

RE: FSRA's First Proposed Insurance Rule Released for Public Consultation – the Unfair or Deceptive Acts or Practices (UDAP) Rule ID: 2020-018

Speaking on behalf of the Canadian car and truck rental industry and specifically, our industry members in Ontario, Associated Canadian Car Rental Operators (ACCRO) is pleased to see proposed initiatives designed to improve consumer protection. However, with respect to the proposed Unfair or Deceptive Acts or Practices (UDAP) Rule, ACCRO has significant concerns that portions of the proposed rule to not adequately address issues endemic to the Ontario automobile insurance landscape.

Among the objectives listed in the "Substance and Purpose of the Proposed Rule" section are the requirements that the proposed rules:

Do not lead to decisions that are against the interests of consumers, and...are not unfairly discriminatory, anti-competitive or reliant on prohibited factors.

While these would appear to be foundational requirements, they are referenced only in terms of the portion of the proposed rule that address the area of customer incentives and rebates from insurers. Given the proposed rule's shift to "Principles-based drafting," protecting the interests of consumers and prohibiting unfair discrimination and anti-competitive practices should reside in the backbone of the regulation not limited to the portion of the rule that addresses incentives, rebates, or other inducements to accept policy conditions.

Other stated intentions of the proposed rule are flexibility and transparency. This is to be accomplished in part by incorporating the participation of stakeholders for future supplements to the rule and to identify and prevent misconduct "to protect the public interest and ensure desired outcomes." In the text of the proposed rule, the

entities captured by the rule include “for greater clarity and without limitation, automotive repair, towing and storage services.” Despite falling under the authority of FSRA and the proposed rule, none of the included claims service providers have a conduit via FSRA to identify or report misconduct. This asymmetry biases the rule; a claims goods or services provider can only be accused under the rule but cannot bring a complaint themselves. This opens the possibility that insurers will use the rule in a manner that is anti-competitive within the marketplace to the ultimate detriment of the consumer.

There are systemic issues that increase conflict between claimants and insurers and friction between all service providers tasked with the goal of restoring the insured to pre-accident condition. In a document produced by FSRA’s predecessor, FSCO, the “Auto Insurance Consumers’ Bill of Rights”, one of the consumer rights is, “you have the right to choose a repair shop, tow operator, or vehicle rental company.” This document resides on FSCO’s website at fSCO.gov.on.ca/en/auto/brochures/Pages/brochure_billofrights.aspx.

Despite this long-held insured’s right to choose their service provider, insurers too focused on claims costs outcomes rather than claimant outcomes will exert leverage upon their insureds to influence their choice, also known as ‘steering’. A common tactic (just one of many) involves changing the administration of a policy benefit based on which service provider is chosen, this despite no acknowledgement at policy inception that the policy benefit would be applied unevenly based on which service vendor was chosen. Naturally, left with the choice of using the insurer’s vendor of choice and no money out of pocket versus using the vendor of the insured’s choice but having to pay up front and apply to the insurer for a likely contentious reimbursement, virtually all insureds are ultimately strong-armed into using the vendor of the insurer’s choice. This is a deceptive act on the part of the insurer and an anti-competitive act inflicted upon the marketplace. Under current and proposed rules, the marketplace has no venue available to address anti-competitive actions on the part of insurers.

If the interests of consumers are truly important to FSRA, their ability to choose must be respected and FSRA must engage with claims service providers who allege harm from an insurer’s anti-competitive actions.

ACCRO is not opposed to the concept of an insurer's preferred providers. However, it must be acknowledged that the quid pro quo inherent in a preferred provider agreement disqualifies that arrangement from bearing reference to any determinations of unreasonable or unfair costs or expenses.

From the proposed rule:

"Unreasonable consideration" means an amount being paid or sought for goods or services provided to a claimant that a reasonable person, in the position of the provider of the goods or services, would not charge or seek, or would not expect a reasonable person, in the position of the recipient of the goods or services, to accept.

1(2) For greater clarity: (i) in determining what amounts to a reasonable person who is an insurer, the reasonable person will be deemed to have a level of knowledge and expertise commensurate with that insurers size and type of business..."

The definition of "unreasonable consideration" in the rule anchors its reference to the insurers size and type of business. This implies acceptance of an insurer's internally negotiated pricing as proxy for fair market value. An example of the inequity that will result follows. The Ontario Automobile Policy, since at least the days of the original OMPP form, has codified a basic temporary substitute vehicle benefit as \$30/day (described in the current OAP 1 as "reasonable expenses for the rental of a similar substitute automobile" OAP 1 section 7.4.4). In 1990, \$30/day was not a reasonable proxy for a base market value rate. ACCRO is not aware of what consultation occurred, if any, to determine that figure within the policy. In 2021 with the average cost of a new car approximately double what it was in 1990, it is clearly not reflective of a 'reasonable expense' for rental of an automobile, yet the policy benefit in the section of the policy describing "loss of use due to theft" limits the policy benefit to \$900. The policy does not disclose to an insured that the common industry standard of a 30-day waiting period in addition to the first 72 hours before settling an unrecovered theft claim results in the same 1990-era \$30/day policy benefit limitation for most insureds.

In the consultations leading to the ensuing regulation designed to address unfair or deceptive tow and storage charges (O reg. 427/15), the regulation uses the language "fair value" to set expectations for

industry conduct in pricing. It should only be appropriate that if claims goods and service providers are expected to charge fair value prices, that the insurance policy and insurers should provide policy benefits at fair value as well.

Whether an insurer has been able to negotiate 'preferred pricing' from a specific claims goods and service provider should have no bearing on determining reasonable consideration from another. Neither the insured or another claims goods and service provider is party to the negotiations or benefits directly from the relationship. It is important that the proposed UDAP rule reference any determination of 'reasonableness' or 'fairness' to fair market values, rather than proprietary, internally negotiated rates with no public access.

In the 30 years since the introduction of OMPP and the continual evolution of the Ontario automobile insurance policy, we have experienced incredible technological advances. In the last 10 years, the rate of innovation has accelerated. While it is promising that aspects of the proposed rule seek to address potential innovations in terms of insurance products, it falls short in addressing innovation in other areas.

Appendix C of the proposed rule document includes the list of stakeholders consulted in the formation of the proposed rule. No representative groups from any claims service providers save the Health Service Provider Stakeholder Advisory Committee participated in the consultations. The list of stakeholders is likely similar in content to the same lists created 30 years ago for the OMPP consultations. Uses and ownership structures of vehicles have changed in 30 years. Technology has made it quick and easy to share timely information. The technology within vehicles has changed dramatically as has their complexity and repair expense. In terms of identifying the root causes of unfair or deceptive practices, addressing regulation of multiple industries, and facilitating transparency and flexibility, to look forward, one needs more than reliance on legacy stakeholders. Nowadays, with a phone-based app, any vehicle can be a rental car and any insured can instantly connect with an advisor, insurer representative or service provider of the insured's choice. With the proposed rule's focus on claims goods and services delivery, stakeholders from the vehicle repair, towing and/or rental industries should have been included.

Associated Canadian Car Rental Operators (ACCRO) is encouraged to see initiatives designed to reduce unfair or deceptive acts or practices however, to best achieve the goals of improved claimant outcomes, consumer protection, customer satisfaction, and operating efficiencies, FSRA and the Ontario government must engage at the principles drafting level, a properly representative group of all participating stakeholders. Renewed focus on claimant outcomes and cooperation of all participating providers of goods and services involved in claimant outcomes will encourage a departure from the all-too-frequently adversarial relationship between insurers, insureds, and claims goods and service providers.

ACCRO encourages FSRA to review our industry's submission and consider the recommendations addressing:

- Accountability and reporting provisions for anti-competitive actions upon the claims goods and services provider marketplace to preserve the consumer's right to choose,
- Creating an equitable framework for determining unreasonable or unfair costs,
- Engaging with additional stakeholder groups so the drafting principles properly contemplate future developments in all aspects of the consumer experience not solely those at policy inception.

Sincerely,

Craig Hirota
Associated Canadian Car Rental Operators

About ACCRO:

Associated Canadian Car Rental Operators or ACCRO is a Canadian organization that represents the united voice of the industry in Canada. ACCRO is dedicated to the continuous improvement of the Canadian car and truck rental industry through participation in legislative and regulatory consultation with all levels of government. The car and truck rental industry in Canada operates over 175,000 vehicles (pre-pandemic), employs over 16,000 Canadians, and has a

total direct and indirect economic impact in excess of \$10 billion annually.

ACCRO is comprised of over 98% of our nation's Car and Truck Rental Industry. This includes all the major brands, Alamo, Avis, Budget, Discount, Dollar, Enterprise, Hertz, National, Thrifty, and U-Haul along with over 200 independently owned and operated vehicle rental companies. Our industry truly spans the range of business size classifications from large, multi-national companies with fleets in the tens of thousands to 'mom and pop' businesses with as few as 5 cars. Despite the vast disparity in sizes, we are all united in our goal of facilitating the mobility needs of Canada's population