

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

## *Proposed Guidance on Public Warning Notices*

August 25, 2023

The Ontario Trial Lawyers Association (OTLA) is pleased to provide input to the Financial Services Regulatory Authority of Ontario (FSRA) regarding its proposed Guidance on Public Warning Notices (“the Proposed Guideline”).

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 supports the Proposed Guideline with two suggested changes.

### **1. CHANGE “IMPROPER DEALING” TO “UNFAIR OR DECEPTIVE ACTS OR PRACTISES”**

The Proposed Guidance seems to focus mostly on the deterrence of unlicensed activities, which is a valid focus and self-explanatory. However, the Proposed Guidance also indicates that a Public Warning Notice could be issued when “there is a clear indication of an improper dealing of a FSRA-regulated product or service.”

The term “improper dealing” is used throughout the Guidance but a definition is not provided. OTLA recommends replacing the term “improper dealing” with the term “unfair or deceptive acts or practises”, which is clearly defined in industry-relevant legislation.

Sections 438 and 439 of the *Insurance Act* prohibits insurance companies from engaging in “unfair or deceptive acts or practises” and defines the term as “any activity or failure to act that is prescribed by the Authority rules as an unfair or deceptive act or practice.”

Ontario Regulation 7/00 – or the UDAP Regulation – further prescribes specific actions that are considered unfair or deceptive.

This change would provide more clarity as to when a Public Warning Notice could be issued with respect to the conduct of a FSRA-regulated product, service or individual.

### **2. USE SOCIAL MEDIA**

OTLA agrees that the public warning should be posted on the FSRA website and in a news release. Additionally, FSRA should use social media to disseminate the public warning more broadly. By posting to social media forums, the Public Warning Notice would be more accessible and visible to the general public.

## **CONCLUSION**

OTLA appreciates the opportunity to provide feedback with respect to FSRA’s proposed Guidance on Public Warning Notices 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.