

OTLA Submission to Financial Services Regulatory Authority (FSRA)

Proposed Guidance for Operational Risk Management Framework in Rating and Underwriting of Automobile Insurance

February 25, 2022

The Ontario Trial Lawyers Association (OTLA) is pleased to provide input to the Financial Services Regulatory Authority of Ontario (FSRA) regarding its proposed Guidance for Operational Risk Management Framework in Rating and Underwriting of Automobile Insurance.

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 the Proposed Guidance for Operational Risk Management Framework in Rating and Underwriting of Automobile Insurance. OTLA supports an operational risk management framework that requires insurers to be responsive to changing external environments, to charge fair rates, and to be transparent to the consumer.

1. Rating and underwriting must be responsive

The ongoing COVID-19 pandemic has brought the need for flexible and accountable rate-setting to the forefront. After the province-wide shutdown commencing March 17, 2020, the number of collisions across the province dropped and has remained low ever since. Ontarians have been driving less, resulting in fewer motor vehicle collisions. For example, from March 17 to October 31, 2019, there were a total of 155,191 automobile collisions in Ontario. During that same period in 2020, however, there were a total of only 91,320 collisions, a decrease of more than 41%. In 2021, the number of collisions between March 17 and October 31 was still down by approximately 34% compared to 2019.¹

| Class of Collision | 2018 | 2019 | 2020 | 2021 |
|--------------------|------------------|------------------|------------------|------------------|
| | Mar 17 to Oct 31 |
| Fatal | 397 | 424 | 395 | 381 |
| Personal Injury | 24,804 | 23,315 | 14,841 | 16,096 |
| Property Damage | 127,228 | 131,452 | 76,084 | 86,247 |
| Total | 152,429 | 155,191 | 91,320 | 102,724 |

*preliminary data from 2018 through 2021

Source: Ministry of Transportation

Despite these precipitous declines in collisions, most insurers have recently applied for and received rate increases through FSRA, and many policyholders will therefore see their premiums increase at renewal.

¹ MTO Collisions Statistics - 2018-2021, <https://www.otla.com/docDownload/1884309>

According to FSRA, the average premium to the end of June 2020 increased by \$30 since December 2019. Spread across the approximate 6.6 million drivers in Ontario, this represents an increase of revenue for insurers of \$198,000,000.

With rates static or, even slightly increasing, in the face of declining collisions, insurance companies have earned far greater revenues and profits. The realized profit provision for Ontario auto insurers in 2020 was reported to be 27.6%.² This is more than five times the target. Consumers should not be paying increased rates while insurers collect profits that far exceed the target.

OTLA supports the Proposed Guidance in encouraging insurers to adapt to changes in the external environment, in turn promoting more accurate and responsive ratings.

2. Rating and underwriting must be fair

OTLA agrees that it is of utmost importance that the models used by insurance companies be accurate and sound.

Consumer interest should be the primary consideration when setting and explaining how and why auto insurance rates are set.

The dangers posed by unresponsive modeling to insurance ratings is clear from consumer complaints of auto insurance rate increases based on changes to their postal codes. A recent CTV News article (January 4, 2022) reports that consumers have experienced increased insurance premiums when Canada Post changed their postal codes, even though they did not physically move.³ Modeling can unduly sweep consumers into unfair categories. OTLA supports the Proposed Guidance's call for insurers to implement processes to understand the impact to individual customers from the use of models and to avoid unfair discrimination.

3. Rating and underwriting must be transparent

Automobile insurance is a compulsory financial services product. Consumers are required to purchase insurance to protect themselves and their families in the event of auto crashes and should be assured that the price they pay for their insurance is both fair and reasonable.

The Proposed Guidance focuses on internal accountability for rate-setting and underwriting. OTLA agrees this is important, but also recommends that the rating and underwriting processes be transparent and available to the public.

Data transparency is paramount. Auto policy in Ontario must be based on complete data transparency and accountability from the auto insurance sector.

² Preliminary Ontario Private Passenger Vehicles Annual Review – Based on Industry Data Through December 31, 2020 (July 12, 2021) [Oliver Wyman Review] at page 18. In 2021, FSRA retained Oliver, Wyman Limited (Oliver Wyman) to review the private passenger vehicle insurance experience in Ontario, with reference to data compiled and presented by the General Insurance Statistical Agency (GISA) as of December 31, 2020, <https://www.fsrao.ca/media/4426/download>

³ Ontario driver frustrated when car insurance goes up after postal code changed, <https://toronto.ctvnews.ca/ontario-driver-frustrated-when-car-insurance-goes-up-after-postal-code-changed-1.5727675>

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, premium increases now 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.

4. The Proposed Guidance should be mandatory

Finally, OTLA recommends making this guidance mandatory for insurers in Ontario. As it stands, the proposal is information guidance only. It does not create a new compliance obligation for regulated persons. OTLA recommends that this proposed guidance be mandatory on auto insurers to safeguard fair and consistent rating and underwriting across the industry.

CONCLUSION

OTLA appreciates the opportunity to provide feedback with respect to FSRA's proposed Guidance for Operational Risk Management Framework in Rating and Underwriting of Automobile Insurance and looks forward to continuing to work together to protect and empower consumers in the public interest. OTLA would be pleased to discuss these submissions if there be any questions, or if OTLA can be of any further assistance.