



FSRA Consultation on Auto Reforms

Submitted to: Financial Services Regulatory
Authority of Ontario

Submitted by: Ontario Bar Association

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BAR ASSOCIATION
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Table of Contents

Executive Summary.....	3
Ontario Bar Association.....	3
Comments & Recommendations.....	3



Executive Summary

The Ontario Bar Association ("**OBA**") welcomes the opportunity to provide feedback on the Financial Services Regulatory Authority of Ontario ("**FSRA**") consultation on auto reforms. We have focused our comments on the impacts the statutory maximum hourly rates ("**maximum statutory rates**") have on litigation and the justice system as a whole.

Ontario Bar Association

Established in 1907, the OBA is the largest and most diverse volunteer lawyer association in Ontario, with close to 16,000 members, practicing in every area of law in every region of the province. Each year, through the work of our 40 practice sections, the OBA provides advice to assist legislators and other key decision-makers in the interests of both the profession and the public and we deliver over 325 in-person and online professional development programs to an audience of over 20,000 lawyers, judges, students, and professors.

This submission was prepared by lawyers practicing personal injury law and was reviewed by members of the OBA's Civil Litigation and Insurance Law sections. These lawyers have extensive experience appearing before the License Appeal Tribunal ("**LAT**") and the Courts for tort litigation. Members of these sections include barristers and solicitors in public and private practice in large, medium, and small firms, and in-house counsel across every region in Ontario.

Comments & Recommendations

The maximum statutory rates outline the maximum hourly rates that insurers are liable to pay to listed Health Service Providers ("**HSPs**") in relation to medical and rehabilitation benefits received by a consumer. Disputes about entitlement and costs payable up to the



statutory rates are generally dealt with by the LAT, whereas the recovery of actual amounts paid above the maximum statutory rates proceed as tort claims in the court system.

The maximum statutory rates have not been increased or indexed since 2014. The rates deviate significantly from market rates and the typical fees charged by HSPs. As a result, many plaintiffs must commence tort claims in the courts to recoup the portion of rehabilitation costs that are not covered by the accident benefits regime. To frame this discussion, we note the maximum hourly rates for attendant care below:

- \$14.90/hour (Level 1 Attendant Care for routine personal care)
- \$14.00/hour (Level 2 Attendant Care for basic supervisory functions)
- \$21.11/hour (Level 3 Attendant Care for complex health/care and hygiene functions)

By way of an example, if a plaintiff receives level 2 attendant care at the maximum statutory rate of \$14.00/hour, but is actually charged \$30.00/hour, they must litigate to seek to recoup the additional \$16.00/hour paid. This means that cases that could be dealt with outside of litigation are brought into the court system, and cases that are litigating for other reasons must spend a significant amount of time and expense on this issue. Trial time is spent on proving entitlement to attendant care (even if the plaintiff received the maximum statutory rates and was determined to be entitled by the LAT), followed by an hour-by-hour assessment of the amount above the maximum statutory rate that the plaintiff seeks to recoup.

One of the key objectives of the no-fault regime in Ontario was to take these cases out of the courts and move them to the LAT. With the insufficient statutory maximum rates in place, plaintiffs are having to litigate twice. They may have to appear before the LAT to argue entitlement under the statutory maximum rates, followed by a tort case that seeks to recoup the additional costs.

The court systems in Ontario are overwhelmed and backlogged. The no-fault regime was meant to free the courts of these issues by placing cases in a specialized tribunal to increase



efficiency. Unfortunately, the current reality is resulting in increased cases at the LAT and in the court system. Increasing the statutory rates could decrease the frequency of tort claims in the justice system and reduce the disputes that the LAT hears.

While we do not propose commenting on the method FSRA should use to increase rates, at a high level, we think the rates need to reflect the reality of the market rates and be indexed and reviewed regularly. Regular indexing and review will avoid this issue resurfacing in the future.

As a final comment, we acknowledge FSRA's comments that increasing rates will result in the legislated prescribed standard limits (in other words, the "cap") being reached in more cases. While we think FSRA should explore increasing the caps, an increase in the statutory rates without accompanying cap increases would still have a positive impact on the system. Tort cases would likely be limited to claims for reimbursement above the cap, and not disputes about recouping the extra cost of care above the statutory rates, which involves the use of expert witnesses and significant court time.

The OBA would be pleased to discuss this further and answer any questions that you may have.