Desjardins
General Insurance
Group

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95 Grosvenor Street, 4th Floor
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Re: DGIG Submission on Reform to Ontario Auto Insurance Dispute Resolution System

Dear Madam,

Thank you for the opportunity to comment on the auto insurance dispute resolution system. As one of Ontario's largest auto insurance providers, operating under the Desjardins Insurance and The Personal brands, we have serious concerns about the effectiveness and cost of the system. We recognize and applaud FSCO for the progress that has been made in improving efficiencies and clearing up the backlog of mediation and to a lesser extent arbitration files. We feel, however, that more significant changes need to be made to address the serious flaws in the system.

Here's what we would recommend:

1. Make the mediations more meaningful and effective

For mediations to work, both parties must be committed to the process. Unfortunately, it is our recent experience that most claimants and their representatives have no real interest in mediation. The claimants seldom participate and we suspect that many are not even aware of the process. Their legal representatives, usually paralegals, seldom provide the requested medical reports or other needed documentation, and the vast majority appear to be unfamiliar with the file when they do participate in the mediation. It is our view that the legal representatives have decided in advance, possibly without the knowledge or agreement of the claimants, to fail the mediation without allowing any meaningful opportunity to address or resolve issues.

As a result, the mediations are largely perfunctory, a waste of time and money for the insurers, and a major contributor to the delays in the system.

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We believe that the mediation process would be made more effective through the following:

- Mandatory Claimant Signature on Mediation Application: Claimants should be required to sign the Application for Mediation, to demonstrate their awareness and agreement.
- Mandatory Claimant Participation in Mediation: It should be mandatory for the claimant to participate in the mediation process. If the claimant fails to participate (without a compelling reason for being absent), he or she should be barred from proceeding further with the dispute resolution process.
- Duty to Provide Documents: All documentation requested by the insurer in its Response to An Application for Mediation should be submitted prior to the mediation taking place. In many cases, these requests are simply ignored.
- Provide Mediators with Enforcement Powers: Mediators should be provided with enforcement powers to ensure the rules related to mediations are followed by both parties. If a party fails to comply, the mediation should not be permitted to continue or to fail. For example, a claimant is required to attend an insurer examination prior to filing a dispute. In many cases, however, the mediator will allow the mediation to occur without this step. Obviously, the rules were put in place for a reason and should be enforced.
- Qualified Mediators: Mediators should be fully qualified for their role, which includes knowledge of the Statutory Accident Benefits Schedule (SABS). This is not always the case, and clearly undermines the mediators' credibility and effectiveness.

2. Put in place measures to discourage frivolous or abusive use of the dispute resolution system

Recent statistics show that in roughly half of all arbitration cases, neither the claimant nor his or her legal representative bothers to show up. This is a huge waste of resources, and is unfair to the insurer which has incurred costs by committing resources such as specialized adjusters and legal experts to the file and other expenses. In addition, the insurer is left with uncertainty regarding the ultimate resolution of the claim.

We suspect that this non-attendance problem is due in large part to the involvement of some legal representatives, who are willing to pursue frivolous claims, hoping that the insurer will pay off at some point to avoid the cost and effort involved in continuing through the dispute resolution process. As the system is now constructed, there is nothing in place to penalize this type of abuse of the process. Because insurers are required to set aside appropriate reserves for unresolved claims, these factors directly impact premiums paid by consumers.

We believe that the following would help discourage frivolous use of the system:

- Mandatory Claimant Signature on Arbitration Application: As we recommended with the mediation process, claimants should be required to personally sign applications for arbitration, to demonstrate their awareness and agreement.

- Mandatory Claimant Attendance: Claimants should be required to attend all pre-hearings and arbitrations in person. This would ensure the claimant is aware of the actions of his or her legal representative and is fully committed to the process.
- Accept only Fully Completed Arbitration Applications: FSCO should not accept Applications for Arbitration without confirming the outstanding issues, the reasons the mediation failed and ensuring that all outstanding requests for production of medical reports or other documents have been complied with by the parties.
- Stay Incomplete Arbitration Applications: The Application for Arbitration should be stayed at any stage in the process if required reports and other documentation are not provided by the claimant.
- Cost Consequences: Allow the arbitrator the discretion to order the claimant and / or their legal representative to reimburse the insurer's $3,000 arbitration assessment fee in appropriate circumstances. This will act as a deterrent for unmeritorious cases.

3. Other suggested improvements

We believe the process could be further improved through the following:

- Alternative Process for Low Value Disputes: Develop an alternative, streamlined process for lower value claims. The current process is a very time consuming and expensive way to resolve such claims. Because insurers are required to prepare for and participate in each step of the process, and pay a $3000 fee for arbitrations, there is a strong incentive to simply pay off lower value claims, even when payment is not justified. This, in turn, encourages more abuse of the system. A more streamlined, less expensive approach would discourage this type of abuse and provide faster resolution for those claims that have merit.
- Increase Timeline in Response to Arbitration Application: Increase the timeline for responding to arbitration applications from 21 days to 60 days. This would provide a more appropriate amount of time to potentially resolve the dispute before resorting to arbitration. When an Application for Arbitration is issued, the insurer will assign a litigation specialist and legal counsel to the matter. These individuals will bring a fresh perspective to the issues in dispute. Extending the Response Due Date to 60 days allows the insurer an opportunity to reconsider its position and explore settlement opportunities with the claimant's legal representatives. We find the 21 day stipulation too restrictive to accomplish these tasks.
- Streamline Process: Do not require claimants to apply for new mediations in cases where there is a pending arbitration. Instead, these issues should be automatically added to the pending arbitration, and thus would be resolved more quickly and effectively, and lessen the demands on the system.

We look forward to the development of a dispute resolution system that is more balanced and effective, for the benefit of Ontario consumers and insurers alike.

We hope you find these suggestions helpful and we would be happy to meet with your staff to discuss the issues and recommended solutions outlined in this submission. Please contact us if you have any questions or require clarification of anything contained in this submission.

Sincerely,

Ken Lindhardsen

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