

OTLA Submission to Financial Services Regulatory Authority (FSRA)

Proposed FY2025-2026 Statement of Priorities

December 6, 2024

The Ontario Trial Lawyers Association (OTLA) is pleased to provide input to the Financial Services Regulatory Authority of Ontario (FSRA) regarding its proposed FY2025-2026 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 2024 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 consumers.

For that reason, OTLA strongly supports FSRA's stated priority of strengthening consumer protection. As the landscape of automobile insurance evolves, FSRA has acknowledged the need for comprehensive reforms aimed at ensuring fair treatment for consumers while promoting a competitive market. In order to give effect to this priority, OTLA proposes three key focuses for FSRA in the 2025-2026 fiscal year:

1. Consumer Education;
2. Transparency of Insurer Profits and Insurance Rates to Consumers; and
3. Effective Supervision and Monitoring of the Automobile Insurance Sector.

OTLA's submission will focus on Section 4 of the proposed Statement of Priorities, entitled *Property & Casualty and Auto Insurance Priorities*.

4.1 Implement key reforms for the regulation of auto insurance rates and underwriting

FRSA has indicated that they seek the following outcomes:

- Fair treatment of consumers and the promotion of a more competitive and sustainable market.
- Transformation to a principles-based, consumer outcomes-focused supervisory model.
- Consumers are empowered to make more informed decisions.

Keeping transparency at the forefront of all considerations and aspects of insurance ratings and underwriting supervision will help ensure that consumers are protected and insurers are held accountable when unfair or deceptive acts or practices (UDAP) are identified.

To properly protect consumers, the automobile insurance rating and underwriting supervision must include clear definitions of UDAP as well as a clear and straightforward enforcement mechanism, with clearly defined timelines and consequences.

The automobile insurance rating and underwriting supervision is extremely important for consumer protection. Consumers tend to be unsophisticated in matters of insurance and often, if not always, at the mercy of their insurers. OTLA recently made a submission to FSRA with respect to rating and underwriting supervision guidance. Below is a summary of those submissions, which can be accessed [here](#).

Transparency and accountability in automobile insurance underwriting and rating are paramount, especially when considering that one of the intentions of automobile insurance is consumer protection.

There are three primary ways that OTLA suggests that transparency and accountability are best achieved:

1. Through clear enforcement mechanisms for UDAP;
2. Clear definitions with specific examples of UDAP to better assist insurers, and the public, with understanding the line between acts that are fair and those which are unfair; and
3. Through collection and publication of data from insurers.

As outlined in OTLA's submission, these three goals are supported by the following:

The need to give effect to the Consumer Protection Nature of the Automobile Insurance Regime

Automobile insurance is designed to protect consumers in the event that they are injured or suffer property damage as a result of a car accident. Consumers often lack understanding of insurance policies and are therefore vulnerable to unfair practices. Through clear definitions establishing the type of behaviours that constitute UDAP, the gap in understanding between insurers and consumers can begin to be bridged.

However, definitions are only as good as the mechanism to enforce violators. A robust and clear enforcement mechanism, with defined timelines and specified consequences will also help to bridge the gap in understanding and will also provide insurers with a clear understanding of best practices as well as punish violations.

Transparency and Fairness

OTLA would suggest several examples of ways in which FSRA can mandate insurers to increase transparency and fairness in the system. For example, as a result of the typical gap in understanding by consumers of insurance products, insurers should provide clear and accurate information to consumers. Insurers should also not engage in practices that unnecessarily increase costs for consumers. Furthermore, if optional benefits are available, consumers must be informed about the available options and the corresponding financial consequences of their choices. For example, a consumer should be explained the specific financial consequences that could follow if they reduce their third-party liability limits and are subsequently in an *at-fault* collision.

Significantly, one further way to ensure an appropriate level of transparency is to require insurers to be transparent about their financial data, including profits. Insurers are quick to blame *fraud* as the reason that premiums are increased, or as a reason why legislation should

be changed. Insurers should be obligated to share their financial data in a clear and public manner to consumers, to ensure that consumers are being treated fairly and are being provided with sufficient value for the premiums.

Once insurers disclose their data, including profitability, OTLA recommends that the government assign to an existing independent body or establish a new independent body to review the insurer data to share the findings with the public. The government currently has a mechanism in place to do this through the office of the ombudsperson. The ombudsperson's mandate could be expanded to review insurer data.

Alternatively, a group could be established using FSRAs existing mandate to proactively supervise insurers (including evaluating their involvement in disputes and legal actions) and to provide an accessible enforcement mechanism for UDAP complaints.

After the assignment or establishment of an independent body, if the independent body finds that an insurer's profits or rate increases were excessive, OTLA recommends that the violating insurer should be held accountable for excessive profits and rate increases. Insurers who fail to comply with the regulations should face appropriate sanctions and corrective action.

Section 4.2 Support Reforms of the Auto Insurance System

FRSA has indicated that they seek the following outcomes:

- More choices for consumers to design auto insurance coverage to best suit their needs.
- Ensure that consumers injured in auto accidents receive the care they need and that the health service provider (“HSP”) framework and the Health Claims for Auto Insurance (“HCAI”) system are more modern and efficient.
- Improved ability to quantify, assess and better detect auto insurance fraud.

Expanding Consumer Choice

Ontario Regulation 383/24 has amended the Statutory Accident Benefits Schedule (for policies issued after June 30, 2026) making many of the previous *SABS* benefits which were always standard, now only available for insureds if they have purchased those as optional benefits. The Government of Ontario has stated that a main purpose of these amendments was to enable “consumer choice”, which will “allow drivers to decide what coverages are important to them and their families”.

Consumer choice in these circumstances can only be meaningful and powerful if consumers are educated on the options available to them. Most consumers blindly purchase the policy or renewal put forth by their broker or agent, assuming all their needs will be met.

However, insurers, agents and brokers have not done a good job to date of educating consumers generally, with most consumers having little to no understanding of their auto insurance policy or the available options, and the effect of having or not having those options. In fact, consumers are rarely told about the options and, if they are told, the explanation is long and complicated and pricing is not provided.

For many consumers, their primary concern when purchasing or renewing auto insurance is not the policy's coverage or protections, but rather, the cost of the premium. Consumers do not

expect to be injured in an accident. They purchase insurance because it is mandatory. If given an option to pay less, most consumers will take that option without appreciating the consequences of their decision for themselves and their family. It will not be until they are injured in a crash that they will appreciate the inadequacy of their *choices*.

OTLA's full submissions on this issue are available [here](#).

Efficiency and Modernity of the HSP Framework and HCAI System

Treating clients under the accident benefits regime is very difficult for HSPs. OTLA recommends that FSRA consider ways to reduce the administrative efforts required by HSPs. HSPs expend uncompensated time and effort to submit HCAI forms. Over the last decade, the ability of a treatment provider to get compensated for administrative-type work (gathering information and filling out complicated forms, submitting said forms, etc.) has decreased significantly and, in many ways, all but disappeared.

The complexity of this work (because of the HCAI system), however, has only increased. The result is obvious. Treatment providers spend far too much uncompensated time providing insurers with significant details about an injured person's treatment when that time could be better spent treating the injured person. This potentially poses an unnecessary barrier to treatment for insured injured consumers. We encourage FSRA to [read our submissions](#) regarding the HSP Framework Review consultation. Within that document we have provided examples of specific treatment providers who have left the SABS system.

FSRA should prioritize the streamlining of its processes so that treatment providers can focus on treating injured persons and should avoid adding further administrative complexities to its system via the addition of further forms and billings through HCAI.

OTLA recommends that consumers and their legal representatives be given limited access to the HCAI system. Consumers and their legal representatives should be able to see what is being invoiced and charged against their policy limits. This will increase the efficiency and accuracy of billing and assist with identifying billing irregularities, which in turn can be a cost savings to insurers. Specifically, consumers and their legal representatives should be able to access the following information on HCAI:

- The forms submitted through HCAI including invoices;
- The insurers response to forms;
- Whether an invoice has been paid or approved;
- The total amount of benefits paid out to any given date including a detailed breakdown of which invoices were paid, and from which provider, to reach the total;
- Outstanding invoices that have not yet been responded to or paid by the insurer; and
- Any amounts approved for a treatment plan that remains outstanding.

Providing a limited access to HCAI to consumers and their legal representatives would fit with the objective of increasing efficiencies and modernization. Legal representatives would no longer have to make as many requests of insurance adjusters for information, resulting in a savings of time and expense for the insurance industry, lawyers and consumers and consumers would be better informed in a more timely manner. OTLA's full submissions on this issue are available [here](#).

Eliminating Fraud

OTLA agrees that the ability to quantify, assess and better detect auto insurance fraud will benefit consumers and stakeholders alike. However, OTLA is concerned that the insurance industry's reliance on fraud as a "major point of concern" has disproportionately permeated FSRA's priority list when it comes to supervising HSPs. HSPs are regulated by their respective governing colleges, who are far better suited than FSRA to supervise, regulate and discipline them, where necessary. Furthermore, with access to HCAI data, FSRA is well-suited to supervise HSP billing practices and information for any fraud it suspects has occurred.

Rather, the focus should be on promoting a healthy environment in which HSPs would be encouraged to do auto-insurer/HCAI-related work, as opposed to being overly burdened by administrative work or being made to feel as though they are defrauding system due to an overly paternalistic approach from FSRA. HSPs, particularly those in high-needs areas such as psychologists and psychotherapists, are leaving auto-insurer/HCAI-related work in droves because of low pay rates, burdensome administrative work and low morale.

4.3 Ensure the fair treatment of customers of Property and Casualty Insurance

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

The legislation of auto insurance in Ontario should have as its primary focus, consumer protection. Throughout this submission, OTLA has taken a consumer protection focus and it encourages FSRA to do so as well in all aspects of regulation of the insurance industry.

In order to support this initiative, OTLA recommends that FSRA consider explicitly outlining how FSRA plans to address risks to consumers in the property and casualty and automobile sectors. For instance, FSRA could elaborate on how it will measure the effectiveness of its supervisory framework in protecting consumers and building public confidence.

OTLA proposes that FSRA also emphasize specific areas that require monitoring to protect consumers, such as:

- Fair claims handling;
- Transparency in policy language;
- Protection against bad faith practises;
- Timely resolution of disputes; and
- Protection of vulnerable consumers.

Overall, this stated priority aligns well with FSRA's current initiatives and focuses on consumer protection, which OTLA strongly supports.

CONCLUSION

OTLA supports many of FSRA's proposed initiatives, particularly those that recognize consumer vulnerability and enhance consumer focus and 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 consumer protection, it is imperative that consumers are educated, that there be transparency with regard to insurer profits and rates and that the automobile insurance sector is effectively supervised to protect consumer interests.

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.