



## ONTARIO MUTUAL INSURANCE ASSOCIATION

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*Since 1882*

September 19<sup>th</sup>, 2013

Senior Manager  
Automobile Insurance Policy Unit  
Industrial and Financial Policy Branch  
Ministry of Finance  
95 Grosvenor Street, 4<sup>th</sup> Floor  
Toronto, ON M7A 1Z1

Re: *Call for Submissions on Alternate Dispute Resolution Review*

I am writing as the President of the Ontario Mutual Insurance Association.

Our Association is composed of 44 policyholder owned farm mutuals. All of our mutuals are provincially incorporated here in Ontario and write business solely in this province. Our mutuals were formed between 1856 and 1910 and employ approximately 1000 people across the province.

40 of our member companies write automobile insurance. Our total premium volume is about \$663 million of which \$276 million is automobile insurance premium. We are the 14<sup>th</sup> largest automobile insurer in the province.

Our member companies are located in rural communities across Ontario and have a largely rural policyholder base. Our perspective is somewhat different from that of more urban based insurers. Our members have significantly less exposure to the GTA than other auto insurers might have.

The Alternate Dispute Resolution system has been an issue for our members over the course of time, although we probably have a lower pro-rata number of files involved in dispute resolution than other insurers. Nonetheless we share significant concerns on how the alternate dispute resolution process has evolved and the effect this has on the rest of the automobile insurance system.

We commend FSCO on its recent efforts to remove the backlog from the mediation system; however we believe that the underlying issues that created the initial backlog must be addressed or similar backlogs will reoccur.

We see numerous cases where dispute resolutions are automatically filed by individuals (or more commonly the legal firms representing individuals) when there has been minimal effort put in to properly identify or document claims. We would categorize this as a "pro-forma" or automatic dispute filing tactic without sufficient thought or effort on the part of those bringing forward the claim. There is no disincentive to this type of behaviour on the part of claimants as the cost is borne by the respondents.

We believe that the mediation process as it's currently constituted, particularly the telephone mediation process, simply adds an administrative layer to dispute resolution without any meaningful prospect of resolution. Our members report that there is little effort by mediators to conduct a quality mediation and actually mediate the issues. Our members perceive a lack of preparation on the part of mediators and no effort or ability to point out to the disputing parties the strengths and weaknesses of their respective positions. When coupled with an incomplete or poorly filed dispute the mediation process cannot succeed.

In talking to our member companies, we also understand that there are situations where mediations are scheduled and then at the time of the mediation it is determined that all areas in dispute will be withdrawn by the claimant. This points to a lack of accountability on the part of the individuals and firms filing the dispute. These situations add a significant cost burden to both the system and all the parties involved. We believe that greater accountability should be placed on those bringing the matters to dispute. If mediation is to be an effective means to resolve areas of dispute there needs to be an appropriate mindset and level of preparation on the part of each party. As it stands there is no risk for SABS claimants to bring forward mediation even on a nuisance basis. The cost of mediation is borne by insurers and as such there would appear to be little incentive on the part of individuals to carefully assess and document items in dispute with a genuine motivation for early resolution.

We believe that if the alternate dispute resolution system is to function as intended it must be more than an administrative process. In this vein, there should be screening to remove frivolous or undocumented disputes from the process *at no cost to the respondent*. This requires a proactive case management mindset and a mediator skill set that allows mediators to proactively move legitimate disputes into a productive mediation forum.

We believe that in considering case managers and mediators, care should be given to choose individuals who bring a significant value to the process and can assist the parties in dispute in looking ahead to what the ultimate decision might be in arbitration or at law. Parties in dispute would benefit from a realistic professional perspective on the merits of their case.

We also believe some consideration could be given to combined mediation/arbitrations which may significantly shorten the timeline on relatively small disputes and avoid significant lags between mediation and arbitration.

Earlier this year I wrote to the Minister of Finance outlining our concerns in regards to the quality of the decisions made by arbitrators, particularly as it pertains to liberalizing the intent of Statutory Accident Benefit Schedule. We recognize the importance of arbitrators' independence; however, we don't think it is unreasonable to expect

arbitrators to consider the sustainability of the system and the policy intent of the original statute or regulation. The selection, professional development, and evaluation of arbitrators should reflect some of these broader objectives.

As you are no doubt aware, similar arguments have been put forward in regards to the role of labour arbitrators in a different context and as such it appears that concerns over the ultimate responsibility of arbitrators for the practical implications of their decisions is an issue in more than just the auto insurance system.

As noted earlier in our submission, the dispute resolution process is relatively risk free to the plaintiff. We understand that the system needs to provide a safety valve to ensure insurance companies don't use superior financial resources to overwhelm individual claimants. Nonetheless, we believe that in order for dispute resolution to be effective, both parties need to share and understand to some degree the risk of bringing forward an ultimately unsuccessful dispute.

We appreciate the opportunity to provide input to this review. We believe this is an important step in attempting to create a sustainable automobile insurance system. We would also like to reiterate the farm mutuals' commitment to having a positive influence on the automobile insurance system in Ontario and ensure long term affordability and availability to Ontario drivers, many of whom have been insured with our companies for generations.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John L. Taylor". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

John L. Taylor, BBA, FCIP, CHRP  
President