Submission regarding Dispute Resolution Process (Financial Services Commission)

- The hiring of ADR Chambers to process Mediations and Arbitrations.

  Whilst claims have been processed in a more timely fashion, ADR Chambers Mediators and Arbitrators have, for the most part, not been helpful in fulfilling the mandate of the Mediation and Arbitration processes. Most ADR Chambers Mediators and Arbitrators are not versed in legislation pertaining to Ontario motor vehicle claims (*Statutory Accident Benefits Schedule, Dispute Resolution Practice Code)* or FSCO customs and procedures.

- Mediations and Arbitrations require:

  - more incentive on parties to resolve claims
  - more involvement by Mediators and Arbitrators in the process
  - more compliance with regulations governing the Dispute Resolution Process, specifically, the *Dispute Resolution Practice Code (DRPC)*
  - more penalties for non-compliance

- Suggestions towards improvement of the Dispute Resolution Process:

  - eliminate the use of ADR Chambers and hire FSCO Mediators and Arbitrators who are versed in the applicable motor vehicle legislation.
  - enforcement of *DRPC* rules in terms of documentary requirements, for example, Responses to Mediation. Although there is currently a requirement to provide a Response to Mediation, most of the time, it is not done and there is no retribution for non-compliance. In fact, it is rarely, if ever, referred to in the Report of Mediator. Also, the Dispute Resolution Processing group should be more even handed when processing documentation. Many times, an Application document will not be processed because information is incomplete yet the same meticulousness is not applied to the Respondent's material. Even if there is a direct request for compliance with the *DRPC* by a party, it is debated or ignored.
  - encourage Mediators to access the *DRPC* when a party is not prepared for the Mediation process and provide Mediators greater power to impose penalties where circumstances dictate. The dispute process' mandate is to assist in resolving disputes between insured and insurers however, if one of the parties participating is not prepared, the process ends up becoming a useless step in a prolonged battle. Most Mediators are reluctant to adhere to the *DRPC* and often advise that they are statutorily limited in their power with respect to enforcement or compliance. Having a party be ill (or not) prepared for a Mediation means that a process that at one time used to be helpful towards resolution of claims or issues, is now a complete waste of time.

- the imposition of greater monetary penalties with respect to non-compliance. Giving Mediators and Arbitrators more power to impose monetary penalties will encourage parties to follow *DRPC* rules and be more prepared which should increase the potential that claims or issues will resolve at the earliest opportunity, eliminating the need for further dispute process.
- consideration of a "fast track" or "triage" program. Currently, all applications are processed and treated similarly. A "fast track" or "triage" program could consider certain claims that require more immediate action (where a person's income benefits have been terminated) or for single issue claims that would not require a full mediation process.
- setting Arbitration dates similar to court trial sittings such that a number of Arbitrations could be scheduled to proceed in a two week time period. Arbitrations could be scheduled sooner and it is unlikely that Arbitrators will be double booked at the commencement of an Arbitration as most Arbitrations will end up resolving.
- Complaints under the Unfair and Deceptive Practices Act should not be put on hold pending the Mediation process.