

Friday, September 13, 2013

Senior Manager
Automobile Insurance Policy Unit
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Ministry of Finance
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Dear Sir or Madam,

Subject: Ontario Dispute Resolution System Consultation

The Co-operators is a group of Canadian companies focusing on insurance. As a co-operative, our 44 member owners include co-operatives and credit union centrals representing a combined membership of millions of Canadians. In Ontario we employ over 2,500 staff, 245 Advisors and insure 403,000 vehicles, 260,000 homes, 8,000 farms, and 24,000 businesses. We are not full members of the Insurance Bureau of Canada as we prefer to contribute to the policy development process directly. 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.

Thank you for the opportunity to provide our views and experience regarding the *Dispute Resolution System* in Ontario. We acknowledge measures the Financial Services Commission of Ontario (FSCO) has implemented to improve its productivity and help address the growing backlog of mediation applications. The creation of the e-calendar has had the most impact in terms of managing mediations and we are pleased to have been one of the pilot participants in this endeavor. It is our understanding that a similar process will be implemented for arbitration and we welcome the opportunity once again to participate in the project. We congratulate FSCO on clearing the backlog; it was a significant undertaking and working with ADR Chambers was an effective avenue to reduce the backlog in the shortest period of time.

Mediation through FSCO is a legislated mandatory first step under the *Insurance Act*, and neither party can proceed to FSCO's arbitration process or court unless mediation occurs first. 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. FSCO must have a system that is timely and with a relatively good chance of resolving issues/files at mediation to ensure commitment from all parties to the process. Applications have dropped in the past year, however, there is no guarantee this will continue. Without more measures in place, it is possible that another backlog could develop.

We therefore suggest the following to alleviate such a prospect:

- 1) There are instances where legal representatives who attend on behalf of the insured person have no authority to resolve the issues or settle the file. In other instances the plaintiff counsel is unfamiliar with the file and cannot engage in any meaningful discussion. This is unproductive for all sides and leads to further delay and expenses. We believe there should be penalties or consequences when someone attends mediation without authority. We acknowledge this situation may also apply to insurers and support the industry being subjected to the same consequences or penalties. In an instance where either party has no instructions we recommend the mediation be adjourned and a failed mediation report not be issued.
- 2) We believe a client's participation should be mandatory. Often plaintiff counsel must rely on information only a client can provide. If the client is not available for the mediation, the mediation should be adjourned and a failed mediation report should not be issued.
- 3) There continues to be issues surrounding scheduling of early morning and late afternoon time slots. We suggest FSCO seek a potential resolution within the system to use the time slots available rather than booking so far in advance which would perhaps allow for more mediations to occur. There also needs to be some flexibility in the amount of time booked. The system should allow for additional time on files that require more than the 90 minute allocated period.
- 4) FSCO should enforce the 60 day booking rule. Currently, plaintiff counsel is allowed to book one year into the future. If mediation is unable to be scheduled within 60 days, we believe it should be withdrawn and re-filed. Although we attempt to book within the 60 days, we have experienced several law firms advising that they have nothing available until early 2014 or later. We are not opposed to the timeframe being extended to 90 days as long as there are strict adherences to the process.
- 5) The *Insurance Act* requires mediation be completed within 60 days of the filing of the application unless both parties agree to an extension. If an insurer agrees with plaintiff counsel on a date beyond the 60 days, neither side should be able to request a failed report.
- 6) When the parties agree to "fail mediation" and add it to an existing arbitration, we recommend that these be fast-tracked or automatically added to the existing action. Instead of being charged the \$500 fee, we suggest a \$100 administration fee. .
- 7) The *Dispute Code* should be modified/updated so that *Section 55* of the *Statutory Accident Benefit Schedule* is enforceable by FSCO mediators. If a client has not attended an Insurer Examination and has not provided any reason for non-compliance, the mediators should have the authority to disallow mediation of the issue until the party has provided a reason for non-compliance. We suggest it should be withdrawn and re-filed upon compliance.

8) In an effort to be more efficient, inexpensive, and sustainable, we suggest FSCO go paperless. We believe it is imperative to invest in a secure system that allows information be sent electronically.

Once again, thank you for the opportunity to participate in the consultation and provide our views and experiences. 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.

Sincerely,



Kathleen Lillico
Vice-President Claims
The Co-operators