

FAIR Association of Victims for Accident Insurance Reform

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FAIR submission to: FSRA Proposed FY2021-2022 Statement of Priorities

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 comment on the FSRA Proposed FY2021-2022 Statement of Priorities. Our comments will be directed toward auto insurance issues and Section 4 of the Proposed Statement of Priorities.

We can appreciate the effort that the FSRA has already invested to strengthen the Consumer Office and the language in this Statement reflects a desire to make good on the promise of a better and more consumer focused agenda going forward.

Ontario's auto insurance consumers are just now coming to realize that while they were hunkered down during the height of the Covid pandemic auto insurers were pocketing a record profit in excess of \$3.6 billion in 2020. We see no indication in this statement that the Regulator, who is entrusted with protecting the public's interest, is planning on holding insurers to account when it comes to the cost of premiums. By FSRA's own press release [\[1\]](#) auto insurers paid over \$600 million in claims and there were only 46,000 new claimants last year – a significant drop in costs and record breaking profits [\[2\]](#) should result in a premium adjustment for consumers and not a declaration of a fraud war on claimant access to rehabilitation providers. We are mindful that Ontario's auto insurers have expressed a desire to be in complete control of claimant healthcare delivery. We agree that fraud exists in all sectors but putting undue pressure on rehab providers will force many of the most experienced to leave what is now the lowest paying rehabilitation resource sector – auto insurance.

FSRA appears to be focusing on insurer profit and the 'modernization' of auto insurance and that may be more of a wish than actual support [\[3\]](#) from consumers for the increased use of telematics in vehicles. Now that insurers have been given the go-ahead to penalize their customers who may have less than ideal driving habits, it stands to reason that there may be less participation in these programs given the overall lack of public trust in this industry. We would urge the Regulator to take a closer look at consumer privacy and to set goals regarding how to protect consumers from unfettered access of their personal information by auto insurers in both the use of usage-based insurance (UBI) and in the information gathering during the claims process and the OCF-1 form [\[4\]](#).

As the Regulator monitoring compliance with the obligations that insurers have to their customers, it is incumbent on FSRA to maintain the quality and standards of the delivery of auto insurance within the

parameters of the Insurance Act. To consumers, this means there must be an interest and a stake in the quality of the outcomes of their contractual relationship with insurers when they make a claim. We are aware that a significant number of claimants that are delayed or denied coverage end up on social supports such as taxpayer funded OW and ODSP so the need for timely regulation enforcement matters to all Ontarians. Outcomes matter to us all so the Regulator cannot be just about the financial transaction with insurers but it also needs to be about the process to serve these injured consumers.

What the system today would tells us:

- There is a significant likelihood that a claimant will end up seriously financially harmed in the broken claims process. An already slow system has been made worse by the Covid pandemic.
- It is far more likely claimants will receive less care and end up on our social nets and living far below the poverty line. This will not improve medical outcomes.
- There are 56,283 (2019 / 2020 StatsCan) lined up at Ontario's Civil courts. No personal injury car crash case has been heard since the pandemic began. Insurers continue to insist on the use of juries when they know it isn't possible and there is no downside for them since interest on overdue payments is so low. There is nothing to discourage insurers behaving badly or from their overuse of our courts to beat claims down.
- There are thousands more unpaid and untreated car crash survivors waiting at the Licensed Appeal Tribunal (LAT) Auto Accident Benefits System (AABS) for a hearing so they can access treatments. It takes many months to get a date for a conference, not a hearing, but a case conference, and that wait is often close to a year from the time of request. [\[5\]](#)
- The LAT most recent Decisions reveal that only one in ten claimants is successful at a LAT hearing where most decisions favor auto insurers by denying treatments. Many of the hearings are about the appeal process or 'reconsideration' that equate to making a request of the same trier-of-fact to rehear a case they've already adjudicated.
- One insurer continues to have high claims denials and the lion's share of LAT Decisions (40% at last check) despite having only 16% of the market share in Ontario.

The above tells us that Ontario's auto insurance is a system completely broken down and the only part that still works is the flow of funds from consumers' pockets into the hands of insurers.

We point this out; not because FSRA necessarily has the power to change all of these things, but it is evident this massive failure to deliver on a promise of coverage made to 10 million drivers can only happen when the Regulator has failed to ensure the product has actual value.

This structural bias to favor auto insurers existed at the Financial Services Commission of Ontario (FSCO) and that undervaluing of consumer importance as a stakeholder in the millions of financial transactions with insurers has led us to this point in a broken system.

It's evident that this bias exists within FSRA as well, no doubt as an unconscious effort to maintain good relationships with insurers. It's evident in the FSRA consultations that are not open or actively inclusive to the public and in the case of auto insurance, these consultations are often impossibly short and difficult to understand. Consumers remain unaware of the reports that FSRA puts out because they aren't told and they aren't invited into the process. The recent 17 day long FSRA Stakeholder

Engagement Survey [6] was an example of selectively shutting out the public. On inquiry we were told that no consumers in the FSRA complaints system were informed of the poll and it was only sent to FSRA News subscribers who were most likely working in the insurance sector. This is a huge miss when those who are purported to be at the center of the consumer protection are completely passed over in order to get a desired outcome. We note that insurance consultations, as listed on the FSRA website, consistently show tighter timelines for responses than other financial sectors.

Thank you for the opportunity to have our voice heard and we look forward to FSRA’s greater consumer focus in 2022-23.

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[1] **FSRA identifies supervision focus in the health service provider sector**

<https://www.newswire.ca/news-releases/fsra-identifies-supervision-focus-in-the-health-service-provider-sector-813925221.html>

[2] **PRELIMINARY ONTARIO PRIVATE PASSENGER VEHICLES ANNUAL REVIEW**

<https://www.fsrao.ca/media/4426/download> – page 18

Table 5: Comparison of Target to Realized 5% Profit Provision

Calendar Year	Loss & LAE Ratio	Discount Factor	Expense Ratio	Realized Profit Provision ¹⁷
2016	79.3	0.937	25.9%	-0.3%
2017	77.5	0.923	25.4%	3.0%
2018	78.9	0.952	25.9%	-1.0%
2019	74.2	0.908	24.9%	7.7%
2020	51.3	0.905	26.0%	27.6%

* Realized Profit Provision = 1 – Discounted Loss & LAE Ratio – Expense Ratio

As presented in Table 5, on average, insurers have exceeded the 5% profit provision target set by FSRA in two of the last five years. This Table is not intended to imply that the excess profit for 2020 and 2019 was intended by insurers. The 2020 result was an exception due to COVID-19. Further, this is not a representation of target levels achieved prior to 2016, nor a reflection of future target levels for 2021 and beyond.

[3] **With 81% of polled Canadians yet to try UBI, brokers have opportunity to educate and sell**

<https://www.canadianunderwriter.ca/insurance/with-81-of-polled-canadians-yet-to-try-ubi-brokers-have-opportunity-to-educate-and-sell-1004213855/>

[4] **Application for Accident Benefits (OCF-1)**

<http://www.fsco.gov.on.ca/en/auto/forms/Documents/SABS-Claims-Forms/1224E.5.pdf>

[5] **Updated LAT Statistics** <https://otlablog.com/updated-lat-statistics/>

[6] **Online survey: FSRA stakeholder engagement survey** <https://www.fsrao.ca/newsroom/online-survey-fsra-stakeholder-engagement-survey>