

September 24, 2021

## **FAIR Submission to FSRA Proposed Transparent Communication of FSRA Enforcement Actions No. GR0011APP**

FAIR (Fair Association of Victims for Accident Insurance Reform) is a grassroots not-for-profit organization of MVA (Motor Vehicle Accident) survivors who have struggled with the current auto insurance system in Ontario.

Thank you for the opportunity to voice our concerns and our comments are directed toward the auto insurance sector.

We are pleased to see that FSRA is prioritizing transparency in regulating Ontario's financial services. This will go a long way to promoting awareness and confidence in a sector that directly affects millions of Ontario consumers.

There are over 10 million insured drivers in Ontario to whom the mechanics and day to day operations of insurance companies are a mystery. Since we are legislated to purchase the auto insurance product it's important that the government take an active and open role in regulating the industry to ensure it best serves the interests of Ontarians. Sharing information about complaints and the resulting enforcement actions regarding these privately run entities by articulating the concerns of the Regulator will ensure more a resilient and effective auto insurance industry through greater accountability.

### **Investigation Information**

If the intent is to deter deceptive or fraudulent conduct and that is weighed against the confidentiality and potential harms to the reputations of those to whom the investigation relates, then we think that consumer protection should ALWAYS outweigh the potential reputational harm to insurance companies. At the core of many of the FSRA complaints are the health and well-being of vulnerable Ontario patients and their access to rehabilitation so minimizing that potential harm should be prioritized. Millions of consumers expect that the government will ensure the quality of the product they rely on and this new transparency is an important step toward that goal.

### **Discretionary Circumstances**

Shining a light on conduct, practices and activities shouldn't be an optional part of regulating, but it should be a core principal. The application of scrutiny, exposure and sanctions should be evenly applied. There should be very little use of the 'discretionary circumstances' described in this document if the goal is to protect consumers by way of a more transparent system. This should not be a place where the FSRA 'regulatory sandbox' proposal is used to pave the way to make an order to exempt any person or entity from "any requirement imposed by, or from the application of any provision in the Insurance Act, the regulations or an Authority rule that is prescribed by regulation". [1] There should be no less light on auto insurers than there are on any other business operating in the province.

## **Investigation Information**

While we understand the need to not preemptively publish the details of an investigation, there should be some sort of investigative marker that indicates when the complaint has or appears to have substance and it is, at that point, that the public should be made aware of the complaint or concerns FSRA is investigating.

## **Processes and practices**

There is definitely a need for more touch points with complainants during investigations. Some of our members tell us that they have no idea of the status of their complaint file and this, in and of itself, is undermining consumer confidence that the regulator is taking any action about their concerns. There needs to be an accessible tracking system built into regulatory oversight to overcome this. It is not an indictment of the parties or a statement of the Regulator to post some details of the progression of a complaint. This is done in great detail in our court system at the Supreme Court of Canada [2] where the markers are when information is received and shared or when actions occur is available to the public. While this is perhaps more detail than FSRA might need or want, it should be noted that Canada Post [3] has a simple system for tracking packages that could also be used as a model to adapt to fill the need for accessible individual consumer information in a less public way.

## **Enforcement actions**

Undoubtedly the complaints system and regulatory enforcement will be improved by the proposal put forward in this document and we would like to see some attention on auto insurers being required to look into how a misconduct complaint may be playing out across their customer base and that harm should also have to be addressed. Insurers who behave badly seldom seem to target just one customer and this is true of overcharging as was recently seen with a multitude of insurers pocketing the HST they deducted from rehabilitation coverage and in the use of personal credit scores in claims handling. Insurers should be made to bear the costs of such investigations as is done by other regulatory bodies such as LSO and CPSO.

In closing we'd like to acknowledge the effort on behalf of the Regulator to promote a higher standard of business conduct in the financial services sectors and enhance public confidence through the creation of a more transparent system to foster a deterrence of unacceptable consumer abuse.

## ***FAIR Association of Victims for Accident Insurance Reform***

[1] <http://www.fairassociation.ca/wp-content/uploads/2021/04/FAIR-submission-re-Proposal-Number-21-MOF004-FSRA-CEO-exemption-orders-under-section-15.1-of-the-Act.pdf>

[2] <https://www.scc-csc.ca/case-dossier/info/dock-regi-eng.aspx?cas=37524>

[3] <https://www.canadapost-postescanada.ca/cpc/en/support/kb/receiving/tracking/how-to-track-a-package-online>