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**TRIAL
LAWYERS
ASSOCIATION**
of **BC**

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SAFE ROADS TO A STRONG ICBC



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I. EXECUTIVE SUMMARY

The Insurance Corporation of British Columbia was created in 1973 to provide British Columbians with comprehensive and affordable auto insurance. Over four decades, it has been a leader in the industry, delivering a stable and affordable product to the citizens of B.C.

Multiple factors affecting the global automobile insurance industry have combined to create significant short-term financial pressure on ICBC. These factors include low interest rates and much higher crash rates on B.C.'s roads. The former is likely to improve with modest upticks in the Bank of Canada's key interest rate. The answer to ICBC's challenges is *not* the imposition of right-stripping injury caps or thresholds and copying the costly and ineffective schemes adopted in Alberta, Ontario and Atlantic Canada. **These caps or thresholds harm most the poor, immigrant communities and BC's working class.** Rather, ICBC and *today's* BC government have a unique opportunity to be the continent-wide leader in the provision of fairly priced public auto insurance by aggressively combatting higher crash rates and by adopting progressive legislative, management and early dispute resolution practices that reduce costs.

Recall that in 2014, ICBC's net income was \$372M. This fell to \$131M in 2015. 2016 saw a significant decrease, putting ICBC into a \$533M shortfall.

ICBC's investment portfolio was valued at \$14.7 billion in 2015. As with all major insurers, it uses investment income to offset costs and reduce the need for higher premiums. The largest component of its investment income typically comes from interest bearing investments. However, historically low interest rates since the downturn of 2008 have significantly reduced ICBC's investment returns. From 2001-2007, its average annual return was 6.6%; from 2008-2015, it fell to 4.7%. The drop in investment returns from pre-2008 levels has cost ICBC \$2.2 billion. While interest rates remain below pre-2008 levels, the recent increases are positive signs for ICBC's investment returns.

Much of the \$533M shortfall in 2016 is attributable to reduced investment income in that year. Investment income was \$852M in 2014 and \$920M in 2015. For 2016, investment income dropped \$401M to \$519M. That drop accounts for nearly 80% of the 2016 shortfall.

Crash rates had held steady in British Columbia at approximately 260,000 from 2011-2013. Since then, they have increased steadily by 20,000 per year to 320,000 in 2016. With ICBC shouldering claims costs of over \$14,500 per crash, the total cost of an additional 60,000 crashes per year is nearly \$900M.

Increased incidence of car crashes means increased claims costs to ICBC but also costs to British Columbia more broadly. Impacts include strains on our health care system, the negative impact of disabled workers on the economy, and public safety. Fixing this problem and reducing the incidence of car crashes must be the focus not just for ICBC but for British Columbia as a whole.

ICBC's current financial shortfall can be remedied without significant increases in premiums by returning accident rates to 2011-2013 levels and below. This can be done through implementation of many of the public safety recommendations made in the *Ernst & Young* report. However, technology is already available that promises to have an even greater impact on crash rates. BC and ICBC should be leaders in seeing its widespread adoption to protect British Columbians and, in the process, return ICBC to fiscal stability.

All of the major auto manufacturers have committed to including forward collision avoidance systems as a standard feature on virtually all new vehicles by no later than 2022. For some manufacturers, these systems are already being offered as standard features even on entry-level models.

Studies show that automatic emergency braking systems alone – the single most effective but not the only collision avoidance feature – reduce rear-end collisions by 40%.

British Columbia should immediately take steps to incentivize the purchase of vehicles with proven road safety equipment such as automatic emergency braking. This could be done either through a program similar to the Clean Energy Vehicle Program and/or through premium discounts within ICBC. Crash rates will see sharp reductions as this technology is adopted.

Making roads safer will eliminate the need to respond to short-term financial pressure by stripping British Columbians of their rights. This has occurred in many other jurisdictions and ratepayers have not benefitted as the insurance industry promised.

Tort reform movements led by the insurance lobby have curtailed the rights of individuals. In most instances this has taken the form of artificial caps on damages. Such caps prevent individuals from accessing justice by removing the right to have their losses determined by a judge or impartial arbiter. The socioeconomically disadvantaged are most harmed by these systems as they have the least ability to pursue their rights.

Where caps on damages or injury thresholds have been implemented, rate payers have not seen the expected decreases in premiums. Indeed, in some instances they have seen premiums increase significantly.

Increased claims per crash are also driving up costs. Modernizing ICBC's first party accident benefits will help reduce claims. Current coverage levels only provide \$23 per treatment for physiotherapy or chiropractors, approximately one-third to one-quarter of the actual cost. This is preventing individuals from getting treatment, prolonging their recovery, and driving them to make claims.

The insurance industry is a cyclical business. Between 2010-2015, \$1.2 billion was transferred out of ICBC's Excess Optional capital by the previous BC Government. Now ICBC faces a cash crunch.

Targeted intervention to make our roads safer will inarguably be beneficial to all British Columbians. This government can be a leader in road safety. It should seize the opportunity to right ICBC's fiscal ship by making our roads safer, not by stripping the rights of vulnerable citizens.

II. RECOMMENDATIONS

1. Increase the per-treatment funding for rehabilitation benefits. This will allow more victims to access timely treatment, reducing recovery times and claims.
2. Implement strategies to accelerate the universal adoption of collision avoidance systems. This can be done either through a rebate program, reduced ICBC premiums for equipped vehicles, or both. This technology will lead to reduced crash rates.
3. Adopt the road safety initiatives highlighted in Table 1 of the *E&Y* report. The estimated savings are \$250M annually.
4. Increase driver risk premiums. Higher risk drivers should pay for their choices and behaviours. The current model does not adequately price this. This would include increased premiums not just for claims but for high risk behaviours such as speeding, driving while impaired, or distracted driving. *E&Y* estimates that a modernized pricing and risk model could generate up to \$80M in incremental revenue per year.
5. Adopt a high-value vehicle sliding scale price model to better recognize the increased cost of insuring luxury vehicles.
6. Allow ICBC to retain at least a portion of additional revenues generated by road safety measures that they are being asked to implement.
7. Continued review of procurement activities to reduce the cost of auto repair, as well as medical assessments and reports. *E&Y* expect this will save \$30M annually.
8. Consider offering usage based insurance. Insureds that are only occasional drivers should have access to pricing based on limited usage of vehicles.
9. Legislate away the right of private insurers to subrogate in motor vehicle accident claims which will immediately result in considerable savings to ICBC without harming victims.

10. Consider the implementation of the further reforms outlined in the TLABC Operational Review Terms of Reference letter to AG Eby dated September 18, 2017, which are *in addition* to those already expressly referenced herein and include:
- a. Improving ICBC management practices for non-represented claimants;
 - b. Studying data and performing life-cycle analyses of injury claims with a goal to identifying bottlenecks, decreasing delays and pushing for earlier dispute resolution and claim closure;
 - c. Reconsidering the effectiveness of ICBC's centralized approach to settlement authority;
 - d. Reducing transfers of ICBC profits to government general revenue and reducing the offloading of costs to ICBC basic rate payers without reimbursement for same;
 - e. Reducing fraud but with a critical review of ICBC's Special Investigative Unit and its cost vs. effectiveness;
 - f. Forming an Auto Insurance Claims & Litigation Working Group to liaise with-- and make cost saving recommendations to-- the Rules Committee and the Attorney General of BC, including specific recommendations for improving efficiency and drastically reducing litigation disbursements;
 - g. Automating insurance renewals and/or switching to an online process in lieu of the expensive and cumbersome Autoplan brokerage system;
 - h. Selling and closing all or most claims centres with ICBC vehicle damage estimators travelling to repair shops; and
 - i. Reducing material claims with renewed oversight by rebuilding ICBC's internal material damage department.

III. AUTOMOBILE INSURANCE IN BRITISH COLUMBIA

a. ICBC's Role in British Columbia

Since 1973, the Insurance Corporation of British Columbia has provided automotive insurance to British Columbians. Its mandate is to provide universal and affordable coverage by operating on a non-profit basis.

In Attorney General Eby's August 23, 2017 letter to ICBC, three key commitments were emphasized:

- "Our first commitment is to make life more affordable. We expect all public service organizations to work to contain costs, and to be conscious of the impact of every decision on the daily cost of living of families and businesses."
- "Our second commitment is to deliver the services that people count on. In many cases, critical programs and services are delivered by Crown Corporations, and ministers will work with Board Chairs to ensure your organizations remain focused on maintaining and improving levels of service to citizens."
- "Our third key commitment is to build a strong, sustainable, innovative economy that works for everyone. Our government believes that public sector organizations have a role to play in supporting broad-based economic growth in every region of the province."

These commitments can be kept by improving the system that has served British Columbians well for four-and-a-half decades.

b. ICBC's Obligations

ICBC is not just an insurer in British Columbia. It has taken on administrative roles that are borne by provincial governments in other jurisdictions. Premiums go to funding these tasks whereas taxpayers in other provinces pay these costs through general revenue.

The onus on ICBC is significant. In 2016, it spent over \$175M on its administrative responsibilities. These included:

- \$70M on the administration of Driver Licensing and Testing Services;
- \$40M on road safety initiatives including Vehicle Registration & Licensing and Driver Training School Certification and regulation; and
- \$22m for the Police Services Division responsible for the oversight for the Enhanced Traffic Enforcement Program.

The revenue generated by this spending – \$577M in 2016 – is returned to the Province which then shares it with BC municipalities. None of it is retained by ICBC.

c. Accident Benefits

Basic coverage must be purchased through ICBC. Optional insurance is also offered through the private market.

As part of their basic coverage, drivers in British Columbia are required to carry \$200,000 in third party liability coverage. All BC residents are also able to access up to \$200,000 in liability coverage if injured or killed in a hit-and-run accident on a roadway in BC.

Basic coverage also includes Autoplan Accident Benefits. Often referred to as “no fault” benefits, Accident Benefits are first party coverage including:

- Medical and rehabilitation costs arising from injuries suffered in an accident, up to \$150,000;
- Wage loss benefits capped at \$300/week;
- Housekeeping benefits capped at \$145/week;
- Underinsured motorist protection of \$1,000,000.

Modest funeral and death benefits are also provided.

Part 7 benefits are intended to provide immediate access to rehabilitation that will help British Columbians recover as quickly as possible following an accident. They are not fulfilling that mandate. It is counterproductive. Depriving accident victims of timely access to adequate rehabilitation is undoubtedly costing ICBC far more than it is saving.

The underfunding of rehabilitation benefits in the immediate aftermath of an accident is the clearest example of this. Injured individuals have access to up to \$150,000 in rehabilitation funds, far more than necessary in all but catastrophic or near catastrophic cases. The overall amount in the fund is not the issue in the vast majority of cases.

It is the specific outlays that are the problem. Medical and rehabilitation benefits are governed by section 88 of the *Insurance Vehicle Regulation*. Subsection 7 provides that the maximum amount payable by ICBC for various treatments is the amount provided for in the schedules established by the Medical Services Commission under the *Medicare Protection Act*. The amount payable under those schedules for some of the most common treatments – physiotherapy and chiropractic treatment – is \$23. It would be very surprising to find a physiotherapist or chiropractor in BC that offers treatment for anything close to this amount.

This underfunding of treatment is a costly mistake. The average victim reasonably expects that ICBC will cover their rehabilitation expenses following an accident. They go to their doctor who recommends, for example, physiotherapy. ICBC confirms they have coverage but their physiotherapist charges \$75 per treatment and their coverage is only \$23. Unless they have other extended medical coverage, they will have to pay a \$52 “user fee.”

The injured individual likely heard that their coverage includes rehabilitation expenses in the event of an accident and is upset to hear that they are only covered for a third or a quarter of the actual costs.

For many individuals, this means that they will not get the treatment that they need. Their recovery is prolonged or forestalled. The eventual cost to ICBC goes up as they miss more work and are ultimately entitled to greater amounts for pain and suffering as well as lost wages due to the prolonged recovery.

Most of the time, funding the full cost of physiotherapy up front is at no additional cost to ICBC. While they are only obligated to pay \$23 towards treatment as part of Part 7, unless the individual was at fault for the accident, ICBC is liable for reimbursement of the full amount as part of the negligence claim. Some adjusters realize this and pay the full cost up front but often that is not the case.

In addition to harming the individual's recovery, underfunding of rehabilitation in the initial post-accident stage often prompts individuals to retain counsel. Either because of general frustration with not being able to access treatment or because they know counsel can help fill the funding gap, inadequate funding of rehabilitation is a key factor in driving up representation rates.

By increasing rehabilitation benefits to cover the actual cost, or near the actual cost, of treatment, ICBC will help accident victims recover faster. This will reduce ICBC's own costs. Hastening recoveries means fewer and smaller claims.

d. British Columbia's Tort System

The insurance lobby has been effective in curtailing the rights of individual citizens. British Columbia is a hybrid system with mandatory no fault benefits. However, it retains a strong tort system – it should be proud of that fact.

An individual injured in British Columbia as a result of another motorist's negligence has a right to bring a claim for their losses. Only a small percentage of claims are litigated. In 2016, 19,003 motor vehicle claims were filed in Supreme Court.¹ Although data is unavailable, only a much smaller percentage proceed to trial, likely 1-2%.

When a claim proceeds to trial, the evidence is heard so that a judge or jury can quantify that individual's particular losses. No two individuals are the same and each case is unique. On the rare occasion when a trial is necessary, it allows for the details of that individual's losses to be considered.

¹

http://www.courts.gov.bc.ca/supreme_court/about_the_supreme_court/annual_reports/2016_SC_Annual_Report.pdf, at p. 45.

Case law is then used by lawyers and adjusters to assess other claims. It provides guidance for what another injured individual should recover. Individuals are treated as individuals.

In the words of one Canadian jurist:

No one denies that the fault system is riddled with imperfections; it is costly, difficult to administer, denies compensation to many injured people, and is replete with delays. Nevertheless, it is also a mark of nobility when a society directs its members to conduct themselves reasonably in their relations with their fellow citizens, or pay the consequences...

Only tort law is tailored to deal with each person as an individual entity. This is unquestionably one of its weaknesses, but it is also one of its greatest strengths.²

Access to justice is a struggle in modern society. In family law and criminal law, individuals are often unable to secure legal representation. Largely as a result of the prevalence of contingency fee arrangements, injury victims are one of the few groups where even the most socioeconomically disadvantaged are routinely given a voice through legal counsel.

British Columbia has maintained a strong tort system that it should be proud of. It is a system that gives voice to all British Columbians. Short term financial pressures resulting from other controllable factors should not be used to deprive citizens of those rights.

e. The Role of Investment Income

As of 2015, ICBC carried an investment portfolio valued at \$14.7 billion. As with all major insurers, funds are invested to offset costs and thereby reduce rates. In most years investment income comes primarily from interest bearing investments.

In the 2001-2007 period, annual investment returns were 6.6%.

Interest rates have been historically low since the downturn of 2008. This has significantly harmed ICBC's financial position (and, indeed, has impacted insurers globally).

From 2008-2015, ICBC's annual investment returns fell to 4.7%. That 1.9% decrease from 2001-2007 averages cost ICBC \$2.2 billion.³

² *Lahey Estate v. Craig*, 1992 CanLII 2803.

³ Report of Craig A. Allen, July 26, 2017.

The summary of ICBC's recent financial results in Table 17 of the *E&Y* report includes the Corporation's investment income for 2014-2016. There was a very significant unexplained decrease in 2016:

ICBC Investment Income 2014-2016:

2014	2015	2016
\$852M	\$920M	\$519M

ICBC earned \$401M less from investment income in 2016 than it did in 2015.

Investment income returning to 2015 levels would by itself eliminate nearly 80% of ICBC's net loss in 2016.

IV. PROVINCIAL EXAMPLES

a. Background of Reform

Putting a dollar figure on the pain and suffering of a seriously injured citizen is a difficult task. It is a task that we have entrusted to the judiciary who do so based on the full body of evidence they hear. A decision is then reached where a determination is made as to what is just in light of all the facts.

While quantifying disability or pain is a difficult task, it is not an arbitrary task. The Supreme Court of Canada fixed a maximum for pain and suffering at \$100,000 in 1978.⁴ This has gone up with inflation so it is now approximately \$370,000. This means that in the most serious of cases, typically cases of paralysis or severe traumatic brain injury, the victim's compensation for loss of enjoyment of life is \$370,000.

In non-catastrophic cases, judges hear the evidence about the nature of the individual's injuries and how their life has been impacted. Factors established by the case law⁵ and awards in comparable cases inform the decision of what constitutes a reasonable and just amount for the pain and suffering the particular individual has endured as a result of somebody else's negligence.

Non-pecuniary damages are typically the least contentious aspect of a personal injury claim; damages for lost earning capacity or future care costs are much more commonly the nub of the dispute. The vast majority of claims settle without a trial being necessary but of those claims that go to trial, only a small minority proceeds over a dispute related to the proper quantification for pain and suffering. This is because there is substantial case law setting out appropriate awards and litigants are usually able to agree on a figure.

"Justice" has been defined as the "constant and perpetual disposition to render every person their due."⁶ Justice includes allowing for a victim's case to be heard. It requires fair compensation based on principle. An artificially legislated cap on an individual's compensation for their losses means depriving British Columbian victims their due access to justice.

Just as mandatory minimum sentences in criminal law artificially limit a judge's discretion and disproportionately impact society's most vulnerable, caps on non-pecuniary damages do the same. Those hit hardest are those unfortunate individuals who are middle class or lower and find themselves disabled as a result of somebody else's negligence. That is who inevitably bears the biggest brunt of such legislation.

The Trial Lawyers Association of British Columbia is a non-profit of over 1,400 legal professionals who represent individuals in a variety of areas including personal injury. It

⁴ *Andrews v. Grand & Toy Alberta Ltd.*, [1978] 2 SCR 229.

⁵ The most common cited inexhaustive list of factors that inform the award is from *Stapley v. Hejslet*, 2006 BCCA 34, at para. 46.

⁶ *Black's Law Dictionary*, 4th ed., p. 1002.

may be easy to dismiss what follows as self-interested. But it should also be understood that we are writing from the perspective of people who deal on a daily basis with British Columbians who have had their lives turned upside down by disability. We deal with people who are struggling with chronic pain or an inability to work or an inability to support their family. We deal with people who are suddenly being asked to navigate a system that is completely foreign to them and that they are often ill-equipped to deal with. The TLABC is writing on behalf of the individuals we represent on a daily basis and whom we fear would be most harmed by an artificial cap on damages for pain and suffering.

The *E&Y* report appears to favour a system restricting access to judicial determinations of fair awards for pain and suffering in certain cases. It holds out Alberta and the Atlantic provinces as particular examples.

Although Ontario has adopted a hybrid approach which places limits on the rights of injured motorists, this has had disastrous unintended consequences. Their “care based” approach has led to skyrocketing costs. As the *E&Y* report states:

Ontario has one of the least effective insurance systems in Canada. It is filled with disputes and inefficiencies, and a very high percentage of premiums is going to experts and lawyers rather than directly to complainants.

The changes to Ontario’s tort system have been harmful to Ontarians. Reduced access to justice has come at a significant financial cost. Ontarians now pay the highest insurance rates in Canada by a wide margin.

The examples of Alberta and the Atlantic provinces have led to problems of their own. These are repeatedly glossed over in the *E&Y* report. Focused examinations of those systems are included in the appendices to this report. In the pages that follow, we will summarize those reviews.

Alberta, Nova Scotia, and New Brunswick have all adopted similar versions of a cap on the rights of accident victims to have their losses individually determined.

b. Alberta

In Alberta, Ralph Klein’s Progressive Conservatives adopted a scheme that severely curtailed the rights of individuals who had suffered soft tissue injuries. By way of the *Minor Injury Regulation* (MIR), damages for pain and suffering were capped at \$4,000 for individuals caught by its wording. Only recently, in early 2017, was the cap raised to \$5,020.

Alberta’s cap does not apply to all injuries. It applies to some sprain, strain, and “whiplash” type injuries. If it applies to an injury, it is only the pain and suffering damages which are subject to the cap.

The MIR and the Cap created a new administrative and regulatory scheme. Alongside common law principles of tort law that apply to the rest of the claim, injury definitions, diagnostic and treatment protocols, and certification requirements for medical examiners all create a costly and inefficient process.

The first element of the test considers the type of injury with “minor injury” including sprains, strains or WAD injuries. “WAD injury” is defined as:

A whiplash-associated disorder other than one that exhibits one or both of the following:

- i. Objective, demonstrable, definable and clinically relevant neurological signs;
- ii. A fracture to or a dislocation of the spine.

Injuries that would otherwise be caught by the above are exempted from the Cap if the injury results in a “serious impairment.” “Serious impairment” is defined as:

An impairment of a physical or cognitive function

- i. That results in a substantial inability to perform the
 - a. Essential tasks of the claimant’s regular employment, occupation or profession, despite reasonable efforts to accommodate the claimant’s impairment and the claimant’s reasonable efforts to use the accommodation to allow the claimant to continue the claimant’s employment, occupation or profession,
 - b. Essential tasks of the claimant’s training or education in a program or course that the claimant was enrolled in or had been accepted for enrolment in at the time of the accident, despite reasonable efforts to accommodate the claimant’s impairment and the claimant’s reasonable efforts to use the accommodation to allow the claimant to continue the claimant’s training or education, or
 - c. Normal activities of the claimant’s daily living,
- ii. That has been ongoing since the accident, and
- iii. That is expected not to improve substantially.⁷

Determining whether any given injury falls in the above is fertile ground for disputes, particularly when the prognostic element – “not expected to improve substantially” – is added to the mix.

The medical profession and the Superintendent of Insurance are entangled in the costs and administration created by the cap. The MIR creates a special category of physician: the certified examiner. The Superintendent of Insurance is required to establish, maintain and administer a register of certified examiners. Determining whether a physician is eligible to be a certified examiner is placed on the College of Physicians and Surgeons.

⁷ *Automobile Accident Insurance Regulations*, AR Reg. 352/72, s. 1(j)

If there is a dispute about whether an injury is a “minor injury”, the injured person or the insurance company may require an examination by a certified examiner. If the parties disagree on the examiner, either party may require the Superintendent of Insurance to make the choice.

The opinion of the certified examiner is *prima facie* evidence that the injury is, or is not, a minor injury. Thus, after the costly exercise of obtaining a certified examiner’s opinion, it is open to either party to challenge that opinion.

Treating physicians are prohibited from conducting the assessment. Indeed, “any physician who diagnosed or treated the injured person, or...any physician who consulted with respect to the diagnosis or treatment of the injured person” is disqualified. The legislative scheme mandates the participation of a new physician to determine the individual’s status.

It is the injured individual who must bear the cost of the assessment. As a result, the economically disadvantaged are often prevented from accessing justice.

Despite the Cap, Alberta’s insurance grid base rate has been increasing at an annual rate of 7-8% since 2015. There will be a 10% rate increase effective January 1, 2018.

Albertans have not seen more generous accident benefits to go alongside the loss of tort rights. Indeed, Alberta’s first party accident benefits are subject to limits of \$50,000 and are only payable for 2 years after an accident.

c. Nova Scotia

In November 2003, the Nova Scotia legislature passed the *Automobile Insurance Reform Act*. The law similarly stripped away the rights of innocent accident victims and capped damages for pain and suffering at \$2,500 in all claims deemed minor.

There was a profound backlash to the arbitrary cap on damages. In May, 2010, changes were made to the diagnostic criteria for assessing injury thresholds while increasing the minor injury cap to \$7,500 and indexing it to inflation. Under the new regulation, a “minor injury” is defined as:

- A sprain;
- A strain;
- A “Whiplash Associated Disorder” injury (WAD injury). Whiplash Associated Disorder is a diagnosis widely accepted by the medical community to define or diagnose connective tissue or muscle related injuries caused by acceleration/deceleration trauma.

These terms are further defined within Nova Scotia’s *Treatment Protocols* which include guidance on the criteria a health care practitioner must use in assessing the severity of the injury.

If the victim suffers a sprain, strain or whiplash injury that would otherwise be capped, the new regulations allow an avenue around the cap if the injury results in a “serious impairment.” A serious impairment is defined as a substantial inability to perform any of the following:

- The essential duties of the injured persons regular employment;
- The essential tasks of the injured persons training or education; or
- The normal activities of the claimant’s daily living.

There remains tremendous uncertainty in any given case whether it is subject to the artificial cap or not. Those with the funds to access doctors and pay for reports find themselves far more likely to be able to have their claims determined on their merits. Much like Alberta’s experience, those without such means typically find themselves caught by Nova Scotia’s cap.

The insurance industry’s injury cap system has had a chilling effect on access to justice for Nova Scotia’s citizens, felt most profoundly by the province’s most vulnerable communities. Indeed, some in the legal community felt the legislation was in fact discriminatory, “against women, children, the elderly, persons with psychological injury, and generally those less fortunate”⁸. In a legal climate where the applicant challenging the injury cap must assume the cost of paying for a certified examiner’s review of the case, access to justice is only in substance available to people of means who can afford these extraordinary costs.

d. New Brunswick

Also in 2003, New Brunswick adopted the *Injury Regulation*. It was intended to impose a threshold and cap to control the cost of “minor personal injury” claims. Instead, it was worded in such a way that almost all claims fell within the definition of “minor personal injury.” All but the most serious injuries were excluded.

“Minor personal injury” was defined as an injury that does not result in:

- a) Permanent serious disfigurement, or
- b) Permanent serious impairment of an important bodily function caused by continuing injury which is physical in nature;

“Serious impairment” was then defined as “an impairment that causes substantial interference with a person’s ability to perform their usual daily activities or their regular employment.”

Those with injuries that were categorized as “minor” were limited to compensation of \$2,500 for all non-financial losses. This meant that an individual who suffered permanent injuries as a result of an accident could only recover a maximum of \$2,500 for their pain

⁸*Nova Scotia Barristers Society*, “ Business As Usual? Three Lawyers Weigh in on life after the cap”, Anna Marie Butler (October 2006).

and suffering. Indeed, as long as the individual could return to the same type of work or activities as before the accident without substantial interference, even in cases of orthopaedic or brain injuries, they were restricted to \$2,500.

Responding to public backlash, in 2013 the New Brunswick government introduced significant amendments to the cap. The cap itself was raised to \$7,500 and indexed to inflation. As importantly, the definition of “minor personal injury” was amended to specifically list the injuries that are considered minor. These are:

- A contusion;
- An abrasion;
- A laceration;
- A sprain;
- A strain; and
- A whiplash associated disorder.

For accidents that occur after July 1, 2013, victims are only restricted to the cap if the injuries are on the above list. If their injuries are among the above, they are required to show that it has resulted in a “serious impairment” to avoid the impact of the cap.

“Whiplash associated disorder” includes a definition that mirrors Alberta’s. It is a whiplash injury that does not “exhibit objective, demonstrable, definable, and clinically relevant neurological signs.” Like in Alberta, significant litigation now revolves around whether that definition is met. People with soft tissue injuries are being sent for electromyogram tests, nerve conduction studies, x-rays, MRIs, and CT scans in the immediate aftermath of accidents, not out of medical necessity but as a legal necessity.

The cap in New Brunswick has proved itself counter-productive, increasing costs, failing to reduce premiums, and hurting injured New Brunswickers.

e. Newfoundland:

Newfoundland & Labrador took a different approach than the previous three provinces. Rather than introducing tests to classify injuries and cap damages for pain and suffering, they introduced a \$2,500 deductible on claims for pain and suffering, along with other measures.

Effective August 1, 2004, the insurer is entitled to take a \$2,500 offset no matter the value of the bodily injury claim. The wording is in s. 39.1:

In an action in the province for loss or damage from bodily injury or death arising directly or indirectly from the use or operation of an automobile, the damages to which a plaintiff is entitled for non-pecuniary loss or damage shall be reduced by the amount the Lieutenant-Governor in Council may set by regulation.

In essence, this is a \$2,500 per claim boon to insurers at the expense of victims.

f. Conclusions from Other Provinces

In *E&Y's* report, a cap on damages in the range of \$7,000 - \$9,000 for “minor injury claims” is the first recommendation to reduce the Basic rate gap. With that in mind, it is surprising that there is not a focused analysis on how similar caps have impacted premiums in Alberta, Nova Scotia, and New Brunswick.

Drawing comparisons is a challenge because of the many variables. There is no straightforward apples-to-apples analysis. The main reasons a straightforward comparison is difficult are:

- i. ICBC is saddled with road safety, licensing, and administrative costs that are borne by government in other jurisdictions, totalling \$175M per year;
- ii. Premiums are priced differently in each jurisdiction with certain factors considered; and
- iii. The product offered and levels of coverage vary by jurisdiction.

“Automobile insurance” is not standardized across jurisdictions. There are significant differences in mandatory minimums for liability insurance as well as first party coverage including underinsured motorist protection and rehabilitation benefits.

The biggest difference is with respect to first party medical expenses. In British Columbia, these are capped \$150,000, meaning that an individual harmed in a motor vehicle accident has up to \$150,000 in coverage for rehabilitation related expenses (including things such as home modifications or adapted vehicles in catastrophic cases).

In Alberta, New Brunswick, and Nova Scotia, these benefits are capped at \$50,000. In New Brunswick, they are also subject to a four-year time limit. In Nova Scotia, added coverage is available for purchase.

In Ontario, the level of benefits is dependent on the nature of the injury. For a “minor injury,” benefits are capped at \$3,500. For a non-minor and non-catastrophic injury, they are \$65,000. In the event of catastrophic injury, benefits are up to \$1M.

Tables for all the mandatory coverages across provinces are available in A1a and A1b of Dr. Devlin’s report (attached in the Appendices).

Thus, bearing in mind that it is not an apples-to-apples comparison, Dr. Devlin undertook to track prices across jurisdictions. Using a 45-year-old employed driver of a Honda Civic as an example, she looked at the cost of both minimum coverage and complete coverage. The minimum coverages are as defined in tables A1a and A1b of her report. “Complete” coverage included higher-than-mandated liability limits, comprehensive coverage, and other benefits as defined in table A3. She provides quotes both for the individual with a “clean” driving record and for the individual with a poor driving record.

For the 45-year-old individual with a clean driving record in the province's largest city, the average cost of coverage is as follows:

Province	Required Coverage	Complete Coverage
Ontario	\$2,480	\$2,831
Alberta	\$789	\$1,469
Nova Scotia	\$762	\$1,173
New Brunswick	\$898	\$1,349
Newfoundland	\$1,258	\$1,832
British Columbia	\$1,087	\$1,853
Manitoba	\$1,167	\$1,451
Saskatchewan	\$917	\$1,131

Looking at the same individual but with a poor driving record, the rates are as follows:

Province	Required Coverage	Complete Coverage
Ontario	\$4,374	\$5,277
Alberta	\$1,223	\$2,666
Nova Scotia	\$1,113	\$1,813
New Brunswick	\$1,483	\$2,103
Newfoundland	N/A	N/A
British Columbia	\$1,571	\$2,310
Manitoba	\$1,239	\$1,541
Saskatchewan	\$978	\$1,192

The above tables make clear a number of points:

- Ontario remains by far the most expensive province for drivers, irrespective of sex or driving record.
- A clean driving record is very important to premiums but far more so in provinces with private insurers;
- British Columbia premiums remain largely in line with other provinces.

The location where one is primarily driving is a significant factor in premiums because driving in high volume areas results in more accidents. This is why rural drivers see a discount.

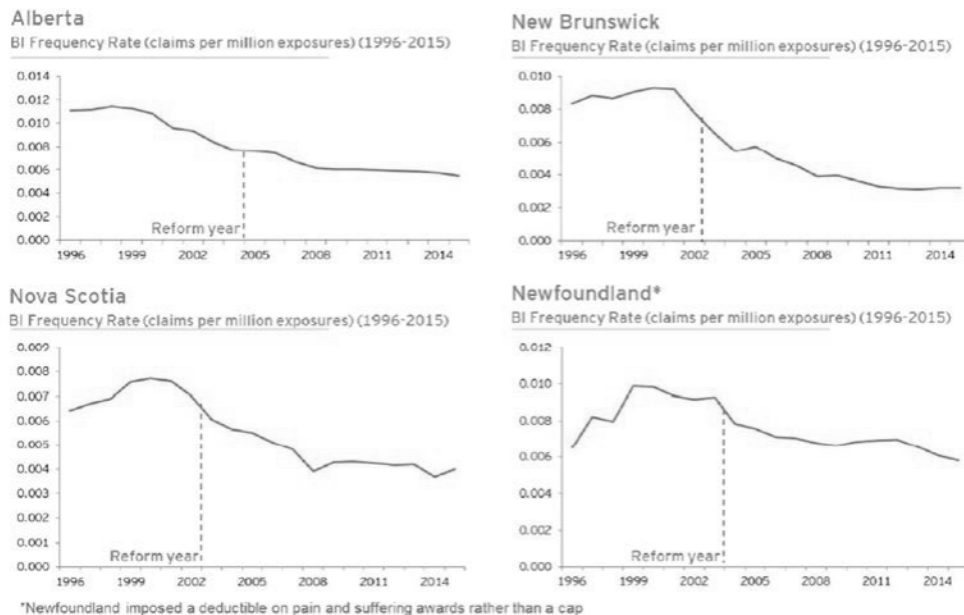
The two largest cities in this sample are Toronto and Vancouver. The GTA has a population of 6.42M while Greater Vancouver has 2.46M. A driver in Vancouver pays less than half an otherwise comparable driver in Toronto, despite Ontario having adopted significant restrictions on an individual's right to sue.

The fact that Vancouver is significantly larger and more densely populated than either Saskatoon or Winnipeg would lead one to anticipate significantly higher prices in Vancouver. Basic coverage is slightly higher than in Saskatoon and slightly lower than in

Winnipeg for a driver with a clean record. This is notwithstanding the significant restriction on rights that drivers in both of those jurisdictions face.

Further, contrary to claims in the *E&Y* report that suggest a “noticeable decrease in the frequency of bodily injury (BI) claims post-reform in [Alberta, New Brunswick, Nova Scotia, and Newfoundland,” the cited data says otherwise. The charts cited to support this contention show in all four provinces that reforms were enacted in the midst of significant downturns in bodily injury frequency rates:

Chart 12: Frequency of bodily injury (BI) claims post-reform



The *E&Y* report speculates that it “is likely that the cap on pain and suffering for minor injuries acted as a disincentive in certain cases; hence, some claimants and/or lawyers decided not to pursue a claim.” In fact, the frequency of bodily injury claims leveled off shortly after the reforms were implemented rather than continuing their downward trajectory.

Looking at the reform date in each of the above examples, it is clear that contrary to *E&Y*'s claims, restricting the rights of individual's did not result in reduced claims. By the time the reforms had been fully implemented, the pre-existing trend or reduced claims had leveled off in each instance.

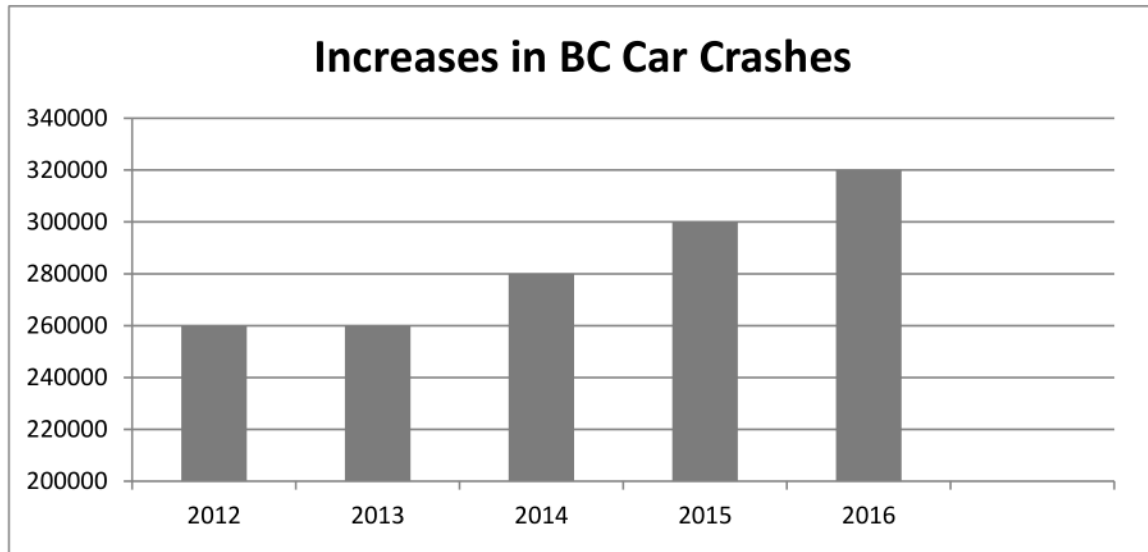
Injury caps have been tried in other provinces. Ontario remains far more expensive than any other Canadian jurisdiction despite their caps. Newfoundland remains more expensive despite a deductible system. Alberta, New Brunswick, and Nova Scotia are modestly cheaper on average than British Columbia but provide lesser coverage to their citizens. Further, lower premiums would be expected where a lower percentage of kilometers are travelled in densely populated areas.

Rather than following other jurisdiction that have restricted their citizen's rights and seen poor results, British Columbia should lead the way and tackle cost pressures by focusing efforts on reducing crash rates.

V. MAKING BC ROADS SAFER

a. *Current Crash Trends:*

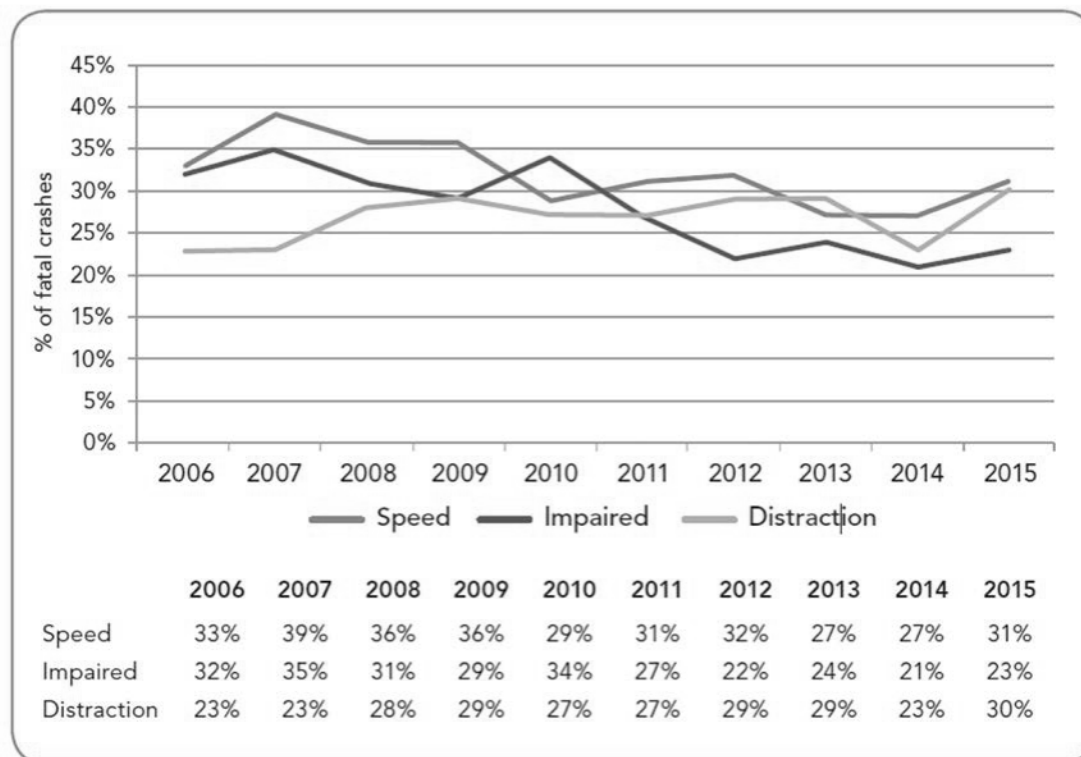
In the past four years, car crashes in British Columbia are up 23%. Having held steady at approximately 260,000 per year from 2011 - 2013, total BC car crashes increased to 280,000 in 2014, 300,000 in 2015, and 320,000 in 2016. This is a staggering increase and is driving ICBC's current losses:



There is not yet data available to empirically explain the current upswing in crash rates. Common sense and our collective experience tells us that the increase is largely attributable to distracted driving.

ICBC attempts to track the contributing factors in fatal car crashes. Beginning in 2014, the trend line for distracted driving began increasing markedly. If that pattern continued through 2016-2017, distracted driving will have overtaken speed (it has already overtaken impaired driving by a considerable margin) as the number one cause of fatal accidents in British Columbia:

Top contributing factors in fatal crashes



With 2014 claim costs of \$3.56Bn and 280,000 crashes, ICBC spent approximately \$12,714 per crash. In 2015, claim costs rose to \$4.042Bn or \$13,473 per crash. In 2016, claim costs were \$4.658Bn or \$14,556 per crash.

While those are the costs to ICBC, the actual societal costs are much greater. The broader reach of an additional 60,000 car crashes per year necessarily includes:

- Extraordinary added burden on the health care system, both in emergency rooms and family doctors' offices around the province;
- Lost productivity in the economy from missed work days due to disability;
- Social costs of many thousands of individuals struggling with injury and disability.

As a result of the sharp increase in accident rates, tens of thousands of British Columbians are struggling with pain, disability, or just the inconvenience of being without a vehicle.

The increase in car crashes in British Columbia since 2013 is the cause of ICBC's current shortfall. If each crash costs on average \$14,556 in direct claims costs to ICBC, reducing total accidents by 60,000 would result in savings of \$873M. ICBC's net shortfall in 2016 was \$533M.

Returning to 2013 accident rates would not only fix ICBC's budget shortfall, the benefit to society as a whole is clear. It is a public safety issue with tremendous economic implications as well. Surely this is where the focus should be.

b. Ernst & Young Road Safety Recommendations

TLABC wholeheartedly supports the road safety solutions addressed in chapter 8 of the report from *E&Y*. This includes road safety initiatives with a projected \$250M in annual savings:

The *EY* report identifies three main causes of accidents.

1. **Speed.** Proposals to address speed include doubling the number of intersection cameras and increase activation to 100%. Add automated speed enforcement cameras at high-risk sites, and allow for variable speed limits and point-to-point speed systems. They project annual savings of \$150M.
2. **Distracted.** Proposals including increasing the number of Integrated Road Safety Unit Officers by 100 FTEs, "Safe Work" programs, technological solutions and innovations, and road infrastructure countermeasures such as rumble strips. Projected annual savings are \$100M.
3. **Impaired.** Proposals again include increasing the number of IRSU officers by 100 FTEs and review the current penalties to assess current effectiveness. The anticipated annual savings are \$20-30M.

All of these recommendations should be pursued.

c. Technological Innovations

Apart from a general reference to "technological solutions and innovations", detailed consideration of how automotive technology will affect accident rates in coming years is a striking omission from the analysis in the *E&Y* report.

Already widely available technology will reduce accident rates sharply in coming years. A government dedicated to helping British Columbians while stabilizing ICBC without increasing premiums must proactively support the widespread adoption of that technology as soon as possible.

Fully autonomous vehicles are on the near-term horizon but technologies that will dramatically lower accident rates are already widely available. Indeed, many are becoming standard on new vehicles. Many new vehicles, *even entry level vehicles*, are now coming equipped with technology that will dramatically reduce accidents. In particular, they have the capability to sharply decrease the types of accidents that are driving up crash rates in recent years: rear-end collisions caused by distracted driving.

Government should be incentivizing the adoption of this technology. The return on investment will be immediate both to ICBC and to society as a whole. Widespread adoption of collision avoidance systems has the potential to return crash rates not only to their pre-2014 levels but to far lower rates.

There are many technologies included under the ambit of collision avoidance systems. Automatic emergency braking will have the greatest impact on crash rates in the shortest period of time both because of its effectiveness and affordability.

i. Automatic Emergency Braking

Automatic Emergency Braking (“AEB”) typically involves multiple systems. Forward Collision Warnings (“FCW”) alert the driver of an object in the vehicle’s path with sufficient lead-time for the driver to respond with braking or steering. If the driver does not apply sufficient braking, a Dynamic Brake Support system will supplement the brake application. If the driver does not take action to avoid the crash, Crash Imminent Braking automatically applies the brakes so a collision can be avoided or mitigated.⁹

Adoption of this technology is increasing rapidly. In 2014, 4 of 684 passenger vehicle models included a complete forward collision avoidance system as a standard feature.¹⁰ Pursuant to a 2016 agreement between all major auto manufacturers and the US National Highway Traffic Safety Administration, it will be a standard feature on virtually all new vehicles by no later than 2022.¹¹

Early signs suggest many manufacturers are not waiting for 2022.

- Mazda has said FCW and AEB will be standard on every 2018 vehicle except the MX-5 Miata sports car.¹²
- Nissan will have FCW and AEB as a standard feature on seven of its 2018 models, accounting for about 2/3 of Nissan’s U.S. sales.¹³
- Toyota and Lexus will feature FCW and AEB as a standard feature on most (25 of 30) of its 2018 models.¹⁴

By way of example, Toyota’s “Pre-Collision System” uses cameras and laser or radar to detect vehicles ahead. It prompts the driver to take action using audio and visual alerts if a frontal collision is likely. If the driver applies the brakes, the PCS may apply additional

⁹ <https://static.nhtsa.gov/odi/inv/2016/INCLA-PE16007-7876.PDF>

¹⁰ <http://www.insurancejournal.com/news/national/2015/06/10/371116.htm>

¹¹ <http://www.iihs.org/iihs/news/desktopnews/u-s-dot-and-iihs-announce-historic-commitment-of-20-automakers-to-make-automatic-emergency-braking-standard-on-new-vehicles>

¹² <https://www.consumerreports.org/car-safety/mazda-makes-key-safety-features-standard-on-almost-every-2018-model/>

¹³ <https://www.cars.com/articles/nissan-makes-automatic-braking-standard-on-most-2018-models-1420695662371/>

¹⁴ <https://www.consumerreports.org/car-safety/toyota-to-hit-safety-goal-well-before-2022-target/>

force. If the driver does not brake, the PCS may automatically apply the brakes.¹⁵ This feature, along with lane departure alerts, pedestrian detection, and other safety technologies are standard on the vast majority of new vehicles.

A Toyota video showing how the features function is available here:

<https://www.toyota.ca/toyota/en/vehicles/prius/features-benefits#/al/features-safety>

Critically, this technology is no longer reserved for luxury vehicles. Entry level vehicles such as the Toyota Yaris come with standard pre-collision systems and lane departure alerts.

Not all manufacturers are moving as quickly. The Insurance Institute for Highway Safety (“IIHS”) has recently indicated only 17% of models tested included standard collision-avoiding braking.¹⁶ However, one can be reasonably confident that the 2022 target for AEB in virtually all new vehicles will be met.

As AEB becomes commonplace on our streets and highways, accident rates will decline. Data from the IIHS shows that FCW systems alone reduce rear-end collisions by 23% while AEB systems reduce rear-end collisions by 40%.¹⁷

"The success of front crash prevention represents a big step toward safer roads," says David Zuby, IIHS chief research officer. "As this technology becomes more widespread, we can expect to see noticeably fewer rear-end crashes. The same goes for the whiplash injuries that often result from these crashes and can cause a lot of pain and lost productivity."

The implications of this readily available and soon-to-be universal technology should not be understated. According to ICBC data, reported crashes across BC had remained steady at 260,000 from 2011-2013, then increased to 280,000 and 300,000 in 2014 and 2015, respectively. In 2015, 57,000 of these crashes resulted in a casualty (an injury or fatality).¹⁸

NHTSA data suggests that 28% of crashes are rear-end collisions. Assuming that data holds true for British Columbia, of 320,000 car crashes in BC, approximately 89,600 are rear-end collisions.

As noted, IIHS data shows 40% of rear-end collisions are avoided by AEB systems. Therefore, we can expect to see 35,840 fewer crashes per year in British Columbia once AEB is universally adopted.

Further, AEB systems will improve. The IIHS study showing a 40% reduction in rear-end collisions was based on 2010-2014 Acura, Honda, Mercedes-Benz, Subaru, and Volvo

¹⁵ <https://www.toyota.com/safety-sense/details/feature/pcs>

¹⁶ <http://www.insurancejournal.com/news/national/2017/06/12/454084.htm>

¹⁷ <http://www.iihs.org/iihs/sr/statusreport/article/51/1/1>

¹⁸ <http://www.icbc.com/about-icbc/newsroom/Documents/quick-statistics.pdf>

vehicles with optional front crash prevention. As AEB systems improve, a greater percentage of collisions will be avoided. The figures above likely underestimate the impact that universal adoption of newer AEB systems will have on crash rates.

ii. Automation

Self-driving vehicles are coming. The technology is here now and it will have tremendous societal implications, including for automotive insurance.

“Automation” is not one single technology. In January 2014, the Society of Automotive Engineers provided a taxonomy and definitions for automated driving. The report offers 6 levels of automation, spanning from no automation at Level 0 to fully self-driving at level 5.¹⁹

The AEB systems discussed above fall within level 1 or 2. Those will be standard on all new vehicles within 5 years. But soon we will also see far more vehicles equipped with self-driving capabilities that fall into levels 3, 4, or 5.

Tesla Autopilot was launched on their Model S vehicles beginning in October, 2014. Vis-à-vis SAE automation, it is between levels 2 and 3. Although it has been upgraded several times, even early versions appear to have had market-shifting impacts on crash rates.

On May 6, 2016, a 2015 Model S utilizing Autopilot crashed into a tractor trailer crossing an uncontrolled intersection in Florida, resulting in fatal injuries to the Tesla driver. This led to an investigation by the NHTSA to examine the design and performance of Tesla’s automated driving systems.

In the course of that investigation, the NHTSA looked at how Tesla’s Autosteer had affected the number of accidents Tesla vehicles were involved in. The results are staggering:²⁰

¹⁹ https://www.sae.org/misc/pdfs/automated_driving.pdf . The magazine Wired provides user-friendly explanations for each level here: <https://www.wired.com/2016/08/self-driving-car-levels-sae-nhtsa/>

²⁰ <https://static.nhtsa.gov/odi/inv/2016/INCLA-PE16007-7876.PDF>

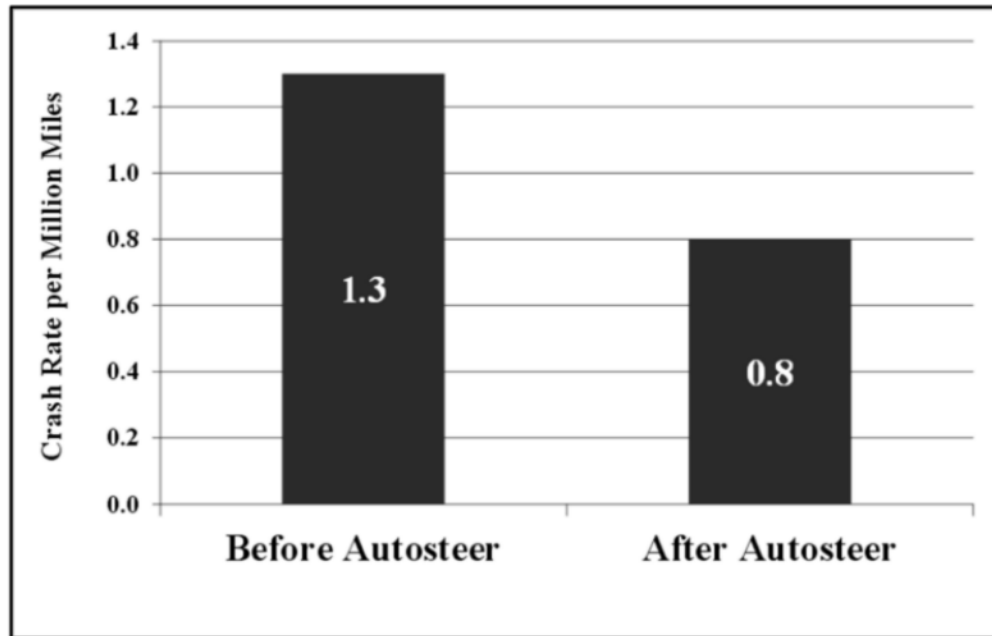


Figure 11. Crash Rates in MY 2014-16 Tesla Model S and 2016 Model X vehicles Before and After Autosteer Installation.

The NHTSA found that vehicles equipped with Tesla Autosteer crashed 40% less than those without it. Autosteer had led Teslas to go from 1 crash per 800,000 miles driven to 1 crash per 1.3M miles driven. Unlike the AEB data discussed above that concluded AEB systems reduced rear-end collisions by 40%, this data concluded Autosteer reduced the rate of *all* collisions by 40%.

Autosteer technology is quickly giving way to fully autonomous vehicles: vehicles that fall into SAE's level 4 or 5. Full automation will have even greater impacts and wider-ranging implications. Tesla's CEO Elon Musk has recently said he sees full level 5 automation as being 2 years away²¹ while Volvo has said it will start offering full automation in select cities by 2021.

The insurance implications of level 5 automation – that being automation where a driver may be able to sleep while being driven from point A to B – are paradigm-shifting. Volvo acknowledged as much in recent testimony before congress. In a Feb. 14, 2017 statement to the U.S. House Committee on Energy & Commerce, Volvo's Vice President of Government Affairs recognized that full automation will transfer liability from drivers to manufacturers:

When these cars are in autonomous mode, VCC believes the product liability should no longer rest with the driver, but should be assumed by the manufacturer. Therefore, in 2015 VCC announced that Volvo Cars will assume liability for SAE level 4 vehicles if a crash or incident is

²¹ <https://electrek.co/2017/04/29/elon-musk-tesla-plan-level-5-full-autonomous-driving/>

a result of a defect in the AD technology. This is of course provided that the handover is conducted properly and the car has not been misused.

As the automation of vehicles increases from levels 0 to 5, society will see significant decreases in accident rates. When levels 4 or 5 are reached, individual drivers will no longer face liability for most crashes and that risk will be transferred primarily to manufacturers.

The automotive insurance industry will soon face much different risk pools. Drivers will still require liability insurance but may only face liability for a small percentage of accidents.

iii. Summary of Technological Innovations

This is a brief survey of some technology. Much has been omitted. For example, 9% of accidents are caused by bad lane changes.²² Those figures will be significantly reduced by lane departure warnings and lane change warnings long before we reach full automation.

It is reasonable to infer that the recent uptick in accident rates in British Columbia is largely attributable to distracted driving, specifically to the prevalent use of smartphone use while driving. Current efforts to counteract that trend include education, harsher penalties, and other technologies.²³ Those efforts are undoubtedly positive and should be encouraged. However, even if the habits of modern drivers cannot be changed, there is ample reason to believe that the accident rate will soon markedly decline as a result of the widespread adoption of already-available technologies.

Encouraging technologies that are proven to reduce accident rates will benefit all British Columbians. The simplest method would be premium discounts for vehicles that include AEB or other automation.

The Provincial Government has already incentivized the purchase of clean vehicles through the Clean Energy Vehicle Program. Similar rebates for vehicles that come equipped with collision avoidance systems should be considered. The sooner this technology becomes ubiquitous on BC roads, the sooner crash rates will decrease.

Focused campaigns that stigmatized drunk driving have had tremendous success. Similar campaigns should be targeted at the modern scourge of distracted driving. It should be similarly stigmatized and road safety campaigns to that end should be supported. However, it is unlikely to be enough.

Technology will bring accident rates down significantly. When it does, a strong ICBC operated as a revenue-neutral entity serving the public good will be uniquely positioned

²² <http://safebraking.com/nhtsa-28-of-crashes-are-rear-end-collisions/>

²³ E.g.: <http://globalnews.ca/news/3509445/iphones-new-distracted-driving-feature-is-a-good-first-step-cao/>

to keep rates low for British Columbians while providing superior coverage. The government that oversees this technological revolution will ultimately oversee stabilization of ICBC and a reduction in premiums.

VI. SUBROGATION

Subrogation is the right of a first party insurer to recover amounts that they pay pursuant to a first party insurance policy when that payment is necessitated by the conduct of a liable third party. For example, if a home burns down as a result of a third party's conduct, the homeowner's insurer will pay for the repair or replacement, then has a subrogated claim against the individual who caused the fire.

Subrogated claims are a significant expense for ICBC.²⁴ Targeted amendments to the *Insurance Vehicle Act* could save ICBC those amounts without harming crash victims.

When a crash victim has private medical insurer, that private insurer is the "first payer" of medical benefits. This means that the private insurer is responsible for payment of rehabilitation expenses until that coverage is exhausted. Once that occurs, the insured may turn to their ICBC coverage for further benefits.

ICBC does not always insist on an insured accessing their private coverage first. This is because ICBC will end up liable for repayment of the private insurer's expenses at the conclusion of the case unless the insured was at fault for the accident.

In a case of soft tissue injuries where the insured has some physiotherapy and/or chiropractic treatments, the cost to ICBC of the subrogated claim may only be hundreds or thousands of dollars but these arise very commonly. In catastrophic claims, the subrogated claim can cost ICBC tens or even hundreds of thousands of dollars.

Ending the right to subrogate for certain claims in motor vehicle litigation is a step already taken in most other jurisdictions. In Alberta, this was done in the early 2000s by what is now s. 570(6) of their *Insurance Act*.

While Alberta's legislation is straightforward,²⁵ insurers and disability trust plans are taking steps to minimize their responsibility to pay claims. This includes drafting policies to limit or exempt coverage when the need for coverage arises from a motor vehicle accident. Such policies often then deem payments as loans rather than payments made pursuant to the policy. For ICBC to receive maximum return without jeopardizing the health of British Columbians, drafters of such legislation will need to carefully consider appropriate wording.

²⁴ We expect ICBC would be able to produce exact data on the amount it is spending annually on subrogated claims and, therefore, what the savings of eliminating these claims would amount to.

²⁵ "(6) A person who makes or assumes liability for a payment referred to in subsection (3) is not subrogated to a right of recovery of the insured against another person in respect of that payment."

VII. CONCLUSION

ICBC was created to provide British Columbians with affordable and universal auto insurance. It has been a leader in the insurance industry for over 4 decades. It has developed cutting edge road safety campaigns and provided British Columbians with better coverage than virtually any other Canadians. And, for better or for worse, in recent years it has plugged holes in the budgets of provincial governments.

It now faces a turning point. A perfect storm of low interest rates, past governments raiding its profits, and increased accident rates has led to its current precarious financial situation. Clearly hard decisions need to be made to fix short-term holes in ICBC's budget.

The tools are available to make BC's roads safer. All agree that doing so is a public good that will benefit all British Columbians. Doing so will also fix the fiscal difficulties facing ICBC. Rather than taking away the rights of British Columbians in response to a short-term downturn, we urge the Government to take the high road and solve what ails ICBC by making our roads safer.

VIII. APPENDICES

1. A Comparison of Automobile Insurance Regimes in Canada, Dr. Rose Devlin, July 25, 2017;
2. Projection of the Cumulative Financial Impact of Transfers from ICBC to the Government of British Columbia between 2010 and 2015, and the Cumulative Financial Impact of the Reduced Rate of ICBC Investment Return Beginning in 2008, Craig Allen, July 26, 2017;
3. Analysis of Nova Scotia Auto Insurance, John Rice;
4. Auto Insurance: A Closer Look at New Brunswick & Newfoundland, Ronald Nairne and Matthew Burtini;
5. Analysis of Alberta Auto Insurance, Michael Holroyd and Tod Brown.

1. A COMPARISON OF AUTOMOBILE INSURANCE REGIMES
IN CANADA, DR. ROSE DEVLIN,
JULY 25, 2017

A Comparison of Automobile Insurance Regimes in Canada

Report Prepared for the Trial Lawyers Association of BC

By:

Rose Anne Devlin PhD

Ottawa, Ontario

Revised: July 25, 2017

Executive Summary

This report was prepared for the Trial Lawyers Association of BC. The objective is to compare and contrast automobile insurance provision across Canadian jurisdictions, with particular emphasis on comparing how British Columbia fares relative to other provinces. These jurisdictions are grouped as having a privately-provided automobile insurance regime (Alberta, Ontario, New Brunswick, Nova Scotia, Newfoundland and Labrador, and Prince Edward Island) or a publicly-provided one (British Columbia, Saskatchewan, Manitoba and Quebec). Comparable data could not be obtained for Quebec, hence only three public provinces are compared. In addition, four provinces have no-fault provisions (Saskatchewan, Manitoba, Ontario and Quebec) – the first three have ‘partial’ regimes whereas Quebec has ‘pure’ no-fault (no recourse to the courts for damages).

The report provides a brief discussion of the different automobile insurance regimes, as well as the mandated packages in each province. I obtained price quotes by jurisdiction for the mandated package as well as for enhanced packages, for a hypothetical driver (either male or female) with a driving record that is good or poor, who is 45 years of age and drives a Honda Civic. Table 1 reviews these price quotes across jurisdictions. Table 2 reports the average price quotes by jurisdiction for the minimum mandated package. Prices in Vancouver, BC are in the middle of the pack, and are much lower than in Toronto, Ontario for a driver with a good record. BC average prices are similar to those in Saskatchewan and Manitoba.

I also examine loss ratios (ratio of claims to premiums earned, table 3), these vary quite a bit over the past five years (2011-2015) with no clear pattern except that they are always higher in public regimes than private ones. Because these ratios fluctuate from year to year, no one single province has performed consistently or significantly better than the others. BC has remained in the pack. I present a table of average claim costs (table 5) and discuss why much caution needs to be exercised when interpreting this information because of interjurisdictional and intertemporal differences in the way in which claims are counted.

Two graphs depict motor vehicle registrations per capita by province and fatal vehicle collisions per 10,000 registered vehicles – indicators of demand for automobile insurance. BC is in the lower end of per capita registered vehicles, along with Quebec and Ontario; it is in the middle to high end of per capita fatal collisions, along with Alberta and Manitoba.

The Appendix contains several more tables, including ones detailing the elements of the mandated packages across jurisdictions and ones detailing all of the elements underlying table 1’s price quotes.

The report has been very careful at pointing out the problems associated with drawing hard and fast conclusions because of the differences in insurance packages across provinces and the aggregated and limited nature of much of the available data. Four conclusions are notable:

- Automobile prices charged in BC are in line with those of Manitoba (with some nuancing: for instance, BC tends to penalize poor driving records much more than either of the other public provinces).
- A driver in Vancouver pays significantly less than an otherwise comparable driver in Toronto.
- In the private system, Ontario has the lowest loss ratios; in the public system, there is *no discernable, stable, relationship across the three jurisdictions. BC is in the pack.*
- Average claim costs cannot be compared across regimes. Differences in the way in which data are gathered in public versus private jurisdictions render comparisons across these two types of jurisdictions meaningless.

0. Introduction

I was contracted by the Trial Lawyers Association of BC to provide an interprovincial comparison of automobile insurance regimes in Canada. I undertook this project on the strict understanding that I would analyse the data and reach conclusions based on these data, without any prior expectation one way or another. The TLA was agreeable to these terms.

It is very difficult to obtain good data in any one jurisdiction let alone across all of the provinces in Canada. Several compromises had to be made. For instance, the Quebec data were simply not comparable to the other jurisdictions on several fronts, and hence had to be eliminated. I had to rely on data from the General Insurance Statistical Agency (GISA) for the six provinces with private automobile insurance regimes and these data were only available from 2011 to 2015. The good news is that these data are reasonably comparable across these provinces. But obtaining comparable data from the public provinces was complicated. I have indicated throughout this report when caution has to be taken.

Insurance prices were obtained largely through a price-quote agency, as well as through direct contact with various firms. There was no attempt to put any particular regime in a better light than others. After much thought and several preliminary investigations, I decided to let the representative driver be a reasonably average one – 45 years of age, driving a Honda Civic, employed I think that the price quotes are indicative of what one would be facing in the different provinces.

This report is structured as follows. I start with a review of the compulsory insurance packages mandated in each regime. While the list of benefits accompanying these packages is very similar, quite a bit of variation is seen in the details of these benefits across provinces. This review groups provinces as liability or no-fault regimes, and as private and public provision. The

next section provides data on the price of automobile insurance by province (except Quebec). Quotes were obtained from a variety of companies, especially in the private regimes. Huge variations were found in prices. When I compared someone living in Toronto to the same person in Vancouver, a good driving record resulted in a much lower price in BC than in Ontario. The third section compares costs across public and private regimes. Intra-regime comparisons are much more reliable than inter-regime ones. That being said, private regimes had lower loss ratios in general when compared to public ones. The BC regime is reasonably comparable to the other two public systems in this regard. It is not possible to compare average claim costs across public and private regimes because, among other reasons, of the way in which claims are counted. A fourth section examines some of the factors influencing demand for insurance, especially the number of registered vehicles per capita on the road. Alberta and Saskatchewan stand out as having the highest and second highest number, respectively. BC is in the middle of the pack. There is a slight upward trend across the board in this number. Fatal accidents per registered vehicle, displays an overall downward trend. Finally, I say a few words about the public versus private provision debate. Overall, there is remarkably little empirical work done on this issue, I found one serious undertaking for Canada done in 1976. Not surprisingly, there is no clear cut answer as to which regime is better: the public regime is likely to reap economies of scale and hence have lower costs, but the private one is likely to provide a larger range of products. A few overall conclusions are discussed in the last section.

1. A Brief Review of Automobile Insurance in Canadian Provinces

A minimum level of automobile insurance coverage is mandated and compulsory in every jurisdiction in Canada. Automobile insurance regimes can be described as being based primarily upon liability-based or no-fault-based rules, and can be described as being publicly or privately provided. Six provinces have purely private provision (subject always to public regulations), and four have public monopoly provision (they are really ‘hybrid’ systems insofar as private companies can provide insurance beyond the basic mandated package; Quebec is an outlier insofar as it has publicly provided insurance for bodily injuries, and privately provided insurance for property damages).

Each province mandates the minimum requirements for an automobile insurance policy. These are described in the Appendix tables A1: table A1a details the requirements in the private provinces and table A1b details the same for the public provinces. While the list of benefits provided in all jurisdictions is more or less the same, there are differences across the regimes in terms of amounts and details. Tables A1a and b reveal, for instance, differences in the amount of medical care provided in the event of an accident, death and survivor benefits, and income replacement rules, across the jurisdictions. It is important to look at the significant differences across provinces in terms of the minimum or basic insurance package, because these will affect the minimum price of insurance.

1.1 Liability-Based Vs No-Fault-Based Automobile Insurance Regimes

Under a liability regime, damages incurred by not-at-fault victims of accidents are recovered from at-fault drivers; drivers thus take out third-party liability insurance to cover these costs in the event of an at-fault accident. Tables A1a and A1b reveal that all provincial jurisdictions in Canada mandate third-party coverage. If an insurance package were comprised

only of third-party liability provisions, then those who suffered losses as a result of the fault of others, would be entitled to compensation by the at fault drivers, but the at-fault drivers would not receive any indemnification for own injuries or damages. But this does not describe the situation in Canadian provinces. All automobile insurance regimes in Canada except for Newfoundland and Labrador where it is optional, require some first-party coverage that compensates for ‘own’ (first party) losses irrespective of fault. Some commentators describe regimes with such first party coverage as ‘no fault’ ones, but normally to be classified as a ‘no-fault’ regime, there are restrictions on the right to sue the at-fault driver for damages incurred.

All private insurance regimes have restrictions on the amount of money that can be awarded by the courts for pain and suffering, as indicated in table A1a. Those provinces that have maximum awards for pain and suffering for minor injuries, namely Alberta, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador, are not usually considered as no-fault jurisdictions. Whereas Ontario, which limits the right to sue for pain and suffering to injuries that are deemed to be ‘severe’, is considered to be a ‘partial’ no-fault regime.

Of the four public insurance provinces, three have no-fault regimes. Manitoba and Quebec do not allow any suits for pain and suffering, and Saskatchewan imposes a \$5,000 deductible on awards for pain and suffering (since 2003, Saskatchewan has allowed drivers to opt out of no-fault provisions, but this is rarely done). Manitoba and Saskatchewan would be considered as ‘partial’ no-fault regimes as the right to sue for economic losses in excess of no-fault benefits is maintained. By contrast, Quebec has a pure no-fault system for all road accidents involving bodily injuries. This means that Quebecers cannot resort to the tort system to sue for additional damage recovery.

The point of this brief overview is to highlight the main similarities and differences across provincial jurisdictions with the view to identifying where problems may arise when comparing provincial automobile insurance plans, especially with respect to prices and financial outcomes. One expects big differences to exist across public and private regimes, and liability and no-fault ones. I will expand upon some of the intricacies of these differences as needed below. I now turn to a discussion of the price of automobile insurance in each jurisdiction. In order to compare across provincial jurisdictions, quotes were obtained for several different driver profiles. The following section presents this information.

2. The Price of Auto Insurance across Provinces

Insurance prices depend upon a variety of factors which may differ across provincial jurisdictions. Table A2 in the Appendix lists these factors, including: type of vehicle; place of residence; driving record; use of vehicle; sex; age; and marital status. These latter three ‘personal’ criteria are regularly criticized as being ‘discriminatory’. Whereas statistically, young, single, males have more accidents, the argument is often raised that individuals should not be judged *ex ante* based on statistical averages. The public provinces do not price based on age or sex.

As indicated in table A2, many factors are taken into account when pricing insurance. For the purposes of this report, I obtained estimates for the price of insurance for a man and for a woman with the following characteristics: 45 years old, single, employed, driving to work 15 kilometres, annual driving of 15,000 kilometres, 2008 Honda Civic (4 door, DX model), living in a city (the most populous city in the province, as specified in the table). This price was obtained for someone with a ‘clean’ driving record (no at fault accidents in past 10 years, see the footnote

that follows this sentence) and a ‘poor’ record defined as one partially at-fault accident and one speeding ticket over the past three years.¹ For the private insurance regimes, I used the Kanetix web site which provides a host of prices for the identified driver from several companies (but the company with the ‘lowest’ price in Ontario is not identified, one has to contact Kanetix directly for this information).² In addition, I obtained price quotes from several other large insurance companies either by telephone or on line. All prices were obtained in May-June 2017.

All price quotes were obtained for the ‘mandated’ coverage (as required by law, and defined in tables A1a and A1b) and for a ‘complete’ package with higher-than-mandated liability limits, comprehensive coverage, as well as other benefits (defined in Appendix table A3). One important caveat is that in the private regimes, insurance companies typically do not offer packages with just the minimum prescribed third party insurance amounts, as these are inadequate to cover damages in the event of an accident. Normally, insurance companies require that one takes out at least one million dollars in such coverage (whereas the mandated amount is \$200,000 in most jurisdictions). In the public regime, the minimum mandated amount is

¹ From the Kanetix web site (see next footnote), these records are defined specifically as follows:

Clean Record

- At fault accidents in last 10 years: **None**
- Not at fault accidents in last 10 years: **None**
- Non-accident claims in last 6 years: **None**
- Tickets in last 3 years (not including parking tickets): **None**

Poor Record

- At fault accidents in last 10 years: **One**
 - **Partially at fault accident**
- Not at fault accidents in last 10 years: **None**
- Non-accident claims in last 6 years: **None**
- Tickets in last 3 years (not including parking tickets): **One**
 - **Speeding**

² The auto insurance price quotes were obtained from: <https://www.kanetix.ca/auto-insurance>. This web site harvests quotes from a long list of companies, found here: https://www.kanetix.ca/about_suppliers_gen.

provided. Table A3 also provides the minimum amounts of liability coverage available by jurisdiction.

For the public regimes, the prices were obtained in Manitoba from the Autopac web site; in Saskatchewan, basic coverage was obtained from the SGI web site and the complete package was obtained by telephone from the broker companies located around the postal code of the representative driver, recommended on the SGI website.³ All of the information for British Columbia was also obtained by calling the brokers recommended on the ICBC website around the postal code of the driver.

All of the data gathered on prices are provided in the Appendix, tables A4a-d. Tables A4a-d present all of the price quotes received by jurisdiction and important notes to take into account. Table A4a contains prices for the private provinces for our representative driver with a good driving record; table A4b contains the same for a poor driving record (except for Newfoundland and Labrador which did not provide quotes for poor drivers). Tables A4c and d present the same information but this time for the public provinces. Before turning to a discussion of pricing tendencies from tables A4a-d, it is interesting to note that for the 45 year old driver featured here, the insurance price for women is often higher than that for men. It is for young drivers that the opposite occurs: young men are typically charged higher prices than young women in private regimes. For instance, a 21 year old female student living at home but principal driver of the aforementioned 2008 Honda Civic, is charged at least \$3,459 for the mandated coverage, whereas an otherwise similar male would be charged \$3,997.⁴

³ Quebec is omitted partly because the insurance price includes driver license and registration fees and it was too difficult to render this price comparable to the others.

⁴ These were the minimum prices quoted from specified insurance companies from the Kanetix web site previously mentioned.

In order to focus the discussion, I synthesize the key data presented in tables A4a-d, and present them in table 1. Table 1 reports three prices (with a fourth for Ontario) each for males and for females, for mandated coverage and for complete (optional) coverage, and for a clean driving record and for a poor driving record (as previously defined). The three prices are as follows: the first number is the minimum price quoted by an identified insurance company; the next number below is the maximum price quoted by an identified insurance company; underneath the maximum price in Ontario only is the ‘lowest unspecified price’ from Kanetix;⁵ lastly, I report the average of all of the quotes obtained. All of this information is given for all provinces except Quebec: the private regimes are presented first followed by the public ones.

Table 1: Price Quotes for 45 year old, Employed Driver (Honda Civic) Source: Appendix Tables A4a-d

	Clean Record				Poor Record			
	Required Coverage		Complete Coverage		Required Coverage		Complete Coverage	
	Female	Male	Female	Male	Female	Male	Female	Male
Ontario (Toronto)	1 671	1 661	1 815	1 930	2 538	2 493	3 149	3 255
Maximum	3 948	3 948	4 724	4 463	6 572	6 572	7 809	7 809
Unspecified Minimum	N/A	1 285	N/A	1 727	N/A	N/A	N/A	N/A
Average	2 464	2 497	2 815	2 848	4 394	4 354	5 295	5 259
Alberta (Calgary)	669	667	1 223	1 223	1 216	1 216	2 481	2 481
Maximum	978	902	1 897	1 954	1 236	1 236	2 862	2 991
Average	796	782	1 466	1 473	1 223	1 223	2 663	2 669
Nova Scotia (Halifax)	653	643	1 032	1 032	856	845	1 464	1 479
Maximum	924	924	1 433	1 190	1 374	1 374	2 153	2 153
Average	764	760	1 170	1 176	1 115	1 110	1 809	1 816
PEI (Charlottetown)	391	391	1 002	1 002	554	554	1 545	1 604
Maximum	629	629	1 213	1 213	887	887	1 967	1 967
Average	517	516	1 074	1 085	721	721	1 756	1 756
NB (Moncton)	587	587	1 049	1 049	933	933	1 432	1 432
Maximum	898	898	1 349	1 349	2 035	2 035	2 776	2 776

⁵ For Ontario, Kanetix provided an unidentified lowest price, but not for the other provinces.

Average	775	775	1 180	1 180	1 484	1 481	2 102	2 104
NL (St Johns)	918	918	1 329	1 329				
Maximum	1 751	1 751	2 377	2 377				
Average	1 258	1 258	1 832	1 832				
BC (Vancouver)	1 064	1 064	1 618	1 618	1 514	1 514	1 743	1 743
Maximum	1 123	1 123	2 372	2 372	1 618	1 618	2 640	2 640
Average	1 087	1 087	1 853	1 853	1 571	1 571	2 310	2 310
Manitoba (Winnipeg)	1 167	1 167	1 451	1 451	1 239	1 239	1 541	1 541
Maximum	1 167	1 167	1 451	1 451	1 239	1 239	1 541	1 541
Average	1 167	1 167	1 451	1 451	1 239	1 239	1 541	1 541
Saskatchewan (Saskatoon)	917	917	1 125	1 125	978	978	1 186	1 186
Maximum	917	917	1 142	1 142	978	978	1 196	1 196
Average	917	917	1 131	1 131	978	978	1 192	1 192

2.1 Private Insurance Regime Prices

Several observations can be made from Table 1 with respect to the private provinces. First, it reveals the importance of driving record – for mandatory coverage, a poor record for a driver in Toronto, Ontario, results in an increase in the lowest rates from \$1,406 to \$2,538 for a woman, and from \$1,661 to \$2,493 for a man. In Calgary, Alberta, the comparable minimum coverage rates go from \$669 to \$1,216 for females and from \$667 to \$1,216 for males. Table 1 also reveals the importance of coverage – moving from the mandated coverage to a more complete coverage results in a significant increase in rates. For the 45 year old male living in Toronto, his best price goes from \$1,661 (mandatory package) to \$1,930 (complete package). The prices in the Maritime Provinces are different than in Ontario, but display a similar pattern.

Whereas the previous paragraph focused on the lowest price quoted for the private regimes, if one looks at the average of all of the quoted prices (as reported in Tables A4a and b),

it renders even clearer that Ontario is by far the most expensive province for drivers, irrespective of sex or driving record. It is actually quite startling the magnitude of the rates quoted for Toronto relative to these other, albeit much smaller, cities.

Finally, with respect to the private regimes, there is a huge difference between the prices quoted for Ontario (Toronto) and for the other provinces especially for the basic, mandated, coverage. These differences are smaller when one compares prices for the complete insurance package, but it is clear that population size (actually, more likely to be population density) plays a role in explaining prices.

2.2 Public Insurance Regime Prices

Information on prices from the three public jurisdictions (excluding Quebec) is presented in the bottom part of table 1. These prices do not vary by gender but do vary by driving record. All prices reported for the public provinces exclude registration and licensing fees which were initially reported in the insurance price: in Manitoba I subtracted \$161, in Saskatchewan \$68 and in BC, \$61.

The price for someone with a clean driving record and mandatory coverage in Winnipeg, Manitoba is \$1,167 and for the extended, 'complete' coverage, it is \$1,451. In Saskatoon, Saskatchewan, basic coverage costs \$917 while the price of complete coverage varies a bit according to brokers used, from \$1,125 to \$1,217. In Vancouver, British Columbia, both basic coverage and the optional (complete) plan vary by broker: from \$1,064 to \$1,123 (basic) and from \$1,618 to \$2,372 (complete).

Only in BC is there some variation in the prices quoted across the coverages. But the variation is quite small when compared to what was observed in the private jurisdictions. As a

consequence, average prices are only slightly different than the minimum price indicated for BC in table 1.

Having a poor driving record also leads to an increase in the price of insurance in the public provinces. Basic coverage goes up from \$1,167 to \$1,239 in Manitoba, from \$917 to \$978 in Saskatchewan, and the minimum quote in BC moves from \$1,064 to \$1,514. Even though the population of Greater Vancouver, at 2.46 million, is the same as the population of the other two public provinces combined (Saskatchewan with 1.15 million and Manitoba with 1.32 million) and far exceeds the population in the other two cities, the amount charged a driver in Vancouver for required coverage is less than that of Winnipeg (\$1,064 versus \$1,167), and not far off of the lowest-priced jurisdiction, Saskatoon (\$917).⁶ Once complete coverage is taken into account, the Vancouver driver pays a bit more (\$1,618 versus \$1,451), but still surprisingly close given the huge population differences in these jurisdictions.

The average price of the minimum required insurance package across the three public auto insurance provinces are remarkably similar. Saskatchewan charges the lowest price on average, Manitoba charges the highest on average, and BC is in the middle. Once again, the fact that Vancouver is significantly larger and more densely populated than either Saskatoon or Winnipeg would lead one to anticipate significantly higher prices in Vancouver, but this is not clearly revealed by the data. Moreover, the fact that Saskatchewan and Manitoba run no-fault systems with restrictions on the right to sue for pain and suffering might also lead to the expectation of clearly lower prices in these jurisdictions relative to the liability-based province of British Columbia – but this is not the case either.

⁶ All population data in this section are from the 2016 census, retrieved from CANSIM table number: 051-0001.

2.3 Comparing BC Prices to other Public and Private Insurance Regimes

With much caution, one can compare across private and public regimes. To facilitate this comparison, table 2 extracts the average prices from table 1 for the **minimum required** insurance package for each province for the 45 year old employed female or male driver of a Honda Civic, with a clean driving record. These average prices are reported from highest to lowest.

Table 2: Average Price for Minimum Required Coverage: 45 year old, Employed Driver (Honda Civic) Extracted from Table 1

Province	Female	Male
Ontario (Toronto)	2,464	2,497
Newfoundland (St. John's)	1,258	1,258
Manitoba (Winnipeg)	1,167	1,167
British Columbia (Vancouver)	1,087	1,087
Saskatchewan (Saskatoon)	917	917
Alberta (Calgary)	796	782
New Brunswick (Moncton)	775	775
Nova Scotia (Halifax)	764	760
PEI (Charlottetown)	517	516

From table 2 it is clear that the average price in British Columbia (Vancouver) is in the middle of the pack and most closely comparable to the prices in Manitoba and Saskatchewan, the other two public jurisdictions. The two largest cities in this sample are Vancouver and Toronto: the Greater Toronto Area has a population of 6.42 million, while Greater Vancouver has 2.46 million. However, a driver with a good record in Vancouver pays significantly less (in fact less

than half for the driver featured in table 2) than an otherwise comparable driver in Toronto. This observation is particularly interesting because Toronto is in a no-fault province that has already severely restricted the right to sue for pain and suffering for all but severe injuries which was theoretically supposed to keep costs (and hence prices) down, whereas Vancouver is in a liability-based regime.

Once again, it is important to remember that the insurance packages are not entirely comparable across jurisdictions. The focus on mandatory packages, and minimum quotes, helps to determine the cost of entry into driving by province – which is somewhat comparable across jurisdictions. But from tables 1A and B, one can see that there are differences across many of the benefits provided in the mandatory packages, affecting prices.

3. Comparing Costs across Public and Private Regimes

Before turning to comparisons of insurance costs, it is necessary to understand a couple of fundamental differences between public and private regimes when it comes to collecting and interpreting data. Since 2011, data for the private provinces are available from the General Insurance Statistical Agency (GISA) “...an independent legal entity under the Canada Corporations Act ... to carry out the activities of a statistical agent on behalf of all participating Canadian jurisdictions.”⁷ The Insurance Bureau of Canada collects this data on behalf of GISA. Efforts are made to render these data as accurate as possible, hence facilitating interprovincial comparisons. I was unable to obtain any comparable information prior to 2011 from IBC.

Some information is not included in the available GISA data, most importantly from the point of view of this comparison, is the exemption of Facility Association residual market

⁷ <https://www.gisa.ca/>

information. High risk drivers, who cannot obtain automobile insurance through conventional means, have to apply to a Facility Association which provides them with coverage typically by facilitating a risk pooling contract across several companies. Facility Associations exist in all privately provided automobile insurance regimes because automobile insurance is mandatory. Not only is the information from these high risk drivers exempt from GISA data, but so too is information from uninsured drivers.⁸ The Facility Associations have an uninsured motorist fund that indemnifies victims of uninsured drivers. Thus GISA data does not include all of the very high risk portion of the driving population.

By contrast, data from public insurance provinces are obtained from the public insurer itself. These data include all drivers, even the high risk ones. And each public insurer has a fund to deal with uninsured drivers. In other words, the insurance data presented below include all insured drivers in the public jurisdictions but not in the private jurisdictions where data on the riskiest group is excluded.

In addition to these exclusions, there is potentially a fundamental difference between the number of claims reported in a liability-based private system versus a first-party-based public one. In a liability regime, a driver involved in an accident through no fault of his/her own, will not typically make a claim on his/her own insurance policy. The claim will be on the at-fault driver's policy. As a result, such an accident with two vehicles, say, will result in one claim. In the public, first-party, system, such an accident would yield two claims, one for each vehicle. We cannot, then, compare number of claims across these two systems, which is apparent in the next section.

⁸ <https://www.gisa.ca/Documents/View/2168> (p.6).

3.1 Interprovincial Comparisons: Loss Ratios and Average Claim Costs

Notwithstanding the difficulties associated with comparing insurance regimes across provinces, I look at a simple measure of the costs of insurance provision: the “Claim and Adjustment Expenses Incurred” divided by the “Earned Premiums” – known as the “Earned Incurred Loss Ratio” (referred to as the “Loss Ratio”). The claim and adjustment expenses refer to the amounts reported by insurance companies directly associated with claims. Earned premiums are the premiums paid for the policies during the fiscal year: if someone began their policy half way through the year but paid for a full year in advance, only one-half of these premiums would count in this number. Similarly, if someone were to cancel their policy during the year, the amount reimbursed would be netted out of this figure.

I chose to focus on the loss ratio because I was able to find reasonably comparable information on this ratio for all jurisdictions (except Quebec). The loss ratio provides a measure of the amount of money paid out for claims relative to the amount of premiums earned: the larger this number, the closer premiums reflect claims. As this ratio approaches one, claim costs approach premiums paid and arguably this implies that there is less ‘waste’ in the system. As a result, the loss ratio has been treated as a measure of performance. But it is an imperfect one. This ratio can be high for several reasons, including premiums being set ‘too low’; claims being ‘too high’; or a combination of both of these factors.

That being said, the loss ratio is one way to compare jurisdictions. Like before, it makes sense to continue to discuss the private and public systems separately. The top half of table 3 presents the earned premiums and claim expenses for the private systems: the four Atlantic Provinces (together), Ontario and Alberta, for the five year period: 2011 to 2015. As previously indicated, all of these data are gathered from the same source, the General Insurance Statistical

Agency, which helps render them comparable. The second half of the table reports the public regimes.

Table 3: Earned Premiums, Claim and Adjustment Expenses Incurred and Earned Incurred Loss Ratio

Province	Coverage and Accident Year	Earned Premiums	Claim and Adjustment Expenses Incurred	Earned Incurred Loss Ratio
Alberta	2011	2 476 498 770	1 737 461 860	70
	2012	2 583 782 815	2 023 238 074	78
	2013	2 738 168 536	2 156 806 256	79
	2014	2 931 948 823	2 357 661 553	80
	2015	3 093 938 231	2 491 948 366	81
	Total	13 824 337 175	10 767 116 109	78
Atlantic Provinces	2011	1 163 948 471	777 985 471	67
	2012	1 174 441 574	804 537 082	69
	2013	1 184 283 171	865 660 975	73
	2014	1 199 866 294	901 404 977	75
	2015	1 218 228 911	981 135 267	81
	Total	5 940 768 422	4 330 723 772	73
Ontario	2011	10 037 791 312	6 322 237 101	63
	2012	10 439 481 575	6 274 427 278	60
	2013	10 582 013 779	6 806 718 445	64
	2014	10 538 886 511	7 103 631 213	67
	2015	10 378 560 055	7 600 789 200	73
	Total	51 976 733 233	34 107 803 237	66
British Columbia	2006	3 256 856 000	2 944 453 000	90
	2007	3 482 434 000	2 914 550 000	84
	2008	3 631 215 000	2 819 138 000	78
	2009	3 650 025 000	2 970 125 000	81
	2010	3 667 324 000	3 074 228 000	84
	2011	3 673 210 000	3 186 563 000	87
	2012	3 811 386 000	3 276 291 000	86
	2013	3 927 694 000	3 434 660 000	87
	2014	4 158 695 000	3 894 833 000	94
	2015	4 447 931 000	4 363 495 000	98
	Total	37 706 770 000	32 878 336 000	86
Saskatchewan*	2006	542 204 000	449 072 000	83
	2007	557 087 000	532 217 000	96
	2008	587 918 000	563 965 000	96
	2009	630 559 000	600 432 000	95
	2010	684 821 000	609 673 000	89

	2011	726 282 000	806 924 000	111
	2012	767 226 000	740 528 000	97
	2013	806 965 000	739 103 000	92
	2014	863 976 000	834 155 000	97
	2015	925 678 000	753 031 000	82
	Total	7 092 716 000	6 629 100 000	93
Manitoba**	2006	798 811 000	731 689 000	92
	2007	828 121 000	728 675 000	88
	2008	865 056 000	723 430 000	84
	2009	895 811 000	736 514 000	82
	2010	918 905 000	547 320 000	60
	2011	935 385 000	850 003 000	91
	2012	940 910 000	889 211 000	95
	2013	956 350 000	1 009 260 000	106
	2014	1 001 770 000	992 897 000	99
	2015	1 070 182 000	920 452 000	86
	Total	9 211 301 000	8 129 451 000	88

Sources: See Table A5 in the Appendix.

Notes:

*The Saskatchewan Auto Fund transitioned to a March 31 year end in 2015. The current fiscal period represents the 15 months ended March 31, 2016.

** Manitoba's Annual Reports results are based on a Fiscal year ending February 28/29.

Starting first with the private systems, three points are worthy of note from table 3. First, the loss ratio in Alberta is the highest in every year but the last one where it is the same as in the Atlantic Provinces. Second, Ontario always has the lowest loss ratio of this group. Finally, except for in 2012 in Ontario, the loss ratios increase every year in every jurisdiction. If one interprets this ratio as being a measure of good performance, table 3 suggests that Alberta performs better than the other jurisdictions (although it is tied with the Atlantic Provinces in 2015), and Ontario is the worst. Again, caution is required here, for the reasons stated earlier. The fact that these ratios are rising can be interpreted as meaning that the industry is performing better. But ... it may also be an indicator of impending financial difficulty to the extent that claims being paid out are approaching premiums earned.

On the topic of financial difficulty, a main source of revenue in the insurance market is returns to investments. The nature of the insurance market is such that firms collect a massive amount of money regularly, but have much more irregular payouts. Investment income is an important revenue component. Table 4 presents the average returns on equity and investment, as well as loss ratios across the country (private property and casualty insurance, of which automobile insurance is the largest component) according to the Insurance Bureau of Canada (Fact Book, 2017, p.14).⁹ The main point to notice from this table is the falling rate of return on investments over the 2011 to 2015 period. This falling rate adversely affects the size of the revenues generated for insurance companies. As these revenues fall, shortfalls have to be made up elsewhere – principally through premium hikes or claim reductions. All insurance regimes are in the same boat when it comes to the problem of investment income. Although, arguably, public regimes have recourse to other sources of revenue (a point to which I return below).

⁹ http://assets.ibc.ca/Documents/Facts%20Book/Facts_Book/2017/Fact-Book-2017.pdf, accessed May 16, 2017.

Table 4: Canada Wide Returns on Investment and Equity for the Property –Causality Insurance

	Return Equity *	Return Investment	Earned loss ratio	Operating expense ratio	Combined ratio
1993	9.5%	10.7%	77.1%	32.8%	109.9%
1994	6.8%	8.0%	75.7%	31.3%	107.0%
1995	11.7%	9.1%	73.3%	30.8%	104.1%
1996	13.6%	10.3%	72.7%	30.7%	103.4%
1997	13.1%	10.4%	71.4%	31.2%	102.6%
1998	6.8%	8.5%	74.9%	32.9%	107.8%
1999	6.5%	7.3%	72.6%	33.2%	105.9%
2000	6.3%	9.0%	75.9%	32.7%	108.7%
2001	2.6%	7.5%	80.0%	31.0%	111.0%
2002	1.7%	5.4%	76.9%	28.9%	105.8%
2003	11.6%	6.2%	69.9%	28.6%	98.4%
2004	18.1%	5.6%	62.7%	28.2%	91.0%
2005	17.2%	5.9%	64.7%	28.7%	93.4%
2006	16.9%	5.9%	59.5%	28.1%	87.5%
2007	14.1%	5.5%	62.5%	28.5%	91.0%
2008	6.0%	3.9%	70.3%	30.0%	100.3%
2009	6.9%	4.2%	69.5%	30.0%	99.6%
2010	7.6%	4.3%	69.1%	30.2%	99.4%
2011	8.0%	4.2%	68.2%	30.3%	98.4%
2012	10.8%	3.9%	64.7%	30.6%	95.3%
2013	6.9%	3.1%	68.1%	30.8%	98.9%
2014	9.9%	3.9%	66.6%	31.0%	97.6%
2015	10.0%	3.3%	63.5%	31.4%	94.9%
2016	6.0%	**2.7%	67.6%	31.8%	99.4%

* *Excluding Lloyd's*

** *As per the latest OSFI regulatory filing forms, which came into effect Q4 2016*

Source: Copied directly from: IBC (2017) Facts Book, p. 14, accessed at:

<http://assets.ibc.ca/Documents/Facts%20Book/Facts Book/2017/Fact-Book-2017.pdf>

Returning to table 3, the bottom half presents the Earned Incurred Loss Ratio for the three public provinces included in this report. Before analysing these data, a few remarks are necessary. In 2015, the Saskatchewan Auto Fund moved to a March 31st year end and hence the data for 2015 actually comprise 15 months; the financial year is ended February 28th (29th) in Manitoba; and in 2015 the Insurance Corporation of British Columbia announced that it was no

longer considering the Loss Ratio as a performance measure effective with the 2015-2017 *Service Plan* (although I calculated and provide this figure in table 3).¹⁰

Looking across the three public jurisdictions, one finds quite a bit of variation in the loss ratio over time. For the first five years of the data (2006-2010), this ratio basically falls in BC, rises then falls in Saskatchewan, but not to as low a level as it began in 2006, and falls in Manitoba (although the rate of 60 in 2010 seems anomalously low). For the second part of the data series, namely from 2011 to 2015, the period for which private insurance regime data are also available, different patterns are displayed. It basically rises in BC, falls (but not continuously) in Saskatchewan, where it began from an anomalously high level of 111, and rises then falls in Manitoba. Over this latter five year period, the loss ratio in BC is the lowest when compared to Saskatchewan and Manitoba, except in 2015 when it is the highest. It is also notable that twice the loss ratio is greater than one – meaning that claims exceeded earned premiums in that period. Overall, therefore, when comparing the loss ratios of the three public auto insurance provinces of BC, Saskatchewan and Manitoba, it is clear that they fluctuate significantly from year to year and that no one single province has performed consistently or significantly better than the others. BC has remained in the pack.

Altogether there is a remarkable amount of year-to-year variation in this loss ratio in both the private and public jurisdictions. This observation suggests that much caution needs to be taken when relying on this figure in any given year. It is likely to be meaningful to make a statement about a continuously rising or continuously falling loss ratio – such a pattern would be suggestive, but when it regularly goes up and down, as is observed in table 3, it is difficult to rely

¹⁰ From ICBC Annual Report 2014, p. 10, retrieved at: <http://www.icbc.com/about-icbc/company-info/Documents/ar14.pdf>.

on it as an indicator of performance one way or another. Table 3 provides the total loss ratio over the period of the data series – one can see quite clearly that this total loss ratio bears very little resemblance to, say, the loss ratio of 2015. In BC, for instance, it happens to have the highest loss ratio in 2015 at 98 across all of the jurisdictions, but, at 86, it has the lowest total loss ratio across the three public provinces for the ten years of the data set, followed closely by Manitoba with 88. Ontario, with 66, has the lowest total loss ratio of all reported jurisdictions.

Comparing across the private and public jurisdictions reveals that the loss ratio is almost always highest in the public regimes (except for 2010 in Manitoba). One interpretation of this observation is that the public regimes are outperforming the private ones insofar as their claims are closer to earned premiums – but this is too facile an interpretation for the reasons already stated. Moreover, because public regimes may have more ready access to other sources of revenue typically not available to private companies, including fees for a variety of other, related, services, like drivers' permits and vehicle registrations, not to mention the possibility of transfers from general government revenues, this means that they can operate with a higher loss ratio relative to the private regimes. Another reason why public regimes may have a higher loss ratio is because their data include all of the high risk drivers – those who would have to resort to a Facility Association in the private regimes, plus those who drive uninsured.

One might be tempted to compare the average cost of claims by province. However, as discussed above, public and private regimes are inherently different in the way in which claims are counted and hence comparisons across these regimes are inappropriate. Within regime comparisons can be made. To this end, I again use the information on claim and adjustment expenses previously reported in table 3, but now these amounts need to be expressed as 'real' dollars to take account of annual inflation. If one does not account for inflation, then rising claim

costs may simply be reflecting general price increases rather than other factors. I adjust for inflation by using the provincial consumer price indices each year.¹¹ The year 2011 was chosen as the base (or reference) year, which means that all of the claim and adjustment expenses are expressed in 2011 dollars. Therefore, in table 3 the reported figures for 2011 are identical to those in table 5; for years prior to 2011, real claim expenses reported in table 5 are higher than those in table 3, and for years after 2011 they will look lower in table 5 compared to table 3 as the numbers are expressed in 2011 dollars. Once I obtain the ‘real claim costs’ (claim costs and adjustment expenses from table 3 divided through by the CPI) I can then divide this number by the number of claims each year to obtain the real average cost per claim. Table 5 provides the information on real claim costs in the column entitled “Real Claim and Adjustment Expenses Incurred”; and provides the information on the “Real Average Cost per Claim” in the last column. Remember, that the information in this last column cannot be compared across public and private regimes because of the way in which claims are calculated. Looking first at the three private regions (Alberta, Ontario and Atlantic Provinces), the (real) average cost of claims in Ontario is much higher than in the other two jurisdictions; the Atlantic Provinces are clearly the lowest on this measure. I was unable to obtain reliable information for Saskatchewan; hence only two public regimes are reported in table 3. BC has higher average claim costs when compared to Manitoba.

¹¹ Notice this it was not necessary to deflate these numbers for table 2 as both the numerator and denominator were monetary amounts. I used CPI All Items, 2011=100 (2011 is the base year).

Table 5: Number of Earned Vehicles, Number of Claims, Real Claim and Adjustment Expenses Incurred and Real Average Cost per Claim

Province	Coverage and Accident Year	Number of Earned Vehicles*	Number of Claims	Real Claim and Adjustment Expenses Incurred	Real Average Cost per Claim
Total					
Alberta	2011	2 307 347	246 758	1 737 461 860	7 041
	2012	2 396 990	271 795	2 000 952 210	7 362
	2013	2 490 256	271 306	2 103 262 579	7 752
	2014	2 586 150	280 845	2 241 740 221	7 982
	2015	2 656 122	272 353	2 342 841 508	8 602
	Total	12 436 866	1 343 057	10 426 258 378	7 748
Atlantic	2011	1 374 134	160 540	777 985 471	4 846
	2012	1 401 563	153 552	789 305 161	5 140
	2013	1 423 561	157 950	837 298 374	5 301
	2014	1 440 100	162 946	857 399 657	5 262
	2015	1 459 626	172 949	931 600 368	5 387
	Total	7 098 984	807 936	4 193 589 030	5 187
Ontario	2011	6 651 053	610 535	6 322 237 101	10 355
	2012	6 766 018	592 948	6 186 853 170	10 434
	2013	6 855 617	620 882	6 646 234 839	10 705
	2014	6 953 621	634 489	6 776 378 941	10 680
	2015	7 080 296	657 761	7 165 265 172	10 893
	Total	34 306 604	3 116 615	33 096 969 223	10 613
British Columbia	2006	3 012 000	947 000	3 173 254 158	3 351
	2007	3 108 000	992 000	3 086 773 409	3 112
	2008	3 193 000	964 000	2 924 573 259	3 034
	2009	3 225 000	946 000	3 081 207 146	3 257
	2010	3 281 000	895 000	3 147 166 626	3 516
	2011	3 321 000	900 000	3 186 563 000	3 541
	2012	3 372 000	915 000	3 240 134 987	3 541
	2013	3 429 000	917 000	3 399 642 226	3 707
	2014	3 493 000	900 000	3 816 215 681	4 240
	2015	3 596 000	858 000	4 229 177 766	4 929

	Total	33 030 000	9 234 000	33 284 708 259	3 623
Manitoba**	2006		269 135	796 982 315	2 543
	2007		280 319	777 954 193	2 355
	2008		254 856	755 327 266	2 481
	2009		267 611	764 270 443	2 381
	2010		275 763	563 501 635	1 562
	2011		277 201	850 003 000	2 532
	2012		287 105	875 166 936	2 559
	2013		287 741	971 515 317	2 881
	2014		273 244	938 220 310	2 922
	2015		297 957	859 475 685	2 667
	Total		2 770 932	8 152 417 099	2 488

Sources: See Appendix, Table A5 and Statistics Canada, CANSIM Table 326-0021.

Notes:

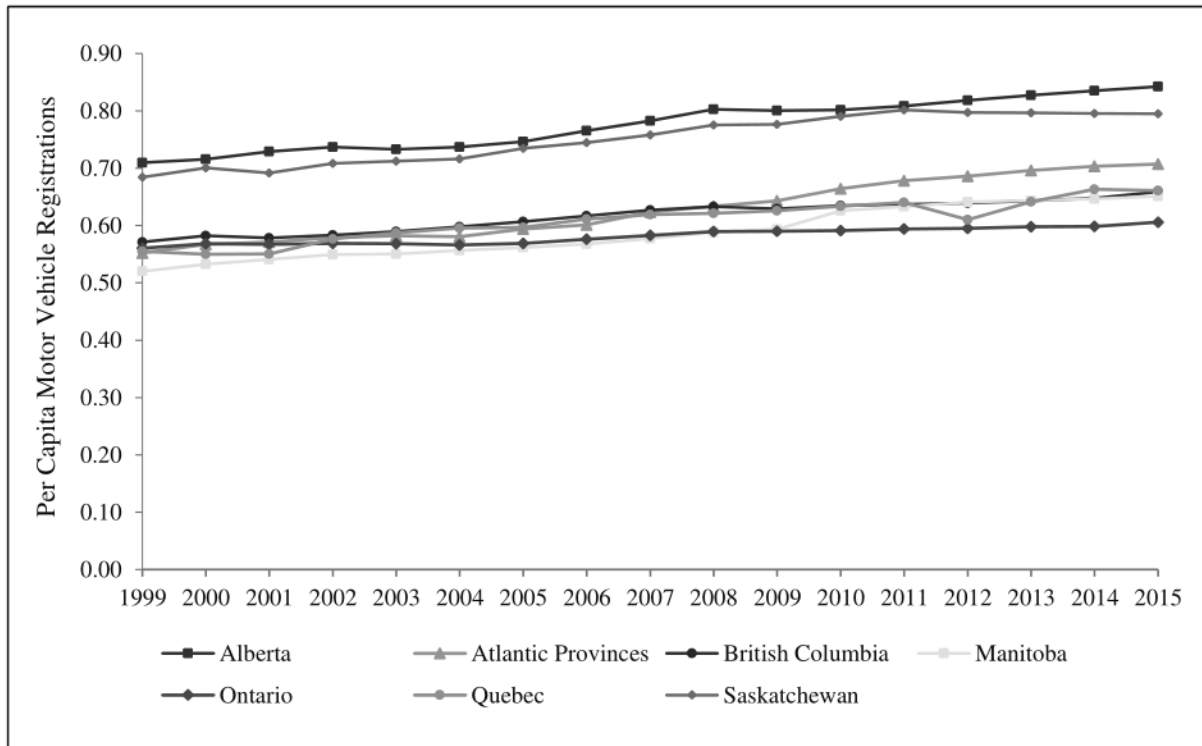
*Earned Vehicles refers essentially to the number of vehicles insured during the year, taking into account policies that start and end throughout the year. For instance, if an insurance policy began on July 1st, then it would be counted as a 0.5 of an earned vehicle during the calendar year.

**Manitoba has a fiscal year ending February 28 (29).

4. Other Factors Influencing the Price of Automobile Insurance

Several factors influence the demand for automobile insurance, not the least of which is the number of vehicles on the road. Graph 1 presents the number of motor vehicle registrations per capita per province over the period 1999 to 2015. A couple of broad points to note: the highest rate of per capita vehicle registrations is in Alberta, followed, occasionally very closely, by Saskatchewan. These two provinces are clearly higher than the others. The other regions are more clumped together, especially until about 2008 when we see Ontario having from then on the lowest per capita number of vehicles, and from 2009 the Atlantic Provinces trend upwards moving away from the pack. British Columbia has had a slight upward trend each year with a per capita rate of 0.57 in 1999 reaching a high of 0.66 in 2015 in par with the rate in Quebec and Manitoba.

Graph 1: Per Capital Motor Vehicle Registrations 1999-2015

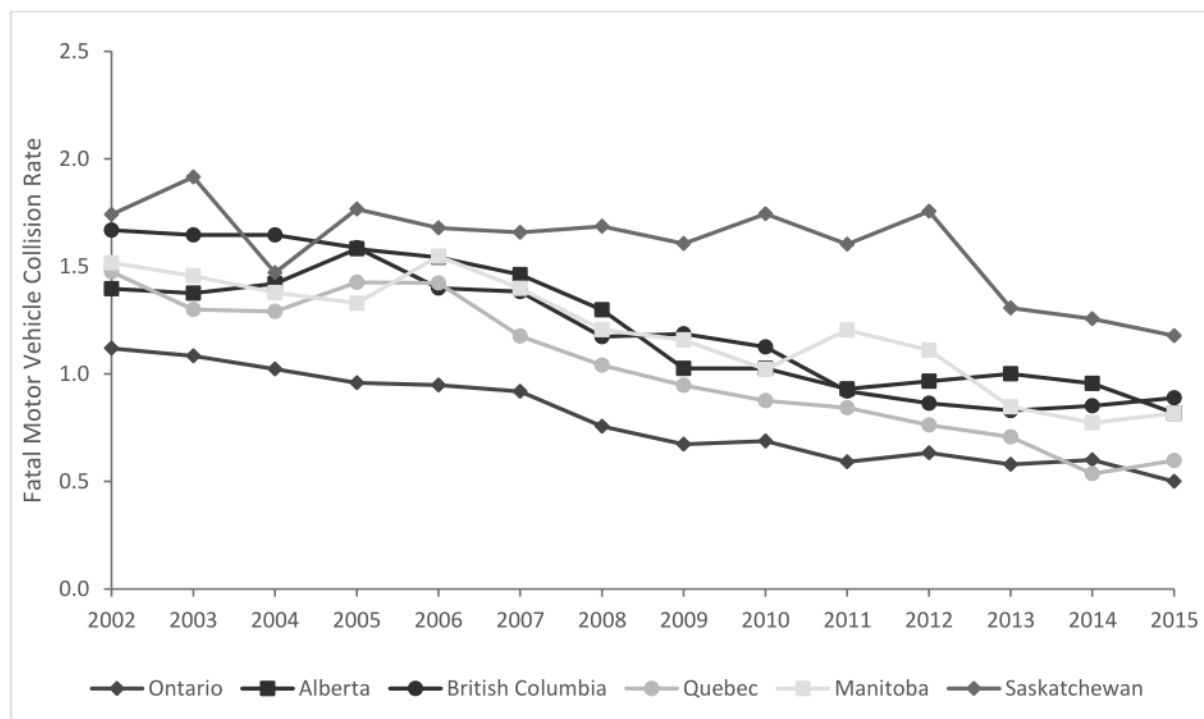


Sources: 1999 to 2015: Statistics Canada, CANSIM Table 405-0004 (Motor Vehicle Registrations);
1999 to 2015: Statistics Canada, CANSIM Table 051-0001 (population).

Another factor that influences the price of insurance is the number of accidents on the road. Typically, accidents are grouped into three main types: property-damage only, bodily-injuries, and fatal. The most comparable data on accidents are those gathered by police reports. One issue with these data, however, is the practice around when police are called to the scene. Small property-damage only accidents often are not attended by police, so these are the least comparable across jurisdictions. Problems exist with bodily-injury accidents as well insofar as police presence may not be required if the injuries are minor. The only type of accident that is accurately reported is fatal accidents – these tend to provide a good indicator of driving risk over time. Graph 2 presents the rate of fatal accidents per 10,000 registered motor vehicles from 2002

to 2015 (excluding the Atlantic Provinces). Generally speaking, there is a downward trend in this rate: all of the rates are significantly lower in 2015 when compared to 2002. In 2002, the two jurisdictions with the highest fatality rates were Saskatchewan and British Columbia, with a rate of 1.7 fatal collisions per 10,000 registered vehicles (as opposed to, say, Ontario at 1.1). By 2015, the BC rate is clearly lower than that of Saskatchewan – 0.9 versus 1.2 – and Saskatchewan continues to have the highest rate. Ontario has the lowest fatal collision rate across the board except for 2014 when Quebec held that distinction.

Graph 2: Fatal Vehicle Collisions per 10,000 Registered Vehicles



Sources: See table A5.

Notes:

1. Ontario Statistics for 2015 and 2016 are preliminary statistics as of June 2017.
2. "Fatal Motor Vehicle collisions" include all reported motor vehicle crashes that resulted in at least one death, where death occurred within 30 days of the collision, except in Quebec before 2007 (eight days).

5. A Few Words on Public versus Private Provision of Insurance

The question as to whether automobile insurance is *best* provided by a public monopoly as opposed to by private insurers is one that has received little attention of late, but has been addressed in waves over the past decades. Currently, the public versus private debate rages on in the health care area, especially in the United States with its range of public, private and non-profit provision of medical services.

When it comes to the public versus private ‘debate’, much hinges on the impact of competition on prices and quality in comparison to potential cost savings associated with monopoly provision. In short – the big question centres on whether or not the provision of (automobile) insurance is subject to large enough economies of scale to warrant a public monopoly. Very little empirical work has been done on this question for automobile insurance. Kennedy (1976) wrote a PhD thesis on this private versus public issue, and used as a case study the experience in Manitoba, with the introduction of its Autopac public insurance program in November, 1971, a couple of years before the ICBC creation in March, 1974.¹² He compares this public provider with the private system in Alberta and concludes that neither had a clearly superior product (p.117) and that coordinating the licensing of drivers and vehicles with the provision of insurance led to fewer uninsured drivers on the road in Manitoba relative to Alberta, but that more product variety was available in the private system. He found that the price of basic coverage was cheaper in Alberta but for complete coverage, Manitoba was superior, although Autopac was allowed to run a deficit which complicated this comparison.

¹² K. F. Kennedy “A Case Study in Private Vs. Public Enterprise: The Manitoba Experience with Automobile Insurance”, PhD thesis, 1976, University of Illinois at Urbana-Champaign, Business Administration.

6. Concluding Remarks

This report has been extremely careful to present data and analyze them cautiously. By now, it should be clear that very few definite conclusions can be drawn. So what can be said? A particularly informative table is table 1 which provides a synthesis of the price quotes obtained by jurisdiction. From this table, two main conclusions can be drawn: *prices charged in BC are in line with those of Manitoba (with some nuancing: for instance, BC tends to penalize poor driving records much more than either of the other public provinces)*. This holds true even though the demand for insurance in BC far exceeds that of the other two public provinces. *A driver in Vancouver pays significantly less than an otherwise comparable driver in Toronto*. The population in Toronto is larger which may justify some of this difference, but still the difference in some cases is quite remarkable.

One measure of performance is the earned incurred loss ratio which is reported in table 3. I have indicated why this ratio is not comparable across public and private regimes. *In the private system, Ontario has the lowest loss ratios; in the public system, there is no discernable, stable, relationship across the three jurisdictions. BC is in the pack.*

Average claim costs cannot be compared across regimes. In fact, one definite conclusion that can be made from this report is the extent to which *differences in the way in which data are gathered in public versus private jurisdictions render comparisons across these two types of jurisdictions quite meaningless.*

Road riskiness as measured by fatal accidents per 10,000 vehicles is falling over time. This is good news. Information on other types of accidents are not comparable either across jurisdictions or, indeed, across time within the same jurisdiction because of reporting rules.

Appendix Tables

Table A1a: Mandated Policy for Private Provinces

Benefits	Alberta	Ontario	New Brunswick	Nova Scotia	Newfoundland and Labrador	Prince Edward Island
Mandatory Minimum Third-party Liability	\$200,000 available for any one accident. For claims involving both bodily injury and property damage, claim for property damage capped at \$10,000.	\$200,000 available for any one accident. For claims involving both bodily injury and property damage, claim for property damage capped at \$10,000.	\$200,000 available for any one accident. For claims involving both bodily injury and property damage, claim for property damage capped at \$20,000.	\$500,000 available for any one accident.	\$200,000 available for any one accident. For claims involving both bodily injury and property damage, claim for property damage capped at \$20,000.	\$200,000 available for any one accident. For claims involving both bodily injury and property damage, claim for property damage capped at \$10,000.
Medical, Rehabilitation and Attendant care	Up to \$50,000/person.	Up to \$3,500 for minor injury. Up to \$65 000/person for non-minor and non-catastrophic injuries. Up to \$1 million for catastrophic injury.	Up to \$50,000/person; four-year time limit.	Up to \$50,000/person; four-year time limit (Consumers have option to purchase additional coverage).	(Optional to buy) Up to \$25,000/person; four-year time limit.	Up to \$50,000/person; four-year time limit.
Funeral Expenses	Up to \$5,000.	Up to \$6 000. (Amount may be higher if optional indexation coverage is purchased.)	Up to \$2,500.	Up to \$2,500.	(Optional to buy) Up to \$1,000.	Up to \$2,500.
Disability Income Benefits:						
Income Replacement	80% of gross weekly wages to maximum \$400/week; 104 weeks for total disability.*	70% of gross wages to maximum \$400/week for 104 weeks (longer if victim is unable to pursue any suitable occupation).*	Maximum \$250/week; 104 weeks for partial disability, lifetime for total disability. Must be disabled for at least seven days to qualify.	Maximum \$250/week; 104 weeks for partial disability, lifetime for total disability; must be disabled for at least seven days to qualify.	(Optional to buy) Up to \$140/week; 104 weeks for partial disability; lifetime for total disability; must be disabled for at least seven days to qualify.	Maximum \$250/week; 104 weeks for partial disability, lifetime for total disability; must be disabled for at least seven days to qualify.

<i>Non-earners</i>	\$135/week, up to 26 weeks.	\$185/week for 104 weeks; 4-week wait; limit two years. (See Note 1).	N/A	N/A	N/A	N/A
<i>Homemaker</i>	N/A	\$100/week up to 104 weeks.	\$100/week up to 52 weeks.	\$100/week up to 52 weeks.	\$70/week, up to 12 weeks.	\$100/week up to 52 weeks.
Death Benefits						
<i>Surviving Spouse</i>	Death of head of household: \$10,000, plus 20% (\$2,000) for each dependent survivor after first, plus additional \$15,000 for first survivor and \$4,000 for each remaining survivor; Death of spouse/adult interdependent partner of head of household \$10,000.	Death within 180 days of accident (or three years if continuously disabled prior to death); \$25,000 minimum. (Amount may be higher if optional indexation coverage is purchased).	Death within 180 days (or two years if continuously disabled prior to death) of: Head of household, \$50,000 plus \$1,000 to each dependent after first; Spouse/partner, \$25,000.	Death within 180 days (or two years if continuously disabled prior to death) of: Head of household \$25,000 plus \$1,000 to each dependent after first. Spouse/partner \$25,000.	(Optional to buy) Death within 180 days (or two years if continuously disabled prior to death) of: Head of household, \$10,000, plus \$1,000 to each dependent survivor after first; Spouse, \$10,000.	Death within 180 days (or two years if continuously disabled prior to death) of: Head of household \$50,000 plus \$1,000 to each dependent after first; Spouse/partner \$25,000.
<i>Surviving Dependent</i>	Death of head of household: \$10,000, plus 20% (\$2,000) for each dependent survivor after first, plus additional \$15,000 for first survivor and \$4,000 for each remaining survivor; Death of spouse/adult interdependent partner of head of household \$10,000.	Death within 180 days of accident (or three years if continuously disabled prior to death); \$10,000 each. (Amount may be higher if optional indexation coverage is purchased).	Death within 180 days (or two years if continuously disabled prior to death) of: Head of household, \$50,000 plus \$1,000 to each dependent after first; Spouse/partner, \$25,000.	Death within 180 days (or two years if continuously disabled prior to death) of: Head of household \$25,000 plus \$1,000 to each dependent after first. Spouse/partner \$25,000.	(Optional to buy) Death within 180 days (or two years if continuously disabled prior to death) of: Head of household, \$10,000, plus \$1,000 to each dependent survivor after first; Spouse, \$10,000.	Death within 180 days (or two years if continuously disabled prior to death) of: Head of household \$50,000 plus \$1,000 to each dependent after first; Spouse/partner \$25,000.
<i>No Dependent</i>	N/A	\$10,000 per survivor. (Amount may be higher if optional	N/A	N/A	N/A	N/A

		indexation coverage is purchased).				
Parent/Guardian	Death of dependent relative: according to age, maximum \$3,000.	\$10 000 per survivor.	Death within 180 days (or two years if continuously disabled prior to death) of dependant, \$5,000.	Death within 180 days (or two years if continuously disabled prior to death) of dependant \$5,000.	(Optional to buy) Death within 180 days (or two years if continuously disabled prior to death) of dependant \$2,000.	Death within 180 days (or two years if continuously disabled prior to death) of dependant \$5,000.
Right to sue for pain and suffering?	Yes. If injury is deemed “minor” under provincial legislation, maximum award is \$5,020.	Yes, if injury meets severity test (called “threshold”), and subject to deductible. (See Note 2)	Yes. If injury is deemed “minor” under provincial legislation, maximum award is \$7,818.87.	Yes. If injury is deemed “minor” under provincial legislation, maximum award is \$8,486.	Yes. Awards are subject to deductible of \$2,500.	Yes. If injury is deemed “minor” under provincial regulation, maximum award is \$7,545.
Right to sue for economic loss in excess of no-fault benefits?	Yes	Yes. (See Note 3).	Yes	Yes.	Yes.	Yes.

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Notes:

* Nothing for first seven days of disability.

** Nothing for first seven days of disability unless catastrophically injured.

1. For Ontario the "Non-Earners Benefit" is not available if the insured is eligible for, and elects to receive, the income replacement or caregiver benefit; Income replacement award above no-fault benefit is based on net income after deductions for income tax, Canada Pension and Employment Insurance.
2. Lawsuit allowed only if injured person dies or sustains permanent and serious disfigurement and/or impairment of important physical, mental or psychological function. The court assesses damages and deducts \$36,905 (\$18,453 for a Family Law Act claim).
3. Injured person may sue for 70% of net income loss before trial, 100% of gross after trial; also for medical, rehabilitation and related costs when injury meets severity test for pain and suffering claims.

Table A1b: Mandated Policy for Public Provinces

Benefits	British Columbia	Saskatchewan		Manitoba	Quebec
Mandatory Minimum Third-party Liability	\$200,000 available for any one accident. For claims involving both bodily injury and property damage, property damage will be capped at \$20,000.	\$200,000 available for any one accident. For claims involving both bodily injury and property damage, property damage will be capped at \$10,000.		\$200,000 available for any one accident. For claims involving both bodily injury and property damage, property damage will be capped at \$20,000.	Private Insurance: \$50,000 available for any one accident; liability limits relate to property damage claims within Quebec and to personal injury and property damage claims outside Quebec.
		If no-fault option selected:	If tort option selected:		
Medical, Rehabilitation and Attendant care	Up to \$150,000/person.	Up to \$6,813,680/person.	Up to \$26,667/person for non-catastrophic injury; Up to \$200,000/person for catastrophic injury.	No time or amount limit.	Public Insurance: No time or amount limit.
Funeral Expenses	Up to \$2,500	Up to \$10,219.	Up to \$6,667.	Up to \$8,409.	Public Insurance: Up to \$5,178.
Disability Income					
Income Replacement	75% of gross weekly wages to maximum \$300/week; 104 weeks for temporary disability; lifetime for total disability.*	90% of net income based on gross annual income of maximum \$94,587/year. **	\$429/week for total disability; \$214/week for partial disability up to two years; maximum \$22,308/year.	90% of net wages based on gross annual income of maximum \$94,500/year.*	Public Insurance: 90% of net wages based on gross annual income of maximum \$72,500/year; indexed.*
Non-earners	N/A	After 180 days, will receive at least minimum wage if still disabled.	\$429/week for total disability; \$214/week for partial disability up to two years; maximum \$22,308/year.	After 180 days, will receive at least minimum wage.	Public Insurance: After 180 days, will receive at least minimum wage.
Homemaker	\$145/week, up to 104 weeks.	After 180 days, will receive at least minimum wage if still disabled.	\$429/week for total disability; \$214/week for partial disability up to two years;	N/A	N/A

			maximum \$22,308/year.		
Death Benefits					
Surviving Spouse	Death following a collision of: Head of household \$5,000, plus \$145/week up to 104 weeks; Partner/Spouse of head of household \$2,500, plus \$145/week up to 104 weeks.	45% of deceased's net income to a maximum gross salary of \$94,587 per year.	45% of deceased's net income to a maximum gross salary of \$94,587 per year.	Death any time after injury: Depends on wage and age of deceased and range from \$61,706 to \$472,500.	Death any time after accident: Public Insurance: Benefits depend on gross annual income multiplied by a factor between one and five, depending on age of the victim; range from \$69,102 to \$362,500.
Surviving Dependent	Death following a collision of: Head of household \$1,000, plus \$35/week up to 104 weeks to each child; Partner/ Spouse of head of household: \$2,500, plus \$145/week up to 104 weeks to each child.	5% of the deceased's net income per dependent child.	5% of the deceased's net income per dependent child.	Death any time after injury: Depends on the dependant's age at time of accident and range from \$29,309 to \$53,993, plus \$26,995 for a disabled dependent.	Death any time after accident: Public Insurance: Benefits depend on dependent child's age; Range from \$32,822 to \$60,466.
No Dependent	N/A	\$15,620 maximum per survivor/estate; \$70,293 maximum total payable.	Up to \$13,333 to estate.	Death any time after injury: Up to \$13, 741 per survivor.	Death any time after accident: Public Insurance: If there is no surviving spouse/dependant, parents or estate receive \$55,386.
Parent/Guardian	Death following a collision of dependent child: according to age, maximum \$1,500.	Death of dependent child: \$31,240.	N/A	N/A	Death any time after accident: Public Insurance: If there is no surviving spouse/dependant, parents or estate receive \$55,386.
Impairment benefits	N/A	Up to \$195,257 /person for non-catastrophic injury and up to \$238,479/person for catastrophic injury.	Up to \$13,333/person for non-catastrophic injury; Up to \$173,333/person for catastrophic injury.	Minimum \$770/week up to \$154,261 for non- catastrophic injury; Up to \$243,580 for catastrophic injury.	Public Insurance: Up to \$242,311.

Right to sue for pain and suffering?	Yes	Yes	Yes, subject to deductible of \$5,000.	No	Public insurance: No
Right to sue for economic loss in excess of no-fault benefits?	Yes	Yes	Yes	Yes	Public insurance: No

Sources:

ICBC Autoplan Insurance, accessed at: <http://www.icbc.com/autoplan/Documents/autoplan-insurance.pdf>;
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 Services and Support Guide for Fatality Claims, accessed at: <https://www.mpi.mb.ca/en/PDFs/SupportGuideFatalityClaims.pdf>;
 SGI Canada Personal Injury Coverage, accessed at: <https://www.sgi.sk.ca/individuals/registration/personalautoinjury/>;
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 The Insurance Policy for All Quebecers: Accident Victim, accessed at: www.saaq.gouv.qc.ca/en/accident_victim/insurance_policy/index.php
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Notes:

* Nothing for first seven days of disability.

** Nothing for first seven days of disability unless catastrophically injured.

Table A2: Factors Affecting Insurance Prices by Province

Criteria	Private						Public			
	AB	ON	NB	NS	PEI	NL	BC	SK	MB	QC
Personal Profile										
<i>Age</i>	Yes	Yes	No	No	Yes	No	No	No	No	Public: No; Private: Yes
<i>Marital Status</i>	Yes	Yes	No	No	*	No	No	No	No	Public: No; Private: *
<i>Gender</i>	Yes	Yes	No	Yes	*	No	No	No	No	Public: No; Private: Yes
<i>Driving Record</i>	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<i>Claim record of Policy Holder</i>	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Vehicle										
<i>Make, Model and Year of Vehicle</i>	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<i>Rate Class</i>	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<i>Territory</i>	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
Optional Coverage										
<i>Optional Coverage</i>	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<i>Amount of Deductible Paid</i>	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<i>Discounts and Savings</i>	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

Sources:

Age Rating in Auto Insurance, Actuarial Equity or Unfair Discrimination? (2007), accessed at: <http://www.contingencies.org/septoct07/age.pdf>;

Alberta AIRB Factors that Affect Premiums, accessed at: <http://www.airb.alberta.ca/drivers/factors.aspx>;

Alberta AIRB Ways to Lower Your Premium, accessed at: http://www.airb.alberta.ca/drivers/ways_to_lower.aspx;

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<https://www.canlii.org/en/nb/laws/regu/nb-reg-2004-139/latest/nb-reg-2004-139.html>;

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<http://www.gnb.ca/cnb/news/jus/2007e0898ju.htm>;

News Releases Government of Newfoundland & Labrador – Canada, Government Services: Province Recognized for One of the Lowest Auto Insurance Premiums in the Country, accessed at: <http://www.releases.gov.nl.ca/releases/2007/gs/0216n03.htm>;

ICBC Buying Auto Insurance: How Auto Insurance Premiums Are Calculated, accessed at: <http://www.ibc.ca/nl/auto/buying-auto-insurance>;

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FSCO, How Your Auto Insurance Rates are Set, accessed at: <https://www.fSCO.gov.on.ca/en/auto/brochures/Pages/how-your-auto-insurance-rates-are-set.aspx>;

Prince Edward Island, Regulatory & Appeals Commission, FAQ: Auto Insurance Regulation, accessed at: <http://www.irac.pe.ca/document.aspx?file=faq/documents/auto-insurance-faq.asp>,

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Lowestrates.ca, Compare Car Insurance Quotes to Get the Lowest Rates in Saskatchewan, accessed at: <http://www.lowestrates.ca/insurance/auto/Saskatchewan>.

Note:

* Not clear regarding effect of this factor on price.

Table A3: Components of the Complete Insurance Package and Minimum Possible Liability Limits

Province	Third Party Liability	Collision and Comprehensive Deductibles	Third Party Liability	Collision and Comprehensive Deductibles
Private				
Ontario (Toronto)	1,000,000	No Coverage	2,000,000	500, 500
Alberta (Calgary)	1,000,000	No Coverage	2,000,000	500, 500
Quebec (Montreal)	1,000,000	No Coverage	2,000,000	500, 500
NS (Halifax)	1,000,000	No Coverage	2,000,000	500, 500
PEI (Charlottetown)	1,000,000	No Coverage	2,000,000	500, 500
NB (Moncton)	1,000,000	No Coverage	2,000,000	500, 500
NL (St John's)	1,000,000	No Coverage	2,000,000	500, 500
Public				
Manitoba (Winnipeg)	200,000	500,500	2,000,000	200, 200
Saskatchewan (Saskatoon)	200,000	700,700	2,000,000	200, 200
British Columbia Vancouver)	200,000	No Coverage	3,000,000	300, 300

Sources:

MPI Insurance, accessed at: https://www.mpi.mb.ca/en/Reg-and-Ins/Insurance/Optional-Autopac/Pages/orv_additional_coverage.aspx

Basic plate insurance vs. Auto Pak, accesses at:

<https://www.sgicanada.ca/sk/individuals/autoextension/compare.html>;

SGI Canada Auto extension insurance, accessed at:

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Autoplan Insurance, Basic Coverage, accessed at:

<http://www.icbc.com/autoplan/basic/Pages/default.aspx>;

Autoplan Insurance, Optional Coverage: Accessed at:

<http://www.icbc.com/autoplan/optional/Pages/Default.aspx>;

Notes:

1. Complete Coverage for the provinces includes: Changing the Comprehensive Deductibles and Collision Deductible amounts respectively; Increased Third-Party Liability Limits; Loss of Use coverage and Rental vehicle coverage (excluding Manitoba).

Table A4a: Insurance Price Quotes for Private Provinces: Good Record

	Alberta, Calgary				Ontario, Toronto			
	Basic Coverage		Complete Coverage		Basic Coverage		Complete Coverage	
Company	Female	Male	Female	Male	Female	Male	Female	Male
**Lowest	660	660	1 162	1 162	1 185	1 234	1 575	1 629
Unspecified						1 285		1 727
Belairdirect					1 958	1 855	2 309	2 194
CAA					2 771	2 771	3 409	3 409
Coachman					3 460	3 460	4 071	4 071
Echelon					3 766	3 505	4 724	4 463
Economical	669	667	1 337	1 345	1 671	1 848	2 143	2 354
Johnson Home-Auto	698*	698*	1 223*	1 223*	1 696	1 696	1 930	1 930
PAFCO					3 948	3 948		
Pembridge	679	679	1 286	1 286	3 147	3 132	3 755	3 755
TD	822	839	1 492	1 549	1 917	1 682	2 240	2 010
Travelers Dominion					1 783	1 851	2 152	2 241
Wawanesa					2 183	2 183	2 589	2 589
SSQauto								
The Co-operators	771*	771*	1 643*	1 683*	1 725	1 661	2 343	2 268
Allstate	835	835	1 439	1 439	3 525	3 507	3 486	3 428
COSECO								
Intact	916	902	1 897	1 954	2 011	1 859	2 439	2 307
Millennium			1 265	1 265				
Desjardins	978	866	1 610	1 517	1 406		1 815	
Average	796	782	1 466	1 473	2 464	2 497	2 815	2 848

Table A4a continued: Insurance Price Quotes for Private Provinces: Good Record

	Moncton, NB				Halifax, NS				Charlottetown, PEI				St Johns, NL			
	Basic Coverage		Complete Coverage		Basic Coverage		Complete Coverage		Basic Coverage		Complete Coverage		Basic Coverage		Complete Coverage	
Company	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male
**Lowest	774	774	956	956	658	658	1 120	1 120	391	391	993	993				
CAA	802	802	1 214	1 214												
Johnson Home-Auto	587*	587*	1 049*	1 049*	690*	690*	1 032*	1 032*	606*	606*	1 017*	1 017*	918*	918*	1 329	1 329
TD	745*	745*	1 085*	1 085*	653*	643*	1 114*	1 123*	440*	439*	1 213*	1 258*	1 106*	1 106*	1 791*	1 791*
The Co-operators	898*	898*	1 349*	1 349*	896*	883*	1 433*	1 421*	629*	629*	1 062*	1 062*	1 751*	1 751*	2 377*	2 377*
CAA Atlantic	843*	843*	1 283*	1 283*	658*	658*	1 130*	1 130*	391*	391*	1 002*	1 002*				
Allstate					924	924	1 162	1 162								
COSECO			1 099*	1 099*			1 146	1 190								
Average	775	775	1 180	1 180	764	760	1 170	1 176	517	516	1 074	1 085	1 258	1 258	1 832	1 832

Sources:

1. Quotes were obtained from the Kanetix website (* indicates quotes obtained directly from the respective Insurance Companies website); Kanetix harvests quotes from different companies, but those companies do not necessarily quote for all cities.
2. ** Kanetix provides a “lowest rate” but does not identify it until the consumer calls for a quote.

Notes:

1. All quotes exclude the respective registration costs and any applicable taxes in each province.
2. “Average” excludes “lowest unspecified rate”.

Table 4Ab: Insurance Price Quotes for Private Provinces: Poor Record

	Alberta, Calgary				Ontario, Toronto			
	Basic Coverage		Complete Coverage		Basic Coverage		Complete Coverage	
Company	Female	Male	Female	Male	Female	Male	Female	Male
**Lowest	1 008	1 031	1 843	1 915	2 286	2 081	2 847	2 691
Belairdirect					4 402	4 123	5 159	4 847
CAA					6 572	6 572	7 809	7 809
Coachman					4 749	4 749	5 512	5 512
Echelon					5 243	4 979	6 408	6 144
Economical	1 236	1 236	2 688	2 688	3 393	3 755	4 148	4 572
Johnson Home-Auto	1 226	1 226	2 481	2 481				
PAFCO					4 482	4 482		
Pembridge	1 223	1 223	2 856	2 856	5 621	5 562	6 997	6 938
Travelers Dominion Product					2 896	3 022	3 476	3 639
Wawanesa					3 748	3 748	4 355	4 355
SSQauto								
The Co-operators					2 585	2 493	3 416	3 306
Intact	1 216	1 216	2 594	2 682	4 528	4 190	5 307	5 003
Allstate	1 216	1 216	2 862	2 991	6 370	6 298	7 802	7 730
Millennium			2 496	2 496				
Raptors Home+Auto					2 538	2 634	3 149	3 255
Average	1 223	1 223	2 663	2 699	4 394	4 354	5 295	5 259

Table A4b continued: Insurance Price Quotes for Private Provinces: Poor Record

	Moncton, NB				Halifax, NS				Charlottetown, PEI			
	Basic Coverage		Complete Coverage		Basic Coverage		Complete Coverage		Basic Coverage		Complete Coverage	
Company	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male
**Lowest	1934	1934	2632	2632	1 374	1 374	2143	2143	888	888	1958	1958
TD	933*	933*	1432*	1432*	856*	845*	1464*	1479*	554*	554*	1545*	1604*
CAA Atlantic	2035*	2035*	2776*	2776*	1374*	1374*	2153*	2153*	887*	887*	1967*	1967*
Average	1 484	1 484	2 104	2 104	1 115	1 110	1 809	1 816	721	721	1 756	1 786

Sources:

1. Quotes were obtained from the Kanetix website (* indicates quotes obtained directly from the respective Insurance Companies website); Kanetix harvests quotes from different companies, but those companies do not necessarily quote for all cities.
2. ** Kanetix provides a “lowest rate” but does not identify it until the consumer calls for a quote.

Notes:

1. All quotes exclude the respective registration costs and any applicable taxes in each province.
2. “Average” excludes “lowest unspecified rate”.

Table A4c: Insurance Price Quotes for Public Provinces: Good Record

	British Columbia, Vancouver		Saskatchewan, Saskatoon		Manitoba, Winnipeg	
	Basic Coverage	Complete Coverage	Basic Coverage	Basic Coverage	Complete Coverage	Complete Coverage
Company	ICBC Basic Autoplan	ICBC Optional Autoplan	SGI Basic Plate	ICBC Basic Autoplan	ICBC Optional Autoplan	MPI Optional Autopac
Manitoba Public Insurance					1 167	1 451
Saskatchewan Government Insurance			917	1 125		
Affinity Insurance Services Inc Lakewood			917	1 125		
Affinity Insurance Services Inc Preston Ave.			917	1 142		
Life Line General Insurance Inc			917	1 125		
Hoffmann Kool Insurance			917	1 135		
Galon Insurance Brokers			917	1 135		
Westland Insurance Group Ltd	1 089	1 618				
Affinity Insurance Services	1 072	2 372				
Pemberton Insurance Corporation	1 064	1 855				
Hicks Pacific Centre Insurance Service Ltd	1 123	1 848				
BCAA	1 089	1 620				
Thompson Insurance Centre (1997) Inc	1 082	1 807				
Average	1 087	1 853	917	1 131	1 167	1 451

Sources:

1. Manitoba Public Insurance (MPI) quotes where obtained from the MPI website.
2. Saskatchewan Government Insurance “(SGI) Basic Plate” quotes for Saskatchewan were obtained from the SGI website; The “SGI Autopak” quotes were obtained from the individual brokers listed in the table.
3. The ICBC Basic Autoplan and Optional Autoplan where both obtained from each individual broker listed.

Notes:

4. All quotes exclude the respective registration costs and any applicable taxes in each province.

Table A4d: Insurance Price Quotes for Public Provinces: Poor Record

	British Columbia, Vancouver		Saskatchewan, Saskatoon		Manitoba, Winnipeg	
	Basic Coverage	Complete Coverage	Basic Coverage	Complete Coverage	Basic Coverage	Complete Coverage
Company	ICBC Basic Autoplan	ICBC Optional Autoplan	SGI Basic Plate	SGI Autopak	MPI Basic Autopac	MPI Optional Autopac
Manitoba Public Insurance					1 239	1 541
Saskatchewan Government Insurance			978			
Affinity Insurance Services Inc Lakewood			978	1 236		
Affinity Insurance Services Inc Preston Ave.			978	1 253		
Life Line General Insurance Inc			978	1 207		
Hoffmann Kool Insurance			978	1 226		
Galon Insurance Brokers			978	1 226		
Westland Insurance Group Ltd	1 594	1 743				
Affinity Insurance Services	1 618	1 743				
Pemberton Insurance Corporation	1 514	2 640				
Hicks Pacific Centre Insurance Service Ltd	1 573	2 610				
BCAA	1 594	2 556				
Thompson Insurance Centre (1997) Inc	1 533	2 569				
Averages	1 571	2 310	978	1 230	1 239	1 541

Sources

See Table A4c.

Notes:

1. All quotes exclude the respective registration costs and any applicable taxes in each province.

Table A5: Sources for Tables 2 and 3 in text and Graph 2

Sources Tables 2 and 3:

2015 GISA Automobile Exhibit Introduction, accessed at: <https://www.gisa.ca/StatisticalInformation>;
2015 GISA Actual Loss Ratio Exhibits, accessed at: <https://www.gisa.ca/StatisticalInformation>;
2009 to 2015 ICBC Annual Service Plan Reports, accessed at: <http://www.icbc.com/about-icbc/company-info/Pages/Annual-Report.aspx>;
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ICBC Consolidated Financial Statements As At December 31, 2007, accessed at:
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Sources Graph 2:

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2017 ICBC Quick Statistics for the Media, accessed at: <http://www.icbc.com/about-icbc/newsroom/Pages/Statistics.aspx>;
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2012 to 2015 SGI TAIS Annual Report, accessed at: <https://www.sgi.sk.ca/about/publications/collisionstats/index.html>;
1999 to 2015: Statistics Canada, CANSIM Table 405-0004, Total Road Motor Vehicles.

2. PROJECTION OF THE CUMULATIVE FINANCIAL IMPACT OF TRANSFERS FROM ICBC TO THE GOVERNMENT OF BRITISH COLUMBIA BETWEEN 2010 AND 2015, AND THE CUMULATIVE FINANCIAL IMPACT OF THE REDUCED RATE OF ICBC INVESTMENT RETURN BEGINNING IN 2008, CRAIG ALLEN, JULY 26, 2017

Projection of the Cumulative Financial Impact of Transfers from ICBC to the
Government of British Columbia between 2010 and 2015, and the Cumulative
Financial Impact of the Reduced Rate of ICBC Investment Return Beginning in
2008.

Prepared for: The Trial Lawyers Association of British Columbia,

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Date: July 26, 2017

I. Introduction

A. Scope and Purpose

This report has been prepared for the Trial Lawyers Association of British Columbia (TLABC) by Craig A. Allen, FCAS, FCIA. I have been asked by TLABC to calculate projections of the following two items:

1. The cumulative financial impact to the Insurance Corporation of British Columbia (ICBC) of five transfers of money from ICBC to the Government of British Columbia over the period 2010 through 2015.
2. The cumulative financial impact of the reduction in ICBC's rate of return on its investments during the period 2008 through 2015, compared to the period 2001 through 2007.

This report has been prepared in the context of the following events:

- ICBC's net income has declined from \$372 million in 2014 to \$131 million in 2015 to a forecast loss of \$697 million for the period January 1, 2016 through March 31, 2017.
- Basic insurance rates have increased each year since 2012 and recently released projections suggested that ICBC may require rates to increase by up to 42% by 2020 to cover costs.

These events have raised concerns about the financial status of the automobile insurance programs operated by ICBC.

The purpose of this analysis is to assist TLABC in assessing factors that have played a significant role in the decline in ICBC's net income and in the projected rate increase requirements.

This report was prepared in accordance with accepted actuarial practice in Canada.

B. Data

The analysis in this report is based on publicly available data provided by ICBC in its statements and schedules of financial information. The data spans the period 2000 through 2015. I have not verified this data by an independent audit. However, I have examined the amounts for reasonableness.

II. Summary of Findings

Recent events have raised concerns about the financial status of the automobile insurance programs operated by the Insurance Corporation of British Columbia (ICBC). ICBC's net income declined from \$372 million in 2014 to \$131 million in 2015 to a forecast loss of \$697 million for the period January 1, 2016 through March 31, 2017. Further, basic insurance rates have increased each year since 2012 and recently released projections suggested that ICBC may require rates to increase by up to 42% by 2020 to cover costs.

I have been asked to analyze available data to evaluate the cumulative financial impact of transfers of money from ICBC to the Government of British Columbia between 2010 and 2015, and to evaluate the impact to ICBC of reduced rates of investment return over the period 2008 through 2015. The following findings are based on my review:

1. Transfers to Government Have Cost ICBC Up to \$1.4 Billion Since 2010

Between 2010 and 2015, \$1.2 billion has been transferred from ICBC's *Excess Optional capital* to the B.C. Government. If this money had not been transferred, ICBC could have invested it and earned additional investment income. Based on ICBC's investment rates of return between 2010 and 2015, ICBC could have earned \$225 million on those funds. Investment income since the end of 2015 would have increased this amount further.

On November 24, 2016, ICBC announced that the B.C. Government will not seek further transfers for at least three years. Thus, the rate of growth in the value of transfers and the accompanying lost investment income will be substantially reduced below the 2010-2015 level.

2. Lower Investment Returns Have Cost ICBC up to \$2.2 Billion

ICBC carries a significant investment portfolio valued in 2015 at \$14.7 billion. In common with other insurance companies, ICBC uses investment income to partially offset its costs, which in turn reduces the need for higher insurance rates. In most years, the largest component of ICBC's investment income comes from interest bearing investments. Since the economic downturn of 2008, historically low interest rates have significantly reduced ICBC's investment returns. The average annual investment return for the period 2001–2007 was 6.6%, compared to 4.7% for 2008-2015. Had ICBC's investment rates of return after 2007 maintained the pre-2008 average of 6.6%, ICBC would have earned an additional \$2.2 billion.

While interest rates remain below their pre-2008 level, interest rates on Government of Canada securities have increased from their lows, beginning in June 2017.

III. Statement of Opinion

I have made the calculations for the purpose described herein and prepared this report in accordance with accepted actuarial practice. The results are presented in Section II, Summary of Findings. In my opinion, the assumptions and methods I have chosen are appropriate in the circumstances of this analysis and for the purposes of this report.



Craig A. Allen
Fellow, Canadian Institute of Actuaries
Somerville, Massachusetts
July 26, 2017

IV. Analysis

A. ICBC Rate of Investment Return

Table 1 below calculates rates of investment return for ICBC over the years 2001 through 2015. The return is calculated as the amount of investment income, reported by ICBC for the calendar year, divided by the average of ICBC's reported cash and investments for the calendar year.

The average of the calculated returns declined to 4.7% for the period 2001-2007, compared to 6.6% for the period 2008-2015.

B. Transfers from ICBC to Government of B.C. and Lost Investment Income

Table 2 below presents calculations of the loss of investment income arising from transfers of *Optional Excess capital* from ICBC to the B.C. Government. These calculations assumed that ICBC would have invested those funds at calendar year rates of return equal to that for its reported portfolio of cash and investments. Further, these calculations assume that investment income earned on those funds would be reinvested, also at rates of return equal to ICBC's reported portfolio of cash and investments.

The result is accumulated investment income of \$225 million, on transfers of \$1.2 billion.

C. Cumulative Financial Impact of Reduction in Investment Rate of Return

Table 3 below presents projections of the amount of additional investment income that ICBC would have earned in 2008-2015 at an investment rate of return of 6.6%. This is the rate of return it earned in 2001-2007, and compares with 4.7%, the actual average rate of return it earned in 2008-2015. It is assumed that the additional investment income is also reinvested at 6.6%.

Had ICBC done so, the result would have been an accumulated amount of additional investment income of \$2.2 billion.

Table 1 – ICBC Rate of Return on Cash and Investments, 2001-2015

(1)	(2)	(3)	(4)	(5)
Year	Reported ICBC Cash and Investments (\$ millions)*	Average of Reported ICBC Cash and Investments (\$millions) = [(2) _{Year} + (2) _{Year-1}]/2	Reported ICBC Investment Income (\$ millions)*	Rate of Return on Cash and Investments = (4)/(3)
2000	5,854		626	
2001	5,548	5,701	454	8.0%
2002	5,858	5,703	327	5.7%
2003	6,436	6,147	330	5.4%
2004	7,055	6,746	395	5.9%
2005	7,167	7,111	579	8.1%
2006	8,471	7,819	512	6.5%
2007	9,641	9,056	612	6.8%
2008	10,057	9,849	280	2.8%
2009	11,129	10,593	532	5.0%
2010	11,577	11,353	530	4.7%
2011	11,476	11,527	441	3.8%
2012	12,305	11,891	443	3.7%
2013	13,528	12,917	671	5.2%
2014	14,134	13,831	862	6.2%
2015	14,764	14,449	920	6.4%
				Average for 2001-2007: 6.6%
				Average for 2008-2015: 4.7%

* From ICBC Annual Statements

Table 2 – Transfers from ICBC to Government of B.C. and Lost Investment Income, 2010-2015

(1) Year	(2) Opening Balance of Transfers + Investment Income (\$ millions)	(3) ICBC Rate of Return on Cash and Investments from Table 1, Column (5)	(4) Projected Investment Income at ICBC Rate of Return (\$ millions) = (2) x (3)	(5) Reported Transfers from ICBC to Government (\$ millions) *	(6) Ending Balance of Transfers + Investment Income (\$ millions) =(2)+(4)+(5)
2010	0	4.7%	0	575	575
2011	575	3.8%	22	101	698
2012	698	3.7%	26	0	724
2013	724	5.2%	38	237	999
2014	999	6.2%	62	139	1,200
2015	1,200	6.4%	77	138	1,415
Total			225	1,190	

Table 3 – Additional Investment Income in 2008-2015 if ICBC Had Earned its 2001-2007 Rate of Return

(1) Year	(2) Average of Reported ICBC Cash & Investments (\$millions) from Table 1, Column (3)	(3) Cumulative Additional Investment Income (\$millions) = 0 for 2008 = (3) _{Year-1} + (5) _{Year-1} for Other Years	(4) Average ICBC Cash and Investments + Cumulative Additional Investment Income (\$millions) = (2) + (3)	(5) Investment Income at 6.6% Return (\$ millions) =(4) x 6.6%	(6) Reported ICBC Investment Income (\$ millions)*	(7) Additional Investment Income at 6.6% Return (\$ millions) = (5) – (6)
2008	9,849		9,849	650	280	370
2009	10,593	370	10,963	724	532	192
2010	11,353	562	11,915	786	530	256
2011	11,527	818	12,345	815	441	374
2012	11,891	1,192	13,083	863	443	420
2013	12,917	1,612	14,529	959	671	288
2014	13,831	1,900	15,731	1,038	862	176
2015	14,449	2,076	16,525	1,091	920	171
						Total for 2008-2015: 2,247

* From ICBC Annual Statements

3. ANALYSIS OF NOVA SCOTIA AUTO INSURANCE, JOHN RICE

INTRODUCTION

In Nova Scotia the rights of its citizens were profoundly diminished in 2003 to protect the profits of the auto accident insurance industry in the form of an oppressive “minor injury” cap system and correspondingly poor wage replacement and rehabilitation benefit schemes. This change in policy was cheaper to administer, but offered Nova Scotia’s a lower quality insurance product.

Caution is required when trying to compare Canada’s auto insurance jurisdictions and especially those with private vs. public auto insurers. For example, unlike in BC, Nova Scotia’s for-profit, private insurance industry is saddled with none of the licensing, regulatory, enforcement or collection costs that are paid for out of BC basic insurance premiums. There are also significant population, demographic and geographic disparities between the two jurisdictions which render comparative analyses problematic.

What we do know is that Nova Scotia’s injury cap system has caused significant problems with access to – and the administration of – justice. Challenging a ‘capped’ injury claim is time consuming, complicated and expensive; leaving the delay, risk and cost to individuals. In substance, only the wealthy can afford legal representation to challenge and prosecute an injury claim that does not clearly exceed the definition of a “minor injury”. Lawyers simply can’t afford the time and risk of prosecuting on a contingency fee basis claims that do not clearly exceed the cap. In light of the evolving regulations defining a “minor injury” and jurisprudence interpreting statute, there are significant time delays for the resolution of claims that are not clearly inside or outside of the capped ‘minor injury’ threshold. Lastly, it would seem that the province’s insurance industry is profiting from the public misperception that all or at least most of the injury claims in the province are capped, regardless of severity.

Overview of Nova Scotia’s Automobile Insurance Scheme

Regulations define mandatory benefits that must be included in all standard automobile insurance policies in Nova Scotia, such as coverage for medical and rehabilitation expense for people who are injured in automobile accidents.

In Nova Scotia, private non-government insurance companies provide all auto insurance. There are four sections to Nova Scotia’s standard form policy which include:

- **Section A:** Third Party Liability;

- minimum of \$500,000
- **Section B:** Accident Benefits ;
 - up to a maximum of \$50,000 for medical expenses
 - death benefits
 - loss of income - The amount of a weekly payment shall be the lesser of, \$250 per week; or 80% of the insured person's gross weekly income
- **Section C:** Collision and Comprehensive (optional); and
- **Section D:** Uninsured drivers.

Section B benefits provide compensation for specific losses up to the limits prescribed above and are "broadly considered to be too low in Nova Scotia and. . . significantly out of step with the rest of the country in respect to the level of these benefits".¹ The influence of the insurance lobby on Nova Scotia's auto accident insurance benefits scheme is clear. Policy holders not only suffer marked restriction on their right to recovery fair compensatory damages for pain and suffering, but they also suffer from correspondingly low wage replacement and accident benefit schemes.

Comparing Nova Scotia to BC

Injured victims in Nova Scotia who suffer minor injuries as a result of a negligent driver have access to a maximum of \$50,000 in medical benefits and up to a maximum of \$7,500 (\$8,213 in 2017) for their pain and suffering. These figures are significantly lower in respect to the levels of benefits currently offered in British Columbia, as follows:

British Columbia	Nova Scotia
Motorists buy basic coverage from the government-run Insurance Corporation of British Columbia (ICBC), while optional coverage can be purchased from ICBC or private insurers	Private non-government insurance companies provide all auto insurance
Minimum \$200,000 in third-party liability	Minimum \$500,000 in third-party liability
Medical payments up to \$150,000	Medical payments up to \$50,000 per person with a four-year limit
funeral expenses \$2,500	funeral expenses \$2,500
disability maximum \$300 per week up to 104 weeks if temporary, lifetime if totally disabled	disability maximum \$250 per week for 104 weeks for temporary disability and lifetime for permanent disability
Housekeeping Expenses of \$145 a week for 104 weeks.	Housekeeping Expenses of \$100.00 per week for 17 weeks
Victims can sue for pain and suffering	Victims can sue for pain and suffering, but minor

¹ CFN Consultants (Atlantic) Inc., *Final Report Addressing: The Nova Scotia Automobile Insurance Review*, May 31, 2011.

INTRODUCTION OF THE 'MINIMUM INJURY CAP' FOR PAIN & SUFFERING

In November 2003 the Nova Scotia legislature passed the *Automobile Insurance Reform Act*. The law was introduced to protect the profits of the insurance industry – they want of course to increase their profits without having to significantly raise premium increases.

The insurance industry motives were aptly described as follows by Richard Halpern in a presentation to the Canadian Bar Association in February 2010:

Understandably when the proponents of restricted tort rights advocate for these changes they do not cite profits as their motive. Rather we hear allegations of abuse by users and their representatives and unpredictable claims costs escalating precipitously. While there are undoubtedly pressures in the system from abuse or merely inflation that may need addressing, in the end, it is really a matter of profit. Insurers do not tend to raise much of an issue about inefficiency, fraud or abuse when their bottom line is healthy.²

The law striped away the right of innocent accident victims and placed a limit on the compensation car accident victims could recover for their injuries. From 2004 to 2008 this led to increased profits for insurance companies: On average, the after-tax return on equity earned by insurers for private passenger automobile insurance in Nova Scotia over the period of 2004 to 2008 was an estimated 26%.

Any victim who suffered a “minor injury” in a car accident was limited to a maximum of \$2,500 dollars in compensation for their pain and suffering. There was a profound backlash to the injury cap system from the legal community and the public at large.

On May 11, 2010, this lead to changes in Nova Scotia’s “minor injury” compensation cap. The new rules now apply to anyone injured in a car accident in Nova Scotia on or after April 28, 2010. The new rules and regulations adopted an Alberta style model of ‘diagnostic criteria’ for assessing injury thresholds and the application of the minimum injury cap.

The new rules and regulations increased the minor injury cap to \$7,500, subject to inflation based annual increases thereafter. The definition of what was actually considered to be a “minor injury” was redefined as:

- A sprain;
- A strain;

² Halpern, Richard C., *Automobile Insurance: Beyond the New Brunswick Broder* (February 2010) (Presented to the CBA, Halpern is a partner at Thomson, Rogers, Chair, OBA Working Group on Auto Insurance, member of CBA Working group on No-Fault Compensation, Past President, Ontario Trial Lawyers Association)

- A “Whiplash Associated Disorder” injury (WAD injury). Whiplash Associated Disorder is a diagnosis widely accepted by the medical community to define or diagnose connective tissue or muscle related injuries caused by acceleration or deceleration trauma.

Under the new definition, any accident victim who has suffered a WAD 0, WAD 1, or WAD 2 injury will be considered to have suffered a “minor injury”. Their claims for “pain and suffering” will be capped at present day value of \$8,213 inclusive of inflation.

WAD Grade	Classification
0	No complaints about the neck. No physical signs.
1	Neck complaint of pain, stiffness or tenderness only. No physical signs.
2	Neck complaint and musculoskeletal signs. Musculoskeletal signs include decreased range of motion and point tenderness.
3	Neck complaint and neurological signs. Neurological signs include decreased or absent deep tendon reflexes, weakness and sensory deficits.
4	Neck complaint and fracture or dislocation.

The definition of Sprain, Strain and Whiplashes is further defines in the *Treatment Protocols*:

Developing diagnosis for strains and sprains

- 10 (1)** Using evidence-informed practice and referring to the International Classification of Diseases, a health care practitioner must use the following process to diagnose a strain or sprain:

(d) identify

- for strains, the muscle or muscle groups injured, and
- for sprains, the tendons or ligaments, or both, that are involved and the specific anatomical site of the injury.

- (2)** A health care practitioner must use the diagnostic criteria set out in the following table to determine the degree of severity of a **strain**:

	1st Degree Strain	2nd Degree Strain	3rd Degree Strain
Definition of the degree of strain	few fibres of muscles torn	about half of muscle fibres torn	all muscle fibres torn (rupture)
Mechanism of injury	overstretch overload	overstretch overload crushing	overstretch overload
Onset	acute	acute	acute
Weakness	minor	moderate to	moderate to major

		major (reflex inhibition)	
Disability	minor	moderate	major
Muscle spasm	minor	moderate to major	moderate
Swelling	minor	moderate to major	moderate to major
Loss of function	minor	moderate to major	major (reflex inhibition)
Pain on isometric contraction	minor	moderate to major	no to minor
Pain on stretch	yes	yes	not if it is the only tissue injured; however, often with 3rd degree injuries other structures will suffer 1st or 2nd degree injuries and be painful
Joint play	normal	normal	normal
Palpable defect	no	no	yes (if early)
Crepitus	no	no	no
Range of motion	decreased	decreased	may increase or decrease depending on swelling

(3) A health care practitioner must use diagnostic criteria set out in the following table to determine the degree of severity of a sprain:

	1st Degree Sprain	2nd Degree Sprain	3rd Degree Sprain
Definition of the degree of sprain	few fibres of ligament torn	about half of ligament torn	all fibres of ligament torn
Mechanism of injury	overload	overload	overload

	overstretch	overstretch	overstretch
Onset	acute	acute	acute
Weakness	minor	minor to moderate	minor to moderate
Disability	minor	moderate	moderate to major
Muscle spasm	minor	minor	minor
Swelling	minor	moderate	moderate to major
Pain on isometric contraction	no	no	no
Pain on stretch	yes	yes	not if it is the only tissue injured; however, often with 3rd degree injuries other structures will suffer 1st or 2nd degree injuries and be painful
Joint play	normal	normal	normal to excessive
Palpable defect	no	no	yes (if early)
Crepitus	no	no	no
Range of motion	decreased	decreased	may increase or decrease depending on swelling. dislocation or subluxation possible

Even if the car accident victim suffers a sprain, strain or Whiplash injury that appears to be capped, the new regulations allow an avenue around the cap if the injury results in a “*serious impairment*”. Serious impairment is defined under the Act as a *substantial inability* to perform any of the following:

- The essential duties of the injured persons regular employment;

- The essential task of injured persons training or education; or
- The normal activities of the claimant's daily living.

More problematic, in the 2010 reforms the Nova Scotian government removed the provision allowing applicants to show "substantial impairment" where their injuries exceeded 12 months. The 2010 reform removed the 12-month threshold which had helped classify serious impairment, and assisted many individuals in getting around the cap. There is now uncertainty in establishing "serious impairment" as there is an undefined period of time.

Nova Scotia's Administrative Delays & Inefficiencies

Determining when a type of injury is subject to the minor injury cap is not a simple process, leading to delay and uncertainty for the public.

The definition of minor injury results in an uphill battle for accident victims with soft tissue injuries. According to the Minor Injury Regulations the determination of an injury must be based on individual assessment done in accordance with the Diagnostic and Treatment Protocols Regulation ("Treatment Protocols").

Naturally, in fact likely universally, plaintiffs and defendants will disagree as to whether a plaintiff's injuries are minor. The onus is on the plaintiff to prove their injuries are not minor, this task is time consuming and costly. In order to prove an injury is not "minor" the plaintiff is required to undergo a multitude of medical legal examinations. If the litigant wants to carry on, they can carry on with litigation but run the risk of only being awarded non pecuniary damages up to the minor injury cap, likely not even covering the cost of the reports.

The obvious consequence of course is that the legal community advises the public in most instances of injury from motor vehicle accidents to "wait and see" whether their injuries can even arguably circumvent.

Access to Justice Denied

The insurance industry's injury cap system has had a chilling effect on access to justice for the Nova Scotia's citizens, felt most profoundly by the province's most vulnerable communities. Indeed, some in the legal community felt the legislation was in fact discriminatory, "against women, children, the elderly, persons with psychological injury, and generally those less fortunate"³. Clearly in a legal climate where the applicant challenging the injury cap must assume the cost of paying for a certified examiner's review of the case, access to justice is only in substance available to people of means who can afford these extraordinary costs.

³*Nova Scotia Barristers Society*, "Business As Usual? Three Lawyers Weigh in on life after the cap", Anna Marie Butler (October 2006).

The consensus too from the legal community is that the public, and especially the most ill-informed of the public being the less educated, low income, and immigrant communities are under the misimpression that regardless of the nature, duration and extent of their injuries, their injury claims for pain and suffering are in any case restricted to the province's cap of \$7500⁴.

More broadly, the injury cap reduced the incentives for the public to be safe motorists by lessening the consequences for accidents. After a far reaching public consultation, the Nova Scotian provincial government acknowledged these deficits with their own system:

Insufficient compensation: The existing cap provides insufficient compensation for the pain, inconvenience and difficulties endured by many accident victims who are subject to the cap.

Access to Legal Representation: It is difficult to obtain legal representation and assistance for all aspects of a claim if the injury is at risk of being classified as "minor".

Definition of 'Minor' Injury: Injuries are being captured by the cap that most reasonable persons would not consider to be "minor".

Settlement Delays: Disputes take a long time to settle, or end up in court, increasing costs for both injured parties and insurers. The current definition of "minor injury" is confusing, difficult to interpret and encompasses a wide array of injuries which may be a contributor to settlement delays.

Consumer Knowledge: Those injured in automobile accidents may have little knowledge of their rights and entitlements under insurance policies and may not know how to obtain unbiased information.⁵

ARE THE MINIMUM INJURY CAPS REDUCING CLAIMS COSTS & KEEPING CLAIMS LOW?

The EY Report says that in BC rising number and size of claims, larger cash settlements for minor injuries, and more claims costs going towards legal representation have led to the unsustainability of the current model.

For Nova Scotia the claims cost experience from 1996 to 2006 is set out in Table below. It can be seen that claims costs as a percentage of premiums declined from 2000 and up to and beyond the introduction of the 2003 tort restrictions. Recall that the tort restrictions were not enacted until November of 2003. This suggests that claims costs were not the sole cause of unsustainability and that rates of claims were decreasing even before the cap was introduced. Richard Halpern goes further, explaining that the Nova Scotia's tort restrictions "were not required in order to restore the industry to profitability":

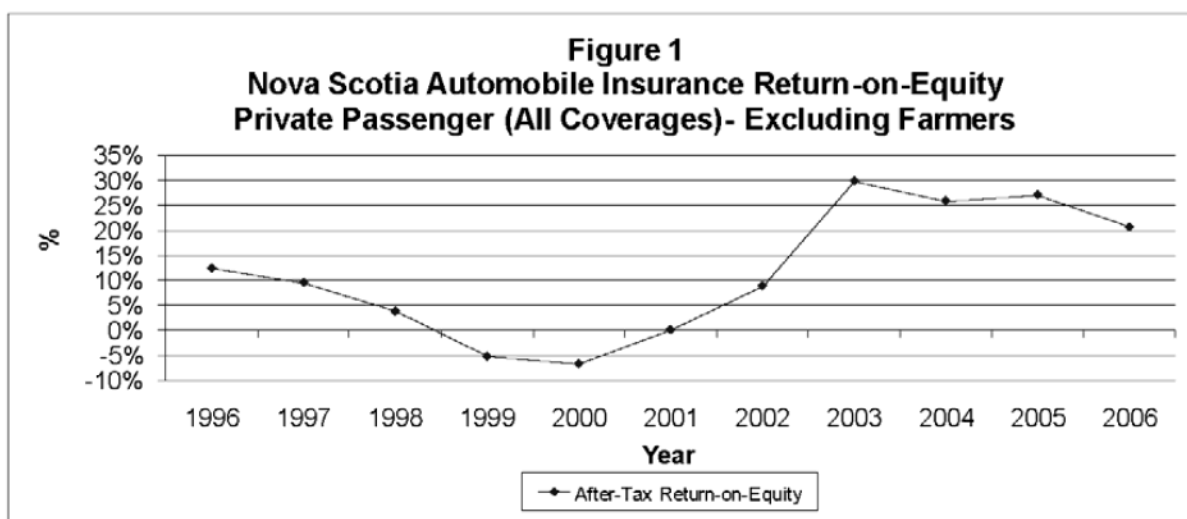
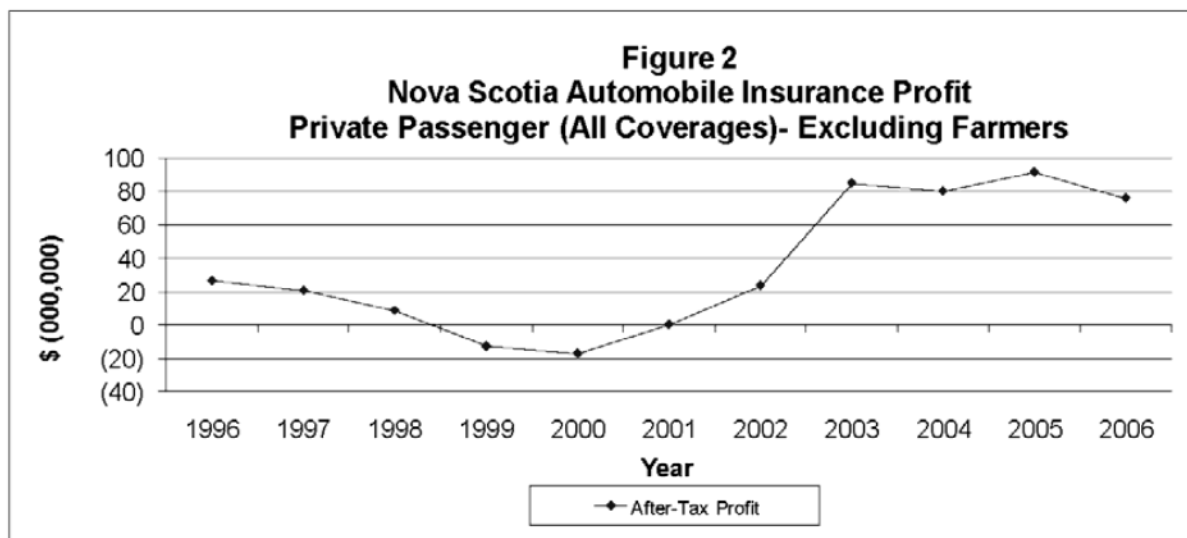
⁴ Supra, at pp.12,13

⁵ Government of Nova Scotia, Automobile Insurance Changes: Discussion Paper Responses (April 28, 2010).

Nova Scotia saw tort restrictions introduced for accidents occurring on or after November 1, 2003. A cap of \$2,500 on pain and suffering awards was introduced for minor personal injury claims. ROE was indeed low for auto insurers in the period 1996 to 2002, with 1998 to 2001 being particularly lean years with ROE hitting -6.8%. Importantly, in 2003 the insurance industry would enjoy record-high profits. Despite this, an ROE of 8.8% (see Table 1 reproduced below), while below reasonable levels, indicated the beginning of a recovery. It was only late in that year, at a time when the industry was already on its way to earning record profits, that the MPIR was introduced. From this fact alone, it follows that the tort restrictions introduced in 2003 in Nova Scotia were not required in order to restore the industry to profitability. It also follows that the third party liability issues could not explain why insurers had such poor fiscal performance in the years leading up to 2003.

Nova Scotia Automobile Insurance Private Passenger-Excluding Farmers All Coverages			
Year	Average Premium	Average Claim per Vehicle	Claim Costs Relative to Premiums
1996	\$591	\$482	82%
1997	\$599	\$521	87%
1998	\$602	\$549	91%
1999	\$604	\$627	104%
2000	\$613	\$681	111%
2001	\$675	\$640	95%
2002	\$800	\$604	76%
2003	\$950	\$530	56%
2004	\$883	\$491	56%
2005	\$871	\$478	55%
2006	\$829	\$504	61%
Source: GISA/IBC AU90-S. 1987-2006			

The same data is graphed below:



Further updated data is available through the General Insurance Statistical Agency which we have not poured into for present purposes.

However, economist Dr. Rose Devlin conducted a massive and far reaching nation-wide analysis of all insurance schemes in Canada.⁶ While not isolated to Nova Scotia only, the following points from her report are worthy of mention relative to loss ratios, being the rational of claims to premiums earned:

I also examine loss ratios (ratio of claims to premiums earned, table 3), these vary quite a bit over the past five years (2011-2015) with no clear pattern except that they are always higher in public regimes than private ones. Because these ratios fluctuate from year to year, no one single province has performed consistently or significantly better than the others. BC has remained in

⁶ Devlin, DR. Rose Anne, A Comparison of Automobile Insurance Regimes in Canada (July 25, 2017)

the pack. I present a table of average claim costs (table 5) and discuss why much caution needs to be exercised when interpreting this information because of interjurisdictional and intertemporal differences in the way in which claims are counted.

Devlin identifies how problematic it is for BC policy makers to try and draw “hard fast” conclusions from the “aggregated and limited nature of much of the available data” (p.1) . Dr. Devlin does draw these four conclusions:

1. Automobile prices charged in BC are in line with those of Manitoba (with some nuancing: for instance, BC tends to penalize poor driving records much more than either of the other public provinces).
2. A driver in Vancouver pays significantly less than an otherwise comparable driver in Toronto.
3. In the private system, Ontario has the lowest loss ratios; in the public system, there is *no discernable, stable, relationship across the three jurisdictions. BC is in the pack.*
4. Average claim costs cannot be compared across regimes. Differences in the way in which data are gathered in public versus private jurisdictions render comparisons across these two types of jurisdictions meaningless.

Injury Caps & No Fault Regimes Increase MVA Rates and Fatalities

Lastly, and while not isolated to Nova Scotia specifically, a number of studies found that no fault rules or injury cap systems actually lead to increases in accident rates, including:

1. Sloan et al. (1994) found that fatality rate for drivers above the age of 21 increased by 18% when the fraction of claims barred from tort liability (their no-fault indicator) rose from 0 to 0.25.
2. Using a US closed-claims accident survey data set, Devlin (199) examined whether no-fault insurance measures affected the severity of accidents and concluded that they did.
3. Cummins et al. (2001) generally concluded that no fault measures to a 7 to 14% higher fatal accident rate, depending upon specification.
4. Cohen and Dehejia (2004), in the first paper to take into account of the fact that all states that adopted no-fault insurance adopted compulsory insurance requirements, concludes that no-fault liability insurance was linked positively with traffic fatality rates, by about 6%.

4. AUTO INSURANCE: A CLOSER LOOK AT NEW BRUNSWICK & NEWFOUNDLAND, RONALD NAIRNE AND MATTHEW BURTINI

Auto Insurance: A Closer Look at New Brunswick & Newfoundland

By: Ronald Nairne and Matthew Burtini

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INTRODUCTION

In a free and democratic society, government's primary task is to preserve and protect the justice system. The purpose of British Columbia's civil justice system is to prevent wrongful conduct by holding wrongdoers fully accountable for their actions. It is only when we fail in our initial purpose we move to the secondary purpose: full and fair compensation for the wronged individual. Driving a vehicle is inherently dangerous and demands the utmost care. A momentary lapse of attention while driving can cause a lifetime of pain for a fellow road user. Placing any sort of legislative cap on compensation and/or imposing a deductible on bodily injury claims not only limits an injured person's ability to be made whole again, but it also shifts the responsibility from the wrongdoer to the victim. It allows careless wrongdoers to escape a portion of their responsibility and flies in the face of British Columbian values. In the words of Arthur Ripstein:

Tort law thus gives expression to a familiar idea of responsibility, according to which *the person who makes a mess must clean it up.*¹

Insurance has historically allowed injured people to receive adequate funding for their losses that otherwise might not be available from a wrongdoer with limited means, promoting the principle that innocent victims of wrongdoing ought not to bear the burden of loss caused by another. Since the 1980s, the focus on controlling costs in the insurance industry has jeopardized the objective of shifting the burden of loss by ignoring it.

The larger and more complicated a society grows, the greater the demands on the tort system become. Accordingly, the tort system has been subject to criticism for being expensive and inefficient, particularly by the very insurance companies responsible for paying the losses under the policies they have underwritten. This has resulted in a search for an alternative way of dealing with compensation. However, all proposed alternatives to date involve sacrificing access to justice and eroding the important purposes and objectives of the tort system. Under no-fault alternatives, loss previously attributed to the wrongdoer is effectively shifted back to the injured victim. Motivated entirely by cost reduction, the search for an alternative way of dealing with compensation has resulted in systems that do a disservice to injured people and cheapen widely held societal values of personal responsibility. The tort system is far from perfect, but much like democracy, it is the worst system except all the others that have been tried.²

The push for "tort reform" is not new in Canada. For example, a court-imposed cap on non-pecuniary damages has been in place since 1978.³ In any event, despite all of the important reasons in support of maintaining a healthy tort system, New Brunswick and Newfoundland felt the push for tort reform in the early 2000s. Almost invariably, the strongest pushes for implementing no-fault systems and restricting access to justice come on the heels of a "crisis". New Brunswick and Newfoundland were no different.

¹ Arthur Ripstein in *Some Recent Obituaries of Tort Law* (1998), 48 U.T.L.J. 561 at 565:

² Winston Churchill once said: "Democracy is the worst form of government, except all the others that have been tried."

³ See the Trilogy: *Teno v. Arnold*, [1978] 2 S.C.R. 287; *Andrews v. Grand & Toy Alberta Ltd.*, [1978] 2 S.C.R. 299; and, *Thornton v. Prince George School Board*, [1978] 2 S.C.R. 267.

New Brunswick:

In the early 2000s, the insurance industry in New Brunswick was in the middle of a downward business cycle. Insurance profits were lagging and payouts were (allegedly) rising faster than premiums. The insurance industry characterized it as a financial crisis. In 2003, legislative caps on compensatory damages were imposed for those who suffered “minor” injuries as a result of another driver’s negligence. Over the next decade, the insurance industry realized record profit margins. At the same time, only three injured plaintiffs challenged the 2003 cap legislation in court—all of them were unsuccessful.⁴ Despite rising profits and a chilling effect on litigation, insurance rates continued to rise.

The 2003 cap legislation had unforeseen consequences that reached a boiling point and eventually became an election issue, with undercompensated victims at the forefront. The cap legislation was amended in 2013 and alleviated only the most egregious problems. For example, individuals with broken bones and traumatic brain injuries were no longer characterized as “minor personal injuries”. The cap was increased from \$2,500 to \$7,500. While certainly a step in the right direction, the insurance industry continues to profit off of the backs of undercompensated injured victims.

Newfoundland & Labrador:

Much like New Brunswick, the insurance industry in Newfoundland and Labrador was also in the middle of a downward business cycle in the early 2000s. According to a July 23, 2001 press release by then-Minister of Government Services and Lands, Walter Noel:

The insurance industry says the increased cost of claims for minor soft tissue injuries are a major cause of the need for rate increases. Government is reviewing the evidence and considering options which could reduce the cost of such claims. The industry contends that rates could be reduced if consumers were prepared to restrict the right to sue for minor injuries which do not result in financial loss. Some lawyers and consumers find such an option unacceptable. We would like to know what citizens think about such proposals. Do they really want to pay higher rates in order to preserve this option for the relatively few people likely to benefit from it?⁵

Similar rhetoric from the Minister continued over the next few years. For instance, the following comments were release in two press releases dated November 14, 2011 and March 8, 2002, respectively:

If the restricted tort option were to be adopted, government could mandate an immediate reduction in third-party liability rates, estimated at 35 per cent. *The*

⁴ See *Fraser v. Haines*, 2008 NBCA 59; *Rossignol v. Rubidge*, 2007 NBQB 89; and *Douthwright v. Duffy*, 2015 NBQB 224.

⁵ <http://www.releases.gov.nl.ca/releases/2001/gsl/0723n02.htm>

insurance industry is warning that in the absence of such change, rates will rise dramatically. Consumers have to make a choice.⁶

...

Where do we stand now? Policyholders still face increasing premium costs creating difficulties for many individuals and families. *And the insurance industry is projecting increases which will see rates rise almost 50 per cent over several years.* This is a problem which will not disappear. We have to continue trying to find ways to deal with it.⁷

The rhetoric continued and eventually reached a boiling point on August 1, 2004, when the government introduced reforms to the automobile industry, namely, the introduction of a \$2,500 deductible on pain and suffering payments. Despite the introduction of a deductible and a subsequent drop in claims costs, premiums oddly continued to rise over the next five years.

Now, more than 13 years later, Newfoundland is faced with another rate crisis: “Claims costs and insurance rates have increased steadily since the last review in 2005. We have heard the concerns of consumers and stakeholders who are finding it difficult to deal with the rising cost of insurance, so we have asked the Public Utilities Board to undertake this independent review as a way to find solutions that will benefit consumers.”⁸ As of July 4, 2017, the Government of Newfoundland announced the commencement of a comprehensive review of the automobile insurance system that will involve closed claims studies and public consultation. The review will be focused on the financial profitability of the auto insurance industry and will be considering changes to the deductible and/or instituting a non-pecuniary cap for “minor” injuries akin to New Brunswick and other systems across Canada.⁹ It is anticipated that legislative changes will be in place by the fall of 2018.

Rather than turn the gaze inwards at the business practices of the insurance industry itself, injured victims in New Brunswick and Newfoundland were forced to accept less than full compensation for their injuries. Meanwhile, the insurance industry continued to operate with the same inefficiencies and static business practices that led them to financial decline in the first place. As a result, the underlying problems remain unaddressed and despite the stripping of victims’ rights, insurance rates have continued to rise.

COMPARISSON: INSURANCE MARKETS AND BENEFIT SYSTEMS

One of the key differences between New Brunswick and Newfoundland versus British Columbia is the auto insurance market. In British Columbia, the insurance industry is almost entirely governed by a provincial crown corporation, namely, ICBC. Private insurance companies only exist in the optional insurance market and are prohibited from offering British Columbians basic

⁶ <http://www.releases.gov.nl.ca/releases/2001/gsl/1114n03.htm>

⁷ <http://www.releases.gov.nl.ca/releases/2002/gsl/0308n03.htm>

⁸ Minister of Service Newfoundland, Perry Trimper, <http://www.releases.gov.nl.ca/releases/2017/servicenl/0704n02.aspx>

⁹ <http://www.pub.nl.ca/insurance/2017AutoInsReview/correspondance/PUB%20Terms%20of%20Reference.8.2017.pdf>

insurance coverage. In New Brunswick and Newfoundland, the market is strictly made up of private insurance companies (with the exception of Facility Association as discussed below). The market is quite fragmented in both markets: in New Brunswick, there are at least 30 private insurance companies offering auto insurance policies to a population of approximately 750,000; in Newfoundland and Labrador, there are approximately 51 automobile insurers providing insurance to a population of approximately 500,000 people, with the top 15 insurers writing approximately 92% and the top 4 insurers writing approximately 81% of all insurance business in the province.¹⁰ However, for those drivers deemed to be too high risk to be insured under a normal insurance pool in New Brunswick or Newfoundland and Labrador, insurance is offered through a non-profit organization known as Facility Association. This is the insurer of last resort and is an association that is funded by the private insurance companies operating in New Brunswick and Newfoundland.

The chart¹¹ below displays the main differences in mandatory coverage across Canada:

Table 4: Differences in mandatory auto insurance coverage across provinces (in 2009)

	Minimum third party liability	Medical payments	Right to sue	Catastrophic injury limits (\$)	Controls on health care costs ³
BC	\$200,000	\$150,000	Yes	150,000 (Med/rehab)	Yes
AB	\$200,000	\$50,000 ¹	Yes	n/a	No
SK— Tort	\$200,000	\$23,841 (non-catastrophic); \$178,838 (catastrophic)	Yes	178,838 (Med/rehab); 154,992 (Permanent impairment)	Yes
SK— No-fault	\$200,000	\$6,098,358	No (with exceptions)	213,443 (Permanent impairment)	Yes
MB	\$200,000	No limit	No	4,900 (Personal care); 215,000 (Permanent impairment); 1,000,000 (Lifetime)	Yes
ON	\$200,000	\$50,000 (Buy-up options available)	Yes (subject to threshold)	1,000,000 (med/rehab) 1,000,000 (attendant care)	Yes
QC	\$50,000	No limit	No	Maximums vary (based on age, income level, injury etc.)	Yes
NB	\$200,000	\$50,000	Yes	n/a	No
NS	\$500,000	\$25,000	Yes	n/a	No
PEI	\$200,000	\$25,000	Yes	n/a	No
NL	\$200,000	\$25,000 ² (optional)	Yes (subject to deductible)	n/a	No

¹ In Alberta, as part of the \$50,000 medical benefits, there are sub-limits on chiropractics (\$750), massage therapy (\$750), and acupuncture (\$250). In addition, Alberta offers physical, psychological, and occupational therapy, as well as grief counseling on death benefits.

² Accident benefit averages are not mandatory in NL and there is a \$2,500 deductible for pain and suffering.

³ Controls on health care costs are based on limits of workers' compensation or provincial health insurance.

Source: AMF, 2010; Alberta, Finance and Enterprise, n.d.; New Brunswick, n.d.; Nova Scotia, 2005; Prince Edward Island, n.d.; Newfoundland & Labrador, 1990, amended 2010; ICBC, 2011; MPI, 2011; Ontario, 2011; SGI, 2007.

¹⁰ As of the period of April 1, 2015 to March 31, 2016: <http://www.pub.nl.ca/download/Insann16.pdf>

¹¹ <https://www.fraserinstitute.org/sites/default/files/personal-cost-and-affordability-auto-insurance-2011.pdf>

An important difference to outline is that of first party benefits. First party benefits, like universal health care, are available to all individuals who are injured in car accidents, regardless of fault. These benefits are designed to provide injured people with a basic level of benefits aimed at addressing injury in the early phases and to provide basic levels of benefits that will facilitate a return to work and other activities. In British Columbia, the limit on mandatory first party benefits is \$150,000. The limit on mandatory first party benefits in New Brunswick is \$50,000. Conversely, the limit on first party benefits in Newfoundland and Labrador is \$25,000 and coverage is optional.

A final difference between the two systems is that ICBC is responsible for driver licensing, vehicle registration, and various road safety initiatives. Conversely, in New Brunswick and Newfoundland, these services are the responsibility of the provincial government. As a result, the costs of all these different elements are conflated under one entity in British Columbia, rather than separated between the private and public spheres as in New Brunswick and Newfoundland.

THE EROSION OF TORT RIGHTS

New Brunswick:

Prior to June 27, 2003, New Brunswickers enjoyed full access to the courts and a full and fair measure of justice when they suffered injuries as a result of the wrongdoing of others who caused car crashes. The tort system in New Brunswick was widely considered to be fair, reasonable, and modest by those who understood it best. Despite this, the profitability of the insurance industry had diminished in recent years. Insurance premiums increased and the New Brunswick government was asked to come up with a swift solution to the rising costs faced by the insurance industry.

To fully appreciate the rationale for imposing restrictions on tort rights, it is necessary to understand the economic and political pressures that lead to these restrictions. Essentially, the crises that have led to restrictions have arisen out of the threat of precipitous increases in insurance premiums for drivers. Throughout history, auto insurers see their profitability decrease to unacceptably low levels. This in turn results in the need to dramatically increase premiums to offset losses. Large increases in premiums are understandably unacceptable to the public and consumers are not shy about expressing their disapproval during an election by voting governments out of office. Insurers, already not much admired by their customers, are also sensitive to the unpopularity of drastic rises in premiums. In the absence of large premium increases, the only other way to restore insurers to profitability is to reduce their costs.

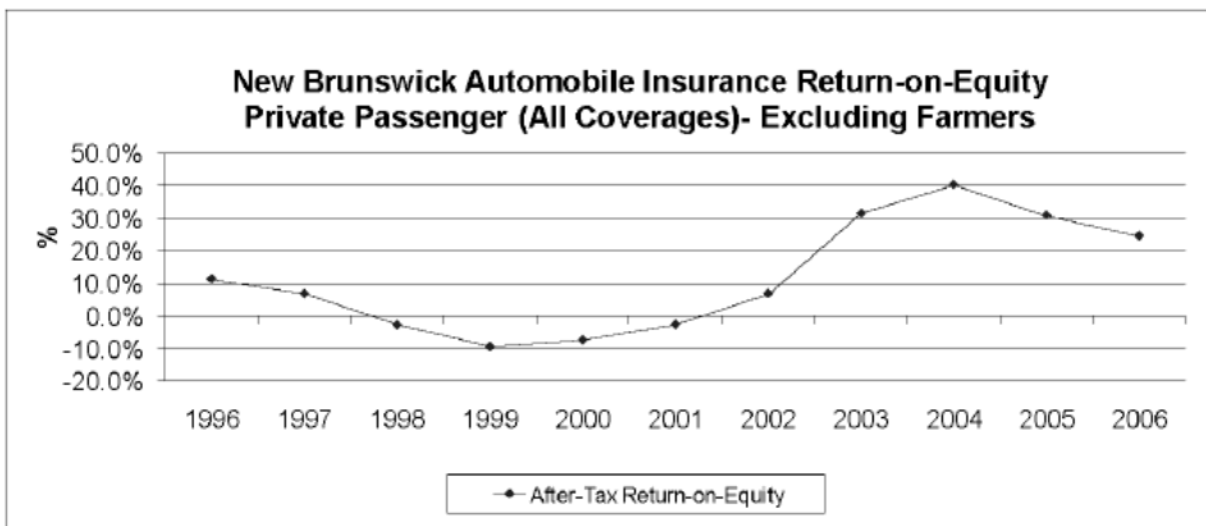
Cost reduction in the form of streamlining the administration of insurance companies or improving efficiency is hard work and takes time. Thus, the preferred approach, at least from the perspective of the insurance industry, is to have the government legislate cost reductions. This has come about, in part, through tort restrictions. When profitability declines for a period of time, insurers argue that claims costs are out of control, unstable, and making insurance unaffordable for customers. This is precisely what happened in New Brunswick prior to the imposition of the

2003 caps on non-pecuniary damages. In the lead up to 2003, the insurance industry in New Brunswick was in the middle of a downward business cycle. Insurance profits were lagging and payouts were (allegedly) rising faster than premiums. The insurance industry characterized it as a financial crisis. The government was feeling pressure from the public to reduce rates. Ultimately, the insurance industry blamed victims and the justice system for the rising costs of auto insurance.

The insurance industry is vast and complicated. Profitability is measured by return on equity (“ROE”)—that is, the after-tax profits divided by the value of investments in the industry. The insurance industry is subject to cycles of corresponding highs and lows. When ROE diminishes, as illustrated by the periodic troughs in the profit cycle, there is upward pressure on premiums and urging from the insurance industry to reduce costs. If government adopts auto insurance reform proposals in these circumstances, it essentially legislates insurers out of their periodic, and temporary, economic decline. This is an entirely unwise, unnecessary, and unfortunate response to the fiscal misfortunes of auto insurance companies. By definition, cycles have ups and downs. It makes no sense to legislate away the troughs inherent in a particular industry.

The insurance industry also involves the selling of insurance policies for a premium and investing the cash flow in income producing assets (i.e. interest bearing assets and stocks), which generate a total return on investment. From 1996 to 2001, the insurance industry in New Brunswick was experiencing declining returns on its investments and increasingly competitive markets. Insurance companies rely on investment income to remain profitable.

The figure below is a graph showing automobile ROE for New Brunswick from 1996 to 2006.¹²



The table on the next page sets out the profitability for New Brunswick auto insurance from 1996 to 2006. The figure above is based on data from the right-hand column of the table.¹³

¹² Richard C. Halpern, *Automobile Insurance: Beyond the New Brunswick Border*.

¹³ Richard C. Halpern, *Automobile Insurance: Beyond the New Brunswick Border*.

New Brunswick Automobile Insurance Profitability Private Passenger (All Coverages) Excluding Farmers		
Year	Total Profit (millions) After-Tax Profit	After-Tax Return-on- Equity
1996	25	11.3%
1997	15	6.7%
1998	(7)	-2.8%
1999	(23)	-9.4%
2000	(19)	-7.4%
2001	(7)	-2.7%
2002	18	6.8%
2003	86	31.4%
2004	124	40.3%
2005	106	30.7%
2006	87	24.5%

The pattern depicted by the figure on the previous page is one of boom and bust. Those familiar with the battle over auto insurance reform know all too well that the boom attracts very little public attention, but there is much consternation about the bust.

Further, as evidenced by the chart above, in 1996 the insurance industry in New Brunswick made an after-tax profit of \$25 million with an after-tax return on equity of 11.3%. By 1999 it had suffered a loss of \$23 million and its after-tax return on equity dropped to -9.4%. The insurance industry sounded the alarm in the early 2000s, even as the 2002 data started to show that the industry was climbing out of a trough.

Accordingly, insurance companies spiked premiums to make up for investment losses. New Brunswickers sought government intervention due to unaffordable rates. The government chose to limit the rights of victims of car crashes, which included people with broken bones, chronic pain, anxiety, and depression. These people were told that they had to give up their rights if they wanted affordable insurance rates. Meanwhile, insurance companies were not required to give up anything.

However, not all victims were asked to give up their rights: only those who had suffered “minor personal injuries”.

In the lead up to the implementation of the 2003 caps, the insurance industry in New Brunswick was beginning to recover from poor fiscal results in 2002. By 2003, they had set a record for profits with an ROE of 31.4%. Insurers enjoyed unprecedented profits for the next 4 years, 2003 to 2006 inclusive. In 2004, return on equity for New Brunswick auto insurers hovered around

40%. The tort restrictions do not explain the dramatic return to profitability for auto insurers in New Brunswick. The ROE numbers however, do demonstrate that the tort restrictions were not needed to restore reasonable earnings (see the table on the previous page).

It is important to note that in 2002—the year before the cap and threshold regulation was adopted—the insurance industry in New Brunswick made an after-tax return on equity of 6.8%. It was only 3.2 points short of the 10% return which the Government of New Brunswick thought was an acceptable after-tax return on equity for the industry. Nonetheless, the Insurance Bureau of Canada (“IBC”) issued the following press release on June 4, 2002:

Car insurance premiums in Atlantic Canada have increased because the industry is now paying out more money in claims... The situation has now become critical. For every premium dollar an insurance company collects in Atlantic Canada, it pays out \$1.22 in claims.¹⁴

In fact, in 2002 the statistics indicate that the industry’s claim costs were 78% relative to premiums. For every dollar collected in premiums in New Brunswick the insurance industry kept \$0.22.

In the same press release, the IBC took aim at lawyers:

Car insurance premiums in Atlantic Canada have increased for a reason...that is the growing practice of hiring a lawyer after every car accident. It’s no longer something about helping people get well following an accident. It is now also about how much extra money a person can receive for even the most minor of injuries -such as a sore neck or sore back.

Of course, the insurance industry did not blame itself for its problems (i.e. poor management, inefficient business practices, inability to adapt to changing market conditions, etc.). It blamed victims of car accidents and the justice system for the increasing cost of insurance claims. The claims costs in New Brunswick are set out in the table¹⁵ on the next page, which depicts the average premiums and claims costs for New Brunswickers from 1996 to 2006. The table demonstrates a pattern: claims as a percentage of premiums were decreasing during this time period.

¹⁴ <https://www.canadianunderwriter.ca/insurance/auto-costs-still-higher-in-atlantic-canada-insurance-industry-financial-results-1000025672/>

¹⁵ Richard C. Halpern, *Automobile Insurance: Beyond the New Brunswick Border*.

New Brunswick Automobile Insurance Private Passenger-Excluding Farmers All Coverages				
Year	Average Premium		Average Claim per Vehicle	Claim Costs Relative to Premiums
1996	\$	737	\$ 614	83%
1997	\$	741	\$ 677	91%
1998	\$	735	\$ 751	102%
1999	\$	737	\$ 821	111%
2000	\$	746	\$ 841	113%
2001	\$	808	\$ 804	99%
2002	\$	943	\$ 739	78%
2003	\$	1,095	\$ 606	55%
2004	\$	1,120	\$ 477	43%
2005	\$	1,044	\$ 535	51%
2006	\$	951	\$ 534	56%

Source: GISA/IBC AU90-B.1987-2006

The table below shows bodily injury and accident benefits claims costs in New Brunswick for the period of 1996 to 2006. Once again, the table demonstrates that bodily injury claims costs were not a problem in New Brunswick and that tort restrictions were not necessary to address diminished profitability for insurers in earlier years.

New Brunswick Private Passenger (Excluding Farmers) Automobile Average Claims Per Vehicle (per Coverage Type) & Percentage Change								
Year	Third-Party-Liability Claims				Accident Benefits	% Change	Other Coverages	% Change
	Bodily-Injury	% Change	Property-Damage	% Change				
1996	\$ 333		\$ 69		\$ 61		\$ 211	
1997	\$ 352	6%	\$ 73	6%	\$ 89	46%	\$ 215	2%
1998	\$ 403	14%	\$ 70	-4%	\$ 102	14%	\$ 221	3%
1999	\$ 444	10%	\$ 76	8%	\$ 127	25%	\$ 225	2%
2000	\$ 436	-2%	\$ 76	0%	\$ 134	5%	\$ 242	7%
2001	\$ 424	-3%	\$ 72	-5%	\$ 132	-1%	\$ 228	-6%
2002	\$ 382	-10%	\$ 67	-7%	\$ 121	-8%	\$ 209	-8%
2003	\$ 280	-27%	\$ 64	-4%	\$ 110	-9%	\$ 188	-10%
2004	\$ 189	-32%	\$ 61	-4%	\$ 87	-21%	\$ 178	-6%
2005	\$ 224	18%	\$ 63	2%	\$ 100	15%	\$ 187	5%
2006	\$ 212	-5%	\$ 72	15%	\$ 89	-11%	\$ 190	2%

Source: GISA/IBC AU90-B.1987-2006. Includes allocated-loss-adjustment-expenses and unallocated-loss-adjustment-expenses. "Other Coverages" in this table account for collision and comprehensive "Optional" coverages; these two coverages make up approximately eighty-percent of the entire "Optional" coverages; more is noted in Table 6.

For instance, between 1999 and 2004, bodily injury claims declined by 57%. In fact, they declined every year from 1999 to 2004. Claims were declining prior to the imposition of non-pecuniary caps in 2003, but the insurance industry was increasing its premiums to cover investment losses. Between 1996 and 2004, premiums increased by 51% from \$737 to \$1,120 (see table on previous page).

Newfoundland & Labrador:

In the early 2002, drivers in Newfoundland and Labrador were faced with a choice: accept rate increases of “almost 50 per cent over several years”¹⁶ or allow the insurance industry to place barriers on injured peoples’ ability to sue negligent drivers. The question was framed as a false dilemma and was directed at a population consisting predominantly of uninjured motorists.

The government requested a report on the topic of product changes in the auto insurance industry from the Board of Commissioners of Public Utilities, which was delivered to government on March 8, 2004.¹⁷ The analysis relied upon 1996 data and modelled deductible levels for third-party liability claims involving bodily injury of \$7,500, \$10,000, \$12,500, and \$15,000. While a deductible of \$2,500 was not “fully modeled”, premium savings per private passenger vehicle were estimated at 6.1%. At page 20 of the report, the Board concluded as follows:

The analysis in this report is based on data contained in the most recent Closed Claims Study conducted in 1998 (using 1996 information) by the insurance industry. This data source currently provides the latest and most detailed information available to measure the impact on loss costs and hence premiums. The Board recommends Government require industry to conduct a further Closed Claims Study...

Less than 10 days after receipt of the above-mentioned report, the government announced its decision on auto insurance reform in a press release:

The savings will be achieved through a combination of a \$2,500-deductible on claims for pain and suffering and mandatory reductions on coverage for collision, comprehensive and uninsured motorists. Savings will also come from basing compensation awards on 100 per cent of net wages instead of gross, and deducting any compensation received from other insurance plans to eliminate double recovery...

[A full public hearing], which will be done by the Public Utilities Board, will be held once a new closed-claims study is complete. The study will look into the costs to the insurance industry of recent claims. The only information currently available is nearly a decade old... Government may implement additional reforms

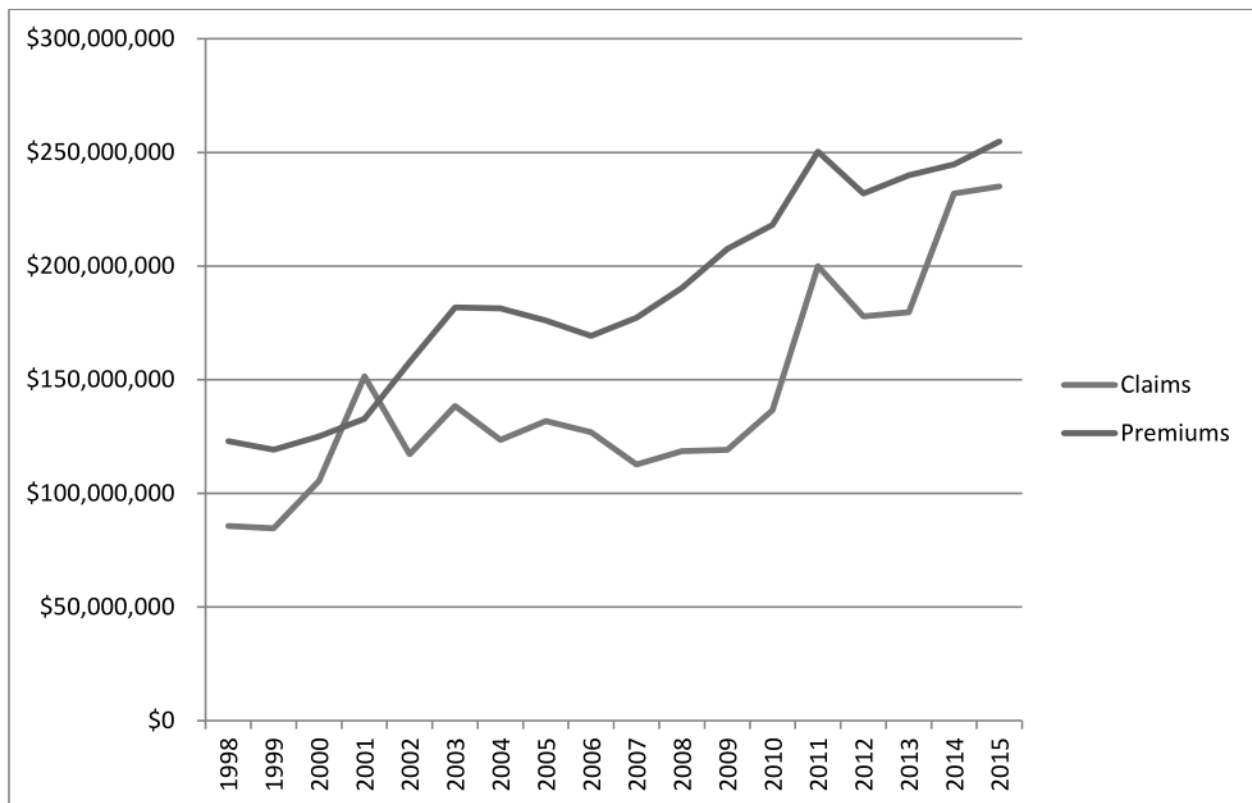
¹⁶ <http://www.releases.gov.nl.ca/releases/2002/gsl/0308n03.htm>

¹⁷ <http://www.pub.nl.ca/insreform/FinalReport.pdf>

or amend existing components of the legislation based on the outcome of the hearing.¹⁸

Despite severely old data, minimal public consultation, and incomplete modelling of the \$2,500 deductible, Bill-30 was introduced two months later. By August 1, 2004, a \$2,500 deductible on pain and suffering damages became effective as an interim remedy for the province. After implementing the \$2,500 deductible, updated data was collected and a further report was provided to government in March of 2005;¹⁹ however, the 2005 report did not have any significant impact on the already-implemented reforms, largely due to the fact that the industry had stabilized in the interim (discussed below).

Much like New Brunswick, the insurance industry in Newfoundland and Labrador was struggling in the late 1990s and early 2000s. However, the data shows that it had begun to rebound by 2002. While ROE data for the insurance industry in Newfoundland and Labrador is not readily available, aggregate data on claims costs and premiums for the entire automobile insurance industry in Newfoundland is publically available.²⁰ Based on the data, the graph below shows claims costs versus premiums from 1998 to 2015.



¹⁸ <http://www.releases.gov.nl.ca/releases/2004/gsl/0317n03.htm>

¹⁹ http://www.servicel.gov.nl.ca/insurance/pdf/pub_auto_ins_rev.pdf

²⁰ See the Board of Commissions of Public Utilities Annual Reports: <http://www.pub.nl.ca/annreport/annual.htm>

As depicted above, 2001 was the only year in which the insurance industry (as a whole) did not earn sufficient premiums to cover claims costs. After this point, claims costs as a percentage of premiums began to stabilize. In fact, by the time the \$2,500 deductible had been implemented in August of 2004, the industry had recovered and was expected to remain stable for the foreseeable future. The Board's March 2005 report to government reached an interesting conclusion:

[T]he performance of the industry has rebounded remarkably in recent times with average premiums for Third Party Liability exceeding claims costs by a significant margin. ***Based on the cyclical nature of the industry... the price of automobile insurance should be entering a period of relative stability coupled with expected decreases in premiums.***²¹

The Board was partially correct: the automobile insurance industry did in fact continue along a stable path in terms of claims costs; however, premiums did not decrease in any significant way over the next several years. Despite decreasing claims costs from 2004 to 2009 (as depicted in the graph on the previous page), premiums continued to rise. Despite the insurance industry's 2002 threat of a 50% rate increase over several years if tort-reform measures were not implemented, rates began to rise almost immediately after the \$2,500 deductible was imposed. From 2006 to 2011, the insurance industry received approximately 48% more in premiums. While this does not directly translate to a rate increase of 48%, it certainly represents a significant increase in premiums.

Clearly, tort-reform measures were not the answer to the problem of rising insurance premiums in Newfoundland and Labrador. Proponents of tort-reform will argue that the \$2,500 deductible did not go far enough to create any real cost savings. However, jurisdictions across Canada that have taken greater tort-reform measures have also failed in this regard. It begs the question: perhaps there is a more appropriate solution to the rate problem that takes proactive measures well in advance of the volatile shifts inherent in the insurance industry. This approach was alluded to and endorsed by the Board in the 2005 report:

In addressing the need to moderate the cycle of reform and crisis and achieve long-term stability, the IBC also recommended the introduction of a regulatory regime in partnership with the industry based on a proactive stewardship and risk based system. Such an approach is focused on a market conduct supervisory model, which monitors key indicators such as the frequency and severity of claims, trends in loss cost developments, claims handling, changes in premiums in relation to other financial indicators, to name a few. According to the IBC such ***a pro-active system is necessary if the industry and government are to undertake strategic monitoring of the industry in the province with a view to taking necessary action in advance of the crisis, rather than reacting to the crisis once it has occurred...*** The Board strongly encourages and supports a partnership involving Government and the industry as proposed above.²²

²¹ http://www.servicenl.gov.nl.ca/insurance/pdf/pub_auto_ins_rev.pdf at page 117.

²² http://www.servicenl.gov.nl.ca/insurance/pdf/pub_auto_ins_rev.pdf at page 123.

NEW BRUNSWICK: THE 2003 CAP AND THRESHOLD SYSTEM

The government adopted the Injury Regulation effective July 1, 2003. The legislation was intended to impose a threshold and a cap to control the cost of “minor personal injury” claims. Instead, it was worded in such a way that almost all claims fell within the definition of a “minor personal injury” unless the injury fell within the scope of a very narrow definition, which only captured the most serious injuries.

The *Injury Regulation*, NB Reg 2003-20 reads as follows:

Definitions

2(2)

“minor personal injury” means an injury that does not result in

- (a) permanent serious disfigurement, or
- (b) permanent serious impairment of an important bodily function caused by continuing injury which is physical in nature;

“serious impairment” means an impairment that causes substantial interference with a person’s ability to perform their usual daily activities or their regular employment.

Application

3 This Regulation only applies to minor personal injury suffered by a plaintiff as a result of an accident that occurs on or after July 1, 2003.

Maximum recoverable amount

4 ... the total amount recoverable as damages for the non-pecuniary loss of the plaintiff for all minor personal injuries suffered by the plaintiff as a result of an accident shall not exceed \$2,500.

The Injury Regulation has been described by lawyers in New Brunswick as a tax on pain. People who are injured receive less compensation as a result of the cap and threshold system and insurance companies add more money to their bottom line as a result of the cap and threshold. A huge amount of money was transferred to the insurance industry and the cost was imposed on New Brunswick victims. The benefit was transferred directly from victims to insurance companies. It was a tax on pain that the industry turned into profits for itself. The victims, who were hurt and sometimes off work, were asked to pay the tax.

NEWFOUNDLAND & LABRADOR: THE \$2,500 DEDUCTIBLE

The government adopted amendments to the *Automobile Insurance Act* effective August 1, 2014. In Newfoundland and Labrador, the insurer is entitled to take a \$2,500 offset no matter what the value of the bodily injury claim: if the victim has a \$5,000 claim, \$2,500 comes off the top; if the claim is valued at \$100,000, \$2,500 comes off the top.

The authority for the \$2,500 deductible comes from the *Automobile Insurance Act*, RSNL 1990, c A-22:

Reduction in damages for non-pecuniary loss

39.1 In an action in the province for loss or damage from bodily injury or death arising directly or indirectly from the use or operation of an automobile, the damages to which a plaintiff is entitled for non-pecuniary loss or damage shall be reduced by the amount the Lieutenant-Governor in Council may set by regulation.

Section 6 of the *Automobile Insurance Regulations*, NLR 81/04 has the deductible set at \$2,500.

NEW BRUNSWICK: POST-2003 FALLOUT

In short, the 2003 cap had unforeseen consequences for injured people. Many New Brunswickers thought that only soft tissue injuries were capped at \$2,500. However, the wording of the 2003 cap was silent as to the type of injuries subject to the cap. Regardless of the type of injury suffered, as long as an injured person could return to the same type of work or activities as before the accident without any substantial interference, then their pain and suffering compensation would be capped at \$2,500. In other words, an individual could suffer a broken bone or a brain injury and only be entitled to \$2,500 for pain and suffering, so long as the individual eventually returned to regular employment. While victims of car crashes were being dramatically understated, the insurance industry began enjoying its highest profits in history.

Minor personal injuries were defined in such a way that *everything* was a “minor personal injury” unless specifically excluded by regulation. The result is that the net was cast too wide. Moreover, the victim bore the burden of proving that he or she had not suffered a “minor personal injury”. In other words, the victim was required to prove a negative. The entire analysis revolved around whether or not a victim suffered an “impairment”. Chronic pain for example, is not generally considered an “impairment” under the strictest sense of the medical definition. The result is that someone whose primary disabling condition is pain may not be found to have an “impairment” of an “important bodily function caused by a continuing injury which is physical in nature”.

Further, the legislation failed to recognize students, homemakers and volunteer workers. Because these groups of people do not have “regular employment”, they are left to establish that there has been a “substantial interference” with their ability to perform their “usual daily activities”, which is often difficult to establish. As a result, these groups were left under compensated.

“Minor Personal Injuries”

There are only three plaintiffs that attempted to challenge the 2003 cap. The cases are as follows:

- *Fraser v. Haines*, 2008 NBQA 59
- *Rossignol v. Rubidge*, 2007 NBQB 89
- *Douthwright v. Duffy*, 2015 NBQB 224

The fact that there are only three cases in a 12-year period serves as evidence of the chilling effect and the hampering of access to justice for accident victims brought about by the 2003 legislation.

In *Rossignol*, the plaintiff was 17 at the time of the crash and suffered a fractured tibia and fibula that required surgical reconstruction by inserting pins and screws to stabilize the bones in his leg. He was hospitalized for 8 days and released initially in a wheel chair, then a walker, then crutches and a cane. He was unable to drive a car for 6 months and did not walk unassisted for almost 2 years. He was enrolled at St. Thomas University in the fall of 2004 and he was in the first week of classes at the time of the crash. Prior to the accident, he was active in sports, but never returned to the same level of activity after the accident. He managed to complete three of five courses in the 2004 – 2005 academic year, but ultimately could not return to university. Instead, he completed a two-year culinary arts course at a community college. His future had been significantly derailed. Despite the changes to his life forced upon him by accident-related injuries, he was found to have suffered a “minor personal injury” and awarded \$2,500 for his pain and suffering.

In *Fraser*, the 46-year-old plaintiff worked on a survey crew and was required to pound stakes. He suffered a soft tissue injury to his left shoulder, which resulted in chronic pain. He missed 6 months of work before commencing a gradual return to work program. After approximately 1.5 years, he was finally able to resume his regular duties, albeit not without adjustment. He was rendered unable to pound stakes with his left arm. However, he was able to continue pounding stakes with his other arm, but eventually went on to develop tennis elbow from too much strain in the right arm due to over use. Despite this, he was found to have suffered a “minor personal injury” and received \$2,500 for his pain and suffering. Of note is the fact that the judge said that if not for the \$2,500 cap, she would have awarded \$30,000 in non-pecuniary damages.

In *Douthwright*, the plaintiff was a passenger in a vehicle in which the driver fell asleep. The vehicle crossed into the path of an oncoming transport truck, resulting in a severe and traumatizing collision. The plaintiff suffered from pre-existing medical conditions including depression, anxiety, and chronic pain. She was not working at the time of the accident and was not looking for work. The question arose as to whether or not she suffered a traumatic brain injury as a result of the collision. She was sent for various medical assessments and tests, none of which revealed objective evidence of a traumatic brain injury. The Court accepted that the plaintiff’s chronic pain, depression, and anxiety were all exacerbated by the accident. The Court also accepted that the plaintiff suffered from post-traumatic stress disorder and severe driving anxiety as a result of the accident. However, the Court did not accept that the plaintiff suffered a traumatic brain injury (relying heavily on the lack of objective evidence that is required to lift a

plaintiff out of the “minor injury” category). The plaintiff was found to have suffered a “minor personal injury” and awarded \$2,500. The judge made the following comment in the reasons for judgment:

*I am certain that Ms. Douthwright, like the accident victims referred to by Chief Justice Drapeau in *LeBlanc v. Bulmer*, will have difficulty understanding that her injuries have not been found to be “serious”.*

These cases demonstrate that the cap and threshold system created an additional risk for victims: the risk that they might not succeed in establishing that their injury *was not* a “minor personal injury”. If they failed at court, they faced the prospect of recovering almost nothing due to the cost of litigation. In fact, the system created a real risk that the victim might end up *owing* money as a result of litigation.

New Brunswick: The 2013 Amendments to the Cap and Threshold System

In the aftermath of the 2003 legislative changes, the push for corrective amendments began as an election issue with injured victims at the forefront. All of this occurred against the back drop of rising rates. For instance, premiums went from \$737 in 1996 to \$1,120 in 2004 (an increase of 52%).²³ It is difficult to find data for the industry, but the Saskatchewan Government Insurance (“SGI”) completed a comparative survey of average insurance rates across Canada for the years of 2011 to 2013. The average personal insurance rates from 2011 to 2013 were as follows (compared to BC for illustrative purposes):

Year	New Brunswick	British Columbia
2011 ²⁴	\$1,579	\$1,285
2012 ²⁵	\$1,723	\$1,360
2013 ²⁶	\$1,741	\$1,425

The data demonstrates that rates went from \$1,120 in 2004 to \$1,741 in 2013 (an increase of 55%). In other words, the 2003 reform measures, as restrictive as they were, did little to quell the trend of rising rates that pre-dated tort reform. Clearly, the \$2,500 cap on non-pecuniary damages was not the silver bullet solution that the insurance industry had suggested it would be. Accordingly, there is no reason to believe that increasing the cap will have a different effect.

Nonetheless, in 2013 the New Brunswick Government introduced a new minor personal injury cap of \$7,500 indexed to inflation for victims injured on or after July 1, 2013. This new cap corrected issues with the old cap by, for example and probably most importantly, changing the

²³ See the chart on Page 10.

²⁴ Report to the Minister Responsible for Crown Investments Corporation of Saskatchewan regarding the SGI’s Auto Fund Rate Application (<http://www.saskratereview.ca/docs/sgi2012/saf-panel-final-report-2012.pdf>).

²⁵ Report to the Minister Responsible for Crown Investments Corporation of Saskatchewan regarding the Saskatchewan Auto Fund Rate Application (<http://www.saskratereview.ca/docs/sgi2013/saf-2013-full-report-final-june11-13.pdf>).

²⁶ Report to the Minister Responsible for Crown Investments Corporation of Saskatchewan regarding Saskatchewan Auto Fund Rate Application (<http://www.saskratereview.ca/docs/sgi2014/saf-2014-report-final-kw.pdf>).

definition of minor personal injury to explicitly list a series of injuries that are considered “minor”. These injuries are as follows:

- a contusion;
- an abrasion;
- a laceration;
- a sprain;
- a strain; and
- a whiplash associated disorder.

Therefore, if someone is a victim of a car accident in New Brunswick after July 1, 2013 and suffers an injury other than any of the six listed above, the cap would not apply. Victims of car accident in New Brunswick after July 1, 2013 who have suffered from one of the six listed injuries are still able to claim that the new cap does not apply to their specific situation if their injury results in “serious impairment”.

Unfortunately for victims of car accidents between July 1, 2003 and June 30, 2013, the 2003 cap continues to apply as the New Brunswick government did not change the cap retroactively.

Of particular note is the definition of “whiplash associated disorder”:

“whiplash associated disorder” means a whiplash injury that

- a. does not exhibit objective, demonstrable, definable and clinically relevant neurological signs, and
- b. does not exhibit a fracture in or dislocation of the spine.

Since the bulk of personal injury claims are whiplash associated disorders, a great deal turns on this definition. The practice of personal injury law in New Brunswick now focuses on acquiring “objective, demonstrable, definable and clinically relevant neurological signs” as early as possible, often within days or week of an accident. People with soft tissue injuries are being sent for Electromyogram (EMG) tests, nerve conduction studies, x-rays, MRIs, and CT scans right away. These tests are often not medically necessary to treat their injuries, especially in the case of soft tissue injuries, but they are necessary for the legal purposes of proving that an injury is not a “minor personal injury”. The definition of “whiplash associated disorder” has had the impact of creating a more litigious system with the victim being forced to incur the costs of expensive medical tests upfront. Further, it is placing more strain on the medical system by increasing the amount of medical testing required throughout litigation and involving medical experts at an earlier stage of the proceedings.

The definition of “serious impairment” is also important:

“serious impairment” means, in respect of a plaintiff, an impairment of a physical or cognitive function that

- (a) results in a substantial inability to perform
 - i. the essential tasks of the plaintiff's employment, occupation or profession, despite the plaintiff's reasonable efforts to use any accommodation provided to assist the plaintiff in performing those tasks,
 - ii. the essential tasks of the plaintiff's training or education in a program or course in which the plaintiff was enrolled or had been accepted for enrolment at the time of the accident, despite the plaintiff's reasonable efforts to use any accommodation provided to assist the plaintiff in performing those tasks, or
 - iii. the plaintiff's normal activities of daily living,
- (b) has been ongoing since the accident, and
- (c) is not expected to improve substantially.

The definition begs the following questions, many of which remain unanswered or unclear:

- What are “essential tasks of the plaintiff's employment” and “training or education in a program or course in which the plaintiff was enrolled”?
- What are “reasonable efforts to use any accommodation provided to assist the plaintiff in performing [essential tasks]”?
- What are the plaintiff's “normal activities of daily living”?
- What is meant by a physical or cognitive impairment of function that has been “ongoing” since the accident?
- What is meant by “substantial improvement”?

The new legislation has created the potential for a more litigious system. Uncertainty breeds litigation and tends to increase costs. To date however, there has not been a case that has tested the 2013 amendments, so it is difficult to determine the impact that the legislative changes will likely have. At the outset however, one can expect that an increased reliance on expert medical evidence will not result in cost savings for the insurance industry.

Caps on minor injury damages are designed to reduce or eliminate the cost of less serious claims. Thresholds and caps are inherently expensive and inefficient ways to achieve these goals. There are two fundamental problems: first the definition of what constitutes a minor injury is complex and may ultimately require interpretation from appellate courts, creating uncertainty for litigants;

second, the determination of whether the claims meet the test is not determined until the end of the case, after substantial costs and administration of justice resources have been exhausted.

NEWFOUNDLAND & LABRADOR: THE AFTERMATH

As discussed in the **Erosion of Tort Rights Section** above, in the approximately 5-year period following the implementation of the \$2,500 deductible on pain and suffering damages in Newfoundland and Labrador, the industry saw an increase in premiums, but oddly, without a corresponding increase in claims costs. This leads to speculation as to (1) whether any increase in premiums was necessary and (2) whether the \$2,500 deductible was the appropriate solution to the problem of rising claims costs and premiums. Now, more than 13 years later, following a period of rising claims costs, Newfoundland is revisiting tort-reform measures.

CONCLUSION

Provincial governments have historically been too quick to limit tort rights based largely on unfounded claims from the insurance industry. It remains unclear whether the tort reform measures employed in New Brunswick and Newfoundland had any significant impact on lowering premiums. In fact, the post-reform data tends to demonstrate that rates continued to increase even as claims costs decreased, suggesting that there are other factors responsible for rising rates. At the very least, one can safely conclude that tort reform measures do not lead to premium stability (as evidenced by New Brunswick, Newfoundland, and other jurisdictions across Canada). Swings in profitability and pressure for precipitous premium increases will not be eliminated through restricting access to justice. Restricting access to justice, on the other hand, will *always* impair the rights of innocent accident victims and consequently the amount of coverage that a consumer receives per premium dollar spent.

When the focus is on profit to the exclusion of other important considerations, the result is an inferior product that inevitably fails to meet the needs of consumers and, as important, the needs of injured people who must access compensation under the system.

The insurance industry is heavily influenced by financial markets. Much like the stock market, the insurance industry is cyclical and must be able to endure wide swings in the market. The insurance industry must accept responsibility for operating profitability, not look to victims of accidents to foot the bill. If profits are unsatisfactory, the insurance industry must be proactive in changing its operations, altering its investment strategies during periods of economic recession, and ultimately become more efficient from top to bottom.

There is an underlying morality in the fault-based British Columbian tort system which ought not to be lightly brushed aside. In the words of Mr. Justice McLellan in the New Brunswick decision of *Lahey Estate v. Craig*, 1992 CanLII 2803:

No one denies that the fault system is riddled with imperfections; it is costly, difficult to administer, denies compensation to many injured people, and is

replete with delays. Nevertheless, it is also a mark of nobility when a society directs its members to conduct themselves reasonably in their relations with their fellow citizens, or pay for the consequences...

Only tort law is tailored to deal with each person as an individual entity. This is unquestionably one of its weaknesses, but it is also one of its greatest strengths.

Despite the claims made by the insurance industry in New Brunswick and Newfoundland, the no-fault measures imposed in 2003, 2004, and 2013 have not cured the imperfections within their respective tort systems. The business of insurance is still costly, as evidenced by rising premiums. Insurance profits are still subject to wide swings in variability, despite the imposition of legislative no-fault cost saving measures. Injured victims continue to be denied full and fair compensation for their injuries (in growing numbers). The solution for British Columbia is not to erode tort rights, but rather to bolster them while simultaneously reducing inefficiencies in the insurance industry and improving road safety initiatives.

5. ANALYSIS OF ALBERTA AUTO INSURANCE, MICHAEL HOLROYD
AND TOD BROWN

ALBERTA

Introduction

In 2004 the Alberta Government, led by Premier Ralph Klein, adopted a scheme of legislation which, among other things, slashed the level of damages available to automobile accident victims who sustained soft tissue injuries. The *Minor Injury Regulation*¹ (MIR) imposed a \$4000 cap on non-pecuniary damages (the Cap) for minor injuries as defined under the MIR. The Cap was increased to \$5,020 effective January 1, 2017.

This discussion paper considers the Cap.

Summary

1. The Cap does not apply to all injuries: it applies to *some* sprain, strain and “whiplash” type injuries. If Cap applies to an injury, it is only pain and suffering damages which are subject to the Cap.
2. The MIR and the Cap created a new administrative and regulatory scheme. Frankenstein-like, it consists of stitched together parts such as injury definitions, diagnostic and treatment protocols and certification requirements for medical examiners, all of which has been grafted onto the existing accident benefit regulations and Canadian tort law.

The task of determining whether an injury is subject to the Cap is costly and inefficient.

3. Automobile injury claims costs are projected to increase at the annual rate of 7.6%. The Alberta automobile insurance industry attributes this in part to increased legal representation and the use of strategies to avoid the Cap.
4. Alberta’s automobile insurance grid base rate has been increasing at the annual rate of 7-8% since 2015. There will be 10% rate increase effective January 1, 2018.
5. The Cap has not resulted in more generous accident benefits than those available in British Columbia. Alberta imposes a \$50,000 limit on medical and rehabilitation benefits; the limit is \$150,000 in British Columbia. Income loss benefits in Alberta are only payable for 2 years after an accident; those benefits are payable to the age of 65 in British Columbia.

¹ AR 123/2004

Background

Automobile insurance in Alberta is mandatory. The mandatory motor vehicle liability policy limit for each accident for private vehicles is \$200,000, exclusive of interest and costs (“Basic Coverage”).² Claims against an insured arising from bodily injury or death have priority over property claims up to \$190,000.

Automobile insurance is provided through private insurers. These include large property and casualty insurers such as Allstate Insurance Company of Canada, Wawanesa Mutual Insurance Company and Zurich Insurance Company Limited.³

A substantial majority of auto insurance premiums are for private vehicles. Those not insured by private insurers may seek insurance from non-standard insurance market companies who demand higher premiums or from the Facility Association, the insurer of last resort.^{4,5}

Insurers are required to use the form of automobile insurance policy approved by the Superintendent of Insurance.⁶ The Alberta Standard Automobile Insurance Policy (SPF #1) contains three sections, which are:

Section A: Third Party Liability

Section B: Accident Benefits

Section C: Loss or Damage to the Insured Vehicle

Alberta requires motor vehicle liability policies issued in the province to include accident insurance benefits, commonly known as Section B benefits, upon injury to, or death of, an insured person.⁷ These benefits are “no fault” benefits. Although the Section B benefits are similar to British Columbia’s Part 7 benefits, the Alberta benefits offer a much lower degree of protection to automobile accident victims.

In 2004 the Alberta government of Premier Ralph Klein enacted legislation which changed the automobile insurance landscape in Alberta. Among other things, the changes provided for:

- elimination of double – recovery from more than one source
- recovery of wage loss based on net, rather than gross, income

² *Insurance Act*, RSA 2000, c. I-3, (the “Act”) s. 571(1)

³ Alberta Automobile Insurance Rate Board, http://www.airb.alberta.ca/drivers/insurance_providers.aspx

⁴ *Morrow v. Zhang*, 2009 ABCA 215, at para. 10

⁵ <http://www.ibc.ca/qc/auto/buying-auto-insurance/facility-association>

⁶ Act, s. 551(1)

⁷ *Insurance Act*, s. 573 and *Automobile Accident Insurance Regulations*, AR Reg. 352/72,

- an increase in the maximum for medical/rehabilitation benefits from \$10,000 to \$50,000
- a \$4,000 cap on pain and suffering damages for “minor injuries”
- diagnostic and treatment protocols for “minor injuries”

The Klein government also introduced a grid rating program which set the maximum premiums to be charged for Basic Coverage, to be regulated by a new authority, the Auto Insurance Rate Board.

Caps on “minor injury” damages for pain and suffering

In 1978, the Supreme Court of Canada established a rough upper limit of \$100,000 for non-pecuniary damages (approximately \$372,000 in August 2017⁸). The Court emphasized the importance of ensuring equality of compensation for non-pecuniary damages throughout Canada, stating:

The amounts of such awards should not vary greatly from one part of the country to another. Everyone in Canada, wherever he may reside, is entitled to a more or less equal measure of compensation for similar non-pecuniary loss. Variation should be made for what a particular individual has lost in the way of amenities and enjoyment of life, and for what will function to make up for this loss, but variation should not be made merely for the province in which he happens to live.⁹

With the Cap, the Klein government created an “Alberta-only” scheme which devalued non-pecuniary damages suffered by those unfortunate enough to fall into the less than clear category of “minor injury” under the MIR. The Supreme Court of Canada embraced the importance of equality and uniformity of non-pecuniary damages across Canada. The Klein government took the contrarian view, opted out of the uniform common law approach, and created an arbitrary system for the compensation of pain and suffering damages for auto accident victims. The result was, and still is, that:

- The pain and suffering of a person injured by a distracted driver who runs a red light in Calgary will worth less if the accident occurs in Vancouver.
- The pain and suffering of a person who suffers a back injury in Calgary, but no fractures or nerve damage, may be worth less if the injury was caused by

⁸ McKellar Structured Settlements, <http://www.mckellar.com/statistics>

⁹ *Andrews and others v. Grand & Toy Alberta Ltd.* (1978), 83 D.R.R. (3d) 452, at p. 477

a distracted driver rather than by a negligent commercial owner who fails to remove snow and ice from the entrance to a shopping centre.

The Cap: the “minor injury” maze

The Cap is embedded in a regulatory tangle of rules, including but not limited to the MIR, which attempt to define an injury subject to the Cap, regulate the diagnosis and treatment of that injury, and limit the pain and suffering damages for such an injury. These additional layers of administration which appear to be modelled on workers compensation schemes.

The legislation is complex and rich with opportunities for disputes about how the legislation should be interpreted and applied. This creates a petri-dish like environment for the growth of litigation.¹⁰ In its recently published annual review of private auto insurance, the Alberta Automobile Insurance Rate Board notes that bodily injury claims costs in Alberta are projected to increase at the annual rate of 7.6%. The Board notes that Alberta automobile insurers identify increased legal representation and the use of strategies to avoid the Cap limitations as one of the leading factors at the root of the increase.¹¹

a. “minor injury”: the definition

The basic concept in the Alberta Cap scheme is deceptively straightforward: the total amount recoverable as damages for non-pecuniary loss for all minor injuries sustained by a person injured as a result of an accident arising from the use or operation of a motor vehicle is \$4,000 (currently \$5,020).¹²

In reality, the determination of whether a motor vehicle accident injury claim is subject to the Cap is not a straightforward, efficient, inexpensive exercise.

The Cap applies only to a “minor injury”, which is defined by a two part test in the MIR.

¹⁰ “Court challenges have been a reality in most jurisdictions where minor injuries are defined. Some injury definitions have been successfully challenged, which has led to an erosion of financial benefits over time”, Ernst & Young report, *infra*, note 51, p. 48

¹¹ 2017 Annual Review – Alberta Private Passenger Vehicles, September 29, 2017, at p. 7

¹² Automobile Accident Insurance Regulations, AR Reg. 352/72, s. 6(2)

The first part of the test considers the type of injury. A “minor injury” is defined as

- (i) a sprain,
- (ii) a strain, or
- (iii) a WAD injury¹³

A “sprain” means an injury to one or more tendons or ligaments, or to both.¹⁴

A “strain” means an injury to one or more muscles.¹⁵

A “WAD injury” is defined as

a whiplash-associated disorder other than one that exhibits one or both of the following:

- (i) objective, demonstrable, definable and clinically relevant neurological signs;
- (ii) a fracture to or a dislocation of the spine.¹⁶

However, not all sprain, strain or WAD injuries are subject to the Cap.

The second part of the test excludes any such injury which “does not result in a serious impairment”.¹⁷ The Alberta legislation defines a “serious impairment” as follows:

an impairment of a physical or cognitive function

- (i) that results in a substantial inability to perform the
 - (A) essential tasks of the claimant’s regular employment, occupation or profession, despite reasonable efforts to accommodate the claimant’s impairment and the claimant’s reasonable efforts to use the accommodation to allow the claimant to continue the claimant’s employment, occupation or profession,
 - (B) essential tasks of the claimant’s training or education in a program or course that the

¹³ *Supra* note 10, s. 1(h)

¹⁴ *Supra* note 10, s. 1(k)

¹⁵ *Supra* note 10, s. 1(l)

¹⁶ *Supra* note 10, s. 1(n)

¹⁷ *Supra* note 10, s. 1(n)

claimant was enrolled in or had been accepted for enrolment in at the time of the accident, despite reasonable efforts to accommodate the claimant's impairment and the claimant's reasonable efforts to use the accommodation to allow the claimant to continue the claimant's training or education, or

(C) normal activities of the claimant's daily living,

(ii) that has been ongoing since the accident, and

(iii) that is expected not to improve substantially¹⁸;

The determination of whether an injury results in a serious impairment is fertile ground for disputes, duelling medical opinions, and ultimately an additional burden on judicial resources. This particularly so of the requirement that the injury "is not expected to improve substantially", which invites medical experts to engage in crystal ball gazing.

b. Assessing whether an injury meets the "minor injury" definition

The MIR requires the determination as to whether an injury is a sprain, strain or WAD injury to be based on an assessment of the injured person in accordance with diagnostic and treatment protocols established under a separation regulation under the *Insurance Act*, the *Diagnostic and Treatment Protocols Regulation* (the "Protocols")¹⁹ The Protocols set out the diagnostic criteria for sprain, strain and WAD injuries and treatment protocols.

The lengthy, complex diagnostic provisions in the Protocols require the physician, physiotherapist or chiropractor to navigate and apply diagnostic criteria in assessing whether an injury is sprain, strain or WAD injury and then grade the severity of the injury according to criteria for the sub-classifications of 1st, 2nd and 3rd degree strains or sprains and WAD I or II injuries.

The diagnosis of a strain, sprain or WAD injury is to be made with reference to the *International Statistical Classification of Diseases and Related Health Problems, Canada*, published by the Canadian Institute of Health Information. ("ICD").²⁰

¹⁸ *Supra* note 10, s. 1(j)

¹⁹ AB Reg. 116/2014

²⁰ *Supra*, note 18, ss. 1(h) and 7(1)

In some cases the Protocols may conflict with the definition of “minor injury” in the MIR. In terms of deciding whether an injury is a minor injury or not, this may produce a diagnostic paralysis. This is particularly so when, for example, a WAD injury lasts more than 3-6 months and would be considered “chronic” under the ICD classification, yet may be still be subject to the Cap if the injury may improve substantially. Madam Justice Eidsvik of the Court of Queen’s Bench of Alberta recently referred to this paradox as follows:

Very confusing. And certainly not what the Legislature intended.²¹

To further complicate matters, the determination of whether a strain, sprain or WAD injury results in a serious impairment, which would exclude the injury from the Cap, must take into account the injured person’s pre-existing history.²² A sprain, strain or WAD injury to be considered to have resulted in a serious impairment, the sprain, strain or WAD injury must be the *primary* factor contributing to the impairment.²³ More complexity. More uncertainty.

c. Certified examiners

The medical profession and the Superintendent of Insurance cannot escape the additional layer of administration and cost created by the Cap regime.

The MIR creates a special category of physician: the certified examiner. The Superintendent of Insurance is required to establish, maintain and administer a register of certified examiners.²⁴ The job of determining whether a physician is eligible to be a certified examiner is placed on the College of Physicians and Surgeons of the Province of Alberta (“the College”).

The eligibility criteria include the following:

- a. the physician must successfully complete an examination approved by the College,
- b. the physician must demonstrate to the satisfaction of the College that the physician

²¹ *McLean v. Parmar*, 2015 ABQB 62, paras. 66 - 67

²² *Supra* note 10, s. 4(3)

²³ *Supra* note 10, s. 3

²⁴ *Supra* note 1, MIR, s. 15(1)

- (i) is knowledgeable with respect to the biopsychosocial model,
- (ii) is knowledgeable with respect to assessing acute and chronic pain,
- (iii) is knowledgeable in the application of the International Classification of Diseases,
- (iv) is experienced in rehabilitation and disability management,
- (v) is competent in conducting independent assessments and providing third party opinions, and
- (vi) uses evidence-based decision-making in the physician's practice,

and

- (c) meets any additional qualifications established by the Superintendent and approved by the College.²⁵

If there is a dispute about whether an injury is a “minor injury”, the injured person or the insurance company may require an examination by a certified examiner. If the parties disagree about the choice of examiner, either party may require the Superintendent of Insurance to make the choice. The cost of the assessment is paid by the party requesting it.²⁶

The certified examiner must assess the injured person to determine if an injury is

- i. a sprain, strain or WAD injury as defined by the MIR and, if it is,
- ii. whether it results in a substantial impairment.²⁷

The MIR stipulates that the opinion of the certified examiner is *prima facie* evidence that the injury is, or is not, a minor injury.²⁸ Thus, even if parties embark on the costly exercise of obtaining certified examiner's opinion, it is open to either party to challenge that opinion.

²⁵ *Supra*, note 1, MIR, s. 16(1)

²⁶ *Supra*, note 1, MIR, s. 13(1)

²⁷ *Supra*, note 1, MIR, s. 10(1)

²⁸ *Supra*, note 1, MIR, s. 12

Rather than permit one of the injured person's treating physicians to conduct the assessment, the certified examiner provisions disqualify the following physicians from conducting the assessment:

- (i) any physician who diagnosed or treated the injured person, or
- (ii) any physician who consulted with respect to the diagnosis or treatment of the injured person

in respect of *any* injury arising from the accident.²⁹

Thus, the Cap legislation, through the certified examiner provisions, mandates the participation of a new physician in the determination of whether an injury is captured by the Cap. More administration. More expense.

d. Assessing pain and suffering damages for multiple injuries

The task of assessing pain and suffering damages becomes even more complex if the injured person sustained multiple injuries, one or more of which is a "minor injury" and one or more of which is not.

If an injured person sustains more than one injury in an accident, each injury must be assessed separately to determine whether the injury is or is not a minor injury.³⁰ If any of the injuries is a "non-minor injury", the legislation requires the court to assess the non-pecuniary damages of the non-minor injuries separately from the minor injuries³¹. In a recent decision of the Alberta Queen's Bench, the court referred to difficulty of applying this provision:

Further, by excepting out part of a Plaintiff's injuries from others as the MIR expects the Court to do, quite an artificial and very difficult task is required to sift out some injuries from others when in effect, like in Ms. McLean's case, the injuries are often inextricably intertwined.³²

²⁹ *Supra*, note 1, MIR, s. 8

³⁰ *Supra* note 10, MIR, s. 2

³¹ *Supra* note 10, MIR, s. 7

³² *McLean v. Parmar*, 2015 ABQB 62, at para. 68

e. *An extra administrative scheme to treat a “minor injury”*

With some exceptions, a person injured in an auto accident in Alberta may be entitled to receive accident benefits for reasonable expenses incurred for necessary medical and rehabilitation treatment approved by both the injured person’s physician and the insurance company’s medical advisor.³³

The introduction of the Protocols in 2004 grafted an additional layer of regulation and administration for the treatment of sprain, strain and WAD injuries onto the Part B accident benefits regulation.

In terms of treatment, the basic scheme of the Protocols is that an auto accident victim with a sprain, strain or WAD injury may have the cost of the treatment of that injury paid for by the Part B benefits insurer without requiring approval by the insurance company’s medical advisor. The treatment must be authorized by a physician, chiropractor or physiotherapist.

The Protocols only apply to treatment within 90 days of an accident and up to the aggregate limit of visits authorized by the Protocols. The authorized number of visits vary according to the classification of the injury. However, the combined total of 21 physical therapy, chiropractic and adjunct therapy visits is the maximum allowed.

Ostensibly, participation in the Protocols’ treatment regime is voluntary. The Protocols apply if the injured person chooses to be diagnosed and treated in accordance with the Protocols.³⁴

Practically speaking, the Alberta Cap legislation is designed to force auto injury victims who may have an injury which could be characterized as a strain, sprain or WAD injury to opt into the Protocol administrative scheme. If the injured person refuses “without reasonable excuse” to follow the Protocols, the sprain, strain or WAD injury is deemed to be a minor injury subject to the Cap unless the injured person establishes that:

- a. the injury would have resulted in serious impairment, and
- b. the serious impairment would have occurred even if the person had been diagnosed and treated in accordance with the Protocols.³⁵

³³ *Supra*, note 6

³⁴ *Supra*, note 17, s. 2(1)

³⁵ *Supra*, note 9, s. 5(1).

Even if the injured person elects to follow the Protocol, any treatment more than 90 days after the accident, or any therapy visit in excess of the prescribed limit, requires the approval of the Part B insurer. In other words, after 90 days post-accident *at the latest*, the minor injury Cap victim defaults to the regular Part B accident benefits scheme.

Was the Cap intended to fix an insurance crisis?

The private passenger automobile insurance industry in Alberta is subject to cyclical periods of soft markets, where competition is strong and profitability eventually declines, and hard markets, where premiums rise. During soft markets, insurers keep premiums relatively stable and reduce them in order to increase volume share of the market. However, as profitability reduces, the hard market cycle brings higher premiums.

Since 1972, when mandatory insurance was introduced, there have been several insurance cycles.

In 2001, Alberta entered a hard market period which peaked in 2003. In addition to the imposition of higher premiums during this period, it appeared that an increasing number of drivers were driving without insurance.³⁶

Bill 53, the enabling legislation which introduced the Cap and related auto insurance measures including a premium rate freeze, received royal assent on December 4, 2003. In March 17, 2004, the Globe and Mail reported that the insurance industry in Canada recorded a record profit of \$2.63 billion. Nova Scotia's minister of insurance stated that the insurance industry had obviously "overstated" its financial difficulties when it claimed that 2003 would be one of the worst years ever.³⁷

The Alberta Cap legislation did not arise from a concern that insurance company profits were threatened and increased auto insurance premiums for all drivers would follow. Bill 53 was the Klein government's response to complaints about high insurance rates for one group: young drivers.³⁸ Premier Klein said:

³⁶ *Ibid*, at para. 11

³⁷ "Insurance industry reaps record profits", March 17, 2004, Globe and Mail

³⁸ "Where the discrepancy lies is in the extraordinary amount that young drivers with good driving records are paying and older drivers are paying and also as it relates to younger drivers, young males in particular. What we want to do is deal with that component mostly", per Premier Ralph Klein, Legislative Assembly Minutes, Alberta Hansard, November 18, 2003, p. 1695

the whole government initiative relative to insurances was launched because of the concerns of small business...Basically there were a number of complaints to this government that these small businesses couldn't hire people between the ages of 16 and 25 because their insurance rates would go sky high³⁹

The current epidemic of fatalities and injuries caused by distracted driving makes the public policy case in Alberta for limiting compensation to auto accident victims in order to reduce insurance rates for young drivers more difficult to make today than it was in 2004. Young, inexperienced drivers under the age of 25, have long been recognized as particularly high risk road users.⁴⁰ Young drivers in the age category 16 – 24 have the highest rates of cell phone use of any age group and more young drivers use cell phones, at any given moment on the roads, than all other age groups combined.⁴¹

Are auto insurance premiums lower in Alberta than in British Columbia?

The argument that is often advanced by proponents of a cap on pain and suffering damages is that this will produce cost savings which will result in lower car insurance liability premiums.

Alberta's experience does not lend much support to that argument. Since 2015, the Basic Coverage grid premium has increased at least 7% on an annual basis. In 2018, the premium will increase by 10%.

The Auto Insurance Rate Board (the "Board") regulates the rates charged by Alberta auto insurers for Basic Coverage. In July 1, 2014, the Board's mandate was expanded to include optional coverage.

The grid rating program, mandated in 2004, sets the maximum premiums to be charged for Basic Coverage. Subject to exceptions based on a driver's history of at-fault accidents and convictions, an insurer is required to charge the less of the grid premium for Basic Coverage or the premium established by an insurer's Board approved rating program.

³⁹ Legislative Assembly Minutes, Alberta Hansard, March 29, 2004, p. 722

⁴⁰ "Injury Insight", BC Injury Research and Prevention Unit, July 2016

⁴¹ "Addressing the problem of distracted driving and its impacts on road safety", Discussion Paper – British Columbia Ministry of Public Safety and Solicitor General and Office of the Superintendent of Motor Vehicles, 2009

The applicable regulation requires the grid base premium (Basic Coverage for a 12 month period) in areas outside of Calgary and Edmonton to be 20% less than for those urban areas.⁴²

In the past four years, the grid base premiums established by the Board increased as follows:

i. for \$200,000 in coverage

Year	Base premium as of January 1	Board ordered base premium increase
2018	\$2,228 ⁴³	10%
2017	\$2,025 ⁴⁴	8%
2016	\$1,875 ⁴⁵	7%
2015	\$1,752 ⁴⁶	7%

ii. for \$1 million in coverage

Year	Base premium as of January 1	Board ordered base premium increase
2018	\$2,619 ⁴⁷	10%
2017	\$2,381 ⁴⁸	8%
2016	\$2,205 ⁴⁹	7%
2015	\$2,061 ⁵⁰	7%

The grid premium is the maximum premium rate. Insurance companies may charge less, but the rates charged for the same coverage may vary substantially from company to company. The trend of increasing maximum grid premiums is one metric of annual rate of increase of bodily injury claims costs. The grid premium increases may understate the pace of the growth of claims costs. In its most recent review, auto insurance industry stakeholders raised concerns about the adequacy of grid rate levels, leading the Board to conclude that

⁴² *Automobile Insurance Premiums Regulation*, AR 117/2014, Sched. 3, s. 3(2)

⁴³ Alberta Automobile Insurance Rate Board Decision, September 29, 2017, Order no. 01-17

⁴⁴ Alberta Automobile Insurance Rate Board Decision, September 16, 2016, Order no. 01-16

⁴⁵ Alberta Automobile Insurance Rate Board Decision, September 18, 2015, Order no. 01-15

⁴⁶ Alberta Automobile Insurance Rate Board Decision, September 22, 2014, Order no. 01-14

⁴⁷ *Supra*, note 25

⁴⁸ *Supra*, note 26

⁴⁹ *Supra*, note 27

⁵⁰ *Supra*, note 28

Due to the nature of the Grid rating program, an increase in Grid premium will not likely bring the Grid rates to an adequate level...the setting of Grid premium levels needs to be an on-going process.⁵¹

The Board has an online interactive application which provides the current basic insurance rates of individual insurance providers for private automobiles based on a set of profiles that represent typical insurance customers with the most common coverage.⁵² The five different profiles include the following:

Male, Age 19, Calgary (post code - T2Y)

- Driver training
- Licensed 2 years, Class 5 license
- 2 years graduated license
- Renewal, 2 years with present company
- Pleasure use - annual mileage 18,000 km
- No at fault accidents
- No Convictions
- 2005 Mazda3 GS Sedan 4DR

This driver would pay a premium ranging from \$3,815 to \$12,117.⁵³

Female, Age 35 (post code - T2Y)

- No driver training
- Licensed 15 years, Class 5 license
- New business
- Annual mileage 25,000 km, travel to/from work 25 km one way
- No at fault accidents
- No convictions
- 2009 Nissan Versa Hatchback 1.8S 4DR

This driver would pay a premium ranging from \$1,123 to \$3,137.⁵⁴

⁵¹ Supra, note 11, at p. 10

⁵² <https://airb-applications.alberta.ca/ratingprofiles/>

⁵³ Supra, note 33. This profile produced 41 separate insurance provider premiums. The least expensive premium of \$3,815 was provided by ACE INA Insurance. The most expensive - \$12,117 – was provided by Zenith Insurance Company. Canadian Direct Insurance Incorporated, which offers optional insurance in B.C., produced a premium of \$6,840.

⁵⁴ Supra, note 33. ACE INA Insurance provided the least expensive premium. The Facility Association provided the most expensive. Canadian Direct was \$1,503.

By contrast, in I.C.B.C.'s 2017 Revenue Requirements Application recently filed with the B.C. Utilities Commission:

- I.C.B.C.'s forecast premium for basic liability insurance for the 2017 policy year for personal (i.e. non-commercial) vehicles was \$815.42⁵⁵
- I.C.B.C. sought a 6.4% increase in the basic insurance rates for the 2017 policy year.⁵⁶

The rising cost of bodily injury claims in Alberta

The cause of the escalating increase in bodily claims costs and auto insurance premiums is not more frequent accidents or bodily injury claims. The rising rate of increase in the cost per claim appears to be an important factor.

In its most recent annual review of the Alberta insurance industry experience for private passenger vehicles, the actuarial consultants to the Board noted that the *frequency* of bodily injury claims had declined in recent years. This was attributed to the sharp rise in Alberta's unemployment rate combined with mild winters and low snowfall.⁵⁷

However, bodily injury claim *severity* – the amount paid for the claim and as well as the settlement expenses associated directly with the claim (such as legal costs), had increased.

The Board's actuarial consultants observed that bodily injury claim severity "*has exhibited an upward trend*" since the introduction of the Cap in 2004.⁵⁸ By June 30, 2016, the Board's actuaries estimated that the Alberta bodily injury severity average claim cost was 59% higher than it had been in 2011. The estimates for bodily injury severity for the period from 2011 to June 30, 2016 are set out in the following table⁵⁹:

Year	Severity
2016 (1 st half)	\$66,120
2015	\$65,254
2014	\$57,490

⁵⁵ I.C.B.C.'s 2017 Revenue Requirements Application, September 15, 2017, Chapter 2, App. B.0, p. 9

⁵⁶ Supra, note 33, p. i

⁵⁷ "Review of Industry Experience as of December 31, 2016 Private Passenger Vehicles", Oliver Wyman, pp. 29 – 30. Oliver Wyman estimates between 2011 and the first half of 2016, bodily injury claims declined from 6.01 to 4.95 per 1000 policies issued.

⁵⁸ Supra, note 35, p. 32

⁵⁹ Supra, note 35, p. 24

2013	\$51,970
2012	\$46,879
2011	\$41,534

By contrast, I.C.B.C.'s actual bodily injury paid severity was \$35,333 in 2016, an increase of less than 1% from 2015.⁶⁰

Did the Cap result in more generous accident benefits in Alberta than in British Columbia?

Proponents of limits on pain and suffering damages for automobile accident claims argue that the limiting measures, such as the Cap, will produce cost savings which will enable to adopting jurisdiction to provide more generous accident benefits.

For example, in its recent review of I.C.B.C., Ernst & Young stated:

Savings gained from applying caps to litigated awards such as pain and suffering for minor injury claims could be redistributed to increase accident benefits to more beneficial levels for all claimants.⁶¹

The table below summarizes the benefits available in Alberta and British Columbia for the two types of benefits which are generally the most financially significant to an auto accident victim: medical benefits and income loss benefits.

Benefits available	British Columbia	Alberta
Medical treatment / rehabilitation	i. Limit of \$150,000/person. ii. Lifetime entitlement to benefits. iii. All reasonable medical and rehabilitation expenses. Approval of ICBC's medical advisor is not	i. Limit of \$50,000/person. ii. Limited to expenses incurred within 2 years from the date of the accident. iii. Reasonable medical and rehabilitation expenses.

⁶⁰ Supra, note 33, p. 7-1

⁶¹ "ICBC – Affordable and effective auto insurance – A new road forward for British Columbia", 10 July 2017, Ernst & Young, p. 109

	required, except for specified rehabilitation expenses such as home and vehicle modifications.	Approval by insured's physician and insurance company's medical advisor required.
Loss of income	<p>75% of gross weekly income up to a maximum of \$300/week.</p> <p>Maximum benefit period: age 65 or the duration of the total disability, whichever is shorter.</p>	80% of gross weekly wages up to a maximum of \$400/week for person employed on accident date

If a cap on pain and suffering damages saves money which may then be used to provide more generous accident benefits than those available in a non-cap jurisdiction, Alberta's accident benefits should be more generous than those available in B.C. Clearly, that is not the case. Alberta's accident benefits are substantially lower than the Part 7 benefits available in B.C.

It may be that the Klein government shared the philosophy adopted in the recent Ernst & Young report, where those consultants made the following statements⁶²:

Provision of benefits such as medical treatments...if not implemented properly and with appropriate controls and limits... can also cause escalating costs

[in South Australia] [e]xtremely generous benefits acted as disincentives for claimants to return to their pre-accident lives

[in Ontario] [g]enerous and complex benefits are being taken advantage of by claimants and service providers alike, resulting in claim costs increasing rather than decreasing.

⁶² Supra, note 61, p. 55

Hawkins, Brittany PREM:EX

From: Howlett, Tim GCPE:EX
Sent: November 4, 2019 4:34 PM
To: Brown, Evan PREM:EX; Nash, Amber PREM:EX; Holmwood, Jen PREM:EX; Aaron, Sage PREM:EX; Smith, George PREM:EX
Subject: Scan
Attachments: 2019.11.05 Issues Scan - FNLG.docx

Issues Scan

November 5, 2019
FNLG

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ICBC

Background:

- Palmer, Shaw and Smyth have reported that the Attorney General may consider moving to no fault, especially in the context of the court cases regarding minor injury caps and the Civil Resolution Tribunal.
- MLA Stone was quoted in the media last week saying that ICBC pushed “goofy” ideas for years - like no-fault, driver risk based rate redesign and selling the domain name to a Chinese bank - but he said no.
- The Attorney General continues to review the Crowder court decision and look at next steps. Minister James has indicated that the fiscal impacts could be in the range of \$400M. An appeal or further legislation could be options.

Message:

- The mess the old government left at ICBC is incredibly frustrating for people in B.C.
- The Attorney General is working extremely hard to clean up that mess.

s.13

What does the Crowder decision mean for the upcoming provincial budget?

- We’re still reviewing the decision and next steps so it’s too early to tell. Minister James always builds prudence into the budget.

s.13

Hawkins, Brittany PREM:EX

From: Howlett, Tim GCPE:EX
Sent: November 12, 2019 5:21 PM
To: Aaron, Sage PREM:EX; Holmwood, Jen PREM:EX; Smith, George PREM:EX; Hagglund, Jarrett PREM:EX
Subject: FW: scan
Attachments: 2019.11.13 Issues Scan - Langford.docx

From: Howlett, Tim GCPE:EX
Sent: Tuesday, November 12, 2019 5:21 PM
To: Brown, Evan PREM:EX (Evan.Brown@gov.bc.ca)
Subject: scan

Tim Howlett
Executive Director of Issues Management
250.208.4828

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November 13, 2019

Langford

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ICBC Broker Commissions

Background:

- On Nov. 10, Mike Smyth's column claimed that online insurance renewals could save ICBC hundreds of millions a year, while the Attorney General has said that moving to online renewals is "not a priority," compared to tackling the financial mess.
- Smyth asked why the Attorney General has been "going after" trial lawyers, when broker commissions^{s.13} are almost as much money as legal fees^{s.13}
- The Opposition said that not moving to online insurance is a missed opportunity for cost savings through the elimination of commissions to insurance brokers.
- While online insurance sales is an opportunity for some degree of savings, it would also require a significant expenditure on software, IT support, sales staff and a call centre.
- Even once online insurance is implemented, brokers will still have a role to play in customer service for many customers.

Message:

- The priority has been on working to clean up the financial mess the old government left at ICBC and bringing rates down.
- That said, work *is* happening to move toward offering online sales.

s.13

Why not move to online sales to save money and decrease broker commissions?

- Our priority has been working on reforms that can deliver savings quickly and effectively.
- There is some opportunity for savings with moving to online, but there would also be significant costs associated with the transition, and brokers will still have a role to play in delivering customer service for people.

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s.14

Page 294 of 311

Withheld pursuant to/removed as

s.13 ; s.14

Page 295 of 311

Withheld pursuant to/removed as

s.12 ; s.14

Hawkins, Brittany PREM:EX

From: Howlett, Tim GCPE:EX
Sent: December 11, 2019 3:56 PM
To: Holmwood, Jen PREM:EX; Aaron, Sage PREM:EX; Smith, George PREM:EX; McKinnon, Michael PREM:EX
Subject: FW: scan
Attachments: 2019.12.12 Issues Scan - Year End Media.docx

From: Howlett, Tim GCPE:EX
Sent: Wednesday, December 11, 2019 3:56 PM
To: Hagglund, Jarrett PREM:EX ; Nash, Amber PREM:EX (Amber.Nash@gov.bc.ca)
Subject: scan

Tim Howlett
Executive Director of Issues Management
250.208.4828

Issues Scan

December 12

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ICBC - Rate Application Delay

Background:

- The Attorney General will be announcing at 10AM on Dec. 12 that government is directing a delay in ICBC's 2020 basic rate application to the BCUC.
- ICBC will now have until February 16, 2020 to make their application.
- Q2 results showed ICBC is projected to lose \$91 million this year, up from \$50 million in Budget 2019 projections.
- Media reported widely that the \$91 million did not include the costs related to the Crowder court decision. Those costs have not been finalized, though the Finance Minister has said that \$400 million is a "worst case" scenario.
- The Attorney General has said he'll be introducing legislative changes in the spring to limit the number of expert reports in motor vehicle litigation to help mitigate the impacts of the Crowder decision - while leaving room for judicial discretion.

Message:

- The mess the old government left at ICBC is incredibly frustrating for people in B.C. and it is frustrating for me.
- We're working very hard to clean it up.
- There's more to do, but the numbers we're seeing today are a far cry from the billions in losses under the old government.

s.13

Are you concerned that the rate application is delayed?

- Not at all. The Attorney General has said many times that they're still doing a lot of financial analysis around the amount of savings we can expect from the legislation we'll be bringing in in the spring to respond to the Crowder decision.
- Until that analysis is finished, we can't responsibly ask ICBC to put forward its 2020 rate application based on an incomplete financial picture.

(cont...)

Are you worried that impacts of the Crowder decision will push your next budget into the red?

- The Attorney General is going to be bringing in changes this Spring to help offset the impacts of the Crowder decision. There's more work to do to put a number to that.
- But the old government's mess at ICBC is also one of the reasons Minister James has built prudence into the budget.

You've said that all options are on the table. Are you contemplating no-fault?

- I've said before that people are still paying too much for auto insurance.
- We know we need to keep finding ways to bring auto insurance premiums down and support people injured in crashes.
- Part of that is to make sure we get the issue of expert reports right. We've been focused on the Crowder decision, and it's still our focus right now going into the Spring.

Hawkins, Brittany PREM:EX

From: Howlett, Tim GCPE:EX
Sent: December 12, 2019 3:41 PM
To: Smith, George PREM:EX; Holmwood, Jen PREM:EX; Aaron, Sage PREM:EX; McKinnon, Michael PREM:EX
Subject: FW: Scan - PLEASE USE THIS ONE
Attachments: 2019.12.13 Issues Scan - Year End Media.docx

From: Howlett, Tim GCPE:EX
Sent: Thursday, December 12, 2019 3:41 PM
To: Hagglund, Jarrett PREM:EX
Subject: Scan - PLEASE USE THIS ONE

Sorry – failed to save a change. Please use this one

From: Hagglund, Jarrett PREM:EX <Jarrett.Hagglund@gov.bc.ca>
Sent: Thursday, December 12, 2019 3:13 PM
To: Howlett, Tim GCPE:EX <Tim.Howlett@gov.bc.ca>
Subject: Premier leaving today

FYI he is going to be leaving after his interview that ends at 4:15pm.

Hope we can make that work.

Jarrett

Jarrett Hagglund | Executive Coordinator to the Premier
Office of the Premier
Office: 236-478-1561 | Cell: 604-817-1458
Jarrett.Hagglund@gov.bc.ca

Issues Scan

December 13

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Hawkins, Brittany PREM:EX

From: Howlett, Tim GCPE:EX
Sent: December 13, 2019 3:38 PM
To: Hagglund, Jarrett PREM:EX; Holmwood, Jen PREM:EX; Aaron, Sage PREM:EX; Smith, George PREM:EX; McKinnon, Michael PREM:EX
Subject: Scan to Print - Jen?
Attachments: 2019.12.16 Issues Scan - Surrey Media Roundtable & Chinese Media.docx

Jen – can you print for Premier?

Items for Chinese Media interviews in the last 3 pages

Tim Howlett
Executive Director of Issues Management
250.208.4828

Issues Scan

South Asian Media Roundtable

December 16, 2019

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ICBC - General

Background:

- Media may ask about calls for government to offer “choice” in auto insurance.
- They may also ask about examples of large rate increases, tied to changes to ICBC premium calculations that came into effect on September 1, 2019.
- Generally speaking, experienced drivers without at-fault crashes will enjoy premium savings, while drivers who have caused crashes or are inexperienced will pay more.

Message:

- Because of the old government’s mismanagement of ICBC, people are paying too much for car insurance. We have a lot of work ahead to get these costs down.

s.13

- We’re going to keep working to clean up the old government’s mess and make auto insurance rates more affordable for all drivers in B.C.

Will you be bringing in legislation to prevent future government’s from raiding ICBC as the Attorney General promised?

- Our government will never take money from ICBC. We believe that any future profits from ICBC should go to making people’s insurance cheaper.

s.13

Hawkins, Brittany PREM:EX

From: Richard McCandless <rick.mccandless@shaw.ca>
Sent: December 20, 2019 10:37 AM
To: Eby, David
Cc: Smith, George PREM:EX
Subject: FW: Recent Developments Respecting Auto Insurance
Attachments: Commentary Auto Insurance Issues 20 December 2019.pdf

For information.

From: Richard McCandless
Sent: December 20, 2019 10:36 AM
To: Adam Stirling (Adam.Stirling@bellmedia.ca) ; 'Andrew MacLeod' ; 'Charlie Smith (gs.info@straight.com)' ; 'Dave Obee (dobee@timescolonist.com)' ; David Ball (david@davidball.net) ; 'Editor TheOrca (editor@theorca.ca)' ; 'Gary Mason (gmason@globeandmail.com)' ; 'George Smith (george.smith@gov.bc.ca)' ; 'ghoekstra@postmedia.com' ; 'Howie Reimer (hreimer@newcap.ca)' ; 'Ian Bailey (IBailey@globeandmail.com)' ; 'imulgrew@postmedia.com' ; 'Jake Costello (jake.costello@cbc.ca)' ; 'John Hua' ; 'John O'Dowd (john@cknw.com)' ; 'Johnson, Philip' ; 'Jon Woodward (jon.woodward@bellmedia.ca)' ; 'Justine Hunter (JHunter@globeandmail.com)' ; 'Keith Baldrey' ; Liza Yuzda (liza.yuzda@rci.rogers.com) ; 'lkines@timescolonist.com' ; 'Marcella Benardo (Marcella.Bernardo@vancouverradio.rogers.com)' ; 'Matt Prepost (editor@ahnfsj.ca)' ; 'Mike Macdonald' ; 'Mike Smyth (msmyth@postmedia.com)' ; 'Molko, David' ; 'paul willcocks' ; 'Richard Zussman' ; 'rshaw@postmedia.com' ; 'Stephen Quinn (stephen.quinn@cbc.ca)' ; 'Tanya Fletcher' ; 'trenshaw@biv.com' ; 'Vaughn Palmer (vpalmer@vancouverun.com)' ; 'Wendy Stueck (wstueck@globeandmail.com)'
Subject: Recent Developments Respecting Auto Insurance

A number of developments respecting auto insurance in B.C. and Alberta have occurred in the last two weeks. This commentary provides some perspective on four recent events, including a review of auto insurance in Alberta.

Richard McCandless

RECENT INITIATIVES RESPECTING AUTO INSURANCE IN BRITISH COLUMBIA

The Government Changes ICBC's Basic Rate Design to Avoid Double Jeopardy for Commercial Drivers

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Page 309 of 311 to/à Page 310 of 311

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The writer is a retired senior BC government public servant whose paper describing the BC government's manipulation of the finances of BC Hydro from 2008 to 2014 was published by *BC Studies* in November 2016. *BC Studies* published his paper on the 40-year financial history of ICBC in 2013. He is an intervener in the BC Utilities Commission's current reviews of ICBC's and B.C. Hydro's rate requests.

¹⁵ <https://vancouver.sun.com/opinion/columnists/vaughn-palmer-horgan-aims-to-get-handle-on-icbc-downplays-rumours-of-snap-election>

¹⁶ <https://vancouver.sun.com/opinion/columnists/vaughn-palmer-horgan-aims-to-get-handle-on-icbc-downplays-rumours-of-snap-election>