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*Newfoundland & Labrador*

**BOARD OF COMMISSIONERS OF PUBLIC UTILITIES**

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**REFERENCE TO THE BOARD**

**REVIEW OF AUTOMOBILE INSURANCE IN  
NEWFOUNDLAND AND LABRADOR**

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**REPORT TO GOVERNMENT**

**JANUARY 29, 2019**

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**BEFORE:**

**Darlene Whalen, P. Eng., FEC**  
**Chair and CEO**

**Dwanda Newman, LL.B.**  
**Vice Chair**

**James Oxford**  
**Commissioner**

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NEWFOUNDLAND AND LABRADOR  
**BOARD OF COMMISSIONERS OF PUBLIC UTILITIES**  
120 Torbay Road, P.O. Box 21040, St. John's, Newfoundland and Labrador, Canada, A1A 5B2

2019-01-29

The Honourable Sherry Gambin-Walsh  
Minister of Service NL  
Provincial Office  
100 Prince Philip Drive  
Government of Newfoundland and Labrador  
P.O. Box 8700  
St. John's, NL A1B 4J6

Dear Minister:

On August 9, 2017 Government issued a reference directing the Board to undertake a review of automobile insurance in Newfoundland and Labrador. The Terms of Reference requested the Board to review and report on a number of issues, including the reasons behind increasing claims costs for private passenger vehicles and taxi operators and options to reduce these costs.

In addition to the completion of a number of actuarial studies and consultant reports, the Board invited input from stakeholders and heard directly from taxi operators in individual sessions. The public hearing provided the opportunity for intervenors and others to make presentations, ask questions and file submissions on the issues under review. The input from those who participated in the review was informative and helpful to the Board in its work and we thank those who contributed to this process.

We are pleased to advise that the Board has completed its review and is now submitting its report.

Respectfully submitted,

A handwritten signature in black ink that reads "DWhalen".

Darlene Whalen, P. Eng., FEC  
Chair and CEO

A handwritten signature in black ink that reads "Dwanda Newman".

Dwanda Newman, LL.B.  
Vice Chair

A handwritten signature in blue ink that reads "James Oxford".

James Oxford  
Commissioner

## EXECUTIVE SUMMARY

### **The Reference**

The Board was directed by Government to undertake a review of private passenger automobile insurance in Newfoundland and Labrador. The Terms of Reference requested the Board to review and report on a number of issues, including the reasons behind increasing claims costs for private passenger vehicles and taxi operators, and options to reduce these costs. The Board was specifically asked to examine the impact on rates and implications for claimants of introducing a monetary cap on claims for non-economic loss for mild/minor injuries, and the impact on rates of continuing with the current deductible of \$2,500 or increasing the deductible. The review included completion of a number of actuarial studies and consultant reports, collection of input from stakeholders through presentations, submissions and comments as well as a public hearing.

### **Premiums and Claims Costs**

Information presented during the review shows that consumers in this province currently pay 35% more, on average, for private passenger automobile insurance than consumers in the Maritimes. Even with the higher premium levels in this province relative to the other Atlantic provinces, the total private passenger premiums paid by consumers over the period 2012-2016 were not sufficient to cover industry costs for this business. The estimated premium deficiency ranged from 6.8% in 2014 to 16.2% in 2016 and was forecast to be 17% in 2017, or approximately \$190. These findings point to the possibility for further premium increases in the short-term.

Based on the information provided in the review the higher average premiums in this province are primarily associated with the higher bodily injury claims costs in this province. From 2006 to 2017 the average bodily injury claims costs per private passenger vehicle in this province increased by approximately 30% and is now the highest in Atlantic Canada. In 2017 the average bodily injury claims cost per vehicle in Newfoundland and Labrador was \$414, compared to \$277 in Nova Scotia, \$224 in New Brunswick and \$205 in Prince Edward Island. The closed claims study showed that there has been an increase in the percentage of claimants receiving pain and suffering awards, in the proportion of pain and suffering awards in the total settlements paid, and in the average amount of the award since the last study in 2004. Based on the information provided in this review the deductible that was implemented in this province in 2004 was less effective in controlling bodily injury costs than the minor injury caps that were introduced in the other Atlantic Provinces at around the same time.

### **Industry Profitability**

The review of the financial profitability of the private passenger automobile insurance in the province showed that over the period 2007 to 2011 premiums were more than adequate to provide for claims costs, operating expenses and profit but over the period 2012 to 2016 premiums were not adequate for the insurance industry to achieve reasonable profit levels for this class of business. In the years 2013, 2015 and 2016 there were industry losses and the profit level in 2017 was forecast to be even lower than that of 2015 and 2016 as the increase in claims costs exceeded the increase in premiums.

## **Minor Injury Caps/Deductibles**

To reduce the potential for large premium increases and restore cost stability industry stakeholders suggested product reform would be required to achieve approximately 30% in bodily injury claim cost savings in the province. Savings at this level would bring the premium charged close to the required premium but would not be expected to result in rate decreases. Industry generally supported the introduction of a \$5,000 cap on pain and suffering damages for minor injuries along with other product changes. Those opposing reforms suggested there is no crisis in bodily injury claims costs and submitted that the focus should be on accident reduction rather than any option that will take away the rights of claimants. The Consumer Advocate supported the introduction of a \$10,000 deductible on pain and suffering damages.

### *Impact on Rates*

Implementation of a \$5,000 cap is estimated to result in reductions in loss costs for private passenger vehicles in the range of 23% to 29%. This translates to reductions in required premiums for insurers in the range of \$121 to \$151, which is less than the amount estimated to be required to achieve rate level adequacy of approximately \$190. As a result there was general consensus that the implementation of a cap may contribute to rate stability in the province but is unlikely to result in rate decreases for consumers, in the absence of additional reform measures.

Increasing the deductible, even to the highest level of \$10,000 as suggested by the Consumer Advocate, is not expected to reduce loss costs enough to eliminate the estimated rate inadequacy. It is estimated that this deductible would reduce loss costs for private passenger vehicles in the range of approximately 9% to 13% with estimated reductions in required premiums for insurers of \$49 to \$65. As a result consumers may still experience near-term rate increases under this scenario.

### *Implications for Claimants*

The implementation of a minor injury cap would be a significant change in this province since it would replace the current \$2,500 deductible which applies to all pain and suffering awards, regardless of the extent of injury. The minor injury cap would apply only to those with a mild or minor injury, estimated to be 66% to 76% of all claimants, based on the minor injury definitions reviewed.

Many presenters and submissions, including claimants, lawyers and medical professionals, spoke to the impact an automobile accident can have, especially with respect to soft tissue injuries and their lasting effects, and how the implementation of further restrictions on pain and suffering damages would affect those injured and their families. Specific issues were raised in relation to fairness and access to justice with the implementation of restrictions for persons injured in an accident caused by another driver, including the potential for disproportionate impacts on vulnerable groups, especially seniors, and uninsured claimants such as pedestrians, cyclists or passengers. Other concerns raised included the impact of a cap or deductible on a claimant's ability to obtain legal representation and the loss of the opportunity of having the courts determine the pain and suffering damages.

## Market Considerations

The automobile insurance market is highly concentrated compared to other Canadian jurisdictions, and particularly the other Atlantic provinces, with 98% of the total premiums written by 15 insurers. When common ownership is considered four insurer groups write 85% of the premiums. The market share for the insurer of last resort, Facility Association, is also higher than in all other Canadian provinces where Facility Association operates and there are no non-standard insurers in this province. As a result there is less competition and fewer choices for consumers in this province which increases the potential for instability in the market. Industry stakeholders advocated strongly for regulatory and product reform to improve market performance and consumer outcomes.

## Taxi Experience Review

Approximately 95% of taxi insurance written in Newfoundland and Labrador is insured through Facility Association, the insurer of last resort. After almost two decades of rate stability taxi insurance rates in the province have experienced a cumulative increase of approximately 244% since 2012. Even with these increases the rates continue to be inadequate to cover the taxi industry losses. An audit of taxi claims did not find any claims handling issues which would have significantly contributed to the high loss costs. The taxi operators participating in the review spoke to the impact of high insurance premiums on their ability to continue to operate and maintain independent drivers. Frustration was expressed by the operators about the lack of alternatives to Facility Association and the apparent lack of recognition of good driving records or risk reduction measures taken by the taxi industry in recent years.

The taxi industry and government have already implemented a number of measures aimed at strengthening the industry. Other measures may be considered to lower costs in the long-term, including product reform, and the reduction of the frequency of accidents, such as through driver education, mandatory winter tires and additional requirements in relation to driver training, certification and monitoring. There were limited measures identified which would be expected to provide immediate relief to taxi operators. A review of Facility Association's risk classification system and underwriting guidelines and Plan of Operation, and of taxi insurance premium taxation may be considered. In the circumstances government may wish to immediately begin consultations with stakeholders to identify solutions to current crisis in the taxi industry, largely caused by high insurance premiums.

## Other Issues

### *Accident Benefits*

Newfoundland and Labrador has the lowest Accident Benefits coverage limits in Atlantic Canada and is the only province in Canada where this coverage is not mandatory. While it is expected the introduction of mandatory Accident Benefits combined with enhanced coverage limits would impact premiums, these changes would provide for better benefits for claimants and were supported by most participants in this review.

### *Minor Injury Diagnostic and Treatment Protocols*

Minor injury diagnostic and treatment protocols are intended to provide people with injuries defined as “mild/minor” with immediate access to evidence-based treatment on a pre-approved basis so that they can recover quickly. Industry stakeholders generally supported implementing these protocols as part of an overall product reform package, including enhanced Accident Benefits limits and a minor injury cap. It is expected that implementing these protocols would likely increase premiums for Accident Benefits as this coverage would become a primary coverage in certain instances.

### *Increasing Third Party Liability Mandatory Limit*

Almost 99% of insureds in the province already carry a Third Party Liability coverage limit higher than the mandatory limit of \$200,000. It is estimated that increasing the mandatory limit to \$500,000 would result in a premium increase in the range of 11%-18% for insureds currently carrying the minimum limit.

### *Direct Compensation Property Damage (DCPD)*

Adopting a direct compensation property damage model in place of the current Third Party Liability property damage claims settlement model would allow consumers to deal with their own insurer when repairing or replacing their vehicle. Implementation of this model was supported and generally found to be cost neutral.

### *Uninsured Automobiles Coverage*

Newfoundland and Labrador has the highest claim frequency and costs for uninsured drivers in Atlantic Canada, the costs of which must be paid by other insureds. Suggestions to address this issue included assigning the license plate to the individual instead of the vehicle and requiring insurance companies to notify the Motor Registration Division when a policy is cancelled.

### *Highway Safety and Accident Prevention*

Effective highway safety and accident prevention programs were viewed by all stakeholders as essential in reducing the number of vehicle accidents and injuries in the province, and therefore reducing the number of claims and claims costs. Initiatives aimed at reducing speed and distracted driving, continued education and awareness as well as continued coordination of efforts between government, law enforcement agencies and industry stakeholders were viewed as important. Suggested measures included intersection cameras, road infrastructure initiatives for traffic calming, vehicle monitoring devices, reinstatement of vehicle inspections and mandatory winter tires.

### *Additional Issues*

Other areas suggested for potential cost savings or improvements include procedural changes to streamline the claims adjustment and settlement process and to improve litigation efficiency, provision for electronic and digital communications and documentation fraud prevention, creation of a public insurance system and a review of insurance taxation.

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## TABLE OF CONTENTS

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### EXECUTIVE SUMMARY

|            |   |           |
|------------|---|-----------|
| <b>1.0</b> | <b>BACKGROUND .....</b>   | <b>1</b>  |
| 1.1        | Scope and Objectives .....  | 1         |
| 1.2        | Mandate and Authority .....   | 1         |
| 1.3        | Terms of Reference .....  | 1         |
| 1.4        | Review Process .....  | 2         |
| 1.4.1      | Consultant Studies and Reports .....  | 2         |
| 1.4.2      | Consumer Advocate .....   | 3         |
| 1.4.3      | Public Participation and Hearing .....  | 3         |
| 1.5        | Procedural Issues .....   | 3         |
| 1.5.1      | Court of Appeal .....   | 4         |
| 1.5.2      | Questioning of Aviva Canada Inc. ....   | 4         |
| 1.6        | Report Structure .....  | 4         |
| <b>2.0</b> | <b>OVERVIEW OF AUTOMOBILE INSURANCE .....</b>   | <b>5</b>  |
| 2.1        | Liability Insurance Systems .....   | 5         |
| 2.2        | Coverages .....   | 5         |
| 2.3        | Pricing .....   | 6         |
| 2.4        | Jurisdictional Scan of Automobile Insurance Systems in Canada .....                               | 7         |
| 2.5        | Automobile Insurance Product Reforms .....  | 8         |
| <b>3.0</b> | <b>AUTOMOBILE INSURANCE IN NEWFOUNDLAND AND LABRADOR.....</b>                                     | <b>9</b>  |
| 3.1        | Industry Structure and Market Composition .....   | 9         |
| 3.2        | Regulation and Supervision .....  | 10        |
| 3.2.1      | Role of the Board .....   | 10        |
| 3.2.2      | Office of the Superintendent of Insurance .....   | 11        |
| 3.3        | Facility Association .....  | 12        |
| 3.4        | Rating Territories .....  | 12        |
| <b>4.0</b> | <b>THE COST OF AUTOMOBILE INSURANCE IN NEWFOUNDLAND AND LABRADOR.....</b>                         | <b>14</b> |
| 4.1        | Premiums for Private Passenger Vehicles .....   | 14        |
| 4.2        | Claims Costs for Private Passenger Vehicles .....   | 16        |
| 4.3        | Rate Level Adequacy .....   | 20        |
| 4.4        | Board Comments .....  | 21        |
| <b>5.0</b> | <b>FINANCIAL PROFITABILITY OF AUTOMOBILE INSURANCE INDUSTRY IN NEWFOUNDLAND AND LABRADOR.....</b> | <b>23</b> |
| 5.1        | Introduction .....  | 23        |
| 5.2        | Profitability Review .....  | 23        |
| 5.3        | Presentations, Submissions and Comments .....   | 26        |
| 5.4        | Board Comments .....  | 29        |

|            |   |           |
|------------|---|-----------|
| <b>6.0</b> | <b>CLOSED CLAIMS STUDY .....</b>  | <b>31</b> |
| 6.1        | Introduction.....   | 31        |
| 6.2        | Closed Claims Study Process .....   | 31        |
| 6.2.1      | Claims Survey Development .....   | 31        |
| 6.2.2      | Data Collection and Validation.....                                       | 32        |
| 6.2.3      | Claim Sample Size.....  | 32        |
| 6.3        | Closed Claims Study Findings.....   | 33        |
| 6.3.1      | Claimant Injuries.....  | 33        |
| 6.3.2      | Amounts Paid.....   | 34        |
| 6.4        | Presentations, Submissions and Comments .....                             | 35        |
| 6.5        | Board Comments .....  | 37        |
| <b>7.0</b> | <b>CAPS AND DEDUCTIBLES ON PAIN AND SUFFERING DAMAGES.....</b>            | <b>39</b> |
| 7.1        | Introduction.....   | 39        |
| 7.2        | Monetary Cap on Pain and Suffering Damages.....                           | 39        |
| 7.2.1      | Impact on Loss Costs and Required Premiums .....                          | 40        |
| 7.2.2      | Impact on Rates.....  | 42        |
| 7.3        | Maintaining or Increasing the Current Deductible .....                    | 43        |
| 7.3.1      | Impact on Loss Costs and Required Premiums .....                          | 43        |
| 7.3.2      | Impact on Rates.....  | 44        |
| 7.4        | Implications for Claimants.....   | 45        |
| 7.5        | Tort Reforms in Other Jurisdictions .....                                 | 50        |
| 7.5.1      | Deductible .....  | 50        |
| 7.5.2      | Cap .....   | 51        |
| 7.6        | Additional Considerations .....   | 53        |
| 7.6.1      | The Amount of the Minor Injury Cap or Deductible.....                     | 53        |
| 7.6.2      | Use and Definition of “Minor Injury” .....                                | 55        |
| 7.6.3      | Mandatory Rate Freeze or Reduction .....                                  | 59        |
| 7.6.4      | Legal Representation and Contingency Fees .....                           | 60        |
| 7.6.5      | Impact on Other Public Systems .....                                      | 62        |
| 7.7        | Position of the Participants on Caps and Deductibles .....                | 62        |
| 7.8        | Board Comments .....  | 65        |
| <b>8.0</b> | <b>TAXI INDUSTRY CLAIMS EXPERIENCE REVIEW.....</b>                        | <b>69</b> |
| 8.1        | Introduction.....   | 69        |
| 8.2        | Premiums and Claims Costs .....   | 69        |
| 8.2.1      | Premium Levels .....  | 69        |
| 8.2.2      | Claims Costs .....  | 72        |
| 8.2.3      | Atlantic Comparison .....   | 73        |
| 8.3        | Claims Audit .....  | 75        |
| 8.4        | Presentations, Submissions and Comments .....                             | 77        |
| 8.4.1      | Taxi Operators .....  | 77        |
| 8.4.2      | Other Submissions .....   | 83        |
| 8.5        | Other Jurisdictions .....   | 85        |
| 8.6        | Measures Adopted by Government and Taxi Operators During the Review ..... | 86        |
| 8.7        | Other Considerations .....  | 86        |

|             |  |            |
|-------------|--|------------|
| 8.7.1       | Limousines .....   | 86         |
| 8.7.2       | Expense Provision.....   | 87         |
| 8.7.3       | Facility Association Notice Requirement .....  | 88         |
| 8.7.4       | Vehicle Loss History Rating.....   | 88         |
| 8.8         | Board Comments .....   | 88         |
| <b>9.0</b>  | <b>SECTION A/THIRD PARTY LIABILITY LIMIT .....</b>                                       | <b>91</b>  |
| 9.1         | Introduction.....  | 91         |
| 9.2         | Third Party Liability Coverage in Newfoundland and Labrador.....                         | 91         |
| 9.3         | Implications of Increasing the Statutory Minimum Limit .....                             | 92         |
| 9.4         | Presentations, Submissions and Comments .....  | 93         |
| 9.5         | Board Comments .....   | 94         |
| <b>10.0</b> | <b>SECTION B/ACCIDENT BENEFITS.....</b>  | <b>95</b>  |
| 10.1        | Introduction.....  | 95         |
| 10.2        | Previous Reviews of Section B/Accident Benefits Coverage.....                            | 95         |
| 10.3        | Other Jurisdictions .....  | 96         |
| 10.4        | Injury Assessment and Payment of Benefits .....  | 97         |
| 10.5        | The Relationship of Accident Benefits to Third Party Liability Settlements .....         | 98         |
| 10.6        | Impact of Making Accident Benefits Coverage Mandatory .....                              | 98         |
| 10.7        | Presentations, Submissions and Comments .....  | 99         |
| 10.8        | Board Comments .....   | 101        |
| <b>11.0</b> | <b>MINOR INJURY DIAGNOSTIC AND TREATMENT PROTOCOLS .....</b>                             | <b>102</b> |
| 11.1        | Introduction.....  | 102        |
| 11.2        | Diagnostic and Treatment Protocols .....   | 102        |
| 11.3        | Impact of Adopting Diagnostic and Treatment Protocols in Newfoundland and Labrador ..... | 104        |
| 11.4        | Presentations, Submissions and Comments .....  | 105        |
| 11.5        | Board Comments .....   | 109        |
| <b>12.0</b> | <b>DIRECT COMPENSATION-PROPERTY DAMAGE .....</b>   | <b>110</b> |
| 12.1        | Introduction.....  | 110        |
| 12.2        | Impact of Adopting DCPD in Newfoundland and Labrador .....                               | 110        |
| 12.2.1      | Allocation of Costs to DCPD.....   | 110        |
| 12.2.2      | Changes in Total Costs for DCPD and PD-Tort Combined .....                               | 111        |
| 12.2.3      | Impact on Collision Coverage .....   | 111        |
| 12.2.4      | Other Considerations .....   | 112        |
| 12.3        | Presentations, Submissions and Comments .....  | 112        |
| 12.4        | Board Comments .....   | 113        |
| <b>13.0</b> | <b>SECTION D/UNINSURED AUTOMOBILES COVERAGE .....</b>                                    | <b>114</b> |
| 13.1        | Introduction.....  | 114        |
| 13.2        | Uninsured Automobiles Experience .....   | 114        |
| 13.3        | Vehicle Registration and Proof of Insurance .....  | 116        |
| 13.4        | Other Jurisdictions .....  | 117        |

|             |   |            |
|-------------|---|------------|
| 13.5        | Presentations, Submissions and Comments .....             | 118        |
| 13.6        | Board Comments .....                                      | 120        |
| <b>14.0</b> | <b>HIGHWAY SAFETY AND ACCIDENT PREVENTION .....</b>       | <b>121</b> |
| 14.1        | Introduction.....   | 121        |
| 14.2        | Accident Statistics.....                                  | 121        |
| 14.3        | Recent Government Legislation .....                       | 122        |
| 14.4        | Other Initiatives .....                                   | 122        |
| 14.5        | Presentations, Submissions and Comments .....             | 123        |
| 14.6        | Board Comments .....                                      | 126        |
| <b>15.0</b> | <b>AUTOMOBILE INSURANCE MARKET CONSIDERATIONS .....</b>   | <b>127</b> |
| 15.1        | Introduction.....   | 127        |
| 15.2        | Market Concentration .....                                | 127        |
| 15.3        | Presentations, Submissions and Comments .....             | 130        |
| 15.4        | Board Comments .....                                      | 133        |
| <b>16.0</b> | <b>OTHER POTENTIAL COST SAVINGS OR IMPROVEMENTS .....</b> | <b>134</b> |
| <b>17.0</b> | <b>CONCLUDING COMMENTS.....</b>                           | <b>139</b> |

**Exhibit 1: Terms of Reference**

**Exhibit 2: Letter from Board to Minister of Service NL, August 11, 2017**

**Exhibit 3: Presenters, Submissions and Public Comments**

**Exhibit 4: Automobile Insurance in Canada - Jurisdictional Scans:  
Private Systems and Public Systems**

**Exhibit 5: Overview of Recent Reform Initiatives in Other Jurisdictions**

**Exhibit 6: Minor Injury Definitions by Province**

## 1.0 BACKGROUND

### 1.1 Scope and Objectives

This report presents the results of a review of automobile insurance in the Province undertaken by the Board of Commissioners of Public Utilities (Board) as directed by Government in a Terms of Reference issued on August 9, 2017. The report reflects the results of a number of studies commissioned by the Board, input from intervenors and other stakeholders during the hearing and in written submissions and comments, as well as other information and analyses available to the Board.

### 1.2 Mandate and Authority

The Board is an independent administrative tribunal which has responsibility to regulate aspects of the automobile insurance industry in the Province. The Board derives its mandate for the supervision of automobile insurance rates and underwriting guidelines from provincial statutes and legislation, primarily the *Automobile Insurance Act*, the *Insurance Companies Act* and the *Public Utilities Act*.

The *Automobile Insurance Act* provides the Board with the responsibility for the general supervision of the rates an insurer charges or proposes to charge for automobile insurance. The *Insurance Companies Act* sets out the Board's role with respect to regulation of underwriting guidelines, risk classification systems, grounds for refusing to issue, decline, or terminate insurance coverage and also regulation of Facility Association's rates. Matters respecting insurance other than rates charged or underwriting guidelines are under the responsibility of the Superintendent of Insurance. The *Public Utilities Act* constitutes and defines the general powers of the Board and provides the authority for the Board in discharging its mandate.

This review was conducted pursuant to a direction from Government under Section 3.1 of the *Insurance Companies Act*.<sup>1</sup>

### 1.3 Terms of Reference

The *Terms of Reference for the Public Utilities Board Review into Automobile Insurance* (Exhibit 1) directed the Board to review and report on a number of issues with respect to automobile insurance in the province, including the reasons behind increasing claims costs for private passenger vehicles and taxi operators, and options to reduce these costs. The Board was specifically asked to examine the impact on rates and implications for claimants of introducing a monetary cap on claims for non-economic loss for minor/mild injuries or continuing with the current deductible of \$2,500 or increasing the deductible.

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<sup>1</sup> Section 3.1 (1) states that "The Lieutenant-Governor in Council may by order direct the board to conduct a review of any aspect of insurance in the province on the terms and conditions that the Lieutenant-Governor in Council may specify." The direction to the Board was set out in Order in Council OC2017-195.

Concurrent with the issuance to the Board of the direction for this review Service NL also announced the Terms of Reference for its own review of certain aspects of automobile insurance in the province.<sup>2</sup>

On August 11, 2017 the Board wrote Government advising of the minor/mild injury definitions, monetary caps and deductibles to be considered in the review (Exhibit 2). The Board stated that it would review the impact on rates and implications on claimants of monetary caps for non-economic loss of \$5,000, \$7,500 and \$10,000 indexed for inflation, for the definitions for mild/minor injury currently in use in the other Atlantic provinces. With respect to the deductible analyses the Board stated that it would review the impact on rates of continuing with the current deductible or increasing the deductible to \$5,000, \$7,500 or \$10,000. The Board also advised that the definitions of minor injury from Nova Scotia, New Brunswick and Prince Edward Island would be used.

## 1.4 Review Process

### 1.4.1 Consultant Studies and Reports

Upon the issuance of the Terms of Reference in August, 2017 the Board engaged its consulting actuaries, Oliver Wyman Limited (Oliver Wyman), to complete a series of studies and reports to assist the Board in the completion of its work. The Board also engaged Cameron and Associates Insurance Consultants (Cameron), a risk management and insurance consulting firm, to complete a review of taxi claims.

The instructions for data collection for the closed claims study were reviewed by Oliver Wyman and finalized in consultation with the Insurance Bureau of Canada (IBC). Data collection for the closed claims study commenced in October, 2017 and was overseen by IBC. The data was provided to Oliver Wyman for its review and analysis in March, 2018.

Oliver Wyman completed the following reports:

- *Summary of Taxi Experience in Newfoundland and Labrador.* March 20, 2018
- *Profit and Rate Adequacy Review – Private Passenger Automobiles.* March 29, 2018
- *Closed Claim Study – Private Passenger Automobiles – Bodily Injury.* April 19, 2018
- *Minor Injury Reform Cost Estimates – Private Passenger Automobiles.* April 19, 2018<sup>3</sup>
- *Other Coverages Review – Private Passenger Automobiles.* April 25, 2018

Cameron completed the following report:

- *Report on Taxi Claims Review.* March 20, 2018

The studies and reports were circulated directly to stakeholders who had requested to be included on the Board's distribution list and made available on the Board's website.

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<sup>2</sup> The Terms of Reference for the Service NL review can be found at [https://www.servicenl.gov.nl.ca/insurance/pdf/Terms\\_of\\_Reference\\_SNL.pdf](https://www.servicenl.gov.nl.ca/insurance/pdf/Terms_of_Reference_SNL.pdf)

<sup>3</sup> Amended on May 17, 2018 with a calculation correction to Table 2 and Exhibits 9 to 12.

#### 1.4.2 Consumer Advocate

On September 22, 2017 Government announced the appointment of Dennis Browne, Q.C. as the Consumer Advocate, pursuant to section 3.1 of the *Insurance Companies Act*, to represent consumers during the automobile insurance review. Mr. Browne was assisted by counsel Andrew Wadden.

#### 1.4.3 Public Participation and Hearing

The Board undertook a number of initiatives to advise the public of the review, the process and schedule, and how to participate. The Board's website included notice of the review, an insurance backgrounder as well as the Board's work plan and schedule. The website also provided the opportunity to complete a feedback form or to email comments to the Board. Media releases were issued as consultant reports were available. Direct contact letters were sent to organizations that participated in the 2005 Automobile Insurance Review as well as to other organizations the Board felt may be interested in the review. The Board also contacted taxi operators directly inviting participation and feedback.

During the month of April, 2018 the Board met with individual taxi operators who requested the opportunity to discuss their concerns. Follow-up meetings were held in September, 2018 with two taxi operators at their request.

On May 5, 2018 the Board published a Notice of Public Hearing and Invitation to Participate in papers across the province. Intervenor submissions were received from:

- Campaign to Protect Accident Victims (Campaign)
- Atlantic Provinces Trial Lawyers Association (APTLA)
- Spinal Cord Injury Newfoundland and Labrador (Spinal Cord Injury NL)
- IBC

Public hearings were held at the Board's offices in St. John's on June 5-8 and June 11-13, 2018 and September 6-7, September 10-14 and September 27, 2018. Intervenors were provided an opportunity to file reports, make presentations and ask questions of the Board's consultants as well as presenters that attended on behalf of Intervenors. Written submissions and comments were received by the Board throughout the review process and the Board heard a number of presentations. Final submissions were filed by Intervenors on October 12, 2018.

A list of persons and organizations who participated in the review either as Intervenors, making presentations and/or providing written submissions or comments is provided in Exhibit 3.

### **1.5 Procedural Issues**

Two preliminary issues were raised related to the process and schedule established by the Board for the review.

### 1.5.1 Court of Appeal

On April 10, 2018 the Campaign requested a postponement of the hearing originally scheduled to commence on May 23, 2018 to allow time for the Campaign to provide meaningful input to the Board. On April 16, 2018 the Board received confirmation from Government of its expectation that it would receive the report by the end of June 2018. The Board advised that the hearing would start on June 4, 2018.

On May 7, 2018 the Campaign notified the Board of its intention to file an application for leave to appeal the Board's refusal to postpone the public hearings. Following a case management conference facilitated by the Court of Appeal a revised schedule was established.

### 1.5.2 Questioning of Aviva Canada Inc.

On June 28, 2018 the Campaign filed an application seeking the Board's permission to question Aviva Canada Inc. (Aviva) in relation to its written submission and its scheduled presentation. On July 18, 2018 the Board received submissions from the Consumer Advocate, IBC and Aviva on the Campaign's application and the Campaign filed a reply submission on July 31, 2018. In Order No. A.I. 27(2018), the Board dismissed the application. Aviva ultimately decided not to make a presentation at the hearing.

## **1.6 Report Structure**

Sections 2.0 to 4.0 present background information in relation to the work undertaken by the Board in addressing the issues set out in the Terms of Reference. Section 2 provides a general overview of automobile insurance including the jurisdictional scan of automobile insurance systems in Canada. Section 3.0 describes the automobile insurance system in Newfoundland and Labrador, including industry structure and market composition, and Section 4.0 presents information on the cost of automobile insurance in the province.

The remainder of the report is generally organized to align with the issues the Board was requested to review and report on in the Terms of Reference. Sections 5.0 to 16.0 set out the results of the Board's review of each of these issues including the presentations, submissions and comments from intervenors and public and Board comments. Section 17.0 provides the Board's concluding comments.

## **2.0 OVERVIEW OF AUTOMOBILE INSURANCE**

This section is intended to provide general background information on various aspects of automobile insurance to assist in consideration of the issues contained in this report. The areas covered include an explanation of liability insurance systems, automobile insurance coverages and pricing as well as an overview of automobile insurance systems in other Canadian jurisdictions.

### **2.1 Liability Insurance Systems**

Automobile insurance provides owners/drivers of motor vehicles financial protection against loss or damage caused in the operation of a vehicle. Automobile insurance is required by law in all jurisdictions in Canada and covers the owners/drivers, passengers, pedestrians and property affected by a vehicle collision.

In Canada automobile insurance is generally provided under two types of systems – tort-based or no-fault. Under a tort-based system a party injured in an automobile accident may seek compensation for losses from the driver who caused the accident. The injured party is entitled to compensation only to the degree that the other driver is responsible for the accident, with the degree of fault determined by the Courts. The tort system is intended to place the injured person, to the extent possible in the circumstances, in the position they were in before the accident. An injured person is compensated for all past and future economic losses that were caused by the negligent driver, including loss of income, loss of earnings capacity as well as the cost of injury treatment. In addition, an injured person is entitled to non-economic damages experienced as a result of the accident, including compensation for loss of enjoyment of life, amenities and expectation of life. These damages may also be referred to as non-pecuniary or “pain and suffering” awards. In jurisdictions that operate under a tort system all vehicles must carry a minimum amount of Third Party Liability coverage to ensure that negligent drivers can appropriately compensate claimants for injuries. This requirement protects both injured persons and the drivers who may otherwise be found responsible and required to compensate an injured person.

In a no-fault system accident victims are compensated for their injuries based on their level of damages with no regard as to who caused the accident. This type of insurance system is often referred to as a “care-based” model. There is no requirement to establish fault to access benefits and benefits are normally paid under a pre-determined scale of payments. No-fault systems currently exist in Manitoba and Quebec under public insurance systems. Saskatchewan has a no-fault system; however, drivers may opt in to a partial tort-based recovery system. The remaining jurisdictions operate under tort-based systems.

All tort-based systems in Canada currently have some form of restrictions on tort recovery such as deductibles and/or caps on non-economic compensation for minor injuries and mandated treatment protocols.

### **2.2 Coverages**

Automobile insurance provides a variety of coverages to indemnify for losses associated with the operation of motor vehicles. The standard automobile insurance coverages are as follows:

| <b>Coverage</b>  |                               | <b>Description</b>   |
|------------------|-------------------------------|--|
| <b>Section A</b> | <b>Third Party Liability*</b> | Indemnification, up to the policy limit, of the insured for damages arising from bodily injury or property damage caused to innocent third parties from the policyholder's negligent operation of the insured vehicle.   |
| <b>Section B</b> | <b>Accident Benefits</b>      | Partial indemnification on a no-fault basis for certain expenses to drivers, passengers or pedestrians who suffer injury or death as a result of an automobile accident. Benefits include medical expenses, funeral expense, death benefits, income replacement and housekeeping services.                           |
| <b>Section C</b> | <b>Collision</b>              | Indemnification, subject to a deductible, of the insured for damages caused to the insured vehicle arising from a collision or upset.  |
|                  | <b>Comprehensive</b>          | Indemnification, subject to a deductible, of the insured for any damage caused to the insured vehicle for any peril other than collision or upset.   |
|                  | <b>Specified Perils</b>       | Indemnification, subject to a deductible, for any damage caused to the insured vehicle for the named perils specified in the coverage. The named perils are included under the Comprehensive coverage, thus an insured need not purchase both.   |
|                  | <b>All Perils</b>             | Indemnification, subject to a deductible, for all risks unless they are explicitly excluded in the policy text. This coverage combines and adds to the protection provided by Collision and Comprehensive, thus All Perils need not be combined with any other Section C coverages.                                  |
| <b>Section D</b> | <b>Uninsured Motorist*</b>    | Indemnification for the insured for bodily injury and death arising from an accident with an uninsured or unidentified vehicle. In the case of an uninsured vehicle where the owner is identified, this coverage also provides indemnification, subject to a deductible, for property damage to the insured vehicle. |

\*Mandatory coverages in Newfoundland and Labrador

All private passenger vehicles in this province are required by law to carry Third Party Liability and Uninsured Automobiles coverage. Third Party Liability is the most expensive coverage and accounts for approximately 58% of the total average private passenger premium in the province. It is subdivided into bodily injury coverage and property damage coverage, with the bodily injury component comprising the largest portion of the Third Party Liability premium. Uninsured Motorist accounts for only 2% of the total average premium and the remaining optional coverages comprise the 40% balance.<sup>4</sup>

Insureds in the province are only mandated to carry the statutory minimum limit of \$200,000 for Third Party Liability and Uninsured Automobiles. Increased Third Party Liability limits and optional coverages may be purchased at the discretion of individual policyholders based on need and desired coverage level.

### 2.3 Pricing

Premiums for automobile insurance coverages are determined on a company-specific basis for each class of business using actuarial pricing models.<sup>5</sup> Actuarial pricing models for automobile insurance are forward looking or prospective as they determine the overall amount of premium

<sup>4</sup> Percentages are based on 2017 aggregate industry data excluding endorsements and taxes. Percentages will vary by individual policyholder based on factors such as rating territory, coverage limit, driving record and deductible.

<sup>5</sup> Insurers conduct separate analyses and determine separate premiums for each of its private passenger, commercial and miscellaneous (e.g. motorcycles, ATVs and snowmobiles) classes of business.

that should be charged in a future period to cover estimated claims, expenses and a target profit margin.<sup>6</sup>

The premiums charged by an insurer are based on the circumstances of the insured. The general principles of risk assignment suggest that a person with a higher risk of causing a claim should be charged a higher premium. For automobile insurance the process of charging premiums based on risk is done through classification using a variety of rating factors such as:

- Driver characteristics – Number of drivers, years of licensed driving experience, at-fault claims and conviction history, age, gender and marital status
- Vehicle characteristics – Make, model and year
- Vehicle use – Pleasure, commuting to and from work, or business
- Territory – Where the vehicle is principally driven or garaged

Many jurisdictions regulate the rating factors insurance companies are permitted to use. A rating factor accepted in one province or territory may be prohibited in another.<sup>7</sup>

## **2.4 Jurisdictional Scan of Automobile Insurance Systems in Canada**

The delivery and structure of Canada's automobile insurance system varies by province/territory ranging from private, tort-based systems to public, no-fault systems. The legislation and regulations governing each system vary widely across jurisdictions, as do the available coverages and benefits. To review the product offerings in other Canadian jurisdictions the Board conducted a jurisdictional scan involving both primary and secondary research.

The Board's primary research included a survey of automobile insurance regulators designed to highlight the jurisdictional differences across Canada. The survey was developed by Board staff and included 19 multi-part questions spanning various automobile insurance subject areas including regulations, tort restrictions, reform initiatives and rate filing processes. The response to the survey was very positive and submissions were received from each jurisdiction contacted. Secondary research was also undertaken, including a review of applicable insurance legislation, a review of research documents compiled by the Canadian Automobile Insurance Rate Regulators Association (CARR), and a review of industry documents published by both IBC and the General Insurance Statistical Agency (GISA). This information served as a complement to the submissions received from the Board's survey.

A comprehensive overview of the private and public automobile insurance systems throughout Canada is outlined in Exhibit 4. Comparisons of Newfoundland and Labrador with other Canadian jurisdictions are also included in applicable sections throughout the report.

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<sup>6</sup> Expenses include commissions and other business acquisition costs, premium taxes, policy servicing expenses and other operating expenses.

<sup>7</sup> For example, Newfoundland and Labrador prohibits the use of age, gender and marital status for rating purposes whereas Ontario allows it.

## 2.5 Automobile Insurance Product Reforms

The last review of the Newfoundland and Labrador automobile insurance system commenced in late 2003, and included a review by the Board in 2004-2005 of certain aspects of automobile insurance in the province.<sup>8</sup> As a result two sets of legislated reforms to the automobile insurance product were implemented effective August 1, 2004 and August 1, 2005. Some of the key changes implemented are outlined as follows:

- Effective August 1, 2004:
  - a \$2,500 deductible on third-party liability claims
  - mandated premium reductions of 9% for Third-Party Liability, 27% to 37% for Collision, 19% for Comprehensive and 11% for Uninsured Motorists
  - a 25% reduction in compensation for not wearing a seatbelt
  - new underwriting guideline prohibitions including, but not limited to, age, gender or marital status, age of vehicle, and not at-fault accidents and claims history
  - mandatory monthly premium payment plans
  - disclosure to drivers of placement in Facility Association
- Effective August 1, 2005:
  - mandated 5% per cent reduction of premiums (subject to conditions)
  - a new rate setting process based on individual company filings requiring that each company justify any rate increase
  - elimination of age, gender and marital status for rating purposes
  - permitting group rating
  - a Point of Claim Disclosure Form to be signed by consumers to ensure they are adequately informed of their rights when making a claim
  - additions to grounds which cannot be used to decline, terminate or refuse to renew automobile insurance coverage
  - additions to prohibitions on an insurance company's risk classification system

Additional reforms were also implemented effective June 1, 2011 which prohibited the use of a person's credit information in an insurance company's risk classification system and in the decision to decline, terminate or refuse to renew contracts of insurance.

Exhibit 5 provides an overview of recent automobile insurance reform initiatives in Canada. As this information shows, significant reforms have been implemented to the automobile insurance product in most Canadian jurisdictions, many of which focus around restrictions on pain and suffering awards for minor injuries. Minor injury caps indexed to inflation are now maintained in New Brunswick, Nova Scotia, Prince Edward Island and Alberta, while Ontario has a deductible that applies subject to a verbal injury threshold. British Columbia has also recently announced the introduction of a minor injury cap effective April 1, 2019. Other recent reform initiatives included the implementation of Direct Compensation for Property Damage coverage, changes to Accident Benefits coverage limits, introduction of minor injury diagnostic and treatment protocols, and changes to the minor injury definitions.

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<sup>8</sup> The Board's report to government was issued on March 31, 2005 and can be found at [https://www.servicenl.gov.nl.ca/insurance/pdf/pub\\_auto\\_ins\\_rev.pdf](https://www.servicenl.gov.nl.ca/insurance/pdf/pub_auto_ins_rev.pdf)

## 3.0 AUTOMOBILE INSURANCE IN NEWFOUNDLAND AND LABRADOR

### 3.1 Industry Structure and Market Composition

The automobile insurance industry in Newfoundland and Labrador operates in a tort-based system with a \$2,500 deductible for pain and suffering damages. Automobile insurance is provided through private insurers with rates approved by the Board.

The 2017 Report of the Superintendent of Insurance identified 44 automobile insurers operating in Newfoundland and Labrador reporting direct premiums written totaling \$435.4 million of which approximately \$365.5 million (or 84%) was private passenger automobile business.<sup>9,10</sup> The market share by company, on the basis of direct premiums written, for each of the top 15 insurers is shown below:<sup>11</sup>

| Newfoundland and Labrador Automobile Insurance<br>2017 Market Share by Company Direct Written Premiums |                         |                         |                    |
|--|-------------------------|-------------------------|--------------------|
| Company Name   | Direct Premiums Written | Individual Market Share | Total Market Share |
| Novex Insurance Company  | \$77,233,000            | 17.74%                  | 17.74%             |
| Unifund Assurance Company  | \$72,258,000            | 16.59%                  | 34.33%             |
| Intact Insurance Company   | \$56,775,000            | 13.04%                  | 47.37%             |
| S&Y Insurance Company  | \$37,173,000            | 8.54%                   | 55.91%             |
| Co-operators General Insurance Company   | \$34,031,000            | 7.82%                   | 63.72%             |
| Aviva General Insurance Company  | \$24,463,000            | 5.62%                   | 69.34%             |
| Royal and Sun Alliance Insurance Company of Canada   | \$24,454,000            | 5.62%                   | 74.96%             |
| Traders General Insurance Company  | \$18,930,000            | 4.35%                   | 79.30%             |
| Security National Insurance Company  | \$16,280,000            | 3.74%                   | 83.04%             |
| Primum Insurance Company   | \$15,344,000            | 3.52%                   | 86.57%             |
| The Dominion of Canada General Insurance Company   | \$13,252,000            | 3.04%                   | 89.61%             |
| Northbridge General Insurance Corporation  | \$12,180,000            | 2.80%                   | 92.41%             |
| Aviva Insurance Company of Canada  | \$9,314,000             | 2.14%                   | 94.55%             |
| COSECO Insurance Company   | \$7,834,000             | 1.80%                   | 96.34%             |
| The Personal Insurance Company   | \$6,592,000             | 1.51%                   | 97.86%             |

The market shows a high level of concentration with 97.86% of the automobile insurance business written by 15 insurers. When common ownership among companies is considered there are four insurer groups writing approximately 85% of the automobile insurance business.<sup>12</sup>

<sup>9</sup> The total direct written premiums refers to all classes of automobile insurance written in Newfoundland and Labrador and includes private passenger, commercial and miscellaneous vehicles.

<sup>10</sup> 2017 Report of the Superintendent of Insurance (<https://www.servicenl.gov.nl.ca/insurance/pdf/2017.pdf>) and GISA Exhibit AUTO1010.

<sup>11</sup> 2017 Report of the Superintendent of Insurance.

<sup>12</sup> The four insurer groups include Intact Financial Corporation, RSA Canada, Aviva Canada and The Co-operators Group.

The private passenger automobile insurance market in Newfoundland and Labrador is small relative to other provinces with private tort-based systems as shown in the following table:<sup>13</sup>

| Comparative Market Size in Canada<br>2017 Private Passenger Vehicles |                  |                      |
|--|------------------|----------------------|
| Province   | Written Vehicles | Written Premiums     |
| Ontario  | 7,559,729        | \$10,924,507,207     |
| Alberta  | 2,724,129        | \$3,408,453,398      |
| Nova Scotia  | 590,704          | \$497,593,852        |
| New Brunswick  | 503,772          | \$412,669,318        |
| <b>Newfoundland and Labrador</b>                                     | <b>322,770</b>   | <b>\$365,472,558</b> |
| Prince Edward Island   | 98,536           | \$78,408,314         |

### 3.2 Regulation and Supervision

#### 3.2.1 Role of the Board

The Board's jurisdiction regarding automobile insurance regulation is primarily derived from the *Automobile Insurance Act* and the *Insurance Companies Act*. The Board's responsibilities include regulation and oversight of automobile insurance rates, underwriting guidelines, risk classification systems and the grounds for refusal used by insurers.

Under Section 48 of the *Automobile Insurance Act* insurance companies writing automobile insurance business in the province may only use rates that have been filed with and approved by the Board. The current rate setting framework was established on August 1, 2005 as part of Government's prior automobile insurance reforms and includes a "prior approval" process for rate increases and a "file and use" process for rate decreases.

Applications proposing new rates or increases in rates previously filed with the Board are subject to a review by the Board to determine if the proposed rates are too high. Applications proposing decreases in rates previously filed with the Board are accepted on a file and use basis and take effect 30 days after the application has been received by the Board or such later date as set out in the application. The Board's *Automobile Insurance Filing Guidelines*, developed under the authority of the current statutes and regulations, provide specific instructions to insurers for rate filings with the Board.<sup>14</sup>

The Board is required to assess the grounds for a rate increase based on the company's projected loss experience, expenses and investment income for its automobile insurance business in the province, as well as other elements considered appropriate by the Board. Rate increases must be justified by the company and are subject to a detailed review by an independent actuarial consultant

<sup>13</sup> GISA Exhibit AUTO1010.

<sup>14</sup> The Board's *Automobile Insurance Filing Guidelines* set out the instructions for specific filing categories, the prohibited elements for underwriting rules and risk classification systems, as well as detailed rate application filing information requirements. The Filing Guidelines were updated in September 2011 and are available on the Board's website [www.pub.nl.ca](http://www.pub.nl.ca)

retained by the Board. Current legislation does not provide for fixed filing dates and insurers are permitted to file at a frequency of their choosing, subject to the Board's Filing Guidelines.<sup>15</sup>

Under the *Insurance Companies Act* the Board is also responsible for the control and oversight of underwriting guidelines and risk classification systems used by insurers in deciding whether to write a particular automobile insurance policy and, if so, at what rates. The Board may prohibit certain underwriting and classification practices of an insurer which, in the Board's opinion, are unjust or unfairly discriminatory. The Board also has the authority to investigate any rates being charged by an insurer and impose penalties for non-compliance with the *Automobile Insurance Act*.

In addition to its primary role in the supervision of rates and underwriting guidelines, the Board also has the authority, when directed by the Lieutenant-Governor in Council, to undertake a review of any aspect of insurance in the province on the terms and conditions that the Lieutenant-Governor in Council may specify. It is under this section that the Board has been directed to conduct this review.

### 3.2.2 Office of the Superintendent of Insurance

The Office of the Superintendent of Insurance under the Financial Services Regulation Division of Service NL also regulates aspects of automobile insurance in the province. The Superintendent's role includes the following functions:

- Review and approval of endorsement wordings
- Licensure of automobile insurance companies, brokers and agents
- Dispute mediation
- Review and approval of use of the automobile statistical plan
- Review and determination of automobile insurance rating territories

The Superintendent of Insurance also ensures that licensed insurers operating in the province report timely and accurate statistical and financial data to support its public policy objectives. This information is collected and reported by GISA, which acts as the statistical agent for the Superintendent in Newfoundland and Labrador.<sup>16</sup> GISA collects and reports statistical and financial data in a standardized format in accordance with the Automobile Statistical Plan and the Financial Information Report, subject to the legislative and regulatory requirements in member jurisdictions. GISA publishes a series of exhibits and reports on the automobile insurance

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<sup>15</sup> Many Canadian jurisdictions impose mandatory filing dates and/or timelines which specify the frequency in which rate filings must be filed with the regulator.

<sup>16</sup> GISA was federally incorporated as a not-for-profit corporation in June 2005 and appointed, effective April 1, 2006, as the statistical agent for insurance regulators in the following participating member jurisdictions: Alberta, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island and Yukon. GISA was established to improve the governance, accountability, and oversight, as well as the reliability and objectivity, of insurance statistical data in member jurisdictions. GISA's mandate is to collect, and make available, timely statistical and financial information to support a healthy, accessible, and responsive marketplace for property and casualty insurance. See [www.gisa.ca](http://www.gisa.ca) for more information.

experience and financial information, which are compiled from data that has been collected from all licensed automobile insurers by GISA in all participating jurisdictions.

GISA has entered into a service agreement with IBC whereby its Data Services Division acts as the Statistical Service Provider for the collection and analysis of the Automobile Statistical Plan data under GISA's direction. In this role IBC provides technology, data management and exhibit production services to support the collection, analysis and reporting of statistical plan information for member jurisdictions.

The GISA data was used and relied on by the Board and its consultants in this review. GISA data is available at [www.gisa.ca](http://www.gisa.ca).

### **3.3 Facility Association**

Facility Association was established to ensure that automobile insurance is available to all owners and licensed drivers of motor vehicles where such owners or drivers are unable to obtain coverage through the voluntary insurance market.<sup>17</sup> Facility Association is an unincorporated non-profit organization of all automobile insurers and operates in Newfoundland and Labrador as well as Nova Scotia, New Brunswick, Prince Edward Island, Ontario, Alberta, Northwest Territories, Nunavut, and Yukon.

Every insurer licensed to write automobile insurance in Newfoundland and Labrador is required to become a member of Facility Association and abide by the “Plan of Operation” which sets out the governance framework for Facility Association. Regulation of the Facility Association Plan of Operation is the responsibility of the Superintendent of Insurance. Regulation of Facility Association’s rates and underwriting rules is the responsibility of the Board. Facility Association is subject to the same rate filing provisions as regular market insurers in the province, except that the Board does not currently allow for a cost of capital provision (i.e. profit provision) to be reflected in any of Facility Association’s rates in this province.

Approximately 3.2% of all private passenger vehicles written in the province are currently placed through Facility Association.<sup>18</sup> This compares to the peak Facility Association market share of 8.0% in 2003 prior to the last reforms.

### **3.4 Rating Territories**

Newfoundland and Labrador is currently subdivided into four statistical territories for data reporting purposes under the Automobile Statistical Plan and three territories for rating purposes. The statistical territories and rating territories share the same boundaries with the exception that Rating Territory 2 is subdivided into two separate statistical codes for reporting purposes. The territory definitions are as follows:<sup>19</sup>

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<sup>17</sup> Facility Association is often referred to as the residual market or market of last resort.

<sup>18</sup> This equates to approximately 10,500 private passenger vehicles.

<sup>19</sup> GISA ASP Manual (<https://www.gisa.ca/Documents/View/2165>).

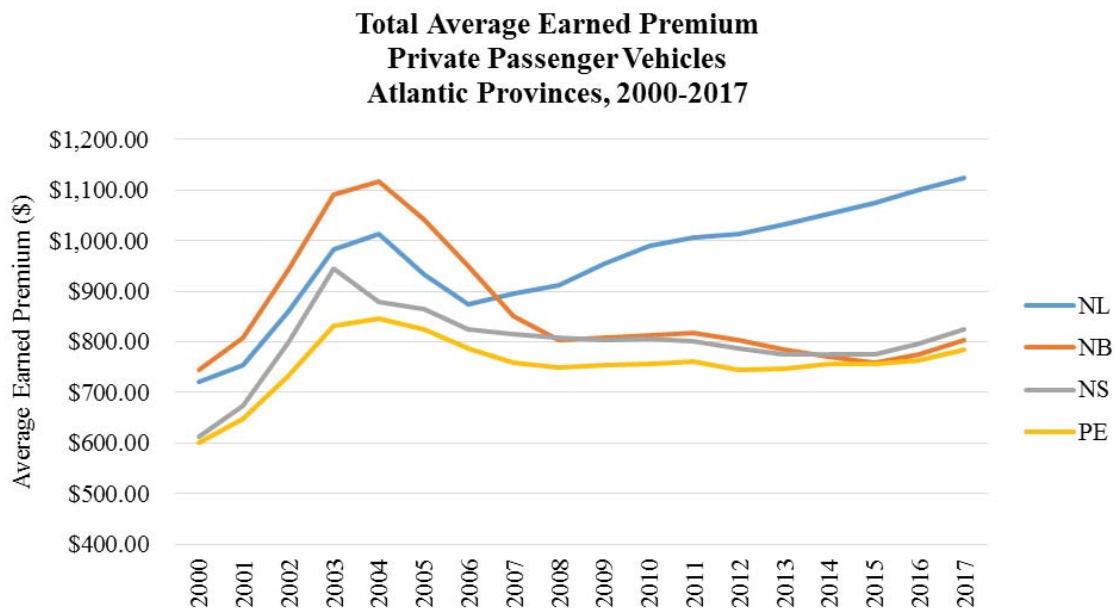
| <b>Newfoundland and Labrador<br/>Automobile Insurance Territories</b> |                             |  |
|---|-----------------------------|--|
| <b>Rating<br/>Code</b>  | <b>Statistical<br/>Code</b> | <b>Description</b>   |
| Territory 1   | 004                         | Avalon District consisting of: City of St. John's including that part of the island east of highway 202 being a line between the communities of Old Shop and Chapel Arm in Trinity Bay to the north and Long Harbour and Ship Harbour in Placentia Bay to the south. |
| Territory 2   | 005                         | Bonavista and Burin District consisting of: That territory east of line drawn from Port Blandford in Bonavista Bay to English Harbour East in Fortune Bay, excluding the Avalon District.  |
|   | 007                         | Remainder of Province consisting of: Those parts of the province of Newfoundland and Labrador, excluding the Avalon, Labrador and the Bonavista and Burin Districts.   |
| Territory 3   | 006                         | The entire District of Labrador.   |

## 4.0 THE COST OF AUTOMOBILE INSURANCE IN NEWFOUNDLAND AND LABRADOR

In 2004 and 2005 automobile insurance reforms were implemented in Newfoundland and Labrador which resulted in premium decreases for insureds. Since that time average premiums have increased steadily and are now the highest in Atlantic Canada. This section provides information on the premiums paid for automobile insurance in Atlantic Canada and the possible reasons for the higher premium levels in this province.

### 4.1 Premiums for Private Passenger Vehicles

The total average earned premium per private passenger vehicle<sup>20</sup> in the Atlantic Provinces over the period 2000 to 2017 is shown below:<sup>21</sup>



According to IBC consumers in this province currently pay 35% more, on average, for automobile insurance than drivers in the Maritimes.<sup>22</sup> The 2017 average earned premium per private passenger vehicle in each of the Atlantic Provinces is shown below:<sup>23</sup>

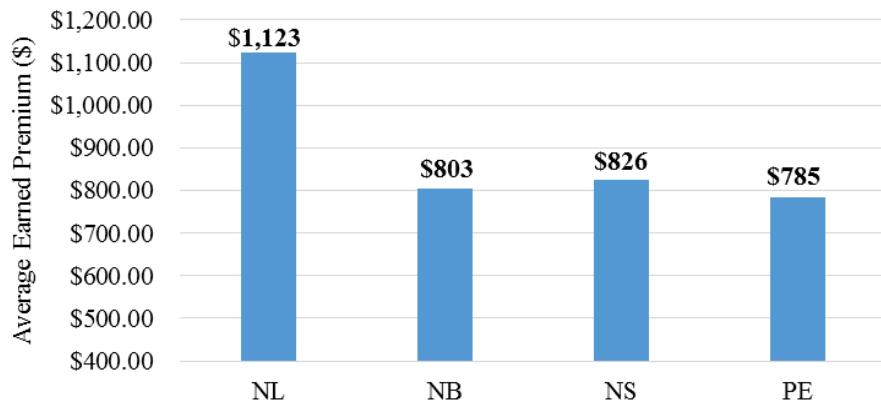
<sup>20</sup> There is a difference between written premium and earned premium. Written premium is the amount of premium charged by an insurer for all insurance policies it has sold during a period, regardless of what portions have been earned. Earned premium is the amount of written premium that is associated with the portion of policy term that has expired. Since the insurance company covered the risk during that time, it can consider the associated premium payments it took from the policyholder to belong to the company. If a policy is cancelled prior to reaching full term any unearned premium must be returned to the policyholder.

<sup>21</sup> GISA Exhibits AU10 and AUTO1010.

<sup>22</sup> IBC Submission, October 12, 2018, page 11.

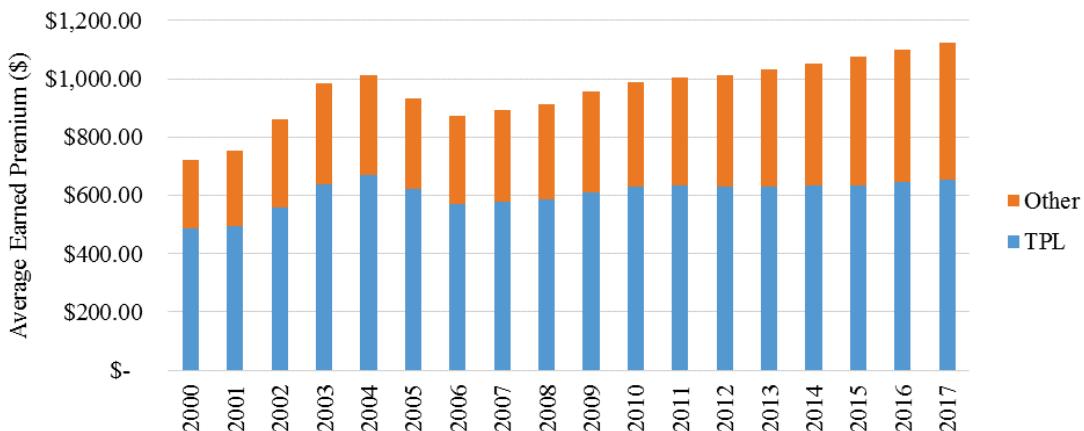
<sup>23</sup> GISA Exhibit AUTO1010.

**Total Average Earned Premium  
Private Passenger Vehicles  
Atlantic Provinces, 2017**



The total average earned premium for private passenger vehicles in Newfoundland and Labrador over the period 2000 to 2017 broken down by Third Party Liability and Other coverages is shown below:<sup>24</sup>

**Total Average Earned Premium  
Private Passenger Vehicles  
Newfoundland and Labrador, 2000-2017**



Following the implementation of the \$2,500 deductible and other reforms in 2004 and 2005 the average Third Party Liability premium increased from \$570 to \$654 and the total average premium increased from \$874 to \$1,123 over the period from 2006 to 2017.

During the review several industry stakeholders commented on the high premiums in this province. Amanda Dean, IBC's Atlantic Vice-President, stated that premiums in this province are too high and explained that the gap between what consumers pay for automobile insurance in Newfoundland and Labrador and the Maritimes has increased from \$14 in 2006 to \$318 in 2017

<sup>24</sup> GISA Exhibits AU10 and AUTO1010.

even though consumers in the Maritime provinces have access to better medical, rehabilitation, and disability income benefits.<sup>25</sup> Intact Financial Corporation (Intact) confirmed that automobile insurance premiums in Newfoundland and Labrador have been the highest in Atlantic Canada since 2007 and that the cost in this province is more than one-third higher than in Nova Scotia. Aviva also confirmed that Newfoundland and Labrador has the highest automobile insurance premiums in the Atlantic region and noted that, according to its survey of 400 drivers, the majority viewed premiums in this province as increasing and as becoming financially difficult.

A number of other comments filed during the review also submitted that the cost of insurance is too high and expressed frustration, with some describing rates as outrageous and excessive. The Canadian Federation of Independent Business (CFIB) explained that insurance costs are one of the largest cost constraints on small business owners in Newfoundland and Labrador and that small businesses have seen insurance costs grow to the extent that it is affecting business expansion. The Canadian Union of Public Employees (CUPE) also raised concerns as to the cost of automobile insurance in this province and noted that premiums in Newfoundland and Labrador are among the highest in the country.

The Campaign submitted that automobile insurance rates in this province have been relatively stable over the last number of years. According to the Campaign, between 2006 and 2017 the average premium for private passenger Third Party Liability coverage increased at an average annual rate of 1.3%, which is less than the increase in the consumer price index. Over the same period, total private passenger premiums increased by an average annual rate of 2.3%.

#### **4.2 Claims Costs for Private Passenger Vehicles**

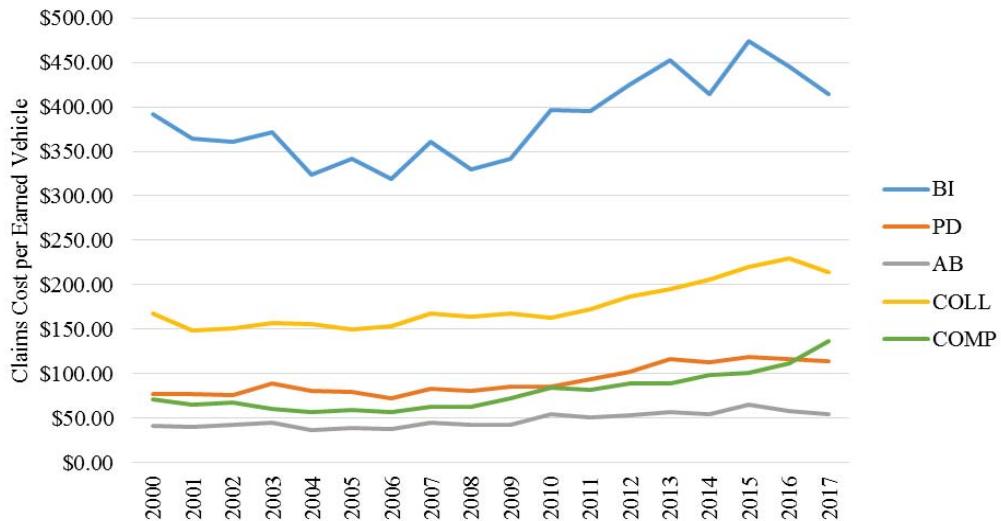
The average claims costs per earned private passenger vehicle in Newfoundland and Labrador over the period 2000 to 2017 is shown in the following chart:<sup>26</sup>

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<sup>25</sup> Transcript, June 12, 2018, pages 2-4.

<sup>26</sup> GISA Exhibit AUTO9001.

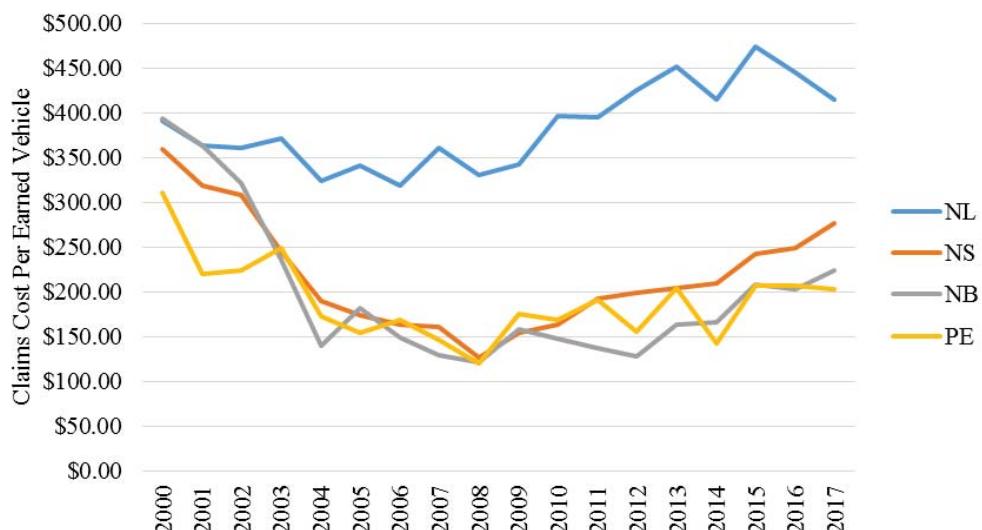
**Average Claims Cost Per Earned Vehicle  
Private Passenger Vehicles  
Newfoundland and Labrador, 2000-2017**



Bodily injury claims represent the highest proportion of total claims incurred for private passenger vehicles by a significant margin. In 2017 bodily injury claims of over \$134 million were reported, accounting for 47.4% of total claims cost in the province. Over the period 2006 to 2017 the average bodily injury claims cost per private passenger vehicle increased by approximately 30%, from \$318.57 to \$414.48.

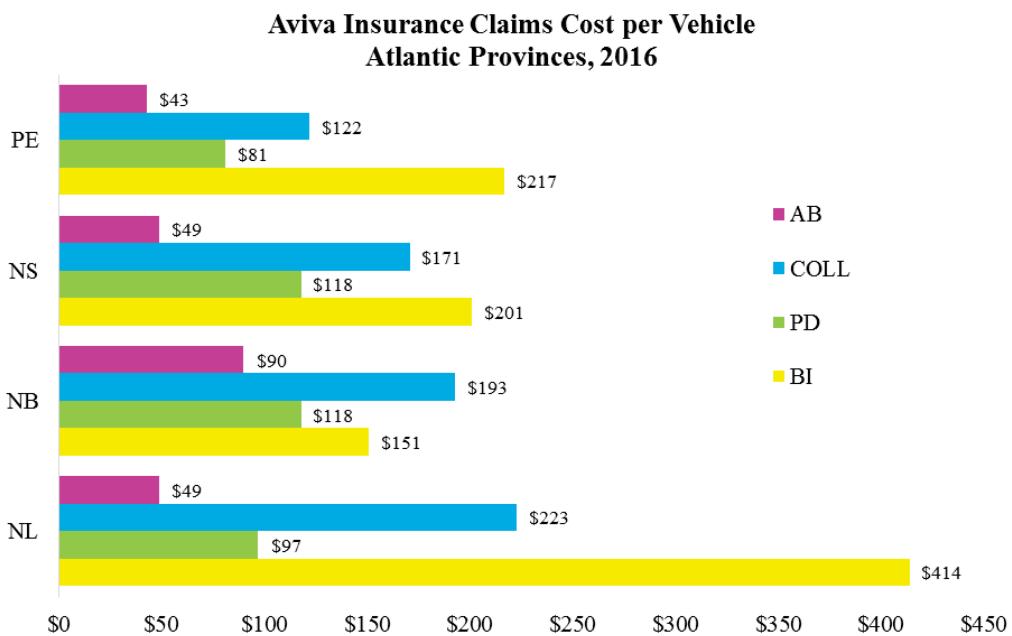
IBC submitted that the reason Newfoundland and Labrador has the highest premiums in Atlantic Canada is because it also has the highest average cost of settling bodily injury claims as shown in the following chart:

**Average Bodily Injury Claims Cost Per Earned Vehicle  
Private Passenger Vehicles  
2000-2017**



In 2017 the average bodily injury claims cost per vehicle in Newfoundland and Labrador of \$414 was 50% higher than in Nova Scotia at \$277, 85% higher than in New Brunswick at \$224 and 104% higher than Prince Edward Island at \$203. According to IBC average bodily injury claims costs are higher in this province because there are relatively few claims of less than \$20,000, which is taken to be a proxy for common minor injury claims. It was noted that only about one-third of bodily injury claims in this province are less than \$20,000 while in the other Atlantic Provinces over two-thirds are less than \$20,000.<sup>27</sup> The Associated Canadian Car Rental Operators provided information in relation to its claims which showed similar results; bodily injury claims were 73% higher in Newfoundland and Labrador with only 26% of these claims under \$20,000, compared with 87% in the other Atlantic Provinces.<sup>28</sup>

Aviva also noted that its bodily injury claims costs for Newfoundland and Labrador are significantly higher than in the other Atlantic Provinces. In its submission Aviva provided information to show that its bodily injury claims costs per vehicle in this province in 2016 were 175% higher than New Brunswick, 106% higher than Nova Scotia and 91% higher than Prince Edward Island as shown below.<sup>29</sup>



According to Oliver Wyman the caps on minor injuries implemented in Nova Scotia and New Brunswick have played a role in lowering average bodily injury claims costs in those provinces as compared to the deductible implemented in Newfoundland and Labrador. During her presentation Paula Elliott of Oliver Wyman explained:

<sup>27</sup> IBC Submission, February, 2018, page 5: Table - Bodily Injury Claims Size Distribution at Three-Year Development Level (2014).

<sup>28</sup> Associated Canadian Car Rental Operators Submission, page 2. This information is based on a sample of this industry's claims experience between 2010 and 2018.

<sup>29</sup> Aviva Submission, May 31, 2018, page 9.

Certainly we can see that the costs of bodily injury in Nova Scotia and New Brunswick is substantially less than in Newfoundland and they're on a different regime, and of course, there are other reasons for differences in costs, like traffic density and modes and weather and all those sorts of things, but certainly that product has lowered the cost of bodily injury claims in total per car there than the regime that was adopted in Newfoundland with the deductible.<sup>30</sup>

In commenting on the bodily injury costs Amanda Dean of IBC explained:

During the same time that those bodily injury costs per vehicle in Newfoundland and Labrador rose steadily, the same costs plummeted in Nova Scotia and New Brunswick. In those provinces, the governments implemented a cap on pain and suffering awards for those with minor injuries. Between 2000 and 2016, bodily injury costs per vehicle were up 9 percent here, but down 51 percent in New Brunswick, and down 42 percent in Nova Scotia.<sup>31</sup>

The Campaign's actuary, Craig Allen, acknowledged there has been an increase in bodily injury average claims costs in the province but suggested that this was not the only Third Party Liability cost driver. According to Mr. Allen over the period from 2001 to 2017 the estimated average Third Party Liability bodily injury severity increased from \$33,789 to \$63,336 compared to an increase in property damage severity from \$2,635 to \$4,489. This resulted in an estimated bodily injury loss cost of \$350 per vehicle in 2017, which was 3.5 times higher than the estimated property damage loss cost of \$100.<sup>32</sup> Mr. Allen noted however that property damage claims costs have increased at a higher rate than bodily injury claims costs and that the share of the Third Party Liability cost per vehicle attributed to property damage had increased from 18.7% to 22.2% over the period 2006-2017. Mr. Allen acknowledged that the average cost to settle a property damage claim is much less than the average cost to settle a bodily injury claim, but noted that the property damage component must also be considered a driver of increased costs when assessing Third Party Liability premiums in the province.<sup>33</sup>

In its submission the Campaign noted its actuary's observation that the higher number of individuals purchasing optional physical damage coverage (e.g. Collision and Comprehensive) appeared to be driving the increase in average total premiums above the growth in the consumer price index and that bodily injury claims settlement costs had only a minor role, if any. According to Mr. Allen, over the period from 2001 to 2017, the percentage of vehicles carrying Collision coverage in Newfoundland and Labrador increased from 63% to 76% and the percentage of vehicles carrying Comprehensive coverage increased from 63% to 81%.<sup>34</sup>

The issue of increased average property damage/physical damage claims costs was also raised during a presentation to the Board on behalf of the Campaign. Valerie Hynes of the Campaign's lawyers panel stated:

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<sup>30</sup> Transcript, June 7, 2018, page 206/17 to page 207/3.

<sup>31</sup> Transcript, June 12, 2018, page 6/8-18.

<sup>32</sup> Campaign – Response to Written Questions from PUB on Craig Allen's Report, August 8, 2018, pages 2-3.

<sup>33</sup> Transcript, September 11, 2018, pages 39-41.

<sup>34</sup> Craig Allen, Actuarial Report for the Campaign to Protect Accident Victims, July 18, 2018, page 10.

...when somebody's in a car accident, the cost of repairing a vehicle today is so much greater than what we saw even five or six years ago. With the technology that's being introduced into vehicles, you know, a bumper we could have replaced years ago for seven or eight hundred dollars, today that same bumper is costing us four to five thousand dollars because of all the sensors and the backup cameras and the additional technology that's being built into these vehicles.<sup>35</sup>

The Campaign questioned why the central focus by IBC and insurers involved in the review was seeking a reduction in bodily injury claims costs given that bodily injury claims settlement costs appear to have played a minor role in increasing premiums. The Campaign further noted that bodily injury claims have been declining in frequency since 2001 and that traffic accidents as reported by the RNC were down by 25% from 2013-2017.<sup>36</sup>

Oliver Wyman's findings did not support the position of the Campaign that bodily injury claims costs have played a minor role in increasing premiums in the province. According to Oliver Wyman, absent a change to the system, the upward pressure on premiums due to increasing bodily injury costs would continue. In response to questioning during the hearing Ms. Elliott stated:

Right, what is forcing premiums to go higher is where your average cost to settle a claim is increasing and in the case of bodily injury our estimate is approximately a 7 percent per year increase in the average cost of a bodily injury claim from year to year. Offsetting that is the fact that as we've, you know, noted from the graphs, are the frequency, the number of claims per 1000 cars insured is declining, so that's helping offset that 7 percent. So if there's no change to the \$2,500 deductible, we are going to continue to see an increase in costs.<sup>37</sup>

#### 4.3 Rate Level Adequacy

Oliver Wyman's analysis of required premiums versus actual premiums suggests that over the period 2012 to 2016 the aggregate actual average premiums paid by consumers, in hindsight, were not sufficient to meet the required average premium levels of the industry.<sup>38</sup> The premium deficiency ranged from 6.8% in 2014 to 16.2% in 2016. The findings are shown in the following table:<sup>39</sup>

| Rate Level Adequacy               |         |         |         |         |         |
|-----------------------------------|---------|---------|---------|---------|---------|
| Average Total Premium per Vehicle |         |         |         |         |         |
| Accident Years 2012-2016          |         |         |         |         |         |
| Accident Year                     | 2012    | 2013    | 2014    | 2015    | 2016    |
| Required Average Premium          | \$1,121 | \$1,115 | \$1,126 | \$1,231 | \$1,281 |
| Actual Average Premium            | \$1,014 | \$1,032 | \$1,054 | \$1,075 | \$1,102 |
| \$ Difference                     | (\$107) | (\$83)  | (\$72)  | (\$156) | (\$179) |
| % Difference                      | -10.6%  | -8.0%   | -6.8%   | -14.5%  | -16.2%  |

<sup>35</sup> Transcript, September 10, 2018, page 180/8-19.

<sup>36</sup> Campaign Submission, October 12, 2018, pages 9 and 28.

<sup>37</sup> Transcript, June 7, 2018, page 204/7-20.

<sup>38</sup> Required premium refers to amount required to cover estimated claims costs, total expenses and a target profit margin whereas actual premium is simply the amount that was collected.

<sup>39</sup> Oliver Wyman, *Profit and Rate Adequacy Review – Private Passenger Automobiles*, March 29, 2018, page 19.

Oliver Wyman noted that, while premium deficiencies were found generally across all coverages, the Third Party Liability coverage, which represents approximately 60% of total premium, exhibited the largest deficiency as displayed in the following table:<sup>40</sup>

| Rate Level Adequacy<br>Average Third Party Liability Premium<br>Accident Years 2012-2016 |        |        |        |         |         |
|--|--------|--------|--------|---------|---------|
| Accident Year  | 2012   | 2013   | 2014   | 2015    | 2016    |
| Required Third Party Liability Premium per vehicle                                       | \$713  | \$712  | \$685  | \$759   | \$767   |
| Actual Third Party Liability Premium per vehicle   | \$629  | \$631  | \$633  | \$634   | \$645   |
| \$ Difference  | (\$84) | (\$81) | (\$52) | (\$125) | (\$122) |

Based on Oliver Wyman's calculations the required bodily injury premium accounted for approximately 74% of the total Third Party Liability premium required on average.

IBC commented that premium increases experienced in Newfoundland and Labrador have not kept pace with claims payouts and that premium levels were inadequate. According to IBC large rate increases or product reforms will be needed to address this problem.<sup>41</sup> Aviva also submitted that its premiums remain inadequate to cover claims and other insurance costs despite recent significant increases. According to Aviva, while its premiums in the province increased by 25.7% from 2008 to 2017 and by a further 10.5% in 2018, its loss trends and rate indications remain high signaling that premiums will continue to rise.<sup>42</sup>

The insurance industry focused on the differences between premiums in Newfoundland and Labrador compared to the other Atlantic Provinces and the need for change in this province. Amanda Dean of IBC stated:

What we're saying is the system needs to change. We're seeing upward pressures on claims, premiums are not covering claims. These systems and proposals that we are discussing in our reports have worked in other provinces, and we believe that they could work in this province in terms of controlling costs for the many to pay for the claims of the few.<sup>43</sup>

#### 4.4 Board Comments

Automobile insurance premiums in Newfoundland and Labrador have increased steadily in recent years such that premiums in this province are now approximately one-third higher than premiums in other Atlantic provinces. As of 2017:

<sup>40</sup> Oliver Wyman, *Profit and Rate Adequacy Review – Private Passenger Automobiles*, March 29, 2018, Appendix A, pages 1-5.

<sup>41</sup> Transcript, June 12, 2018, pages 4-6.

<sup>42</sup> Aviva Submission, May 31, 2018, page 6.

<sup>43</sup> Transcript, June 12, 2018, page 147/18 to page 148/1.

- the total average earned premium in Newfoundland and Labrador is \$1,123 versus \$826 in Nova Scotia, \$803 in New Brunswick and \$785 in Prince Edward Island; and
- the gap between what consumers pay for automobile insurance in Newfoundland and Labrador and the average of what consumers pay in the other Atlantic provinces increased from \$14 in 2006 to \$318 in 2017.

Even with these premium increases the aggregate actual average premiums paid by consumers over the period 2012 to 2016 were not sufficient to meet the required average premium levels.<sup>44</sup> This premium inadequacy ranged from 6.8% in 2014 to 16.2% in 2016 and was estimated to be 17% for 2017.

While the Board heard concerns about the level of premiums in this province not all participants share the same point of view with respect to premiums. The Campaign submitted that premiums have been relatively stable in recent years, and noted that since 2006 automobile insurance premiums in this province have increased at just over the rate of inflation, with premiums for Third Party Liability coverage increasing at less than the rate of inflation. IBC and several insurers argued that premiums are too high, being the highest in Atlantic Canada, and are not sustainable. These different perspectives painted very different pictures, one of business as usual with no intervention required and the other of an underperforming market requiring corrective action.

It was suggested that the reason for the higher premiums in Newfoundland and Labrador is because this province also has the highest average cost of settling bodily injury claims. In 2000-2001 private passenger bodily injury costs were comparable across the Atlantic provinces; however, since that time these costs in this province have steadily increased compared to the costs in the other Atlantic provinces. By 2017 average bodily injury claims costs in Newfoundland and Labrador were approximately 50% higher than in Nova Scotia, 85% higher than in New Brunswick, and 104% higher than Prince Edward Island. While the increases in the optional physical damage coverages contributed in part to the increase in the total premiums, because bodily injury claims costs account for almost half of total premiums, these costs continue to be the main cost driver for premiums. Based on the information provided in the review it is clear that the caps implemented in the other Atlantic provinces in 2003-2004 were more successful in reducing and controlling bodily injury claims costs than the deductible that was put in place in Newfoundland and Labrador at around the same time. It is reasonable to conclude that this is a significant factor in the higher premiums in this province. The question that will have to be answered is whether measures should be taken to reduce this differential and stem the steady climb of rates in this province.

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<sup>44</sup> Required premium refers to amount required to cover estimated claims costs, total expenses and a target profit margin whereas actual premium is simply the amount that was collected.

## 5.0 FINANCIAL PROFITABILITY OF THE AUTOMOBILE INSURANCE INDUSTRY

### 5.1 Introduction

The Board was directed to review the financial profitability of the auto insurance industry in Newfoundland and Labrador.

Automobile insurers have two sources of profit – underwriting profit and investment income. Underwriting profit is derived from the insurance operation itself and is the sum of claim costs, commissions, premium taxes and the insurer's operating costs subtracted from earned premiums. Investment income is the second component of the profit equation and augments revenue from insurance premiums. Since claim payments lag the collection of insurance premiums, insurers have a timing “float” resulting in available funds that can be invested until required to meet claim obligations. Investment income is earned on both the underwriting operations of the company and any available surplus. The investment portfolio of an insurance company generally comprises government and corporate bonds, term deposits, mortgages, shares and other financial investments. A company's return on equity (ROE) is the after-tax profit from both sources, i.e. underwriting operations and investment income, expressed as a percentage of shareholder's equity or surplus. The premiums collected from insureds combined with the earned investment income provide for the payment of claims, operating expenses and a reasonable profit.

### 5.2 Profitability Review

A hindsight review of the financial profitability of the private passenger automobile industry was completed by Oliver Wyman by comparing the total premium charged by insurers in Newfoundland and Labrador for private passenger vehicles in each of the years 2007 to 2016 to the total of:

- i) claim and expense costs related to claims as estimated by Oliver Wyman that insurance companies will pay on claims that occurred in each of these years;
- ii) the operating expense costs reported by IBC through 2011 and by GISA as of 2012 that were incurred in each of these years; and
- iii) an estimated provision for investment income attributed as being earned on the cash flow of the insurance operation and the supporting capital.

Oliver Wyman estimated the industry profit levels realized by private passenger automobile insurers in the province for accident years 2007 to 2016, in aggregate, in terms of percent of premium (POP) and ROE.<sup>45</sup> A summary of the findings is presented in the following table.<sup>46</sup>

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<sup>45</sup> Percent of Premium (POP) is the profits realized as a percent of premium on a pre-tax basis. The advantage of this approach is its simplicity. For example, if the POP is 7%, the consumer can readily understand that for every \$100 in premium paid, \$7 was retained by insurers as profit. Return on Equity (ROE) is the standard approach used by insurance companies and the investment community to measure and report profits on an after-tax basis expressed as a percentage of equity.

<sup>46</sup> Oliver Wyman, *Profit and Rate Adequacy Review – Private Passenger Automobiles*, March 29, 2018, page 2.

| Private Passenger Automobile Insurance - NL<br>Estimated Profit Levels by Accident Year |             |               |
|---|-------------|---------------|
| Accident Year   | POP Pre-Tax | ROE After-Tax |
| 2007  | 8%          | 11%           |
| 2008  | 12%         | 16%           |
| 2009  | 8%          | 11%           |
| 2010  | 5%          | 7%            |
| 2011  | 7%          | 9%            |
| 2012  | 1%          | 2%            |
| 2013  | -3%         | -4%           |
| 2014  | 4%          | 6%            |
| 2015  | -5%         | -8%           |
| 2016  | -6%         | -8%           |

The analysis completed by Oliver Wyman used the Board's Guideline profit provisions of i) target after-tax ROE of 10.0%, ii) premium to surplus ratio of 2:1, and iii) return on investment in the range of 2.8%-4.0%.<sup>47</sup> The Board's guideline ROE of 10% equates to a POP of 7.1%. Oliver Wyman explained that the findings of its profitability review were for all insurance companies in aggregate and were not applicable to any one insurer. The findings were also based on a hindsight review of the experience that emerged and were not intended to suggest that insurance companies intended to achieve the profit levels calculated.

As the above table shows the estimated realized profit levels were equal to or higher than the Board's guideline from 2007 to 2009, and lower than the Board's guideline from 2010 to 2016. Based on these estimates Oliver Wyman found that the premiums charged over years 2007 to 2011, in aggregate, were more than adequate to provide for claims costs, operating expenses and profit. Conversely, premiums charged over years 2012 to 2016 were inadequate, particularly in years 2013, 2015 and 2016 in which industry losses occurred. According to Oliver Wyman:

The relatively lower profit levels for the more recent five accident years are the result of higher loss ratios (particularly so for 2015 and 2016) and lower investment income returns. The higher loss ratio in 2015 is, in part, due to unusually adverse weather conditions; random large losses may also be contributing to the higher loss ratios in these years.<sup>48</sup>

Oliver Wyman presented a comparison of its estimated profit levels to the profit levels reported in the *GISA Financial Information Industry Profit and Loss Report for Private Passenger Automobiles* (FIIP&L Report) exhibits as shown in the following table.<sup>49</sup>

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<sup>47</sup> These profit margin guidelines are set out in the Board's *Automobile Insurance Filing Guidelines* and are to be used by all insurers, with the exception of Facility Association, in calculations for rate level indications in applications to the Board for rate increases. Other proposed return on equity, premium to surplus and return on investment assumptions or calculations may be considered by the Board if documentary evidence and full justification is provided by the insurer.

<sup>48</sup> Oliver Wyman, *Profit and Rate Adequacy Review – Private Passenger Automobiles*, March 29, 2018, page 3.

<sup>49</sup> Since 2012 GISA has prepared and released a report called the “*Financial Information Industry Profit and Loss Report for Private Passenger Automobiles*” (FIIP&L Report) which presents ROE results by province and calendar year, as well as other information from which POP results can be calculated.

| Comparison of Oliver Wyman and FIIP&L Profit Levels |               |        |                 |        |
|---|---------------|--------|-----------------|--------|
| Year  | POP (Pre-Tax) |        | ROE (After-Tax) |        |
|   | Oliver Wyman  | FIIP&L | Oliver Wyman    | FIIP&L |
| 2012  | 1%            | 3.3%   | 2%              | 2.6%   |
| 2013  | -3%           | -0.5%  | -4%             | 0.7%   |
| 2014  | 4%            | -11.5% | 6%              | -12.5% |
| 2015  | -5%           | -13.6% | -8%             | -28%   |
| 2016  | -6%           | 3%     | -8%             | 3.1%   |

This comparison shows that the POP and ROE profit levels estimated by Oliver Wyman and reported in the FIIP&L Report differ rather significantly in a number of cases. Oliver Wyman identified some of the factors contributing to the differences as follows:

- The financial results and profit levels in the FIIP&L Report were presented on a calendar year basis<sup>50</sup> whereas Oliver Wyman's results were presented on an accident year basis.<sup>51</sup>
- The FIIP&L Report calendar year loss estimates reflected the loss reserves booked by insurers as reported to the Office of the Superintendent of Financial Institutions (OSFI) whereas Oliver Wyman's accident year loss estimates represented an estimate of the reserve needs in aggregate.
- The loss ratios used in the FIIP&L Report reflected reinsurance arrangements whereas the loss ratios used by Oliver Wyman did not.
- The implied premium to surplus ratios presented in the FIIP&L Report were based on the allocations completed by insurers whereas Oliver Wyman allocated surplus consistent with the Board's profit provision guideline of a 2 to 1 premium to surplus ratio.
- The FIIP&L Report used different investment income assumptions, expense ratios and tax rates than Oliver Wyman.<sup>52</sup>

Oliver Wyman noted that, despite the differences in approach, both analyses are consistent in that they show that the private passenger automobile insurers in the province did not achieve a level of profit consistent with the Board's profit margin guidelines over the years 2012 to 2016.

During the hearing Paula Elliott of Oliver Wyman was questioned on the inputs used in reaching its conclusions regarding the historical profit levels in the province. In relation to whether Oliver Wyman examined the GISA expense ratios used in the profit analysis for reasonableness and whether any alternate, lower expenses ratios were considered Ms. Elliott explained that Oliver Wyman was asked to look at what the historical profits were. The actual expense ratio provided by GISA was used as opposed to an expense ratio that would be hypothetical.<sup>53</sup> Ms. Elliott stated:

<sup>50</sup> Calendar Year Basis - losses represent the claim payments made during the calendar year plus the change in the loss reserves. Calendar year results do not change after a calendar year is complete. Any changes in loss estimates following the close of a calendar year are reflected in the results for the calendar year in which the change occurred.

<sup>51</sup> Accident Year Basis - refers to the method of arranging loss and exposure data so that all losses associated with accidents occurring within a given calendar year are compared to all premiums earned during the same year, regardless of individual policy periods or when a loss is reported or paid. Changes in loss estimates are matched to the year in which the loss occurred, regardless as to when the change estimate is recorded.

<sup>52</sup> Oliver Wyman, *Profit and Rate Adequacy Review – Private Passenger Automobiles*, March 29, 2018, pages 11-14.

<sup>53</sup> Transcript, September 6, 2018, page 20/6-15.

In terms of the expenses, again repeating myself, we were looking at the hindsight, what they were in the measurements that we did, not what if they were a certain number. In looking forward to expenses, I'm certainly in favour of anything that makes the expense provision in rates lower, so that that reduction in expense cost translates to lower premiums for consumers. It's a very positive thing.<sup>54</sup>

Ms. Elliott was also asked how the return on investment assumptions were arrived at and whether any higher estimated returns based on longer time periods were considered. Ms. Elliott explained that the actual return on investment values reported to OSFI in the audited financial statements were used for the analysis. Ms. Elliott also noted that insurance companies are required to invest conservatively, with the result that most investments are in risk free, low interest government grade bonds.<sup>55</sup> Regarding the suggestion of using a longer time period Ms. Elliott stated:

Well, we want 2017 to reflect what we think is happening, and the more recent timeframe would reflect what would be happening given what's going on in the markets. So, going back to 2002, that might be—I don't know what the number might be. Ten percent. That wouldn't be reasonable to assume that you'd get ten percent in 2017. So, it was the view that the more recent timeframe is indicative of what will happen in the subsequent year.<sup>56</sup>

### 5.3 Presentations, Submissions and Comments

Both the Campaign and APTLA raised issues with Oliver Wyman's approach and findings in its review of insurance industry profitability. The Campaign submitted that Oliver Wyman's profit analysis was flawed in that it relied on inputs of data from insurers, but these inputs were not critically examined. It was suggested by the Campaign that Oliver Wyman should have adjusted some of the inputs in their analysis:

For example, Oliver Wyman ought to have considered reducing the operating expense ratios from those reported by the industry on the basis of volatility in the ratios year-over-year and on the basis that the operating expense ratios were too high for Newfoundland and Labrador relative to other provinces such as Alberta. Further, failing to take into account a larger number of years in the analysis to capture the full insurance or profitability cycle, using late Accident Year loss cost data, likely produced a distorted picture of insurance company profitability by failing to incorporate more reasonable components of the claim and expense side of the ROE equation.<sup>57</sup>

According to the Campaign Oliver Wyman has likely underestimated the profitability of auto insurance companies in the province and overestimated their premium deficiencies during the period 2012-2016. The Campaign pointed to the report of its own experts, Dr. Fred Lazar and Dr. Eli Prisman, which examined the assumptions for ROE, investment income returns and operating expense ratios and the impact of alternate assumptions on the profitability and rate adequacy findings.<sup>58</sup> The Campaign highlighted their experts' conclusions that i) the 10% benchmark ROE

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<sup>54</sup> Transcript, September 6, 2018, page 21/24 to page 22/8.

<sup>55</sup> Transcript, September 6, 2018, page 91/14-20.

<sup>56</sup> Transcript, September 6, 2018, page 52/10-20.

<sup>57</sup> Campaign Submission, October 12, 2018, page 42.

<sup>58</sup>Dr. Fred Lazar and Dr. Eli Prisman, *Estimated Overpayments of Automobile Insurance Premiums in Newfoundland and Labrador, 2012-2016*. Prepared for The Campaign for Accident Victims. July 2018.

is too high and that a 10-year rolling average would be more appropriate, ii) Oliver Wyman's assumptions for the ROE are unrealistically low, iii) the operating expenses accepted by Oliver Wyman needed to be examined to account for increased efficiencies and technology use, and iv) insurers have not left the province and are buying brokerages suggesting the situation is not as bad as claimed.

In a presentation on behalf of the Campaign Dr. Lazar explained his position on the validity of the assumptions used in his analysis:

No, my answer is our analysis, whether you accept it or not, is if you were to have done the right analysis, to do it thoroughly you conclude unequivocally and I'll repeat it again and I hate to repeat things, but premiums are too high, plain and simple, regardless of what expense ratio you plug in, regardless what return on investment you plug in because you used the wrong return on equity.<sup>59</sup>

Dr. Lazar also explained that several companies that frequently reported negative ROEs were excluded from his study since these companies may be operating in the province as loss leaders.<sup>60</sup> Based on his review Dr. Lazar expressed the opinion that ratepayers in this province had made premium overpayments in every year in the range of 8-10% as a result of the required ROE and expenses being too high and the return on investment being too low. On questioning from the Campaign as to whether Oliver Wyman considered excluding companies from its analysis Ms. Elliott stated:

...you're hypothesizing and I'm not prepared to present results on a hypothesis. I'm only prepared, which I did, to present results on the actual data that was available, not to say well, what if I exclude the companies without low negative ROE. You can do that calculation, but that's not what I chose to do because I don't know why their ROE was negative.<sup>61</sup>

The Campaign submitted that "even with the bald acceptance of insurance company claim and expense figures" the Oliver Wyman results confirm that, in its assessment, automobile insurers in the Province have been earning positive ROEs in seven of the last ten years examined.

APTLA stated that it has been shown during the review that the insurance industry as a whole has been profitable, stating:

From the presentations made, the questions asked, and the answers given during these hearings along with the documentation submitted to the board; it is clear that the Insurance Industry as a whole has on an annual basis made profits on its overall business in Newfoundland and Labrador in the approximate amount of \$100 million per year.<sup>62</sup>

This position was shared by others, including the Campaign which stated that "in 2016, automobile insurance companies in NL reported \$100M in underwriting profit (approximately 23% profit from

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<sup>59</sup> Transcript, September 13, 2018, page 174/20 to page 175/4.

<sup>60</sup> A loss leader is a product or service that is offered at a price that is not profitable but is sold or offered in order to attract new customers or to sell additional products and services to those customers.

<sup>61</sup> Transcript, September 6, 2018, page 29/16-24.

<sup>62</sup> APTLA Submission, October 12, 2018, page 3.

\$430M in revenue).<sup>63</sup> The written comments of Seniors Against Insurance Caps repeated the same statement.

APTLA also suggested that manipulation of operating expenses and claim reserves by insurers “leads to inaccurate loss ratios/returns on equity and profitability figures for insurers.”<sup>64</sup> According to APTLA “the insurance industry can hide profits by increasing their claim reserves to make their company look less profitable than they are in reality.”<sup>65</sup> APTLA suggested that IBC applies a supplemental reserve to data supplied to GISA which, according to APTLA, is an inherent conflict. APTLA stated:

The IBC as the paid lobbyist of the insurance companies could easily manipulate the supplemental reserve and could easily hide the insurance company’s profits in doing so. This is exactly what occurred in Nova Scotia in 2002 before the bodily injury cap was placed on accident victims.<sup>66</sup>

During the hearing Ms. Elliott clarified that IBC supplemental reserve amounts were not included as part of Oliver Wyman’s profit analysis and that Oliver Wyman calculated its own figures based on the aggregated industry data.<sup>67</sup> APTLA suggested that Oliver Wyman’s review of this data should not give the Board any comfort given Oliver Wyman’s conflict and lack of independence as a subsidiary company of the Marsh & McLennan Group who relies on insurers in this province for business. Ms. Elliott explained during the hearing that while Oliver Wyman is part of the Marsh & McLennan Group, Oliver Wyman is a separate operation focussed on automobile insurance regulation and that it does not do any work for insurance companies.<sup>68</sup>

APTLA further noted that Oliver Wyman’s response to its request to perform a projected ROE recalculation to adjust for different claims reserve assumptions showed the ROE for 2017 as +8.7% compared to -9% as originally calculated by Oliver Wyman. Based on this information APTLA submitted that the automobile insurance industry is currently earning an ROE of 9% and stated:

The evidence before this Board is that auto insurers in Newfoundland earned healthy profits from 2002 to 2017. There is simply no financial basis to recommend the imposition of restrictions on Newfoundland accident victims given the healthy profits of auto insurers in this province.<sup>69</sup>

In its submission IBC referenced the claims made by APTLA and the Campaign that insurance companies in the province earned profits of \$100 million in 2016 based on information from the Superintendent of Insurance. According to IBC these claims are based on an incorrect understanding of the Superintendent of Insurance publications which do not include additional insurer costs such as commissions, premiums taxes or general expenses. IBC also pointed to Oliver Wyman’s report findings that between 2012 and 2016 actual average premiums have been, on

<sup>63</sup> Campaign Submission, October 12, 2018, page 7.

<sup>64</sup> APTLA Submission, October 12, 2018, page 6.

<sup>65</sup> APTLA Submission, October 12, 2018, page 8.

<sup>66</sup> APTLA Submission, October 12, 2018, page 8. APTLA provided a copy of *Nova Scotia Automobile Insurance Discussion Document* during the review to support this claim (filed as Exhibit 5).

<sup>67</sup> Transcript, September 6, 2018, pages 118-120.

<sup>68</sup> Transcript, June 8, 2018, page 62/4-20.

<sup>69</sup> APTLA Submission, October 12, 2018, page 9.

average, 11.2% deficient and that in 2017 rates were projected to be approximately 15% deficient as evidence that the industry is in a precarious position.<sup>70</sup>

IBC also submitted that, in their report, the Campaign’s experts “make multiple errors in arriving at their claims of ‘premium overpayments’ paid by the province’s drivers”, including misinterpretation of industry return on investment figures, misunderstanding and incorrectly comparing different GISA reports, ignoring the difference in methodology between accident year and financial year data, and relying on an inappropriate ROE model.<sup>71</sup> IBC also pointed to the omission of certain data and companies in the ROE analysis completed on behalf of the Campaign. According to IBC these errors and omissions suggest a lack of understanding by the reports’ authors of the insurance industry, of insurance industry financial calculations and of how auto insurance rates are set and regulated by the Board.

#### 5.4 Board Comments

The Board heard a variety of perspectives as to what constitutes a reasonable profit level for automobile insurers and how insurance company profits should be determined. As a result, a wide range of information and conclusions, often conflicting, were offered in relation to the financial profitability of the automobile insurance industry in Newfoundland and Labrador.

Throughout the review the Campaign and APTLA suggested that the automobile insurance industry in Newfoundland and Labrador earned profits of approximately \$100 million in 2016. This position was also part of public messaging through radio and print advertising. This figure was based on premium and claim information published in the 2016 Report of the Superintendent of Insurance which did not include any provision for general expenses, commissions or premium taxes.<sup>72</sup> It is generally accepted that these expenses are around 27% of the premium, which is estimated to be in excess of \$100 million for 2016. As such the suggestion that the automobile insurance industry in Newfoundland and Labrador earned profits of approximately \$100 million is not correct.

Oliver Wyman conducted a review of the premiums charged by insurers based on actual figures reported as required by regulators in Canada and in this province. Based on this review Oliver Wyman concluded that the automobile insurance premiums charged over the period 2007 to 2011 were more than adequate to provide for claims costs, operating expenses and profit for that period. However, with respect to the years 2012 to 2016 Oliver Wyman found that the premiums were inadequate, particularly for 2013, 2015 and 2016 when the industry incurred losses. Oliver Wyman explained that the relatively lower profit levels for this period are the result of higher loss ratios and lower investment returns with weather conditions and random large losses contributing in some cases.

The Campaign submitted that Oliver Wyman’s analysis produced a distorted picture of insurance company profitability by failing to take into account a larger number of years in the analysis to capture the full insurance profitability cycle. The Board notes that Oliver Wyman used a ten-year

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<sup>70</sup> IBC Submission, October 12, 2018, page 3.

<sup>71</sup> IBC Submission, October 12, 2018, page 6.

<sup>72</sup> 2016 Report of the Superintendent of Insurance, <https://www.servicenl.gov.nl.ca/insurance/pdf/2016.pdf>

period for review and that the profit analysis submitted by the Campaign's experts addressed only a 6-year period from 2011 to 2016. The Board notes that the ten-year period reviewed by Oliver Wyman showed fluctuations in profit from year to year and there is no reason to expect that a longer period of time would be more informative for the purposes of this review.<sup>73</sup> The Campaign also argued that Oliver Wyman ought to have reduced the operating expense ratios for Newfoundland and Labrador to be comparable to other provinces. Although there is validity to trying to find ways to reduce future expenses to be passed on to insureds, since this was a hindsight review of profit levels it is appropriate to include the actual expenses reported in this province.

The Campaign presented the evidence of Drs. Lazar and Prisman who concluded that the automobile insurance industry in this province has been profitable and that consumers have consistently overpaid premiums in the province. In reaching this conclusion the authors used a number of assumptions which IBC suggested were incorrect, such as excluding the data of certain companies, calculating loss ratios based on an average of financial year and accident year results, calculating artificially low expense ratios by excluding a component of general expenses, and calculating return on investment using incorrect assumptions. Given the issues identified with a number of the inputs the Board does not accept the Campaign's expert analysis of industry profitability to be an accurate reflection of the actual profit levels experienced in the province for the automobile insurance sector.

The Board believes that the aggregate results as presented by Oliver Wyman, based on reported industry data, represent a reasonable estimate of the profitability of the automobile insurance industry in Newfoundland and Labrador for the period 2007 to 2017. The Board soundly rejects APTLA's position in relation to the independence of Oliver Wyman, which has served as the Board's consulting actuary for many years, has been retained by automobile insurance regulators throughout Canada, and has completed numerous reviews, reports and hearings related to the automobile insurance industry. The Board believes that the Oliver Wyman analysis provides the most comprehensive and credible estimates of industry profitability available in the circumstances. Based on the results of this review it can reasonably be concluded that premiums for private passenger vehicles were more than adequate to provide for claims costs, operating expenses and profit for the period 2007 to 2011 but have not been adequate for the insurance industry to achieve reasonable profit levels for this class of business since 2012.

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<sup>73</sup> It is noted that there was a detailed discussion of industry profit over the period 1975 to 2004 in the Board's Report to Government, March 2005, pages 105 to 111.

## 6.0 CLOSED CLAIMS STUDY

### 6.1 Introduction

The Board was directed to conduct a closed claims study to determine the costs associated with Third Party Liability/Section A bodily injury claims arising from the use of private passenger vehicles, including the use (or no use) of interim payments and whether Accident Benefits were available.

A closed claims study provides a detailed analysis of costs and other factors relating to claims that have been filed, processed and closed by automobile insurers in the province. Such studies examine patterns and trends of claims, the proportion of different injury categories, the distribution of amounts paid across various heads of damage, and the correlation between injury types, settlement amounts and settlement durations. This data is important in evaluating the impacts that various reform options may have on future bodily injury claims. The last closed claims study for Newfoundland and Labrador was conducted under the direction of the Board as part of the 2005 Automobile Insurance Review. Prior to that, Exactor Insurance Services Inc. conducted a private passenger bodily injury closed claims study on behalf of IBC in 1998.

### 6.2 Closed Claims Study Process

The information which was gathered through the closed claims study was collected from the private passenger vehicle files maintained by individual insurance companies operating in the province. Oliver Wyman collaborated with IBC to design a detailed bodily injury closed claims study. IBC's Data Services Division was responsible for the collection and validation of the closed claims study database and Oliver Wyman completed the analysis of the data. IBC was also the data facilitator in previous closed claims studies completed in other Atlantic Provinces, including the *2010 Nova Scotia Closed Claim Study* and *2011 New Brunswick Closed Claim Study*, both completed under the guidance of the automobile insurance regulatory boards in each jurisdiction.<sup>74</sup>

#### 6.2.1 Claims Survey Development

IBC developed a draft survey questionnaire for company representatives to complete for each claim selected for review for the closed claims study. The draft survey questionnaire was reviewed by Oliver Wyman. As a part of this review Oliver Wyman engaged in discussions with IBC personnel including an actuary and a medical consultant to ensure the survey questions would result in data collection that was thorough and consistent to meet the Board's needs. Following these discussions, Oliver Wyman provided feedback and additional questions to IBC to be incorporated into the final version of the survey. The information which was collected through this survey included information related to the types of injuries that were suffered and the amount and types of damages that were paid.

In addition to the survey questionnaire IBC also developed an Excel form to facilitate the data input by companies and to increase the consistency of the information submitted. This form was reviewed and accepted by Oliver Wyman prior to being finalized.

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<sup>74</sup> Nova Scotia Utility and Review Board (NSUARB) and the New Brunswick Insurance Board (NBIB).

### 6.2.2 Data Collection and Validation

The closed claims study data was collected by the individual insurance companies from their private passenger vehicle files as directed by the *Closed Claims Study Instructions*. Training was provided to these insurers by IBC. IBC conducted three training sessions for more than 40 staff from all reporting companies and also had two dedicated, experienced staff providing continuous guidance and support to the reporting companies throughout the data collection and verification process.

The collection and validation of the closed claims study data began in October 2017 and was completed in February 2018. Six insurer groups participated in the closed claim study, comprised of twenty individual companies which represented 86.7% of the provincial private passenger vehicle market share. The participating insurer groups were: TD Insurance, Aviva Insurance, Intact Insurance, Co-operators Insurance, Royal and Sun Alliance Insurance and Travelers Insurance.

Data quality checks to ensure data integrity were conducted by IBC before accepting the reported data into the closed claims study master file. Each company was requested to submit their first 25 claimant files to IBC for review to identify any data quality issues early and provide appropriate feedback. Since IBC had no access to any supporting documentation or paper files the data quality checks did not equate to an audit process.<sup>75</sup>

The closed claims study database was provided to Oliver Wyman in March 2018 for review of the data for reasonableness and consistency.

### 6.2.3 Claim Sample Size

The initial closed claims database target set by Oliver Wyman was 2,000 claimant files closed during the twelve-month period from July 1, 2016 to June 30, 2017 allocated proportionally based on market share. During the course of the data collection process IBC found that the twelve-month period selected was insufficient to reach the target of 2,000 claimant files and therefore directed each insurer to expand the time period. The final closed claims study database provided to Oliver Wyman included data of 1,977 claimants with claims closed during the period January 1, 2016 to November 30, 2017.

Oliver Wyman's review of the closed claim study data showed that two insurers, Intact Insurance and Royal and Sun Alliance Insurance, had a higher than expected distribution of claimants with more recent accident dates. Following investigation it was determined that system issues prevented these two insurers from reporting claims with older accident dates. Oliver Wyman concluded that this could lead to a potential biased sample and, as a result, decided to exclude all of the claimant data from these two insurers.<sup>76</sup> This resulted in a final closed claims database of 1,741 claimants from 18 insurers representing 74.2% of the provincial market share.<sup>77</sup> Ms. Elliott noted that, even

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<sup>75</sup> NL Closed Claim Study Instructions, Notes to Users, pages 1-4.

<sup>76</sup> This exclusion refers to the insurance companies named Intact and Royal, not the entire insurer group. For example, claimant data from Novex (owned by Intact) and Unifund (owned by Royal) was still included in the closed claims study database.

<sup>77</sup> Transcript, June 5, 2018, pages 137-138 and 179-183.

with the exclusion of data from two companies, the database of 1,741 claimants was still larger than that used in both the Nova Scotia and New Brunswick closed claims studies which were used as the basis of implementing automobile insurance reforms in those provinces in 2010 and 2013, respectively. Ms. Elliott confirmed her confidence in the sample size, stating:

...so in the context of having a good size sample, I'm happy with that. So it would have been nice to have the full sample, all the companies, not exclude two, definitely, but I think the sample size is reasonable.<sup>78</sup>

Ms. Elliott further noted that if the data from the two companies remained in the analysis the level of savings associated with a cap would have been falsely overstated.<sup>79</sup>

### 6.3 Closed Claims Study Findings

Oliver Wyman completed an analysis of the information gathered in the private passenger automobiles closed claims study. Selected findings from this study indicated that:

- 52% of the claimants were between the age of 30 and 60 years at the time of the accident and 30% were under the age of 30.
- 58% of the claimants were female and 42% were male.
- 69% of the claimants were employed.
- 77% of insured drivers were from the metropolitan area of St. John's and the surrounding Avalon district.
- Drivers accounted for 66% of all claimants, passengers of other vehicles accounted for 23%, passengers of the insured vehicle accounted for 7%, and the remaining 4% of claimants were pedestrians or bicyclists.
- Over 98% of all claimants settled their claim and the remainder settled through mediation or at a pre-trial settlement conference. No claims were concluded via binding arbitration or judgement of the court.
- 82% of the claimants had legal representation for their claim settlement.

#### 6.3.1 Claimant Injuries

The closed claims study collected information relating to the injuries suffered by each claimant. Out of the 1,741 claimants, 26% suffered one injury, 35% two injuries, 26% three injuries and 13% four or more. A total of 4,029 injuries were reported.

There were 35 injury types included in the study and insurers were instructed to identify those that best reflected the injuries that the claimants suffered. The 35 injury types were categorized as Class 1, 2 or 3 by IBC based on the level of severity.<sup>80</sup> Class 1 injuries included the least serious injuries

<sup>78</sup> Transcript, June 5, 2018, page 171/1-6.

<sup>79</sup> Transcript, June 5, 2018, page 175/5-19.

<sup>80</sup> Class 1 - single injury or multiple injuries in the same class that are assumed to be minor unless the claimant is assessed and deemed to have a serious impairment.

Class 2 - injuries which may be minor or non-minor injury depending on the severity of the injury itself and the resulting impairment(s) experienced by the individual claimant. If the injury is deemed non-minor or there is a finding of serious impairment, the overall injury determination will be non-minor.

and Class 3 included the most serious. Class 1 injuries were reported 3,172 times, Class 2 injuries were reported 533 times and Class 3 were reported 21 times.

### 6.3.2 Amounts Paid

The 1,741 claimants in the closed claims study database were involved in 1,425 claims which implies an average of approximately 1.22 claimants per claim. The total amounts paid under the main damage categories were as follows:

| <b>Closed Claims Study Payment Amounts</b>  |                          |
|---|--------------------------|
| <b>Damage Payment Category<sup>81</sup></b> | <b>Total Amount Paid</b> |
| General Damages                             | \$57.3 million           |
| Special Damages                             | \$8.5 million            |
| Pre-judgement Interest                      | \$2.4 million            |
| Other <sup>82</sup>                         | \$0.71 million           |

The total settlement costs associated with the 1,741 claimants was \$68.9 million resulting in an average total settlement cost of \$39,580 per claimant. In addition, the total allocated loss adjustment expense costs for these claimants was \$3.9 million which implies an average allocated loss adjustment expense of \$2,227 per claimant.<sup>83</sup> General Damages accounted for the largest portion of the total settlement amount of \$57.3 million and these payments were sub-categorized as follows:

| <b>General Damages Payment Amounts</b>                       |                |
|--|----------------|
| Pain and suffering – net of \$2,500 deductible <sup>84</sup> | \$43.9 million |
| Future Loss of Employment Income                             | \$7.6 million  |
| Future Medical/Rehabilitation/Care                           | \$2.9 million  |
| Future Replacement Services                                  | \$2.9 million  |
| Other  | \$0.1 million  |

Pain and suffering damages represented 64% of the total settlement amount paid. In total, for the 1,741 claimants, the average pain and suffering damage award was \$25,208 and only 11 did not receive a pain and suffering award.

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Class 3 - injuries which are assumed to be non-minor and do not require a claimant undergo a serious impairment assessment.

<sup>81</sup> Special damages compensate for actual out-of-pocket expenses incurred up to settlement such as loss of employment income, loss of other income, medical and rehabilitative care, replacement services and funeral expenses. General damages compensate for the direct effects of the accident/injury such as pain and suffering, future loss of employment income, future medical and rehabilitative care and future replacement services.

<sup>82</sup> Includes punitive, post-judgement interest, no-fault Section B off-set damages and party and party costs.

<sup>83</sup> Allocated loss adjustment expense, or ALAE, are those expenses which can be assigned to a particular claim (e.g. policy reports, legal fees, independent adjuster fees). In contrast unallocated loss adjustment expenses, or ULAE, are more general expenses and cannot be assigned to particular claims (e.g. overhead, salaries, field adjusters).

<sup>84</sup> In Newfoundland and Labrador all pain and suffering settlement amounts are subject to a \$2,500 deductible. The amounts reflected are all net of the deductible.

The following table sets out the average amounts paid for claimants based on injury type:<sup>85</sup>

| Average Payment Amounts by Injury Group |                     |                       |                          |                            |
|---|---------------------|-----------------------|--------------------------|----------------------------|
| Injury Group                            | Number of Claimants | Average Non-Pecuniary | Average Total Settlement | Average Adjustment Expense |
| Class 1 only <sup>86</sup>              | 1,145               | \$20,066              | \$26,954                 | \$1,209                    |
| Class 2 only                            | 39                  | \$19,817              | \$28,616                 | \$3,524                    |
| Class 3 only <sup>87</sup>              | 54                  | \$44,332              | \$81,164                 | \$5,309                    |
| Class 1 and 2 only                      | 1,492               | \$21,895              | \$31,461                 | \$1,590                    |
| Class 2 and 3 only                      | 135                 | \$42,337              | \$80,595                 | \$5,725                    |
| All Combinations                        | 1,741               | \$25,208              | \$39,580                 | \$2,227                    |

As shown above, both the average pain and suffering damages and average total settlement awards were highest for the most severe injury types. In the most severe injury cases the average pain and suffering damages were \$44,332 which accounted for approximately 55% of the total average settlement. The least severe injuries which would most likely meet the definition of “minor” received average pain and suffering damages of \$20,066 which was approximately 74% of the total average settlement.

A comparison to the Board’s 2004 closed claim study is shown in the following table:

| Comparison of Closed Claims Study Results – 2004 and 2018 |                          |                          |
|---|--------------------------|--------------------------|
|   | 2004 study <sup>88</sup> | 2018 study <sup>89</sup> |
| Claimants receiving pain and suffering awards             | 95.9%                    | 99.4%                    |
| Pain and suffering as percent of total claims payments    | 60.4%                    | 63.7%                    |
| Average pain and suffering payment                        | \$13,613                 | \$25,208                 |

This shows that there has been an increase in the percentage of claimants receiving pain and suffering awards, in the proportion of pain and suffering awards in the total settlements paid, and in the average amount of the pain and suffering award.

#### 6.4 Presentations, Submissions and Comments

During the review issues were raised with respect to the closed claim study process. The Campaign submitted that there were significant reliability and validity problems inherent in the process undertaken by IBC and Oliver Wyman. In particular, the Campaign stated that Oliver Wyman did not fulfil its role as an “independent” actuary and that its failure to take proper steps resulted in the potential for bias. The Campaign noted that Oliver Wyman did not have any involvement in the validation of the data collected by IBC, nor was any independent audit of the data performed by Oliver Wyman prior to commencing the analysis. The Campaign argued that this was not adequate given IBC’s lobbying efforts and its role as a proponent of the cap. The Campaign further noted that, while the 2004 closed claim study included the involvement of a medical consultant, an

<sup>85</sup> Oliver Wyman, *Closed Claim Study – Private Passenger Automobiles-Bodily Injury*, April 19, 2018, page 10.

<sup>86</sup> Least severe.

<sup>87</sup> Most severe.

<sup>88</sup> No restriction on pain and suffering was in place at the time of the 2004 study.

<sup>89</sup> 2018 study amounts are net of the \$2,500 deductible.

insurance consultant and a chartered accountant firm, Oliver Wyman did not make any recommendations to the Board that a similar approach should be adopted in preparing the current study. The Campaign found that this demonstrated a lack of rigour in Oliver Wyman's approach.<sup>90</sup>

The Campaign submitted that the failure of Oliver Wyman to take steps to ensure the independence and integrity of the data as well as the expert evidence of Dr. Blidook, a professor of political science at Memorial University, presented on behalf of the Campaign, should cause the Board serious concerns.<sup>91</sup> According to Dr. Blidook it was inappropriate to use data supplied solely by IBC without independent verification given that IBC was an industry advocate actively lobbying for a particular outcome.<sup>92</sup> Dr. Blidook discussed the importance of incorporating effective processes such as independent verification to ensure data integrity. Dr. Blidook questioned the value of IBC's prior experience in collecting data for closed claim studies and stated:

...the two things that we do know is that we're dealing with an advocate or proponent for the industry and so there is an interest in the data that's collected. The fact that something has happened multiple times does not make it an effective process. It doesn't mean that it's been done properly.<sup>93</sup>

According to the Campaign the process was "tainted" and government cannot legitimately use such data in making an important policy decision.<sup>94</sup> APTLA and Spinal Cord Injury NL also raised concerns that the data collection was not as independent or as secure as the data collection process for the previous closed claim study undertaken by the Board.

During the hearing Ms. Elliott commented on the role of IBC in the closed claims study and explained:

Well, I mean, I'll repeat what I've answered earlier, IBC is the service provider for the Superintendent of Insurance. They collect the data from all the insurers. That is their role, their area of expertise. They have done this before. They agreed to facilitate this exercise again of collecting the data. Their role was to manage, train the staff, validate it, check it, and they did it in the past and they did it again.<sup>95</sup>

Ms. Elliott explained that GISA is responsible for the collection of data for the Superintendents of Insurance in various provinces and that GISA has engaged IBC Data Services Division as its service provider for data collection.<sup>96</sup> GISA addressed the independence and oversight of IBC in its submission:

The independence of IBC in its role as GISA's Statistical Service Provider is assured through the oversight of the GISA Operations Unit, which is staffed by public servants

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<sup>90</sup> Campaign Submission, October 12, 2018, pages 20-25.

<sup>91</sup> Dr. Blidook's teaching responsibilities include research methods and data collection and he was presented as an expert in this area.

<sup>92</sup> Dr. Kelly Blidook, *Review of Data and Analysis Report*, July 16, 2018, page 2.

<sup>93</sup> Transcript, September 14, 2018, page 183/24 to page 184/6.

<sup>94</sup> Campaign Submission, October 12, 2018, page 28.

<sup>95</sup> Transcript, June 6, 2018, page 153/11-20.

<sup>96</sup> Transcript, June 6, 2018, pages 160-161; Transcript, June 8, 2018, page 76.

through a Memorandum of Understanding with GISA, and GISA's Statistical Plan Committee.

GISA has developed and utilizes a number of electronic means to promote data integrity in the data collection and validation process. In addition, ASP data is subject to review by GISA's analysts and consulting actuary, insurance regulators and rate boards, including validation of the data by cross-referencing with other external data sources such as the Office of the Superintendent of Financial Institutions.<sup>97</sup>

The issue of independence and bias on the part of IBC acting in its role as an advocacy organization for the insurance industry was also addressed by Ms. Elliott:

I mean, you're expressing that they want to have a minor injury cap, I'm not disagreeing with that. The fact that they have the data and need to provide the data to us, that's just, there's no way around that, but I don't believe that the individuals that are completing, the adjuster, you know completing it has any bias in filling out the form.<sup>98</sup>

Ms. Elliott expressed her confidence in the expertise and independence of IBC based on the history of IBC's work and their area of expertise. Ms. Elliott explained that the Board should have confidence in the data and the results of the closed claim study since Oliver Wyman's findings from similar studies in other jurisdictions completed using the same data collection methodology with IBC have been shown to be reasonable in other jurisdictions and have stood the "test of time". Ms. Elliott stated:

That means that findings that I presented in my report, a similar report to this, have been referenced and used by many actuaries since they were published. In regard to Nova Scotia and in New Brunswick, the percentage changing costs with regards to the reforms that were made. So, we made estimates for those provinces for the superintendents, they were provided, there were hearings on those findings. And my reports and our findings have been used in reference by many actuaries in their rate filings.<sup>99</sup>

Aviva commented that its own internal analysis was consistent with Oliver Wyman's analysis of the entire closed claims sample.<sup>100</sup>

## 6.5 Board Comments

The data collected through the closed claim study formed the basis of the analysis of the impacts of the options for product reform included in this review. Issues were raised during the review by some participants as to whether the processes used in the closed claim study were reasonable and whether the information gathered should form the basis of the decisions to be made in relation to insurance reform in this province.

One of the concerns raised related to the role of the insurance industry in the closed claim study. The fact that the data collection was conducted by individual insurers and was overseen by IBC

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<sup>97</sup> General Insurance Statistical Agency Letter, August 24, 2018, page 2.

<sup>98</sup> Transcript, June 6, 2018, page 75/23 to page 76/14.

<sup>99</sup> Transcript, June 6, 2018, page 61/25 to page 62/12.

<sup>100</sup> Aviva Submission, May 31, 2018, Pages 10-11.

was questioned on the basis that both were strong proponents for the implementation of a cap in this province. The Board understands this concern but notes that the necessary information for the closed claim study was only available from the files of the insurance companies in the province. While the information was collected by the insurers there was considerable oversight throughout the information gathering process. Standard forms and instructions were developed, with input from Oliver Wyman, to be used by the insurers in collecting the data, including a survey questionnaire and excel spreadsheet. In addition there was ongoing oversight and instruction provided by IBC to the individual insurers in the gathering of the information, including data quality checks by IBC's Data Services Division to ensure data integrity. Oliver Wyman also completed its own review of the data received from IBC to ensure data reasonableness and consistency and any issues arising were addressed by Oliver Wyman. Further during the hearing Ms. Elliott explained that she had confidence in the data collected on the basis of the history of IBC's work and area of expertise.

The Board acknowledges that there are inherent limitations associated with any closed claim study. Using the results of such a study to estimate the future impacts of various product reform options is by its nature an imperfect exercise which involves a number of assumptions and judgements and, as such, is subject to all of the uncertainties associated with using past experience as an indication of the future. At the same time, given that the information may be used in important policy decisions relating to insurance reform in this province, it is important to be sure, to the extent possible, that best practices were followed and that the information collected can be reasonably relied upon to reflect the experience in the past period. It was suggested that there was a lack of rigor in the approach to this closed claim study as the Board did not engage a medical professional, an insurance consultant and chartered accountancy firm as was the case in the 2004 closed claim study. The Board notes that, since the last closed claim study, there have been a number of other reviews in the other Atlantic provinces. The process followed in this review was modeled on the process used in recent reviews in Nova Scotia and New Brunswick which, as explained by Ms. Elliott, has since been shown to be reasonable. The Board also notes that there was considerable oversight, review and quality checks by IBC and Oliver Wyman. There was no additional validation or audit processes suggested which the Board believes would be of any material benefit in the circumstances. The Board is satisfied that the results of the closed claim study reasonably reflect the experience for the study period.

## 7.0 CAPS AND DEDUCTIBLES ON PAIN AND SUFFERING DAMAGES

### 7.1 Introduction

The Board was directed to review i) the impact on rates of a monetary cap on claims for non-economic loss for minor/mild injuries and the implications of such a cap for claimants, and ii) the impact on rates of continuing with the current deductible of \$2,500 or increasing the deductible.

Caps and deductibles limit the amount of pain and suffering damages to be paid for injuries sustained in motor vehicle accidents. As discussed earlier pain and suffering damages are intended to compensate for the loss of enjoyment of life, including all discomfort and distress caused by an accident, both physical and psychological, from the date of the accident and anticipated in the future. Since the caps and deductibles do not impact other damage claims an injured person would continue to be entitled to claim economic damages such as loss of income and rehabilitation expenses.

Pain and suffering damages often form a significant portion of total settlements so placing limits on the amount of these damages can lead to savings in claims costs and potentially stability or savings in rates. It is notable that, based on the closed claim study completed as a part of this review, pain and suffering damages represent 64% of the total amounts paid by insurers for bodily injury claims in this province.<sup>101</sup> As previously discussed, this percentage is larger than it was in the 2004 closed claim study when it was approximately 60%. In addition the amount of the average pain and suffering payment increased by 85%, from \$13,613 in 2004 to \$25,208 in this study. The percentage of claimants receiving pain and suffering awards also increased from 95.9% to 99.4%.<sup>102</sup>

Given the significant role of pain and suffering damage payments associated with motor vehicle accidents it is not surprising that these claims have been subject to a number of reforms throughout the country over the years. Most provinces with tort-based systems have implemented restrictions with respect to the amount of these damages arising from a motor vehicle accident.<sup>103</sup> In this province a deductible of \$2,500 on pain and suffering damages arising from motor vehicle accidents was implemented in 2004.

### 7.2 Monetary Cap on Pain and Suffering Damages

The impact on rates of replacing the current deductible in this province with a cap on pain and suffering damages for minor/mild injuries arising from a motor vehicle accident in the amount of \$5,000, \$7,500 and \$10,000 was studied in this review. The definitions of minor/mild injury used in this analysis were assumed to be the same as the definitions currently in place in the other Atlantic provinces.<sup>104</sup>

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<sup>101</sup> Oliver Wyman, *Closed Claim Study – Private Passenger Automobiles – Bodily Injury*, April 19, 2018, page 6.

<sup>102</sup> See Section 6.3.2.

<sup>103</sup> See Section 7.5 discussion of other provinces.

<sup>104</sup> See Exhibit 2.

### 7.2.1 Impact on Loss Costs and Required Premiums

According to Oliver Wyman the introduction of a cap on pain and suffering damages for minor/mild injuries would lead to a reduction in the average total settlements paid to claimants with minor injuries, a reduction in the total claims costs and a commensurate reduction in the total required premiums. Oliver Wyman estimated the impact of a cap on bodily injury loss costs and required premiums for private passenger vehicles as follows:<sup>105</sup>

| Oliver Wyman Minor Injury Reform Estimates – Cap<br>Third Party Liability Bodily Injury<br>Private Passenger Vehicles |   |  |
|---|---|--|
| Cap   | % Reduction in<br>Loss Costs <sup>106</sup> | Average Reduction in<br>Required Premiums <sup>107</sup> |
| <b>\$5,000</b>  | 21% - 27%                                   | \$112 - \$139  |
| <b>\$7,500</b>  | 19% - 24%                                   | \$97 - \$123   |
| <b>\$10,000</b>   | 16% - 21%                                   | \$83 - \$108   |

Oliver Wyman estimated that 66% to 76% of claimants may be subject to a cap under a minor injury definition similar to other Atlantic provinces and presented estimated savings as a range to account for this.<sup>108</sup> Oliver Wyman added that the savings may be even higher if the implementation of a cap influences the propensity of a person injured in a motor vehicle accident to pursue a claim. Based on the reform experience in other provinces including Nova Scotia and New Brunswick, Oliver Wyman stated that in its judgement there is likely a correlation between the cap amount and the likelihood a claim will not be pursued; the lower the cap amount, the higher the likelihood that a claim will not be pursued. In Oliver Wyman's view a cap may reduce the minor injury claims frequency rate for claimants with minor injuries by between 5% and 15% and based on this judgement the following reductions in loss costs and required premiums were estimated:<sup>109</sup>

<sup>105</sup> Oliver Wyman, *Minor Injury Reform Cost Estimates – Private Passenger Automobiles*, May 17, 2018, pages 2-3.

<sup>106</sup> Loss costs include total claims costs and allocated loss adjustment expenses.

<sup>107</sup> The estimated reduction in premiums is based on Oliver Wyman's estimate of the 2017 accident year required average premium as in Oliver Wyman's *Profit and Rate Adequacy Review* report dated March 29, 2018. The reduction in required premiums is the reduction in the amount required by insurers, on average, to cover all costs and expenses, including a profit provision. It does not reflect a reduction in the premium charged to insureds.

<sup>108</sup> Oliver Wyman, *Minor Injury Reform Cost Estimates – Private Passenger Automobiles*, May 17, 2018, pages 12-14.

<sup>109</sup> Oliver Wyman, *Minor Injury Reform Cost Estimates – Private Passenger Automobiles*, May 17, 2018, pages 2-3.

| Oliver Wyman Minor Injury Reform Estimates - Cap<br>Third Party Liability Bodily Injury<br>Private Passenger Vehicles |  |  |   |  |   |  |
|---|--|--|---|--|---|--|
|   | 5% Reduction in Minor Injury Claims Frequency Rate |  | 10% Reduction in Minor Injury Claims Frequency Rate |  | 15% Reduction in Minor Injury Claims Frequency Rate |  |
| Cap Amount  | % Reduction in Loss Costs                          | Average Reduction in Required Premiums | % Reduction in Loss Costs                           | Average Reduction in Required Premiums | % Reduction in Loss Costs                           | Average Reduction in Required Premiums |
| <b>\$5,000</b>  | 23% - 29%  | \$121 - \$151                          | 25% - 31%   | \$131 - \$163                          | 27% - 34%   | \$140 - \$175                          |
| <b>\$7,500</b>  | 20% - 26%  | \$106 - \$135                          | 22% - 28%   | \$116 - \$147                          | 24% - 31%   | \$125 - \$159                          |
| <b>\$10,000</b>   | 18% - 23%  | \$92 - \$120                           | 20% - 25%   | \$102 - \$132                          | 21% - 28%   | \$112 - \$144                          |

Both IBC and the Campaign disagreed with Oliver Wyman that a cap would significantly reduce the bodily injury claims frequency rate. IBC submitted that other factors may have contributed to the bodily injury claims frequency rate declines in Nova Scotia and New Brunswick, including improvements in vehicle safety. IBC noted that across Canada there has been a national trend of declining bodily injury claims frequency rates since the early 2000s, including in Newfoundland and Labrador and British Columbia where there was no cap in place over the period.<sup>110</sup> IBC also stated that, given how much the bodily injury claims frequency rate has declined since the early 2000s, even with a \$5,000 cap, any further decline would be minimal.

The report filed by the Campaign's actuary stated that the minor injury regulations in other Atlantic provinces appear to not have appreciably reduced the bodily injury claims frequency rate beyond the trends that were already in place. According to Mr. Allen, while the claims frequency rate for this province has been higher than that of the other provinces, this gap has generally been constant so it is reasonable to assume that a cap in this province will not reduce the bodily injury claims frequency rate.<sup>111</sup>

During the hearing Paula Elliott of Oliver Wyman acknowledged that predicting consumer behaviour is difficult and that, while she does not know how reforms would affect the bodily injury claims frequency rate in Newfoundland and Labrador, she believes that it is appropriate to suggest that it may change with the introduction of a cap.<sup>112</sup>

Issues were also raised during the review with respect to the fact that Oliver Wyman's estimated reductions in bodily injury loss costs and required premiums included a 25% reduction in the amount of allocated loss adjustment expenses.<sup>113</sup> The Campaign submitted that Oliver Wyman's reduction in allocated loss adjustment expenses was based on judgement and was speculative and should not be relied on. The Campaign also noted that its actuary's opinion was that a cap would

<sup>110</sup> IBC Submission, May 31, 2018, pages 4-5.

<sup>111</sup> Craig Allen, *Actuarial Report for the Campaign to Protect Accident Victims*, July 18, 2018, page 17.

<sup>112</sup> Transcript, June 7, 2018, page 49/17-22, page 190/7-9 and page 223/13-21.

<sup>113</sup> Oliver Wyman explained that data from New Brunswick showed a 38% reduction in allocated loss adjustment expenses with the 2003 reforms (See Oliver Wyman, Responses to questions from the Campaign, July 6, 2018, page 16).

not have a significant impact on these expenses, and that the downward trend in allocated loss adjustment expenses in New Brunswick and Nova Scotia began before the introduction of caps in 2003.

Apart from the analysis completed by Oliver Wyman there was little information provided setting out other actuarial analyses. The Campaign's actuary, Mr. Allen, estimated a reduction in loss costs in the range of 17.4% to 22.4% for a minor injury cap in the amount of \$8,579, the 2018 Nova Scotia cap, using a straight-line interpolation of the Oliver Wyman estimates.<sup>114</sup>

IBC accepted that Oliver Wyman's estimates are within a reasonable range overall and provided the following anticipated bodily injury loss costs savings with the introduction of a minor injury cap, assuming a reduction in the minor injury claims frequency rate of 5%:<sup>115</sup>

| IBC Anticipated Savings Based on IBC Proposed Minor Injury Definition |                         |  |
|---|-------------------------|--|
|   | Reduction in Loss Costs | Reduction in Required Premium <sup>116</sup> |
| <b>\$5,000 Cap</b>  | 27% to 29%              | \$139 to \$151                               |
| <b>\$7,500 Cap</b>  | 24%                     | \$123  |
| <b>\$10,000 Cap</b>   | 21%                     | \$108  |

Intact also provided some information in relation to the potential impact of a minor injury cap on loss costs in Newfoundland and Labrador. An internal analysis by Intact of 388 claims closed between 2011 and 2015 found that a \$2,500 cap resulted in a potential bodily injury loss costs reduction of 23.1% and a \$5,000 cap resulted in a potential bodily injury loss costs reduction of 19.9%.<sup>117</sup>

Based on the information provided during the review the introduction of a cap will result in reduced bodily injury loss costs and reduced required premiums for insurers, though it should be noted that the estimated reductions are based on the industry as a whole, on average, and may not be applicable to any individual insurer or insured. In addition the estimated reductions relate to private passenger automobile insurance and may not be applicable to other classes of business, such as commercial and taxi.

### 7.2.2 Impact on Rates

While the introduction of a cap will result in reduced bodily injury loss costs and required premiums it may not result in rate reductions for automobile insurance consumers in this province. As previously discussed Oliver Wyman found in its profitability and rate adequacy review that rates in this province are currently inadequate to cover all costs and allow insurers to earn a reasonable profit level.<sup>118</sup> Oliver Wyman estimated the forecast average earned premium for 2017

<sup>114</sup> Craig Allen, *Actuarial Report for the Campaign to Protect Accident Victims*, July 18, 2018, page 21.

<sup>115</sup> IBC Submission, May 31, 2018, page 10. IBC proposed that the minor injury definitions in New Brunswick, Prince Edward Island, Ontario, Alberta and British Columbia be used which, according to IBC, cover all injuries that the prevailing medical literature deems minor.

<sup>116</sup> The estimated reduction in premiums is based on Oliver Wyman's estimate of the 2017 accident year required average premium as in Oliver Wyman's *Profit and Rate Adequacy Review* report dated March 29, 2018.

<sup>117</sup> Intact Submission, March 29, 2018, page 4.

<sup>118</sup> See Section 4.3.

would be approximately \$190 lower than required on average. Given that the estimated required premium reduction with even the most restrictive cap was \$175, it would appear that the potential savings would not be adequate to fully address the estimated rate inadequacy and would likely not lead to rate reductions, absent some additional changes.<sup>119</sup> According to Oliver Wyman it is possible that even with the introduction of a cap, consumers may still be faced with short-term rate increases.

During the review it became clear that IBC and the participating insurers also do not expect that the introduction of a cap in this province would result in rate reductions for consumers; rather it was suggested that consumers can expect rate stability. Amanda Dean of IBC explained:

It would depend on-number one, it would depend on company experience, so, some companies may do a lot better in, let's say the first three years than others. Those companies would be able to adjust their rates quicker than some others. So, again, we get back to trying to predict consumer behavior and how all of this is going to impact those claims costs and, of course, the frequency. Will we have no change, will we have increased frequency, or will we have a frequency drop?<sup>120</sup>

The participating insurers, the Campaign, APTLA, Spinal Cord Injury NL and the Consumer Advocate all appeared to accept that consumers should not expect rate decreases with the implementation of a cap. In his presentation Ken Moyse of Rogers Rogers Moyse Personal Injury Law challenged whether consumers can even count on rate stability.

### **7.3 Maintaining or Increasing the Current Deductible**

The Board also reviewed the impact on rates of maintaining the current deductible of \$2,500 on pain and suffering damages arising from a motor vehicle accident, or of increasing the deductible to \$5,000, \$7,500 or \$10,000.

#### 7.3.1 Impact on Loss Costs and Required Premiums

The current deductible on pain and suffering damages in this province of \$2,500 was implemented on August 1, 2004. Maintaining the current \$2,500 deductible with no other changes is expected to have no impact on loss costs or required premiums. Paula Elliott of Oliver Wyman explained that increases in the average cost to settle a claim are driving premium increases and, if there is no change to the \$2,500 deductible, costs will continue to increase.<sup>121</sup>

If the deductible is increased the total settlement amounts would be lower but, as noted by Oliver Wyman, a non-indexed deductible would be subject to erosion over time. As inflation applies to the overall settlement costs over time, the value of a fixed deductible will represent a lower percentage of the settlement costs and the impact of the deductible will therefore be diminished.

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<sup>119</sup> According to Appendix B of Oliver Wyman's *Profit and Rate Adequacy Review* the estimated 2017 accident year required average premium was \$1,322 but the estimated earned premium was \$1,131, based on industry data as of June 30, 2017.

<sup>120</sup> Transcript, June 12, 2018, page 181/13-24.

<sup>121</sup> Transcript, June 7, 2018, pages 203-204.

Oliver Wyman provided the following estimates of the reductions in bodily injury loss costs and required premiums for the various deductible amounts, both with and without erosion:<sup>122</sup>

| Oliver Wyman Minor Injury Reform Estimates – Deductible<br>Third Party Liability Bodily Injury<br>Private Passenger Vehicles |                              |              |  |              |
|--|------------------------------|--------------|--|--------------|
| Deductible   | % Reduction in<br>Loss Costs |              | Average Reduction in<br>Required Premiums <sup>123</sup> |              |
|  | No Erosion                   | With Erosion | No Erosion   | With Erosion |
| <b>\$5,000</b>   | 4%                           | 3% - 4%      | \$23   | \$17 - \$19  |
| <b>\$7,500</b>   | 9%                           | 6% - 7%      | \$45   | \$33 - \$38  |
| <b>\$10,000</b>  | 13%                          | 9% - 11%     | \$65   | \$49 - \$55  |

During the hearing Ms. Elliott compared the impact of a deductible and a cap, explaining:

You know, the issue with a cap, as it was introduced in Nova Scotia and New Brunswick, held it fixed at \$2,500, so that really assisted between the frequency dropping and that lower level held really assisted in keeping their costs of their product low. Contra to that with a deductible, it's like here's your costs and we take this little bit off; whereas with a cap, it's here and it's limited, it wasn't indexed at the time, so there's quite a difference in the impact on the amount paid for non-pecuniary amount with a cap versus a deductible over time.<sup>124</sup>

According to IBC, while deductibles can initially reduce the number of small claims and claims costs, over time the settlements tend to increase until the deductible is just a small cost of doing business.

### 7.3.2 Impact on Rates

An increased deductible is expected to result in a reduction in bodily injury loss costs as well as the premiums required by insurers to cover all costs and a reasonable profit; however, the estimated reductions are much smaller for a deductible than a cap. A cap may result in loss cost reductions of between 18% and 29%, compared to the reductions of between 3% and 13%, estimated for increased deductibles. These reductions are much smaller than required to address the estimated current rate inadequacy.<sup>125</sup>

According to IBC the bodily injury claims cost savings and reductions in required premiums associated with increasing the deductible to \$5,000, \$7,500 or \$10,000 would barely improve market conditions. IBC calculated that, based on Oliver Wyman's analysis, a deductible of \$10,000 would leave consumers facing a potential premium increase of more than \$100.

<sup>122</sup> Erosion factors of -15% and -25% based on actuarial judgement were applied to the estimates which include the consideration of erosion.

<sup>123</sup> The estimated reduction in premiums is based on Oliver Wyman's estimate of the 2017 accident year required average premium as in Oliver Wyman's *Profit and Rate Adequacy Review* dated March 29, 2018.

<sup>124</sup> Transcript, June 7, 2018, page 205/12-25.

<sup>125</sup> See Section 4.3.

## 7.4 Implications for Claimants

The Board was also directed to review the implications for claimants of a cap on claims for pain and suffering for minor/mild injuries. During the review there was a great deal of discussion on the implications of such a cap for claimants and also more generally in relation to any restriction on pain and suffering. It is noted that, in either case, claimants would continue to be entitled to claim all economic losses, including past and future lost wages and rehabilitation expenses.

In terms of who would be affected by the implementation of a cap, while the deductible applies to all claims, a cap would only apply in the case of minor injuries. A cap would have no impact on claimants with serious injuries. While it is not possible to know with certainty how many claimants will be impacted by the implementation of a cap, Oliver Wyman estimated that between 66% and 76% of claimants may be subject to the cap if a minor injury definition similar to the other Atlantic Provinces is implemented.<sup>126</sup>

As to the implications for those claimants that would be affected the presentations and comments received by the Board provided very personal accounts of the impact of injuries suffered in a motor vehicle accident. Della Ryan and Sheila Elliott, presenting as an accident victims panel on behalf of the Campaign, both spoke to how their lives have been changed by injuries suffered in motor vehicle accidents. Ms. Ryan explained that following the accident her healthy lifestyle was gone and that life as she knew it was completely changed. She commented that people often overlook the psychological and emotional aspects of accidents and explained that while she tries to be positive she feels depressed, emotional and very defeated and helpless. When asked to describe the effect of the accident on her life Ms. Ryan explained that it is “horrific” and that it has totally changed her life so much so that she feels that somebody else is living it.<sup>127</sup> Ms. Ryan stated:

Unless you go through this, or you have a family member that goes through something like this, I’m not – I don’t have a cane, I don’t have a walker, you don’t see a cast. To look at me, you really wouldn’t say there’s a whole lot wrong with me, but physically and psychologically, I’m broken. I’m just a broken shell of a person right now...<sup>128</sup>

In her presentation Sheila Elliott explained that she hoped that by sharing her experience people will understand the impact of being injured and the lifestyle that you lead afterwards.<sup>129</sup> She noted that she is still dealing with treatments and pain every day and it impacts her when doing things like laundry or drying her hair. She felt her experience needed to be heard because she can never go back to waking up without pain. She explained: “Like I said, I can’t speak for everybody, but I can speak on my behalf and that’s how I feel, that it will never be okay.”<sup>130</sup>

Several written comments also set out very personal stories in relation to the impacts of injuries suffered in motor vehicle accidents. S.Q. offered a personal story to be considered in the context of the implementation of a cap. S.Q. was struck while on a cross walk and suffered multiple

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<sup>126</sup> Oliver Wyman, *Minor Injury Reform Cost Estimates – Private Passenger Automobiles*, May 17, 2018, pages 12-14.

<sup>127</sup> Transcript, September 10, 2018, page 25.

<sup>128</sup> Transcript, September 10, 2018, page 23/20 to page 24/3.

<sup>129</sup> Transcript, September 10, 2018, page 78.

<sup>130</sup> Transcript, September 10, 2018, page 103/20-23.

injuries, including psychological injuries. According to S.Q. distracted, aggressive or impaired driving should be addressed because fewer accidents would mean lower premiums and safer roads for everyone. S.Q. explained that putting a \$5,000 cap on auto insurance “feels like a slap in the face.”

Another written comment by D.B. shared a story to put a face to what a “little accident” can do to someone’s life and how capping compensation can destroy their life. D.B. explained that their car was stopped when it was struck by another car, likely travelling less than 20 km/h. In relation to the impacts on the passenger in the vehicle D.B. explained:

The affect [sic] of this accident was not a major visible injury or a written off car, but instead long lasting pain that has drastically changed both of our lives. Once able to hike together, stay up all night and work hard all day, we’re left with nothing but those memories. To look at pictures and sometimes even at her public face, my partner wouldn’t seem like she is suffering, but the truth is much different.<sup>131</sup>

Several health care professionals also shared their experience with patients injured in motor vehicle accidents. Dr. Karl Misik, who has been practicing medicine in the province for almost 50 years, explained that he filed a submission to address the long term consequences witnessed by family physicians in treating patients who have been injured in a motor vehicle accident. During his presentation Dr. Misik stated:

Even when individuals have settled whatever they have to settle, we often see the subsequent problems that you referred to in terms of depressive disorder, which is increasing significantly for these types of injuries, fibromyalgia, chronic muscle pains and aches that are not explained by any other thing than just having had a particular traumatic incident, which obviously a motor vehicle accident is, so that the reason why I feel I should be here giving some further context is that we see those types of things years and years later that keep on cropping up, and we also see people 14/15 years later that are still having significant problems from their original soft tissue injuries.<sup>132</sup>

Dr. Misik explained that he may see 40 to 50 individuals a year for injuries associated with a motor vehicle accident and that of these there may be four or five patients that he often sees more than six years later because of a secondary incident that triggers things again.<sup>133</sup>

Dr. Stephen Major, who has been a family physician in the province for the past 23 years, commented:

I have many patients that I follow on a regular basis, with chronic neck and back pain from soft tissue injuries, for many years after they have been involved in an accident, and have settled their accident in litigation. Contrary to the propaganda of the insurance companies, I would like to express that at least 80% of patients I see in my practice with soft tissue injuries, that have chronic pain, continued to have the symptoms long after they have

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<sup>131</sup> D.B. Written Comment, August 20, 2018.

<sup>132</sup> Transcript, September 7, 2018, page 11/25 to page 12/16.

<sup>133</sup> Transcript, September 7, 2018, page 34.

received financial compensation from a litigation. The vast majority of patients I have, would rather not receive any compensation and be able to be pain-free.<sup>134</sup>

Dr. Darrell Wade, on behalf of the Newfoundland and Labrador Chiropractic Association (NLCA), wrote:

Sequelae of some injuries including arthritis or future disc herniation may not show up diagnostically until years afterwards despite the fact that the pain produced by these changes is real and being reported by the patient from the time of injury. As a result, these patients often require ongoing care that far exceeds the duration of what guidelines suggest are the norm.<sup>135</sup>

Dr. Wade quoted the *Bone and Joint Decade Task Force on Neck Pain and Associated Disorders* which suggested that:

Most people with neck pain do not experience a complete resolution of symptoms. Between 50% and 85% of those who experience neck pain at some initial point will report neck pain again 1 to 5 years later. These numbers appear to be similar in the general population, in workers and after motor vehicle crashes.<sup>136</sup>

Viivi Riis, a physiotherapist who has specialized in this area for many years and who has served as an advisor for several tort reforms in various provinces, noted that a small percentage of those who suffer minor injuries may go on to develop prolonged disability or chronic conditions. According to Ms. Riis: “These individuals should not be penalized by a minor injury cap when the effects of their injury lead to serious impairment in the person’s ability to function in their daily life.”<sup>137</sup>

A panel of lawyers, Valerie Hynes, Richard Rogers and Kate McGarry, presented on behalf of the Campaign to provide their experience representing accident victims over a number of years. Ms. Hynes commented:

These are not the people who cause the accident; these are not the people who are impaired driving, distracted drivers and that. These are the victims. They did nothing wrong. They were driving down the road; they were walking on the sidewalk; they were crossing at a crosswalk; they were a passenger in a car with their family member and they are injured in an accident. They can no longer do the things that they are normally able to do; look after the children the way that they want to look after the children; enjoy their life the way they want to enjoy their life; exercise; take care of their health; be less of a burden on our health care system through the activity that they are involved in trying to stay healthy.<sup>138</sup>

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<sup>134</sup> Dr. Stephen Major Written Comment, September 16, 2018.

<sup>135</sup> Newfoundland and Labrador Chiropractic Association Submission, August 28, 2018.

<sup>136</sup> Newfoundland and Labrador Chiropractic Association Submission, August 28, 2018.

<sup>137</sup> Viivi Riis, *Report to Insurance Bureau of Canada: Newfoundland and Labrador Insurance System*, July 25, 2018, page 4.

<sup>138</sup> Transcript, September 10, 2018, page 144/6-23.

According to Mr. Rogers the money is never worth it to his clients who would rather turn back the hands of time and have their health back. Mr. Rogers further commented that Newfoundland and Labrador is the last province without a cap and he is proud that we have resisted this trend.<sup>139</sup> The lawyers panel also raised issues related to access to justice and the disproportionate impact of a cap on certain groups. Valerie Hynes explained that for some people, such as senior citizens, people on a fixed income, stay-at-home moms, caregivers, poor people, and students, non-pecuniary damages would be the majority of their claim and therefore a cap would have a far greater impact on their claim. Kate McGarry also expressed concern in relation to the negative impact of a cap for claimants in rural areas as the lack of resources in these areas may make it difficult for them to prove their claim. The Campaign submitted:

If a cap on minor injuries is implemented these groups, who are far more vulnerable financially to begin with, will stand to lose the vast majority of their right to seek compensation for their losses. Such consequences make a cap on non-pecuniary general damages for “minor injury” unconscionable, in the submission of the Campaign.<sup>140</sup>

Retired Supreme Court Justice Robert Wells, who presented at the request of the Campaign, has had a very long history in civil litigation, particularly in relation to personal injury law and the issues associated with pain and suffering damages. Mr. Justice Wells explained that the role of the judge is to interpret the facts in light of the law and in relation to replacing this judgement with a cap he commented as follows:

So, when somebody talks about taking something away from the Court and putting an arbitrary cap on it, no matter what the cap is, it – it doesn’t seem right to me because the Court is the organ that can give the full treatment and its decision guide what happens in settlements. So that’s my feeling.<sup>141</sup>

APTLA submitted that there was a consensus that for certain already vulnerable populations the imposition of a cap would have a disproportionately negative impact, including students, the unemployed, single mothers, persons with existing injuries or disabilities and the elderly.

Spinal Cord Injury NL submitted that a cap on pain and suffering damages targets vulnerable groups of people such as disabled persons, senior citizens, the poor and single parents, and stated:

These people may not be able to show a loss of income but their ability to do the things they need to do is impacted and that has a value. That value is often compensated through non-pecuniary loss. For instance, a single mother who has no choice but to continue to care for her children in pain and unable to do the things with her children that she once did. A person with mobility impairment, who can no longer engage in community activities as they once did, but cannot display a loss of income has lost quality of life. Finally, a senior citizen, who while retired does not lose income, loses precious time in treatment and recovering, that could have been spent with their family or living an active life. These are the people who will lose the most should a minor injury cap be implemented.<sup>142</sup>

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<sup>139</sup> Transcript, September 10, 2018, page 183/1-11.

<sup>140</sup> Campaign Submission, October 12, 2018, page 52.

<sup>141</sup> Transcript, September 27, 2018, page 127/22 to page 127/4.

<sup>142</sup> Spinal Cord Injury NL Submission, October 12, 2018, page 2.

Spinal Cord Injury NL also submitted that access to justice will become a major issue for accident victims subject to the cap who will more often be unrepresented and have to deal with the insurance industry themselves in relation to both Third Party Liability and Accident Benefits claims. Further Spinal Cord Injury NL argued that a cap would give the insurance industry a weapon in negotiation that automatically places the injured person at a disadvantage. According to Spinal Cord Injury NL there would be an inherent unfairness to persons injured in motor vehicle accidents and a cap would create classes of injured persons, based on the minor injury definition and also based on whether the injury was the result of negligence in the operation of a motor vehicle accident rather than as the result of some other act of negligence.

The disproportionate impact of a cap on seniors was widely discussed during the review. Robert Rogers, President of the 50+ Federation of Seniors Clubs for the province, made a presentation which provided the perspective of seniors. Mr. Rogers noted that in all his meetings across the province and of all the people he has talked to not one was in favour of a cap. He summarized the 50+ Federation's position:

In summary, on behalf of the 150 clubs in Newfoundland and Labrador is totally opposed to any implementation of insurance caps or deductibles. Seniors in the province should have the right to sue for proper compensation if they're involved in a motor vehicle accident as a passenger or a pedestrian. An insurance company should not have the authority to make a decision on compensation as we feel that only the courts should make this decision.<sup>143</sup>

Seniors Against Insurance Cap, another group representing seniors during the hearing, explained that the group has become increasingly concerned about the impact the proposed insurance caps would have on seniors in this province. It was noted that many seniors no longer drive and yet they could become the victim of a car accident either as a pedestrian or passenger. According to this group a cap on insurance claims would have detrimental impacts on these innocent victims, leaving them vulnerable financially and with no ability to challenge the outcome of a settlement. As well, it was noted that many seniors that still drive a car are not in favour of an imposed cap on accident claims that would limit the ability to receive fair compensation.<sup>144</sup>

The implications of a cap on trades people in the province was also raised by Trades NL:

Our trades workers have physically challenging jobs, and work hard every day, often in harsh environments. Many of these same workers are also on the highway daily commuting to work, often times in very bad weather, making them more susceptible to accidents. Combined, these factors make them very vulnerable and hard hit should a cap be placed on compensation for pain and suffering and loss of amenities of life.<sup>145</sup>

Trades NL explained that there have been many instances where members experience an accident, resulting in significant pain, anxiety, life-altering suffering, mental health issues and loss of ability to return to work.

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<sup>143</sup> Transcript, June 13, 2018, page 73/14-24.

<sup>144</sup> Seniors Against Insurance Cap Submission, September 27, 2018, page 1.

<sup>145</sup> Trades NL Submission, September 12, 2018, page 1.

The Campaign submitted that it is important that the human element not be forgotten:

It is the Campaign's position that changes can be made which result in improvements in the insurance system while still maintaining the rights of innocent accident victims such as Della Ryan and Sheila Elliott (from whom the Board heard) to access justice and receive fair and appropriate compensation for pain and suffering based on principles set by the Courts, instead of based on an arbitrary cap proposed by the IBC. It is important that, in the discussion of numbers and profits, the human element not be forgotten. This Board has had the opportunity to hear the impact of motor vehicle accidents on Ms. Ryan and Ms. Elliott. Things that are part of a person's everyday life are no longer possible, whether it be lifting one's child, walking the dog or washing the dishes. These injuries, described as "minor" by the insurance industry (a label even IBC's own consultant, Viivi Riis, disagrees with) are not minor to the person affected or their families. In many cases, as this Board has heard, they are life-altering.<sup>146</sup>

## 7.5 Tort Reforms in Other Jurisdictions

Most provinces in Canada have implemented either a deductible or a minor injury cap on pain and suffering damages arising from a motor vehicle accident.<sup>147</sup> In many cases the initial deductible or cap was subsequently amended to address issues and concerns raised with respect to the amount or the application of the deductible or cap. The experience of the other provinces, especially in relation to the issues and concerns that were raised and how they were addressed, may be informative when considering the approach to be taken in this province.

### 7.5.1 Deductible

Aside from Newfoundland and Labrador only two other provinces have implemented a deductible on pain and suffering damages arising from a motor vehicle accident, as shown below:

| Deductibles on Pain and Suffering Awards |         |                        |          |          |             |
|--|---------|------------------------|----------|----------|-------------|
|  | NL      | SK                     | ON       |          |             |
| Implementation                           | 2004    | 2003                   | 1994     | 1996     | 2003        |
| Deductible Amount                        | \$2,500 | \$5,000 <sup>149</sup> | \$10,000 | \$15,000 | \$30,000    |
|  |         |                        |          |          | \$37,983.33 |

Given the different insurance systems in Saskatchewan and Ontario the experience in these provinces may not be relevant to this province. Saskatchewan operates a publicly run system with two types of automobile insurance to choose from: no-fault coverage and tort coverage. All residents are automatically covered with no-fault insurance unless tort is chosen.<sup>150</sup> Tort coverage allows insureds to sue for additional losses; however, any payments for pain and suffering are subject to the deductible.

<sup>146</sup> Campaign Submission, October 12, 2018, page 3.

<sup>147</sup> See Exhibit 5 for an overview of reform initiatives in other provinces.

<sup>148</sup> In 2015 the \$30,000 cap was indexed to inflation.

<sup>149</sup> SGI - Guide to Choosing Personal Auto Injury Insurance, 2019. This deductible was not indexed and has not changed since it was implemented.

<sup>150</sup> No-fault coverage does not permit insureds to sue for pain and suffering except under very limited circumstances. The \$5,000 deductible is not applicable to any pain and suffering awards in the no-fault coverage.

The insurance system in Ontario is also unique as there is a deductible, a monetary threshold and a verbal threshold which limit pain and suffering awards.<sup>151</sup> Claimants who are able to demonstrate that the injuries sustained are serious and permanent have the right to sue but claims lower than \$126,610.07 are subject to the deductible.<sup>152</sup> The amount of the deductible has undergone a number of changes since its introduction in 1994 when it was initially set at \$10,000.<sup>153</sup> Alan Wynperle, from the Ontario Trial Lawyer's Association, presented on behalf of the Campaign during the review and provided some information in relation to the Ontario experience. Mr. Wynperle stated:

We have had, since 1990, a no-fault or a hybrid legislation where there's accident benefits and there is a limited right to lawsuit and every government has had their hand in changing that balance, but over the last 10 years mostly, there have been significant complaint by the insurance industry of lack of profitability, there have been significant complaint[sic] from insureds that they're paying too much for premiums, and so the government had gone on a probably once every year or two cycle of cutting benefits for insureds, and this is, like I said, generally brought up by the insurance industry who feel that they cannot support the present product at the premiums that are presently existing in Ontario. And I will say that the premiums in Ontario seems[sic] to be, from everything we understand, to be the most expensive in the country.<sup>154</sup>

Mr. Wynperle further commented on the frequent changes in Ontario:

Despite 17 cuts to benefit rights for accident victims in the last eight years, we don't appear to be much better off. Injured people are getting less damages and they're getting less treatment because there's just not as much funding on the accident benefit side, and policy holders are not receiving the benefit of reduced premiums. Sadly, you know, when some of these benefit cuts were implemented, there was temporary reduction in premiums but as of last year, several large insurers have received premium increases in the province of Ontario by our regulator. And so what we see is a system where we're on a carousel, we're on a ferris wheel, we're going round and round and round, we end up in the same spot every two to three years and that's causing the government to take away rights from injured victims which is, in my submission, highly unfair.<sup>155</sup>

### 7.5.2 Cap

At around the same time that the deductible was implemented in Newfoundland and Labrador and Saskatchewan, several other provinces implemented a cap on pain and suffering damages for minor injuries. In addition the province of British Columbia has recently announced that it will also introduce a minor injury cap as of April 1, 2019. The following table sets out the amounts of the minor injury caps in the other provinces:

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<sup>151</sup> Claimants in Ontario must establish medical evidence that the injuries sustained as a result of a motor vehicle accident were serious and permanent. If it is determined that a claimant has not met the threshold test, the claimant has no right to sue.

<sup>152</sup> 2018 figure which is indexed and adjusted on an annual basis. Claims higher than this amount are not subject to a deductible.

<sup>153</sup> See Ontario *Insurance Act*, R.S.O. 1990, c. I.8; Ontario Regulation 461/96.

<sup>154</sup> Transcript, September 12, 2018, page 231/15 to page 232/10.

<sup>155</sup> Transcript, September 12, 2018, page 234/23 to page 235/18.

| Minor Injury Cap Amounts |         |         |         |         |         |         |         |         |
|--------------------------|---------|---------|---------|---------|---------|---------|---------|---------|
|                          | NS      |         | NB      |         | PEI     |         | AB      | BC      |
| Implementation           | 2003    | 2010    | 2003    | 2013    | 2004    | 2014    | 2004    | 2019    |
| Cap Amount               | \$2,500 | \$7,500 | \$2,500 | \$7,500 | \$2,500 | \$7,500 | \$4,000 | \$5,500 |
| 2018 Indexed Amount      | N/A     | \$8,579 | N/A     | \$7,999 | N/A     | \$7,681 | \$5,080 | N/A     |

In addition to the changes to the amounts of the caps, there have also been significant changes in relation to the definition of minor injury over the years. The current definitions of minor injury in provinces with a cap are set out in Exhibit 6.

In Nova Scotia the cap on pain and suffering awards for minor injuries was introduced in 2003 with a definition of “minor injury” which was considered by many to be too broad. In 2010, in response to concerns that were raised in relation to the fairness of the cap, the government of Nova Scotia undertook a review to develop and analyze alternatives and assess the fairness of compensation while ensuring that premiums were affordable.<sup>156</sup> During this review submissions from injured persons impacted by the cap expressed concerns related to insufficient compensation, limited access to legal representation, the types of injuries being classified as minor, delays in obtaining settlements, and a lack of understanding of rights and entitlements under the system. Following the review Nova Scotia introduced reforms to increase the cap to \$7,500 and to provide for annual adjustments indexed to inflation. In addition the definition of “minor injury” was amended so that only sprains, strains and whiplash-type injuries that do not result in serious impairment would be considered to be “minor injuries”.

In New Brunswick the cap on “minor personal injuries” was introduced in 2003 along with several other reforms intended to address insurance cost and availability issues at the time. After implementation of this cap concerns were raised in relation to the types of injuries that were included.<sup>157</sup> In 2011 the New Brunswick government established the Auto Insurance Working Group to review the cap and the definition of “minor personal injury.” It was suggested that the definition was vague, complex and confusing, and did not address injuries of a continuing nature. In 2013 the government of New Brunswick implemented reforms to increase the cap to \$7,500 and to provide for annual indexing. A new definition of “minor personal injury” was also implemented which provided that the cap would apply to the following injuries, including any clinically associated sequelae, that do not result in serious impairment or permanent serious disfigurement: contusions, abrasions, lacerations, sprains, strains, and whiplash-associated disorder. This definition is broader than the Nova Scotia definition as it includes “clinically associated sequelae” which would include injuries such as Temporomandibular Joint (TMJ) disorder and psychological injuries.

In Prince Edward Island the cap on “minor personal injuries” implemented in 2004 did not set out what specific type of injuries were subject to the cap. In 2014, following the changes in the other provinces the government of Prince Edward Island also introduced changes to increase the cap to \$7,500 and to provide for annual indexing. Similar to New Brunswick a new “minor personal

<sup>156</sup> Nova Scotia Automobile Insurance Changes, Discussion Paper Responses, April 28, 2010, [https://www.novascotia.ca/finance/site-finance/media/finance/insurance/DiscussionPaperResp\\_April28.pdf](https://www.novascotia.ca/finance/site-finance/media/finance/insurance/DiscussionPaperResp_April28.pdf)

<sup>157</sup> Response to the Auto Insurance Working Group’s Report, June 2012, <https://www2.gnb.ca/content/dam/gnb/Departments/jus/PDF/publications/ResponseAutoInsurance.pdf>

injury” definition was implemented which included the following injuries, including clinically associated sequelae: a sprain, a strain and whiplash-associated disorder.

It is notable that the definition of minor injury that was adapted by Nova Scotia in 2010 was based on the definition that was implemented in Alberta in 2004. This definition was in place for many years without change until recently following two court challenges. These cases confirmed that TMJ injuries and sprains and strains with psychological and/or pain conditions are not considered minor regardless of the seriousness of the injury and its effect on the injured person’s daily life.<sup>158</sup> According to IBC these decisions caused Alberta’s average bodily injury claims costs to increase by more than 9% per year over a five-year period. The resulting pressure on consumer premiums caused the Alberta government to amend the minor injury definition in 2018. This amended definition makes it clear that some TMJ injuries, as well as some physical or psychological conditions or symptoms arising from sprains, strains and whiplash injuries, are considered minor injuries under the regulations.<sup>159</sup>

The government in British Columbia announced in February 2018 that, to help control the government-run insurers’ bodily injury claims costs and to stabilize premiums, a cap on pain and suffering damages for minor injuries in the amount of \$5,500, indexed to inflation, would be implemented in April of 2019.<sup>160</sup> Changes to the regulations were introduced in November 2018 which set out a minor injury definition similar to Alberta’s amended definition. Several conditions are specifically listed, including “a physical or mental injury, whether or not chronic, a pain syndrome, or a psychological or psychiatric condition.”<sup>161</sup>

Despite years of experience with caps in the other provinces and numerous changes to address issues that have arisen, there continue to be challenges. Recent decisions in Nova Scotia and New Brunswick have addressed issues related to whether injuries caused serious and permanent impairment and are subject to the cap and who bears the burden of proof.<sup>162</sup>

## 7.6 Additional Considerations

There are a number of other considerations which may arise if it is decided that a minor injury cap or an increased deductible for pain and suffering damages should be implemented in this province. These include the amount of the cap or deductible and whether it should be indexed, what form the cap should take, and whether there should be a mandatory rate freeze or reduction at the time of implementation of any reforms.

### 7.6.1 The Amount of the Minor Injury Cap or Deductible

The amount of the deductible or minor injury cap is a critical determination which, as discussed, can have a significant impact in terms of the rates and the implications for claimants.

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<sup>158</sup> *Sparrowhawk v. Zapoltinksy*, Alberta Court of Queen’s Bench, 2012, ABQB 34; and *McLean v. Pamar*, Alberta Court of Queen’s Bench, 2015, ABQB 62.

<sup>159</sup> Alberta Notice 04-2018 <https://www.alberta.ca/insurance-superintendent-bulletins-notices-enforcement.aspx>

<sup>160</sup> BC Gov News, *Government directs changes to make ICBC work for B.C. drivers again*, February 6, 2018.

<sup>161</sup> ICBC Product Change Regulations [https://news.gov.bc.ca/files/ICBC\\_product\\_change\\_regulation.pdf](https://news.gov.bc.ca/files/ICBC_product_change_regulation.pdf)

<sup>162</sup> *Warnell v. Cumby*, [2017] NSSC 88; *Chiasson v. Theriault*, [2018] NB QB 177.

### *Deductible*

During the hearing there was little discussion in relation to whether the current \$2,500 deductible should be maintained or be increased to \$5,000, \$7,500 or \$10,000. During the hearing Paula Elliott of Oliver Wyman suggested that, when we look in hindsight at the \$2,500 deductible, it appears to have had a limited impact on costs.<sup>163</sup> Ms. Elliott also acknowledged that the deductible would have had a greater impact on reducing claims payments and losses over time if it had been adjusted each year (e.g. indexed to inflation).<sup>164</sup>

IBC stated that for a deductible to be effective it needs to be set high. IBC cited the Ontario experience where after the implementation of a \$15,000 deductible in 1996 bodily injury claims costs had increased by 154% by 2002. To control costs the deductible was increased to \$30,000 in 2003 and eventually linked to inflation. Amanda Dean of IBC explained that deductibles erode over time regardless of their size until they become a small cost of doing business.<sup>165</sup>

The Campaign recommended that the \$2,500 deductible be continued and explained that, in its experience, the deductible is included in every settlement discussion and has achieved savings in claims costs without undue harm to innocent victims.<sup>166</sup>

The Consumer Advocate submitted a deductible of up to \$10,000 for pain and suffering damages should be implemented as it would be more difficult to disregard.

### *Minor Injury Cap*

Potential minor injury caps of \$5,000, \$7,500 or \$10,000 were studied in this review. Paula Elliott of Oliver Wyman explained that the experience in the other provinces suggests the amount of the cap can have an impact on the propensity of someone involved in an accident to pursue a claim: the higher the cap the more likely they will pursue a claim.<sup>167</sup>

IBC supported the implementation of a \$5,000 cap indexed to inflation on the basis of the numbers presented in Oliver Wyman's reports, stating that this level of a cap is most likely to "...get the industry out of the red."<sup>168</sup> IBC noted that, while a \$7,500 cap is common in other Atlantic provinces, a high cap brings the risk of allowing bodily injury claim costs to run ahead of inflation thereby reducing its effectiveness at controlling costs. IBC stated:

The savings associated with the \$7,500 and \$10,000 caps are less secure than the savings associated with the \$5,000 cap. That is because the higher caps provide more financial incentive for personal injury lawyers to take on minor injury claims and use the litigation process to increase cash payments even though these common claims can easily settle without legal involvement.

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<sup>163</sup> Transcript, June 7, 2018, page 97/1-5.

<sup>164</sup> Transcript, June 7, 2018, page 136-137.

<sup>165</sup> Transcript, June 12, 2018, page 8/10-15.

<sup>166</sup> Campaign Submission, October 12, 2018, page 73.

<sup>167</sup> Transcript, June 7, 2018, page 184/20 to page 185/8.

<sup>168</sup> Transcript, June 12, 2018, page 158/1-6.

In Nova Scotia, upon increasing the cap in 2010 from \$2,500 to \$7,500 and linking it to inflation, the average bodily injury claim cost increased by 29% in only two years. Since then, the average cost has increased by 4.5% per year, which is significantly more than inflation.<sup>169</sup>

Support for a \$5,000 cap indexed to inflation was also expressed by Intact, The Co-operators, Allstate and Royal and Sun Alliance, as well as the Associated Canadian Car Rental Operators. The Co-operators submitted that other Atlantic Provinces with indexed caps at \$7,500 have not sufficiently contained costs.

#### 7.6.2 Use and Definition of “Minor Injury”

Issues were raised with respect to the definition of the injuries that would be captured by the cap and also the use of the term “minor” to describe these injuries. While this is the term commonly used to describe the injuries which are subject to a cap on pain and suffering damages, a number of participants suggested that this term is not appropriate and that another term should be adopted. Dr. Karl Misik provided his thoughts on the use of the term “minor injury”:

Well, again the term minor in my opinion should not be there at all. There should be a different classification, as already has been talked about, Type 1, Type 2 injury perhaps, and so on, but to consider minor being the definition really begs the question then what does major mean, and major, are we talking about individuals that have substantial brain injuries, broken bones and so on, but there is a gradation of that, and minor, in my opinion, does not exist because as I said, again people may feel somewhat better after two or three months and so on of physio or whatever treatment one prescribes, but it’s the aftermath and the symptoms that relate to mental health that come as a result of the trauma. Trauma, in and of itself, creates significant mental health issues in a great proportion of these individuals down the road, and that is not captured anywhere in these definitions, but yet it is a problem that we deal with on an ongoing basis, and it is a rather difficult to deal with.<sup>170</sup>

During the presentation by the lawyers panel, Valerie Hynes stated:

What I wanted to impress upon you that we’re talking about a minor injury cap, but we don’t profess to feel that there is such a thing as a minor injury. There are various different types of injuries and that have various different impacts on people, but each of those victims of motor vehicle collisions through no fault of their own have suffered an injury that has caused a life altering change to their life and it’s, I think, somewhat insulting to determine it as minor.<sup>171</sup>

Viivi Riis, who presented on behalf of IBC, referenced a study by the Ontario Protocol for Traffic Injury Management (OPTIMA) with respect to defining the injuries subject to the cap. This study concluded that the use of the term “minor” to categorize traffic-related injuries was not appropriate

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<sup>169</sup> IBC Submission, May 31, 2018, page 8.

<sup>170</sup> Transcript, September 7, 2018, page 13/7 to page 14/5.

<sup>171</sup> Transcript, September 10, 2018, page 136/4-15.

and that there was no scientific rationale or merit in continuing to employ the term “minor injury”.<sup>172</sup> The study noted:

These injured persons consistently shared with us their belief that the term “minor injury” is unrepresentative of the actual experiences associated with traffic-related injuries. Many narratives emphasize the perception that vague terms such as “benign”, “temporary”, “transient”, and “non-serious”, and the categorization of “minor injury”, were not helpful; to the contrary they seemed to trivialize and dismiss very real experiences of distress or suffering. Injured person described to us their experiences of unplanned, sudden onset intense pain, and subsequent occupational or domestic disability, sleep disruption and daytime exhaustion, family stress, and psychological and emotional distress. These persons also reported encountering frustration and uncertainty during the course of their recovery.<sup>173</sup>

Ms. Riis suggested that the OPTIMa classification of injuries should be used:

Type I injuries are those traffic injuries which have been shown in epidemiological studies to have a favourable natural history (recovery times ranging from days to a few months). These injuries include musculoskeletal injuries (such as Neck Pain and Associated Disorders (NAD) Grades I-III, Grades I and II sprains and strains of the spine and limbs); traumatic radiculopathies; mild traumatic brain injuries; and post-traumatic psychological symptoms such as anxiety and stress.

Most often, Type I injuries improve within days to a few months of the collision, leaving no permanent, serious impairment. Typically, the impact of even the most effective treatment for Type I injuries is modest, and usually limited to a reduction in symptom intensity.<sup>174</sup>

Ms. Riis agreed that a cap should apply to physical symptoms as well as the sequelae of these injuries, which may include mental and psychological symptoms. With respect to the definition of serious impairment, Ms. Riis referred to the International Classification of Functioning, Disability and Health (ICF) which “conceptualizes a person’s level of functioning as a dynamic interaction between his or her health conditions, environmental factors, and personal factors.” Ms. Riis stated:

Further to these observations, I would recommend against defining serious impairment based on chronological timeline. This is because while patients may experience various symptoms long after an injury is incurred, many are able to participate fully in his/her life while others may not. As the definition of serious impairment in use in other Canadian jurisdictions have aligned with the ICF model of functioning, I recommend looking to these examples as models for adoption in NL.<sup>175</sup>

<sup>172</sup> OPTIMa includes a multidisciplinary team of expert clinicians (from medical, dental, physiotherapy, chiropractic, psychological, occupational therapy and nursing disciplines), academics and scientists (epidemiologists, clinical epidemiologists and health economists), a patient liaison, a consumer advocate, a retired judge and automobile insurance industry experts.

<sup>173</sup> Cote P., Shearer H., Ameis A., Carroll L., Mior M., Nordin M. and the OPTIMa Collaboration. Enabling recovery from common traffic injuries: A focus on the injured person. UOIT-CMCC Centre for the Study of Disability Prevention and Rehabilitation. January 31, 2015, page 6.

<sup>174</sup> OPTIMa Study, January 31, 2015, page 7.

<sup>175</sup> Viivi Riis, *Report to Insurance Bureau of Canada: Newfoundland and Labrador Insurance System*, July 25, 2018, page 6.

The NLCA recommended that reforms that utilize the term “minor injury” not be entertained as research suggests this inappropriately trivializes the complex nature of many injuries sustained in motor vehicle accidents. The NLCA also referenced the OPTIMA study, noting that the threshold for an injury to be classified as Type I is that at least 50% of patients should be expected to recover within 6 months. The NLCA stated:

While this is the threshold that has been set by the researchers, it is evident that there is still a significant opportunity for a large percentage of those classified as having type I injuries to not recover within 6 months and potentially experience and disability that continues beyond 6 months.<sup>176</sup>

According to the NLCA caps on pain and suffering damages should not be linked to the OPTIMA classifications of injury as “these injury classifications are intended only to guide treatment and do not adequately address the impact of pain and suffering on injured parties.”<sup>177</sup> The NLCA highlighted the subjective symptoms often associated with soft tissue injuries such as headaches, joint pain, burning in soft tissues, and other generalized pain symptoms which are difficult to quantify but no less impactful. In addition the NLCA noted that sequelae of some injuries, such as arthritis or future disc herniation, may not show up diagnostically until years after the initial injury and cautioned that the creation and implementation of categorical injury definitions should consider these factors in order to ensure that appropriate access to necessary care is not compromised.

IBC referenced the minor injury definitions in the Atlantic provinces and Alberta and stated that, while these definitions appear to be similar, there are subtle differences. IBC explained that the main difference relates to the term “clinically associated sequelae” and stated:

The terminology is important because it confirms the minor injury cap’s application on people with minor sprains or strains who also report an injury to the temporomandibular joint (TMJ) or psychological and/or pain conditions, which the prevailing medical literature states are often minor.

The Alberta and Nova Scotia definitions omit the “including any clinically associated sequelae” terminology. In Alberta, the omission of this terminology has led to two court decisions stating that TMJ injuries and sprains or strains with psychological and or pain conditions are not minor, regardless of the seriousness of the injury and its effect on the injured person’s daily life. As a result, since the first decision in 2012, Alberta’s average bodily injury claim cost has been increasing by more than 9% annually.<sup>178</sup>

IBC explained that Nova Scotia is now the only province with a definition covering only sprains and strains. In Ontario, New Brunswick and Prince Edward Island the definitions cover sprains, strains and the psychological, emotional, pain or TMJ conditions often ancillary to sprains and strains and, as of June 2018 and April 2019, Alberta and British Columbia will have similar definitions. IBC submitted:

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<sup>176</sup> Newfoundland and Labrador Chiropractic Association Submission, August 28, 2018, page 7.

<sup>177</sup> Newfoundland and Labrador Chiropractic Association Submission, August 28, 2018, page 8.

<sup>178</sup> IBC Submission, March 7, 2018, pages 6-7.

It is also unlikely that a cap based on a minor injury definition modeled after the Nova Scotia definition, which applies only to sprains and strains, would cover the same number of claims as a definition modeled after the New Brunswick definition, which is based on the prevailing medical literature on motor vehicle collision injuries. The prevailing medical literature states that common collision injuries are known to present as clusters of physical, psychological and pain conditions, and that most people with these injuries recover in a few days, weeks or months.<sup>179</sup>

IBC recommended that Newfoundland and Labrador implement a minor injury definition that includes sprains, strains and whiplash injuries, including any clinically associated sequelae, whether physical or psychological in nature that does not result in a serious impairment. IBC explained that the addition of “whether physical or psychological in nature” is meant to confirm the meaning of “clinically associated sequelae” and should clarify to all stakeholders the alignment of the minor injury definition with the prevailing medical literature.<sup>180</sup> This definition was supported by Allstate, Intact, The Co-operators, Royal and Sun Alliance and Associated Canadian Car Rental Operators. The Co-operators submitted that establishing a clear minor injury definition is key and any psychological sequelae of a minor injury should be included or considered as part of the definition. Intact noted that it is important to keep the definition of minor injury current to “close perceived loopholes.”

The Campaign stated in relation to the term “minor injury”:

It is important for the Board to acknowledge that the injuries captured by the so-called “minor injury” definitions in each jurisdiction do not fit with the term “minor” as members of the public normally think of that term. Often these cases took two or even ten years to be heard in Court, and despite the victims’ continuous suffering throughout this period of time, the injuries were ultimately determined to be “minor injuries” because of the Courts’ interpretation of the definition and specifically the interpretation of the “serious impairment” component of the definition.

The Campaign submits that the term “minor injury” is a misnomer cleverly invented by the insurance industry to lull decision makers and the public into believing that the injuries of innocent victims limited by a cap are truly “minor” in the normal sense. In reality, each of these definitions are designed to capture injuries, impairments and disorders that are neither minor nor temporary, contrary to what is suggested in various presentations and submissions from IBC, Intact, Aviva and RSA. These injuries are often permanent, result in major changes in the way a person may work, enjoy their recreational activities, care for loved ones or simply enjoy life, but yet the impact is not enough to be considered a serious impairment of an important bodily function, so it is still considered to be minor and is capped.<sup>181</sup>

According to the Campaign the threshold to get over the minor injury definition is steep and the examples provided by the insurance industry participants do not reflect the fact that the Courts have interpreted very serious injuries to be minor. The Campaign submits that the various

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<sup>179</sup> IBC Submission, May 31, 2018, page 6.

<sup>180</sup> IBC Submission, May 31, 2018, page 3.

<sup>181</sup> Campaign Submission, October 12, 2018, page 50.

definitions of “minor injury” categorize pain and suffering damages as less important and deserving of compensation than lost wages or out of pocket expenses.<sup>182</sup>

APTLA submitted that one of the important points from Dr. Misik’s presentation was his explanation of the inappropriateness/inadequacy of the use of the term “minor injury” when applied to the classification of an injury as opposed to the impact on an individual.<sup>183</sup>

The Consumer Advocate noted that the introduction of a cap in other jurisdictions resulted in litigation to determine whether the claimant’s injuries were within the legislative definition of “minor injury” and this could prove an expensive proposition for consumers in this province.<sup>184</sup>

### 7.6.3 Mandatory Rate Freeze or Reduction

When caps and deductibles have been introduced in the past, both in this province and in other jurisdictions, other coincident reforms to address expected rate outcomes have often also been implemented at the same time. These reforms have included a rate freeze, a rate reduction, mandatory rate filings and requirements with respect to insurer departures from the market.

In 2004, when the current deductible was introduced in this province, the following additional reforms were also introduced:

- A mandated reduction in Third Party Liability premiums in the amount of 9%.<sup>185</sup>
- Mandated reductions of 27% to 37% for Collision, 19% for Comprehensive and 11% for Uninsured Automobiles.<sup>186</sup>
- Regulations were also implemented in relation to insurer departures from the market.<sup>187</sup>

In 2005 Government mandated a further 5% reduction in overall premiums on the basis that significant profits had been reported by industry and that the Board had found that there was between 10% and 12% flexibility in the system to reduce rates.<sup>188</sup>

Similar measures were also adopted in the other provinces at the same time that restrictions on claims for pain and suffering damages were introduced:

- In Nova Scotia when the cap was implemented in 2003 a 20% roll back on rates was implemented with the cap and rates were frozen for a period of twelve months. It is notable

<sup>182</sup> Campaign Submission, October 12, 2018, page 51.

<sup>183</sup> APTLA Submission, October 12, 2018, page 5.

<sup>184</sup> Consumer Advocate Submission, October 12, 2018, page 9.

<sup>185</sup> Based on Oliver Wyman, *Report on Potential Savings Arising From Various Product Changes and Other Considerations Involving Automobile Insurance in Newfoundland and Labrador*, March 8, 2004, Addendum to page 18, March 12, 2004. The introduction of a deductible of between \$2,500 and \$15,000 was associated with potential reductions of between 3.9% and 21.4% for Third Party Liability premiums.

<sup>186</sup> These reductions were related to the information available at the time in relation to rate adequacy for these coverages.

<sup>187</sup> Insurers were required to provide notice of intention to withdraw from the market in the province at least six months prior to leaving or be subject to a fine of between \$100,000 and \$1,000,000. This requirement continues to apply.

<sup>188</sup> NL Government News Release NLIS 1, May 12, 2005.

that the Nova Scotia Utility and Review Board had found in the fall of 2003 that the 2002 automobile insurance rates in the province were as much as 20% inadequate in relation to industry loss experience.<sup>189</sup> A requirement was also introduced at the time that insurers must provide six months advance notice of their intent to withdraw from the market or face a \$1,000,000 penalty.

- In New Brunswick insurers were required to file and justify new rates or face a 20% rollback in rates and, similar to Nova Scotia, insurers were required to provide six months advance notice of their intent to withdraw from the market or face a \$1,000,000 penalty.<sup>190</sup>
- In Prince Edward Island companies were required to revise rates reflecting IBC's announcement that rates could be reduced by 13% with reform.
- In Ontario when additional restrictions were implemented in 2003, government initially implemented a rate freeze and shortly after insurers were ordered to file a 10% rate reduction or a fully supported actuarially justified filing.
- In Alberta when the cap was introduced in 2003 an eighteen month rate freeze was implemented. In addition drivers received a 5% rate reduction in premiums for compulsory coverage.

There was little specific discussion during this review in relation to whether similar measures should be taken in the current circumstances if a minor injury cap or an increased deductible is implemented. During the 2004 review, despite the fact that rates were found to be generally adequate and that there would be savings with the implementation of a deductible, concerns were expressed at the time as to a rollback in rates without taking account of the individual circumstances of individual insurers. In its report to government the Board cautioned:

Whatever product reform Government decides to implement it must be determined with regard to the stability and functionality of the industry or else the reform intended to help consumers could do more harm than good.<sup>191</sup>

There may be even more reason for caution today with respect to these additional measures given the concerns expressed during this review in relation to the current rate level inadequacy and the level of market concentration. In the circumstances it may be prudent to seek further input and analysis before a determination is made with respect to the implementation of additional reforms such as a mandatory rate freeze or a rate reduction.

#### 7.6.4 Legal Representation and Contingency Fees

Concerns were raised during the review in relation to the rate of legal representation in automobile insurance claims in Newfoundland and Labrador and the role of contingency fees paid to lawyers.

IBC submitted that the personal injury lawyer representation rate in Newfoundland and Labrador is unusually high at 82% based on the results of the closed claims study. IBC noted that closed

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<sup>189</sup> Oliver Wyman, *Report on Potential Savings Arising From Various Product Changes and Other Considerations Involving Automobile Insurance in Newfoundland and Labrador*, March 8, 2004, page 4.

<sup>190</sup> Oliver Wyman, *Report on Potential Savings Arising From Various Product Changes and Other Considerations Involving Automobile Insurance in Newfoundland and Labrador*, March 8, 2004, page 5.

<sup>191</sup> Public Utilities Board, *Automobile Insurance Review Report*, March 2005, page 122.

claims studies conducted in Alberta in 2015, New Brunswick in 2011 and Nova Scotia in 2009 indicated personal injury lawyer representation rates between 58% and 63%. IBC further stated:

That so many Newfoundland and Labrador claims have personal injury lawyers is a symptom of the problem that has caused consumers to have to pay hundreds of dollars more for insurance than Maritime consumers even though Maritime consumers purchase higher medical, rehabilitation and disability income benefits.<sup>192</sup>

According to Aviva its internal closed claims study showed that 80% of bodily injury claims had legal representation, which was far higher than in other provinces – 50% for Ontario and less than 30% in Nova Scotia, New Brunswick and Alberta. Aviva submitted that this is a clear sign the system in this province is broken. Aviva recommended a review of lawyer contingency fees be undertaken to ensure that lawyers are paid a fair amount and injured victims receive an appropriate share of their settlement. Aviva stated:

It's not clear to us why there's such a high rate of legal representation in Newfoundland and Labrador. However, we're concerned about the potential amount of money flowing away from injured claimants. It's our understanding that most Personal Injury lawyers in Newfoundland and Labrador work on a contingency fee basis of 30%. This could potentially result in a very large amount of money being directed at lawyers instead of auto accident victims.<sup>193</sup>

Aviva noted that New Brunswick has a contingency fee cap of 25% and recommended that a contingency fee cap of 20% in Newfoundland and Labrador would be a good consumer protection measure.

In a written comment to the Board Vince Porter of Roddickton suggested that contingency lawsuits only encourage frivolous and expensive claims on the part of claimants and lawyers and should not be permitted.<sup>194</sup>

The Campaign submitted that the Board should expressly reject the position taken by the insurance industry on the involvement of lawyers in representing claimants in personal injury claims. The Campaign commented on the importance of the contingency fee arrangement in ensuring access to justice and quoted the Ontario Court of Appeal case *McIntyre v. Ontario* (Attorney General 2002) as follows:

There can be no doubt that from a public policy standpoint, the attitude towards permitting the use of contingency fee arrangements has undergone enormous change over the last century. The reason for the change in attitude is directly tied to concerns about access to justice. Over time, the costs of litigation have risen significantly and the unfortunate result is that many individuals with meritorious claims are simply not able to pay for legal representation unless they are successful in litigation.<sup>195</sup>

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<sup>192</sup> IBC Submission, May 31, 2018, page 4.

<sup>193</sup> Aviva Submission, May 31, 2018, page 18.

<sup>194</sup> Vince Porter Written Comment, August 17, 2018.

<sup>195</sup> Campaign Submission, October 12, 2018, pages 61-62.

Spinal Cord Injury NL expressed concern that unrepresented claimants would have to deal with insurance companies in relation to both Third Party Liability and Accident Benefits claims and that the ability to effectively communicate with even their own insurer is a persistent problem which can provide a barrier to treatment. Further if these people have no legal representation they may not have the knowledge to effectively protect themselves.<sup>196</sup>

The issue of legal costs and contingency fees was also raised by some presenters in the Board's last insurance review.<sup>197</sup> The Board explained at the time that it heard from some participants that contingency fees serve an important function for claimants, while other participants suggested that these fees add to the increased costs in the system. The Board also noted that this issue was raised by the Select Committee in 1998. Further, in Ontario the issue of contingency fees was also reviewed in the Marshall Report review of the Ontario automobile insurance system in 2017. This report noted that contingency fee arrangements are not transparent and recommended changes to ensure these fees are fair, reasonable and more transparent.<sup>198</sup>

#### 7.6.5 Impact on Other Public Systems

The potential for the implementation of a cap or a deductible to shift costs to public systems was raised as a concern during the review. The Campaign submitted that the introduction of a cap would place strain on and shift costs to the health care system of the province and would negatively impact the compensation fund managed by WorkplaceNL. The Campaign noted that it was Dr. Karl Misik's view that the implementation of a cap would result in costs and burdens on resources in the health and medical system.

According to WorkplaceNL and Trades NL the implementation of a cap may negatively affect the workers' compensation system in two ways. Firstly if a cap is introduced it will likely no longer be an attractive option for a worker involved in a workplace vehicle accident to elect to pursue legal action with a significant number of workers electing to receive compensation benefits instead. WorkplaceNL noted that, in the last three years, between 66 and 71 workers elected to pursue a legal action instead of claiming compensation benefits. Secondly if a cap or increased deductible is implemented the ability of WorkplaceNL to pursue a legal action against the party who caused the accident will be impaired. In the last three years WorkplaceNL noted that it collected between \$1,820,880 and \$2,933,057 as a result of legal actions in relation to workplace vehicle accidents. Trades NL also expressed concerns in relation to the increased use of Workers' Compensation and thus an increase in premiums to employers and employees.

#### **7.7 Position of the Participants on Caps and Deductibles**

IBC supported the implementation of a cap in the amount of \$5,000. According to IBC, because a deductible is unable to keep claim costs stable, all other provinces with tort-based auto insurance legislation have or are implementing a minor injury cap.<sup>199</sup> IBC submitted that minor injury caps

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<sup>196</sup> Spinal Cord Injury NL Submission, October 12, 2018, page 3.

<sup>197</sup> Public Utilities Board, *Automobile Insurance Review Report*, March 2005, pages 97-98.

<sup>198</sup> David Marshall, *Fair Benefits Fairly Delivered: A Review of the Auto Insurance System in Ontario*. Final Report. April 11, 2017, pages 58-60.

<sup>199</sup> IBC Submission, May 31, 2018, page 4.

have proven more effective at controlling bodily injury claim costs than deductibles and in the provinces that implemented caps, bodily injury claim costs continue to be lower than before the caps came into effect. IBC noted that rates in Newfoundland and Labrador are 35% higher than the other Atlantic Provinces. IBC submitted that Oliver Wyman's reports demonstrate that significant bodily injury claim cost savings are needed to improve market conditions and protect consumers from potentially large premium increases.<sup>200</sup> IBC stated:

To achieve close to the 30% bodily injury claim cost savings needed to improve market conditions, protect consumers from potentially large premium increases and accommodate the enhanced accident benefits, the government should establish a \$5,000 cap. The cap should be linked to inflation and apply to all injuries that the prevailing medical literature deems minor.<sup>201</sup>

Support for a \$5,000 cap indexed to inflation was also expressed by the participating insurance companies, Intact, The Co-operators, Allstate and Royal and Sun Alliance as well as the Associated Canadian Car Rental Operators. The Co-operators submitted that the implementation of a \$5,000 cap in conjunction with increased Section B benefits may translate to a reduction in the number of tort claims, speedier settlements and better outcomes for consumers in the province. Aviva, on the other hand, recommended an optional tort model where consumers choose whether they can claim pain and suffering damages in the case of an accident, with the basic policy excluding pain and suffering coverage except in the case of defined serious injury.<sup>202</sup> Aviva also provided the results of a survey of 400 drivers in the province and reported that 90% were in favour of a cap on pain and suffering claims if it would result in lower car insurance premiums, and further that 67% supported making the right to sue an optional benefit which could be purchased as part of their policy. Insurance Brokers of Newfoundland and Labrador (IBAN) did not take a position on the implementation of a cap or a deductible but did set out a number of advantages and disadvantages for each.

While the insurance industry and others expressed strong support for a cap there was equally strong opposition to the implementation of a cap from other participants in the review. The Campaign set out its position in its submission:

A “minor injury” cap on pain and suffering compensation will do nothing to reduce insurance rates currently being paid by Newfoundlanders and Labradorians, but will serve to act as a draconian denial of the ability of an individual to access justice. The insurance industry has confirmed this fact publicly. At best, a cap may reduce insurance company claims costs and increase insurance company profits.<sup>203</sup>

The Campaign calculated that Oliver Wyman's estimated annual premium reductions with the implementation of a \$5,000 cap would translate to savings of only \$9.33 to \$11.60 per month if these savings were passed on to consumers, stating:

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<sup>200</sup> IBC Submission, May 31, 2018, page 3.

<sup>201</sup> IBC Submission, May 31, 2018, page 10.

<sup>202</sup> Aviva explained that similar models can be found in Saskatchewan and New Jersey and this option has significantly reduced litigation and freed up courts.

<sup>203</sup> Campaign Submission, October 12, 2018, page 71.

Meanwhile, these meager monthly savings would come at an extreme cost to accident victims (upwards of 76% of all claimants would be “capped” based on the Closed Claim Study results) who would have their right to access justice and to receive fair compensation for often very serious losses, effectively eradicated or severely curtailed.<sup>204</sup>

The Campaign further stated:

IBC now admits that a cap will not reduce, as originally argued, but only “stabilize” overall insurance rates. The “problem”, as defined by IBC, does not exist. The cap is a “solution” to a non-existent “problem”.<sup>205</sup>

Concerns were also raised by the Campaign in relation to the experience in other provinces:

This cautionary tale from the Ontario experience should caution Government on the effects of tinkering with the automobile insurance system in the Province for concern of ending up in a situation like Ontario where premiums have continued to rise despite cuts to damages and benefits, or where “minor injury” caps ultimately do little to prevent insurance rate increases by insurers, but serve to severely limit the rights of innocent accident victims.<sup>206</sup>

The Campaign suggested there is overwhelming opposition to a “minor injury” cap, noting that 26 submissions opposed or did not support a cap and only eight supported a cap. The Campaign highlighted the results of a survey presented by the panel of lawyers which showed that:

- 69% believe a cap will mean more profits for insurance companies;
- 62% believe that a cap will not lower insurance premiums;
- 70% agree that a cap would take away a victim’s right to fair compensation;
- 77% agree that insurance companies should not have the power to decide what is fair compensation for injuries; and
- 70% oppose a \$5,000 cap on claims for pain and suffering.

It was the Campaign’s position that the current \$2,500 deductible should be maintained.

APTLA submitted that the evidence does not support an insurance crisis mandating any type of restriction on legal rights on Newfoundland and Labrador accident victims. APTLA concluded:

There is simply no basis whatsoever to recommend the imposition of restrictions on Newfoundland accident victims given the enormous impact on victims and the objectively healthy profits of auto insurers in this province.<sup>207</sup>

According to the Consumer Advocate the value of a cap to consumers remains unclear. The Consumer Advocate noted that Oliver Wyman estimated that a \$5,000 cap would result in anywhere from \$112 to \$175 in average premium reduction but that, according to Amanda Dean

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<sup>204</sup> Campaign Submission, October 12, 2018, pages 31-32.

<sup>205</sup> Campaign Submission, October 12, 2018, page 70.

<sup>206</sup> Campaign Submission, October 12, 2018, page 37.

<sup>207</sup> APTLA Submission, October 12, 2018, page 12.

of IBC, after the introduction of a \$5,000 cap insurance bills would stay the same initially until claims pressures are relieved. The Consumer Advocate stated:

Currently our Courts determine the value of claims, rather than pre-determined legislative definitions. Consumers should maintain their right to access the Court system unencumbered. The imposition of caps will impact adversely on consumers generally. On balance after considering all of the evidence it is difficult to conclude that the introduction of a cap would be an improvement or translate into long term stable rates for consumers.<sup>208</sup>

The Consumer Advocate submitted that there is varying evidence concerning the profitability of the insurance industry in this province and its long term sustainability, concluding:

On balance after considering all of the evidence, it is in the best interests of consumers at this juncture to continue with a deductible regime, but one which will ensure reduced and sustainable premiums. A change to the legislation referenced above with an increase in the deductible of up to \$10,000 is therefore recommended.<sup>209</sup>

According to the Consumer Advocate this deductible would be more difficult to disregard and could serve to balance the interests of insurers and consumers, provided that the insurers are committed to premium reduction and long-term premium stability. The Consumer Advocate also suggested that the deductible could be optional for consumers.

## 7.8 Board Comments

The implementation of additional restrictions on pain and suffering damages arising from a motor vehicle accident proved to be the dominant issue in this review. A number of issues and concerns related to increasing the current deductible of \$2,500 or implementing a cap on minor injuries were addressed, including the estimated rate impacts and the implications for claimants.

### *Impact on Rates of a Cap or An Increased Deductible*

Considering the Oliver Wyman analysis as well as the other information, opinions and comments provided during the review the Board believes that it is reasonable to expect that the introduction of a minor injury cap or an increased deductible in this province would result in the following range of reductions in bodily injury loss costs and the premiums required by insurers.<sup>210</sup>

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<sup>208</sup> Consumer Advocate Submission, October 12, 2018, pages 9-10.

<sup>209</sup> Consumer Advocate Submission, October 12, 2018, page 10.

<sup>210</sup> These estimates reflect a reduction in minor injury claims frequency of 5% and a drop in allocated loss adjustment expenses on the basis of the information provided in Oliver Wyman's *Minor Injury Reform Cost Estimates* report dated May 17, 2018, Paula Elliott's presentation and IBC's estimates.

| <b>Estimated Reductions in Bodily Injury Loss Costs and Premiums Required by Insurers<br/>Minor Injury Cap and Deductible Options</b> |  |   |  |   |
|---|--|---|--|---|
| <b>Amount</b>   | <b>Minor Injury Cap</b>                      |   | <b>Deductible</b>                            |   |
|   | <b>%<br/>Reduction<br/>in Loss<br/>Costs</b> | <b>Average<br/>Reduction<br/>in Required<br/>Premiums</b> | <b>%<br/>Reduction<br/>in Loss<br/>Costs</b> | <b>Average Reduction<br/>in Required Premiums</b> |
| <b>\$5,000</b>  | 23% - 29%                                    | \$121 - \$151   | 3% - 4%                                      | \$17 - \$23                                       |
| <b>\$7,500</b>  | 20% - 26%                                    | \$106 - \$135   | 6% - 9%                                      | \$33 - \$45                                       |
| <b>\$10,000</b>   | 18% - 23%                                    | \$92 - \$120  | 9% - 13%                                     | \$49 - \$65                                       |

It is notable that, because rates were estimated to be inadequate, on average, by approximately \$190, it is unlikely that either of these reforms would result in a reduction in overall premiums in this province. While the implementation of a cap would result in larger reductions as compared to an increased deductible, even a \$5,000 minor injury cap would be insufficient to offset the estimated rate inadequacy. Further in the circumstances it is possible that even after the introduction of a cap or an increased deductible, consumers may continue to experience short-term rate increases.

#### *Implications for Claimants*

During the review, the Board heard from a number of people that had been injured in a motor vehicle accident as well as professionals who work in this area, including doctors, chiropractors, physiotherapists, massage therapists and legal professionals. The very honest and personal stories that were presented demonstrated very clearly how dramatically a person's life can be changed by something as simple as a small "fender bender." Soft tissue injuries suffered in a motor vehicle accident are often not outwardly visible and can be difficult to objectively measure. Further assessing the extent of the impact is, by its very nature, subjective as pain and suffering damages often cannot be quantified in the same manner as physiotherapy expenses or a lost day's wages. Nevertheless the seriousness of these injuries and the impact on the lives of those affected was clearly demonstrated during the review by those that have been injured and by the professionals who work with them.

A number of specific implications of both caps and deductibles were raised during the review related to fairness and access to justice including:

- A cap or deductible could have a disproportionate impact on vulnerable groups such as seniors, the disabled, single mothers, the unemployed, the poor, as well as on trades people, and those in rural areas.
- A cap would take away the opportunity for a full impartial assessment by a judge and may be seen as being arbitrary and unfair.
- Claimants who do not have their own insurance, including seniors who no longer drive or pedestrians, may not benefit from loss cost reductions but would nevertheless have their entitlement to recovery of pain and suffering damages restricted.
- A cap or deductible would apply to motor vehicle accident claims but not to other claims such as a slip and fall claims.

- The implementation of a cap or an increased deductible may impact a claimant's ability to obtain legal representation and increase obstacles to successfully making a claim.

It is clear that the introduction of both a cap on pain and suffering for minor injuries and an increased deductible would have serious implications for claimants. Further the implementation of a minor injury cap would represent a significant change for claimants in this province since a cap would have very different impacts than the current deductible. Unlike the deductible, which is applied equally to all claims for pain and suffering damages, a cap would apply only to those with a mild or minor injury, estimated to be 66% to 76% of all claimants. In addition, a cap would have a larger impact on claims for the most serious "minor injuries" since these claims would likely have been much larger than the amount of a cap.

#### *Additional Considerations*

Aside from the impact on rates and implications for claimants, there are several other considerations related to the implementation of a minor injury cap or an increased deductible in this province, including:

- the amount of the cap or deductible and whether it is indexed;
- the definition of minor injury and whether a different term should be used to describe the injuries to which a cap would apply;
- whether a mandatory rate freeze or rate reduction is appropriate given the estimated rate inadequacy in this province;
- whether reforms to address concerns in relation to legal representation rates in this province are appropriate, such as limits on contingency fee arrangements; and
- the potential impact on costs in public systems such as the health care system and the workers' compensation system.

It is notable that the introduction of a cap would bring Newfoundland and Labrador in line with the other Atlantic provinces, which all have a minor injury cap. These minor injury caps are indexed to the rate of inflation and as of 2018 the amounts of the caps in the other Atlantic provinces ranged between \$7,681 and \$8,579. Only two other provinces, Ontario and Saskatchewan, have a deductible and these deductibles are substantially larger than the deductible in this province. While Alberta also has a minor injury cap and British Columbia is implementing a cap in 2019 the amount of the caps in these provinces is much lower.

#### *Conclusion*

There was no consensus during this review as to whether a cap on minor injuries or an increased deductible should be implemented in this province and in fact the issue proved to be quite contentious, especially with respect to the implementation of a minor injury cap. The insurance industry, represented by IBC and several individual insurers, strongly supported the introduction of a \$5,000 cap indexed to inflation to improve market performance and consumer outcomes. The Campaign, APTLA and Spinal Cord Injury NL strongly opposed the imposition of any further restrictions on pain and suffering damages, especially the implementation of a cap which it was argued would do nothing to reduce insurance rates and would severely limit the rights of innocent

accident victims. The Consumer Advocate, concluded that the value of a cap is unclear and supported the implementation of an increased deductible in the amount of \$10,000, suggesting that consumers should also be given a choice.

At the end of this review it is clear that the introduction of a minor injury cap or an increased deductible would lead to a reduction in bodily injury loss costs, though it is expected that the reductions associated with an increased deductible would be much smaller. It is also clear that, in either case, the estimated reductions in loss costs are not sufficient to offset the estimated rate inadequacy in this province. The circumstances today are quite different than in the last insurance review when it was estimated that premiums were more than adequate to provide for claims costs, operating expenses and profit. As such there can be no expectation that insurers will reduce rates as a result of the implementation of a cap or a deductible, though some insurers may choose to do so. It is likely that the best that can be hoped for in terms of overall rates upon the implementation of cap is rate stability. Further there were serious concerns raised in relation to the implications for claimants. The injuries caused by a motor vehicle accident, even those that may be classed as minor, often have significant detrimental impacts on the lives of those affected. Restrictions on pain and suffering damages, and particularly the introduction of a cap, are associated with concerns related to fairness and access to justice. It is clear that there are many people who believe that a cap would be an unfair restriction on the right of someone who is not at fault to be fully compensated for their loss.

## 8.0 TAXI INDUSTRY CLAIMS EXPERIENCE REVIEW

### 8.1 Introduction

The Board was directed to conduct an audit of taxi closed claims to determine the causes of poor claims experience, including details regarding the underlying causes of losses and high claim costs incurred, and provide any recommendations to reduce claim costs and reduce rates.

Approximately 95% of the taxi business written in Newfoundland and Labrador is insured through Facility Association.<sup>211</sup> Taxi insurance is placed with Facility Association through one of four servicing carriers in the province and, regardless of which carrier is placing the business, the coverages, conditions and premiums are the same.<sup>212</sup> Since all insurers in the province are required to participate in Facility Association they are all indirectly involved in providing insurance to the Taxis class of business.<sup>213</sup>

Two reports were commissioned by the Board in relation to its review of taxi claims experience:

- i) *Report on Taxi Claims Review*, completed by Cameron & Associates Insurance Consultants (“Cameron”), sets out the findings of a review of the handling of taxi claims files by adjusters and lawyers from 2010 to 2016 to determine the factors, if any, affecting loss experience and the factors which could improve the loss experience.
- ii) *Summary of Taxi Experience in Newfoundland and Labrador*, completed by Oliver Wyman, provides a summary of the insurance industry taxi premium and loss experience in Newfoundland and Labrador based on information collected and provided by GISA as of December 31, 2016.

The Campaign also filed a report on April 4, 2018 by its actuary, Craig Allen, responding to the reports filed by Oliver Wyman and Cameron.

During the review the Board received a great deal of information related to the issues and concerns regarding taxi insurance in this province. Through meetings with the Board, presentations at the hearing and written comments the taxi operators provided their perspective on the high cost of insurance, the role of Facility Association and the measures which should be considered to address the issues facing the industry.

### 8.2 Premiums and Claims Costs

#### 8.2.1 Premium Levels

For many years the premiums paid by taxi operators in Newfoundland and Labrador were stable as Facility Association did not apply for any rate increases for its Taxis class of business in the province from 1993 to 2012. However, since 2013 Facility Association has filed almost yearly rate

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<sup>211</sup> Oliver Wyman, *Summary of Taxi Experience in Newfoundland and Labrador*, page 2.

<sup>212</sup> Royal and Sun Alliance, Intact Insurance, The Co-operators and Unifund Assurance.

<sup>213</sup> See Section 3.3 for a further discussion of Facility Association.

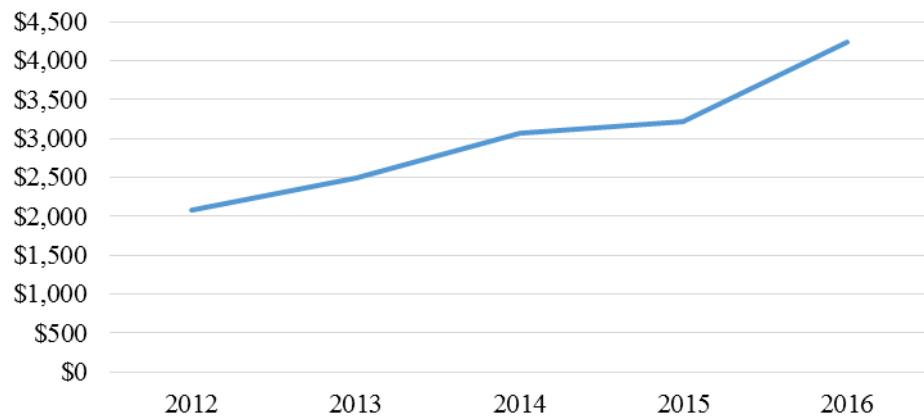
applications and the following average rate increases have been found to be supported by actuarial evidence and approved by the Board:<sup>214</sup>

| Facility Association Taxi and Limousine Rate Increases<br>Newfoundland and Labrador |                           |                          |
|---|---------------------------|--------------------------|
| Effective Date  | Approved Average Increase | Cumulative Rate Increase |
| August 1, 2013  | 50.1%                     | 50.1%                    |
| September 1, 2015   | 19.3%                     | 79.1%                    |
| June 1, 2016  | 28.9%                     | 130.8%                   |
| March 1, 2017   | 25.7%                     | 190.1%                   |
| March 1, 2018   | 18.6%                     | 244.1%                   |

As shown above the total cumulative rate increases over the period 2012 to 2018 for all coverages combined is approximately 244 percent. This increase was largely driven by increases to Third Party Liability premiums as this is the predominant coverage for Taxis, comprising approximately 90% of the total written premium.<sup>215</sup>

The following chart shows the average written premium per vehicle for Facility Association's Taxis class of business in Newfoundland and Labrador over the period 2012 to 2016:<sup>216</sup>

**Average Written Premium  
Facility Association Taxis  
Newfoundland and Labrador, 2012-2016**



This average premium continued to rise and, due to the rate increases implemented in 2017 and 2018 is now estimated to be approximately \$7,228.<sup>217</sup> In 2018 the calculated total premium for a taxi with a clean driving record was \$7,058 and for a taxi with multiple accidents and convictions

<sup>214</sup> Oliver Wyman, *Summary of Taxi Experience in Newfoundland and Labrador*, March 20, 2018, page 2.

<sup>215</sup> Oliver Wyman, *Summary of Taxi Experience in Newfoundland and Labrador*, March 20, 2018, page 2-3.

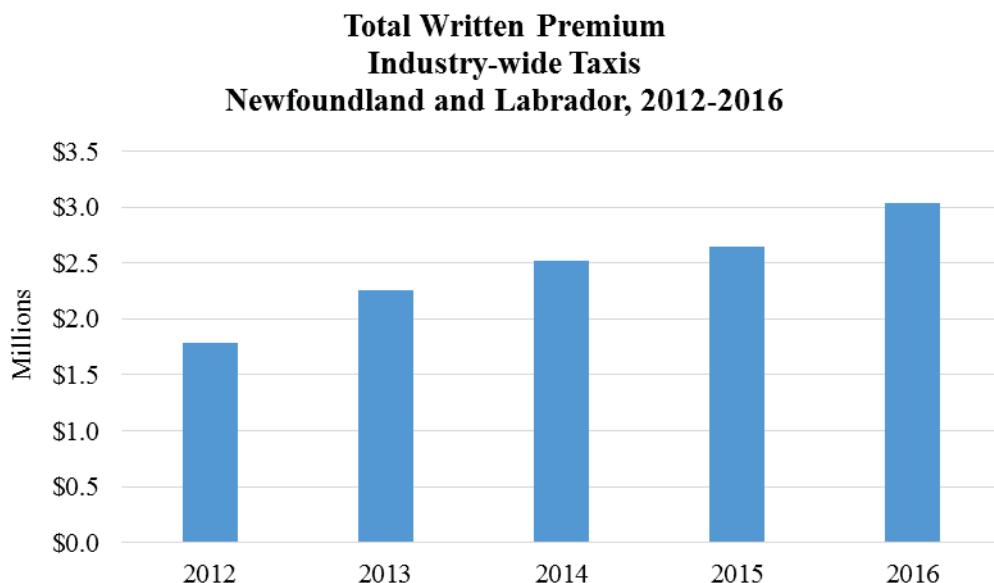
<sup>216</sup> Facility Association response to the Board's request for information, September 25, 2018, page 1.

<sup>217</sup> Estimate calculated by Oliver Wyman based on data provided in Facility Association's Taxis rate application filed with the Board on July 30, 2018.

it would have been \$15,753.<sup>218</sup> In addition on July 30, 2018 Facility Association filed an application for an additional Taxi rate increase of 10.2% which, if approved, would further increase the average premium to approximately \$7,965.<sup>219</sup> As of the date of this report this application is still before the Board.

At the same time as the increases in premiums there were also changes to the taxation of insurance in this province. On July 1, 2016 a 15% retail sales tax was applied to insurance premiums in this province and the 4% premium tax on insurance companies was increased to 5%.<sup>220</sup> The retail sales tax on insurance premiums was subsequently reduced to 13%, effective January 1, 2019.

The total written premiums for the taxi industry in the province have increased significantly in recent years due to the magnitude of the rate increases for Facility Association's Taxis class of business. According to Oliver Wyman the industry-wide Taxi written premiums for all coverages combined increased almost 70% over the period 2012 to 2016, from \$1.8 million to \$3.0 million, as shown below:<sup>221</sup>



It is notable that the increase in total written premiums reported were significantly lower than the cumulative rate increase of 131% implemented over the same period. It is also noted that the 2017 GISA data published following the release of Oliver Wyman's report shows that the Taxis written premiums in Newfoundland and Labrador further increased to \$3.6 million in 2017.<sup>222</sup> This represents a 100% increase in total written premiums since 2012 compared to an approximate 190% cumulative rate increase over the same period. During the hearing Paula Elliott of Oliver

<sup>218</sup> Based on Facility Association Taxis rates effective March 1, 2018.

<http://www.facilityassociation.com/manurulesratesnf.asp>

<sup>219</sup> Estimate calculated by Oliver Wyman based on data provided in Facility Association's Taxis rate application filed with the Board on July 30, 2018.

<sup>220</sup> See Section 16.5 for a further discussion of taxation.

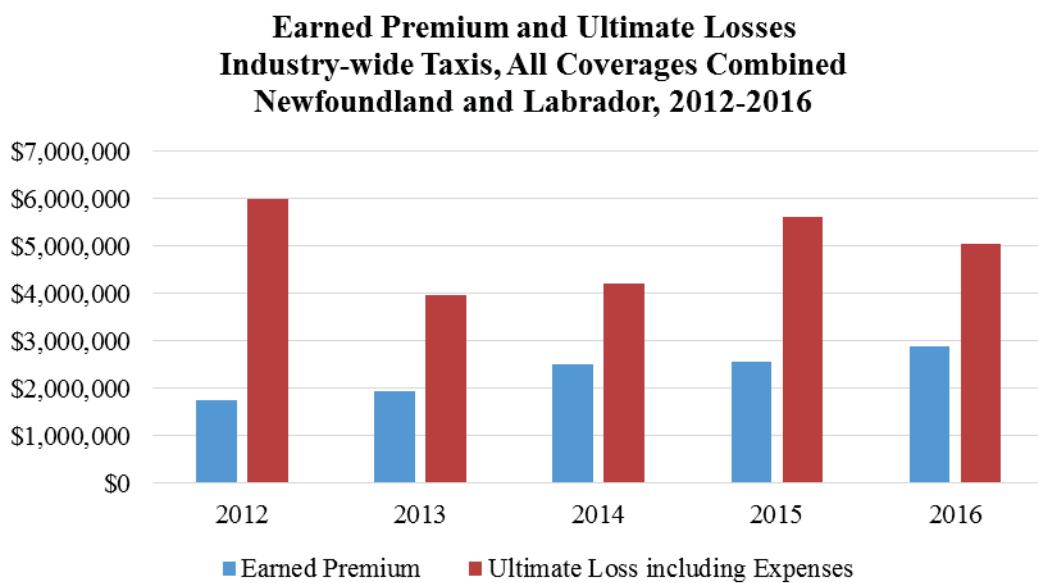
<sup>221</sup> Oliver Wyman, Summary of Taxi Experience in Newfoundland and Labrador, March 20, 2018, page 1.

<sup>222</sup> GISA Exhibit AUTO1101.

Wyman explained that she did not have any data to confirm why there was such a difference between the written premium increase and the total cumulative rate increases experienced in the province. Ms. Elliott suggested that insureds may have taken measures to curb the impact of the rate increases, for example by taking vehicles off the road, improving the record of drivers or dropping optional coverages.<sup>223,224</sup> It is noted that data provided by Facility Association confirmed that exposures or vehicles decreased from 819 to 685 over this period.<sup>225</sup> It should be noted that the number of exposures or vehicles may not be reflective of the total number of vehicles included in fleet rated policies.

### 8.2.2 Claims Costs

The Facility Association Taxi rate increases experienced in recent years have been the result of the poor taxi claims experience in the province. In 2012 the taxi industry reported incurred losses of \$6 million which exceeded the earned premiums collected for the period by over \$4.2 million resulting in a loss ratio of 340%.<sup>226</sup> Despite the significant rate increases implemented by Facility Association in the years that followed, the incurred claims costs of the taxi industry continues to be materially higher than the premiums collected. The following graph shows earned premiums compared to ultimate losses on an all coverages combined basis for the industry-wide taxi experience over the period 2012 to 2016:<sup>227</sup>



<sup>223</sup> Transcript, June 5, 2018, pages 126-129.

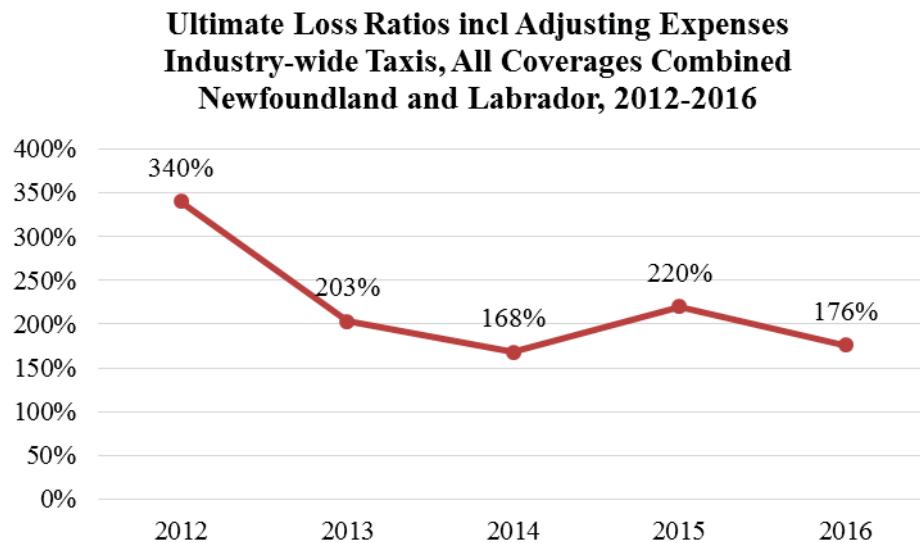
<sup>224</sup> The GISA industry exhibits for Taxis do not present data on the number of written taxi exposures in the industry.

<sup>225</sup> Facility Association response to the Board's request for information, September 25, 2018, page 1.

<sup>226</sup> The loss ratio is calculated by dividing claims paid by premiums earned. The lower the loss ratio the more profitable the business and vice versa. A loss ratio above 100% means more is being paid out in claims than collected in premiums.

<sup>227</sup> Oliver Wyman, *Summary of Taxi Experience in Newfoundland and Labrador*, March 20, 2018, page 5.

The resulting loss ratios over the same period are as follows:



The industry loss ratios are well in excess of 100% for each year reviewed, indicating that more was paid out in claims costs than was collected in premiums. The 2017 GISA data published following the release of Oliver Wyman's report shows that the taxi loss ratio in Newfoundland and Labrador continues to be high in 2017 at 144%.<sup>228</sup>

During the hearing Ms. Elliott made the following comments with respect to the losses experienced in the Newfoundland and Labrador taxi industry:

I would say in this particular case that the loss ratio, the experience for taxi is very extreme, this is very unusual to see such high loss ratios, and I can't speak to why FA allowed, you know, the timing of the last-the first rate filing which I believe was 2013 for this taxi filing, the timing of when they chose, they had not had a rate change for nearly, I'm estimating it was about ten years prior to that. I don't know the reason for that, so in my opinion that's not typical of what occurs, companies don't let their rates stay stagnant, unchanged for ten years and then see some astronomical loss ratio and then put in a rate filing.<sup>229</sup>

### 8.2.3 Atlantic Comparison

As previously noted, approximately 95% of the taxi business written in the province is insured through Facility Association. This situation is not unique to Newfoundland and Labrador. As set out in the following table the percentage of taxi business insured through Facility Association is similar in each of the Atlantic Provinces:<sup>230</sup>

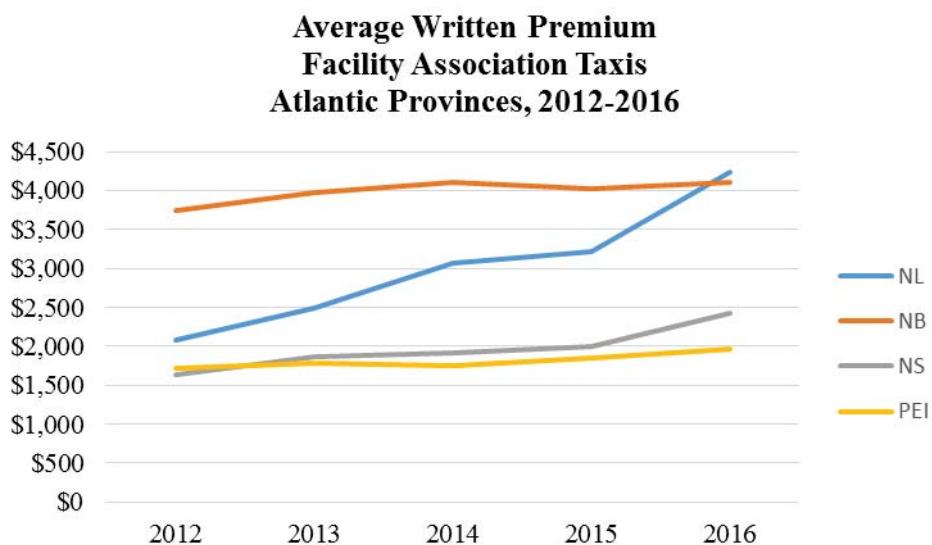
<sup>228</sup> GISA Exhibit AUTO 1101.

<sup>229</sup> Transcript, June 5, 2018, page 67/15 to page 68/4.

<sup>230</sup> Facility Association response to the Board's request for information, August 27, 2018, page 4.

| Facility Association Taxi Market Share<br>Written Premiums - Atlantic Provinces |       |       |       |       |
|---|-------|-------|-------|-------|
| Year  | NL    | NB    | NS    | PE    |
| 2012  | 95.0% | 99.9% | 95.8% | 98.5% |
| 2013  | 95.4% | 98.5% | 95.8% | 98.6% |
| 2014  | 95.0% | 96.2% | 96.2% | 98.5% |
| 2015  | 94.9% | 96.2% | 97.8% | 97.4% |
| 2016  | 95.7% | 99.7% | 98.4% | 95.2% |

During the review Facility Association confirmed that its underwriting practices for taxis were also similar in each of the Atlantic Provinces.<sup>231</sup> Despite these similarities, the average written premium for Facility Association Taxis has been increasing at a much faster rate in Newfoundland and Labrador than the other Atlantic Provinces as shown in the following chart:<sup>232</sup>



The average written premium in Newfoundland and Labrador more than doubled from 2012 to 2016 compared to increases of less than 10% in New Brunswick, just under 50% in Nova Scotia and less than 15% in Prince Edward Island. Since 2016 Facility Association has also received approval for further cumulative rate increases of 49% in Newfoundland and Labrador, compared to 32% in New Brunswick, 3% in Nova Scotia and 4% in Prince Edward Island.<sup>233</sup>

The higher average premium levels and rate increases experienced in Newfoundland and Labrador compared to the other Atlantic provinces can be attributed to the higher industry loss ratios as shown below:<sup>234</sup>

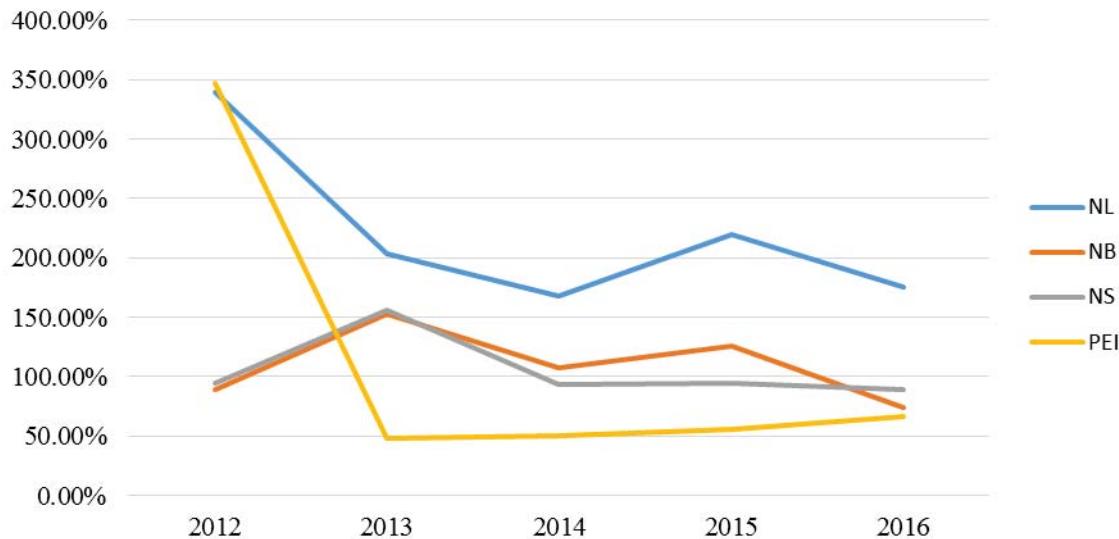
<sup>231</sup> Facility Association response to the Board's request for information, August 27, 2018, page 4.

<sup>232</sup> Facility Association response to the Board's request for information, August 27, 2018, page 1.

<sup>233</sup> Approved rate increases for Facility Association's Taxi business in Atlantic Canada for 2017, 2018 and 2019 include: i) Newfoundland and Labrador: +25.7% effective Mar. 1, 2017 and +18.6% effective Mar. 1, 2018; ii) New Brunswick: +18.2% effective Sept. 1, 2017, +2.9% effective Sept. 1, 2018 and +8.4% effective Sept. 1, 2019; iii) Nova Scotia: +3.0% effective Mar. 1, 2018; and iv) Prince Edward Island: +3.8% effective Oct. 1, 2017.

<sup>234</sup> GISA Exhibit AUTO 1101.

**Ultimate Loss Ratios incl Adjusting Expenses  
Industry-wide Taxis  
Atlantic Provinces, 2012-2016**



With the exception of Prince Edward Island in 2012, Newfoundland and Labrador had the highest Taxis loss ratios by a considerable margin over the period 2012 to 2016. According to the 2017 GISA data the Taxis loss ratio for 2017 in Newfoundland and Labrador is 144%, compared to 82% in New Brunswick, 123% in Nova Scotia and 53% in Prince Edward Island.

### 8.3 Claims Audit

An audit of taxi claims for accidents in Newfoundland and Labrador occurring in the years 2010 to 2016 was completed by Cameron on behalf of the Board. The purpose of the audit was to analyze the handling of taxi claim files by adjusters and lawyers in order to identify any possible factors affecting loss experience in the province. In excess of 100 open and closed claims were audited by Cameron and all policies subject to review were insured through Facility Association.

Cameron's review of taxi claims did not identify any issues with the claims handling by the insurance companies, adjusters, and lawyers that would adversely influence outcomes or increase loss costs experienced in Newfoundland and Labrador. Cameron found that claims settlements were provident, fair and expeditiously handled and there was no evidence that the interests of the insureds were not adequately protected.<sup>235</sup>

Cameron found that the majority of the taxi claims reported in the province were in Territory 1, mainly the St. John's area. According to Cameron, Territory 1 had 831 of the 946 taxi claims occurring in the years 2010 to 2016 which accounted for approximately \$15.6 million of \$18.7 million in gross payouts, or 83%. It was also noted that \$15.2 million of the total gross amount paid was attributed to bodily injury claims.<sup>236</sup>

<sup>235</sup> Cameron, *Report on Taxi Claims Review*, March 20, 2018, page 4.

<sup>236</sup> Cameron, *Report on Taxi Claims Review*, March 20, 2018, page 23.

Cameron did identify a number of issues within the taxi industry in the province not related to claims handling such as late or no reporting of claims by taxi companies and non-identification of drivers on taxi policies which may have an impact on loss ratios. Cameron recommended that risk management measures, education and training, and careful selection of drivers by taxi cab owners were ways in which the industry could address such issues.

During the hearing James Cameron explained that, in his experience, the problem of poor taxi experience has been around for decades. For example he referenced an occasion in the 1990s where an individual insurer entered the market to insure the better taxi risks and at the end of the day the insurer pulled out of this market because the losses were terrible. Mr. Cameron explained:

If the vehicle is on the road 24 hours a day or let's say one driver, 8 hours a day, that's different than your own vehicle where maybe you drive it to and from work and it's a couple of hours, cumulative, total in a day. You're exposed to a risk of an accident, so it's a different risk, it's all about risk assessment really, and it's different by province, it's different by characteristics of the vehicle, characteristics of the driver, all those factors. There's a whole myriad of factors that go into it.<sup>237</sup>

Cameron's report concluded that, without some major changes to the product such as a minor injury cap or an increased deductible, the taxi loss experience in the province is highly unlikely to improve.

In response to Cameron's report the Campaign's actuary, Craig Allen, suggested that the implementation of measures aimed at reducing the number of accidents involving taxi drivers would have a much larger impact on reducing taxi claims costs in the province than the major product changes suggested by Cameron. Mr. Allen noted that the greatest discrepancy between taxi loss experience and the other classes of business is the frequency of claims rather than the severity as shown in the following table.<sup>238</sup>

| Facility Association Taxis Compared to Private Passenger and Commercial Vehicles<br>Newfoundland and Labrador 2015 Accident Year Results |                 |                      |                    |                             |                    |                       |
|--|-----------------|----------------------|--------------------|-----------------------------|--------------------|-----------------------|
|  | Earned Vehicles | Ultimate Claim Count | Ultimate Indemnity | Frequency per 1000 Vehicles | Severity per Claim | Loss Cost per Vehicle |
| <b>FA Taxis</b>  | 795             | 181                  | \$3,846,775        | 228                         | \$21,253           | \$4,839               |
| <b>Private Passenger</b>   | 320,014         | 9,439                | \$138,478,794      | 29                          | \$14,671           | \$433                 |
| <b>Commercial</b>  | 29,081          | 633                  | \$10,438,348       | 22                          | \$16,490           | \$359                 |

According to Mr. Allen the measures suggested by Cameron may reduce claim frequency by eliminating some claims but may not significantly decrease the loss cost per vehicle since the claims eliminated will be of lower severity. Mr. Allen suggested more effective measures to reduce frequency would include: i) improved driver education, training, and screening; ii) measures to

<sup>237</sup> Transcript, June 11, 2018, page 216/13-25.

<sup>238</sup> Craig Allen, Response to Oliver Wyman and Cameron reports, April 4, 2018, page 2.

improve vehicle condition and roadworthiness; and iii) a driver certification program which might include training standards, taxi driving experience, claims records and violation tracking.<sup>239</sup>

In response to questioning during the hearing Mr. Cameron acknowledged that he agreed with the accident reduction measures recommended by Mr. Allen and noted that such measures could help avoid losses and control loss costs which is the ultimate goal. Mr. Cameron further noted that an important consideration of introducing such measures would be one of implementation with either the individual taxi companies introducing the measures independently or government helping by imposing legislation. Mr. Cameron stated:

Regulations force you to do it, which means that if there's a big cost to it, and you're running a business and you do it voluntarily, it's an increased cost. And if everyone has to do it because it's a regulation, then that levels the playing field. So, that's why the regulations play a part I think in those types of decisions.<sup>240</sup>

## 8.4 Presentations, Submissions and Comments

### 8.4.1 Taxi Operators

The taxi operators who took the time to meet with the Board, make a presentation or file written comments provided first-hand knowledge of the challenges associated with insuring their vehicles. While each taxi operator faces unique circumstances it is clear that the cost of insurance is a serious concern for every taxi operator in the province. Issues were also raised in relation to the significant role of Facility Association in the taxi insurance market and the lack of alternate insurers. This section addresses the concerns raised by the taxi operators and the measures suggested to address these concerns.

#### *Facility Association*

The lack of alternatives to Facility Association was an issue raised by most of the taxi operators participating in the review. As explained by Doug McCarthy of Newfound Cabs he does not have a choice since, if he wants to work, he has to buy insurance through Facility Association. In his view taxi operators need a better market to obtain insurance.<sup>241</sup> Mr. McCarthy also noted that, as someone insured through Facility Association, he is supposed to receive a letter every year explaining why he is in Facility Association and how he may get out, but he has never received such a letter, stating that "...the simple reason being is that it doesn't matter what I do, I'm not getting out of Facility."<sup>242</sup> Mr. McCarthy stated:

As you are all aware, the taxi industry in this province is facing a "do or die" situation in regards to insurance. There's a lot of factors involved in it, the primary factor is that we do not have an open market in regards to who we can obtain insurance from. We are limited to basically three underwriters who all go through Facility and Facility sets the rates which are based on their claims payouts and as far as we can see, the claims that they're paying

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<sup>239</sup> Craig Allen, Response to Oliver Wyman and Cameron reports, April 4, 2018, pages 3-4.

<sup>240</sup> Transcript, June 11, 2018, page 196/18-25.

<sup>241</sup> Transcript, April 10, 2018, page 6/2-9.

<sup>242</sup> Transcript, April 10, 2018, page 43/18-21.

out are according to the reports that I've gone through, are exorbitant. They are paying out, as I've come to determine, a lot more than what they've been bringing in, as been the case all along. We're not disputing that, what we are disputing is the fact that based on current provincial law, I am to be insured on my driving record, not what I drive. Unfortunately, it's the other way around, I'm insured for what I drive and not how I drive.<sup>243</sup>

While Mr. McCarthy acknowledged that the industry has a problem with the number of events that occur in a given year he suggested that, considering the amount of kilometers that a taxi drives, the accident rate is not high. According to Mr. McCarthy taxis will average just over 100,000 kilometers per year whereas for the average driver it is approximately 25,000 kilometers per year.<sup>244</sup> Mr. McCarthy stated:

However, an owner/operator with over 20 years of clean driving is required to pay more for insurance than an individual who has three convictions for impaired. Who's the greater risk; the taxi driver or the individual who's already proven that he cannot be trusted with the control of a vehicle.<sup>245</sup>

Several other taxi operators commented they felt discriminated against and raised concerns as to whether Facility Association was in a monopoly situation. Peter Gulliver, owner of Bugden's Taxi, City Wide Taxi and most recently Northwest Taxi, explained that he has 41 years of claims free driving and yet he cannot get out of Facility Association.<sup>246</sup> George Murphy of Jiffy Cabs stated:

And it doesn't matter about the driving record that you have, it doesn't matter what driving skills you have. Right now, you are told that you are going to be in Facility, you have no other choice but to go to Facility and even when somebody who wants to get into the industry is shopping around for insurance, it turns out that Facility is becoming anti-competitive.<sup>247</sup>

William Newhook of Jovanax Ent. Inc. in Dildo submitted that taxis should not be automatically placed with a high risk insurance company. While Mr. Newhook acknowledged that taxis have a higher chance of having an accident because of the amount of time and kilometers they are on the road, he explained that they also have "leaps and bounds" more driving experience. Brian Tobin of Tobin's Taxi in Holyrood submitted that Facility Association is a monopoly insurance provider and that this "...creates an environment for high rates, collusion and other practices that may negatively influence the current escalated taxi rates."<sup>248</sup>

#### *Premiums*

Every taxi operator spoke to the amount that they have to pay for automobile insurance and the large increases in recent years. Many questioned why the cost of taxi insurance is so high compared to other insurance. Peter Gulliver noted that he pays roughly \$11,000 per taxi compared to approximately \$13,500 to insure his nine private passenger vehicles. Tom Lambe of City Wide

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<sup>243</sup> Transcript, April 10, 2018, page 4/24 to page 5/20.

<sup>244</sup> Transcript, June 13, 2018, page 104/16 to page 105/6.

<sup>245</sup> Transcript, June 13, 2018, page 105/15-22.

<sup>246</sup> Transcript, September 14, 2018, page 121/11 to page 124/1.

<sup>247</sup> Transcript, April 12, 2018, page 11/22 to page 12/6.

<sup>248</sup> Written Submission, April 4, 2018, page 1.

Taxi explained that when he started in the taxi business his insurance cost \$500 but it has increased to \$12,200 for one car. Donnie Earle of Gould's Taxi commented that he currently pays \$17,000 for three cars and that he has no claims against him. According to Mr. Earle his circumstances are very different than those of larger operators in larger communities. When asked about the future of his company Mr. Earle responded that, because of the insurance issue, his only option is closing down.

Mr. McCarthy of Newfound Cabs noted that in September 2018 his insurance was due to increase from \$6,500 to \$8,200, stating:

That's the threshold. I can't, I mean if the average run is \$10.00, my first 820 jobs I do has to go to car insurance and that's before I put five cents worth of gas in the car, that's before I pay my stand fees, my brokerage fees for driving with Newfound, before I pay for any maintenance, before I pay for the car or before I give my wife five cents and she's top of the list. So, you know, I operated at a loss last year.<sup>249</sup>

Mr. McCarthy explained that he has been driving a taxi for 14 years and has no accidents or convictions. In his view double digit rate increases cannot be sustained and unless something changes his is a dying industry.<sup>250</sup> Mr. McCarthy stated:

In the year 2014, the taxi industry in this province had at that time, according to motor vehicle records, 2,165 TX plates in use. That's taxis and limousines. As of December, 2017 we now have 1,877 TX plates in use. This means that in the past three years 288 vehicles have been removed or just over 13 percent of the entire fleet. The sole reason for the removal is that the owners could no longer afford to pay the increased insurance rates and still earn a living. This decline in numbers will continue so long as the rates continue to increase yearly by double digit.<sup>251</sup>

In September 2018 Mr. McCarthy advised that he had decided to sell out to a larger company:

Effective the 23<sup>rd</sup> of this month there will be one less taxi on the road to provide service to the residents of this city. I will no longer be renewing my taxi insurance, as I can no longer afford the rates for my insurance. In 2013 I paid \$1,890.00; this year my renewal rate is \$8,895.25. This represents an overall rate increase of 470% in just under five years. I can no longer afford to pay these rates and all my additional expenses and still earn a living. Therefore, I have no choice but to sell out to a larger company and hope that I may retain a driving position, or I too, will become another stat, that too of unemployed.<sup>252</sup>

In addition Mr. McCarthy advised of other significant changes in the taxi industry in the province in 2018:

Two major companies representing two communities have closed out their businesses after years of providing service to the public, to their respective communities. Mt. Pearl saw the loss of Valley Cabs in July; and just this month, Paradise lost Cy's Taxi. The simple reason

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<sup>249</sup> Transcript, April 10, 2018, page 35/10-21.

<sup>250</sup> Transcript, April 10, 2018, page 47/12-19.

<sup>251</sup> Transcript, June 13, 2018, page 103/17 to page 104/6.

<sup>252</sup> Transcript, September 18, 2018, page 2/9-24.

that these two companies of long standing service to their communities sold out was insurance rates. They could no longer sustain the massive rate hikes to their insurance. Yes, these communities still have taxi service, now provided by Newfound Cabs, however this service is not the same level as before simply due to the fact that fewer vehicles are being provided at this time.<sup>253</sup>

According to Mr. McCarthy, while Valley Cabs had approximately 25 cars on the road, the area is now being serviced by 15 cars and Cy's Taxi now has four cars, down from 12.

Another operator, Dave Fleming, owner and operator of Northwest Taxi for many years, also took the time to meet with the Board and to make a presentation to provide his point of view. He explained that two years ago he had 28 cars but by mid-2018 this number had dropped to 15.<sup>254</sup> Like Doug McCarthy, Mr. Fleming advised that he had sold his business this year, stating that he had no other choice as he had been losing money for the past two years.<sup>255</sup>

Krista Quigley and Todd Edmonds of Star Taxi, which operates in Corner Brook, explained that insurance is their highest cost and, even with no accidents in four years, their annual insurance bill is over \$100,000. They noted that for many years there were no rate increases and then suddenly there were increases twice a year such that it is getting to the point that it is not feasible to stay in the business. While Star Taxi had 11 independent drivers when they took over the business in 2011 there is now only one because insurance rates are too high and the independent drivers cannot make a living. Mr. Newhook of Jovanax Ent. Inc. explained that he started with one taxi and increased to six, but now is back to two, due in large part to insurance costs.

Many of the taxi operators expressed concerns about how their customers and the public will be impacted by the ongoing challenges facing the taxi industry. Mr. Fleming of Northwest Taxi provided the most heartfelt description of the service provided by taxis:

Now I'll talk something about my drivers, what a taximan does. They take our kids back and forth to school. They bring the elderly people to their doctor appointments and homes. They drive people to and from work. They take people to the supermarkets and then take them back home with their groceries. They're out in all kinds of weather. When everyone else is home, they're still on the road, rain and snow, they're still going, and if you see the snowbanks in the winters when council plows them, you just take Barachois Street, that you got to take those groceries, five or six bags of groceries in each hand and try to make it up over that mound and down and into the driveway up to our house, that's what taximen does.<sup>256</sup>

Ms. Quigley of Star Taxi in Corner Brook noted that ninety percent of Star Taxi's clientele are senior citizens and that there is high demand for their two accessible vehicles, and commented:

But this is, the taxi industry is more of a life line for a lot of people. You know, they depend on us to, just to go get their groceries, you know, or go to a doctor's appointment. You

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<sup>253</sup> Transcript, September 18, 2018, page 1/17 to page 2/8.

<sup>254</sup> Transcript, June 13, 2018, page 78/9-11.

<sup>255</sup> Transcript, September 18, 2018, page 11/16-19.

<sup>256</sup> Transcript, May 2, 2018, page 24/11 to 25/3.

know, and this is probably the only time these people get out when you stop and think about this.<sup>257</sup>

Doug McCarthy of Newfound Cabs stated:

We are, for all intents and purposes, an essential industry. We provide a valuable service not just in the city, but all across the province. In some cases we are the only means of public transportation for residents living outside the areas served by a transit system. We are the first person of contact to travelers entering through our airports. Where would the tourism or convention industry be without a reliable taxi industry. In some cases, we act as the eyes on the road for the RNC when they are looking for somebody. We are the ones who drive impaired individuals home and in some cases drive their cars home as well, so that they are not on the road placing peoples lives in jeopardy...<sup>258</sup>

During the review the taxi operators explained that there had been discussion as to whether there should be an increase in taxi fares to recover the increased insurance costs but that no increase had been implemented. As explained by George Murphy of Jiffy Cabs:

We looked at the possibility of increasing metre rates, for example, to mitigate the insurance rates, and we say right now, that we can't do that. The simple reason is, it's a poor economy out there and people are already having trouble out there and we believe that it would bring more harm to the industry more so then ever. So, that particular route is out.<sup>259</sup>

Tom Lambe of City Wide Taxi explained that they had looked at increasing taxi rates but noted that it cost \$3.75 to sit in a cab for the past 8 or 9 years and if it was \$5.00 it would be the highest in Canada. Many of the other taxi operators agreed that customers would not be able to afford increased taxi fares.

### *Suggested Changes*

In addition to outlining the serious concerns now facing the taxi industry the taxi operators provided their views and suggestions as to measures which may be taken to address these issues.

According to Doug McCarthy the time has come for government to introduce major changes to the insurance industry. Mr. McCarthy advised that he had made a number of recommendations to Government, including additional license requirements, the introduction of a new class for novice drivers, and mandatory winter tires. Mr. McCarthy explained:

Based on the report released by the Province of Quebec, the only province in Canada, I might add, that has mandatory winter tires, in the two years that the law has been in effect, they're reduced their accident rate by 36 percent.<sup>260</sup>

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<sup>257</sup> Transcript, April 12, 2018, page 60/15-22.

<sup>258</sup> Transcript, June 13, 2018, page 106/18 to page 107/11.

<sup>259</sup> Transcript, April 12, 2018, page 14/3-11.

<sup>260</sup> Transcript, April 10, 2018, page 8/19-25. The Board notes that it appears that winter tires are also mandatory on highways in British Columbia.

Mr. McCarthy estimated that approximately 75 percent of taxis in this province operate with winter tires but, if they were mandatory for everyone, it could lead to a drop in accident rates province-wide. In relation to the problem of drivers not being listed on insurance policies, Mr. McCarthy suggested that the province should mandate that proof that a driver is insured be required before an individual can drive a taxi. Further he suggested that insurance should be based on driving record and that accidents should go to the driver's record, not the owner's. Mr. McCarthy also raised the possibility of a provincial insurance program and suggested that, in the alternative, measures should be taken to incent insurers to enter the market.

Brian Tobin of Tobin's Taxi in Holyrood suggested that programs be developed within the industry to aid taxi companies in recruitment, driver training, implementing best practices and elevating industry standards and that insurance rates should reflect such programs. In his view insurance rates should be reflective of individual taxi company insurance experience and driving histories.

William Newhook of Jovanax Ent. Inc. made a number of suggestions including mandatory dashcams, breathalyzers and black boxes for all vehicles. Mr. Newhook also noted that, since the majority of claims come from the St. John's area, the premiums required to offset these claims should come from the St. John's area. He suggested that taxi companies in St. John's should be classed as one area and that the further a company is away from St. John's it should have progressively lower rates. He stated:

There has to be a way to decrease insurance costs for those in rural areas such as myself, with such high overhead costs many of us smaller companies will not be able to remain in business even though rural areas still need a taxi.<sup>261</sup>

According to Donnie Earle of Gould's Taxi good drivers should be incented and bad drivers punished and all drivers should be required to have knowledge of the roads and provide a certificate of good conduct. Mr. Earle stated "I thinks it's pretty simple for someone to say to Facility, 'Hey, listen here, if you got a good driver, you need to treat him the way he should be treated', plain and simple."<sup>262</sup>

Many taxi operators also questioned whether claims are being properly managed by insurance companies. Krista Quigley suggested that there should be more effective investigation of accidents. George Murphy submitted that insurance companies were not doing due diligence and that customers are insulated from the costs, and also that lawyer fees are too high. Similar concerns were raised by William Newhook based on his experience when he had an accident. Brian Tobin also suggested that the role of the adjuster should be determined and regulated by an independent body with a focus on best practices to ensure compliance and remove opportunities for collusion. Mr. Tobin suggested that evidence indicates abuse with respect to collision repair rates, with repair companies often falsifying documentation, billing for repairs not completed and exaggerating the cost of the claim. Mr. Tobin recommended that all accidents should be reported and investigated by law enforcement personnel to ensure consistency and to remove biases from the investigation process.

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<sup>261</sup> Jovanax Ent. Inc. Submission, April 4, 2018, page 2.

<sup>262</sup> Transcript, April 10, 2018, page 73/9-12.

While some taxi operators supported the implementation of a cap others explained that they did not see how it would be of benefit. Doug McCarthy supported a cap and noted that taxi insurance rates in Nova Scotia, which has a cap on minor injuries, are thousands of dollars less than they are in this province, even though taxis are insured through Facility Association in both provinces.

#### 8.4.2 Other Submissions

Neither IBC nor Facility Association addressed issues related to taxis in their submission. In response to a request from the Board Facility Association provided some comments on possible measures to reduce loss costs and premiums. Facility Association stated that reducing motor vehicle accidents would be a positive step but noted that a reduction in claims costs would not necessarily eliminate the significant rate inadequacy for Newfoundland and Labrador Taxis.<sup>263</sup> While Facility Association acknowledged that a discount for risk management measures taken by taxis might merit consideration at a future point in time, given the existing rate inadequacy, a discount relative to other taxis would not necessarily lead to a rate reduction.

The Campaign submitted that something needs to be done to help the taxi industry obtain fair and reasonable insurance rates, stating:

Problems in the taxi industry arising from high total premium costs for automobile insurance will clearly not be remedied by a cap on “minor injury” claims. The majority of the taxi license holders do not want a cap on “minor injury” claims because they see the lack of utility in such a mechanism for reducing their premiums. The taxi issue is a very separate and different issue, which will require a set of innovative recommendations that should not include a cap on “minor injury” claims.<sup>264</sup>

In the Campaign’s view the report of its actuary, Craig Allen, clearly shows that implementing a cap would be of little or no benefit to taxi drivers and the problem of high insurance premiums. The Campaign suggested that Facility Association confirmed that a cap would be of no benefit to assisting taxi drivers with high insurance premium costs and also that the Atlantic Canadian premium information provided by Facility Association is further evidence that the cap would not benefit the taxi industry. The Campaign noted the accident prevention measures recommended by Mr. Allen to reduce the number of claims for taxis, citing the following comment from his report:

The benefits of an effective program to reduce claim frequency and severity would support the shared interests of the public, the government and the taxi industry. Further, such a program would add an additional economic incentive for taxi drivers to maintain good driving practices in order to remain certified to qualify for better rates in the competitive market.<sup>265</sup>

The Campaign submitted that Mr. Allen’s recommendations would make a good start at addressing the problem.

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<sup>263</sup> Facility Association response to the Board’s request for information, September 25, 2018, page 5.

<sup>264</sup> Campaign Submission, October 12, 2018, page 72.

<sup>265</sup> Craig Allen, Response to Oliver Wyman and Cameron reports, April 4, 2018, page 5.

According to the Consumer Advocate the concerns of the taxi industry need to be addressed but no all-encompassing solution was identified. The Consumer Advocate noted that during the hearing the taxi industry explained that “...their premiums are crippling with no relief in sight”.<sup>266</sup> The Consumer Advocate commented that the number of accidents in which taxis are involved is high relative to the number of taxis and explained:

It is clear from the March 20, 2018 Oliver Wyman report re the Taxi Experience in Newfoundland and Labrador that the insurance industry has consistently been incurring losses relative to premium revenues in providing insurance to taxis. Moreover, the Cameron and Associates Report on Taxi Claims of the same date, indicates that taxi rate increases have been attributed to continuously escalating loss costs.<sup>267</sup>

A number of possible measures to address these issues were noted by the Consumer Advocate, including monitoring of vehicles, risk sharing pools and the use of vehicle history in rating. According to the Consumer Advocate measures to monitor vehicles have been utilized in other provinces such as Nova Scotia where premiums were significantly lower in 2016. As an example, Intact offers a discount program in Nova Scotia which uses an application installed on a mobile device for the collection and processing of driving data for rating and discount purposes. The collected data is used to analyze driving behavior to determine eligibility for a discount and policy updates. According to the Consumer Advocate similar technology implemented in this province would prove useful for taxis. The Consumer Advocate stated:

The taxi experience in this province can be improved by instituting driver monitoring, enforcement of Service NL taxi related measures taken in 2018, and by having Facility Association re-examine their rating approach. Insurers have a role to play by implementing various methods of vehicle data monitoring for taxis and private passenger vehicles.<sup>268</sup>

The Consumer Advocate also suggested that the concept of a risk sharing pool as recommended by Intact may have potential value. Intact explained that Alberta, Nova Scotia, New Brunswick, Ontario and Quebec have risk sharing pools where insurance companies come together to form a pool of high-risk drivers who cannot otherwise access insurance in the regular market. Intact stated:

We recommend that the Superintendent of Insurance of Newfoundland and Labrador task the Board of Directors of the Facility Association to develop a strategy to depopulate the Facility Association using a risk sharing pool that would be administered by the Facility Association. The risk sharing pool should require all insurers, brokers and agents to participate in the program.<sup>269</sup>

The Consumer Advocate also noted Facility Association’s use of vehicle loss history as an underwriting factor as opposed to driver record and argued that this is inconsistent with the language of section 6.1 of the *Automobile Insurance Act*. While he acknowledged the logistical difficulty associated with separating the two, given that multiple drivers can operate the same

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<sup>266</sup> Consumer Advocate Submission, October 12, 2018, page 6.

<sup>267</sup> Consumer Advocate Submission, October 12, 2018, page 6.

<sup>268</sup> Consumer Advocate Submission, October 12, 2018, page 5.

<sup>269</sup> Intact Submission, March 20, 2018, page 11.

vehicle, the Consumer Advocate submitted that this approach places a heavy burden on taxi drivers who have a good driving record.

## 8.5 Other Jurisdictions

In addition to the information provided in relation to Facility Association in Newfoundland and Labrador and the other Atlantic Provinces it appears, based on certain information available in relation to Ontario and British Columbia, that the concerns raised in this review related to taxi insurance may not be unique.

A 2014 report by the Financial Services Commission of Ontario (FSCO) addressed, among other things, issues related to insurance for taxis in southwestern Ontario. According to this report taxi insurance is a specialty market which is offered through a small number of insurers in Ontario. This report explained that taxis are considered high risk, and the factors contributing to the severe risk exposure of taxis include the size of the territory in which the vehicles operate, the number of hours the vehicles are on the road, the number of drivers on the vehicle, and the exposure to passenger claims. The report stated:

The issue around the high costs and availability of taxi insurance in the voluntary market is not unique to Ontario. In New Brunswick, Nova Scotia, PEI, and Newfoundland and Labrador, insurance for taxis is obtained primarily through the FA. In these provinces, the FA services approximately 96% to 99% of the taxi business. In Alberta, approximately 44% of written taxi premiums were provided by the FA. In Ontario, taxis appeared to fare better with taxis in the FA accounting for approximately 16% of total written taxi premium in 2013.<sup>270</sup>

The report noted that FSCO and the Ministry of Finance met with the insurance and taxi industry to monitor the issue and review market place solutions with key industry participants.

In British Columbia it was reported in 1999 that taxis paid anywhere from \$4,000 to \$12,000 per annum and that taxi insurance premiums had been frozen by Government in 1994 resulting in a net loss to the BC Insurance Corporation.<sup>271</sup> More recently significant changes are being considered in British Columbia coincident with the rise of ride sharing as a potential alternative to the traditional taxi service. Options that were considered included financial assistance to develop an app to compete with ride-hailing companies, crash avoidance technology for cabs, relaxation of geographic restrictions and exclusive rights to pick up passengers by phone, street hail or at taxi stands as well as a possible new insurance package for traditional taxis, which may include insurance for part-time taxis and premiums based on kilometers travelled.<sup>272</sup>

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<sup>270</sup> Financial Services Commission of Ontario, *Report on the Three Year Review of Automobile Insurance, 2014*, December 2014, page 55. <https://www.fSCO.gov.on.ca/en/auto/3yr-review/Documents/aoda-3yr-review.pdf>

<sup>271</sup> A Study of the Taxi Industry in British Columbia, The Taxi Study Panel, June 15, 1999, page 26.

<sup>272</sup> Government adopts key recommendations on modernizing taxi industry, <https://news.gov.bc.ca>, July 19, 2018. Modernizing Taxi Regulation, Hara Associates, June 8, 2018. B.C. to create new auto insurance for ride-hailing companies, taxi industry, Vancouver Sun, March 8, 2017.

## 8.6 Measures Adopted by Government and Taxi Operators During the Review

On May 16, 2018 Government announced changes in relation to the licensing of taxi drivers and vehicles, effective July 1, 2018. The specific changes included increased requirements for new drivers seeking a taxi license, such as a driving course, an on-road assessment and a written exam, as well as an increase in class 5 license prerequisites. A requirement for an annual review for all taxi license holders was also implemented, with the ability for a license to be revoked in certain circumstances, including where there were three or more driving-related convictions in a two-year period. Increased requirements with respect to vehicle inspections, including random inspections of taxis by Motor Registration Division, were also put in place. In announcing these measures Government explained that these more stringent requirements will strengthen the taxi industry and that these changes were supported by the taxi industry.<sup>273</sup>

The taxi industry also implemented a number of measures intended to strengthen the industry. Doug McCarthy explained:

We, as an industry, are taking steps to improve the quality of our drivers, providing them with additional training, so that they have the necessary skills to provide safe, reliable service to the clients we service. Most companies now require all new applicants to have a current drivers abstract, a record of conduct, a vulnerable sector clearance prior to starting work. Newfoundland Taxi has also implemented a number of required courses that a driver must complete as well. Newfoundland was the first company to introduce driver ID placards on the dash so the clients would know who they are being driven by. Newfoundland has also installed GPS tracking units in their cars, so they monitor the vehicles speed, braking, starting, and turning, so as to determine the conduct of the driver while on the road. Should that driver be speeding, the dispatcher will automatically receive a notice on the master board and the driver will be advised to slow down.<sup>274</sup>

Doug McCarthy explained that Newfoundland Cabs had already severed the employment of several drivers for speeding as a result of this new tracking system. During the review several other taxi operators indicated that they had voluntarily implemented some of these measures as well. According to Doug McCarthy, while it would take time to improve, the industry requires relief on taxi rates in the meantime. During his presentation Inspector Didham of the Royal Newfoundland Constabulary commented on these GPS tracking devices, also called automated vehicle locators, and explained that they have been installed in police vehicles and that they are not a significant cost.

## 8.7 Other Considerations

### 8.7.1 Limousines

One of the issues that came up during the review is that Facility Association's Taxis class of business includes limousines. This means that each time Facility Association receives approval for a rate increase for its Taxis class of business, the rate increase also applies to limousines.

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<sup>273</sup> Newfoundland and Labrador Government Press Release, May 16, 2018.

<https://www.releases.gov.nl.ca/releases/2018/servicenl/0516n01.aspx>

<sup>274</sup> Transcript, June 13, 2018, page 110/18 to page 111/17.

Facility Association classifies taxis and limousines as Class 77 in its rating program and charges the same premiums to both.<sup>275</sup> This is done based on the “type of use” code set out in the GISA Automobile Statistical Plan whereby Class 77 includes taxis, jitneys, liveries, airport limousines and other limousines. The Class 77 description is consistent across all jurisdictions where the Automobile Statistical Plan is applicable.<sup>276</sup> The GISA data reported and published for these types of vehicles does not differentiate between taxis, limousines or any of the other vehicles included in the description. As such, it is not uncommon for taxis and limousines to be charged the same rates. It is noted that, while limousines are rated and charged the same premiums as taxis by Facility Association in Newfoundland and Labrador, this is not the case in all Canadian jurisdictions. The Facility Association rate manual in Alberta sets out that limousines are to be coded as taxis under Class 77, but rated at 50% of the taxi rates.<sup>277</sup>

In a submission to the Board Nicholas Windsor of Platinum Limousine Inc. questioned why limousines are classified in the same category as taxis. According to Mr. Windsor there has never been any collisions involving limousines causing injury or large claims and yet limousine companies are closing up daily due to high insurance costs. Mr. Windsor noted that limousines are classified by Motor Registration Division as buses but, while a 96-passenger school bus operator would pay roughly \$900 per year per bus for insurance, he pays close to \$9,000 for a 12-passenger stretch limousine. According to Mr. Windsor there is no reason that limousines should be in the same category as a taxi since they are on the road only five or six times a week and do not operate like a taxi, which is on the road daily.

In relation to the potential to rate limousines separately from taxis Facility Association explained that its underwriting experience is that, while limousines may be generally on the road less often than taxis, they tend to have a higher passenger capacity.<sup>278</sup> Facility Association did not provide any specific information to support this statement nor did it provide any further comments on the matter.

### 8.7.2 Expense Provision

There have been questions raised in recent Facility Association Taxi rate filings as to whether the expense provision reflected in rates continues to reasonably reflect the costs of writing Taxis business in the province given the large increases in premiums. The expense provision is intended to provide for recovery of the estimated operating expenses associated with writing automobile insurance in the province. It is noted that a number of Facility Association’s expense components are set out in the Plan of Operation approved for use by the Superintendent of Insurance. Several of these components are based on agreements between Facility Association and its servicing carriers including: a commission rate of 6%; servicing carrier fees of 1%; and servicing carrier operating costs of 9%. These expense components are not subject to review by the Board during the rate setting process and as such the actual underlying costs of the servicing carriers to write Facility Association business are not made available.

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<sup>275</sup> Where seating capacity of a limousine exceeds seven, each seat over seven is charged the per seat premium applicable to Passenger Bodily Injury and Accident Benefits for a Public Bus.

<sup>276</sup> Includes Alberta, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Yukon, Nunavut and the Northwest Territories.

<sup>277</sup> Facility Association Manual of Rules and Rates, Alberta, page E11.

<sup>278</sup> Facility Association response to the Board’s request for information, August 27, 2018, page 5.

Because the expense provision is a percentage of premium and the premium level has increased so substantial the amount of the expense provision has also risen substantially. For example the servicing carrier fees and operating costs, which together total 10%, provide for recovery to the servicing carrier and inclusion in rates of approximately \$723 for the processing and handling of a policy based on a current average Taxi premium of \$7,228. Whereas in 2012 when the average premium was approximately \$2,000 the servicing carrier fees would have been less than one third of this amount. It is not clear that the costs of the servicing carriers would have increased in proportion to the large premium increases in the province over this timeframe.

#### 8.7.3 Facility Association Notice Requirement

Taxi operators also raised concerns in relation to the fact that they are not receiving the required notice in relation to placement with Facility Association. Section 6.1 of the *Automobile Insurance Act* requires that every insured that is placed with Facility Association receive an annual notice setting out: a) the reasons why the insurance is placed through Facility Association; b) how long the person is anticipated to be provided with insurance through Facility Association based on the person's driving record; and c) what steps the person may take to qualify for insurance other than through Facility Association.

#### 8.7.4 Vehicle Loss History Rating

Concerns were raised in relation to the use of vehicle loss history rating for Facility Association's Taxis class of business. Facility Association explained that vehicle loss history is appropriate because there are multiple drivers and they frequently change. The Board notes that it is only in the case of fleets consisting of 10 or more taxis under common ownership/management that rating is based on vehicle loss history. It is also noted that this rating is a common practice for the automobile insurance industry, not just Facility Association Taxis.

### **8.8 Board Comments**

Every taxi operator who participated in this review spoke to the high cost of taxi insurance and how the increases in premiums in the last few years have made it extremely difficult to continue operating and to maintain independent drivers. Over the period 2013 to 2018 cumulative rate increases for Facility Association's Taxis class of business in Newfoundland and Labrador were 244%.<sup>279</sup> Even with these significant increases the rates continue to be inadequate to recover the losses and expenses associated with this class of business. As a result the loss ratios in this province are very poor, well in excess of 100%, and Newfoundland and Labrador has the highest taxis loss ratios in Atlantic Canada by a considerable margin over the period 2013 to 2017. It was acknowledged by the taxi operators that claims payouts for taxis in this province are high. James Cameron noted that the problem of poor taxi experience has been around for years.

The audit of closed taxi claims was intended to determine the factors affecting the Taxis loss experience in this province and identify measures which could improve this loss experience. This audit did not identify any such measures but did find that there were some issues with respect to reporting of claims and non-identification of drivers on insurance policies, that the majority of

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<sup>279</sup> In addition Facility Association has now applied for a further increase of 10.2%.

claims were in the St. John's area and that 81% of the gross payouts was attributed to bodily injury claims. It was concluded that the Taxis loss experience is highly unlikely to improve in the absence of major changes to the product. The Campaign's actuary, Craig Allen, noted that the taxi industry had a higher frequency of claims and significantly higher loss costs per vehicle compared to private passenger and commercial vehicles. In Mr. Allen's view, while the introduction of a minor injury cap or increased tort deductible, as suggested by Cameron, may eliminate some of these claims, the loss costs may not see much reduction since the eliminated claims will be of lower severity. It was suggested that specific measures aimed at reducing accidents would be more effective at reducing the frequency of claims and loss costs. Given the continuing and significant high loss ratios for this class of business it seems unlikely that any of the suggested measures would lead to immediate measurable reductions in Facility Association rates for its Taxis class of business in this province.<sup>280</sup>

One of the major frustrations expressed by the taxi operators was the lack of alternatives to Facility Association. Currently, it is only through Facility Association, the market of last resort, that taxis are able to obtain the mandatory automobile insurance coverage in this province. Given the high loss ratios it seems unlikely that individual insurers would be willing to enter the taxi insurance market at this time. Further, improved loss ratios may not solve the problem given that Facility Association is also the effective sole provider of taxi insurance in the other Atlantic provinces, despite significantly better loss ratios. This is particularly of note in Nova Scotia given that there are also additional risk sharing pools in that province. It seems that, at least in the near-term, without significant improvement in loss ratios Facility Association will continue to be the mechanism through which taxi operators in this province are insured.

Another significant concern raised by taxi operators was the fact that their insurance premiums do not appear to be based on their driving record. Several taxi operators reported that they had been driving for years without an accident or a conviction and yet their insurance rates were extremely high. Some compared the rates that they were charged for their taxi to the rates that they were charged for their personal automobile, which were dramatically lower. However it is clear, that the risks associated with a taxi are quite different than the risks of a private passenger vehicle. According to the taxi operators the average taxi travels 75,000 kilometers to 100,000 kilometers per year, carrying passengers at all hours of the day, and in all weather conditions, as compared to private passenger vehicles which generally travel less than 25,000 kilometers per year. It was also suggested by several taxi operators that good driving should be rewarded and bad driving discouraged. The Board notes that Facility Association's rates do reflect differences in driving record for individually rated taxis business with calculated rates ranging from approximately \$7,000 to over \$15,000.

In light of the concerns expressed by the taxi operators in relation to Facility Association's rates a review of Facility Association's risk classification scheme and underwriting guidelines for its Taxis class of business may be warranted to ensure that the premiums that are charged appropriately reflect the risks. In particular the following measures may be considered:

- Increase the incentive for taxis with a clean driving record and disincentive for those with multiple accidents and convictions. For example, Facility Association's private passenger

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<sup>280</sup> See section 4.3 for a discussion of rate adequacy in the context of private passenger coverage in the province.

class of business includes a clean driver discount of 20% for risks that have no convictions in 36 months, no at-fault accidents in 60 months and no license suspensions in five years.

- Introduce a discount for risk reduction measures taken by taxis. In this regard consideration should be given to the ongoing rate inadequacy and the difficulty of quantifying the immediate impact of these measures.
- Provide for rates which are more reflective of kilometers or time driven.
- Differentiate the Limousines and Taxis class of business in Facility Association's book of business, either through separate type-of-use codes for rating purposes or a discount.

In addition consideration may be given to the issues related to how the required Facility Association placement notice applies in the case of Taxis and in relation to the use of vehicle loss history for fleet-rated Taxis.

At the end of this review it is clear that the taxi industry is in crisis largely as a result of the recent significant increases in insurance premiums. These premium increases are the result of the extremely high loss ratios that have been experienced for this class of business. Government and the taxi operators have already taken the first steps to strengthen the taxi industry and it is expected that these measures will lead to lower loss costs in the long term. Unfortunately it is unlikely that these actions will result in immediate measurable reductions in the Taxis loss costs and premiums. In the circumstances it may be advisable to bring together representatives from the taxi and insurance industries as well as the various levels of government to build on the work that has already been done and to identify additional measures that can be implemented in the near term to control loss costs and to provide relief to the taxi operators. These measures may include:

- Further legislative and regulatory reforms, including mandatory winter tires, and additional requirements in relation to driver licensing, certification and monitoring, as well as additional vehicle requirements.
- Changes to Facility Association's risk classification system and underwriting guidelines and the expense provision which is reflected in Facility Association's Taxis rates.
- Further measures to address the issues raised related to the reporting of claims and the non-identification of drivers.
- Additional data collection to better identify better risks within this market.
- Structural changes such as the creation of risk sharing pools.
- A review with respect to the taxation of insurance and how taxes apply in the case of the high premiums paid by Taxis.

Given the similar circumstances in the other Atlantic provinces it may be beneficial to widen the discussions to include representatives from the other Atlantic provinces. This may yield a better understanding of measures which may be taken in the taxi insurance market to encourage the entrance of a specialty market insurer and contribute to consistencies in approach throughout the region. Through the cooperation of the various levels of governments and the insurance and taxi industries an approach can be developed to address the issues relating to the insurance of taxis in this province.

## 9.0 SECTION A/THIRD PARTY LIABILITY LIMIT

### 9.1 Introduction

The Board was directed to review the current mandatory Section A/Third Party Liability limit of \$200,000 and the rate implications of increasing the limit. Section A, or Third Party Liability coverage, provides compensation to a third party for bodily injury or property damage suffered in an automobile accident for which the insured is legally liable. The maximum amount that an insurer will pay for Third Party Liability coverage is based on the policy which is purchased, normally between \$200,000 and \$2,000,000. If a claim is made for more than the limit that was purchased the insurer will not pay the excess, leaving the insured without coverage for this amount.

Drivers in Newfoundland and Labrador are required by law to carry a minimum amount of Third Party Liability coverage of \$200,000, exclusive of interest and costs.<sup>281</sup> If a claim involving both bodily injury and property damage reaches \$200,000, payment for property damage is capped at \$20,000. The current \$200,000 statutory minimum has been in place since 1982 when it was increased from \$35,000.<sup>282</sup>

The statutory minimum Third Party Liability coverage is \$200,000 in all Canadian jurisdictions with the exception of Nova Scotia and Quebec.<sup>283</sup> In 2004 Nova Scotia's statutory minimum was increased from \$200,000 to \$500,000, making it the highest in Canada. Quebec's statutory minimum civil liability policy is \$50,000 but the system operates much differently than other jurisdictions as bodily injury is covered under the public plan.<sup>284</sup>

### 9.2 Third Party Liability Coverage in Newfoundland and Labrador

Third Party Liability coverage comprises the largest component of the automobile insurance premiums written in Newfoundland and Labrador and the majority of policyholders purchase coverage above the statutory minimum. The number of private passenger vehicles insured at the statutory minimum of \$200,000 in this province is relatively small and has declined in recent years, as shown in the following table:<sup>285</sup>

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<sup>281</sup> *Automobile Insurance Act*, RSNL 1990, c. A-22, s. 21.

<sup>282</sup> *An Act to Amend the Automobile Insurance Act and the Highway Traffic Act to Increase the Minimum Liability Under Motor Vehicle Liability Policies*, SNL 1982, c. 31, s. 1.

<sup>283</sup> See Exhibit 4 - Jurisdictional Scan.

<sup>284</sup> The statutory minimum applies only to property damage, or bodily injury when the accident occurs outside Quebec. <https://saaq.gouv.qc.ca/en/traffic-accident/public-automobile-insurance-plan/in-brief/>

<sup>285</sup> As reported in GISA Exhibit AUTO1010.

| Number of Private Passenger Earned Vehicles per Liability Limit<br>Newfoundland and Labrador |         |         |         |         |         |
|--|---------|---------|---------|---------|---------|
| Limit  | 2012    | 2013    | 2014    | 2015    | 2016    |
| <b>\$200K</b>  | 10,762  | 8,922   | 6,826   | 5,453   | 4,416   |
| <b>\$300K</b>  | 669     | 599     | 555     | 488     | 431     |
| <b>\$500K</b>  | 81,413  | 78,109  | 73,635  | 67,819  | 60,247  |
| <b>\$1M</b>  | 181,287 | 194,238 | 205,086 | 216,747 | 227,596 |
| <b>\$2M+</b>   | 24,252  | 25,718  | 27,617  | 29,815  | 32,581  |
| <b>All Other</b>   | 0       | 0       | 2       | 10      | 13      |
| <b>Total</b>   | 298,383 | 307,587 | 313,721 | 320,332 | 325,285 |

Based on this information, almost 99% of all private passenger vehicles were insured at a limit of \$500,000 or higher in 2016, and almost 80% were insured at \$1,000,000 or higher. Further the percentage of the market purchasing the statutory minimum has decreased from almost 4% in 2012 to just over 1.0% in 2016.

The circumstances are quite different with respect to vehicles insured with Facility Association in Newfoundland and Labrador. As noted by Oliver Wyman, in 2016 32% of all vehicles insured at the statutory minimum in the province were with Facility Association. Approximately 13% of Facility Association private passenger vehicles were insured at the statutory minimum limit of \$200,000 in 2016, compared to 31.7% in 2012.<sup>286</sup>

### 9.3 Implications of Increasing the Statutory Minimum Limit

Increasing the statutory minimum limit for Third Party Liability coverage would impact a very small percentage of the overall market given that almost 99% of insureds already carry a limit of \$500,000 or higher. For those insureds that carry the statutory minimum Third Party Liability coverage it is expected that an increase in this minimum limit would result in a coincident increase in premiums. The amount of this increase would vary by insurer because base rates and the factors used to calculate premiums are approved on a company specific basis. Oliver Wyman estimated that an increase in the statutory limit for Third Party Liability coverage to \$500,000, with no other changes, would increase the Third Party Liability premiums for affected insureds by 11% to 18%.<sup>287</sup>

While Facility Association Third Party Liability premiums would see a similar percentage impact if the statutory minimum limit is raised to \$500,000, the premium increase for Facility Association insureds may be greater due to their relatively higher average premiums.<sup>288</sup> In addition more insureds would also be impacted since approximately 13% of insureds in Facility Association carry only the statutory minimum. The progressive impact of increasing the statutory minimum up to \$2 million for Facility Association private passenger premiums is set out in the following table:<sup>289</sup>

<sup>286</sup> Oliver Wyman, *Other Coverages Review – Private Passenger Automobiles*, April 25, 2018, page 5.

<sup>287</sup> Oliver Wyman, *Other Coverages Review- Private passenger Automobiles*, April 25, 2018, page 5, footnote 10.

<sup>288</sup> Facility Association premiums were on average \$2020 compared to regular market \$1123 for private passenger vehicles in 2017.

<sup>289</sup> Facility Association's Manual of Rules and Rates for Newfoundland and Labrador, <http://www.facilityassociation.com/manurulesrates.asp>.

| Estimated TPL Premium Increases |   |
|---------------------------------|---|
| Facility Association            | Private Passenger                                   |
| TPL Limit                       | Estimated TPL Premium Increase from \$200,000 limit |
| \$500,000                       | 11.0%   |
| \$1,000,000                     | 22.0%   |
| \$2,000,000                     | 36.0%   |

It is also expected that an increase to the statutory minimum for Third Party Liability coverage would impact Underinsured Motorist coverage.<sup>290</sup> As explained by Oliver Wyman a claimant who purchased the Underinsured Motorist endorsement with a \$1 million limit can recover the difference between the at-fault party's Third Party Liability Limit and their own limit of \$1 million. If the Third Party Liability coverage statutory minimum is increased from \$200,000 some of the claims costs previously covered by the claimant's own Underinsured Motorist endorsement would shift to the at-fault party's Third Party Liability policy.<sup>291</sup>

Increasing the statutory minimum limit for Third Party Liability coverage would provide more recovery for claimants with catastrophic losses in cases where the insured vehicle carries only the statutory minimum coverage and the claimant does not carry the optional Underinsured Motorist coverage. As an example a claimant whose injuries include paraplegia may have much larger damages than the current statutory limit given the potential for significant care costs and total loss of income. It is notable that approximately 95% of insureds in this province purchase the optional Underinsured Motorist endorsement, which would provide coverage for some or all of this shortfall.

#### 9.4 Presentations, Submissions and Comments

IBC noted that, since very few Third Party Liability claims result in settlements higher than the current minimum \$200,000 limit, increasing the minimum limit should only marginally increase claims costs but would increase the premiums for the few individuals who currently purchase the minimum limit.

IBAN submitted that the statutory minimum for Third Party Liability should be increased to \$1,000,000. According to IBAN \$200,000 can often be insufficient coverage in the event of an accident that causes multiple injuries or injuries requiring life-long care. IBAN noted that for many in serious accidents a shortfall in coverage could be enough to cause financial ruin. IBAN stated:

There are many reasons that policy holders may choose a lower liability limit, though cost is often a factor. These savings can be an illusion, though. Lower liability maximums mean that, in the event of an accident where damages exceed them, other policies make up the difference, which creates a risk that inflates all insurance prices, even for drivers with a clean driving record. In the end, requiring all drivers to carry insurance policies that reflect real risks will allow for more effective pricing.<sup>292</sup>

<sup>290</sup> Underinsured Motorist coverage is an optional endorsement that may be purchased to provide for recovery from one's own insurer if the at-fault party in an accident is inadequately insured.

<sup>291</sup> Oliver Wyman, *Other Coverages Review – Private Passenger Automobiles*, April 25, 2018, page 5.

<sup>292</sup> IBAN Submission, May 2018.

## 9.5 Board Comments

Almost all private passenger vehicles in Newfoundland and Labrador already carry Third Party Liability coverage above the statutory minimum of \$200,000 and the vast majority also carry the optional Underinsured Motorist coverage to protect themselves in the event that the at-fault driver does not have adequate coverage. As a result increasing the Third Party Liability statutory minimum to \$500,000 is anticipated to have minimal impact on the total industry premiums, losses or profitability or on the vast majority of insureds in the province. It is noted that the statutory minimum Third Party Liability coverage is \$200,000 in all provinces, except Nova Scotia where it is \$500,000 and Quebec where it is \$50,000.

For the approximate 1% of vehicles in the regular market and 13% of vehicles in Facility Association which do carry only the statutory minimum Third Party Liability coverage, an increase in the statutory minimum limit will, all else being equal, result in an increase in the premium for this coverage. It was estimated that increasing the statutory minimum to \$500,000 would increase Third Party Liability premiums for these insureds by between 11% and 18%. This increase would likely have greater impacts on insureds in Facility Association since their premiums are, on average, materially higher than the regular market and a higher portion carry only the statutory minimum coverage.

Balanced against the potential increase in costs for some insureds is the potential benefit to claimants with large claims that would not otherwise be fully compensated by the current statutory minimum Third Party Liability coverage. While there may be very few claims which exceed \$200,000, concern was expressed as to the potential serious impacts for claimants in those cases. As an example, in the case of multiple injuries or injuries requiring life-long care the losses may be much higher than \$200,000 so that, if the person who caused the accident carried only the statutory minimum, the injured person would not be fully compensated unless they had purchased the optional Underinsured Motorist coverage.

## 10.0 SECTION B/ACCIDENT BENEFITS

### 10.1 Introduction

The Board was directed to review Section B/Accident Benefits coverage and impact on rates with respect to:

- coverage limits on medical and rehabilitation benefits and indemnity for loss of income;
- benefit payment practices (i.e. advance payments versus reimbursement);
- order of payment benefits in relation to other insurance plans;
- timeliness and efficiency of the injury assessment process;
- the relationship of Section B benefits to the settlement of Section A benefits; and
- whether the coverage should be mandatory.

Section B or Accident Benefits coverage provides compensation for certain expenses on a no-fault basis for drivers, passengers or pedestrians who suffer injury or death as a result of an automobile accident.<sup>293</sup> This coverage provides a broad range of benefits including medical expenses, funeral expenses, death benefits, loss of income/income replacement, and housekeeping services.

Accident Benefits coverage is mandatory in all Canadian jurisdictions with the exception of Newfoundland and Labrador where coverage is optional. The coverage limits for Accident Benefits in Newfoundland and Labrador have been in place since 1992 and include the following:

- Medical expenses - \$25,000 per person, including rehabilitation; time limit of 4 years
- Funeral expenses - \$1,000
- Disability income benefits – \$140/week; 104 weeks for partial disability; lifetime for total disability; must be disabled for at least seven days to qualify; unpaid housekeeper \$70/week for maximum of 12 weeks
- Death benefits - Death within 180 days (or two years if continuously disabled prior to death); death of head of household \$10,000 plus \$1,000 to each dependant survivor after first; death of spouse \$10,000; death of dependant \$2,000

Accident Benefits is currently a secondary coverage in Newfoundland and Labrador meaning that insureds are required to exhaust the benefits available under any public and private health plans before gaining access to Accident Benefits under their automobile insurance policies. This can leave those injured in a motor vehicle accident with no future coverage to deal with any non-automobile related health claims that may arise in the future.

### 10.2 Previous Reviews of Section B/Accident Benefits Coverage

Issues surrounding Accident Benefits coverage have been considered previously, both by the Select Committee in its 1998 report and by the Board in its 2005 Automobile Insurance Review. In its report the Select Committee recommended enhancements to the benefits available through Accident Benefits in conjunction with other recommended changes to the tort law system intended

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<sup>293</sup> “no-fault” – benefits are payable by your own insurer even if you are at-fault for the accident.

to address increasing claim severity and to offset the additional costs associated with enhanced Section B benefits. No changes were made to Accidents Benefits at that time.

While the coverage limits for Accident Benefits did not emerge as a significant issue during the Board's 2004-2005 review a number of industry stakeholders recommended making the coverage mandatory. No changes were implemented in Newfoundland and Labrador as part of the reforms arising from the 2005 review.

### 10.3 Other Jurisdictions

At the time of the Board's last review the benefits available under the Accident Benefits coverage in Newfoundland and Labrador were comparable on a regional basis to both Nova Scotia and Prince Edward Island and, while New Brunswick did have higher maximum limits, it also had an optional "No Frills" buy-down package which offered reduced limits similar to its Atlantic counterparts.

Since 2005 significant changes to Accident Benefits coverage have been made in the other Atlantic provinces. On December 20, 2007 New Brunswick repealed its optional "No Frills" policy limits. Nova Scotia and Prince Edward Island have also since increased the mandatory Accident Benefits limits to levels comparable to New Brunswick. As a result, Newfoundland and Labrador now has the lowest Accident Benefits coverage limits in Atlantic Canada as shown below:

| Section B/Accident Benefits Coverage Limits<br>Atlantic Canada |          |          |          |          |
|--|----------|----------|----------|----------|
| Benefit Category   | NL       | NB       | NS       | PEI      |
| Medical Expenses   | \$25,000 | \$50,000 | \$50,000 | \$50,000 |
| Funeral Expenses   | \$1,000  | \$2,500  | \$2,500  | \$2,500  |
| Death - Head of Household                                      | \$10,000 | \$50,000 | \$25,000 | \$50,000 |
| Death - Spouse   | \$10,000 | \$25,000 | \$25,000 | \$25,000 |
| Death - Dependent  | \$2,000  | \$5,000  | \$5,000  | \$5,000  |
| Income - Weekly Payment  | \$140    | \$250    | \$250    | \$250    |
| Income - Unpaid Housekeeper                                    | \$70     | \$100    | \$100    | \$100    |

Many tort-based automobile insurance systems in Canada have structured Accident Benefits as a secondary coverage similar to Newfoundland and Labrador. This minimizes the cost of the product by shifting some costs to other insurers such as group employment medical providers. Exceptions to this approach exist in Alberta, Nova Scotia and Ontario where claimants can elect to use Accident Benefits as the primary coverage for minor injuries if they agree to follow prescribed treatment protocols.<sup>294</sup> Services falling within the protocols are pre-approved and paid directly by the automobile insurer thereby avoiding out of pocket expenses for claimants and the use of other health plans.<sup>295</sup>

<sup>294</sup> Minor injuries as defined in applicable legislation and regulations.

<sup>295</sup> Similar changes to Newfoundland and Labrador's system are under consideration as part of this review and are discussed in greater detail in Section 12 – Minor Injury Treatment and Diagnostic Protocols.

## 10.4 Injury Assessment and Payment of Benefits

In Newfoundland and Labrador claimants that have purchased optional Accident Benefits coverage can access no-fault medical and rehabilitation benefits up to the prescribed limits provided they have been deemed essential by a physician of the insured's choice and the insurer's medical advisor.<sup>296</sup> Claimants often have to wait for approval from their insurer's medical advisor before treatment and rehabilitation can begin. In addition there may be disagreement over the type and extent of treatment required as there are no standard guidelines in the province pertaining to the assessment, diagnosis or treatment of injuries associated with Accident Benefits. Claims for Accident Benefits may also require insureds to pay out of pocket for any applicable expenses and then seek reimbursement from their insurer. This may pose a financial hardship for some and may result in a claimant not seeking treatment.

During the hearing Sheila Elliott and Della Ryan, the Campaign's accident victims panel, provided their experience with claiming Accident Benefits. Ms. Elliott was involved in three successive not-at-fault accidents over a five-year period in which she sustained injuries. In relation to problems accessing her Accident Benefits following her second accident, Ms. Elliott explained:

There was at points once my personal medical coverage was exhausted. At that – at a certain point, I did have two medical coverages, personal coverages, and once they were exhausted, then I had to go to Section B, but sometimes it was hard to get a hold of the representative because my massage therapist or physiotherapist didn't direct bill to my company, so that left me out of pocket, which left me short. And trying to come up with this money or having to have this business be short on money because I had to come back the next week and pay them, they were very accommodating like that, so I was very lucky, but I mean, at some points, my lawyer had to be involved and actually go further and contacting the company from my Section B.<sup>297</sup>

There were also similar delays in accessing benefits following a third accident, even though Ms. Elliott was still under treatment for injuries received from the second accident, as she explained “there could be weeks or multiple contacts made with the representative waiting to hear whether they would cover my massage or physio when needed”.<sup>298</sup> According to Ms. Elliott things improved when her lawyer became involved but she described dealing with the adjuster as a very frustrating experience:

I'd send email after email with all the documentation that they needed and I wouldn't get any response or I'd go for a massage and I'd speak to the person on the desk there and they'd say “oh well, we haven't heard from her today. We haven't heard from her. We've sent her emails. We faxed her information” and so, in that sense, it was very frustrating. Because like I said, I had to either put it on my credit card or leave an outstanding balance, which would double up the next time I went, when I did have the funds to pay it, and I felt like I shouldn't have to do that. Like I shouldn't have to deal with the stresses and that their position to help me out under Section B.<sup>299</sup>

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<sup>296</sup> S.P.F.1, Standard Automobile Policy (Owner's Form), Newfoundland and Labrador.

<sup>297</sup> Transcript, September 10, 2018, page 53/15 to page 54/7.

<sup>298</sup> Transcript, September 10, 2018, page 66/17-24.

<sup>299</sup> Transcript, September 10, 2018, page 69/8 to page 70/2.

Ms. Ryan described a similar experience with Accident Benefits coverage where her insurance company would not add her chiropractor to its list for direct billing which resulted in her having to pay out of pocket and then get reimbursed or delay payment for services until she had the money to pay. Ms. Ryan stated:

...I believe that every massage therapist or chiropractor or whatever form of treatment you're getting, should be on a direct billing system with the insurance companies because there's times when I've had to take a hundred dollars out of my pocket to pay for therapy that really should have gone to the grocery store to feed my kids.<sup>300</sup>

During the Campaign's lawyers' panel presentation Richard Rogers explained the difficulties associated with Section B benefits when attempting to settle a claim:

Section B sometimes becomes more difficult to deal with than the Section A. So, yeah, there are some problems and issues with Section B. But you know, when you stand back, insurance companies aren't there to pay out money. That's not their job. They don't like to do it. They like to make money. But they will do it. They'll pay out money and sometimes we have to really work hard to threaten lawsuits, to threaten legal intimidation. So, our job is not easy.<sup>301</sup>

## 10.5 The Relationship of Accident Benefits to Third Party Liability Settlements

Accident Benefits payments are deducted from any Third Party Liability settlement amounts.<sup>302</sup> This means that inadequate Accident Benefits coverage limits could potentially contribute to increased Third Party Liability claims costs in cases where accident victims exceed their Accident Benefits limits and seek additional recovery through Third Party Liability. As part of the closed claim study insurance companies were asked for information pertaining to the amounts that were collected under Accident Benefits that reduced the amounts paid under the Third Party Liability coverage. Unfortunately, this information was reported as "unknown" for 87% of the claimant files reviewed and IBC was unable to verify the reported data. As a result Oliver Wyman was unable to comment on the relationship of Accident Benefits on Third Party Liability settlements.<sup>303</sup>

## 10.6 Impact of Making Accident Benefits Coverage Mandatory

Newfoundland and Labrador is the only Canadian jurisdiction in which Accident Benefits coverage is optional. Oliver Wyman found that 94.6% of private passenger vehicles carried this coverage in 2016, with an average premium of \$72, and 82.5% of private passenger vehicles insured in Facility Association had Accident Benefits, with an average premium of \$143.<sup>304</sup> Accordingly, making Accident Benefits mandatory would be expected to have little impact on total industry premiums, losses or profitability given that the vast majority vehicles already have this

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<sup>300</sup> Transcript, September 10, 2018, page 125/5-13.

<sup>301</sup> Transcript, September 10, 2018, page 168/2-13.

<sup>302</sup> Since Accident Benefits payments are made on a no fault basis, an injured at-fault driver would also receive Accident Benefits payments. These are the only injury benefits available to the at-fault driver.

<sup>303</sup> Oliver Wyman, *Other Coverages Review – Private Passenger Automobiles*, April 25, 2018, page 11.

<sup>304</sup> Oliver Wyman, *Other Coverages Review – Private Passenger Automobiles*, April 25, 2018, page 11; GISA Exhibit FA AUTO1010.

coverage.<sup>305</sup> Those most affected by this change would therefore be the individuals who currently opt not to purchase the coverage.

During a presentation on behalf of the Campaign Richard Rogers stated the following on this issue:

Section B should be available to everybody. With a client – the first thing I ask a client, “did you carry Section B?” and the vast majority of them have no idea what I’m talking about. They don’t know what their insurance policy is. All they know that they pay X number of dollars a month usually and they don’t even know what their policy amount is. There’s a really lack of communication between the insurance company and the policy holder.<sup>306</sup>

Individuals who have access to private or employer sponsored health benefits, which often will have significantly enhanced coverage, may never recover under the Accident Benefits policy because it is a secondary coverage. By keeping Accident Benefits optional these individuals may choose to avoid the additional premiums associated with purchasing Accident Benefits.

## 10.7 Presentations, Submissions and Comments

IBC noted that Newfoundland and Labrador’s Accident Benefits coverage provide access to fewer treatment options than in the Maritimes and Alberta. According to IBC the fact that Accident Benefits coverage is optional and the limits are low is particularly problematic when someone is seriously injured in a collision. IBC recommended that government enhance Accident Benefits in this province by: i) making the coverage mandatory; ii) enhancing medical and rehabilitation benefits to \$50,000 and disability income benefits to \$250 per week; and iii) establishing pre-approved evidence-based treatment protocols. Viivi Riis, who presented on behalf of IBC, supported these recommendations. Ms. Riis noted that GISA data on no-fault Accident Benefits costs show average medical/rehabilitation costs have increased from \$3,607 in 2001 to \$7,491 in 2017, an increase of more than 108% as compared to a 32% increase in the cost of living over the same time period. According to Ms. Riis:

These data suggest that in spite of advances in rehabilitation research and techniques to help injured people recover from traffic injuries, it is costing more to provide rehabilitation care to injury victims in NL. Moreover, in spite of more money being spent on treatment, injured people are not getting better and are therefore being deemed eligible for compensation for extended pain and suffering.<sup>307</sup>

Aviva, Intact, Allstate, The Co-operators, Royal and Sun Alliance and IBAN supported making Accident Benefits mandatory with enhanced medical and rehabilitation benefits and disability income along with the introduction of evidence-based treatment protocols. According to The Co-operators making Accident Benefits mandatory will better protect consumers, leading to better health outcomes through faster access to care and less friction in litigation. The Co-operators noted that increasing Accident Benefits coverage to match the other Atlantic Provinces would provide

<sup>305</sup> Oliver Wyman, *Other Coverages Review – Private Passenger Automobiles*, April 25, 2018, page 11.

<sup>306</sup> Transcript, September 10, 2018, page 165/22 to page 166/7.

<sup>307</sup> Viivi Riis, *Report to Insurance Bureau of Canada: Newfoundland & Labrador Auto Insurance System*, July 25, 2018, page 6.

enhanced protection to clients but would also put additional cost pressures on premiums in the province. Because of this it was stressed that increased collateral benefits should offset tort entitlements and that increased Accident Benefits be accompanied by appropriate controls such as treatment protocols and clear limits.

The Campaign supported making Accident Benefits a mandatory coverage on the basis that the majority of policy-holders already buy the coverage. It was suggested that mandatory Accident Benefits coverage may result in some administrative cost savings to insurers who will no longer have to determine or pursue subrogated claims for Accident Benefits paid.<sup>308</sup> The Campaign also submitted that Accident Benefits should be the first payer, which would preserve private or group health coverage and make the process more streamlined for the claimant and the insurer. The Campaign supported a requirement for Section B insurers to accept direct billing for insured benefits from all treatment providers, not only those on the insurers “preferred supplier” list, as “a preferred supplier list creates a conflict of interest which does not benefit the victim/insured in this first party contract.”<sup>309</sup> In relation to the proposed increase in the coverage limits for medical and rehabilitation expense the Campaign stated:

While an increase in the Section B coverage limit for medical and rehabilitation expenses to \$50,000.00 may be reasonable, the evidence to support such a change has not been presented to the Board. The Board is further cautioned that it should not interpret a proposed increase in the Section B medical and rehabilitation expense coverage limit as somehow providing a trade-off benefit for injured victims having their compensation claims capped. The fact is, the vast majority of claimants, in our experience, would not receive any benefit from an additional \$25,000.00 in Section B Accident Benefits coverage for medical and rehabilitation costs.<sup>310</sup>

The Consumer Advocate agreed with IBC’s proposals related to Accident Benefits in the province, noting that, since most insureds already avail of the coverage, the transition to a mandatory coverage is not likely to have an impact on premiums, losses or profitability. According to the Consumer Advocate:

Overall, this proposal (which largely mirrors that of Intact) will be less cumbersome for the consumer who needs to avail of the accident benefits regime. Allowing the injured person’s insurer to be first payor will enable that individual a shorter path to treatment and the ability to in all likelihood deal with only one insurer. Moreover, an increase in accident benefits coverage will finally allow for an increase in what has been a dismal level of disability income (\$140/week).<sup>311</sup>

The Newfoundland and Labrador Chiropractic Association supported IBC’s proposal that the automobile insurer be the first and only payer of medical costs related to injuries sustained in a motor vehicle accident and pay the health care providers directly. The Canadian Federation of Independent Business noted that its members “too often report that a patient who has exhausted

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<sup>308</sup> Campaign Submission, October 12, 2018, page 72.

<sup>309</sup> Campaign Submission, October 12, 2018, pages 58.

<sup>310</sup> Campaign Submission, October 12, 2018, pages 57.

<sup>311</sup> Consumer Advocate Submission, October 12, 2018, page 12.

their private coverage in relation to a motor vehicle accident is left to pay out of pocket when they experience an unrelated injury and require care.”<sup>312</sup>

## **10.8 Board Comments**

Making Accident Benefits coverage mandatory would ensure that all claimants have access to the medical treatments which are covered following a motor vehicle accident. This should promote injury recovery and would bring Newfoundland and Labrador in line with other provinces, all of which have mandatory Accident Benefits.

Given that the vast majority of insureds in this province currently purchase Accident Benefits coverage, making this coverage mandatory is anticipated to have little impact on the total industry premiums, losses or profitability. For those insureds that do not currently purchase this coverage their premiums would increase as they would be required to pay the Accident Benefits premium. The average Accident Benefits premium in 2016 for private passenger vehicles was \$72 and for Facility Association private passenger vehicles it was \$143.

The coverage limits for Accident Benefits in Newfoundland and Labrador are currently much less than in the other Atlantic provinces. Enhancement of coverage limits would also be expected to result in an increase in the overall costs of providing this coverage, with a corresponding increase in premiums. It is noted, however, that enhancing Accident Benefits could lead to a small offsetting reduction in Third Party Liability claims costs.

Apart from making the Accident Benefits coverage mandatory and enhancing the benefits there were several other issues raised which may be considered in evaluating changes to the Accident Benefits coverage. Consideration may be given to whether Accident Benefits should be the primary, first payer coverage for an injured party following a motor vehicle accident, rather than a secondary coverage, as it is now. This may increase the cost of the coverage but would protect private health care benefits should they be needed for a future injury or illness not related to a motor vehicle accident. In addition, that while Accident Benefits insurers often permits health care providers to bill them directly, sometimes an injured person has to pay out-of-pocket for treatment and seek reimbursement from his or her own insurer. This can cause a great deal of frustration and financial difficulty for claimants who often are already going through a very difficult time.

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<sup>312</sup> Newfoundland and Labrador Chiropractic Association Submission, August 28, 2018, page 6.

## 11.0 MINOR INJURY DIAGNOSTIC AND TREATMENT PROTOCOLS

### 11.1 Introduction

The Board was directed to review the impact of adopting minor injury diagnostic and treatment protocols such as those provided in Alberta and Nova Scotia and how mandatory Section B/Accident Benefits coverage and the diagnostic protocols would impact Section A/Third Party Liability claims costs. The minor injury diagnostic and treatment protocols in place in Alberta and Nova Scotia set out the process and path that may be followed by persons who have been involved in an automobile accident and have injuries consistent with the definitions within the protocols. Ontario also implemented a minor injury guideline as part of its 2010 reforms which includes a pre-approved framework guideline for the treatment of certain minor injuries.

### 11.2 Diagnostic and Treatment Protocols

Diagnostic and treatment protocols typically address the most common injuries in automobile accidents such as sprains, strains and whiplash associated disorders (WADs) and specify how many chiropractic and physiotherapy visits may be authorized based on the injury suffered. The protocols are developed in consultation with health care professionals based on the latest research and evidence available. The determination as to whether an injury is minor or non-minor must be based on an assessment in accordance with the protocols. The protocols also provide options for individuals who are not recovering as expected following diagnosis and treatment.

Claimants that choose to follow the established diagnostic and treatment protocols do not need prior approval from insurance companies to begin treatment and do not pay out-of-pocket for the treatments. The treatments are pre-approved and billed directly to the insurance companies through Accident Benefits coverage of the automobile insurance policy. This helps avoid delays and disagreements over the type and extent of treatment required and allows for early diagnosis and treatment to help claimants return to work and normal daily activities. As a result, diagnostic and treatment protocols are said to be patient-focused and deliver better care sooner in order to promote healthier outcomes for automobile accident victims.

#### *Alberta*

In October 2004, at the same time that a minor injury cap was implemented, the Government of Alberta introduced the *Diagnostic & Treatment Protocol Regulation* which established new protocols for the diagnosis and treatment of minor injuries which applied specifically to sprains, strains and WADs suffered as a result of a motor vehicle accident.<sup>313</sup> Under these protocols the insurer is the first payer after the public health care system which means that claimants are not required to first exhaust personal health care benefits before accessing Accident Benefits.

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<sup>313</sup> Updates to the Diagnostic & Treatment Protocol Regulation were implemented effective July 1, 2014. This was the first update to the regulation since October 1, 2004. The changes were administrative in nature and did not include any significant policy changes. [http://www.qp.alberta.ca/documents/Regs/2014\\_116.pdf](http://www.qp.alberta.ca/documents/Regs/2014_116.pdf).

Claimants following the protocols can access up to 12 weeks of pre-approved therapy which provides for between 10 and 21 visits to a health care provider, depending on the injury.<sup>314</sup>

Claimants can choose their preferred doctor, chiropractor, or physiotherapist as their primary health care practitioner. The primary health care practitioner will diagnose the injury, instruct the client in the treatment process, follow the client's therapy and, with the client's consent, will provide the insurer with documentation of the diagnosis, planned treatment, and expected outcomes.

If an injury is not resolved following the 12 weeks of treatment available under the protocols, or if there is a need for services not covered by the protocols, the claimant can apply to the insurance company for further assessment or additional benefits under their Accident Benefits coverage. The primary health care practitioner can also refer the claimant to an Injury Management Consultant who can provide advice and report on the diagnosis and treatment of the claimant and also recommend a further assessment or multidisciplinary assessment of the injury.

The Superintendent of Insurance in Alberta has the authority to prescribe fees or maximum fees for any service described in the protocol regulations such as diagnostic imaging, laboratory testing, specialized testing, supply, treatment, visit, therapy, assessment or report. The prescribed fees are issued as industry-wide bulletins and published in the respective government gazette.

It is important to note that Alberta's *Diagnostic & Treatment Protocol Regulation* only sets a general approach to the treatment of minor injuries associated with motor vehicle collisions. Claimants are not required to seek treatment within the protocols, nor are health providers required to treat patients within the protocols. The claimant makes the final decision with input from the primary health care practitioner. The Regulations do not prevent or limit a claimant or a primary health care practitioner from asking an insurer to authorize investigations or treatments beyond the specified limits within the regulation.<sup>315</sup>

While there was no data to assess the direct impact of implementing the protocols in Alberta, a survey of claims data was conducted on behalf of IBC to assess the performance of automobile insurance reforms. The results demonstrated a number of positive results including an increase in the number of claimants accessing treatment in the first 12 weeks post-injury and fewer incidents of disputes requiring an independent medical examination. There was also a higher rate of claim closure which increased significantly during the 13-26 week post-injury period. By week 26, only 41.5% of the sample claims remained opened under the protocols, compared to 71.0% pre-reforms. The Alberta data also illustrated a shift in the treatment and average claims costs under the protocols with insurers paying more for treatment costs but less for overall average claims. The average cost per treatment increased from \$53 to \$61 following implementation of the protocols, but the total average cost per claim decreased from \$1,238 to \$1082, as calculated at 26 weeks

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<sup>314</sup> The protocols allow 10 visits to a health care provider for a 1<sup>st</sup> or 2<sup>nd</sup> degree strain/sprain and WAD I injury, and up to 21 treatment sessions for a 3<sup>rd</sup> degree strain/sprain or WAD II injury.

<sup>315</sup> Alberta Interpretive Bulletin – A guide for diagnosis, treatment and claims, Dr. Larry Ohlhauser, October 1, 2014.

post-injury.<sup>316</sup> Unfortunately, the scope of the survey did not address the impact, if any, adoption of the protocols had on automobile insurance premiums in Alberta.

#### *Nova Scotia*

Nova Scotia introduced the *Automobile Accident Diagnostic and Treatment Protocols Regulations* in April, 2013 to establish protocols for sprains, strains and WADs suffered as a result of a motor vehicle accident.<sup>317</sup> The Nova Scotia protocols were based on the Alberta model and are likewise aimed at ensuring that claimants with minor injuries have direct access to treatment without waiting for approval from an insurer or a physician's referral.

Similar to Alberta, the Nova Scotia protocols provide claimants with access up to 12 weeks of pre-approved therapy which includes between 10 and 21 visits to a health care provider, depending on the injury. There is also provision for claimants to be referred to an injury management consultant and to apply for additional treatments and Accident Benefits outside the limits specified in the protocols. Also, as in Alberta, the Superintendent of Insurance in Nova Scotia has the authority to prescribe fees or maximum fees for any service described in the protocol regulations such as diagnostic imaging, laboratory testing, specialized testing, supply, treatment, visit, therapy, assessment or report. The prescribed fees are issued as industry-wide bulletins and published in the respective government gazette.

It is notable that the lack of available data to assess the implementation of diagnostic and treatment protocols was noted by the Nova Scotia Utility and Review Board during its reform review. In its 2011 decision the NSUARB stated:

##### Cost Impact

[110] While Co-operators provided some limited information on claims costs, apart from anecdotal suggestions that the protocols were effective at reducing costs, there was no other evidence to provide insight into the impact on claims costs.

##### Premium Impact

[111] Similarly, there is insufficient evidence to determine the impact on the average premium if the minor injury protocols were implemented.<sup>318</sup>

### **11.3 Impact of Adopting Diagnostic and Treatment Protocols in Newfoundland and Labrador**

There was insufficient data available to determine the industry cost or premium impact associated with the introduction of diagnostic and treatment protocols for eligible injuries in Newfoundland and Labrador, or its potential impact on Third Party Liability claims costs. As noted in Section 10 of this report, due to data limitations in the closed claim study no conclusive findings could be made with respect to the relationship between Accident Benefits coverage and Third Party Liability claims costs.

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<sup>316</sup> *A Survey of Injury Claims Data After Introduction of Injury Care Protocols in Alberta, Canada* – Barbara Sulzenko-Laurie, BA (Hons); Viivi Riis, MSc; and, Elena Grubisic, MSc, 2010. (IBC response to Question #2).

<sup>317</sup> <https://www.novascotia.ca/just/regulations/regs/insdiagnostic.htm>

<sup>318</sup> NSUARB-INS-11-24 2011 NSUARB 160, September 30, 2011, page 30.

Implementation of diagnostic and treatment protocols is a complex process which would require significant changes be made by the insurance industry, health care practitioners and government. The Nova Scotia Utility and Review Board set out a number of specific factors as being important to successful implementation of diagnostic and treatment protocols:<sup>319</sup>

- engaging providers and insurers during the design and implementation phase;
- limiting and clearly defining the types of providers who can authorize protocol treatment
- making insurers the first payers for treatment only during the protocols period;
- including provisions that make claimants with sprains/strain injuries who decline to use protocols take on the onus of proving that their injuries are not minor;
- establishing fee schedules for the principal medical rehabilitation providers; and
- monitoring on an ongoing basis the functioning of the protocols.

Prescribed fees can help maintain a level playing field in the health practitioners market by eliminating provider rate increases. This can help ensure that the primary beneficiaries of the protocols are those injured in automobile accidents. It is important that any prescribed fees be maintained at appropriate levels in comparison to the market. If a fee differential exists for health practitioners treating inside versus outside the protocols, there may be an incentive to include or exclude claimants in favor of whichever option offers higher compensation.

Careful consideration would have to be given to the legislative and regulatory implications as new regulations would be required. A framework for the regulations could be based on the models established in Alberta and Nova Scotia with a commitment to make modifications based on the latest research and evidence available. Alberta utilized an experienced medical consultant to assist in this process and Newfoundland and Labrador may wish to do the same. Ongoing consultation with Alberta and Nova Scotia regulatory officials would be helpful as there is likely much insight to be gained from the experiences in those jurisdictions.

The implementation of diagnostic and treatment protocols would reflect a significant change to the current system and claimants would need to be informed of their new options with respect to making automobile insurance claims and seeking treatment for injuries. Alberta has developed a very clear and concise guide relating to the use of the protocols that would be helpful in this regard.<sup>320</sup>

#### **11.4 Presentations, Submissions and Comments**

The majority of industry stakeholders in the review supported the establishment of evidence-based diagnostic and treatment protocols. Viivi Riis, on behalf of IBC, stated that treatment for injured persons should be consistent and based on the scientific evidence. According to Ms. Riis, based on her experience, costs to the insurance industry are reduced when injured persons recover as fully as possible. Ms. Riis stated:

My personal experience in medical rehabilitation practice has confirmed to me that injured

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<sup>319</sup> NSUARB-INS-11-24, page 33.

<sup>320</sup> Alberta Interpretive Bulletin – A guide for diagnosis, treatment and claims, Dr. Larry Ohlhauser, October 1, 2014.

claimants who can access the right resources at the right time to recover maximally have better health outcomes and quality of life.<sup>321</sup>

Ms. Riis explained that she supports robust programs that are designed to protect the injured person's access to good quality treatment regardless of who was at fault. According to Ms. Riis treatment protocols should:

- set out a framework of care based on research and include recommendations for treatment known to be effective as well as guidance to avoid treatments shown to be ineffective;
- provide easy access to pre-authorized evidence-based treatment without a lot of paperwork, delays or bureaucracy;
- include a costing model that discourages over-treatment or inappropriate treatment;
- include mandatory standard health outcome measurements to increase accountability on the part of the treatment provider and help the injured person and insurer understand the extent to which treatment is helping; and
- not be overly prescriptive and allow for health practitioners who initiate treatment to exercise clinical judgment in designing a treatment plan for an individual patient.

IBC recommended the establishment of pre-approved evidence-based treatment protocols and proposed the following provisions be used to guide the development of the treatment protocols:

- The treatment protocols should consist of up to 10 or 21 treatment visits, depending on the injury's seriousness, for up to 90 days, as in Alberta and Nova Scotia.
- Treatment within the protocols should be pre-approved and the automobile insurer should be the first payer.
- Eligible injuries should be sprains, strains and whiplash, including any clinically associated sequelae, whether physical or psychological in nature, regardless of the injury's seriousness. All people with these injuries should benefit from the pre-approved evidence-based treatment.
- As in Alberta and Nova Scotia, physicians, physiotherapists and chiropractors should be the only health providers eligible to coordinate treatment within the protocols. However, they should be able to use some of the injured person's treatment visits for massage therapy, acupuncture, dental services, psychological services and occupational therapy.
- All health providers should have to abide by a government-issued fee schedule, modeled after the fee schedules in Alberta and Nova Scotia.<sup>322</sup>

In its submission Intact noted that its experience with evidence based treatment protocols in other provinces demonstrates a faster path to recovery. Intact strongly recommended the use and continued development of new evidence-based treatment protocols. According to Intact clearly articulated evidence based treatment protocols set out expectations and provide clarity for all parties involved. Intact stated that, whenever possible, the best treatment modalities with a proven track record of success should be available, in keeping with the goal of providing access to care aimed at returning claimants back to health. Intact also recommended that information on

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<sup>321</sup> Viivi Riis, *Report to Insurance Bureau of Canada: Newfoundland & Labrador Auto Insurance System*, July 25, 2018, pages 7-8.

<sup>322</sup> IBC Submission, March 7, 2018, page 10.

evidence-based treatment protocols should be readily accessible and published in a centralized website, and that protocols must clearly indicate that, unless insurers receive compelling medical evidence to the contrary, the claimant will be discharged and medical and rehabilitative treatment will end when treatment has concluded.

Intact also noted that Newfoundland and Labrador does not need to start from scratch with respect to treatment protocols as the use of evidence-based programs in automobile insurance is an established norm in Alberta and Nova Scotia. According to Intact the progressive implementation of evidence based treatment protocols paired with a fee schedule for services that aligns with the provincial health care rates would ensure that costs are fair for the treatment received and support the recovery of eligible collision victims. Intact also suggested that there is an opportunity to be more clear and transparent with customers in terms of what is afforded under the policy and where caps and limits apply, similar to the current approach with disability policies, where a schedule of limits and coverage are clearly outlined at the time of the purchase of the policy. If a customer does not fall within an evidence-based program of care and passive treatments such as massage therapy and chiropractic care are being pursued, such treatment should be subject to clear per-visit caps and maximum limits. The use of ultimate limits for passive treatment already exists within Alberta's first-party benefit system.

The Co-operators noted that, while they support the establishment of pre-approved evidence-based treatment protocols, these alone are not enough to be a significant driver of stability and predictability. According to The Co-operators policies that control loss costs as well as transaction costs, such as those in Alberta, merit consideration. These policies include allowing medical and rehabilitation and income replacement benefits to be only available for two years from the date of the accident, and implementing separate hard payment limits for chiropractic, massage therapy and acupuncture outside treatment protocols.

Aviva submitted that effective programs of care have been shown to improve health outcomes and reduce costs. Aviva encourages the government to look to other auto insurance markets and workers compensation for programs of care and adopt those, suggesting "there's no need to reinvent the wheel." Programs of care should be introduced for the treatment of frequently seen injuries such as soft tissue injuries with associated sequelae, chronic pain, post-traumatic stress disorder, and concussions. Aviva also recommended that Newfoundland and Labrador adopt and implement Ontario's Health Claims for Auto Insurance (HCAI).<sup>323</sup> According to Aviva HCAI provides valuable data about injuries sustained in automobile accidents and the treatment provided which can be used by the government to address injury trends, develop new programs of care and understand the effectiveness of current programs of care.

Allstate, Royal and Sun Alliance and IBAN supported the implementation of pre-approved evidence-based treatment protocols as proposed by IBC.

In relation to treatment protocols proposed by the insurance industry the Campaign stated:

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<sup>323</sup> HCAI is an electronic system developed by Ontario auto insurers, working closely with FSCO, the Ontario Ministry of Finance, various medical rehabilitation provider associations and other stakeholders. This system is used for transmitting automobile insurance claims forms between insurers and healthcare facilities in Ontario.

There is a serious concern with implementing the Section B treatment protocols proposed by the IBC, as it appears to remove or severely limit the role of the individuals' medical care providers in their treatment and may place artificial constraints and limits on treatment that may well not accord with treating the claimant as an individual. The Board has heard from family physicians, and the massage therapist and chiropractors associations in opposition to these protocols as proposed.<sup>324</sup>

The Campaign suggested that insurers have asked to implement pre-approved evidence-based treatment protocols without any medical or costing evidence to support such a decision.<sup>325</sup>

In its written submission the Newfoundland and Labrador Chiropractic Association (NLCA) provided its views on the clinical management of injured parties, specifically the need for better treatment coordination. The NLCA noted the current practice in the province is that insurers most often instruct those injured in vehicle accidents that they must use a medical physician to coordinate their treatment. The NLCA supported IBC's position that treatment coordination should be limited to only the select professions qualified to treat an entire injury and should include a fee schedule. On the need for a collaborative approach related to evidence-based protocols the NLCA stated:

...it is essential that any recommendations relating to evidence based protocols include the requirement for collaborative development between insurers and primary coordinators of care in NL, including chiropractors. Doing so will ensure that these guidelines respect the principles of evidence based health care, the individuality of those injured, and the needs of insurers for cost-effectiveness.<sup>326</sup>

The NLCA also recommended that measures be put in place to prevent the use of preferred provider networks and create disciplinary measures for insurers who engage in practices that limit or intend to influence an insured's provider of choice. According to the NLCA treatment protocols should:

..acknowledge the potential for individual responses to treatment that differ from suggested recovery times in guidelines and in those circumstances allow for a process to ensure that injured persons are able to access appropriate and necessary care that is recommended by their treating health practitioner.<sup>327</sup>

In its submission the Newfoundland and Labrador Massage Therapists Association (NLMTA) supported the need for early intervention in recovery from a motor vehicle accident. The NLMTA proposed the automobile insurance industry "move away from the current model and protocol for post-accident intervention and look at a model that has massage therapy included in the first line of defense which will improve outcomes and lower costs in the long term."<sup>328</sup>

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<sup>324</sup> Campaign Submission, October 12, 2018, pages 72-73.

<sup>325</sup> Campaign Submission, October 12, 2018, page 56.

<sup>326</sup> Newfoundland and Labrador Chiropractic Association Submission, August 28, 2018, page 5.

<sup>327</sup> Newfoundland and Labrador Chiropractic Association Submission, August 28, 2018, page 8.

<sup>328</sup> Newfoundland and Labrador Massage Therapists Association Submission, August 13, 2018.

## 11.5 Board Comments

The goal of diagnostic and treatment protocols is to get a person injured in a motor vehicle accident on the road to recovery as soon as possible with timely and effective evidence-based treatment specific to the injury. The benefits of these protocols for an injured person include not having to wait for approval from the insurer or for a physician referral to access treatment, not having to pay out of pocket so there are no financial barriers to access to treatment, consistency in treatment for defined injuries based on scientific evidence, and being able to choose their own treatment provider.

The costs associated with treatment under the diagnostic and treatment protocols would be covered by the no-fault Accident Benefits coverage. A number of insurers cautioned that cost control measures such as prescribed fee schedules and time limits for rehabilitation and income replacement benefits should be included. There was limited information available during the review to assess the cost impacts of implementing these protocols. These protocols have been in place for a number of years in Nova Scotia and Alberta and one post-reform study conducted in Alberta suggested that the protocols resulted in reduced claims costs through higher rates of claim closures and lower overall average claim payouts even with higher treatment costs.

There was general support from industry stakeholders for the implementation of pre-approved, evidence-based diagnostic and treatment protocols for defined injuries, as a part of a package of reforms including a minor injury cap, mandatory Accident Benefits and increased coverage limits for Accident Benefits. Tort reform was initially implemented in New Brunswick and Nova Scotia without the establishment of diagnostic and treatment protocols, but in 2013 Nova Scotia implemented protocols for minor injuries. In Alberta the protocols were implemented on 2004 at the same time as the minor injury cap. Given the benefits to injured persons of early access to treatment and potentially faster recovery it could be argued that these protocols should be put in place even if tort reform is not pursued. Most insurers suggested that both are needed to ensure cost stability.

Implementation of minor injury diagnostic and treatment protocols in this province would be a significant change. Collaboration between the insurance industry, health care professionals and government would be critical in developing and implementing diagnostic and treatment protocols in this province.

## 12.0 DIRECT COMPENSATION-PROPERTY DAMAGE

### 12.1 Introduction

The Board was directed to review the impact of offering direct compensation for physical damage to automobiles. Under Newfoundland and Labrador's current automobile insurance system, when a motor vehicle accident results in physical damage to the automobile of a driver who is not at fault, recovery for this damage will be sought from the driver who is at fault and damages will be paid under the at-fault driver's mandatory Third Party Liability property damage coverage.

Under Direct Compensation-Property Damage (DCPD) coverage an insured who is in a motor vehicle accident is indemnified by his or her own insurance company for damages to the automobile regardless of who is at-fault. This means that not-at-fault claimants do not have to deal with the at-fault party's insurer to collect reimbursement for damages to their automobile. The at-fault driver would continue to be reimbursed for physical damage to his or her automobile under his or her Collision coverage, provided this coverage was purchased. DCPD does not remove the concept of fault from loss recovery, but merely changes the source of funds. It also does not change the claimant's right to sue for other damages. Those rights are maintained while claims for physical damage to automobiles are settled directly with each driver's own insurer.<sup>329</sup>

DCPD coverage was introduced in New Brunswick in 2005, Nova Scotia in 2013 and Prince Edward Island in 2015. It has also been available in Quebec and Ontario for decades.<sup>330</sup>

### 12.2 Impact of Adopting DCPD in Newfoundland and Labrador

#### 12.2.1 Allocation of Costs to DCPD

As noted by Oliver Wyman introducing DCPD would result in the split of property damage coverage claims into two components: DCPD and PD-Tort.<sup>331</sup> Oliver Wyman examined GISA data to determine how these costs were split in other jurisdictions in which DCPD was available to estimate how the split might look in Newfoundland and Labrador.<sup>332</sup> This review showed that, over a five-year period ending December 31, 2016, total property damage claim costs were approximately split, on average, as follows:

| Total Property Damage Claims Costs Split<br>DCPD and PD-Tort 2012-2016 |      |         |
|--|------|---------|
|  | DCPD | PD-Tort |
| <b>New Brunswick</b>   | 92%  | 8%      |
| <b>Nova Scotia</b>   | 93%  | 7%      |
| <b>Ontario</b>   | 95%  | 5%      |

<sup>329</sup> DCPD only covers property damage to automobiles and its contents. All other types of third party property damage (i.e. broken fence, damaged bicycle) would continue to be paid under the Third Party Liability property damage coverage.

<sup>330</sup> DCPD was introduced in Quebec in 1978 and Ontario in 1990.

<sup>331</sup> The change in the Third Party Liability property damage coverage resulting from the introduction of DCPD is referred to as PD-Tort to avoid confusion with the current property damage coverage.

<sup>332</sup> Quebec and Prince Edward Island were excluded from the comparison due to data limitations.

Oliver Wyman noted that Ontario's split of DCPD and PD-Tort was slightly different than New Brunswick and Nova Scotia and suggested two possible reasons for this: (i) Ontario has a deductible option for DCPD; and (ii) Ontario has a lower bodily injury claims frequency rate which is correlated to the property damage frequency rate.

Oliver Wyman assumed that the DCPD model implemented in this province would more closely resemble that of New Brunswick and Nova Scotia and found that the anticipated split of property damage total claims costs into DCPD at 93% and PD-Tort at 7% would be a reasonable initial estimate.<sup>333</sup>

#### 12.2.2 Change in Total Costs for DCPD and PD-Tort Combined

Implementation of DCPD is generally viewed as cost neutral given that the cost to administer DCPD is offset by elimination of the cost for property damage liability coverage. Oliver Wyman examined the total property damage claims costs following the introduction of DCPD in New Brunswick and Nova Scotia to estimate if any adjustments would be required to implement DCPD in Newfoundland and Labrador.<sup>334</sup>

In New Brunswick there was no apparent change in the total claims costs for DCPD and PD-Tort combined following implementation of DCPD. However, Nova Scotia experienced an increase in average claims costs per vehicle from \$86 to \$110 following implementation and total claims costs continued at increased levels. Most of the increase could be attributed to a higher claims frequency rate following the introduction of DCPD, but there was uncertainty as to the reasons for the increase in claims frequency.

Given that there was no increase in total costs evident in New Brunswick and that there was uncertainty regarding the reasons for the increase in Nova Scotia, Oliver Wyman suggested that no adjustments to DCPD rates would be necessary to account for total cost changes associated with the introduction of DCPD in Newfoundland and Labrador.<sup>335</sup>

#### 12.2.3 Impact on Collision Coverage

Oliver Wyman also examined the experience in New Brunswick and Nova Scotia to estimate the possible impact on Collision coverage upon implementation of DCPD and found there were significant changes in the frequency and severity rates for Collision coverage following the introduction of DCPD in both provinces. In New Brunswick the Collision frequency rate declined by 21% while the average severity cost increased by approximately 25%. In Nova Scotia the frequency rate declined approximately 13.5% while the average severity cost increased by 20%.

While changes in frequency rates and severity costs were observed following the introduction of DCPD, there was minimal impact on the overall average claim cost per vehicle for Collision as the changes were offsetting. As a result, Oliver Wyman found that no adjustments to Collision

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<sup>333</sup> Oliver Wyman, *Other Coverages Review – Private Passenger Automobiles*, April 25, 2018, pages 7-8.

<sup>334</sup> Ontario was not considered in this analysis since the introduction of DCPD occurred nearly 30 years ago.

<sup>335</sup> Oliver Wyman, *Other Coverages Review – Private Passenger Automobiles*, April 25, 2018, page 8.

rates would be necessary to account for total cost changes associated with the introduction of DCPD in Newfoundland and Labrador.<sup>336</sup>

#### 12.2.4 Other Considerations

DCPD is viewed by insurers as an efficient system with less litigation and faster settlement of claims which tends to reduce claims processing costs for insurers due to the reduced need for subrogation between carriers. DCPD is also viewed as more consumer friendly given that insureds deal with their own company with whom they already have a relationship.

The accuracy of rate setting also tends to be enhanced under DCPD as insurers have precise information on the vehicle that would need to be repaired or replaced in advance of an accident. However, this could result in some changes to the premium charged to an insured immediately following implementation of DCPD as insurers make rate adjustments to more accurately reflect their insureds' vehicles. Under a DCPD system insureds with more expensive vehicles may pay more than they currently pay and insureds with less expensive vehicles may pay less.

With respect to rate setting it is noted that the Canadian Loss Experience Automobile Rating (CLEAR) factors are provided annually by IBC and are widely used by insurers for rating physical damage coverages such as Collision and Comprehensive as they more accurately and fairly price premiums based on prior loss experience of individual vehicles. CLEAR rating factors are also available for DCPD coverage.<sup>337</sup> In the event that DCPD is implemented in Newfoundland and Labrador insurers could be encouraged to utilize the CLEAR rating factors to rate this coverage.

### **12.3 Presentations, Submissions and Comments**

IBC noted that DCPD would benefit consumers as they would be able to deal with their own insurer and it would benefit insurers as they would be able to more accurately calculate their premiums. Intact, Allstate, Aviva and The Co-operators all supported the transition from the current property damage claims settlement model to DCPD. Allstate noted that only Newfoundland and Labrador and Alberta currently have a tort-based vehicle damage claims-settlement model. The Co-operators submitted that adopting DCPD for physical damage coverage would reduce costs and allow for better client service.

IBAN also recommended implementation of DCPD in the province to improve the consumer experience when dealing with a not-at-fault claim.

The Consumer Advocate supported the adoption of the DCPD system, stating that it would represent a streamlined process for the consumer who would have the advantage of dealing with a representative of a familiar insurance company. According to the Consumer Advocate the adoption

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<sup>336</sup> Oliver Wyman, *Other Coverages Review*, April 25, 2018, pages 8-9.

<sup>337</sup> CLEAR uses insurance claims data to assess expected and actual claims experience of all vehicles made for the Canadian and U.S. markets. Each year, all rate groups are updated to reflect such factors as aging and experiential changes.

of DCPD, which he understood to be a “cost neutral” measure, should allow the claims process to function more efficiently, resulting in an expeditious compensation process.<sup>338</sup>

#### **12.4 Board Comments**

The introduction of DCPD coverage in Newfoundland and Labrador would allow drivers who are not at fault to seek reimbursement for damages to their automobiles directly from their own insurer rather than from the insurer of the driver who was at fault. This can contribute to a faster and more customer-friendly resolution of the claim.

Implementing DCPD is generally viewed as being cost neutral and, based on Oliver Wyman’s findings, no adjustments to DCPD or Collision rates would be necessary to account for total cost changes associated with the introduction of DCPD in this province. It was noted that, because DCPD tends to enhance the accuracy of rate setting, the premiums paid by some insureds may change following implementation as insurers adjust rates to reflect the insured vehicle.

Industry supported the implementation of DCPD in this province on the basis that it would reduce costs for insurers and improve customer service. The Consumer Advocate also supported the implementation of this coverage on the basis that it is a “cost-neutral” measure and result in a more streamlined process.

Newfoundland and Labrador is currently the only province that does not have DCPD coverage. Adopting the DCPD model would contribute to standardization of the automobile insurance product in Atlantic Canada. Given the relatively recent adoption of DCPD in Nova Scotia and Prince Edward Island, the experience in those jurisdictions may be informative.

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<sup>338</sup> Consumer Advocate Submission, October 12, 2018, pages 13-14.

## 13.0 SECTION D/UNINSURED AUTOMOBILES COVERAGE

### 13.1 Introduction

The Board was directed to review Section D/Uninsured Automobiles coverage in the Province. Uninsured Automobiles coverage provides compensation for bodily injury, death and property damage caused by an uninsured or unidentified vehicle.

To protect persons and property from a loss as a result of the operation of vehicles which are not insured the *Automobile Insurance Act* mandates that Uninsured Automobiles coverage be included as part of all insurance policies sold in the province. In Newfoundland and Labrador, benefits up to \$200,000 are available for any one accident. In the event that a loss is caused by an unidentifiable automobile, Section D will provide coverage for bodily injury claims, but not for property damage claims.<sup>339</sup> Uninsured Automobiles coverage is also mandatory in New Brunswick, Nova Scotia and Prince Edward Island.<sup>340</sup>

In addition to Uninsured Automobiles coverage each Atlantic province has an Uninsured Automobile Fund to indemnify for claims by persons, such as pedestrians and cyclists, with no insurance coverage or inadequate coverage who suffer injury or damage occasioned by an uninsured vehicle. Facility Association is required under the respective provincial insurance legislation to administer these funds and is also responsible for monitoring the investigation, defense and settlement of these claims through the assistance of designated law firms.<sup>341</sup> Any amounts paid by the funds are financed by the automobile insurance industry as a whole.

### 13.2 Uninsured Automobiles Experience

It is impossible to quantify the exact number of drivers operating without the mandatory insurance coverage in the province though there is some information available through the records of highway enforcement activities and claims arising as a result of an accident involving an uninsured vehicle. Previous reviews of this issue have estimated that approximately 3% - 7% of automobiles on the road in the province were uninsured.<sup>342</sup>

The table below shows the number of highway traffic offenses for insurance coverage violations reported in RNC jurisdictions throughout the province over the period 2012 to 2017.<sup>343</sup>

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<sup>339</sup> Any Accident Benefit payments made are deducted from the benefits payable under Uninsured Automobiles coverage.

<sup>340</sup> Oliver Wyman, *Other Coverages Review – Private Passenger Automobiles*, April 25, 2018, page 10.

<sup>341</sup> Section 98(2)(b) of the *Insurance Companies Act* sets out the regulations for Facility Association in administering the Uninsured Automobile Fund in Newfoundland and Labrador.

<sup>342</sup> See the discussion on page 83 of the Board's *2005 Automobile Insurance Review Report to Government*

<sup>343</sup> RNC Annual Juristat reports, 2012-2017. [www.rnc.gov.nl.ca/statistical-reports/](http://www.rnc.gov.nl.ca/statistical-reports/)

| Insurance Coverage Violations<br>RNC Jurisdictions<br>2012-2017 |                     |                 |          |       |
|---|---------------------|-----------------|----------|-------|
| Year  | Northeast<br>Avalon | Corner<br>Brook | Labrador | Total |
| 2012  | 1072                | 47              | 25       | 1144  |
| 2013  | 1111                | 42              | 33       | 1186  |
| 2014  | 1116                | 69              | 29       | 1214  |
| 2015  | 1223                | 75              | 21       | 1319  |
| 2016  | 1445                | 186             | 34       | 1665  |
| 2017  | 1190                | 128             | 29       | 1347  |
| Total   | 7157                | 547             | 171      | 7875  |

Inspector Didham of the RNC acknowledged during the hearing that there are more uninsured drivers on the roads than those reported in the RNC figures as “these are just the ones we’re catching.”<sup>344</sup>

In addition the information which is available in relation to claims made under Uninsured Automobiles coverage in the province in recent years provides a perspective on the number of vehicles being driven without the mandatory automobile insurance. The following table presents the Uninsured Automobiles experience for private passenger vehicles in Newfoundland and Labrador for the years 2012 to 2016:<sup>345</sup>

| Section D/Uninsured Automobiles Experience<br>Newfoundland and Labrador<br>2012-2016 |                    |                     |                        |                                     |                              |                              |   |
|--|--------------------|---------------------|------------------------|-------------------------------------|------------------------------|------------------------------|---|
| Accident<br>Year   | Earned<br>Vehicles | Earned<br>Premium   | Number<br>of<br>Claims | Claim and<br>Adjustment<br>Expenses | Average<br>Cost Per<br>Claim | Average<br>Earned<br>Premium | Incurred<br>Claim Cost<br>Per Earned<br>Vehicle |
| 2012   | 298,999            | \$5,626,848         | 154                    | \$4,146,467                         | \$26,962                     | \$18.82                      | \$13.87   |
| 2013   | 308,807            | \$5,839,206         | 154                    | \$4,554,633                         | \$29,562                     | \$18.91                      | \$14.75   |
| 2014   | 315,959            | \$5,980,904         | 167                    | \$5,470,383                         | \$32,675                     | \$18.93                      | \$17.31   |
| 2015   | 321,264            | \$6,220,866         | 186                    | \$5,930,095                         | \$31,950                     | \$19.36                      | \$18.46   |
| 2016   | 325,798            | \$6,163,538         | 127                    | \$6,273,866                         | \$49,445                     | \$18.92                      | \$19.26   |
| <b>Total</b>   | <b>1,570,826</b>   | <b>\$29,831,362</b> | <b>788</b>             | <b>\$26,375,444</b>                 | <b>\$33,481</b>              | <b>\$18.99</b>               | <b>\$16.79</b>                                  |

Over a five-year period ending 2016, there were 788 claims in the province with over \$26 million in damages paid in which a driver involved in an automobile accident was reported as either uninsured or unidentified.

Oliver Wyman completed a comparison of the Uninsured Automobile experience in each of the Atlantic Provinces over the period 2012 to 2016. Oliver Wyman found that the average Uninsured Automobile claims frequency rate in Newfoundland and Labrador was the highest in the region. An average of five Uninsured Automobile claims were reported each year for every 10,000

<sup>344</sup> Transcript, September 27, 2018, page 41/10 to page 42/4.

<sup>345</sup> GISA Exhibit AUTO1005.

vehicles insured in Newfoundland and Labrador, compared to three in both New Brunswick and Nova Scotia and four in Prince Edward Island. Oliver Wyman further noted that Newfoundland and Labrador's average claim cost per earned vehicle at \$19 was also highest compared to \$5 in New Brunswick, \$9 in Nova Scotia and \$7 in Prince Edward Island. In relation to the Atlantic comparison Oliver Wyman stated:

We assume that, on average, higher UA claims frequency rates are associated with a higher percentage of uninsured vehicles. However, data to compare differences in the number of uninsured vehicles in each Province is not available.<sup>346</sup>

The experience for the Uninsured Automobile Funds for 2017 shows there was a net underwriting loss of \$141,000 in Newfoundland and Labrador which means that uninsured drivers imposed additional costs to the industry, thereby increasing the overall cost of insurance to be paid by insureds.<sup>347</sup>

### 13.3 Vehicle Registration and Proof of Insurance

In Newfoundland and Labrador commercial and private passenger vehicles are treated differently by the Motor Registration Division (MRD) with respect to validation of insurance. In the case of commercial vehicles, the insurer is required to file a certificate of insurance with MRD and also to notify MRD in writing of the cancellation or expiry of a policy for which a certificate of insurance has been issued. This is not the case for private passenger vehicles. Individuals registering a private passenger vehicle have to provide MRD with the name of their insurance company and their policy number but MRD has no way of verifying the information and the insurance company is not required to notify MRD if the policy is subsequently cancelled.

The issue of vehicles being driven without valid insurance in the province was raised in the 2008 Report of the Auditor General of Newfoundland and Labrador. A review of the MRD resulted in the Auditor General concluding the following with respect to private passenger vehicles:

There were no controls to prevent individuals from registering vehicles without insurance because MRD did not verify insurance information provided at registration and had no means of verifying the information it received as it did not have online access to insurance industry systems. As well, insurance companies were not required to notify MRD of insurance cancellations. Therefore, MRD was not able to prevent individuals from purchasing insurance when registering a motor vehicle and subsequently cancelling the insurance policy.<sup>348</sup>

Additional findings were also made with respect to highway enforcement of proof of insurance:

We noted that Highway Enforcement Officers were not able to verify whether an insurance card being presented as proof of insurance actually represented a valid, in-force insurance

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<sup>346</sup> Oliver Wyman, *Other Coverages Review – Private Passenger Automobiles*, April 25, 2018, page 10.

<sup>347</sup> Facility Association Financial Statements for year ended October 31, 2017. Nova Scotia showed a net underwriting loss of \$1,124,000 while New Brunswick and Prince Edward Island showed gains of \$503,000 and \$105,000 respectively.

<sup>348</sup> Report of the Auditor General of Newfoundland and Labrador, January 2008, Chapter 2, Part 2.8.

policy. In addition, in cases where proof of insurance was not presented or was invalid, follow-up letters were not always issued by MRD as required to be certain that all warning tickets to provide proof of insurance had been acted upon.<sup>349</sup>

In February, 2018 the *Highway Traffic Act* was amended to, among other things, increase penalties for driving without a valid licence and failing to provide proof of insurance.<sup>350</sup>

### 13.4 Other Jurisdictions

The issue of uninsured drivers is not unique to this province and several initiatives have been undertaken in Canada and the United States to address this issue.

In late 2010 the Ministry of Transportation of Ontario launched an Insurance Validation Program (IVP) which matches the Vehicle Identification Numbers of vehicles to a database of insured drivers maintained by IBC. Access to the IVP database has since been extended to Ontario law enforcement agencies so police can validate insurance and confirm mandatory insurance coverage right from their vehicles.<sup>351</sup>

Under British Columbia's public insurance system the mandatory coverage is sold by the Insurance Corporation of British Columbia (ICBC), which is also responsible for licensing of drivers and vehicle licensing and registration. A recent review of ICBC suggested that the low rate of uninsured drivers in British Columbia was partly due to the integration of insurance with driver and vehicle licensing.<sup>352</sup>

In addition there have been a number of other approaches taken to address the number of uninsured drivers in several American states. The California Low Cost Automobile Program was established to provide income eligible persons with mandatory liability insurance protection at affordable rates.<sup>353</sup> New Jersey has implemented a Special Automobile Insurance Policy to help make auto insurance coverage available to certain eligible drivers who would likely otherwise go uninsured because of limited financial resources. These policies, commonly referred to as "dollar a day" policies as drivers can obtain a medical coverage-only policy at a cost of \$365 a year, have reduced liability limits, Accident Benefits coverage and tort coverage for serious injuries only. In addition several states have adopted the principle of "no pay, no play" where uninsured drivers are prohibited from receiving compensation or filing a lawsuit for non-economic losses such as pain and suffering after an accident.

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<sup>349</sup> Report of the Auditor General of Newfoundland and Labrador, January 2008, Chapter 2, Part 2.8.

<sup>350</sup> *Highway Traffic Act*, RSNL 1990 Chapter H-3.

<sup>351</sup> Ontario's Insurance Validation Program - <http://www.ibc.ca/on/auto/branding/insurance-validation-program>

<sup>352</sup> Ernst & Young. *ICBC: Affordable and effective auto insurance – A new road forward for British Columbia*. 2017, page 31, <https://www.icbc.com/about-icbc/company-info/Documents/Affordable-and-Effective-AutoInsurance-Report.pdf>

<sup>353</sup> <http://www.insurance.ca.gov/> and [www.mylowcostauto.com](http://www.mylowcostauto.com)

### 13.5 Presentations, Submissions and Comments

During the hearing Paula Elliott of Oliver Wyman spoke to the number of uninsured automobile claims in this province and explained:

I think there has to be an understanding of what's driving the higher number of claims in the Province. And so, when you think about who's driving a vehicle without insurance, your immediate assumption – need to hypothesize – well, they can't afford to pay for insurance and that they need to drive somewhere. And so, then you have to extrapolate and try to understand, you know, what segment – where is this occurring and what can be done. It may be associated with those that either are unemployed, so they can't afford insurance, and I'm not sure that's really a policy issue over how to deal with drivers that are driving uninsured. What we presented are the actual differences with the other provinces, but I think the next step would be some sort of policy of Government to address the issues that are causing or allowing drivers to drive without insurance.<sup>354</sup>

In relation to potential solutions Ms. Elliott further explained:

But hypothetically, if it is drivers that get insurance, they get their pink slip and then they cancel their policy for whatever reason, they are then driving with a slip that they can show. To the extent that when a cancellation occurs that there's some other link mechanism to get the plates off that car, perhaps that's a solution.<sup>355</sup>

Inspector Didham of the RNC suggested during his presentation on behalf of the Consumer Advocate that affordability of insurance is the reason most often stated for drivers not carrying insurance on their vehicles.<sup>356</sup> Inspector Didham offered the following comment:

It'll be just a suggestion because it's something that's outside the parameter of the police to do, other than the enforcement side. But, I mean, if there was something that could be done with the insurance companies and the Registrar, whether it be sharing of information or I'm not sure how the ATIPP legislation would deal with that, but you know, if there's some way for the insurance to notify the Registrar who can then notify the police that a person is operating without insurance, you know. If we're provided with that information that could assist.<sup>357</sup>

George Murphy, the business manager for Jiffy Cabs in St. John's, provided the following view with respect to uninsured vehicles during his presentation:

A lifting of plates from uninsured vehicles has to happen, and it's easily enforced and coordinated between various services with implementation of the policy. We feel that that's very important, that it's not just taxi drivers that are out there that have a high rate of claims, but the general public has a high rate of claims too, and often enough the rate for uninsured automobile is going up too at the same time. Albeit a lot smaller than what the liability pay outs would be, but it's still a cost. And if it's 50 bucks that it's gone up over the years, it's 50 bucks, or whatever the number is, but still, it's an easy system as far as I'm concerned

<sup>354</sup> Transcript, September 6, 2018, page 136/11 to page 137/6.

<sup>355</sup> Transcript, September 6, 2018, page 141/25 to page 132/4.

<sup>356</sup> Transcript, September 27, 2018, pages 80-81.

<sup>357</sup> Transcript, September 27, 2018, page 42/22 to page 43/14.

for Government to implement and coordinate between the services of Highway Enforcement, Royal Newfoundland Constabulary, RCMP, insurance companies, motor vehicle registration. This guy hasn't paid his policy for two months. We all have the tendency to pay in advance, there's a different way we can handle it too. You pay in advance for insurance. Once you get past that deadline for your next payment, it becomes automatically uninsured anyway, so the plate should come off the car. And that's as easy as picking up the phone and why aren't we doing it?<sup>358</sup>

In a written comment G.F. stated:

The practice in NL of the license plate going with a sold vehicle encourages people of low integrity to just buy another cheap car with valid plates to drive with no insurance or license or major fines (just read the local news). Removing the plate (as in NS) would help this situation.<sup>359</sup>

In its written submission IBAN stated that, based on IBC data, Newfoundland and Labrador has the highest rate of insurance claims for accidents with uninsured drivers in Atlantic Canada. IBAN also noted that the RNC and RCMP caught more than 1,000 drivers driving without insurance across the province in 2016. According to IBAN, with as many as three in ten drivers in the province in an uninsured position, others insureds are forced through higher premiums to cover that revenue deficit. In terms of possible solutions IBAN recommended that a policy be adopted whereby plates are assigned to the individual and not the vehicle. IBAN also recommended requiring insurance companies to notify the province when a policy is cancelled.

Aviva suggested that government consider a low-cost insurance offering to help reduce the number of uninsured drivers such as the New Jersey "dollar-a-day" policy, but noted that this low-cost offering would not address those who drive without insurance for reasons other than costs.

The Consumer Advocate noted that the issue of uninsured automobiles was included in the Board's 2005 Automobile Insurance Review Report. The Consumer Advocate submitted that Uninsured Automobiles claims frequency is linked to the high percentage of uninsured vehicles in this province as shown by the fact that the RNC recorded 1,347 insurance coverage violations in 2017. According to the Consumer Advocate the number of uninsured vehicles must be reduced to reduce these types of claims and pointed to IBAN's proposal of assigning plates to the individual and not the vehicle as a possible solution.

The Consumer Advocate further submitted that there is evidence of a failure in communication between the insurance industry and MRD regarding the cancellation of insurance policies and that protocols must be developed to communicate the cancellation of policies to MRD to ensure this information is passed on to law enforcement. The Consumer Advocate noted that recent changes to the *Highway Traffic Act* to impose fines for an inability to produce insurance is a good step, but that until appropriate measures are taken to notify of policy cancellation these systemic costs will continue unabated.

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<sup>358</sup> Transcript, April 12, 2018, page 49/7 to page 50/12.

<sup>359</sup> G.F. Written Comment, September 8, 2018.

### **13.6 Board Comments**

Uninsured drivers impose costs which must be paid by the drivers who are insured and as a result the overall cost of insurance is higher than it would otherwise be. While the issue of uninsured drivers is not unique to this province it is noteworthy that Newfoundland and Labrador has the highest claim frequency and costs for uninsured drivers of any of the Atlantic provinces.

One of the deterrents to uninsured driving that was suggested by a number of participants involves changes to the vehicle registration system. One possible solution is an automated mechanism to validate insurance status for individuals seeking to register an automobile, such as Ontario's online Insurance Validation Program. This program appears to be an effective means to link the license renewal and vehicle registration process to confirmed insurance status and would be a potential improvement over the current manual system. As in Ontario such a program could be extended to police forces so that traffic officers would be able to verify, in real time, the insurance status of vehicles on the roadways.

Another potential change relates to how licence plates are handled upon the sale of a vehicle. All other provinces with the exception of Newfoundland and Labrador require that, upon the sale or transfer of ownership or interest in a vehicle, the plates must either be surrendered to the Registrar or remain with the original registrant. Several presenters advocated for this requirement to put in place in this province as well. While implementing such a program may help reduce uninsured drivers it is noted that there are still uninsured drivers in those jurisdictions with a plate-to-owner registration model.

## 14.0 HIGHWAY SAFETY AND ACCIDENT PREVENTION

### 14.1 Introduction

The Board was asked to report on measures to improve highway safety and automotive accident prevention in the province. This section sets out the measures and suggestions identified by participants during the Board's review.

### 14.2 Accident Statistics

There was some information made available during the review in relation to the number and type of accidents in areas of the province but this information did not provide a comprehensive picture of the total number and causes of vehicle accidents in the province. The RNC publishes annual Juristat Reports which provide reported accident statistics for the areas in which it operates. The following tables show the accident statistics from 2012-2017 in each of the RNC jurisdictions:<sup>360</sup>

| Total Motor Vehicle Accidents<br>RNC Jurisdictions<br>2012-2017 |                  |              |          |       |
|---|------------------|--------------|----------|-------|
| Year  | Northeast Avalon | Corner Brook | Labrador | Total |
| 2012  | 5142             | 551          | 285      | 5978  |
| 2013  | 5404             | 598          | 282      | 6284  |
| 2014  | 5366             | 535          | 199      | 6100  |
| 2015  | 4921             | 517          | 152      | 5590  |
| 2016  | 4629             | 451          | 136      | 5216  |
| 2017  | 4157             | 456          | 139      | 4752  |
| Total   | 29616            | 3108         | 1193     | 33917 |

| Types of Motor Vehicle Accidents<br>RNC Jurisdictions<br>2012-2017 |       |                     |                                      |                    |                  |       |
|--|-------|---------------------|--------------------------------------|--------------------|------------------|-------|
|  | Fatal | Non-Fatal<br>Injury | Non-Reportable<br>Property<br>Damage | Property<br>Damage | Street<br>Racing | Total |
| 2012   | 7     | 1278                | 250                                  | 4443               | 0                | 5978  |
| 2013   | 7     | 1247                | 310                                  | 4720               | 0                | 6284  |
| 2014   | 5     | 1204                | 383                                  | 4508               | 0                | 6100  |
| 2015   | 13    | 1277                | 410                                  | 3889               | 1                | 5590  |
| 2016   | 3     | 1225                | 426                                  | 3560               | 2                | 5216  |
| 2017   | 3     | 1025                | 421                                  | 3303               | 0                | 4752  |
| Total  | 38    | 7256                | 2200                                 | 24423              | 3                | 33920 |

Based on this information reported collisions in the RNC jurisdictions decreased by over 20% in the period 2012 to 2017 and decreased by almost 25% from the high in 2013.

<sup>360</sup> This information was sourced from Table 8 of the RNC Juristat reports available at [www.rnc.gov.nl.ca/statistical-reports/](http://www.rnc.gov.nl.ca/statistical-reports/). Jurisdictions include Northeast Avalon, Corner Brook, Labrador City and Churchill Falls. No data was available from the RCMP jurisdictions.

### 14.3 Recent Government Legislation

Since the issuance of the Terms of Reference for this review Government has announced a series of legislative amendments aimed at deterring unsafe driving, including increasing penalties for impaired driving.<sup>361</sup> The first legislative amendments were effective as of September 21, 2017 and included the following changes:

- A driver whose license is suspended after an impaired driving conviction will be required to enter a mandatory ignition interlock program as a condition of reinstatement.
- Drivers less than 22 years of age will be required to maintain zero blood alcohol content while driving.
- Any driver found to have a blood alcohol content of 0.08 or greater will have their vehicle impounded for a minimum of 30 days.
- Drivers who are 22 years of age or older who are found to have a blood alcohol content of 0.05 or greater but less than 0.08, will have their vehicle impounded for seven days.
- Novice drivers and drivers under 22 years of age will have their vehicle impounded for seven days if they are found to have a blood alcohol content greater than zero but less than 0.08.

In December 2017 Government introduced further amendments to the *Highway Traffic Act* aimed at reducing excessive speeding, stunting and street racing by adding license suspensions and vehicle impoundments as new penalties. Move over provisions when approaching law enforcement or other emergency vehicles stopped at roadside were also introduced.

Further amendments to the *Highway Traffic Act* became effective in February 2018 which increased penalties for a number of offences including illegal vehicle modifications and driving without clearing snow from a windshield.

In June 2018 a new offence for driving without due care and attention or without reasonable consideration for other persons causing bodily harm or death was also added to the *Highway Traffic Act*, along with associated fines and penalties. Increases in existing fines for driving without due care and attention or without reasonable consideration for other persons were also enacted.

### 14.4 Other Initiatives

The Canadian Council of Motor Transport Administrators (CCMTA) is the umbrella group of Canada's 14 provincial, federal and territorial governments which coordinates all matters dealing with the administration, regulation and control of motor vehicle transportation and highway safety.<sup>362</sup> Its vision is "to have the safest and most efficient movement of people and goods by road

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<sup>361</sup> This information was sourced from various Service NL news releases issued at the time of legislative change announcements.

<sup>362</sup> The Registrar of Motor Vehicles (Acting) in Newfoundland and Labrador is a member of the Board of Directors of the CCMTA. The Manager of Safety Programs, Service NL is a member of the Program Committee on Road Safety Research and Policies. The Manager of Business Process, Service NL is a member of the Program Committee on Drivers and Vehicles. <https://www.ccmta.ca/who-we-are-what-we-do>.

in the world". CCMTA published its latest report in January 2016 which set out the goals of its road safety strategy:

The purpose of the strategy is to continue our national effort in addressing important road safety issues in Canada by providing a framework for governments and other road safety stakeholders to establish their own road safety plans, objectives, and interventions to eliminate road crashes which result in serious injuries or fatalities.<sup>363</sup>

The report identifies the key risk groups, contributing factors and interventions based on emerging trends and research and analysis in Canada. An on-line inventory of "proven and promising" practices for reducing or preventing fatalities specific to road safety interventions are available and include road user initiatives, road infrastructure initiatives and vehicle initiatives along with an initiatives assessment tool.

In British Columbia a 2017 report addressing insurance affordability highlighted a number of road safety initiatives from global jurisdictions with leading road safety performance that could be implemented to reduce costs and insurance premiums.<sup>364</sup> These include specific initiatives to address speed, distracted driving and impairment. Many of the initiatives mirror those raised in this review, such as intersection cameras and automated speed enforcement cameras at high-risk sites, roadway countermeasures (e.g. edge line and centre line rumble strips), increased resources for road safety and enforcement, higher penalties, as well as a focus on education and awareness.

It is noted that, as part of its own review of the automobile insurance system in the province, Service NL is also gathering opinions and information on measures to improve highway safety and prevent automotive accidents. A number of additional measures may be identified through this review.

#### 14.5 Presentations, Submissions and Comments

Representatives from the City of St. John's and the RNC presented on behalf of the Consumer Advocate on issues of traffic safety and accident prevention. Inspector Paul Didham, who is responsible for RNC's Traffic Services Division, provided an overview of the efforts of the RNC to reduce the number and severity of collisions in the jurisdictions in which it operates. Inspector Didham attributed the decrease in accident statistics in recent years to the three pillars implemented in its 2014-2017 Corporate Plan aimed at improving road safety and reducing accidents: education, awareness and enforcement. Inspector Didham described the ongoing efforts in these areas but noted that undertaking additional work in these areas would be challenging with existing resources.

Inspector Didham also recognized that improvements to technology in automobiles may be a contributing factor to the reduction in fatalities and injuries from automobile accidents in recent years:

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<sup>363</sup> CCMTA: *Road Safety Strategy 2025: Towards Zero: The Safest Roads in the World*, January 2016, page 4.  
<http://roadsafetystrategy.ca/en/>

<sup>364</sup> Ernst & Young. *ICBC: Affordable and effective auto insurance – A new road forward for British Columbia*. 2017.  
<https://www.icbc.com/about-icbc/company-info/Documents/Affordable-and-Effective-AutoInsurance-Report.pdf>

More vehicles, especially you know, within the last three or four years, the improvements to technology within the vehicles now, with side curtain airbags, with retractors on seatbelts, with lane departure warning devices, and a lot of these additions are coming as standard equipment on cars now. You know, at one time a lot of it was options that you could buy for extra money, you know. But generally now, a lot of these vehicles, because they're safety oriented, are coming as standard equipment which is fantastic and you're correct, I do believe that, you know, generally in society we're seeing the effects of that because the seriousness of at least what we're seeing for our collisions, personal injury and fatalities have gone down as well. And I would like to believe that that has been a contributing factor to it.<sup>365</sup>

Inspector Didham discussed how the RNC is tackling the issue of distracted driving:

One of the ways we're trying to tackle that is having our officers engage community members and different groups within the community starting young. You know, we start with early drivers and new drivers and we're out and we can meet with them and we give them the opportunity to see, by using this distracted driving simulator, and it's not treated as a video game or a joke. We advise them when we're providing them with the – because we give another presentation on the consequences of driving, you know, while distracted and we show sometimes scenes and graphic images, not something that's going to be everlasting, but we give them an idea of what the consequences are of driving like that. And we do that – we primarily focus on younger drivers because we want to build those good driving skills that age.<sup>366</sup>

In addition Inspector Didham discussed the role of the RNC in ensuring the safety of vehicles on the road, such as during a recent inspection of taxis, suggesting that more spot inspections may be implemented:

And it was a safety inspection. It was also to do with to see if proper licensing and things were in place for those companies. This winter – and we do it again as we near the winter for safety again, most likely, you know, sort of giving people a heads up on it now, I guess. We're going to be going out doing the same thing with passenger vehicles. So, you know, we'll do spot inspections on vehicles throughout our jurisdiction, not just taxis, all vehicles to ensure that they're compliant with safety of their vehicles, tires, brakes, you know, basically getting people ready for the winter to ensure that – you know, try to up safety, increase safety.<sup>367</sup>

Inspector Didham discussed the use of event data recorders as a means to investigate collisions and determine if any offences were committed. Many modern vehicles are now factory equipped with data recorders which capture information such as speed, seatbelt use, heavy breaking and steering motion. Inspector Didham noted that this data can be very useful to law enforcement officers and insurers, but cautioned that it is currently only available through consent of the driver or by obtaining a warrant. Inspector Didham also noted the measures taken in the City of St. John's and specifically referred to the efforts to address traffic volumes on certain streets as a means of reducing the number of collisions.

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<sup>365</sup> Transcript, September 27, 2018, page 75/8 to page 76/3.

<sup>366</sup> Transcript, September 27, 2018, page 28/7 to page 29/1.

<sup>367</sup> Transcript, September 27, 2018, page 38/21 to page 39/11.

During his presentation Garrett Donaher, Manager of Transportation Engineering with the City of St. John's, discussed the utility of traffic calming studies and detailed various traffic calming measures that can be installed by municipal government in problematic areas to help reduce both the volume and speed of traffic. Such measures include vertical deflection (e.g. speed bumps), horizontal deflection (e.g. curb extensions), restrictions (e.g. no left turns), and traffic circles. Mr. Donaher also noted the utility of photo enforcement that has been implemented in other provinces to assist in reducing speeds and intersection violations such as running red lights.

Aviva addressed the issue of distracted driving and referenced possible technology solutions and recommended government and industry work together to educate consumers and raise awareness about the dangers associated with distracted driving.

IBAN raised the reinstatement of mandatory vehicle inspections and explained:

Today's new vehicles are stronger than they ever have been before. Mandating annual inspections for new and near-new vehicles makes little sense, even in the context of a change in ownership. However, as a vehicle ages and accumulates mileage, safety systems degrade and accidents become much more common. Therefore a mandatory annual inspection after a vehicle passes its eighth year on the road would help ensure the province's older vehicles remain safe and road-worthy.<sup>368</sup>

IBAN also recommended that winter tires be made mandatory in the province between November and April. IBAN noted that other places where winter tires were made mandatory, including Quebec and Germany, experienced sizeable declines in the number of collisions experienced following implementation.<sup>369</sup>

A number of suggestions with respect to highway safety and accident prevention were made by the taxi operators. Doug McCarthy of Newfound Cabs supported making winter tires mandatory in this province. William Newhook of Jovanax Ent. Inc. offered:

Make it mandatory to have dash cams, breathalyzers and yes maybe even a black box installed in every vehicle personal and commercial alike. I've talked to other drivers and clients alike, you'd be surprised at how many are in favor of this idea. Manufacturers can do this at very little cost with todays technology and it could be make just as cost efficient for owners of older vehicles if government regulated. This would decrease speeding and also prevent the he said/ she said situations found in many accident cases. Some would argue this to be an invasion of privacy, OK, so if having your license is actually a privilege not a right. Then simply make this a condition of that privilege no different than having to have insurance. Also enforce strict laws and penalties for anyone found to tamper with these devices. It CAN be done and would surely decrease insurance payouts.<sup>370</sup>

The Rotary Club of Waterford Valley supported mandating vehicle inspections as a means to improve road safety and also recommended that the motor vehicle inspection certification booklet be updated to reflect modern technology systems integrated into newer vehicles.<sup>371</sup> The CFIB also

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<sup>368</sup> IBAN Submission, May 18, 2018.

<sup>369</sup> IBAN Submission, May 18, 2018.

<sup>370</sup> Jovanax Ent. Inc. Submission, April 4, 2018, page 2.

<sup>371</sup> The Rotary Club of Waterford Valley Submission, April 23, 2018.

supported mandating age based inspections on vehicles eight years and older.<sup>372</sup> In a written comment G.F. stressed the importance of vehicle maintenance and noted that most drivers have no idea about the condition of their vehicle. G.F. stated that mandatory vehicle inspections should be implemented and that the cost of such inspections should be inexpensive enough to encourage safety.

The Consumer Advocate and the Campaign both expressed the view that special emphasis needs to be placed on highway safety and accident prevention.

The Consumer Advocate submitted that data event recorders are currently being underutilized and suggested that use of recorded data could be consented to by insureds at the time of purchasing an insurance policy. The Consumer Advocate noted that use of this data could act as a deterrent for unsafe driving if drivers are made aware that their actions are being recorded and fully available to the insurer.<sup>373</sup>

#### **14.6 Board Comments**

Law enforcement agencies and municipal authorities in this province have dedicated significant time and resources in recent years to improving road safety and preventing accidents. A number of measures have been adopted which appear to have contributed, at least in part, to a reduction in accidents throughout the province in the last few years. Ongoing initiatives aimed at reducing speeding and incidents of distracted driving were viewed as important. Continued coordination of efforts between all levels of government, law enforcement agencies and industry stakeholders was also supported. A number of presenters and submissions suggested that new technologies may provide an opportunity to further improve road safety as well as accident investigation. It was noted that there may be challenges that will have to be addressed to fully avail of these technologies, including concerns in relation to privacy. Other specific measures identified included traffic cameras, the reinstatement of vehicle inspections and mandatory winter tires. While some of the identified initiatives may require the allocation of continued or additional resources, there was a consensus in the review that effective highway safety and accident prevention programs are essential to reduce the number of accidents and injuries sustained on roads in the province.

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<sup>372</sup> CFIB Submission, June 14, 2018, page 4.

<sup>373</sup> Consumer Advocate Submission, October 12, 2018, pages 18-20.

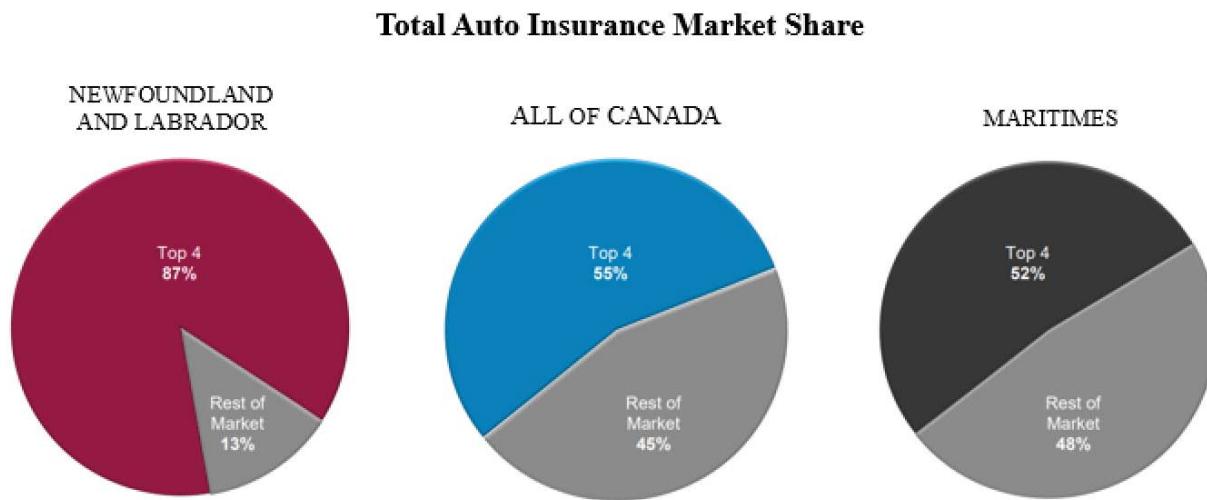
## 15.0 AUTOMOBILE INSURANCE MARKET CONSIDERATIONS

### 15.1 Introduction

The Board was asked to review the current auto insurance market and provide comment on insurer exits and report on ways to encourage new entrants into the market.<sup>374</sup> This section summarizes the concerns identified by stakeholders on market conditions in the province and proposed actions that could be taken to alleviate these concerns.

### 15.2 Market Concentration

Section 3 of this report sets out the market composition for the automobile insurance industry in Newfoundland and Labrador. As noted previously approximately \$435.4 million in automobile insurance direct premiums were written in the province in 2017, with 97.86% of the automobile insurance business written by 15 insurers. When common ownership among companies is considered four insurer groups write approximately 85% of the automobile insurance business. IBC provided the following chart showing market share of the top four insurer groups in the province compared to both the Maritimes and all of Canada.<sup>375</sup>



A number of high profile insurers have withdrawn from the Newfoundland and Labrador market in recent years including Portage la Prairie Mutual Insurance in 2013 and both Economical Insurance and Federation Insurance in 2014. These companies wrote a cumulative total of

<sup>374</sup> Service NL is also undertaking a concurrent review of specific issues related to automobile insurance, including reviewing “ways to encourage new entrants to the auto insurance market or to encourage increased competition amongst auto insurance companies in the Province.”

[https://www.servicenl.gov.nl.ca/insurance/pdf/Terms\\_of\\_Reference\\_SNL.pdf](https://www.servicenl.gov.nl.ca/insurance/pdf/Terms_of_Reference_SNL.pdf)

<sup>375</sup> MSA Research Inc. Excludes Lloyd's, Genworth and Canada Guaranty Mortgage Insurance. The top four insurer groups in Newfoundland and Labrador are Intact Financial Corporation, RSA Canada, Aviva Canada and The Co-operators Group. It is noted that IBC's calculated market share of the top four insurer groups in Newfoundland and Labrador of 87% is slightly different than the Board's calculated market share of 85% due to the use of different datasets. IBC references MSA data whereas the Board references the Annual Report of the Superintendent of Insurance and the Canadian Underwriter 2018 Stats Guide.

approximately \$10.4 million in direct premiums which has since been absorbed by other insurers in the market.<sup>376</sup> Elite Insurance also withdrew its Non-Standard Private Passenger program in 2017 which may lead to further market concentration as these risks move to other insurers in the province.<sup>377</sup> The primary reason reported by these companies for exiting the market was the limited opportunity to earn a profit and the challenging regulatory environment.<sup>378</sup>

Acquisitions by some of the largest insurers in the province have also played a role in changing the market composition in recent years. In 2011 Intact Insurance entered the market and acquired AXA Insurance and later acquired Metro General in 2014.<sup>379</sup> Royal and Sun Alliance Insurance acquired L'Union Canadienne in 2012 and Aviva Insurance acquired RBC Insurance in 2016. These acquisitions resulted in the elimination of four additional insurers and shifted over \$87.8 million in direct premiums to companies that already held significant market shares. With the exception of Intact there have been no new entrants to the market writing a substantial amount of private passenger automobile premiums in recent years.

The following table shows a number of automobile insurance providers that do not currently write business in Newfoundland and Labrador but have a significant presence in other Atlantic jurisdictions.<sup>380</sup>

| Automobile Insurers Absent from Newfoundland and Labrador Market |                 |              |                 |              |                      |              |
|--|-----------------|--------------|-----------------|--------------|----------------------|--------------|
| 2017 Direct Premiums Written                                     |                 |              |                 |              |                      |              |
| Company  | New Brunswick   |              | Nova Scotia     |              | Prince Edward Island |              |
|  | Direct Premiums | Market Share | Direct Premiums | Market Share | Direct Premiums      | Market Share |
| Wawanesa Mutual  | \$72,553,000    | 14.1%        | \$50,845,000    | 8.5%         | \$10,697,000         | 11.4%        |
| Economical Mutual <sup>381</sup>                                 | \$46,693,000    | 9.1%         | \$33,993,000    | 5.7%         | \$3,593,000          | 3.8%         |
| Allstate Insurance <sup>382</sup>                                | \$44,403,000    | 8.6%         | \$37,415,000    | 6.3%         | -                    | -            |
| Echelon Financial Holdings                                       | \$9,651,000     | 1.9%         | \$21,807,000    | 3.7%         | \$8,693,000          | 9.3%         |
| Portage la Prairie Mutual  | \$5,524,000     | 1.1%         | \$15,540,000    | 2.6%         | \$2,888,000          | 3.1%         |

The total premium volumes written by Wawanesa Mutual, Economical Mutual and Allstate represent approximately 32% of the market share in New Brunswick and 21% in Nova Scotia.

<sup>376</sup> Portage - \$2,221,000 (2013); Economical - \$1,447,000 (2014); Federation - \$6,733,000 (2014). This equates to approximately 2.4% of 2017 direct premiums written.

<sup>377</sup> In 2016 Elite wrote over \$4.7 million in direct premiums in the Province across all lines of automobile insurance.

<sup>378</sup> As indicated on the *Insurance Company Withdrawal Notice Forms* filed with the Superintendent of Insurance.

<sup>379</sup> Intact formed Novex Insurance Company following the acquisition of Axa Insurance.

<sup>380</sup> This information was sourced from the Canadian Underwriter 2018 Stats Guide.

<sup>381</sup> As previously noted, both Economical Mutual and Portage la Prairie Mutual withdrew from the Newfoundland and Labrador automobile insurance market in 2014.

<sup>382</sup> Allstate Canada Group, which includes Allstate Insurance Company of Canada, Pembridge Insurance Company and Pafco Insurance Company, used to write in this province but exited the market in the early 2000s.

Facility Association provided some information which shows a comparison of 2016 premium volume and active insurance providers for the jurisdictions in which it operates as follows:<sup>383</sup>

| Facility Association Market Share<br>Private Passenger Vehicles, 2016 |  |                      |                                      |               |  |                       |
|---|--|----------------------|--------------------------------------|---------------|--|-----------------------|
|   | Direct Written Premium excluding Facility (\$) | # of Active Insurers | Facility Direct Written Premium (\$) | Facility Rank | Direct Written Premium including Facility (\$) | Facility Market Share |
| <b>ON</b>   | 10,337,033,000                                 | 33                   | 12,587,000                           | 23            | 10,349,620,000                                 | 0.10%                 |
| <b>AB</b>   | 3,281,034,000                                  | 24                   | 7,587,000                            | 11            | 3,288,621,000                                  | 0.20%                 |
| <b>NB</b>   | 369,509,000                                    | 18                   | 12,545,000                           | 10            | 382,054,000                                    | 3.30%                 |
| <b>NS</b>   | 459,430,000                                    | 17                   | 7,561,000                            | 13            | 466,991,000                                    | 1.60%                 |
| <b>NL</b>   | 337,348,000                                    | 10                   | 20,592,000                           | 6             | 357,940,000                                    | 5.80%                 |
| <b>PE</b>   | 68,988,000                                     | 14                   | 2,910,000                            | 9             | 71,898,000                                     | 4.00%                 |
| <b>YT</b>   | 22,475,000                                     | 10                   | 526,000                              | 9             | 23,001,000                                     | 2.30%                 |
| <b>NT</b>   | 16,273,000                                     | 9                    | 3,313,000                            | 2             | 19,586,000                                     | 16.90%                |
| <b>NU</b>   | 2,562,000                                      | 8                    | 454,000                              | 3             | 3,016,000                                      | 15.10%                |
| <b>Total</b>  | <b>\$14,894,652,000</b>                        |                      | <b>\$68,075,000</b>                  |               | <b>\$14,962,727,000</b>                        | <b>0.50%</b>          |

This data shows that:

- Newfoundland and Labrador has a low number of insurance providers compared to New Brunswick and Nova Scotia despite having similar premium volumes.
- Facility Association has a higher proportion of market share in this province compared to all other jurisdictions except Northwest Territories and Nunavut.
- The premium volume market share for Facility Association in this province (5.8%) is significantly higher than Nova Scotia (1.6%), New Brunswick (3.3%) and Prince Edward Island (4.0%).
- Facility Association is the sixth largest private passenger insurer in the province.

The high market share of Facility Association in this province is due in part to the limited insurance options available. There are certain drivers in the automobile insurance market whose risk factors make it difficult or impossible to obtain insurance at standard market rates, but do not necessarily warrant placement in the market of last resort of Facility Association.<sup>384</sup> These drivers are referred to as non-standard or “grey market” risks. There are companies in the industry that target only non-standard type risks and set rates accordingly with average premiums levels that are typically higher than rates in the standard market but lower than Facility Association. Such non-standard insurers are often viewed as the middle ground between the standard open market and Facility Association. Unlike most other jurisdictions there are no non-standard insurers writing automobile insurance in Newfoundland and Labrador, therefore many of the non-standard risks in the province end up being insured through Facility Association.

<sup>383</sup> Facility Association Submission, May 24, 2018, page 4.

<sup>384</sup> Due to traffic violations, lapse in coverage, cancellation due to non-payment, misrepresentation of information, etc.

### 15.3 Presentations, Submissions and Comments

A number of industry participants expressed the view that the high level of market concentration poses significant risk to the industry and further insurer exits could have a detrimental impact on the competitiveness of the market. It was IBC's position that significant reform is needed in Newfoundland and Labrador to improve market performance and consumer outcomes. In particular IBC expressed concern in relation to market concentration, Facility Association market share, a lack of insurers offering online distribution models and usage-based insurance. IBC also noted that the industry has had an average annual underwriting loss of \$15 million in this province since 2006 and Alberta is the only other province in which private sector insurers operate that experience similar losses. IBC stated:

Since the early 2000s, when almost every Canadian province reformed their auto insurance laws, Newfoundland and Labrador has performed poorly on almost every metric for measuring market performance and consumer outcomes.<sup>385</sup>

With respect to the reasons for the Newfoundland and Labrador market conditions IBC submitted that high claims payouts, high premiums and instability has resulted in less insurers choosing to compete for the business in the province.

During his presentation Kent Rowe of IBAN stated:

We have the most concentrated auto insurance market in Canada with only four insurers available through the broker channel for selling home and automobile insurance. Over the course of the last three years, two insurers have withdrawn from the province for various reasons, and so, as a result of that concentration, I mean there's certainly a continued fear of withdrawing of insurers from the market which would of course be, you know, extremely problematic from our perspective in terms of our ability to offer, you know, choice and competitive pricing and competitive products to our consumers.<sup>386</sup>

Aviva expressed the view that the province is at risk of being just one withdrawal away from having no market at all and stressed the need for action, stating:

The actions resulting from this review need to improve the health of the auto insurance market in Newfoundland and Labrador (NL). At present, the market is neither healthy nor sustainable. The current trajectory left unchecked exposes Newfoundlanders to an unacceptable level of personal and financial risk, unnecessarily in our view.<sup>387</sup>

In its submission Facility Association stated:

We are concerned about the level of market concentration in Newfoundland and Labrador because the exit of a single large group from the province could leave a significant number of consumers with no other choice than Facility Association for their automobile insurance.<sup>388</sup>

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<sup>385</sup> IBC Submission, March 7, 2018, page 3.

<sup>386</sup> Transcript, June 13, 2018, page 5/7-22.

<sup>387</sup> Aviva Submission, May 31, 2018, page 6.

<sup>388</sup> Facility Association Submission, May 24, 2018, page 4.

Several industry submissions recommended the establishment of a risk sharing pool in the province.<sup>389</sup> Intact suggested that the establishment of a risk sharing pool could be part of a strategy to depopulate Facility Association. Intact also noted that development of the pool would not need to start from scratch and recommended looking to the existing practices in other provinces to create the best system for residents of Newfoundland and Labrador.<sup>390</sup> The Co-operators also recommended the development of a risk sharing pool and stated:

We believe a risk sharing pool is an important component of risk management, as it allows insurers to pool high-risk drivers and share equally in their losses. Pools also benefit the consumer by providing access to insurance that high risk drivers could not otherwise get in the regular market and controlling premiums for all other drivers that are part of the regular market. Numerous other provinces have implemented risk sharing pools. We recommend following the structure of the pools in Ontario, Alberta, or Quebec which is less restrictive than the existing Atlantic pools.<sup>391</sup>

In its submission Allstate explained that poor market performance and consumer outcomes were the reason for its decision to leave the Newfoundland and Labrador market in the early 2000s. Allstate commented:

There is no question that significant reform is needed to the Newfoundland and Labrador's automobile insurance market. Experience from other jurisdictions shows that market performance and consumer outcomes improve when the product being offered focuses on care instead of cash, where there is a simple claims process, and there are many insurers in the market innovating and competing for business providing choice and increasing availability.<sup>392</sup>

Allstate also spoke to the reasons why, in its view, non-standard insurers do not write in this province:

Additionally, the current approach by the Public Utilities Board to require non-standard insurers to use standard market results to price a nonstandard product, has resulted in the withdrawal of all non-standard writers from the province. In a true competitive market, there would indeed be several non-standard automobile writers, focused on meeting the needs of drivers with some prior mishaps, who are repenters aiming to improve their driving records in order to return to the standard market. As a result of the position of the Public Utilities Board with regards to rate filings, such a market does not exist in Newfoundland and Labrador, resulting in a higher percentage of drivers remaining in the Facility Association.<sup>393</sup>

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<sup>389</sup> A risk sharing pool is a form of risk management where insurance companies come together to form a pool of drivers who are of higher risk, but do not necessarily fall within the description of a Residual Market risk. These are sometimes referred to as “grey” market risks. The pool is distributed among all insurers operating in the market and can protect drivers from higher premiums associated with the Facility Association Residual Market.

<sup>390</sup> Intact Submission, March 20, 2018, page 11. As part of its submission Intact provided a comparison chart of risk sharing pools in other jurisdictions.

<sup>391</sup> The Co-operators Submission, May 30, 2018, page 8.

<sup>392</sup> Allstate Insurance Company of Canada Submission, May 11, 2018, page 1.

<sup>393</sup> Allstate Insurance Company of Canada Submission, May 11, 2018, page 4.

The CFIB explained that small business owners lament the reduction in the number of insurance companies in the province which has resulted in limited options at competitive rates. According to the CFIB small business owners believe that there should be more competition in automobile insurance in Newfoundland and Labrador. IBAN also spoke to the benefit of a cap in terms of the potential for increased competition.

The existing regulatory framework in the province was highlighted by industry stakeholders as one of the reasons for lack of new market entrants. Under the prior-approval system the regulator requires actuarial evidence from an insurer to support any changes to its rates and risk-classification system and the changes must be approved by the regulator prior to implementation. According to industry submissions the prior approval system is unfavorable to both consumers and insurers as it is strict, costly, time consuming and limits the adequate pricing of risk, resulting in reduced competition and a deterrent for new entrants. Kent Rowe of IBAN stated:

Yeah, I mean, just as an example, I had a conversation with an insurance company who does not do business in this province about a year and a half ago and I was personally trying to entice them to do business here and one of the reasons that they gave me for not wanting to consider doing business in the province was the regulatory environment, the expense that they would incur in filing rates, the time that it takes and, of course, the payoff, you know, in terms of their market share after going through that process certainly wouldn't be commensurate with the amount of time and effort required to do so.<sup>394</sup>

A number of industry stakeholders recommended government transition to a market-based approach for rate regulation by replacing the current prior approval system with a use-and-file system.<sup>395</sup> A use-and-file system would allow insurers to implement rate changes immediately without approval, subject to filing the changes with the regulator within a specific period of time. Under this type of system the role of the regulator shifts to monitoring overall rate levels and compliance. According to industry stakeholders the benefits of such a change would include new entrants to the market, quick pricing adjustments, enhanced risk segmentation and new products and services. This would result in more insurance options for consumers and more competitive prices. The regulator would also still play a role in protecting consumers and ensuring availability of the mandated product.

IBC pointed out that many areas of the world, including the United States and Europe, have already moved away from strict prior approval regulation and adopted more flexible rating practices. According to IBC:

The intent is to create an environment for consumers to reap the benefits of increased competition and of more accurate premiums relative to risk, and for the regulator to position itself to be able to identify and remedy any solvency or market conduct concerns efficiently by focusing its limited resources on overseeing the market.<sup>396</sup>

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<sup>394</sup> Transcript, June 13, 2018, page 27-28.

<sup>395</sup> Intact, Allstate, The Co-operators, Aviva, Facility Association, Royal and Sun Alliance, IBC and IBAN all supported this change.

<sup>396</sup> IBC Submission, March 7, 2018, page 12.

In the event that a full transition to market-based regulation is not pursued a number of industry submissions proposed changes be considered within the current automobile insurance regulatory framework. These included specific recommendations for changes to existing regulations with respect to the how the Board is to assess the appropriateness of rates and the basis for justification of rate approvals, time limits for rate change approvals and prohibited elements for underwriting.

#### **15.4 Board Comments**

The insurance market in Newfoundland and Labrador is considerably more concentrated than other markets in Canada, and particularly in relation to the other Atlantic provinces. This province also has the highest proportion of market share in Facility Association in Atlantic Canada and non-standard insurers are not present. These market conditions result in less competition and consumer choice. In the circumstances the departure of a single insurer from the market could be significant.

Many of the submissions from the insurance industry focused on the need for regulatory reform, particularly in the rate approval process. The Board notes that these comments were also made in the industry submissions to Government as a part of the review being undertaken by Service NL. The Board agrees that there are opportunities to improve regulation in this province which may have benefits in terms of market competition and performance and looks forward to contributing to the regulatory reform discussion as it progresses.

## 16.0 OTHER POTENTIAL COST SAVINGS OR IMPROVEMENTS

The Board was directed to report on any other cost savings or other improvements on any aspect of automobile insurance offered in this province. A number of potential measures to reduce costs and improve the automobile insurance product were raised by various participants in both written submissions and presentations to the Board. These suggestions were outside of the specific items to be reviewed by the Board in this review but are reported in this section of the report in accordance with the Terms of Reference. The suggestions included procedural changes to streamline the bodily injury claims adjustment and settlement process and improve litigation efficiency, implementation of electronic documentation, fraud prevention measures, the creation of a public insurance system and reduced taxation. Government may wish to determine whether any of these additional suggestions warrant further study in the future.

### *Procedural Changes*

Several industry submissions proposed changes to the existing tort procedural rules specific to motor vehicle collision claims in Newfoundland and Labrador to streamline bodily injury claims adjustment and settlement processes for accident victims and improve litigation efficiency.

According to Intact the current tort framework lacks efficient rules and procedures to encourage parties to exchange needed information which hinders claims from proceeding and settling with minimum delay. Intact also stated that tort procedural reforms can help stabilize the costs of bodily injury claims when implemented as part of a robust plan including a minor injury cap. Intact noted that other jurisdictions have implemented tort procedural changes and pointed to Section 258.3 of Ontario's *Insurance Act* as one example whereby accident victims must meet a number of procedural requirements before pursuing litigation. Intact also recommended the following additional tort procedural changes:

- create a prescribed list of documents to produce, which would include the accident benefits file, Medical Care Plan records, hospital records and/or clinical notes;
- participate in mandatory mediation if requested by either party;
- provide a form of case management that encourages cases to proceed with minimum delay; and
- fully deduct accident benefit awards from tort awards.<sup>397</sup>

Aviva recommended a number of measures to improve litigation efficiency and reduce transaction costs in this province, including binding medical assessments, mandatory production of documents with litigation commencement, reducing the time for service of a statement of claim to six months consistent with other provinces, pretrial examination of experts, deduction of Accident Benefit payments from tort awards, and mandatory stipulated reductions in tort awards for contributory negligence.<sup>398</sup>

The Co-operators recommended a revision to the mandatory disclosure form to remove any reference to the possibility of insurance company surveillance in investigating the merit of a claim

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<sup>397</sup> Intact Submission, March 20, 2018, page 5.

<sup>398</sup> Aviva Submission, May 31, 2018, page 17.

on the basis that “the threat of surveillance may unnecessarily create an adversarial relationship between insurers and injured parties”.<sup>399</sup>

#### *Electronic Documentation*

The need for legislative change to accommodate electronic and digital communications and documentation was also raised during the review. Aviva noted that many customers want to interact digitally with their insurer but current rules still require insurers to send paper and on occasion, registered mail.<sup>400</sup> IBAN proposed that allowing for electronic proof of automobile insurance, as was recently implemented in Nova Scotia, could improve the consumer experience given that the vast majority of drivers carry smartphones at all times. IBAN recommended a transition period where traditional paper pink slips would continue to be mandatory followed by a consumer optional transition to digital-only demonstration of coverage.<sup>401</sup> During his presentation to the Board Jason Sharpe of IBAN noted that, aside from the convenience factor for consumers, digital proof of insurance also has the potential to allow insurance coverage to be tracked in real time leading to enhanced enforcement potential and a reduction in the number of uninsured drivers.<sup>402</sup>

#### *Fraud Prevention*

Aviva discussed the issue of insurance fraud as a contributing factor to the cost of insurance for all drivers. According to Aviva insurance fraud is an issue in Newfoundland and Labrador but the amount is difficult to quantify as insurers are not required to measure and report it. Aviva stated that government, insurers and consumers all have a role to play in the fight against fraud and recommended the following to address fraud in the system:

- Assign responsibility for fighting fraud.
- Mandate insurers to report fraud to the regulator.
- Eliminate root causes of fraud, including prohibiting referral fees and the practice of service providers asking consumers to sign blank work orders and charging different amounts based on whether costs are covered by insurance or not.<sup>403</sup>

Concerns in relation to fraud prevention were raised in a number of written submissions, including Brian Tobin of Tobin’s Taxi and George Murphy of Jiffy Cabs. Vince Porter of Roddickton stated:

A portion of every insurance premium should be dedicated to investigating and defending against fraudulent claims. It should be itemized as such. Insurance premiums will go up a bit in the immediate term but will result in long term reductions in premiums.

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<sup>399</sup> The Co-operators Submission, May 30, page 8.

<sup>400</sup> Aviva Submission, May 31, 2018, page 24.

<sup>401</sup> IBAN Submission, May 18, 2018.

<sup>402</sup> Transcript, June 13, 2018, pages 11-12.

<sup>403</sup> Aviva Submission, May 31, 2018, page 22.

### *Public Insurance*

Public automobile insurance refers to a government owned and operated system that provides the mandatory coverage required by law and is typically administered through a crown corporation. The mandatory product is sold directly by the public corporation or through independent brokers, often leaving private companies to compete in selling additional coverages. Four provinces currently operate public automobile insurance systems including British Columbia, Quebec, Manitoba, and Saskatchewan.

Sherry Hillier, President of CUPE, recommended the creation of a publicly owned non-profit automobile insurance system in Newfoundland and Labrador. In her presentation to the Board Ms. Hillier stated:

CUPE Newfoundland and Labrador believes this review provides a valued opportunity to explore the possibilities of creating an improved automobile insurance system for the province. Instead of just tinkering with the existing system by tweaking the rates, adjusting the profits, moving the caps up and down, why not seize the opportunity to fix the problem once and for all? CUPE recommends the creation of a publicly-owned non-profit automobile insurance that can offer fair, non-discriminatory rates and high-quality coverage for all licensed drivers, including private passenger drivers, independent commercial owner/operators, and drivers for fleet companies such as trucking, courier and taxi companies.<sup>404</sup>

According to Ms. Hillier this province would be in the enviable position of being able to learn from the experiences of other public insurance systems to design a made in Newfoundland and Labrador full service system that makes good sense both economically and socially to meet the needs of the people.<sup>405</sup> In its written submission to the Board CUPE recommended that Government establish a Task Force to identify the key elements, start-up costs, and implementation time-lines of a public insurance model. CUPE further recommended that the model should be in the form of a non-profit Crown corporation and include the provision of vehicle registration and driver's licensing in addition to auto insurance.<sup>406</sup>

Doug McCarthy of Newfound Cabs also recommended that the government consider the implementation of a public insurance system. The written comment filed by D.F. also suggested the possibility of introducing a government-run, not-for-profit insurance system.

### *Taxation*

There are two taxes applicable to automobile insurance premiums in Newfoundland and Labrador: the retail sales tax (GST) of 13%, reduced from 15% as of January 1, 2019, and a premium tax of 5% which is incorporated into the rate. The GST was previously eliminated by the provincial government as part of the 2008 budget but was reintroduced effective July 1, 2016. The premium tax was also increased from 4% to 5% at that time. In its 2018 budget government announced it

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<sup>404</sup> Transcript, June 5, 2018, page 41/14 to page 42/6.

<sup>405</sup> Transcript, June 5, 2018, page 42.

<sup>406</sup> CUPE NL Submission, April 19, 2018, page 11.

would cut the RST from 15 percent to 10 percent over a four-year period starting with a two percent reduction in 2019 and a further one per cent reduction in each of the following three years.

A number of concerns were raised during the review in relation to the issue of taxation. In a written comment N. Wheaton stated that the recent addition of taxes to insurance policies will only increase the number of persons who are uninsured or underinsured. Another written comment, from P.H., similarly stated that, “If people were driving without insurance before the tax, how many are doing it now especially given the added tax amounts to another \$300/\$400”.

In its written submission CFIB identified taxation of insurance premiums as a major cost constraint for businesses in the provinces, stating:

The 15 per cent tax is dissimilar to the Harmonized Sales Tax in that there is no input tax credit available. As a result, there has been a direct hit to the bottom line of business owners throughout the province.<sup>407</sup>

The CFIB also pointed out that, in a recent survey of its members, the RST on insurance premiums was identified as the most harmful tax on businesses. The CFIB estimated that government collects approximately \$11.3 million annually in RST on insurance premiums from small and medium-sized businesses in the province. As a result, some business owners have reduced the amount of insurance coverage they carry, cut staff hours or raised prices to offset the additional costs. The CFIB acknowledged that government’s recent decision to reduce the RST is a step in the right direction but noted it will have minimal effect on business owners.

#### *Facility Association Business Placements*

The Board heard from a number of persons during the review who questioned why they were placed in Facility Association despite having clean driving records. As previously noted, Facility Association is the residual market mechanism in the province which guarantees the availability of automobile insurance to those who would not otherwise be able to obtain it through the regular market. This could be due to the risk characteristics of the driver (e.g. history of accident and convictions) the risk characteristics of the vehicle (e.g. vehicle age, specifications, maintenance and inspection history), or simply because another market for the business does not exist.

Paul Prowse, owner of Smart Driver Training driving school, noted during his presentation to the Board that his driving school vehicles were insured through Facility Association despite the business having never been involved in a collision or filing a claim during its ten years of operation. Mr. Prowse also noted that the vehicles were equipped with the required driving school equipment such as side brakes, instructor’s mirror and signage, passed all required inspections and were fully certified. Mr. Prowse stated:

I don’t believe that we should be in that pool. I really believe that the driving school vehicles are the safest ones on the road because we practice rules of the road according to the Highway Traffic Act and the Road Users Guide.

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<sup>407</sup> CFIB Submission, September 14, 2018, page 1.

Mr. Prowse further noted that automobile insurance is one of his biggest business expenses at roughly four to five thousand dollars and that there should be other options made available for him to obtain insurance other than Facility Association.

As noted previously a number of taxi operators also spoke to the lack of options for insurance other than Facility Association.

## 17.0 CONCLUDING COMMENTS

The last comprehensive review of automobile insurance in Newfoundland and Labrador was undertaken in 2004-2005 at a time of rising premiums across Canada. At that time a number of provinces had already implemented product reforms intended to stabilize and reduce rates, including a \$2,500 cap on pain and suffering awards for minor injuries in Nova Scotia, New Brunswick and Prince Edward Island. In 2004 Newfoundland and Labrador implemented a number of automobile insurance reforms, including a \$2,500 deductible on pain and suffering awards, a mandated premium reduction, a one-year rate freeze and increased regulatory requirements. Additional reforms were introduced in this province in 2005, including further premium reductions and a new rate setting process. Since that time further reforms have been implemented in the other Atlantic provinces, including changes to the minor injury cap, enhanced Accident Benefits, and diagnostic and treatment protocols for minor injuries. All Atlantic provinces now have some sort of restriction on pain and suffering awards, though only Newfoundland and Labrador has a deductible.

Prior to the implementation of product reforms average premiums for private passenger vehicles in Newfoundland and Labrador were comparable to those of the other Atlantic provinces. Following the reforms average premiums in this province have steadily increased such that consumers in Newfoundland and Labrador currently pay 35% more than consumers in the other Atlantic provinces. This is, at least in part, because the average bodily injury claims cost per vehicle in this province is much higher than in the other Atlantic provinces. Based on the information provided in this review it is clear that the deductible that was implemented in this province was less effective in controlling bodily injury claims costs than the minor injury caps introduced in the other Atlantic provinces. Even with the increases in premiums in this province automobile insurers have not achieved reasonable profit levels since 2012. Based on the estimated current rate inadequacy it is expected that the implementation of a minor injury cap or an increased deductible would contribute to rate stability but would likely not result in lower rates, and in fact insureds may still see increases in rates in the short-term. In the absence of any product reform or implementation of other measures to reduce loss costs, premiums in this province are likely to continue to increase in the short-term.

A monetary cap on pain and suffering awards presents the best opportunity for the reduction of bodily injury claims costs but would also have significant implications for claimants. The personal stories of those affected by a motor vehicle accident and their treating medical and legal professionals provided a very compelling picture of the profound impacts a motor vehicle accident can have and the importance of fair compensation for those affected. Whatever decision is taken in regard to insurance reform the potential implications for claimants in this province, particularly for the most vulnerable, must be considered. After the minor injury cap was introduced in the other Atlantic provinces significant concerns were raised in relation to the fairness of the caps, which ultimately resulted in changes to the minor injury definitions and cap levels. The experience in these provinces through these reforms may be informative in any further analysis and consultation which may be undertaken in relation to the reform alternatives in this province.

While there was little disagreement as to the fact that bodily injury claims costs and premiums are high in Newfoundland and Labrador compared to the other Atlantic provinces, there was no consensus as to how Government should proceed in the circumstances. The insurance industry

strongly advocated for the implementation of a \$5,000 minor injury cap along with enhanced Accident Benefits and injury treatment protocols to improve market performance and consumer outcomes. The Campaign, APTLA and Spinal Cord Injury NL argued that the implementation of a cap is unnecessary on the basis that the price is too great for claimants compared to the expected benefit. The Consumer Advocate suggested that, rather than introducing a cap in this province, the deductible which is already in place should be increased to \$10,000.

The Board urges caution in relation to the expectations for rate reductions with the implementation of reforms in light of the findings in this review that rates are inadequate. The mandated reductions and rate freezes that were implemented during the last round of product reform when the deductible was implemented were only possible because rates were found to be more than adequate at the time. This is not the case today. Mandated rate reductions and/or rate freezes in light of the current rate inadequacy may be met with pushback from the industry and could potentially lead to market disruption and instability.

Aside from a cap or an increased deductible there were other potential reforms and measures that most participants agreed would bring benefits to consumers, claimants and the insurance industry, including the introduction of Direct Compensation Property Damage coverage and changes to the Accident Benefits coverages. Measures to address uninsured drivers, improve highway safety and reduce accidents were also supported. Other potential reforms supported by some participants but not all included increasing the statutory minimum Third Party Liability coverage limit and the introduction of minor injury diagnostic and treatment protocols.

One of the most difficult aspects of this review for the Board relates to the issues currently being experienced by taxi operators in the province. It is clear that the taxi industry is in crisis, largely as a result of the significant increases in taxi insurance rates in this province over the last few years. These increasing rates are already having an impact with several operators having left the business in 2018. The taxi losses continue to be significantly higher than the premiums collected and few opportunities were identified to materially reduce the significant taxi claim costs. The measures which have been taken by Government and the taxi industry to date will tend to reduce loss costs in the long-term but are not expected to bring immediate relief in relation to taxi insurance rates. Given the severity and complexity of the taxi insurance issues in this province, Government may wish to immediately begin consultations with taxi and insurance industry stakeholders dedicated to identifying solutions which can be implemented quickly and which can be expected to provide relief in the short term.

A key issue underlying the policy decisions to be made with respect to any product reform is the fact that Newfoundland and Labrador appears to be out-of-step with the other Atlantic provinces with respect to many of the indicators one would expect for a healthy automobile insurance market and positive consumer outcomes. This province has the highest average premium levels, the highest bodily injury claims costs, the lowest level of coverage for Accident Benefits and the highest market share for Facility Association. There are also fewer insurance providers in this province than in New Brunswick and Nova Scotia, despite similar premium volumes, resulting in less competition and consumer choice. In the absence of reforms this situation is unlikely to improve and may actually deteriorate further. The Board believes that there is reason for concern in the circumstances as it is only with a healthy insurance market that consumers can have access to a range of product choices at reasonable prices. In determining the reform options to be

introduced, if any, Government will have to consider whether Newfoundland and Labrador should continue on its own unique path, or whether it should adopt similar reforms as in other provinces, including implementation of a minor injury cap.

While there was not a great deal of discussion in the review as to the value of harmonization with the other Atlantic provinces, this may be a consideration in relation to both market concentration and performance. It is noted that there are five major automobile insurers that currently have a significant presence in the other Atlantic provinces in terms of market share and premium volume but do not write in this province. Three of these insurers used to write in this province but withdrew from the market citing poor market performance and consumer outcomes. During this review the insurance industry suggested both product and regulatory reforms as measures which would have benefits in relation to market performance. The Board agrees that changes to the way insurance is regulated in this province, especially to the rate approval process, could bring positive results in terms of market concentration and performance. The suggested product and regulatory reforms would also bring Atlantic Canada much closer to harmonization and may encourage more insurers to enter the market in this province.

At the end of this review there does not appear to be any one measure that will result in both lower rates for consumers and improvements in the automobile insurance market in this province. It is clear that, at least in this province, there continues to be a strong belief in the right to seek compensation for pain and suffering damages and the value of the opportunity for an impartial review by the court. The personal stories that were shared during the review by claimants who were injured in a motor vehicle accident as well as the opinions and experience of medical and legal professionals clearly showed the profound impacts that a motor vehicle accident can have on someone's life. At the same time the insurance industry was united in its call for product reforms, to reduce claims costs and to keep premiums from increasing further and also to improve health outcomes for people injured in automobile accidents. It is difficult to argue with the concept of "care not cash" put forward by the insurance industry. The proposals for enhanced Accident Benefits and diagnostic and treatment protocols may result in early access to appropriate treatment for all claimants, and could contribute to faster recovery for injured persons and cost stability.

Given the importance and complexity of the issues and the diversity of opinions expressed in this review Government may wish to consider a comprehensive approach to reforms in consultation with stakeholders to determine those reforms that would best serve the interests of claimants, consumers and industry. Before the implementation of any reforms a consumer education program should also be undertaken to ensure that the reforms are fully understood. The automobile insurance system is complex and understanding the insurance product, knowing legal entitlements, and navigating claims and medical rehabilitation procedures can present challenges to even the most sophisticated consumers. A number of jurisdictions have comprehensive consumer guides which may serve as models of the type of resources that could be made available in this province.

As a final point Government may wish to consider more comprehensive, ongoing monitoring as well as mandated legislative reviews to ensure that the insurance product and market continues to best serve consumers and claimants in Newfoundland and Labrador. Regular reviews and reporting of key indicators of the health of the automobile insurance market in the province would assist in identifying issues and solutions before they become crisis ones and enable all stakeholders to be pro-actively engaged.

Terms of Reference  
For The Board of Commissioners of Public Utilities  
Review into Automobile Insurance

The Public Utilities Board shall undertake a review and report on the issues outlined below with respect to Automobile Insurance in the Province and in addition shall detail other issues or concerns raised by stakeholders participating in the review. Certain parts of the review are independent of each other and may be provided to the Department of Service NL upon completion separately.

Phase I

Phase I of the review will consist of a closed claim study into private passenger automobile insurance and a separate closed claim study into causes of high taxi claims costs.

- To conduct a closed claims study to determine the costs associated with Third Party Liability / Section A bodily injury claims arising from the use of private passenger vehicles, including the use (or no use) of interim payments and whether Accident Benefits were available.
- To review the impact on rates of a monetary cap on claims for non-economic loss for minor/mild injuries and the implications of such a cap for claimants.
- To review the impact on rates of continuing with the current deductible of \$2,500 or increasing the deductible.
- To conduct an audit of taxi closed claims to determine the causes of poor claims experience, including details regarding the underlying causes of loss and high claim costs incurred, and provide any recommendations to reduce claim costs and reduce rates.

Phase II

Phase II will review the existing private passenger automobile insurance products and assess and recommend possible options to contain costs.

- To review the auto insurance product offered in Newfoundland and Labrador and conduct a jurisdictional scan of other provinces' auto insurance product offerings.
- To review the current mandatory Section A/Third Party Liability limit of \$200,000 and the rate implications of increasing the limit.
- To review Section B/ Accident Benefits coverage and impact on rates with respect to:
  - Coverage limits on medical and rehabilitation benefits and indemnity for loss of income;
  - Benefit payment practices (i.e. advance payments versus reimbursement);
  - Order of payment of benefits in relation to other insurance plans;
  - Timeliness and efficiency of the injury assessment process;
  - The relationship of Section B benefits to the settlement of Section A benefits; and
  - Whether the coverage should be mandatory.

- To review the impact of Newfoundland and Labrador adopting minor injury diagnostic and treatment protocols such as those provided in Alberta and Nova Scotia and how mandatory Section B coverage and the diagnostic protocols would impact Section A claim costs.
- To review the impact of offering direct compensation for physical damage to automobiles (Section C).
- To review Section D Uninsured Automobiles coverage in the Province.
- To report on measures to improve highway safety and automotive accident prevention in Newfoundland and Labrador.
- To review the financial profitability of the auto insurance industry in Newfoundland and Labrador.
- To review the current auto insurance market and provide comment of Insurer exits and report on ways to encourage new entrants into the market.
- To report any other cost savings or other improvements on any aspect of automobile insurance offered in this Province.



NEWFOUNDLAND AND LABRADOR  
**BOARD OF COMMISSIONERS OF PUBLIC UTILITIES**  
120 Torbay Road, P.O. Box 21040, St. John's, Newfoundland and Labrador, Canada, A1A 5B2

2017-08-11

Honourable Sherry Gambin-Walsh  
Minister of Service NL  
Provincial Office  
100 Prince Phillip Drive  
P.O. Box 8700  
St. John's, NL A1B 4J6

Dear Minister Gambin-Walsh:

**Re: Review of Automobile Insurance in the Province**

The Board of Commissioners of Public Utilities has been directed to undertake a review of automobile insurance in the province. As part of the Terms of Reference for the review the Board has been directed:

- To review the impact on rates of a monetary cap on claims for non-economic loss of minor/mild injuries and the implications of such a cap for claimants; and
- To review the impact on rates of continuing with the current deductible or increasing the deductible.

The Terms of Reference did not provide direction on the minor/mild injury definition(s) or monetary caps to be used in the closed claims study and analysis, or the specific higher deductibles to be analyzed. The purpose of this letter is to advise on the minor injury definition(s), monetary caps and deductibles that the Board plans to consider in its review.

*Mild/Minor Injury Definition and Monetary Caps*

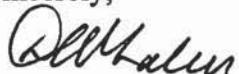
Nova Scotia, New Brunswick and Prince Edward Island all have mild/minor injury definitions for determining non-economic loss which appear to be substantively similar (see attached Schedule A). These jurisdictions also have monetary caps that limit pain and suffering compensation for injuries legally defined as minor. The pain and suffering compensation in each province is limited to a maximum of \$7,500.00 indexed for inflation. The current monetary caps for 2017 are \$7,818.87 in Nova Scotia, \$8,486 in New Brunswick and \$7,545 in Prince Edward Island.

*Deductibles*

The current deductible applied to all pain and suffering claims in Newfoundland and Labrador is \$2,500. The Board will review the impact on rates of continuing with the current deductible or increasing the deductible to \$5,000, \$7,500 or \$10,000.

We trust this will be satisfactory.

Sincerely,



Darlene Whalen, P. Eng.  
Vice-Chair

## **SCHEDULE A**

### **Minor/Mild Injury Definitions – Atlantic Canada**

#### **Nova Scotia (2010)**

Minor injury, with respect to an accident, means

- (i) a sprain;
- (ii) a strain; or
- (iii) a whiplash-associated disorder injury,

caused by that accident that does not result in a serious impairment.

#### **New Brunswick (2013)**

Minor personal injury means any of the following injuries, including any clinically associated sequelae, that do not result in serious impairment or in permanent serious disfigurement:

- (a) a contusion;
- (b) an abrasion;
- (c) a laceration;
- (d) a sprain;
- (e) a strain; and
- (f) a whiplash associated disorder.

#### **Prince Edward Island (2014)**

Minor personal injury means any of the following injuries, including any clinically associated sequelae, that do not result in serious impairment:

- (i) sprain,
- (ii) strain; or
- (iii) whiplash-associated disorder injury.

**Newfoundland and Labrador  
Board of Commissioners of Public Utilities  
Automobile Insurance Review**

**Listing of Presenters on Behalf of Intervenors**

|    | <b>Organization</b>                        | <b>Presenter</b>  | <b>Presentation Date(s)</b>                                    |
|----|--|---|--|
| 1  | Board of Commissioners of Public Utilities | Paula Elliott, Oliver Wyman<br>James Cameron, Cameron and Associates  | June 5, 6, 7, and 8, 2018 & September 6, 2018<br>June 11, 2018 |
| 2  | Insurance Bureau of Canada (IBC)           | Amanda Dean, IBC<br>Ryan Stein, IBC   | June 12, 2018  |
| 3  | Campaign to Protect Accident Victims       | Dr. Karl Misik, MD  | September 7, 2018  |
| 4  | Campaign to Protect Accident Victims       | Accident Victims Panel<br>Della Ryan<br>Sheila Elliott<br><br>Technical Legal Panel<br>Valerie Hynes, Roebathan McKay Marshall<br>Kate McGarry, Roebathan McKay Marshall<br>Richard Rogers, Rogers Rogers Moyse Personal Injury Law | September 10, 2018<br><br>September 10, 2018                   |
| 5  | Campaign to Protect Accident Victims       | Craig Allen, Actuary  | September 11, 2018   |
| 6  | Insurance Bureau of Canada                 | Viivi Riis, Health Service Management   | September 12, 2018   |
| 7  | Campaign to Protect Accident Victims       | John Karapita, Ontario Trial Lawyers Association<br>Allen Wynperle, Ontario Trial Lawyers Association   | September 12, 2018   |
| 8  | Campaign to Protect Accident Victims       | Dr. Fred Lazar, Associate Professor, Economics Schulich School of Business and Faculty of Liberal Arts and Professional Studies York  | September 13, 2018   |
| 9  | Consumer Advocate                          | Garrett Donaher, Manager of Transportation Engineering, City of St. John's  | September 14, 2018   |
| 10 | Campaign to Protect Accident Victims       | Kelly Blidook, Associate Professor, Department of Political Science, Memorial University  | September 14, 2018   |
| 11 | Consumer Advocate                          | Paul Didham, Inspector, Royal Newfoundland Constabulary   | September 27, 2018   |
| 12 | Campaign to Protect Accident Victims       | Justice Robert Wells, Retired, Supreme Court of Newfoundland and Labrador   | September 27, 2018   |

**Newfoundland and Labrador  
Board of Commissioners of Public Utilities  
Automobile Insurance Review**

**Listing of Public Presenters**

|    | <b>Presenter</b> | <b>Organization</b>  | <b>Presentation Date</b>                              |
|----|------------------|--|---|
| 1  | Donnie Earle     | Goulds Taxi  | April 10, 2018  |
| 2  | Doug McCarthy    | Owner/Operator, Newfound Cabs                                | April 10, 2018<br>June 13, 2018<br>September 18, 2018 |
| 3  | Tom Lambe        | City Wide Taxi   | April 12, 2018  |
| 4  | George Murphy    | Jiffy Cabs   | April 12, 2018  |
| 5  | Krista Quigley   | Star Taxi  | April 12, 2018  |
| 6  | Todd Edmonds     | Star Taxi  | April 12, 2018  |
| 7  | Sherry Hillier   | CUPE Newfoundland Labrador                                   | June 5, 2018  |
| 8  | Carol Ferguson   | CUPE Newfoundland Labrador                                   | June 5, 2018  |
| 9  | Jason Sharpe     | Insurance Brokers Association of Newfoundland and Labrador   | June 13, 2018   |
| 10 | Kent Rowe        | Insurance Brokers Association of Newfoundland and Labrador   | June 13, 2018   |
| 11 | Ken Moyse        | Rogers Rogers Moyse Personal Injury Law                      | June 13, 2018   |
| 12 | Paul Prowse      | Owner/Operator, SmartDRIVER Training                         | June 13, 2018   |
| 13 | Jeremiah Perry   | Private Citizen  | June 13, 2018   |
| 14 | Robert Rogers    | 50+ Federation of Seniors Clubs of Newfoundland and Labrador | June 13, 2018   |
| 15 | Dave Fleming     | Owner, Northwest Taxi  | May 2, 2018<br>June 13, 2018                          |
| 16 | Peter Gulliver   | Owner, City Wide Taxi  | September 14, 2018                                    |

**Newfoundland and Labrador**  
**Board of Commissioners of Public Utilities**  
**Automobile Insurance Review**

**Submissions Received**

|    | <b>Name/Organization</b>                                      | <b>Date Received</b>          |
|----|---|-------------------------------|
| 1  | Insurance Bureau of Canada<br>• Supplementary Submission      | March 7, 2018<br>May 31, 2018 |
| 2  | Platinum Limousine Inc.                                       | March 21, 2018                |
| 3  | Intact Financial Corporation                                  | March 29, 2018                |
| 4  | Workplace NL  | March 29, 2018                |
| 5  | Jovanax Ent. Inc.   | April 4, 2018                 |
| 6  | Tobin's Taxi  | April 4, 2018                 |
| 7  | CUPE Newfoundland and Labrador                                | April 19, 2018                |
| 8  | Rotary Club of Waterford Valley                               | April 23, 2018                |
| 9  | Allstate Insurance Company of Canada                          | May 11, 2018                  |
| 10 | Insurance Brokers Association of Newfoundland (IBAN)          | May 18, 2018                  |
| 11 | Facility Association  | May 24, 2018                  |
| 12 | The Co-operators Group Limited                                | May 30, 2018                  |
| 13 | Aviva Canada  | May 31, 2018                  |
| 14 | Insurance Institute of Canada                                 | June 5, 2018                  |
| 15 | Newfoundland Labrador Massage Therapists' Association (NLMTA) | August 13, 2018               |
| 16 | General Insurance Statistical Agency (GISA)                   | August 24, 2018               |
| 17 | Newfoundland and Labrador Chiropractic Association (NLCA)     | August 28, 2018               |
| 18 | Building Trades of Newfoundland and Labrador                  | September 12, 2018            |
| 19 | Royal and Sun Alliance Insurance Company of Canada            | September 6, 2018             |
| 20 | Associated Canadian Car Rental Operators (ACCRO)              | September 14, 2018            |
| 21 | Canadian Federation of Independent Business (CFIB)            | September 14, 2018            |
| 22 | Seniors Against Insurance Cap                                 | September 27, 2018            |
|    | <b>Name/Organization (Intervenor Submissions)</b>             | <b>Date Received</b>          |
| 1  | Spinal Cord Injury NL   | October 11, 2018              |
| 2  | Atlantic Provinces Trial Lawyers Association (APTLA)          | October 12, 2018              |
| 3  | Campaign to Protect Accident Victims                          | October 12, 2018              |
| 4  | Consumer Advocate   | October 12, 2018              |
| 5  | Insurance Bureau of Canada                                    | October 12, 2018              |

**Newfoundland and Labrador  
Board of Commissioners of Public Utilities  
Automobile Insurance Review**

**Public Comments Received**

|    | <b>Name</b>     | <b>Address</b>            | <b>Date Received</b> |
|----|-----------------|---------------------------|----------------------|
| 1  | DJ              | Portugal Cove-St. Philips | September 15, 2017   |
| 2  | PH              | Unknown                   | October 8, 2017      |
| 3  | DD              | St. John's                | November 28, 2017    |
| 4  | DN              | St. John's                | November 28, 2017    |
| 5  | RC              | Unknown                   | November 28, 2017    |
| 6  | MP              | Unknown                   | March 7, 2018        |
| 7  | KA              | St. John's                | May 9, 2018          |
| 8  | Neville Wheaton | Unknown                   | May 9, 2018          |
| 9  | SQ              | Unknown                   | June 16, 2018        |
| 10 | BP              | Unknown                   | August 2, 2018       |
| 11 | CM              | Unknown                   | August 2, 2018       |
| 12 | MY              | Unknown                   | August 2, 2018       |
| 13 | PC              | Unknown                   | August 2, 2018       |
| 14 | TD              | Unknown                   | August 2, 2018       |
| 15 | KB              | Unknown                   | August 3, 2018       |
| 16 | KP              | Cupids                    | August 3, 2018       |
| 17 | SS              | St. John's                | August 3, 2018       |
| 18 | DH              | Mount Pearl               | August 5, 2018       |
| 19 | RF              | Unknown                   | August 8, 2018       |
| 20 | DF              | Unknown                   | August 13, 2018      |
| 21 | KS              | Unknown                   | August 16, 2018      |
| 22 | MJ              | Unknown                   | August 17, 2018      |
| 23 | Vince Porter    | Roddickton                | August 17, 2018      |
| 24 | MB              | St. John's                | August 18, 2018      |
| 25 | VP              | Grand Falls-Windsor       | August 19, 2018      |
| 26 | DB              | Unknown                   | August 20, 2018      |
| 27 | MW              | Unknown                   | September 1, 2018    |
| 28 | GF              | Unknown                   | September 8, 2018    |
| 29 | MC              | Unknown                   | September 10, 2018   |
| 30 | AM              | Unknown                   | September 11, 2018   |
| 31 | April Squires   | Unknown                   | September 12, 2018   |
| 32 | DN              | St. John's                | September 13, 2018   |
| 33 | KH              | Unknown                   | September 13, 2018   |
| 34 | Stephen Major   | Unknown                   | September 16, 2018   |
| 35 | MB              | Corner Brook              | September 18, 2018   |

*\*NOTE: Initials and general address used to protect confidentiality of personal information.*

**Automobile Insurance in Canada**

**Jurisdictional Scan - Private Systems as of December 31, 2018**

|                  | NL   | NS  | PEI   | NB  |
|------------------|--|---|---|---|
| <b>Section A</b> | <b>Mandatory Minimum Third Party Liability</b><br>\$200,000 for any one accident; property damage limit of \$20,000  | \$500,000 for any one accident  | \$200,000 for any one accident; property damage limit of \$10,000   | \$200,000 for any one accident; property damage limit of \$20,000   |
|                  | <b>Medical Payments</b><br>\$25,000/person; four-year time limit   | \$50,000/person; four-year time limit   | \$50,000/person; four-year time limit   | \$50,000/person; four-year time limit   |
|                  | <b>Funeral Expense Benefits</b><br>\$1,000   | \$2,500   | \$2,500   | \$2,500   |
|                  | <b>Disability Income Benefits</b><br>\$140/week; 104 weeks for partial disability; lifetime for total disability; must be disabled for at least seven days to qualify; unpaid housekeeper \$70/week for 12 weeks                                     | \$250/week; 104 weeks for partial disability; lifetime for total disability; must be disabled for at least seven days to qualify; unpaid housekeeper \$100/week for 52 weeks  | \$250/week; 104 weeks for partial disability; lifetime for total disability; must be disabled for at least seven days to qualify; unpaid housekeeper \$100/week for 52 weeks  | \$250/week; 104 weeks for partial disability; lifetime for total disability; must be disabled for at least seven days to qualify; unpaid housekeeper \$100/week for 52 weeks  |
|                  | <b>Death Benefits</b><br>Death within 180 days (or two years if continuously disabled prior to death); death of head of household \$10,000 plus \$1,000 to each dependent survivor after first; death of spouse \$10,000; death of dependent \$2,000 | Death within 180 days (or two years if continuously disabled prior to death); death of head of household \$25,000 plus \$1,000 to each dependant survivor after first; death of spouse/partner \$25,000; death of dependant \$5,000 | Death within 180 days (or two years if continuously disabled prior to death); death of head of household \$50,000 plus \$1,000 to each dependant survivor after first; death of spouse/partner \$25,000; death of dependant \$5,000 | Death within 180 days (or two years if continuously disabled prior to death); death of head of household \$50,000 plus \$1,000 to each dependant survivor after first; death of spouse/partner \$25,000; death of dependant \$5,000 |
|                  | <b>Impairment Benefits</b><br>N/A  | N/A   | N/A   | N/A   |
|                  | <b>Injury Treatment Guidelines</b><br>N/A  | Diagnostic and Treatment Protocols: pre-approved treatment for sprains, strains and whiplash injuries   | N/A   | N/A   |
|                  | <b>First Payer or Last Payer</b><br>Last payer   | Last payer, except under Diagnostic and Treatment Protocols   | Last payer  | Last payer  |
|                  | <b>Direct Compensation Property Damage</b><br>No   | Yes   | Yes   | Yes   |
|                  | <b>DCPD</b><br>Right to Sue for Pain and Suffering<br>Right to Sue for Economic Loss<br>Tort Restrictions  | Yes<br>Yes<br>Awards are subject to deductible of \$2,500   | Yes<br>Yes<br>If injury is deemed "minor" under provincial legislation, maximum award is \$8,579  | Yes<br>Yes<br>If injury is deemed "minor" under provincial legislation, maximum award is \$7,681  |

**Automobile Insurance in Canada**  
Jurisdictional Scan - Private Systems as of December 31, 2018

|                          | ON  | AB   | NT and NU  | YK   |
|--------------------------|---|--|--|--|
| Section A                | <b>Mandatory Minimum Third Party Liability</b><br>\$200,000 for any one accident; property damage limit of \$10,000   | \$200,000 for any one accident; property damage limit of \$10,000  | \$200,000 for any one accident; property damage limit of \$10,000  | \$200,000 for any one accident; property damage limit of \$10,000  |
|                          | <b>Medical Payments</b><br>\$3,500 for minor injury; \$65,000/person for non-minor, non-catastrophic for up to five years; \$1 million for catastrophic injury                          | \$50,000/person  | \$25,000/person; four-year time limit  | \$10,000/person; two-year time limit   |
|                          | <b>Funeral Expense Benefits</b><br>\$6,000 (may be higher if optional indexation coverage purchased)  | \$5,000  | \$1,000  | \$2,000  |
|                          | <b>Disability Benefits</b><br>\$400/week for 104 weeks; nothing payable for the first seven days of disability; non-earner \$185/week for 104 weeks; four week wait; limit of two years | \$400/week, up to 104 weeks for total disability; nothing payable for the first seven days of disability; non-earner \$135/week for up to 26 weeks   | \$140/week; 104 weeks for temporary disability; lifetime for total disability; nothing is payable for the first seven days of disability; unpaid housekeeper \$100/week for up to 12 weeks   | \$300/week; 104 weeks for temporary or total disability; nothing is payable for the first seven days of disability; unpaid housekeeper \$100/week for up to 26 weeks   |
|                          | <b>Income Benefits</b>  |  |  |  |
|                          | <b>Section B</b>  | Death within 180 days (or three years if continuously disabled prior to death); \$25,000 minimum to spouse, \$10,000 to each surviving dependant; \$10,000 to each parent/guardian (may be higher if optional indexation coverage purchased) | Death within 180 days after accident (or two years if continuously disabled prior to death); death of head of household \$10,000 plus \$1,500 to single survivor or \$2,500 to each survivor after first if more than one; death of spouse of head of household \$10,000; death of dependant \$2,000           | Death any time after accident; death of head of household \$10,000 plus \$2,000 to each dependant other than the first and 1% of total principal sum to each dependant after first for 104 weeks; death of spouse \$10,000; death of dependant relative, according to age, maximum \$3,000 |
|                          |   |  | Death of head of household \$10,000, plus 20% (\$2000) for each dependant survivor after first, additional \$15,000 for first survivor and \$4,000 for each remaining survivor; death of spouse \$10,000; death of dependant relative, according to age, \$3,000 max; grief counselling up to \$400 per family |  |
|                          | <b>Impairment Benefits</b>  | N/A  | N/A  | N/A  |
|                          | <b>Injury Treatment Guidelines</b>  | Minor Injury Guideline: pre-approved treatment of minor injuries   | Diagnostic and Treatment Protocols: pre-approved treatment for sprains, strains and whiplash injuries  | N/A  |
|                          | <b>First Payer or Last Payer</b>  | Last payer   | Last payer, except under the Diagnostic and Treatment Protocols  | Last payer   |
| Section C                | <b>Direct Compensation Property Damage</b>  | Yes  | No   | No   |
|                          | <b>DCPD Right to Sue for Pain and Suffering</b>   | Yes  | Yes  | Yes  |
|                          | <b>Right to Sue for Economic Loss</b>   | Yes  | Yes  | Yes  |
|                          | <b>Tort Restrictions</b>  | Injury must meet severity test (called "threshold"). Awards subject to deductible of \$37,983 (\$18,992 for a Family Law Act claims)   | If injury deemed "minor" under provincial legislation, maximum award is \$5,080  | None   |
| <b>Tort Restrictions</b> |   |  |  |  |

**Automobile Insurance in Canada**

**Jurisdictional Scan - Public Systems as of December 31, 2018**

|  | QC   | MB   | SK   |  | BC   |
|--|--|--|--|--|--|
|  |  |  | No-Fault   | Tort   |  |
| <b>Section A</b>                         | \$50,000 for any one accident for property damage claims within QC and personal injury and property damage claims outside QC   | \$200,000 for any one accident; property damage limit of \$20,000  | \$200,000 for any one accident; property damage limit of \$10,000  | \$200,000 for any one accident; property damage limit of \$20,000  |  |
| Medical Payments                         | No time or amount limit  | No time or amount limit  | \$6,888.630/person   | \$22,960/person for non-catastrophic; up to \$202,200 for catastrophic   | \$300,000/person   |
| Funeral Expense Benefits                 | \$5,256  | \$8,544  | \$10,331   | \$6,740  | \$2500; (\$7,500 on April 1, 2019)   |
| Disability Income Benefits               | 90% of net wages based on gross annual income of maximum \$73,500/year; nothing payable for the first seven days of disability; indexed  | 90% of net wages based on gross annual income of maximum \$96,000/year; nothing payable for the first seven days of disability   | 90% of net wages based on gross annual income of maximum \$96,034/year; nothing payable for the first seven days unless catastrophically injured   | \$438/week for total disability up to two years, lifetime if unable to return to any job; \$219/week for partial disability; maximum \$22,776/year | \$300/week (\$740/week on April 1, 2019); 104 weeks for temporary, lifetime for total disability; nothing payable for the first seven days; homemaker up to \$145/week (\$280/week on April 1, 2019), max 104 weeks  |
| Death Benefits                           | Death any time after injury; benefits for partners depend on wage and age, minimum \$62,693; benefits for dependant children depend on age and range from \$29,778 to \$54,857; disabled dependants receive an additional \$27,427; non-dependant children or parents receive \$13,961 | Death any time after accident; gross annual income multiplied by a factor between one and five depending on age; spouse from \$70,139 to \$367,500; dependant child based on age from \$33,314 to \$61,373; if no surviving spouse/dependent, parents or estate receive \$56,217 | 45% of deceased's net income benefit to spouse; 5% of deceased's net income to each dependant child; if no spouse, \$15,620 to each surviving parent or child (21 years or older) to max \$71,066; death of dependant child \$31,584 | 45% of deceased's net income; 5% of calculated death benefits to each dependant child; if no spouse or dependant, estate receives up to \$13,480   | Death of head of household \$5,000, plus \$145/week to first survivor, plus \$1,000 and \$35/week to each child for 104 weeks; death of spouse/partner of head of household \$21,500; death of dependant child, according to age, maximum \$1,500; (Death Benefits simplified and increased to \$30,000 effective April 1, 2019) |
| Impairment Benefits                      | Up to \$245,946  | \$782/week to maximum \$156,729 for non-catastrophic injury; maximum \$247,477 for catastrophic injury.  | Up to \$197,405/person for non-catastrophic injury; up to \$241,102 for catastrophic injury  | Up to \$13,480/person for non-catastrophic; up to \$175,240 for catastrophic injury  | N/A  |
| Injury Treatment Guidelines              | N/A  | N/A  |  | N/A  | N/A  |
| First Payer or Last Payer                | First payer  | First payer  | First payer  | First payer  | Last payer   |
| DCPD Direct Compensation Property Damage | Yes  | No   | No   | No   | No   |
| Tort Restrictions                        | No-fault insurance system  | No-fault option  | Awards are subject to deductible of \$5,000  | None; (Minor injury cap of \$5,500 to be implemented April 1, 2019)  |  |

**Overview of Recent Reform Initiatives in Other Jurisdictions**

| NS   | NB   | PE   | ON   | AB   | BC  |
|--|--|--|--|--|---|
| 2010: Reforms to Minor Injury Cap (\$7500 indexing) and minor injury definitions                 | 2013: Minor Injury Cap increased from \$2500 (with no adjustment for inflation) to \$7,500 (annually adjusted for inflation - \$7,819 in 2017) | 2014: Minor Injury Cap increased from \$2,500 to \$7,500 indexed annually for inflation; | 2016: Medical and Rehabilitation, and Attendant Care benefits for non-catastrophic injuries combined and reduced to \$65,000 total | 2014: Regulations amended to grant AIRB authority to regulate all coverage and types of vehicles | 2018: Limited for medical and physiotherapy costs for treatments increased to \$300,000 |
| 2010: Enabled the introduction of an optional full tort product at later date                    | 2013: Changes to minor injury definitions  | 2014: Enhanced Mandatory Benefits under Section B  | 2016: Medical and Rehabilitation, and Attendant Care benefits for catastrophic injuries combined and reduced to \$1,000,000 total  | 2018: Minor Injury Cap amount for 2018 is \$5,080.   | 2019: Wage loss payments increase to \$740/week   |
| 2012: Enhanced Mandatory Benefits under Section B  | 2018: Minor Injury Cap amount for 2018 is \$7,998.70   | 2015: DCPD introduced  | 2016: Changes to optional benefits and limits  | 2019: Home support benefits increase to \$280/week   |   |
| 2012: Prohibition of Premium increases if no claim made  | 2018: Minor Injury Cap amount for 2018 is \$7,681 (was \$7,545 in 2017)  | 2016: Changes to various definitions   | 2016: Changes to optional benefits and limits  | 2019: Funeral costs increase to \$7,500  |   |
| 2012: Review of automobile insurance legislation and regulations required at least every 7 years |  |  | 2016: Changes to various definitions   | 2019: Death benefits simplified and increased to \$30,000  |   |
| 2013: Diagnostic and treatment protocols for minor injuries introduced                           |  |  |  | 2019: \$5,500 Minor Injury Cap to be introduced  |   |
| 2013: DCPD introduced  |  |  |  |  |   |
| 2013: Limited Liability and New Priority of Pay Rules for Rental Companies                       |  |  |  |  |   |
| 2018: Minor Injury Cap amount for 2018 is \$8,579 (was \$8,486 in 2017)                          |  |  |  |  |   |

| <b>Minor Injury Definitions by Province</b>                                       |   |  |   |  |
|---|---|--|---|--|
| <b>NS</b>   | <b>NB</b>   | <b>PE</b>  | <b>AB</b>   | <b>BC</b>  |
| A sprain, strain or whiplash injury that does not result in a serious impairment. | A contusion, abrasion, laceration, sprain, strain or whiplash injury, including any clinically associated sequelae, that does not result in a serious impairment or in permanent serious disfigurement. | A sprain, strain or whiplash injury, including any clinically associated sequelae, that does not result in a serious impairment. | A sprain, strain or whiplash that does not result in a serious impairment.<br><br>A TMJ injury is a sprain, strain or whiplash unless it involves damage to bone, teeth or articular disc.<br><br>A physical or psychological condition or symptom that arises from and resolves with a sprain, strain or whiplash is not separate from the sprain, strain or whiplash. | A physical or mental injury, whether or not chronic:<br>an abrasion, a contusion, a laceration, a sprain, or a strain, a pain syndrome, a psychological or psychiatric condition or another prescribed injury, including a symptom or a condition associated with the injury, that does not result in a permanent serious disfigurement or serious impairment. |

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*Newfoundland & Labrador*

**BOARD OF COMMISSIONERS OF PUBLIC UTILITIES**  
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