



OBA Submission on the FSRA Innovation Office's Innovation Framework

Submitted to: Innovation Office, Financial Regulatory Services
Authority of Ontario

Submitted by: Ontario Bar Association

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Table of Contents

Introduction.....	3
The Ontario Bar Association	3
Overview	3
Comments.....	4
Conclusion	5



Introduction

The Ontario Bar Association (OBA) appreciates the opportunity to provide a submission on the Financial Services Regulatory Authority of Ontario's (FSRA) Innovation Framework.

The Ontario Bar Association

Established in 1907, the OBA is the largest and most diverse volunteer lawyer association in Ontario, with over 16,000 members who practice on the frontlines of the justice system, providing services to people and businesses in virtually every area of law in every part 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 delivers over 325 in-person and on-line professional development programs to an audience of over 12,000 lawyers, judges, students and professors.

This submission was prepared by the Executive of the Insurance Law Section of the OBA. Collectively, our members regularly deal in a wide array of matters of insurance law and products, and represent a broad range of clients dealing with or appearing before FSRA, the Licence Appeal Tribunal (LAT), the Financial Services Tribunal (FST) and the Courts.

Overview

We generally agree that establishing an Innovation Office at FSRA would be fruitful and that innovation is desirable in protecting the consumer and the broader public interest. We note that one of FSRA's objects under the *FSRA Act*, 2016 is fostering strong, sustainable, competitive and innovative financial services sectors in Ontario. In that vein, the active participation of outside counsel from the start, such as on advisory, technical, resources or



stakeholder panels, teams, committees or boards to assist in effective regulation and legal risk identification and management of the proposed innovations and frameworks.

Comments

Without innovation, regulation of the financial services sectors runs the risk of becoming archaic or burdensome and could defeat the very purpose of regulation in the first place. In turn, this impedes the ability of insurers (a regulated sector) to provide products and services in a meaningful, timely and cost-effective way. Furthermore, this makes it difficult for counsel to advance the interests of their clients, be it insurers or consumers, because regulation of the insurance marketplace that isn't innovative, becomes unresponsive to what is really going on or needed.

The need for innovative approaches is particularly illustrative in the context of auto insurance. Unlike other types of insurance, auto insurance is a mandatory product and highly regulated. The relevant insurance legislation and auto insurance contract are not easily understood and change frequently in response to the needs of the marketplace and the decisions of the LAT and the Court. An Innovation Office could shepherd areas of specific review and act as a sounding board for how innovative and efficient regulatory schemes and business models might be developed, to proactively address the next generation of auto insurance and Court and tribunal decisions.

We would strongly suggest that the Innovation Office include the active participation of outside counsel from the start, such as on advisory, technical, resources or stakeholder panels, teams, committees or boards. Such counsel deal directly with insurers and consumers on a variety of insurance products and services, and the diverse and complex legal and related issues or risks each routinely face. Consequently, such counsel are very well placed to participate in any "core regulatory teams" or other stakeholder, technical, advisory, educational or resource bodies set up by the Innovation Office.



In our view, the early involvement of such counsel would facilitate the Innovation Office's attempts to engage in ongoing dialogue and identification of how the carrying on of the business of insurance can be better regulated. Likewise, such counsel could assist in the preparation and proactive review of any study, best practices, tool kits or proposed models, measures or legislative changes.

For example, the Consultation Paper notes that pursuant to section 15.1 of the *Insurance Act*, the FSRA CEO can make exemption orders as prescribed, and that exemption requests could be an area where an innovation team develops and tests possible models or parameters. We also note that on October 14, 2021, new O. Reg 704/21 (Exemption Orders) was filed and it prescribes a wide variety of insurance products and filings that could be subject to an exemption request. In our view, teams assembled by the Innovation Office to study possible exemption models or parameters provide an excellent example of where the inclusion of outside counsel, alongside insurers and others, would be fruitful.

The OBA is well-positioned and would be keen to participate in any of the roles listed above. Our membership offers expertise across a broad range of practice areas and can provide a perspective that would represent the consensus view of its vast membership.

Conclusion

Once again, the OBA appreciates the opportunity to provide this submission in response to FSRA's Innovation Framework consultation. We look forward to continuing to participate in FSRA's stakeholder engagement, in particular, to be active participants and consultants in their innovation efforts.