

FAIR Association of Victims for Accident Insurance Reform
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FAIR submission to: **Proposed new regulation under the Insurance Act with respect to Financial Services Regulatory Authority of Ontario (FSRA) Chief Executive Officer (CEO) exemption orders under section 15.1 of the Act. Proposal Number: 21-MOF004**

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

Thank you for the opportunity to speak to the proposed new regulation 15.1 under the Insurance Act in regards to exemption orders "to enable FSRA to operate an automobile insurance "regulatory sandbox" for insurers to pilot innovative initiatives to bring new consumer-focused products and services to market more quickly in response to changing consumer needs."

There is a disconnect between the description of, and the wording of, the proposed use of this legislation. There are already other proposals, totally unrelated to innovation initiatives that propose to take advantage of this change and ability to override existing legislation. Last week it was suggested this CEO exemption 15.1 be applied to unfair or deceptive acts or practices (UDAP) which is to govern the behavior of auto insurers and affiliated businesses. How will inventing excuses not to take action when the insurance sector behaves badly, manipulates medical files, or circumvents existing legislation be at all helpful to consumer protection?

We have concerns about the lack of control or safeguards to protect consumers. The language refers to 'any' requirement or provision in the Insurance Act throughout the proposal and it allows the CEO to make an order to exempt any person or entity from "any requirement imposed by, or from the application of any provision in, this Act, the regulations or an Authority rule that is prescribed by regulation, and may make the order subject to such conditions as are set out in the order" so it appears 15.1 is referencing the entire Act and 'any' regulation.

Such unfettered and unaccountable use of the proposed 15.1 will not only appear to be corrupt but will actually be corrupting the intent of any regulation to perform the function of Consumer Protection. The use of the word 'any' means it can easily become a form of assisting insurers in 'any' capacity which is especially repugnant in relation to the unfair or deceptive acts of Ontario's auto insurers and other stakeholder subject to UDAP.

Putting a great deal of power into the hands of one individual undermines legislation and whether we agree with that legislation or not, it was put in place by democratically elected MPPs who themselves have consulted with the public and insurers in doing so. The new regulation 15.1 can easily be interpreted as a lobbying opportunity by many participants in the industry and not just by insurers, but

by individual MVA claimants and groups who will undoubtedly contact the FSRA CEO in their quest to hold their insurers to account. Given the extremely high number of dis-satisfied consumers in the system the FSRA may have to bring in extra personnel to handle the flow of requests for assistance from the 'sandbox'.

It is disturbing to see the only instruction or parameter in the use of 15.1 is that the "CEO be of the opinion that doing so would not be prejudicial to the public interest". Should one person be able to make that decision and what experience would he/she have to make that designation. This new power to influence auto insurance or to "exempt persons or entities from requirements under the Act" will introduce a new element of distrust from consumers.

It was only a few years ago that the Financial Services Commission of Ontario (FSCO) had to close down the Dispute Resolution System (DRS) as it had become bottlenecked with almost 40,000 unpaid MVA survivors waiting for mediation. This happened because FSCO, as regulator, had failed to apply legislation (which obliged FSCO hold themselves to account) and comply with a 60 day requirement to have mediation or allow MVA claimants to progress to Arbitration. So FSRA was formed to negate that conflict of interest. And now the Minister of Finance (MOF) proposes to create a pathway for FSRA to ignore or undermine legislation in exactly the same way. The public may not be aware of the growing volume of unpaid claimants in the queue at LAT AABS but FSRA is and should be taking action to ensure we don't head down that same road again instead of creating ways to facilitate Ontario insurers to be less accountable.

We support innovation and the ability to act quickly when necessary changes are needed but not by introducing a level of uncertainty for every consumer in Ontario who buys auto insurance. We already have difficulty understanding the product, difficulty in accessing the promised coverage, difficulty in holding insurers to account and the new level of distrust 15.1 would generate, coupled with possible confusion when the rules are bent or even thrown away for some and not others, is counter to any Consumer Protection.

This proposed legislation should not go forward in its present rendition as it concentrates unfettered power in the hands of one individual and fails to put consumer protection first. We would suggest:

- that the language of 15.1 be far more detailed so as to restrict this new ability by the CEO to issues of facilitating innovation only
- that reasons for any use of 15.1 be made public and available on the FSRA website as to why any such decision has been made, who requested it, and who is affected by the decision

We support modernization but not at the expense of the obligation to follow the law and creating exemptions to undermine democratically arrived at legislation.

Thank you for the opportunity to have our voice heard. We believe insurers must be more accountable to better serve Ontarians.

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