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**Official Report  
of Debates  
(Hansard)**

Thursday 21 November 2002

**Journal  
des débats  
(Hansard)**

Jeudi 21 novembre 2002

**Standing committee on  
finance and economic affairs**

Collision Repair  
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**Comité permanent des finances  
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Loi de 2002  
sur les normes de réparation  
en cas de collision

Chair: Joseph Spina  
Clerk: Katch Koch

Président : Joseph Spina  
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON  
FINANCE AND ECONOMIC AFFAIRS**

**COMITÉ PERMANENT DES FINANCES  
ET DES AFFAIRES ÉCONOMIQUES**

Thursday 21 November 2002

Jeudi 21 novembre 2002

*The committee met at 1002 in room 2.*

**SUBCOMMITTEE REPORT**

**The Chair (Mr Joseph Spina):** The meeting will come to order. I think we have a quorum here. The first item on our agenda is the adoption of the subcommittee report.

**Mr Rob Sampson (Mississauga Centre):** Mr Chair, your subcommittee met on Monday, November 18, 2002, to consider the method of proceeding on Bill 186, An Act to further highway safety and establish consumer protection through the regulation of the collision repair industry, and to make a complementary amendment to the Insurance Act and recommends as follows:

(1) That the committee proceed with clause-by-clause consideration of Bill 186 on Thursday, November 21, 2002, at 10 am.

(2) That the deadline for amendments be Wednesday, November 20, 2002, at 12 noon.

(3) That the clerk of the committee, in consultation with the Chair, be authorized prior to the adoption of the report of the subcommittee to commence making any preliminary arrangements to facilitate the committee's proceedings.

I move adoption of that report.

**The Chair:** Any comments? Shall the subcommittee report carry? Carried.

**COLLISION REPAIR  
STANDARDS ACT, 2002**

**LOI DE 2002  
SUR LES NORMES DE RÉPARATION  
EN CAS DE COLLISION**

Consideration of Bill 186, An Act to further highway safety and establish consumer protection through the regulation of the collision repair industry, and to make a complementary amendment to the Insurance Act / Projet de loi 186, Loi visant à améliorer la sécurité sur les voies publiques et à protéger les consommateurs en réglementant le secteur de la réparation en cas de collision et à apporter une modification complémentaire à la Loi sur les assurances.

**The Chair:** The second item on our agenda is the clause-by-clause consideration of Bill 186, An Act to further highway safety and establish consumer protection

through the regulation of the collision repair industry, and to make a complementary amendment to the Insurance Act. Are there any comments, questions or amendments to any sections of the bill, and if so, which section?

**Mr Sampson:** Section 1, Mr Chair: I believe it's amendment 1 in your package.

I move that section 1 of the bill be amended by striking out the definition of "collision repair shop" and substituting the following:

"'collision repair shop' means a place of business where collision repair is performed, and includes an entity that provides towing services, where the entity is owned or operated either in whole or in part by an entity that provides collision repair;" and there's a French version there that I won't even bore you with.

**The Chair:** Are there any comments on the amendment?

**Mr Monte Kwinter (York Centre):** I have some concerns about this particular amendment. My concern is that it provides that a towing service, where the entity is owned or operated either in whole or in part by an entity that provides collision repair—it doesn't include what we call these rogue tow truck operators, and nowhere else in the act are they addressed. It's a point I've raised before, that one of the major concerns I have is that the towing industry is an integral part of the chain of events that impact on someone who has had an accident, and limiting this act to only those tow truck operators owned in whole or in part by an entity that is a collision repair facility excludes a substantial number of tow truck operators that really do have an impact on what we're trying to do.

**Mr Sampson:** Thanks, Monte. That's a good point. I think the issue that you need to understand is that the dealings between the collision repair shop and those, as you call them, rogue tow truck operators could be dealt with under the regulations to determine the types of business relationships the collision repair shop can and cannot have in order to maintain its certification. Through that mechanism we can get at what I think you're driving at: some of the less than fair business practices some of the rogue tow truck operators are performing.

The intent of this amendment was to say that you couldn't get around being covered by the certification requirements for a collision repair by saying, "Well, I'm just a tow truck business." If there's some relationship

between the collision repair shop and the tow truck business, some business relationship in whole or in part, then you need to be considered covered by this act. If you are truly just operating a tow truck business, then you're in the realm of regulating the tow truck industry. But what you really want to do to protect the consumer is get at that business relationship that's a non-ownership relationship between a tow truck entity and a collision repair shop, and I think you can do that through tight regulation, as set out by this proposed act.

**Mr Kwinter:** With all due respect, it would seem to me that you could solve that without having to worry about the regulations just by saying, "means a place of business where collision repair is performed, and includes an entity that provides towing services"—period. You don't have to have a condition in there that it's "where the entity is owned or operated either in whole or in part by an entity that provides collision repair."

**Mr Sampson:** Yes, but the problem with that is that if you're just in the towing business, if that's all you're in, that amendment you're suggesting means you'd be covered by this act and governed by a board that consists of collision repair guys, consumers, as proposed, and government officials.

This isn't intended to directly regulate the tow truck industry. It never was intended to be that. It was intended to regulate the collision repair industry and their relationship with consumers. If they have a business connection with a tow truck business, like an ownership relationship, then that would be covered. But as a stand-alone tow truck business, I think it would be problematic for us to regulate that indirectly, if you will, through a collision repair act. That's the problem with your amendment. Somebody who is solely in the business of tow trucking, under your suggestion, would be covered by this act, and the rest of this act would have to contemplate that.

I know what you're trying to get at, Monte. I think you can do it by asking, what's the bad business practice between an independent tow truck guy and the collision repair guy? Let's get at that by regulating the good business performance of the collision repair guy, and that is contemplated by this act.

**Mr Kwinter:** I don't want to belabour the point, but I feel very strongly about this, because when we talked about this whole initiative, it was a consumer protection act. That was the rationale. It was to try to get some consumer protection and try to eliminate some of the abuses taking place in this industry, whether it be the insurance company, whether it be the tow truck operators or whether it be uncertified or unqualified repair services. I thought I had made the point, and I thought that we sort of had agreement, that you can't separate any of the components. Tow trucks are the first line of defence. That is the major problem, because when someone has an accident—sometimes they may be injured, sometimes they may be distraught, whatever happens—a tow truck shows up on the scene and says, "I'm taking your vehicle somewhere," and in most or some cases the driver says, "Whatever you have to do, you have to do." To say

you're going to get at it through regulation really goes against your argument, because you're saying this was never contemplated to deal with the tow truck operator.

**1010**

**Mr Sampson:** It was. The problem is that when they get to the collision repair shop, there's a kickback for the cost of that repair in bad business situations. You get at that by saying to the collision repair people, "You pay the tow truck guy for the towing service. Period. Full stop." It's not the bad business practice, if you will, by the independent tow truck guy. It's what the collision repair shop is doing to get that business. I would argue that the amendment you're suggesting is a bit complicated, because you're basically saying that the collision repair shop includes the towing business. It doesn't. A stand-alone towing business is not a collision repair business, logically or practically.

What you want to get at is a bad business practice between the collision guy and the towing guy, and you do that by clamping down on the bad business practice of the collision people, who are the ones paying the money. I think you do that by tough regulations within a collision repair act as to what good practices and bad practices are.

**Mr Kwinter:** If I could just make one more point, a tow truck operator has various things they can do. They can tow a vehicle to a dealership because, for some reason or other, the car isn't running and it has nothing to do with a collision repair shop. I agree with you on that point, that there's no reason we should be regulating how they operate with this act. But when a tow truck operator is taking a car to a collision repair shop, then they are part of this process.

**Mr Sampson:** And this act allows you to catch them because it—

**Mr Kwinter:** It only allows them to catch them if they are partially or wholly owned by that repair service.

**Mr Sampson:** No, that's wrong. You can catch them through the detailed regulations as to the appropriate business practice that the certified collision repair shop will have with anybody who tows the vehicle into their compound, as it relates to the payment of services for that towing service, as it relates to how that car is sourced at the scene of the accident, all sorts of things that the collision repair council could recommend to the minister.

You hit the nail on the head. We don't want to get those people who are towing somebody, because they've got a flat tire, to a Canadian Tire to get their tire repaired. Your amendment would capture them, and I'm not suggesting we do that. I'm suggesting we get at the bad business practice by getting at the majority player in the bad business practice, if there is any, on the collision repair side.

**The Chair:** I think the points have been made by both gentlemen. Is there any other comment on this?

**Mr Kwinter:** Well, just one more shot at it.

**The Chair:** The last one.

**Mr Kwinter:** The concern I have is that you're saying contradictory things. You're saying the act is going to deal with tow truck operators if they are owned or

partially owned by a collision repair shop. What difference does it make whether they are owned or partially owned by the repair shop if a tow truck operator is not owned but still has a relationship with the collision repair?

**Mr Sampson:** He is caught under any proposed regs that would determine the nature of that business.

**Mr Kwinter:** But I don't know what those regs are going to be, whereas it would seem to me that if you're talking about it here, why would you not capture that group as well in the same clause where you've already captured the ones that are owned or partially owned by repair shops?

**Mr David Christopherson (Hamilton West):** That's a good point. You could still have an external relationship that doesn't tie into any kind of ownership, but you could still have some funny business going on. Why wouldn't it be phrased in a way that captures all the tow trucks?

**Mr Sampson:** The answer to that question is that the legislation proposed here would allow for the creation of rules and guidelines that would be part of a certification of a repair shop that would determine the types of proper relationships they can have with people who bring cars in on a hook, and improper ones. The improper ones would be paying a percentage of the repair for the cost of the tow. That would be an improper business relationship with whoever towed the vehicle into your shop and would subject you to decertification as a repair shop.

I argue that that's probably a more effective way to get at that business relationship than to delve into the very complicated process of regulating the towing industry directly, which is what I think you are proposing. The amendment here simply says you can't get around being required to certify your collision repair shop by saying, "My primary business is in towing." That's the towing addendum to that clause, if you will, the "whole or in part." I don't want to provide a loophole where people would say, "I don't have to certify my collision shop because really I'm just in the towing business."

**The Chair:** Shall the amendment carry as proposed? Carried.

Shall section 1 of the bill then carry? Carried.

The next amendment, I believe, is a government amendment.

**Mr Sampson:** It deals with section 3. Do you need to carry section 2, Mr Chair?

**The Chair:** Sorry. Shall section 2 of the bill carry, since there are no amendments? Any opposed? Carried.

Section 3 of the bill: now we have an amendment.

**Mr Sampson:** I move that section 3 of the bill be amended by striking out subsections (2) and (3) and substituting the following:

"Board membership

"(2) The advisory board consists of 10 members appointed by the Lieutenant Governor in Council, of whom,

"(a) four shall be persons who work in the collision repair industry;

"(b) four shall be persons who represent the consumers of Ontario and who do not work in the collision repair industry; and

"(c) two shall be employees of the government of Ontario.

"Terms of office

"(3) The terms of office of the members of the advisory board are subject to the following rules:

"1. Members serve for a term set by the Lieutenant Governor in Council in the instrument of appointment.

"2. Members may be reappointed.

"3. When the term of a member expires, he or she continues to serve until a successor is appointed."

**The Vice-Chair (Mr Ted Arnott):** Any discussion on the motion? Shall Mr Sampson's proposed amendment carry? Carried.

Shall section 3, as amended, carry?

**Mr Sampson:** On subsection 4(1) I have another amendment, I believe, do I not, Katch? The annual report to the minister, that amendment?

*Interjection.*

**Mr Sampson:** Oh, I'm in the wrong section. I apologize.

**The Vice-Chair:** OK. Shall section 3, as amended, carry? Carried.

We now turn to section 4 of the bill.

**Mr Sampson:** I move that subsection 4(1) of the bill be amended by adding the following clause:

"(0.a) make an annual report to the minister concerning its activities, including an annual budget indicating the advisory board is self-financing, and make the report available to the public;"

**The Vice-Chair:** Any discussion on the motion? Shall the amendment carry? Carried.

**Mr Sampson:** I believe there's another amendment for 4.

I move that the subsection 4(2) of the bill be amended by striking out "subject to any conditions it sees fit" in the portion before clause (a) and substituting "subject to any conditions prescribed in the regulations."

**The Vice-Chair:** Any discussion on this motion?

**Mr Kwinter:** I just want to congratulate Mr Sampson for changing that particular provision. I've never seen any act that ever says "subject to any condition it sees fit." To make it conditional upon prescribed regulations is a huge step forward, and I want to thank you for doing that.

**Mr Sampson:** A 10-minute speech, I think it was, from the member opposite encouraged me that I was perhaps wrong in our original.

**The Vice-Chair:** Further discussion? Shall Mr Sampson's amendment carry? Carried.

**1020**

**Mr Sampson:** We have one more.

I move that section 4 of the bill be amended by adding the following subsection:

"SPPA

"(3) The Statutory Powers Procedure Act applies to procedures and hearings of the advisory board."

**The Vice-Chair:** Discussion on the motion? Shall the amendment carry? Carried.

Shall section 4, as amended, carry? Carried.

I understand that there are no amendments being proposed to section 5.

**Mr Sampson:** No, there is. I have one.

**The Vice-Chair:** To section 5 in the bill there are no amendments. We're adding a new section, 5.1.

So the question to put to the committee is, shall section 5 carry? Carried.

Section 5.1; Mr Sampson.

**Mr Sampson:** I move that the bill be amended by adding the following section:

"Motorist's Bill of Rights

"5.1(1) At the time of providing an estimate to a customer, every operator of a certified collision repair shop shall provide every customer with a copy of the Motorist's Bill of Rights that complies with subsection (2).

"Same

"(2) The Motorist's Bill of Rights shall contain at least the following elements:

"1. A statement advising the consumer of his or her right to select a certified collision repair shop for auto body damage covered by his or her insurance policy.

"2. A statement advising the consumer that an insurer may suggest that the work be done at a particular collision repair shop but may not require this work to be done at a particular collision repair shop.

"3. A statement advising the consumer of his or her right to be informed about whether the auto body repairs will be made with new original equipment parts, new aftermarket parts, or other type of parts.

"4. A statement confirming to the consumer that the repairer will, before the consumer takes custody of the repaired vehicle, provide the consumer with a certificate acknowledging that the repair has been made in accordance with all applicable safety standards.

"5. Toll-free phone number and Internet address for reporting suspected fraud and other complaints and concerns about collision repair shops to the advisory board."

**The Vice-Chair:** Discussion on the motion?

**Mr Kwinter:** I have some concerns under (2)1, "A statement advising the consumer of his or her right to select a certified collision repair shop for auto body damage covered by his or her insurance policy." When I first read that, my first reaction was that somehow or other that leaves an opportunity to negate the second part, which says, "A statement advising the consumer that an insurer may suggest that the work be done at a particular collision repair shop but may not require this work to be done at a particular collision repair shop."

I would prefer to have that statement say, "A statement advising an insured consumer of his or her right to select a certified collision repair shop for auto body damage," period. When you include "covered by his or her insurance policy," I have some concerns that that may be used by insurance companies to say, "This is

spelled out in the act and we can in fact direct where you're going," notwithstanding that in the second part it says that doesn't happen. I think the only purpose that last clause serves, the way it is now, is to say that it's covered by your insurance policy. If you substitute it and say, "A statement advising the insured consumer," it covers that without leaving the ambiguity that the insurance company can use this as a way of directing where that car gets repaired. Do you know what I'm trying to get at?

**Mr Sampson:** Yes. Actually, these two statements are just reflecting the reality as it is today; you'd just take out "certified collision repair shop" and put in "collision repair shop." Right now, the consumer can pick wherever they want to go, but the companies can provide some direction as to where to go. We're trying to capture today's reality. I don't quite follow what you're getting at with your concern about "covered by his or her insurance policy." I don't get it yet.

**Mr Kwinter:** One of the main thrusts of this act is to allow consumers freedom of choice as to where they get their car repaired, provided it goes to a certified auto collision shop.

**Mr Sampson:** Correct.

**Mr Kwinter:** And one of the things we're trying to eliminate is the concerns that have been expressed—and we've heard about them—where the insurance companies have their preferred list and say, "Here's where you've got to take your car." We're saying, "You don't have to do that any more. The insurance companies can say, 'Here's our preferred list,' but if you want to go somewhere else, you're free to do it." My concern is that when it says "covered by his or her insurance policy," that could be interpreted as, "Our policy says that here's where you're going to take your car." If you want to get to the point where you want to cover the fact that we're only dealing with insured drivers—when I say "insured drivers," it's drivers who have collision insurance—then if you just say "A statement advising the insured consumer" of his right, it solves that problem.

**Mr Sampson:** I'm not actually going to argue that deleting that phrase is problematic. I would be prepared to delete that phrase. I don't know whether we can, actually. I don't know technically whether we can. I suppose if I agree, we could. I'm not wedded to having that phrase—

**Mr Kwinter:** We're debating an act. We can do whatever we want as long as we get consent.

**Mr Sampson:** I don't have a problem with what you're suggesting, Monte. They are there because it's being covered by the insurance policy. I don't have a problem with that.

**Mr Kwinter:** And it's covered in my amendment. It just says "the insured consumer."

**Mr Sampson:** You're suggesting stopping where?

**Mr Kwinter:** I'm saying, "A statement advising the insured consumer of his or her right to select a certified collision repair shop for auto body damage."

**Mr Sampson:** Are you wedded to including “insured consumer”? What’s the difference?

**Mr Kwinter:** This particular clause deals only with people who are covered by insurance.

**Mr Sampson:** I think by “insured consumer,” you’re doing the same thing I tried to do by saying “a consumer covered by an insurance policy.” I think we’re doing the same thing. I’m worried about the term “insured consumer,” because it’s not defined anywhere. I don’t think “insured consumer” is even defined in the Insurance Act. We might be setting up a definition that hasn’t been defined anywhere in any other act, the Insurance Act or this one. “Consumer” is a relatively consistent definition, I would argue, in a lot of statutes in the province of Ontario. I would argue that it just say “A statement advising the consumer of his or her right to select a certified collision repair shop for auto body damage.”

**Mr Kwinter:** Fine. I have no problem with that, no problem at all.

**Mr Sampson:** Does that deal with your concerns, David?

**Mr Christopherson:** Yes. In fact, the reason I asked for the floor was that I just wanted to compliment you on responding to some of those concerns. Nobody expected a New Democrat to be the one to jump forward and argue the insurance companies’ rights here, but I thought they made some really good points and raised some good concerns. I’ve had discussions with you, and I thought it was really good that you came up with it in a way that makes it very clear that we’re not looking to change that; and if we were, that was a whole different process, and I had a problem with trying to ram that through. I wanted to compliment you on being sensitive to things.

**Mr Sampson:** Mr Chair, I am proposing unanimous consent of the committee to delete—

**The Vice-Chair:** You need to request unanimous consent.

**Mr Sampson:** Can I have unanimous consent to delete from my amendment?

**The Vice-Chair:** You need unanimous consent to move a motion to amend your amendment.

**Mr Sampson:** That’s what I need.

**The Vice-Chair:** Is there unanimous consent to allow Mr Sampson to amend his amendment? Agreed.

**Mr Sampson:** My amendment would be to take the amendment that I have already read into the record but in clause 5.1(2)1, we’d delete “covered by his or her insurance policy.” That would read, “A statement advising the consumer of his or her right to select a certified collision repair shop for auto body damage.”

**The Vice-Chair:** Is there any discussion on the amendment to the amendment? Shall the amendment to the amendment carry? Carried.

Shall the amendment, as amended, carry? Carried.

Shall section 5.1 carry? Carried.

I see no amendments to section 6. Shall section 6 carry? Carried.

Section 6.1; Mr Sampson.

1030

**Mr Sampson:** Yes, I have a 6.1. I move that the bill be amended by adding the following sections:

“Duty to be”—oh, sorry.

**The Vice-Chair:** That’s Monte’s.

**Mr Sampson:** I’m sorry. This is not my amendment. I apologize to you, Monte. I don’t move anything.

**Mr Kwinter:** That’s right. I move an amendment, a new section 6.1.

I move that the bill be amended by adding the following section:

“Duty to be certified

“6.1(1) No person shall operate a collision repair shop that is not certified by the minister in accordance with the regulations.

“Penalty

“(2) Every person who contravenes this section is guilty of an offence, and on conviction is liable to a fine not exceeding \$10,000 for a first offence, and not exceeding \$50,000 for each subsequent offence.”

**The Vice-Chair:** Thank you, Mr Kwinter. I apologize for not recognizing you initially. Any discussion on Mr Kwinter’s amendment?

**Mr Christopherson:** Just a question: I see that it removes the issue of an imprisonment penalty. That’s the main change in what you’re proposing, is it, Monte? I’m just looking at the difference between what you originally proposed, Rob, and what Monte has just moved. It seems to me that the only difference was the imprisonment part, and I just wondered why.

**Mr Sampson:** I think it’s because when I took Crozier’s amendment, I took it back to legal counsel and said, “Is there an imprisonment component that could be added?” They did, and I never got that to you. Do you have any problem with that?

**Mr Kwinter:** I have no problem with that.

**Mr Sampson:** OK. Do you want to do what I just did with the last amendment?

**Mr Kwinter:** Sure. Can I just amend my amendment?

**The Vice-Chair:** You need to seek unanimous consent.

**Mr Kwinter:** Can I have unanimous consent to—

**The Vice-Chair:** Yes. Is there unanimous consent for Mr Kwinter to move an amendment to his amendment? Agreed.

**Mr Kwinter:** Under subsection 6.1(2), it would be “a fine not exceeding \$50,000 or to imprisonment for not more than six months, or to both, for each subsequent offence.” I move the amendment to the amendment.

**The Vice-Chair:** Any discussion on Mr Kwinter’s amendment to his amendment? Shall the amendment to the amendment carry? Carried. Shall the amendment, as amended, carry? Carried.

Shall section 6.1 carry? Carried.

Moving now to section 7; Mr Sampson.

**Mr Sampson:** I move that section 7 of the bill be amended by adding the following clauses:

“(c) prescribing anything that may be prescribed for the purposes of this act;

“(d) generally for implementing the provisions of this act.”

**The Vice-Chair:** Any discussion on the amendment?

**Mr Sampson:** This one deals with the insurance companies’ suggestion that there wasn’t enough regulatory-making authority to implement the bill.

**The Vice-Chair:** Any discussion on the amendment? Shall the amendment carry? Carried.

Mr Sampson, you have another proposed amendment for this section.

**Mr Sampson:** Yes. I move that section 7 of the bill be amended by adding the following subsection:

“Fees

“(2) The Lieutenant Governor in Council may make regulations,

“(a) requiring applicants for the certification of collision repair shops to pay reasonable fees to support the operation of the advisory board;

“(b) to ensure that the advisory board is self-financing.”

**The Vice-Chair:** Any discussion on this amendment? Shall the amendment carry? Carried.

Shall section 7, as amended, carry? Carried.

Turning now to section 8; Mr Sampson.

**Mr Sampson:** I move that section 8 of the bill be struck out and the following substituted:

“Insurance Act

“8. The Insurance Act is amended by adding the following section:

“Payment for collision repair

“263.1(1) An insured who is entitled to payment from an insurer for the repair of damage to an automobile as a result of a collision is entitled to have the repair performed at any certified collision repair shop within the meaning of the Collision Repair Standards Act, 2002, subject to any rules that may be made in regulations under subsection (3).

“Cooling off period

“(2) Despite the terms of any policy, an insurer is not required to make a payment for the repair of damage to an automobile due to a collision where the automobile was towed to a collision repair shop or a collision reporting centre, and the automobile was not released for repair with the consent of both the insurer and the insured.

“Regulations

“(3) The Lieutenant Governor in Council may make regulations setting out rules for the purposes of subsection (1).

“Definitions

“(4) In this section,

“‘collision’ includes,

“(a) collision with another vehicle,

“(b) collision with the roadway or any object on the roadway,

“(c) an act of theft or attempted theft,

“(d) fire, or

“(e) vandalism;”

**The Vice-Chair:** Any discussion on this particular amendment?

**Mr Kwinter:** I just want a clarification. It may be OK, but I’d just like your explanation on the cooling off period and the wording. It says, “Despite the terms of any policy, an insurer is not required to make a payment for the repair of damage to an automobile due to a collision where the automobile was towed to a collision repair shop or a collision reporting centre”—I have no problem with that; then it says—“and the automobile was not released for repair with the consent of both the insurer and the insured.” Is that meant to say that notwithstanding that the insured and the insurer both agree it should be released for repair, these people don’t do it? Or should it say “was released for repair without the consent of both the insurer and the insured”? I just want to get some clarification, because when I read that, I’m having a little difficulty figuring out what it is that it’s trying to solve.

**Mr Sampson:** Yes, it’s a double negative thing you’ve got to work through. The insurer is not required to make the payment if the vehicle was not released. If it was released, they are required to make the payment. Your interpretation of this is the meaning of it, but it’s the double negatives that make it complicated. I must agree with you. This section is actually worded to say that the only time a repair can be done is if it was released by both the insurer and the insured. It’s just the double negatives in that clause that make it difficult to read.

**Mr Kwinter:** So possibly we can get rid of the “was not” and just have “the automobile was released for repair without the consent of both the insurer and the insured.”

**Mr Sampson:** The policy says, “You have to make the payment.” This says, “You don’t have to make the payment if these weren’t done.”

**Mr Kwinter:** Is legislative counsel happy with that wording?

**Mr Ralph Armstrong:** Ralph Armstrong, legislative counsel office. My understanding of it is in accordance with Mr Sampson’s that it’s the double negative. You’re not required to make a payment where it was towed to the centre and it was not released with consent, meaning the negatives pile up; essentially, if it was not released with the consent of both parties, no payment need be made, which I believe is the intent of the policy behind the provision.

**Mr Kwinter:** Why can’t it say that?

**Mr Armstrong:** I think we’d pile up negatives no matter how we do it, because we’re talking about not making a payment where certain circumstances apply or don’t apply.

**Mr Sampson:** The way the Insurance Act is written makes it mandatory that payments be made, so any other bill that deals with when payments can’t be made has to start off and say, “You can’t make payments when these things don’t happen.” I suppose you could say, “You can’t make payments where these things do happen,” but



describing what the “do happen” is in this particular case—to the extent that’s an English phrase—is that people don’t release. One’s caught by the legalese.

**Mr Kwinter:** Again to the legislative counsel, you’re satisfied that that covers it?

**Mr Armstrong:** I am satisfied, sir.

**Mr Kwinter:** OK.

**Mr Sampson:** I agree. If only we could use English, right?

**The Vice-Chair:** Any further discussion on this particular amendment? Shall the amendment carry? Carried.

Shall section 8, as amended, carry? Carried.

Section 9; Mr Sampson.

**Mr Sampson:** I move that section 9 of the bill be struck out and the following substituted:

“Commencement

“9. This act comes into force on a day to be named by proclamation of the Lieutenant Governor.”

**The Vice-Chair:** Any discussion on this amendment? Shall the amendment carry? Carried.

Shall section 9, as amended, carry? Carried.

Section 10: I believe there are no proposed amendments to section 10. Shall section 10 carry? Carried.

**Mr Sampson:** Mr Chair, before we move on the entire bill, a note has been passed to me about whether, under section 5, the minister might want to delegate the authority to the council to certify and decertify shops, and that’s not currently contemplated by the bill. I’m just wondering whether the committee would unanimously allow me to reopen that section to consider that amendment. I don’t have a written amendment now, but a note has been passed to me that we might want to provide for that.

**Mr Christopherson:** Where does that authority lie now?

**Mr Sampson:** It sticks with the minister.

**Mr Christopherson:** Is there an element of some kind of check and balance that’s of benefit to the consumer by virtue of the minister doing it? Even though it’s a rubber stamp, by and large, there’s still a recommendation that has to come from the advisory group and it still has to be on the radar screen of the minister’s staff before they put it in front of him or her to sign. Are we removing an element of check and balance that may actually be of value, both in fairness to the consumer to get the bad shops out of the game, but also so that shops don’t inadvertently lose a licence? I mean, one bad mistake like that and they could be out of business in a blink.

**Mr Sampson:** I’m comfortable leaving it where it is. If the minister wants to make that amendment, he or she can do that in subsequent bills. I’ll leave it as it is, sure.

**The Vice-Chair:** That’s fine.

We are now at the point of the title of the bill. My question to the committee is, shall the title of the bill carry? Carried.

Shall Bill 186, as amended, carry? Carried.

Shall the Chair of the committee report the bill, as amended, to the House? Carried.

Thank you very much, committee members. Well done, Mr Sampson, and congratulations. I will adjourn the committee.

Sorry. There is one additional order of business that has been brought to my attention. The Chair of our committee has received an invitation to attend a conference in February 2003 in Australia, and it has been suggested by Katch that we refer this matter to the subcommittee for discussion. Is everyone in agreement with that? Agreed.

Any further business? OK. The committee’s adjourned.

*The committee adjourned at 1044.*





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