

THE GENERAL INSURANCE OMBUDSERVICE

Terms of Reference for Dispute Resolution

The General Insurance OmbudService (GIO) is an independent not-for-profit corporation, created in 2002, with the sole purpose of helping Canadian consumers resolve disputes or concerns with their home, automobile or business insurers.

The GIO's employees are impartial professionals with experience in the insurance industry and related sectors, but with no direct ties to specific insurance companies or their boards of directors. The GIO's goal is to use its extensive experience and industry-related insight to work towards a fair solution between individuals and their insurance providers.

The GIO's services are available free of charge, in both English and French to any home, automobile or business insurance policyholder in Canada. The majority of issues we deal with concern claims, interpretation of policy coverage and policy processing and handling.

The GIO is governed by a seven-member Board of Directors, committed to the ideals of fairness and integrity. Five of the Directors are individuals from outside the insurance industry who bring experience from a wide range of backgrounds. The regionally diverse Board also has two insurance industry appointed directors who provide an industry perspective.

The GIO is a member of the Financial Services OmbudsNetwork ("FSON"), an industry-based integrated consumer assistance system, to provide Canada's financial services consumers with recourse when they have concerns or complaints. The FSON is endorsed by financial services regulators and sponsored by the financial services industry.

The following Terms of Reference are intended to set out the principal powers and duties of the GIO, mandate of the GIO and a general statement of the procedures to be followed in filing a complaint against a home, automobile or business insurance company.

TERMS OF REFERENCE FOR DISPUTE RESOLUTION

I *Purpose*

1. These Terms of Reference describe the principal powers and duties of the General Insurance OmbudService (“GIO”), the GIO’s mandate, and the GIO’s process for receiving, considering, investigating and seeking a resolution of a Complaint brought by the Consumer about a Property and Casualty Insurance Service and/or Product.

II *Definitions*

2. In these Terms of Reference, the following expressions have the following meanings:

“**Board**” means the Board of Directors of the GIO;

“**CLHIO**” means the Canadian Life and Health Insurance OmbudService;

“**CLO**” means a Member company Complaint Liaison Officer;

“**Company Complaint Procedure**” means a Member’s internal dispute resolution process;

“**Complainant**” means an individual Consumer of a Member or its representative making a Complaint to the GIO and includes the authorized representative(s) of the Consumer, such as a personal representative, guardian, trustee or executor;

“**Complaint**” means a complaint about the provision within Canada of a Property and Casualty Insurance Service and/or Product provided by a Member or its representative;

“**Consumer**” means an individual who has a Property and Casualty Insurance Service and/or Product from a Member or its representative;

“**CSO**” means a Consumer Service Officer who works on behalf of the GIO to try to resolve the Complaint related to a Property and Casualty Insurance Service and/or Product;

“**Dispute Resolution Process(es)**” means an alternative method of resolving a Complaint outside of the traditional adjudicative court process, and includes mediation, conciliation and arbitration;

“**FSON**” means the Financial Services OmbudsNetwork, a national dispute resolution system for Consumers of financial services that is endorsed by insurance, banking and securities regulators. It includes the Ombudsman for Banking Services and Investments (“OBSI”), the Canadian Life and Health Insurance OmbudService (“CLHIO”), and the General Insurance OmbudService (GIO), and any other participating ombud entity;

“**GIO**” means the General Insurance OmbudService;

“**GIO’s Dispute Resolution Process**” means GIO’s alternative method of resolving a Complaint outside of the traditional adjudicative court process, and includes conciliation, adjudication, and where applicable, mediation;

“**GIO Registration Form**” means an authorization/agreement form sent by the GIO to the Complainant for signature;

“**GIO Manager of Complaints**” means an individual appointed by the GIO who oversees GIO’s Dispute Resolution Process;

“**Impartial**” means being and being seen as unbiased toward the Complainant and Member to a dispute, toward their interests and toward the options they present for settlement;

“**Industry OmbudService**” means any of the OBSI, the CLHIO, or the GIO, and any other ombud entity participating in the FSON;

“**Mediation**” means the use of an impartial Third Party to assist the Complainant and Member to resolve their dispute in a (2) two-hour mediation session in accordance with the Mediation Rules of Procedure;

“**Mediation Agreement**” means an agreement, incorporating the Mediation Rules of Procedure, signed by the Complainant and Member prior to the commencement of the mediation;

“**Mediation Phase**” means the GIO process in which at the request of a Complainant and upon consent by the GIO, a Mediator selected from a list approved by the GIO (based on the roster of professional Mediators approved by the GIO, or in Quebec, by le Barreau du

Quebec or the GIO) will attempt to mediate mutually agreeable outcomes to try to resolve the Complaint;

“Mediation Rules of Procedure” means the GIO’s Rules of Procedure for the conduct of the Mediation;

“Mediator” means the impartial person or persons, engaged to assist the Complainant and Member to resolve a dispute;

“Member” means any Property and Casualty Insurance Company admitted as a member of the GIO;

“Non-Binding Recommendation(s)” means a recommendation(s) made by the GIO’s SAO regarding the resolution of the Complaint that is not binding upon the Member or the Consumer;

“OBSI” means Ombudsman for Banking Services and Investments;

“Property and Casualty Insurance Service and/or Product” means automobile, home or business insurance services and/or products;

“SAO” means a Senior Adjudicative Officer with an appropriate skill set and demonstrated experience in the field of law and/or dispute resolution who is appointed by the GIO to recommend the resolution of the Complaint, as described herein;

“Senior Adjudicative Phase” means the GIO process in which the SAO prepares a report concerning the resolution of the Complaint that includes a Non-Binding Recommendation(s);

“Standards” means any standards, including performance standards, adopted by the Board of Directors from time to time for the handling and resolution of Complaints; and,

- (a) References to the male gender include, where the context admits, the female gender and vice versa and references to the singular number include, where the context admits, the plural number and vice versa; and,
- (b) References to sections and paragraphs are to sections and paragraphs of these Terms of Reference.

III *Principal Powers and Duties of the GIO*

3. The GIO shall at all times serve as an independent and impartial forum within which Complaints can be resolved and shall not act as an advocate for the Member, the Consumer, the Complainant or for any other person or entity.
4. As a matter of general practice, the GIO will not comment upon the business practices and/or design of business products of a Member. If during the course of the handling of a Complaint, the GIO finds it necessary to explain to the Consumer business practices or product design of a particular Member, the GIO will first seek any necessary confirmation of these facts from that Member.
5. The GIO shall:
 - (a) act within these Terms of Reference;
 - (b) adhere to any Standards adopted by the Board of Directors;
 - (c) receive Complaints, as appropriate;
 - (d) subject to sections 8 to 12, consider and review Complaints and try to resolve them through appropriate Dispute Resolution Processes;
 - (e) make reports, where applicable containing a Non-Binding Recommendation(s), to Members and to Consumers regarding the resolution of Complaints; and,
 - (f) advise the public about the procedures for making a Complaint to the GIO;
6. The GIO shall comply with all applicable legislation protecting the privacy of personal information as well as the privacy policies and procedures of the GIO.
7. The GIO shall ensure that all officers, employees, consultants, independent contractors, and agents of the GIO periodically acknowledge their understanding and compliance with any Standard and/or Code of Conduct and privacy policies and procedures adopted by the Board of Directors.

IV *Mandate of the GIO*

8. Subject to sections 9 to 12, the GIO may consider and review any Complaint received if it is satisfied that:
- (a) the Complaint is made to the GIO by a Complainant to whom or for whom the automobile, home or business Insurance Service(s) and/or Product(s) in question was or were provided by the Member. The Complainant should be a person who is directly affected by the decision of the Member that is the subject matter of the Complaint. The GIO may decide that the non-participation of a person with an interest in the Complaint does not prevent the GIO from considering the Complaint, provided that all necessary consents to release confidential information have been obtained. For purposes of this provision, a Complaint made by an executive of an incorporated entity shall be considered to be the person who is directly affected by the decision of the Member;
 - (b) the Member has rejected the complaint or made a recommendation for resolution of the Complaint, but the Consumer has not accepted the recommendation proposed by the Member;
 - (c) the subject matter of the Complaint by the same Complainant (or any one or more of them) against the same Member was not previously considered by the GIO. Where a Complaint has been previously considered but, in the opinion of the GIO, relevant new information is available, the GIO may request that the Member reconsider the Complaint in light of the new information. After the Member reconsiders the Complaint or if the Member declines to reconsider the Complaint, the Complainant may request that the GIO reconsider the Complaint;
 - (d) the subject matter of the Complaint by the same Complainant (or any one or more of them) has not been or is not the subject of any proceedings in or before any court of law, tribunal or arbitrator, or any other independent dispute resolution body;
 - (e) the GIO has received appropriate consents and/or authorization forms concerning the release and treatment of confidential information from all necessary parties and any other agreements or releases that the GIO considers appropriate in the circumstances; and

- (f) the Complaint is being pursued reasonably by the Complainant and not in a frivolous, vexatious or threatening manner.

9. The GIO shall not consider or review or shall cease to consider or review a Complaint:

- (a) to the extent that the subject matter materially relates to:
 - (i) an allegation(s) of misconduct against a non-member third party(ies);
 - (ii) the Member's pricing of products and/or services;
 - (iii) the availability of insurance; and/or
 - (iv) dispute settlement procedures as required by law or designated regulatory authority.
- (b) when in the opinion of the GIO Manager of Complaints, the Complaint is being pursued in a frivolous, vexatious or threatening manner;
- (c) brought by a collective group of unrelated Complainants, although such Complaints can be dealt with individually or the GIO Manager of Complaints could suggest that another Dispute Resolution Process be used;
- (d) where the GIO Manager of Complaints decides that there is a more appropriate place for the Complaint to be dealt with, such as a court of law, a regulator, an arbitration procedure or any other Dispute Resolution Process; or
- (e) where the subject matter of the Complaint by the same Complainant (or any one or more of them) has been or is the subject of any proceedings in or before any court of law, tribunal or arbitrator, or any other independent dispute resolution body, unless the Member consents to the GIO considering it.

10. The GIO Manager of Complaints may defer the consideration and review of, or may decline to consider, a Complaint the subject matter of which is being investigated by any regulator having authority over the Member. The GIO Manager of Complaints shall notify the Complainant and the Member of any deferral, and any further steps that the GIO Manager of Complaints may consider taking following the completion of the regulatory investigation, and of any other dispute resolution alternatives that may be available to the Complainant.

11. In those circumstances where the GIO Manager of Complaints has or may reasonably be perceived to have a material interest and/or conflict of interest, the GIO Manager of Complaints shall notify the Complainant and the Member of that interest, and shall refer the Complaint to the Executive Director of the GIO, where this position is held by an individual other than the GIO Manager of Complaints, or in instances where both positions of the GIO Manager of Complaints and Executive Director of the GIO are held by the same individual, the Chair of the Board shall designate a CSO to act in his place. The GIO Manager of Complaints thereafter shall not have any further involvement in the consideration, review or settlement of the Complaint.
12. In those circumstances where the subject matter of which the CSO or SAO has or may reasonably be perceived to have a material interest and/or conflict of interest, the GIO Manager of Complaints shall notify the Complainant and the Member of that interest, and shall refer the Complaint to another designated CSO or SAO designated by the GIO Manager of Complaints. The CSO or the SAO, as the case may be, thereafter shall not have any further involvement in the consideration, review or settlement of the Complaint.
13. The GIO may investigate a Complaint involving a claim for a monetary amount, provided that the Complaint falls within the GIO mandate under these Terms of Reference.
14. To promote recourse to alternative dispute resolution, where a statutory limitations period issue may arise, the Member and the Complainant may agree in writing that they will suspend the application of the limitations period until the GIO has had an opportunity to attempt to resolve the dispute (where the law permits).
15. Where, in the opinion of the GIO, the subject matter of a Complaint (in whole or in part) is one in which another Industry OmbudService has expertise and the Complainant and the Member consent, the GIO may cooperate with that Industry OmbudService in the investigation of the Complaint and may, if appropriate, make a recommendation jointly with the other Industry OmbudService for the resolution of the Complaint. Similarly, the GIO may cooperate with another Industry OmbudService in the investigation and resolution of a Complaint referred to the GIO by that Industry OmbudService.
16. In relation to individual Complaints,

- (a) The Board shall not:
 - (i) consider any Complaint or engage in any decisions thereof;
 - (ii) consider a request to hear an appeal of any recommendation(s) made by the GIO, or of the rejection of a Complaint by the GIO;
 - (iii) seek the identity of any Consumer who has made an inquiry or any Complainant who has made a Complaint;
 - (iv) seek information relating to any inquiry or Complaint;
 - (v) make any representation relating to an inquiry or a Complaint to a Member or a Consumer; or
 - (vi) act on any information received that reveals the identity of a Consumer or Complainant or any information described in paragraph (ii) or (iii) above.
- (b) The Chair of the Board, may, in a manner that the Chair deems appropriate, consider any concerns about the GIO's Dispute Resolution Process or the conduct of an employee or officer of the GIO in relation to his duties.
- (c) The Chair of the Board shall be provided with a copy of any Complaint addressed to a director of the Board or of any Complaint that a Complainant has requested be forwarded to, reviewed by or appealed to the Board. The Chair shall respond to the Complainant on behalf of the Board indicating the limits of the Board's authority and the GIO's Terms of Reference.

V Case Referral and Management Procedures

17. The GIO will follow the procedures set out in the GIO's Dispute Resolution Process for Complainant dispute resolution handling and may determine any additional procedures and/or revisions to the GIO's Dispute Resolution Process for filing a Complaint with the GIO and for considering and reviewing Complaints, having regard to these Terms of Reference and any Standards or Codes of Conduct.

18. The GIO shall decide, in its sole discretion, whether a Complaint falls within its mandate or jurisdiction as set out under these Terms of Reference and, in reaching this decision, may consider oral and/or written representations from the Complainant and/or from the Member, as it deems appropriate.
19. The GIO:
- (a) expects the full cooperation and assistance of the Member, and the Complainant, in the consideration and review of the Complaint;
 - (b) requires a Member to provide all relevant non-privileged information regarding the Complaint in its possession or control as soon as is reasonably practical; and
 - (c) shall promptly provide to the Member any consents of the kind referred to in paragraph 8(e) received by the GIO.
20. The GIO's Dispute Resolution Process is confidential and without prejudice to the parties to the Complaint and to the GIO. The discussions and correspondence of the Complainant, the Member, and the GIO Manager of Complaints, Consumer Service Officers, and SAO that form part of the GIO's Dispute Resolution Process will not be disclosed or used in any subsequent legal, other proceedings or Dispute Resolution Processes. The files of the GIO are confidential and are protected from disclosure for all purposes. In addition, the Executive Director of the GIO, the GIO Manager of Complaints, the GIO staff, and the CSO and SAO will not be called to testify in any subsequent legal, other proceedings, or Dispute Resolution Processes. These terms are a condition of participation in the GIO's Dispute Resolution Process by the Complainant.

VI GIO's Dispute Resolution Process - General Provisions

21. Where the Complaint has not been resolved through informal contact between the Member and the Complainant, the Complainant can elect to contact the GIO directly to proceed further with the resolution of the Complaint. Where a Complainant makes contact with the CSO before having attempted to contact the Member to resolve a Complaint, the Complainant shall be informed by the CSO of the existence of the complaint procedure process of the Member and contact information for the Member's CLO. The Complainant shall then be referred to the Member for a response.

22. During the initial contact with the GIO, the Complainant will speak with a CSO to obtain information and advice regarding a resolution of the Complaint. Thereafter, the Complainant, or authorized representative, will provide the GIO with written permission to address the issues relating to the Complaint.

i) *Informal Conciliation*

23. The CSO may provide the Member with a written summary of the Complaint, and discuss the issues with the Member and the Complainant, in an effort to identify mutually agreeable outcomes to try to resolve the Complaint.

24. Where the Complaint is resolved through informal conciliation, the CSO may provide written notice to the Complainant and the Member confirming that agreement has been reached, and will thereafter close the file.

25. Where the Complaint has not been resolved through informal conciliation, the file will be referred to the Manager of Complaints, who will determine whether or not there is a basis on which the matter may be pursued further. If there is no basis on which to pursue the matter, the Manager of Complaints will advise the Complainant in writing. If there is a basis on which to pursue the matter further, the Manager of Complaints will discuss the options of Mediation and SAO referral with the Complainant. After this discussion, the Complainant will be sent a GIO Registration Form to complete and return to GIO. The GIO Registration Form offers the Complainant a choice between having the case referred to Mediation or directly to the Senior Adjudicative Phase of the Dispute Resolution Process.

ii) *Mediation Phase*

26. The GIO mediation process is available to Complainants only after they have tried to resolve their Complaint(s) with the Member, and through the informal conciliation process offered by the GIO.

27. Where the Complainant requests, and if there is a basis on which to consent to the Complainant's request, the CSO will refer the Complaint to Mediation. The Complainant will initiate Mediation by selecting "Mediation" on the GIO Registration Form. The CSO will send the Member a copy of the GIO Mediation Agreement signed by the Complainant.

28. The CSO will nominate (where possible) three (3) Mediators who may be available to act in the Mediation. The CSO will invite the Complainant to rank the Mediators from that list. The CSO will inform the Mediator of his/her selection. If the Mediator is unable to act, the CSO shall contact the next highest ranked Mediator and inform the Complainant and the Member of that selection.

29. When a Mediator is selected and has accepted the appointment, the CSO shall:

- (a) send the *Contract for Mediation Services (Form 2)* to the Mediator;
- (b) send copies of the *Mediation Rules of Procedure (Schedule A)* and the *Mediation Agreement (Form 1)* to the Member, the Complainant and the Mediator, informing them that they must bring the documents to the mediation session;
- (c) provide the Mediator with the GIO file concerning the Complaint(s) between the Complainant and the Member; and
- (d) send blank *Mediation Reports (Schedule B & C)* to the Mediator

30. The Mediator will conduct a review of the file material, and mediate the issues with the Member and the Complainant, in an effort to identify mutually agreeable outcomes to try to resolve the Complaint.

31. Where the Complaint is resolved through Mediation, the Mediator will prepare a Mediation Report (Schedule “B”) for the Complainant and the Member indicating the nature of Complaint and the agreement reached, and will thereafter close the file. Where the Complaint is unresolved through Mediation, the Mediator will prepare a Mediation Report (Schedule “C”) for the Complainant and the Member indicating the nature of Complaint and that no agreement was reached.

iii) Senior Adjudicative Phase

32. Where attempts at informal conciliation and where requested, Mediation, have failed and if there is a basis on which to pursue the matter, the GIO Manager of Complaints will upon request by the Complainant refer the Complaint to the Senior Adjudicative Phase to be dealt with by the SAO who will prepare a report in accordance with the process set out in this Phase.

33. Prior to transferring the Complaint to the Senior Adjudicative Phase, the CSO may send a letter to the Member confirming that the Complainant has elected to pursue the matter. The Member will be invited to submit documentation in support of its position, such documentation to be submitted within fifteen (15) days, and the Member will be advised that this documentation will form the basis for the SAO's Report which contains a Non-Binding Recommendations(s).

34. At the end of the notice period specified in paragraph 33 above, the GIO Manager of Complaints or the CSO on behalf of the GIO Manager of Complaints will transfer the file to the SAO and ensure that the SAO is fully apprised of all aspects of the Complaint.

35. The SAO will consider and review the Complaint. While the SAO is considering the Complaint, he may seek:

- a) an opportunity to speak with the party or parties if the SAO believes it necessary to be better apprised of any relevant issue(s) in dispute;
- b) to promote a resolution of the Complaint by agreement between the Complainant and Member.

36. If the Member and the Complainant do not resolve the Complaint, the SAO shall prepare a report within 30 days of the completion of the steps in paragraph 35, which report shall contain a Non-Binding Recommendation(s) regarding the resolution of the Complaint.

The SAO's Report:

- a. shall be in writing;
- b. shall include a summary of the SAO's reasons;
- c. may be made jointly with another Industry OmbudService in the circumstances described in section 15;
- d. is not binding on the Member or the Complainant; and,
- e. is final and is not subject to further review, consideration or appeal, except in those cases where it is determined that there is an error in the jurisdiction of

GIO's authority, or in circumstances where it is deemed that there was a serious breach of the rules of the GIO Dispute Resolution Process.

37. The SAO shall make Non-Binding Recommendation(s) regarding the resolution of the Complaint with reference to what is, in the SAO's opinion, fair and appropriate in all the circumstances to the Complainant and to the Member, taking into consideration general principles of good business practice and any relevant code of practice or conduct. Although the SAO shall strive for consistency in his recommendation(s), the SAO shall not be bound by any previous recommendation made by the SAO or by any predecessor in that office.
38. Any report and its accompanying Non-Binding Recommendation(s) made by the SAO should seek to achieve a resolution of the Complaint that is satisfactory to the Complainant and to the Member, and should be made in accordance with these Terms of Reference.
39. If the Member does not accept the Non-binding Recommendation(s) of the SAO and the Complainant accepts the Non-binding Recommendation(s) of the SAO, the GIO Manager of Complaints shall make that information public.
40. In those instances where a Complainant does not accept the Non-binding Recommendation(s) of the SAO, the GIO shall report on the number of such cases in its Annual Report.

VII *Reporting*

41. The GIO shall prepare and provide an annual review regarding its activities as well as other reports containing statistics, case studies of Complaints for educational purposes (with all personal identifiers removed), and other information that the Board of Directors considers appropriate to the interests of interested parties and the general public.