



June 14, 2021

Elizabeth Elder
Acting Director
Financial Institutions Policy Branch
Financial Services Policy Division
Ontario Ministry of Finance
95 Grosvenor Street, 4th Floor
Toronto, ON M7A 1Z1

VIA EMAIL: Elizabeth.Elder@ontario.ca

Dear Ms. Elder:

I am writing to you on behalf of the Ontario Bar Association (OBA), at the request of the Insurance Law Section of the OBA. The OBA is Ontario's largest volunteer association of lawyers with over 16,000 members in Ontario. The Insurance Law section is comprised of over 200 lawyers who represent both insurance claimants and insurers. Our lawyers appear before the License Appeal Tribunal representing plaintiffs and defendants on a regular basis.

I understand that your predecessor, Mr. McLean, responded to concerns raised by Canadian Defence Lawyers, in particular regarding the removal of access to the former Decisions Database of the Automobile Insurance Dispute Resolution Services (DRS), as operated by the Financial Services Commission of Ontario (FSCO) before disputes regarding Statutory Accident Benefits were moved to the jurisdiction of the License Appeal Tribunal (LAT) in April 2016.

In particular, I understand that he has advised that the Decisions Database cannot simply be posted back onto a website, and that the Ministry is considering other options.

As an association that represents both plaintiff-side and defence-side lawyers, and as an association that seeks to advance the principle of access to justice, we are writing to add our voice to concern over the disappearance of the Decisions Database. While there are online services that can provide access to DRS decisions, such as QuickLaw and WestLaw, I am sure you are aware that those services require paid subscriptions. This raises an access to justice issue, which is all the more apparent when one considers that injured persons who now appear before the LAT to pursue claims for Statutory Accident Benefits, and who may wish to bring FSCO DRS decisions to the attention of the LAT Adjudicator who will be hearing their case, may be self-represented and lack the means to purchase a subscription to a service such as QuickLaw or WestLaw.

We understand that you have indicated that persons can request a copy of a specific decision from the Ministry, and while that service is appreciated, the former FSCO DRS Decisions Database allowed users to conduct "keyword" and other searches that would be needed to identify specific

decisions, and it would then allow users to review decisions found through those searches to see if a particular decision is relevant to their case.

We understand that the Ministry is considering options to make FSCO DRS decisions more readily available. We ask whether consideration has been given to providing the FSCO DRS decisions to which the Ministry has access to the Canadian Legal Information Institute ("CanLII"). As you may already know, CanLII, which is funded by the lawyers and notaries who are members of Canada's provincial and territorial law societies, comprising the Federation of Law Societies of Canada, provides online access, without charge to the user, to decisions from all Canadian courts, as well as many administrative tribunals, including the LAT. If CanLII were asked, and were provided with the FSCO DRS decisions to which the Ministry has access, CanLII may be willing to take all of the necessary steps to ensure those decisions are posted and publicly available on its website.

We therefore respectfully suggest that the Ministry approach CanLII to determine if this is a feasible step to resolve the concerns caused by the disappearance of the Decisions Database. Of course, we would also be interested in hearing from you regarding the other options that the Ministry is looking into in order to provide the public with ready access to FSCO DRS decisions.

Yours truly,

A handwritten signature in black ink, appearing to read "Charlene Theodore". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Charlene Theodore,
President, Ontario Bar Association