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Association of Management, Administrative and Professional Crown Employees of Ontario

1 Dundas Street West Suite 2310 P.O. Box 72 Toronto Ontario M5G 1Z3
416 595 9000 *or* 1 888 AMAPCEO
www.amapceo.on.ca

**AMAPCEO Response to Mr. Justice Cunningham's Interim Report:
Ontario Automobile Insurance Dispute Resolution System Review**

December 2, 2013

To: Senior Manager
Insurance Policy Unit
Industrial and Financial Policy Branch
Ministry of Finance
95 Grosvenor Street, 4th Floor
Toronto, Ontario M7A 1Z1

Sent by e-mail only: autoinsurance@ontario.ca

The Association of Management, Administrative and Professional Crown Employees of Ontario (AMAPCEO) appreciates this opportunity to comment on the Interim Report of the Ontario Automobile Insurance Dispute Resolution System Review. AMAPCEO is the largest bargaining agent representing professionals in the Ontario Public Service and we represent mediators and arbitrators who work in the Dispute Resolution Services Branch at the Financial Services Commission of Ontario (FSCO).

Our members at FSCO have submitted two separate briefs commenting on the Interim Report – one from a group of arbitrators and another from a group of mediators. We commend both of those submissions to Mr. Justice Cunningham and to the Ministry of Finance. They provide an important and unique perspective that is informed by the experience and expertise of the mediators and arbitrators, who work on a day-to-day basis in the dispute resolution system.

As their bargaining agent, we do not have much more to add to what they have said. We do, however, want to emphasize two important points:

- As the mediators' submission notes, the backlog of files to be mediated has now been permanently eliminated as of last September. This was the ostensible basis on which mediation services were outsourced to a private sector firm. AMAPCEO expressed serious concern at the time about the need for outsourcing, given that there are readily-available options for the government to hire fixed term contract employees to deal with temporary spikes in workload; this is done routinely throughout government and there was no reason why this option could not have been used in the case of the FSCO file backlog. We understand, in fact, that FSCO management first sought central approval to hire additional contract staff to deal with the backlog but were turned down because of the government's FTE constraint program, part of the fiscal plan for managing the provincial deficit. The move to outsource, in other words, was an inferior "Plan B". The interim report notes that "When demand for services increases, FSCO has no flexibility from within its current head count to respond, and the process for approving additional head count is restrictive." Rather than simply accepting this

as a given, surely the Ministry needs to hear from the reviewer that a rigid OPS-wide cap on “head counts” that does not take account of temporary workload fluctuations is not a particularly smart business practice.

In any event, several new initiatives have been implemented at FSCO to prevent another backlog from occurring. The mediators have noted the many advantages of using professional public servants, including: expert knowledge developed in the context of regular interaction with each other and continuous training; uniformity in the service provided; and a single location for service, facilitating face-to-face mediations, the ability for substitutions and constant access to each other for additional knowledge and expertise.

- Both the mediators and the arbitrators address important reasons against outsourcing their functions externally. In the case of the mediators, their status as salaried public sector professionals “positively impacts our neutrality, as our income is not determined by the outcome of the mediation”. The arbitrators note that “to be considered a fair [adjudicative] process, decision-makers must be independent and be perceived to be so. The Supreme Court of Canada has stated that the hallmarks of independence are: (1) security of tenure, (2) financial security, and (3) institutional independence”. The arbitrators’ brief provides an extensive discussion on this issue.

We believe it is in the public interest that the mediation and arbitration functions remain in the public service and that mediators and arbitrators continue to be salaried public service professionals. The arguments for moving these functions to the private sector or to a part-time roster system do not seem compelling. Indeed, the risk of jeopardizing the quality and impartiality of the current system in moving to an external approach seem huge, with potential negative impacts on both consumers and the insurance industry.

AMAPCEO would like to make one further observation. We urge the Ministry of Finance and Mr. Justice Cunningham to ensure that the final report addresses the concerns that have been expressed by many that final decisions have already been made and that the insurance industry has had a disproportionate role in shaping the outcome of this consultation process. It is critically important -for consumers, the insurance industry and the public interest- that this review process and the government’s consideration of the recommendations be seen to be beyond reproach and that all stakeholders are able to feel that they have had a fair hearing on these matters.

Thank you, again, for this opportunity to comment and best wishes as you move to the next phase of this important review.

Sincerely,



GARY GANNAGE
President and CEO