

June 8, 2015

Mr. Brian Mills
Chief Executive Officer and
Superintendent of Financial Services (Interim)
Financial Services Commission of Ontario
15th floor, PO Box 85
5160 Yonge Street
North York, Ontario
M2N 6L9

Dear Mr. Mills:

The Ontario Trial Lawyers Association (“OTLA”) welcomes the opportunity to provide the following comments on the Financial Services Commission of Ontario (“FSCO”) draft 2015 Statement of Priorities.

OTLA notes and encourages the Mandate and Vision of FSCO directed to protecting the public interest in providing the framework for the Statement of Priorities. However, OTLA wishes to raise a number of proposals and areas of concern, which are set out below.

THREE YEAR REVIEW OF PART VI OF THE INSURANCE ACT

OTLA is concerned that the Ministry of Finance tabled its 2015 budget, including new reductions to accident benefits, before FSCO publicly released the report of its 3 year review of the Insurance Act. FSCO received numerous submissions from stakeholders who provided input and recommendations covering a broad range of concerns by March 31, 2014. This included a submission from OTLA. FSCO announced that its report on the review was expected to be submitted to the Minister of Finance in the Fall of 2014. As of May 2015, FSCO’s report of its 3 year review remains hidden from public view. This is particularly troubling in light of the fact that one of the purposes of the review was to promote greater transparency and accountability.

FSCO’s failure to publicly release the report of its 3 year review led to the Minister of Finance tabling significant benefit reductions without any prior public consultation or discussion on proposed benefit cuts. This seriously undermined the purported openness of the 3 year review process and the proposed reductions to accident benefits.

AUTOMOBILE INSURANCE DATA AND STATISTICS

In order for FSCO to meet its transparency obligations in the setting of auto insurance rates, there must be access by all stakeholders to unbiased Ontario auto insurance statistical information.

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Decisions made by government, including FSCO, based on data that is lacking or skewed, can result in poor policy decisions that may not be in the best interests of the people of Ontario.

FSCO needs to ensure that it avails itself of truly independent, outside experts and resources to review, analyze and comment upon the financial and other data supplied by the insurance industry. Sufficient resources must be committed to this most critical analysis.

While recognizing the proprietary interest of individual insurers, FSCO must obtain Ontario-based statistical information collected in a transparent and consistent manner.

OTLA supports working with the General Insurance Statistical Agency (GISA) to collect and analyze data in a consistent and transparent process.

OTLA reiterates its serious concerns with respect to the Ministry's decision to retain KPMG particularly given KPMG's previous involvement and report at the request of the Insurance Bureau of Canada. The recent revised report of Professors Lazar and Prisman demonstrates the limitations and flaws in the KPMG analysis of GISA data. OTLA urges the Ministry to retain impartial auditors to analyze statistical data for further analysis.

THE MINOR INJURY TREATMENT PROTOCOL

When the Minor Injury Guideline (MIG) was established in September 2010, FSCO described it as a temporary measure only. Since that time, the funding available for medical treatment and therapy to more than 75% of all persons injured in automobile accidents in Ontario has been capped at a maximum of \$3,500.00.

Experience over the past three and a half years, has clearly shown that this limit is not sufficient to properly provide for the legitimate treatment needs of many injured persons. Insufficient treatment leads to poor patient outcomes for many injured persons. Poor outcomes not only affect the injured person, but their families as well and often place an increased burden on the already overtaxed public healthcare system.

In 2012, Dr. Pierre Coté and his team began work on the development of a standardized treatment protocol for minor injuries. In April 2015, Dr. Coté delivered to FSCO a final report entitled, "Enabling Recovery from Common Traffic Injuries." OTLA calls for the immediate release of the report of Dr. Pierre Coté and his team. More importantly, FSCO should seek broad input from stakeholders before accepting the report's conclusions uncritically, to ensure that adequate automobile insurance resources are available to meet the treatment needs of injured persons.

IMPLEMENTATION OF CHANGES TO THE DISPUTE RESOLUTION SYSTEM

The report of the Honourable J. Douglas Cunningham and the legislation introduced by the government in March 2014, detailed recommendations for a complete overhaul of the system for resolving disputes between injured persons and insurance companies over Accident Benefits.

The stated purpose of this overhaul is to simplify, speed up and make less costly the dispute resolution system. While this goal is laudable, FSCO needs to do everything possible to make sure that any new system is fair to both injured persons and their insurers.

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Injured persons have always been and remain at a significant disadvantage when trying to challenge the decisions made by their insurance companies. Insurers have financial and other resources available to them that injured persons do not. This often creates an unfair advantage.

Many of the changes proposed in the Cunningham report and incorporated in the draft legislation, will, if implemented, result in the playing field, which is already uneven, becoming more so. As part of its legislated consumer protection mandate, FSCO needs to make sure that the playing field is as level as possible and that injured persons have the means to be able to fairly challenge benefit denials from an equal footing so that adjudications of those disputes are indeed fair.

LICENCE APPEAL TRIBUNAL

In keeping with FSCO's mandate to promote transparency and accountability, OTLA calls for greater participation in the drafting of regulations regarding the implementation of the Licence Appeal Tribunal (LAT) to help ensure a smooth and effective transition.

Once again, we thank you for the opportunity to provide comment on the upcoming Statement of Priorities and we look forward continuing to work with the Financial Services Commission of Ontario and indeed all stakeholders to achieve stability and fairness in Ontario's auto insurance system.

Yours truly,

Maia Bent

President

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