



IBC • BAC
Insurance Bureau of Canada
Bureau d'assurance du Canada

Amanda Dean

*Vice-President, Ontario & Atlantic
Vice-présidente, Ontario et Atlantique*

902.402.1028
adean@ibc.ca

777 Bay Street, Suite 1900
P.O. Box 121, Toronto, ON M5G 2C8

October 15, 2024

Financial Services Regulatory Authority of Ontario
Auto Insurance Sector
25 Sheppard Avenue West, Suite 100
Toronto, ON M2N 6S6

RE: Consultation on Proposed Fraud Reporting Service Rule and Guidance

Insurance Bureau of Canada (IBC) and its member property and casualty (P&C) insurers welcome the opportunity to comment on the Financial Services Regulatory Authority of Ontario's (FSRA) consultation on the Proposed Fraud Reporting Service (FRS) Rule and Guidance. IBC shares FSRA's commitment to combating fraud in Ontario's insurance sector. However, any investments made by insurers and FSRA must deliver measurable returns for policyholders through more effective fraud prevention and detection. Further, it is essential to balance the priorities of data collection with the need for real-time fraud mitigation. The commentary contained in this submission reflects industry's views and recommendations.

Strategic Alignment and Investment in Fraud Prevention

The successful implementation of the FRS will require significant investments from both insurers and FSRA. The technological and operational costs associated with implementing this framework are substantial, and it is essential that these expenditures result in clear benefits for policyholders, particularly through more effective fraud detection and mitigation.

IBC urges FSRA to take a phased and strategic approach to the FRS. Phase 1 should prioritize establishing a baseline understanding of fraud in the sector, focusing on high-level, aggregated data. Requiring insurers to provide case-level reporting at this stage would place unnecessary burdens on the industry and could lead to unintended negative consequences.

Further, it is critical that FSRA clearly define the objectives of Phase 2 before moving forward. Phase 2 must outline how the collected data will be used to support industry-wide fraud detection and prevention efforts. A key priority in this phase should be enabling data sharing between FSRA, insurers, and partners such as Équité, which already has the infrastructure in place for fraud data collection and analysis. By leveraging these existing systems, FSRA can streamline the process and avoid duplication of efforts, ensuring that FSRA's and the industry's investments yield tangible results. Clarity around Phase 2 goals, especially regarding how the data will be used to empower fraud prevention, is essential to ensuring the FRS delivers on its promise to reduce fraud and protect consumers.

FSRA must also revise its Guidance to clearly separate Phase 1 from Phase 2. Phase 1 should focus on fraud quantification, while Phase 2 should address data sharing, real-time fraud detection, and consumer protection. By defining these goals upfront, FSRA can ensure that the FRS generates meaningful returns for both the industry and consumers.



Lastly, it is also important to recognize that Canada lags behind both the United States and the United Kingdom in addressing insurance fraud. IBC urges FSRA to look to these countries as models for effective practices. By adopting proven strategies, Canada can accelerate its progress in combatting fraud and enhance consumer protection.

Leveraging Équité

To streamline the reporting process and maximize the value of the data collected, IBC believes that Équité is best-positioned to be the entity responsible for managing the FRS. Équité's established role in fraud data collection makes it the ideal partner to gather, analyze, and report fraud information. This would create efficiencies, avoid duplication of time and expense, and enable FSRA to focus on its mandate of fraud deterrence. Additionally, this approach mirrors the model used in the United States, where insurers collaborate with the National Insurance Crime Bureau (NICB). Importantly, this reporting process would minimize disruption for insurers, helping to prevent cost pressures which ultimately impact consumers.

Balancing Data Collection with Active Fraud Mitigation

It is crucial that FSRA does not prioritize data collection phase at the expense of other essential anti-fraud activities. Insurers require effective tools and resources to combat fraud in real-time, as it is evident that significant fraud persists in the sector, even without an updated industry-wide metric. For instance, the August 21 Toronto Police Service [news release](#) highlighted the significant violence and fraud in the towing sector, underscoring the ongoing challenges in this area. As noted in the 2012 Ontario Automobile Insurance Anti-Fraud Task Force report, towing often serves as the 'first link' in a chain of fraudulent activity that starts at the scene of a collision.

While gathering accurate and comprehensive data is important, it must not delay or diminish ongoing efforts to equip the industry with actionable tools that address fraud as it occurs. Baselines, while useful, are more valuable if they are paired with mechanisms to measure and achieve change. In light of this, IBC recommends the following:

- Limited liability protections for industry stakeholders which allow them to report, share and act upon fraud information. The development of a framework to share information, similar to the one that exists in the banking sector, would be ideal;
- Creation of suspicious provider lists created both by individual insurers and centrally by FSRA, allowing the identification of bad actors and facilitating enforcement of penalties against them;
- The ability to decline coverage for fraud risk when there are reasonable grounds or the applicant has a history of fraud, aligning with similar provisions, such as Alberta's *Adverse Contractual Action Regulation* and the federal *Bank Act*;
- Enhanced enforcement and coordination across the various public entities involved in combatting insurance fraud.



These recommendations, which IBC has shared with FSRA in the past, remain essential to effectively combat fraud and protect consumers. We urge FSRA to consider these measures as part of its broader strategy to ensure that insurers have the necessary tools to fulfill their anti-fraud mandate. Empowering insurers with adequate tools to fight fraud will help FSRA achieve its mandate to deter fraudulent and deceptive conduct in the P&C insurance industry.

Proposed Rule and Guidance

The following commentary pertains to the technical aspects of the consultation. This feedback is based on the current phase of the FRS development, with an understanding that a comprehensive definition of Phase 2 will be crucial to guide next steps. While we recommend that FSRA refer to Équité's submission for further insights, we also offer the following additional points for consideration.

Breadth of Data Collection Requirements

The current draft of the Guidance raises significant concerns for the industry regarding the scope of data that insurers are required to report, particularly in relation to Special Investigations Unit (SIU) activities. This places an undue burden on insurers, compelling them to report non-essential information that does not contribute to the detection or assessment of fraud. The following points highlight specific areas of concern:

- **Appendix B Concerns:** The list of data sets outlined in Appendix B of the Guidance is both extensive and non-exhaustive, creating ambiguity around the reporting requirements. The Guidance's provision that information not deemed necessary for the initial phase of fraud detection should be updated in a later phase suggests a continuous obligation to disclose data that may not be immediately relevant.
- **SIU Reporting Requirements:** As currently drafted, the language in section 4 of the Guidance implies an obligation to report all data associated with SIU investigations, along with a subsequent obligation to disclose the outcomes of these investigations. This adds an unnecessary burden on insurers, requiring them to disclose information that may not be directly relevant to fraud detection.

Clarity and Consistency in Terminology

There is a need for greater clarity and consistency in the terminology used within the Guidance and Rule, particularly concerning the reporting of suspected fraudulent activity. Without this clarity, it will be challenging for insurers to consistently fulfill their obligations under the FRS. This could inadvertently expose insurers to Unfair or Deceptive Acts or Practices Rule (UDAP) sanctions for noncompliance and may also undermine the public policy objectives that the FRS seeks to achieve.

- **Relevance of Information:** The Guidance currently requires the reporting of all "relevant information" in cases where there are reasonable grounds to believe (RGB) fraud has occurred. However, the Rule itself only references the need to report information where there are RGB fraud exists, without specifying that the information must be "relevant." To avoid confusion and ensure consistency, we recommend that the rule be amended to explicitly include the term "relevant," thereby aligning with the Guidance and focusing on the provision of pertinent information.



- **RGB Standard:** The definition of RGB within the Guidance appears to straddle the line between suspicion and conclusion, but the language used in the Guidance—specifically, the reference to a “high degree of certainty”—leans toward a conclusive threshold. This higher standard may complicate the reporting process, as it implies a need for more substantial evidence than what is typically required under the RGB standard. We suggest revising the language to reflect a moderate approach, ensuring that it aligns with the intended definition of RGB, which falls between suspicion and conclusion.

Reporting Identifying Information

The Guidance presents ambiguity regarding the reporting of identifying information, particularly concerning individuals who are part of an SIU investigation. There appears to be a tension between protecting innocent parties from being erroneously reported in the fraud database and ensuring that those determined to be involved in fraudulent activity are appropriately reported. The current Guidance suggests withholding identifying information unless it is necessary to comply with Section 101.3(2) of the *Insurance Act*, which mandates disclosure when fraud is determined. This approach is prudent but would benefit from further clarification to ensure that insurers can navigate these requirements effectively. Specifically, clearer guidance is needed to delineate when and how identifying information should be reported, particularly in cases where fraud has not yet been conclusively established.

Development and Implementation of the Reporting Tool

The success of the reporting process depends heavily on the design and functionality of the tool. To ensure its effectiveness, IBC recommends the following:

- **Standardization and Ease of Use:** The reporting tool, when developed, must ensure a standardized process for data entry across all insurers. Specifically, there should be consistency in data format, field edits and instructions available, and communication and support from FSRA when any changes are made. Ease of use should be a primary consideration to facilitate compliance and reduce the administrative burden.
- **Data Structure and Rollout Timelines:** The development and centralization of the required data will create additional work for insurers, as the data may not be readily available in the necessary format. This challenge should be taken into account when determining the rollout timelines for the tool to allow sufficient time for insurers to adapt. It is important to account for differences in insurer size, lines of business, and operational structures to ensure a smooth and manageable transition across the industry.
- **Penalties for Late Reporting:** Clarification is needed on whether there will be flexibility in the event of unforeseen circumstances that impact the ability to meet reporting requirements. Insurers should not face penalties for late reporting when there is a legitimate reason for the delay.

Feedback on Proposed Rule

IBC has identified several areas where clarification and expansion could enhance the effectiveness and practicality of the Proposed Rule.



- Rule 1(1)(e): Mirroring Équité’s recommendation, we also suggest revising the definition of a fraud event to include the following underlined amendment:

“‘fraud event’ means a deceptive act or omission, or series of deceptive acts or omissions intentionally committed by a person(s) to obtain advantage, financial gain, or benefits beyond that to which one is entitled to with regard to any policy, claim, provision of goods or services or other occurrence related to automobile insurance, and for greater clarity includes but is not limited to instances of:

- I. Obtaining an automobile insurance policy through fraudulent means, including underwriting fraud;*
 - II. Obtaining a benefit under a contract of insurance through fraudulent claims;*
 - III. Providing goods or services to a beneficiary under a contract of insurance through fraudulent means or in a fraudulent manner;*
 - IV. Fraudulent activity in the selling or distribution of insurance products; and*
 - V. Fraudulent activity committed by internal employees of an insurer.”*
- Rule 3(1): The current wording, which includes information related to events that are “likely to occur,” could inflate the amount of data insurers are required to report. This phrase may capture speculative information that does not result in actual fraud. Therefore, we recommend removing the “likely to occur” wording.
 - Rule 3(2): The requirement to report within 30 days after the close of each quarter when an insurer has “taken action” could be burdensome, especially when the action only involves a suspicion of fraud, such as escalating a file to the SIU for further investigation. As outlined in Équité’s submission, IBC also recommends that qualifiers be added to the Guidance for “Actions” and “Decisions” that will present clear triggers for reporting. Specifically, only SIU-reported cases that remain open after 45-60 days should be reported.

Confidentiality, Limited Liability, and Immunity

The Guidance should include provisions that address confidentiality, limited liability, and immunity for insurers in the context of reporting fraud. These provisions are essential to protect insurers from potential legal repercussions arising from the mandatory reporting of suspected fraudulent activity, in particular where such reporting involves personal information.

FSRA Reporting Requirements and Information Sharing

IBC strongly recommends that FSRA outline its own reporting requirements regarding the data collected through the FRS. This should include regular updates on the number of ongoing investigations, their outcomes, enforcement actions taken, and other relevant metrics. Transparency in this area will help insurers understand the broader impact of their reporting efforts and enhance collaboration between the industry and FSRA.

Conclusion

While IBC supports FSRA’s initiative to enhance fraud reporting and information sharing, it is vital that this does not detract from the broader fight against fraud. Insurers need robust tools and clear guidelines imminently,



and any new reporting obligations must be designed to enhance, not hinder, the industry's ability to combat fraud.

FSRA must also clearly define the objectives of Phase 2 to ensure that the data collected is actionable and supports industry-wide fraud prevention efforts. Further, we reiterate that Équité is best-positioned to manage the FRS, given its established expertise in fraud data collection. This would streamline the process, avoid duplication, and reduce the burden on insurers, ultimately mitigating impacts on consumers.

We look forward to continued collaboration with FSRA to ensure that this initiative strengthens the industry's anti-fraud capabilities and delivers meaningful outcomes for both the industry and consumers.

Sincerely,

Amanda Dean
Lobbyist Registration No. 54385H

AD/jw