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Trial lawyers express concerns

TRIAL LAWYERS are concerned that a report recommending a streamlined Ontario auto insurance dispute resolution system may discount, or even rule out, a victim's right to go to court.

In the report he submitted to the provincial government, former judge Douglas Cunningham called for greater emphasis on mediation and a reduction of the adversarial nature of dispute resolution.

Charles Gluckstein, president of the Ontario Trial Lawyers Association, told *Thompson's* the report wasn't entirely clear on the issue of the right to go to court, but the OTLA believes that needs to remain an option.

"This is an access to justice issue," he said. "The preservation of the court system is a fundamental principle in protecting the rights of innocent victims.

"Justice Cunningham mentioned that possibly the option to go to court would still exist. In his recommendations he doesn't say anything more about it other than to say once this enhanced settlement meeting has occurred the option would be taken away."

The report recommends that mediation services be enhanced and continue to be a mandatory step in the DRS, but now as part of a settlement meeting. The option of initiating a court proceeding instead of arbitration should be eliminated when the parties are unable to reach a settlement.

"We don't disagree with that as a suggestion as long as at the outset, before you go into the enhanced mediation, you would have the option to choose whether you are going through the DRS and to court," Mr. Gluckstein said. "That would be modelled after the current system." In its submission to the review the OTLA pushed for the preservation of the DRS system as it stands now with arbitrators being government appointed. The recommendations include that but carry the caveat that if the system becomes too bloated contracted arbitrators could be used. Mr. Gluckstein said the OTLA supports that principle.

But the association is concerned for those caught in the minor injury guideline.

"There are some that have been placed in the minor injury guideline that are disputing that coverage.

"Justice Cunningham suggests that disputes in the MIG valued at \$10,000 or less should be dealt with by paper review. It's suggested that they wouldn't be entitled to any form of an oral hearing.

"Individuals in the minor injury guideline who are advocating to be out are suggesting that their injuries would be entitled to \$50,000 in medical/rehab coverage. If they are in the paper review system they wouldn't be able to advocate."

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