Reforming Ontario's Insurance Appraisal Regime

A Framework for Modernization and Enhanced Consumer Protection

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Executive Summary

This discussion paper should be reviewed in conjunction with this author's former thesis delivered to the Ministry and FSRA, April 30, 2026. Both thesis' represent his personal views and provide guidance as to his knowledge and mindset if selected to act as a mediator, arbiter-neutral or umpire addressing alternative dispute resolution services for property claim disputes.

Ontario's statutory appraisal mechanism under s.128 of the *Insurance Act* has become a system in crisis. Designed for the 1920 Standard Fire Policy, it now operates in a modern insurance environment for which it is structurally, doctrinally, and procedurally unfit. The mechanism lacks definitions, lacks boundaries, lacks transparency, and lacks oversight. The result is a process that no longer resembles the statute that authorizes it.

Recent jurisprudence has accelerated this deterioration. The Divisional Court's decisions in *Arvanitopoulos* v. Wawanesa and *TD Insurance v. Skrinjar* confirm a troubling pattern: courts are granting appraisal umpires a level of discretion and authority that exceeds the statutory purpose of s.128. In *Skrinjar*, the Court stated that the umpire has "very wide discretion to control his own process so as to focus the hearing in a way that allows him to arrive at a just result." This language effectively elevates the umpire to the role of a trial judge—without rules, without a record, and without accountability.

This doctrinal drift has created a "Wild West" tribunal environment where umpires, qualified or not, are empowered to make factual findings, interpret policy language, determine scope and methodology, and issue binding awards on matters that exceed valuation. Appraisers and umpires are routinely thrust into disputes involving causation, coverage, and legal interpretation—issues that belong in court, not in an unregulated appraisal forum.

The consequences are severe:

- **Consumers face unpredictable outcomes and escalating costs.**
- **Insurers face inconsistent awards and unbounded exposure.**
- **The courts refuse to intervene, citing deference to a process that has no procedural safeguards.**
- **The Ministry and FSRA have not acted, despite clear evidence of systemic failure.**

This thesis demonstrates that the appraisal mechanism has evolved into an unregulated, quasi-judicial tribunal operating outside its legislative purpose. The absence of statutory definitions—"value," "valuation" "amount of loss," "cost," "costs" "replacement cost," "actual cash value"—has allowed umpires to fill the vacuum with inconsistent and unreviewable interpretations.

Modernization is no longer optional. It is urgent.

Ontario must:

- Define the terms.
- Define the jurisdiction.
- Define the process.
- Establish procedural safeguards.
- Restore the mechanism to its intended purpose.

My thesis' provides a comprehensive blueprint for reform. The Ministry and FSRA must act now to prevent further erosion of fairness, predictability, and public confidence in Ontario's property insurance system.

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A Regulatory Discussion Paper for the Ministry of Finance and FSRA

June 2026

Section 1 — Statutory Framework

1.1 Legislative Basis

Ontario's statutory appraisal mechanism is rooted in:

- **Statutory Condition 11** (Fire Insurance)
- **Section 128 of the Insurance Act**

Both provisions were drafted for the **1920 Standard Fire Policy**, a time when:

- losses were simple,
- only structures were insured,
- structures were basic,
- disputes were limited to valuation,
- appraisers were independent, they were not advocates for either party.

The only update in a century has been, to allow anyone to act as an appraiser that has allowed claim representatives and adjusters handling the initial adjustment of files to also act as appraisers. No claim supervisory or management review mandated. It has also allowed policyholders to act as their own appraises.

1.2 Legislative Intent

The original purpose of appraisal was:

- to determine the value of the property insured'
- to determine the value of the property saved,
- to determine **the amount of loss**,
- **not** to determine coverage,
- **not** to determine causation,
- **not** to determine methodology of repair or replacement,
- **not** to adjudicate scope of loss disputes,
- and **not** to replace the courts.

The mechanism was intended to be:

- fast,
- inexpensive,
- narrow in scope,
- and limited to valuation.

1.3 The Definitions Problem

The statute does **not** define:

- **value or valuation**
- **amount of loss**
- **cost or costs,**
- **replacement cost (RC) value,**
- **actual cash value (ACV).**

Insurers have attempted to define **actual cash value (ACV).** Most clear language policies now include **market value** within the definition, making its determination now a legal issue, including reproduction costs new, less functional obsolescence etc. Courts in-turn address ACV primarily using the **Broad Evidence Rule** as opposed to previously applying depreciation for material costs only.

The only requirement to be appointed as an umpire, is that they be independent. There are no licensing requirement, educational or knowledge-based standards. This vacuum has led umpires to:

- misinterpret definitions,
- expand jurisdiction,
- interpret policy language,
- and make factual findings.

1.3.1 What does "amount of loss" mean?

Two competing interpretations now exist:

A. Narrow Interpretation (Legislative Intent)

"Amount of loss" = **dollar value of loss or damage**, based on:

- policy coverage
- scope
- replacement cost (RC) value
- actual cash value (ACV)

- depreciation
- pricing

B. Expanded Interpretation (Judicial Drift)

"Amount of loss" = **extent of damage + methodology of repair or replacement + causation + coverage + valuation**

This expanded interpretation has **no statutory basis**, yet courts now treat it as settled law.

Section 2 — Current Deficiencies

2.1 Structural Failures

The mechanism suffers from four systemic failures:

1. **Judicial Overreach**
2. **Incomplete or Fractured Valuations**
3. **Procedural Unfairness**
4. **Lack of Transparency and Accountability**

These failures have intensified.

2.2 Qualification Gaps

There are:

- no minimum qualifications,
- no training requirements,
- no conflict-of-interest rules,
- no continuing education,
- no regulatory oversight.

Appraisers routinely address:

- structural engineering issues,
- environmental contamination,
- code compliance,
- causation disputes,
- policy interpretation,

— without expertise.

2.3 Absence of Procedural Rules

There is:

- no record, no transcript,
- no evidence rules,
- no disclosure rules,
- no timelines,
- no written reasons requirement.

This is incompatible with modern insurance disputes.

2.4 Power Imbalances

Policyholders often:

- are unrepresented,
- lack resources,
- lack technical knowledge,
- lack procedural protections.

Insurers face:

- inconsistent awards,
- unpredictable outcomes,
- escalating costs.

2.5 Obsolescence

The mechanism was designed for:

- barns,
- sheds,
- simple dwellings.

Today's disputes involve:

- complex building systems,
- environmental hazards,
- engineering failures,
- multi-million-dollar losses.

The mechanism is no longer fit for purpose.

Section 3 — Jurisprudence Review

3.1 Overview

Ontario courts have repeatedly expanded the scope of appraisal through:

- deference,
- avoidance of statutory interpretation,
- and failure to address jurisdictional limits.

3.2 Arvanitopoulos v. Wawanesa Mutual Insurance Company

The umpire made:

- factual findings,
- causation determinations,
- scope decisions,
- and coverage interpretations.

Legal counsel did **not** raise judicial overreach or trier-of-fact issues. The Divisional Court upheld the award: 2024 ONSC 3718. The policyholders lacked funds to appeal.

3.3 Truscott v. Co-Operators General Insurance Company

The umpire refused to consider incurred by-law costs. The Divisional Court upheld the award without addressing statutory limits. Overturned on appeal: 2023ONCA 267

3.4 TD Insurance Company v. Skrinjar

This case is the turning point: 2025 ONSC 266

The insurer argued:

- judicial overreach
- trier-of-fact
- scope and coverage issues
- process irregularities

The Court dismissed all arguments.

Key Quote:

"The umpire has very wide discretion to control his own process so as to focus the hearing in a way that allows him to arrive at a just result in an expeditious manner."

This language:

- elevates the umpire to a **trial judge**,
- abandons statutory limits,
- endorses unbounded discretion,
- and collapses the distinction between appraisal and adjudication.

The insurer chose not to appeal.

3.5 Comparative Table

Issue	Arvanitopoulos	Truscott	Skrinjar
Judicial Overreach	Not argued	Avoided	Argued, dismissed
Trier of Fact	Not argued	Avoided	Argued, dismissed
Statutory Limits	Ignored	Ignored	Ignored
Court's Approach	High deference	High deference	Extreme deference
Doctrinal Impact	Expanded scope	Reinforced drift	Cemented drift

3.6 Doctrinal Warning

Unless future judicial review applications:

- return to first principles,
- anchor arguments in statutory text,
- challenge jurisdictional overreach,

the courts will continue to expand appraisal into a **lawless, unbounded tribunal.**

Section 4 — Consumer & Public Interest Risks

Most policyholders look to their insurer in times of peril for assistance not confrontation.

4.1 Unrepresented Policyholders

Most consumers:

- cannot afford counsel,
- cannot challenge procedural abuses,
- cannot appeal awards.

4.2 Conflicted Appointments

There are:

- no conflict rules,
- no disclosure requirements,
- no oversight.

4.3 Finality Without Accountability

Awards are:

- binding,
- unreviewable,
- unrecorded.

4.4 Access to Justice

Appraisal is now:

- expensive,
- unpredictable,
- procedurally opaque.

Section 5 — Regulatory Considerations

5.1 FSRA Mandate

FSRA is responsible for:

- consumer protection,
- market conduct,
- systemic risk.

Appraisal now poses **all three risks.**

5.2 Ministry Responsibility

The Ministry is responsible for:

- statutory integrity, legislative modernization.

The mechanism is now **inconsistent with its own statute.**

5.3 Cross-Jurisdictional Benchmarks

Other jurisdictions have:

- qualifications,
- procedural rules,
- oversight bodies,
- defined scope.

Ontario has none.

Section 6 — Reform Framework

Six Core Reforms

1. Qualifications
2. Conflict rules
3. Procedural minimums
4. Scope regulation
5. Cost allocation
6. FSRA oversight

Section 7 — Conclusion

Ontario's statutory appraisal mechanism is no longer functioning as intended. It has become:

- unbounded,
- unregulated,
- unreviewable,
- and increasingly dangerous.

The jurisprudence now confirms:

- courts will not enforce statutory limits,
- courts will not correct procedural abuses,
- courts will not protect consumers,
- courts will not restrain umpires.

The responsibility now lies squarely with:

- **the Ministry of Finance**, and
- **FSRA**.

Modernization is not optional. It is urgent.

Ontario must act.