



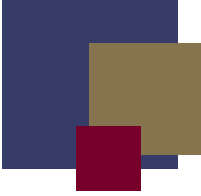
FSCO's Dispute Resolution Services: A Real Alternative



Have you been injured in an automobile accident?

Do you and the insurance company disagree about your accident benefits?

FSCO provides a real alternative to solve your dispute.



If you are injured in an automobile accident, you may be entitled to statutory accident benefits (also known as no-fault benefits), whether or not the accident was your fault.

Generally, accident benefits are paid by your own insurance company. Even if you do not have an automobile insurance policy, you can apply for benefits from the company that insures the automobile in which you were an occupant, or which hit you.

If you and the insurance company disagree about your entitlement to accident benefits, or the amount, the Financial Services Commission of Ontario's (FSCO) Dispute Resolution Services offers a dispute resolution process that is fair and cost-effective – a real alternative to court. FSCO's Dispute Resolution Services are available in English and French, and include:

- mediation,
- neutral evaluation,
- arbitration,
- appeal, and
- variation/revocation.

A Real Alternative

If you have been injured in an automobile accident, there are several things you should know.

1. An automobile insurance policy provides several different types of accident benefits. The list below provides a general summary of the benefits that are available:
 - **Income replacement benefits** help replace lost income if you become disabled and can no longer work.
 - **Caregiver benefits** pay certain childcare or caregiver expenses if you are a caregiver, and are unable to care for a child or other person in need of care.
 - **Non-earner benefits** are paid if you are not working and are unable to engage in all of your pre-accident activities.
 - **Medical and rehabilitation benefits** pay for the medical and rehabilitation expenses that are not covered by OHIP or your disability insurance plan.
 - **Attendant care benefits** pay for an aide or attendant to look after you, if you have been seriously injured.
 - **Funeral expenses and death benefits** are paid if you die as a result of the accident.

Depending on your circumstances, you may also be entitled to other benefits. Examples include: benefits to pay for lost education expenses, house-keeping assistance, visitors' expenses, repair or replacement of eyeglasses or clothing damaged in the accident, or case management services.

2. If you and the insurance company disagree about your entitlement to accident benefits, or the amount, you may apply for mediation. In Ontario, mediation is a mandatory first step before going to court or arbitration.
3. **FSCO's Dispute Resolution Services is not able to assist with the following:**
 - claims for damages due to pain and suffering,
 - claims for damages to your automobile or other property,
 - decisions on who was at fault in the accident, and
 - resolution of disputes between insurers about which company is responsible for your claim.

Please refer to FSCO's consumer information brochure, *After an Auto Accident: Understanding the Claims Process*, for more information on property damage claims.

4. If mediation is unable to resolve your dispute with the insurance company, you can:
 - file for arbitration at FSCO,
 - go to court, or
 - pursue neutral evaluation or private arbitration (with the agreement of the insurance company).

The First Step: Mediation at FSCO

What is mediation?

Mediation is an informal process in which a mediator helps you and the insurance company resolve the issues in dispute. A mediator from FSCO's Dispute Resolution Services will work with you and the insurance company to reach a mutually agreeable solution.

FSCO's mediators are neutral – they do not take sides or provide legal advice. Their job is to provide mediation assistance to all parties involved in the dispute.

All mediation discussions are confidential. Mediation sessions cannot be recorded and mediators cannot be asked to provide any evidence, notes and/or documents, even if the dispute ever goes to court.

How is the mediation conducted?

Mediation can be conducted in person or over the telephone (usually by conference call).

Do I need to participate?

You need to personally participate in mediation, even if you have a representative. If you cannot participate for some extraordinary reason, your representative must have full authority to enter into a settlement agreement on your behalf. Your mediation may be delayed if your representative does not have this authority.

What is the time limit for applying for mediation?

You must apply for mediation within TWO YEARS after the insurance company refuses to pay the accident benefits claimed. This time limit is important. If you do not apply on time, you may not qualify for mediation.

How much does mediation cost?

As an insured person, there is no cost to you for mediation. However, you must pay for any personal expenses, such as lawyer's fees, travel costs, accounting services, and any additional medical reports you might need.

How long will the mediation process take?

FSCO will work with you to ensure that the application for mediation is complete. Once the application is finalized and assigned to a mediator, the mediation will be completed within 60 days. In special cases, this limit can be extended on written consent of all the parties.

At the end of the mediation process, the mediator will issue a written report called a Report of Mediator. This report will identify the issues that have been settled, the issues that remain unresolved, and the next steps to take.

What are My Options After Mediation?

If the Report of Mediator states there are issues remaining in dispute, you can proceed with one of the following options:

- You can apply for arbitration by a FSCO arbitrator.
- You can start a civil proceeding (law suit) in court.
- If you and the insurance company agree, you can pursue neutral evaluation, or have the dispute decided by a private arbitrator not employed by FSCO.

Arbitration at FSCO

If your dispute is not settled through FSCO's mediation services, you can apply for arbitration by a FSCO arbitrator.

You must apply for arbitration within TWO YEARS after the insurance company refuses to pay the accident benefits claimed, or within 90 days after the mediator issues the Report of Mediator, whichever is later.

Arbitration pre-hearing conferences

FSCO's Dispute Resolution Services will schedule a pre-hearing conference, either in person at FSCO, or by telephone conference. The pre-hearing arbitrator will schedule a hearing date and make sure all parties are ready for the hearing. The arbitrator will also try to help you and the insurance company settle the dispute.

Arbitration hearings

Arbitration hearings take place at FSCO's offices in Toronto or at other locations across Ontario. They are similar to hearings in court, but are quicker, less expensive and less formal. During the arbitration hearing, the arbitrator will hear evidence from you and the insurance company. The arbitrator will then provide a written decision, determining the issues in dispute.

The arbitrator's decision is binding on all parties. It has the same authority as an order of a judge in the Ontario Superior Court of Justice, and can be enforced by the court.

How much does arbitration cost?

There is a \$100 filing fee for arbitration. You are also likely to incur some costs in preparing and presenting your case at arbitration. Examples of these costs include: witness fees, travel costs, legal expenses, as well as fees for reports prepared by doctors or other experts.

After deciding your case, the arbitrator has the power to:

- order you to pay all or part of the insurance company's arbitration expenses,
- order the insurance company to pay all or part of your arbitration expenses, or
- order each party to pay its own expenses.

The arbitrator's decision about expenses is based on:

- each party's degree of success in the outcome of the arbitration,
- any written offers to settle,
- whether any important legal issues were raised,
- the conduct of the parties and their representatives,
- whether any aspect of the proceeding was improper, or considered unnecessary, and
- whether the applicant refused or failed to attend an independent examination.

Refer to Ontario Regulation 664 (Criteria for Awarding Expenses), for rules on awarding expenses. This information is available on FSCO's website at www.fSCO.gov.on.ca on the *Dispute Resolution Services* web page.

How long does arbitration take?

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. Generally, arbitration decisions are issued within 85 days after the conclusion of the hearing.

What are My Options After Arbitration?

After the arbitration process is complete, there are two possible additional processes:

1. Appeal
 2. Variation/revocation
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Appeal

You or the insurance company can appeal an arbitrator's order within 30 days of the arbitration decision, but only on a question of law.

An appeal is decided by FSCO's Director of Arbitrations or a Director's Delegate, and is usually heard through written submissions and a short oral hearing. As a general rule, no new evidence can be presented in the appeal. Once the appeal process is completed, the Director of Arbitrations or Director's Delegate will issue a written decision with reasons. The appeal decision is final and cannot be appealed.

The only way you may be able to challenge an appeal decision is through a judicial review in the courts.

Variation/Revocation

You or the insurance company can apply to the Director of Arbitrations for variation/revocation of the arbitration or appeal order.

You can apply for variation/revocation if:

- there is a material change in your circumstances,
- new evidence becomes available after the arbitration or appeal has occurred, or
- there is an error in the arbitration or appeal order (for example, the order does not correspond to the reasons for the decision).

How Do I Apply for Dispute Resolution Services?

- To apply for **mediation**, you must send FSCO two completed copies (one original and one copy) of the *Application for Mediation - Form A*. There is no cost to you for mediation services.
- To apply for **arbitration**, you must send FSCO two completed copies (one original and one copy) of each of the following forms:
 1. *Application for Arbitration - Form C*
 2. *The Report of Mediator* you received.

You will also need to send FSCO a cheque or money order for \$100, made payable to the Minister of Finance.

- To start an **appeal**, you must send FSCO and the insurance company a completed *Notice of Appeal - Form I* within 30 days of the date of the arbitration decision. You also need to complete and send FSCO a *Statement of Service - Form F*, along with a cheque or money order for \$250, made payable to the Minister of Finance.
 - To apply for **variation/revocation**, you must send FSCO and the insurance company a completed *Application for Variation/Revocation - Form L*. You also need to send FSCO a *Statement of Service - Form F*, along with a cheque or money order for \$250, made payable to the Minister of Finance.
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Completed forms should be sent to the following address:

Financial Services Commission of Ontario
Dispute Resolution Services
5160 Yonge Street, 14th Floor
P.O. Box 85
Toronto, ON M2N 6L9

Do I Need a Lawyer?

You can choose to represent yourself. However, as disputes can become complicated and most insurance companies have lawyers representing them at arbitration and appeal, you should consider consulting a lawyer or licensed paralegal.

If you need help finding a representative, the Law Society of Upper Canada offers a 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 referral service).

For More Information

Visit FSCO's website at www.fSCO.gov.on.ca to:

- learn more about FSCO's Dispute Resolution Services,
- access a complete copy of the Dispute Resolution Practice Code,
- download dispute resolution forms, and
- access valuable consumer information on automobile insurance.

For general Dispute Resolution Services inquiries:

- Call (416) 250-6714 if you live in the Greater Toronto Area, or
- Call toll free: 1-800-517-2332.

To learn more about mediation, arbitration and appeals:

Mediation Hotline

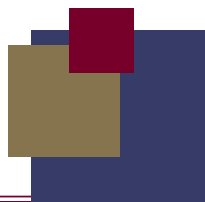
- Call (416) 590-7210 if you live in the Greater Toronto Area, or
- Call toll free: 1-800-517-2332 (dial extension 7210).

Arbitration Hotline

- Call (416) 590-7202 if you live in the Greater Toronto Area, or
- Call toll free: 1-800-517-2332 (dial extension 7202).

Appeal Hotline

- Call (416) 590-7222 if you live in the Greater Toronto Area, or
- Call toll free: 1-800-517-2332 (dial extension 7222).



About FSCO

FSCO is an arm's-length agency of Ontario's Ministry of Finance. In addition to insurance, FSCO regulates pension plans, credit unions, caisses populaires, mortgage brokers, loan and trust companies, and co-operatives.

FSCO works with consumers, industry stakeholders and investors to enhance public confidence in, and access to, a fair and efficient financial services industry in Ontario.

For more information on any of these sectors, visit our website at www.fSCO.gov.on.ca, or call our Contact Centre at: (416) 250-7250, Toll-free: 1-800-668-0128, TTY toll-free: 1-800-387-0584.

Remember to visit FSCO's website at www.fSCO.gov.on.ca for more information on:

- insurance,
- how to file a complaint against your insurance company,
- FSCO's dispute resolution services,
- pensions,
- applying for special access to money in locked-in retirement savings accounts, and
- important consumer tips.

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FSCO website: www.fSCO.gov.on.ca

Ce feuillet de renseignement est également disponible en français



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