging of high standards of conduct in the interest of public confidence and safety.

As noted above, automobile insurance in Ontario is a compulsory product. As a result, consumers assume they are protected from deceptive or abusive conduct, and that they will be covered in the case of an accident. Citizens trust the government to ensure that the insurance offers adequate protection and coverage. To ensure adequate consumer protection, deterrence of deceptive or abusive conduct must be accompanied by a clear and straightforward enforcement mechanism, with clearly defined timelines and consequences.

Legal rules meant to deter deceptive and abusive conduct have been severely restricted, or completely removed, by other legislative changes. Insureds cannot sue their own insurer for bad faith and special award and costs awards at the Licence Appeal Tribunal (LAT) are exceedingly rare.

Consumers must be provided with clear, easy-to-understand information about FSRA's enforcement processes, including:

- 1. Clear and accessible enforcement process**
 - When consumers wish to bring a complaint, the enforcement process should be available, easy to find, and simple to access.
- 2. Certainty in response to complaint**
 - If a consumer brings a complaint through the easily accessible enforcement process, they should be assured the certainty of a meaningful response from the regulator.
- 3. Clarity of process in investigation**
 - In the response to the consumer complaint, the process of investigation and the documentation and information required, as well as the decision-making process, and timelines, should be clearly outlined to the complainant.
- 4. Clear and expected punitive measures**
 - If undesirable conduct is identified, the consumer ought to be assured of the punitive measures available through the enforcement mechanism.

Such clarity in enforcement would help the goal of deterring undesirable conduct. Without an effective enforcement mechanism, that provides certainty of response, and expected sanctions, the goal of fair treatment of P&C auto consumers would be undermined.

Conclusion

OTLA supports many of FSRA's proposed initiatives, particularly those that recognize consumer vulnerability and enhance consumer focus and consumer protection. The protection of the public interest must be front and centre in all initiatives undertaken with respect to compulsory

automobile insurance. In order to accomplish the stated goal of protection of the public interest, it is imperative that there be transparency with regard to insurer profits and rates.

OTLA appreciates the opportunity to provide feedback with respect to FSRA's proposed Statement of Principles and Budget and looks forward to continuing to work together with FSRA to protect and empower consumers in the public interest. OTLA would be pleased to discuss these submissions if questions arise, if clarification is required or if OTLA can be of any further assistance.