

Legislative
Assembly
of Ontario



Assemblée
législative
de l'Ontario

**Official Report
of Debates
(Hansard)**

T-21

**Journal
des débats
(Hansard)**

T-21

**Standing Committee on
Regulations and Private Bills**

**Comité permanent des
règlements et des projets
de loi d'intérêt privé**

1st Session
42nd Parliament
Monday 9 November 2020

1^{re} session
42^e législature
Lundi 9 novembre 2020

Chair: Deepak Anand
Clerk: Isaiah Thorning

Président : Deepak Anand
Greffier : Isaiah Thorning

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<https://www.ola.org/>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7400.

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7400.

House Publications and Language Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



Service linguistique et des publications parlementaires
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

ISSN 1180-4319

CONTENTS

Monday 9 November 2020

Occupiers' Liability Amendment Act, 2020, Bill 118, Mr. Norman Miller / Loi de 2020 modifiant la Loi sur la responsabilité des occupants, projet de loi 118, M. Norman Miller	T-75
Mr. Norman Miller	T-75
Landscape Ontario Horticultural Trades Association; The Gardener Inc.; Ontario Association of School Business Officials, risk management and insurance committee	T-82
Mr. Tony DiGiovanni	
Mr. David Jones	
Mr. Tony Rossi	
Mr. Enzo Addesa	
Husky Services Inc.; Youngs Insurance Brokers Inc.; Weeks Construction Inc.	T-91
Mr. Mike Dominick	
Mr. Gord Fergusson	
Ms. Shannon Burrows	
Mr. David Finch; Dairy Queen, Cornwall; Whispering Pines Landscaping	T-99
Mr. Nolan Quinn	
Mr. Greg Wildeboer	
Tanner Insurance Service Ltd. and Ottawa Insurance Brokers Association; Morison Insurance Brokers Inc.; Humberview Services Ltd.	T-107
Ms. Jenny Desroches	
Mr. Fred Morison	
Ms. Heather French	
Mr. Brian Erwin; Mr. Trevor Garner; Mr. Joseph Carnevale	T-115
Greentario Landscaping (2006) Inc.; Mr. Doug Dolson; Simcoe County District School Board.....	T-122
Mr. Carmine Filice	
Ms. Erin Schwarz	
Clintar Commercial Outdoor Services	T-130
Mr. Terry Nicholson	

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE
ON REGULATIONS
AND PRIVATE BILLS**

**COMITÉ PERMANENT DES
RÈGLEMENTS ET DES PROJETS
DE LOI D'INTÉRÊT PRIVÉ**

Monday 9 November 2020

Lundi 9 novembre 2020

The committee met at 0900 in committee room 1 and by video conference.

OCCUPIERS' LIABILITY
AMENDMENT ACT, 2020
LOI DE 2020 MODIFIANT
LA LOI SUR LA RESPONSABILITÉ
DES OCCUPANTS

Consideration of the following bill:

Bill 118, An Act to amend the Occupiers' Liability Act / Projet de loi 118, Loi modifiant la Loi sur la responsabilité des occupants.

The Chair (Mr. Deepak Anand): I call the meeting to order. Good morning, everyone. We are meeting to conduct public hearings on Bill 118, An Act to amend the Occupiers' Liability Act.

As you know, we have MPP Stephen Crawford in the room. We have MPP Barrett, MPP Gila Martow, MPP Billy Pang, MPP Jamie West, MPP Mike Harris and MPP Norm Miller joining through Zoom and phone.

Staff from Hansard, broadcast and recording, and legislative research join us remotely today.

To make sure that everyone can understand what is going on, it is important that all participants speak slowly and clearly. Please wait until I recognize you before starting to speak. Since it could take a little time for your audio and video to come up, after I recognize you, please take a brief pause before beginning. As always, all comments should go through the Chair.

At this time, I do see MPP John Fraser. Good morning, MPP Fraser. Please confirm you're MPP Fraser and you're in Ontario, sir.

Mr. John Fraser: Yes, John Fraser, MPP for Ottawa South. I'm in Ontario.

The Chair (Mr. Deepak Anand): Thank you so much.

MR. NORMAN MILLER

The Chair (Mr. Deepak Anand): At this time, I would like to call on MPP Norm Miller. You will have 15 minutes for your presentation. Please state your name for Hansard, and you may begin now.

Mr. Norman Miller: Yes, Chair. Can you hear me okay?

The Chair (Mr. Deepak Anand): Absolutely, yes.

Mr. Norman Miller: Good. Well, good morning, everyone. I'm pleased to be here virtually to talk to you all about Bill 118, the Occupiers' Liability Amendment Act.

It is appropriate we are discussing this right now. Despite the warm weather this past weekend, just a week ago, my riding and much of central Ontario had our first snowfall of the season. Right now, snow removal companies are facing steep increases in insurance costs. Some can't get insurance at all. The main goal of this bill is to reduce the number of frivolous lawsuits for slips and falls on snow and ice in order to ensure snow removal companies can get insurance to operate.

In an effort to do that, I propose changing the notification period for slip-and-fall lawsuits from two years to 10 days, the same as the time allotted for notifying municipalities of falls on roads and sidewalks. If this bill were to pass, in order to sue, individuals would have to notify property occupants, property owners and their snow removal companies of the fall within 10 days of the accident, except in extreme cases.

As the bill states, "No action shall be brought for the recovery of damages for personal injury caused by snow or ice against an occupier, an independent contractor employed by the occupier or, in the case of a tenancy described in subsection 8(1) of the act, a landlord, unless, within 10 days after the occurrence of the injury, written notice of the claim and of the injury are served."

Under the current rules, property owners, their tenants and commercial snow and ice management companies can face lawsuits up to two years after a fall on their property or a property they maintain. They may not even know someone has fallen, and they are expected to be able to defend their maintenance of the property. This has created a situation where many small companies have been hit with frivolous yet crippling injury lawsuits long after anyone can remember an incident. These lawsuits have become so common and so expensive to defend against that insurance providers have hiked their fees and deductibles across the board for the snow and ice management industry, including for companies with no active lawsuits against them.

Some insurance providers have stopped covering businesses in this industry altogether because there is such a high risk of getting tied up in expensive litigation. I've been told that other insurance companies are only providing insurance to large companies with more than \$1

million in revenue and only if 20% or less of that revenue comes from snow removal. This lack of insurance or lack of affordable insurance has forced many small snow removal companies out of business, leaving Ontarians wondering who will clear the masses of snow and ice coming this winter. We know we get snow. We know we need snow removal. So we need to do something before we lose more snow removal companies.

This issue was first brought to my attention by Dave Finch from Wes Finch and Sons, an excavating and landscaping business located in Bracebridge, Muskoka. I believe we'll hear from him this afternoon. After hearing from David, I started asking around and found that this was a common problem for both snow removal companies and their customers. Many business owners have approached me with concerns about frivolous lawsuits which are leading to excessive insurance premiums.

This fall, I've been hearing from snow removal companies that they can't get insurance at all. Without access to insurance, businesses are forced to close down. One of my constituents, Mr. Ian Goodhand of Huntsville, used to own and operate a small snow clearing business serving 37 customers seasonally in the area. His business is powered by one tractor with a front-mounted snow blower, but his insurer told him last month that they would not cover him for snow clearing this year. Unable to get insurance, Mr. Goodhand has had to close his business, leaving his clients in Huntsville out in the cold.

It isn't just one-person operations that are facing this. This morning, we're going to hear from Mike Dominick. Mike owns Husky Services in Cornwall, and he has informed his 100 snow removal customers that he won't be providing services this winter because he couldn't get liability insurance. This impacts his 100 customers and 12 part-time employees.

Another snow removal company sent us the notice they received from their insurance broker, stating that their insurance company would not be renewing their coverage because they are no longer providing coverage for snow removal businesses. Shockingly, the letter goes on to say, "We must advise that renewing your coverage may be difficult but, unless you advise otherwise, we will endeavor to arrange appropriate coverage with another insurer prior to the expiry date of the indicated policy. Since we may be unsuccessful, and because we want to ensure that you have every opportunity to replace your coverage, we recommend that you contact other insurance brokers to see if they have a solution unavailable to us. If no insurance company is willing to underwrite your policy, your coverage will cease effective 12:01 a.m. on December 1, 2020."

Since we debated this bill in the Legislature in June 2019, I have received support from snow removal company owners from every corner of this wide and snowy province. For example, Gelderman Landscape Services has been serving communities in southwestern Ontario, including Waterdown, Kitchener-Waterloo, Guelph and Mississauga, for 65 years. Over the last five years, their insurance prices have skyrocketed and their deductibles have jumped from \$5,000 to \$25,000.

Carlos Almeida operates Alme-Con Group Inc., a landscaping business operating throughout the greater Toronto area. He has no active claims, yet his insurance rates have doubled this year.

Kevin and Ryan Marshall of Turf Pro landscaping in London, Ontario, told us that in the past year, their insurance costs have increased by \$20,000, and their deductible has shot up from \$2,500 to \$10,000. When they tried switching insurance providers for a better rate, they found that most others were no longer covering the snow and ice management sector because the risk is now considered too high.

Nicholas Dean runs Dean Ryans Enterprises, a landscaping and snow clearing business in Ottawa. Since 2018, his insurance rates have jumped from \$6,000 to over \$35,000. Because of this steep increase in costs, he is considering ending his snow removal service entirely.

John Howcraft runs Peel Landscaping Ltd., and his insurance premiums went up 350% this year, with deductible costs of \$25,000 that threatened to put him out of business entirely.

It is illogical that fears of slip-and-fall lawsuits are forcing the very people who clear the snow out of business. These frivolous lawsuits don't only impact the snow removal companies, but also their clients. These could be small businesses, larger businesses, public institutions like hospitals and schools or even individual Ontarians. I've heard from small business owners who have had to try to defend against a lawsuit for a fall they learned about one year and 11 months after the fact. Even if the business had a security camera, if they don't know anyone had fallen, they probably didn't save the footage from that date, and their staff can't really be expected to remember what happened on a specific date almost two years ago. They might not even still have the same staff. We will hear from two school board risk managers today, because our school boards face the same problems.

0910

Due to a fear of lawsuits, and with deductibles at an all-time high, some snow removal companies and property owners put down excessive amounts of road salt to try to mitigate the risk of slip-and-fall lawsuits. Just walk around in downtown Toronto in winter, and you'll find parts of the sidewalk completely covered in salt. This has devastating effects on our environment, especially on our water quality.

In my own riding, the Muskoka Watershed Advisory Group's recent report identified an increasing level of road salt in Muskoka's lakes to be a top source of pollution in my region. The report estimates that road salt pollution affects about 20% of Muskoka's lakes. The salt causes chloride pollution, damaging plankton, which then enters the lake's food web, affecting the wildlife of the area. In Jevins Lake near Gravenhurst, research has shown that excessive road salt has caused chloride levels which violate the Canadians water quality guidelines. The Muskoka Watershed Advisory Group has recommended immediate intervention to manage the level of road salt in our lakes, and I hope this law can be part of the solution to this problem.

Environment Canada and the Farmers' Almanac have predicted heavier than usual snowfall in western Ontario this winter, and the rest of the province is set to get its usual cycle of blizzards, thawing and freezing. Winter is coming. We can't stop it. We need to have viable snow removal companies.

Once again, the changes I'm proposing today do not prevent slip-and-fall claims from being filed. I'm simply asking that the statute of limitation for claims be reduced to allow snow removal companies and their customers the opportunity to get statements from staff and witnesses while they remember what happened, and to save evidence.

While I'm not a fan of injury lawyers who advertise, "You don't pay unless you win," I am going to quote Preszler Law. Their website explains that statutes of limitations "are important because as time goes by, evidence may be lost and memories will fade—which can affect the integrity of a claim. For instance, if someone tries to file a slip and fall claim against a grocery store 10 years after the incident, the employees and management may be different, the store policies may have changed, and valuable evidence such as surveillance video would likely be gone."

I would suggest that even a year later, the staff may have changed, memories would have faded and evidence may be gone. If someone asked you to describe the state of a parking lot or sidewalk a year ago, would you be able to do it? Would you remember what time it started to snow? Would you remember what kind of footwear a customer had been wearing?

In this bill, I'm proposing a window of 10 days in order to be consistent with the limits around suing for a slip-and-fall on municipally maintained roads or sidewalks, but I'm open to other suggestions. Let's find the right balance. What length of time is reasonable for a person who fell and for the property owner, tenant and snow remover contractor?

I want to point out, the bill does include an exception for cases of death or if a judge finds there is a reasonable explanation for the insufficiency of notice. I can't assume what judges would decide, but to me, that would ensure that someone who is badly injured and in hospital for longer than the notice period—I would hope that would be considered a reasonable explanation.

Once again, let me say, we live in a climate with winter. As individuals, we need to take some responsibility for our own safety. We need to watch where we're walking and wear appropriate footwear. As a province, we need to create an environment in which snow removal companies can operate with enough profits to stay in business and without constant fear of being sued. I believe this bill will help do that.

I want to thank the committee for considering this important legislation, and I look forward to everyone's input on this matter. I would also like to note that my brand new legislative intern, Elizabeth Haig, was the main contributor to this opening statement. I want to thank her. That was pretty much her first day on the job, so thank you, Elizabeth.

The Chair (Mr. Deepak Anand): Thank you, MPP Miller. I appreciate it. Thanks for your presentation.

Now we're going to go through the questions. This round of questions will start with the official opposition for six minutes, followed by the government for six minutes and then the independents, four and half minutes. We'll be doing three turns with the opposition, three with the government and two with the independent members.

Who would like to ask from the opposition? I see MPP West. Go ahead, sir.

Mr. Jamie West: Thank you, Chair, and thank you, as well, to MPP Miller for summarizing it in a nutshell. One of the things you talked about several times was the steep increases in insurance costs, insurance companies denying coverage and the threat to small business. Many of the businesses that you had talked about had been in business for a long time.

I was just wondering: Is there a plan from your government to address the insurance gouging that seems to be going on? I don't know what sort of stats there are, but I'm just curious about—it seems like this is driven because insurance costs are going up. I don't know what the details are for actual claims going in, but if insurance companies are gouging their customers, is there a plan from the Conservative government to do something about that?

Mr. Norman Miller: Thank you, MPP West, for the question. As you know, this is a private member's bill that I brought forward based on issues initially happening in my own riding, and then discovered that it's right across the province. I would say that obviously the government is interested in addressing this issue and trying to have an effect on insurance costs by the fact that this private member's bill is where it is right now, in public hearings. My hope is that after this day of public hearings and after we think about amendments, it will get third reading in the Legislature and hopefully become law.

My motivation is to have a positive effect on curbing the insurance rates, so that we can have businesses in the snow removal business and have our sidewalks and our hospitals and our schools and everything else looked after, because without them there could be a lot more people falling down, as well.

Mr. Jamie West: Thank you. We have a similar climate, so I understand how important it is to have snow removal. I remember last winter not even being able to get into our parking lot, because snow removal hadn't started by the time we got there, because of the large dump of snow—which is very similar to your region of Parry Sound.

I wondered: Did you have an opportunity to speak with plaintiffs of cases, to talk about—when I see it changing from two years to 10 days, it seems like a relatively short amount of time. I wondered if you had an opportunity to speak with different plaintiffs to talk about what their experiences were, and if they had any difficulty gathering the information or contacting the right people within a 10-day window that would make it fair for both parties, for example.

Mr. Norman Miller: Initially, when I was proposing the bill, I was proposing 30 days, and I became aware that

for municipalities, for sidewalks etc., it was 10 days, so then the thought was to make it consistent with municipalities. Municipalities across the country have similar lengths of time.

And remember, this is to give notice, so it's not to actually start a suit, but it's just to give notice, to let the snow removal company or the Tim Hortons or whatever the business might be—one of the businesses—know that you fell down. So you don't have to have prepared your entire suit; you just have to give notice, at this point, within 10 days. As I mentioned in my opening statement, if that is thought to be too soon, then I am open to suggestions to lengthen that period.

Mr. Jamie West: Okay. I had another question. Were you able to speak with any plaintiffs, and if so, how many were you able to speak with?

Mr. Norman Miller: No, I did not hear from plaintiffs—that I'm aware of, anyways.

The Chair (Mr. Deepak Anand): Two minutes of questioning, MPP West.

Mr. Jamie West: Oh, that's the time?

The Chair (Mr. Deepak Anand): Two minutes.

Mr. Jamie West: Two minutes? Okay.

Yes, it's unfortunate, because we rushed the time period for getting deputations. I look on the list and I don't see anybody who would be a plaintiff, and I'd love to hear that other side of the conversation, just so we get it right, because I think the intent of the bill is important and I think that having people available to remove snow is important, especially in our ridings.

Mr. Norman Miller: I did meet and speak with the Ontario Trial Lawyers Association—obviously they're representing plaintiffs—and I did, as I mentioned in my debate time back in June of 2019, quote some lawyers in the speech I made at that point, as well.

Mr. Jamie West: Okay. My main concern, really, is that the short window—either people who were wrongfully injured don't have the time to contact whoever the contractor is and figure out who it is, or they file a lawsuit frivolously just in case, and we have a clog in the system. You're trying to address the system being clogged up, and we might clog the system up by having people file no matter what happens to them because there are only 10 days. Is that anything you've thought about or considered?

Mr. Norman Miller: We've tried to make it easier for the notice by allowing—if you're at a mall would be the best scenario, where you're not sure who you would give notice. You give notice to one of the concerned businesses—whether it's the guy in the truck or the tractor salting and sanding or the Tim Hortons, if you fell in front there—so that you don't have to contact everybody; you contact one.

The Chair (Mr. Deepak Anand): There are about 10 seconds left, MPP West.

Mr. Jamie West: Okay. Thank you, Chair. That's all.

The Chair (Mr. Deepak Anand): I appreciate it. Moving over to the government side, I know MPP Barrett wants to ask, and then MPP Crawford.

Mr. Toby Barrett: Thank you, Norm. Down along Lake Erie, we don't get nearly the snow that you do, but in a normal winter, you still have to have a blade come in maybe 10 times, depending on the weather, and oftentimes it's a local farmer, a local garage, people in the landscaping business and people that volunteer. They'll do their neighbour's farm laneway, especially if somebody is away and they can't plow it out. I have a blade, but I'm never home to be able to use it.

We've contacted your office. We've reached out to several smaller companies—VMP Landscaping are just up the road from me, and Jeff's Outdoor service. It's not that small: He has about 38 employees. He's been in business for about 26 years.

Again, the concern—and they've indicated to me that this came up at one of their conferences, the Landscape Ontario Congress: lots of stories about premiums going up 300%, obviously around liability on slip-and-fall. Many of them are turning away customers now or just going out of the business altogether. I can certainly read into the record some of these items in these emails that I've been getting, but I just wondered if there was any further comment from you. To what extent are these small employers organized other than that congress? How effective have they been in getting their word out?

Mr. Norman Miller: I think it's certainly a widespread problem, as I tried to indicate in my opening statement, where I had emails from all across the province and from some pretty small operators and quite large operators. As I indicated, I was told that for some companies, you have to do at least \$1 million worth of business and only 20% of it in snow removal to get insurance at all. The first person that came to me about this, Dave Finch, said that—they were a medium-sized company doing the hospital, very professional, keeping great records etc. He said that for a lot of the smaller operators, some you were describing, Toby, if you have a pickup truck and you do half a dozen driveways, a lot of those operators would think their truck insurance covers them when in fact it doesn't, and they wouldn't very likely get insurance.

In reference to your question, Landscape Ontario has done a very good job of hearing from their members, and that's the main organization that I'm aware of that has been very concerned about this.

Mr. Toby Barrett: I know that one company, Jeff's Outdoor, indicated to me their insurance increases—he's talking \$32,000 a year going up to \$86,000 a year. His deductible is also going up significantly as a result of these, as he describes, nuisance complaints or frivolous complaints.

I'll just read in a quote, if I have time, from his email. He talks about various clauses to ban hold harmless clauses in contracts that push all liability to contractors when it is outside the terms of the contract. These clauses unfairly push all liability to contractors. He has indicated, and maybe this was in your notes as well, MPP Miller, that such a ban is already in place in several US jurisdictions, including Denver, Illinois and Connecticut. The ban will help reduce the cost of claims for landscapers and the cost

to the insurance company to pay for claims. I don't recall; do we get into this kind of detail in this proposed legislation?

Mr. Norman Miller: The legislation is relatively simple, MPP Barrett. It's just shortening the notice period from two years to 10 days, so it's relatively simple.

Mr. Toby Barrett: Okay, thank you, Norm.

The Chair (Mr. Deepak Anand): Thank you, MPP Barrett. Now, moving over to—I do see MPP Dave Smith. Before I ask MPP Crawford to ask a question, MPP Smith, please confirm that you are MPP Smith and that you are in Ontario. Thank you, sir.

Mr. Dave Smith: I am MPP Dave Smith and I am in beautiful downtown Peterborough—God's country.

The Chair (Mr. Deepak Anand): Thank you so much. We have about a minute.

Mr. Stephen Crawford: Thank you very much, Chair, and thank you, MPP Miller, for this legislation you're putting forward. We don't have a lot of time, but I'm just wondering—you mentioned the deductibles were way up, and the cost is 350%. I'm just trying to get a handle on it. Is this something that has just happened in the last 12 months or is this something that's been building up over many years? Was there some factor at play here or has this been something that's been trending in this direction for many years?

Mr. Norman Miller: Thanks, MPP Crawford. I believe it was three years ago that, initially, a constituent, Dave Finch, approached me about it. But I think it has become much worse since then. I'm sure some of the folks who are coming before the committee today, including Landscape Ontario, which I believe is the first one, will have more specific information. But it's certainly getting worse and worse as time is going on.

Mr. Stephen Crawford: Corresponding to that, have there been more and more claims and that's why the price has gone up?

The Chair (Mr. Deepak Anand): Thank, MPP Crawford. Time is up, but you can definitely ask in the next round.

Now over to the independent members. MPP Fraser.

Mr. John Fraser: Thank you very much, MPP Miller, for bringing this forward, and for your very clear presentation this morning.

You know what? When I look at this, we have an insurance problem. I agree with MPP West. I've seen this happen with taxi drivers in my community, so I have concerns about how the insurance industry is approaching this industry and other industries, and whether there is an issue of fairness and transparency.

Having said that, I have a couple of questions about your bill. What is your understanding of notice? Is that a legal written notice prepared by a lawyer or a paralegal, or is that just a simple written notification that you could hand to somebody yourself?

Mr. Norman Miller: A very good question, MPP Fraser. I'm no lawyer but I would think it would be things like a registered letter, not necessarily prepared by a lawyer, but a registered letter to either the contractor or the

business involved in the incident. And as you know, [*inaudible*] limitation are two different things, so this is notice, not the actual start of a suit.

Mr. John Fraser: Yes, I do know that. Having been in the grocery business before, that was kind of my understanding. But we probably should get some clarification from research or counsel as to exactly what that is.

Like MPP West, I am concerned about the notification period. It seems short. When you look at it in light of what's happening with municipalities, that seems short to me as well. I think we need to get a reasonable balance.

If you look across Canada, five provinces have this kind of legislation. They don't put limitations in, but they do the same thing that we've been doing, which is provide limitations of varying lengths for municipalities.

When we look at the limitation period, I think we have to be fair, reasonable and balanced to ensure that people have access to due process. But it's very important that we get it right. We have to address the concerns of operators; there's no question. It's good that you've brought this forward. I've heard it in my community, and we certainly—for consumers as well, the fewer operators you have, the more expensive the service can become.

0930

Anyway, I look forward to the next round of questioning. I just wanted to ask you about those two things.

Mr. Norman Miller: Thank you for that, MPP Fraser. Yes, when we met at the cafeteria and you were asking about notice periods, I did check in with research across—it's mainly municipalities. Winnipeg has seven days. In Alberta, it's 21 days. Saskatchewan is 30 days. For the crown in Ontario, it's 10 days. But I'm certainly open to a change of that 10 days as we go through this process and listen to those involved. It's certainly not set in stone.

Mr. John Fraser: That would be great. Thanks a lot.

The Chair (Mr. Deepak Anand): Thank you so much. We're going to move back to the official opposition. MPP West, would you like to ask again?

Mr. Jamie West: Yes, Chair. Thank you very much. Most of my questions had to do with seeing the other side of the coin. Maybe you had this; I'm not sure. When you spoke with the insurance brokers, when you reached out to your constituency, to snow plowing and removal, MPP Miller, was there any idea of how many lawsuits were brought forward in the previous year or how many were successful versus how many were tossed out or how many were not successful?

Mr. Norman Miller: Thank you, MPP West. I think that will be a really good question for some of the people coming before the committee today. Maybe they will have a very specific—I mean, I've talked to local businesses. There's a Tim Hortons out on Highway 400 just south of Parry Sound, and the owner sold the business two years ago. He didn't give me an exact number; he just said that it has become far, far worse in the last number of years, the number of suits that they're receiving. But I think that will be a good question for some of the folks coming before us.

My office has reached out to try to get written comment from the trial lawyers as well, so hopefully we'll get that

today so that we can get their further input. As I mentioned, I did meet with them to get their input. But I look forward to getting something in writing from them.

Mr. Jamie West: With the Tim Hortons, for example, that anyone who is coming south on Highway 69 or the soon-to-be-four-lane 400—I think everybody knows the Tim Hortons you're talking about. It's the stop that you make, especially if you're coming from Sudbury, because it's about the halfway mark to Toronto.

If I were to slip and fall in that parking lot and Tim Hortons had the contract with, I'll just say, Jim's snow plowing, can I notify Tim Hortons and still be aligned with this, or do I have to find out who does the snow plowing for them and notify Jim's snow plowing or whatever the contractor's name is?

Mr. Norman Miller: Certainly, the intent is that if there are multiple folks involved that you want to sue, you just have to notify one of them. The obvious one there would be giving written notice—the registered letter or whatever—to the Tim Hortons, or if you can see the snow removal company in the parking lot, to give it to them. So you don't have to notify all; it's just one of the businesses involved.

Mr. Jamie West: Okay. All right. Thank you, Chair. I don't have any more questions.

The Chair (Mr. Deepak Anand): I appreciate it. Thank you.

Moving back to the government side, MPP Crawford.

Mr. Stephen Crawford: MPP Miller, I know you touched on some other jurisdictions in Canada. You mentioned a few other municipalities. But with respect to snow plowing specifically, I think you compared some municipalities—Winnipeg gets seven days, or in municipalities in Ontario, it's 10 days. In terms of something like this, where it's a private business, and alluding to the situation you just mentioned, for example, the Tim Hortons, how is that in other jurisdictions in Canada? Is it two years? Is it limitless? Is it 10 days? What are your thoughts on where it is in the other parts of Canada?

Mr. Norman Miller: As far as I know, other provinces don't have something similar to this at this point. As I mentioned before, I had legislative research look at—the crown in Ontario is 10 days, and it's quite common with municipalities. As they say, for Winnipeg, it's seven days, and for Alberta municipalities, it's 21 days. For Saskatchewan, in the Municipalities Act, it's 30 days. I think that the City of Toronto Act has 10 days. As I mentioned, for municipalities, for sidewalks etc., it is 10 days. This is unique in terms of for private businesses.

Mr. Stephen Crawford: You mentioned some of the deductibles have gone up dramatically, and the cost was up 350%. I'm just wondering if you've studied or looked into—do you believe this is the factor that's pushing those prices up? Is it a factor, or is it actually something else that we don't even know about? I just want to make sure. There is a problem here. We all acknowledge that and we need to do something. But if we tackle this and put this legislation through, is this going to solve the problem for these snow removal companies and get them back in

business and snowplowing? Are we making the right decision?

Mr. Norman Miller: I don't think it's going to solve the entire problem, but I think it's certainly going to make a big difference. Even the case of the company I was talking about on Highway 400 that has the Tim Hortons, they get sued at one year and 11 months—which is when pretty much all the cases come in—and by that point, they don't have any evidence to protect themselves. They don't have any surveillance. Video cameras have long gone by that point. Their records at that point might not be that great.

As we've mentioned, 10 days are what we're considering for notice. Then a business will be able to have that video surveillance, have records of the snowfall and the conditions fresh in their mind, and be better able to defend themselves. I would assume that that is going to make a difference. I think, as the folks come in today, it would be really good to ask questions about sorts of lawsuits and specifics.

I did receive a letter from a company that suggested that more has to happen. I'll just read the email that I received just a few days ago. This is a Tim Hortons owner. He says, "As an example, a couple of years ago, a lady came into one of my locations completely intoxicated." This is from Darryn McPhail.

"She fell and broke her leg in two places. She attempted to sue my company for \$250,000. The case was thrown out after video evidence showed the lady stumbling around, that the parking lot was dry and, in fact, there was no bad weather in nine days. The issue was this still cost approximately \$12,000 to defend. Unless there is a potential for these false claims to come back to people, the claims will not stop. They have nothing to lose. I appreciate your consideration on this matter."

That's just a way of saying that there may be other things that need to be done, if we really want to tackle this. But I do believe this will make it much easier for businesses to properly defend themselves and I believe it will result in less of the frivolous lawsuits happening, which should result in insurance coverage becoming more available and the cost becoming more reasonable. I believe it's a step in the right direction, but I don't believe that it's doing everything that needs to be done.

Mr. Stephen Crawford: Thank you.

The Chair (Mr. Deepak Anand): We still have about a minute and 30 seconds. Anyone else wants to ask, from the government side? I do see MPP Martow. Go ahead.

Mrs. Gila Martow: Hi, if I don't finish, I'll finish in the next round, if there is a next round. I was an optometrist up in Keswick, and there was freezing rain. The police said, "Don't go out unless it's an emergency." A lady got in her car and decided to pick up her glasses. We weren't even open; we were only open afternoons and evenings, and she came in the morning. She fell, she broke her hip; she had wonderful surgery and a full recovery. She wasn't working at the time; she was retired. Her daughter also wasn't working and took care of her. And she sued. She sued the owners of the building, myself, and we shared a parking lot with a doughnut/coffee place.

I really feel for what these companies go through. She was offered \$10,000 by my insurance company to settle. She chose not to, went to court and she got \$0. She couldn't claim any kind of damages, and obviously we had the record of the weather. I can't imagine what would have happened if she would have given notice of a lawsuit two years after the fact, and to go back and remember exactly what happened: that my staff would have been the same; that we had proof that actually the steps had already been salted that day—she didn't even make it to the steps; she fell right outside her car in the parking lot—and that it was impossible types of conditions—

0940

The Chair (Mr. Deepak Anand): Mrs. Martow, the time is up.

Mrs. Gila Martow: If my time is up, I'll just leave it at that.

The Chair (Mr. Deepak Anand): Thank you so much. Maybe, MPP Miller, you can answer in the next round.

We move to MPP John Fraser. Would you like to ask, sir?

Mr. John Fraser: Thanks, Norm. You kind of got the rub of my next question, which is that we can make a change here, but are we actually going to achieve what we're trying to achieve, which is to make sure that premiums are going to be accessible to operators?

I think it would have been good to hear from some of the large insurers. I think transparency in terms of fairness to operators is pretty critical. We're not going to hear from them or see them. They're kind of a hard industry to get at. We all know that. We've all been there in different political parties and in government.

I think we have to keep that in mind when we're getting that balance, that there still may be other things that we need to do to help operators. If we get the right balance here, the next thing is, how do we ensure that there's fairness? I don't know if you have any thoughts about that. I know it's not particularly germane to this bill, but—it is germane to the bill, but not specific to the bill.

Mr. Norman Miller: Yes, I would agree. Again, I think it would be good to ask some of the folks coming before us today. We will have the insurance brokers, I believe, coming in as well, and also we have folks from schools that are involved in managing insurance, so they may have some insight as well.

I would agree with you that I don't think this is the solution for everything, but I believe it will make a difference. It will start to help having more reasonably affordable insurance premiums for our snow and ice removers around the province.

Mr. John Fraser: That's all I had, Norm. Thanks very much.

Mr. Norman Miller: Thanks, John.

The Chair (Mr. Deepak Anand): We're going to the opposition's third and final round for six minutes. MPP West, would you like to ask anything?

Interjection.

The Chair (Mr. Deepak Anand): MPP West?

Mr. Jamie West: How is that?

The Chair (Mr. Deepak Anand): Awesome.

Mr. Jamie West: I apologize, Chair.

I guess the only question I would have, really—MPP Miller, you may not know. The bill was tabled June 2019, and then basically we hadn't heard anything about it until last week from the committee side. I'm just wondering: What was the urgency? What changed between last winter and this winter? I understand it's important, but I don't understand why it wasn't brought forward last winter.

Mr. Norman Miller: Thanks a lot, MPP West. Good question. Of course, as you would know, with private members' bills, most of them don't make it to the stage we're at right now, so I'm just really pleased that it is at this stage.

Of course, COVID-19 hit. There were plans to go through this process a lot earlier. We were actually hoping to do it in the spring of last year, but then when COVID-19 hit, COVID became the number one priority and this got pushed back. If it hadn't hit, I actually had some dates when we were hoping to do it in the spring, but that got affected by COVID.

Mr. Jamie West: Okay. Thank you, Chair. I don't have any further questions.

The Chair (Mr. Deepak Anand): I appreciate it. Thank you so much.

Back to the government side. This is your final six minutes. MPP Martow, would you like to finish your question? Or we can go to MPP Miller.

Mrs. Gila Martow: I'll just say to MPP Miller my story that it could have been a very different outcome for the building that I was renting from, and it affected my relationship with my landlord. It was never the same after this lawsuit. They knew it wasn't my fault, but it made a kind of chilly atmosphere.

We were lucky in a way that the notice of lawsuit and the lawsuit happened very quickly after her fall. We had all the staff. We had all the records. We know what salt had been put down. We knew the weather exactly, what day it was, and had the reports, even. It's very, very different when—I can't imagine what the outcome might have been, or can't predict, if it was two years later.

If you want to repeat how important this is—I have a letter in front of me that I'm not going to read right now from Derrad Property Maintenance in Concord, which is in my riding, and they say that in one year—I believe it was a year ago—their insurance went up 30%. It doesn't necessarily mean that claims went up or that there was a claim against them. We all know that if they had a claim against them, sometimes that drives things up. Obviously, the more claims you get, the more your insurance goes up, and the longer the period, the more claims you get, the more the insurance goes up. I'd love you to comment on that.

Mr. Norman Miller: Thank you, MPP Martow. It's an excellent example of why having some timeliness to this makes the whole system fairer, really. It allows you to have evidence of whether there was salt on or what the conditions were like and defend yourself if you're the business, but it makes the whole system quite a bit fairer.

In fact, I would like to quote our current Attorney General. When he spoke to the bill, he said on this issue, “The member has really touched on something that deals with things that I’ve run into as a lawyer. I can tell you, it isn’t to tip the balance in anybody’s favour. It’s to preserve the best evidence as early as possible, so that if something does happen—and this has worked in the municipal world for a long time, the 10-day notice. This isn’t to actually file a statement of claim within 10 days; it’s simply to put the party on notice that you need to preserve your records and preserve the best evidence possible so that justice can be served for everybody.

“I endorse this 100%. I think it’s a prudent thing to do. It actually is a benefit to people who are plaintiffs and it’s a benefit to people who will be defendants—and let the courts sort it out. But let’s preserve the best evidence as we go forward.”

That was before he was the Attorney General, but our current Attorney General, Mr. Downey, speaking to the private member’s bill. Your example demonstrates that point as well, so thank you.

And if you want to read your—

Mrs. Gila Martow: If there’s any time left. Chair, how much time do we have? I’ll read a paragraph.

The Chair (Mr. Deepak Anand): We have about two minutes and 50 seconds.

Mrs. Gila Martow: Okay. I said that it’s from Derrad Property Maintenance, that their company has roughly 10 employees and that they’ve been expanding.

“The help I need is to stop the out of control escalation of insurance prices for snow and ice contractors and in some cases the lack of insurance availability. This year alone my costs for insurance rose 30% because of the high prevalence of slip and fall claims (many that are frivolous/nuisance claims) against all contractors in the sector. My deductible for each claim also increased to \$5,000,” and I would say that that’s something we also haven’t addressed. It’s not just the availability and the cost of insurance, but have you been hearing, MPP Miller, about the rising deductible cost, which, if there is a claim in the future, can just bankrupt a business?

Mr. Norman Miller: Yes, MPP Martow. I believe I cited some examples where it’s gone up tremendously, and that would be a very good question for some of the presenters today.

Mrs. Gila Martow: Thank you very, very much. Again, I think that we all want to see our roads cleared—winter is coming—and I think this is very, very urgent. I hope that we can do something to maybe not completely reduce all rising costs—we all know that that’s not in our control—but to significantly reduce the costs and the burden to our businesses who really provide an essential service.

The Chair (Mr. Deepak Anand): I appreciate it. Is there any other member from the government who would like to ask? Seeing none, that concludes the presentation from MPP Miller. Thank you, MPP Miller, for that presentation.

The time now is 9:48, and our next presenters are going to be joining us at 10 a.m. At this time, we will be taking a break and we will reconvene at 10 a.m. Thank you so much for your co-operation.

The committee recessed from 0948 to 1000.

LANDSCAPE ONTARIO HORTICULTURAL
TRADES ASSOCIATION
THE GARDENER INC.
ONTARIO ASSOCIATION OF SCHOOL
BUSINESS OFFICIALS, RISK
MANAGEMENT AND INSURANCE
COMMITTEE

The Chair (Mr. Deepak Anand): Welcome back. It’s 10 a.m.

We have Mr. Tony DiGiovanni, executive director of Landscape Ontario Horticultural Trades Association; Mr. David Jones, vice-president of franchising, The Gardener Inc.; and members of the Ontario Association of School Business Officials, risk management and insurance committee.

Mr. DiGiovanni, welcome to the Standing Committee on Regulations and Private Bills. You will have seven minutes for your presentation. You can start now, sir. Please state your name for Hansard.

Mr. Tony DiGiovanni: Thank you very much. My name is Tony DiGiovanni. I’m the executive director of Landscape Ontario Horticultural Trades Association.

Landscape Ontario represents 2,800 member companies. Our members design, install and maintain Ontario’s landscapes and gardens, and many of them are also in the snow and ice management business. They represent an army of unseen snow-fighters who work tirelessly in the middle of the night to ensure that we can all go about our business safely after a snow or ice event.

These snow-fighters are in the midst of an insurance crisis. I’ve received many calls from members who can no longer get insurance for snow and ice operations. Others report that their insurance rates have doubled or tripled and their deductibles have been increased immensely. I’m receiving approximately five calls a week from desperate members. Many of them are multi-generational, small, family businesses who can no longer operate because their insurance companies have exited the business. Others can no longer afford the huge increases.

Last January, we hosted a meeting on the issue, and 300 members showed up to talk about the crisis. This is serious. Not only does this issue affect contractors and their employees, but it eventually will affect every one of us. It is not an overstatement to say that the safety of our citizens, as well as the health of their economy, is at risk if we don’t find some way to deal with this issue. Who will clear the snow and ice if contractors can’t get insurance?

The issue is complex. Insurance companies have decided to walk away from snow and ice operations. Even our own endorsed insurance carrier exited the business. They left \$9 million in premiums because the risk was too

high. The slip-and-fall claims cost more than the premiums collected. The ubiquitous commercials from personal injury lawyers are not helping. The constant refrain, “You don’t pay unless we win,” is having an effect. There is more litigation now than there ever has been.

It also does not help that the public has an expectation that roads, parking lots and sidewalks should be bare at all times, even during a snow and ice event. The truth is that our members cannot be everywhere at the same time. A common sign on the highway says, “Drive according to winter conditions.” Pedestrians should dress according to winter conditions. It’s everyone’s responsibility to do the best they can to stay safe.

Bill 118 proposes to reduce the statute of limitations from two years to 10 days. Right now, if someone falls on municipal property, they have 10 days to make a claim. If that same municipal property was maintained by a private contractor, the same person would have two years to make the claim. This is inherently unfair. Bill 118 not only levels the playing field between municipal and private operations, but it will also have a positive effect on the crisis, because it is much easier to deal with claims in a timely manner when all the data is fresh in memory. Nuisance and frivolous lawsuits will be mitigated.

It is important to note that our association is focused on improving and enhancing professional operations. We have initiated multi-year research at the University of Waterloo to determine optimum rates for salt and ice melters. We are founding members of the Smart About Salt Council. We host an annual professional development conference called Snowposium. We have published guidelines. We are supporting the development of a CSA standard for snow and ice operations. We continually strive to elevate the profession.

We’re not asking for protection against negligence. We are asking for the reduction of the statute of limitations as one step in a multi-faceted strategy to deal with the fact that obtaining insurance is a serious barrier to operations. If our members cannot get insurance, or if insurance rates are so high that businesses are not sustainable, who will keep our properties safe and accessible?

Later on today, you will hear first-hand the experiences of many snow-and-ice contractors. I want to quickly relay some examples from letters sent to us from members.

This is from Jeff Ronhaar of Jeff’s Outdoor maintenance in Caledonia. “This year alone (2020) my cost for insurance rose from \$32,000 to \$86,000 because of the high prevalence of slip-and-fall claims (many are frivolous or nuisance claims).”

From Nicholas Dean of Dean Ryans in Ottawa: “Our rates went from \$6,000 to \$16,000 in the span of a year in 2018” and “now in 2019 they are \$35,500.”

This is another one: “After Dec 14th, I will not have liability insurance to protect my properties, myself, my family and my home from potential lawsuits. I don’t want to let anyone down, but at this point I’m not sure what else to do. I’m feeling helpless as this is important income for myself and my family.

“But you have to understand where I’m coming from in not wanting to put my wife, my three kids and my home under any risk. This puts us in a position where I would no longer be able to provide for my family...financially or anything. My snow plowing business was my bread and butter, and I’m very worried how this could end.” This was from Delio Gomes in Toronto

Here’s another one: “Our insurance in the 2018-19 year went up roughly 350%, not 3% or 5%, 350%! This cost cannot be recouped from the clients. They will not agree to such an erratic price increase during their second year of a three-year contract. This additional cost came out of our pockets, resulting in us having to sell some equipment.” That was from Joey Ducharme in Ottawa.

“Last season, my commercial insurance company decided to drop snow management completely after ... contracts had started. I was one of the lucky ones and was able to obtain insurance from another company. This, however, came with a price. My insurance premium tripled in price. I was already locked into contracts and pricing was set. I had no other option but to absorb the cost.” That was from Kristi Delima in Fenwick.

These are a few examples. There are many more.

We thank MPP Norm Miller for doing something about this crisis. We thank you, the committee, for listening to our plight. Please pass Bill 118. Thank you.

The Chair (Mr. Deepak Anand): Thank you so much. Now, we want to move over to Mr. David Jones, vice-president of franchising, The Gardener Inc. You have seven minutes, sir. Please state your name for Hansard.

Mr. David Jones: Hi there. David Jones from The Gardener Inc. Can everyone hear me?

The Chair (Mr. Deepak Anand): Go ahead.

Mr. David Jones: Okay. I’d like to start today by thanking the committee members as well for allowing me to present on behalf of The Gardener and our 43 franchise owners. I’d like to thank Norman Miller, MPP for Parry Sound–Muskoka, for taking this fight up and introducing Bill 118 as a private member’s bill. I’d like to thank Tony and the rest of the Landscape Ontario board of directors and various committees for constantly having our back and keeping this in the forefront. This is a crisis that threatens our industry as a whole. I’d like to thank the PC government for moving this along and hopefully imminently passing Bill 118.

I’d also like to mention that this issue is not a partisan one. It’s a threat to the landscape industry all over Ontario, regardless of what party you vote for or who you support. Increased lawsuits are threatening our industry, and if they’re threatening any industry in our province, it should concern all parties. Protecting Ontarians and Ontario through carefully thought out rules and regulations is our government’s responsibility. Bill 118 will help to do this by protecting property owners, business owners, landscape professionals and our environment—all this while still giving Ontarians who are duly hurt by negligence caused by any of the business owners or property owners or landscape professionals the rights to sue and to legally solve their problem.

I'd like to start out by just giving everyone a little snippet of what The Gardener is all about. We're a true homegrown Ontario success story. We started out with a couple of lawn mowers in the back of our Volkswagen Rabbit back in the 1980s, cutting lawns on the street. We used that as a way to support ourselves through school, through university, with plans to exit the landscape industry and go on to other things. But we quite enjoyed it, and stayed in the landscape industry. We grew our business in Thornhill, Ontario, over five or six years, to a point where we were employing 35 to 40 people, depending on the season, and used that as a stepping stone, in 1992, to start thinking of the concept of franchising our business.

1010

In 1994, we sold our first franchise, in Markham, Ontario, and have grown since then, to a point where we have 43 franchise owners, predominantly in Ontario, but we do have franchises in Alberta and Nova Scotia as well. Each one of these franchises is a small, independent, family business operating in a local market such as Peterborough or Burlington, and employing anywhere between, on the low end, four or five employees, and on the higher end up to 30 or 40 employees. All told, we have about 250 vehicles on the road each day across Canada and between 700 and 1,000 employees, depending on the season. That's kind of what's at risk here if there are no changes to the current model.

Back when we first started our business, we didn't give insurance much more than a moment's thought upon renewal each year. We would get an envelope in the mail, a small increase, send it back, and we were set for another year. Back when we first started franchising this business—we wouldn't have been able to under the current situation, because when you disclose all of the operating costs to a prospective franchise owner, if you were to show them the cost that they would incur now—if they were even able to secure insurance, because most new businesses are having trouble even getting a company to offer them a policy. It just wouldn't have happened if we were in the current situation back then.

Obviously, we view insurance right now as the biggest threat to our industry. That has changed throughout the years. We have gone through recessions. We have gone through labour shortages. Obviously, the current situation, with COVID-19, is a new curve ball that we've had to negotiate and find our way around. But we've been able to do that all the while staying in business, in some cases continuing to grow our business, and most importantly, continuing to employ and make a living for ourselves. Insurance, if there are no changes, is not just going to threaten that, but it is going to change that.

As Tony mentioned, the increases that are being thrown out by insurance companies year over year—if you're lucky, you only get an increase. In a lot of cases, you get cancellation. Obviously, that can't continue.

With Bill 118, we consider it to be a good start. The idea, as Tony mentioned, that we are becoming a far more litigious province—I don't want to date myself, but back

when I used to watch cartoons on Saturday morning on Fox 29 out of Buffalo as a kid, I was shocked at how many ads there were for lawyers—

The Chair (Mr. Deepak Anand): Mr. Jones, you have about 20 seconds.

Mr. David Jones: Sorry?

The Chair (Mr. Deepak Anand): You have about 20 seconds, so if you want to finish it—

Mr. David Jones: Okay, sorry. So I was shocked at how many ads there were for lawyers. That's what we are in now. We're in a situation where Diamond and Diamond and other lawyers advertise specifically during snow events. They specifically target slip and falls, knowing they have two years to put that case through, hoping we lose all of our data—

The Chair (Mr. Deepak Anand): Thank you so much, Mr. Jones. That concludes your time, but you will be able to answer some of the questions during the conversation with the members.

The next is Mr. Tony Rossi and Mr. Enzo Addesa from the Ontario Association of School Business Officials, risk management and insurance committee. You have seven minutes, starting with your name for Hansard, sir. Thank you so much.

Mr. Tony Rossi: Good morning, Mr. Chair, and standing committee members. My name is Tony Rossi and I am the chair of the Ontario Association of School Business Officials risk management and insurance committee. On behalf of the Ontario Association of School Business Officials and the risk management and insurance committee, we want to thank MPP Norman Miller and the standing committee for bringing Bill 118 forward, as well as providing us this opportunity to comment on the Occupiers' Liability Amendment Act and the addition of subsection 6.1, "Limitation period—injury from snow, ice."

School boards are faced with exposures that are outside their control, due to their very operation and locations within communities. Quite often, the community views school board properties as public lands, much like they view city parks, fields and walkways. These lands cannot be closed to the community, including in cases where the conditions of snow and ice exist. School boards' caretaking services have greatly decreased over the years, with many schools having one caretaker to service both the exterior and interior of the school facility. This is increasingly challenging when weather, temperatures, wind speeds and precipitation change throughout a day, causing conditions that quickly move from a snow melt to an icy condition and snow accumulations when precipitation is continuous throughout the day.

Inspecting and maintaining interior and exterior traffic areas on a school-operation daily basis is quite difficult. Regardless of the snow and ice conditions, and in addition to the daily person-traffic onto school properties, non-school-related persons continue to cut through school board properties to get to their destinations, in that they've been using a sidewalk system available, as well as to enter and use school board sports tracks and walkways, such as

dog walkers and joggers; our playscapes by young children, despite the frozen surfaces; and schoolyards by children of all ages in the early mornings and evenings, including during the off-seasons such as winter holidays and weekends when our schools are not operational.

Due to the financial constraints, school boards do not have the financial resources to offer the level of service and attention that is often explicitly demanded in a legal action by a plaintiff counsel who represents persons who have filed actions against school boards. In most, if not all, of the legal actions, persons are fully aware of the snow and ice conditions present. Yet, by default, school boards are commonly assumed responsible even when winter maintenance was performed, resulting in a financial settlement expectation.

A 100% finding of no liability is much less common, due to a number of difficulties, including the following, some of which have already been highlighted: School board cameras most often have limited data storage of video, if cameras even exist, resulting in the footage being lost, in some cases, after seven days; the conditions at the location of the incident have changed by the time the school board is notified of a matter; witnesses often have difficulty in accurately recalling an incident once a school board is claimed against.

School board inspections and maintenance records seem to support an adequate system of inspection and maintenance in litigation, but such records never seem to meet the “reasonable standard” level expected by plaintiff counsel and their client.

When schools are not operational, external maintenance is reduced or non-existent in many areas of the school board property, such as walkways and sports tracks.

Most school boards have limited caretaking services due to financial constraints; in some cases, one caretaker performing caretaking services throughout the day for the entire school.

Finally, the costs to defend such actions and insurance premiums, particularly in this hard market where fewer insurers are interested in school board business and rate increases are the norm, mean fewer financial resources devoted to our classrooms.

School boards do hire external winter maintenance service contractors, but this is often for their parking lot areas, and although this may assist a school board in transferring the exposure to a contractor, it isn't always a clear transfer of risk, as maintenance contractors' liability exposure and high insurance costs are included in their service fees, placing an additional financial burden on school boards. In fact, we are finding that winter maintenance contractors are having a very tough time obtaining insurance and meeting the insurance requirements in school board contracts.

Given the challenges with school board properties, reducing the notice period for snow and ice to 10 days would provide some fairness in defending such matters, as well as an opportunity for school boards to be in a better position to respond, investigate and manage claims made against them.

1020

Thank you for this opportunity, and at this time I would like to allow our association and committee member Mr. Addesa an opportunity to speak specifically on behalf of the Peel District School Board.

Mr. Enzo Addesa: Thank you, Tony, and good morning, committee members. My name is Enzo Addesa. I'm a security/risk manager at the Peel District School Board. I've been in this role since 2000. Thank you for allowing me to comment on the Occupiers' Liability Amendment Act, Bill 118.

Each year, I see slip-and-fall claims that occur during the winter months and we're served notice eight, 16 and even 23 months from the date of that accident. As my friend Tony Rossi alluded to, defending such claims long after the accident is difficult on many fronts: the conditions, the ice, the snow are no longer there and we're unable to photograph these conditions; the use of video surveillance is not available; salting and snow removal logs are difficult to locate; the custodian that day that was at the site eight or 16 months ago is no longer at that school, and even the contractor may have moved on.

Boards cannot confirm what footwear the visitor was wearing at the time of the accident, and when these accidents occur, it should be reported to the office right away or the next day so the board can take immediate action to make that area safe.

School grounds are open to the community, like Tony alluded to. It's an extension of the community seven days a week, 24 hours a day. Liability exposure is ongoing. Over the years, custodial staff have gone from two or three in a school to one, and sometimes that one custodian has to open up two schools.

In any given year, we experience four to six claims that result in visitors falling on ice and snow on our property. I believe that 50% of those claims are being reported more than eight months after the accident. My colleagues at the municipalities within Peel have been benefiting from a 10-day statute of limitation for many years, and the boards are publicly funded, as are the municipalities.

The Chair (Mr. Deepak Anand): Excuse me, that concludes your time, Mr. Addesa. Thank you so much. Thank you for that presentation.

Now, there will be two rounds of questions, starting with the government, seven and a half minutes, then the official opposition, seven and a half minutes, followed by the independent members for four and a half minutes; starting with the government members, to the Landscape Ontario Horticultural Trades Association.

Any members from the government side who would like to ask? I see MPP Miller. MPP Miller, go ahead, sir, followed by MPP Smith.

Mr. Norman Miller: Thank you, and I'll be brief to allow my colleagues some time. Thank you to all of you for presenting this morning: Mr. DiGiovanni for speaking up for all of your members in this crisis, and Mr. Jones for talking about how it's affecting your business. I'm really pleased to have school boards represented here with the Ontario Association of School Business Officials, because

it shows that it's not just private businesses, that it affects the public sector as well.

I guess my question would be to Mr. Addesa. You want to make sure that you are included in this legislation, that it doesn't just affect private business?

Mr. Enzo Addesa: For sure. It's hard for a board to purchase insurance with the amount of claims, and it definitely affects our bottom line. It's a couple of hundred thousand dollars a year that could be used in other facets of our operation. So, definitely, it affects the public purse.

Mr. Norman Miller: Thank you. And I did hear both Mr. DiGiovanni and Mr. Addesa speak about personal responsibility, and I just want to highlight that I believe that, too. I think, as individuals, we do have personal responsibility, and I think that's something we have to recognize as we go forward.

I'll pass it on to my colleagues, who I know have questions.

The Chair (Mr. Deepak Anand): Thank you so much. I just want to clarify that these questions can be asked to any of the three representing organizations, so to the members, when you ask a question, please clarify who you are asking. Thank you so much.

Over to MPP Smith. MPP Smith, go ahead.

Mr. Dave Smith: Thanks Chair. How much time do I have?

The Chair (Mr. Deepak Anand): You have five minutes and 40 seconds.

Mr. Dave Smith: Thank you. My first question is for Mr. Jones. With the number of franchises that you have, I would assume, then, you have a little bit of a challenge at times with record-keeping amongst all of your franchisees. What's a realistic timeline for the length of time that you could keep the records of what you're doing in a position where you would actually be able to go back and pull those records?

Mr. David Jones: Very good question. Like all businesses with multiple outlets or dealers, we definitely have challenges keeping everything consistent. There are several electronic apps out there that are quite good at storing data. That side of it is okay. The other side, the actual operator and their recollections, is what really varies.

We try to do before and after pictures of every site that we service. We document all sorts of weather data. We have dash cams on our trucks. We have sensors on our trucks that weight and measure the salt dropped and how long the spinners are operating and all these sorts of things.

I would say a realistic time frame would be definitely within the season that we're operating in. Like, right now, if we have a lawsuit that happens tonight, we might get served with that in two years. It's crazy—so within the season, definitely. Maybe a month or a month and a half would be ideal to get all that collection out.

Mr. Dave Smith: So is it fair to say that it is a challenge to pull all those records out if it's two years from now, especially when you're talking about somebody's own memory?

Mr. David Jones: Absolutely. It's impossible, especially when we're not even notified of it at the time.

Like Mr. Addesa said, when you don't even get notified when it happens, it's impossible to then go back and try to put the pieces together. We have the contract in place that we signed with the client, and we can pull weather data and GPS truck data and that sort of thing, but that employee might not even be with us anymore. Good luck, then, remembering what they did at that site in that specific event.

Mr. Dave Smith: Okay. Thank you.

My next one, then, would go to Mr. Rossi or Mr. Addesa. School boards typically have more resources than a lot of other places. How long do you store the images from the cameras that you might have on your parking lots or on the front entrance? What's a timeline you would have for that?

Mr. Enzo Addesa: I'll go ahead. Tony, do you want me to—

Mr. Tony Rossi: Yes, go ahead.

Mr. Enzo Addesa: So basically in our high schools where we have cameras, our 40 high schools, we see video storage anywhere from 12 to 18 days. With the newer IP systems, we're trying to get to 30 days.

Mr. Dave Smith: So that would be a real challenge for you, then, two years down the road, if somebody came forward and said, "Your parking lot wasn't clean enough for me, and I slipped and fell," if you're only able to store the data for about two to three weeks.

Mr. Enzo Addesa: That's correct. We're experiencing that, and I've experienced that in my last 20 years at the school board on a regular basis.

Mr. Tony Rossi: Also, a lot of schools do not have exterior cameras, as well. It's not every school that has an exterior camera.

Mr. Dave Smith: For Mr. DiGiovanni: Do you recommend, with your snowplow operators, that they have a dashboard camera, so that they can show before and after pictures? If you do, what's the length of time that somebody would keep that data?

Mr. Tony DiGiovanni: We recommend keeping lots of documentation—as much as possible. We also have a number of templates that we use. Especially with the Smart About Salt program, there are templates in there. When we have our Snowposium, there are always speakers on the importance of documentation.

Documentation varies. It's getting better now. The technology to actually track spinners and the speed of vehicles and the GPS is getting better. But in terms of what we recommend, we basically say keep as many records as you can for as long as you can. That's what we say, and we're constantly repeating those messages because it's all about documentation.

Mr. Dave Smith: A picture is definitely worth a thousand words, but we may be in a position where we're asking these operators, then, to have a written report on each of the areas that they do. How much time do you think that would add to their day if they had to do a full written report every time they came in and cleaned—

The Chair (Mr. Deepak Anand): Thirty seconds.

1030

Mr. Tony DiGiovanni: David would probably be able to answer this question better. You're dealing with 2 o'clock in the morning, someone going out and then expecting to clean all their properties that they have, and then keep records at the same time. It's a very difficult thing to do—

The Chair (Mr. Deepak Anand): That concludes the time for the presentation from the government side. Moving over to the opposition, MPP West.

Mr. Jamie West: I would like to go to Tony DiGiovanni. I know you were—I'm sorry; it was the next one that was cut off. Like most of the deputations today, we talked about insurance rates doubling or tripling. You had mentioned you had 300 members show up to discuss the crisis, that your endorsed insurance agency actually exited the business because it was just too costly. Will this address what's happening? What I'm asking is, is this an insurance crisis or is it a claims crisis? Because if we shorten it to 10 days, will we be back perhaps next year to shorten it to five days because the insurance rates just keep climbing no matter what we do on the time-window side?

The Chair (Mr. Deepak Anand): Go ahead.

Mr. Tony DiGiovanni: Yes, this is a very complex issue. Bill 118 will certainly help because it will reduce the statute of limitations. But there is lots more that we're involved with.

We're also suggesting to the government, on another program, that we copy what they're doing in New Hampshire. In New Hampshire what they have is an accreditation program for contractors. If the contractors are accredited, and they are doing the best that they can do based on an accreditation, then they have liability protection.

The other thing that we're doing is we're also investigating our own insurance company, like a captive insurance, because it's so difficult, and you say, "What other situations can we be involved with that will provide solutions?" So we are investigating a captive insurance model. There is a group of members that are also doing what's called a self-insured retention model, which is basically the same idea as captive.

There is another initiative trying to come up with fair, hold harmless clauses. So right now, what's happening is property owners are dealing with the issue by transferring all of the risk over to the contractors and forcing them to sign hold harmless clauses. We've looked in the US to see examples of what they're doing. In some states, they're saying, "Okay, hold harmless clauses are fine, but they need to be fair. Everyone needs to be responsible. You can't just transfer everything."

It is a complex issue. Our solutions are multi-faceted, but Bill 118 will certainly help.

Mr. Jamie West: Okay. Mr. DiGiovanni—I apologize for stumbling on your name—I'm curious: The municipal claims time period is 10 days and this legislation will match it. Do you know if the number of claims brought forward are similar in ratio to private and municipal

claims? I don't expect you to have it off the top of your head, but if you do—

Mr. Tony DiGiovanni: No, I actually don't know.

Mr. Jamie West: Okay. And then I want to know, as well, for the people that you represent or that you speak on behalf of, have the number of claims been rising or does the insurance rate seem to be climbing faster than the claims are rising?

Mr. Tony DiGiovanni: Definitely, the claims are rising because—

Mr. Jamie West: They are, eh?

Mr. Tony DiGiovanni: Definitely. There's no question about it. The constant commercials on TV are actually having an effect, and the claims are rising more in the urban areas. There's no question.

Mr. Jamie West: Thank you very much.

How much time do I have, Chair?

The Chair (Mr. Deepak Anand): You have about three minutes and 30 seconds.

Mr. Jamie West: Three minutes. Okay. I'll go on to David Jones from The Gardener. I apologize; earlier I thought it was Mr. DiGiovanni. Mr. Jones, would you like to put your deputation? I know you were cut short.

Mr. David Jones: Yes. I don't want to take up all of your time, but I was just going to highlight the fact that I do believe Bill 118 is a start, a really good start, but there are other things that need to be put in place. I think the main one is the onus of safety has to somehow shift from the property owner, or usually transferred to the service provider, like a company like ours, onto the individual: proper footwear, not going out when weather conditions don't permit, snow tires on vehicles, taking time and care.

We could literally have a staff member living on-site on the parking lot all winter in a little temporary housing. At certain times during the year, even though they're on-site 24/7, which is completely unfeasible for what we're being paid, there would still be snow and ice on that property at some point. It's absolutely impossible to keep the property free and clear of ice 24/7 for the entire winter.

I think that while shortening the time frame is a good start and I don't think we're going to be back next year to shorten it even more, this really would solve that portion of it. But then there's having some further changes to alleviate the fact that once we sign a contract with a property owner, we are on the hook for literally every square inch of pavement, regardless of what Mother Nature throws at us.

That was my wrap-up. I just wanted to thank everyone for allowing me to speak.

Mr. Jamie West: Thank you for that. I'm probably almost out of time, so I just want to congratulate you on the growth. My best friend, actually, when he was going to college, had a similar landscaping industry, mowing lawns and shoveling driveways and that sort of thing, and he didn't continue it. So the growth of yours with the 45 franchises—I just want to congratulate you on that.

Mr. David Jones: Thank you.

Mr. Jamie West: I do want to recognize the trouble—I think of mainly spring, but it probably happens in fall as

well—when we have those weird warm-and-cold days. You could literally clear the road or ice, salt the road and then have it freeze over an hour later, so I understand that problem.

Chair, I'm going to cede the rest of my time. I'll follow up on the next round.

The Chair (Mr. Deepak Anand): I will move over to the independents. MPP Fraser, you will have four and a half minutes. I will just signal you about a minute—

Mr. John Fraser: Great. Thank you very much, Chair. Thanks to all of the presenters for your very clear and concise presentations.

My first comment/question is to Mr. DiGiovanni. The comments are just in general. It's interesting how this is dealt with, not just in Ontario but across Canada. It's kind of this hodgepodge of limitations or no limitations, differences in municipalities and some school boards. As a committee, we have to do something here. We're going to have to figure out what's the right balance.

I am concerned about insurers and trying to solve what seems to be the most immediate problem, which is the tripling or more of insurance rates. In terms of insurers' commitment to the industry for this kind of initiative, is there any indication of what's going to happen with premiums, or is that just, "Let's do this and see what they do"?

Mr. Tony DiGiovanni: The insurance carriers themselves are multinationals, and the insurance industry is a really strange one, because they buy risk from each other. How do we know how to control that? That's why ultimately my gut feel is that at some point in time, having our own insurance program might be the way to go, like a captive insurer. But part of me also says, "What makes us think that we're not going to lose our shirts?" I don't know enough about the broader insurance industry.

Mr. John Fraser: Given the nature of the industry and the importance of it in terms of our climate and our ability to live, I was interested in what you said about what they were doing in New Hampshire in terms of certification. I'm taking by what you said, and I could be wrong, that the risk is then borne by New Hampshire or some sort of insurance policy program inside New Hampshire.

Mr. Tony DiGiovanni: No, they're protected from liability. As long as they prove that they've done their job as well as they can in New Hampshire, then they are protected. It's called the Green SnowPro program. The certification or the accreditation is done by the state itself. So that's how they're dealing with it. Different states are dealing with the issue in different ways, but it is an issue across the board, yes.

1040

Mr. John Fraser: In your industry, what is—and I haven't got a legal interpretation of this yet; we're going to get one in the committee. But in terms of notice, what is "notice"? What is the notice that we are essentially putting a limited—what's the nature of that notice? Is it, "I sent you an email. I sent you a registered letter"? Is it a notice of claim or a notice of incident? What are we doing here?

Mr. Tony DiGiovanni: I'm not sure. It's a good question. What's happening now is the notice actually goes to the building owner. That's who the notice goes to. It doesn't actually have to go to the contractor. Very often, the contractor actually doesn't even know that there's a claim until two years after.

The Chair (Mr. Deepak Anand): One minute.

Mr. John Fraser: Okay. So the challenge is somebody may get a notice, but the person who gets the notice—

Mr. Tony DiGiovanni: It's not the contractor.

Mr. John Fraser: —is not a contractor, and the person who gets the notice is not informing the contractor.

Mr. Tony DiGiovanni: That's right. That's huge.

Mr. John Fraser: That's another problem altogether.

Mr. Tony DiGiovanni: That's right. That's another problem. Somehow, the legislation should state that everyone should get the notice if there's a notice. That way, if you're able to—

Mr. John Fraser: If you get the notice and you're a contractee, you have to—

Mr. Tony DiGiovanni: Pass it on.

Mr. John Fraser: Pass it on, right. So that's an interesting problem. Thank you. That's very helpful.

Mr. Tony DiGiovanni: Thank you.

The Chair (Mr. Deepak Anand): Thank you so much. That concludes the time. Over to the government side. Would any of your members—I see MPP Pang. Go ahead, sir. You have seven and a half minutes, and I'll give you a signal at one minute.

Mr. Billy Pang: My first question is to The Gardener, Inc. I believe your insurance has increased in the last couple of years. How much are the increments increasing every year in the last few years?

Mr. David Jones: Historically, pre-five years ago, I would say 3% to 5% annually was pretty normal unless there was a reason for it. If one of our franchise owners had been successfully sued for negligence, then you'll expect an increase. It's no different than in the auto world: If you get in an accident, you expect an increase in your policy in the next year. For the last five years, it has been anywhere from 25% annually to—we have had ones in the 300% range, and that's with no reasoning. These are just purely increases based on the business we're doing. It's not because they were negligent and three lawsuits the year before. They're just seeing a 300% increase for no reason.

As well, we have had several owners who have received cancellation of policies. Our Ottawa franchise last year right around this time was given 30 days' notice. We typically sign our contracts with clients anywhere from Labour Day through to the end of November. That's when we sign those contracts. So to receive a 30-day cancellation of policy at this time of the year is pretty stressful. He was able to secure insurance, but at a much higher premium, to stay in business. But we're at a point now where we have owners who are paying between 15% and 50% of their overall snow revenue on insurance, which is just unsustainable. It can't be the largest expense, higher than labour, higher than equipment, higher than gas—

heaven forbid the owner actually making a little bit of profit at the end of the season. It's unsustainable.

Mr. Billy Pang: The snow removing industry is not a new industry, right? It has been here for a century. Did your insurance company explain to you why the price of insurance is going up?

Mr. David Jones: The term "hard market" seems to be thrown around a lot, which I've come to understand is that there are just far less options. Lots of insurance companies are just getting out of the snow liability insurance market. So with less options out there, the rates go up.

Mr. Billy Pang: So has the increase of the cost of insurance meant you have to charge your customers more? How much more?

Mr. David Jones: Absolutely. If we're notified in advance, then we can at least capture that upon renewal or at the quoting stage and charge more. In most regards, we're trying to keep it as reasonable as possible because, sadly, we just lose out on business if we try and pass too much of it on to the client. But by the same token, with some of these increases, you can't make up that money within the overhead of the business. So we definitely try to pass that on. But in the case where you get that insurance increase after you've already signed contracts, we just have to eat it for that season and deal with it at the renewal of the next year.

Mr. Billy Pang: So has this also impacted how much you can pay for your workers?

Mr. David Jones: Yes. We have to find savings in other places. We have to try to either cut back on labour or make equipment last longer and use older equipment. We definitely have to try. But the problem is that as soon as you start to make cutbacks in those areas, you're opening yourself up to more liability because with less staff or lower-quality staff, you're not getting the work done at the proper level. We try to always over-service our clients. We don't want lawsuits. We want them to be happy. Years ago, we used to judge our success by if you heard clients complaining in the morning. Sadly, now, it's how many letters do you get that you have to sign for at the door from the lawyers.

One of the other members asked a question about, "Have numbers of cases gone up?" I can absolutely attest to that. Collectively, amongst our franchise owners, pre-five years ago, we might have been served on one slip-and-fall case, collectively, amongst the whole group. We're now at a point where it's not quite there, but it's almost one per territory. So we've gone from one collectively to somewhere between 30 and 40 collectively in a year.

It's unsustainable. It's unsustainable for us as a franchise owner or franchisor, because we get named in all the cases, no different than McDonald's Canada gets named if a McDonald's store gets sued. We get sued as well, so our own insurance company—we've had to change insurers in the last five years because they don't want to assume that risk. Most of the time, we get released because we're not responsible for the actual, physical work, but we still have to fight it. Sadly, open claims are a rate increase for sure

upon renewal of your insurance premium. If you have a number of open claims out there, they have to hedge their bets, thinking they're going to have to pay out on them. So even if we get released from them, we still pay for insurance.

Mr. Billy Pang: So there is some short notice from insurance companies, in some cases, that they may cut your insurance, right?

Mr. David Jones: Absolutely.

Mr. Billy Pang: What will happen if the insurance company decides to cut the insurance? What will happen to your company, employees and customers?

The Chair (Mr. Deepak Anand): One minute.

Mr. David Jones: We're out of business. We currently have two franchise owners going into this winter that can't plow snow. Their insurance company will not give them coverage for snow. So the neighbouring franchise owners are looking after that territory for the winter portion of the season. So we're still able to service it, but the franchise owner themselves are not able to operate their business for the winter months. We had another one that had to sell their franchise three years ago in Oakville and leave the landscape industry. They couldn't get insurance anymore, so they just sold their franchise and went on to something else.

If this continues, we're going to just see more and more franchise territories close. We won't be able to find buyers for them because, again, we have to disclose all of the operating costs when we sell a franchise. The real long term would be The Gardener Inc. as a whole is closed down because of insurance.

The Chair (Mr. Deepak Anand): Thank you so much. That concludes the time. Over to the opposition: MPP West, I'll give you a signal one minute before the time ends.

Mr. Jamie West: Okay, thank you, Chair.

I'll continue with Mr. Jones. A couple of the stats I wrote down: You talked about for insurance, typically, it was 3% to 5%, and over the past five years, it's been over 25% to 300% with no real rhyme or reason, from what you had said. There was a 30-day cancellation notice. It's eating into your cost, from 15% to 50% with insurance. You talked about franchisee owners who can't plow snow because of the cost—two of them who just can't do it and one of them, about three years ago, who couldn't locate insurance and got out of the business and sold their franchise. Is there more that could be done? You have a substantial number of government members, Conservative members, who hold the majority. Is there something you'd like to see from the government regarding insurance gouging for businesses?

1050

Mr. David Jones: Absolutely. Diamond and Diamond is an easy target in the GTA. They do a heck of a lot of advertising, so I use them as an example because most people have heard their ads. But this concept of "You don't pay until we win"—I'm not disputing that there are legitimate claims. There are legitimate bad contractors in this industry that don't service properties when they

should and don't put enough salt or place snow in the wrong spots and then it melts off and freezes. There are bad operators.

But when you have an operator like I would like to think ours are, and a number of other ones in our industry, that have the right equipment, that put their staff through the right training, that get their salt applicators put through the Smart About Salt program that Tony was mentioning earlier—we're doing all the right things. We're documenting our work. We're using a proper contract that Landscape Ontario has come up with that's fair and protects both the property owner and the contractor and that sort of thing. It's awful when you're out plowing snow and you hear these Diamond and Diamond ads, because you know they're targeted around weather events. You know that their bus advertising and their signage is put in lower-income areas, traditionally, because—I hate to say it, but it's almost like they're seducing someone to an easy payout.

And when you have an insurance company that, as soon as they get dealt with a slip-and-fall claim, looks at it as, "We can defend this person and it's going to cost between \$50,000 and \$100,000 to take it to court and we may win or we may not, or we can just pay out the person suing \$20,000 or \$30,000," that's apparently a solution on our behalf, to have them pay out, because they save money. But then it's a legitimate claim that has been paid out, so then, unfortunately, our contractor, our franchise owner can't get insurance next year or their insurance doubles or triples. This concept that—we used to call them "ambulance chasers," the bad lawyers.

There are definitely other things to do, but I think the biggest thing is that we have to start putting the onus of liability onto people. This is Ontario; it's going to snow. We know that. We know it's going to snow this winter and we know it's going to snow in 10 years. People need to take some of the liability onto themselves and not rush through the GO train parking lot in high heels because they're late for the train, not race out the door and forget that there could be ice on the steps because it's February, not not bother buying winter boots, not not bother buying snow tires, not not bother clearing their cars off so they can actually see out their windows. We had a case in a parking lot a couple of years ago where someone didn't clear their car off, they backed into someone, they got out in indoor shoes and slipped on the parking lot, and they're now suing us. How is this our fault? We didn't sign up for that.

Mr. Jamie West: Okay. Thank you, Mr. Jones. I like the comment you made about the cost of case work versus just paying out the claim, and then that circling back to increasing your rates. It's something I hadn't considered.

I'm going to move on to Enzo Addesa. Enzo, I know that you were cut off in your deputation as well, so if you wanted to finish the last little bit.

Mr. Enzo Addesa: Thank you. I was just going to allude to the fact that—I think we covered that off, but the thousands of dollars that a school board would save could

be put into other areas, and the change in the statute of limitations to 10 days will better protect school boards and the public purse from the ongoing liability exposure that we have as we're open to communities. Some other jurisdictions around the world have built fences around their publicly funded schools. We wouldn't want to see that in Ontario or in Canada, but I guess they're protecting themselves from liability in closing themselves off to the community.

That's basically it. I'm hoping our comments that Tony Rossi and I have shared from the school board side will help contribute in passing Bill 118.

Mr. Jamie West: Thank you for that. One of the comments you talked about was the reduction of custodians from three to two to one. Is that one of the root causes of what's happening? I don't understand the complete work or how it's done. It might have been helped with machinery and stuff, so is the reduction of custodians one of the root causes or not really?

Mr. Enzo Addesa: Considering we have 270 buildings in Peel and we have about eight claims a year, I think our custodians are doing a great job. In the last 15 years, we've added logs. Unfortunately, they only have a short window. They start at 6:30 in the morning. They have till about 8:30 to clear quite a bit of sidewalk and walkways around the schools.

My dad was in North York for a long time. The North York Board of Education became the Toronto board. I remember visiting him, and he'd have five or six custodians with him in a high school—even eight custodians in a large Toronto high school. Now I think they're down to two or three. So that has changed, the funding formula and custodial support staff, and that contributes. Having so many different extra bodies out getting the building ready for opening has changed things, for sure.

Mr. Jamie West: Okay. And then, I was just curious—

The Chair (Mr. Deepak Anand): One minute.

Mr. Jamie West: —when MPP Smith talked to you about video storage and you said some places, about 18 places—and I understand some places have no video at all. Is that something that's going to be negligible over time—I don't mean two years but for 30 days or something like that—with the cost of video storage, or is 18 days kind of the standard?

Mr. Enzo Addesa: Well, the cost of video storage is coming down. I'm also the security manager for the board. We spend a lot of time looking at video storage. At one time, we were paying \$7,000 for 119 terabytes. Now, we're getting 20, 30, 40 terabytes for \$1,000 or less. So I'm thinking for the next wave of IP cameras, we should be getting 30 to 60 days, depending on the amount of activity in a particular school. Storage is getting cheaper every day, so I do see video cameras being able to support—

The Chair (Mr. Deepak Anand): Thank you so much, Mr. Addesa. I appreciate it.

Moving over to the independents, MPP Fraser, you have four and a half minutes, and I'll signal at one minute.

Mr. John Fraser: My question is for Mr. Rossi. Thank you for your presentation. I'm going to go back to what constitutes a notice or a statement of claim, to your understanding, with the board. What do you receive? Is it a letter from a lawyer? Is it an email, a registered letter?

Mr. Tony Rossi: Notice would be an email. An email is fine. That's formal written notice.

Mr. John Fraser: And it can be just from me, right?

Mr. Tony Rossi: Yes. You would email generic—like, the risk management department, and then, in turn, if there was a contractor involved, we would notify that contractor.

Mr. John Fraser: And you would do that just as a matter of practice of business. It's the right thing to do with your partners and for your enterprise as well. If someone is a contractor to you and you get served with a notice, you let them know that that happened, because they may have some obligation and responsibility in that regard.

Mr. Tony Rossi: Yes, there's that, but there's a legal duty too, to put them on notice as soon as possible so that they can initiate their investigation as soon as possible as well.

Mr. John Fraser: So what's the legal obligation? That's my question, because when I was speaking to Mr. DiGiovanni, I was trying to get at, what is the obligation for one party to notify another party that is a contractor?

Mr. Tony Rossi: What happens is the person on the outside who fell, for example, is not going to know the contractor's name or even if there was a contractor involved. Eventually, if they do go to a statement of claim, they're going to want to name a contractor. In order to get that statement of claim correct and so that the proper parties are being served, I would suggest that's the legal duty in that perspective, to make sure that [*inaudible*] happens if they actually go right into litigation.

Mr. John Fraser: And what we're proposing now is that the limitation is on the statement of claim, right? Ten days to make a statement of claim? Is that my understanding of the bill?

Mr. Tony Rossi: Well, my understanding is that it's strictly notice, so if that email comes in two weeks or four weeks or a month later, they would be issued a denial. The person who fell—an email would go back to them and say, "You're past the notice period."

Mr. John Fraser: Okay. That's great. That's all I have. Thank you very much.

Mr. Tony Rossi: Well, thank you.

The Chair (Mr. Deepak Anand): Thank you so much, MPP Fraser. That concludes the time allocated for this set of presenters. Thank you so much for your input. I greatly appreciate it. At this time, we will be moving to the next set of presenters. It's 11 o'clock. Thank you so much. I appreciate it.

1100

HUSKY SERVICES INC.

YOUNGS INSURANCE BROKERS INC.

WEEKS CONSTRUCTION INC.

The Chair (Mr. Deepak Anand): Now the time is 11 a.m., and we have Mike Dominick; Gord Fergusson from Youngs Insurance Brokers Inc.; and Shannon Burrows, administrator, Weeks Construction Inc.

I would like to call Mike Dominick. Sir, you have seven minutes for your presentation. Please state your name for Hansard, and I will signal you one minute before the presentation ends so that you can wrap up. You may begin now.

Mr. Mike Dominick: Good morning, everyone. My name is Mike Dominick. I'm the owner of Husky Services—it's basically snow removal and property maintenance—in Cornwall, Ontario. I've been affected by this situation of lawsuits and litigation to do with slips and falls. I've had to close down my winter operations because I'm unable to acquire insurance coverage.

I'm just going to read through a bunch of points that I prepared for a meeting I had this spring with my local MPP, Jim McDonell.

In Canada, we have winter, and it's an unavoidable fact that we're going to have slippery conditions. It's just part of life. Snow removal contractors, in my opinion, are an essential part of life in Canada, because if roads and sidewalks don't get plowed, our society comes to a grinding halt. We do the best we can with what Mother Nature sends our way. It could be drastic temperature swings, from minus 20 degrees to plus 5 degrees within a 24-hour span and then back down to minus 20 degrees again, freezing rain, high rates of snowfall—stuff that's beyond our control, yet we do our best possible work to try to mitigate these risks.

I don't believe it is reasonable or even fairly explainable how contractors can be held liable, far too often, for the negligence or non-consideration of the elements of others; for example, wearing unsuitable footwear in the winter, like sneakers, sandals, dress shoes, or people not looking where they are walking when they have their head planted in their phone or another electronic device.

I feel that our current legislation that allows people to file a lawsuit up to two years from the date of incident is too long, in the sense that, often, by this time, key evidence that may support the contractor is limited or nil. For example, video footage is often overwritten—it could be anywhere from two weeks, a month. The video footage just gets erased and re-recorded over. Witness memories are vague or forgotten. Witnesses cannot even be located, or any other evidence in the defence of the property owner or contractor regarding the incident is gone. This makes it extremely challenging to defend a case, thus costing more legal fees and translating into higher insurance premiums. I have a real example for that: We have a litigation on us right now at a property where this person fell—the tenant has moved on. It was a bank. They moved to another

location, and thus their video footage has been erased, and there are no other video cameras on that site. So any evidence we have is gone.

The bigger mainstream insurance companies have opted out of the snow removal market due to the high claim volumes. I think we can all agree that nobody really likes insurance companies. However, they are a business, at the end of the day, and they need to show a profit, and with these high claims, they're not as high as I guess they would like.

As a result of these high claims, contractors are forced to acquire coverage from substandard insurance markets. After the receipt of the claim, even an unfounded claim increases premiums substantially and unsustainably.

Even some substandard markets are unwilling to quote coverage, and even if they do, they impose out-of-custom deductibles; for example, a \$5,000 deductible per occurrence on a \$2-million general liability policy is standard and easily found. However, as soon as you have a claim or multiple claims, they can use that as an excuse to up your deductibles to, as I have seen in some quotes that I received in the last year, in the ballpark of a \$25,000 to \$50,000 deductible. For some companies, that might not be an issue, but for the smaller companies such as myself, taking the risk of paying a \$50,000 deductible and getting three claims that I'd have to pay that out would bankrupt me. It's unsustainable for the smaller companies. Too many claims can result in an uninsurable contractor or company, and force the closure of the company.

We have summer operations and winter operations. However, we've had to close down our winter operations, and I've put 12 people out of work for the winter. These 12 people used to work for me all year long; now they can only work the summer months.

The Chair (Mr. Deepak Anand): One minute.

Mr. Mike Dominick: The other thing, too, is that we as a contractor have no recourse against the people who file the fraudulent claims. So we take the damage of having unfounded claims put on our record; they don't win their case, because it was fraudulent, for example; their life goes on; ours is affected; and we can't repair that damage. We have to wait for those claims to get erased off our insurance record, if you want to call it that, and that doesn't happen right away; every insurance company has a different policy of when they start to expunge claims from your record.

I believe it's a step in the right direction to put Bill 118 in. We're not looking for anything above and beyond what is already in place for municipal and—

The Chair (Mr. Deepak Anand): Thank you so much, Mr. Dominick. We appreciated your presentation.

Next is Mr. Gord Fergusson from Youngs Insurance Brokers Inc. You have seven minutes. I will give you a signal at one minute. Go ahead, sir. Start with your name for Hansard. Mr. Fergusson, you can start now.

Interjection.

The Chair (Mr. Deepak Anand): Mr. Fergusson, can you hear us, sir? You're on mute right now. Can you unmute yourself? Go ahead, sir.

Mr. Gord Fergusson: Good morning. My name is Gord Fergusson. I am the principal insurance broker for Youngs Insurance. Our brokerage size is approximately \$150 million in volume, and our area of operation would be anywhere in the Mississauga-Windsor-Niagara Falls corridor in Ontario.

I'm here today to speak to you a little bit about what we feel with regard to Bill 118, and perhaps to give you some opportunity to see some real-life scenarios that we have pulled. We have a situation here, the best example I can give you, where we have had a snow removal company that we have been insuring for the last seven years. Then one of the major insurers in Ontario decided that snow removal was no longer an acceptable business to be in. We were able to procure for this client other insurance, and within a 24-month period, this client received two claims that were in a position where he was not even aware of the claims existing, and they were over 20 months old, both of them.

The problem that occurred with that is on his next renewal, the carrier had to put what we call a reserve in, an expectation of what would be the most paid in the event of a loss. So even though this client had no losses paid out on his file, he was deemed unprofitable as far as an organization to write with.

1110

We were eventually, through advocating with the carriers, able to find him an insurance premium that was acceptable—no, it wasn't acceptable. It was basically double, plus a little bit, on what he had paid in the previous year. That is with no money paid out on claims. It's unfortunate that this type of scenario exists in our industry. We think with, certainly, the reduction of the time period, it would allow insurance carriers to have a better scope on what they understand as to be the risk for this particular customer, or snow removal in general.

The challenge that it's faced with is these people are generally small contractors who are also doing gardening and other things in the summer, so they need this other piece to keep going on a yearly basis. It creates a challenge because, really, what you have to be is you either have to be big or not exist under the current legislation, the way it exists. So Bill 118 would certainly go a long way to be able to help, from an insurance perspective, to underwrite the risks, better allowing for the types of claims that are there and really understanding what this customer is all about.

In many cases, these customers, these organizations that are lawn care maintenance don't even know that a claim has existed until the actual writ comes to the door. The one that I'm looking at in particular right now was 23 months after the date, and he had never been notified of any other claim before. The challenge that he faced was, on his application, he advised that he had no claim. He didn't know.

So I'm sitting here today, talking to you a little bit about that. I hope that that comes as an opportunity to advocate for this position. Thank you.

The Chair (Mr. Deepak Anand): Thank you so much, Mr. Fergusson. I appreciate it.

Now moving over to Ms. Shannon Burrows from Weeks Construction Inc.

Ms. Shannon Burrows: Good morning.

The Chair (Mr. Deepak Anand): Please state your name for Hansard.

Ms. Shannon Burrows: My name is Shannon Burrows and I'm the administrator for Weeks Construction in Parry Sound, Ontario, a family-owned construction company. We have been in business since 1956, now moving into the fourth generation. We have provided snow removal and snow, sanding and salt services for several decades, and in recent years, we have experienced a significant increase in premiums for the provision of snow services in our region.

Currently, depending on the underwriter, it can be anywhere between—with a minimum premium cost no matter what your volume of sales is—\$7,500 to \$8,000 in premium alone, no matter how much snow removal you provide, or anywhere between \$100 to \$150 per \$1,000 of total sales for coverage. We significantly limited our services last year, and considered cancelling altogether, simply because of the increased cost, and we also then resulted in decreased employment options for our staff in an already limited employable region secondary to seasonal work, as was referred to previously by a previous presenter.

We were recently named in two lawsuits in the last two years by private citizens for our local location for which we provide service. In both cases, it was clearly determined our contracted scope of work was completely adhered to and that we had abided by all of our terms and conditions and that we were not at fault. However, despite this, the insurance company—one outcome is still yet to be determined—opted to pay the claimant \$20,000 simply to settle, as it was easier for them, and it now negatively reflects on our claim history.

The underwriting insurer was the same for us as well as the company we're providing service for. In both cases, as was previously noted, we were notified, as the contractor, within a week of the two-year limitation. So we weren't even notified or even aware of it as we were in dialogue with our insurer. In addition, prior to these litigious claims, our premiums were already increased simply due to the use of the word "snow" as we're putting in our annual renewal applications.

I understand that there are concerns for persons who are potentially harmed by slips and falls caused secondary to negligence on the part of contractors, landowners etc. However, the assumption is that it's always big companies or big business and that all contractors are negligent, or victims never are at fault or not appropriately prepared for appropriate conditions. We've had individuals who were wearing three- to four-inch high-heel spikes, walking on parking lots in January in northern Ontario and expecting that conditions should always be dry and clear and all surface conditions should be the same as southern Ontario, which often doesn't even have snow or ice during winter months. Sometimes, they expect summer-like conditions and dry pavement.

There need to be considerations for all the various kinds of weather patterns across the province, and it's important we take that into consideration when we're doing this legislation.

We most certainly feel that, should someone be harmed, negligence should not be forgiven, dismissed or overlooked. The bill outlines in sections 3 and 4, however—leaving a timeline of up to two years is excessive and not in line, from what I understand, with any claims on municipal or government properties, which is currently 10 days. I'm not clear why private enterprise should be treated or measured differently and feel that the timelines should be similar.

There are contractors who have either had to increase their rates significantly—which individuals, landowners, churches and not-for-profits, private businesses etc. find is yet another expense they simply struggle to afford, and that their livelihood in winter months is threatened.

Insurers are punishing those who don't have any claim history even, banking on odds of getting their money back from others when they want to protect their own business. As was mentioned in the first presenter's case, we understand it's a business model. They want to make money, at the end of the day. However, it's impacting the provision of snow services for multiple businesses and private sector individuals across the province. Even if claims are found to be frivolous, it does still indeed affect our claim history, and some insurers are simply no longer offering coverage or offering limited options available, and premium costs are simply too expensive.

We strongly feel that reducing the time frame will assist in reducing frivolous claims. It's something to mention: When lawyers are offering that "you don't pay unless we win," that affects the costs and the outcome all the way around.

It will also ensure a timely and fair response to individuals who need a response, those individuals whose injuries are either delayed in manifesting or who are so critically injured that a 10-day time frame simply isn't feasible. Those provisions are allowed within this legislation.

It would assist in managing insurance costs to contractors and, as a result, ensure affordable, accessible options and access to snow management and potentially reduce the issue of over-salting and environmental management. Contractors are so afraid of getting sued, they're over-salting, which has a negative impact on our environment.

It would also improve evidence-gathering—this point was already made—due to simply the shortened time frame, video footage, availability of witnesses and making sure that the people that were directly involved are available and can speak to the situation at hand.

I believe that's all I have at this time. Thank you for the opportunity to speak. I'm open to any questions and will answer to the best of my ability.

The Chair (Mr. Deepak Anand): Thank you so much, Ms. Burrows.

At this time, there will be two rounds of questions, starting with the government, seven and a half minutes; the official opposition, seven and a half minutes; and then the

independent members, four and a half minutes. I will give you a signal one minute before so you can wrap up in a timely manner.

I see MPP Norman Miller. Go ahead, sir.

Mr. Norman Miller: Thank you, and thank you to all the presenters for bringing lots of good information. Shannon, thanks for being on. I'm glad to have someone from the Parry Sound area that's represented here today.

You talked about the suits and getting notice—23 months—that you're being sued. What do you do when you're sued when it's 23 months? What defence do you have? What records do you have? What video evidence do you have to try to protect yourself at 23 months?

Ms. Shannon Burrows: Sorry, Norm. I'm assuming you're asking me that question.

Mr. Norman Miller: Yes—

Ms. Shannon Burrows: So [*inaudible*] we received a statement of claim. A process server came to our office, issued us a statement of claim. At that time, we connected with the landowner. They received a statement of claim at the same time. They had received a notice—somehow; I'm not really sure of the details, and they, themselves were foggy. All we have is documentation by our staff as to the services provided: time cards, notations, those kinds of things. There was no video footage available. It required extra effort—we needed two staff to go out and try and reconstruct the scene. The structure of the location had changed physically at that time, so we needed to go simply by memory. Memory is not always 100% accurate. So it posed some challenges.

I'm not really sure what else you're looking for there. If there's anything else, I'm not clear.

1120

Mr. Norman Miller: Has the number of claims gone up over the last 10 years?

Also, you mentioned “frivolous” many times. Do you feel that many of them are frivolous? You mentioned the lawyers—“You don't pay unless we win”—so I assume that you feel that many of the suits are frivolous.

Ms. Shannon Burrows: Mr. DiGiovanni, I believe, presented earlier this morning—just with Landscape Ontario, the dialogue with multiple contractors, especially with the emergency meeting last January.

For us, when it's determined that someone is not wearing appropriate footwear—they're not dressed for the weather, they're not paying attention, or whatever—it does negatively impact, and it is frivolous in the way that you can't expect July conditions in January. So yes, it is an issue.

Increase? I would say in my time here, back with the business for five years, we've had two lawsuits. Prior to that, I think they had one over the last 35 years. Our record is solid. We've provided services for years in the region, and we just simply haven't had the same impact. We've opted to simply shut out snow removal all together, which then impacts competitiveness in our region, as you're well familiar with.

Mr. Norman Miller: I completely agree with you that I think personal responsibility has to come into play

somewhere. We get winter. I fall down at least twice per winter, but it's not usually anybody else's fault; it's usually my fault. I might hurt myself sometimes, but I don't feel like somebody else should be responsible for that necessarily.

Another thing you mentioned in your presentation was the overuse of salt. Of course, we're right on the edge of Georgian Bay and we're concerned about water quality etc. Do you want to just talk about that a bit, please?

Ms. Shannon Burrows: Simply, yes. The environmental impact of we're just over-salting everything out of fear rather than practical—there are guidelines through Landscape Ontario. There are certain processes and protocols; however, fear is the driver of a lot of things.

Secondarily, salt is also an access issue. When we're utilizing salt, we're shipping it in by boat. We're trucking it all over the province. Salt was a problem last year. We had trouble accessing it simply because of the salt mine impact. There are multiple factors in that chain of access—environmental impact, where you're having salt runoff into multiple lakes, rivers, water tables etc., when we can limit some of that, or sand reallocation. We're in Northern Ontario. Sand isn't always readily available as much as rock is. It's a resource issue as well. We need to manage those resources wisely, utilize them well, and not be over-applying things out of fear, but simply just out of best standards and best practice.

Mr. Norman Miller: Yes, I certainly experience the salt scenario walking to Queen's Park and back in downtown Toronto, where you crunch along on, it seems like, half an inch of salt the whole way. Even with that, they're still slippery because you get the freeze-thaw—

Ms. Shannon Burrows: Absolutely.

Mr. Norman Miller: —[*inaudible*] so that there aren't slippery bits. It's almost worse because you're thinking it's all salt, but then you hit one of the little bits.

I guess that's it for my questions. Thanks a lot for coming before the committee today. I appreciate it.

Ms. Shannon Burrows: Thank you.

The Chair (Mr. Deepak Anand): I appreciate it. Thank you so much.

Next is MPP Gila Martow.

Mrs. Gila Martow: Okay, I'm unmuted. I wonder, Shannon—perhaps if I can ask you, even though you were just put on the hot spot—if you could talk a little bit about if you feel that there is anything else the government can do, other than shortening the timeline. We all are pretty clear that expecting companies to hold on to two years of information when their employees change—that's pretty darn challenging. What else do you think that maybe the government could be looking at, even if it's just public awareness to explain to these people what the repercussions of these types of lawsuits are?

Ms. Shannon Burrows: As an educator myself, historically, I appreciate education is often deemed to be the answer to certain scenarios. When someone is emotionally charged, or feel as though they're owed something, education is often put to the side in a sign that

they've read—they'll do anything in order to get what they feel is their just desserts.

Strongly, I feel as though the insurance companies and the insurance industry needs to be reviewed. There needs to be someone looking into record multi-million-dollar quarterly profits, acknowledging the fact that we are limited with our underwriters that are available to us within our province and across our country, and just simply looking at saying, "Are the insurers doing the right thing for people?"

I recognize we're speaking about this particular bill, but there are multiple areas within our industry, heavy civil construction, where insurers are dictating terms that are just causing so many complications and additional costs. I'm not sure how that would work, from a provincial standpoint, but I do believe that partnering with, holding insurance companies accountable and responsible—really, they're dictating so many things, and there are only limited underwriters because they're buying each other out, so your options are really thin.

Mrs. Gila Martow: Thank you so much, Shannon.

I'm going to go to Mike now—

The Chair (Mr. Deepak Anand): About 40 seconds.

Mrs. Gila Martow: —in my colleague MPP McDonell's riding. Mike, maybe you wanted to add some thoughts as well. Maybe if the public understood a little bit about their need to exercise a certain amount of caution and take some responsibility, that it shouldn't all rest on the shoulders of what I consider to be an essential service, which is snow removal in the Canadian climate. Go ahead, Mike.

The Chair (Mr. Deepak Anand): That actually concludes the time for questions from the government side. Maybe you can answer it in the next round.

Over to the opposition. MPP West.

Mr. Jamie West: I'm getting better. I unmuted myself this time. Thank you, Chair.

I'm going to start with Mike Dominick from Husky Services snow removal. I'll start by letting you complete your deputation, Mike. I know you were cut off. But I may have to [*inaudible*] if it's too long.

Mr. Mike Dominick: No, no, no. I was literally on the last paragraph, so that's fine. I'll take a couple of seconds here. I have six litigations after me right now. The first one, from 2017, is still going. This particular litigation, the gentleman has gone through three different lawyers. He's on to his third lawyer. My insurance company has had to defend this same case three times because he keeps going to lawyers that don't charge unless—"You don't pay me unless we win" type of deal. I find that a little ridiculous that they can do that. He did it all within the two-year span, so it's legal, but it's still a load of ridiculous.

The other litigations are slips and falls, but they're on properties—and this is a key point here, to me—where we are not even contracted to provide salting services. The customer, our client, the property owner, declined salting services because the cost was too much. So we're being held liable for a service that we're not even providing,

come slippery conditions. My head can't compute that logic.

Mr. Jamie West: I'm just making notes. Thank you for that.

The part of your deputation—there's a lot of it that really hit me, but one of the parts that really hit me hard was 12 people being let off for the winter months, especially because snow removal is so important. It's not like we had unseasonably warm weather and there's just no work; we're likely to have a lot of snow. That's what they're calling for this year, the same as they called for last year. Thinking about 12 people wondering how they're going to make ends meet for six to eight months—I'm not sure how long—I'm concerned about that.

The other concern that I have is when we shorten the window to seven days, do you have any concern that with these Diamond and Diamond, "You don't pay"—like other witnesses had said, targeting people and prompting people to make these cases, that when we shorten it to 10 days—sorry, I said seven earlier—people will file just in case? Do you think it may raise the amount of filing that happens?

Mr. Mike Dominick: I think if the injury is immediate, they may still file, but the ones that are just looking for the quick payday may not consider it right away until they fall on harder times and go, "Hey, maybe I can file a suit for this, because my back hurts now." It's hard to say. People are funny.

I believe that people that have a true and sincere injury and they feel that the conditions were not being mitigated properly by the property owner—then, yes, I'm all for the suit. But I don't think people are going to file just in case.

Mr. Jamie West: Right. Okay. It seems like everyone we speak to today talks about insurance gouging and the high cost of insurance, really having no control over what the insurance does. Earlier there were a deputation talking about how the insurance company decides to settle and then it becomes a claim for the company, even though they feel like they had done everything properly and would have won the case, but now their rates are going up.

1130

Outside of what's happening with this private member's bill, would you also like the government to address insurance gouging or how the insurance companies are behaving towards businesses?

Mr. Mike Dominick: Well, yes. I'll speak quickly to that point. Every insurance company has—apparently, from my understanding—a different way of handling this. If they come to a point where they've expended too much money and they want to just pay the person off as a financial decision to make them go away, it shouldn't be put on our back. We should not have to pay the deductible if they have taken it upon themselves to pay the person off.

If we are found negligent through either discoveries, as lawyers are calling them now, or even going to trial and being found negligent as a contractor, then the deductible should be charged. But if the insurance company takes it upon themselves, that's their decision; that's their business decision. I don't blame other companies for my decisions

within my company and charge erroneous fees to my customers because I made a bad decision. It shouldn't be that way.

Mr. Jamie West: Right. Okay.

I'm going to move on to Mr. Fergusson. I'm interested in your perspective on this, because it's been a little bit of people beating up on insurance companies. I know that as a broker, you represent different insurers, or their voices at least. MPP Miller, for example, talked about how in some cases, insurance costs have gone up 350%. How do you see what's happening with insurance and how these companies are really struggling to make ends meet, in some cases having to close down and avoid the snowplowing season?

Mr. Gord Fergusson: There were some really interesting points and good points made just in the past two presenters. I'd like to point out a couple of things. The shortening of the time actually allows the insurance companies to better underwrite the risk. Part of the problem and part of the reason why the price is going up is because we don't know what this individual who we are beginning to now insure has, nor does the individual know. He's coming in saying, "I have no claims," but—

The Chair (Mr. Deepak Anand): One minute.

Mr. Gord Fergusson: —we could then [*inaudible*] there may be two or three out there. I'm not saying that's right; I'm just saying that's some of the mindset of the insurers.

I think the availability of limiting that time is a good idea. At least it puts it on the table where perhaps in many cases the insurance company can't perform a mathematical equation, whatever the number is, and at least come up with something that is there.

Insurance companies were struggling prior to COVID and prior to this loss with a lot of natural disasters and not a lot of interest rates, so not a lot of money being made by the insurer. The insurers are a for-profit organization, as I believe someone else was saying just a few minutes ago. They're challenged and I—

The Chair (Mr. Deepak Anand): Thank you so much. That concludes your time, Mr. Fergusson.

Moving over to MPP Fraser.

Mr. John Fraser: Thank you to all the presenters for some very clear and thoughtful presentations. A couple of questions to Mr. Finch: I noticed in your deputation that you're being sued for a property on which the person you were serving said "no salt," didn't want to have salt because of the expense. Is that a normal thing or is that a thing that occurs with some frequency?

The Chair (Mr. Deepak Anand): Who is that question to, MPP Fraser?

Mr. John Fraser: Mr. Finch—oh, sorry, Mr. Dominick. I'm sorry. Pardon me.

Mr. Mike Dominick: Yes, out of the six claims we have, four of them are for slips and falls on properties we don't provide salting services for.

Mr. John Fraser: Wow. Okay.

Mr. Mike Dominick: The other one is for a flooding garage, because, oh, I have control over where the snow goes and melts. But anyway, that's another issue.

Mr. John Fraser: No, it's quite interesting, the obligations. In other words, from an industry perspective, that obviously puts you at risk when you have a client who says, "Take the snow away, but I'm not going to take care of the salt." That's a really interesting point that's in here. Because we're trying to create a balance between everybody's responsibility, right? So that's a particularly interesting incident. I'd probably like to hear more from the landscape association as to how broad that problem is.

Because—and you may want to comment on this—what you do is a public good. Just like the taxi drivers in my riding are a public good. You're not a public service, but you're about as close as—we need you, when it comes down to it. We need taxi drivers. We're using a blunt instrument to try to throttle insurance costs, so I don't know if we'll have—I think it will help, but I don't know if it will be successful in terms of doing what needs to happen. I know it's a good first step. So I'd just like to hear a bit more about what you think we could do from the insurance perspective—not related to this bill.

Mr. Mike Dominick: An insurance perspective—like I said, I understand they are a business. It's how they treat the claims. When we get a claim, even unfounded, it still counts against our record. So we're paying for a mistake that's not even been settled yet. My first lawsuit started in March 2017 when this incident first happened, and it's still not solved. But, yes, I keep paying the insurance premiums based on that incident three or four years ago—going on four years now.

Mr. John Fraser: So any settlement, you're deemed at fault, is what you're saying?

Mr. Mike Dominick: As soon as the statement of claim comes in and I forward it on to my insurance company, that goes on my record.

Mr. John Fraser: Yes. Okay. Thank you very much. How much time do I have left, Chair?

The Chair (Mr. Deepak Anand): A minute and 13 seconds.

Mr. John Fraser: To Mr. Fergusson—in terms of what you feel will happen in the industry to insurance rates should we pass this legislation.

Mr. Gord Fergusson: I think a couple of things could happen right away. I think it gives us a calculation in order to predict claims, because it's coming in with something that we do know has a timeline. You do know that there's a distinct timeline on how this would be set out as a quote in two years. I think that's an option.

Do I think rates are going to go down in the short term? No, I think insurance companies perform a calculation and if this improves the types of smaller claims, the long-term perspective, I think, is much better for insurance, and viability for insurance. I think that then other insurance carriers can look at this and say, "Yes, there's a methodology to calculating"—

The Chair (Mr. Deepak Anand): Thank you, Mr. Fergusson. That concludes the time. I appreciate it.

Now we have a second round, starting with the opposition. MPP West, you have seven and a half minutes.

Mr. Jamie West: I'm going to go back, actually, to Mr. Fergusson. It's unfortunate that out of all the deputations we have today, I don't think we have anybody who was a plaintiff. I know somebody who slipped outside of a pharmacy. From memory, they had the right shoes, they had a cane with a spike at the end, and they slipped and fell and broke their hip. They can't deputize because that happened about 10 years ago and they've passed on by now, but I'd like to hear the other side of the story.

From your perspective, what are the stats in Ontario, or that you've dealt with? How many lawsuits were brought forward? How many were successful? Anything you could share about the statistics.

Mr. Gord Fergusson: I don't think we have any statistics available, but certainly the particular carriers would be able to provide that, because they do it in their basic mathematical algorithms. I don't have any data on that.

Mr. Jamie West: Okay. I'm going to move on to Ms. Burrows from Weeks Construction. One of the things that I'm concerned about, Ms. Burrows, is that when we shorten it to 10 days—and two years does feel like a long time. I'm not an expert in this, but in a shortened 10-day window, I'm thinking of a friend of mine who fell—this has nothing to do with a lawsuit; he was curling for the first time, slipped on the ice with his spider on his shoe and fell on his head. He was in the hospital for 30 days, basically, with no noise and no light.

1140

For the areas that you provide services to, how easy would it be for somebody to recognize—let's say, I'm outside of—I almost said Sears, but Sears doesn't exist—a Walmart, and it's one of the areas, for example, that you provide service to and I slip and fall, do I serve Walmart, or do I have to find out if they have a contract with you? Does that even happen within 10 days? Because my first priority would really be, "Go get well. Go to the hospital to make sure that I haven't broken a limb or anything like that." I'm talking about in a perfect world, where I'm wearing the proper shoes, I was being careful and somehow I just slipped and fell. Does that 10-day window make it more difficult to locate who's responsible or who I would want to reach out to?

Ms. Shannon Burrows: I am a registered nurse, so I appreciate—I've dealt with many patients who have gone through multiple different scenarios, as you are describing. I don't believe, from my understanding—please be aware of that—that if notice is provided to the location, then it is their responsibility then to notify those—the ripple effect is that if there is clarification needed to be required, if notice is provided, the appropriate parties involved should be notified within a timely manner as well. I don't believe that for someone who's in hospital for 30 days in bed, as the proviso in sections 3 and 4 outlines, that should be a hindrance to them pursuing what they need to pursue. If they can't heal within 10 days, we understand that. But two years? When I receive a statement of claim a week before my two-year limitation and I have to go back through, it just makes it that much harder.

Mr. Jamie West: Yes, that makes sense, the two-year. It seems to be pretty consistent in the deputations. I can imagine, how would you remember? Even with good documentation, it would be hard to do.

You had talked about the two claims that were brought forward. I don't know if you were not found at fault or you had the data to show it, but the insurance paid out \$20,000. Is there something you or Weeks Construction would like to see in terms of how insurance companies are basically dictating what the terms and costs are for your business?

Ms. Shannon Burrows: I will speak to the first presenter with respect to multiple—for these two particular locations, sanding and salting were not included; we were simply to plow. We were not responsible for sanding at any location nor were we responsible for sidewalks, for example. The one person slipped and fell on a sidewalk, an area we're not responsible for, and we were still named in the lawsuit. The other one: They slipped and fell in an area that we plowed. There had been no snow for a week on either side of the slip-and-fall. We weren't to provide sanding and we were still named. They still paid out money to the person. The language from the insurance company was that it was cheaper for them to pay than to worry about court costs. That was from the insurance provider themselves.

I believe, as was mentioned before, there needs to be a review of how insurance companies manage other people's money. I'm not sure how the government can do that; that's why we trust people in government. But there needs to be a review of how they're making decisions using other people's funds, simply to save themselves a buck on the back of someone else.

Mr. Jamie West: I find that hard to understand. If I signed a contract and I said, "No, I don't want to pay for sanding and salting," how are you liable?

Ms. Shannon Burrows: The lawyer pushed us multiple times in examination—it was me who went to examinations for discovery—pushing and pushing and pushing. The onus is on the landowner to notify and call for sanding or salting services. We provide that if we're called; that was the condition of the contract. However, because it was the same underwriter that was providing for both us and the landowner—it was Intact Insurance—they shared the wealth because they figured it was just easier.

I don't know what their decision-making process is; this is the information I'm getting. Again, I'm not privy to the decisions, but I'm certainly privy to the impact.

Mr. Jamie West: Okay. How much time do I have, Chair?

The Chair (Mr. Deepak Anand): You have a minute and 30 seconds.

Mr. Jamie West: Oh, that doesn't leave me a lot. Okay. Do you know what, Chair? I'll give up my time, because I don't have enough time, really, to ask a question and get a response, and I think I have most of what I need anyway.

Thank you to all the presenters for sharing your time and helping us to better understand your reality. Thank you.

The Chair (Mr. Deepak Anand): I appreciate it. Moving over to the government side, I have MPP Crawford. MPP Crawford, go ahead, sir.

Mr. Stephen Crawford: My question is for Mr. Fergusson. And actually, I would ask the other two guests maybe from their point of view as customers as well to give their perspective. I'm wondering how many insurance companies you know offer insurance in the snow removal business right now and how many have left that business because they found it unprofitable because of all these frivolous lawsuits. So perhaps Mr. Fergusson but also the other two guests as well could give their comment as consumers of insurance on what they've seen happen on that side as well.

Ms. Shannon Burrows: Hi there. We recently went to market just this year—

Interjection.

Ms. Shannon Burrows: Oh, sorry.

The Chair (Mr. Deepak Anand): No, go ahead.

Ms. Shannon Burrows: Thank you. We recently went to market this year. We usually go every three to five years. Our broker approached eight different insurers, six of which declined because they don't provide snow removal services, which only left us two as options, if that answers your question.

Mr. Stephen Crawford: Yes.

The Chair (Mr. Deepak Anand): Thank you. Mr. Dominick or Mr. Fergusson, who would like to answer it first? Mr. Fergusson, go ahead, sir.

Mr. Gord Fergusson: Is this now me? There are a number of insurance companies that have pulled out over the last 24 to 36 months, snow removal being one of the things, but there are certainly other issues that are on the table where insurers are pulling out of all kinds of litigious situations. Liquor liability is another great example of [*inaudible*]. I don't think this is a—we have to find a way through which to make the product that the landscapers and the snow removal people do palatable for insurers to quote again. Again, I don't see that as a today thing without this coming legislation, and I'm concerned that the current year is a real challenge for this year. I'm not sure that there will be a lot of availability for this right now.

The Chair (Mr. Deepak Anand): Thank you so much. Mr. Dominick.

Mr. Mike Dominick: From a consumer standpoint, my insurance has doubled every year for the past two years, and it has been increasingly more and more difficult every year. It has culminated to the point where this year no one would provide us a quotation for insurance coverage due to the six claims that we have. Again, we have not been held liable for any of them and no payouts have been made; however, it's [*inaudible*] and we're unable to even get a quote. The only way we could have possibly—and that's not even for sure—is we would have had to expand so dramatically into a different insurance bracket, per se, of over a million dollars in order to get insurance coverage. But in my mind, I didn't go in that direction because it didn't solve the root problem of the ease of filing suits and receiving claims.

Mr. Stephen Crawford: Okay. Well, it certainly sounds like there's a problem with suits, because one of the previous witnesses mentioned that he had one suit in his entire company, and now it has gone to one per territory, which is about 35. That's a 3,500% increase or more in frivolous lawsuits in over a couple of years, so that's pretty dramatic. Obviously, insurance companies have to adjust to deal with that, so we've got to deal with the issue here.

With that, my question for you, Mr. Dominick and Ms. Burrows, is, with the suits that were launched to you, what was the time frame on those? After the incident or the accident, was it 19 months? Or what was the time frame for all of the suits against your companies?

Ms. Shannon Burrows: For us, it was two suits within a week of each other. Both incidents occurred around a week of each other, in December and January 2016-17, and we received a statement of claim two years less, I think, a week to 10 days from that date. If that answers your question?

1150

Mr. Stephen Crawford: Yes. Thank you.

Mr. Mike Dominick: Mine were all about eight to 12 months in time frame, except for, as I said, this gentleman that has used the two years to its fullest and filed three times for the same injury.

Mr. Stephen Crawford: The proposed legislation is going down to 10 days from two years. Do you think that maybe 10 days is a bit short, though, because if you just have an accident, you're not even quite sure how you feel? Do you think it should be 30 days or 60 days or 90 days? Do you think 10 is the right number?

Mr. Mike Dominick: To add to what Ms. Burrows said earlier, it's my understanding as well that this bill has provisions in place that it can go onto the opinion of a judge if you were incapacitated or in the hospital for 30 days and were unable to file the notice, to put somebody on notice as the property owner. You can still file a claim if the judge deems that you were unable to do that within the 10 days.

Mr. Stephen Crawford: So you think 10 days is reasonable?

Mr. Mike Dominick: I think it's reasonable, and again, we're not asking for anything different than what the municipal governments have.

Ms. Shannon Burrows: I would agree with Mr. Dominick.

The Chair (Mr. Deepak Anand): One minute.

Ms. Shannon Burrows: Why would private business be treated differently? It would make sense to me that the time frames would be the same. At the time we change a rule, if there are different conditions to each one, it makes it complicated. I know Landscape Ontario has proposed 60 days. I personally think matching municipal would be reasonable.

Mr. Stephen Crawford: Okay. Thank you. That's all my questions.

Ms. Shannon Burrows: Thank you.

The Chair (Mr. Deepak Anand): We have about 30 seconds, if any of the members from the government want to ask.

Seeing none, over to MPP Fraser. You have four and a half minutes, sir.

Mr. John Fraser: I just want to follow along that line. I understand the matching up of the 10-day notice to equal what municipalities have. It's interesting, when you look across Canada, you have that legislation, but in some areas, protecting municipalities goes anywhere from 10 days to three weeks. Then, actually, for outside of municipalities, across Canada, what I can see is there's no matching legislation that exists for companies or for private businesses. It's kind of interesting how that exists. So I agree with a couple of the presenters on this.

I am, however, concerned, though, with the ability of people to file notice. Ten days is—even when I look at municipalities, that concerns me, simply because not everybody has the wherewithal to know and understand these things. So that is a concern with access to justice. It's a concern that way. How do we strike that balance that ensures that, as an industry, you can continue providing the very important service that you have at a reasonable rate and ensure that people have access?

I'll just throw that out there, and maybe I could direct that, firstly, to Shannon Burrows and then Gord Fergusson, if there's an opportunity.

Ms. Shannon Burrows: My understanding with the stipulations is that if a reasonable excuse—such as hospitalization or unconsciousness, as we've discussed already—can be provided to the courts, utilizing the correct representation, that if there's a reasonable excuse, then the judge can choose to allow the claim, based on that rationale.

As a private business owner, I also find, to throw this in as an example, dental insurance: “Oh, your boss can pay for it. It's fine because it's insured,” or “You're a business owner. You make lots of money, so can you donate to my hockey club?” There's this assumption that there's this endless pot of money, and as we've known in the last eight to 10 months, that pot is pretty shallow. So I think the 10-day reasonableness is quite reasonable, because there are provisos to allow for exceptions, and I think that's important to highlight.

Mr. John Fraser: I think that we probably have to take a look at what those exceptions are, because [inaudible]. As you can understand, the health issue is one thing, but there's also an ability to appreciate people's personal circumstances. And so—

Ms. Shannon Burrows: [Inaudible] the limitations—

Mr. John Fraser: Yes, limitations from an [inaudible] point of view, a family point of view, responsibilities. That's kind of what I'm getting at. It's like if you go too far one way—thanks very much. I don't know if there's time for Mr. Fergusson. Thanks.

The Chair (Mr. Deepak Anand): Mr. Fergusson.

Mr. Gord Fergusson: I agree. I think any opportunity that the courts could provide to be in a situation where they can make a decision very quickly only adds to [inaudible].

What I'm coming at is, from an underwriting perspective, if we know the risk and know the risk better and know what's out there [inaudible] we can be able to quantify what the premium is. So I think it does have merit on what you're suggesting.

Mr. John Fraser: Thank you very much.

The Chair (Mr. Deepak Anand): One minute.

Mr. John Fraser: That's good; I'm done, Chair. Thank you very much to all the presenters for taking the time.

The Chair (Mr. Deepak Anand): Thank you so much. That concludes the time allocated for your presentation. Thank you, Mr. Dominick, Mr. Fergusson and Ms. Burrows. I appreciated your inputs.

At this time, it is time to take recess. The committee will reconvene at 1 p.m. I appreciate your support.

The committee recessed from 1156 to 1300.

MR. DAVID FINCH

DAIRY QUEEN, CORNWALL

WHISPERING PINES LANDSCAPING

The Chair (Mr. Deepak Anand): Good afternoon, everybody. Let's resume our meeting on Bill 118, An Act to amend the Occupiers' Liability Act.

We have three presenters: Mr. David Finch, Mr. Nolan Quinn and Mr. Greg Wildeboer. You have seven minutes for your presentation. Please state your name for Hansard. I will signal to you when you have one minute so that you can wrap up on time.

At this time, I would like to call Mr. David Finch. Good afternoon, sir.

Mr. David Finch: Mr. Chair, members of the committee, thank you for the opportunity to address you.

My name is David Finch. I'm a co-owner of a three-generation family excavation business in Bracebridge, Muskoka. Our family has performed snowplowing services in Bracebridge for over 50 years. We look after our hospital, grocery stores, hotels, doctors, factories, school buses and propane delivery depots. Personally, I have 33 years' experience working with our seven year-round employees on our [inaudible] our night shifts when snow arrives. We work from 1 a.m. to 9 a.m. to have businesses ready for when they open their doors.

When I started my career, we generally didn't sand parking lots or shovel walkways, as owners didn't want the mess of sand and they did their own walkways. Insurance has changed many of those demands for those tasks.

I'm here today to support Bill 118, lowering the two-year time limit down to 10 days—similar to, I believe, what municipality properties enjoy.

I originally contacted my MPP, Norm Miller, a few years ago to raise my insurance concerns, with our existing coverage being revoked. I have three general concerns about how snow liability insurance is affecting my business, and perhaps others like mine: the current claims system, our rates and coverages, and our future.

My first concern is our current slip-and-fall process, which tries to find fault with someone else for a fall during an Ontario winter. Our industry has been placed in a no-win situation trying to ensure perfect, no-slip walking conditions everywhere, all of the time. I've experienced the discovery phase of a claim that seemed to presume my guilt until proven otherwise. I was questioned on my ability, judgment, timing, actions and possible negligence for a staircase on a client's property, which we were not hired to clear. The client cleared their own staircase. The claim for a twisted ankle enlightened me on how commission-fee lawyers get paid pre-court and in-court settlements. A few letters and a couple of days in discovery seem like a small investment to share in a pre-court settlement. With winter arriving each year and difficult expectations of no ice or snow affecting the general public, I can envision a never-ending supply of cases, settlements and costs increasing to our industry. Perhaps Bill 118 will lessen this volume.

My second concern is our coverage. My call to MPP Norm Miller was to let him know that our long-time underwriter was going to deny our coverage because we plow the local hospital. It was not our record that was affecting things; it was a claim at another hospital in Toronto. The underwriter didn't want to chance having two claims from two hospitals at the same time. We'd suddenly been moved from an annual business discussion on rates to a drop in coverage. How could this be, with a clean record? For the last two years, we have been working with one possible underwriter—no other companies will address our needs. Lloyd's of London have been looking after us. This is not a comforting position to be in, as a business owner. Our rates have increased, but we have been able to absorb them and pass them along to our clients. A colleague of mine at another hospital in Muskoka is not so lucky. He's facing a \$25,000 surcharge for plowing the hospital's helipad, an area that he has looked after for the last 10 years.

This brings me to my final concern: our future. I'm worried that if our rates cannot be absorbed by my clients, or if our coverage is quickly denied, then what? If we have to drop our winter operations, we'll have to lay off my employees. Will they be available in the spring when I need them? Who will help all of my existing clients, including the hospital?

I wonder, if my family is feeling this way, how many other small-town employers have the same issues. If we have a mass exodus from our industry, what will be the effect on our communities? Our business, and I think probably our whole industry, relies on local equipment, manpower and monitoring for an effective response to the unscheduled needs of snow clearing. It's my hope that Bill 118 and other future adjustments will help our industry with the current system, its coverages and its future. Thank you for your time.

The Chair (Mr. Deepak Anand): Thank you so much, Mr. Finch. We appreciated your input.

Moving on to Mr. Nolan Quinn from Dairy Queen, Cornwall: Over to you, sir.

Mr. Nolan Quinn: Thank you. First off, I will give a brief apology. Since Friday, I've worked over 45 hours during this pandemic. With COVID and everything going on, my store has been short, so I did plan on being a little bit more organized with my speech for this. But with the pandemic, we're all just trying to get through this together.

The reason why I was passionate about—

The Chair (Mr. Deepak Anand): Excuse me, sir. Mr. Quinn, please start with your name so that we can—

Mr. Nolan Quinn: Oh, sorry. I'm Nolan Quinn, owner of the Dairy Queen in Cornwall, Ontario, for 10 years now. I've worked here for over 20 years.

I was reached out to by my MPP, Jim McDonell, to support Bill 118. The reason why I am supporting it is that my snowplow removal company that I have been using the last seven years five weeks ago told me that they will not be doing any snowplowing this winter at all. It's affecting over a hundred businesses in the community of Cornwall.

After speaking with other restaurants, just like the presenter before me, we were told that there is in the insurance industry a blacklist, so to speak, and restaurants are on there, as are churches and hospitals, from what I've been told. That was very concerning to me, as we all are in business to be able to provide a service and to be able to make some money at the end of the day.

I do believe the snowplow removal industry has had a couple of difficult years, and I may get off topic with this, but Bill 148 affected my industry and affected their industry as well. I know it has been repealed, but for a couple of years under the previous government, we were not allowed any call-in shifts or standby shifts without having to prepay them if we didn't call them into work, which would very much affect an industry that is weather-oriented, like snowplow removal. They've also had the carbon taxes added onto their industry and into their profitability margins.

To add in this two-year window to be able to put a claim in, I do believe, is frivolous. I've been lucky enough that I've never had a winter fall, slip or trip claim at my store. Again, I've been here for 22 years and owned it for 10, but we have had some frivolous lawsuits about slips on wet floors that weren't actually wet. The only thing that actually saved my store and was able to throw out that lawsuit on the insurance side was my camera system. Having that two-year window to be able to put a claim in, there is no camera system in the world right now that's going to have the memory that businesses have to have to be able to go back that far. I just purchased a brand new camera system last week and it's got all the bells and whistles; I will be lucky to get 30 days' recording off of that camera system, and this is the newest system out there.

I want to talk about my rates. I used to have the full service for my restaurant: the salting, the shovelling and the snowplow removal as well. This year, I was not able to afford the shovelling and the sidewalks, so I will be doing that myself. I think that is a very big point that I want to make clear: I will be doing that myself. I am already short-staffed, as I did imply in the first few minutes. I've

worked 45 hours since Friday. We are in the middle of a pandemic, and for this industry, snowplow removal, it couldn't come at a worse time for them, that they were not able to get their insurance.

1310

I have heard from multiple snow removal companies, the ones that are still staying in the business, that their rates went up over \$25,000 over the last year, and they are still sticking with it, the ones that have kept in it.

I do have a really big piece of this. Again, I only figured this out about six weeks ago, that I need to look for new a snow removal company. Again, my rates have gone up 30% this year. They actually went up 30% last year, but I was getting the full service. Now, because of the lack of companies doing the job, I'm paying 30% more of a premium but actually getting a lot less.

Again, I support Bill 118. I apologize for not being as organized. But with the pandemic, every small business is struggling to be able to keep the doors open, myself included. Thank you, Mr. Chair.

The Chair (Mr. Deepak Anand): Thank you so much. I appreciate it.

Next is Mr. Greg Wildeboer. Sir, you have seven minutes, starting with your name for Hansard.

Mr. Greg Wildeboer: Good afternoon. I'm Greg Wildeboer of Whispering Pines Landscaping. Thank you for allowing me to address you today and be afforded the time to share my company's story and provide input into the private member's bill, Bill 118, which I also support.

Whispering Pines Landscaping started in 1993. Like many companies in our industry, it started with a pickup truck, a wheelbarrow and a dream. Over the years, it has grown to a size where we now employ over 50 people, and we have been able to make a substantial impact in our community. We have been strong community partners, helping out with projects in the local hospital and the food bank, and we're corporate members of Rotary. We see the value in supporting local businesses, and the majority of our products are produced and manufactured in Ontario.

We see the value in investing in our employees and providing a place to work where they can support a family, purchase a home and give back to the community. Recently, we were recipients of the Workforce Builder Award from the Dufferin Board of Trade, a testament to the care and efforts we have put into becoming a top employer.

Now, being an open-book company allows us to share our company's performance and what the future holds for Whispering Pines. Engaged employees benefit from the profitability of the company, and we share our financial health monthly with all our team members.

In September, I had the most difficult share. I had to tell my team that we had received notice that our liability insurance has been terminated, effective October 31. At this point, 13 insurance companies had turned us down. The future of our snow management, our team members, our entire company, hung in the balance. So how does this happen? How can a high-level company be suddenly placed in this position? The answer falls at the feet of snow

management and the exposure the insurance companies no longer have an appetite for.

Our company has managed snow for 25 years. We have looked after the same properties for five, 10, 15 and 20 years. We understand the snow industry. We train our staff. We have loyal team members. We have a fleet of new equipment. We work with state-of-the-art technology. We're Smart About Salt certified—the list goes on. We have 24-hour, seven-days-of-the-week monitoring, with dedicated staff who monitor and record, with the assistance of GPS, all our properties. Our response is the best in the local marketplace, and our team is provided reasonable shift times so they're not overworked.

Further, we have increased our salt usage by as much as 200% to 300% to try to further mitigate liability. We had been claim-free for the last 22 years of business, and I was confident in how we manage snow and believe that we had it figured out.

In our 23rd year, we received a notice that we were being sued for a slip-and-fall on a property we manage snow at. This notice was a full year after the event took place at a property where we only plowed the snow and the owner of the property was responsible for requesting salt if they deemed it necessary. We were considered at fault because we did not properly educate the property owner on the risk and exposure they had with salt on request.

So one claim after 22 years in business with a payout of approximately \$27,000 should not have been a significant challenge. After a renewal took place on November 1, 2019, we were sued by another slip and fall on a property we have managed for almost 20 years consecutively. In this case, we were on-site relocating some snow piles, we salted the property, our nighttime monitor checked and recorded site conditions, and a follow-up visit was made by the daytime monitor to inspect and verify that the property was safe. To date, we do not know where the slip and fall took place on the property, what the injury is, and more importantly, what we could have done differently to protect others, and that is, if we were negligent at all.

Our insurance company no longer wanted to cover our company because of one at-fault claim, the second claim that is now being challenged, and the potential claims that may surface out of the blue that could go back up to two years. We did secure insurance, at a \$58,000 increase from what we currently were paying. We had no choice but to accept.

Our company's story is similar to the majority of snow management companies in Ontario. The difference in our case is we secured insurance.

So who pays for the increased cost that is associated with an unreasonable amount of site monitoring, additional salt application, expensive insurance bills? The trickle-down effect of the contractor passing on these costs to the property owner, who then passes it to the tenants—stores, restaurants, service businesses—who in turn pass it down to the consumer—you and me—is these costs have escalated quickly. Though the pushback is great, there is no choice but to pass these costs on so we can stay in

business. During the COVID crisis, this is just one more blow for small businesses. In turn, people are forced to pay more for everything, including basic necessities.

The further toll that has taken place because of the heightened level of service to mitigate risk is the environment. In many communities where they rely on well water, there are noticeable increases—

The Chair (Mr. Deepak Anand): One minute.

Mr. Greg Wildeboer: —in sodium levels in wells. Creeks, ponds and aquifers are all experiencing higher sodium levels. If this continues to increase, there will be a long-term detrimental impact on our ecosystems and drinking water.

So how does Bill 118 help? By shortening the time to make a claim off the current two years, we are aware of the site conditions, we can review the approach, review camera footage, and ensure that we took all the necessary steps to provide as safe a site as we could.

An interesting observation is that in a large number of cases, the plaintiff has documentation, including photos of the area where the slip and fall took place. If the injured person is able to do this, why does it take weeks, months and sometimes up to two years for a suit to be filed?

This won't solve all the challenges the industry faces. However, it is a significant step in the right direction.

The Chair (Mr. Deepak Anand): Thank you so much. We appreciate your input. Now there will be two rounds of questions, starting with the government, seven and a half minutes; followed by the official opposition, seven and a half minutes; and then the independent, four and a half minutes. I'll give a signal around one minute so you can wrap up your presentation in a timely manner.

I see MPP Miller. Go ahead, sir.

Mr. Norman Miller: Thank you to all of you for your excellent presentations. I'll start with David Finch. David, you are the reason for this bill. I hate to tell you that, but it was your call—I think that was three years ago. Maybe your memory is better than mine. Government doesn't move that fast. But yes, I think it was three years ago when you just called me up out of the blue concerned with insurance costs and how much they were going up.

You said in your presentation, and I'm fully aware as a customer of yours at times, that it's the third generation—so how recent a problem is this in terms of being sued and insurance costs going up?

Mr. David Finch: The slip-and-fall claim that I mentioned was a number of years ago; it's probably 12, 13 years ago that I was involved in that one. The underwriter not wanting to carry us was about three years ago, when we moved from that carrier and had to seek out Lloyd's of London to get coverage. So it's fairly recent. When I spoke to you at that first time, that was the shock and awe of being dropped.

Mr. Norman Miller: How much has insurance gone up in that last three years, then?

Mr. David Finch: It's probably doubled from \$10,000 to \$20,000. We're lucky. As I mentioned, we're lucky where we are right now.

1320

Mr. Norman Miller: I remember you talking about how you do South Muskoka hospital, so inevitably, the hospital or whatever business you do ends up picking up those costs.

Mr. David Finch: That's right. It has to be managed somewhere.

Mr. Norman Miller: You had talked about how the expectation is just not realistic—that it's perfect, no-slip conditions everywhere. My feeling is, we have winter; people will slip and fall. I probably fall twice a winter. It's not usually anybody else's fault. So my feeling is people need to assume some responsibility about it all as well.

In your presentation, you talked about other future adjustments. Any other ideas of things that could be changed, and do you agree with me that people have to assume some responsibility?

Mr. David Finch: I don't know the actual silver bullet for that, but the notion that in Ontario, we do have snow—where has it all changed in my 30 years or my family's 50 years? Where has it all changed that—how many litigations did we have back then, and how did we get here? It's the notion that it's okay for someone else to pay if you slip and fall. Is that appropriate? I don't know how government approaches that, but that's the elephant in the room: Why do we all pay for those unfortunate things that—nobody wants anyone to fall, but it's difficult when you're in a snowbelt snowsquall situation to have perfect walking conditions.

Mr. Norman Miller: Well, the intent of this bill is to make a difference, and I do have a letter from the Insurance Bureau of Canada saying—I'll just read the final line—"From an insurance perspective, the bill would provide assistance to independent snow removal operators that are contracted by occupiers in avoiding the costs associated with defending and potentially paying for non-meritorious claims, which in turn would improve their claims history and insurability." The whole idea is to try to make it a little more affordable.

My colleagues here are going to want questions too, so I wanted to ask Nolan a question, if I could. Nolan, you mentioned that you have video cameras. I spoke over the lunchtime and I've had meetings with the Ontario trial lawyers, who are arguing for a longer than 10-day period; they don't think 10 days is long enough. You mentioned you have brand new camera equipment, which is critical in your business to be able to defend yourself. How long will the modern video stuff—can you get backups so you can do 60 or 90 days? That's my question, I guess.

Mr. Nolan Quinn: I will be fortunate if I get up to 60 days. All of my cameras are based on movement or motion, but because I'm on a busy corner, it's not just my traffic; when the police have an accident on the road, they will come to me looking for footage as well.

I've been told about 60 days. The system—not to put a number on it, but it was at least \$10,000 plus the installation, so it's not like I went with a cheaper system; I did get the newer system. There's only so much funds I have to be able to purchase that extra, extra memory, but I did go with terabytes' worth of memory.

Mr. Norman Miller: Thank you for that, because I think that's important for you to be able to defend yourself or maintain that if you do get sued for a slip-and-fall.

Greg, one of the points you made that I found—certainly from my perspective, representing Parry Sound–Muskoka, there are lakes all over the place. You talked about salt use going up 200% to 300%. Over what time frame would that be that you've increased salt use so much?

That's to Greg, who would need to be unmuted, I think, to be able to answer.

Mr. Greg Wildeboer: Over the last five years is when we've greatly increased it. We knew the struggles with the industry were going this way, so we tried to adapt and modify in order to reduce our exposure. The safe bet is to add more salt, because you're going to hit black asphalt quicker by adding more salt. The negative impact, as I mentioned, is significant as well. But really, we've seen it the last five years, the impact significantly.

Mr. Norman Miller: That certainly concerns me. It's just not good for any of our lakes and water systems to be putting so much salt into them.

The Chair (Mr. Deepak Anand): One minute.

Mr. Norman Miller: I know walking around downtown Toronto, when you walk to Queen's Park, as I do—it's about a half-an-hour walk—I seem to be walking on a steady bed of salt the whole way. Despite that, when you get a freeze and thaw, you still find parts where it's slippery, where the water moves and freezes. So I think our expectations from a legal sense are just unrealistic. I could get back to, we have winter, it is slippery, and you have to be prepared, and there should be some personal responsibility.

Mr. Greg Wildeboer: I agree 100%. The challenge you have is you get the freeze and thaws, and we also have lake-effect snow that tails in, in our community. We're always out there trying to manage, but other than being there 24/7 and having somebody on-site there, monitoring and managing it, it's almost impossible to offer the level of service that would avoid 100% of these cases. We do the best we can. We have everything in place, every tool and technology going—

The Chair (Mr. Deepak Anand): Thank you so much. Now, we're moving over to the opposition, MPP Jamie West. Go ahead, sir.

Mr. Jamie West: I'm going to start with Mr. Finch. It's a familiar story I keep hearing here all morning. We've been doing deputations since this morning. I think your comment on how it seems like you need to be 100% perfect all the time and feeling guilty until proven innocent—we've heard other stories similar to the one you talked about with the staircase that you were on contract to clear or other stories where people were told that they don't want to buy the salt and sand, and then when someone slips, being told that you didn't explain properly that they need salt and sand or when they would need it.

One other thing that concerns me in your deputation, and similar to the other ones, is two comments made: the underwriter had denied you because you were clearing a

hospital and they had a claim at another hospital that had nothing to do with you specifically, and the fact that you can only get insurance now with Lloyd's of London, I think is what you said. I know it's not really part of the scope of this bill, but I think what we need to do is look at how insurance treats companies. I just want to know your perspective on that.

Mr. David Finch: My understanding is that the auto industry—you have to have auto insurance, and I gather that's looked after by the Ontario Legislature, whereas it seems like the liabilities side of things is a Wild West sort of thing. They can do whatever they want, and have, and we've seen that just in these three presentations. That's what I'm hearing from colleagues and other associations that I'm a member of in Ontario. I call them and ask them about the same topic. My first call to Norm was, "How could this be, that I can't get insurance in Ontario?"

Mr. Jamie West: I was surprised when I heard it.

So by shortening to the 10-day window—we heard from a broker earlier. They said that it will likely help because they will be able to evaluate, but it may not change immediately. It may change over time, which doesn't really help address the immediate relief that's needed. It's a real struggle.

If I were to slip and fall in an area where you serviced it, would I be able to, within 10 days, recognize that you—not you specifically but your company—are the person I should be letting know that, for whatever reason, frivolous or legitimate? Would it be easy for me to track down who is responsible for the snowplowing?

Mr. David Finch: I believe it would be, because you're going to get that answer very quickly from the property owner, I would gather. That one claim that I was involved—we've had some other claims that showed up and that I didn't have to go to discovery on. But it seems to me that all are named in a hurry, so I guess in the 10-day window, that's going to happen too as the lawyers learn the new rules.

Mr. Jamie West: Okay. And the other thing I'm wondering about from your perspective: I think two years feels too long, but with the 10 days, do you think it will come to a situation where every time someone slips, they file a claim just in case, as a placeholder, or do you think it will all work out in the wash?

Mr. David Finch: I think they will claim if it's serious enough that they're losing perhaps their livelihood or being, obviously, advised by others that they should seek counsel. I think that's going to happen. I think we're targeting maybe trying to eliminate the notion in society that it's okay to get paid for a fall. When they see the commercials on TV or billboards or whatever, it's like, "That could be me. Maybe I should make that call." By the law of averages, in two years, they've got time to think about it and see those advertisements. So it's a little harsh, but it may be the only way to eliminate those frivolous claims.

1330

Mr. Jamie West: I'm going to move on to Mr. Quinn. First, I want to thank you for the hours you put in. It's not

fair to you, but it's typical of a small business. My mom had a small business, and when you're short-staffed, you're putting in all the hours.

I personally thought your deputation was solid. I know you worked a ton of hours and you felt tired, but you really got your point across.

Similar to what happened previously, as other people had deputized—you talked about how you've never had a winter slip-and-fall but had one for a frivolous slip-and-fall on a wet floor that wasn't wet, and you're facing increased insurance rates. It's almost like auto insurance—never being in an accident and finding out your rates are going up by 30%. Your rates are going up by about 30%, and you're getting less coverage.

My concern is that this bill will basically be the finger in the dike and that your rates could go up anyway because we're not really addressing the root cause of insurance gouging small business owners. What are your thoughts?

Mr. Nolan Quinn: I do believe that it is a slippery slope, and the costs always do get passed along. Again, the 30% this year is not the only increase I have seen; there have been some in the past.

I do want to mention—and I know this is off-topic—the salting. My previous snowplow remover was salting so much that it's actually disintegrating the bricks on my building. Now it makes sense, in hindsight, because they were always worried about that lawsuit that's coming. I've never had my bricks disintegrate, but in the last few years, they've really increased the salt intake.

So, yes, I am very worried I may not be able to afford it.

The Chair (Mr. Deepak Anand): One minute.

Mr. Jamie West: Thank you, Chair. I'm going to continue after, because there's less than a minute now.

The Chair (Mr. Deepak Anand): Over to MPP Fraser: You have four and half minutes, sir.

Mr. John Fraser: Thanks to all three presenters today for your very clear and thoughtful presentations.

I'm going to start with Mr. Finch. One of the things that came up this morning was contractors being sued—and I think my colleague mentioned this, as well—when salting and sanding was something that was intentionally left out of the contract by the business taking the contract. If you're a reasonable person, you wonder how someone gets caught up in this, if somebody assumes a great deal of liability by saying, "No, I don't want this thing that's going to protect people."

When I look at the instrument that we're using here—I'm glad the member brought the bill forward, because we have to do something about this—it's a bit of a blunt instrument in some ways, because we're not addressing things like this issue that I raised, or we're actually not necessarily going to bring down rates; that's not what the insurance bureau said. I just want to hear your thoughts on that.

Mr. David Finch: We're caught in that Catch-22 right now.

One of the things I learned from my underwriter's lawyer during that slip-and-fall claim was that I should

have a shopping list that I make clients decide on. Right now, we give people a choice; let's say, the Canadian Tire store here in town: You either take sand every time we plow, when you request, or never. They have three choices. I mentioned earlier in my presentation that we didn't own any sanders 30 years ago; we now own three of them for that reason. So we have a long list of properties where every time we plow them, we sand them. But we have a very large property here in town that has a number of tenants in that building. They shall remain nameless, but they have chosen not to be sanded when we plow. They will call us. It concerns me, having heard the other stories today. It concerned me before that, but we're in that very, very uncomfortable position right now.

Mr. John Fraser: Thank you very much. Intuitively, going from two years to 10 days seems like a pretty big jump. I understand why we're looking at that limitation, and that we're trying to be fair, I think, to operators, because you're a public service. You're a private company, but we need you. There's no question of that. We can't have no people doing this, or make it unaffordable for people to do this. So it's at the same time trying to balance out and ensuring that people have access to justice, and there are reasonable limitations—and reasonable reasons for maybe not meeting those limitations.

But on the other hand, from a government and a ministry perspective, how do you actually protect yourselves, inasmuch as you can; to say, "No, no, we've done our best and therefore our liability is limited or non-existent for this case." It's kind of what I'm driving at. As you said, it feels like it could be a bit of an overcorrection, but it will eliminate the things that you're worried about. But it may eliminate some things that have merit.

The Chair (Mr. Deepak Anand): MPP Fraser, the time is about to finish.

Mr. David Finch: The ability to make a claim against, let's say, our company for that slip-and-fall—another presenter mentioned that we can't take pictures of when the event happened. The people who make that claim, and maybe that's because of where we live, there are no consequences for them. We have to protect ourselves—

The Chair (Mr. Deepak Anand): Thank you, Mr. Finch. I appreciate it. Thank you so much.

Moving over to the government side, I have MPP Gila Martow. MPP Martow, please go ahead.

Mrs. Gila Martow: This is to David Finch. We heard a little bit about the increased costs that trickle down from the property owner to the tenants to the consumers, and I wonder if the hospital spoke to you about their increased costs for snow removal in general, or for maintenance work in general, because of liability or their insurance costs. Because, after all, the hospitals—it's a public health care system, and the question is not about private clients paying for this; it's about the governments and therefore the taxpayers. So if you've had any conversations that you could share with us, Mr. Finch.

He's still muted.

The Chair (Mr. Deepak Anand): Mr. Finch, please unmute yourself.

Mr. David Finch: The hospital is currently in year two of a three-year contract, so we're not in a position to raise our rates right now with them, and so the public is protected that way. They are one of—that style of contract. And that's why I mentioned that some of them we have to absorb and it can't be passed along until a future tender.

But they're concerned. They called, "How are you doing with insurance?"—having seen some pieces on CTV News and such. The procurement officer called me last year and wanted to know how my insurance was. Next May, when I renew, he'll probably be one of the first people I call. So we're blessed with—

Mrs. Gila Martow: I know we've had some discussion through the morning and into the afternoon about what would be the right time frame to demand that people keep their records. I'm from a medical background—I'm an optometrist—and it's always that concern about record-keeping all the time and receiving a letter from somebody asking about a record that was several years back. Doctors are used to keeping those kind of records, but it's very different from records in terms of what the weather conditions were and things like that. How have you changed and how has that added to the cost in terms of just the record-keeping? What can you share with us in terms of the added burden, the extra staff for this record-keeping that's been necessitated?

1340

Mr. David Finch: The difficult task, honestly, is getting the men and women that we hire to do those record-keepings in the middle of the night as they do each of those tasks. It's burdensome for some that are not that literate, bluntly. That's just not their forte, so that's a task to get them to time-stamp when they're at properties and things along those lines. It adds to their day and things that they have to do in their day instead of just accomplishing the task at hand, obviously. And many of them are older.

Mrs. Gila Martow: Okay. I don't know if any of my colleagues had some questions as well. I didn't want to take up all the time that was left. No?

The Chair (Mr. Deepak Anand): Thank you so much. We have about—

Mrs. Gila Martow: Dave, did you have a comment? No? Waving his hand. If they can unmute Dave, MPP Smith.

The Chair (Mr. Deepak Anand): Thank you, Gila. Thank you for taking care of my job. MPP Smith, go ahead, please.

Mr. Dave Smith: How much time is left, Chair?

The Chair (Mr. Deepak Anand): We have three minutes, 30 seconds.

Mr. Dave Smith: Three minutes?

The Chair (Mr. Deepak Anand): Yes.

Mr. Dave Smith: Greg, I'm going to jump over to you, if you don't mind. One of the things that we had heard from an earlier presentation was dashboard cameras and so on. I recognize that you can't store the data for all that long, if you have a dash cam on the front of your truck. Is it realistic to expect that snowplow operators would be able to invest in dashboard cameras, and are you actually

going to get any kind of an image that shows what it was like when you're snowplowing at 3 o'clock in the morning?

Mr. Greg Wildeboer: Thank you. It's virtually impossible. There are obviously parking lot lights that would be able to show it, but that's really not a tool that we've even considered. GPS in the trucks—all our phones are smart-phones that clock in and use GPS to locate where they are. We're as sophisticated as we can get, but that's not going to help. It would help in the case of an accident, but not with regard to the snow and ice management of any property.

Mr. Dave Smith: I've said before with other presenters that a picture is worth a thousand words. If you can't realistically take good images on the fly, quickly, when you're plowing at 2 o'clock, 3 o'clock, 4 o'clock in the morning, it makes it really, really tough, then, for you to fill out a form at the end of every parking lot that you've just cleaned out, or every driveway or every person's walkway. You're probably going to spend 15 or 20 minutes filling out, "Here's what I did and here's what the conditions were and I took my tape measure out and showed how much snow was there."

Even if it's not the insurance cost, the simple cost in labour in having to do something like that, the number of people that you'd have to hire to do the same number of businesses that you were doing—it just isn't realistic. So I think that we have to find a way to mitigate that risk when you're doing everything that is reasonable to make sure that it's safe.

Mr. Greg Wildeboer: One consideration: Obviously, this bill will not cover that—

The Chair (Mr. Deepak Anand): One minute.

Mr. Greg Wildeboer: —but if we could be a certified company, ISO or some level of certification, that if we protect and do everything we're supposed to do, we have sort of a free card. We've done everything within our power to do on that site. We're at a high level; we're certified. We do everything we need to do. We should be allowed to say that we've protected that property, and claims that come against us do not hold water because we've done everything in our own power to do it. A lot of states have gone this way. There's merit in it. That allows things to be operated at a professional level, protects the industry and avoids a lot of the troubles that we're having today.

Ten days is one step to moving towards something that could have longer-term play. One of you could probably look into it and eventually bring it to committee as well as present to Parliament.

The Chair (Mr. Deepak Anand): Thank you so much. That concludes the time for the government side. Over to the opposition. MPP West.

MPP West, please unmute yourself.

Mr. Jamie West: Oh, I apologize, Chair. I thought that I had. Oh, I see the note that says the host is not allowing participants to unmute themselves, so I had to wait for permission.

I'll continue with Mr. Wildeboer as well—unbelievable that you were claim-free for 22 years, and your first claim

was, “You didn’t educate your customer enough.” They saved some money, and you ended up paying \$27,000 out of that claim. The story I hear—and I’ll just use yours as an example from the notes I had. In September, you had noticed that there are 13 insurance companies that had turned you down. The insurance you’re with won’t cover you any more for snow removal; they’re going to cancel it at the end of the month. And I know that Bill 118 is about the number of days, but I’m emphasizing this because I think as a government they need to look at this. When you think of the number of snow removal companies, landscaping companies, the amount of premiums they all pay, you add those all together, when a claim comes in, we’re trending towards—I’m concerned that there will be snow removal companies that don’t take the insurance—not yours, obviously, but under-the-table ones. Or that system where people get into a car accident and they decide, “I don’t want my claims to spike, so let’s just do it under the table and offside,” which isn’t a good situation as well. So I’m highlighting this because I think we need to look at how insurance is treating small businesses like yours.

My question really has to do with the 10-day window. I’m concerned 10 days may not be long enough and not for someone who’s obviously hurt. I’m just thinking of people like my mom, who has probably never been in a lawsuit in her life. If she had fallen, if she was steady on her feet, she wouldn’t even think that she might need extra help to cover costs or anything like that and may not even consider it within 10 days. Is there a day that is unreasonable—you know, 30 days, 60 days or 15 days—or do you feel like 10 days is the right number?

Mr. Greg Wildeboer: Obviously, as a contractor, if we know within 10 days if something happened, the quicker—the more information we have, the better response time. We can go back and look at records very quickly, even though we keep them for a long time. It’s more realistic for that end. But yes, to that end, if you slip and fall in front of a LCBO, and who owns the property—they would probably talk to the LCBO. But there may be a time frame in place.

I know our industry has the idea that 10 days may be too tight. They would be prepared to go longer. I would hazard to say that 30 days would be quite realistic to be able to get the information, find out who owns the property, who they need to go after and how to approach it. I believe in 10 days you could do it. A lawyer can call up records very quickly. But yes, in certain cases, 30 days would be enough to accomplish that.

Mr. Jamie West: And then, just from your perspective, because you talked a little bit about different ways that this could be made better, is there something we’re missing that could help your industry? Is there something that MPP Miller might want to propose for his next private member’s bill that would help your industry be more successful? Because deputations like the ones I’m hearing today are really opening my eyes to the stress that’s putting under a business like yours that’s been around for 25 years and grown from, like you said, a guy in a pickup truck with a wheelbarrow, to someone who has got, I think you said, 50 employees.

Mr. Greg Wildeboer: When I first started seeing the trend, I was thinking: You know what? Whispering Pines has an edge. We’re professional. We have all these things in our favour. It’s going to push some of the small players that are the more fly-by-night, don’t really have proper insurance or find other ways to accomplish it. So we felt that we were at the high level. When these things started to happen, where we’re being sued for really frivolous things, we really saw that even though we’re as professional as possible, it doesn’t mean a whole bunch. So if we can operate at a high level and the industry is operating at a high level, there should be some protection for us to say that you can’t do any more than what these companies are operating in doing their job. To that end, we’re protected, so that if a lawsuit comes in, while it’s against the Whispering Pineses of the world, there’s no reason that that lawsuit should stick, based on the parameters that we have as a proper company.

1350

Mr. Jamie West: Okay. Basically, you just want reasonable diligence. Earlier, people have talked about how you could salt and sand and come back an hour later and it looks good, but it’s actually ice over the top because of freeze/thaw or whatever else.

I’m not sure how much time I have left, but I just want to acknowledge Mr. Quinn. You had mentioned working 45 hours since Friday, which is a ton of hours, and the fact that you’re going to be paying more, doing less and having to shovel on your own. All we’re doing, really, is transferring the risk from area to the next. We move from employees or customers slipping outside to perhaps you slipping inside because you’re rushing from going inside to outside and having wet shoes.

I worked at a Baskin Robbins many years ago. You spilled stuff behind the counter, as well, trying to juggle all of that. So I just want to acknowledge all the work you’re doing in an industry like yours that’s being hit hard during COVID. It’s important that we get this right. We’ll be going into amendments later on this week, but I think we really do want to get this right on this committee and make sure that we tackle it.

A similar question: Do you think that 10 days is the right window? Would you be comfortable with a larger window, and if so, what would that look like to you?

The Chair (Mr. Deepak Anand): One minute. Mr. Quinn, go ahead.

Mr. Nolan Quinn: Yes, I do believe 10 days is a good enough window, but under some circumstances they may need a bit more time. I wouldn’t want it more than 30 days. I do believe 30 days is enough time, and knowing that businesses can afford the best of the best camera systems, that does come into play too. So 30 days should be enough.

Mr. Jamie West: Okay. I probably have less than a minute, Chair, so I’ll just concede the rest of my time.

The Chair (Mr. Deepak Anand): You have 30 seconds.

Mr. Jamie West: That’s fine. I just want to thank everyone for sharing their stories so we can make these good, good decisions. Thank you, Chair.

The Chair (Mr. Deepak Anand): Thank you so much. Moving over to MPP John Fraser: Go ahead, sir.

Interjection.

The Chair (Mr. Deepak Anand): Unmute MPP Fraser, please.

Mr. John Fraser: Yes, there we go. Thank you, Mr. Chair, and once again, thank you to all three presenters for your presentations and openness to our questions. I'm glad to hear some openness in terms of the limitation for notice. We have to make sure to get it right, because some people can have challenges either because of their understanding or education, their family circumstance, how busy they are.

I'll tell you just a—well, it's not a funny story—well, it's a bit of a funny story. I fell about a month ago, in front of a restaurant on Bay Street. There was no snow or ice, but it was because the sidewalk was uneven with the interlock that was in front of the restaurant. I had a pretty bad fall. I ripped my pants, skinned both of my knees and I started to feel a lot older. I also messed up my ankle a little bit.

It took me about a week, because I'm busy—but also because that was a short period of time in a sense, but I knew how to look and I could have some help in doing that—to find out who actually owned the property and how I actually connect to them. That's why when you talk about 10 days, it concerns me that that may be too strict a time limitation, if there either is not something a bit longer or some reasonable—I'll use the word “exceptions”—or some reasonable understanding of what people's circumstances may be and an allowance made for that.

Again, I'll go back and say this: The services that you provide are a public service, but you're not. You're a business. We need you. Your customers need you. Otherwise, it would be very hard to do business or to buy groceries or to do all sorts of other things during the winter months. So I think that once we get this bill away, I agree with, I think, all of my colleagues—I know that MPP West said this as well, and I think MPP Smith did too. How do we actually help you beyond this? Because this is something that's a start. I just wanted to leave it at that.

How much time do I have, Chair?

The Chair (Mr. Deepak Anand): You have two minutes and 30 seconds.

Mr. John Fraser: Two minutes and 30 seconds. If either Mr. Quinn or Mr. Wildeboer want to make a comment on that, I would be happy to hear them.

Mr. David Finch: Something that occurred to me, MPP Fraser—you're talking about other adjustments. In the process of assigning liability when you do get to a claim, there is the notion of negotiations between all of the counsels involved that they want to do a pre-court settlement.

I believe that may be at the root of the issue in Ontario: There is a cottage industry where those lawyers do well by taking \$20,000 from each of the underwriters and splitting that with the client—right, wrong or indifferent—but that's how they're paid and that's how they pay the client, whether it's frivolous or true. And it's all done under the

shotgun of trying to avoid going to the \$100,000 main court of Ontario. Perhaps we should have a Small Claims Court for this type of thing. You take that shotgun out of the equation that is being used as a bargaining chip, and they all play that shell game. That would be a future adjustment that could be considered.

Mr. John Fraser: Thank you very much.

The Chair (Mr. Deepak Anand): Thanks, MPP Fraser. That concludes the time allocated for the presentation.

Mr. Finch, Mr. Quinn and Mr. Wildeboer, thank you so much for your input. We appreciate it.

TANNER INSURANCE SERVICE LTD. AND
OTTAWA INSURANCE BROKERS
ASSOCIATION

MORISON INSURANCE BROKERS INC.

HUMBERVIEW SERVICES LTD.

The Chair (Mr. Deepak Anand): We have a caller through the phone. Can you please identify your names? We have one member who is actually making a phone call.

Ms. Jenny Desroches: That would be myself, Jenny Desroches.

The Chair (Mr. Deepak Anand): Okay. Thank you so much. Now we have Jenny Desroches, operations manager of Tanner Insurance Service and president of Ottawa Insurance Brokers Association; Mr. Fred Morison, principal broker, Morison Insurance Brokers Inc.; and Ms. Heather French, owner-operator of Humberview Services Ltd. Thank you so much for joining.

We will start the presentation with Ms. Jenny Desroches. Please state your name for Hansard. You have seven minutes. Thank you so much. Go ahead.

Ms. Jenny Desroches: My name is Jenny Desroches. I currently live in the Carleton riding and work for Tanner Insurance in the Ottawa South riding. I also serve as the current president of the Ottawa Insurance Brokers Association.

As a broker, our organization services the general public in the greater Ottawa area and beyond for their personal, auto, property as well as commercial insurance needs.

Snow removal contractors have experienced a higher frequency and severity of claims experience than other contractors tend to do. Most insurance companies have very limited or no appetite to offer liability insurance options. The insurers who offer terms charge high minimum premiums and carry larger deductibles, making it very challenging for contractors.

Larger companies with an excess of \$1 million in sales, with less than 20% of that coming from snow removal, have been favoured by insurance companies, and smaller, local contractors are being left to scrounge for coverage at a decent price. We have seen clients who have paid \$5,000 to \$20,000 in premiums suddenly jump to five to seven times more, and these clients have not had a change in operations revenue or in claims.

Farmers are beginning to be affected as some farm mutuals are no longer offering snow coverage. Many farmers opt to do some snow removal in the winter to hold them off until the spring. A recent case was seen where an insured's tractor backed into a car, and the third party sued for mental anguish 10 months later. This caused non-renewal on the policy. Many policies are being non-renewed by insurance companies unless the client stops doing snow removal, and many contractors have reluctantly chosen to do so as they can't afford to lose their insurance for their residual business.

1400

It's very difficult, or even, in some cases, impossible, for us as brokers to find insurance for some clients. The big issue is the transfer of liability from building owners to contractors. The contracts they sign absolve all liability to the building owner and pass it to the contractor. Slip-and-fall payouts are ridiculous, leaving the contractor wholly responsible, even when the claimant has also been negligent: as an example brought forward, wearing high heels during an ice storm.

Plaintiffs delay filing their lawsuit until just before the two-year statute of limitations period to make it more challenging and expensive for snow removal contractors and their insurers to defend the action. The passing of Bill 118 amendments reducing the limitation time to 10 days—and a prior caller did mention 30 days, which would be acceptable as well—for plaintiffs to file a claim will hopefully reduce the number of liability claims and minimize defence costs so insurers may start offering snow removal contractors more competitive options. This would invariably keep more contractors in business.

In times like these, we need to support local businesses, and in a city like Ottawa, which has seen some challenging winter weather, we need snow removal contractors active. As a business and a service industry, we need our clients to be charged fair insurance premiums and protected against unreasonable limitation periods.

Thank you for your time.

The Chair (Mr. Deepak Anand): Thank you so much. Moving on to Mr. Fred Morison, Morison Insurance Brokers Inc., you have seven minutes, sir, and I'll signal you one minute before your presentation ends so you can finish it in time. Go ahead.

Mr. Fred Morison: Hi. Can you hear me okay?

The Chair (Mr. Deepak Anand): Yes, we can.

Mr. Fred Morison: Okay, great. My name is Fred Morison. I'm calling from Morison Insurance. We have a number of offices: nine offices throughout southern Ontario, ranging from St. Catharines to Oakville to Hamilton and all the way south down to Delhi and Tillsonburg, small rural communities in southwestern Ontario.

I won't take up any more time than I actually have to. Much of what the prior caller from Ottawa said is exactly what we're experiencing in our area. As you can see from where our offices are, we represent customers in larger urban communities and customers in smaller, more rural communities. Our experience is the same as up in Ottawa. What that caller suggested makes perfect sense. I just want

to reiterate that what they're experiencing is not unique to that area. We have it down here as well.

As of this morning, we've had a third person call in who used to do snowplowing saying, "Okay, well, I'm not going to do that anymore." We can't find them the proper insurance, and they exited the industry and they're focusing on landscaping during the spring, summer and fall months. That's a choice that they've made, but not a choice that they've made willingly. What it does is it leaves a number of people without someone to plow their driveway, plow their walks and that sort of thing. It drives up the price, which is going to be borne by somebody, by all of us, and it's not going to end at a good spot.

As I said, what the caller had suggested before makes perfect sense. There has to be within the court system a certain expectation by society on the general public that it's wintertime, and you wear the proper shoes and that sort of thing. I was saying someone had mentioned going out in high heels or leather shoes or whatever: You're only looking for injury. So we do need to do something. We do need to do it quickly. It's unfair to those people who used to earn their living doing important work and work that we all need looked after, and the additional cost, when they can find it, is borne by all of us. That's not to say that those who are injured without any negligence on their part shouldn't be looked after, but basically, a lot of the insurance dollars, a lot of the insurance premiums spent go to members of the public, not to the injured individual.

That's really all I have to say. If someone else asks a question, I'm happy to answer, but that's really all I have to say at this stage.

The Chair (Mr. Deepak Anand): Thank you so much, Mr. Morison. After each presenter, there will be questions by all three members: government, official opposition and the independents.

Mr. Fred Morison: Okay. Thanks.

The Chair (Mr. Deepak Anand): Yes, please hold on there, sir.

At this point, I will ask Ms. Heather French to state your name and give your presentation. Ma'am, you have seven minutes.

Ms. Heather French: Hello, everyone. My name is Heather French. My husband and I are grain farmers in the town of Caledon, and in the winter we've operated a snow removal company for the past 15 years in our local hometown. We strongly support Bill 118. Having a limitation period of 10 days is a logical and fair method for everyone involved. We believe that it will create a level playing field for everyone.

Over the past two years, our insurance has gone from \$15,000 to \$112,000 this year due to a slip-and-fall. We had a slip-and-fall on January 10, 2018. We were not made aware of it until we received a letter on December 2, 2019. The business where it happened dealt with it internally, investigated it and found no fault in the claim. They dismissed it, and that's when we received the claim against us. The letter from the lawyer told us, "In anticipation of litigation, we request that you immediately undertake measures and steps to preserve any surveillance and photographs from the date of loss."

As a contractor, we keep daily weather logs and on-site visit logs. We've installed GPS in all of our tractors and equipment. However, when a claim is filed, the contractor should be notified immediately, or at least within a 10-day window, so that they can collect any video surveillance and check their dash cams and records to back up their service delivery. They should not be notified a year or two later. I have a hard time remembering what I did yesterday, let alone a year ago. A 10-day window would give all contractors and occupiers a fighting chance to support their case.

According to our insurance agent, there has been a change in the underwriting appetite for snow removal. Insurers are moving away from stand-alone snow removal. Snow is becoming harder and harder to place, and I'm not sure who's going to take on small to medium-sized snow companies moving forward. We know several local contractors that have gone out of business due to the rising insurance costs because of slip-and-falls.

Another point is the length of time to resolve the claim file. We had an adjuster come out and speak with us. We provided all of the requested information and he told us that there is no claim; he felt comfortable that we had done our due diligence. However, until the claim is settled, it remains on our file, therefore increasing our insurance costs and reducing the number of insurers that will even give us general liability, which was the case this year as a result of the \$112,000 premium.

For those reasons, we support Bill 118. I think it's a good idea. Thank you for your time.

The Chair (Mr. Deepak Anand): Thank you so much for your presentation. I really appreciate it, Ms. French.

At this time, I'll ask the member from the opposition to start the questions. Sir, you have seven and a half minutes. MPP West.

Mr. Jamie West: I'm going to start with Ms. French. I'm sorry; I was taking notes. Your insurance had gone up from \$15,000 to how much, again?

Ms. Heather French: It's \$112,000.

Mr. Jamie West: Holy cow!

Ms. Heather French: Yes.

Mr. Jamie West: Due to one slip-and-fall. And then you had said right near the end that they felt that you wouldn't be held liable in the end, but your rates are based on, basically, the claim being in until it's settled. Once it's settled, would you be expecting a rebate for—

Ms. Heather French: I asked the exact same question of our insurance agent. I said, "Will we get a rebate when you find we did our due diligence?" And he said no.

Mr. Jamie West: Right. I think this change will help, but it really feels like the insurance companies have the right to do whatever they want, which is a little bit frustrating.

I don't have many more questions for you, but thank you for participating and sharing the information. There seems to be a theme here that I hear again and again.

I want to move to the brokers, because I want to get the insurance point of view. I'll start with Mr. Morison from Morison Insurance.

Mr. Fred Morison: Yes?

Mr. Jamie West: One of the things you said in your deputation, Mr. Morison, was people in high-heeled shoes may take responsibility. What happens if I'm not wearing the proper footwear, if I'm wearing a tuxedo and the shoes that come with it—basically, you can barely stand on a dance floor with them—and I walk on a floor and I slip and fall, wouldn't that be thrown out as having nothing really to do with the conditions? Or what happens in that sort of court case, if I file a claim like that?

1410

Mr. Fred Morison: I'm not going to state how the insurance company is going to handle that sort of case. I'm not going to address something that's speculative at this stage. But even if it was ultimately thrown out, it's not going to be thrown out for a long time—maybe one year, two years, as with the last caller to speak—and they won't know for quite some time what the resolution is.

Even if it is thrown out by the courts as being frivolous or whatever, the insurance companies have already spent lots and lots of money getting to that stage. Those costs are going to be borne someplace and it's going to be reflected in that type of insurance. They're going to say, "You can be right all you want, but to get to 'right' we're going to end up spending hundreds of thousands of dollars defending our position," which really isn't the answer. Being right is great, but not if you have to spend thousands of dollars to get there.

Mr. Jamie West: Okay. That makes more sense to me. From your perspective, why are rates climbing so quickly? It seems like, from what we've heard today, that within the last maybe five years, but I think about three years, they've really taken off. What has happened to spur this along?

Mr. Fred Morison: Things often happen in a rush, I suppose. But there are a couple of things at play, from my standpoint. One is the domestic markets. If it's getting to a stage where the claims are just outstripping any sorts of reasonable premium increases that they can legitimately ask for or that people will pay, and they've got loss ratio issues on this class, they're going to say, "You know what? We don't know what the answer is, other than we could charge a lot more money, but that probably isn't going to be the answer, so we're just going to exit it."

It's not just domestics; I've got contacts at Lloyd's, and you can't find a syndicate there that will look at it. They say, "Well, in Canada, it snows, people fall down and then they sue and then they have to pay." Many of those suits, I suggest, are largely without merit. There are some that are terrible, there has been a real injury and it has not been the fault of the injured individual at all, but those are really quite few and far between. I could go into lots of examples that I have seen over my some 20-some-odd years in the industry. But companies aren't able to make a profit and so they exit.

Mr. Jamie West: Okay. For the ones that were with merit and you felt were reasonable, are 10 days enough for those people in those circumstances? I know you're not going to know them all off the top of your head, but are 10 days enough for somebody to recognize?

Mr. Fred Morison: Yes, I think that's more than enough time. If you've fallen over and you've been injured, maybe your back doesn't start to get sore for another day or two. But you don't need a year and a half to find out whether you've been injured; you know that you've tripped on the ice or slipped or what have you.

Despite the best efforts of property owners and snow removal contractors—we have it here at any number of our offices. They put down lots of salt, the snow is taken off the parking lot; they pile it up in the corner. Then the weather starts to warm up, the snow melts, and by 4:15, the sun is dying down a bit and it freezes. It's not as if the property owner or the snowplow contractors are being negligent, but the fact of the matter is that this is Canada, it is a winter, and if you're venturing out onto the ice and snow, whether you're going to something that you've got a tuxedo on or not, you need to wear the proper footwear. I don't think that's so outside what I would consider normal, or what anybody would consider normal practice.

The Chair (Mr. Deepak Anand): One minute.

Mr. Jamie West: I know a minute is not a lot of time to cover this, but are there any other solutions outside of this bill that we should look at as well, from your perspective, in the field that you're an expert in? We're here to listen to your expertise. Are there things we should be looking at as the government that would [*inaudible*] as well?

Mr. Fred Morison: Well, I just hearken back to one of your earlier comments that you made about the insurance companies. This is not an insurance industry problem. This is a court issue. Ten days is ample to decide if you're injured—whether you are or whether you aren't, you should be able to have decided that that's the case—and it would give the contractors or the property owners, what have you, some time to get that organized. Memories fade after a bit. They take lots of records and GPS and pictures and all that sort of thing, but the sooner that we know that there's an issue, the sooner that—

The Chair (Mr. Deepak Anand): Thank you, Mr. Morison. I appreciated your comments. We're now moving over to the government side.

Ms. Jenny Desroches, there will be a second round with the opposition asking questions.

MPP Barrett.

Ms. Jenny Desroches: Thank you.

The Chair (Mr. Deepak Anand): MPP Barrett, can you unmute yourself, sir. Thank you.

Mr. Toby Barrett: Am I coming through okay, Chair?

The Chair (Mr. Deepak Anand): Yes, amazingly.

Mr. Toby Barrett: Can people hear me?

The Chair (Mr. Deepak Anand): Yes.

Mr. Toby Barrett: Okay, good. It's been an interesting day. I commend Norm Miller for this proposed legislation. As my insurance broker has indicated, not everything can lie with legislation. Full disclosure: Fred Morison is a well-known broker in our area, and in the city as well.

You know, as legislators, oftentimes every problem that's presented before us—it's like if you have a hammer and if you see a nail, you use your hammer; we use

legislation. But Fred Morison has presented some other options. I think part of it relates to the fashion industry. I know those of us who have farms wear work boots. I don't get on my riding lawn mower without a pair of steel-toed work boots, actually. I'm hoping that perhaps through this legislation there is a caveat or an incentive, not to legislate prevention and information but to recognize that there is probably some more education required amongst consumers.

Chair, with your permission, I just want to hold up a prop. I don't know whether this shows up, but when I buy work boots, and when I buy boots, there's a retractable cleat at the bottom. I wear this in the winter. I'm trying to talk my wife into buying a pair of boots like this as well. It's saved me injuries a number of times.

My question to Mr. Morison: The IBAO, the Insurance Brokers Association of Ontario, for example, or the Insurance Bureau of Canada—is anybody in the industry doing anything in this—as you say, we're Canadians. Even down our way, Fred, we do get snow even though we're about as far [*inaudible*]. Is anything being done by the industry as far as education or awareness, as far as common sense—

Mr. Fred Morison: Not that I am aware of. I suppose you could say the industry should remind people that it's snowing out so put on your boots. But they do a great job at reminding people to put on snow tires and they give them a discount on the auto. This is my own opinion, but if this country is at a stage where we have to tell people this is Canada, it's winter, put on snow boots, we've got other problems.

I think it's the courts that really—instead of saying it's obviously the insurance company's issue, and the snowplow operator didn't get there on time, or the property owner didn't hire the right contractors to get the job done—which may happen on occasion; I'm not saying that in every case the snowplow operator did a great job or the property owner took the proper care of their property. But there needs to be an expectation, or courage by the courts to basically say, “Not every problem is someone else's to fix. You have to take responsibility for yourself.”

1420

You wouldn't go out chopping wood wearing open-toed sandals, but if you did, I'm not sure you'd get a lot of sympathy. If you're going out and it's snowing and it's February, you should be wearing the proper shoes. If we have to train people to do that, we've got other problems. I don't know of the insurance industry having an educational program reminding people of what they should wear going out in the snow.

Mr. Toby Barrett: I used to sit on the board of a local insurance company, one of the farm mutuals. We supported Crime Stoppers, fire safety initiatives, things like that. I concur with that idea that you've thrown out for this committee.

Chair, I would like to turn the floor over to one of my colleagues.

The Chair (Mr. Deepak Anand): MPP Pang.

Mr. Billy Pang: Mr. Chair, it's good that we have two different insurance brokers here today so they may speak the same language for insurance companies.

I want to follow up on MPP West's question, about the spike of the insurance fees. I have heard Mr. Morison's personal guess on why the fees changed so much. But did any one of you—the brokers—check with the insurance company that they have some official response for why there's so much adjustment in the insurance fees?

Mr. Fred Morison: I could make a comment, but perhaps the other insurance broker in the Ottawa area would like to speak first. Or would you like me to go now?

Mr. Billy Pang: Either one.

The Chair (Mr. Deepak Anand): Go ahead, sir.

Mr. Fred Morison: Okay. Maybe she's still muted.

I have to be careful how I phrase this. The insurance industry is a very, very competitive spot. If they are allowed to compete and there is an opportunity to make a profit, which is what we want them to do, we'll have lots of entrants, and the competition alone will keep the premiums as low as they absolutely can be. But when you have a situation where there's no reasonable way to underwrite the issue and claims drag on for years, whether the resolution is in favour of the insurance company or not, and you spend lots and lots of money on lawyers and all the rest of it, trying to defend yourself, and insurance companies do nothing but lose money, they decide to exit.

Larger snow removal contractors can usually afford higher premiums, afford higher deductibles. But I'm not sure having just a few large players in the industry—in any industry—is really the answer that we're looking for. The ones that are impacted most are the small operators, and they exit, and there's less choice and all the rest of it. They don't make a profit, so they don't—

The Chair (Mr. Deepak Anand): Thank you so much, Mr. Morison. The time is up.

It's time to move to MPP Fraser.

Mr. John Fraser: I'd like to thank all three presenters for their very clear and thoughtful presentations and taking the time out, because this is an important issue.

I've said a couple of times already that snow clearing—it's a public good, it's a public service, but it's not. We have winter, and we can't do business or do the things we do unless we have people doing this work.

When we look at this bill—some people have described it as a start; it's a bit of a blunt instrument. It doesn't guarantee that rates will moderate. I've heard comments from the industry that it's going to stabilize.

But having said that, I need to understand from a company's perspective. Say I'm a snowplow operator. Say I'm a small operator. I have a landscape business and I get 200 or 300 customers—I don't know if that's small—and I go out to be insured. What is the insurance company looking for from me? What are the criteria, what are the things that they need to know? And are they using that to assess risk? I'll start with Ms. Desroches, and then maybe Mr. Morison can respond as well.

The Chair (Mr. Deepak Anand): Ms. Jenny Desroches, please go ahead.

Interjection.

The Chair (Mr. Deepak Anand): Unmute yourself. Please unmute yourself.

Interjection.

The Chair (Mr. Deepak Anand): Ms. Desroches, go ahead. You can answer it, but you're muted. You have to unmute yourself.

Mr. Morison, can you go ahead? Meanwhile, we can figure it out.

Mr. Fred Morison: Sure. I'll just think about the answer here. From the underwriting standpoint, the insurance company would want to know—this won't be an exhaustive list, but it's just what's coming off the top of my head. They'll want to know that you've got experienced and trained truck operators. They'll want to know that your trucks are outfitted with the proper GPS equipment, equipment that will measure how much sand or salt that has been put onto the road or whatever, on top of the snowplowing on the roads. They'll want to know what kind of logs you're keeping about when you're at particular sites, how long you were there. They want pictures taken before you get there and pictures taken after. They want to know that you've collected weather information each day, multiple times per day, so that in the event of a claim a year later, we've got some information about what happened, what the weather situation was. Those are the things I can think of off the top of my head.

Basically, what it demonstrates is that (1) the operator, whether they're large or small, is a professional operator, and (2) in the event of a claim, they're able to demonstrate the extent that the operator did the job that they were supposed to do, what time they looked at the job and that sort of thing.

There might be some other information, and the broker from Ottawa could chime in as well.

The Chair (Mr. Deepak Anand): Ms. Jenny Desroches, can you please unmute and try to answer it?

Interjection.

The Chair (Mr. Deepak Anand): Unfortunately, we cannot hear you.

Mr. Fred Morison: If there's someone from the IBAO here they could send her a text or an email. Maybe she doesn't know that she's been asked to unmute.

Mr. John Fraser: That might be a good idea, and we could try in the second round too.

What I'm driving at is that I think the bill is an important bill, because we need to help the industry. We've got to make sure we get the right balance between the people who may have claims and the industry itself. But where do we go from here? We'll have to figure out the limitations, I think. We'll have some clause-by-clause on this, and we've heard different comments from different people, but where do we go from here?

The Chair (Mr. Deepak Anand): Thank you, Mr. Fraser. The time is up.

Mr. John Fraser: I'll go back to that on the next round.

The Chair (Mr. Deepak Anand): No problem.

We're moving over to the opposition. MPP West, over to you, sir.

Mr. Jamie West: I was hoping to ask Ms. Desroches some questions as well, so hopefully she can answer. I'll just start with one. One of the comments she made earlier was that rates were rising without claims, and I was trying to understand why that is. If you have a business with no claims, why are your rates climbing as well?

Just to see if we can get a mic check?

1430

Mr. Fred Morison: I can answer that if you want.

The Chair (Mr. Deepak Anand): MPP West, who is your question to?

Mr. Jamie West: Ms. Desroches. I can hand it over; I just want to give her the opportunity to be able to speak. Even if she just nods her head, "No, it's not working," or something would just—

The Chair (Mr. Deepak Anand): Ms. Jenny, you have to unmute yourself. I apologize; I don't know. Maybe disconnect and reconnect? Meanwhile, we can ask Mr. Morison.

Mr. Jamie West: Okay, I'll go on to Mr. Morison. Thank you, Chair.

Mr. Fred Morison: Am I on now?

Mr. Jamie West: Yes.

The Chair (Mr. Deepak Anand): Go ahead, Mr. Morison.

Mr. Fred Morison: I'm just sending a text to the IBAO to ask Jenny to unmute, but anyway, we'll try.

Your question was, if I have no claims, why are my premiums going up? That essentially, I would say, is the premiums of the many are to pay for the losses of the few. Even though I haven't had any claims, claims in that industry or claims in any industry are always rising, and they're rising tremendously in the snow removal industry, so the industry needs to collect more premiums to pay out ever-rising claims. Even though I didn't have a claim last year, it doesn't mean I might not have a claim this year or the year after. Or I may have already had the claim; I'm just not going to find out about it for 24 months less a day. So all of those thoughts go into the determination of what the rates should or shouldn't be.

Mr. Jamie West: I see. I don't know if you can answer this or not: From Ms. Desroches's deputation, she said that contracts are moving the risk to the contractor. Say it was my parking lot. Even if I'm liable for whatever reason, all of the risk is with the contractor doing the snow removal. If there was a way to move that back, would it help reduce rates or would it not matter anyway?

Mr. Fred Morison: When you say move it back, move it to where?

Ms. Jenny Desroches: I think—

Mr. Fred Morison: Sorry, she's there.

Ms. Jenny Desroches: I think I'm finally unmuted.

The Chair (Mr. Deepak Anand): Yes, yes, finally.

Ms. Jenny Desroches: If I had a dollar for every time I tried, we could pay for the issues that are happening.

We're circling around a bunch of different things, but yes, there should be some kind of joint liability. Really, what Fred attempted to say earlier, when we're trying to explain the rates that insurance companies are imposing—

what we're saying is that it really comes back to that reporting time. The closer and shorter that gap is between the occurrence and the time of reporting—it's really critical. The longer that you wait, the less opportunity to access those camera videos, because they tend to go away after 30 days or 60 days with different companies. If we can get that evidence—gathering the evidence as close to the occurrence as possible is going to help insurance companies to investigate and settle claims faster and at a lower cost, as well as reduce the situations of actually having to go to litigation.

[*Inaudible*] we're talking about is trying to prevent these long timelines to get to litigation. The faster and more efficient we can be that way, the better the data will be for insurance companies to really charge appropriate rates, because they have the right data in place. That helps a little bit with your question.

Mr. Jamie West: Yes, and I appreciate you working to try to come back and connect with us. It's so different now with all these virtual meetings.

If we had a magic bullet solution when we come out of this and we get the right amount of days and the legislation moves forward, how long before the insurance industry responds? How long would it be before some of our previous guests this morning who provide snow removal start seeing their rates coming down and they're able to get back into the business?

Ms. Jenny Desroches: That's certainly the magic question that has a magic answer, because none of us really have that. It does take time, no matter what product you're talking about, for it to cycle through and get through. I would say it's probably going to take a couple of years to really see a great impact, but it does go hand in hand with trying to reduce the rates, tackling the limitation period.

Mr. Jamie West: Okay. Then, just as a skeptic—and don't take this personally—I've never seen my insurance go down. Does it really happen? Do insurance rates go down?

Ms. Jenny Desroches: It does, it does, but you're right; the last several years there has been a trend upwards and it seems like, whether we're talking about auto insurance or commercial insurance or home insurance, things are going up. But I think it really comes down to having the right data to support why those are going up, and that's what was being spoken about before, to explain really specifically why they're going up and not just have these arbitrary increases that we can't explain to our clients.

Mr. Jamie West: Okay. Then just with the remaining time that we have, are there other solutions outside of this bill—we won't debate them, but just to give us ideas for future private members' bills—that can help address this? Because it's going to affect many of our ridings, as well. This will be the start, but what else should we be looking at that would help reduce insurance rates for this industry?

The Chair (Mr. Deepak Anand): You have one minute.

I would appreciate members asking specifically who the question is for so that we don't have to speculate.

Mr. Jamie West: Oh, I'm sorry. This is for Ms. Desroches as well. Just if there's any other—

Ms. Jenny Desroches: For snow removal insurance, in particular, other than—there is an education piece, but it's hard to give you a black-and-white answer right at this moment of what would specifically help. Somebody else did mention that it is a question for insurance companies, specifically, on how and why they derive the rates they do and what would help them to decrease that. But I think data and knowledge would help greatly.

Mr. Jamie West: Okay. Thank you for that. The reason I ask is that you're more of an expert than I am in the field. It's not that you would have the magic-bullet solution; it's just that if we don't ask, we'd never have the opportunity to hear it. Thank you, again.

I think I have about 20 seconds, so I'll just concede my time, Chair.

The Chair (Mr. Deepak Anand): Thank you so much.

I know each one of you is very passionate, but I would appreciate and I would request that any member asking a question please specify who that question is to so that the comm team doesn't have to struggle or speculate. I appreciate that. Thank you so much.

At this time, I will ask the government members. You have seven and a half minutes. Who would like to ask? I see MPP Smith. MPP Smith, go ahead, sir.

Mr. Dave Smith: Thanks, Chair. I'm just going to follow up on what MPP Barrett had said when he asked about if the insurance industry should embark on an education campaign about what people should be wearing when they go out in the winter. I'm going to direct it to Jenny.

But before I do, I want to make an interesting comment. I own two vehicles, a 2018 Nissan Frontier and a 1965 Corvair. In the owner's manual for my Corvair, it gives me instructions on how to sync the four carburetors. In the owner's manual for my Nissan Frontier, it says don't drink the contents of the battery. That, to me, tells me someone actually tried to drink what was in the battery and sued, and then insurance companies advised Nissan that they needed to put this in their owner's manual.

Should it really be the responsibility of the insurance company to try and educate people on common sense, that if you go out in the snow, it's slippery? Is that something that, really, you should be forced to do? That's for Jenny, sorry.

Ms. Jenny Desroches: Well, we've always said you can't teach common sense. So I don't know if we're going to be here to debate that, but I think what we're trying to say is that when we can get to that evidence of showing what an individual was doing—or perhaps, because we're focusing on what they might be wearing—that contributed to the fact that they had a slip-and-fall in the first place, that can then assist to litigate those claims, and not look at them a year and a half later and suddenly force it on the insurance company to have to deal with the claim, or down to the contractor, when they did everything possible they could but don't have access to those videos or the proof to

show that they did their due diligence. That's really what we're talking about.

Mr. Dave Smith: I know MPP Fraser has mentioned this a number of times, about the timelines and if 10 days is long enough. I recognize that you have a vested interest in making sure that a claim comes forward as quickly as possible. What do you think would be a realistic timeline for people to keep those documents that they could pull back and show what the situation was like on that? Is 10 days enough? Should it be 30 days? Should it be 90 days? Is two years far too long? Again, that's for Jenny.

1440

Ms. Jenny Desroches: Okay, thank you. Two years is far too long. Ten days is reasonable for an individual to report the incident. I think, from hearing from contractors and building owners alike, often they keep video on file for, I believe, 30 to 60 days. In a prior session, someone mentioned 30 days. I don't think 30 days is unreasonable, but as soon as we get beyond that 60-day mark, we get further and further away from the ability to retrieve those videos, and if we can't retrieve those videos, that could make a huge difference in that settlement of that claim. So I would say if you're going to look at a different timeline beyond 10 days, I don't think 30 days is unreasonable at all.

Mr. Dave Smith: What we're trying to do is we're trying to avoid the malicious lawsuits. Anyone who has a legitimate [*inaudible*] where they have been injured, or something has happened as a result of negligence—you still need to have the ability to come forward with a lawsuit. We're trying to stop those where someone was looking for a windfall, simply because. Are there other measures that you think we should be taking a look at, then? Again for Jenny. Just because it was so hard to get you off of mute, I want to get—

Ms. Jenny Desroches: I appreciate that. I think, obviously, if there's a serious injury, death being the worst, or something that would impact the ability of someone to report, that's got to be taken into consideration. But I think you really need to look at why it is that there have been instances that have taken two years, just shy of that limitation period. Why has it taken that time, and are they actual reasonable reasons to do so? I think you've kind of got to go backwards and see what's happening there to then determine what is required beyond that limitation period. But for your general slips and falls and the minor situations that are going to litigation and really shouldn't be, 10 to 30 days is more than enough of a reporting timeline.

Mr. Dave Smith: Thank you for that.

Mr. Chair, how much time do I have left?

The Chair (Mr. Deepak Anand): We have about two minutes—a little shy of two minutes.

Mr. Dave Smith: I'm going to direct my next one, then, to Heather, if I could, please. As an operator, why stay in the business? It's getting this difficult. There's the chance of lawsuits. It's tough to get insurance. Why stay in the business?

Ms. Heather French: Thank you for the question. That is a really good question, and it's something that we

contemplated this year when we saw our premiums at \$112,000. As I mentioned, my husband and I are grain farmers. We have eight employees on our farm, and snowplowing is a way to keep our employees around for the entire season. It gives them work.

As I said, we work in the local community, so we do the majority of businesses and that. They're our neighbours and our friends; we go to church with them. We've been doing this for 50 years now. It's what we do; it's our livelihood. But believe me, it's—we have contracts that we're two years out into, so we feel obligated. We have a contract with them, so hence we're going to pay it. We've had to up some of our costs to the business owners. This year, obviously, is a terrible year to be doing it, with COVID and all. But that's why we do it, to keep our employees around, to give them year-round work, and to keep everyone in the workforce.

If I might say one more thing, when you're asking the insurance agents—one of the things too: Education, I think, is key, because people are hearing on the news, "You don't pay unless we win." That is ingrained in people's minds. You turn on the news and it's the first thing you hear: "Have you had a slip-and-fall? You don't pay unless we win." People are hearing that and—I don't know. Education from the insurance side might help prevent some of these claims. I'm not sure.

Mr. Dave Smith: Okay.

The Chair (Mr. Deepak Anand): Thank you so much. That concludes the time. Over to MPP Fraser. You have four and a half minutes, sir.

Mr. John Fraser: I'm going to direct my questions to Ms. Desroches.

I think where I left off last time around is, where do we go from here? I'm pleased to hear that there's an understanding and the 10 days could be reasonable but it's not—no inflexibility around that, because we have to strike the right balance. But even when we strike the right balance, what's the next thing? I don't think this is going to necessarily make it—it's not the last thing that we need to do to make sure that we have a very viable snow removal industry in Ontario, which, again, is a public good. Would you like to comment on that?

Ms. Jenny Desroches: I'm not sure if I have something to say beyond the 10 days, at least at this point. It's a starting point. It goes hand in hand with having discussions with insurance companies and how that's going to assist them to reduce the claims they do pay out.

Also, it goes to Heather's comment about commercials and seeing, "You don't pay unless we get something out of it." That's coming from the legal side. That's coming from the lawyer's side. That's not coming from a viable settlement of a claim through an insurance company.

Just to make it clear again: As brokers, we don't represent the insurance companies; we represent our clients, the general public. So I'm not here to tout them.

If they are doing everything reasonable and needed to settle that claim, it's that litigation side that is really causing an issue.

So I would say the next steps would be, these types of conversations have to be taken to the insurance companies as well—and understanding where they're getting their rates from and what's going to help to reduce them, as well as the litigation side.

Mr. John Fraser: It seems that there is an industry incentivizing personal injury claims, and that's part of the root of what the challenge is here, from what we've been hearing in testimony.

We talked about education—that you should wear winter clothing and proper winter boots. In Ontario, I have snow tires on both of my cars every year, and I get a small discount for that, but there are tons of people who still drive around with all-seasons. I still underwrite their risk, which is interesting [*inaudible*] this and they have this other challenge that I think creates a problem in the industry for everybody. I don't know if you have a comment on that.

Ms. Jenny Desroches: Fred could also add to this; I don't want to monopolize the broker time here.

I don't think there should be a winter tire discount. That's my personal opinion on it. I believe winter tires should be mandated across the board, directly from the government. The issue that the discount has caused is, it's so minimal that—people think that by putting tires on they're actually going to save the cost of the tires themselves, and that's never going to happen. We can't do that. It's not feasible. So I think we take away the discount altogether. It's not about reducing the insurance; it's about making sure that there's safety in place, and that will reduce claims, which will invariably reduce the cost of insurance.

The Chair (Mr. Deepak Anand): That concludes the time. Thank you so much, Ms. Desroches, Mr. Morison and Ms. French, for your input.

At this time, I want to ask the committee members—we are a little bit ahead of time. We have about 10 minutes. So just by raising your hand—what would you prefer? Taking a break for 10 minutes? All those in favour of breaking? All right. I actually have a majority already in place. Good.

Let's reconnect at 3 p.m. Thanks for your co-operation.

The committee recessed from 1450 to 1501.

MR. BRIAN ERWIN

MR. TREVOR GARNER

MR. JOSEPH CARNEVALE

The Chair (Mr. Deepak Anand): Good afternoon, everybody, and thank you for joining back. Those who are joining for the first time, thank you for joining us. We are going through the committee meeting for Bill 118, An Act to amend the Occupiers' Liability Act.

I see Mr. Brian Erwin, Mr. Trevor Garner and Mr. Joseph Carnevale. Welcome to the committee. You will have seven minutes for your presentation. Please state your name for Hansard, and you may begin after I finish. I will signal to you approximately one minute before your

time wraps up so that you can wrap up your presentation in a timely manner, starting with Mr. Brian Erwin.

Mr. Brian Erwin: Good afternoon, all. Thank you for giving me the opportunity to speak before your committee. My name is Brian Erwin. I'm an independent insurance broker at D.S. Currey and Son Insurance Brokers on Bank Street in Ottawa. I'm also on the board of directors for the Insurance Brokers Association of Ontario, representing territory 13, which is Ottawa and the upper Ottawa Valley. I have been an insurance broker for 22 years.

Through the Currey office, we primarily provide personal, automobile and property insurance, with a mix of small commercial accounts. We have a few snowplowing and removal accounts; the percentage of this exposure is less than 20% of their annual revenue. Over the past three years, their annual premiums have increased exponentially and have forced them to sell their client list to a bigger snowplowing company or cease snowplowing and sanding operations altogether. There are very few insurance companies that will offer coverage or even a quote for a small businessperson in snowplowing and ice sanding operations.

As the territory director, I reached out to other insurance brokers, asking for their input on industry conditions in our territory and the ability for Ottawa and area brokers to place commercial insurance coverage for small, family-owned companies that fall into this category. They have very similar stories of small business clients that cannot find affordable insurance coverage or options at all.

Two weeks ago, our office had a client forward a notice of claim that the plaintiff slipped in our client's parking lot and fell, allegedly causing facial and dental damage. As a result, the plaintiff is now suing for anxiety. The slip-and-fall occurred on October 18, 2018; the statement of claim was served on our client on October 15, 2020. They're looking for \$150,000. The evidence is difficult to argue or defend, two-plus years down the road.

The amendments to Bill 118 would help insurance companies evaluate this risk quicker, settle claims faster and reduce the cost of claims, and would potentially open this class of business up to more insurance companies. Change is needed to make the premiums available and competitive again. We're looking for your support on this position. Thank you.

The Chair (Mr. Deepak Anand): Thank you so much.

Next is Mr. Trevor Garner. Sir, you have seven minutes. Go ahead and kindly unmute yourself. Thanks so much.

Mr. Trevor Garner: Thank you for letting me speak on behalf of this bill. My name is Trevor Garner. I'm the president of Landscape Plus Inc. We are a landscape contractor located in the Kitchener-Waterloo and Guelph area. We employ approximately 28 full-time employees and have been in the snow and ice business since 2002.

From 2002 to 2015, we did not have any claims associated with our snow and ice business. But since that time, this issue has caused some severe distress on our organization in obtaining insurance, which Brian just

spoke about. In 2017, we were notified on October 1 that Economical Insurance was no longer going to insure us. We reached out to our broker at that time, and I believe the number was 19 insurance companies that they reached out to, and none of them were interested in even providing a quote. Our contracts, many of which are 12 months and year-round, were starting in 45 days, so it was a very, very stressful part of our time finding insurance to service these contracts and not let them down. One of our main contracts is providing snow and ice control for all the region of Waterloo's bus stops. We're kind of a critical business to make sure that people can get on and off the bus in a safe manner.

Snow represents about a third of our business revenue-wise, so it is a very important aspect of what we do. We were able to find insurance in 2018 with a company called Lloyd's of London. Our insurance premium went from \$16,191 per year to \$28,742. After a year with Lloyd's of London, we were notified that they were no longer interested in insuring our snow business.

We're a member of Landscape Ontario and I sit on the board of Landscape Ontario.

We went through a broker named Marsh with a company called AIG. Our insurance premium deductible went up to \$5,000 and our premium went up to \$38,921. We were informed that AIG is no longer interested in providing insurance for the snow business, so this year, through Marsh, we found insurance with Allianz and our premium went from \$38,921 to \$92,511. That's an increase last year of \$53,590.

It's not only finding insurance and premiums going through the roof; we've also had difficulty with the types of contracts we're signing. As I mentioned, Landscape Ontario came up with a contract that removes words like, "Keep site safe at all times," which is just impossible in the winter months, and tries to remove clauses like, "hold harmless," that keeps us responsible for everything.

1510

Municipalities and large corporations, we found in the last year, do not want to adapt and sign our Landscape Ontario version of contracts. They have insisted on using their contracts, and our current insurance provider has had a situation where they don't want any amendments to any contracts whatsoever. So, if we can't come to an agreement on a contract, we've had to forgo bidding on some projects this year as well, as well as a client of mine for 17 years I've had to say no to, because we've been using the same contract for 17 years and we cannot find insurance for this particular contract.

While MPP Miller's bill is not a silver bullet for us in this situation, we believe it is a step in the right direction. Hopefully, it keeps claims and deductibles in our fiscal year of business so that we're not surprised by expenses two years down the road and large deductibles. Ideally, it will reduce frivolous claims. And hopefully, in the end, it will eliminate the need for insurance to factor in unpaid premiums that they don't know about into our yearly premiums. So, as I mentioned, although it's not a silver

bullet, we believe it's definitely a step in the right direction. Thank you.

The Chair (Mr. Deepak Anand): Thank you so much.

Over to Mr. Joseph Carnevale for your presentation. You have seven minutes, sir. Go ahead.

Mr. Joseph Carnevale: Thank you very much. I'm Joseph Carnevale. I am also the president of the Insurance Brokers Association of Ontario. First, let me say thank you for the opportunity to speak here today. It is a pleasure to be with such distinguished members of provincial Parliament and overlooking such an amazing opportunity to help consumers.

Like Brian, I am a broker. Our office is in Vaughan. We've been around since 1963. We represent predominantly the greater Toronto area, stretching from Burlington to Pickering and north to Barrie. We're recently opened an office in Ottawa—sorry, Brian—and so we do represent a good number of people in the personal lines and commercial lines sectors.

Where I am a little bit unique in this situation is, like Trevor, I actually grew up in a landscape business. My parents had a landscape company for over 25 years. I went on to buy their company and actually be a landscaper and snow removal contractor for five years, so I can speak to some of the personal effects on both sides of the fence, as a broker looking for insurance for landscapers and also as a landscaper myself who had to try to find insurance, and all the situations you find yourself in when you're trying to make a living and do good work and all these other things happen and get in your way.

I would like to also say that this is exactly what Trevor had said: It's not the silver bullet. It's not the end all and be all of amendments, but it is an amazing opportunity to right a wrong. It's an amazing opportunity to make things better, and make things better for not just contractors; not just landlords who find themselves having to be in the middle of all this as well, not being able to find a landscaper who can do the work for them, to remove the snow, who is properly insured; and the insurance companies that can't insure them as well; but ultimately, consumers. Who is affected most when snow removal contractors have to pay higher premiums, if they can get insurance? It's their clients, and their clients find some way to put that back on the consumers they represent.

So, ultimately what we're doing here is making it work, making the right environment to be able to support businesses to operate effectively at a fair and reasonable price, which ultimately translates into a great consumer experience for everyone.

The current situation, as Brian alluded to, is any landscape and snow removal contractor that's greater than \$1 million of volume, which are really the big guys—they're having their increases, but they're still getting insurance. Really, what this is doing is impacting all the smaller guys: the family-run businesses, the small operators who do this to supplement their income when they're not working in the winter. You're taking them out of the mix by not doing something to make a better environment.

Where this amendment to the bill does that is it helps insurance companies look at this in a meaningful way and say, "Look, if I know that in the first 10 days I know what my risk is going forward, I have greater comfort in knowing that I can offer renewal, and I can price that model in." Municipalities already do it. As per the bill, it's not that people cannot sue when they're injured. The whole point here is people who are legitimately injured have the opportunity to get what they need to get better. That's how it works.

We're trying to minimize and eliminate the ones that are just frivolous lawsuits. We all know they exist. Nothing has changed in Ontario's weather patterns that makes it so there are many more people falling outside or on properties. It's about an opportunity for someone thinking they're going to get rich. They think, "Wow, I fell. My nephew or my cousin says, 'Hey, I know someone, and we can get you a really good dollar on this fall.'"

So I think this is really going towards, how do you eliminate the people who have frivolous claims, and how do you really support the ones who have legitimate claims and get them the support they need, and how can we make businesses survive in this environment?

I would like to conclude by saying that I think it's an excellent step. Again, it won't solve everything, but it really will go in the right direction in getting a better product for snow removal contractors, helping landlords, and ultimately helping consumers get what they need.

Thank you again for this opportunity.

The Chair (Mr. Deepak Anand): Thank you so much.

At this time, there are going to be questions. We're starting with the government this time. MPP Miller.

Mr. Norman Miller: Thank you all for excellent presentations.

Brian, you talked about how, in the last three years, prices have gone up exponentially, and that only big companies—I've heard that before—that do a million dollars' worth of business and have 20% in snow removal are able to get insurance. Is that because it spreads the risk out? I assume that the small companies probably do an as good or better job of actual snow removal. I can't imagine that that's the reason the insurance companies will insure the big ones but not the small ones. Have you got an explanation for that?

Mr. Brian Erwin: I'm not the insurance company doing the underwriting, but what I've been told is that their claims with the smaller players are greater than with the bigger players. I don't know the rationale for that—whether it's training, education, experience.

The companies we had—they were paying \$2,200; one of them went to \$7,800. For a small guy supplementing his income, that's just unaffordable. And it was similar for the other client who had the same situation.

If I were to guess at why the insurance company would rate for that, it's because of the experience of the smaller player. They don't pay the bigger bucks for someone who has the years of experience. Someone who has a million dollars in snow removal—they can pay for more experience. That's my guess.

Mr. Norman Miller: There has been some discussion today about, is 10 days too short to be able to give notice? I've spoken to trial lawyers who would like no more than a year around that. But there have been people in the business who say 30 days is realistic.

Do you have any thoughts about the notice period and what is still fair but will actually make a difference in insurance costs?

Mr. Brian Erwin: I feel that 10 days is too short, but I feel that 30 days is adequate. In my opinion, 30 to 60 days could enable someone to find a lawyer, if they're going to make a claim, bring their information to the lawyer, notify the person who has the insurance so they can get the tape from their cameras wherever they provided the service and review the tape. If it's a frivolous claim, it's gone and off the books and it's not rateable for the client, so the client has better peace of mind knowing that it's not going to happen.

Mr. Norman Miller: You talked about how things have to happen faster. If you're shopping for insurance as a company, switching companies, and you have six suits hanging over you that take years to settle, that's a lot of uncertainty. I can see why an insurance company would be nervous about that.

Trevor, you said you employ 28 people full-time. I would have thought, from my perspective, that's a fairly big company. Are you in the big company or small company or medium company bracket?

Mr. Trevor Garner: I guess in the snow and ice business, it's a medium-size company.

To your question you asked Brian earlier: With us being able to be insured—we have GPS in all of our trucks. We have some kind of top-edge software tracking what we did. We calibrate all of our salters. I think that might make us a little bit more—a better appetite for the insurance companies, compared to, as Brian mentioned, the small guy. However, I'm not a big enough person that a \$53,590 increase in my premium in one year isn't a dramatic effect to me.

1520

Mr. Norman Miller: Going from what I saw, you started out at \$16,100 in 2018, and you're at \$92,511 now. That's a huge increase, and obviously, that must get passed on to the customer, so people must be paying a lot more for snow removal, whether it's public or private. You did the bus stops in Waterloo, I think you said. So obviously, it's an extra cost for everybody.

Mr. Trevor Garner: It is, but I'm in a three-year contract for the bus stop. So unfortunately, that comes out of my pocket. We are able to pass it on to certain people, but a lot of your snow and ice, especially with a municipality, is a three-year contract.

Mr. Norman Miller: And eventually though, in the next contract, you're going to probably have to make it up, or you're not in business if you're not making money.

Mr. Trevor Garner: You've got it; yes.

Mr. Norman Miller: I think it was Landscape Ontario earlier in the day who talked about looking at other steps that could be taken. They talked about a state that had

accreditation, and if you have accreditation, you're protected. To me, that sounds like a reasonable sort of strategy going forward. Have you any thoughts about that, or have you looked into that at all?

Mr. Trevor Garner: Yes. I believe they might be speaking about a New Hampshire model. It just gives a state of mind that when we do our jobs, shall we say, it just restricts our—if we've not been to a property in three days and someone slips and falls on it, I would feel that we were negligent. But our current mandate is to touch on every property within six hours of the final snowfall. I think we're providing a pretty high level of service. We are doing snow patrol spot checks, doing some minimal salting. We're doing constant things with Smart About Salt, trying to reduce our salt impact on the environment; however, salt is the number one thing to prevent people from slipping and falling. So sometimes we're caught in the middle, but I believe definitely a standard of care that could be established like they've done down in New Hampshire does make a lot of sense to me and I think would be the next step in the right direction for living in this insurance crisis.

Mr. Norman Miller: Thanks. I know my colleagues want to ask questions, so I'll move to Joseph. Joseph, you talked about frivolous lawsuits.

The Chair (Mr. Deepak Anand): We have 30 seconds left, MPP Miller.

Mr. Norman Miller: Sorry; how much time?

The Chair (Mr. Deepak Anand): Thirty seconds.

Mr. Norman Miller: Just quickly, Joseph: We've heard a lot of people talking about advertising by lawyers: "You don't pay unless we win." Should there be restrictions on that? I drive up and down Highways 11 and 400 and see signs everywhere. Should there be some restrictions?

Mr. Joseph Carnevale: Thank you for that question. I would put in a similar vein that if you offered a free lottery ticket to everyone, who would say no? But if there's a cost to the ticket, people think twice. Similarly, if people can sue—

The Chair (Mr. Deepak Anand): Thank you so much. That concludes the time. You will have the opportunity in the next round. Over to the opposition, MPP West.

Mr. Jamie West: I'll allow Mr. Carnevale to finish answering the question, because I think it was important. To Joseph Carnevale, Chair.

Mr. Joseph Carnevale: Thank you very much. So the answer is, yes, I think if you can restrict scenarios—here's the beautiful part: You're asking for feedback from all of us. We really appreciate that, and you get to put the formula together of what's going to really make sense at the end of the day. I can tell you from my perspective, again, from a broker and a landscape perspective, any time you give an opportunity for someone to spend two years' worth of time minus a day to think about all the wonderful things that could happen if they go to a lawyer or a paralegal or someone who could then launch something—I promise you, they're all assured, "You're going to get something out of this." Because at some point, the cost to

defend the claim is more expensive than paying the person out in the first place. As long as you create that environment, it's an incentive for people to jump in and file a lawsuit whether there's merit to it or not, and unfortunately, it has become a numbers game. That's why it's a scenario where it just forces people to enter into it.

Mr. Jamie West: Okay. Thank you. I was just making notes about that.

Again, Chair, to Mr. Carnevale: You're in a unique position. You talked about being in the landscaping and snow removal industry and now an insurance broker. What are we missing? I know this bill is sort of limited in what we're looking at, but what do you see that would be able to help both the insurance industry and help these snow removal companies? I'm concerned that we're going to lose them and we'll have bigger issues moving on.

Mr. Joseph Carnevale: That's a great question. Thank you. Again, nothing has changed the environment, nothing has changed that all of a sudden, there's a lot more ice and there are a lot more slips and falls inside plazas and malls and offices. What's changed, I think—and sorry to bring this into the mix here, but you've done a lot of good work: You've had different governments over time trying to fix the auto insurance product. But what's happened is there's an entire industry that survives, that feeds off of injury and feeds off of personal injury, whether it's an auto accident or these types of events. What happens is the more pressure you apply on the auto side—they're squeezing out into different areas and finding other opportunities to develop their business. I don't think the circumstances have changed, other than the people looking to make a living in this industry of personal injury have really ramped up their efforts in this one area.

Mr. Jamie West: Just for clarity, and I know it was asked earlier to the other broker, it seems that only businesses that have more than a million dollars' worth of resources can get insurance. Are these larger companies seeing the same increases in rates, or is it different for a larger million-dollar-plus company? This is also to—

Mr. Joseph Carnevale: Okay, sure. Thank you. The answer is yes. The best case scenario is everyone is seeing drastic increases; the worst case scenario is you're seeing many small businesses just not getting renewals at all and just not able to operate.

Mr. Jamie West: Thank you, Joseph.

Can I go to Trevor Garner, please? Mr. Garner, I was trying to take notes at the same time. You talked about your rates increasing from Lloyd's of London. Can you let me know, what were the rates for Lloyd's of London, then AIG and now with Allianz as well, just so I can have clear notes?

Mr. Trevor Garner: Economical was \$16,191 in 2017; Lloyd's of London was \$28,742; AIG was \$38,921; and this year, we're at \$92,511.

Mr. Jamie West: Wow. That's a massive increase. And you were talking earlier, when MPP Miller was talking to you, about a municipal contract being locked in for three years. When your rates are increasing that much, it's a huge amount for you to eat as the contractor, and it

probably is going to be a shock for the municipality when they go to renew, that those costs are going to have to be transferred over, which is difficult as well.

Is there anything you see that we should be doing as well to improve your conditions for work or just your ability to compete with the million-dollar companies? I'm a big fan of smaller businesses, and I want to make sure you're able to compete.

Mr. Trevor Garner: Yes, it's a tough one. I think I'd have to agree with Brian and Joseph. I wanted to add another comment, but I don't know if it's been brought up. Video cameras and frivolous claims have been a major thing, so extending this to 30 days, but not past 60, that typically would allow—the landlord's cameras kind of stop the footage. So that's a very important point there.

To me, it is our claims, and for myself, we've had, in the last five years, I believe, six slip-and-fall claims. I have had zero input on any of them. We've provided all of our GPS and all of our documents, but in each case, the insurance company typically—and Brian and Joseph would probably be better to talk about this, but I've heard the number of \$100,000 minimum to go to court. So anything below \$100,000, they tend to just pay out and make these claims go away.

I think when the insurance is having that kind of attitude towards it, someone is going to get something for slipping and falling. I don't know how to change that, but again, there has to be, I think, some standardization. In a freezing rainstorm, for example, it's going to be slippery. We do live in Canada. The temperature goes above and below 0 degrees. Wear proper footwear.

1530

The Chair (Mr. Deepak Anand): One minute.

Mr. Trevor Garner: A lot of these things can help to reduce—it is about the amount of claims. To me, I don't know how we change that, but there has got to be some more—if someone's hurt in a slip-and-fall, we want the insurance to take care of them; I'm not saying that. But when somebody just slips—we've seen some of them on the video cameras, and they get up right after and turn around and make sure no one saw them, right? So I think it's getting rid of the frivolous claims, and then this will be more appealing to the insurance.

Mr. Jamie West: Thank you, Mr. Garner.

I think I'm out of time, Chair.

The Chair (Mr. Deepak Anand): Thank you so much. Over to MPP Fraser. Go ahead, sir.

Mr. John Fraser: I'd like to say thank you to Mr. Erwin, Mr. Garner and Mr. Carnevale for taking the time to present today and for the very clear and concise presentations that you made.

I'll just say hello to Mr. Erwin. Hi, Brian. It's nice to see you again. We're probably relatively close to each other, even though we're on Zoom.

Mr. Brian Erwin: We are, Mr. Fraser.

Mr. John Fraser: Not too far away—I'm at home, not my office; I was in my office.

I would like to go through everyone in order of presentation about a couple of things going forward from

here. I'm glad to hear that 30 days is something that's reasonable in terms of the evidence that's there. We're trying to balance it, to ensure that people have access to justice, because that's critical. Even 10 days seems a bit short to me, given the circumstances that people can find themselves in.

But I guess my question is twofold. Is anybody doing anything else? I know we've heard about New Hampshire, but is anybody doing anything in Canada that addresses this issue? Because this can't be just Ontario; I'm sure it affects Quebec as well. Number two: If this bill should pass, which I believe it will, what's the next most important thing that we have to do? It's a twofold question: Is anybody doing anything different in Canada, and what's the most important thing for us to do next?

Mr. Brian Erwin: I'm going to defer to Joseph. With his position with the IBAO, he would have a broader vision of what Canada would see, with his position.

Mr. John Fraser: Okay. Thanks. I should have started there.

Mr. Joseph Carnevale: It's a good question. Thanks a lot, Brian.

The honest truth is that Ontario is a much more litigious province than the other provinces in Canada. I think many of our practices are following the American model—and I say unfortunately, because it is unfortunate. I'm not aware of any other instances in Canada where it's to this extent. Again, it goes back to my previous comments: Nothing has really changed other than the number of lawsuits that get dropped all the time, two days before the two-year period ends.

To everyone's point, in many cases, the contractor, the employee driving the snowplow, is no longer employed by that company. It's a very transient workforce, unfortunately. The superintendent of the building is no longer around to speak personally to what they saw or what they noticed for the day.

I've had many cases where many of my clients' landlords in particular—we have a regimen where someone slips and falls and they present them immediately with a document that they fill out in their home in their own handwriting, and they will say nine times out of 10, "I was wearing the wrong shoes for the weather. I should have been wearing boots. Instead, I was wearing high heels. I slipped and I fell. I'm fine, no injuries. Everything's good." Then, two years later minus a day, you get a lawsuit because they had this damage or they had that damage. It's almost like there's a script for this. It happens every single time. So not to repeat, but that's essentially what we're facing here. It's just the onslaught of continuous frivolous lawsuits.

The Chair (Mr. Deepak Anand): One minute.

Mr. John Fraser: I don't know if Mr. Garner wants to add anything in there.

Mr. Trevor Garner: Yes, I believe I'm going to second Joseph. It does seem—we just received one, a client. We do the litter pickup. We're not even responsible for the snow and ice at this property, and we've been included on the lawsuit, which came in about three days

before the two years came up. I agree that there needs to be—if somebody slips and falls and people were negligent, there has to be some level of care taken to them. But footwear is a huge thing. A storm is coming and they're telling you to stay inside all over the radio, and the Weather Network says please be careful—

The Chair (Mr. Deepak Anand): Thank you so much, Mr. Garner. That concludes the time. I appreciate it.

Now, over to the government members. MPP Crawford.

Mr. Stephen Crawford: Thank you to the witnesses for presenting today. My question is for Trevor, I guess, from Landscape Plus. Has the increased cost of insurance affected your customers, in terms of their pricing?

Mr. Trevor Garner: Yes, it has. We have been forced to, unfortunately—and it's something we're getting a lot of pushback from. I'm not sure how many people would know, but about two years ago, we had a salt shortage crisis which caused the price of salt to just about double, so we went back to our clients about a salt increase, and now with the insurance hike, it definitely has affected a lot of our landlords. I'm not sure if it was Brian or Joseph who mentioned it, especially with—we do a lot of commercial care, and these costs get passed right back to the tenants. The landlord just moves that increase back to the tenants of the plaza for whatever—

Mr. Stephen Crawford: Right. Over the last couple of years, what percentage increase—it's a generalization; I know every client is different. But generally in the industry, how much do you think as a percentage the costs of snow removal and salting has gone up?

Mr. Trevor Garner: Thirty-five per cent. I can say that pretty confidently because our insurance calculated out to be about a 17% increase, and the ice was just under that a couple of years ago with the salt prices. So, yes, I would say about a 35% increase. Unfortunately, we haven't been able to pass that to all of our customers, so we have been—I know my budget projections are down this year from what we did last year due to the fact that we couldn't push the cost increase onto all of our clients, because we were in three-years.

Mr. Stephen Crawford: Do you find that there are some competitors of yours that maybe are not in the business, that you're getting more calls now and you can't meet the demand? Which actually pushes prices up even more; it may be another factor at play. Salt has gone up, insurance has gone up; some people are now leaving the business. It's just been a triple whammy.

Mr. Trevor Garner: Yes. As mentioned, prior to—if someone had asked if we were a big player in the snow, I would not—we're not looking to grow our snow at all, because we can't take on the insurance and the risk right now. But, yes, we would do a very small percentage of all the parking lots and snow. I think there is going to be a drastic shortage of contractors to provide this service. The ma-and-pa shops, let's call them, I would guess did probably 40% of the city, and I just don't see them getting insurance this year. This is going to be a serious crisis.

We're not sure where people are going. As I mentioned, I had to give up one contract with a Best Buy. Their

corporate would not change the insurance. I'm not sure where they're going to find somebody to do their snow without changing their contract. Whether it's an issue this year or coming forward, it's coming, right? Everybody in the industry is feeling the insurance pain.

Mr. Stephen Crawford: Okay, thank you very much. I believe MPP Martow had questions.

The Chair (Mr. Deepak Anand): MPP Martow, go ahead, please.

Mrs. Gila Martow: Okay, I'm unmuted. It's interesting that Mr. Garner just said the word "crisis," which is what I am starting to surmise after today with what we're hearing, and I think that the opposition members are also starting to feel that this is a bit of a crisis.

1540

I guess my question—I'll start with Mr. Garner—is, other than just reducing the number of days, what other suggestions—we've heard a few other suggestions today, but if there is anything that you want to add in terms of what our government can do; we understand it's a litigious society, but to explain to people that insurance companies aren't from another stratosphere, that if the costs go up, the fees go up as well, and we all pay.

Mr. Trevor Garner: I spoke about it, but just a standard of care is what I think, and an expectation of what is due diligence.

As I mention, when we have a freezing rainstorm, it's just something that's very similar. But we can't put the salt down before it freezes because it will all wash down into the drain. Then it freezes that instant it goes to about minus 2 degrees. You're going to start to see, "We hit this freezing rainstorm." It's all over the radio. It will take about four hours for us to touch all of our properties, and that's doing a really good job out there.

So if we had to set some standards, and taking the burden off the snow and ice contractor and the landlords to do a reasonable duty, whether that's four hours, six hours or eight hours after a snowfall—as mentioned, Joseph brings it up—the weather hasn't changed that much in Canada.

We did a lot of banks, per se, and we noticed a lot of people weren't wearing their proper footwear when they would come to work. Those things all add up to creating a harmful environment. I think if we could create a standard, as they did in New Hampshire, that would be a step in the right direction after this. As long as we do our jobs and no one has been negligent, then you shouldn't be able to slip-and-fall for a winter in Canada if you're not wearing the right footwear.

The Chair (Mr. Deepak Anand): One minute.

Mrs. Gila Martow: I'll just mention that I recognize Joseph Carnevale from the Vaughan mayor's events, so hi, Joseph.

I don't know if Joseph wants to comment on what Mr. Garner just said about a standard of care. I'm from a medical background and that's how doctors operate. Is this the standard of care? A lot of times, they do tests or things like that that they don't think are needed, but it's the standard of care. You have probably 30 seconds.

Mr. Joseph Carnevale: Hi back. With insurance companies, any time you can stipulate exactly what the standard is, you're taking a lot of guesswork out of our insurance companies. More importantly, when you set a standard for consumers of what they can expect, they know then what the standard is and they can hold people to account.

I just want to echo what Trevor said very clearly: If you're negligent, we want negligent people to pay for their negligence. This is not about negligent people getting off scot-free. This is about people putting in lawsuits that impact people who are honest, hard-working people, who shouldn't be penalized. That's what this is about. I just wanted to add that.

The Chair (Mr. Deepak Anand): Thank you so much.

Mrs. Gila Martow: I really appreciate it, and I think that we're all trying to make things safer but affordable.

The Chair (Mr. Deepak Anand): Thank you, MPP Martow.

Moving over to MPP West.

Mr. Jamie West: Thank you, Chair. I'm going to direct my questions to Mr. Garner for now.

You were cut off from responding to MPP Fraser. I don't know if you want to finish responding or you can wait until MPP Fraser comes around. You might be able to refresh your memory on what the response was about. I'm just giving you the opportunity to be able to finish that thought.

Mr. Trevor Garner: Yes, I was just getting to exactly what Joseph said. It's a standard that can be met that, when we're doing our job as a snow removal contractor, we can't be held liable and responsible for things that are out of our grasp and our realm. We joked around that you can't catch the snowflakes when they're coming down. We would if we could, but you've got to wait for them to fall and finish falling, and then we take our job very seriously and we do the best job we can. That's about all.

Mr. Jamie West: Okay. That actually leads into what was my next question, because I want to know—we've heard, actually, before about New Hampshire's standard of care. And so I have a better understanding of it, is it a checklist of services that are provided—it's been plowed, the sidewalks have been cleaned, there's this much salt or sand, or whatever—or is it a minimum timeline of response, or a blend? For someone who just does their own driveway, what does the standard of care look like for, say, a parking lot?

Mr. Trevor Garner: You're correct: In a combination of all of those. The first thing it would do is it would set a standard level. We would pay to be certified that we've taken a course and accept that level of care to give. So whether we're going to plow a driveway down to bare pavement within eight hours, say, of a snowfall ending, then we apply X amount of salt according to the Smart About Salt program, and we all become accredited in that situation that this is the level of care that we're all going to provide across the board as an industry, whether we do that through—we have a Smart About Salt course that we all take. We have different levels of care, but there's not

one standardized practice that maybe the entire province could adapt, that contractors could all become part of that. Then I think that group of people would be much more insurable, shall we say, is where I think we're going, and it is setting all those standards and what we're going to do as a professional association.

Mr. Jamie West: Okay, that helps me to better understand. I appreciate that.

I asked you earlier about municipal contracts. I was just wondering, the contracts are for three years and your prices are climbing exponentially. When you go back to clients, municipal or not, and you tell them, "Hey, I need to raise my prices because of my insurance rates," what is their response? I feel like if I was one of your clients, I'd find it hard to believe that they climb that much. Have you had the experience so far?

Mr. Trevor Garner: Yes, definitely. We normally go face-to-face, but with the COVID crisis, we haven't been able to do that. A lot of it is over a Zoom meeting, but it literally looks like—there's our policy and we're showing an open-book management, because it's right there: This was last year's insurance; this is this year's insurance, and it's pretty black and white.

Again, we consider ourselves an industry leader and say, maybe someone else doesn't have this premium yet, but it is coming across the board. I think maybe Joseph could comment on that. I don't think there are too many contractors that this increase is not applying to, so the cost for this service is going to go up, whether it does it this year or next year. I think it's going to be significant.

Mr. Jamie West: Then maybe I will switch over to Joseph, because he might know. Mr. Carnevale, just in terms of municipalities, are these insurance rates also affecting snow removal for municipalities?

Mr. Joseph Carnevale: Great question. In many cases, they're hiring a lot of these companies to do the work for them. They're contracting out. So, absolutely, it would impact them. And, in some cases, even provincial government offices and agencies are looking to get contractors to come and do work. They're saying, "Well, I need this requirement," and these contractors can't meet those requirements because they can't get the insurance, they can't get the limits or they can't afford the cost of that insurance. So, absolutely, it's affecting everyone. There's no exception to the rule.

I will add, though, that, yes, today we're talking about snow removers, but landlords are dragged into this situation because they're part of this. Inevitably, if they're going to get sued in the action, they're going to get brought in, their insurance is going to pay, so in many ways, it hits everyone as it goes through the cycle.

Mr. Jamie West: Again, Mr. Carnevale, just in the remaining time I have, what I see potentially happening is, at some point, the snow removal company waving the white flag and saying, "I can't do this anymore," or maybe being bankrupt or unable to find insurance, and with a lot of parking lots basically without any service. Is that what we're potentially looking at?

Mr. Joseph Carnevale: That is correct. I think when the word "crisis" was brought up, this is absolutely a crisis. We're in November, it's November—is it the 9th today? November 9. November 15 is generally the date that many contracts start when it comes to snow removal for a lot of places across the GTA—it may be earlier in northern Ontario—and many companies are impacted by that. It's going to affect everyone, and it's not a long-term—right now, it's going to affect everyone.

Mr. Jamie West: Okay. Chair, I don't have any more questions. I'll just—

The Chair (Mr. Deepak Anand): Thank you so much. Moving over to MPP Fraser: MPP Fraser, you have four and half minutes, sir.

1550

Mr. John Fraser: Thank you very much, Chair. Thanks again to all the presenters. I'm interested in this standard of care because one of the things that came out in some of the earlier presentations and depositions is that, contractually, some companies or landlords, when they contract to providers, say, "Well, don't worry about the salt or the sand. Just clear my snow and then take it away every once in a while." Even though the contract stipulates "no snow means no sand," contracts are still caught in that. The standard of care: I guess the question is, if you're going to apply that to a contractor, it also has to be the person who is employing that company to do that.

I don't know if Mr. Garner wants to comment on that.

Mr. Trevor Garner: Yes, I think it's a great question. We've had a lot of, I would call those clients that are just looking for the bare minimum, and we don't have any more contracts like that. We've had to say no to that, because even though it's clearly written, when we talk to our brokers, when someone slips and falls, they're going to sue the landlord, they sue everyone, and they let the insurance companies figure it out.

Again, I don't think the landlord, in that sense, should be allowed to say, "You apply the salt when we say to apply the salt." That was something that was very popular five years ago, and it's becoming less and less now. We just say, "No, we have to take care of the whole contract. We set our own standards. We track our own service. We track the weather. We know what we're doing, when to apply salt and when not to." Again, I think you're right in that sense, but I think, really, if we're going to fix this problem, we should have the same standards spread across the entire province.

Mr. John Fraser: Yes, that's sort of the question, that you can apply an industry standard and do what you've done, but that doesn't solve the problem. The problem is still happening because the person, the property owner, is not fulfilling their responsibility. So when we talk about that, I just think that—I don't know what they do in New Hampshire or what they do elsewhere. It's something interesting for us to look into. It doesn't solve the problem if we say to you, "You've got a standard of care. Use the standard of care," but if somebody can opt out of that, but you're still caught—I don't see it being effective.

The way I look at what we're doing here is, it's a first step. This is just something that's going to—from what

we've heard all day, it's not going to drive rates down. It may stabilize them, and stabilize things inside the industry, but it's still going to be an ongoing problem. Unless we can tackle that, then we're going to have challenges for costs for snow removal, not only for companies but for individuals, and actually, the ability to be able to do it, right? It may be very hard for people to continue to have a small business in that, which I don't find particularly good for consumer choice or affordability.

The Chair (Mr. Deepak Anand): One minute.

Mr. John Fraser: Those are just my comments. I don't have anything else, Chair. I don't know if Mr. Erwin or Mr. Carnevale want to use up some time to say anything else they haven't had a chance to say.

The Chair (Mr. Deepak Anand): Mr. Carnevale.

Mr. Joseph Carnevale: There we go. That's better. Okay. I would. Thank you for the opportunity.

The Chair (Mr. Deepak Anand): Thirty seconds.

Mr. Joseph Carnevale: I think standards are incredibly important exactly for all the reasons Trevor brought up. Again, going back to the experience we've all had, I think the one thing is that you can have the best standard in the world—again, we go back to, so what's the scenario? The standard is met, but the claimant says it wasn't met. They go back and forth. The insurance company says, "It's cheaper to pay you to go away than it is to draw this out in court to prove that my client met the standard." So we haven't eliminated that back and forth. We haven't eliminated the cost of litigating. That is still a factor in why insurance companies pay out these claims. I think—

The Chair (Mr. Deepak Anand): Thank you so much, Mr. Carnevale.

That concludes the time allocated for your presentation. Thank you, Mr. Brian Erwin. Thank you, Mr. Trevor Garner. Thank you, Mr. Joseph Carnevale. I appreciated your input. Thank you so much.

GREENTARIO LANDSCAPING (2006) INC.

MR. DOUG DOLSON

SIMCOE COUNTY DISTRICT
SCHOOL BOARD

The Chair (Mr. Deepak Anand): We do have our next set of presenters. We have Carmine Filice, president of Greentario Landscaping (2006) Inc.; Doug Dolson; and Erin Schwarz, corporate risk officer at Simcoe County District School Board.

We'll start with Carmine Filice. You have seven minutes for your presentation. Please state your name for Hansard, then you may begin.

Mr. Carmine Filice: My name is Carmine Filice. I am a partner and president of Greentario Landscaping, a family-owned corporation. We operate out of Hamilton and service the Golden Horseshoe, from Niagara Falls to Oakville, along with the cities of Cambridge and Kitchener. Greentario has been in business for over 30 years. I've personally been at it full-time for the past 24 years. We've been providing snowplowing and ice control

services for 25 years. We employ 40 people, all of whom participate in snow removal and ice control in the winter. In addition to this, we hire other landscape companies, farmers and heavy equipment operators as subcontractors. We service affordable housing unit sites, commercial plazas, industrial buildings, office buildings and hospitals.

I've watched the snow industry change over the past 24 years. When we started, it was simple: It snowed, and we went out, plowed, applied some salt and went home. There were very few calls or concerns from customers. Slip-and-fall lawsuits were rare, and this at a time when a person had seven years to file a claim. Insurance was just part of doing business and easy to budget for the following year.

Then, slowly, things started to change. Slip-and-fall lawsuits started to increase in frequency. We saw more frivolous claims, such as, "I slipped and fell, sprained my wrist and was not able to work for three months." Insurance companies, for the most part, chose to settle these claims for arbitrary amounts instead of defending them in court. The problem with this is, the amount settled for was allocated as a claim on our insurance profile, even if we performed all services as required under our contract. We were never found to be at fault, but these frivolous claims have taken a toll over the years. The result? A 100% increase in our premiums over the past two years, and our deductible increased this year from \$2,500 to \$25,000. All of our subcontractors are facing similar, if not larger, increases.

The rising cost of insurance has hurt our business in many ways. For example, we are in the middle of two- and three-year contracts with many of our customers, and our company is the one that ends up absorbing the cost during the term. How can we budget for something we do not know is coming, especially when we are notified two years after the fact? Once again, to reiterate, they're mostly frivolous claims. Think about it. If we had four frivolous claims brought against Greentario, it could cost us \$100,000 in deductibles.

Over the past three years, my business partner and I have budgeted and worked hard so that the minimum we pay our employees is a living wage, \$18 an hour, as defined by the Ontario Living Wage Network. This is now in jeopardy as we look to offset current increases and potential future costs due to slip-and-fall claims.

We had planned an expansion of our current facility. This, too, is being put on hold until we get a better understanding of how our \$25,000 deductible will affect our operations.

Furthermore, how do I explain to our wonderful team that there will be no bonuses this year because of slip-and-fall lawsuits that happened many years back?

It has also hurt us as our insurance broker has not been able to go to market with our policy, because at this time no carrier wishes to take on new snow removal policies. I am aware of three companies that have left the business because they could not get insurance.

This year, we have been inundated with requests to quote new sites from people with whom we have never

done business before. Normally, this would be a great thing. However, we have chosen not to take on new customers because we do not wish to take on the unknown risks.

The result of all this is going to be a substantial increase in the cost of snow removal services; that is, if you can get a company to quote your site.

I also bring a unique perspective to this issue, as I sat on the city of Hamilton housing board for four years and I am currently the chair of the Sons and Daughters of Italy housing board. Affordable housing budgets are very tight and, as the goal is to keep the rent down, the boards are limited by law as to how much they can increase the rent. How will they absorb not only the increase in snow removal costs but the increase in liability insurance? The board I currently chair had a 38% increase to their insurance cost, once again mostly due to frivolous claims and the lack of appetite by insurance companies to take on such policies. This may put the needy in our community at an even greater risk.

1600

So how will Bill 118 help? I know that the 10-day limitation period proposed by Bill 118 is not intended to give a plaintiff 10 days to file a statement of claim in court. Instead, it's intended to give a plaintiff 10 days to put a defendant on notice. If we know that a slip and fall has occurred, it will make it easier to do a number of things: For example, all parties involved can collect better evidence. As a service provider, we will have up-to-date information and can budget accordingly for the following year. It will also help us identify if there is an issue with a particular site, giving everyone involved the opportunity to make corrections and avoid further claims. I believe it will reduce the number of frivolous claims.

Also, we're living in a time where packages are being delivered daily at all times of the day. Everyone, including homeowners, should be made aware as soon as possible of any potential for a lawsuit.

I thank MPP Norm Miller for doing something about this crisis. I also thank all of you for listening, and I ask that you please pass Bill 118. Thank you.

The Chair (Mr. Deepak Anand): Thank you so much.

Moving over to Doug Dolson: You have seven minutes, sir. Start with your name for Hansard.

Mr. Doug Dolson: My name is Doug Dolson. I'm the owner of Paramount Landscaping.

The Chair (Mr. Deepak Anand): Go ahead, sir, with your comments.

Mr. Doug Dolson: Thank you for allowing me to speak on behalf of fellow landscaper professionals today. My name is Doug Dolson, and I'm the owner of Paramount Landscaping Inc. My company operates in 24 cities in the GTA. We provide services to over 300 customers in the area and we've been operating since 2005.

Our industry is currently facing three major crises, two of which we're not talking about today: labour shortages and fluctuations in salt pricing. Of course, what we're speaking about today is insurance. The insurance crisis that we are discussing today is crippling the snow industry.

Myself and fellow snow removal companies are finding it very hard to run our companies professionally while coping with these inflated costs. In the last three years, I've had no slip-and-fall claims and my insurance has increased by 59%, skyrocketing from \$44,000 a year to \$75,000 a year, with no minor additions to my insurance. Keeping in mind the no-claim list, which is very small and possibly not even existent, most of my fellow tradesmen have had slip-and-fall claims.

My story is impactful but not [*inaudible*] the industry problems that we're communicating about today. I'm sure you've heard from industry members today that may or may not have given these examples. I want to bring forth a worthy example to help the standing committee understand the challenges we face. I've been worrying about this over the last few years concerning the increases, and I've spoken to numerous landscape professionals. This year, I've seen more action than words and owners closing their doors or giving it a last chance, hoping for a change.

When I was asked on Thursday to be involved in the committee meeting, I decided to update myself with current information. I spent the last four days talking to snow removal companies in my area and heard some mind-boggling testimonies about their circumstances. Although I can bring forward the worst-case scenario, I chose to pick one that was more mainstream, a kind of middle-of-the-fence-type story so you could feel the impact of the majority of the industry.

I'm going to use Mike Jones as an example. Mike is a fellow landscape professional who I know in the industry. Although I'd never spoken to Mike before Saturday, I was aware of him and his company. Mike Jones owns a snow removal company that he runs during the winter to supplement his farm, StoneWater Farms. Like myself, Mike has been doing snow removal for almost 20 years in the GTA.

As mentioned, Mike is not the worst-case scenario that I've heard over the week, but he's a good base point. Mike has had three slip-and-falls in the last five years, totalling a payout of \$96,000 from the insurance companies; \$20,000 of it was Mike's deductible, bringing his insurance payout to \$76,000. His insurance last year went from \$29,000 to \$145,000, which was an increase of 500%. This increase is very troubling and not manageable. How does one budget in our industry when our insurance costs go from about 2.5% on gross sales to 11% over one year?

Our industry, on average, clears about 4% to 10% profit yearly on snow removal. That makes 9% of the profit that would cover insurance increases. This would put 50% of my competition broke or out of business, and the others would make 1% to 2% profit.

I'm going to use Mike again to speak about what I talked to him about on Saturday. I was aware of him and his company. I understand that the last statement was very impactful and it's not only a problem concerning insurance. There are also two other major problems with how the insurance reacted to slip-and-fall claims, which I also wanted to bring forward: the deductibles and the renewals.

The deductibles are increasing with costs. Mike Jones went from \$10,000 to \$25,000 in insurance premium

deductibles. So not only did he accept a 500% increase, he also took on 15% more of a deductible. This is not sustainable for the market.

The last concern I also wanted to mention was in renewals. This seems to be very troubling, and I have had this happen myself. With Mike, last year when he got the \$145,000 increase, he decided that he would reach out to the company and see if he could find some other people. Mike's renewal came up September 24. Mike reached out to his insurance company back in July of that year to get his renewal. Eight days before his insurance was to be renewed, on September 16, is when he received the increase of 500%. That gave him eight days to cancel and find somebody new.

As you can imagine, this was a very concerning, life-changing situation. He had to present legal action for a 30-day extension to find someone else to cover him, which ultimately—higher quotes. He was able to find one at \$77,000, which was still an increase of 265%. Keep in mind contracts are already sold by this date, so he was stuck with eating that cost. This year, he was not even able to provide the renewal on time. His renewal was supposed to be on the 24th, and they reached out to him on October 15, almost 22 days later, to tell him that he was only taking a small increase of \$1,500 this year, but he could no longer do any municipal work, which was 25% of his income.

He now is locked into municipal contracts because of the date of October 15, and he now cannot service them. So now he's in a predicament of trying to find another insurance company, which he's now, again, gone out to get a 30-day clause to try to find somebody that will take on his insurance. He's set up for failure.

We understand that the insurance is taking a hit and their margins are probably decreasing. They need to make it continuous or they're going to close the doors on our industry. Can a country like Canada afford not to have snow removal services by the private sector? Every grocery store, restaurant, skating rink etc. is cleared by us. Twenty-five per cent of municipal roads are cleared by us. This bill will help narrow down the claims substantially and will keep the information to claims relevant to the same year.

As the previous speaker had mentioned, it's hard for us, two and three years down the road, to get the information we need to defend ourselves. That's why the insurance companies will just take the risk and buy it out.

Things that can help change this going forward are obviously Bill 118 and bringing the shorter times forward for a claim. Guidelines to guarantee no claim timeline and amount of salt being used would be other ways to try to help this. And contracts: I know it's not in there, but there are so many contracts revolving around in our industry. A lot of our own customers are giving us contracts. We're the providers; they should be signing our contracts.

There's not much more to say. But, as Carmine said, I'm in the same situation as him—

The Chair (Mr. Deepak Anand): Thank you so much, Mr. Dolson. You will have an opportunity to answer

questions. We are going to go into question period after this.

At this time, I will request Ms. Erin Schwarz, corporate risk officer, to go ahead. You have seven minutes. Please start with your name.

Ms. Erin Schwarz: My name is Erin Schwarz. I'm a corporate risk officer with Simcoe County District School Board.

The Chair (Mr. Deepak Anand): Ms. Schwarz, would you like to present?

Ms. Erin Schwarz: Yes.

The Chair (Mr. Deepak Anand): Go ahead, please.

Ms. Erin Schwarz: Thank you so much for allowing me to speak today. I understand that you spoke with two of my colleagues from the Ontario Association of School Business Officials this morning, of which I'm also a member. I may have some similar points to them, but I also have a more northern perspective.

Simcoe County District School Board is certainly supportive of the amendment of the Occupiers' Liability Act that you are proposing—reducing the statute of limitations from two years to 10 days—for many reasons. Claims made 18 months to 24 months after an incident are difficult to defend, as I'm sure you've been told multiple times today. Evidence is hard or impossible to obtain, making defence difficult for adjusters, lawyers or even for us as a school board. We're unable to determine what type of footwear these people were wearing, we're unable to get pictures or witnesses, and in our area, weather is of certain consequence.

1610

Being in the snowbelt means that Simcoe County District School Board has an increased volume of snow, quickly changing weather, and wind patterns that create unexpected conditions very quickly. This does lead to an increased risk of slips, trips and falls related to snow and ice. That being said, we have very, very thorough policies, procedures and methods of maintaining proof, because we are so used to being a target for lawsuits and for legislation. That being said, we cannot maintain the evidence over a 12- to 24-month period. The benefit that we would have from knowing within the 10 days to collect that evidence would be of utmost assistance.

We have limited custodial hours and custodial money that's available to care for areas of responsibility. They are continuously checking on and monitoring our sites, as well as maintaining doorways and, in some cases, sidewalks. Like your last two presenters, we rely very, very heavily on the contracting world to maintain our parking lots, and we do share that liability with those contractors.

As you know, we also have principals, who are considered our site supervisors under the Occupational Health and Safety Act, and those people are required to take time out of their day looking after our students, teaching our students and supervising their staff in order to check the site and verify that we do or don't need to call contractors back in for areas.

That being said, we are able to control the use of our property throughout the day. In the wintertime, we do

things like close playgrounds, close down the schoolyard if it's too icy. We're able to close tarmacked areas, have indoor recesses. Our supervision, our staff, tells students where they can and cannot go.

Unfortunately, we have a couple of things that open us up to further exposure that we cannot control. Community use of schools is required by our government. It increases our traffic. It gives us additional exposure from community groups entering and leaving our schools, often in the lower-light conditions of the evening. In the winter, that's when we're at lower light; it's when black ice forms. Of course we do have people there monitoring it, but we can't control those groups and where they go, as easily.

That being said, we also have after-hours use of schools that we completely cannot control. These are the dog walkers, the teenagers hanging out on the weekends and in the evenings, people cutting across our schools and using our schools as parks and sporting areas. People are sledding in our yards. Our efforts to limit access to our facilities are met with vandalism or snow fence removal.

We know that our municipalities are already enjoying that 10-day statute for all liability claims, and we would really like to enjoy it, at least for this area. Over the past five years, Simcoe County District School Board, which is a medium-sized school board within Ontario, has had six slip-and-falls on ice for adults. Of course, we know our students carry a special statute-of-limitation risk, and we deal with those separately. But we had six slip-and-falls on ice to adults that were reported outside that 10-day period, at a total cost of \$335,000. We also carry a \$25,000 deductible, which makes \$150,000 of that money a direct cost to the school board, which is taking those funds out of the classroom.

With an extremely hard market for insurance, these claims are making our liability insurance harder and harder to place, and more and more expensive. We do, as I said, have a self-insured retention. Not all school boards do, but Simcoe County District School Board does.

With joint and several liability in Ontario, school boards are quite often the ones that have the deepest pockets and end up paying, and we are then also left with the task to go back and get that money back from the other parties. Respectfully, we would request that the amendment be applied to school boards as a public entity operating with limited public funds. Thank you.

The Chair (Mr. Deepak Anand): Thank you so much. I appreciated your comments. At this time, I will request MPP Jamie West, with your questions. You have seven and a half minutes, sir.

Mr. Jamie West: I'm going to begin with Ms. Schwarz. There was a comment you made right near the end, Ms. Schwarz, about the timeline for students being different. I don't know if I misheard it, so I just want to know, is there different criteria for students who slip and fall?

Ms. Erin Schwarz: I don't know if this bill would amend this—I would certainly love if it did—but most statute of limitations for students leaves us with the unique challenge of maintaining evidence for children, as their

statute of limitations of two years doesn't begin until they reach the age of majority, or 18 years of age. So a child who is injured at four years old in junior kindergarten has approximately 16 years to come back and sue us.

I keep impeccable records.

Mr. Jamie West: I had no idea. I appreciate this.

Ms. Erin Schwarz: You're welcome.

Mr. Jamie West: You had talked about the use of your schoolyard. In my notes, I put it down as "intended use" and "unintended use." We used to play men's basketball at night; that would be intended.

Ms. Erin Schwarz: Yes.

Mr. Jamie West: And then I guess just kids playing in the schoolyard or going sliding would be unintended.

The required use, I guess required by government—I'm just wondering with custodial staff, is that included in that or is that just part of the regular budget? If the school is booked a couple of nights a week, is there more money for custodial staff, or is that part of the main budget?

Ms. Erin Schwarz: Depending on who the community-use group is, whether it is opened to all public or whether it is a private organization, the custodial use is somewhat subsidized by the government for things that are open completely to the public. But for our schools to be open to anyone other than staff and students, we have a custodian present to ensure our policies and procedures are followed.

Mr. Jamie West: Okay. And then this year, because of COVID, and I don't know if it's too soon to tell, will the ability of the custodian to check and maintain to the best of their ability—I was going to say parking lots, but also walkways, all that stuff—is it going to be affected because of the more enhanced cleaning with COVID?

Ms. Erin Schwarz: We do fear that our ability to have everything done to the standards that it's normally done will be hampered by the additional requirements of COVID. We're hoping to get more staff in, but as you know, everyone's looking for more cleaning and custodial staff at this time, so we're limited. We're also limited in our occasional staff covering regular staff who are off being tested. So we are being tested to our limits. We're doing our best, but we do think that it is going to be hampered this year.

Mr. Jamie West: Thank you very much. I appreciate that, Ms. Schwarz, and also for your perspective. I live in Sudbury, so I thought I knew what snow was. But about 10 years ago, I went through the snowbelt and I got hit by one of those storms where you're basically following the four-way flashers in front of you and hoping that they don't go off into the ditch, because the person behind you is following and we're just all going to, like a train, drive off into the ditch together. So I appreciated the perspective of that you know snow probably better than we do here, and the difficult time keeping the evidence.

Is the window of 10 days reasonable? Other people have mentioned 30 to 60 days. Is there a different window, and what becomes too extreme if it is a larger window?

Ms. Erin Schwarz: Thirty to 60 days would be better than two years, but I really do feel that the 10-day window

is quite satisfactory, knowing that the municipalities have been using it for quite some time.

Because it changes so frequently, we actually have logs where our custodians check multiple times a day and enter the weather conditions, because we have been caught so many times by someone saying, “I slipped on the 22nd.” Thankfully, we’re usually able to go back and say, “It was sunny and plus 2 on the 22nd,” but we’re not always that lucky. The shorter that statute of limitations for snow and ice, the better.

Mr. Jamie West: Okay. I appreciate that as well.

How much time do I have, Chair?

The Chair (Mr. Deepak Anand): You have about three minutes, give or take.

Mr. Jamie West: Excellent. I’ll move on to Mr. Dolson. Thank you, again, Ms. Schwarz.

Ms. Erin Schwarz: You’re welcome.

Mr. Jamie West: I’m just trying to catch up on my notes. Mr. Dolson, you talked about Mike Jones—well, first, did you want to finish your deputation, your last, maybe, two sentences that you were going to say? Did you want to finish off?

Mr. Doug Dolson: No, I think it’s okay. It was just more about what could be added to the bill, but that’s not of interest right now. Thanks.

Mr. Jamie West: Okay. You talked about Mike Jones, his insurance climbing 500%. And then the insurance—basically, your profit margin dropping to 1% or 2%. How do you guys stay in business in this current situation?

Mr. Doug Dolson: We won’t; it’s already happening. I know Carmine said he knows of three companies. I know of 17 that have closed their doors in the last month. So you’re going to end up with nobody doing snow; that’s basically what’s going to happen. It’s a very tight industry. We’ve always called it a loss leader in our industry, but we take it on because most of our contracts are a full year. So in order to do our property maintenance, we have to do the snow. We would probably all not do the snow, and this is just going to make it even more relevant to get out of snow, period.

1620

Mr. Jamie West: Right. You talked about helping 24 cities in the GTA and having more than 300 customers. If, for example, you just pulled the pin or just simply couldn’t find anyone to insure you, where would those 300 customers go?

Mr. Doug Dolson: Your guess is as good as mine. I really don’t know. Like I said—and Carmine said the same thing. Everything that Carmine said I can pretty much guarantee is exactly the same as us. We’ve had the phone ringing off the hook with people looking for us to take them on. We’ve had to turn people down. Where are they going to get it? I don’t know. They’re basically in the same situation we are with insurance: We’re all chasing insurance, trying to find it; they’re all chasing people to take care of them. Sooner or later, there isn’t going to be anybody to do it.

Mr. Jamie West: Right. Yes, we’ve heard “crisis” a couple of times. You’re painting a really clear picture for us on this as well.

Mr. Doug Dolson: There’s worse too. Like I said, I brought out—

The Chair (Mr. Deepak Anand): One minute.

Mr. Doug Dolson: —my phone because I wanted to pick somebody who’s kind of in the middle. I’ve heard of a 1,000% increase. I’ve heard of not even being able to get insurance, from three people.

Mr. Jamie West: Right. I think I got the one-minute warning, so I’m going to concede my time, and then I’ll come back in the second round. Thank you again for this, Doug.

The Chair (Mr. Deepak Anand): Thank you so much. Over to the government members. I see MPP Miller.

Mr. Norman Miller: I guess I’ll start with Ms. Schwarz at Simcoe Country District School Board. Thank you for supporting the private member’s bill.

We had a bit of discussion about 10 days versus other times. I’m gathering from you that shorter is better in terms of being able to defend yourself. We’ve had some folks today say that 30 to 60 days is okay. Is beyond that too long for a notice period?

Ms. Erin Schwarz: I would say beyond 60 days would be unreasonable. We’d be out of the winter by that point for most cases, so we’ve really moved on to the next season at that point. I don’t know how you would collect evidence. You may be able to still maintain your witnesses at that point, but we wouldn’t be able to gather any of the other evidence.

Mr. Norman Miller: Okay. Thank you. That’s useful. It is a tough position that schools are in, where you’re responsible even when the school is closed, and they’re popular places to go for youth, for adults.

Ms. Erin Schwarz: They are.

Mr. Norman Miller: I must admit, I went for a bike ride on the weekend and rode through the nearby school’s grounds on the way into town. So it’s tricky that you’re responsible even though the school is closed. My memories as a kid were that we liked it when there were great big ice piles because that’s what we played on in public school.

However, you also said that you’re a target for lawsuits and that you had six lawsuits, and I think I heard \$335,000 in claims. So it’s obviously a very significant cost. Do these turn out to be frivolous, or are they legitimate?

Ms. Erin Schwarz: In most cases, it’s difficult to tell. They come in so late. They are able to prove that they’ve had an injury or something that has affected them, but they’ve reported so far past the time when the incident happened that I can’t—I can potentially place them on my site. They may be the parent of a child. They may have been there playing volleyball or basketball. But nothing says that they didn’t fall at Canadian Tire or in their own laneway after they left my school site because they reported it to me 18 months later. A school board does potentially have the view of deeper pockets, so unless they’re able to provide—

Interjection.

Ms. Erin Schwarz: —to put them there.

Mr. Norman Miller: Sorry; my computer froze, so I thought you'd stopped talking.

Ms. Erin Schwarz: No, that's fine.

Mr. Norman Miller: I've certainly heard that from businesses as well where they get the notice at one year and 11 months and they have no idea whether anything actually happened or didn't happen, and they have no evidence one way or the other to protect themselves.

You were talking about the unique case of younger students being 18-plus years, or the age of 18 plus two years. I wasn't aware of that. So do you get many lawsuits, then, from youth 20 years later?

Ms. Erin Schwarz: There are not as many as you would think that wait until that age of majority. In most cases, their parents do sue on their behalf while they're still a minor.

Mr. Norman Miller: Thank you. I'd like to [*inaudible*] landscaping. Mr. Filice, you mentioned that you're on the housing board of Hamilton and I think you said you were involved with affordable housing. This whole challenge we're facing is affecting the costs for affordable housing. Can you elaborate on that a little bit, please? Mr. Filice?

Mr. Carmine Filice: Yes. Can you hear me okay now?

Mr. Norman Miller: Yes.

Mr. Carmine Filice: Similar to our industry, that industry is facing the same thing, where slip and falls happen on a property, so they do sue the property manager, who in turn—we get called into the claim as the service provider, but just like us, the facility that's operating has a claim against it. Whether there is a payout or not, it is a claim, and this causes insurance to increase because they see that as a potential liability, even if nothing is paid out.

Mr. Norman Miller: You said, if I noted correctly, that with your company, you haven't had slip-and-fall suits. Was I correct in hearing that?

Mr. Carmine Filice: No, we've had slip-and-fall lawsuits, most of them frivolous. In the past five years, there have only been two, for which we've received notification just this past spring. Neither one of them has been paid out yet, but that triggered that massive increase in our firm's insurance.

Mr. Norman Miller: When you say "most are frivolous," how do you determine that most are frivolous? Is it because you—

Mr. Carmine Filice: For our history, for example, we have had, in our 25 years of snow removal, one paid out where they found us partially at fault along with the property manager. All the rest were settled or dismissed.

Mr. Norman Miller: So when you're feeling—and I've asked this before, and I've heard, as the day has gone on, that Ontario has become more litigious, and it's more litigious than even some other provinces. I live in Parry Sound–Muskoka and drive up Highways 400 and 11, and I see great big signs saying, "If you fall, sue," basically. Do you think there need to be controls on that, the "You don't have to pay" or "You won't have to pay until you win" sort of thing for the lawyers advertising?

Mr. Carmine Filice: It would be nice. You know, it's Canada. The weather comes. And it's mostly geared

toward them finding something where they can create some revenue. As I mentioned, in the early days, you had seven years to file a claim. They were very rare. Why, all of a sudden, do we have all those claims coming forward? Our winters have actually become more mild. I remember as a child digging out under three feet of snow around the car. Now we have a lot of, I guess, storms. They just come in out of the blue and a lot of them are ice storms as opposed to snowstorms in the area where we are. I'm talking the Golden Horseshoe.

The Chair (Mr. Deepak Anand): One minute.

Mr. Carmine Filice: This wasn't the case 25 years ago. So the lawyers are doing a great job. People are becoming more educated. As an industry, we have educated ourselves. We are up to date with the most modern techniques. The environment is taking a massive hit because as contractors, we're terrified of slip-and-falls and we're just throwing salt until there's no tomorrow to make sure that the sidewalks look covered so slip-and-falls don't happen.

Mr. Norman Miller: I've certainly heard that. The area I represent is Parry Sound–Muskoka, with all kinds of lakes, and that certainly concerns me from an environmental perspective, more salt than is necessary being spread everywhere.

On the timing, we've had some discussion with regard to, is 10 days the right number or is 30, 60 or 90 days? Any thoughts on that? I gather from your perspective that shorter is going to be better, but what do you think is reasonable and fair?

Mr. Carmine Filice: I would say between 10 and 30 days is fair. It gives you—

The Chair (Mr. Deepak Anand): Thank you so much. That concludes the time. Over to MPP Fraser. You will have an opportunity in the next round, Mr. Filice. Over to MPP Fraser.

Mr. John Fraser: I'll let Mr. Filice finish his thought.

Mr. Carmine Filice: Thank you, MPP. I would say that any time between 10 and 30 days would be acceptable. We're in the same season, and you're able to address it and collect the information—all parties are, actually.

Mr. John Fraser: Thank you very much, Mr. Filice. I'm glad that we heard that as a theme this afternoon, what's reasonable.

1630

I want to go back to a question that we had in some earlier presentations. I'm not sure if this is something that can be addressed in this bill or if it is something that needs addressing, because we haven't heard this from everybody: the notification of contractors in the case of a slip-and-fall, a notice of injury, or a notice of intent. I'm not sure if there's a legal obligation contractually for the business that contracted you to say, "We've had this happen." Do you have that inside your contract? Is that an obligation?

Mr. Carmine Filice: For people to notify us of a slip-and-fall?

Mr. John Fraser: Yes. In other words, the company that contracted you.

Mr. Carmine Filice: Actually, no, quite the opposite. Everything dictates toward us, to hold them harmless of any clauses. In good practice, our good customers do notify us, but there is no obligation under contract for them to notify us.

Mr. John Fraser: I was in the grocery business, and if anything happened we were right on top of that. We didn't have contractors at the time, because most of that stuff was inside the stores, so it was a very clear process about what to do.

It just surprises me that company X could contract you, someone could send them an email and then it goes into the ether somewhere, and then 18 months or two years or later you find out. I wonder if that's an unusual situation or if it's something that happens with some regularity.

Mr. Carmine Filice: With great regularity. We are always receiving the notification at the eleventh hour.

What has changed is, the property managers and owners are also facing similar increases as we are, so they're starting to change policy with their renters or users of the facilities, in the sense that they're asking to be notified of a slip-and-fall as soon as possible, but there's still no obligation on anyone's part to do so.

Mr. John Fraser: Can I direct that same question to Ms. Schwarz, in terms of the obligation of your board with the contractors? Is that something that you do contractually, or is it just good practice for you to say, "This has happened"?

Ms. Erin Schwarz: We do it just as good practice. We would certainly notify a contractor if we received a statement of claim. In most cases, we're receiving a statement of claim and they're named on it as well, and they're also being served. Unfortunately, that tends to be when we find out that there has been an accident—at the time of serving statement of claim. We would contact them and say that we've received it. But had we known earlier, we would have let them know.

We do not advise every time there's a slip-and-fall. I will tell you, dealing with 55,000 children—

The Chair (Mr. Deepak Anand): One minute.

Ms. Erin Schwarz: —and 8,000 staff, we have so many slips-and-falls in a day that we could not notify our contractor of all of them.

Mr. John Fraser: That would be different for you. But if I fell outside an apartment building, if I notified the property manager of that building—there's no real obligation, other than good business practice, to let your contractor know, and hopefully you're doing that. It concerns me that the contractor may not know. He doesn't have the same insurance company, right?

Ms. Erin Schwarz: Right—definitely not have the same insurance.

The Chair (Mr. Deepak Anand): Moving over to the opposition, MPP West.

Mr. Jamie West: I'd like to ask Mr. Dolson one more question. Earlier in your deputation, you said there were three crises. You talked mainly about snowplowing. I think they were about insurance—I was just wondering what the other two were.

Mr. Doug Dolson: Just repeat the question one more time to me.

Mr. Jamie West: You said there were three crises facing your industry, and you said snowplowing—

Mr. Doug Dolson: Yes; sorry. We're having issues for the last few years with salt, with being able to provide it and with costs majorly increasing on salt as a commodity. Labour shortage is another issue that we're facing. So with all three of them, it's a lot. But the insurance is definitely something we've got to figure out in the near future.

Mr. Jamie West: Okay. Thank you for that. It was odd how salt all of a sudden became really rare and expensive. I lived through that here as well. I'm sure it was across the industry.

There was another question I wanted to ask. In terms of—it's not going to be covered, obviously, in this bill, MPP Miller's bill, which I think we're all aligned on; we just need to tweak the details on it. But should we also be looking at insurance? It seems to me that there are really very few restrictions on insurance. You gave a couple of examples, of your friend Mike, for example, being notified eight days before renewal that it was increasing 500%, and then actually 22 days after his renewal that it was being increased again, but also he couldn't do municipal work that he'd already signed the contracts for. Is there more work to do with the insurance companies, from the provincial level?

Mr. Doug Dolson: I think for sure. I think that right now the insurance is doing everything they can to protect themselves, which anybody is going to do, but they have it all in their corner so they're putting all the onus on us to bear whatever happens. We need to in some way stipulate timelines for when they can bring it forward so that we can as an industry look for alternative measures.

Right now, it's taking about 60 days of turnaround to quote for landscape insurance. If he's only getting 12 days, he's never going to get a quote in time. So he's either performing services without insurance, or he is going to have to sign with them, which he's going to have to take the increase. And when we're contracted already without a clause to get out, we have no choice but to take the insurance and stay open.

Mr. Jamie West: Okay. Thank you, Mr. Dolson. I appreciate that.

I'm going to move over to Mr. Filice from Greentario Landscaping. I want to compliment you on your deputation and all the details, because I ended up having really excellent notes—which I think is reflective of everyone today, actually. It was interesting that one of the things that you had mentioned was that the insurance, if they choose to settle, you have no real participation in that. They might let you know that one is coming, but they choose to settle, which looks like no fault for you, and your rates keep increasing. I think you said it increased by 100%, which makes it really tough to budget, right, because you feel like you've done everything responsibly and nothing happens there. I appreciate you being a living-wage employer and the difficulty in doing that and talking about that as a minimum wage.

A similar question that I asked previously: Is there work we should be doing around how insurance handles their rates or how they respond to these things while working with your industry?

Mr. Carmine Filice: It would be nice if there was a way for insurance companies not to be able to refuse quoting tenders, to take themselves out of the market completely. Right now, we have no ability to go around the market if they say no. Right now, we're with Lloyd's of London, so high risk. We did nothing wrong. This is what's more amazing about this whole situation. We've got a great record, and it's just crazy.

Similar to what Doug had just mentioned and his insurance premiums going up with no slip-and-fall claims within the last 24 months: How does that happen? How can the insurance industry as a whole decide to blanket an entire industry with one type of analogy or cost—I'm looking for the right word here to say; I'm not sure what it is. But they basically said, "Snow removal is horrible. We're all out of it." There has to be something done about that in the insurance industry.

Mr. Jamie West: Yes. It just feels unfair. I don't know enough about insurance to understand, but I wanted to dig into that because it just feels wrong.

In terms of the contracts—and we've heard this a couple of times today, so I apologize if it's already been asked—this idea of "hold harmless" and that you assume all the risk, as it happens more and more often, would the insurance risk be lower or would the rates be lower if it was shared, or would it just be high for the contractor and the property owner?

Mr. Carmine Filice: It would probably just be shared. So we would have gone back to our larger portfolios and asked our property managers, "Would you be willing to assume 15%, 25% of the risk?" Can I go back to my insurance company and tell them, "You're going to assume 50% of the risk and give me another price," to see if it makes sense, and you go back to your service provider? Right now, they hold all the cards and the answer is just a straightforward no. If I was doing all of Cadillac Fairview's sites, for example, and I got to say to them, "You know what? We're stepping back. We're done with this unless you guys take out half," well, that's a different ballgame. But we have zero say at this point in time.

1640

Mr. Jamie West: Right. The way things are going, you and a handful of other people might be the only ones providing the service at some point.

Chair, I think I have enough. I don't think I need to ask any more questions to this group. Thank you.

The Chair (Mr. Deepak Anand): Thank you so much.

Over to the government side: Members from the government side, would you like to ask? MPP Martow? Any other members who would like to ask? We're good? Okay. Over to MPP Fraser.

Mr. John Fraser: Thanks very much, Mr. Chair, and I'd like to thank everybody again. I want to direct this question to Mr. Dolson. It is concerning that someone

would find out 22 days late, 12 days before their contracts would naturally start, that they couldn't get insurance. It would seem to me that the carrier should have some responsibility. I want to get your take on what you think would be a reasonable solution to that.

Mr. Doug Dolson: I think we should be setting the insurance companies to some sort of standard that they have to follow: 60 days' or 90 days' notice, just like they ask us for notice. They want us to give them notice for cancellation; we should have them do the same.

The other thing: This is new, because five years ago, I went for new insurance. I went to 12 different companies for new insurance, and I had folks banging at my door in three days. Now, they seem to be taking 60 days. I think it's because they're trying to gauge the length or they're trying to gauge what their margins are going to be and where everybody's slip-and-fall claims are before they start to provide it, almost like they're scared to give the quote.

Mr. John Fraser: Yes, I can see that with some of the weather forecasts, because I have a relative who's in oil and gas stuff. They often send the predictions for weather. It's a big business, right? They were doing that five years ago. They may be doing that right now, which says, "What's going on this winter?"

I didn't give you a chance to answer this one with regard to the people who are contracting you and their obligation to inform you of a notice of claim. Have you ever had a challenge with that?

Mr. Doug Dolson: No, normally we don't get told about a claim in the industry. I forget her name, but she had mentioned it seems that when they're informed is when we get served. It's all within a couple of days, anyways. Rarely does anybody inform you. There's a statement that goes around our industry that in two years less a day they'll send the claim in, because they have up to the two-year mark, so all of a sudden we'll get claims from 2018 this year. I actually know of one that just came in three years later, but because of COVID, he's allowed to put the claim through.

I don't think they really want to inform us, and I think that's the hard part; we need to get that information so we can gather.

Mr. John Fraser: Yes, sorry. The thing which I do expect will happen out of this bill is that it will shorten the period of notice of claim. Inside the industry, there will have to be an obligation to let you know that such a thing has happened, because if somebody says, "I've been injured," there will still be a window for a statement of claim, I think.

Mr. Doug Dolson: I would assume if you're trying to get an insurance claim and you've been injured, in 10 days you know you've been injured enough that you need to claim it. It should be brought forward by that point anyway.

Mr. John Fraser: Okay. Thank you very much. That's all I have, Mr. Chair.

The Chair (Mr. Deepak Anand): Thank you so much. That concludes the time allocated for the presentation—

Interjection.

The Chair (Mr. Deepak Anand): MPP Fraser, did you want to say something?

Mr. John Fraser: Thank you very much, Mr. Chair. I have another meeting that I have to get to, so I will not be able to be here for the last presentations. I would just like to give my time, if that's appropriate, evenly to both the Conservatives and the NDP.

The Chair (Mr. Deepak Anand): I think at this moment—I appreciate your sharing the time, but we will stick to the schedule that was time-allocated, and I think that is enough for the time being. Thank you so much for that consideration, though. I appreciate it and thanks for joining in.

At this time, I would like to conclude the time allocated to our presenters. Thank you, Mr. Filice, Mr. Dolson and Ms. Schwarz. I really appreciated your input.

The time now is 4:45 p.m., and we have two stakeholders coming to present next at 5 p.m., so we will be taking a short break and we'll see you at 5 o'clock. Thank you so much.

The committee recessed from 1646 to 1700.

CLINTAR COMMERCIAL OUTDOOR SERVICES

The Chair (Mr. Deepak Anand): Good afternoon, everybody. Welcome back. I would like to say thank you to Isaiah Thorning for doing such a wonderful job, along with our communication team.

It's 5 p.m., so we do have Mr. Terry Nicholson, the vice-president for Clintar Commercial Outdoor Services. Mr. Nicholson, welcome to the committee. You have seven minutes for your presentation, sir. Please start with your name for Hansard, and you may begin now. Thank you so much.

Mr. Terry Nicholson: Thank you. Good afternoon. As mentioned, I'm Terry Nicholson. I am the vice-president of Clintar Commercial Outdoor Services. I'm also the chair of Landscape Ontario's snow and ice committee.

I want to thank MPP Miller and this committee for allowing us to talk about the snow on such a beautiful summer's day in November. I know you've all had a long day today with many contractors speaking before me, so hopefully I don't sound too repetitive for you.

Established in 1973, Clintar is the largest private snow contractor in the province, deploying over 600 people every snowfall. Our customers include multiple hospitals, school boards, retail centres and other commercial properties, from heavy snow areas like London, Midland, Ottawa and throughout the GTA and the Golden Horseshoe. Many of these properties we've serviced for over 20 years. You don't grow to the size we are without providing quality services at fair pricing.

The availability of liability insurance has become the number one threat to not only Clintar but to our entire industry. Clintar alone pays over \$2.5 million in insurance premiums annually. You think that would be an attractive piece of business to insurance companies, yet since 2015,

we've had four different insurers, and our broker has recently informed us we'll need a fifth for 2021. Four of these insurers have abandoned the snow industry altogether. We're told it's due to the cost to defend and the settlements paid for slip-and-fall claims that exceed the premiums collected.

Despite more than doubling the premiums we've paid during this period, to stop the premiums from escalating further, we've also had to absorb higher deductibles as well. It's simply not sustainable. Passing these costs off to our clients is difficult, as we're often bound to multi-year contracts. We can closely estimate future increases in labour, material and equipment costs, but insurance has become wildly unpredictable.

We also know that other contractors are struggling, and in some cases, cannot find anyone to provide coverage, even if they've got a zero claims history. This fall, we've had a few competitors approach us to ask if we could take on their contracts, hire their employees for the season and rent their equipment, as they can't meet the contractual insurance requirements. I personally know of two former Clintar supervisors who have left our company to pursue the joys of entrepreneurship. Both had been hoping to subcontract to Clintar as they got started, but they've had to put their dreams on hold as they cannot find anybody to cover them.

We don't blame the insurance companies or the brokers. We don't blame the property owners who present us with unfavourable contracts with hold harmless clauses. To us, the issue is with the current legislation and the "guilty until proven innocent" assumption. It's our belief that not all claims are legitimate. A couple of years back, we had the same individual file two separate claims for two separate incidents, both in the same season. Both were at Home Depot stores: one in Woodstock and one in London. This is from the same individual.

We have questioned why, of all of the stores that are in a supercentre-like shopping facility, we only see claims for incidents at Loblaws or Walmart, yet never for the restaurants or the small retailers that are part of those centres. It's our theory that the feeling is the big guys have deep pockets, so they'll pay more. It's not worth chasing the smaller independents.

Why is it that thousands of people can safely get in and out of a Costco on a busy Saturday, but if one person falls, it becomes the responsibility of the snow contractor? When did it become that only dry, bare pavement is considered safe in a snowy Ontario?

We feel Bill 118 is extremely important. In the majority of cases, we first learn of slip-and-fall incidents when the notice of claim is delivered to us. Many times, we aren't served until the final month of the currently legislated two-year period. It can then be years before a case even gets to discovery. A recent example: A couple of weeks ago, I attended discovery for an incident from Christmas Eve 2013. It's our belief that this delay is intentional, to put us in a tougher position to defend ourselves.

As we're a seasonal business, we do experience a high staff turnover. After a few years, we lose touch with some

staff. Facility managers we work with could move on or there could be physical changes to the property. We're very good at keeping detailed service records, but over time storm circumstances can be forgotten. By reducing the claims period to 10 days, both property owner and contractor are in a much better position to defend themselves. It should also reduce the number of frivolous claims.

As an industry, we're also looking at other solutions. We'd like to see the elimination or some modification to the use of hold harmless clauses in contracts; a voluntary accreditation or certification of snow contractors in exchange for liability protection; and the creation of a national standard for snow and ice control that better defines what is considered "reasonable care" by the Occupiers' Liability Act.

Bill 118 is a great start. We thank member Miller for bringing it forward, and we sincerely hope your committee agrees to see it through. Thank you.

The Chair (Mr. Deepak Anand): Thank you so much. I appreciate it.

At this time, I'll ask the members from the government. You have seven and a half minutes. MPP Miller.

Mr. Norman Miller: Thank you for coming before the committee today and for your advice. You're probably, as you say, the largest snow removal company. I believe you do Queen's Park, too. I'm pretty sure I've seen your vehicles around Queen's Park for many years.

Mr. Terry Nicholson: Yes. Since 1997.

Mr. Norman Miller: Okay. Well, you do a fine job around Queen's Park. That's for sure. My complaint is it's probably too much salt on the ground, but that may be because of the worries about being sued by some politician that falls down.

Mr. Terry Nicholson: Anybody. That's the big issue, yes.

Mr. Norman Miller: There's been some discussion about whether 10 days' notice is the right time period, whether that's fair or whether that's too short. The example you gave of a case going on from, I think you said 2013 demonstrates how things take so long and how that builds uncertainty and cost into the whole system. If 10 days is too short, what would be a reasonable length of time for notice, in your opinion?

Mr. Terry Nicholson: The closer we find out about incidents the better we are to defend ourselves, to collect all the necessary data, to talk to all the people who would have serviced the property.

Our snow season typically for most of Ontario is about five months. We would turn over staff a couple of times possibly during that time. It's not the most desirable work in the world.

So 30 days? You know, the records are kept—sometimes we rely on the video or photographs taken by our customers. We do have monitoring cameras that we've placed at some properties, but were denied that in a lot of cases due to some privacy issues. I think those recordings maybe are kept for 30 days; I'm not sure. So, something in that regard maybe, but the longer the period the harder it is to defend.

Mr. Norman Miller: Your accreditation idea seems to be something that might be a good step going forward. As a snow removal company, you'd take a course or whatever and follow a bunch of guidelines, and then you're accredited and then that gives you some liability protection, is what you're proposing.

Mr. Terry Nicholson: Yes. That's something that is in place in the state of New Hampshire right now. There is a program in Ontario, Smart About Salt, that is administered here. They actually provide the training for the New Hampshire model. That's something—a modified Smart About Salt-type training—that would also address your issue with too much salt at Queen's Park.

Mr. Norman Miller: Yes.

Mr. Terry Nicholson: So that's where that model comes from, and it seems to work for them down there.

Mr. Norman Miller: How long has it been in New Hampshire?

Mr. Terry Nicholson: I believe for four or five years maybe. That program was put in place to address the over-salting issue. That's really where that started.

Mr. Norman Miller: Yes. I represent an area with all kinds of lakes, so too much salt is not a good thing. The right amount is fine as far as I'm concerned, or other alternatives—sand or whatever. But yes, filling Muskoka Lakes up with salt is not something I like the idea of doing.

1710
Mr. Terry Nicholson: I also sit on another committee that's called the Freshwater Roundtable that's led by the Lake Simcoe Region Conservation Authority, and they've assembled a group of contractors, property owners, lawyers, conservation authorities, the World Wildlife Fund; there's some involvement from the MOECP and from Environment Canada. It's looking at how we reduce the amount of salt that's getting into the freshwater lakes, rivers and streams. As a group, everybody has come to the same agreement: that as long as the contractor is liable for every slip-and-fall, they're going to keep putting down as much salt as possible, because that's really our only defence.

Mr. Norman Miller: Okay. You described some incidents at the Walmart that certainly sound frivolous, when the same person is claiming—at two different Home Depots, I think you said. Do you have any indication of how many of your slip-and-fall lawsuits are frivolous, in your mind?

Mr. Terry Nicholson: We don't know for sure. We don't see the medical records. We don't see everything that is brought forward at discovery. We make our presentation and that's it, and then in most cases, there's a settlement. This case of the same person at two different Home Depots in the same season to me is somebody trying to take advantage of the system. We do, as I mentioned, find it odd—we don't get claims from smaller retailers. It's only the Home Depots, the Lowes, the Walmarts, the Loblaws. Those are the places where the claims come forward. We believe it's because people think that when they fall at Loblaws, they're suing Loblaws. They don't understand that they're suing the snow contractor. The

corporations that are perceived to have the deep pockets are the ones where we see most of the claims coming forward.

Mr. Norman Miller: A presenter earlier in the day described sort of a system. It's like getting a lottery ticket that you don't have to buy when you do one of these. I drive up to my rural riding and I see the big billboards advertising, "If you fall, you don't pay unless we win," that kind of thing. And you hear them on the radio. Do you have any recommendations for—I mean, it seems like in the last 10 years this has really gotten out of control, is the way I would describe it. Should clients have to pay something so that they have some skin in the game? Should there be limits on advertising for lawyers? Any thoughts about that?

The Chair (Mr. Deepak Anand): One minute.

Mr. Terry Nicholson: I don't know if having to pay something, a little bit, to defend yourself might incent some of them in a different direction. But surely, that type of advertising can't help. The client has nothing to lose. They don't get all the money. Whatever the settlement is, the contingency lawyer gets a good chunk of that. But yes, every bus has a sign on it. Billboards, advertising on radio, TV: They're everywhere. We believe that's what has led to the increase in claims over the years.

We can't catch the snow. It's got to touch the ground at some point. People are going to slip; it's snow and ice. But if you can demonstrate that you've visited the property, you've applied material, you've done everything you can to try to make it safe, and somebody can still fall during a freezing rainstorm, we end up in these cases and then the settlements are made.

The Chair (Mr. Deepak Anand): Thank you so much. That concludes the time, MPP Miller. Now over to MPP West.

Mr. Jamie West: Thank you, Chair, and thank you as well, Mr. Nicholson, for joining us. I know it's a long day. I appreciate it, and the perspective.

A question I was writing down as we switched over: I was wondering what a typical snow removal contract looks like. Just for perspective, my office is in a bit of a strip mall. I have a shared parking lot with the Rexall and the Starbucks and a couple of doctors' offices. Is the contract basically to make sure the snow is removed? For example, let's say it snowed this morning. Typically, the place is clean before I get here at 7 a.m. Are you expected to clear it by 7 a.m. or is the contract written in a way that you're supposed to come back all day in case—I don't know—it warmed up and melted, and then it got cold and froze over again?

Mr. Terry Nicholson: A lot of contracts are written "clear by 7 o'clock," but that's next to impossible if it's snowing at 6 o'clock, right? Some are written with "clear within" a number of hours "from the end of the snowfall," but again if the parking lot gets half-full of cars, you can't complete the work till maybe the following night when it's empty again.

Often there's a threshold written into the contract, "plow at two inches," something like that, but also in the

contract is "maintain bare pavement." It says they'll come when there's two inches, but then it also says "maintain bare pavement." So you're kind of stuck.

We go in and apply salt where there's—we typically start plowing at one inch regardless of what the contract reads and then apply material afterwards. But it always comes down to this "maintain bare pavement" clause, that we're kind of expected to be there all day and every day unless—and with these bigger corporations, the bigger property managers, we're signing their contract. We're signing what's presented to us. The argument could be, "Well, just don't sign them if they're that one-sided." Well, somebody's got to sign them because they're not budging.

Mr. Jamie West: Right. Thank you for your patience. If I don't write it down, I'll forget.

We've heard a lot today from probably smaller—well, obviously smaller; you're the largest one—contractors and you, and insurance brokers. I know it's outside of the scope of this, but we've got so much information and it's a missed opportunity if I don't ask: What else should we be looking at to help your industry? I wasn't aware of this, so I applaud MPP Miller for bringing it forward, the concerns about insurance rates skyrocketing and being at the mercy of them. What else do we need to look at in terms of snow removal that we can maybe get ahead of the ball on before it gets to this point?

Mr. Terry Nicholson: Well, a couple of things. One is—this is, I guess, an education program, but somehow the expectation has to change. You're in a much colder environment here than in Toronto. I know that in Sudbury people will drive on hard-packed snow and walk across hard-packed snow, and be fine with it. Here in Toronto, it seems to be a different standard. I think there needs to be some kind of a better education program about dressing appropriately. Don't go out when it's dangerous. Let the people do their work to clear the lots and get things done. You don't have to go to Loblaws on a Saturday if it's snowing. You can go on Sunday or you can go during the week. Things like that, I think, would help.

I do believe part of the problem in defending these slip-and-falls right now is the way that the act is written—I think the words are "reasonable care." Nobody can define what "reasonable care" is. So if somebody were to slip and fall, it's the owner of that property who is liable and they, in turn, draw the snow contractor in. I think it's an education thing.

We're trying to get going with the Canadian Standards Association to write a snow and ice standard so we can have something to present that says that if we're meeting these requirements, following these guidelines, then we've met the standard so we have met that reasonable care. But we don't know how long that's going to take. We need some federal support on that.

Mr. Jamie West: It's interesting what you said about bare pavement, because earlier when you talked about bare pavement—sorry. Even my light is getting tired. When you talked about bare pavement earlier, I was thinking about—every parking lot in Sudbury is snow-packed. There's a little bare pavement where there's high traffic in

and out of the mall, but anywhere you park is hard-packed. That is interesting, as well.

Primarily we've been talking to smaller businesses and we keep hearing that it's easier to get insurance for the above-million-dollar company. I don't know if you fit into that, but as one of the largest I think you do, and you'll be able to bring some perspective. Is it easier to get insurance for the above-million-dollar companies?

Mr. Terry Nicholson: We do about \$30 million in snow in Ontario.

Mr. Jamie West: Okay.

Mr. Terry Nicholson: We've not lost insurance, but every renewal period for the last five years, we've been scrambling. We've always managed to get placed somewhere. We actually changed our renewal date to May 1 from September 30 because we wanted to know early in the year what our price increase was going to be so we could try to incorporate it into our pricing that fall. When we were finding out in September, it was too late. So we've managed, but our most recent renewal was for May 1 this year, and that insurance company has since announced that they're not going to insure anybody in snow—really, not doing any renewals, effective immediately.

The Chair (Mr. Deepak Anand): One minute.

Mr. Terry Nicholson: We're covered until April 30, and then we've got to find a new one for May 1, but we're running out of options.

Mr. Jamie West: It's unbelievable, because we keep hearing this about insurance companies saying no or the prices skyrocketing. But the insurance companies saying no is the one that I'm surprised about. We all need insurance in order to run our businesses.

Anyway, I'm almost out of time, so thank you again for your time, Mr. Nicholson. I appreciate it.

Mr. Terry Nicholson: Thank you.

The Chair (Mr. Deepak Anand): Thank you so much, MPP West. Now, it's time for the government members, for the second round.

At this point, I don't see any government members, so it's all good. Thank you so much.

Back to MPP West for the second and final round.

Mr. Jamie West: I'm going to be brief. There were three recommendations you had said during your deputation; I wasn't able to write one down. One was the elimination of the hold harmless contracts; the second one, I believe, was an accreditation like New Hampshire's. I didn't write down what the third one was.

Mr. Terry Nicholson: It was the creation of the national standard that will better define what "reasonable care" is.

Mr. Jamie West: Okay. Thank you again for this and for staying late.

Chair, I have no more questions.

The Chair (Mr. Deepak Anand): Thank you so much.

Thank you, Mr. Nicholson, for joining us. Thanks for your presentation and thanks for your input.

At this time, I'd like to thank everyone. This concludes our business for today. Please note that the deadline for written submissions is at 7 p.m. today, and the deadline for filing amendments to the bill is 5 p.m. on Tuesday, November 10, 2020.

The committee is now adjourned until 9 a.m. on Thursday, November 12, 2020. Thank you so much for joining. I'm looking forward to seeing you on Thursday.

The committee adjourned at 1723.

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

Chair / Président

Mr. Deepak Anand (Mississauga–Malton PC)

Vice-Chair / Vice-Président

Mr. John Fraser (Ottawa South / Ottawa-Sud L)

Mr. Deepak Anand (Mississauga–Malton PC)

Mr. Toby Barrett (Haldimand–Norfolk PC)

Mr. Will Bouma (Brantford–Brant PC)

Mr. Stephen Crawford (Oakville PC)

Mr. John Fraser (Ottawa South / Ottawa-Sud L)

Ms. Laura Mae Lindo (Kitchener Centre / Kitchener-Centre ND)

Mrs. Gila Martow (Thornhill PC)

Mr. Paul Miller (Hamilton East–Stoney Creek / Hamilton-Est–Stoney Creek ND)

Mr. Billy Pang (Markham–Unionville PC)

Mr. Dave Smith (Peterborough–Kawartha PC)

Mr. Jamie West (Sudbury ND)

Substitutions / Membres remplaçants

Mr. Mike Harris (Kitchener–Conestoga PC)

Mr. Norman Miller (Parry Sound–Muskoka PC)

Clerk / Greffier

Mr. Isaiah Thorning

Staff / Personnel

Ms. Monica Cop, research officer,
Research Services