

Thursday, November 28, 2013

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Dear Sir or Madam,

**Subject: Ontario Dispute Resolution System Review – Interim Report**

Thank you once again for allowing us the opportunity to provide feedback on the DRS Review, and specifically, on the Interim Report which was presented to Minister Sousa in October 2013.

In Ontario, The Co-operators employs over 2,500 staff, 245 Advisors and insures 403,000 vehicles, 260,000 homes, 8,000 farms, and 24,000 businesses. We are a co-operative as well as an insurance company and believe we bring a uniquely Canadian and co-operative perspective to public policy consultations. We are not full members of the Insurance Bureau of Canada as we prefer to contribute to the policy development process directly.

**Timelines**

While we support the establishment of statutory time limits for Dispute Resolution, we do however require clarification on sanctions to each party for failure to adhere to the timelines.

**Proportionality**

In our September 13<sup>th</sup>, 2013 submission we noted that there needs to be some flexibility in the amount of time booked and that the system should allow for additional time on files that require more than the 90 minute allocated period. We agree with the concept of a simplified process for smaller disputes. However, it is our experience that a paper review leads to conflicting expert opinions. The current mediation process, if conducted in a timely manner, allows the parties to exchange ideas and come to a resolution.

## Accessibility

In order to help screen out or remove frivolous or undocumented disputes, we agree there needs to be some disincentive for claimants. We further agree costs could be payable at the back end of the process.

## Predictability

We agree that Arbitrators should not be setting policy. We further agree that stopping the practice of publishing decisions would remove an element of predictability. A lower cost model of the Designated Assessment Centres (DACs) would be agreeable if the decisions are binding on the parties and made in accordance with the Guidelines.

## Streamlining

It has been our experience that when a client is available, at the very least by phone, we are better able to ascertain the true circumstances and come to a resolution. There remains an element of abuse and fraud by service providers and therefore the input of the client has value by providing details on the claim. If the client is excluded from this process it potentially allows for the health care facility to control the claim. Allowing service providers to have direct access to the dispute resolution process would enable those parties to abuse the system more readily.

## Costs

We agree the fees being paid should be contingent on how far the claim progresses and not used as a way to force an insurer to settle the claim. Costs need to be attributed to both sides rather than solely the insurer.

## Culture

While we agree disputes need to be focused on getting claimants timely access to necessary treatment and assessments, we suggest allowing FSCO the flexibility to increase positions as necessitated by the demand for services rather than going to an external solution. As noted in our submission, we believe Section 55 of the Statutory Accident Benefits Schedule (SABS) needs to be enforceable at the mediation level.

## Mandatory Mediation

In our submission we emphasized that *“The Co-operators believes mediation should remain mandatory. Historically, the majority of disputes have been resolved – either partially or fully – through FSCO mediation. Mediation must remain mandatory in order to ensure dispute resolution is accessible for clients. Without such a system it would result in higher legal costs for both insurers and clients as disputes would be lengthier and head directly to arbitration or litigation.”* However, we do acknowledge that while the process is successful in resolving disputes, a speedier process would be preferable.

Regardless of any changes moving forward we want a system in place that will have our staff involved at the initial stage and not hire counsel. We currently have an internal review process and believe that it has been integral to our low number of disputes in the system. Insurers should have informal internal procedures to allow for a reconsideration of their decision. There needs to be consequences on both parties for failure to adhere to the process. If a claimant fails to co-operate with the process, they should be denied access to the courts or Arbitration.

## Private vs Public

There are no guarantees that a private company would provide better decisions on matters of dispute. FSCO staff are well versed in the SABS. The interim report discusses the training, quality control, and meaningful standards that would be essential if a contracted service delivery model was implemented. The majority of disputes are capable of resolution and it would add significant costs to the system to have insurers retain counsel every time a client chooses ADR. Once again, as noted in our submission, our experience indicates that the client's involvement facilitates resolution and should be mandatory for mediation and pre-arbitration.

Thank you once again for the opportunity to continue our participation in the consultation and provide comments and feedback on the *Interim Report*. If you have any questions, or require clarification, please do not hesitate to contact Frank Bomben, Director of Government Relations and Public Affairs, at 519-767-3055 or [frank\\_bomben@cooperators.ca](mailto:frank_bomben@cooperators.ca) to arrange a meeting or call.

Sincerely,



Kathleen Lillico  
Vice-President Claims  
The Co-operators