

## P&C Insurance Industry Stakeholder Advisory Committee Submission

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### To FSRA re: 2021 Priorities and Budget, November 2020

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The Property and Casualty (P&C) insurance industry is pleased to respond to FSRA's request for input on its proposed Statement of Priorities and Budget for 2021-2022. Again this year, we compliment FSRA for pressing forward on its vision of modern, principle-based regulation of Ontario's financial services sectors. As representatives of one of the most closely regulated industries in Canada, we greatly appreciate FSRA's commitment to this approach, which we believe can be uniquely effective in supporting high levels of consumer satisfaction and protection.

- In this submission we will provide detail on the following points and recommendations:
  - The P&C insurance sector expresses appreciation for FSRA's work during the COVID period, while continuing to make progress on its 2020-2021 priorities.
  - Among the proposed cross-sectoral priorities, special mention is made of FSRA's commitments to promoting innovation and consumer education. Both are described as critical to the industry's future and to its continued ability to serve the needs of customers during times of unprecedented volatility.
  - A central priority for the industry remains the high cost of auto insurance. Although COVID has temporarily reduced claims costs and premiums, the core factors behind the high cost structure for Ontario auto insurance remain. The industry understands the role of the Ministry of Finance in directing system reforms. However, FSRA's statutory objects and stated priority on fostering "a competitive and stable auto insurance marketplace" imply responsibility for actively working with the minister on the details of "transformative" system changes to reduce and stabilize the cost of auto insurance.
  - Reference is made to a variety of new cost pressures on auto insurance. The Stakeholder Advisory Committee (SAC) recommends creation of a permanent industry advisory group to meet with FSRA periodically to identify cost drivers and develop solutions for implementation or advice to the Minister of Finance.
  - The SAC supports the initiatives on fighting insurance fraud, moving to principles-based rules, and reforming rate regulation. With respect to the latter direction, the industry advises attention to maintaining balance between protecting consumers from unjustified rates and avoiding disincentives for innovation and competition.
  - We appreciate the importance FSRA is placing on building its data analytics capacity, and offers caution that changes to the data collected through HCAI must continue to support that system's basic function of facilitating timely adjustment of no-fault injury claims.

- On the proposed budget, we welcome the reduction in regulatory fees for most of the industry. We ask for further information on both the large fee increase for prudential regulation of provincially incorporated companies and FSRA’s plans for ensuring fair application of regulatory costs and obligations across all companies, incumbent and new entrants alike, as the environment of change, innovation and new business models intensifies.
- The sector looks forward to strengthened openness and transparency in our relationship with FSRA and the prospect for ongoing progress in resolving challenges to our industry and customers.

## **FSRA’s response to the COVID-19 Disruption**

- The P&C Industry (SAC) appreciates the havoc that the COVID-19 pandemic has brought to FSRA in planning and prioritizing activities, as it has to our companies, customers and suppliers. These have been far from normal times, such that FSRA’s continued focus on the 2020-2021 priorities must be recognized.
- During the COVID period, FSRA’s role in overseeing and reporting to the public on the industry’s provision of consumer relief measures – in recognition of lower traffic and claims incidence levels – has been the most visible. FSRA’s involvement in this process allowed the government to announce the industry’s provision of nearly \$1 billion in consumer relief on premiums.
- Also of note was the June 3 issuance of guidance on managing accident benefit claims during this time. Insurers found the content of the guidance reassuring insofar it generally confirmed the manner in which they had already been handling AB claims under COVID restrictions. Indeed, the industry’s compliance with the spirit of the guidance was corroborated in the June 30 edition of *The Lawyer’s Daily* which quoted a prominent plaintiff lawyer as saying: “I have indeed observed a commendable willingness on the part of many insurance companies to try to reach a settlement of a claim that makes sense for both parties”.<sup>1</sup>
- As we emerge from the COVID period, the industry looks forward to working with the regulator on addressing new trends and potential challenges with cost pressures, litigation, digitalization, market availability and other issues that may appear.

## **Sector view of FSRA’s 2021-2022 priorities**

### Cross-sectoral priorities

- Innovation: Among the cross-sectoral priorities that FSRA has identified, we particularly welcome the strong commitment to promoting innovation. This focus is consistent with our expectations for a regulator that is proactive in advancing both consumer interests and Ontario’s need for strong, competitive financial services sectors. It is clear that FSRA understands the connection between these two goals as the combined effects of generational transition and new technologies have demonstrated over the past few years. In addition, among the many lessons that the COVID-19 experience has taught, the industry’s ability to innovate and adapt to sudden changes in the

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<sup>1</sup> Mr. Andrew Murray, Personal Injury Partner, Lerner LLP

environment has become an essential ingredient in meeting the basic financial services needs of Ontario's population.

- Consumer education: Under the heading "Regulatory Efficiency and Effectiveness", the priorities document speaks to the regulator's important role in promoting consumer education and awareness. As stated in previous advice from the P&C SAC, we very strongly support this role. It is especially important in light of the complexity of insurance products and the industry's vulnerability to public misunderstandings of the reasons behind fluctuations in the markets for different types of insurance coverage.

#### Reducing the high cost of auto Insurance

- The priorities that FSRA has posited for the P&C insurance sector, particularly the commitments to empower and protect auto insurance consumers and to support and implement government's auto insurance priorities, are matters of central interest to us.
- As of the last month prior to the COVID shutdown, the average premium in Ontario had risen more than 10% over the previous year and by 21% since June 2017. While the COVID shutdown has brought the cost of the claims that drive premiums down, nothing has changed in the auto insurance environment to suggest that the core factors responsible for the high cost structure of Ontario's auto insurance system will not again assert their influence on the affordability and availability of insurance to Ontario's drivers.
- In its 2019 budget, the current government recognized that the most dysfunctional aspects of auto insurance in this province – including excessive disputes playing out through lengthy litigation, large leakages to third party stakeholders of the insurance resources intended for accident victims and a very costly and impugned medical assessment process – require "transformative" change to the design of the system. The budget committed the government to work with FSRA to overhaul the system.
- The auto insurance industry understands that the authority to direct reforms to auto insurance rests with the Minister of Finance and government as a whole. But we also see in the direction from the FSRA Act to "work with the Minister to carry out the regulatory function" statutory confirmation of FSRA's very important role in advising the government on the changes vitally needed to, in the words of the priorities document, "foster a more competitive and stable auto insurance marketplace". In this regard, we value the work that FSRA has undertaken in contributing to the development of the Auto Insurance Blueprint and convening consultations on key areas for system reform.

#### Recommendation:

Going forward, we urge FSRA, in the strongest possible terms, to continue actively advising the Minister on the details of the transformative system changes that are, in our view, the only route to substantially reducing and permanently stabilizing the cost of auto insurance in Ontario.

#### Addressing new sources of cost pressure in auto insurance

- Complementing the core imperative for strategic changes to the design of the auto insurance system, a variety of issues have emerged recently that are potentially threatening significant new pressures on the cost of auto insurance to consumers. These issues have arisen from several sources, and as

they have come to our attention, we have been assiduous in sharing with the regulator what related information, data and analysis we have.

- Long experience teaches that in the complex and multi-stakeholder environment of auto insurance, new sources of cost pressure can always be expected to arise. What this means for insurers and for the regulator is that the job of ensuring affordable and stable rates is ongoing – we need to be vigilant and we need to be prepared to act to prevent small problems from escalating to produce widespread adverse effects for the well-being of consumers.

Recommendation:

We recommend creation of a permanent advisory group, comprising representatives from the insurer and broker communities, to meet periodically for the purpose of identifying cost drivers and, with the regulator, develop solutions – solutions that FSRA can either implement on its own authority or propose to the Ministry of Finance. We believe this measure will avert serious harm to consumers resulting from the inherent instability of auto insurance markets. At our meeting with the Board, we will be pleased to discuss some of the impending cost driver issues, including those potentially arising from the COVID period, that we believe the proposed advisory group could productively address.

**Comments and questions related to FSRA’s proposed key deliverables for auto insurance**

- Rate regulation: Under the draft priority titled “Empower and protect P&C auto insurance consumers”, the priorities document states that a key deliverable will be ensuring “auto insurance rates are reasonable through improved use of benchmarks and developing additional tools for identifying unreasonable rates”. Loss trend benchmarks can be a useful tool in the rate approval process if developed and used appropriately. However, there are also risks attached to reliance on such benchmarks. The Ontario claims environment has proved to be notoriously difficult to predict – this being illustrated, in the extreme, by the wildly erratic driving patterns that have accompanied COVID. Rigid approaches to using benchmarks have been cited for increasing the risks to enhanced competition and innovation within the regulated sector.

The industry is pleased that having created a Technical Advisory Committee for Transforming Rate Regulation, FSRA is retaining its commitment to revise Ontario’s old inefficient and costly system for regulating auto insurance rates. And we are hopeful that as this work progresses, a balance is rigorously maintained between protecting consumers from unjustified rates and avoiding unintended consequences for the innovative and competitive forces at play within the market.

- Rulemaking: The SAC supports the initiative that FSRA has recently undertaken to replace the regulation on *Unfair and Deceptive Practices* (UDAP) with a principles-based FSRA rule. UDAP has long existed as an extreme example of rules-based regulation entailing a great deal of regulatory burden and counterproductive impacts on the competitive auto insurance market. This exercise will be an important test of the modern approach to financial services regulation that focuses on the responsibility of companies to operate in accordance with a set of outcome-based principles to deliver effective consumer protection and enhanced consumer well-being. When fully implemented, it should prove an example for transforming other areas where regulation has been rigid and overly costly to the new principle based model.

- Fighting insurance fraud: The P&C insurance sector very strongly supports FSRA's commitment to building and operationalizing a fraud and abuse strategy to protect consumers and insurers from the high costs of insurance fraud. We appreciate the complexity of this undertaking, which will entail a great deal of cooperation and coordination with other government departments and agencies, including the Ministries of Government & Consumer Services, Attorney General, Transportation, as well as the OPP and local police services.

We look forward to reviewing the new strategy and to working with the regulator to help ensure its early and effective implementation.

- Auto insurance data and analytics strategy: Our industry understands the extraordinary power that accurate and timely data can bring to the regulator, as it is also a critical element in the functioning of our businesses. Consequently, we appreciate the priority that FSRA is placing on building its capacity to access and, most importantly, analyze data on the industry's performance in areas relevant to the regulatory mandate. At the same time, we are mindful of the critical need for very strong data security and privacy protection measures to support this activity.

When it comes to incorporating data from the Health Claims for Auto Insurance (HCAI) system within FSRA's data and analytics strategy, it must be kept in mind that the industry built HCAI for the primary purpose of enabling electronic transfer of the information necessary to adjust injury claims and pay for health services. The claims forms that transmit data through HCAI are the result of an extended partnership process involving health care providers, insurance adjusters, legal advisors and the regulator. We agree that the time has come to review and revise the claims forms. However, it is essential for the review to be conducted in a manner that protects the essential function of HCAI, which is to support the efficient adjustment of claims. An important implication of this is that both insurers and health care providers need to agree that 1) any revised forms carry the information necessary for efficient adjustment decision-making and 2) providers are not encumbered in providing accurate information and data through the forms.<sup>2</sup>

### **Comments on FSRA's proposed budget for 2021-2022**

- The industry appreciates that FSRA's cost and fee projections are a reflection of experience over the past year. Although admittedly a very atypical year in terms of the issues with which the regulator has had to contend, we welcome the information that the costs borne by our sector as a whole will be lower during the coming year. We take particular satisfaction in noting that the largest percentage decline in fees was identified under the P&C conduct column, which we see as a measure of the industry's solid performance on treating consumers fairly within the extraordinary challenges posed by COVID.
- Maintaining a level playing field for fair competition: Projecting forward, consideration needs to be given to the accommodation within FSRA's assessment and regulatory structures of new entrants to the P&C insurance market. While we understand and embrace the great value of vigorous competition within our industry, it is very important to us that the principle of fairness in the costs

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<sup>2</sup> An good example of such encumbrances is found in the exceptionally wide variety of codes to denote injuries, treatments and attributes that are currently able to be used by providers; this contributes to common errors in coding.

and obligations of regulation applies evenly to all market participants, incumbents and new entrants alike. We would like to hear more from FSRA as to how it anticipates meeting this challenge as the environment of economic change, innovation and new business models intensifies.

- Prudential regulation: We have taken note that within the overall decrease in fees that will be collected from P&C in general, the regulatory cost of prudential regulation of provincially incorporated companies will rise by over 100%. Given that these companies are generally small and typically operate within limited communities/markets, the size of this increased burden comes as a surprise. Consequently, it is a matter of concern to this segment of the industry to understand both the rationale for the very large assessment increase being proposed for it and what further regulatory compliance implications it may be signaling for 2021-2022 and beyond.

## **Final Comments**

In closing, we want to comment briefly on the great importance we attach to sustaining a robust, frank and transparent relationship between FSRA and the P&C insurance industry. From its inception, FSRA has emphasized its own commitment to consultation with the regulated sectors and has provided a number of opportunities for industry and other stakeholders to share concerns and convey feedback on its plans and proposals.

FSRA's accomplishments in the eighteen months of its existence are impressive. And, as the priorities document makes clear, a great deal of work lies ahead to fully realize the regulator's core goals in consumer protection and promoting strong, competitive financial services sectors. Looking ahead, we are committed to strengthening the sector's working relationships with FSRA at the staff, executive and board levels. In our view, what will be key to the success of this effort will be FSRA's continued commitment to openness and transparency in its dealings with the industry. In short, our vision is for a genuine partnership with FSRA through which we can achieve ongoing progress in resolving the very real challenges faced by our industry and our customers.