

Ontario Auto Insurance – Protecting Consumers First

FAIR submission to 2024 Ontario Pre-Budget Consultation

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FAIR Association of Victims for Accident Insurance Reform

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'FAIR – supporting auto accident survivors through advocacy and education'

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FAIR Association of Victims for Accident Insurance Reform is a grass-roots, not-for-profit organization of car accident survivors and their supporters. Thank you for the opportunity to present our views.

Ontario drivers deserve coverage they can count on. Taxpayers deserve to have their dollars spent wisely. There is a way to get to quality coverage but it means insurers must pay up and they must be sanctioned if they don't. Ontario needs to acknowledge that our auto insurance is increasingly more public than private and ensure we aren't paying twice for this very poor coverage.

It's true, and stakeholders agree, that Ontario's auto insurance is broken but the question remains unanswered – how do we fix this?

And if it is broken, why is it that insurers continue to rake in record profits made in the current system? [1] Could it be that it is only broken for claimants and going full steam ahead for big dollars for Ontario's auto insurers?

Aside from a massive tax burden on Ontario's citizens, the failure to act to protect consumers also guarantees injured car crash survivors won't get what they need for recovery. This is because past governments have not seen fit to ensure that coverage reflects the true cost of care or that claimants are able to access the coverage they paid for.

This isn't a hypothetical scenario, this is the reality on the ground in Ontario and vulnerable injured citizens are being left behind, impoverished and unable to get the medical assistance they need. Just ask the over 16,000 plus unpaid claimants [2] who went to the Licensed Appeal Tribunal (LAT) last year. They can tell you their coverage isn't worth the paper it's written on.

Dollars going to insurers, the premiums, the court deductible and the threshold [3] claimants are required to meet, are all indexed but funding the recovery of car crash survivors continues to be static. Some areas of coverage such as payments to treatment providers through the Professional Services Guideline (PSG) have not seen an increase in a decade [4], some areas of care are funded below minimum wage [5] and income replacement benefits (IRB) have remained at 70% of income up to \$400/wk since 1996. Money mostly flows one way in Ontario's auto insurance scheme. As a result of auto insurers dodging their injured customers downloading to taxpayers continues to increase. Every year, and with every cut to coverage, taxpayers pick up more of the costs for the care of injured people. [6]

In order to improve auto insurance, promote public confidence and most importantly to protect consumers we recommend the government introduce real and meaningful consequences for insurers who fail to follow legislation or those in the system who behave badly and abuse their customers. Under the previous government disincentives such as substantial interest payable to claimants, who were left without proper care or access to rehabilitation, were reduced to the point of insignificance.

Recently the FSRA introduced an Automobile Insurance Supervision Plan 2023-2025 [7] with a commitment to ensuring the fair treatment of consumers and to promote public trust while maintaining a robust insurance sector in Ontario. The promise is that insurers and their intermediaries will be required to service policies until all obligations are settled. There's an additional commitment to transparency and to promote industry compliance with regulatory requirements along with an invitation to stakeholders "FSRA welcomes comments from stakeholders". On inquiry FSRA has declined to put a contact email in the document for these purportedly

desired comments and we think this underlines the message that FSRA has little interest in what claimants who actually made claims have to say about their insurance experience. We hope the Standing Committee will pick up that dropped thread and do what needs to be done to better protect consumers in a real and quantifiable way. FSRA's data on market conduct reveals that insurance (auto and long term disability) complaints comprise 53.2% of their total complaints [8] and yet their most recent survey reveals that only 36% of those surveyed by FSRA have ever been involved in a car accident. You can't get good data on customer satisfaction if you don't ask people who have used the product what they think about how well it performs. [9] Over 16,000 claims at the LAT in the past year suggest consumer satisfaction ought to be front and center of ensuring the quality of the product and this was a suggestion of the Auditor General report in 2022.

There has been far too much vitriol pointed at personal injury lawyers and their fees and insurers continue to set the narrative that somehow they and claimants are the targets of some sort of financial scam. We would not say that legal representation isn't expensive, it is and it ought not to be, but these high fees are the outcome of an insurer who simply fails to pay out on a legitimate claim. So when insurers say, and FSRA accepts that it is "estimated that about 30%–35% of settlements paid in personal injury disputes between insurance companies and claimants are used to pay for professional and legal fees, such as contingency fees, instead of benefitting injured parties" [10] it should say 'when insurers wrongly deny a legitimate claim'. We are all paying for a delay and deny model of auto insurance, through social supports and through bottlenecked court services and expensive court costs but the biggest price is paid by claimants who are without rehab resources and likely on inadequate social supports (OW and ODSP) and whose voices are drowned out by insurers claiming they aren't making enough money.

We would ask this government to put claimants first, to walk a mile to the foodbank in their shoes and pay the high legal fees caused by insurers who have found a way to use our court system like a club to impoverish and leverage their injured customers. Claimants have to deal with knowing treatment is needed for recovery but they soon find out they'll wait a couple of years to get to a LAT hearing and that their chances are slim [11] that they'll get the care they need from a Tribunal designed by and paid for by Ontario insurers.

Our wish list is below. It hasn't changed much because the system hasn't yet acknowledged that insurers are continuing to thumb their nose at their injured customers and at the Regulator. FSRA has had to take some serious action to get some accountability from one insurer that we know about last year. [12] And the fact that whistle-blower protection was needed [13] in order to get information about insurers should be concerning to us all but especially to the government legislators who have continued to mandate that we buy this product without properly reviewing outcomes for claimants. We'd ask that you level the playing field, make insurers accountable and give FSRA the tools they need to better position themselves to regulate. FSRA needs to be able to adequately sanction insurers, their providers and assessors through increased Unfair or Deceptive Act or Practices Administrative Monetary Penalties (UDAP AMPs) [14]. Insurers have consistently spent more on assessing injuries than treating injuries [15] and that tells us that patient care is second to insurers interest in profit over people. Currently bad actors in the system often make more in profit than the rare sanction they are made to pay when they abuse claimants looking for recovery resources. [16] Putting consumers first would mean shifting insurers from prepping for a possible court case to customer care.

Current legislation looks to ensure insurers interests are first and it has puts a thumb on the scale of justice so it has effectively shut Ontario's injured claimants out of any hope of recovering their losses or even accessing the treatment they need for recovery. The issues at the LAT should not be ignored.

Ontario's 10 plus million drivers look to our legislators to ensure their interests and well-being are protected under our laws and we hope that you will read our submission with protecting consumers first in mind. Again, thank you for the opportunity to express our views.

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Recommendations:

Increase the UDAP AMPs (Unfair or Deceptive Act or Practices and Administrative Monetary Penalties) as they are far too low as to be meaningful and often the profits made by the bad actor exceeds the amount of the AMP.

Increase scrutiny on insurer assessment centers (IME/IE) and their billing practices would result in savings for insurers and taxpayers. Much of the systemic insurer (not consumer) fraud in claims is centered around the Insurer Medical Examination (IME or IE) process. It's here where costs go up because insurers have deep pockets and the ability to keep assessing a claimant until they get a medical opinion they like. Insurers have preferred vendors from a pool of assessment centers that are financially dependent on them. Although FSRA has recently taken some action to hold assessors accountable, the problems with attaining a quality medical report and testimony remains a pervasive and deeply entrenched structural flaw in the insurance scheme. The answer is not 'Care not Cash' since we can clearly see that insurers are reluctant to provide 'care' now at a time when they are set up to do so.

Investigate the option of removing thresholds (MIG and CAT) since a significant number of cases at the LAT AABS are about getting out of the MIG to access more rehabilitation dollars or about proving an injury is CATastrophic. These 'thresholds' are one of the many changes to No-Fault that continues to backlog courts and undermine recovery. Thresholds stand in the way of accessing timely treatment.

Increase the Minor Injury Guideline (MIG) to reflect the real cost of care in 2024 if the intent is to keep this cap on access. It is a driver of litigation as it does not reflect current needs. This amount is NOT indexed and has remained the same since introduction in 2010. It is the lowest MIG in Canada.

Increase Income Replacement Benefits (IRB) and Non-Earner Benefits (NEB) to reflect the real cost of living and reinstate indexing of the IRB which is currently below the poverty line at 70% of a claimants income and maxes out at \$400/wk in the standard package which is well below the poverty line.

Eliminate the secret 'Deductible' of \$46,053.20 (up from \$44,367.24 in 2023). This is money that insurers keep from civil court settlements when a threshold (also indexed and so harder to reach for claimants) isn't met. Juries should not have this relevant information about a deduction kept from them and Judges should never be asked to be dishonest with a Jury to protect an insurance company.

Abolish the use of Juries in civil court – accident victims are not criminals and should not be treated as one. This is a considerable cost to the taxpayers and adds to the bottleneck of cases in our courts.

Reinstate the practice of awarding successful claimants some or all of their legal costs at the LAT AABS if they are successful at holding their insurer to account for failing to assist them after a car crash. The current practice of claimants bearing their LAT legal costs is undermining access to justice and punishes claimants for holding their insurer to account. This failure to award costs is unique to auto insurance cases in Ontario and it is unfair.

List insurers by name on court documents to enable consumers to make informed decisions about what insurers they can trust to properly address their claims if they are injured.

Stop using the names of accident victims in the LAT AABS decisions where their personal and private medical information is revealed. This spotlight on claimants' privacy has become an obstacle to justice as claimants are affected by this exposure long after their cases are concluded. We hear of cases where claimants will not pursue an insurer because of the failure to protect their interests.

Introduce meaningful sanctions for insurers who behave badly both at the LAT AABS and at the Civil Court level and post those sanctions publicly to promote transparency and accountability to improve the system. FSRA has made significant progress in this area and we look forward to their taking an interest in claimant complaints about insurers going forward. The courts must also take action to purge bad actors and bar improper and biased 'experts' from their hearings.

Reinstate meaningful pre-judgement interest sanctions that existed under the Financial Services Regulatory Authority Dispute Resolution system. This was a system where insurers paid a substantial fee for bringing a dispute forward to discourage them from overuse of dispute resolution. Insurers were also sanctioned with significant interest at 2% per month on overdue payments to claimants that provided a dis-incentive to delaying or denying a claim without reasoning. Now it is claimants who pay a fee for bringing a case forward and interest is so low as to be insignificant and no longer a dis-incentive for an insurer who behaves badly or fails to pay a claim in a timely manner.

Make wider use of the 'Special Award' that is a percentage of the amount a claimant should have already received. The award was and should be based on sanctioning an insurer for failing to properly adjust a claim during the entire claims process and not just behaviour in a few meetings at the LAT as is currently done.

Create a process for appealing LAT decisions that respects the right to justice for ALL Ontarians.

Review and adjust Professional Services Guideline (PSG) and index this amount to reflect current cost of doing business and to ensure claimants get quality and timely treatment.

Review and adjust the Healthcare transfer dollar amount payable by insurers toward Ontario's healthcare costs. This amount of transfer was designed to cover the costs to taxpayers incurred by injured auto insurance claimants has not been indexed or even adjusted in more than a decade and the loss to taxpayers funding OHIP is significant while insurers pocket the billions of dollars for care they should pay taxpayers for.

Consider assigning insurers as payors of first resort after a car crash since their status as payor of last resort is not well-known to the public who are unaware of the downloading of claimants onto the public purse. This has created a sense that Ontario's auto insurance is a safety net when it is a system dependent on public resources that are undeniably inadequate.

[1] Ontario Auditor General Report: Financial Services Regulatory Authority: Regulation of Private Passenger Automobile Insurance, Credit Unions and Pension Plans 2022 Value-for-Money Audit

See pg 17: "we noted that overall, private passenger automobile insurance companies exceeded the 5% profit provision target set by FSRA in both 2019 (at 7.7%) and 2020 (at 27.6%, a vast increase)"

https://www.auditor.on.ca/en/content/annualreports/arreports/en22/AR_FSRA_en22.pdf

[2] Another Year of The LAT: Is Time Standing Still?

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The **average** time between application and decision is now **854** days. While there was a slight drop in the last quarter, overall, this has steadily increased since the LAT took over AB disputes. In fact, **the LAT is now almost three times as slow as it was when it first took over AB disputes** (compared to 323 days in 2017-2018 Q4)

- The average time between **each** litigation step (application, case conference, hearing) has had some **improvement** in the last year. So, the LAT is getting faster by that metric.
- The average time for release hearing decisions has improved.
- Applications remain high, with 2023-2024 Q1 setting a “record” with 4,060 (in that quarter alone). Roughly 16,000 accident benefit disputes per year should tell the LAT, FSRA and the Ontario Government something... insurers deny a lot of claims!

<https://otlablog.com/another-year-of-the-lat-is-time-standing-still/>

NOTE: FAIR continues to rely on the OTLA numbers regarding the use of the LAT since the Tribunal no longer publishes their numbers and has additionally declined to share who their ‘stakeholders’ are and when they meet.

[3] FSRA 2024 Automobile insurance indexation amounts Guidance Appendix 1

2024 Monetary thresholds and deductibles for non-pecuniary tort awards under the *Insurance Act* and O. Reg. 461/96 (court proceedings for automobile accidents that occur on or after November 1, 1996)

<https://www.fsrao.ca/industry/auto-insurance/regulatory-framework/guidance-auto-insurance/2024-automobile-insurance-indexation-amounts-guidance>

NOTE: You won’t find the \$400/wk income replacement benefit (IRB) listed on this page as it is NOT indexed. Nor are the rates for treatment providers or personal support workers (PSW) listed – also not indexed.

[4] Professional Services Guideline Superintendent’s Guideline No. 03/14 Professional Services Guideline (PSG), a schedule of the Insurance Act, sets out the rates that insurers pay healthcare providers for treatment of motor vehicle accident injuries. It has not been adjusted since a cost of living adjustment in 2014. <https://www.fsrao.ca/media/7996/download>

[5] Superintendent’s Guideline No. 01/18: Attendant Care Hourly Rate

Guideline Attendant Care Costs Maximum Hourly Rate

Part 1: Hourly Rate A Level 1 Attendant Care is for routine personal care. \$14.90

Part 2: Hourly Rate B Level 2 Attendant Care is for basic supervisory functions. \$14.00

Part 3: Hourly Rate C Level 3 Attendant Care is for complex health/care and hygiene functions. \$21.11

<https://www.fsrao.ca/media/6901/download>

[6] FAIR submission to: Senate Standing Committee on Social Affairs, Science and Technology (SOCI) on Bill C-22

“My insurance company made me fight for rehabilitation and kept denying coverage. I had no other choice and was forced to apply for the Ontario Disability Support Program even though I paid for premium insurance coverage. My insurance company only paid my income replacement for a short time and cut me off without notice. A national disability payment would mean the government wouldn’t continue making up and paying for the shortcomings of the insurance company compensation to accident victims. It would allow MVA victims to focus on getting better and regaining their place in life. We wouldn’t have to spend time worrying about the next meal or how we can afford medication and treatment while injured and unable to work. [B.Y.]”

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<http://www.fairassociation.ca/wp-content/uploads/2023/04/FAIR-submission-to-SOCI-on-Bill-C-22-April-11-2023.pdf>

[7] Automobile Insurance Supervision Plan 2023-2025

- ensuring the fair treatment of customers
- promoting public trust
- maintaining a robust insurance sector in Ontario

<https://www.fsrao.ca/industry/auto-insurance/publications/automobile-insurance-supervision-plan-2023-2025#feedback>

[8] FSRA market conduct complaints about insurance companies totalled 53.2 of all complaints in 2022-23. See page 78 of the **Financial Services Regulatory Authority of Ontario 2022- 2023 Annual Report**

<https://www.fsrao.ca/media/23866/download>

[9] FSRA continues to conduct auto insurance surveys about consumer satisfaction and vulnerabilities but the data reveals that 36% of participants have never been involved in a car accident. Of those who have been involved in a car accident only 35% were totally satisfied with the auto insurance claims handling process. **Financial Services Regulatory Authority of Ontario 2022 Consumer Research: Auto Insurance** See slide 27, 29 <https://www.fsrao.ca/media/24056/download>

[10] Ontario Auditor General Report: Financial Services Regulatory Authority: Regulation of Private Passenger Automobile Insurance, Credit Unions and Pension Plans 2022 Value-for-Money Audit

See pg 23: "FSRA estimated that about 30%–35% of settlements paid in personal injury disputes between insurance companies and claimants are used to pay for professional and legal fees, such as contingency fees, instead of benefitting injured parties"

https://www.auditor.on.ca/en/content/annualreports/arreports/en22/AR_FSRA_en22.pdf

[11] Ont. lawyers question impartiality of provincial tribunal that hears insurance car crash claims

"It appears that Aviva may have tried to stack the deck here in terms of this adjudicator continuing to hear these cases or at least that the adjudicator had a conflict of interest and didn't do anything to recuse herself from the hearings,"

<https://www.cbc.ca/news/canada/windsor/lawyers-question-provincial-tribunal-car-crash-1.6933029>

[12] FSRA imposes administrative penalties against Aviva Insurance Company of Canada and S&Y Insurance Company

<https://www.fsrao.ca/newsroom/fsra-imposes-administrative-penalties-against-aviva-insurance-company-canada-and-sy-insurance-company>

[13] Is the broker/insurer power dynamic broken?

Brokers should not be afraid to speak up about insurer misconduct or breaches – but some are. Take that in for just a moment, because what the FSRA appears to be saying here is that some brokers are so concerned about the risk of being cut off by insurers that they felt they could not engage with a regulatory intervention. So much so, in fact, that this was one reason that the FSRA, which worked with The Registered Brokers of Ontario (RIBO) on its investigation, sought out whistleblower-protection authority from the government.

<https://www.insurancebusinessmag.com/ca/news/columns/is-the-brokerinsurer-power-dynamic-broken-455866.aspx>

[14] O. Reg. 408/12: ADMINISTRATIVE PENALTIES under [Insurance Act, R.S.O. 1990, c. I.8](#)

<https://www.ontario.ca/laws/regulation/120408>

[15] Ontario Health Claims Database HCDB Standard Report 2022 (pg 35) average paid for rehabilitation \$1,532 average paid for insurer exams (IME) \$2,173

<https://a-us.storyblok.com/f/1003207/x/e7a5a48926/hcdb-2022-standard-report-final.pdf>

[16] IN THE MATTER OF the Insurance Act, R.S.O. 1990, c.I.8, as amended (the “Act”), in particular sections 441, 441.2 and 441.3;

AND IN THE MATTER OF Dr. Romeo Vitelli

NOTICE OF PROPOSAL TO IMPOSE COMPLIANCE ORDER AND

NOTICE OF PROPOSAL TO IMPOSE ADMINISTRATIVE PENALTY

Documents in the report establish that Novo Medical submitted seven Psychological Evaluation Reports and one Catastrophic Impairment Determination Psychological Evaluation Report (dated between April 21, 2017 and May 4, 2018) for claimants (AK, CD, GC, JH, MM, MR, and NK). Sections of the reports are identical. The reports also include identical quotations presented as the claimants’ verbatim descriptions of their injuries and symptoms.

<https://teao.fsrao.ca:7179/api/enforcement/downloadDocument?Id=2653&lang=en>