

OTLA Submission to Financial Services Regulatory Authority (FSRA)

Proposed FY2023-2024 Statement of Priorities

November 11, 2022

The Ontario Trial Lawyers Association (OTLA) is pleased to provide input to the Financial Services Regulatory Authority of Ontario (FSRA) regarding its proposed FY2023-2024 Statement of Priorities.

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 welcomes the opportunity to comment on FSRA's proposed priorities. As OTLA stated in its 2022 Pre-Budget submission to the Ontario government, available [here](#), Ontario's auto insurance system is fundamentally broken. It is out of balance and no longer meets the needs or expectations of Ontario's drivers and accident victims. The basic principles and goals underlying an effective automobile insurance system must include transparency, simplicity and certainty for the consumer.

At the outset, OTLA notes that it agrees with FSRA's core strategic priorities of strengthening consumer focus, enabling innovation, modernizing systems and processes and enhancing FSRA's talent management framework and strategy. OTLA applauds the change in order of the four pillars within the Strategic Framework to put protection of the public interest first:

- **Pillar #1:** Protect the public interest to enhance trust and confidence in the sectors we regulate
- **Pillar #2:** Operate effectively to be a high-performing regulator
- **Pillar #3:** Transform our regulatory processes to make evidence-based and risk-based decisions
- **Pillar #4:** Attract talent and evolve our culture to achieve the mission and vision of the organization

In order to implement the stated priorities, OTLA strongly recommends that FSRA focus its efforts on consumer education and on transparency with regard to insurer profits and insurance rates. This is the only way to adequately protect consumers. OTLA's submissions will focus on sections 1 to 5 of the proposed Statement of Priorities.

Section 1: Strengthen Consumer Focus

OTLA supports FSRA's continued priority of strengthening consumer focus and the stated goal of developing relationships with public sector groups, academia, and consumer-focused organizations. This is in line with a recommendation made by OTLA last year in its submission to actively engage consumer stakeholders.

OTLA is also pleased to see a focus on vulnerable consumers and a plan to access the broader community and include diversity, equity and inclusion perspectives. This type of collaboration is key to ensuring FSRA strengthens its consumer focus.

The planned outcomes of 1) enhancing protection of consumer rights and interests with an emphasis on vulnerable consumers, 2) empowering consumers, and 3) strengthening the Consumer Advisory Panel engagement and creating more consumer outreach are laudable goals.

OTLA continues to recommend that FSRA also strengthen consumer focus by ensuring:

- better education for consumers regarding optional benefits; and
- transparency in auto insurance rates and insurer profits.

First, optional benefits must be accompanied by clear, straightforward education. Automobile insurance in Ontario is a compulsory product. It is also an expensive product. For many consumers, at the time they are purchasing or renewing their automobile insurance, their primary concern is the cost of the premium. They assume they are protected and that they will be covered in the case of an accident. Citizens trust the government to ensure that insurance offers adequate protection and coverage. When an accident happens, many are surprised to find out that is not the case. Many of the most vulnerable consumers do not have access to private or work benefits and will then need to resort to public resources when their insurance benefits prove inadequate.

Ontario already has consumer choice in automobile insurance, in the sense that all drivers must have a base, standard policy and then there are optional benefits beyond the base policy. Consumers are rarely told about the optional benefits available to them or, if they are told, the explanation is long and complicated and pricing is not provided. These long, complicated explanations are often ignored by the consumer. The consumer often assumes that all necessary information was provided to them during their conversation with the insurer representative. Unfortunately, these conversations often do not include the limits of the mandatory policy and the risks of not purchasing additional coverages.

In order to ensure consumers are protected, the basic policy, optional benefits and the potential importance of optional benefits should be explained to them in clear, straightforward language. The risks of not purchasing additional coverages can be significant. The standard policy, which has been eroded over the years, does not provide adequate coverage for many Ontarians.

With consideration for the most vulnerable consumers, and the too often focus on premiums to the detriment of benefits, OTLA recommends that no further choice be injected into the auto policy.

Second, consumer interest should be the primary consideration when setting and explaining how and why auto insurance rates are set. Consumers should be provided with clear data regarding insurer profits and profit increases. Transparency regarding how insurance rates are approved is essential since insurance coverage is mandatory. The factors being considered, including profitability, and the data submitted by insurers should be made public and available to all consumers. The consumer should be provided with information so that he or she can clearly understand why premiums may increase generally. On an individual basis, currently premium increases occur with no explanation required to the consumer to justify the increased rate. A clear explanation should be required to justify the individual increase in rate from year to year for any consumer. These should not be generic explanations but rather detailed explanations as to why that particular consumer's premium has increased.

Sections 2 & 3: Enabling Innovation and Modernizing Systems and Processes

OTLA supports technological innovation and the modernization of systems to improve efficiencies, service, and the user experience. In particular, OTLA supports initiatives to improve access to information for consumers, as indicated in the planned outcomes. However, the goals and implementation outlined in FSRA's Statement of Priorities are vague and it is unclear how the proposed changes will be implemented and how the planned outcomes will be achieved.

Transparency is of utmost importance, specifically as it relates to the collection of data and implementation of online and electronic processes. If the intended goal is to streamline and simplify the user experience, we submit that the consumer must be made aware of, and properly informed, as to how their engagement in the process may affect their insurance coverage. The concern is that what might appear as a simple "self-service" consumer choice at the time insurance is purchased can have a greater consequence to the insured if they are involved in an accident and that specific coverage is needed but not provided because of that initial choice. The consumer must appreciate the purpose and value of an optional benefit, for example, to be in position to make an educated and responsible choice. We reiterate the concerns highlighted in Section 1 of these submissions.

Consumers should be informed of what personal information is being collected or exchanged and for what purpose their personal information will be used.

There are also inherent concerns with electronic methods of communication with consumers. Privacy issues arise in web-based systems. Electronic correspondence is also perceived to be informal, less reliable, and more susceptible to interference than traditional methods. E-mail filters and security settings may prevent the e-mail correspondence from appearing in the insured's inbox or being brought to their attention. We submit that there should be informed and meaningful consent to every online system that affects the consumer, especially as it pertains to digital document processing and digital signatures. OTLA outlined similar concerns in our response to the proposed amendments to the *Insurance Act* and Regulations 777/93, 34/10, 676 and 95, regarding electronic communication with insureds and the delivery of electronic notices to terminate coverage. Those submissions can be found [here](#).

With respect to the proposed new regulatory system and portals to improve licensing and registration processes for the insurance sectors and health providers, OTLA submits that FSRA should engage stakeholders in the development and implementation of any such system. This consultation will help ensure that the interests and needs of the end users of new regulatory systems and portals are taken into consideration.

Section 4: Enhance FSRA's Talent Management Framework and Strategy

OTLA supports FSRA's plans to recruit new employees and encourages FSRA to keep in mind its strategic pillars as it moves forward with this HR strategy. OTLA agrees with the stated goals of attracting and retaining employees with appropriate expertise, skills and knowledge within a culture that is inclusive, equitable and diverse.

Section 5: Property and Casualty (Auto) Properties

5.1 Execute Strategy for Reforming the Regulation of Auto Insurance Rates and Underwriting

FSRA's mandate includes contributing to public confidence and promoting transparency and disclosure of information. OTLA is of the view that public confidence has been eroded due to shrinking coverage, drastically reduced benefits and excessive premium increases.

The realized profit provision for Ontario auto insurers in 2020 has been reported to be 27% (return on premiums) and 2021 reported at 23%.¹ This is more than five times the target of 5%, and as, noted in our submission regarding FSRA's Statement of Priorities for 2022-23, found [here](#), profits in 2021 continue to be significantly higher than the regulated amount. OTLA strongly urges FSRA to take action as the regulator to require insurers to reduce their rates and return these excessive profits to consumers, bringing insurer profits back in line with the target of 5%. Consumers should not be paying increased rates while insurers collect profits that far exceed the target.

There is a need to enhance the ability of consumers to make informed decisions. The consumer must be confident that FSRA is indeed operating within a principles-based approach to regulation and supervision of the insurance industry. Transparency must be the key.

Consumers should be able to easily obtain data related to auto insurance rate approvals and, with this information, compare rate increases throughout the year and from previous years. The new reporting structure, through the Auto Insurance Consumer Hub, altered the way auto insurance rate approvals are reported. Previously, through the Financial Services Commission of Ontario, auto insurance rate approvals were released quarterly allowing for interested stakeholders to track the approvals. While attempting to be more transparent and consumer-friendly, in fact, the change in reporting structure makes it impossible for consumers to compare rates.

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5.2 Develop Recommendations and Act on Reforms of the Auto Insurance System

OTLA supports the detection, deterrence and elimination of fraud in automobile insurance. However, as noted in its July 2021 submission to the Ministry of Finance (MOF) and FSRA on the Proposed Fraud and Abuse Strategy for the Auto Insurance Sector, found [here](#), the MOF stated in its Consultation Paper that "insurance fraud and abuse" is neither defined in legislation nor regulation, nor is there an accurate quantification of the size and scope of fraud and abuse". While the development and implementation of initiatives to reduce fraud and abuse is a laudable goal, it is entirely unclear how fraud is being defined and how much fraud actually exists in the system.

¹ Draft Ontario Private Passenger Vehicles Annual Review – Based on Industry Data Through December 31, 2021 (July 6, 2021) [Oliver Wyman Review] at page 18 - <https://www.fsrao.ca/media/11591/download>

Insurers have failed to make this information publicly available. Up-to-date data on fraud should be made public on an ongoing basis, with a clear definition of fraud being utilized by insurers in their reporting.

Insurers cite fraud as the primary reason for increases in premiums. It is a convenient argument but is not currently backed by clear, up-to-date information on the true extent of fraud in the system. Transparency is vital on this issue. Consumers should be provided with explanations of how FSRA and the insurance industry is detecting, tracking and preventing fraud. The consumer expects that with current technology and the use of various tools to track all insurance transactions, fraudulent transactions can be tracked and prevented.

OTLA agrees with the proposal to improve the system to allow for efficiency of billing and data practices to enhance consumer outcomes and the proposal to consult with all stakeholders to improve consumer outcomes.

5.3 Ensure the Fair Treatment of Property and Casualty Consumers

OTLA applauds FSRA's initiatives to ensure the fair treatment of P&C/auto consumers. It supports this goal through efficient and effective regulation that protects the rights and interests of consumers.

5.4 Achieve Supervisory Excellence for the Ontario-incorporated Insurance Companies and Reciprocal Sector

OTLA is encouraged by FSRA's multi-year initiative to transform its supervisory approach and, in particular, applauds the planned outcome of "a strong, stable, and resilient sector in which policyholders and consumers are protected and have confidence in the sector."

As noted above, OTLA strongly recommends that FSRA work to ensure that insurance companies are transparent with regard to profits and insurance rates. Without this transparency, FSRA is working in a void and cannot achieve its goal of consumer protection.

Conclusion

OTLA supports many of FSRA's proposed initiatives, particularly those that recognize consumer vulnerability and enhance consumer focus and consumer protection. The protection of the public interest must be front and centre in all initiatives undertaken with respect to compulsory automobile insurance. In order to accomplish the stated goal of protection of the public interest, it is imperative that there be transparency with regard to insurer profits and rates.

OTLA appreciates the opportunity to provide feedback with respect to FSRA's proposed Statement of Principles and looks forward to continuing to work together with FSRA to protect and empower consumers in the public interest. OTLA would be pleased to discuss these submissions if questions arise, if clarification is required or if OTLA can be of any further assistance.