December 6, 2013

Dear Mr. J. Douglas Cunningham,

The Association of Independent Assessment Centres (AIAC) is pleased to provide feedback on the recommendations made in your interim report reviewing the province's automobile insurance dispute resolution system.

AIAC is a non-profit industry group representing independent assessment businesses, and thousands of health-care professionals who perform medical assessments across Canada. AIAC members perform up to 50,000 neutral, third party examinations of auto and disability insurance claims each year to help determine their entitlement to benefits. AIAC members are also active in the assessment of WSIB claims and as such have a strong perspective on differences and strengths of both systems. We are committed to ensuring Ontarians receive great auto insurance coverage and first-rate, objective assessments. This can be achieved by working closely with the Ontario government to share our experience, unique insights into the system and best practises.

Attached is a detailed summary responding to the recommendations made in the following areas of the dispute resolution system:

- Timeliness
- Proportionality
- Accessibility
- Predictability
- Streamlining
- Costs
- Culture
- Mandatory Mediation
- Private vs. Public

We welcome the opportunity to provide feedback on the dispute resolution system, but also feel it's important to note that we believe a big source of increased dispute in the system is the $3500 Minor Injury cap introduced in 2010. The fact is the Minor Injury cap has fundamentally changed the SABS and how Ontarians access benefits. It's our belief the $3500 cap was arbitrarily set and it's not clear if $3500 is the right amount to provide the appropriate level of care required for the range of minor injuries captured under it. A review of whether $3500 is the appropriate cap for Minor injuries would make a lot of sense and could provide much-needed relief for the DRS. Most source of disputes focus on disputed Med/Rehab benefit. The majority of accident-related injuries are minor; so it will take Ontarians an adjustment period to get used to the $3,500 Med/Rehab benefit as opposed to $100,000 that we had previously.

We also welcome the opportunity to comment on the framework for possible legislation discussed in the report.

Thank you for the opportunity to provide feedback on this imperative report for the auto insurance system.

Sincerely,

Dr. Rocco Guerriero B.Sc., DC, FRCCSS(C), FCCPOR(C), FCCO(C)
AIAC President

Ontario Automobile Insurance Dispute Resolution System Review Interim Report– AIAC's comments on recommendations

Recommendations made in Interim Report	**AIAC Comments**
Timeliness	AIAC members, who are participants in the dispute resolution system, have a great record of providing timely independent assessments whenever called upon. All the same, we believe the attention paid in this report to timeliness makes a lot of sense and we support efforts to help the system become more efficient. In order for Ontario to achieve a timelier dispute resolution system, it is critical that deadlines be enforceable. We agree that reasonable statutory timelines are needed, but they can't be toothless. Today, the rules that would help timeliness are too easily ignored. As a minimum, at the front end of the process, files need to be complete before they are allowed to proceed. Mediation or arbitration hearings shouldn't even be scheduled when, for example, a requested insurer's exam (IE) hasn't been completed. Independent assessments are the checks and balance in the system and provide insurers and claimants with the medical evidence needed in order to properly adjudicate a claim.
Proportionality	We think the idea of more proportionality in the system is worth considering, but we also believe some caution is required around how it is introduced. Determining whether a file moves along an expedited process or not could be tricky. Cases that appear simple on the surface may be complex. Dollar value of the claim is not likely a sufficient determinant of how a file should proceed. For example, a $3500 MIG dispute isn't necessarily a lot of money, but the question of whether a claimant belongs in or out of the MIG can be a complex one and it may be determined that an injured claimant is entitled to up to $50,000 in Med/Rehab benefits. Monetary value of benefits should not be the only determinant for what ADR process should be taken. There needs to be other checks in the system to help determine what path a file may take. Screening questions need to be developed such as: Is there one or more benefit categories at issue? Is it a CAT file? Is this a MIG dispute? Is there more than one benefit? Whenever, the level of Med/Rehab benefit is in dispute (ie CAT or MIG), these cases should be considered carefully and fairly. We do believe the application for mediation/arbitration could be a great tool to help filter files. The application includes a significant

	amount of information that can be used for a pre-screen process. It is critical however that these applications be complete in order for the file to proceed. Too often today incomplete applications move forward. In order for any proportionality to be introduced into the system, mandatory requirements will be needed to ensure these applications are complete.
Accessibility	AIAC has always viewed the dispute resolution system as less than balanced. If the government can get at the issue of accessibility in a constructive way, where it doesn't disenfranchise people, we feel it would be worth consideration. However, we strongly emphasize the need for the Government to still ensure people have access when it is justified to resolve a dispute. There is a balance between access and excess. Having the costs at the back-end of the process could be helpful so long as there are checks at the front-end of the system to ensure those with "frivolous or undocumented disputes" are not allowed in the system to begin with. These types of disputes are significant cost drivers for the system. We believe educating consumers would go a long way. Today, for example, many insurers have a dedicated (company) ombudsman, but most consumers don't know how to access this option. Helping consumers become more educated about the tools available to them would be beneficial in reducing the amounts of disputes that go to mediation and arbitration. This option would also lead to cost savings in the system.
Predictability	AIAC believes predictability is largely solved by tackling other issues in the system such as accessibility, streamlining and timeliness. That being said, one additional piece that should be considered is whether peer assessments shouldn't be re-introduced. The system would be better served by using peer assessments, which are more neutral in nature in resolving disputes about treatment. We understand that in some MIG disputes having a medical specialist assess them may be appropriate, however this practice may be over utilized.
Streamlining	AIAC is concerned with the comments in the interim report that states "if health care providers were permitted to initiate a dispute in Ontario, they could be asked to pay the costs, instead of the current situation where they indirectly access the system at no cost through a claimant." We understand that an injured claimant's health practitioner is their patient advocate, but they should not be involved in the dispute resolution process other than providing the claimant with supporting medical evidence. We do believe there is an opportunity to help streamlining by creating some hybrid process that merges mediation and arbitration.

Costs	AIAC supports a more balanced approach to costs. We believe one of the best ways to ensure claimants have some 'skin in the game' is to ensure they are fully compliant with all requirements in order to access the system. It would go a long way to simply ensure claimants get the assessments required of them before a mediation/arbitration process can be initiated. It would also help the system with cost effectiveness as it would properly screen and weed out non compliant cases.
Culture	As already indicated, the lack of enforcement is a significant problem in the current system. This lack of enforcement has become part of the culture of the dispute resolution system. AIAC strongly supports the call for stricter enforcement of section 55 of the SABS. Not enforcing section 55 is part of the reason the dispute resolution system has faced such a huge backlog up until recently. AIAC commends the report for acknowledging and noting that section 55 is not being enforced.
Mandatory Mediation	We support the ideas expressed in the paper that a hybrid mediation/arbitration model could be a solution to help improve the system. There are certainly instances when it is clear mediation is highly unlikely to produce a favourable result, so looking at how the process can be expedited as proposed makes a lot of sense.
Private vs. Public	AIAC believes moving the dispute resolution system out of FSCO (in whole or in part) could have a positive impact. The backlog in the system was dealt with in a reasonable amount of time once a private organization was introduced to the ADR process. There is good reason to believe private sector players could effectively enhance the dispute resolution system. Further, we also believe there is an inherent conflict if FSCO is acting as both regulator and adjudicator. By allowing FSCO to focus on regulatory issues is a positive move and would be cost effective.
A Framework for Possible Legislation	We greatly appreciate the overview of how a reformed DRS could look if the ideas captured in this interim report are followed. In general, we see a much improved system that would better serve Ontario claimants and all stakeholders. We are greatly concerned however with the proposal that expert reports should be restricted both in length and content. We believe the production of quality reports is important and in fact our members' core values are focussed on their ability to produce high quality reports. The government should not be mandating how long these reports should be. Assessors need to be able to provide the pertinent information they need to substantiate their opinion. Some cases can be complex, and our highly skilled and knowledgeable assessors need to be free to present the information they believe is pertinent. There would be a major gap of information if restricting reports is further exacerbated by the proposal to move to some use of paper review ADR and to also restrict instances

	when experts would be able to give in-person testimony. AIAC would welcome the opportunity to offer our expertise on providing a standardized format that would cover all pertinent requirements of IE reports. *One psychologist, Dr . Iris Jackson ,C . Psych. states, "Proper diagnosis takes time with the patients: the taking of a thorough history, usually some psychometrics, review of medical records, and so on, to rule out other illnesses that masquerade as mental illness and often calls to collateral sources."* We do not believe the system will serve Ontarians well if expert reports are restricted, particularly if we wish to pursue for paper reviews in ADR and also to limit opportunities for testimony. Ensuring quality of the reports needs to be the focus, not placing arbitrary restrictions on length and content. It is also a fact that Insurer's Examinations are materially different than claimant-sided reports. They are by definition more forensic in nature and the burden of evidence required to reach a conclusion is higher. In order to provide the system the quality needed in these reports, assessors should not be hamstrung from doing their independent assessment properly.