

UPCOMING CHANGES TO ONTARIO'S AUTO INSURANCE REGIME

Posted on April 12, 2021

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The ways in which Ontario's auto insurance market is regulated may soon undergo several key changes to enhance consumer protection and foster greater competition and innovation.

Recommendations from the Residents' Reference Panel on Automotive Insurance

In March 2021, the Financial Services Regulatory Authority of Ontario ("FSRA") received the [Final Report of the Residents' Reference Panel on Automotive Insurance in Ontario](#). The mandate of the Residents' Reference Panel on Automotive Insurance (the "**Panel**") is to provide an "everyday citizen's" perspective on how to make the Ontario auto insurance system clearer, easier to understand and more transparent. Specifically, panelists were asked to provide recommendations about how FSRA can improve auto insurance regulation in Ontario to enhance consumer experience and choice.

The Panel's six main recommendations are as follows:

1. Address low confidence in the system by reducing systemic drivers of cost, including streamlining care for personal injury claimants, creating publically available fee schedules, finding ways to decrease operating costs of insurance companies, and limiting the need to turn to lengthy processes in the tort system to receive access to additional care or support following an accident.
2. Enhance transparency across all elements of the auto insurance system (purchasing, renewing, making a claim, escalating a complaint, understanding premium calculations, and difference between mandatory and optional coverage). Greater clarity is required with respect to auto insurance products for consumers.
3. Provide access to timely recovery-focused care through the creation of standardized and easy-to-use claims processes for personal injury claimants, remove barriers to accessing care, and increase visibility of external dispute resolution mechanisms that are accessible and resolve complaints quickly.
4. Develop a more user-friendly automotive insurance system for consumers by convening various stakeholders, creating minimum standards, and ensuring the impartiality of the tools developed by the industry.
5. Increase opportunities for Ontario drivers to reduce their premiums by ensuring they understand the key variables that contribute to the cost of their automotive insurance premiums. This will enable consumers to take action to positively influence their insurance premiums, including the adoption of safe driving

habits.

6. Adopt innovations that lower costs, enhance choice and allow consumers to develop safer driving behaviours, and encourage the use of digital technologies to streamline the purchasing, renewing, and claims processes.

The Panel was convened as a result of FSRA's ongoing commitment to include consumers in the policymaking process. So far, there is no indication of how or when these recommendations will be implemented.

“Take-All-Comers” Consultation

In March 2020, FSRA released a [consultation](#) related to the “Take-All-Comers” requirements. The purpose of the “Take-All-Comers” rule is to ensure that no driver is denied coverage, prohibiting insurers from declining to issue, terminating or refusing to renew an auto policy or endorsement, except on grounds filed with FSRA.^[1] In the consultation, FSRA requested responses to questions from licensed individuals and entities focusing on: (i) the reporting and oversight mechanisms in place to support compliance with the rule; (ii) the way in which instances of non-compliance with the rule are addressed and (iii) changes to the rule that would reduce the risk of consumer harm and/or sector instability. In particular, consumers were asked whether they had been denied auto insurance coverage despite believing they were qualified to receive a quote, whether they had ever had their auto insurance coverage cancelled without understanding why and whether they had experienced not receiving a quote after making a request for one with an insurer or intermediary.

FSRA noted in the consultation that it is reviewing various activities and practices by insurers and/or brokers that may be contravening the “Take-All-Comers” rule and will be conducting supervisory reviews of insurance companies to identify risks or instances of consumer harm. This enhanced monitoring was also described in FSRA's [proposed statement of priorities for 2021-2022](#).

Based on feedback received from the “Take-All-Comers” consultation, FSRA completed a review of the current Unfair or Deceptive Acts or Practices regime in the *Insurance Act* (Ontario) and the *Unfair or Deceptive Acts or Practices* regulation thereunder and published a proposed Unfair or Deceptive Acts or Practices Rule (the “**UDAP Rule**”). The UDAP Rule is designed to improve the existing framework by removing provisions that are unnecessarily prescriptive or inconsistent with desired regulatory outcomes and to allow for increased innovation. For example, insurers may be able to offer their customer a rebate on their auto policy premium for good driving behaviour or a gift card for behavior that reduces insured risk in addition to discounts on premiums that auto insurers can already offer to customers enrolled in Usage-Based Insurance Programs.

Besides the examples set out above, it is unclear how FSRA is using or intends to use the information obtained from the “Take-All-Comers” consultation.

Usage-Based Insurance

In November 2020, FSRA [announced](#) the removal of Guidance [No. A-16/16](#) and [No. A-05/13](#), which set out considerations and requirements for auto insurance filings containing a Usage Based Insurance (“**UBI**”) component. UBI programs collect detailed telematics information about where, how and when vehicles are driven. These types of programs give drivers more control over the price of their auto insurance and promote good driving behaviours among participating drivers. The removal of the prescriptive guidance enables the introduction of more flexible and innovative UBI programs going forward that may benefit consumers and encourage competition.

Ending Discrimination in Automobile Insurance

Another pending change in Ontario is the coming into force of Bill 42, *Ending Discrimination in Automobile Insurance Act, 2019*. The purpose of Bill 42 is to enhance the marketplace and encourage more consumer choice in automobile insurance by prohibiting insurers from using factors primarily related to a person’s postal code or telephone area code in their risk classification system for auto insurance. Bill 42 aims to ensure fairness in rate setting and promote personal driver responsibility and will, once in force, require FSRA to rescind Bulletin A-01/05 dealing with territorial ratings.

Connected and Autonomous Vehicles

Further changes to Ontario’s auto insurance framework may also be forthcoming based on the recent work of the Canadian Council of Insurance Regulators (“**CCIR**”) to engage stakeholders in supporting the safe and swift deployment of connected and autonomous vehicles. To that end, the CCIR recently published an issues paper exploring the potential impacts of connected and autonomous vehicles on the automobile insurance market in Canada. The paper reviews the existing regulation and regulatory requirements and describes certain items that will need to be addressed, including liability and fault determination, claims resolution, pricing, cyber security and data privacy. The CCIR concludes that a shift in focus from a driver’s fault or negligence-based personal liability to product liability will need to be considered by policymakers and regulators to ensure the risks associated with connected and autonomous vehicles are managed appropriately. To start preparing for this potential shift, the Ontario government launched a pilot project in 2016 that allows the testing of automated vehicles on public roads under specific conditions. The objectives of the pilot project are to establish rules, monitor industry developments and evaluate the safety of autonomous vehicles. At the end of 2020, there were twelve such automated vehicle pilot projects in Ontario, all without incident.

Regulatory Sandbox

Industry groups are also encouraging FSRA to create a “regulatory sandbox” that may pave the way for

insurers, fintechs and other entities to introduce innovative initiatives in a controlled environment with the ultimate goal of allowing new consumer-focused products and services to enter the market more quickly.

Conclusion

The above-mentioned legislative and regulatory initiatives highlight a trend in the auto insurance sector towards a more consumer-focused, innovative and flexible approach. In particular, the initiatives led by FSRA support its ongoing mandate to draw from consumer and industry recommendations to inform how FSRA sets and delivers on its priorities, which includes the protection and empowerment of consumers, enhancement of consumer choice, promotion of innovation and the fostering a more competitive and stable auto insurance marketplace.

[1][ps2id id="1" target=""] See sections 237 and 238 of the Ontario *Insurance Act* and section 2(1)(8) of Regulation 7/00 *Unfair or Deceptive Acts or Practices*.

by [Darcy Ammerman](#) and [Shahnaz Dhanani](#) (Articling Student)

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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