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Wednesday 11 July 2012

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Mercredi 11 juillet 2012

Standing Committee on Finance and Economic Affairs

Automobile insurance review

Comité permanent des finances et des affaires économiques

Examen de l'assurance-automobile

Chair: Bob Delaney
Clerk: Valerie Quioc Lim

Président : Bob Delaney
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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

COMITÉ PERMANENT DES FINANCES ET DES AFFAIRES ÉCONOMIQUES

Wednesday 11 July 2012

Mercredi 11 juillet 2012

The committee met at 0900 in the Hilton Windsor, Windsor.

AUTOMOBILE INSURANCE REVIEW

The Chair (Mr. Bob Delaney): Good morning, everybody. We are here to resume our study of the auto insurance industry, pursuant to the order of the House dated May 31, 2012.

ONTARIO TRIAL LAWYERS ASSOCIATION

The Chair (Mr. Bob Delaney): Our first deputation this morning is the Ontario Trial Lawyers Association: Andrew Murray. Good morning. Make yourself comfortable. You'll have up to 20 minutes to make this presentation, followed by up to 10 minutes of questioning divided among the three parties represented. The first round of questioning will begin with the official opposition. Please introduce yourself for Hansard and commence.

Mr. Andrew Murray: My name is Andrew Murray. I'm the president of the Ontario Trial Lawyers Association. I'm very pleased to be here on a second occasion, because I did appear at the end of May as well. I'm not going to repeat what I had said previously, but I have some additional comments, particularly in light of the release of the superintendent's report, which is new since my last appearance before this committee.

I also want to begin with something that you would not have heard about, because it was only some information that my organization was able to collect through a freedom-of-information request. I'm hopeful that on the issue of catastrophic impairment changes, which is certainly an issue of interest and concern for my organization, the perspective that I have to offer from my review and summary of the freedom-of-information data will be helpful to this group.

We had the expert panel's report released, and clearly, having reviewed the superintendent's report, with recommendations to Minister Duncan, it forms the backbone of what the superintendent is saying should be done going forward. We've heard from the superintendent and from Minister Duncan, as well, the comment that it's all about science and getting the medical science right. When you take a look at the minutes from the expert panel group and some of their weekly commentary, which is not information that was ever disclosed publicly—it forms the background, essentially, to what has become the written report—it's clear that it's much more vague than how it has been presented in terms of this being a consensus viewpoint, certainly in terms of this all just being about the science.

Certainly, in their early discussions, there were suggestions by the expert panel members that the definition of catastrophic impairment should be expanded, and that's a theme that I repeated last day without knowing that they had said this. Further, almost all of the panel members made comments, initially, indicating support for the notion of combining mental and physical impairments together when looking at the whole-person impairment. That ultimately did not form part of the recommendations, but when you look at the commentary, you can see that they were struggling with this. It almost looks like there was, for some reason, some arm-twisting going on.

With respect to whether or not the current definition for brain impairment, being a Glasgow coma score of nine or less, was appropriate, the initial dialogue between the eight panel members resulted in only three of them strongly disagreeing or disagreeing, so sort of being against that notion. It begs the question that if their initial impression was that it's probably an adequate tool, why have the need for a change to make something more complicated?

When asked to provide recommendations for improvement to the definition of catastrophic impairment, there were some very insightful comments that were made. One of the comments was this: "The central purpose is to identify patients whose impairments were created by the accident and who probably have major, long-term financial burdens on the system. Therefore, we need to ensure close to 100% sensitivity for detecting all persons with at least potential needs of a substantial nature." That echoes something that I said last day that my organization feels strongly about: You have to make sure that wherever the bar has been set, it's going to capture those people most in need.

Another comment on this same point—and this is exactly what we've been saying: "One thing is certain: It is not always better to change a system without understanding the consequences of implementing new rules." I had mentioned last day about the law of unintended consequences. That's exactly the point that the expert panel itself appears to have been struggling with.

There was an observation about trying to pick and choose and change these definitions, and one of the comments from an expert panel member in the weekly commentary was this: "We are likely answering the wrong question by the piecemeal approach to a system where we have no decision yet on what we want to accomplish and no research on what any suggested alternative would accomplish."

This comment goes to putting the cart before the horse. Without knowing whether the bar is going to be raised, whether the bar is going to be lowered, how many claimants are going to be considered catastrophic after the changes, it's pretty hard to know—and the expert panel struggled with this—what work should go into the analysis.

On the issue of combining—this is combining mental and physical impairments—one of the comments was this: "To enshrine the prohibition to quantify is arbitrary, discriminatory and inaccurate." I note that the Court of Appeal has more or less made similar comments, but on the expert panel itself, certainly this individual supported the need to combine mental and physical impairments.

The scientific literature indicates that when a person has both mental and behavioural disorders, in addition to a physical disorder, the care for the physical disorder may be increased. It kind of stands to reason that if you've got both things going on, your needs are going to be greater. That was identified by one of the expert panel members.

The AMA guides have been used for the last 15 years as the template for these assessments. I'm the first to acknowledge on behalf of my organization that that is a very imperfect analysis and that it has not kept pace with changes to the AMA guides themselves. That being said, it's not as simple as using a medical textbook, because you're talking about a legal test which evolves and which is interpreted by arbitrators and by judges.

One of the panel members in the commentary seemed to be making that same observation by making this statement in the notes that were released pursuant to our freedom-of-information request: "The implications of removing assessment of the impairment level and dispensing with the AMA guides and replacing them with specific criteria which focus on current health care and social service utilization and dependency have not been investigated." So to impose a regime, you're really walking into the unknown.

I'm going to conclude the section of my talk dealing with the freedom-of-information material by going through some excerpts of a meeting that was held in December 2010. Pierre Côté, who was the chair, had this comment: "How things are done in the field is beyond the scope of this project." So, expert panel, don't be concerned about what actually happens in the field. It's a huge issue but not required in order to make recommendations on the definition. We say, of course, that that is wrong-headed and that you must have regard for what's going on in the trenches before you make any of the changes.

Willie Handler, who was involved at the time, noted that the cost impact of what the expert panel was analyzing was not part of the discussion. That was off the table. It wasn't something that they were to consider. It will be a discussion that the government will be undertaking later. We say, of course, that you cannot divorce the analysis of what this is going to cost and what the implications are going to be from a pure medical analysis of a definition.

To his credit, Michel Lacerte, who is going to be speaking later this morning, said, "But that's what the catastrophic definition is all about. It is used to determine the maximum payout. If the claimant does not have the money, they are out of luck. Ethically, if people fall in the gap or they do not have a claim, they are out of luck." This was the debate that was going on by these panel members.

Another panel member, Arthur Ameis, said, "As a definition, it is a financial construct, not a medical one. What is the line from the government's perspective? We need to know that. Then we can make the recommendations as to how we set this test. You can't do it in the reverse order," which appears to be what has happened here.

Then Willie Handler said, "Well, that's where the government will have to make political decisions. They will have to look at how many people there are in the gap and what will be the impact."

0910

I'm very hopeful that this group is going to take that responsibility very seriously, looking at who is going to be in the gap, who is going to be considered to have a catastrophic impairment and who is not, because if you're an individual in need and you're in that gap, your needs are not going to be met.

I now want to make some comments about the superintendent's recommendations, because that's new from the time of my last appearance. I want to restrict them to really the new information that doesn't exactly parrot what was in the expert panel report.

Something that was new was the recommendation by Mr. Howell to have family physicians sign all of the insurance forms for ongoing treatment and therapies for individuals who have a catastrophic impairment. There are some significant flaws with that approach. First off, as we all know, many people do not have a family physician. I can tell you that in my practice, people who have been in motor vehicle accidents and are part of the system have an even harder time than the average citizen in finding a doctor. Doctors essentially will do an interview and will say, "I'm not taking on a patient who has your basket of problems because it's too complicated." In our respectful view, it is not right to have the family physician as the sole gatekeeper for the catastrophic impairment form completion regime because it's not workable.

Even those who have a family doctor will fill find that the doctor is very disinterested because they're busy. They're overworked. They have a patient load of 3,000 or more patients. They don't want to now be completing

form after form, particularly when the issues that require the forms' completion might be outside of the particular expertise of that family doctor. It may be better left to the specialist, to the occupational therapist, to the case manager. The case manager and the entire rehab team have a lot to offer. That recommendation ousts them and in our view is not appropriate.

Phil Howell is to be commended for hearing the stakeholders when they said that you cannot make hospitalization in an in-patient rehab facility a prerequisite to passing any of these various definitions. I want to give proper credit where it's due. There were consultations that were held. There was an outpouring of concern on that issue and it appears that he has heard that.

I want to end this segment of my talk reflecting on the interim catastrophic impairment designation, because the expert panel said that there needs to be some mechanism to get benefits in a timely way to those who need them, and they came up with the interim catastrophic impairment designation.

Mr. Howell, unfortunately, seems to have hollowed out the spirit and intent of that recommendation by restricting any interim benefits, seemingly for all categories, attendant care and medical rehab, to an additional $50,000. I need to remind this group that going back to 1996, the basic benefit that would have been available to anyone was $100,000. This interim benefit, essentially, for those who have an interim catastrophic designation, would simply restore a benefit that people had 15 years ago which, as we know, doesn't even keep pace with inflation. It seems that particularly with the interim benefit designation, you can't pick and choose. You can't say, "We're going to give this because it's needed," but then make it low enough that it's not going to essentially deliver the effect that's intended.

What are OTLA's main criticisms with the proposals that have been put forward by Mr. Howell? We say it is far too complex. We've said this for years; we've said this going back to the five-year review on auto insurance. A key theme was that we had to make this easy to understand, easy to apply; simple, not complex.

If these recommendations are accepted, we now have injected into the analysis the American Spinal Injury Association classification of spinal injury, called ASIA; the extended Glasgow outcome scale for traumatic brain injuries; the global assessment of functioning for psychiatric disorders; and a very long and densely worded list of indicia pointing to the persuasiveness of evidence in the realm of psychiatric impairments. I challenge anyone in this room to read some of that language and themselves understand what the impact would be, just as motorists, just as policyholders—let alone your constituents or the average Joe on the street—to actually look at their policy and try to figure out, "What does this mean for me if I get in an accident?" When it said "paraplegia" or "quadriplegia," I suspect they know what that means. That's what the current test is. When it starts referring to the American Spinal Injury Association and various classifications, I suspect they don't.

I can tell you that whenever you add new tests like this, which incorporate external documents, you're injecting uncertainty, you're adding unpredictability to the system, you're going to increase the disputes because both sides need to figure out, now, what this means, and unfortunately you're going to be slowing down those people from getting benefits.

Our other main criticism is rebutting the suggestion that this is all just based on good science. That seems to be the comment, that we just want to get the science right. I'm hopeful that the excerpts that I reviewed with you from our freedom-of-information request show how even the expert panel didn't feel that this was all about good science. This is a policy decision—it has to be—deciding who is in and who is out on the issue of catastrophic impairment, the same way it was a policy decision for the minor injury guideline, deciding who was in and who was above the minor injury guideline. You may use some scientific measurements to assist you, but when it comes down to figuring out where on a spectrum someone sits, it's basically a policy decision.

In looking at the expert panel's report, which has informed Phil Howell, what you have, essentially, is the expert panel being given a piece of paper, which might represent the entirety of all their considerations. They're told now, "We've folded this paper in half. We only want you to consider what you can see, in giving us your opinion. We don't want you to consider the other elements that you know to exist but which are beyond the scope of this expert panel report." By not considering the cost of what they were going to do, by not considering the implications, it really undermines the effectiveness of their recommendations.

The last point that I want to make, then, relates to the need for data and the type of data that this group should insist on having and should use your powers to obtain in order to make properly informed decisions. Phil Howell's report had some statistical analysis that stopped in 2006—

The Chair (Mr. Bob Delaney): And just to remind you, you've got about two minutes to go.

Mr. Andrew Murray: All right. Anyone who goes to a bank with data from 2006—the last update to data—knows that they're not going to get anywhere when they ask for a loan. The government has an even stronger onus of ensuring that they have accurate data.

This group should be asking for the breakdown of all of the catastrophic claims by category. How many total-blindness cases are there? How many 55%-impairment cases are there? How many spinal cord cases are there? You should then be asking what the average costs of those claims are, broken down by category, and what are the total costs of the catastrophic claims within the whole system, so that you know how much money is at work. Before you tinker with the quadriplegic definition, it might be nice to know whether you're talking about 10 or 100 such cases in the system annually.

Additionally, we need to know, does Mr. Howell think that the catastrophic cases are going to stay approxi-

mately the same? Is the bar at the same point? Because if it is, why change it? If it's going to be more people caught, then we should know that and cost it out. If fewer people are going to be caught, and that's the intention, then we should know that too, so that you know what the effect is on the rest of the system.

I'll leave my formal comments there, but I do hope that there are some questions for me.

The Chair (Mr. Bob Delaney): Thank you. Mr. Yurek.

Mr. Jeff Yurek: Thank you, Andrew, for coming in today. I'm still waking up, so—

Mr. Andrew Murray: I came down last night.

Mr. Jeff Yurek: What, in your idea, would be an ideal definition of catastrophic, and how should that be determined, in your point of view?

Mr. Andrew Murray: That is not a question I can just simply answer in two or three sound bites. What I would say is, it really calls for an analysis, first of all, of: Is there a need for change? I'm not sure that my group would argue that there's any need for a change, because we've got 15 years of experience with the existing system. The wrinkles that exist, and there are always wrinkles, have fortunately been ironed out through the court system. No one has shown my organization any evidence to suggest that there is a crisis on catastrophic impairment that needs to be fixed. I would say the status quo should remain, for certain, pending something conclusive that demonstrates the actual need for a change, recognizing that every change will then trigger a whole cascade of further consequences.

0920

Mr. Jeff Yurek: And my second question kind of has catastrophic involved: Someone who is visiting their friend's house climbs up a ladder, falls and has a catastrophic injury, per se. How would that person—he doesn't have an auto insurance policy, obviously; he fell off a roof—fund their rehabilitation costs?

Mr. Andrew Murray: Those are the most heartbreaking stories. I have someone in your riding who is a 43-year-old engineer—used to make over $100,000 a year—on a mountain bike, and he's a quadriplegic because of his accident. His wife is the one who provides him care 24 hours a day; fortunately she happens to be a nurse. They get maybe six hours of CCAC assistance coming in. His children pick up the slack. His wife picks up the slack. The strains in that family are enormous. He had some private insurance; he had critical injury insurance—in his case, $100,000. He was able to buy a modified van so he could get around and some home modifications so he could stay in his home. He's the rare exception, because he was a higher-wage earner.

Most of those people, in all those other contexts other than auto, really suffer. Because they suffer, I can tell you that the medical people keep them in the rehab facilities longer, and they're turning out the people who have auto insurance back into the community, knowing that those people are going to be—it's a way of managing the beds and managing the resources.

Mr. Jeff Yurek: Thank you.

The Chair (Mr. Bob Delaney): Mr. Singh.

Mr. Jagmeet Singh: Thank you for your insightful presentation. There's a lot of issues there that I think we're all going to take to heart.

Mr. Andrew Murray: And I'd be happy to share this freedom-of-information data with anyone who's interested.

Mr. Jagmeet Singh: Thank you. I think we will follow up on that.

One of my concerns—and I think you just started touching on it, and I've been asking some of the other deputants—is that there seems to be a shift. If the catastrophic injury definition will capture less people, the shifting of people would be to put more burden on the public system, on the public sector, and taking away the onus off the private sector to cover some of these injuries, which would put even more strain or burden on an already overstretched or overburdened public system. What's your take on that? What are you comments and thoughts on that?

Mr. Andrew Murray: We believe that that is a very real concern. We know from the physicians that we talk to that they definitely triage people in the rehab facilities based on whether there's auto insurance or not, just as in the example that I gave previously. Those people have needs. Their needs aren't going away whether the definition has suddenly changed. I would hope that in our society, we would ensure that those needs are met, that they're given basic care and given some opportunity for dignity and the integrity of the person. If it's not coming through the health care system directly, we are talking about people—maybe they're not rehabbed back to work, so instead of being employed people paying taxes, they're collecting Ontario Disability Support Program benefits, because they're not back into the workforce. There's only a certain window of time to get people back into the workforce.

Do I know what the statistics are? Of course I don't know that, and my organization can't know that. But we hope that this is a dialogue that someone who's proposing these changes is having with the Ministry of Health, for example, or the Ministry of Community and Social Services, which are certainly two ministries where the ripple effect will most certainly be felt if the people who are most in need now are no longer able to access what previously was a privately funded benefit.

Mr. Taras Natyshak: I have a couple of questions. Can I jump in, Chair?

The Chair (Mr. Bob Delaney): It'll have to be a quick question.

Mr. Taras Natyshak: I'd like you just expand on the aspect of mental impairment as it relates to, potentially, post-traumatic stress. There was recently a horrific accident in this region where the driver lost several family members. I can only assume that that would affect a person for a very long time afterwards. Could you tell us how, under the new definition, PTSDs would be insured or how they would be dealt with?

Mr. Andrew Murray: Under the new definition, if the proposal, as worded, goes through—it's actually too long for me to even read to you. It talks about a person having a GAF score—I was talking about this earlier, the global assessment of functioning—of 40, which would mean something to a clinical practitioner and probably wouldn't mean anything to anyone in this room.

As someone who has had clients who have suffered these kinds of problems, the GAF score of 40 is a very low score and would certainly, in my estimation as somebody who practises in this area, catch far fewer people than the current test, if that's what you're asking me.

Also, there's this long list of having indicia of what would be demonstrable and persuasive evidence: institutionalization, repeated hospitalizations, interventions, determination of a loss of competence—so, somebody has actually said that the person is no longer competent to manage their affairs. We know that this is a very, very difficult test to meet the—

The Chair (Mr. Bob Delaney): Thank you. I'm just going to move the rotation to Mr. Naqvi.

Mr. Yasir Naqvi: Thank you, Mr. Murray, for your presentation today. You were relying on some freedom of information that you have obtained, and we will appreciate if you share that with us, because I like to make my own judgment as to what those documents stand for.

Mr. Andrew Murray: Absolutely.

Mr. Yasir Naqvi: Some of your commentary was your editorial, so I just want to make sure that we, the committee members, can have access to those documents as well.

I want to get your views on another important theme that we're hearing in these hearings as we travel. It's around fraud within the system. In your experience, being a litigator, how often do you see fraud within the system that is having an impact on the premium rates we pay, the benefits that people receive etc.?

Mr. Andrew Murray: I'm from London. I don't see fraud in my jurisdiction. One of my first acts as president—and I've been in this role now for a month or so—was to meet with the IBC because I was interested in getting more information myself. Following that meeting, I had them come to present at our board at the beginning of June. What I was able to glean from the vice-president who came to speak to us was that fraud does not form any part of the catastrophic world or of those who are very nearly catastrophic; it is part of the soft tissue and the more minor injury world. I was also told, which affirmed my own experience, that it is almost exclusively a problem of the GTA, I'm very sorry to say. Whether that will expand to other parts of the province: perhaps; I don't know. Often what we see there does find its way out. So, my members—we don't have experience with fraud.

The third point that came out of the discussions was that lawyers are not seen as any part of the fraud piece, according to the IBC, which I was very gladdened to hear. Unfortunately, paralegals were implicated by the IBC. I wrote my own follow-up letter to say, "We want to work with you, IBC, on these issues of common interest. Maybe we can help support initiatives dealing with paralegal regulation. Maybe we can help support initiatives dealing with more enforcement available to stamp out fraud." We don't want fraud; it tars and feathers the honest claimants that we represent unfairly. They have this brush of suspicion—they then have to go to heroic lengths to persuade someone that they're legitimate. So, we're as interested as anyone in helping to eliminate that.

Mr. Yasir Naqvi: I appreciate that. One of the most curious statistics that has come to our attention—and Mr. Howell spoke to it when he presented to this committee—is that the medical costs seem to continue to rise, whereas the number of accidents has stabilized. How, in your experience, can you explain that dichotomy?

Mr. Andrew Murray: When Mr. Howell quotes those statistics, by his own admission, his data is all old. He's essentially referring to data that existed before the September 2010 changes. There's no question, from the little bits of information that we've been able to glean, that those numbers are going way, way down with the implications associated with those changes—the minor injury guideline in particular; doing away with housekeeping.

I'd be very careful to read too much into those comments as a forecaster for future trends, but there's no question that it did become a disconnect. Again, according to Mr. Howell's data, it looks like it's more of a GTA—

The Chair (Mr. Bob Delaney): Thank you. That pretty much concludes your time with us this morning. Thank you for coming in.

Mr. Andrew Murray: Thank you.

HUGHES INTELLIGENCE INVESTIGATION SERVICES

The Chair (Mr. Bob Delaney): Our next presentation is Hughes Intelligence Investigation Services: Barry Bentley and Ron Prior. Good morning and thanks for joining us today. You'll have 20 minutes to present your thoughts and opinions, followed by up to 10 minutes of questioning. This round of questioning will begin with the New Democrats. Please introduce yourselves for Hansard and proceed.

0930

Mr. Barry Bentley: Good morning. My name is Barry Bentley and I'm a retired police detective with 25 years' experience in investigation and motor vehicle accident reconstruction. I am currently the owner of Hughes Intelligence Canada, a private investigation agency based in Sarnia, but operating throughout Ontario. With me today is Mr. Ronald Prior, a retired police detective inspector with 26 years' experience and the founder of Hughes Intelligence Canada. We have a combined 73 years' experience in law enforcement and investigation. Our agency has 14 highly qualified investigators.

First off, I would like to thank the Standing Committee on Finance and Economic Affairs for the opportunity to speak before you today.

The Ontario Auto Insurance Anti-Fraud Task Force December 2011 interim report identified four key areas which they believe need to be addressed—prevention, detection, investigation and enforcement—to successfully combat fraudulent activity and its effect on automobile insurance premiums and related health care expenses in Ontario. We agree with this finding, along with the need for consumer awareness of fraudulent activities.

In our experience, it is essential to establish a central control unit which utilizes all available police and private investigator resources in Ontario to reduce fraudulent activities. Prior to the Paul Bernardo case, police forces throughout Ontario found themselves in the same position as the current anti-fraud task force: no collaboration, exchange of data, networking or standardized training amongst investigators.

Mr. Justice Archie Campbell recommended that police meet required core competencies, including major case management; interviewing techniques; a central data bank; crown brief preparation; and specific training in major case investigations. The implementation of these recommendations across the province has noticeably increased the prevention, detection, investigation and enforcement in bringing criminals to justice. We recommend that a similar approach be taken to combat fraudulent automobile insurance injury claims, including health care fraud. To meet this objective, we recommend the following:

—adopt a criminal investigation technique similar to those developed by the United States Health and Human Services Office of Inspector General, which conducts criminal, civil and administrative investigations of fraud and misconduct related to HHS programs, operations and beneficiaries;

—develop a central and regional insurance fraud control unit and certification programs. As an example, the OIG certifies Medicaid fraud control units which, amongst other things, investigate and prosecute Medicaid fraud. The OIG's central controlling unit reviews and directs information received from all agencies and resources, such as a consumer tip hotline and education for public awareness;

—thirdly, promptly implement a health care fraud investigation certification program for investigators, adjusters, service providers and all others involved in insurance fraud assessment, review, prevention, detection, investigation and enforcement. We recommend a standardized core competencies training curriculum that includes private investigators' courses, focused fraud investigation courses, and crown brief preparation and presentation courses;

—apply statistical and artificial intelligence fraud detection techniques to existing data banks. Remove barriers to data mining by certified fraud investigators; and

—explore the development of a special roster of crown prosecutors specializing in handling insurance and health care fraud cases.

In closing, it is our opinion that the implementation of our recommendations will provide savings through public awareness, focused investigations and enforcement. We look forward to assisting the government of Ontario in bringing any necessary changes or measures to ensure consumer awareness and protection.

We're open for any questions.

The Chair (Mr. Bob Delaney): Mr. Singh.

Mr. Jagmeet Singh: My colleague will ask first.

The Chair (Mr. Bob Delaney): Mr. Natyshak.

Mr. Taras Natyshak: Good morning. Thank you very much for your presentation. The model that you propose and the suggestions, are they based on best practices in another jurisdiction, and could you point me to those if they are?

Mr. Ron Prior: Yes. Right now, we're looking at the model that is being used by the Health and Human Services Office of Inspector General in the United States.

Mr. Taras Natyshak: Specific state, or federally?

Mr. Ron Prior: No, it's federal, and it goes across states.

The reason it was implemented is for the very same reasons that we have problems here today. They had a high number of frauds in the health care system, in Medicaid and in automobile accident claims. This was put into place so that there would be a controlling body that would be responsible for managing the investigations of all these areas.

Mr. Taras Natyshak: Ultimately, who would pay for this controlling body and the mechanics of it?

Mr. Ron Prior: Right now, when you look at costs for this unit—the IBC, the Insurance Bureau of Canada currently has a unit called the SIU, special investigations unit. They have offices regionally across the province of Ontario in most of the major cities. They right now are responsible for adjusters coming to them with a claim that they feel may be fraudulent. They assess it, they review it, they come back, and they tell the adjuster either yes, hire a private investigator, or "Don't hire one; there's nothing there." It would be a matter of expanding that and giving them more control to be the managing controlling unit for the province. The cost would be lower. Plus the savings, of course, would be a lot.

Mr. Taras Natyshak: So you're asking the province to sort of create this amalgamated entity but not necessarily to manage it or run any aspect of it?

Mr. Ron Prior: No; the province, I think, is going to be in a position where they're going to have to make regulations, and they're gong to have to be the ones to allow them to do certain things.

Mr. Jagmeet Singh: How complacent are the insurance companies with respect to allowing fraud to occur, turning a blind eye to fraud occurring or not properly investigating or following up on any claims that are suspect?

Mr. Ron Prior: In the 14 years that I've been in the industry, we see, in a lot of cases where we believe there is fraud, that the evidence is gathered, the insurance companies look at it, and they ask, "Is there enough evidence here for a criminal prosecution?" Rather than go to a criminal prosecution, they go to a civil case; they go to a tort. I don't think they're ignoring the fraud: They're hoping to use that evidence in the tort case.

Mr. Jagmeet Singh: Sure. What about denying a claim outright if they find that there's any suspect nature to it and not paying out the money instead of paying out the money and then double-checking afterwards and saying, "Oops, we made a mistake"? What about having some proactive steps taken by the insurance companies so they don't pay someone incorrectly?

Mr. Ron Prior: That does happen. We do see cases where it's so prevalent and bad fraud and there's so much evidence there that the insurance company will come to them and stop the claim. Of course, now they'll take some civil action against the insurance company to keep their claim going.

The Chair (Mr. Bob Delaney): Mr. Naqvi.

Mr. Yasir Naqvi: Good morning, gentlemen. The previous presenter made a categorical statement on the lines of "There's no fraud in London. This is primarily a GTA issue." Your comments on that?

Mr. Ron Prior: I understand Mr. Murray's remarks, but I think what he was alluding to is his perspective of catastrophic injuries. Where there are really catastrophic injuries, he doesn't see much fraud. As you mentioned, soft tissue—and most of the cases that we investigate where we see fraud are soft tissue. This is the whiplash, or "I have a bad back," or "my knee"—these are all that type of issue where we mainly see frauds occurring. And it is regional. We've done cases all the way up to North Bay, Parry Sound, Kingston, so it's not just the GTA where these frauds are occurring.

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Mr. Barry Bentley: Due to the population, obviously, you're going to see more in the GTA area. I mean, that just makes sense. But it is widespread; it's province-wide. Out of 17 years of Hughes Intelligence, the number of cases that come in on a retrospective—out of 10 cases, nine of them will be proven to be somewhat fraudulent, if not completely fraudulent. That's the ratio we're seeing. Out of the 10% that's left over, a portion of those could neither be determined positive or negative due to a lack of evidence, but there's a small fraction of them that they get proven that they are legit. That is the standard throughout the industry of private investigation.

It's everywhere. Obviously, just population-wise, you'll get that spike because of the population.

Mr. Yasir Naqvi: So it's a serious problem.

Mr. Barry Bentley: Yes, very serious.

Mr. Yasir Naqvi: Quickly, your recommendations, by way of your experience, as to how insurance rates can be lowered in Ontario.

Mr. Ron Prior: With the proper training of the adjusters, the people responsible for reviewing and assessing claims, and the investigators—right now, a lot of ex-police officers will become private investigators or will be hired by the insurance companies as their investigators. Not all of them—and I would say maybe one out of 10—have any fraud experience. This is why police forces—the Ontario Provincial Police, the RCMP and your major municipal police forces—have a fraud unit that specializes in the investigation, the case management, the preparation of fraud.

This is what happens with adjusters. They look at something; they don't really know what a fraud is. "Is it a fraud?" We see cases where it might be a chiropractor. The person is supposed to attend on Monday, Wednesday and Friday. Due to some reason, when we're doing surveillance, they don't leave the house. They don't go on Monday, they go on Wednesday, and they don't go on Friday. The adjuster comes back later and says, "We just got billed for Monday, Wednesday and Friday." Well, that's still fraud. That chiropractor is putting through false billing.

The Chair (Mr. Bob Delaney): Thank you. I'll move to Mr. Yurek.

Mr. Jeff Yurek: Thank you, gentlemen, for coming. I appreciate your recommendations. We've been pushing for crown prosecutors to get to work on the fraud case, because we feel it's huge. The fact of using the HCAI system to root out fraud—right now, there are so many barriers in the way of sharing the information that needs to occur.

I really appreciate you giving the idea of expanding the SIU, because I've been grappling in my head how to make it more cost-effective for the government and the system as a whole, and that's an avenue that we'll take a look at.

My question to you is, what other challenges and barriers are there to actually going after fraud, in your opinion, that you're seeing right now?

Mr. Ron Prior: Well, one of the things that we see, especially in the example I just mentioned, is there's no deterrent. There's no deterrent out there to stop somebody from doing something. If a massage therapist overbills or extends treatment, the worst that can happen to him is the insurance company says, "You don't have our business anymore on that case." So there has to be a deterrent.

The other thing that we see is that it's important that they have a right to inspection, and this is something that the HHS and the Inspector General's office have. Today, if there is believed to be a fraud in one of the health care areas, the investigator should be able to go and have a look at their records, have a look at their invoices, look at their bills. The Ministry of Transportation of Ontario has the right to come into my office today and inspect my security and inspect my information that I've gained from the Ministry of Transportation. They have that power to walk in. The Ministry of Natural Resources has the power to walk into my house and open my fridge and see if I have fish that I caught yesterday. So there are

allowances that can be made to allow the investigator to do certain inspections.

Mr. Jeff Yurek: The insurance companies cannot come in and do audits. Is that what you're saying?

Mr. Ron Prior: Basically, an insurance company right now can't walk into a chiropractor's office or a physiotherapist's office or a healthy-equipment supply place and say, "You've billed us. We want to see your invoices or we want to see your records." They can't do that right now.

Mr. Jeff Yurek: That's odd. I'm a pharmacist, and I have audits from insurance companies all the time, checking my billings and comparing it to what I've billed and stuff.

Mr. Barry Bentley: It's not throughout the industry. The whole problem is, it goes from top to bottom, from the claimant to some of the lawyers to some of the providers etc. The whole system needs some kind of support as far as regulations to give the power to the people who are actually responsible to investigate possible fraudulent activity. If you're powerless and you have to jump through hoops, it makes it a tougher gig, and subsequently one that becomes put to the side or dealt away in an agreement or a plea bargain because there are too many hurdles to jump. Streamlining that, very similar to what has been done in numerous other fields of professional industries, isn't that big of a job. It's just one that needs—

The Chair (Mr. Bob Delaney): Thank you, gentlemen. Thank you for having come in to offer your testimony today.

DR. MICHEL LACERTE

The Chair (Mr. Bob Delaney): Our next presenter will be Michel Lacerte. Good morning.

Dr. Michel Lacerte: Good morning.

The Chair (Mr. Bob Delaney): Make yourself comfortable. You'll have 20 minutes to offer your testimony before the committee, followed by up to 10 minutes of questioning. This round of questioning will begin with the government side. Please begin by stating your name for Hansard and proceed.

Dr. Michel Lacerte: My name is Michel Lacerte. I'm a physiatrist in London, Ontario, but I live in Port Stanley. Mr. Yurek is my MPP.

Mr. Jeff Yurek: Hey, welcome. Great town. Great village.

Dr. Michel Lacerte: That's right. Basically, I want to thank you for the opportunity to speak to you today regarding the automobile insurance system in Ontario and to give you my perspective as a busy treating physiatrist, which is a specialist in physical medicine and rehabilitation, and also the perspective of a rehabilitation counsellor and, on occasion, a disability management policy analyst.

It's interesting that over the years I've been attending different activities under automobile insurance. Initially, I was named by Floyd Laughren to be part of the accident benefits advisory committee. This was way back. If you don't remember, the accident benefits advisory committee was basically a committee that reported at that time to the Ontario Insurance Commission. This was before it became the Financial Services Commission of Ontario. I was a physician on that committee. Subsequently, I got involved again, this time as the representative of the College of Physicians and Surgeons of Ontario. At that time, the Conservative government had created an accreditation committee reporting to the minister in regard to designated assessment centres. Then—my luck—I got pulled into the expert panel. Before recently, I never was referred to in the Toronto Sun, so that's a first.

Having said that, you may be interested in terms of how I managed a catastrophic impairment determination DAC centre, which I did for over 10 years, in addition to being also a member of three other DAC catastrophic centres. I ran one of the two catastrophic impairment DAC centres for pediatrics in the province, and my area was from Kitchener all the way to Windsor, going as high as Owen Sound.

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I would like to stress that when we're talking about all of this, we're talking very much about private sector rehabilitation, and I have strong views in terms of strengthening the public health care system that basically treats everybody equally.

Now I'm going to bring you into the whole field, coming from my perspective, of rehabilitation, and I address this as basically the rehab buffet.

Since the beginning of my practice in 1990, being trained in the US, I clearly identified the Americanization and lawyer-ization of service delivery in Ontario. I was just looking at how many physiotherapy centres there were, for example, in London, and it has just exponentially increased in terms of numbers. Also, before, you saw mom-and-pop types of operations, small operations, whereas now you see names of companies and many of them are American companies. Unfortunately, it's very much done in a way where services that are being provided are being provided in a gunshot approach, which is basically you come in the door and you can have access to all sorts of treatment, not just the physio, not just the chiro. You go there and basically it's almost as if they're now going to do your nails as well. So they really have expanded in terms of services.

What is important is that in contrast to the US system, we do not have strong utilization management controls. When I was working on the rehabilitation floor in the US, folks would come to me and say—that would be the utilization nurse for Medicaid patients, as well—"Your patient has not made any progress over the past two weeks. How come they're still here?" That was really problematic because if nothing was happening, they may have denial of payment, and denial of payment—we're talking about hundreds of thousands of dollars in denial. If you're a young physiatrist and you have a few of those denials, there goes your job, because the hospital is not going to keep you very long.

That's exactly the opposite of when I came to Ontario. In Ontario, I remember a patient who had an injury, and we were waiting for a ramp so that they could go back home, and that ramp was not going to come for six weeks. I said, "Well, you could rent the ramp," and so on. They said, "No, no, no." Basically, they said, "Michel, this is not the US here. We can't afford it." I found it so funny, because in the meantime I was getting the neurosurgeon and the orthopaedic surgeon saying, "When can you take my patient?" and so on. Really, there is zero understanding that if you're in rehab, people need to move on.

However, what is happening now has been referred to: Hospitals have been creative and have been offering their own private services. The reason why, in many cases, they move them out quickly is so that they can get other services—the other door.

Whereas in Quebec, it's very clear that those centres that do the EB rehabilitation—I'm talking about severe brain injuries, spinal cord, amputees and so on—the government says, "You will be given, per capita, a certain amount to look after these folks." One thing that you cannot do is to provide services and go in direct competition with the providers on the outside that do soft tissue injury.

There is no limitation. Hospitals right now can go in direct competition with the folks and in many cases will take away the folks who were providing physiotherapy, for example, to the public and will put them instead to provide services now that can be billed to insurers. This is very hard, and this is, I think, what we have seen.

When you look at the system—Quebec, Manitoba and so on—you need to look at how much can the person—for example, the victim of crime is a perfect example. I remember a quadriplegic victim of crime, who has a maximum of $25,000. How can they have access to that service when the hospital says, "No, no, we prefer not to deal with you guys but basically do work where we're going to make some money"—which is really, I think, not in keeping with what you should have.

Furthermore, in London, there are about 11 physiatrists. I'm the only one in the community. Every one of them is basically in the hospital, with salary paid by the hospital to provide some services in the hospital—and this is attached to the university. Most of them simply don't want to do OHIP because they make more money doing private work for lawyers and insurers, using public facilities and resources. If they want to do that, they can come and pay all the overheads I have to pay on the outside and employ people.

What is important for me is that when you look at rehabilitation right now, we're really facing what I would refer to as a Chinese buffet, because basically you can have all sorts of services; there's no limit. You want to have aromatherapy? You want to have a colon enema? If you've got somebody signing it, you're a go; it's good to go.

The problem is that in that Chinese buffet, where you have literally thousands of choices, there are many cooks, and basically there's no public health inspection. What we see is that the family doctor, as was referred to earlier, is oftentimes not equipped or remunerated to try to do the case management, so by default in many cases, the plaintiff attorney starts taking on the kitchen and basically is running the kitchen. If a person has a problem, "Well, you're going to go see my psychologist. You're going to go see my physiotherapist. You're going to go see my speech language pathologist." But I really, truly believe that the Ontario plaintiff lawyers basically have hijacked the whole rehabilitation service delivery in Ontario. Frankly, they would not pass the public health inspection because this is not the outcome that normally, from a medical point of view, we would expect it to be.

People talk about rehabilitation and services. Sometimes we refer to it as "shake and bake." But that's not enough. Rehabilitation is truly a philosophy. I tell people, if you want to know if it's rehab, just remember this: Does the service being provided optimize the individual's ability, autonomy, social participation in the different roles that they may have—as a spouse, as a worker and so on—and, more importantly, social integration? I'm going to tell you, in the vast number of the services being provided right now, that clearly is not the case.

We have to realize that too much treatment can be harmful. Things such as you have in basically pretty much all the system we don't see in automobile insurance, and partly it's because FSCO does not have one physician on staff. IBC does not have one physician on staff. Take all the property casualty carriers in the province; there's not going to be one physician on staff. So, basically, if you want to have good medical control, it has to come from a physician and health care practitioners who certainly can help in that regard.

We need to have disability duration, to say, "Well, this is what normally you should expect in terms of disability." We need to have what we refer to in French as "un temps de consolidation," which basically means you need to be able to say, just like the board in Ontario, "The person has reached maximal medical rehabilitation. Therefore, we don't expect any additional improvement. You can do as much therapy you want; there's not going to be more improvement. So let's use the money, instead of for more physio, more this, more that, perhaps to look at return to work or work reintegration or vocational rehab."

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We need to look at whether or not the service providers that are providing the service are going that route; and second, if you're going to be doing any payments, you need to set up payments so that you're looking at putting more money in high value versus low clinical or functional value. Right now, the system has been, "We don't want to upset anybody, so everybody can provide services."

It used to be that everybody could provide acupuncture because it was unregulated; now it's not the case, but everybody still does it anyway. Second, foot orthotics: Everybody can provide foot orthotics. In Quebec, there's three-year training as a certified orthotist, and then two

years as a foot orthotist. Here, you can go see a kinesiologist, a chiro or physio, and you can get foot orthotics even though you may not need it. It's something that you're entitled to get.

This kind of craziness is also made worse by lawyers who will point out to me, "Well, that person is entitled because arbitrator so-and-so made the decision." Well, I beg your pardon, but an arbitrator will make a decision on legal reasonableness and necessity from a legal standpoint, but to start using what arbitrators are saying as a standard of care is a far reach. Yet this is what sometimes I'm being asked to do, and I usually have a set of kind words in that regard.

Many times, the decisions are not based on best evidence. What I'm seeing right now with the disaster of the mediation backlog is a whole bunch of people who are being disabled simply by time. It might be a legal success, but from a rehab point of view and from an occupational disability point of view, it's disastrous, and nobody seems to care.

What I should mention to you is that I had those same comments 20 years ago, when I was pointing out to ABAC that it was awful that it would take 18 months for an arbitrator to come up with a decision. They said, "Oh, there's nothing we can do."

If you're asking for 14 days for a physician to come back with a report for an independent assessment, for example, I think there needs to be a time frame so that arbitrators can come back with a decision so you can go along. The current model, because everything is permitted, is clearly flawed. Right now, I think the person who is the most vulnerable is the consumer, especially if they have only $3,500 to go around with a minor injury.

Look, if you want to give options—I understand the political aspect of having options. That is great. But the reality for me is that one of the most important places to have an option on is basically if you have a minor injury; in that one, there's not. It doesn't matter if you add up in terms of your maximum limit for your catastrophic—or from $50,000 to $100,000 or $1 million to $2 million; the question is, if you want a minor injury increase, you can't, and I would beg to say that you should be able to do so.

I should also mention that if you're really concerned about people saying, "Oh, well, they really like their aromatherapy. They really like hot stones on their back"—that's fine with me, but perhaps they should get an optional for alternate and complementary medicine. People can opt for it, and if they don't take it, then you should go for what has been demonstrated by research as being the most effective.

This is what comparative effectiveness research is about. In other words, I can treat this three different ways, and I'm going to look at which one works the best, and that is the one that, basically, we're going to fund the most. If you're one of the other ones, that's fine, but the disincentive will be for the provider to give us something that is not as good while they don't get paid as much. This is very much the value-based payment, and certainly, in the US, they have been working on this.

It is important, therefore, that we come up with a more manageable menu of things that work, and we also need to basically tell patients, which generally they don't. I used to also be the American—

The Chair (Mr. Bob Delaney): Mr. Lacerte, you've got about two minutes to go.

Dr. Michel Lacerte: Two minutes to go? Oh, that's easy.

What I'm going to do is like this: There are, when you look at the system, just too many chefs in the kitchen. That needs to basically come right down. I agree, when we were talking about for catastrophic, that there should be—the family physician maybe is not the best person, but at least make it a physician. To raise the case manager to be the one doing it—many of them have no background; they may be social workers, and they're generally selected by the plaintiff attorney—is absurd. I would certainly not support this.

Work disability prevention and the culture of entitlement: All I want to say is that 70% of the disablement that we see, we don't have a good explanation for it. It is not physical, it is not psychiatric; it is social, and for a social problem there is no medical solution—the social-political—and this is where you fall in.

Finally, for medical necessity, I think it's very important that we define what should be on our menu, so that with things such as opioids, when there is a national opioids guideline, it should be followed, which right now is not. Foot orthotics—really? When you have whiplash? Hot tubs: This week, $14,000. A person says, "I need a bathtub." Well, it's not a medical necessity—I would feel very good with a hot tub myself. I was just reading about the $150,000 robotic legs. They're great, but you should apply the ADP standards to everybody because ADP pays 75% of the cost. Not only that, they have controls in place, whereas if you leave it to free market out there, you're going to have everything.

I would have just loved to mention one more thing—

The Chair (Mr. Bob Delaney): Well, you may, but you'll have to do it in the course of a question. Mr. Naqvi.

Dr. Michel Lacerte: Perfect. It was about catastrophic.

The Chair (Mr. Bob Delaney): Ms. Piruzza.

Mrs. Teresa Piruzza: Thank you so much for coming down and speaking to us this morning. I appreciated your comments and the report that you provided us. Through your comments, I can tell that you're very interested in the true rehabilitation of individuals, and it sounds like you're a bit frustrated with the system in terms of your comments of so many chefs in the kitchen as well.

Dr. Michel Lacerte: There's no intercommunication. People go out on their own. The patient comes back after three months and says, "I need my OCF-3, my disability certificate, to be signed." I say, "What do you mean, to be signed?" "Yes, my physiotherapist got me off work because they thought the treatment would work better.

Now I'm having problems with the insurer. I need somebody to sign it." And I say, "Sorry, over my dead body. Go back to see the physiotherapist and get them to fight your fight."

Mrs. Teresa Piruzza: And with respect to that, as we heard—I heard a couple of the comments this morning, and as you know, we were in Toronto on Monday and in Brampton yesterday, so we've been listening to quite a few people. One of the elements, of course, is that as your claims costs increase, that's one of the elements that has the increase on the premiums as well. Some of these elements that you're bringing forward certainly would increase claims costs, which is part of the result of premiums going up.

But one of the elements that I'd like to ask you about is, I understand you were on the expert panel that recently reviewed—

Dr. Michel Lacerte: Unfortunately, yes.

Mrs. Teresa Piruzza: Unfortunately, yes. Okay. We've heard different comments over the last two and a half days: agree with the process; don't agree with the process. There were some who have questioned the experts who were around the table or the process that was used.

You sound like an expert. You were around that table. I'm just wondering if you can shed a little bit of light in terms of that definition of the catastrophic.

Dr. Michel Lacerte: Let me just step back. I believe an expert is the person who does it, okay? If that's what you mean, it's not a title; I do the stuff day in, day out. I get close to 600 new referrals in a month. I'm totally overwhelmed, and I do have some catastrophic patients. I do participate, now that I'm no longer at the DAC, in some of their rehab.

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So for me, where I was very frustrated with the system is that it is a false economy. Who says that when you have an injury it either falls under minor injury, or up to $50,000, and then you have the gap between $50,000—which is not $50,000; with the assessment, it's more like $25,000. Then you have that and the catastrophic. That was not part of the mandate and everyone, I think it's fair to say, said, "Why not?"

I understand attorneys, I understand my patients. Where basically it says, you have a pretty bad accident, you don't have a tort claim because what we should say—if you're in tort claim and you're in good hands, you should not be concerned about anything that we're talking about. Okay? What we're talking about is—

The Chair (Mr. Bob Delaney): I'm going to have to move the rotation to Mr. Yurek.

Dr. Michel Lacerte: Sure.

Mrs. Teresa Piruzza: Thank you. We'll talk another time.

Mr. Jeff Yurek: Thank you for coming in today. My wife's a health inspector, so your story really hits home because—

Dr. Michel Lacerte: Uh-oh. She didn't visit my—

Mr. Jeff Yurek: No. I can send her if you want me to.

I like your idea about a doctor being the gatekeeper. I have a concern about the family doctors just because of the shortage. If you know, Dutton, in our riding, has had one doctor now for the whole area for the last year and we're unable to find a new doctor. So if you see someone in London who you're working with, send them to Dutton.

Dr. Michel Lacerte: I'm on staff at St. Thomas.

Mr. Jeff Yurek: Are you? If you want to work in Dutton, we'll get you a spot.

The minor injury guideline, you say, should be an option to go to $10,000. I think Alberta just raised their limit for their minor injury coverage.

Dr. Michel Lacerte: It's at $4,000, indexed. Ours is not indexed. I don't know if they did that increase.

Mr. Jeff Yurek: Okay. All right.

Dr. Michel Lacerte: But I believe that 3,500 bucks goes out very quickly, especially when you're dealing with those big American outlets I mentioned, which may provide services that meet their bottom line, not the need of the patient.

Mr. Jeff Yurek: Lastly, go ahead and finish your catastrophic discussion. You can have the rest of my time.

Dr. Michel Lacerte: For catastrophic, I think the main issue for me is that if you have multiple injuries, you're in pretty bad shape, I don't understand why there's not something in between. Because frankly, if you don't have a tort claim, you're screwed. I mean, it's that simple. You're going to have a lot of problems because you're going to use—we would not be worried about being on the borderline to catastrophic if it's about having maybe $100,000 or $200,000 that is necessary. Okay? But that's not what we're seeing. And there are some reasons why we don't hear a lot of concern about the gap, because basically if you're a plaintiff attorney, you can get it on the tort side and then you get your cut. That is not the issue on the EB side.

I certainly would have envisioned something in between to take care of it. People always talk about amputees. If you look at amputees over a lifetime—at 20 years old, above knee—we're talking more like $350,000, not $1 million, and that takes into account the ADP component.

The Chair (Mr. Bob Delaney): I'll just move the rotation to Mr. Singh, or to Mr. Natyshak, as the case may be.

Mr. Taras Natyshak: Merci, monsieur Lacerte. J'apprécie votre présentation. J'avais seulement une question.

In your presentation, "It is important to realize that too much treatment is actually harmful to patients." Could you give that to me in the context of potentially a catastrophic injury, say, a full quadriplegic? Although there may not be any substantial clinical, functional value increases throughout the years, there are some secondary benefits to maintaining and continuing various approaches of treatment, even though they may not be measurable. They may be cardiac care and other subsequent issues as a result of the initial injury. Can you tell

me how that would play into the whole concept of too much treatment?

Dr. Michel Lacerte: I'm going to tell you: If you are a tortfeasor, that basically was destroyed by the kids when you got smacked and now you're a quad. You're only dependent upon that $1 million. That is little money, because over a lifetime that is going to be used very, very quickly, and that's why it needs to be used very judiciously.

When I'm saying "too much treatment," this person will clearly use up the $1 million and over. The question is that we really want to make sure that what they're receiving in terms of treatment can be justified in terms of high value. And that's not what's happening right now; everything goes.

Mr. Jagmeet Singh: My question for you is about the expert panel. Do you feel that the mandate was limited in the expert panel?

Dr. Michel Lacerte: Of course.

Mr. Jagmeet Singh: And were you satisfied with the mandate?

Dr. Michel Lacerte: The problem is that I've accepted the terms. I got in and I got out.

Mr. Jagmeet Singh: Did you feel that psychological impairments and those issues were under-represented and that the psychologists' voices were not heard because of the modified Delphi methodology?

Dr. Michel Lacerte: To be honest, I would have loved to have a psychiatrist on the expert panel. It was not the case, because folks who deal with catastrophic psychiatric problems are not psychologists.

Mr. Jagmeet Singh: Were you satisfied with the panel members? One lack was that there was not a psychiatrist, which you would have liked to see. Were there other professionals that you would have liked to see that were not there, and were you satisfied with the members?

Dr. Michel Lacerte: I think I was satisfied generally with the members.

I start at the beginning. I want to strengthen what's going on in the hospital, because for catastrophic, frankly, you need to have the multidisciplinary groups to basically deal with the complex injuries. Frankly, it's very disjointed in the community.

I was satisfied with the group. I wish we could have made a comment that we needed to fill the gap, and it's for a group that I have yet to hear about: It's the mild to moderate head injury that bothers me the most. They're the ones that are the most vulnerable, and basically, once you're finished, it's $50,000.

The Chair (Mr. Bob Delaney): Mr. Lacerte, I'm sorry I have to bring an end to this, but I want to thank you so much for having come in to present to us today and for sharing your findings with the committee.

MS. KATHERINE WOROTNY

The Chair (Mr. Bob Delaney): Our next presentation is Katherine Worotny. Good morning, and welcome.

Ms. Katherine Worotny: Good morning.

The Chair (Mr. Bob Delaney): You'll have 15 minutes to present your thoughts to us this morning, followed by 10 minutes of questioning. This question rotation will begin with the New Democrats. Please begin by introducing yourselves for Hansard and then proceed.

Ms. Katherine Worotny: My name is Katherine Worotny and I am a brain injury survivor. This is Laura Kay. She is the executive director of the Ontario Brain Injury Association. She is here as my mentor, but she's also here in case I get mixed up in my talk; she will help me.

I've come to talk to you today from a survivor's perspective on the changes to the catastrophic definition and what that means to other survivors and to drivers in Ontario who may one day be in a crash. I've come today with a unique perspective. I am a survivor and I give back to the community.

Back in 2001, I was a founding board member of the Brain Injury Association of Windsor/Essex County, and 11 years later I'm still an active board member. As our local survivor representative to the Ontario Brain Injury Association advisory committee, I go to Toronto five times a year. My job is to bring survivor concerns locally to the provincial level. I also help at Chrysalis Day Club. This is a place where adults with acquired brain injury can go each day, Monday to Friday, from 8 o'clock till 4 o'clock. I volunteer there as a leader and I also run the wellness groups. I do that along with the director of the day club and another survivor.

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I would like to pass this book around. This has pictures of my journey. As I'm talking, you can take a look at those.

To be able to do all these things that I've done, I needed a lot of rehabilitation after my car crash. Having medical rehabilitation benefits available really helped me to get better and to regain my life.

Before I tell you how far I've come, first I'd like to tell you what my life was like before my car crash. I was a teacher in life skills and I was a supervisor of six educational assistants and had 21 mentally and physically handicapped students in my class. I represented the Essex County Separate School Board on the Council for Exceptional Children. I was on the education committee for the Essex County Association for Community Living. I was on a committee of teachers that set up an alternative education program for students who had problems with alcohol, drugs, truancy or pregnancy, and I was involved in a lot of the different campaigns like the United Way, the Kidney Foundation, food drives for the Salvation Army, the Downtown Mission, the Drouillard Place and the Well-Come Centre. I was at school most days by 7:30 and I didn't leave much before 5:30.

I was on my way to school one morning. I'm not sure if you're familiar with Windsor and the E.C. Row Expressway, but I got to E.C. Row and Lesperance and I was making a left-hand turn—I had a green arrow—and somebody came through at the red light going towards

Windsor. I was driving a Ford Escort; he was driving a Ford Bronco. Forensic testing says that I did not a seat belt on.

When they took me out of the car, my feet were outside the passenger door and my head was in the glove compartment. I broke the gear shift and the gear shift went in the car and damaged the front window. I had a closed head injury, a broken tibia bone, smashed my knee, fractured my foot. I had a basal fracture in my head. I was in a coma for six weeks and I was in the hospital, from Hôtel-Dieu to Windsor Western. The whole time I was in the hospital was from February 24, 1993, until August 31. I came home for two weeks and then went back to the hospital for another month for medication problems.

I was on life support for a long time. Because I was on life support, I developed scar tissue in my throat. When I was at Windsor Western Hospital, I had to be transferred back to Hôtel-Dieu to have surgery on my throat to get rid of excess skin that grew in there that was causing me to choke. I sound like I have a cold all the time. I have a raspy voice. That's because of the laser surgery and also because when they did that surgery, they found out that I have one vocal cord that's paralyzed. They're not sure if that's from the car crash or from being intubated for six weeks.

When I was at rehab, I had to go speech therapy to learn how to talk, how to read and how to write. Occupational therapy—I had to learn how to feed myself, dress myself, shower and take care of my personal needs, like toileting. I went to physiotherapy. I had to learn how to walk. I was in a wheelchair for about three months. I used a walker for about two months and then a quad cane for about a year. I walked with a regular cane for approximately six years. Then I went to GoodLife Fitness and I paid for a personal trainer to help me to walk without my cane. I have no cane today because of going to GoodLife Fitness and working with a trainer and doing exercises in the mirror.

I spent eight years in rehab. Today, 19 years after my car crash, I still do some therapies. I go to GoodLife Fitness and I do exercises on my knee and I follow a routine for balance exercises. I use an iPod and I sync it with my computer. On my iPod, I have all the appointments and things that are important in my life, because if I didn't have that and didn't have it synchronized, I wouldn't remember where I'm going.

I got my licence back from Hugh MacMillan rehab centre. It was a one-day in-class test. Then I went back there for two weeks of lessons with a driver that was trained to help brain-injured people. I did get my licence back. Sometimes when I'm in the car, going to where I'm going, I get to the corner and I can't remember where I'm going. I can't remember if I'm on my way to go to the day club or if I'm on my way to a doctor's appointment. That's why I have to sync my iPod and my computer together, and I need to look at it all the time.

I also listen to the radio and I read the paper and I watch the news on the TV. I do all three things, listening to the same things, because I want to be informed and I don't want to look stupid when people are talking about things that are happening in the city or in the country. I can do that very easily—get confused and forget about what's happening—so I try to follow these routines.

I had a lot of behaviour problems after my car crash. At Windsor Western Hospital, I called 911 to get an ambulance to come and take me home, and when they wouldn't do that, I called the police to come and arrest all the nurses. I lost my phone and I had to sign a behaviour contract.

When I came home, I had to have psychological counselling, and I had psychological counselling for eight years to help me deal with the loss and to help me deal with changes in my life.

I was a teacher. I was also a tutor of statistics in university. When I came home, I realized that I couldn't even do the multiplication table. So I went to the adult learning centre to learn math and English from grade 9 to OAC. Even though I was a teacher, I had to have a tutor. The tutor I had was a student who was a peer helper in my life skills program at St. Anne's high school. My first day of class in the adult learning centre, there were four students in my class that I had taught in grade 9. They had quit school and they were back as adults. It was very weird for me to be in school with students that I had taught. I did that for about three years. Then I went to St. Clair College and took some adult education classes. I ended up taking the office administration program.

I never went back to my career as a teacher. I do volunteer work with the Chrysalis Day Club and I volunteer at Hôtel-Dieu trauma services. I help with the PARTY program, which is Prevent Alcohol and Risk-Related Trauma in Youth. Every Friday, students come from different high schools. They go through a mild trauma and they learn about risk-taking and about drinking and driving. I talk to them about my part in my crash by not having a seat belt on, even though I was on an expressway. I talk to them about, yes, the other person ran a light, but I had to take the responsibility that I didn't have a seat belt on.

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The Chair (Mr. Bob Delaney): Katherine, you've got about two minutes to go.

Ms. Katherine Worotny: Okay. I also talked to personal support workers at triOS College. I talked to them about what it was like to have a personal support worker in my life after I came home from the hospital.

I want to just end this by saying I understand that the proposed changes to auto insurance may make it harder for people who are seriously and catastrophically injured to get benefits, including the medical and rehabilitative benefits that they need. This means that they will look to the public system and they will go without therapy. This is troublesome. After an accident or a car crash, people want to get better. I am an example of how, after a crash, someone can be rehabilitated and is able to give back to the community. Without therapy, paid for by my car acci-

dent insurance company, I would not be where I am today.

On behalf of car crash survivors like myself, I would like you to consider how changing the definition and making it harder to get benefits after a crash will affect other crash victims like me.

The Chair (Mr. Bob Delaney): Thank you. I made an error when I said the rotation would start with the NDP. It should start with the opposition. Mr. Yurek.

Mr. Jeff Yurek: Thank you, Katherine, for coming in today. I think it's very important that this committee hears the stories of those who have needed to rely on insurance coverage to deal with their accidents. It's very important.

You briefly mentioned that you wouldn't be where you are today without that coverage. With these new catastrophic changes, if you had come into that gap system where you didn't qualify for the coverage, how do you think your life would be right now?

Ms. Katherine Worotny: If I did not have coverage—first of all, the people from Windsor Western rehab, at the very end of my stay in rehab, they wanted to send me to a nursing home. My parents said, "No, she's not going to a nursing home; she's going back to her own home." The insurance company paid for me to have—first of all, they paid for me to have nurses with me for the first month, then they paid for personal support workers, then they paid for cabs and they paid for my education at St. Clair College. They paid for me to go and get my licence back. They paid for my independence. They paid for my psychological counselling, which helped me to not kill people. I had so much anger in me. Honest to God, I have picked up a two-foot wooden stool, smashed it on the ground and cracked it in half. If I had thrown that at the person that I wanted to throw it at, I would have killed them.

I really wanted to spend all of my money from my settlement to hire somebody to kill the guy who ran the red light. I had so much anger and hostility in me that this psychologist who worked with me really helped me to see that that's not really what I wanted to do with my life, look at killing people. She helped me to deal with some of the grief—the loss of my career, my profession—and helped me to deal with how, when I get myself in situations where I feel flustered or frustrated, to walk away, walk away from it so that I don't get myself into so many problems by yelling and screaming and carrying on.

Mr. Jeff Yurek: Just quickly, the accident was about 20 years ago. At that time, did you need to hire a lawyer to help you with the process?

Ms. Katherine Worotny: Yes.

Mr. Jeff Yurek: Any comments on how to improve the insurance system that you went through? Is there anything that could be improved upon? Or was it fine and you got what you needed? You seem to be on your way.

Ms. Katherine Worotny: I did not deal with the car insurance people because I really could not understand what they were saying. My parents were my power of attorney, and so the insurance company dealt with them. When I got a little bit better and they were calling my house, my lawyer asked that they call him.

I had very, very good coverage, and I can say that I am where I am today because I did have those funds available to me.

The Chair (Mr. Bob Delaney): We'll move to Mr. Natyshak now.

Mr. Taras Natyshak: Thank you so much, Katherine, for coming here today to share your story. It is a true inspiration. I certainly appreciate the advocacy that you continue to do on behalf of those who have suffered a brain injury and the work that you do in the community, the PARTY program. That's delivered through STAG, right?

Ms. Katherine Worotny: It's—

Mr. Taras Natyshak: In conjunction with STAG?

Ms. Katherine Worotny: I'm not sure if it's run with STAG, but it's run through trauma services of Hôtel-Dieu. They run it 17 times a year, and they bring in high school students from all over the county and city.

Mr. Taras Natyshak: Well, STAG put me in a fashion show last year to benefit the PARTY program, and I certainly learned about the need for it.

Also, thank you for documenting your journey. I don't think you ever imagined that that book would be such important evidence at a parliamentary committee hearing, but it clearly shows the process you made over the years. It shows how your family helped you along and reminded you not to be so angry at them, as well. I saw that it said, "Be nice to your family." I can appreciate those challenges that you faced as you went through your rehabilitation, and continue to.

My colleague Mr. Yurek asked what could be done to make the system better. I think your last remarks were a clear cautionary tale to us to ensure that those who suffer from catastrophic injury have all of the benefits that they can get and are not limited in the scope.

I just want to know how important, from today forward, your ongoing therapy is to you. You mentioned that you go to GoodLife?

Ms. Katherine Worotny: Yes.

Mr. Taras Natyshak: How important is that as a component in your life?

Ms. Katherine Worotny: It is very important because, like I said, I shattered my knee and I broke my tibia bone. My knee is very, very weak, so I need to do those exercises to keep my body moving.

Like I said, I also keep myself informed. My therapies are constant. I feel like I'm in rehab all the time because I have memory problems. I have Laura sitting here following my—she didn't have to help me at all, but sometimes I have word-finding problems, and when I get nervous, I sometimes forget what I'm saying and I can totally forget where I am.

Mr. Taras Natyshak: Thank you for the work that you've done and your contribution as a teacher, as an educator, and thank you for the work that you're doing

today. They're both equally important to our society and our community.

The Chair (Mr. Bob Delaney): Thank you. Ms. Piruzza.

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Mrs. Teresa Piruzza: Katherine, thank you so much for coming here this morning and sharing your journey with us. I know that that's not an easy thing for you to do, to come forward, share your binder with us, which I've gone through in terms of some of the comments and really that whole journey that you've gone through.

This committee, through our review here—it's important for us to hear from every person that's involved with auto insurance, and that includes those that have been in accidents and have had to use the services in order to get better. So I'm pleased that you've come so far along in your journey and that you've come here to share that with us. It was very important for me to hear that from you in terms of understanding the need for those benefits for those that have the type and scope of injuries that you did receive through your car accident.

I don't have any questions for you. I just really want to thank you, again, for sharing your journey. Thank you as well for not only sharing that with us but with the community as well, so that people can learn from that, because that really takes strength and courage for you to do on a regular basis as well in terms of advocating, in terms of working with the association, working with Chrysalis. I think you were saying that you have your mentor. I think you could be a mentor to many as well in terms of how far you've come along and what you're doing for the community. Again, I just wanted to thank you very much.

Ms. Katherine Worotny: You're welcome. Thank you.

The Chair (Mr. Bob Delaney): Katherine, thank you very much for having come in today.

Ms. Katherine Worotny: Thank you.

HON. HOWARD PAWLEY

The Chair (Mr. Bob Delaney): Our next deputation will be from the Honourable Howard Pawley. Good morning, and welcome.

Hon. Howard Pawley: Thank you very much. I appreciate, Mr. Chair, having the opportunity to address you this morning on what has been a very—

The Chair (Mr. Bob Delaney): You've got 15 minutes to present your deputation this morning, followed by up to 10 minutes of questions. This question rotation will start with the NDP. Just, as a formality, begin by introducing yourself for Hansard, and proceed.

Hon. Howard Pawley: I will just introduce myself. I was 19 years in politics, so I'm familiar with the world of politics, like each and every one of you, and the challenges that one is confronted with.

I should say that in 1969, when I was first elected to office—no legislative experience—I was taken aback and surprised when the newly elected Premier Schreyer contacted me and said, "I want you to look after the red-hot-button issue: automobile insurance." I was surprised he'd asked me—no previous political experience in the Legislature. We established a committee called the feasibility committee—feasibility insofar as whether public automobile insurance ought to be established or not. We travelled throughout the province. We heard from Manitobans. When we returned, we recommended the establishment of public automobile insurance.

Subsequent to that, I became the minister who was responsible for introducing it in the Legislature. We had a minority government; we were short by two votes, but we dared—because of the importance of the issue—members to defeat us on that issue. It was enacted, and I was the first chair of the Manitoba Public Insurance Corp., so I do come with a certain amount of bias this morning, because of what has been a very positive experience.

I want to just have a little fun with you to demonstrate how people have changed their minds on public automobile insurance since the hellish days of 1969 and 1970 when we brought it in and there was tremendous opposition. One of the most negative reporters was a chap by the name of Grant. Grant had just recently written a letter to the media in which he said, "I have lived here long enough to recall the huge negative reaction when the NDP government of the time declared that auto insurance would become public and that had insurance agents fainting dead away, predicting our rates would skyrocket, and public insurance would never do as much as private could do. I was one of those naysayers, and over the years I have had to keep reminding myself how wrong I was. The Manitoba Public Insurance Corp. has not only kept our rates amongst the lowest in the land but also became a major corporate citizen, sponsoring an impressive array of community ventures."

When the decision is made to establish compulsory and universal coverage, it follows that there must be an obligation on the part of government to provide auto insurance at the lowest possible price.

The most effective way of comparing auto insurance programs from province to province is to look at how much of every premium dollar is returned to the ratepayer in the form of claims payments and benefits. This gives us an apples-to-apples comparison. Recent published annual reports illustrate how the administrative costs of the public plan avoid costly administrative duplication and are only one half as much as those incurred by private insurance companies. Public plans return a maximum return of each premium dollar of 85 cents to 90 cents—that's administrative costs. With private plans, the administrative costs range from 65 cents to 70 cents on the premium dollar.

Since 2002, Manitoba's auto insurance cost has increased at a much lower rate, 1.5%, as compared to the countrywide performance of 5.3%—3.5 times less than the national average. Last year and this year, MPI returned just over 90 cents on the dollar.

The inclusion of basic compulsory automobile insurance with the licence plate is the most efficient and economically capable method of delivery. Supplementary auto insurance is also available from either government plans or from private auto insurance companies.

Earlier this year, Statistics Canada put out a report that showed how fast auto insurance rates were increasing all across Canada. Regrettably, I believe we have the highest rates in Ontario, higher than anywhere else in Canada. It found that Manitoba has the best record for keeping auto insurance rates in check. In fact, nationally, auto insurance rates have increased over time at about three times the rate of increase in Manitoba.

The average premium increases over time because of rate increase, decrease and vehicle upgrade. Vehicle upgrades occur when customers move to higher-rated territories and purchase more expensive-rated vehicles. Why not public automobile insurance?

For example, a 21-year-old male with a clean driving record living in Ontario would pay more than six times the rate that we charge, and in Alberta, it would be 2.5 times what the province of Manitoba would charge.

Let me just give you one other quick example. This deals with a 2010 Dodge Grand Caravan and a 35-year-old couple, both with 15-year clean driving records. In Toronto, that would be $3,763; in Manitoba, $1,056—more than three times higher.

If approved by the Public Utilities Board—recently, MPI proposed a 6.8% reduction for rates in 2012-13. These rates, then, will become even more favourable compared to other provinces.

Why do public, driver-owned, public-profit auto insurance plans win, hands down, over the private auto insurance systems? Provincial insurance corporations, as the owners of public auto insurance, have every political reason to reduce accidents and claims by insisting on safer driving conditions for their motorists, and pursue traffic safety and loss-prevention programs—i.e. we see it in British Columbia: photo radar. BC has a public plan, as you know, and by the way, so does Saskatchewan, so does Quebec. There's photo radar and larger red lights at intersections.

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In June 2005, Manitoba Public Insurance announced a major anti-theft initiative, where MPI pays 50% of the cost of after-market electronic theft immobilizers and provides interest-free financing of 50% for the customer. Winnipeg has a very serious auto theft problem. Through this initiative, MPI has taken the lead on working with Manitobans to solve it.

In Manitoba, there is no discrimination based on age or sex. Bad motorists are surcharged additional dollars on their driver's permit. That is a fairer way than discriminating based on sex or age.

Investment company reserves are invested in public institutions. In Manitoba there is currently $2.2 billion in reserves; $557 million of this is invested in Manitoba schools, hospitals and municipalities. Interest reduces premiums by $80 for each person.

The founding objectives include being financially self-sufficient, with no subsidies or other assistance from general government revenues, to operate at a financial break-even level over the long term. Also, all public insurance investment earnings, unlike those of the private plans, are returned either by increased benefits or through lower insurance premiums to the motorists themselves rather than to shareholders.

Opportunities are created in the insurance industry. One main, central office operates in the public system rather than maybe via 100 or so outside the province, as is the situation with the current system. A single agency requires one computer system versus scores of varied, costly computer systems. One executive pool is utilized, in contrast to the magnitude employed by private insurers. Advertising, litigation and adjusting costs are all reduced.

To minimize public inconvenience in insurance claims procedures, regional claims centres—23 in Manitoba—minimize public inconvenience in the insurance adjustment procedure. It enjoys a decided advantage in reducing per-vehicle costs of automobile claims. The Manitoba claims centres will frequently ensure that they purchase parts in the local community in which they operate—e.g. window shields.

Financial strength: Fiscal stability equals lower rates. Because it is a single insurer, there is no need for a retained-earnings reserve fund, as is required with private companies. The public plan is backed by the full recourses of the government, and substantial savings are garnered. With private plans, estimates of uninsured motorists range to about 10% in some instances. This is clearly not acceptable. In 2010, it's my understanding that over 6,000 drivers were caught in Toronto without insurance. I'm sorry; I don't have the figures for this year and for the province as a whole.

The founding objectives include being financially self-sufficient, with no subsidies or other assistance from general government revenues, to operate at a financial break-even level over the long term.

Independent research shows that Manitoba motorists continue to benefit from some of the lowest insurance rates in Canada for comprehensive coverage, including personal injury protection.

While most insurance companies continue to levy rate increases, Manitoba Public Insurance has provided over a decade of rate stability and about $600 million in direct payments to Manitobans. Can you imagine that? With rate reductions in three of the last five years, Autopac premiums compare well with inflationary increases.

Basic Autopac rates have remained stable for nearly a decade. This past year, the Public Utilities Board ordered that a dividend be paid to Autopac customers, which means a $338-million rebate, plus lower rates for most. The dividend gave motorists varying amounts of rebate. It's not unusual for them to range from $250 to $350 for that one year.

Ontario and other provinces have legislated reduced benefits, unfortunately and sadly—and this where the

catastrophic comes in, where I think it's basically wrong in principle—where there has been legislation of reduced benefits by putting caps on payments to the victims of crashes in the hope rates will come down, but rates haven't come down elsewhere.

In Ontario there exists a minor role for regulatory bodies in respect to rate applications. Leaving aside the argument about whether the public or private system is preferable, as you've heard from me the last few minutes, there must be an appropriate and strong regulatory body to examine the following issues:

(1) It should examine significant cuts in coverage in auto insurance, resulting in the introduction of deductibles and caps in respect to awards and general damages. Can we be assured the insurance companies are passing all these savings on to the motorists?

(2) Are there costs or expenditures included in rate calculations for Ontario for losses, for adverse experiences encountered in other jurisdictions, including other Canadian provinces that operate with private insurance? If so, should we object to any such inclusion? The question has to be asked.

(3) Is the investment income properly reflected in the rate calculations and being used to reduce premiums or increase benefits?

(4) Is there industry creaming taking place? Some companies offer very low rates by limiting their business to only the least risky motorists. The result of this can be highly unfair rates to younger and risk-prone drivers.

The Chair (Mr. Bob Delaney): Mr. Pawley, you've got about two minutes to go.

Hon. Howard Pawley: Okay, good. Thank you.

(5) Do the rates charged in the various regions reflect the loss experience in that particular region?

(6) Are private companies promoting accident benefit programs, as they do in western Canada, where governments, as the owners of public auto insurance, have every political reason to reduce accidents by insisting and encouraging safer driving conditions for their motorists?

I acknowledge that public ownership is not always the best way to provide service; private ownership is sometimes better. But here, as with medicare and with public utilities, public ownership is the best way to deal with what is clearly an industry burdened with bloated bureaucracy. The need to establish a feasibility study, I suggest, in Ontario is urgent, to obtain opinions of Ontarians and determine whether you wish to go the way of British Columbia, Saskatchewan, Manitoba, and Quebec, which has kind of a half-and-half system. Thank you very much.

The Chair (Mr. Bob Delaney): Thank you very much. Mr. Singh.

Mr. Jagmeet Singh: I'll give it to my colleague first to begin, and then I'll wrap up.

Mr. Taras Natyshak: If I may, Premier, personally, it's an incredible honour to sit on a committee that has you as a deputant. This is one that I consider as a real high-water mark already, and I want to thank you for your presentation.

My questions are just to have you reiterate some of the figures that you stated. You said that the Manitoba Public Insurance program, MPI, in 2011 actually proposed a 6.8% rate decrease.

Hon. Howard Pawley: Yes. That was paid by way of a dividend directly to the motorists in the province. I think I gave each of you a copy which demonstrates that over the last 10 years, but it was a major dividend refund to the motorists that was paid.

Mr. Taras Natyshak: Did that proposal coincide with any major adjustments in the levels of benefits that are provided?

Hon. Howard Pawley: No, the benefits remained pretty well intact. Now, again, to the comprehensive insurance, I checked with the Manitoba Public Insurance Corp., and they advised me that a strong plan provides reasonable compensation such as injury to the people that are involved in catastrophic injuries, such as injury assessors, advisers, therapists, physios and everybody else. Most of the money should go to claimants, and the rest should go to services for claimants, paying service providers for truly measurable value. They point out that they have twice strengthened their catastrophic coverage.

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Mr. Taras Natyshak: Quite impressive. Thank you.

I'll pass to my colleague.

Mr. Jagmeet Singh: Thank you, Mr. Premier. My questions are related. I'm going to take you through a couple of issues.

Would you agree with me that the claims costs that are incurred by any insurance, whether it's public insurance or an insurance company, are rather directly related to the premiums that they charge?

Hon. Howard Pawley: Well, in this particular case, the premium charges that are levied have been reduced because the administrative costs are only about one half what they are under the private system. Secondly, they're able to return to motorists the interest on over $2 billion, which is invested in the province. So, much of the advantage they have by way of rates is because of other factors in the claims.

Mr. Jagmeet Singh: It's based on administrative costs.

Hon. Howard Pawley: Yes.

Mr. Jagmeet Singh: We have some conclusive data that's coming, and the rest of it will be coming very shortly, we're anticipating by the end of this month. We have some conclusive data that from 2010, post reforms that occurred in the industry, when you compare the cost per vehicle based on claims to the insurance companies, the average cost per vehicle was around $700 that the insurance companies here in Ontario were paying—that was their cost. That cost has gone down now to approximately $300 per vehicle. So the cost has more than halved. It's gone lower than half. Our premiums, though, have only gone down by 0.18%. How does that accord with what you would expect to happen in something like a Manitoba system or a public system?

Hon. Howard Pawley: I'm not really surprised, because in Manitoba, dividends are paid to the motorists. Unfortunately, under the private system, the surplus is not paid back to the motorists; it's paid to the shareholders. Secondly, the administrative costs are double what they are in not just Manitoba, but British Columbia, Saskatchewan and Quebec, which has kind of a half-and-half system. They have public insofar as injury and personal, and private for the property damage.

The Chair (Mr. Bob Delaney): I'll move the rotation to Mr. Naqvi.

Mr. Yasir Naqvi: Good morning, Mr. Pawley. First of all, thank you very much for your public service. For us doing this now, it's always incredible to look up to our predecessors. So thank you very much for being here today.

Based on your comments about the Manitoba system, I'm assuming you must have been very disappointed back in the early 1990s when the Ontario NDP government did not fulfill its promise in the province by not implementing a public insurance system.

Hon. Howard Pawley: I was very, very sorry that they didn't go with it. I think it would have ensured for them a second term. It had been so popular. It became my trademark and probably explains my political success. People would say, "Pawley, Pawley—oh yes, he brought in public auto insurance." I think Bob Rae and the government of the day lost a tremendous opportunity.

Mr. Yasir Naqvi: My understanding of the Manitoba system—I'm not an expert; you are—is that it's based on a set-rate basis, which is paid out to victims, and if there are any changes in conditions, you cannot rely on getting additional payment or by suing. So the benefits are more limited in many respects than what may exist in other provinces. In that light, if I'm correct, do you still think that the Manitoba system is a good one?

Hon. Howard Pawley: The Manitoba system is entirely a no-fault system. I have some reservations about a totally no-fault system. In my day, it was a mix of no-fault and tort. British Columbia, which is public, has a tort system. Its administrative cost levels, all of them, are approximately 15 cents on the dollar. But BC has a tort. I don't understand Saskatchewan, but apparently they have a system by which you can choose tort or the no-fault. And Quebec has the no-fault. I see advantages to the no-fault plan. But on the other hand, I think there are disadvantages, especially to seniors and to young people like students. So I would question the no-fault aspect being the entire form of coverage. I think that does create a problem.

There have been changes to the MPI over the years. As I mentioned, the catastrophic coverage: They've tightened the coverage and improved the coverage, catastrophic-wise, twice in the last short period of time.

Mr. Yasir Naqvi: So if you look at a system which is a public system, the closest comparable to Ontario's would be British Columbia's system as you describe, sort of a no-fault and tort—

Hon. Howard Pawley: It's a tort, yes.

Mr. Yasir Naqvi: This year alone, British Columbia had a rate hike of 11.2%, based on the information that's available to me. How would you reconcile what's happening in a public system like British Columbia versus that of Ontario's private system?

Hon. Howard Pawley: I'll give you an example. I mentioned the 2010 Dodge. That involves the 35-year-old couple, both with 15-year clean driving records. In Ontario you would be paying $3,763 in Toronto for that; in Vancouver, which is another major city, you'd be paying only $1,422. So British Columbia has a huge advantage fee-wise with Toronto.

The Chair (Mr. Bob Delaney): Thank you. I'm just going to move the rotation over to Mr. Yurek.

Mr. Jeff Yurek: Thank you, Premier, for coming in today. It has been very informative.

Do you know how many drivers are insured in Manitoba currently?

Hon. Howard Pawley: In Manitoba?

Mr. Jeff Yurek: Manitoba.

Hon. Howard Pawley: Five hundred and seventy-six thousand.

Mr. Jeff Yurek: Five hundred and seventy-six thousand? There are nine million in Ontario, so I'm just trying to get a clear comparison here. Do you know how many claims are made in Manitoba?

Hon. Howard Pawley: Unfortunately, I don't have the number of claims.

Mr. Jeff Yurek: Something we should look into.

Have you looked at New Brunswick's auto insurance model?

Hon. Howard Pawley: Yes, I have—well, not just recently. I know that New Brunswick recommended in 2004—this was an all-party committee—the Manitoba plan, which was quite interesting, and then the Bernard Lord government backed away and never did implement it.

I should just very quickly say that this is a non-partisan issue in the four provinces I mentioned. You won't get a Conservative, you won't get a Liberal, you won't get a New Democrat that would say, "Let's go back to the old days of the private system." It's a non-partisan issue in those three provinces. But New Brunswick, unfortunately, despite an all-party committee, didn't proceed with the public plan.

Mr. Jeff Yurek: Their plan has stabilized their rates also, and it's private.

Comparison of benefits between Manitoba and Ontario: Have you looked at the comparison of what's offered in Ontario in comparison to what's offered in Manitoba?

Hon. Howard Pawley: I haven't examined them precisely as to the benefits. I think they're similar in range, though.

Mr. Jeff Yurek: Would you say—just to go back to my first question—in Manitoba if there were nine million drivers compared to 500,000, would you think the rebates and savings would all be the same in the system?

Hon. Howard Pawley: I think they could be the same. I think the dollar amount would be much larger, of course. I think this is where Ontario has an opportunity, with the large number of motorists that they have. They could be using much more money, establishing reserves, separate funds for helping hospitals and schools and whatnot out. There's a tremendous opportunity for Ontario.

I feel that the Rae government missed the opportunity in the early 1990s, and I've told them so. Interestingly, I told them at the time, "You've missed your opportunity for a second term in government." When we were elected in 1969, a minority government; in 1973, guess what the big plus was? Automobile insurance, and we were re-elected with a majority government.

The Chair (Mr. Bob Delaney): Thank you very much, Mr. Pawley, for having come in to share your wisdom with us.

Hon. Howard Pawley: Thank you very much. It has been a pleasure.

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MS. VICTORIA CROSS

The Chair (Mr. Bob Delaney): Our final deputation for the morning comes from Victoria Cross. Good morning and thanks for joining us.

Ms. Victoria Cross: Thank you. It's a real pleasure to be here.

The Chair (Mr. Bob Delaney): You will have 15 minutes for your deputation followed by up to 10 minutes of questioning. This rotation will begin with the government. Please state your name for Hansard and proceed.

Ms. Victoria Cross: My name is Victoria Cross, and yes, that's my real name. I'm a lawyer here in Windsor. I'm a general practice lawyer, so I'm not active with OTLA, but I want to thank the OTLA for its presentation. I also want to thank the victims who you have heard from in your travels and dear Ms. Worotny today. Of course, I want to thank Howard Pawley. He is my good friend and a mentor. It's an honour to follow him. He's a tough act to follow, so be nice.

I want to make three points. I tend to be fairly direct, so my first point is very emphatic: I recommend that this committee expand its mandate to include serious, intense, short-time-limited public review of the various public models of auto insurance in Canada for the express purpose of developing a made-in-Ontario public auto insurance plan. We can talk about how that can be done. Second, I want to debunk a few myths and misunderstandings about auto insurance. Third—and this may be even the most imperative—I am going to make an appeal for this committee to take strong recommendations on the comprehensive European trade agreement, so all of Ontario's future or potential public enterprises and present ones are protected before it's too late.

With regard to this committee's ability to function, I certainly don't want to tell the Legislature how to operate. I have glanced at the rules, and I think you can draft a recommendation to the Legislature for a vote when it reconvenes to have the committee's mandate expanded, a proper budget allocated and have a reasonable time for review. I've gone to the trouble to assist you with the New Brunswick report and helpfully included their resolution that set their all-party committee on the road. So you don't even have to really reinvent the wheel; I'm sure there are some similarities in procedure. That's attached to my presentation.

On the other hand, the Minister of Finance might not prefer to have a legislative vote on this issue. The Financial Services Commission of Ontario is preparing for its mandated five-year review of services. All of the auto-insurance-related objectives in its most recent statement of priorities and strategic direction can be met with convening such a public review, and such objectives may be easily amended to include such a review without having to, I believe, go to the Legislature on the matter. Thus, this government of the day could complete and begin carrying out an auto insurance plan before the end of its electoral life.

The next point that I want to make is on some of the myths and misconceptions about auto insurance. I think that Professor, Premier, Order of Canada recipient Pawley made it very clear that auto insurance is not dead as an issue. That was another Premier; that was another time. We've had 20 years to review our no-fault system and deal with successive periods of increases, regulation and re-regulation.

Some can argue that Ontarians prefer our much-revised, modified tort and enhanced no-fault insurance system. This is how it's provided. Wrong: Insurance providers prefer it.

These are some of the cries that you've heard from the heart of our province:

We need a clear, public monitoring of the insurance industry.

Injured parties in auto accidents need to be treated as whole beings. We need to look at the whole patient when it comes to auto insurance. We need to spend as much time worrying about the property damage side and the collision side and the cost of car repairs and the rising cost of mechanical services and property damage as we have been spending on the intense scrutiny of 1% to 2% of those who are injured in auto accidents—those persons who are suffering under catastrophic accidents. It is wrong to make those who are most injured bear the burden of the system or, by definition alone, guarantee them to be kept miserable by check box and protocol.

It is wrong to return, through the back door, to the days when psychological benefits are limited, and we are left with a meat-chart vision of a person, relying on a capped percentage of impairment. That view is supported by the Insurance Bureau of Canada, though the IBC has never provided scientific or medical evidence of their view, which appears to be solely based on economic factors.

We need lower rates, and rates that will continue to be affordable for persons who are low-income; most par-

ticularly—I was thinking about Ms. Worotny's presentation; I'm betting she had an employer-based group plan that topped up her basic benefits as well. So many people—the downward pressure on wages, the number of layoffs, the cuts to post-retirement benefits etc. are creating a situation where people have fewer and fewer options.

Fewer young people are choosing to drive, or have chosen to put off learning to drive, due in part to the cost of insurance.

Insurance benefits have to be better coordinated with OHIP, Ontario disability support payments and other support systems.

Redlining must end. A reassessment of the insurance-company-created, FSCO-approved, up to 55 potential territories—that may be as small as 2,500 people—is redlining by another name. Don't let them dress it up and take it out another way. By using that kind of redlining, they're using neighbourhoods and communities to give an unholy ghost life to racial discrimination.

Driver-based fees are the best way to be fair. Individual driving records should be the predominant, if not the only method, of determining rates.

A tort component, I believe, must remain in the system to ensure justice for people.

As Mr. Pawley expressed, driver-owned, publicly administered auto insurance is not an idea reserved for one political party or another, though I will point out it was the Filmon government in Manitoba that took away the tort option. That was a Tory government.

Public auto insurance is perceived as old-fashioned and not keeping up with our technology in our world. Well, one of the jobs of this committee is to make sure that the financial services that Ontarians use are fair and honest, particularly in dealing with banking and other financial services over the Internet. No matter, again, how you address it—and I'm going to take it out—when you go on the Internet to order auto insurance, you've still got to pay and choose. That's all it is. We already have a platform in Ontario to deliver services by Internet.

There's not a one-size-fits-all plan for auto insurance. Ontario can create its own plan. We don't have to reinvent the wheel, though, because we have all the examples across the country to draw from. We can pick and choose. We have had auto insurance in Ontario since 1945. It's been around longer than our treasured health insurance system.

Public auto insurance is not bureaucratic or inefficient. One of the things I love about the Insurance Bureau, they always talk about how it's going to put the province in legal conflict because the province will be having to litigate against citizens. Well, I'm sorry; the province, through the prosecutorial system that we have, often litigates against citizens, and it hasn't put us in a conflict of interest. That's how the justice system works.

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I do want to say something very important. International agreements will not keep us from setting up a plan. The Lord government retreated in part or in whole because of fears about NAFTA and GATS. That is only true if we let those fears take over. The left and the right in this province have been captured by their own rhetoric about what these trade agreements will mean for insurance. According to Steve Shrybman and Scott Sinclair, NAFTA and GATS are navigable concerns. However, recent opinions regarding the comprehensive European trade agreement may interfere.

Yesterday, Shrybman's—and I'm happy to give this to the committee. It's 21 pages long—my little one-horse law office operation. I just thought the committee might want a copy of that for everyone. GATS and NAFTA are not as much of a concern. However, CETA involves the provinces in decision-making in a way that NAFTA and GATS do not. The province of Ontario unfortunately has not taken the time or interest, or perhaps has decided not to involve itself in the CETA process.

This comprehensive treaty with Europe is centred around a number of services, but financial services are very important. The Europeans have already done the set-asides for their public entities, but it appears—especially since Mr. Shrybman was able to obtain some documents that I have not yet seen but this committee might wish to also review—that the province has not stepped up to protect all our public entities.

We're in a brand new world with financial services—

The Chair (Mr. Bob Delaney): I'd just like to remind you that you've got two minutes to go.

Ms. Victoria Cross: Right—and dozens of towns and cities in Ontario have already stepped up and said, "We want the government to intervene with CETA." When it comes to trial lawyers and international trade lawyers, I assure you that if you can find international trade lawyers to talk you out of doing something, you can find some that will help to make sure it's safe.

In questioning, I can perhaps talk more about GATS, but I want to say this: Since the G20, the Occupy movement and the protests in Quebec, it's time we recognized that citizens in this province and right across the country are fed up with governments that see themselves as middle management for corporations, including financial services corporations. We still have an opportunity to have government respond in a positive way to its citizens and make their lives just a little bit better. I'm sure it's tough, and I'm sure Mr. Pawley would be happy to tell you how he had to take the insurance companies head-on in Manitoba and survived. But I don't think anyone on this panel would want to be less courageous than Mr. Pawley. Times are not that different than they were in 1971.

Thank you very much for taking the time to pay attention.

The Chair (Mr. Bob Delaney): Thank you. Mr. Naqvi.

Mr. Yasir Naqvi: Thank you very much, Ms. Cross, for your presentation. A point of clarification based on your presentation: Do you agree with the NDP's proposal to take territories out when rates are being calculated?

Ms. Victoria Cross: I know that in other provinces, there are perhaps three to five territories. In this province,

there are 55 territories available to insurance companies, some of which could be as small as 2,500. That I got from the testimony from May 28. I think that's something that—you know, the FSCO has been rubber-stamping these requests over and over again. There's not enough time or energy to go over these; the FSCO has other things that they have to administer: co-ops and other things—

Mr. Yasir Naqvi: I was just hoping you can answer my question. Do you agree with that proposal to take territories out when rates are determined, or you don't disagree with that?

Ms. Victoria Cross: I would not put that in a yes or no. I think you're making it too hard. Territories, the three to five urban, rural, perhaps exurban—that's not a big deal. But when you've got neighbourhoods like in Bramalea, where you've got perhaps very tiny territories set up, then that's redlining by any other name.

Mr. Yasir Naqvi: So even in a situation where the result would be higher insurance rates, let's say, for Windsor or other parts of the province, you will still support narrowing down or expanding the territories?

Ms. Victoria Cross: Not without a public auto insurance system that can deal with other issues at the same time. If you take one of these issues out of the mix, what you're doing is just cherry-picking an issue that may or may not solve a problem. You're just adding more regulation on top of more regulation on top of more regulation. By the way, CETA might even prevent those activities unless the province of Ontario steps up.

What I'm suggesting is, if we are going—

Mr. Yasir Naqvi: I have very limited time here—he's going to cut me off very soon—so I'm just trying to get to some key issues here to get a better understanding.

We're not looking at public auto insurance because that's not the mandate of this committee—

Ms. Victoria Cross: Are you never going to look at public auto insurance?

Mr. Yasir Naqvi: That's not my determination to make.

Ms. Victoria Cross: I just want to be sure, because—

Mr. Yasir Naqvi: In the current context, do you still support narrowing the number of territories, even if that means increased rates for cities like Windsor and other areas outside of the GTA?

Ms. Victoria Cross: I do not support narrowing territories as a tool to discriminate against drivers. All decisions, and the primary decisions, should be made on the individual driver's risk. It shouldn't be about age; it shouldn't be about marital status or gender—which, by the way, the IBC admits are still in their rate-setting process.

Mr. Yasir Naqvi: Thank you, Chair.

The Chair (Mr. Bob Delaney): Mr. Yurek.

Mr. Jeff Yurek: Thanks for coming in today. Can you give us your thoughts on the proposed changes to catastrophic? We've heard from the Ontario Trial Lawyers. I'd like to hear from another lawyer.

Ms. Victoria Cross: Well, the reason I am a general practice lawyer is because I often refer out things that are not my specific skill. What I do want to suggest is that Ontario Trial Lawyers has given an effective and smart presentation, and paying attention to that is probably a really good idea.

In terms of catastrophic and serious, non-serious, again, when you are just taking one element of the entire problem—I mean, now that we have discovered the Higgs boson, let's talk about how atoms hold together. If you just take one out of the mix and deal with that one thing without confronting the mare's nest, the tangled web of insurance regulation, then all you're doing is making it worse for people, not better.

Mr. Jeff Yurek: Thank you.

The Chair (Mr. Bob Delaney): Mr. Singh.

Mr. Jagmeet Singh: Thank you very much for your presentation. I really enjoyed it.

Just to pick up on my colleague Mr. Naqvi's question, a Liberal member of provincial Parliament, Mr. Sergio, an honourable member, wanted to eliminate territories across the entire province and get rid of all territories whatsoever. The NDP proposal was a little bit different. It was proposing that areas like the GTA, which has up to 10 different territories with very minimal kilometres separating them—they're very similar neighbourhoods, but there is disparity as much as 2.5 times higher from one region to another. The NDP proposal in my private member's bill was to get rid of that further subdivision so that the divisions of Windsor or northern Ontario or rural communities would remain—those areas could remain as subdivided areas—but something like the greater Toronto area would be one area and rates would stabilize within that area, so that people who were good drivers but living in a "bad" area who were getting high rates because they lived in what was deemed a bad area would then get a savings, and for those who were bad drivers but were living in what was deemed a good area and were getting an unfair savings, their rates would go back up and the driving record would be the primary driver. Is that something that makes sense to you and is that something that you agree with?

Ms. Victoria Cross: Absolutely. I assume people from Jane and Finch occasionally drive past Rosedale.

What I would suggest is that in Ontario, we have an urban mix. We have smaller urban; there are rural issues. My heavens, you can drive across a good part of northern Ontario and not run into another car for hours—literally or figuratively. In a situation like Toronto, which has a high-density population—I think that all of Toronto could be easily seen as one area.

Mr. Jagmeet Singh: You touched on a number of areas. One area I was wondering if you could give perhaps your remarks on: One of the leading drivers of why premium rates are higher or lower is the overall costs that insurance companies incur. We've seen that the costs that insurance companies have incurred have reduced significantly from pre-2010 to post-2010. The reforms have resulted in a savings of almost 50% in terms of the costs.

Given that we've seen a reduction in the costs that are incurred by insurance companies, do you think that this issue of reducing fraud, which is a small piece of this cost puzzle, is a bit of a red herring? We've already seen a reduction of almost 50%, but our premiums haven't reduced at all.

Ms. Victoria Cross: That fraud number has been bandied about for over 20 years. It's $1.3 billion. It was $1.3 billion in 1972, $1.3 billion in 2003, $1.3 billion now.

The other thing is, we're dealing with multinational insurance companies. Why should the people of Ontario be paying for premiums that cover the costs and benefits to people in Florida or Bulgaria? Italy has the highest alleged fraud rate in Europe. If we don't protect our ability to determine our own rates in our own province for our own people, what's going to happen after CETA comes into place? Are we going to have Italian insurance companies coming in to decide, "Oh, gee, we won't have to pay out so many premiums here, so"—

The Chair (Mr. Bob Delaney): On this topic, I think that's a good place to end for the morning. Thank you very much for having come in to share your thoughts with us.

To committee members, we are in recess until 12:45 p.m. this afternoon. I'd like to ask you to be particularly punctual because our first deputation is by teleconference, which has been prearranged.

We are in recess.

The committee recessed from 1132 to 1251.

The Chair (Mr. Bob Delaney): We are here to resume our study of the auto insurance industry. Just before we get to our first deputant, I believe we have a request of legislative research. Mr. Natyshak.

Mr. Taras Natyshak: Thank you very much, Chair. Let me get my stuff in order here, if you would.

I ask the committee researcher to produce a report that shows the changes in average premiums on a provincial riding-by-riding basis in the Toronto census metropolitan area, CMA, if the current industry-defined territories were replaced by one larger Toronto CMA territory. The change would be based on full-year 2011 claims and premium data. If the committee researcher is unable to produce such a report because of the inability to access the relevant claims and premium data, the committee asks the researcher to provide a detailed explanation as to why the appropriate data cannot be accessed, where the relevant data presently resides and suggestions as to how to obtain the relevant data. The report, or an explanation as to why the report can't be produced at the present time, should be distributed to the committee by August 22, 2012.

The second request is that the committee researcher produce a report comparing the profitability of auto insurance underwriting in Ontario for the calendar year 2011 to 2010. If the committee researcher is unable to produce such a report because of the inability to access the relevant financial data, the committee asks the researcher to provide a detailed explanation as to why the appropriate data cannot be accessed, where the relevant data presently resides and suggestions as to how to obtain the relevant data so that the report may be produced. The report, or an explanation as to why the report can't be produced at the present time, should be distributed to the committee by August 22, 2012.

As well, I request that the research officer provide a summary of presentations by August 22 to the committee members.

The Chair (Mr. Bob Delaney): Okay. The request is in order. Is there any discussion? Mr. Naqvi.

Mr. Yasir Naqvi: Perhaps a friendly amendment, Chair, on the first request. Mr. Natyshak was reading really, really fast.

Mr. Taras Natyshak: I apologize. I can provide copies—

Mr. Yasir Naqvi: It would be great if you can get a copy of your request as well in writing, but I think on the first one, where he asked for the impact, riding by riding, within the greater Toronto area if one territory is created—Taras, I think that was the first thing that you asked?

Mr. Taras Natyshak: Yes.

Mr. Yasir Naqvi: I was hoping then, research, if we can also have what impact that may have on the rest of the province.

The Chair (Mr. Bob Delaney): Just to clarify, it's not a motion; it is a request. The request to the researcher to undertake some research is, in fact, in order. The researcher now has Mr. Naqvi's suggestion as well.

Any further discussion? Mr. Yurek.

Mr. Jeff Yurek: I would like to add to the request of the researcher that we include not only average premiums, but also average claims on the provincial riding-by-riding basis, and also, on the first motion, that it wouldn't be just based on 2011 claims. Let's get a full scope from January 2000 until now.

Did you move a second motion, too? I wasn't really listening.

Mr. Jagmeet Singh: We did the second request, too.

Mr. Jeff Yurek: And the second request, I'm just recommending that we are just removing the calendar year 2011 compared to 2010 and just making it between the period of January 2000 to July 11, 2012; as well, adding in a comparison between the profitability of auto insurance underwriting in Ontario and the performance of the TSX and the New York Stock Exchange during this time period.

The Chair (Mr. Bob Delaney): Any other discussion? Mr. Natyshak.

Mr. Taras Natyshak: We're all proposing individual, separate research requests, are we not? Or are we—

The Chair (Mr. Bob Delaney): Doctoral dissertations have been built on much less.

Mr. Taras Natyshak: I can imagine.

Mr. Jagmeet Singh: Just to clarify, my colleague Mr. Yurek's request fits in very easily with what has been requested, so I think that I should be a part of the same request. It's just broadening the scope of what's already in there. It flows very naturally.

I don't have an issue with my colleague Mr. Naqvi's request, but it just doesn't fit into what's being asked here. What's being asked in motion one is just looking at Toronto and, if we got rid of the ratings in Toronto alone, the impact in Toronto—what would happen if it went up and down, not actually looking at the rest of the province. It's specifically saying if we kept the impact localized to Toronto, what would be the impact riding by riding, not actually factoring in the rest of the province, which is a different request. It's not—

The Chair (Mr. Bob Delaney): As members, it's your privilege to make the request that the NDP made and it's Mr. Naqvi's privilege to make the request that he made and Mr. Yurek's privilege to make the request that he made. The Chair is just trying to summarize it all in one word: Yes.

Anything further?

Mr. Taras Natyshak: Just again for clarification: We would be amenable to Mr. Yurek's additions to our request because they fit in seamlessly with the data that we're looking for. If Mr. Naqvi is looking for subsequent data involving different metrics, then I'm of the understanding that he's posing another separate request aside from these three that we have—

Mr. Yasir Naqvi: So let me make that request.

The Chair (Mr. Bob Delaney): So noted.

Mr. Yasir Naqvi: My request is that when the researcher does the analysis on a riding-by-riding basis in the Toronto census metropolitan area as to the impact of one territory and how the rates may go up and down in the greater Toronto area, that they also do what the impact would be on the rates across the province in other CMAs as well.

The Chair (Mr. Bob Delaney): All right. Let's see what our researcher can do with these requests.

Anything further before we move to our first deputation? Okay.

BRAIN INJURY ASSOCIATION OF THUNDER BAY AND AREA

The Chair (Mr. Bob Delaney): Our first deputation of the afternoon comes from the Brain Injury Association of Thunder Bay and Area. Via teleconference with us are Janet Heitanen and Karen Pontello. Are you with us?

Ms. Karen Pontello: Yes, we are.

The Chair (Mr. Bob Delaney): Sorry for the short delay.

Ms. Karen Pontello: That's okay.

The Chair (Mr. Bob Delaney): You'll have 15 minutes to make your presentation to the committee. We're sitting in Windsor and you're addressing members of all three political parties. After you've made your deputations, there will be up to 10 minutes of questions. The first round of questions will come from the official opposition. Before you get started, please introduce yourselves for Hansard and then proceed.

Ms. Karen Pontello: My name is Karen Pontello. I am a board member of the Brain Injury Association of Thunder Bay and Area.

Ms. Janet Heitanen: And my name is Janet Heitanen and I'm also a board member of the Brain Injury Association of Thunder Bay and Area.

Ms. Karen Pontello: I'm Karen. Karen will be presenting.

The Brain Injury Association of Thunder Bay and Area, which is the regional representation of the Ontario Brain Injury Association, would like to present the following concerns regarding the changes to the cat determination for individuals with traumatic brain injuries, referred to later in this report as TBI.

We thank you for the opportunity to present. The brain injury association's main objectives are to provide support and information assistance to individuals and family members living with the effects of brain injury in Thunder Bay and area, from White River to the Manitoba border; to provide education and information that will increase public and professional awareness of the needs of people living with the effects of brain injury; and to work with organizations with similar goals to enhance opportunities and remove barriers to community participation for people living with the effects of brain injury. With these objectives in mind, we present to you our opinion about the changes to the definition of catastrophic impairment, particularly for people with TBIs.

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In supporting people who have sustained brain injuries in motor vehicle collisions, we believe that individuals require a system that emphasizes integrity in the areas of access, accountability, fairness, transparency, consistency and expertise as outlined below.

(1) Access to medical and rehabilitation care: Individuals with TBI require access to care that is available to them in a responsive and timely manner. Individuals require care that addresses their needs at the point in time when it is important for them. In order to access care, funding from their accident benefits must be available for medical and rehab services.

In the current system, individuals with brain injuries who are identified to be catastrophically impaired have access to funds for services when they need them throughout their lifetime. The stipulation on the proposed interim cat determination that requires individuals to be treated in an in-patient neurological facility, outpatient rehab program or day-patient rehab program may limit access, particularly if these rehabilitation services are not immediately available in the larger centre of Thunder Bay or if the interest of the individual is to stay in their home community, which is in the rural areas in the district. At times, also, the need for therapy to occur in an individual's home may be in his or her best interests.

The panel must consider that appropriate neurological rehabilitation may be limited by geography and the availability of services in smaller communities. Consideration of flexibility in this recommendation is required in smaller rural areas and for those individuals who would

benefit from remaining in their home community while receiving rehabilitation services. Moving to a larger city to receive appropriate neurological rehabilitation may not be the best option for individuals who require the support of family and friends while they are receiving rehabilitation. Individual choice for people with TBI is recommended, along with input from the primary care specialist or health practitioner. Currently, families and individuals have reassurance that benefits are available if they need them at any point in the course of their recovery throughout their lifetime.

With the proposed changes, individuals and families will be uncertain if they have access to benefits over a lifetime, particularly if they have been awarded interim catastrophic designation. The fact that this interim cat designation may be removed will add stress to individuals suffering from a brain injury. The panel's proposal that final cat determination for lower-level moderate disability should not be completed until one year post is well taken, as long as this cannot be extended. If after one year an individual is still in need of care, it is likely that the individual will require access to ongoing medical and rehabilitation care as needed throughout their lifetime to continue to make gains towards recovery. It is apparent that under the proposed changes, access to medical and rehabilitation is questionable and uncertain, depending on how the legislation is outlined for individuals following the one-year mark.

The proposed change for removing the Glasgow coma scale used for cat determination, for TBI individuals who are impaired in completion of their daily activities, considering work and other activities, and who are left with a choice of working and being limited in other activities or completing other activities and being unable to work, may no longer meet the catastrophic threshold using the Glasgow outcome scale extended. These people are most vulnerable in the system, as they will fall through the cracks and suffer hardship in trying to manage all activities while living with a TBI. These individuals currently access services when needed, as determined by their health care professional. Without the cat funding available, these individuals will place increased burden on the OHIP system when the non-cat $50,000 limit is depleted. These individuals with moderate TBI will go without needed services that are required to balance activities when living with a TBI. They will require services, and may end up in social systems that have long waiting lists and are not set up to meet the needs of individuals with brain injuries.

The proposed change for limiting the combining of impairments and determining cat designation related to whole person impairment is problematic. Individuals who suffer mild to moderate TBI, along with other psychological impairments such as depression, post-traumatic stress disorder and orthopaedic injuries, deal with the combined effect of each impairment on a daily basis. A person cannot be separated into various impairments in isolation. When considering this, a brain injury and depression are exclusively different issues and need to have a rating for each impairment added cumulatively to the calculation of whole person impairment when a physical impairment exists as well. Function is determined as a whole. The panel needs to reconsider the whole person impairment rating for many individuals with TBI. Their cognitive limitations are significantly impacted by co-existing psychological and physical impairment which negatively affect overall day-to-day functions. Removing the combined whole person impairment rating will limit access to services for individuals who have severely impaired and significant functional limitations in the completion of daily activities.

(2) Accountability, fairness and transparency: Individuals with TBI require their insurance companies to be accountable and fair in managing claims based on medical rehabilitation need. Insurance companies are not responsible for determining need. The management of medical and rehabilitation benefit under the SABS requires transparency so that individuals can receive services to manage the brain injury even when the insurer questions individual need.

The need of the individual who is seriously injured must take priority over mandates that are not always clear to the individual suffering from a brain injury. Insurers currently can deny treatment plans without requiring a second opinion from an equivalent professional assessor and suspend services until the assessment is completed. The ability of the insurance company to question need is considered okay if the individual can continue with services until the need is determined not to be required based on expert opinion. The process of suspending services while need for service is being questioned is unfair and decreases transparency and accountability within the process. The proposed changes may impede accountability, fairness and transparency as interim cat benefits can be taken away at some point in the one- or two-year mark. However, the process for this is not clearly outlined. Without clear criteria and procedures for a change in cat determination, the system appears less fair and out of an individual's control.

(3) Consistency: Individuals with TBI require their insurance company to maintain consistency of care as they manage the claims process. For example, a claimant receiving medical and rehabilitation services should have these services continue while insurance examinations are being conducted. For individuals with significant injuries, consistent services are required to maintain the gains achieved in treatment. It is not clear how continuation of services will be addressed as cat determination is being reconsidered with the interim cat designation.

For individuals with TBI, the medical and rehabilitation services assist them with increasing function and maintaining gains. The panel must consider the continuation of services while insurance examinations are being conducted and disputes are being resolved. If the individual's current services are put on hold or removed through the redetermination of cat process, they may not maintain the progress made in treatment or further gains. These individuals will not be able to afford to maintain

services on their own while waiting, due to the high cost for services in the private system. Individuals who have the interim cat designation removed and lose function as a result should have the option of being reassessed for the cat designation using the Glasgow outcome scale extended at the time that function deteriorates. Consistency of services throughout a lifetime, when needed, is important for maximizing function.

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(4) Experience and expertise: Therapists and practitioners treating individuals with TBI and those completing insurance examinations should be using the same frame of reference when assessing individuals' medical and rehabilitation needs. It is not okay for insurance examiners to have less experience than the treating providers, as opinions may not be reliable or consistent.

Therapists, medical practitioners, neuropsychologists and psychologists who routinely treat individuals with TBI have developed a level of practice that exceeds those who provide intervention for one or two cat cases. It is apparent that differences of opinion often stem from this lack of expertise in assessing and treating seriously injured and catastrophically impaired individuals.

The introduction of the Glasgow outcome scale extended will increase the need for practitioners to understand how an individual with a moderate-to-severe TBI functions routinely in day-to-day activities. In order to determine cat impairment, medical practitioners, therapists, psychologists etc. must understand the cognitive and associated functional limitations that are seen in individuals who are often physically independent but are cognitively impaired.

Increased expertise and experience may be needed in conducting these assessments at the three-month, six-month and one-year points post-brain injury.

The Chair (Mr. Bob Delaney): I'd just like to point out you've got about two minutes to go.

Ms. Karen Pontello: In summary, we believe that the availability of medical and rehabilitation benefits to individuals with TBI early in the process is essential for functional recovery. Given the nature of traumatic brain injury recovery, it is acknowledged that determining functional potential is difficult for health care practitioners to project, as each individual follows his or her own course of recovery.

It is important that individuals with TBI continue to have access to services based on their identified needs throughout a lifetime. This access to services based on needs is the cornerstone in the insurance system and is what individuals paid for when they entered into insurance agreements.

We feel that individuals with TBI require access to care that is consistent and offered by experts in the field within a system that is fair, transparent and accountable. This is essential for individuals with TBI to regain some hope following injury, improve their quality of life in living with significant brain injury, and to promote engagement in meaningful activities. If the funding is not available to individuals with TBI for these purposes, these people will have limited hope as they face their future.

Thank you for consideration of our concerns.

The Chair (Mr. Bob Delaney): And thank you. Mr. Yurek.

Mr. Jeff Yurek: Good afternoon. Thanks for calling in. How's the weather up there?

Ms. Karen Pontello: It's nice.

Mr. Jeff Yurek: My question to you is, before I hit the catastrophic, just with regard to the 2010 changes with the cap on assessment costs: How has that affected your clients, if at all?

Ms. Karen Pontello: What we find is that if we have to travel or if the assessors have to travel to a rural area—so they might fly into Thunder Bay from Toronto, because oftentimes the assessors are coming from Toronto. The cost to travel, which is included in the overall cost, takes away from the assessment. So the $2,000 cap is not enough when travel costs are considered in the rural areas. That's a big issue for us.

Mr. Jeff Yurek: It's a big one. And with regard to these changes in catastrophic, you're thinking, because you're rural and away from major centres, that the designation as catastrophic will be delayed and therefore that is bad; correct?

Ms. Karen Pontello: Yes. When you say "designation as catastrophic," you mean the interim cat designation for treatment?

Mr. Jeff Yurek: Both.

Ms. Karen Pontello: Okay. Yes, we do believe that. There is limited service in rural areas, so there needs to be some access in those areas so that the clients can get started in the system.

Mr. Jeff Yurek: Any suggestions as to how we should proceed with helping those people out?

Ms. Karen Pontello: I'm just wondering if increased education of ERs—some of those areas might be helpful, so that if a client has a brain injury on admission to the emergency room, they are given information on how to proceed with getting that cat determination, particularly if their Glasgow coma scale is nine or less. I think we could get the emergency response system to look at that.

In my experience with clients under the GCS, I think actually there are not too many clients with a GCS of nine or lower who would end up showing up better on the GOSE later on. I feel that it's quite comparable.

Ms. Janet Heitanen: I would just like to add to what Karen said—this is Janet speaking—that as a nurse, I think it's important to have the education in the ER, but also with the family physicians who are then going to take over the care once the admission happens.

The Chair (Mr. Bob Delaney): Okay. I'm just going to move the rotation over to the New Democrats. Mr. Singh.

Mr. Jagmeet Singh: Thank you so much for your presentation. My name is Jagmeet Singh. I just wanted to touch on a couple of points. One is, you mentioned that in rural communities, the $2,000 cap is limited because of travel. What about the suggestion or idea of having a

separate component of the cap set aside for travel? Your feelings on that?

Ms. Karen Pontello: That would be outstanding. That happened before we were able to look at travel being separate. Then, since 2010, they have combined it. So what happens, particularly for the real expert exams—and this can be problematic—is that a company who maybe understands how much work and how much detail is required in an expert exam for a client who is catastrophically impaired from a brain injury would not be able to do it, including travel costs, for the $2,000. Someone who doesn't get it might say, "I can do it," but you're not going to get the expert-type assessment.

Mr. Jagmeet Singh: Thank you for that. What about the new requirement that may require family physicians to sign off on all treatment plans and the impact to people in Thunder Bay or rural communities and their access to doctors, and how that would impact their treatment plans?

Ms. Karen Pontello: Now, I was looking for that because Janet had mentioned it was in there. You mean all treatment plans, including therapists and everything?

Mr. Jagmeet Singh: Yes, everything. I think the proposal is going to be that everything has to be signed off by a family physician.

Ms. Janet Heitanen: I'd like to speak to that. It's Janet speaking. I think in rural communities, one of the big problems is we are very understaffed in medical personnel, family doctors. Many people in Thunder Bay, thousands, do not have family doctors, which I think would be one concern. Also, family physicians typically are very slow in their paperwork because they have caseloads, particularly up here, I think, and in Sault Ste Marie, where I came to Thunder Bay from. I think that will delay treatment. I think that will overburden both the physician system and the catastrophically impaired or [*inaudible*] person in that they won't get the help immediately because—I know that you could wait three months for paperwork to get done because the physicians just—

Mr. Jagmeet Singh: I understand; thank you. I just want to squeeze in one quick question before my time is up. There's also talk about including a whole host of other tests: the Glasgow standard, the GAF, the AMA spinal code guidelines. How is this going to impact your ability to get a clear assessment of someone who is determined to be cat or not?

Ms. Karen Pontello: You mean in terms of specialized assessors?

Mr. Jagmeet Singh: Just in terms of even the initial determination. There's talk about including a host of other tests to kind of complicate the test as it is already, other indicators like mixing in the AMA spinal code guidelines with the Glasgow extended scale, as well as the GAF—

The Chair (Mr. Bob Delaney): I'm sorry, the question took a little bit too long to ask. I'm going to have to move in the rotation over to Mr. Naqvi.

Mr. Yasir Naqvi: Karen, go ahead and answer the question.

Ms. Karen Pontello: What will happen is I would think that some people will be trained to do it and others won't. So while people are understanding how to do it or learning how to do it, there will be people who go without service or fall through the system. When I looked at the GOSE, I was looking at some of the validity and inter-rater reliability associated with it, and looking at what lies in between every question, particularly when you're dealing with clients who have functional impairments. If you just looked for it at face value when someone doesn't understand the significance of a brain injury, let's say, on top of function, they're going to say, "Oh yeah, for sure, the client can stay alone for eight hours," or "For sure, the client can get to work," and not truly understand the impact of how overall function is on those activities. So I really do believe that with [*inaudible*] situations, as well as with spinal cord injuries and the psychological, if people are not trained for that expert opinion, you're going to be dealing with a lot of disputes and a lot of money spent out of clients' cases regarding that.

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Mr. Yasir Naqvi: Great. Thank you very much. I think you've answered all the questions that we had. Thank you for your deputation.

Ms. Karen Pontello: Thank you so much.

The Chair (Mr. Bob Delaney): And thank you very much.

CHAPMAN GORDON GARDIN STEWART LLP PERSONAL INJURY LAWYERS

The Chair (Mr. Bob Delaney): Our next deputation comes from Chapman Gordon Gardin Stewart LLP Personal Injury Lawyers. Come forward. Take a seat. Make yourselves comfortable. You'll have 15 minutes to make your remarks this afternoon, followed by up to 10 minutes of questioning divided among the three parties. This round will begin with the New Democrats. Please begin by introducing yourselves for Hansard, and proceed.

Ms. Ruth Stewart: Hi. My name is Ruth Stewart. I'm a partner at Chapman Gordon Gardin Stewart. To my left sits Stephen Marentette, who is an employed lawyer with our firm.

By way of background information for myself, I actually did insurance defence work for 10 years. I also acted as a local prosecutor for the WSIB. I'm proud to say I have a 100% conviction rate. I was recruited to work in a personal injury firm about four or five years ago, and I am now a partner in Chapman Gordon Gardin Stewart. The firm focuses on ABI work and on catastrophic impairment. I made my living for the last 20-plus years out of two paragraphs in the Insurance Act.

I am also old enough—I don't know how many of you on the panel are old enough; I'm thinking probably nobody—to remember the legislation before the OMPP came into effect. I can tell you that the Insurance Act is a

very complex piece of legislation. The five or six changes that we've had in the last number of decades have made it even more complex, and it's my very strong view that these proposed changes are going to make it even more difficult to understand.

If you compare the benefits that we had back in 1970 and extrapolate it forward by the consumer price index and cost of inflation and all that, I'm willing to bet my eye teeth we have fewer benefits now than we did back in the 1970s. My premiums haven't gone down, though.

I was here earlier today and I seem to get the sense that the focus is maybe not so much anymore on the cat changes, but on fraud and the cost of premiums. If I could make a couple of comments about Mr. Murray's presentation, I agree that the cat definitions, the proposed changes, are going to add a serious layer of complexity and that consumers are not going to understand the contents of the new definitions. Disputes are going to increase, benefits are going to be delayed, and I think we are all in agreement that there's been no real research and insufficient information on the cost implications of the proposed changes. I agree that they're discriminatory.

We, here in Windsor, are an underserviced area in terms of family doctors and medical specialists. There are 109 beds, I understand, for ABI rehab patients across the province. Over 86% of them are from the London-to-Ottawa corridor. None of them are here in Windsor.

I agree with Mr. Murray's suggestion that the panel should have had more data—a breakdown of all cat injuries into the spinal, the brain, the physical, the combination designation.

I also want to say that I was very glad to hear some comments from Dr. Lacerte. He had a very frank admission that the mandate of the cat panel was too restrictive. I was glad to hear that because I did have some comments, but I'm not going to make them.

I was also glad to hear that there should have been more disciplines on the committee. I was very glad to hear that he's very concerned about the mild-to-moderate head injury patient. He even suggested that a fourth category of injured persons might be considered for the SABS schedule.

Both he and Mr. Murray of OTLA agreed that the needs of those most in need ought to be protected, and I don't think anybody here can disagree with that. Dr. Lacerte and Mr. Murray agreed that the family doctor isn't necessarily the best person to administer the treatment plans or the interim $50,000 which would be available for an interim cat designation.

I do disagree with Dr. Lacerte in some aspects. I've been doing this for over 20 years, and except for one case, I have never had an individual get a colon enema or aromatherapy. I think that was an exaggeration on his part. I also disagree with him that once a plateau or maximum medical recovery is reached, there should be no more treatment. Treatment in a lot of cases is essential to keep a person's internal organs functioning and is essential so that they don't decline. I disagree with him in that case managers aren't the proper people to administer the treatment plans, and I seriously don't think that family doctors are those, either.

I strongly disagree with his comments that the plaintiffs' attorneys are running the kitchen. This can't be further from the truth. The insurance industry is running the kitchen, and it's plaintiffs who come to our offices when the kitchen's on fire or when there's smoke. They're coming to say, "Something doesn't smell right. Can you help me out?"

The process as it currently is—the insurer determines the needs of the accident victim. I agree with the person who spoke from the Brain Injury Association of Thunder Bay and Area: Treatment is suspended pending IEs. That's not fair. In reality, I can tell you that if a SABS insurer didn't deny as many treatment plans as they are, we wouldn't have the tort files that we do, because somebody comes in and goes, "I've been trying to get this treatment from my insurance company. I can't get it. Can you help me out?" And you go, "How did the accident happen and whose fault was it?" I would not have the business I do if SABS insurers paid the benefits.

With respect to combining physical and mental or behavioural issues—I went back to the office. I was here earlier this morning. I had this great, big, long presentation, but I went back to the office. I'd like to run a couple of cases by you.

We have a male in his early to late 20s who was trapped in a burning car. There's no tort claim. He suffered burns to his upper body—to his arms, to his hands; his fingers are almost destroyed. He always worked with his hands in physical labour. He can't work with his hands anymore. He suffered a moderate brain injury in addition to those physical injuries. Do you think he made cat? Not without a combination of the physical and the mental impairments.

He used his $50,000 of med rehab very quickly, and without cat, he would have been left without medical treatment, without rehab, and he would have had to rely on OHIP and social programs. If he didn't qualify for income replacement benefits, he'd be on ODSP, collecting from the public purse.

I've probably got a dozen or so cases. I've got a 34-year-old single woman who was involved in a single-car rollover on the 401. She was laid off at the time of the accident. She was actually on her way to get a job at one of the plants in St. Thomas when the accident happened. She never got there, so she never got paid. So she has no work record. She's not entitled to IRBs, according to the insurance company.

She was unconscious for a short period after the accident and it took 20 minutes for the EMS to arrive. She had a broken pelvis, several broken ribs and a degloving injury to her left hand. She's got a serious driving anxiety. She's unable to care for herself or her dog—she lived alone. She has serious issues with depression. She requires a back brace, an arm brace. She ambulates with one cane—not two, as suggested in the panel's report or the superintendent's report. She can't access areas of her own home, including her bedroom.

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The SABS insurer was made aware of the accident. They didn't send anybody in to do an OT assessment for months. She had to rely on CCAC and local services to help her out. She got a maximum of two hours a day.

I have another example of a 63-year-old married woman. She was rear-ended with enough force for her seat back to break. Her husband was in the passenger seat. He has cancer and he's deaf. She was the sole caregiver for that disabled husband and she was the family's sole income-earner. There has been no diagnosis as to her injuries. There's some suggestion that she has suffered from a brain stem injury because of the collapse of the seat, but there's no "objective" evidence—and I put that in quotes—of any medical brain issues. But she suffers from seizures. She can't work, she can't cook, she can't babysit her grandchildren, she can't care for her husband. She relies on her children for housecleaning, yardwork and meal preparation. She needs someone to drive and accompany her to doctor's visits. She can't remember to do her groceries. She needs help with all aspects of her normal life. Is she cat? I don't know—I haven't made the application yet—but I strongly suspect I'm going to get a denial.

I've got a 71-year-old woman who was T-boned in her driver's door. She suffered a broken left ankle, a fractured pelvis, broken ribs, a head injury, numerous soft tissue injuries and whiplash. She, like the other woman, was the sole caregiver for her 75-year-old husband, who has advanced Parkinson's. She can no longer drive, clean, garden, care for her husband, cook or do the groceries. She's very, very depressed. In less than 18 months, she has burned through her med rehabs and she has used, if my last recollection is correct, $36,000 or $38,000 in her $50,000 worth of med rehab. Is she cat?

The Chair (Mr. Bob Delaney): And you've got about two minutes to go.

Ms. Ruth Stewart: Oh, no.

I've got a number of examples. On the issue of fraud, I can tell you that I was involved in a file where an insurance company's lawyer and the insurance company's adjuster had collaborated. The file was settled at our office for $350,000. The documents that went to the insurance company—sorry, Steve—said that there was a settlement of $850,000. "Three" has five letters in it and "eight" has five letters in it, and had that insurance company—and maybe they had twigged on to this—not been astute enough to send a random questionnaire to our offices, I don't know if that fraud would have been discovered. I can tell you that the Law Society did investigate the lawyer. I checked on the website today; his privileges have been revoked. But I never heard from the OPP. I never heard from the RCMP. I have no idea if criminal charges were followed through.

I agree that a tip hotline might be a decent idea, and expanding the SIU for more investigators and more prosecutors. But I think we should pursue fraud a little bit more vigorously.

I don't know what the answer is with respect to the reduction in premiums. I can tell you that the changes in 2010 reduced benefits, but didn't reduce my premium. Income replacement benefits are cut to people who haven't had valid job offers. The HCAI has actually made it more restrictive for people to get medical attention. Unless you've got a cat injury, there's no housekeeping. Med rehab has been cut by 96.5% in most cases. Attendant care has been reduced by 50%.

In my family we have four vehicles, three drivers. My premiums are almost $7,000 a year.

I can tell you that we can't put the burden of managing the funds on the doctors. Our case managers and treating OTs might be the best people for that. I have a real concern that reserves at the insurance company might not be adequately set aside and that we will see insurance companies defaulting on their obligations in the future.

Given that I'm probably at my time limit—

The Chair (Mr. Bob Delaney): Pretty close. Mr. Singh.

Mr. Stephen Marentette: I guess I won't say anything, then.

Mr. Jagmeet Singh: You touched on one category, and one point that was brought up a couple of times and I think it's a very important thing—if you can just elaborate maybe with your own experiences on how people are impacted in this category. We have the catastrophic category and we have the minor injury guidelines and we also have the $50,000 cap, but there's a big gap between the $50,000 and the cat. What are some of the experiences you have with people who are falling between that? What types of services would they have required and how are they literally falling through the cracks because of that big gap?

Ms. Ruth Stewart: If they're lucky enough to have employee health care benefits and long-term disability insurance, they get more in their income replacement benefits than they would under the normal SABS, and if they've got a working spouse, some people are able to sort of fill in some of the gaps and pay for treatment. A lot of those people, especially the single people and the elderly that I've been talking about, they can't do that.

Sorry, can you sort of—

Mr. Jagmeet Singh: You touched on it already. What, in terms of treatment plans—we know that there are extensive multidisciplinary treatment plans that are implemented for people with cats and they end up doing very, very well or they end up getting to a point where they can actually move on with their lives, maybe not in the same capacity. But those who fall in between the cat and the $50,000 cut-off, what type of treatments are they missing out on that could get them back to work and—

Ms. Ruth Stewart: All kinds.

Mr. Jagmeet Singh: If you could just elaborate.

Ms. Ruth Stewart: There's physiotherapy, there's vocational rehabilitation, there's all kinds of treatment that they're missing out on.

Mr. Jagmeet Singh: You mentioned that insurance companies are running the kitchen. I think that that's

probably more accurate than lawyers running the kitchen, but why do you say that and what's something to back up that assertion?

Ms. Ruth Stewart: Unlike some people think, we're not in the hospital chasing the ambulance; we're not sitting there waiting. Our experience is that clients don't contact us for months and months and months after the accident. So, in the meantime, their treatment plan is submitted, it's denied, they're sent to assessment. It's very often the same assessor. You know what the assessment—well, the client doesn't know, but I have an inclination of what the assessment is going to say when it comes back, and their treatment is denied. That's when they come to our office. So until they get to our office, the insurance company and the adjuster, who, in many cases, is inexperienced because the insurance industry has laid off a lot of the more experienced adjusters—the inexperienced adjuster now has the arbitrary opportunity just to say, "No, you fall in the MIG," and you don't fall in the MIG. If you're a fisherman with a serious shoulder issue, if you're somebody that works in a body shop painting cars and you've got a serious shoulder issue, I don't care if it's not a complete tear; if it's a partial tear, that's a problem. You should be out of the MIG.

The Chair (Mr. Bob Delaney): Okay, let's move to the government side. Mr. Naqvi.

Mr. Yasir Naqvi: Four vehicles, $7,000 in premiums; that's less that $2,000 a vehicle, so—

Ms. Ruth Stewart: Say that again?

Mr. Yasir Naqvi: You say you have four vehicles, $7,000 in premiums. That's less that $2,000 in premiums.

Ms. Ruth Stewart: Yes, but I live in a rural community. I don't live in Windsor; I live out in Essex county.

Mr. Yasir Naqvi: The point we're grappling with here is around affordability of insurance and, of course, adequate benefits, and where the balance is between the two. Perhaps I'll ask Stephen—so he gets a chance to be in Hansard and to speak a little bit as well, given that you've given your opinion—as to how we can lower insurance rates in Ontario, in your experience.

Mr. Stephen Marentette: That's an awfully big question. Have there been studies done on what the effect of the lowering to $3,500 has done? And what are the profits for the insurance companies now compared to what they were before? We just really don't know what that effect has been. Do premiums now have to be raised based on these new numbers that are in place? I don't know.

Mr. Yasir Naqvi: So any—

Mr. Stephen Marentette: Why do premiums have to go up?

Mr. Yasir Naqvi: Well, premiums are starting to come down now.

Mr. Stephen Marentette: Can't they stay the same so people have benefits if they need them?

Mr. Yasir Naqvi: Well, there's an interesting statistic that we're looking at, and FSCO talked about it when they came to the committee and spent a fair bit of time with us: The number of accident claims have stabilized; however, the medical cost continues to go up.

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Mr. Stephen Marentette: Yes, but medical costs are going up, what, 6% or 7% a year, whatever the statistic is?

Mrs. Teresa Piruzza: Two hundred and twenty-eight per cent.

Mr. Yasir Naqvi: Over 200%. How would you reconcile that? That definitely has an impact on premiums, right?

Ms. Ruth Stewart: My husband is employed in the auto industry. I think the data that the FSCO panel had was not complete. Our cars are now lighter. They've got more safety equipment. They've got airbags, they've got side-impact airbags, they've got ABS brakes. I would venture to guess that the fatalities in car accidents have decreased because of the nature of the safety equipment in our accidents, but because we're still having all those accidents, the people who otherwise would have died are now suffering catastrophic-type injuries rather than the minor injuries. I would think a lot of it has to do with the safety equipment and the improvement in our automobiles.

The Chair (Mr. Bob Delaney): Okay. Let's move over to Mr. Yurek.

Mr. Jeff Yurek: Thank you for coming out. I'd like to get your opinion on the mediation process currently at FSCO. Your thoughts on it—good, bad, indifferent?

Ms. Ruth Stewart: I filed an application for mediation—I think it was in August. It might have been in September of last year. The issue is cat impairment. Dr. Lacerte actually commissioned a report in that file suggesting that my guy was going to meet the cat impairment based on physical issues alone. But because it was so close, if he combined the mental issues, there is no question that he would be beyond the 55% whole-body impairment.

In December, the Kusnierz decision came down and the Court of Appeal said, "Of course you've got to combine the two. It doesn't make any sense to separate the physical from the mental and behavioural." I have written to the insurance company on the other side numerous times to say, "Can we save the hassle, the time, the expense of going through FSCO?" I have not had the courtesy of a reply.

Generally, my experience with FSCO is that the time delay results in delays, obviously, in treatment for the clients. I appreciate that they've got more people involved now and I'm hopeful that the time delay is going to be eliminated, but I haven't seen a file where we got a mediation date within the required 60 days in years.

Mr. Stephen Marentette: I think you're just encouraging people to start claims, because you don't want to wait for the mediation to come up. You can just start a claim in court.

Mr. Jeff Yurek: Do you have a solution to fix mediation? Is there another option we should be looking at?

Mr. Stephen Marentette: Well, it's an adversarial system, so one side is going to deny and one side is going to want the treatment. You're going to either put more bodies into mediation or you're going to get more disputes.

Mr. Jeff Yurek: Is there a way to simplify the mediation process?

Ms. Ruth Stewart: I don't know how many more people FSCO has hired for mediators or at what stage their training is at.

Mr. Stephen Marentette: Certainly by changing the SABS, you're going to create more delays because there's going to be more uncertainty. Of course, there's a pile of uncertainty right now since 2010, because there haven't been things going through the pipeline, like "incurred expense": What does that mean? There's a lot of uncertainty now, so there are more mediations.

Mr. Jeff Yurek: Exactly. I'm a pharmacist. I have no idea how to fix mediation, but you guys are here. I want to tap your knowledge base while you're sitting in those chairs.

Mr. Stephen Marentette: For example, if you need a housekeeper, you actually can't have a family member do it; you have to hire somebody outside. Or if you need attendant care, you're supposed to hire somebody to come in and do attendant care. Before, you could just have family do it, and they would get paid for it.

The Chair (Mr. Bob Delaney): Thank you very much for having come in.

ONE VOICE

The Chair (Mr. Bob Delaney): Our next deputation by teleconference is the Brain Injury Services of Northern Ontario. Alice Bellavance, are you on the line?

Ms. Alice Bellavance: Good afternoon. I certainly am.

The Chair (Mr. Bob Delaney): Okay. Here are the ground rules: You'll have 15 minutes for your deputation, following which there will be up to 10 minutes of questions. The first questions will come from the government side. Please begin by introducing yourself for Hansard and then proceed.

Ms. Alice Bellavance: All right. Thank you for allowing me to present to the committee. My name is Alice Bellavance and I am indeed the executive director at Brain Injury Services of Northern Ontario. I'm also the co-chair of the provincial advisory committee on brain injury. There is a large group of us, named One Voice, that put together this presentation. Some of it you may have already heard; some of it you may not have. I did send this ahead of time along with a PowerPoint presentation. My understanding is that you don't have this in front of you, but other material that you have may sound somewhat similar, so bear with me.

As One Voice, we're a group who have come together to advocate for the rights of seriously injured individuals in motor vehicle collisions. We're a multi-sector stakeholder group. There is a list attached, and I've also attached a list, in what I sent, of all of the members of the Toronto Acquired Brain Injury Network, which represents 22 government-funded organizations, whether they're in the hospital sector or the community support services sector. They, along with the Ontario Brain Injury Association, the legal community and victims from across Ontario, are deeply concerned about pending changes to the definition of catastrophic impairment related to automobile insurance.

We are the people who deal with the impact of serious accidents every day, either as victims, their health care providers or their advocates. We have great concerns regarding the compilation of the expert panel. It is noted that three of eight of the members of the panel were consultants for the Insurance Bureau of Canada and the superintendent of financial services. It is our position that all medical experts on the panel should clearly be unbiased on such an important issue. Furthermore, our hope is that through the standing committee, thoughtful comments and suggestions based on years of clinical experience from professionals in the field will be taken fully into account and not only the recommendations from the expert panel of academics, some of whom are clearly biased, in our opinion.

We ask that you listen to us today, as members of our group are diverse and include leading experts in the rehab field as well as health care providers from both the public and private sector, professional organizations, and organizations which support accident survivors.

Driving is a risky activity. I had the chance to listen to the comments from a previous presenter about how motor vehicles are much safer. That is definitely true, but also the response time and medical technology have improved, so the degree of impairment that people are now surviving is significant. This is not in my presentation but it's just something that I remember off the top of my head from the Centers for Disease Control, which did a presentation at a worldwide congress. In the 1970s, 85% of people with serious acquired brain injury in motor vehicle collisions died. In the 1980s, 75% died. By the 1990s, we were saving 85%. In less than two decades, we've totally changed the morbidity and mortality rate, so I think that also has a huge impact.

It certainly is a risky activity—driving is. The fact is that over 60,000 people are injured in motor vehicle collisions each year in Ontario, and 12,000 of these individuals sustain serious life-altering injuries such as head injuries, spinal cord injuries and serious orthopaedic injuries. These individuals will create an enormous expense on the public health care system, clearly exceeding what our public health system has capacity for. Thus, it is legislated by the provincial government that individuals who drive must also have auto insurance to ensure that health care costs do not get bludgeoned with the catastrophic costs of serious injuries related to motor vehicle collisions.

It should be noted that in northwestern Ontario, the Ministry of Transportation stats indicate that 40% of the

motor vehicle collisions are with wildlife. Given the vast geography of individuals injured in crashes, they can also be in their vehicles for hours before first responders arrive. A Glasgow coma scale taken at the time may be higher than at the initial time of crash before the first responder got there. I think that's another measure that can't always be the only basis of making a decision of whether or not a person meets the catastrophic definition, but it's certainly one of the things that's looked at.

In terms of some of the proposed changes for the catastrophic definition, according to our clinical expert panel, some of whom are presenting to you, the FSCO panel and the superintendent recommend new assessment tools and new thresholds that would make it much more difficult to be deemed catastrophic. In fact, it would cut the current number of catastrophic injuries in half, according to both medical and legal experts in the field. They will no longer allow designated assessors to combine both mental and physical impairments or consider chronic pain as part of the total-person impairment rating. This goes against the World Health Organization and the American Medical Association guidelines and protocol, as well as best practices in care and some of the recent decisions made by courts.

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The superintendent had added a major barrier to access to benefits for those who were deemed catastrophic, as he suggests only doctors should be able to sign insurance forms for ongoing therapy, equipment and support. One million people in Ontario do not have a family doctor, and that's actually even worse here in northwestern Ontario, the number of people who are orphaned and don't have a physician. These individuals do not have access to primary care, and if they're catastrophically injured, typically their doctors rely on specialists, or specialists are only involved to address medical issues such as surgery or special procedures, and they certainly don't want to be dealing with forms and referrals and overseeing ongoing therapy and equipment and support needs for individuals. This requirement places unreasonable demands on victims and their doctors, and it takes us back to an obsolete medical model that assumes that regulated health practitioners need to be supervised by a physician. Ironically, this model is being suggested at a time when the Ministry of Health and Long-Term Care has introduced legislation for regulated health practitioners to take on elements of health care provision traditionally provided by only physicians. So now I'm speaking to nurse practitioner clinics and family health teams, which are made up of not only physicians, but many other regulated health professionals.

In terms of who should be paying the price of increased costs—what would be the cost of these changes being implemented and who would pay the price—it is our understanding that the insurance industry would continue to enjoy record profits. FSCO has recently reported that the insurance accident benefit costs have plummeted by over half, from $764 to $300 per vehicle, since the minor injury guideline has been introduced and the non-cat benefits have been slashed back in September 2010. However, there has been no reduction of premiums. I can certainly speak to my own premiums, and I haven't had any collision. My premium has been the same. It hasn't gone down; it hasn't gone up, either. It's stayed the same.

Those that would suffer are people who are seriously injured, their families and caregivers and their community, and their lives are irreparably changed. Some of the examples of individuals, and I'm sure you've heard from some of these folks already: a construction worker who was paralyzed and is in a wheelchair for six months, who, with rehab support, progresses to the point where he can walk across the room in therapy using a walker, even if it's slow and painful, but he still depends on a wheelchair for mobility in the community and is unable to return to work without retraining. It is noted that this person also suffers long-term sexual and incontinence issues and psychological and adjustment issues.

The other example is an accountant who was in a coma for several weeks, and by six months was still having such excruciating headaches, weakness, incoordination and significant cognitive problems that he needed an attendant in the home every day and, by the end of one year, was only able to attempt working in a sheltered workshop in a supervised assembly-line setting, and only part-time at that.

As a society, these people are and will continue to turn to an already overburdened public health and social services system and will result in greater expense to the government. Some of these expenses certainly are with the Ministry of Health and Long-Term Care because they fund hospitals, but they also fund organizations like ours, which is a community support service agency. They also fund the community care access centres, which provide in-home professional services such as nursing, physio, OT, speech and language, some social work and some personal support or homemaking. But there are some limits as to how much they can provide, for sure.

The Ministry of Community and Social Services oversees the Ontario disability benefits program, as well as vocational programs or supported employment, assistive devices program and assisted living. You should also be aware that individuals who are on the waiting list for assisted living in this province—we have well over 1,000 people with acquired brain injuries waiting to get into programs that an agency like ours offers in terms of 24-hour assisted living. As well, there's over 1,000 people with physical disabilities on the waiting list for assisted living, which may include individuals with spinal cord injury from motor vehicle collisions.

The Ministry of Education certainly has additional impact because of having to provide adequate special-needs support for integrating children and youth into the education system under the requirements of the Education Act.

The Ministry of the Attorney General certainly is affected, and I know that you've probably heard about the high percentage of individuals who are currently incarcerated in our prisons, 43%—this is based on research

done by Dr. Angela Colantonio—and the impact that that has on the system when they are in a revolving-door situation with our correctional system and a vast array of public agencies that are also funded either on a provincial or federal level that have access, if limited insurance benefits are going to be made available to folks. Unfortunately, the downloading of these costs will also decrease other vital services for other Ontarians who may not have been injured in motor vehicle collisions.

The changes that are recommended by FSCO should not be implemented as they reflect the opinion of the insurance industry and are in direct opposition to what almost all the stakeholder groups are recommending. Again, I said the list would be attached. It's really unfortunate that you guys didn't get this package ahead of time, because I sent it out on Monday.

The Chair (Mr. Bob Delaney): You've got about two minutes to go.

Ms. Alice Bellavance: I'm almost at the bottom of the page.

Again, I think that changes to the cat definition, if they are to be implemented, need to be based on all of the expert and stakeholder feedback, not just the superintendent's and the FSCO panel's. One Voice is happy to work with the government towards this goal and increasing funding for those who sustain serious non-cat injuries, as they are the casualties of the war on fraud in 2010 and are now left unprotected. It's certainly preferable to introducing an interim catastrophic category, which would only add to more complexity of the system and result in more disputes and delays. Again, I heard from the previous presenter that there certainly are delays. I don't have the answer as to how to fix some of those. It's certainly an ongoing challenge.

The only other thing I'd like to add, because I know I'm at the end of my time, is that reducing it from $100,000 to $50,000 is actually a huge step backwards. If we looked at the cost of living, it should have actually been increased to $250,000 in terms of benefits. Thank you for your attention.

The Chair (Mr. Bob Delaney): Okay. Ms. Wong.

Ms. Soo Wong: Thank you for your presentation. I've got questions related to the concerns with respect to balancing the needs of the motor vehicle accident patient or the families, as well as making our auto insurance more affordable. Can you provide more suggestions in terms of how do we make auto insurance more affordable given that there are a lot of challenges—the decreased incidence of mortality and morbidity—and you made that comment earlier, the fact that cars are more safe than before. Now that we have more incidents involving motor vehicle accident patients with head injuries, those head injuries are now creating a lot of rehabilitation care costs and system costs. Can you provide some suggestions to us with respect to balancing the care needs of the victim and the family and reducing the auto insurance costs? How do we address this issue?

Ms. Alice Bellavance: In all honesty, I don't think it can decrease, because the care needs are actually increasing for individuals. I know that I served nine years on the Ontario Brain Injury Association board of directors, and when I first started, we had done some projections about the lifelong cost for the average person who is injured in a motor vehicle collision based on the average age and lifelong expectations and so on and so forth. The cost was at $2 million for the lifetime to support that individual. By the time I finished serving my term on that board, that cost had gone up to $5 million because the cost of services has gone up that much. So I really don't know how you can decrease it.

Ms. Soo Wong: Okay. My other question here is that we have consistently heard over the last two days now, and today, a third day in hearings, the concerns about auto fraud issues. Can you make some comments—

Ms. Alice Bellavance: About auto—

Ms. Soo Wong: The fraud issue dealing with auto insurance and claims. We are trying to come to grips with all the insurance costs. Do you have any suggestions from your association to address the issue of fraud within the auto insurance industry?

Ms. Alice Bellavance: Well, I have not personally come across anyone who is committing fraud. Anyone who has been referred to our agency for services—they've all been seriously injured. I didn't get a chance to do a file review of all of our fee-for-service clients to determine how many of them meet the catastrophic definition, but I think I would be very safe to estimate that 80% of the people who we support on a fee-for-service basis, who we bill either auto insurance or WSIB for, meet the cat definition.

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The Chair (Mr. Bob Delaney): Okay. We'll move the rotation. Mr. Milligan.

Mr. Rob E. Milligan: Thank you, Alice, for joining us this afternoon.

A couple of quick questions. First, does it make sense that our health care system is moving in a multidiscipline model and the auto insurance is moving in what appears to be the opposite direction? Do you have a comment on that?

Ms. Alice Bellavance: Well, I think the auto industry needs to move with the health care system and go with what they're doing because they are the ones that are delivering the care.

Mr. Rob E. Milligan: Okay. My next question is, are there enough family doctors in the north to handle the increased workload from the cat changes?

Ms. Alice Bellavance: No, there isn't. There never has been. I think it's going to be decades before we have enough. I think that's why having physicians being the only gatekeepers that can authorize things is really detrimental to people in northwestern Ontario. I think a broader range of regulated health professionals is certainly very capable of authorizing care plans for folks.

Mr. Rob E. Milligan: Thank you.

The Chair (Mr. Bob Delaney): Okay. Mr. Singh? Oh, Mr. Natyshak.

Mr. Taras Natyshak: Thanks. Hi, Alice. Thank you for your presentation.

Alice, have you ever dealt with injured workers through your association?

Ms. Alice Bellavance: Absolutely.

Mr. Taras Natyshak: And do you see any correlation between WSIB benefits over the last—

Ms. Alice Bellavance: Oh, you really want me to get started on that one, eh?

Mr. Taras Natyshak: I'd like you to just measure both of them. Give me a mirror image. What's going on there?

Ms. Alice Bellavance: Very similar kinds of strategies are being used by WSIB. They've become very insurance-focused. They're also starting to cap and limit. If a person doesn't meet their definition for a serious injury so that it's managed out of the Toronto office and they're managed just out of the Thunder Bay office, because that's the only WSIB office we deal with here, then there's a big difference between what people get and have access to.

The bigger picture that you need to understand, though—I don't know how many of you were around 20 years ago as we've gone through all the different iterations of auto insurance as well as the huge change that happened from WCB to WSIB, but just to put it in perspective for you, when we were doing fee-for-service back in the early 1990s, we were doing as much work in our fee-for-service as we were getting funded to do by the Ministry of Health and Long-Term Care. Two thirds of that revenue was coming through WCB. When the changes were made in WCB, all of the clients that we had on our caseload from WCB had their files closed, every single one of them. That meant that if they had ongoing needs, they had to apply then for our publicly funded services, for which we had huge waiting lists.

Mr. Taras Natyshak: I'm sure you could write a book on that, and I would look forward to that.

I'm going to pass it off to my colleague, Jagmeet Singh.

Mr. Jagmeet Singh: Alice, do you want to compare the northern Ontario experience, just some of the limitations that you experience being in northern Ontario, with—first off, the limitation on requiring a family doctor would disproportionately affect the north because there are less family doctors in the north per person. Is that right?

Ms. Alice Bellavance: Yes.

Mr. Jagmeet Singh: You would also be affected by the caps on assessments, because the $2,000 cap wouldn't allow for travel expenses, which are a big part of your expenses as well. Is that right?

Ms. Alice Bellavance: They're huge.

Mr. Jagmeet Singh: The limited definition on the cat: Your big concerns are that it's not taking into consideration the mental and physical, looking at the body as a total impairment, which is the direction that the World Health Organization wants everyone to go in. Is that right?

Ms. Alice Bellavance: That's correct, because we're talking about a whole person here and not just part of a person.

Mr. Jagmeet Singh: And what would you say are some more limitations specific to the north that are being missed here and that people aren't looking at?

Ms. Alice Bellavance: Well, I think one of the things, unfortunately—and all you have to do is look at the North West LHIN's—the health integration network—data of our population profile here. We are disproportionately represented when it comes to issues of mental health, addictions, issues of heart disease, cancer and all of those other impairments. So many of the people who get injured in motor vehicle collisions may already have other pre-existing conditions. Those pre-existing conditions may or may not have contributed to the collision, but those health care needs still need to be addressed as well.

The Chair (Mr. Bob Delaney): And on that note, I have to thank you, Alice, for your time and for teleconferencing with us this afternoon.

Ms. Alice Bellavance: Not a problem. Thank you for having me.

MR. BRIAN NAIRN

The Chair (Mr. Bob Delaney): Our next deputation is going to be Brian Nairn. Please come forward and have a seat. You'll have 15 minutes to make your remarks to the committee, followed by up to 10 minutes of questioning. This rotation of questioning will begin with the opposition. Begin by introducing yourself for Hansard and proceed.

Mr. Brian Nairn: It's probably just as well that you have a limit; I tend to be a little garrulous at times. My name is Brian Nairn, and I am retired. I was 60 years in the general insurance business, so I have seen 60 years of auto insurance. I'd like to say, first of all, that my sympathy goes out to the committee members. I see that the standing committee is on financial affairs and auto insurance costs. "Financial" must be very difficult in a province that's got a $15-billion deficit. I don't know what effect the committee will have on that.

In all honesty, I can tell you, from my years of experience, that the committee on auto insurance is certainly nothing new. It has been investigated; it has been committee'd; it has been studied. There are at least three that I can recall in the last 20 years, perhaps. One of the largest ones that came out was under the jurisdiction of, oddly enough, a Windsor lawyer, David McWilliams. The members of the government and Mr. McWilliams as chair were in just about every major city in Ontario. This hearing went on for quite a considerable period of time. I attended several of them. In a little bit longer, I'll tell you why. It was called the McWilliams report, and there was actually a book published—bound and so on. I did have a copy of it at one time, and it has gone astray. I tried to find it. You may have it back in the Ontario archives, which I guess never go astray.

I started off my career. I'm the only person around—or alive, I guess—who has worked for the three major writers of automobile insurance in North America: Allstate, State Farm and Liberty Mutual. The first seven years I was in the business, I was looking at everything from a company point of view, dealing with the public as customers. Don't go away with the impression that insurance companies are all out there to make a dollar and have no public thoughts at all. Liberty Mutual, my last employer, has a department—well over $1 million a year they spend on public loss prevention of all natures. They get into workers' comp, but they certainly go very heavy into auto insurance. They were one of the pioneers in seatbelts and so on. Not all companies are out there to be adversarial.

While I was an insurance agent, I became president of the Ontario insurance agents' association and served that for some time, and I was on the original planning committee for RIBO. I don't know if you're familiar with RIBO, but if any of you aren't, that's the self-regulatory body. They look after discipline. If you have a quarrel with your insurance agent that you can't get resolved, you can apply to RIBO and they provide you with legal counsel, if need be, and hear your complaint.

Along with those things, there's the superintendent of insurance—does that body still exist? Is there such a thing as the superintendent of insurance? I never hear it mentioned.

Interjection.

Mr. Brian Nairn: There is one. Who is he? Do you know?

Mr. Jeff Yurek: Phil Howell.

Mr. Brian Nairn: Is he? He's maybe not as visible; I don't know. Anyway, Murray Thompson was the superintendent for a number of years, and he put me onto an automobile study committee that went on for—I guess I was on it for about seven years. I was the only one at that time who actually dealt face-to-face with the public. The other members of the committee: There was one lawyer, there were claims people and underwriters from insurance companies.

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I'll give you a quick for-instance: The very first meeting that I was at—to show you how our costs and so on have changed—at that time, the standard auto policy allowed $10 a day for car rental by theft. That was the only loss of use that you had. So the agents' association had recommended—we were getting into the real world at that time—putting this thing up to $25 a day. Well, this was my first meeting and the committee thrashed it around and they kicked it around. So then they decided they would offer to go up to $15 a day. My first speech to them was, "Well, I've got a better idea. Leave it. Don't bother." "Well, you said you wanted it up." I said, "Yes, but if you can't rent it for $10, you can't rent it for $15. Why bother? Put it up to $25 or forget it." Anyway, that was just kind of an aside.

I came in this morning just out of curiosity, to sort of get an idea of the format. If we had all day, I would love to get into a debate with the honourable Mr. Pawley because he makes such a wonderful view of the world of Manitoba where the government, on a very narrow—as he said—minority government, put in government auto insurance. From that day to this—back again today—they want to compare Manitoba with Ontario. Well, most of you people aren't even from Toronto. I would guarantee you that more people cross the 401 from Brampton to Scarborough every day back and forth probably than the entire population of Manitoba, never mind the number of drivers. So it's a ridiculous comparison in the first place. For some reason, it's always been the thing that that party wanted to put in. Well, then they got elected, one time, in Ontario—well, after they came into Manitoba, there was very big upheaval in the business in Ontario. None of us wanted it, and there was a lot of political action going on anyway. When the election came around in 1981, the NDP elected 21 members out of 126 seats, and it went to bed for a while. Then when Bob Rae was still the leader of the NDP, they became elected and that was going to be Bill 1, as I recall it. But once they got in power, they took a look at the actual statistics—looked at the books, looked at the number of people employed in the industry and so on—and they abandoned it. But it still hangs around.

In a way, I have sympathy for your committee, because I don't think very much is going to change. There's nothing magic about car insurance. In all the years I've been in the business and all of the people I've talked to, there's one common agreement: It costs too much. Stop anybody—I swear to goodness, if the government gave it away for $100, there'd still be people thinking it should be $90. It's just not going to happen. All of the goodwill that you bring and all of the government thought, it's not going to happen because you can't change people's minds; you can't change their outlook.

I was at a seminar in Michigan—and it was partly on auto insurance—and the very wise man said that people today suffer from the psychosis of entitlement, which means no matter what happens to them somebody is to blame and they should get paid. In the 60 years that I put in in the business, you could break it down somewhere between 2,500 and 3,000 weeks. We certainly didn't have an accident every day or even every week, but I think it's fair to say that probably somewhere between 1,000 and 1,500 auto accidents that I was either involved in for my clients or listening to the client for the other person involved. Out of that 1,500, I can count on this hand the number of people who said, "The accident was my fault." It's just not built in your mind.

I remember—one sticks in my mind—the first fatality I ever had. It was a poor man coming off—he was in London. It was a driving rainstorm, a terrible, terrible storm, and he was coming off a shift and ran across the street to catch a bus, and our insured hit him. Our driver police report: "Just a terrible night driving. You could hardly see. But I was only going 30 miles an hour." He doesn't see any correlation.

I've heard all of these people. Nobody ever is responsible for a rear-end collision. "I was never following too close. The guy in front of me stopped too fast."

The Chair (Mr. Bob Delaney): Well, I'm responsible for the two-minute warning.

Mr. Brian Nairn: Two minutes? Okay, I've got about two minutes left.

Intersection accidents—same thing. "I pulled up to stop, looked both ways. There was nothing coming. I pulled out. Bang, somebody ran into me." Red lights: He had the green. As long as that exists, I think it's pie in the sky. You're never going to change people, and because of the cost of the factors that go into car insurance—repair costs, medical costs—there is nothing that's going to change, basically. They are going to continue to rise, and in some proportion that hopefully isn't too disproportionate, if I may. Auto premiums are going to be a constant in relation to everything else. Thank you.

The Chair (Mr. Bob Delaney): Okay. Mr. Yurek.

Mr. Jeff Yurek: Thanks for coming in today. Seeing as how you've been involved in the industry for a long time, I'd like to get your thoughts on no-fault insurance in general versus the system we had before no-fault was brought in. What do you think is wrong with both, or which one is better? Just so we get some experience here.

Mr. Brian Nairn: I'm glad you asked that, because I didn't get to that.

Mr. Jeff Yurek: Well, there you go.

Mr. Brian Nairn: The Honourable William Davis, when he was Premier of Ontario, spoke at a convention that I was at. At that time, the insurance companies were really pushing hard to get no-fault. They thought they had it sold. The agents were stuck in the middle; if they put it in, we knew we were going to have to live with it, but they never came up with a plan that we thought was that attractive. I went to meetings in Toronto for about nine straight weeks. Before then, they still didn't know how much it was going to cost.

Anyway, Premier Davis spoke at the convention, and he said—and I can quote him verbatim—"It is my view and the view of my party that the people of Ontario feel that the wrongdoer should be responsible for his actions." That was his answer to no-fault.

Now, I realize we've slid to some degree. I don't know how great an effect it's had, but I'm just telling you my attitude on it.

Mr. Jeff Yurek: Thank you.

The Chair (Mr. Bob Delaney): Okay. Mr. Singh.

Mr. Jagmeet Singh: Thanks. I just want to get a sense from you—I guess in all things, people always want to pay less for whatever it is. They always want to reduce the price if they can. But there's a little bit of objectivity to the concern about auto insurance, and I'm just wondering if you agree with that comment that, because Ontario is paying the highest rates in the country and we're not necessarily receiving the best benefits—particularly given the 2010 reforms, we're not necessarily receiving the best, by far. Given that situation, do you think that there is something that needs to be fixed?

Mr. Brian Nairn: I'm sorry?

Mr. Jagmeet Singh: Do you think that there is something that needs to be fixed? Just your personal opinion.

Mr. Brian Nairn: There are a lot of things that could be fixed. One thing where the public is going to ultimately be hurt, I think—the government has allowed something, and I never dreamed it would happen. They've allowed insurance companies to buy insurance brokers. That has carried on now to such a degree that almost every independent insurance agent or broker has to have one of these companies in his office, and it's a real conflict of interest. Your insurance agent or broker is supposed to be out there acting for you, but if he is dependent on that company to provide him with a market, it's a wrong thing to do and I think the government—I don't know how it slid in. I think it could have been prevented and I think in the long run it's going to prove to be a very bad thing for the public as a whole.

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Mr. Jagmeet Singh: Mr. Nairn, your concern actually has recently been brought up. It's interesting to hear it from you as well. This concern did come up in other meetings that we had. What do you think the biggest concern or biggest issue is with that and the other concerns that have been raised?

Mr. Brian Nairn: The biggest issue, as I say, is insurance companies. I'd be the last one to think that they are charitable organizations. Insurance companies are the same as any other company; they're in business to make money. But there has to be a relationship, and the relationship I represent—I wasn't the largest in Ontario, by any means, but I had six or seven or eight companies that I represented. If one of them was better for a certain part of a driver—some of them were better at fleets and so on. I had the opportunity or the necessity, really, of offering the choice to my client. Now, with one major company, it's got so ridiculous that they compete with themselves, this one big company. I can tell you the name, if you wanted it. They do actually direct writing on the one hand and buy up insurance agents so they can deal with them on the other. The public is going to suffer.

Mr. Jagmeet Singh: What company is that?

Mr. Brian Nairn: They changed the name. It's Intact now. They are so big. You see, first of all, they bought up a lot of insurance companies. I came out of retirement and I went with Grey Power, which is an excellent thing. But the company representing Grey Power was sold to Intact.

The Chair (Mr. Bob Delaney): Let's move the rotation over to Mr. Naqvi.

Mr. Brian Nairn: Pardon?

The Chair (Mr. Bob Delaney): Let's move the rotation over to Mr. Naqvi.

Mr. Brian Nairn: Certainly.

Mr. Yasir Naqvi: Good afternoon, sir. Thank you very much for coming today and sharing your experience over the decades with us, trying to hopefully make our task a little easier. One of the things that we have repeatedly heard in these hearings, not only here in

Windsor but also in Toronto and Brampton, where we were earlier, is the issue around fraud in auto insurance and the impact of fraud, obviously, on higher premiums. I wanted to hear your views on that and any suggestions as to how government can best tackle auto insurance fraud.

Mr. Brian Nairn: To be honest, I didn't have a lot of experience. I can think of one where there was collusion between a taxi company and a driver. The taxi company cut the guy off on purpose, had an accident, and the guy promptly went in for his accident benefits. But that's only one.

I understand, from anecdotal—I still keep in touch with people to some degree. I think it's a much greater problem in the GTA and I think—I don't want to put my foot in this—a lot of it is ethnic. You have Orientals, if you will. You've got areas where it's easier for collusion, where that happens. As I say, it's certainly not politically correct and I don't want to get into that kind of a situation.

I can recall a different situation here in Windsor where there was a large ethnic population and there would have been some collusion as far as the cost of repairing the car, that kind of thing, but nothing that had any significant effect on the world in general. I don't think fraud, to my knowledge, anyway, is a really big factor.

Mr. Yasir Naqvi: Thank you for your time.

The Chair (Mr. Bob Delaney): Thank you for coming in.

Mr. Brian Nairn: Thank you for hearing me.

MS. ROBERTA GIFFIN

MR. BARRY HOGAN

The Chair (Mr. Bob Delaney): Our next deputation is from Roberta Giffin. Please have a seat. You'll have 15 minutes to make your remarks this afternoon, followed by up to 10 minutes of questioning. This round of questioning will begin with the New Democrats. Please begin by introducing yourself for Hansard and then commence.

Ms. Roberta Giffin: Good afternoon. My name is Roberta Giffin, and I'd like to take this opportunity to thank the committee for inviting us here today to provide our input into the committee's auto insurance study.

Mr. Barry Hogan: Hi, my name is Barry Hogan. I'm with Gamble Insurance in Sarnia. Our offices cover from London to Sarnia to Chatham area. I'm here to sit with Roberta as well.

Ms. Roberta Giffin: I work for DPM Insurance in Chatham and I've been in the insurance industry for 23 years. My priority is to protect the interests of my customer, from the purchase of a policy right through to when they need an independent advocate at the time of a claim. I am sure that most people here understand the difference between brokers and insurers but I would like to reiterate it for those who don't.

As brokers, we need to work closely with the insurers, but our mandate is to represent our customers' interests to the insurance companies. Insurance is a complex product and I feel and the law requires that consumers need to get expert advice tailored to their own individual needs when purchasing the product. My aims and goals will sometimes differ from those of the insurance company as my prime responsibility is to advocate on behalf of the public and serve my customer to the best of my abilities.

With respect to auto insurance fraud and abuse, we have to get auto insurance rates under control. I believe the single most important thing that can be done is to lower the claims costs and the insurance premiums to tackle fraud and abuse in the Ontario insurance system, particularly in the accident benefit area.

The Auto Insurance Anti-Fraud Task Force recommendations are scheduled to come out later this year. I want to urge the government to implement those recommendations as quickly as possible. Page 57 of the 2012 budget foreshadowed some of the task force's final report recommendations: regulation of health clinics, other gaps in regulation, establishment of a dedicated fraud unit, a consumer education and engagement strategy, and a single web portal for auto insurance claimants.

I am not political. I am not a member of any party in the province and I will tell you that I don't care who gets credit for taking action here but action must be taken. I am prepared to support constructive recommendations to combat fraud and abuse from any party. The public deserves nothing less. If we continue to tolerate abuse of the system it will only get worse. We already pay the highest rates in the country and cannot handle any more increases.

Insurance profitability and market stability—I will say it again: Tackling fraud and abuse in auto insurance is probably the most important thing we can do to lower premiums. However, please let's not get into a major overhaul of the system. I have worked through three major overhauls of the system in my career and we don't need a fourth. What we need is to give the 2010 reforms an opportunity to work. They appear to be having some effect but we do need to proceed with action on the abuse front.

Even with these reforms, please do not be misled into thinking that there are excess profits in the auto insurance area. There are no simplistic quick fixes to the system and it is not a time for aggressive measures on rates. Again, let me be clear on something: I'm not here to defend the insurers, but an aggressive tampering with the system will add expense and will threaten market stability.

There is, though, one other measure that can be taken to deal with unfair practices in the property and casualty market. This is to ban the use of credit scoring in personal property insurance. In 2005, the Ontario government banned the use of credit scoring in the rating of automobile insurance. Shortly after that, many insurers began circumventing the ban by refusing to offer quotes to those who refused access to their credit information. This

was finally brought under control by the 2010 auto reform package, which defined the use of credit as an unfair and deceptive practice. What the insurers have now done is use credit scoring much more aggressively on their property products, which basically subverts the ban. Many consumers buy both property and auto products from the same carrier to take advantage of multi-policy discounts. We have had situations where companies increase their property premiums dramatically—$600 to $1,200—due to credit scoring, which forces the client to go elsewhere, thus divesting themselves of an auto policy that they didn't want in the process. We have to stop this backdoor effect on the automobile consumer.

1430

My concern with this is that more and more property insurers are using credit scoring and soon there won't be an elsewhere to go. These are not bad people. They may have a low credit score for all kinds of reasons, but most have always paid their premiums and have been good customers who have not placed a claims burden on the industry. Once there is no elsewhere to go, we will have an availability crisis. That means you will be back here with the standing committee on property insurance in the near future. None of us need that when it is so easily avoided.

Last year, the provinces of Newfoundland and New Brunswick announced their intentions to ban credit scoring from home and other property insurance. Just last week, Prince Edward Island announced the same. Here in Ontario, MPP Colle introduced Bill 108, the Homeowners Insurance Credit Scoring Ban Act. Ontario lawmakers should follow these provinces and pass Mr. Colle's bill.

A ban can also be accomplished by amending the unfair and deceptive practice regulation under current authority in the Insurance Act. The ban on credit in auto is done that way.

It is also my advice to implement relatively minor smart regulation now by banning credit scoring, as is done for automobile insurance currently. This will help avoid more cumbersome regulation later.

Banning the use of credit scoring to price home and other property insurance is the IBAO's number one public policy priority, and I support this. Our association has done a lot of work and research into this issue as it has been advocating for a ban on this practice for nearly two years. Unfortunately, insurers and the Ontario government have done little to deal with this during this time.

We'd be happy to answer any questions.

The Chair (Mr. Bob Delaney): Thank you. We'll begin this round of questioning with Mr. Singh.

Mr. Jagmeet Singh: Thank you very much for attending. I agree with you, just off the bat, that banning credit scoring with respect to home insurance would be a great initiative, and I applaud your work in advocating for that. I think it's important. We've heard from other people from the industry who had a very similar presentation and talked about that issue, so thank you for that.

I just want to touch on one idea. I agree with you when you say that one of the issues in addressing premiums is lowering the claims cost, and particularly when it comes to SABS, the statutory accident benefits schedule. I think that's pretty clear. We've actually already done that. The Liberal government's 2010 amendments have slashed the benefits that we receive as consumers, and we've seen that in 2011 the average claims cost per vehicle has gone down dramatically, over 50%. It's already gone down from a little bit over $700 to now around approximately $300. So we've already seen that, but we've not seen any lowering of premiums. I'm going to put to you that reducing fraud, even if we reduced all of the fraud possible, we wouldn't get nearly the same numbers of a 50% reduction in the average cost per vehicle. We wouldn't get that. We've received that now, but we haven't seen our premiums go down. Do you have any response to that?

Mr. Barry Hogan: What I would suggest is that accident benefits represent, on average, about a third of the premium dollar in your policy. So if you have a $1,000 premium that you're paying, approximately a third of it, $340 of it—just a rough figure—would be your accident benefits premium. That's what goes to pay the accident benefits claims. So if you saw a 50% reduction—and I haven't seen that number yet—you would likely see your accident benefits portion then decrease by a comparable amount as time goes on. The biggest issue you have with accident benefits claims—I always tell our customers: If a tree falls on my car today and we take it to the body shop and get it fixed, within a week or two, we know exactly what the cost is. In an accident benefits claim, those claims are open for six months, a year, two years, three years—until our clients are back healthy. So those claims are open for a long period of time and so much can happen in that time period. Part of the problem is, it's nice to see the claims cost decreasing—50%; I haven't seen that number—but as time goes on, you have to see all those claims close out too.

Mr. Jagmeet Singh: Would you agree with me, though, that claims costs are a more significant piece of the puzzle—overall claims costs—than if you compared the overall accident benefit costs to fraud costs? Accident benefit costs are by far a larger component than fraud costs are. I think there's no comparison, but would you agree with me?

Mr. Barry Hogan: I would actually say from our experience that fraud costs are within the accident benefits area. That's where we see the biggest section.

Mr. Jagmeet Singh: Right, sorry; so they're a portion of it, but they're not all of it. They're just a small fraction of the rest of—whatever fraction they are, they're a fraction of it.

Mr. Barry Hogan: They're a percentage of it. I don't know what exactly.

The Chair (Mr. Bob Delaney): Okay. Thank you. Mr. Naqvi.

Mr. Yasir Naqvi: Good afternoon. Thank you for your presentation today. I'm from Ottawa, so obviously,

I'd like to bring a perspective beyond the GTA when it comes to auto insurance. One of the proposals that we've heard from our friends from the NDP is around the notion of taking territoriality out when rates are being determined by FSCO. I wanted to get your point of view, from your experience, on what kind of impact that will have on insurance rates in other parts of the province if that type of mechanism was used.

Mr. Barry Hogan: I would say the territorial is something that works very well. If you go to northwestern Ontario—Thunder Bay, the Fort Frances area—they have very different issues and concerns than we do in southwestern Ontario, than we do in the GTA. The territorial system: For myself in Sarnia, I face different risks in that territory than people who are 20 kilometres outside of town in small, rural southwestern Ontario.

The territorial system, I believe, works. It has been in place for a number of years. You've noticed that in the GTA, there are more territories. There are tonnes more territories, and territories in other areas can be larger. I know Ottawa has a number of different territories based on loss experience.

The territorial in my business, representing our customers over a larger area—it would be very difficult, because you would have people in larger areas now probably seeing a little less premium, but the people in rural areas, where the loss experience has been better, are going to be paying significantly more.

Mr. Yasir Naqvi: So it would have a significant impact, where you might see rates going down in the GTA, but then a corresponding increase in other parts of the province.

Mr. Barry Hogan: And I would argue that you would have insurance companies that specifically want to write business in certain areas. They would actively or aggressively cancel brokerage of contracts in larger centres if they're going to have to charge a premium that is not adequate enough for them to make money.

The Chair (Mr. Bob Delaney): Thank you. Mr. Yurek.

Mr. Jeff Yurek: Just before I start, are you related to the Hogan Pharmacies in Sarnia?

Mr. Barry Hogan: That was my grandfather. I'm Gamble Insurance, but I get called Barry Gamble, I get called the pharmacist, yes.

Mr. Jeff Yurek: Okay. I'd like you guys to talk about—it hasn't been touched on; we've had various brokers—but I'd like your thoughts on how the banks are selling insurance now and insurance companies have their own sales force. How is that impacting independent brokers, and what thoughts do you have on that that we can take as a committee to look at as we re-evaluate auto insurance?

Ms. Roberta Giffin: Well, it does impact us as independent insurance brokers greatly. We have to be licensed. We have to have continuing education hours each year as a broker. As someone who sells it at a bank, they're not required to have anything at all, any education at all, to sell the product that we sell.

In fairness to that, my customers have left and gone to certain banks and have actually come back because they have not been advised of changes, primarily this reform of 2010, where we have educated our consumers greatly over the changes and what they do need. They did not get anything at all from those banks whatsoever.

Mr. Barry Hogan: I would also say that the issue that we touched on, which was about credit scoring: A bank knows so much about your credit history and your history financially and therefore can very much—they call it "creamer," taking the cream of the crop of those clients. Those are the ones that they will target.

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There are direct writers that if you call up and give them a postal code, you could be told that their system is down, or it's 40 questions to get a quote, or, "I'm going to put you on hold for a minute," and you can sit on hold. You can give a different postal code or write back a different postal code that is in a targeted postal code for them, and they will have a quote for you instantaneously. So that's how the direct writers, in certain cases, will segment out and only write certain pieces of business.

When you talk about our insurer partners—so, large insurance companies that now own brokerages—that is very difficult for an independent broker. I'm an independent broker. I don't have any of my business owned by an insurance company and I don't borrow money from any insurance company. I can say that I'm completely independent. It gets very difficult for a broker when you're owned by an insurance company and that insurance company is paying the wage of the person in the brokerage and a consumer comes in and wants to buy an auto policy. It can get steered over to them.

Mr. Jeff Yurek: Do I have time for one more?

The Chair (Mr. Bob Delaney): A quick one.

Mr. Jeff Yurek: Do you ever feel pressure from insurance companies to get rid of clients? I've heard that in a private conversation yesterday at the town hall, that they get pressure from insurance companies if someone is making too much of a claim or if they're a big risk for loss. Do you ever get pressure from insurance companies to dump clients?

Mr. Barry Hogan: I would think that would depend on the relationship you have with the insurance company. I can tell you that, from our standpoint, we have in the past had insurers that say, "There are certain clients that we don't want," to which our answer is, "That's great if you have a filed reason that says this is why you want to get rid of that client. Let me know that filed reason. Otherwise they are a client and therefore to stay with you."

Mr. Jeff Yurek: Thank you.

The Chair (Mr. Bob Delaney): Thank you very much for coming in and for a very interesting deputation.

BRAIN INJURY ASSOCIATION OF WINDSOR-ESSEX COUNTY

The Chair (Mr. Bob Delaney): Our next presentation comes from the Brain Injury Association of Windsor-Essex County, Nancy Nicholson. Good afternoon and welcome. You'll have 15 minutes to make your remarks before the committee today, followed by up to 10 minutes of questioning. This round of questioning will begin with the government. Please begin by stating your name for Hansard and then proceed.

Ms. Nancy Nicholson: My name is Nancy Nicholson. I am a brain injury survivor. Seventeen years ago, I was a commercial partner with a then-prominent law firm in the city. Seventeen years ago next week, I was in Cambridge, England, attending a law seminar with leading legal minds of the world, including the current Chief Justice of the Supreme Court of Canada. It was interesting to have tea with someone who says, "Well, when I was Prime Minister," and Mr. Trudeau would start a conversation that way.

Two weeks later I was in a car crash, and that's why I'm here today. As a result of that and two and a half years of ups and downs, I was diagnosed with mild to moderate traumatic brain injury. Problems that I experienced included depression, memory problems, reading problems, difficulties with social situations, anger management, balance, fatigue, seizures, difficulty handling financial situations, loss of identity and sense of purpose, and loss of the ability to drive a car.

I'm an intelligent person, I'm very well educated, but the solutions to these problems eluded me. It was only through the provision of the services of a cognitive therapist and occupational therapist—they attempted a drive at rehab but that wasn't very successful—that I was able to come back to the extent that I have today.

Now, I am told that because I had a very high IQ, I was able to come back much further than they anticipated I might otherwise, but it took countless hours of therapy, and that therapy is not cheap. I will never practise law again. I can no longer engage in meaningful employment. I'm no longer employed. The amount of time it would require me to complete tasks and the environment that would be required for me to do them would be prohibitive for an employer.

As was discussed in one mediation with an insurer, the therapist said, "Yes, she could practise law if you put her in a quiet room, give her unlimited time and don't disturb her." I know of no law firm where that is a reasonable term of employment. So I don't practise law.

However, I'm able to live alone. I no longer require someone to check in to. The number of times I see a doctor are much less frequent. My balance is much better and I have had far fewer falls than I had before I received treatment. I avoid situations where my temper is ignited and I have not, in the last 10 years, been escorted out of a store. Now, that may seem amusing, but I have been escorted out of stores and there have been situations where the police may have been called. The therapist said at one point that she felt that I was a potential threat because my temper would just explode out of nowhere. That doesn't happen anymore. It's also one of the reasons why untreated people are found on our streets and in our prisons. That doesn't happen to me anymore.

I have a system that automates my bill-paying, so I am no longer at risk of going bankrupt. I have strategies in place so I no longer go out and buy things for people who say they like things. My phone automates my appointments so I get to them on time. I have multiple timers so that I can cook now and I don't throw out multiple sets of pots and pans. I can live independently, which is an extraordinary thing, because I was injured at a time when I had benefits available to me and I was able to use them within the range of benefits of available to me.

I volunteer with the local brain injury association. I'm past president of the local brain injury association. I'm a board member of the Ontario Brain Injury Association. All of these have given me a sense of purpose. I have strategies which will allow me to travel on short hops independently. I would not go, say, overseas by myself. That's just not practical. It isn't going to happen. I can ride a bus now without falling off head first, as I have done on three separate occasions. That's a pretty good thing.

I still have to work at hermitting, so I devise things that get me out of the house. I golf with the seniors' golf league in the summer, so I'm out there golfing with 85-year-old ladies, but I'm out there golfing. I have a life. I've been lucky.

I shudder to think what would have happened if I had been injured in the current regime. It would be a far different situation. I imagine someone who I know who was injured at the same time, who was severely injured, and a great deal of time was spent trying to save her life. Later, once her life was straightened out, it took almost two years for them to realize she had what was later deemed a catastrophic injury. She required the constant attention of her husband because she could not be left alone. She has had therapy since and she is much, much better, but she required a great deal of attention to get her where she is now. It would be nice if she could come a little further, but that delayed diagnosis is not uncommon. It was not uncommon for me.

The unfortunate thing about a lot of these situations is that the person who is injured is the person least able to articulate to anybody what is wrong with them or to seek help. They are the ones who have to defend themselves against a system that assumes that they are somehow defrauding the insurer. I think it's incumbent upon this group and the government—actually, let me backtrack for a minute.

The individual in question makes progress, but the services do not come as easily, as survivors are constantly asked to defend the fact that they need the services. They're retested and these tests are expensive. "You say you need something? Well, prove that you need it. Here's another test to prove that you need it."

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I know of two situations in my own case where an OT sent out examined me and said, "You need this." It was recommended. The insurance company did not provide it. They sent out the very same OT to see if I needed it. She recommended it again. Now, those costs get included in my pool of what I need, but it was recommended the first time.

Where are the committees examining the needs of the consumers of insurance policies? Brain injurees and their families frequently do not understand what is happening to them, let alone articulate to a professional machine whose sole objective is to minimize the expenses and deny them coverage. I think it's incumbent on government to make sure that the public clearly understands the consequences of proposed changes. In many cases, the changes that have been made, in reality, represent a price hike because the consumer is paying the same price for less service, in essence. To me, that's a price hike.

And it's not fair to ask the poor broker to explain that really you have to buy more for what you had before. That's not fair to impose on the poor guy who was sitting here before me. That's the job of the industry as a whole and of government, which is saying, "This is okay." The insurance should state unequivocally, "This is what you had before and this is what you will get. This is what you have now and this is what will happen to you if you have this type of injury."

Prior standing committees have asked for submissions, and people from the medical profession, those affected by the insurance industry and people like me have spoken to you and have truly felt that they're preaching to somebody who's already been converted by a vested interest. I sincerely hope that's not the case. In past time, the public was truly informed of what goes on.

This is a truly adversarial relationship between somebody who was injured and the insurance company. How many times has an insured had to retain the services of a lawyer to get benefits that were mandated by the policy they purchased? What would the elimination of legal costs do to the expenses of the insurance company? It's assuming we're deceitful. We're followed. How many times has the insurance company had to pay interest on expenses?

I know in my case, in two situations, the amount of interest that the insurance company paid to me exceeded the original claim. One was for the loss of income between the time when my disability was designated and the time my disability insurer started to pay me. That's three months. It equalled $12,000. So they paid me another $12,000—over $12,000 in interest. In the other instance, the interest that they paid me exceeded $40,000.

How are those expenses not costing the insurance company? Every time they change an adjuster, they send you for retesting. How are those not needless expenses? It seems to me that there needs to be a committee examining how the insurance industry does business in terms of this aspect of their business. There's been a colossal loss across the board—everybody, as far as recent stock market losses. How has that not affected them? Are there not other reasons that the insurance company does not do as well? From my point of view, I think it's time. If they keep cutting, at some point in the distant future will we need insurance at all? What will we be paying for?

I respectfully submit: It's time for another standing committee to see what is contained in those expenses that are so horrendous that they have to cease—

The Chair (Mr. Bob Delaney): Just as a reminder, you've got about two minutes.

Ms. Nancy Nicholson: —that they have to keep cutting back what the driving public is receiving. And that's all I have to say.

The Chair (Mr. Bob Delaney): Thank you very much. Ms. Piruzza.

Mrs. Teresa Piruzza: Thank you so much, Nancy, for coming this afternoon to speak to us with respect to what you've gone through over the last number of years and the recommendations that you've brought forward as well. It's evident that you've gone through a number of phases and certainly have depended on the resources in the community to help you. In turn, you're kind of paying back to the community in terms of being active in the community and ensuring that you stay active as well.

One of the points you made earlier in your comments was that you hope that we're listening. Well, I can certainly say for this group that we are listening. We've heard from many individuals over the last three days. We were in Toronto on Monday, Brampton on Tuesday and here today, so it's important for us. So I thank you for coming forward because we need to listen to individuals that have gone through the system as well. You're absolutely right with that as well. We can't get swayed or listen to one interest over another. It all has to be balanced. That's kind of what we grapple with in the committee as well, to balance all that: the needs of the individuals, the costs of the claims and then ultimately, how that reflects in the premiums as well. So we really try to balance all of those elements as well.

Just to summarize some of the recommendations that you've brought forward, I've put them into four areas, if I got it right. One is the need for those assessments and diagnoses to be done sooner than later.

Ms. Nancy Nicholson: Yes, because, to be very honest, the sooner you get treatment the better, and the greater the likelihood of long-term success. When I was president of the brain injury association, I don't know how many times I called—now, these weren't always people who were injured in auto accidents, but I would receive calls from social service agencies who would say, "If this person only had a little bit of rehab, we could get him back to work." And I think that's true. I think the thing that I failed to follow through in the bulk of my presentation is, that person who takes care of a person with a catastrophic injury—if they don't get help, they get burnt out. They need help. They end up in the medical stream as well. They cease to become financially productive themselves. They can't work. They can't earn

an income. So it just goes on, ripples through the system, and costs the government and the public the loss of income, the additional medical expenses. But if you can shorten that up and either get the person back working or get them supported so that they can be independent and their family can get back working, it benefits everyone.

The Chair (Mr. Bob Delaney): Thank you. We'll just move the rotation to Mr. Yurek.

Mr. Jeff Yurek: Thank you for coming out today. So what I'm hearing is two things: one, the catastrophic proposed changes, you're not supportive of?

Ms. Nancy Nicholson: No, I'm not at all.

Mr. Jeff Yurek: Number two, you're saying that if indeed you had had this accident of yours post-September 2010, you would not be able to have recovered to the point where you are today because your coverage would have been capped at $50,000?

Ms. Nancy Nicholson: I would probably be in jail or on the street, to be very honest.

Mr. Jeff Yurek: So do you propose going back to the $100,000 limit, or do you have any other ideas on how to fix the system?

Ms. Nancy Nicholson: I think there should be a complete look at the whole thing. I go back to what you were saying: It has to be a balanced approach. I'm not suggesting that there be an unreasonable approach. I'm saying: Look to see that the system runs efficiently, one, because I don't think the system is run efficiently. I've read some of the papers and there are changes that are recommended that seem to me sensible. Sometimes you miss a diagnosis. If you're trying to save somebody's life, you don't always notice that the computer is not working properly, but once you do, get them in, get them treated, because you can save us all, families and the economy, a lot of grief by getting people back to work, by getting families back to work. Why should we have 21-year-olds in nursing homes?

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There are all sorts of things that need to be changed, but I think the whole system has to be looked at. Maybe you don't need $100,000. Maybe you need $200,000. Maybe you need $125,000. I don't know, but I know that pinning it down to what it is isn't a sensible thing. I think the whole system needs to be reviewed and updated to see what's workable.

Mr. Jeff Yurek: Thank you.

The Chair (Mr. Bob Delaney): Thank you. Mr. Singh?

Mr. Jagmeet Singh: Thank you. I'll pass it on to Mr. Natyshak.

The Chair (Mr. Bob Delaney): Mr. Natyshak?

Mr. Taras Natyshak: Thank you very much, Nancy, for sharing your story with us.

Any of the changes that this committee is examining—do you see any positives for claimants within the context of any of the changes that have been proposed?

Ms. Nancy Nicholson: Not really.

Mr. Taras Natyshak: Fair enough.

Using your own experience, I'm wondering if you could tell us how, even though you fell under the parameters of some previous—you know, you've mentioned that your claim was such that you were able to access $100,000 rather than the current $50,000. How heavily did you have to rely on some of the social safety nets that are existing in our community to get yourself back to—

Ms. Nancy Nicholson: I was fortunate. I was a professional. I had my own disability insurance. It kicked in. I was fortunate as well that my firm was very generous and they loaned me money, because, to be very honest, I had no income until my own disability insurance kicked in.

Mr. Taras Natyshak: So you had to actually be lucky enough to fall into that category to be able to—

Ms. Nancy Nicholson: To be able to benefit, or I'd have had nothing.

Mr. Taras Natyshak: Do you see any rationale in the fact that we're cutting the liability that insurance companies would have on, you know, putting forth benefits, but yet premiums are remaining the same?

Ms. Nancy Nicholson: Well, that's one of the things I don't understand, because it is a rate hike.

Mr. Taras Natyshak: In that sense, I guess it would be. If you're paying more for—

Ms. Nancy Nicholson: It is a substantial rate hike. If you're paying the same for substantially less, it's a rate hike. I don't know how you can call it anything else. If you had this much before and you have this much less and you're paying the same premium, it's a rate hike. There's no way around that.

The one thing I cannot drive home hard enough is the fact that for somebody who has a brain injury, their family are deer in the headlights. They're struggling to cope with what has happened. They do not know the system. They don't understand anything, and they are dealing with a machine. The machine's sole purpose—I had one professional who said to me once, because I know very few people who deal with an insurance company who do not end up engaging a law firm, which is telling in itself, that "The sole purpose of the insurance company is they badger and badger and badger you; a third just drop off. They badger and badger and badger, and then the next third drops off. Then the last third holds on. That's all they care about, that they get rid of two thirds of you."

The Chair (Mr. Bob Delaney): Nancy, thank you very much for your time and for your testimony here today.

THE ADVOCATES' SOCIETY

The Chair (Mr. Bob Delaney): Our final deputation is from the Advocates' Society. Is there a spokesman in the room?

Mr. Andrew Murray: There is, assuming that this group will hear from me as the last speaker of the day.

Mr. Taras Natyshak: We were waiting for you to come back.

The Chair (Mr. Bob Delaney): Mr. Naqvi?

Mr. Yasir Naqvi: I don't know if this is a point of order, whether we can hear from the same deputant twice. I just need clarification.

The Chair (Mr. Bob Delaney): It is a point of order. While committees have in the past heard from the same deputant, it's been a judgment by the committee whether or not the committee considers the entities to be separate. The committees have the latitude to make such a choice. It is also a debatable point.

Mr. Yasir Naqvi: I just—

Interjection.

Mr. Yasir Naqvi: Oh, Mr. Yurek.

The Chair (Mr. Bob Delaney): Mr. Yurek?

Mr. Jeff Yurek: I have no problems. I mean, it's Windsor; we've travelled all this way and Mr. Murray has travelled far too. I'm pretty sure he's professional enough to wear two different hats.

The Chair (Mr. Bob Delaney): Okay. Any further discussion? Mr. Singh.

Mr. Jagmeet Singh: Similarly, we're agreeable to it. We have no issue.

The Chair (Mr. Bob Delaney): Okay.

Mr. Yasir Naqvi: I just hope that we'll hear a little bit more unique perspective from the testimony this morning.

The Chair (Mr. Bob Delaney): Then I assume it's the will of the committee that Mr. Murray be invited to make his presentation on behalf of the Advocates' Society. Is that correct?

Interjection: Yes.

The Chair (Mr. Bob Delaney): Okay. Mr. Murray, welcome back.

Mr. Andrew Murray: Thank you very much. I appreciate that indulgence. It wasn't my intention, of course, to do that, but I was asked by the Advocates' Society. They weren't able to find someone else to be here. I want you to understand that my connection with the Advocates' Society is very legitimate and not contrived.

The Chair (Mr. Bob Delaney): Just before you go, let's just go over the ground rules one more time, which, as Chair, I am required to do. You'll have up to 15 minutes to make your remarks, followed by up to 10 minutes of questioning. This round of questioning will begin with the official opposition. So, once again, state your name for Hansard, and then proceed.

Mr. Andrew Murray: Yes, it's Andrew Murray, and I'm appearing on behalf of the Advocates' Society. The Advocates' Society is a not-for-profit association of approximately 4,700 lawyers throughout Ontario, all of whom are advocates practising dispute resolution [*inaudible*] including before the Financial Services Commission of Ontario and our courts. It has a personal injury and insurance practice group that's about 2,000 people in number. That's a relatively new subgroup, and I was the first co-chair of that group, in fact, about two and a half years ago. When I became involved with another organization, I had to back off because I had my fingers in too many pies.

I stayed involved, however, with the Advocates' Society, specifically in connection with some submissions that have been prepared and I believe will be filed tomorrow—they're written submissions. There was a six-person committee that was struck to review, initially, the expert panel and then to review the superintendent's report, three of whom were defence lawyers—of that three, one practises exclusively, only, accident benefit law as a defence lawyer; two of whom were plaintiff-oriented individuals, myself and another individual who was also a past president of the Ontario Trial Lawyers Association; and one individual from a smaller city who does equal amounts of plaintiff and defence work.

The benefit, in our view, of the Advocates' Society submission is it truly represents a bipartisan recommendation coming before this group. So, it's as if all of you got together and agreed on three or four things, the weight to be held with respect to those recommendations would be elevated.

There are a couple of points that I wanted to make, but I want to address things that were not discussed in any of my earlier submissions. We looked at the issue of the FSCO mediation backlog from the Advocates' Society perspective, not to tell this group that it's a problem, because I think that's readily recognized, but to try to come up with some recommendations from our perspective—people doing this, both plaintiff- and defence-sided. So, we ultimately divided the groups of people coming before FSCO for mediations into two categories: those who are unrepresented and those who are represented. When we say represented, we did include licensed paralegals in that group, assuming that they have, as well, experience appearing before FSCO.

It's our recommendation that the benefits of mediation are certainly important for the unrepresented applicants coming before FSCO. They need the kind of hand-holding and the guidance through the system that a mediator can provide. So we do not recommend that mediations be abolished or really altered for that group of people, with the hope being, of course, that the mediations can ultimately be delivered more quickly for them. And perhaps—and it may warrant consideration—expediting the mediations for the group of people who are unrepresented, as they're least able to flounder around in the system on their own and might well benefit from a mediator either telling them that what they're asking for is completely off the wall and not something they're going to achieve, or helping to persuade the insurer that this person's needs are quite legitimate.

The second group that we looked at—the represented group—we really wanted to adhere to the principles of alternate dispute resolution as we understand them, the fundamental one being that mediation is essentially a voluntary process. The name "mandatory mediation," in our view, is a bit of an oxymoron, because "by necessity" means people are—they desire to come together and resolve their problems. So if you say, "We're forcing you to come together and resolve your problems," leaving

aside that it might take 12 months to do that, we question whether that's the best use of resources.

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We would recommend instead that, when people are represented, there be a requirement that there be a consultation of some variety—in person would be ideal, but perhaps by telephone—between counsel or the paralegal and the insurance adjuster who has carriage of that matter to basically, first of all, see if they can narrow the issues and actually have a discussion, because more often than not, all that it really takes is for the people to sit down and look at their file to sort of decide whether or not they're going to be able to resolve these things.

If, after that discussion, they can't resolve it, but they jointly feel that mediation would be beneficial, proceed on to mediation. If, as a result of their own consultation, they determine that mediation, in this case, is just not going to work—the issues are too complex or the divide is too great between them, or it's a legal issue that's really just going to need to be resolved—let those experienced people, unfettered by the need to go through mediation, make that call on their own and then proceed through to a timely adjudication of their dispute. Those are our recommendations on the FSCO mediation backlog.

We also looked at the tort system. We specifically looked at ways that maybe costs can be saved in that system or duplication can be avoided. Again, I stress that this was equally forceful coming from the defence side as from the plaintiff side, looking at the whole idea of the verbal threshold that we have that requires a claimant, when seeking compensation, to demonstrate that he or she suffers from a permanent and serious impairment of an important physical, mental or psychological function.

There's a defining regulation that says, "Here's how you have to assemble the evidence to prove that point and here's what has to be touched upon." Again, it requires treating doctors to outline what is the continuing impairment and what is the physical impairment. The plaintiffs have to get their doctors to give all of this evidence, and the defence then gets their doctors to give often competing evidence, and it really adds a layer of complexity and expense and delay, because it makes the trials longer, that ultimately, we concluded, was completely unnecessary because there's a system in place where there's a deductible. Any claim under $100,000 is subject to a $30,000 deductible, so if your claim is worth $40,000, you don't get $40,000; you get $10,000, and the likelihood is that those claims are going to be weeded out of the system.

In our view, the threshold is a duplication, in a sense, of the screening process that's already accomplished by the deductible, but it's an unfortunate duplication because it's very costly. There's a whole cascade of consequences, like trying to figure out a limitation period. That's made more complicated because you don't know when you necessarily had a permanent and serious impairment. By eliminating that, we feel that the system could be simplified.

There is, of course, no such thing in any area other than Ottawa—a slip-and-fall case, for example—and those cases seem to work their way through the system fine.

There was another area—it may be sort of esoteric, but I hope it's of some interest to you—and it's an example of unintended consequences. We are familiar with G1 and G2 licensing—which is a good thing; I think we all agree that it's a good thing to have the staggered licensing system. But there's kind of a wrinkle that's developed as a consequence of some of the regulations surrounding when you can drive and when you can't drive. If you're a novice driver [*inaudible*] arguably not even a teaspoon, if that can be detected. If you're a novice driver—which doesn't mean somebody who's under the age of 19, by the way; it could be a 50-year-old who's getting her licence for the first time—if you have any alcohol in your system, you are not authorized by law to drive, and the effect then is that your insurance contract is vitiated. You have no liability insurance coverage when you're in an accident. If you take that same 50-year-old person who has been driving for many, many years, who is two times the legal limit—you know, grossly intoxicated—you don't lose your insurance coverage in that circumstance because it's a slightly different wrinkle.

Our group felt that somebody needed to look at this because we felt that it was simply something that nobody expected was going to happen. It shouldn't be that coverage is completely eliminated in the one instance and not in the other. It has implications for innocent victims who suffer damage by someone who then no longer has insurance.

It's not just restricted to the alcohol example. If you are a novice driver and you're driving with too many passengers in the vehicle for the number of seatbelts, you also have your insurance eliminated. Or, if you're driving a passenger after midnight—you're not supposed to do that as the novice driver. So it's 12:15, you're driving somebody. Maybe they're driving their impaired friend home and they are the sober driver. They're driving them home, it's 12:15; their insurance is wiped out. We don't think that that was probably the intention.

The last point that I want to make, and I'm not going to repeat it—I'm mindful, sir, of your remarks to me. I simply want to say, and you'll see it in the written submissions, that we were unanimous in rejecting Mr. Howell's report for many of the very same reasons that were already outlined before and which I myself even had outlined. I don't wish to repeat that, but I do wish to say that it wasn't Andrew Murray strong-arming this committee. It was definitely a collaborative effort by the group of us, who collectively felt that this was not something that we would want, as people in the know, to see our government initiate.

If there is any time, I'll just leave the balance, should there be any questions for me.

The Chair (Mr. Bob Delaney): Mr. Yurek.

Mr. Jeff Yurek: Thank you, Chair. Thanks for speaking again. It's good—

Mr. Andrew Murray: I appreciate the opportunity.

Mr. Jeff Yurek: I have a couple of questions, if we can get through them. The Auditor General's report noted that the GTA has the highest percentage of mediations. We're looking at 70% or 80%—that's just off the top of my head—because of the GTA. Do you have any reason why mediations would be higher in the GTA as compared to the rest of the province?

Mr. Andrew Murray: I can tell you that we did not speak to that specific issue in this group, so I don't want to step outside of—if you don't wish me to. I can give you a couple of comments, but our group didn't talk about it specifically.

Mr. Jeff Yurek: Go ahead.

Mr. Andrew Murray: I've actually had some consultations with the IBC and they tell me that one of the drivers of mediation is actually rehab companies, on their own initiative and in the name of the claimant, continuing disputes in the name of the claimant in order to seek recovery. So that would be one area.

I'm aware, from some of my defence colleagues that I've talked to—because, again, I wouldn't see these people; they would never be on the other side of my file. But some of my defence colleagues—I'm friendly with them—tell me about some experiences that they've had with paralegals driving the mediation process or just filing mediation after mediation. I was rather shocked to hear that because it's certainly not a practice I adhere to, but I know that there's an element of that. Beyond that, I don't have a specific explanation that I've become aware of.

Mr. Jeff Yurek: Okay, one quick question. Our auto insurance seems to be just a mess of different systems. Briefly, has your advocacy group looked at a full tort system versus a full no-fault insurance or a hybrid? Which one would you think would be the best route to look at?

Mr. Andrew Murray: I can answer it this way: We didn't think that that was part of our mandate when we were looking at this so we didn't address it specifically. But my remarks about getting rid of the threshold, in a sense, is kind of restoring a better picture of tort rights and acknowledging that the minor injury guideline that has already been imposed has gone a considerable way towards drawing back on the generous accident benefits system that existed. It's always been called a historical trade-off; you get no-fault benefits but you have to give up some of your tort rights.

On the whole, given what we've said about catastrophic impairment and how important those benefits are, I think I can comfortably speak for my group in saying that the Advocates' Society feels that there's a place for both prongs—a two-headed approach as it were.

The Chair (Mr. Bob Delaney): Mr. Natyshak.

Mr. Taras Natyshak: Thanks, Chair. Thank you, Mr. Murray. I'm really pleased that we got to hear you again because I actually learned a couple of new things, specifically around the thresholds and the evisceration of some of the insurance rights under the graduated licensing. I'm wondering: In the drafting of the recommendations by the Advocates' Society, was there a guiding approach or principle that led you through that process?

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Mr. Andrew Murray: Yes. We were actually quite significantly guided by two pre-existing papers. One was the 2007 civil justice reform project that was commissioned from the Honourable Coulter Osborne, a very respected judge. If you haven't had that presented to you, I would encourage you to try to take a look at it. The other was the March 2009 five-year review. Coulter Osborne really emphasized proportionality in all things that we do, and we were very mindful of that, particularly in connection with the threshold. In fact, he was saying, back in 2007, to get rid of the threshold because it doesn't really add anything; in fact, it's costing more money. So we took some inspiration from him on that. We really did, in terms of the catastrophic impairment recommendations that I just basically glossed over today, look at what the mandate was with the five-year review. It says that, with respect to any future regulatory change, consideration should be given as to whether the change will increase complexity and regulatory burden. Absent a compelling reason, a change should not be made that would add complexity to the accident benefit system. So we looked at that ourselves and said, "With this proposal, is it adding complexity, and if it's adding complexity, is it warranted?" That was how we approached it.

Mr. Jagmeet Singh: You indicated that there was a difference between the tort side and the litigation side when it comes to something like a slip and fall, as compared to an automobile—could you just highlight the difference and the pros and cons of either way of proceeding?

Mr. Andrew Murray: I'll do it as briefly as I can. In a full tort system, if you are at fault for your accident, you get no compensation unless you happen to have some private insurance. In the modified tort system that we currently have for auto, you don't get to claim any money for pain and suffering unless you meet that test that I described: permanent and serious impairment. Even then, you have a $30,000 clawback, essentially. Your income losses are reduced from the time of your accident to the date of trial to 70% of your gross income, so you'll never get that 30%. I think the notion was that that will encourage people to go back to work because you're not going to be able to recover 100% of your losses. From the time of trial forward—so, being future losses—if it's determined that you're not going back to work or you're going back in some reduced capacity, you're then able to get 100% of your future gross losses, assuming you meet all the legal tests and on the evidence.

If you were to have a slip-and-fall accident and somebody was at fault—the stair rail was all wobbly and you fell down and you suffered a bad injury—you would recover your pain and suffering, you would recover your income losses, and it would be a simpler process, just

because there are fewer hoops and hurdles that one has to go through.

The Chair (Mr. Bob Delaney): I'm just going to move the rotation to Ms. Piruzza.

Mrs. Teresa Piruzza: Thank you. Thanks for sticking around and coming back to speak to us again. That's great.

Mr. Andrew Murray: I've enjoyed my time here.

Mrs. Teresa Piruzza: Thanks for sticking to some different issues on the second, rather than restating what you indicated earlier. The questions that were just coming forward to you really were more, I think, directed to what you were speaking to this morning with respect to some of those elements.

I'd like to bring you back to your role as the advocate, your role in representing individuals through either alternative dispute resolution systems, mediation and the like, and the dispute resolution system through FSCO, recognizing, as you said earlier, that there has been a spike in that. There also have been approaches on behalf of FSCO and to the government to recognize that and to put more resources into that, and in fact, through the last budget, to indicate that there will be a review of that system to see what needs to change in that. So I'd just like you to speak more towards that dispute resolution system and your role as the advocate, rather than what we already discussed this morning with you.

Mr. Andrew Murray: My role as the advocate is a lot of hand-holding with my client and trying to help them to understand how it's going to unfold. It's to be fair and transparent at all times. I do want to say that I am seeing in my practice the beginnings of some improvement now with getting earlier dates when necessary. My clerk is very good at sort of triaging it and saying, "We've got to get this person looked after now. They can't wait." We'll write a letter, and then we've moved up the list. That wasn't possible before, so I can only attribute it to some of the action that has been taken most recently.

My frustration as an advocate is that oftentimes I feel like I'm speaking to myself, so I'm giving a monologue and there's nobody there on the other side who is really listening or responding. I might not get any responding materials at all, so I won't even really know what's the real nature of their denial. Or I get somebody—and I get along with all these people; it's the way I do my business. But they say, "It's been eight months outstanding; I just got it yesterday, Andrew. I can't really do anything with it. Why don't we just fail the mediation now?" after having waited eight months.

I don't know; maybe I'm not addressing the issue you had—

Mrs. Teresa Piruzza: No, I understand. From what I'm hearing from you, then, part of the issue with the mediation is the timing or the response of the other party, which would be the insurance company that you're working with your client on behalf of. Correct?

Mr. Andrew Murray: Yes. Of course, they are always, 100% of the time, in the role of responding. I don't know if people are aware of that, but insurance companies can't file mediation applications. If they want to get money back from an overpayment or something, or dispute an issue, they can't initiate it. So it's always a one-way street coming on the claimant's side.

Mrs. Teresa Piruzza: That's right. So I guess, as we look at that dispute resolution system, that's an element that we'd have to look at, the timeliness of response.

Mr. Andrew Murray: Yes. You know, a recommendation that I would have is to really look at the practice of having insurance companies have a dispute resolution specialist who is a separate person from the adjuster, because the adjuster knows these files much better. It's on their desk. So you'll get to a mediation and you'll have to explain everything anew to a new person whose only job is to do mediations and, you know, either fail them or try to resolve them in some fashion. I can see why somebody thought that was a good idea in theory, but in practice I actually think it inhibits the ability to deal with it in a meaningful way. But that's an insurance-side issue about how they've organized them.

The Chair (Mr. Bob Delaney): Well, Mr. Murray, you have been our bookends for the day, and I must acknowledge your forbearance. Very often, proceedings of standing committees aren't exactly gripping with suspense. So thank you for the second time for having come in and for sharing our company on this day.

For committee members and staff returning to Toronto on the flight, we have 30 minutes before the bus leaves. We are now adjourned.

The committee adjourned at 1527.

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