

CHARTING THE FUTURE OF INSURANCE REGULATION IN ONTARIO - FSRA TAKES AIM AT AUTO, AND HEALTH AND LIFE INSURANCE FOR INCREASED OVERSIGHT AND CONSUMER PROTECTION

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The Financial Services Regulatory Authority of Ontario (“**FSRA**”) released its Annual Business Plan for 2021-2024 (“**Business Plan**”) on May 21, 2021, outlining the agency’s priorities and strategic direction for the next four years.

For the insurance sector, the Business Plan focuses on protecting the interests of consumers, improving market conduct, maintaining competitiveness for consumer insurance options, and promoting innovation. The Business Plan also addresses the expectations set out by the Minister of Finance in the Minister’s [2021-2022 Mandate Letter](#) to FSRA.

FSRA has identified insurance sector priorities and developed standards to align financial service conduct with FSRA’s principles of accountability, effectiveness, efficiency, adaptability, collaboration and transparency.

Property and Casualty

In the Business Plan, FSRA concentrates its Property and Casualty (“**P&C**”) priorities on the auto insurance sector with the aim of enhancing consumer choice, promoting innovation, and fostering a more competitive and stable auto insurance marketplace.

With respect to consumer protection, FSRA plans to monitor auto insurance rates and develop tools to identify unreasonable rates. One such tool that FSRA will continue to use is the Technical Advisory Committee (“**TAC**”) for Transforming Rate Regulation established in December 2019. The TAC for Transforming Rate Regulation is composed of industry experts who provide recommendations for changes to the current system of rate regulation. Such recommendations may include changes to legal requirements, FSRA rule-making, regulatory guidance, and operational processes. According to FSRA’s website, the TAC for Transforming Rate Regulation was originally scheduled to have completed its mandate by March 31, 2021.

One of the main priorities in the FSRA Business Plan is to develop and implement an auto insurance data and analytics to enhance FSRA's understanding of how the auto insurance industry behaves, the regulatory landscape, and ultimately improve auto insurance outcomes for consumers. Greater data driven understanding will enable FSRA to support underwriting regulations, rate regulations, and implement auto insurance reform. Over the next four years, FSRA will work to protect consumers by ensuring that auto insurance rates are reasonable by improving benchmarks and developing tools and capabilities for the identification of unreasonable rates.

In the Business Plan, FSRA has described two ways it will collect and use data to better understand the insurance sector and implement any needed reform. First, FSRA plans to use data from the Registered Insurance Brokers of Ontario (RIBO) to monitor whether or not all consumers have access to auto insurance. FSRA's goal of ensuring that all Ontarians can access auto insurance follows from FSRA's March 2020 "Take-All Comers" consultation, described in our recent article [here](#). Second, FSRA plans to use the information from the Annual Statement on Market Conduct database, run by the Canadian Council of Insurance Regulators, to better understand insurance practices, identify potential risks for consumers, and ensure the fair treatment of consumers. Greater access to information regarding consumer coverage and insurance industry practices will allow FSRA to understand any gaps in protection, risks to consumers, or abusive practices and allow for greater consumer protection in the auto insurance sector.

FSRA will also implement a strategy to address fraud and abuse in the auto insurance industry to improve consumer protection, enhance regulatory efficiency and reduce regulatory burden. As part of the strategy, FSRA is in the process of finalizing a rule defining "Unfair or Deceptive Acts or Practices" ("**UDAP Rule**") under the *Insurance Act*. As described in our recent article published by the *Canadian Insurance Law Reporter* (found [here](#)), the UDAP Rule is designed to, among other things, improve the existing framework by removing provisions that are unnecessarily prescriptive or inconsistent with desired regulatory outcomes and allow for increased innovation in the auto insurance sector. For example, insurers may be able to offer consumers a rebate on their auto policy premium for good driving behaviour, or a gift card for behavior that reduces insured risks. These benefits will be in addition to discounts on premiums that auto insurers can already offer to customers enrolled in Usage-Based Insurance Programs.

The UDAP Rule also provides outcomes-based definitions of unfair or deceptive acts or practices, sets clear and objective standards for determining misconduct that incorporates examples of unfair treatment, and references the Ontario Human Rights Code for enhanced precision. The UDAP Rule was first introduced in December 2020, and was subject to a 90-day consultation period. Once in force, a supporting supervisory regime will uphold the rule in order to protect consumers from unfair or deceptive practices. The details of the supervisory framework are yet to be announced.

FSRA has set the following service standards for auto insurance for 2021-2024:

- a. 100% of Private Passenger Auto Standard filings to be reviewed and decided within 25 business days;
- b. 85% of non-Private Passenger Auto Standard filings to be reviewed and decided within 25 business days;
- c. 90% of Major Rate Filings to be reviewed and decided within 45 business days; and
- d. 80% of Underwriting Rules, Endorsement and Form Filings to be reviewed, and decision made within 30 business days.

Life and Health

With respect to the health and life insurance sector, FSRA's Business Plan envisions greater market oversight to protect consumers. In particular, FSRA is focused on greater market oversight of life and health insurance outsourcing to Managing General Agents ("**MGAs**") and plans to conduct assessments to understand how the use of MGAs affects consumers.

FSRA has also developed two new TACs (announced in September 2020) to address the increased presence of intermediaries in the health and life insurance market. The Segregated Funds Technical Advisory Committee is assisting FSRA with its review of the distribution and administration of segregated funds in Ontario, particularly regarding issues consumers have experienced with this type of investment product. One of the "Outcomes" for the health and life insurance sector listed in the Business Plan is to ensure that the industry has a clear understanding of the FSRA's expectations for informing consumers of the total cost of their segregated funds to ensure consumers can make informed decisions.

The Insurer Oversight of Managing General Agencies TAC is providing technical input and expert advice to the FSRA from an industry perspective regarding trends and issues related to MGAs and potential frameworks for regulating and supervising distribution channels that rely on MGAs. FSRA will lead the implementation of a Canadian Insurance Services Regulatory Organizations (CISRO)-harmonized industry wide Code of Conduct for intermediaries to be implemented in 2022.

FSRA has also completed a review of the Life Agent Reporting Forms submitted to FSRA from June 8, 2019 to March 31, 2020, to evaluate the misconduct or lack of suitability of life insurance agents.^[1] The findings from FSRA's review of the Life Agent Reporting Forms will allow for assessment of trends, determination of emerging issues, and development of supervisory plans to address key issues in the sector.^[2]

FSRA has developed the following new complaint-based service standards for 2021-2024:

- a. 90% of complaints are acknowledged and replied to within 3 business days, provided the reply information is available; and
- b. 80% of complaints containing all available information are assessed and actioned within 120 days.

Key Takeaways

Over the next four years, FSRA plans to enhance consumer protection and industry oversight in the insurance sector based on the guiding principles of accountability, effectiveness, efficiency, adaptability, collaboration and transparency. While FSRA has already accomplished a great deal since its formation in 2019, the regulatory agency continues to push for enhanced consumer protection and ways to support greater innovation and market competition.

[1] [“2019/2020 Market Conduct Life Agent Reporting Form \(LARF\) Summary Report,”](#) Financial Services Regulatory Authority of Ontario.

[2] *Ibid.*

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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