




Financial Services
Commission
of Ontario

FSCO's Dispute Resolution Services: A Real Alternative

**Have you been injured in an auto accident?
Do you and your insurance company
disagree about your accident benefits?
You deserve a real alternative to solve
your dispute.**



If you are injured in an automobile accident in Ontario, your car insurance policy entitles you to certain statutory accident benefits (accident benefits) that are payable whether or not the accident was your fault. They include income replacement benefits if you are not able to return to work and benefits to cover the cost of reasonable medical, rehabilitation, attendant care, and home maintenance services. They do not include compensation for pain and suffering, or property damage, which follow different rules.

As a general rule, accident benefits are paid by your own insurance company. Even if you do not have your own automobile insurance policy, you can apply for benefits from the company that insures the automobile in which you were a passenger or which hit you.

If you and your insurance company disagree about your entitlement to accident benefits, or the amount of benefits, the Financial Services Commission of Ontario's (FSCO) Dispute Resolution Services Branch offers a series of dispute resolution processes, including: mediation, neutral evaluation, arbitration, and appeals, which are a fair, cost-effective, and timely alternative to court.

A Real Alternative

If you have been injured in an automobile accident in Ontario, there are a number of things you should know.

First, as mentioned, your automobile insurance policy provides you with accident benefits. These benefits will cover your medical expenses and provide you with income replacement benefits if you are unable to work as a result of your injuries, regardless of who is at fault in the accident.

Second, if you are claiming accident benefits as a result of an automobile accident and you and your insurance company disagree about your entitlement to accident benefits, you may apply for mediation. In Ontario, mediation through FSCO is a mandatory first step for disputes over accident benefits.

Third, if mediation is unable to resolve the differences between you and your insurance company over accident benefits, you have these options to choose from: you may continue to negotiate with your insurance company, file for arbitration at FSCO, pursue private arbitration, or go to court.

It is important to note that each of these options has its own rules. And once you have chosen one option, you may not be able to switch to another one. For example, if you have begun your action in court, you cannot switch to arbitration at FSCO, or vice versa.

Mediation at FSCO

Mediation is an informal process in which a neutral third party (a mediator) helps you and your insurance company resolve the issues in dispute. A mediator will work with you and your insurance company to clarify issues and explore options that can lead to a satisfactory outcome. It is important to note that a mediator will not take sides and does not have the power to impose a decision.

While mediation can be conducted in person or over the telephone (usually by conference call), you are responsible for participating personally in mediation, even if you have a representative. If for some extraordinary reason you cannot participate, your representative must have full authority to enter into an agreement of settlement at mediation on your behalf. If your representative does not have this authority, your mediation may be delayed.

As an insured person, there is no cost to you for mediation. You must, however, pay for your own expenses, such as lawyer's fees, travelling expenses, accounting services, and any additional medical reports you might need.

Under the *Insurance Act*, all mediations, once they have started, must be concluded within 60 days. In some cases, this limit can be extended at the written request of all the parties. At the end of the process, the mediator will issue a written report. This report will identify the issues which have been settled, issues which remain unresolved, and what the next steps are.

Mediation will not cover the following claims:

- damage to a car,
- other property damage (other than as specifically set out in the *Statutory Accident Benefits Schedule*),
- general damage claims for pain and suffering,
- claims for legal fees associated with a court action, and
- claims for rehabilitation management fees.

Next Steps

If you and your insurance company still cannot agree, you may choose to pursue arbitration at FSCO, private arbitration, or go to court.

Neutral Evaluation at FSCO

Neutral evaluation at FSCO is the process in which a neutral third party (a neutral evaluator) provides an assessment of the issues in dispute, as well as an opinion on the likely results if the dispute proceeds to arbitration at FSCO. Neutral evaluation is part of the arbitration process at FSCO. It is intended to help you and your insurance company settle your dispute so that it does not have to proceed to arbitration.

If you decide to pursue neutral evaluation as part of the arbitration process, both you and your insurance company must agree to it.

If either of you don't agree to it, your dispute will proceed directly to arbitration.

While there is no charge to you, as an insured person, for neutral evaluation at FSCO, you must pay an arbitration filing fee of \$100.

If your dispute is not resolved through neutral evaluation at FSCO, your file will automatically proceed through the arbitration process at FSCO, although it will normally be fast-tracked directly to an arbitration hearing without the need for a pre-hearing discussion.

Arbitration at FSCO

Arbitration is a decision-making process. It is similar to court, but it is quicker, less expensive, and less formal. An arbitrator will listen to the witnesses called by each side in a dispute, review all evidence, and make an order that is binding on both sides.

Only an insured person may apply for arbitration with FSCO – an insurance company does not have that right. If both parties agree, the dispute can be referred to a private arbitrator not affiliated with FSCO. Remember, in either case you must have gone through mediation first before you can apply for arbitration.

While you are not required to have a lawyer for arbitration, many people choose to have a lawyer represent them. Insurance companies are nearly always represented by lawyers at arbitration. You are encouraged to at least consult a lawyer.

If you choose to go through arbitration at FSCO, you must complete an *Application for Arbitration* form. You can get a copy of the form at the conclusion of your mediation from your insurance company, from the FSCO website: www.fSCO.gov.on.ca, or by faxing your request to FSCO at: (416) 590-8462. Once you have completed your form, send it to FSCO, Arbitration Services, 5160 Yonge Street, P.O. Box 85, Toronto, Ontario, M2N 6L9.

You must include a \$100 filing fee with your *Application for Arbitration*.

Over and above this \$100 filing fee, keep in mind that you are also responsible for your own expenses, such as witness fees, travelling and legal expenses should you wish to retain a lawyer, accounting services, and any additional medical reports you may need, as well as experts' fees.

Arbitration hearings are usually held in person at FSCO's offices (located at 5160 Yonge Street, Toronto, Ontario) or at locations throughout Ontario. Sometimes, you and your insurance company can agree to waive an oral hearing and the arbitrator's decision will be based on documents filed and written arguments. The length of the arbitration process will vary, depending on the nature and complexity of the case. The average length of an oral hearing at FSCO is between two and three days.

At arbitration, you should have independent documentation about your claim. You and your insurance company should have already exchanged relevant documents before attending a pre-hearing conference. These documents must be provided to the arbitrator at the pre-hearing and again at the arbitration hearing. If necessary, an arbitrator at the pre-hearing may order you or your insurance company to produce other important documents.

An arbitrator may award expenses of your arbitration to either you or your insurance company. In some cases, you may recover some or all of the expenses of the arbitration from the insurance company, if the arbitrator so orders. In some cases, the arbitrator may award the insurance company a portion of its expenses, which you, the insured person, will be responsible for paying.

Appealing an Arbitrator's Decision at FSCO

If you have undergone arbitration at FSCO and you think the arbitrator's decision was wrong, you have two possible options.

The first option is to appeal the decision, but you can only do so where you think an arbitrator has made an error of law. You will not be allowed to proceed in appeals just because you think the arbitrator should have accepted your evidence instead of the insurance company's evidence.

If you choose to appeal the decision, you must file a *Notice of Appeal* form within 30 days of the date of the arbitration decision. The filing fee is \$250. FSCO's Director of Arbitrations, or an adjudicator appointed by the Director, will decide the appeal.

The second option is to fill out an *Application for Variation/Revocation*. This process is appropriate where your situation has changed since the arbitration hearing, where new evidence has become available that was not available for the arbitration hearing, or where there is some clear error in the arbitration decision. The filing fee for an *Application for Variation/Revocation* is \$250.

More Information

For more information on mediation and arbitration, call us at: (416) 250-6714, Toll-free: 1-800-517-2332, or visit our website at: www.fSCO.gov.on.ca, where you will find a complete copy of the *Dispute Resolution Practice Code* and instructions for using our services.

If you need help with finding a lawyer, the Law Society of Upper Canada offers a lawyer referral service. For more information, visit their website at: www.lsuc.on.ca, or call: 1-900-565-4577 (there is a small fee for this call).

Visit FSCO's website at: www.fSCO.gov.on.ca for more consumer information on:

- automobile insurance,
- other types of insurance products,
- how to file a complaint against your insurance company,
- FSCO's dispute resolution services,
- important consumer tips, and
- pensions.



Financial Services Commission of Ontario
5160 Yonge Street, Box 85
Toronto, Ontario
M2N 6L9

Telephone: (416) 250-7250
Toll-free: 1-800-668-0128
TTY (416) 590-7108, 1-800-387-0584

FSCO website: www.fSCO.gov.on.ca
Auto Insurance website: www.autoinsurance.gov.on.ca

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