

# **OTLA Submission to the Financial Services Regulatory Authority of Ontario (FSRA)**

*Health Service Provider (HSP) Framework Review,  
September 2024*

November 29, 2024

The Ontario Trial Lawyers Association (OTLA) appreciates the opportunity to provide comment to the Financial Services Regulatory Authority of Ontario (FSRA) on their Health Service Provider (HSP) Framework Review.

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 commends FSRA for consulting with stakeholders on how the HSP system can be improved. We encourage changes to the HSP system that increases access to treatment and treatment providers, rather than restricts same, and changes designed to increase efficiencies and modernize the system.

In response to the questions asked within the consultation paper OTLA provides the following responses:

### **1. What features should a HSP licensing system focus on to have better user functionality?**

OTLA fully supports any system that reduces administrative work for HSPs. OTLA repeatedly hears from HSPs that the number one reason they stop doing auto-insurer/HCAI-related work is the amount of administrative red-tape procedures they must endure and the cost outlays required to provide services to their clients. This is more so when compared to the little-to-no administrative work and cost outlays they do for their private or non-auto insurance clients.

In this sense, Initiative A is, on its face, appropriate. That said, another concern raised by HSPs is the costs they must pay out to service auto-insurer/HCAI clients. They pay an upfront licensing fee, and then an annual fee to FSRA every year. As is submitted in OTLA's submission on reforms to HCAI, HCAI billing is incredibly onerous for HSPs and far more so than non-auto/HCAI client billing. Most HSPs therefore pay for software to help integrate HCAI billing into their systems, without which their administrative work would further increase by 200-300%. This is an added cost related solely to auto-insurer/HCAI clients because this software is not required for their private and non-auto insurance clients. Coupled with rates for service that are, in general, far lower than their private rates, there is already an economic disincentive for HSPs to take on auto-insurer/HCAI clients, so any added costs for licensing software will only increase this disincentive.

OTLA is therefore concerned that the price of any further software will be passed on to the HSP, and therefore add to their burden of servicing auto-insurer/HCAI clients.

## **2. Are there any concerns/considerations FSRA should keep in mind when developing and implementing the HSP Supervisory Tool?**

OTLA is concerned that the insurance industry's reliance on fraud as a "major point of concern" has disproportionately permeated FSRA's priority list when it comes to supervising HSPs. In short, the repeated reference to fraud and abuse in the system by HSPs as being a major issue, without evidence of same, needs to stop.

HSPs are regulated by their respective colleges, who are far better suited than FSRA to supervise, regulate and discipline them, where necessary. Furthermore, with access to HCAI data, FSRA is well-suited to supervise HSP billing practices and information for any fraud it suspects has occurred.

Rather, the focus should be on promoting a healthy environment in which HSPs would be encouraged to do auto-insurer/HCAI-related work, as opposed to being overly burdened by administrative work and being felt as though they are defrauding system because of an overly paternalistic approach from FSRA. HSPs, particularly those in high-needs areas such as psychologists and psychotherapists, are leaving auto-insurer/HCAI-related work in droves because of low pay rates, burdensome administrative work and low morale.

In this sense, OTLA is concerned that Initiative B's vague focus on accumulating "multiple data points" and "utilizing a greater data" set will increase the amount of information sought from HSPs by FSRA, thereby increasing their already unworkable administrative load, all in the name of reducing a level of fraud that does not, on any evidence presented by the insurance industry, exist.

OTLA therefore supports any streamlined professional approach to supervision that demonstrates respect for the work done by HSPs.

## **3. What areas of licensing and supervision can RHCs and FSRA work together on to better alleviate issues in the sector?**

The wording of Initiative C, and its emphasis on fraudulent billing raises the same concerns outlined above in question 2.

Each college has policies and procedures in place for billing practices and fees charged by their members. If HSP billing fraud was, in fact, a significant issue, as alleged by the insurance industry, the RHCs would be aware of it and would dedicate the proper resources to investigate it. Offending members would be disciplined or banned from practice. All colleges already publicly report this information on their websites. FSRA is therefore encouraged to consult with RHCs to determine whether fraud is, in fact, the pervasive problem the insurance industry says it is.

OTLA further suspects that RHCs would have trouble justifying an information-sharing arrangement with FSRA to its professionals. It is OTLA's view that HSPs, who already feel disrespected and devalued by FSRA and the accident benefits service provider regime, will feel even more disrespected and devalued if they knew that FSRA was obtaining information on them from their RHCs. OTLA strongly recommends that FSRA not seek an information-sharing arrangement with RHCs.

In a similar vein, OTLA suspects that if the consultation went the other way, and RHCs were consulted on its RSPs doing auto-insurer/HCAI-related work, it would note that the rates of pay are far lower than recommended by each respective college.

- 4. What are the key implementation considerations that must be taken into account for each initiative (i.e. timing, communication, education, etc.)?**
- 5. How can FSRA help to ensure that prioritized initiatives/changes are communicated to HSPs and other stakeholders?**

In answer to question 4 and 5, OTLA recommends that any proposed changes be set out in a clearly worded document to stakeholders and that any suggested new forms or systems are provided to HSPs and stakeholders before their approval and implementation. The current consultation does not provide specific examples of changes and is vague on what may be implemented under each proposed initiative. Specific changes should be provided to stakeholders. Feedback should be obtained from stakeholders and their recommendations and comments considered prior to any approval and implementation of new changes to the system.

Once changes are implemented, OTLA recommends that FSRA hold educational webinars for stakeholders and HSPs on the use of any new system.

- 6. Are there any considerations which have been missed that should be considered as part of the HSP review and/or the proposed initiatives?**

Treating clients under the accident benefits regime is very difficult for HSPs. The causes are largely threefold, namely: a) the administrative burden, b) the low rates of pay, and c) the inherent cruelty of a system that places emphasis on cutting costs for insurers and combatting fraud (which may or may not actually exist) over proper and timely treatment of injured persons.

For example, two practitioners from eastern Ontario, Dr. Ada Mullett, psychologist, and Mike Melles, psychotherapist, advised OTLA that they have stopped taking auto-insurer/HCAI clients for these very reasons. Ms. Mullett noted that she can see a private or non-auto insurance client, treat them, and get paid at her private rate all within an allotted session, whereas through HCAI, that process requires filling out an 11-page treatment plan approved in advance of treatment, followed by a 5-page OCF21 form submitted to get paid, hopefully (but not usually) within 30 days, at a far lower rate (on average \$60-\$70 less per hour).

Mr. Melles notes similar concerns, but even more so because in his profession, psychotherapy, he is routinely told by adjusters that he does not have to be paid at the psychologist rate, and therefore has his rate set by the whims of adjusters on any particular file. He noted how degrading this is and, in conjunction with the other above-noted concerns, left the accident benefits regime altogether.

While HCAI deficiencies and HSP rates are addressed in separate consultations, these real-life examples put into context how HSPs feel they are treated by FSRA within the accident benefits regime.

In conjunction with its consultations on HCAI reform and HSP pay rates, OTLA therefore strongly recommends that FSRA focus on streamlining its systems to ensure HSPs have an environment which reduces their administrative and licensing burden, does not accuse them of fraud, promptly compensates them at appropriate rates of pay, and properly respects their work by reducing the administrative burden for licensing, treatment plans, and payment.

## **CONCLUSION**

OTLA appreciates the opportunity to provide feedback on the consultation paper regarding the HSP Framework Review. OTLA would be pleased to discuss these submissions if questions arise, if clarification is required or if OTLA can be of any further assistance.