

## RECOMMENDATIONS OF THE FSRA PRODUCT TECHNICAL ADVISORY COMMITTEE

### **Members (in alphabetical order)**

1. Lynn Anderson, VP, Claims Transformation, Definity Financial
2. Jennifer Bezaire, Plaintiff Lawyer/Partner, Greg Monforton & Partners (now a Superior Court judge)
3. Tara Davidson, Director, Best Practices Accident Benefits/Bodily Injury, Desjardins
4. Carlie Flynn, Managing Counsel, Travelers
5. Nick Gurevich, Co-Founder and CEO, FunctionAbility
6. Faith Kaplan, Psychologist and Director of Clinic Treatment Services, Kaplan & Levitt Psychologists
7. Don Kunkel, President, Assessmed Inc.
8. Scott MacDonald, AVP, National Claims, Accident Benefits, Co-operators
9. Tracy Milner, Occupational Therapist, former founder of Complex Injury Rehab and Brain Fx, Ontario Rehab Alliance (current COO, Akinox)
10. Jonathan O'Brien, Director, Legal Department, Intact Insurance Company
11. Karin Ots, Senior Vice-President, Regulators and Government Relations, Aviva
12. Moez Rajwani, Rehab2Go/North York Healthcare Associates
13. Laurie Tucker, Plaintiff Lawyer/Partner, Burn Tucker Lachaine
14. Minwei Wei, CAA

### **Introduction**

In April 2022, FSRA established a new Technical Advisory Committee to help identify problems with auto insurance products and offer solutions for the benefit of consumers. It sought applicants with experience in all aspects of auto insurance. Details of the committee and the terms of reference were established and can be accessed here:

[Auto Insurance Product Technical Advisory Committee terms of reference](#)

[Technical Advisory Committee for Auto Insurance Products \(TAC\)](#)

The FSRA Product Technical Advisory Committee met on nine occasions between September 2022 and June 2023. Meetings were hybrid with some attending in-person at FSRA's offices in Toronto with others attending remotely by video. The committee included insurer representatives, plaintiff lawyers and healthcare providers. The group was facilitated by Ann Mackenzie, Senior Manager for Products and Approvals, Auto/Insurance Products with FSRA and David Neill, a retired lawyer from Thomson Rogers.

### **Accountability**

Ontarians deserve a more agile and outcome focused auto insurance system. Both the Ministry of Finance (MOF) and FSRA have scope and responsibility for the auto insurance system in Ontario. However, there is ambiguity related to the specific responsibilities and accountabilities related to the operation of the auto insurance system. The dichotomy of today leads to policy paralysis where the MOF and FSRA are looking

to the other for the solution. The net result is opportunities lost, solutions paused, and Ontarians are negatively impacted.

***Recommendation:***

We recommend that the MOF establish FSRA as the party accountable for the operation of the auto insurance system in Ontario. MOF should set policy and allow FSRA to operationalize it. To achieve this goal, MOF should provide FSRA with the appropriate mandate, authority, and resources. This would include broader access to industry data [e.g., License Appeal Tribunal (LAT) & Health Claims for Auto Insurance (HCAI)] so FSRA can make informed recommendations in real time; decisions aimed to improve the overall health of the auto insurance system. It is recommended that FSRA submit annual or bi-annual reports to government, with recommendations, and that these reports be published on FSRA's website.

**Data Driven Decision Making**

There is a clear need for accurate and relevant data to inform issues and decision-making related to revisions to the auto insurance system in Ontario. The members note that data is often incomplete, fragmented or not accessible to all relevant stakeholders. Without adequate data it will remain difficult to ascertain what the issues are with the current product or the root causes of these issues (e.g., what are the drivers of costs and disputes in the system?).

Better access and utilization of data is essential for FSRA and all stakeholders to have the information needed to make recommendations for improvements to the auto insurance system.

***Recommendation:***

Our group recommends that an auto insurance product data working group be established to identify data sources, analyze the completeness of the data set, aggregate relevant data for analysis, and work with relevant stakeholders to produce key metrics, and additional insights to improve data-driven decision making for the auto insurance product. The overall vision of this group, to the extent that problems are identified, is to work with FSRA to deliver unbiased, robust, standardized, relevant, reliable and accessible reporting for the auto insurance sector.

It is recommended the initial focus be on improving access and utilization of data that is available through HCAI. It is recommended that FSRA be given the mandate and resources to improve the HCAI system, database and data reports and to continuously work with key stakeholders to devise innovative solutions to issues that continue to hinder stability and predictability within the current system.

For example, to deter and identify fraud and abuse, insured persons and health service providers should have real time access to services billed in their name. This has been demonstrated to be an effective tool for early identification of any instances of problematic billing.

### **Fraud and Abuse within the Auto Insurance System**

Simply put, fraud and abuse of the auto insurance systems costs Ontarians. FSRA undertook a consultation on fraud in 2021. In its Fraud & Abuse Consultation Paper, FSRA noted that fraud and abuse are not clearly defined. Every effort should be made to weed out “bad apples” (all stakeholders) from accessing, operating within, or benefiting from the system. It is acknowledged that FSRA already has a mandate to minimize fraud within the auto insurance system (e.g., licensing of health care providers). FSRA’s oversight mandate, however, is not fully realized in the absence of important industry data (notably HCAI) to assist in the detection, prevention, and elimination (delisting) of those who look take advantage of Ontarians. Bad actors are currently advantaged within the system due to a lack of centralized data collection and making FSRA the data hub, while working in collaboration with trusted stakeholders, could help to even the playing field.

### ***Recommendation:***

We recommend that FSRA be provided with the necessary mandate, tools, resources, and data to expand their effort to eliminate fraud and abuse within the auto insurance system. We recommend that fraud and abuse be clearly defined and the scope determined so that effective remedies and preventative measures can be undertaken.

### **Consumer Communications Related to Healthcare Claims**

The healthcare claims process needs to be improved to be simple and user-friendly for consumers, which is not currently the case. On the front end, the auto insurance product is complicated and difficult to understand and some brokers and agents may not explain the product well to consumers so that they can make an informed choice. On the claims side, the forms are unnecessarily complicated and early access to care is available only to those who fall under the MIG. Our group recommends that all of this be reviewed.

On the issue of consumer choice in the auto insurance product, there was no consensus amongst the group. While some members supported the idea that consumers should be able to opt out of benefits that are not applicable to them or that are available to them through other plans the person has in place (long term disability benefits through work, for example) in exchange for lower premiums, others remain

concerned about informed choice and vulnerable consumers. The historical choice of customers has demonstrated minimal uptake, with few Ontarians opting into increased benefits that are currently available. Brokers and agents may not always explain optional benefits well, consumers believe they won't be involved in an accident or that, if they do, the benefits they have will be sufficient or that the public health system will take care of their needs. Vulnerable populations would continue to be at risk in an optional benefits scheme – those who may most need optional benefits may well choose not to purchase them in order to recognize a small premium savings. Any potential discussions concerning the availability of optional benefits must include a well-defined and robust plan to educate the consumer.

### **Reduction of Disputes**

The frequency of accident benefit disputes and the length of time and associated costs involved in resolving disputes under the current system is unacceptable. The significant reduction of disputes is a laudable goal that would benefit consumers and insurers and the reduction in the number of disputes can only be achieved through the establishment of a fair and trusted system. In the past, changes to auto insurance intended, at least in part, to reduce disputes, may have had the opposite effect.

### ***Recommendation:***

As proposed changes to auto insurance are considered, we recommend consultation with this group on what impact those proposed changes may have on disputes and establishment of metrics to measure the impact of those changes, both positive and negative.

### **Timely Access to Appropriate Care**

Ontarians injured in motor vehicle accidents, regardless of the severity of the injury, should have immediate access to care. While the sentiment has broad-based support within the working committee, the means in which to deliver and/or achieve same differs greatly as between stakeholders. The group agrees that accountability and clarity are important, with a reduction in disputes regarding what is reasonable and necessary care and timely access to appropriate care being the primary goals.

To that end, a number of options were discussed but there was no consensus on any one recommended course. These options should be more fully explored and there are others to be considered. The group agrees that further work should be undertaken with a view to investigating and discussing these proposals in greater detail, with the shared goal of coming to a consensus on the best way to achieve timely access to appropriate care. The 3 options that were discussed are:

1. Pre-approved/automatic access to medical/rehabilitation benefits for all claimants with non-minor injuries (non-MIG). The current system allows immediate access to care up to \$3,500 for all MIG claimants, however, serious non-MIG claimants who are in urgent need of care, must go through a complex and lengthy approval process. Levelling the playing field to allow immediate access to care for non-MIG claimants will improve outcomes, reduce claimant frustration leading to disputes, and claims processing costs.
2. Evidenced-Based Pathways of Care. Use of the best treatment modalities, with a proven track record of success, for injured motorists. A pathway provides clarity to the consumer as to what he/she can expect with treatment, its duration, and what happens at the conclusion of treatment. A first step could be to implement the Ontario Protocol for Traffic Injury Management Collaboration which provides evidenced-based pathways of care for the treatment of neck, sprains and strains of the spine, mild traumatic brain injuries, and post-traumatic psychological symptoms such as anxiety and stress. A further investment in expanding or creating new pathways of care for motor vehicle injuries would also be required.
3. Elimination of the MIG with a return to two categories of claims (catastrophic and non-catastrophic) with non-catastrophic claimants having access to up to \$25,000.00 for medical/rehabilitation treatment, indexed to inflation, administered in a manner more akin to how extended health benefits through group insurance are administered, but without specific limits for individual types of therapies and with deference to the recommendations of health care providers.

***Recommendation:***

We recommend that FSRA continue this committee or establish a new Technical Advisory Committee to explore potential solutions and propose options to reduce disputes over what is reasonable and necessary care, and facilitate early access to appropriate care.

**Conclusion**

This group of insurer representatives, plaintiff lawyers and healthcare providers has worked collaboratively to propose practical solutions to improve auto insurance in Ontario, with a focus on the needs of the consumer and reducing disputes. The group is prepared to continue to work together to assist FSRA. Collaboration amongst all key stakeholders is vital to tackling issues that have plagued this industry for many years – issues that are well-known but have been left unaddressed in a constructive and meaningful way.