



FAIR Association of Victims for Accident Insurance Reform

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FAIR Submission to: FSRA Proposed FY2024-2025 Statement of Priorities ID 2023-012

Thank you for the opportunity to speak to the auto insurance issues facing Ontario consumers. FAIR is a grassroots not-for-profit organization of Ontario car crash survivors who have struggled with the current auto insurance system in Ontario.

We appreciate the continuing effort of the FSRA to focus on improving regulatory efficiency and effectiveness in an effort to better serve the public interest.

Our comments will be focused on auto insurance only.

There continues to be a disproportionate amount of effort by FSRA to facilitate insurers and too little attention given to whether consumers, who attempt to use the product they are legislated to purchase, are getting what they need for recovery. There are carefully chosen words such as “Consumers are empowered to make more informed decisions by enhancing transparency and providing resources to enhance the understanding of auto insurance” without providing any roadmap or details around achieving anything beyond the front end of innovation, fair rates and underwriting.

The Auditor General’s (AG) **Value-for-Money Audit: Financial Services Regulatory Authority: Regulation of Private Passenger Automobile Insurance, Credit Unions and Pension Plans (2022)** [\[1\]](#) offered some specific goals and a path for effective oversight in respect to gathering the data FSRA needs to confirm whether or not Ontario drivers are being served through interpreting License Appeal Tribunal (LAT) data – information FSRA already has access to. It is clear the AG’s office felt FSRA “does little with it (LAT data) to better understand the types of cases that are appearing before the LAT, and if regulatory changes or other actions would reduce the number of LAT hearings”. We would have expected some detail around FSRA’s intent to follow through on the AG’s suggestions in this Audit.

Ontario’s car crash survivors continue to have issues with excessive claims denials. The high volume of cases at the LAT is a result of the failure to ensure there is accountability built into the claims system itself. The License Appeal Tribunal is failing to provide accountability with too few sanctions for insurers who behave badly during the course of a claim when a Special Award applies only to participants’ behavior during the hearings process itself. The LAT’s failure means the narrow opportunity to provide accountability lies in the Regulator’s hands through the complaints system and through calculating whether consumers are getting what they paid for. The failure of FSRA to regulate has resulted in Ontario LAT Adjudicators providing excuses for insurers behaving badly. We continue to see the lack of integrity and accountability surrounding this Tribunal system described as "an

independent, quasi-judicial agency" while allegations from Ontario Trial Lawyers Association (OTLA) point out how insurers have "tried to stack the deck" in the LAT system. [\[2\]](#)

As FSRA promises to "Protect the public interest to enhance trust and confidence in the sectors we regulate" we would question how this can be done without actively gathering the information from the LAT decisions in order to gauge the value of the product. By FSRA's own data, there has been no quantifiable action taken when consumers complain about their experiences to FSRA when of the 230 complaints in 2021-22 only 6% or 14 complaints were acted on with a letter of warning. [\[3\]](#)

We acknowledge that the "FSRA's Complaints Framework will be open for update and review next fiscal year" according to the FSRA Consumer Advisory Panel (CAP) record. [\[4\]](#) This still falls short of active regulatory action to hold insurers to account and to protect vulnerable injured claimants during the claims process. There ought to be an eye toward having less complaints through better monitoring of insurer behavior and based on meeting consumer expectations while refining the system to ensure policy-holders are getting what they paid for.

In recent months we've seen action taken by FSRA to protect their own Take-All-Comers rule but where is that same pro-active energy when it comes to protecting injured claimants? It's clear from the media surrounding the recent \$600,000 fine levied against Aviva and their subsidiary S&Y listed on the FSRA website that there can be regulatory follow-through and insurers can be made accountable through fines and through transparency. [\[5\]](#)

What the public remains largely unaware of is the wild-west circumstances around dealing with these mega insurance companies and the intimidation surrounding their business dealings. Claimants who have been denied, delayed, and defamed know all too well about these intimidation tactics but it is shocking and disturbing to see the details around "FSRA found that some brokers might even have felt incentivised to flout rules for financial gain, or out of a wish to keep their insurers happy" and the power imbalance was so pronounced that the Registered Brokers of Ontario (RIBO) sought whistleblower-protection authority from the government for their members. [\[6\]](#)

In this case Aviva's continued failure to follow regulations led to the CEO of FSRA stating "insurers largely denied the problem at first, but that through further investigation including mystery shoppers and consultations, along with working with insurers to self-identify issues, the regulator was able to establish the existence of the practices. Rather than work through extended enforcement actions that could have tied up the process for years, the regulator chose to work with insurers to resolve the issue, he said. While most took action, the FSRA found two Aviva Group subsidiaries continued with non-compliant actions."

This single important action by FSRA, to hold this insurer to account, stands in stark contrast to the routine dismissal of so many complaints about insurer bad behavior in the claims handling process. Claimants are routinely subjected to this same bullying behavior and there is no one to speak to this undermining of their claims through insurers who flout the rules and who fail to follow legislation. There is a silence or perhaps a warning letter issued when it comes to the most fundamental regulation such as proper Notices to claimants in respect to claim denial, access to rehab treatments, Insurer Medical Examination (IME/IE) appointments and adequate Explanation of Benefits (EOB). Many claims are undermined by this failure. [\[7\]](#)

Insurer behavior is directly related to how far they think they can go to deny claims or to limit costs and that climate of operations is set by the Regulator so a weak response to claimant harm at the hands of insurers perpetuates more harm down the road. Failure to acknowledge a problem leads to more questions and leads back to the LAT data that tells the story of who, why and how the system is failing and, as the AG suggested: "While FSRA is not responsible for the operations of the LAT, the insurance companies it licenses and regulates will

always be one of the parties involved in disputes that arise over issues such as denied claims or treatment plans processed by the LAT. FSRA has not conducted inspections of specific insurance companies to understand why so many claims are brought forward against them. If it did, FSRA could use such assessments to engage the insurers in order to identify necessary changes to its own rules or industry regulations to decrease the need for LAT hearings in the future. However, without performing sufficient analysis of this information, FSRA may be losing out on the opportunity to more proactively monitor the industry.” [1]

This Statement of Priorities promises and intent are clear but if the path to get to an “Improved auto insurance product that better serve consumers” is the goal, then shouldn’t there be a stated intent to correct the inequities already existing in the system? Where is the plan to adequately oversee Insurer Medical Examination (IME) assessment centers in a meaningful way and to close that hole in the regulatory landscape? Relying on College oversight does not include many of the individuals who have contact with claimants in the current assessment model so this presents a level of risk to claimants. As insurers ramp up on their desire to fully control Assessment centers and push their own Preferred Provider Network (PPN), where is the plan to ensure claimants are going to get what they need from this system? Currently insurers paid \$2,173 for insurer exams (IME) in 2022 but only paid an average of \$1,532 for rehabilitation. [8] These costs are considerable and we would say evidence of inequity when insurers pay more for assessing an injury than they pay for treating that injury. Given the volume of claimants seeking treatment at the LAT, and because we know the need for rehabilitation is a driver for litigation, there needs to be greater attention on this issue.

Consumer confidence means constant adjusting of some funding for recovery in a fast-changing system. The underpayment of Personal Support Workers (PSW) at a level below Ontario’s minimum wage [9] and the continued downward pressure of many Health Service Providers (HSP) fees that have not been increased in a decade [10] all work against patient recovery and this ultimately undermines the public trust the insurance we buy has value.

If “Identifying and acting on opportunities to better protect vulnerable consumers, such as improving capacity and/or processes to help identify risks of consumer harm for vulnerable groups” is the purpose of publishing the Statement of Priorities, then the place to start is to ensure Ontario’s auto accident survivors have adequate tools for recovery. The Health Care Providers and the businesses claimants rely on to reach that recovery need to be properly paid under the rules that FSRA does have control over and is able to adjust.

In the end, it isn’t enough to say transparency is a goal, or that FSRA is continuing to modernize processes and systems when the focus continues to be around auto insurer facilitation, innovation and protection overall. It is consumers who need protection from insurer behavior, not the other way around and this document promises much without providing the detail of how to get there. It’s clear the auto insurance system is less transparent than it has been in the past and by any measure, we are not moving forward. Regulation isn’t effective when the Regulator positions itself and surrounds itself with insurer representative Stakeholder Advisory Committees (SAC) [11] that ultimately work to help insurers evade consequences. Including consumers means FSRA needs to consider and acknowledge the current system harms many individuals and prioritize a way to quantify that and to correct the harmful inequities that exist today as a result of that lack of inclusion.

FAIR appreciates that the public is invited into these consultations that enables consumers to inform the Regulator about the issues that are important to them.

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1. Office of the Auditor General of Ontario Value-for-Money Audit: Financial Services Regulatory Authority: Regulation of Private Passenger Automobile Insurance, Credit Unions and Pension Plans (2022) 4.1.5 Accident Benefit Appeals Are Not Reviewed to Improve Oversight of Insurers and Provide Consumers with Information

FSRA Could Benefit from the Review of Information from the LAT to Determine How It Can More Effectively Regulate the Sector (pg 33 - 36)

As part of our audit, we reviewed the LAT data that is shared with FSRA. This data includes very high-level statistics such as the number of dispute applications, the categories each falls into (e.g., medical benefits), and how each party was represented (e.g., by a lawyer). We found that although FSRA receives this information from the LAT quarterly, it does little with it to better understand the types of cases that are appearing before the LAT, and if regulatory changes or other actions would reduce the number of LAT hearings on automobile insurance matters.

<https://www.auditor.on.ca/en/content/annualreports/arbyyear/ar2022.html#2022fu-VFM>

2. Ont. lawyers question impartiality of provincial tribunal that hears insurance car crash claims

"It appears that Aviva may have tried to stack the deck here in terms of this adjudicator continuing to hear these cases or at least that the adjudicator had a conflict of interest and didn't do anything to recuse herself from the hearings," said Jennifer Bezaire, a personal injury lawyer and managing partner of Greg Monforton and Partners in Windsor, Ont.

<https://www.cbc.ca/news/canada/windsor/lawyers-question-provincial-tribunal-car-crash-1.6933029>

3. Graphs displaying the complaints at FSRA and action taken 2021/22

230 complaints. 6% (= 14 cases) were acted on with a letter of warning.

<https://www.fsrao.ca/submit-complaint-fsra/complaints-report-2021-2022>

4. FSRA Consumer Advisory Panel Meeting 4 – September 18, 2023

Item 4: Complaints

The Panel is invited to review the complaints resolution framework and provide suggestions for improvement. FSRA's Complaints Framework will be open for update and review next fiscal year. The Panel's input will be taken into consideration during the update process.

<https://www.fsrao.ca/consumers/how-fsra-protects-consumers/consumer-advisory-panel/consumer-advisory-panel-meeting-september-18-2023-0>

5. FSRA imposes administrative penalties against Aviva Insurance Company of Canada and S&Y Insurance Company

The Financial Services Regulatory Authority of Ontario (FSRA) has imposed administrative penalties in the total amount of \$300,000 against [Aviva Insurance Company of Canada](#) (AIC) and administrative penalties in the total amount of \$300,000 against [S&Y Insurance Company](#) (S&Y).

<https://www.fsrao.ca/newsroom/fsra-imposes-administrative-penalties-against-aviva-insurance-company-canada-and-sy-insurance-company>

6. Is the broker/insurer power dynamic broken?

Brokers should not be afraid to speak up about insurer misconduct or breaches – but some are. Take that in for just a moment, because what the FSRA appears to be saying here is that some brokers are so concerned about the risk of being cut off by insurers that they felt they could not engage with a regulatory intervention. So much so, in fact, that this was one reason that the FSRA, which worked with The Registered Brokers of Ontario (RIBO) on its investigation, sought out whistleblower-protection authority from the government.

<https://www.insurancebusinessmag.com/ca/news/columns/is-the-brokerinsurer-power-dynamic-broken-455866.aspx>

7. [K.M.] v Aviva Insurance Canada, 2023 CanLII 60250 (ON LAT), <<https://canlii.ca/t/jz294>

[22] First, the applicant's claim was adjusted with an incorrect understanding of his policy limits. The applicant had optional benefits worth three million dollars which were correctly listed in an adjuster's log note on March

24, 2021. However, the January 25, 2022 EOB stated the proposed cost exceeded the applicant's available policy limits. Ms. Highley, who denied the OCF-18, testified she was unaware the applicant had optional benefits until the summer of 2022. I find it speculative for the respondent to assert the applicant was not negatively impacted by this error. It is not possible to know if Ms. Highley would have ordered additional IEs had she known the correct value of the policy.

[53] Given the applicant is catastrophically impaired and has a severe brain injury that requires a litigation guardian, I consider him to be a particularly vulnerable member of society. As a result of the compounding effect of the respondent's errors and the funds the respondent has unreasonably withheld or delayed, I find the applicant is entitled to an award of 50 per cent of the cost of the vehicle, the difference in rent and the late ACB payment.

[54] The case law that I have cited granted awards from 50 to 25 per cent. In this case, I find the maximum award of 50 per cent is merited because of the respondent's repeated unyielding behaviour that resulted in the applicant living and toileting in his family's living room for months despite having optional benefits worth three million dollars. In my view, the respondent's unrelenting need to quantify the applicant's current and future medical condition, despite his permanent disability due to a traumatic brain injury, caused unnecessary strife and hardship to the applicant. I find the blameworthiness of the insurer's conduct is apparent and an award of 50 per cent is appropriate.

8. Ontario Health Claims Database HCDB Standard Report 2022 (pg 35)

average paid for rehabilitation \$1,532

average paid for insurer exams (IME) \$2,173

<https://a-us.storyblok.com/f/1003207/x/e7a5a48926/hcdb-2022-standard-report-final.pdf>

9. Superintendent's Guideline No. 01/18: Attendant Care Hourly Rate Guideline

Attendant Care Costs Maximum Hourly Rate

Part 1: Hourly Rate A Level 1 Attendant Care is for routine personal care. \$14.90

Part 2: Hourly Rate B Level 2 Attendant Care is for basic supervisory functions. \$14.00

Part 3: Hourly Rate C Level 3 Attendant Care is for complex health/care and hygiene functions. \$21.11

<https://www.fsrao.ca/media/6901/download>

10. Professional Services Guideline Superintendent's Guideline No. 03/14

<https://www.fsrao.ca/media/7996/download>

Professional Services Guideline (PSG), a schedule of the Insurance Act, sets out the rates that insurers pay healthcare providers for treatment of motor vehicle accident injuries. It has not been adjusted since a cost of living adjustment in 2014.

11. Stakeholder Advisory Committee and Technical Advisory Groups

<https://www.fsrao.ca/industry/auto-insurance/regulatory-framework/advisory-committees>