

Acquired Brain Injury Survivor Solutions (ABISS)  
PO Box 1650 Wingham ON N0G 2W0  
July 30, 2021

Mr. Tim Bzowey  
Executive Vice President Auto/Insurance Products  
Financial Services Regulatory Authority of Ontario  
25 Sheppard Avenue West 25,  
Suite 100 Toronto ON M2N 6S6

Dear Mr. Bzowey:

Thank you for your letter dated July 15, 2021 in response to our communication to you of June 26 2021.

We at ABISS appreciate that FSRA has taken seriously our own expressed concerns along with many other consumers of auto insurance who have experienced not only difficult, but costly health and financial deficits due to their insurance claims experience.

We recognize that you are seeking consumer input through the various panels and regulatory reviews you have outlined in your letter and can also appreciate that your mandate covers many areas in addition to auto insurance.

Our input on the initiatives you have outlined is as follows and is based on recommendations embodied in the ABISS platform we have previously shared with you at our meeting in Sept. 2019 and attached to this letter:

**Consumer Office:** We understand that part of this office's mandate is consumer research. With this in mind, we would like to share with you research conducted on behalf of ABISS by students in the graduate Speech Language Pathology program at McMaster University. Their report issued July 26, 2020 is attached and strongly reinforces many of the concerns expressed to you by ABISS previously.

**Consumer Advisory Panel:** ABISS represents a particular subset of those injured in an automobile collision, those permanently disabled by brain injury. We understand that Ms. Rhona DesRoches of the Association of Victims for Accident Insurance Reform (FAIR) is a member of this panel. We at ABISS share many of their views on auto insurance regulatory reform.

**Resident Reference Panel:** We are in agreement with many of the recommendations made in the Report of the Residents' Reference Panel on Automotive Insurance in Ontario. In particular we would like to specifically draw your attention to the panel's discussion and recommendations on Theme 3, Care.

Consumers who have experienced a brain injury in an automobile collision are particularly vulnerable as are others who are diagnosed with physical and mental conditions that are a permanent disability. These people are not in a position to fight barriers put in their way by the insurance claims process and therefore our recommendations made to you specifically address this concern. We can summarize our recommendations that pertain to claimant care as follows:

1. Insurers must accept the Ontario regulated doctor and clinician reports diagnosing a brain injury and eliminate their practice of paying their own experts to provide an opposite view.
2. Eliminate denials and delays for those with diagnosed Acquired Brain Injury and provide immediate access to treatment as well as the prescribed replacement income they are entitled to in their insurance policy.
3. Insurers must appreciate the devastation of brain injury and show respect and understanding by exempting claimants from unwarranted, ineffective, costly surveillance and from privacy violations.
4. Treat those who have suffered brain injuries with the dignity, respect and understanding they deserve by accommodating their communications, travel and environmental setting needs as well as their need for support person(s).

**UDAP review:** We are in agreement with the comments on UDAP made by FAIR regarding the new proposed UDAP rule. In particular, we concur with making information provided by the insurer to the claimant be more clear and timelier and the need to specify what enforcement will be in place including the sanctions that can be applied.

FAIR refers in their submission to a recent decision by the College of Physicians and Surgeons of Ontario (CPSO) stating “The College does not regulate the quality control of third-party IME for the province of Ontario and the insurance industry.” In Sept 2020.

**We cannot emphasize our recommendation 1 above strongly enough! Insurers cannot be allowed to pay for their own repeat medical assessments by unregulated practitioners to challenge regulated physicians and clinicians who have diagnosed a brain injury and prescribed rehabilitation measures!**

**FSRA Complaints Portal:** ABISS is supportive of FSRA having a fair complaint process. While the link to the portal in your letter does not seem to work, there is sufficient information on your website to indicate how a complaint is made. How well and how timely these are processed remains a question. We are hopeful that FSRA will make changes to the auto insurance claim process based on the consumer feedback from ourselves, FAIR and others that will drastically reduce the number of complaints made.

**Consultation on Fraud and Abuse:** ABISS has not made a submission on Fraud an Abuse. We were however struck by the language in the request for submission which strongly implies that all fraud is consumer fraud! This is simply not the case!

Every ABISS member and the majority of respondents in the McMaster survey experienced deliberate minimization of their brain injury in Insurance medical evaluations. Deliberate delays in processing claims particularly in providing income replacement is one example of abusive behaviour by insurers. Another experienced by one of our members was a denial of a recommended psychological assessment when the member had lost her daughter in an auto collision with a drunk driver that gave her a brain injury and several physical injuries. If this is not considered abusive behaviour, we don't know what is. Many other examples were provided by survey respondents,

**A fraud and abuse definition that does NOT cover these kinds of fraudulent and abusive behaviours by insurers is simply unacceptable to us** and would contravene at least 3 of the 6 goals of the FSRA legislative mandate, namely:

- Contribute to public confidence
- Promote transparency and disclosure of information
- Deter deceptive or fraudulent conduct, practices and activities

It also will not likely lessen insurance premiums.

We would be happy to follow-up with you on any of the issues raised here.

Sincerely

Members of ABISS

Deanna Pelino  
Dave Gaylor  
Jackie Cribb  
Ashley Tindall  
Julie Wynen  
Jon Connolly  
Sheila O'Reilly  
Candy Palmer  
Sheila MacDonald

Cc: Mark White, CEO, FSRA; Francisco Chinchon, Assistant Deputy Minister, Ministry of Finance  
Rhona DesRoches, Chair FAIR (Fair Association of Victims for Accident Insurance Reform)

