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Wednesday 30 May 2012

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des débats
(Hansard)**

Mercredi 30 mai 2012

**Standing Committee on
General Government**

Automobile insurance review

**Comité permanent des
affaires gouvernementales**

Examen de l'assurance-
automobile

Chair: David Oraziotti
Clerk: Sylwia Przedziecki

Président : David Oraziotti
Greffière : Sylwia Przedziecki

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
GENERAL GOVERNMENT**

**COMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES**

Wednesday 30 May 2012

Mercredi 30 mai 2012

The committee met at 1602 in room 228.

AUTOMOBILE INSURANCE REVIEW

The Chair (Mr. David Oraziotti): Good afternoon, folks. We'll resume hearings on the auto insurance industry study.

MS. ELAINE MOORE

MR. JOHN SANDERSON

The Chair (Mr. David Oraziotti): Our first presenter is the city of Brampton. Would you like to come forward? Good afternoon. Welcome to the Standing Committee on General Government.

Ms. Elaine Moore: Just take any seat here?

The Chair (Mr. David Oraziotti): Absolutely, that's fine. You have, as you're aware, 10 minutes for your presentation. There will be five minutes for questions among committee members combined.

Ms. Elaine Moore: I'll speak as fast as I can.

The Chair (Mr. David Oraziotti): Any time that you leave will be divided among members, but what you can do for our recording purposes is simply state your name and then you can proceed when you're ready. Thanks.

Ms. Elaine Moore: Thank you. Good afternoon, honourable members. Thank you very much for the invitation and the opportunity to speak to you today. My name is Elaine Moore. I am a regional councillor in the city of Brampton, and I'm joined here today by regional councillor John Sanderson. We are not here today in our official capacity; however, as you can imagine, the offices of city and regional councillors have received a multitude of calls of concern from our residents, taxpayers and businesses in Brampton who are outraged about the increase in insurance rates solely because they have a Brampton address. We're going to share with you today our own personal perspective as well as an example of a typical scenario being played out daily between Brampton residents and Brampton's insurance brokers.

From a personal perspective, my husband and I own five automobiles. We are Ford Motor Company's best customers, I think. We own a 1966 Mustang and a 1967 Fairlane that are insured through a specialty insurance company, and the rates for these two vehicles have barely increased over the past 12 to 14 years. We insure both for

less than \$300 a year and there is a list of restrictions on these policies. We know that non-compliance puts our coverage at risk on these vehicles. We also own fairly new daily-use vehicles and we have a pickup truck because no man is complete without one. We both have pristine driving records, and the only time we've had to go through our insurance company has been when someone else has been charged with damaging our vehicles.

This year, we got our insurance bill and it had increased by over \$1,200 for the three autos. We were absolutely shocked. Our insurance broker has shopped around for a better rate for us, which they do at every renewal date, but the past couple of years has been very difficult. His efforts did net some results this year; however, in order to achieve the better rate, we had to also move our home insurance to the company to get the multiple discount. This all-or-nothing policy is problematic because our home insurance doesn't expire at the same time as our auto insurance, so a good chunk of the savings on the auto insurance has been eaten up with the penalty that we now have to pay to cancel our home insurance prior to its expiry date. So I guess if you don't own a home, you don't qualify for the discounts.

Two years ago, my 79-year-old father moved from Woodstock to Brampton. I have one sister in Brampton and one in Milton, and with his age and his increasing need to access the health care system, it just made good sense to move him closer. He had been travelling from Woodstock to Brampton or Milton at least three times a week—three daughters, three free lunches or dinners. Nearly his entire life he was a truck driver. He loves to drive and he's a great driver, and to the best of my knowledge, he has never had an accident. But when he got his first insurance renewal after he moved to Brampton, he was ready to pack up and move back to Woodstock. His insurance rates had exactly doubled. He is a senior citizen on a fixed income, and, like many in Brampton, he is understandably concerned about what next year's bill is going to bring.

The bottom line is that while he goes out every day to meet the old guys at a local donut shop, goes for fish and chips on Fridays, makes the short trip to my sister's in Milton or in Bramalea for lunch or dinner and his regular doctor's appointments, he is putting less miles on his car today than he was two years ago because he's not travelling along the 400-series highways, and his insurance rates have doubled just because he has a Brampton address.

He is maintaining his independence, which is so incredibly important for our seniors, who need to be kept active and engaged. The option of giving up his vehicle because of escalating insurance rates should not be something that he has to consider.

In Peel region, we continue to have one of highest unemployment rates in Ontario. Many of our folks are struggling to keep their homes and their vehicles. They are making sacrifices just to get by, but there is a real likelihood that when they find employment, it will not be within the Brampton community, and not having a vehicle is just simply not negotiable for them. Despite the significant municipal investment in our public transit system, it is just not an option for everyone.

This really brings me to my next point: Why should where you live be the primary determinant of your insurance rates? Brampton has many residents who travel outside of Brampton for employment or school, hence, their vehicles spend more time outside of Brampton but their insurance rates are based on their home address.

Conversely, Brampton's business community, including the corporation of the city of Brampton, has employees with addresses in Guelph, Georgetown, Erin and Orangeville. Their vehicles probably spend more time in Brampton than in their home community, yet these good folks enjoy a cheaper insurance rate. This just simply is not fair or right.

In the areas that Councillor Sanderson and myself represent in Brampton, there are five insurance brokers—all have been located within half a kilometre of each other in the downtown, and they've been there for decades. So we have a particular concern for the sustainability of the generational relationships that they have built over these many years. Many of their clients are seniors who have enjoyed and appreciated the personal service.

People lead busy lives and many don't have the time for the call centre approach to shopping around for the best rates. Seniors, especially, find it frustrating. They prefer the personal approach that they receive from brokers.

We've had many conversations with our local brokers, and they are losing clients for as little as \$100 a year in savings. They have had clients return because at the expiry date of their policies, their rates have returned or surpassed what they would have paid had they remained with their broker. Call this what you want, but I call it "bait and switch," and it's happening every day. It's unfair, and it's wrong. Controls need to be put in place to prevent this practice.

One of our local brokers has provided me with a real-life example, and this was a client that had come into his office just this week. The client had been with them since 1999. They insure their auto and their home with the same insurer to maximize the discounts. The broker has remarketed his policies to three different insurance companies due to price, and every year the client has seen an increase. They are a family with three newer vehicles, three drivers. They live in Peel Village, a very

desirable community in Brampton. They have had no accidents, with 6-star and above driving records. In 2009, they were paying \$4,765; in 2010, \$5,280; 2011, \$6,104; and in 2012, their rates have escalated to \$7,202.

We don't know what rationale the insurance companies are using to justify targeting communities like Brampton, but we do know that if there are problems in the industry, then they need to get to the root of the problem through operational and administrative efficiencies and corrective measures. But they should not be taking the shortest, most direct route to the bank accounts of the good people who live in Brampton and call Brampton home.

From conversations that we have had, there seems to be a generally accepted view that 85% of insured individuals are not the problem, yet this is the same 85% who seem to be shouldering the financial burden of solving whatever problems the industry is experiencing.

If Brampton residents are hiring paralegals to extract from insurance companies what they believe the policyholder is entitled to, then the industry needs to address this within their operating budgets and stop sending the invoices to recover their costs from Brampton residents. If some rehabilitation centres are a problem, then deal with the centres.

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In other business sectors, if they want to remain in business and keep a good, loyal client base, they either do not or cannot pass along these costs to their customers. They take reduced profit margins and modify their business practices until they get the matter under control. Insurance companies should be legislated to do the same thing.

Insurance companies have a captive audience. In 2011, they had record profits. In Ontario, they passed along the highest premiums, and have provided the second-worst protection in the country to Ontario residents. Residents of Brampton and Ontario deserve better. We need our provincial government to require some serious transparency and accountability from this industry. To single out Brampton in the GTA by imposing skyrocketing auto insurance rates is fundamentally wrong. It is hurting our residents and it is hurting our local economy.

I want to thank each of you for your time this afternoon.

The Chair (Mr. David Oraziotti): Thank you very much for your presentation. The Conservative caucus is up first. Questions? Mr. Yurek, go ahead.

Mr. Jeff Yurek: Thank you, Speaker—or Chair. You're not Speaker yet.

The Chair (Mr. David Oraziotti): No.

Mr. Jeff Yurek: Thanks for coming and talking about insurance. I know Brampton has been hard hit by the insurance rates that people are paying there.

Have you looked into or talked about fraud at all? Brampton seems to be an area that has higher claim costs than the rest of Ontario, mainly the GTA. The fact that they have, and I'm just going off memory here, 45% of

accidents, yet they have 80% of claims of mediation and such—I know the government has a task force on it. Can you give me your thoughts? Have you looked at the fraud issue as to why there may be high claim costs, therefore causing Brampton to have the higher premiums?

Ms. Elaine Moore: I think our position is simply that if there is a problem, then the industry needs to solve the problem, not on the financial backs of people who live in Brampton. If there are some problems with, as I mentioned in the presentation—which I moved through pretty quickly, I understand. But if people in Brampton are hiring paralegals to help navigate and extract from insurance companies the highest rate of return, then deal with the problem. In speaking with the insurance brokers—and as I mentioned, we have five of them in our area—85% of Brampton’s drivers are not the problem. Then deal with the 15%.

We don’t know the answer to the questions. I wish we did. Like most politicians, we’re a mile wide and an inch deep on a lot of subjects. But what we do know is what we hear from our residents and our businesses, that this is hurting them and hurting them a lot.

The Chair (Mr. David Oraziotti): Thank you. We need to move on.

Question? NDP caucus. Mr. Singh, go ahead.

Mr. Jagmeet Singh: Thank you so much for your presentation and thank you for being here.

I just wanted to ask you if you could comment on—your stories are very, very telling in terms of what has happened on a personal level and some anecdotal. In general, in terms of the constituents in Brampton, how widespread is this issue as far as you know, and how dissatisfied or upset are people on this issue of auto insurance rates being so high? How aware are they that they’re higher in Brampton than in other areas?

Mr. John Sanderson: It’s actually one of the first things that they hear: If you live in Brampton, you’re going to pay more for insurance. Obviously, it’s really widespread.

There are all kinds of personal stories regarding this. I was born and raised in Brampton. I just can’t believe my insurance went up over \$500 last year, and that’s with zero claims, zero infractions whatsoever.

Mr. Jagmeet Singh: Would people in Brampton support a bill that would get rid of this discrimination that happens between different territories or different areas within the GTA and kind of equalizes it so that if you’re a good driver living in any area, you’re treated fairly, and if you’re a bad driver, and you may live in an area that was considered good at one point, you’re not going to get a random savings because of that? If you’re a good driver, it doesn’t matter where you live; you should get a good rate. And if you’re a bad driver and living in whatever area, you might get a higher rate.

Mr. John Sanderson: Mr. Singh, I think you’d be a hero if you’re able to do that. Yes.

The Chair (Mr. David Oraziotti): Okay. Thank you. Questions, Liberal caucus? Ms. MacCharles, go ahead.

Ms. Tracy MacCharles: Thank you for both being here today and for highlighting the concerns that you’ve raised on behalf of your community. I just want to learn, if you’ve had a chance to review Bill 45, if you have any comments on that; if you are aware that, as I understand it, the bill would lower premiums in your area but push them up quite high in other areas and would also lower premiums for drunk drivers and affluent drivers. I just wondered if you’ve had a chance to look at that.

Ms. Elaine Moore: I have not had a chance to read the bill, sorry.

Ms. Tracy MacCharles: Okay, thank you very much.

The Chair (Mr. David Oraziotti): Thank you very much. That’s time for your presentation. We appreciate you coming in today.

INSURANCE BROKERS ASSOCIATION OF ONTARIO

The Chair (Mr. David Oraziotti): Next presentation: Insurance Brokers Association of Ontario. Good afternoon. Welcome to the Standing Committee on General Government. As you’re aware, you have 10 minutes for your presentation and five for questions among members who are here. Any time you don’t use will be divided among members. State your name, and you can start when you’re ready.

Mr. Randy Carroll: Randy Carroll, with the Insurance Brokers Association of Ontario.

Mr. Bryan Yetman: Good afternoon. My name is Bryan Yetman. I’m a past president of the Insurance Brokers Association of Ontario. On behalf of the IBAO, I want to thank the Chair, the members, the staff and the committee for inviting us and giving us an opportunity to present here today to provide our input and comments into your auto insurance research.

The Insurance Brokers Association of Ontario represents over 12,000 insurance brokers who assist over five million consumers across Ontario with their insurance needs. Our priority is to protect the interests of consumers, from the purchase of a policy right through to when they need an independent advocate at the time of a claim.

Those not too familiar with the insurance industry sometimes mix us up with the insurers themselves and their association, the Insurance Bureau of Canada, or the IBC. While we often work closely with insurers and the IBC, we’d like to be clear, to let you know that we are not here to represent the insurers themselves, but the brokers who represent the consumers.

We’re licensed and educated experts and intermediaries whose prime concern is that of our consumers, the insurance customers of Ontario. Insurance is a complex financial product, and we feel—and also the law requires that consumers get and need expert advice tailored to their own individual circumstances for proper financial planning and risk mitigation.

As an association, IBAO often differs on certain policy matters with insurers, and as brokers’ prime

responsibility is to advocate and serve their customer base, it often gives us a different perspective from the companies themselves.

Today we want to address and speak to three specific issues. Number one, we want to talk to the issue of insurance broker independence, which is referenced in the original motion establishing this committee and these hearings. We also want to talk about IBAO's perspective on fraud and abuse in the automobile insurance product, also referenced in the motion. Finally, we want to talk about insurer profitability and market stability.

On the issue of broker independence, we take a look at the motion establishing this committee's study, and it makes reference to the role of brokers and their independence. This is a matter that is fundamental to the IBAO and to the value of the broker channel. One of the key advantages of the broker channel versus the direct writers or agents who represent only one company or market is that brokers are independent and shop the market on behalf of their customers to get the best combination of coverages and price for that consumer. This means that a broker compares coverages from more than one insurance company provider. Typically it's four or five, but it can be as many as a dozen different markets.

Any development that would threaten the perception of independence of the broker channel is of serious concern to the IBAO. Historically, the phenomenon of financial linkages between insurance companies and brokerages has always been present. Over the last decade, however, financial linkages between insurance companies and brokerages have begun to increase. These linkages tend to take the form of ownership stakes in some brokerages and/or loans. Of course, this raised flags about conflicts of interest and steering of business to insurers who had a financial interest in a brokerage.

IBAO took this development very seriously and notably, in 2005, our regulator, the Registered Insurance Brokers of Ontario, or RIBO, took two important actions. First, it required that all brokers disclose any financial relationships to their customers, including their commission rates. Second, it conducted a detailed study on the matter to determine the extent of financial or business relationships with an insurance company and the existence of concentration or steering issues among those brokers. We have a copy of that report for the committee. It's a detailed report, and we certainly don't have the time to go into all of the details today. However, the regulator's report did conclude that, "There does not appear to be any unexpected concentration issues or any 'steering' issues among brokerages that have a business relationship with a particular insurer in Ontario."

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That was during the policy review titled *Managing Conflicts of Interest*, and since that time, RIBO has monitored and enforced compliance with the disclosure requirements that exist. IBAO has been in contact with RIBO, and they are willing to update the previous survey to re-examine financial linkages between insurers and brokerages. IBAO believes it's an appropriate time to re-

examine the issue, as a significant time has passed since this first study was actually looked at.

With respect to the issue of auto insurance fraud and abuse, we want to turn to the specific issues again related to fraud and abuse in the auto insurance product. IBAO believes that the single most important thing that can be done to lower claims costs, and, thus, to lower insurance premiums, is to tackle fraud and abuse in Ontario's auto insurance system, particularly in the accident benefits area.

You heard on Monday from the Auto Insurance Anti-Fraud Task Force's chair. Its interim report lays out the issues quite well, and therefore, I will not repeat the content of that here today. IBAO is a participant in the consumer engagement and education task force working group, and we support the work of the task force and its direction.

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

In addition, IBAO will support constructive recommendations to combat fraud and abuse from all parties in this Legislature. We can't tolerate the abuse of the auto insurance product any further, as it's costing the customers we serve too much money, as Ontarians pay the highest auto premiums in Canada.

We want to talk about profitability and market stability. As mentioned, IBAO believes that tackling fraud and abuse in auto insurance is probably the most important thing that we can do to lower premiums at this time. However, we would like to caution against further tampering with the system in the wake of the 2010 auto reforms. Those reforms are only beginning to make themselves felt, and we believe that they are working, but this committee should not be under the illusion that the auto insurance industry in this province is excessively profitable.

In this respect, we want to caution this committee and other decision-makers against recommending simplistic or aggressive measures on rates. Let me be clear: We are not here to defend the insurers, but we do believe that any aggressive tampering with the system will threaten market stability, which is just starting to get a foothold post-reform.

Nevertheless, we do believe that there are measures that can be taken to deal with unfair pricing practices in the property and casualty insurance market. The measure we are referring to is banning the use of credit scoring in personal property insurance. In 2005, the Ontario government banned the use of credit scoring in the rating of automobile insurance. However, shortly after, many carriers began to circumvent the ban by refusing to offer quotes to those that refused access to their credit infor-

mation. By refusing to offer quotes, carriers were naturally not writing business for anyone who refused access to credit information.

In January 2009, via a bulletin from the superintendent, carriers were asked to stop this practice. After refusing to abide by this request, the use of credit was later defined as an unfair and deceptive act or practice under the UDAP regulation as part of the 2010 auto reform package—a measure which, of course, we wholeheartedly supported.

Ironically, however, almost immediately after the credit ban was introduced in automobile insurance, insurers began to use credit far more aggressively to price people's property insurance, once again subverting the ban on auto.

Last year, the Canadian Council of Insurance Regulators, or the CCIR, put out an issue paper entitled Use of Credit Scores by Insurers. The paper identified seven risks or harms to consumers and asked stakeholders whether all potential risks had been identified. The IBAO's submission, which we included in our package today, did identify an eighth risk: the backdoor subversion of current credit prohibitions.

You see, many consumers buy their home insurance with their auto insurance, as we heard in the presentation prior to ours. They want to get the discounts that are available by purchasing both the home and automobile coverage from the same provider. By using credit on home policies, some insurers are able to significantly increase premiums, sometimes as much as 100%. By directly impacting the affordability of the home insurance policy, insurers are able to then again successfully force the policyholder to go elsewhere. This naturally has a negative impact, then, when you dislocate those products, on the auto premium.

IBAO is simply saying this: Implement relatively minor, smart regulation now by banning credit scoring as is done under the unfair or deceptive acts or practices, UDAP, regulation in auto insurance in order to avoid more onerous, cumbersome regulation later.

Banning the use of credit scoring to price home and other property insurance is IBAO's number one public policy priority. We've done a lot of work and research into this issue and we've been advocating for a ban on this practice for nearly two years. Unfortunately, insurers and the Ontario government have done little to deal with this issue during this time. We do not have the time to go into all of the evils of credit scoring, but as mentioned, we have brought some exhibits that delve into greater detail to be left behind with you after today.

The Chair (Mr. David Oraziotti): Sorry, that's 10 minutes. If you want to just take a few seconds there and wrap it up, go ahead.

Mr. Bryan Yetman: Long story then, I guess, is you want to take it through—you know, essentially this is causing consumers to go elsewhere, and the problem is that as we look down the road, more insurance companies are using credit and there will no longer be an elsewhere. Eventually, credit will influence the home

pricing across the entire province. So that's why we're encouraging simple regulation today to avoid something that's more onerous later on, because clearly that's what is going to happen.

The Chair (Mr. David Oraziotti): Okay. Thanks for your presentation.

Mr. Bryan Yetman: Thank you.

The Chair (Mr. David Oraziotti): The NDP caucus is up first. Mr. Singh, go ahead.

Mr. Jagmeet Singh: Thank you very much. First and foremost, I'd like to acknowledge the work that you've been doing on the credit scoring. You've done a lot of work on that. You've advocated for it. I've actually met with you before on this issue, so I'd like to thank you for your work. It's very important and it's affecting a lot of people.

I want you to talk about, if you can, or comment on the fact that the IBC has made this claim as well, that claim costs is the number one driver for premiums and, of that, fraud may be a component. But it's claim costs in total. Comment on that, and comment on the fact that if claim costs are going to show to have decreased significantly, should that mean that there should be a significant reduction in premiums as well?

Mr. Bryan Yetman: Yes, and obviously this is specific to auto. I'll try to address the question. First and foremost, I want to restate the fact that we represent consumers and brokers. We are the individuals who go out and try to seek alternatives. Certainly we're seeing increased cost pressures. Naturally, we would acknowledge the fact that claim costs do have a direct correlation in the long term. Today's claim costs affect tomorrow's premiums, most certainly. But when you take a look at—again, back in my statements, I made a remark around the idea of taking aggressive actions. You're taking a look at—we've had some good years as a result of reforms, and again, we would acknowledge and believe that they are taking shape. But you'd also take a look at the mediations that are currently flooded and backlogged at FSCO. Those mediations, in a lot of cases, reflect old regulation and legislation.

In addition to that, I bought a snow blower three years ago that has not left my garage, so we've had some good weather behind us and some seasons where we've actually seen significant cost benefits coming through as a result of that.

We're certainly not discouraging any look or review of auto insurance, but our view is that right now, given the information that we have, fraud is the area which requires the most attention.

The auto reforms did make reference to a five-year review that should be taking place, and we also believe that taking a look at the product through discussions like this is something we encourage to continue.

Mr. Jagmeet Singh: I'm just going to sneak in one quick question.

The Chair (Mr. David Oraziotti): It needs to be really quick.

Mr. Jagmeet Singh: On credit scoring, is that something that was initially limited to home insurance, but because of the bundling and other practices, would you say that now it's pretty much being used in a lot of cases in the auto insurance as well?

Mr. Randy Carroll: Yes, it's totally being used as a deterrent. You've got a risk. Hamilton is a good example. We put an example in your package: a difference in premium of \$1,385, just based on the individual who lives there. That's driving them to take their auto insurance elsewhere as well, or lose a discount.

The Chair (Mr. David Orazietti): Okay. I'm going to need to stop you there because we need to move on. Liberal caucus: Mr. Coteau, go ahead.

Mr. Michael Coteau: Thank you, Mr. Chair. Thank you for your presentation today. I appreciate your expertise and your knowledge on the subject matter. Bill 45 has been discussed many times at this committee and outside this committee. I was wondering if you had any views on Bill 45. Are you familiar with it?

Mr. Bryan Yetman: Yes, we're familiar with Bill 45. We've had an opportunity to take a look at that. Again, we take a look at the perspective of consumers. We're not here to advocate on behalf of insurers.

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One thing that we do use, as brokers, as a gauge is to see the consistency in the messaging coming from insurers and the information that they provide us. I would suggest that when we've had an opportunity to look at the information that has been provided and the consistent messages that this would have a negative impact on premiums outside of the GTA and whatnot—the evidence that we've looked at is convincing to us, and we believe that that would be the impact.

Mr. Michael Coteau: We've heard statements that it could increase premiums in northern Ontario by as much as 30%. Would you support that claim?

Mr. Randy Carroll: With the information we've provided, yes. And I don't think it gets to the root of the problem. We need to look at the policy, the coverage, the fraud issue.

The Chair (Mr. David Orazietti): Conservative caucus: Mr. Yurek, go ahead.

Mr. Jeff Yurek: Thank you, guys, for coming and speaking to us today. I agree with you on tackling claims costs. Claims costs through fraud is a good way to start to help premiums not only in Brampton but across the whole province.

You didn't get time to finish up on your credit scoring, so can you continue to expand upon your credit scoring that you were cut off with and how it's—

Mr. Bryan Yetman: I think the statements were clear: It's a practice that, ironically, started to become more aggressive after prior subversions in auto before—the 2010 reform certainly did a great deal to completely ban it in the use of auto, and then almost immediately thereafter we started to see it being aggressively used in home insurance. We know that it was being used to make auto insurance less available to a certain sector of the

population. I can't be convinced, and we won't be convinced that in two short years they're now using it in home insurance for the good of consumers. We just think that it's a product that's being used to make coverage less available and certainly more expensive.

Mr. Randy Carroll: I think, very much in the short term, that person that I spoke of with the \$1,385 excess premium—we're not going to have a place for that person to go other than pay the \$1,385. That will happen this year.

The Chair (Mr. David Orazietti): Thank you very much for coming in. That's time for your presentation.

ONTARIO TRIAL LAWYERS ASSOCIATION

The Chair (Mr. David Orazietti): The next presentation is the Ontario Trial Lawyers Association. Good afternoon, folks. Welcome to the Standing Committee on General Government. You've got 10 minutes, as you're aware. Please state your name, and you can start when you're ready.

Mr. John Karapita: Good afternoon. My name is John Karapita. I'm the director of public affairs with the Ontario Trial Lawyers Association. I'm pleased to be here with Andrew Murray from the London law firm of Lerner. Mr. Murray is OTLA's president-elect.

Our association represents more than 1,300 personal injury lawyers, law clerks and students from across Ontario, and our membership also includes lawyers from across the country. Members of our association represent injured people who seek redress for harm caused by others in the areas of motor vehicle accidents, medical negligence and other torts. We welcome the opportunity to be here in this very brief time today to offer our perspective to the committee on the issue of the adequacy of the current definition of "catastrophic impairment" and issues related to fraud, the mediations backlog and the minor injury guideline.

Mr. Andrew Murray: Thank you for giving us this opportunity. I'm mindful of the fact that you have a very tight roster, and it was a privilege to have us be included on that roster.

Let me begin by sharing a few more personal details about myself. I'm going to be the president of the Ontario Trial Lawyers Association beginning in one week. I've spent 18 years almost exclusively practising law on behalf of people who have been injured in auto accidents. More importantly, 18 years ago on May 13, Friday the 13th, on my way home from work, I was in a serious car accident myself. I had a head injury. It was before the days that we heard about hockey players getting knocked out, but that's sort of how I equate it now to people. I was sort of scrambled for six months or so. If I had been a hockey player, I wouldn't have been allowed out on the ice. That really shifted my focus in terms of helping auto accident victims, and it continues to inform everything that I do now.

Lawyers who do my kind of work are three parts lawyer, but you're one part social worker, one part

psychologist, one part financial adviser, and often a spiritual adviser as well. When I see a client, I tell them that if things go well, they'll recover themselves out of a need for a lawyer, but when they don't, I'm there to hold their hand when they lose their house, when their spouse leaves them, when their employer terminates them because they haven't been able to go back to work. I think it's important that you think about the population of accident victims that includes all of those individuals.

As this committee knows, we have a system of mandatory insurance. You have to have insurance. The policy is written and approved, and it's not something that you can bargain when you go to buy your coverage, so it's important that we work as hard as we can to get it right.

Our association, for many years, has suggested this approach when looking at the auto insurance system. We call it the three Ps: profits, which is a reasonable return on equity for the insurers, and so, yes, we are heard to say that the insurance companies need to make appropriate amounts of money—that has to be part of the system; premiums, which of course is fair prices for consumers; and protection, which is fair and appropriate coverage.

If you think of the three Ps as a stool, if you cut off one of those legs—any one of those legs—it's unbalanced and it doesn't work. In anything that you recommend or anything that gets done as a result of the good work of this committee, please be mindful of the three Ps. I would, indeed, add a fourth P, changing it from a stool perhaps into a table, which is predictability.

I can tell you, when a change is made, the law of unintended consequences always occurs and you have uncertainty injected. You've tried to help something here and now nobody knows exactly what the rules are and it gets sent back to the courts for years and years and years trying to sort it out.

We've just gone through 15 years or more of uncertainty with respect to certain issues pertaining to catastrophic impairment. Not long ago, the Court of Appeal in Ontario, our highest court in this province, provided great clarity to a lot of those issues. If we were to now make some changes that have been suggested, it would essentially throw out 15 years of hard work in the trenches, coming to terms with what are the rules of engagement. I would really try to dissuade anyone from doing that because it would not help.

In February of this year, on behalf of my organization, I wrote to the Honourable Dwight Duncan, Minister of Finance, before knowing that we would ever have an event like this, to outline recommendations—it was gratuitous, of course—for the government with respect to the direction and priorities in auto insurance. Essentially, this is what we said: We should suspend the introduction of restrictions on the definition of catastrophic impairment. There had been a lot of talk of that back in the fall, following the release of an expert panel report. We said, instead, that we must focus on eliminating the backlog for mandatory mediations at the Financial Services Commission of Ontario, because it is one of the most signifi-

cant impediments, on both sides, to having a resolution of disputes in the system. It was brought in with good intentions: 60 days to get a mediation, get people talking, maybe you can resolve your differences. Now it has expanded to a monster that doesn't help consumers, and it certainly doesn't help insurance companies because they can't close their files. Any defence lawyer I talk to or insurance company representative tells me they want to have their files closed.

We also said that there needs to be an analysis of the impact of the changes that were made in September 2010 to the accident benefit schedule. Because until we know how those changes have filtered their way down in the system, we don't really know whether there is a need to make further changes. We don't know whether or not premiums are going to continue to decrease because the last round of changes have yet to be felt in the system. We don't know how the minor-injury guideline is ultimately going to be characterized. Is it true that so many people are kept out of the system, or is it going to be expanded by arbitrators and judges?

We were emboldened in that perception by comments made by such individuals as the Auditor General in his report, who specifically said there is not enough data yet in order to make that assessment.

Why would anyone want to make changes when we don't yet have the data to know if the changes are even warranted, particularly going back to my four Ps analogy of predictability, profits, premiums and protection? If we don't know what we're doing, why would we do it?

We also joined with others in saying that, from what we hear and what we understand, there needs to be better anti-fraud measures taken in the system. I must tell you, fraud is not an issue that my organization is familiar with. I don't have experience with fraudulent claims in my practice. If there's something that's even remotely dubious, I no longer act for that individual. I think, speaking on behalf of the members of my organization, the same would follow equally for them.

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One of my first acts as an incoming president was to have a meeting, joined by John Karapita and a couple of others from my organization, with the Insurance Bureau of Canada, to say, "Tell us what you know, because we don't really understand this problem the way that it seems to be portrayed." I felt it was a productive meeting. Next week, the IBC is coming to a meeting of my organization to inform a broader group of our board members, the invitation being, "Let's work together collaboratively, to the extent we can on this issue, to see if we might have joint recommendations which surely would be of help to the people who have to make the changes."

We also said, "Let's talk about joint recommendations"—and the dialogue is only now beginning—"about the mediation backlog, because it is a terrible impediment to people getting their cases resolved." Let me illustrate that, if I can, by reference to someone who I'll simply call Louanne. Louanne was driving along in June 2007

and she hit a deer. It could happen to any of us, particularly those of us who live out in the rural areas. It wasn't her fault; it was just something that happened. She has never worked a day since that accident happened. She has some neurological problems. She was 47 years old, and I had her CPP records. She had worked every year and contributed to CPP every year from when she was 18 until the time of that accident. She got into a dispute with her insurer, and I want to say, it's a legitimate dispute. It is a dispute. It needs to be resolved.

She filed her application for mediation in January 2011 through me. It was comprehensive and detailed. We never got a response from the insurance company—that happens more often than you'd like—and the mediation was conducted on May 16, 2012, 15 months later. The day before the mediation, I get a call from a panicked person at the insurance company, saying, "I just got this file dumped on my lap. I don't really know what it's about. Can we postpone the mediation?" I said, "We can't. We can't do that." She said, "Give me a proposal, maybe, to settle the whole file." So I dropped what I was otherwise doing, put something together, got it to her. I didn't really have time to look at it, but the whole thing failed.

That mediation could have failed—

The Chair (Mr. David Oraziotti): Sorry, I just need you to wrap up. That's time for your presentation. If you want to just—

Mr. Andrew Murray: Oh, my goodness. We will send you some written material, I think, to support some of the things that I wish that I had time to say. But you've got to prioritize what you're going to do, and it has to be looking at the mediation backlog, developing strategies to deal with fraud and certainly not tackling catastrophic impairment issues. We need to have the data come forward with respect to the last round of changes so that all of us can make informed decisions.

The Chair (Mr. David Oraziotti): You'll have an opportunity to elaborate in the questions here.

Liberal caucus: Ms. MacCharles, go ahead.

Ms. Tracy MacCharles: First of all, thank you both for being here. Congratulations, Mr. Murray, on your new role as president-elect.

Mr. Andrew Murray: It's exciting.

Ms. Tracy MacCharles: Yes, very exciting. You talked at length about the disputes and the backlog being a significant issue. Have you submitted anything in writing to the government with concrete recommendations or any discussions on how to solve this problem?

Mr. Andrew Murray: We submitted our letter to Minister Duncan outlining some priorities. We have not submitted a list of recommendations, but what we have done is, we've asked for some more data ourselves on various fronts so that we can have informed recommendations rather than just plucking things out of the air. We're only one piece of the equation, and so it's very hard for us to know, sometimes, where the problems lie.

I can tell you that I wrote on behalf of our organization to the law society when it was doing a review of

paralegals to urge some greater oversight with respect to paralegals because the sense that I was getting, and quite frankly from talking to my defence colleagues, was that there may be some issues with respect to paralegals in the system of accident benefits. Of course, that's really outside the scope and ambit of our own organization. We would like to be part of the solution.

Ms. Tracy MacCharles: Okay. And any recommendations submitted to date on the other issue you raised, catastrophic impairment?

Mr. Andrew Murray: Yes. We actually submitted quite a lengthy letter which is available—or it was at one time—on the FSCO website, in its call for submissions with respect to the expert panel review. We submitted quite detailed recommendations, and I would be very pleased to include those as part of the package that we submit here.

The expert report led to the superintendent, apparently, making some recommendations directly to Minister Duncan. That's referenced in the budget announcement from back in March. It has been at least that long that the minister has had that report from Phil Howell. It has never been released publicly, and we don't know why. We've called for its release, and I would hope that this committee calls for its release and, indeed, may need to suspend its final recommendations pending the release of that report.

The Chair (Mr. David Oraziotti): Okay. Thanks. We need to move on to the Conservative caucus. Mr. Yurek, go ahead.

Mr. Jeff Yurek: Thank you, guys, for coming out and speaking. I made reference for Mr. Duncan to release that report about 20 times on Monday, and I call upon him again. I don't know how he's going to make changes to catastrophic injury without actually getting the report out so we can have a good discussion on it. He already seems to have made up his mind. I'll call upon him again through this committee that he release this report, not only to this committee but to every single stakeholder that's involved in insurance so that we can have an open discussion.

My question is: With the mediation backlog and the changes in 2010, I understand, and you may have touched upon it, that the 2010 changes haven't really gone through mediation yet.

Mr. Andrew Murray: Correct.

Mr. Jeff Yurek: So your pillar of predictability has got to be a hamper on the industry as a whole—how can they change their rates when they don't know how the mediation/arbitration is going to work out? Do you have a solution to fix mediation?

Mr. Andrew Murray: You know what? A solution would be to put a moratorium on mediations, quite frankly. I prepare detailed material. I have dialogue with the insurance adjusters. I foster a good relationship with the insurance adjuster, as do members of my organization. At least for those people who are represented, perhaps when we aren't able otherwise to deal with their

problems, maybe we should do away with the mediation altogether.

Maybe there should be a system whereby technology advancements, where a computer—you can say, you know, “Are we say this close? Yes, we should maybe go ahead and have somebody talk to us.” If we’re miles apart and it’s a legal issue that could never be resolved, that there could never be consensus, we know that sometimes and maybe we can fail it earlier on. Some steps have been made to have consent-to-fail mediations, but I think more can be done in that direction. I’m not sure that just hiring more mediators is the answer. In fact, I think it probably isn’t the answer.

Mr. Jeff Yurek: Thank you.

The Chair (Mr. David Oraziotti): Thank you. NDP caucus: Mr. Marchese, go ahead.

Mr. Rosario Marchese: Just a quick question: FSCO appeared before our committee and they made two suggestions. I didn’t get the wording written down as correctly as I would have liked, but I think they said that they were putting out a request for proposal to some outside group so as to assist in getting this list dealt with—it’s a 33,000 backlog, waiting for a year—

Mr. Andrew Murray: Can you imagine?

Mr. Rosario Marchese: It’s huge. The other one is that presumably, though, the victims can sit down with the insurance company and work out a date, and then they can hire a mediator right away. Now, I don’t see that as two equal partners who are going to just be able to agree on that one, so I’m not sure how workable that is. Have you heard about these two suggestions or do you have a comment on either of the two?

Mr. Andrew Murray: I’m certainly familiar with the request for proposal, and that’s when I made reference to outside mediators being brought in. I think there’s a role for that, and probably there should be targeted mediations. I’ve taken a step—we write, we call and we say, “Look, this person is in a desperate situation. You’ve got to bump this up.” Sometimes, by begging, we get there. If there were more people on the roster, probably there could be more spots like that opened up.

I don’t think that it’s a system that needs to have private mediators hired in and brought in. Why don’t they just talk or—

Mr. Rosario Marchese: What about the other suggestion, where the victim and the insurance companies get together, agree on a date and then—is that workable?

Mr. Andrew Murray: You would need very specific changes, because here’s what’s happening now. It used to be that when it was 60 days, you’d have your mediation and you would deal with it. Once it got to be 10 months, 11 months, 12 months, you have an overworked adjuster, they have a mound of paper this high on their desk, and they don’t know what to do: “I’m going to fail it. I’m going to say I’m not paying this,” and it goes off somewhere else for a year now and it’s not on their desk. It never comes back because there’s an internal dispute person, a mediation specialist, who’s now dealing with it.

The Chair (Mr. David Oraziotti): Okay.

Mr. Jagmeet Singh: I’m just going to sneak in a question—

The Chair (Mr. David Oraziotti): No, that’s time. I’m sorry. We’re going to be too far behind.

Interjection.

The Chair (Mr. David Oraziotti): That’s time for your presentation. I appreciate you coming in today.

Mr. Andrew Murray: Thank you very much.

ONTARIO SAFETY LEAGUE

The Chair (Mr. David Oraziotti): The next presentation is the Ontario Safety League. Good afternoon, and welcome to the Standing Committee on General Government. As you’re aware, you’ve got 10 minutes for your presentation. You can start by stating your name, and you can proceed when you’re ready. We’ve got five minutes for questions following.

Mr. Brian Patterson: Thanks very much, Mr. Chair. It’s a pleasure to have an opportunity to appear before this committee on an issue that I think is of significant importance to all Ontarians.

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As many of you know, the Ontario Safety League has been the chief public safety advocate in the province of Ontario for almost 100 years. As of September 23, 2013, we will move into our second century of service to the citizens of the province of Ontario.

The public perception with respect to automobile insurance and its impact on homes and individual participants in the system leads me to one very significant conclusion, and that is that the general education level of the public with respect to what they’re buying when they’re receiving their insurance and what they’re going to receive when they have an issue is significantly—there’s a significant education deficit among the public on what they’re purchasing with respect to insurance. Often, insurance comes to mind twice in the life of those who do not come into interaction—that is, early on, where the driving school incentives for education take place. In that area, we haven’t seen too much movement, almost from the point that they’ve been brought in.

What some members of the committee may not know is, prior to my safety position—I am a certified fraud examiner in the province of Ontario and have been so for 17 years. I can assure this committee that the one area that I think this committee can focus some real attention on, going forward, is the issue of fraud and the perception of fraud within insurance.

It’s as simple, in my mind, as people putting up a sign that says, “We’ll pay your deductible.” They’re not paying the deductible. The windshield is going to be upped by the amount of the deductible, and we’re all paying.

I know from those who are involved in the investigation of insurance fraud that between 40 and 60 major files are opened every month in this province involving people who have actively targeted the insurance industry. In my mind, those are the thieves who go through the

back door of your house when you're not at home and steal directly from you, and all of us are paying.

There is currently limited police support to insurance fraud, a multi-million-dollar process. You can accept the figures from the Insurance Bureau of Canada or from the police in general, but I can assure you, as a fraud specialist, they are significant numbers; significant targeting. Right now, we've got cases—I think the first case through the courts was a six-year battle to deal with companies that were fabricating crashes, fabricating injuries and billing not only OHIP but others. The committee, I think, should actively consider the request that there be dedicated police support in this province to deal with a problem that is impacting every citizen in Ontario.

The “catastrophic cases” change: We've looked at that with regard to other partners. Our concern is that right now—I know it's a limited time, but the issue we have is that the most vulnerable citizens in this province are often those post-traumatic crash. Often, through no fault of the individual, they've been placed in those situations. The two areas that I think you should spend some focus on are the GCS, the Glasgow coma scale—you'll hear that better articulated here by medical professionals, but essentially, that is the situation where someone arrives at hospital or into care and they're in a coma, and how functional and reactive they are during that time period. Right now, those numbers are often assigned in a standard procedure across hospitals within the province. Early support of people who fall into that range above nine is significant. Essentially, what we like to talk about with heart attacks is that golden period where, if you can get those resources in quickly, with significant rehabilitative care, you can have a very positive outcome.

The other area is, of course, traumatic brain injury. A lot has been done with regard to engineering in vehicles, but we still have traumatic brain injury that results directly from an automobile crash involving two automobiles. Of course, you don't have to be a rocket scientist to figure out that the traumatic brain injury that occurs with cyclists, pedestrians and vehicles is significant. If you look to the changes that are currently proposed, the resources in some areas of the province are non-existent. It will limit the likelihood of a victim to be brought into the catastrophic category, and in some areas of the province, they're non-existent. To get someone into a recognized neurotrauma rehabilitation centre—there are only a limited number. They tend to be in southern Ontario and they are not available for access. As we see this change, it will limit the availability of people who have traumatic brain injury to get immediate resources. We think this is an excellent opportunity with respect to the general discussion on auto insurance, which tends to be a fairly narrow topic between the insurance company, FSCO, and most people are unaware of where the insurance buck stops.

I can tell you, as the head of the Ontario Safety League, we get a significant number of calls from people across the province. If you do not currently have a G1 or G2 driver at the age of 17, wanting to drive a Mustang,

you won't be aware of what that's going to cost, but my first three cars didn't amount to the cost of insurance for a young driver.

We want to be able to see good ideas come to the Legislature that can benefit all Ontarians. The winter driving initiative involving winter tires is significant. There are millions of dollars of benefit there, and I can assure you, as a safety practitioner, it's a non-political safety issue. We can reduce crashes. I have to bring to your attention that we've been able to achieve that. We have the safest roads in North America and the most expensive insurance in Canada. It doesn't make sense.

I'll close by telling you a personal story. I was rear-ended on the 404 in 2008, and got caught up in what I truly believe is the mess that the industry was in at that time. I was directed, through the insurance company, to a rehab facility in Newmarket. By the time I had finished my first visit—I had traditional whiplash—they had already billed the insurance company two thirds of my available benefits. That was one visit. I got an assessment. I got a back rest for my car. I got a back rest for the house. I got some gel for my shoulder, and I got a quick assessment on a massage table. I wasn't aware, until I talked to some lawyers we deal with, that I had used up almost all of it. The \$3,500 would have been long gone. It took a complaint to the insurance company and they immediately moved it, and as you can tell, I'm fit as a fiddle today.

The Chair (Mr. David Oraziotti): Okay. Thanks for your presentation. We're moving right to questions. Mr. Smith, go ahead.

Mr. Todd Smith: Thank you, Chair, and thank you, Brian. Good to see you again. A lot of information in 10 minutes; we usually get that from you. We have had a lot of presenters who have come in here in the two days that we've had these hearings into auto insurance, and they've often talked about the fraud and the problem that it's causing in our insurance system right now.

We believe, as the PC Party, that, like you just said, we need a dedicated anti-fraud unit that can help to cut off the flow. But we did have one of the members from FSCO, who was in here on Monday, tell us that that wouldn't work. As a former certified fraud examiner, what would you say to that and what's your opinion on that statement?

Mr. Brian Patterson: Well, without it you're not going to be able to proceed effectively. These are complicated cases. You want to have dedicated resources because, in fact, there are a number of areas, both administrative and criminal, involved in this. But I can tell you, as somebody who has got 37 fraud convictions of fraudsters in this province under my watch and the largest privately prosecuted fraud case, well-dedicated resources, and we have them in this province, could make an immediate impact on this process. The skill set is within the OPP; it's within insurance investigators who are out there today, and the province could have a dramatic impact on millions of dollars worth of fake claims and abuse right now.

Mr. Todd Smith: And we know that these fraudsters have moved here from jurisdictions elsewhere. Why do you think that is, that they've come to Ontario?

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Mr. Brian Patterson: The national body that I sit on often cites Medicare fraud in the US, and I think it is a target. It's a bag of money that they're looking for, and they're looking for the person who left the back door open, and they go at it aggressively. A staged crash involving two vehicles can very quickly remove a couple of hundred thousand dollars from what's available for all of us for our—

The Chair (Mr. David Oraziotti): Thanks for that.

NDP caucus: Questions? Mr. Singh.

Mr. Jagmeet Singh: We've heard that there are either three Ps or four Ps in the scheme of insurance: profits, premiums, protection, and predictability is a fourth P, if you want to factor that in. Would you be able to speak to the fact that profits seem to be improving but premiums and protection are completely out of sync, in terms of the three pillars?

Mr. Brian Patterson: I'm not able to look at that specifically, but—

Mr. Jagmeet Singh: That's fine.

If I could move on to the safety of Ontario roads, how are you able to assess that? I've heard that claim before, that Ontario's roads are quite safe. What's the empirical data to suggest that?

Mr. Brian Patterson: Ontario roads are gauged against crash statistics across North America, and the per capita crash rate in Ontario is the lowest. I can tell you, it has been a collective effort of many of the NGOs in the province. We do, by all measures, have the safest roads in North America.

Mr. Jagmeet Singh: Given the safest roads, it seems a bit out of sync that we have the highest premiums.

Mr. Brian Patterson: It would be, yes, counter-intuitive.

The Chair (Mr. David Oraziotti): Mr. Coteau?

Mr. Michael Coteau: Your organization has a long record of achievement in this province, and congratulations on your 100 years. I know that you provide safety awareness and public education. Thank you for protecting our citizens.

Recently, the CEO of Mothers Against Drunk Driving came out with a statement in regard to Bill 45. I'm not sure if you're aware of the statement, but it says that this scheme sends the wrong message: "In essence, the bill would force responsible drivers to subsidize the insurance premiums of dangerous drivers." He goes on to say, "In our view, the bill sends all the wrong messages. It punishes responsible drivers, rewards dangerous drivers, and will increase the risk to people on Ontario's roads."

Do you agree with that statement? Are you familiar with Bill 45, and would you agree that it actually would support that statement made by the CEO of MADD?

Mr. Brian Patterson: I'm not sure on what basis he drew those conclusions. Those would not be consistent with the conclusions we've drawn.

Mr. Michael Coteau: What are your conclusions on Bill 45?

Mr. Brian Patterson: I think there's a fair bit more work. Our specialized area is primarily in the area of safety. I think Bill 45 goes in that direction. I don't see the risks that others take to it. But we haven't taken a formal position on Bill 45.

Mr. Michael Coteau: Well, if you do take a formal position, if you could forward it to this committee, that would be great.

Mr. Brian Patterson: Will do.

Mr. Michael Coteau: Thank you very much.

The Chair (Mr. David Oraziotti): We appreciate your time. Thanks for coming in today.

ALLIANCE OF COMMUNITY MEDICAL AND REHABILITATION PROVIDERS

The Chair (Mr. David Oraziotti): The next presentation: Alliance of Community Medical and Rehabilitation Providers. Good afternoon. Welcome to the Standing Committee on General Government. We appreciate you coming in today. As you're aware, you have 10 minutes for your presentation, five for questions from members. Please state your name, and you can proceed when you're ready.

Mr. Nick Gurevich: Thank you very much, Chair and members of the committee, for having us here today. This is Patricia Howell. My name is Nick Gurevich. We are on the board of the Alliance of Community Medical and Rehabilitation Providers. The alliance is a collection of 90 member practices, health care providers in the province of Ontario. Many of them conduct work within the auto insurance sector. The vast majority treat injuries that are not minor in nature; they are serious injuries.

Those member companies represent over 3,500 providers across the province, varying from anything from physicians to nurses to psychologists, neuropsychologists, occupational therapists, speech language pathologists etc. We do have a very good representation.

We had the opportunity to be present here for both afternoons of hearing of this committee. I've been struck by how challenging your task is as you try to wade through the complex and sometimes contradictory information presented by various stakeholder groups. We heard about fraud, claim costs, tort, AB, GCS, ADR, cat, MIG and countless other acronyms. What struck me is that by talking in these acronyms, we are allowing ourselves to get lost in the trees and not seeing the forest. We got lost in the detailed acronyms and stopped paying attention to what is important, and that is the very basic premise of the auto insurance product: to protect yourself and others against property loss or injury.

If this is the premise of auto insurance, why does it feel like we need to apologize to Marianne and Jaisa, the victims you heard from on Monday? The reason is because, during the last reform, we moved away from trying to carefully balance victims' protection and the

price of premiums against the need for insurers to make a profit to only making sure that insurers turn a profit.

The reason I say it is because after the last set of changes, implemented in 2010, benefits have been slashed by over 70%, to a point where Ontario now has the second-worst auto insurance health care coverage in Canada. As if slashing coverage to record lows not seen in almost 20 years is not enough, the last reform also provided for huge barriers to access what little benefits remain. Such barriers include discriminatory practices and concentration of almost absolute power in the hands of insurers, without appropriate checks and balances. It is then of little surprise that the above, coupled with aggressive adjusting practices, has led to scores of dissatisfied victims, 33,000 of which are waiting over a year to have their cases heard. The magnitude of dissatisfaction is difficult to argue with. It is also difficult to argue with the well-documented fact that rehabilitation is only effective in the immediate aftermath of an injury. It is, however, of little comfort to victims like Marianne and Jaisa, who have to wait one to two years to resolve an unsubstantiated denial by an insurer or a misclassification of a serious injury as a minor one.

The justification for these changes was that we need to fight fraud and abuse, which we are in complete agreement with. What we are not in agreement with is the steps taken to address the symptoms rather than the root cause, resulting in an imposition of a collective punishment of all victims. Why was an anti-fraud task force not created over two years ago to go after the offenders?

If we buy the insurers' estimate of \$1.3 billion in annual fraud, we could have saved \$130 per driver per year by just going after the offenders without any slashes in benefits. Instead, 70% of the coverage was slashed, resulting in no reduction in premiums almost two years after the reform. Insurers, on the other hand, are declaring near-record profits while crediting openly the 2010 regulatory changes.

Perhaps it would have been better to introduce piecemeal changes, evaluate interim results and build on that. These are, after all, the current recommendations of the Auditor General. Instead of wholesale changes, perhaps we could have started with creating the minor-injury guideline and waited to evaluate its results before introducing the other 41 changes made during that reform.

Despite the above, FSCO is poised to make additional changes which will result in more cost savings to the insurers but this time on the backs of the catastrophically injured, like Jaisa, leaving her to be looked after by non-existent public health care services and relying on social services and assistance.

Ms. Patricia Howell: What can be done?

First of all, regarding fraud, we agree that every dollar that goes to fraud could be helping innocent accident victims. We are on the right path now that we have an anti-fraud task force in place. The alliance has so far presented three times to this task force, and its consultant has committed to continuing to do everything we can to prevent fraud.

A word of caution: New measures intended to fight fraud must be precise and focused. There cannot be measures introduced that will have the effect of imposing new barriers to victims to access services or prevent health care providers from delivering them.

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The second issue: Let's admit that we made a mistake a couple of years ago when we cut the non-cat benefits so drastically. Let's put those \$100,000-plus assessment costs back in the system. We all know—and I certainly see it every day in my work with pediatric brain injury rehab—that these individuals have legitimate long-term needs, and \$50,000 is not nearly sufficient. It will run out in less than a year. We know that they were an unfortunate casualty in our war on fraud back in 2010. That cap should actually be increased. For those of you who are as old as I am and been in this industry long enough, you realize that that cap of \$100,000 was put in in 1996, and when we look at the inflationary cost of health care over that period, we should be looking at that when we look at the \$100,000.

The third issue: Let's also admit that we made a mistake around when we revamped the IE system a couple of years ago. This is one of the root causes for the escalation in applications for mediation. Of course denial rates for treatment have skyrocketed. For your information, they've gone from 11% of treatment plans denied before the changes were introduced in 2010 to, now, 42% of treatment plans are denied. What else could be expected when you give adjusters with no health care training the ability to deny the recommendations of qualified health professionals?

The IE system itself is not inherently flawed, but changes are needed. We need to put back in place, for example, mandatory IE examiner qualifications. We need to develop a system to manage the inherent conflict of interest and bias in the system. For example, right now, IE assessors are hired by a certain insurance company to do the assessment. To continue to get work, there's some inherent bias there in terms of the program. Why not look at a roster where adjusters are not hand-selecting? Then you would get less pressure for biased reports.

We must also adhere to the principle of equity. Unqualified treatment providers are called "fraudulent" and prosecuted, and so they should be. But the consequences imposed on insurers are not the same. Confidence will be brought to the sector when it's based on professionalism and transparency.

The fourth issue is around cat, which there has been a lot of discussion about this afternoon. I don't believe that the cat definition is totally broken. It is helping many people. For those of you who weren't here on Monday, there were two women presented, one of whom did get the cat designation. Her name was Jaisa, and she was talking about how that has helped her. Marianne, on the other hand, her husband—she's waiting years later and she's still in arbitration and still awaiting a decision, and her story was how that has devastated their entire lives.

However, what I want to say is, for people like Jaisa it's working, and we certainly see that in our work every

day. However, it could be improved. The FSCO panel had some good suggestions. For example, they introduced the notion of interim cat: a way that someone could be qualified cat early on and then later reassessed if that's appropriate. That was a great idea.

However, there were many, many basic premises in the expert report that need to be revisited. For example, the panel was given the wrong mandate. It was told to use paraplegia as the benchmark when it should have been directed to look at what individuals need more than \$50,000. As a result, they produced recommendations for changes and benchmarks in the assessments for who would be deemed cat at a level that's far too high.

The Chair (Mr. David Oraziotti): Sorry. That's about time, so if you want to just wrap up very quickly.

Ms. Patricia Howell: I'm sorry?

The Chair (Mr. David Oraziotti): That's time. That's 10 minutes for your presentation. I would like to move to questions, if you just want a closing remark very quickly.

Ms. Patricia Howell: Sure.

The Chair (Mr. David Oraziotti): Okay. Thank you.

Ms. Patricia Howell: I just wanted to say that the last issue is just around transparency in the issue. We really need to be looking at knowing the numbers that we're dealing with, and it just seems no one knows about that. For example, the AG report even quoted the \$56,000 as an assessment cost average—

Mr. Nick Gurevich: Claim costs.

Ms. Patricia Howell: —and that was—claim costs; sorry. The claim costs, and yet that's not a recent number. So we want to use the right number.

The Chair (Mr. David Oraziotti): Thanks. We're going to move to questions. NDP caucus: Mr. Singh, go ahead.

Mr. Jagmeet Singh: We have limited time, so I'll go right to the chase. The \$56,000 claim cost: That's from 2010 and we don't have the updated results, do we?

Ms. Patricia Howell: No.

Mr. Jagmeet Singh: If we had the updated results, given the fact that there has been a significant decrease in our benefits, our protection, those claim costs would be significantly lower, wouldn't they?

Ms. Patricia Howell: And it should be. They've drastically cut the benefits, plus there are huge denial rates.

Mr. Jagmeet Singh: Would you agree with me that if we look at the three Ps—profits, premiums and protection—profits seem to be increasing for insurance companies, but our protection in terms of our benefits and our premiums in terms of what we're paying are far out of whack or unbalanced, and the profits seem to be increasing?

Mr. Nick Gurevich: Yes. As stated, we see on almost—well, obviously, on a quarterly basis when financial results are released, the last set of reforms is credited as a huge contributor to ensure profitability—which is fine. Insurance companies do need to be profitable. But two years later, we are seeing no relief in

terms of premiums, and certainly the benefits structure has been slashed by upwards of 70%.

Mr. Jagmeet Singh: Bill 45 seeks to get rid of geographic discrimination. One of the components of the risk classification is driver safety. If we included or expanded driver safety to specifically indicate convictions both for highway traffic offences and for Criminal Code offences, the merits of that bill—would you agree—would work towards achieving more fairness in the system?

Mr. Nick Gurevich: Unfortunately, we don't have a position on Bill 45. It's outside of our scope.

The Chair (Mr. David Oraziotti): Ms. MacCharles, go ahead.

Ms. Tracy MacCharles: Thank you both for being here and for the good work that your providers give to the people of Ontario.

I understand you've previously claimed that there's a 30% increase in insurance denials. If I heard correctly, was that the 42% now you spoke of—

Ms. Patricia Howell: It's 42%.

Ms. Tracy MacCharles: So 42%—

Mr. Nick Gurevich: That's almost a 300% increase—

Ms. Tracy MacCharles: —since the 2010 reforms. Can you tell me a bit about your methodology, how you got to that number? Is it available? Do your member organizations self-report on that?

Mr. Nick Gurevich: You all have this report that has been distributed. This is a survey that has been conducted. We actually conducted the survey once, about six months after the rollout of the reforms; reported the results to FSCO. They suggested that we conduct that survey again at the one-year anniversary, which we have done. However, this time around, instead of just using our own membership, we have also worked with two other health care provider associations in the province, the details of which you can find here. Together with them, we've surveyed health care providers across the province to come up with the results that are summarized in this document.

We did, to reinforce the point, initially call FSCO with these numbers and ask them to check the HCAI system, for those of you who know what it is, to tell us what that reports. They said that that's actually information that is kept by IBC, which is the Insurance Bureau of Canada. We asked them for that information; they refused to give it.

Ms. Tracy MacCharles: Thank you.

The Chair (Mr. David Oraziotti): Ms. Scott, go ahead.

Ms. Laurie Scott: Thank you for appearing here today and making some very good points.

I represent a rural riding, and the cap in the access to treatments—a very big problem in our area. We've had a lot of discussion about the mediation backlog that exists. Do you have any suggestions about the mediation backlog, in order to try to reduce them?

Ms. Patricia Howell: From my experience and I think our collective experience, this huge denial rate of 42% has to be a major contribution to this backlog. Then, the

IEs that are being done right now under the new rules— as I said, the adjusters can deny without an independent second medical opinion, and that's a major issue.

Also, there is a limit in the cap on the assessment costs at \$2,000. What we're seeing more and more is independent assessors providing a second opinion who don't have the expertise they should. For example, in my work in pediatric brain injury, we might submit an OT treatment plan, making recommendations. The adjuster denies it, does send for a second opinion, but sends it to an OT who has no pediatric experience and no brain injury experience and might be a new grad. The assessment cost is more affordable for them to get those assessments. So that's another issue.

Mr. Nick Gurevich: To add to that, the previous model was one of a designated assessment centre, what's called DAC. We'll hear from some health care providers, some physicians later—

The Chair (Mr. David Oraziotti): I need you to make this very brief.

Mr. Nick Gurevich: Sure—there were qualifications and there were standards under that model. The model was not perfect, but there were some basic qualifications that do not exist today, and they have to be returned.

The Chair (Mr. David Oraziotti): That's time for your presentation. We're a bit over. Thank you very much for coming in, answering the questions and providing us with your presentation.

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BARON INSURANCE SERVICES INC.

The Chair (Mr. David Oraziotti): Our next presentation: Baron Insurance. Good afternoon. Welcome to the Standing Committee on General Government. As you're aware, you have 10 minutes for your presentation and five minutes for questions. So if you'd state your name for the purposes of our recording Hansard, you can begin your presentation.

Ms. Barb Addie: Thank you very much. I appreciate the opportunity to present. I have put, in our presentation, my credentials: I am an actuary and have been a fellow of both the Canadian Institute of Actuaries and the Casualty Actuarial Society since 1983. I began work in 1979 and I've been actively involved in Ontario auto insurance since. I believe my first speech was on Ontario auto and I believe my last speech will be on Ontario auto.

What I'm going to do today is just review the overall performance and then talk about return on equity and a little bit about auto rating. I may skip some because it's only 10 minutes, but I left some of the information in for you anyway.

As we can see with the summary of results, the return on equity went up slightly between 2010-11, from 7.6% to 8.0%. What this does not tell you is that personal lines insurers have, over the last five years, had returns on equities sub 4%, driven largely by Ontario auto. The banks, on the other hand, enjoyed a 14.4% return on equity last year. So while profits may be rising, they are

not rising dramatically. Eight per cent is not an excessive return on equity.

You had asked that we look at the expectations for underwriting income. Our expectations are that underwriting income will not increase significantly. There are a number of factors that go into this. Commercial insurance rates are essentially unchanged and have been for several years, but there is upward inflationary pressure. Personal property rates have been increasing, mainly due to catastrophes. Slave Lake last year alone was \$726 million. Automobile insurance outside Ontario is generally profitable, but loss ratios are gradually increasing, and that will get worse, particularly, in Nova Scotia with the recent reforms.

Ontario auto results: It is much too early. I'm sorry, from an actuarial point of view, it is just much too early. For the bodily injury claims, right now we know that about 5% have been paid and 50% to 60% of the claims that will ultimately be paid are unreported. It is simply too early. The issues have been, will the MIG hold? If the MIG holds, the reforms may well be more effective than the actuaries had originally estimated. The original estimate was 32%. It may well be closer to 40%.

The other thing that happens is, in the early parts of the reforms, there is what is known as a honeymoon period. During this period, the results are better than expected as both claimants and their representatives get used to the new system. So there is a honeymoon period. It has happened in every reform across the country.

The next area I wanted to look at was return on investment. What this shows you is what has happened to the yield for the three-to-five-year bond. It has gone from a high of 11% in 1991 down to slightly less than 2% in 2011. For P&C insurers, this is a massive issue. Approximately 83% of their investments are in bonds, and a high percentage of those are in government bonds. P&C insurers take huge risks with underwriting insurance, and they tend to have conservative portfolios to offset the insurance risks they're taking on.

The general view, certainly by the major bank economists, is that interest rates will remain low throughout 2013-14. There will be some upward pressure, but not that much, particularly with what's going on in the States. Insurers do have to reinvest their bonds as they expire at lower rates, and this has been driving down investment income. Once interest rates go up, the market value of the bond portfolios will decrease. It's just mathematics: as interest rates increase, the value of the bonds you have on your books today decreases.

I'm now going to go on to return on equity—this is a bit of a fly through insurance. FSCO has stated that rates are supposed to be just and reasonable and set at a level so as not to impair the solvency of the insurance company and not be excessive in relationship to the circumstances of the insurer.

I'll skip the next couple, in the interest of time.

From an economic perspective, the rate of return on equity that achieves the goals that FSCO has set apart is the cost of capital. If insurers are receiving their cost of

capital, consumers will pay the lowest possible rates in the long run and investors will make their expected returns. If the ROE is too high, investors earn more and consumers pay more; however, in the medium term, the rates would decrease as the P&C insurers, with their 80-plus competitors—it's very competitive. They will bring down the rates or else they will lose business. If the ROE is too low, consumers benefit in the short term, but in the longer term, firms either leave the market in search of better returns or rates will have to increase. There's no magic to it.

Using reasonable assumptions based on current conditions, to make a 12% return on equity, the company had to have a loss ratio of 71.5%. To make a 10% return on equity, it would be about 72.9%.

The next page shows you the loss ratios. Clearly the loss ratios are not in the neighbourhood of the low 70s. The most recent year's loss ratio was 81%, so they're just not in the neighbourhood where you would make a 12% return on equity.

Using reasonable assumptions, the industry would have received a 12% in five out of the last 15 years. Unfortunately, the bad years have been much worse than the good years. In the bad year, the industry outperformed the required loss ratio by four points, and the loss ratio was 10 points higher than required on the bad years. So the 12% ROE is largely mythical. Insurance companies are not seeing it. It's not happening. It seems clear that the process by which rates have been judged by FSCO has a downward bias.

Now I'm going to get into the actuarial rating process. Return on equity is just one of the many variables. Our goal as actuaries is to closely match risk and rate, so each person pays as closely as possible to the system the risk that they represent. We are then comfortable as an insurance company writing almost any risk that is presented to us. This is extremely important in a take-all-comers environment. If you force insurers to take everyone who comes in the door, then they've got to be comfortable that they are getting the appropriate rate for that risk.

As actuaries, we consider many things: historical results, trends, loss development and expenses, product changes, investment income and other macro elements, such as the price of gas or changes in weather. We consider all of these in the rating process.

We look at variables that are predictive of risk. This is probably the key that we are worried about. Is the variable predictive of risk and is it socially acceptable? There are variables that are clearly not socially acceptable and cannot be used. So we look at the number of claims, age, gender, marital status, distance driven, commute distances, difficulty of commute, where you live, community densities, demographics, convictions, types of cars, vehicle use, the number of drivers relative to the number of vehicles—which ends up being very predictive; where the car is parked—is it in a garage? Coverage selected, deductibles and limits—and there are a number of other variables that are very predictive of risk that are currently not allowed, and that I believe should

be allowed, including credit rating, payment history, income and employment, particularly when some of the benefits are based on income and employment.

So in the actuarial rating process, we look at various statistical models, including something called multiple regression. We do this so insurers are not over- or under-charged, because if you were to look at every individual factor alone—for instance, underage males: We know that underage males have higher frequency and higher severity. We also know that those people at younger ages have higher severity.

The Acting Chair (Mr. Michael Coteau): You have about a minute left.

Ms. Barb Addie: Okay. So if I just look at everything like this instead of looking at it as a whole, underage males will be doubly charged, which is just wrong and not what the insurance companies want. Actuaries look for equity, where individuals pay their fair share based on the risk they represent. That is how we look at rating. Thank you.

The Acting Chair (Mr. Michael Coteau): Thank you very much. We'll start with the government side. Questions?

Ms. Tracy MacCharles: Thank you for your presentation. It brings me back to my Manulife days. I'm not an actuary, but it does bring back memories. Thank you.

On Bill 45, I understand that that opposes a rating structure that has a StatsCan population measure as a rating variable that's ranked fourth in order. It's been claimed that that measure would help save the north from debilitating effects of the bill. Do you find that claim to be accurate at all?

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Ms. Barb Addie: Ultimately, you've got to pay for all the claims. If I'm going to lower rates here, I have to increase rates here. It's a certain bucket of money. I find that claim to be dubious.

Ms. Tracy MacCharles: And if the territories are removed as a rating factor, what would happen to rates across the province?

Ms. Barb Addie: Well, if the territories were removed, because there is such a significant difference between what happens between territories, people who live in territories where it is underrated would find that they would have a supply problem. As an insurer, why should I knowingly put a risk on my book that is underrated? If I do that, I'm being unfair to my policyholders because I'm impairing my solvency, and I am being unfair to my shareholders because I'm impairing profitability. I cannot, in good conscience, put that risk on my book. What do I do? If I'm a broker company, I cancel all my brokers in those areas. I can't take that. If I am a direct writer, I'm going to have to go to FSCO and say, "I will not write in this area because I cannot put that badly an underpriced risk on my books."

Ms. Tracy MacCharles: Thank you.

The Acting Chair (Mr. Michael Coteau): PC caucus.

Mr. Jeff Yurek: Thanks for coming. I just have a quick question. I appreciated this report here. On ROE, there has been talk about the 12%—it was stated in 1989, I think—that it's too high. If the committee moved forward and pushed forward and the government came out and lowered that rate drastically, would you think that—in the short term, it would be a benefit, as you said, but long term would we be looking at bailing out the insurance companies from going under?

Ms. Barb Addie: Because there's such a downward bias in the rate review process, lowering it dramatically—first of all, it would not be supportable by economics. Lowering it somewhat, I agree, is supportable right now by economics; lowering it dramatically, not so much. You could probably lower it to about 9%, because that gives you a cost of capital of about 7% when you add on inflation. So I think you could lower it but not dramatically. But I agree it could be lowered at this point in time.

The Acting Chair (Mr. Michael Coteau): NDP caucus: MPP Singh.

Mr. Jagmeet Singh: The purpose of Bill 45 is to reduce the granularity, if you understand the idea of a statistical area which would allow for very many distinguished areas throughout the region. The purpose is to reduce the granularity within one region. For example, currently the city of Toronto may be subdivided by insurers into 10 districts with sometimes very significant premium differentials between otherwise identical drivers living on either side of a district boundary. There are around 10 or more districts outside the city of Toronto, within the Toronto CMA. The assertion is this: The major impact of requiring a single rating category for each CMA would be a significant reduction in premium differentials within the Toronto CMA and any CMA so that the granularity between one region would reduce so that we don't have one person living in one postal code within the same city and someone else living in a different postal code having a significant difference between their rates. Do you agree with that assertion?

Ms. Barb Addie: No. Absolutely not.

Mr. Jagmeet Singh: Why is that?

Ms. Barb Addie: The whole concept of a rating structure is to match risk and rate. If I arbitrarily choose to take out a variable that I know to be very predictive, then I am not matching risk and rate. I am putting underpriced risk and overpriced risk in my book.

Mr. Jagmeet Singh: But the issue is the granularity between one region. If you're saying the GTA is a region, and the GTA has a differential of 150%, so 2.5 times higher premiums within the same geographic area of 30 kilometres, to reduce that differential would be, one, social policy acceptable in terms of the unfairness of it, and secondly, in the GTA, people drive all over. Someone may live in the downtown region, but their car may be parked all day long in Brampton. Someone may reside in Scarborough and park all day in Brampton. It's very unfair as a policy, and reducing that granularity would only impact that one CMA. Do you agree with that assertion?

Ms. Barb Addie: If you were only to reduce it in Toronto, I would agree with that, but it's still wrong.

Mr. Jagmeet Singh: But would you agree with the assertion.

Ms. Barb Addie: The reason that the rates are being charged higher—

The Acting Chair (Mr. Michael Coteau): Okay, we'll just get the answer, and then we'll wrap up here.

Mr. Jagmeet Singh: Do you agree with the assertion, whether it's right or wrong? Do you agree with the assertion that reducing the granularity would only impact the differentials within that one region?

Ms. Barb Addie: If that's the way you write the bill.

The Acting Chair (Mr. Michael Coteau): Thank you very much.

DR. J. DOUGLAS SALMON

DR. MILAN UNARKET

The Acting Chair (Mr. Michael Coteau): Next I have J. Douglas Salmon. Welcome. As you're aware, it's a 10-minute deputation, with five minutes for questions from all three parties. Please state your name for the record.

Dr. Milan Unarket: I am Dr. Milan Unarket. I am a psychiatrist, a medical specialist in physical medicine and rehabilitation, at Bridgepoint Hospital.

Dr. J. Douglas Salmon: I'm Dr. J. Douglas Salmon. I'm a neuropsychologist and rehabilitation psychologist in practice here in Toronto.

Dr. Milan Unarket: I'll start. As a psychiatrist, I'm responsible for the in-patient rehabilitation and traumatic brain injury rehab unit. There are only three of these rehab units in the city, and we service pretty much all of Ontario, for those who have traumatic brain injuries who come from trauma centres like St. Mike's, Toronto Western, Sunnybrook. I treat most people through the OHIP system. I see people who go from day one, when they show up to in-patient rehabilitation, to those who have MVAs who have gone through the period of time when they have significant med rehab benefits, and then long after, actually, when the med rehab benefits are over and I still continue to follow them, because sometimes when they've had a brain injury they have lifelong issues.

I was part of the alliance that did some of the recommendations that basically critiqued the cat expert panel. One of the comments I wanted to make was on the GCS. The GCS—the level of how unconscious you are after a brain injury—although it has flaws, is very widely used. It's done by paramedics, it's done by nursing, it's done by other trauma centres, it's done in in-patient rehabilitation. GCS is still not a bad predictor of injury severity. Even though there are some better predictors of injury severity, it's something that's widely used and should probably still continue to be used to deem whether someone is catastrophic or not in brain impairment, because it's something that can be done quickly, easily.

It's accessible, and it's done very widely, so people can say whether you're cat or not from the get-go.

When people are not deemed cat initially and they don't get the proper treatment, it has a significant impact on their functional outcome. Jaisa, the young woman with a spinal cord injury: I was actually her treating physiatrist. If she did not have access to these med rehab benefits, she would have had a very different functional outcome. She would not be able to be walking as much, and she would not be able to do a lot of the activities and function in day-to-day life as she currently can.

When I was reading the cat expert panel recommendations, a lot of them were, I thought, quite insurer-biased. As someone who has been doing this kind of work for a long time, you know who has made what recommendations. Out of the seven people, you would have known who would have done what recommendations and who are the treating clinicians and who are not.

The other thing is, some of the recommendations they made were—they're not actually working as part of treating patients. Some of the recommendations were, "They go to in-patient rehabilitation; they get the automatic cat designation." That's a good idea, but there are a lot of people who have brain injuries who just don't get access to in-patient rehabilitation. Just because you have an injury doesn't mean you get access to in-patient rehab. There are a lot of brain injury patients who don't want to come to in-patient because they think they don't need it; they think nothing is wrong with them. You have to be very careful with some of these recommendations that are being made because they have a significant impact on people's functional status.

The other thing I see is that a lot of OTs, PTs, SLPs, massage therapists will do these OCF-18s and make treatment recommendations, then you have these adjusters who have no training, don't actually know the patient—they never met the patient. They make these denials sitting behind a desk. They don't see the human element, and they don't actually see how it impacts on somebody functionally. So some of their decisions are quite arbitrary, and they don't even have to send them to an IE.

The IE system is also broken. When they're sent to an IE, the people who are doing IEs are very insurer-biased, because the companies that are brokers only hire people who will actually give the opinion that they want. When I first started out in practice, I naively was doing some of these assessments, and then the company would say, "Are you sure you don't mean this?" They'd want us to write what they wanted to write. I stopped doing those assessments, because if you don't write what they say, they don't end up using you. So these insurance examinations are inherently problematic.

The adjusters who deny this don't realize the functional impact it has on these individuals. So when it goes to mediation a year or two years later, it's too late; people don't get the treatment. They only have a certain window of recovery for treatment, and then that window is gone.

The reduction of the med rehab limits from \$100,000 to \$50,000 has a significant impact. There are a lot of

people who don't meet MIG yet aren't catastrophic. There is that certain population subset that gets significantly impacted. So that \$50,000 goes very quickly. The change that they made in 2010 is that all the assessments that are done are also of that \$50,000 med rehab limit. It actually significantly impacts on someone's treatment. So if you have \$6,000 or \$8,000 in assessments or \$10,000 in assessments, that's 20% of someone's treatment. That's 20% of \$50,000. That significantly impacts. That further reduces the amount of money available.

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Dr. J. Douglas Salmon: As a neuropsychologist and rehabilitation psychologist, my practice covers treatment, assessment, the IE side as well as the cat designation side. I've also been involved in numerous professional association committees as well as FSCO-related committees over the years.

I've been struck by the substantial loss of consumer and claimant protection with respect to the outcome of the SABS reforms, though lauding the government for its efforts at trying to contain costs as well as fraud-related concerns.

In the interests of time, I'll abbreviate my talk. You do have my written submission, which I would encourage you to review in more detail.

One of my concerns, to summarize the abbreviated points—and then I'll talk more about the IE system. I do have concerns about the cat panel recommendations, particularly with respect to the combination of physical and psychological impairments as well as changing the mental behavioural definition. Both of these will clearly dramatically decrease the number eligible victims who will be eligible for cat entitlement.

I also have concern with respect to the lack of clarity in the MIG relative to the inclusion of mood, anxiety and other mental health disorders with respect to what levels of severity are considered to be in or outside the MIG. Lack of interpretive definition, which will eventually come through case law—it's still potentially many months to years away. And without this clarification, obviously both insurers as well as IE providers have a certain sense of confusion, lack of clarity and, as such, there will be many denials and lack of mental health services provision on that basis.

There's also lack of rehabilitation funding for those folks who are MIG captured yet at the same time still need IRB benefits. So you have a situation which an individual has IRB entitlement within the MIG, but even if the insurer wants to provide services beyond the MIG-based caps, they're not permitted to. Clearly, that will add to exposure on the tort side.

I also have concerns with respect to the insurer buy-up option. It's understood that the buy-up has been very poorly undertaken by most consumers so far. That leaves folks greatly exposed. As well, within the buy-up, there's no option to actually buy up relative to the MIG. If you buy up to the \$1-million provision, for example, you're still considered to be within the MIG applicability.

I also have concerns with respect to the shifting of health burden, of costs, to an already stressed public

service sector as well as relevant support systems, and also query whether insurer reimbursements to the public system have and will be upwardly adjusted accordingly to adjust for the cost shift.

The Acting Chair (Mr. Michael Coteau): You have about a minute left, sir.

Dr. J. Douglas Salmon: Okay. Thank you.

My other concerns relate to the loss of the mandatory and evidence-based assessment system, which I feel is really the hallmark check and balance within the system itself.

The removal of the DAC structure in 2006 basically removed the impartiality, the neutrality and the evidence-based assessment system. Other colleagues have already commented on the importance of and the stress and pressure on IE examiners relative to the relationship between an IE assessment centre and the IE. With a \$2,000 cap, as well, there are significant, added cost-related pressures that have resulted in increased use of inexperienced new graduates and the like within the system.

I've made a number of recommendations specifically to how I would encourage you to consider reform relative to the IE system to make it more comparable to the DAC system relative to the need for impartial assessments, including for assessors to have to sign an acknowledgement form, a duty basically suggesting the need for impartiality and neutrality.

The Acting Chair (Mr. Michael Coteau): That's time, sir.

Dr. J. Douglas Salmon: Okay.

The Acting Chair (Mr. Michael Coteau): Do you want to take 15 seconds to wrap up?

Dr. J. Douglas Salmon: I think—basically, you can read the other recommendations that pertain to IE reform.

The Acting Chair (Mr. Michael Coteau): Thank you very much. We'll start with the PC caucus. MPP Scott?

Ms. Laurie Scott: Thank you very much for appearing here today. I'm just trying to quickly read some of the other recommendations that you made. It's quite concerning that the IEs don't have any qualifications—very concerning, actually—and that there's no real method of appeal.

Before, when we had the DACs—not that I want to go back to DACs, but there must have been some minimum qualifications. I just wondered: Do you want to take a little time to say that or anything else you want to add on?

Dr. J. Douglas Salmon: Yes. Many of my recommendations are quite parallel to what the DAC protocols were. There was, to begin with, a minimum standard in terms of the qualifications and experience required relative to different types of DACs. I believe it was three years for most DACs and five years' minimum qualification experience for the cat DACs, for instance. There were specific protocols pertaining to how assessments were to be formulated, what specific disciplines should form part of the assessment team, and the requirement for an integrated type of report whereby you can't just have a multidisciplinary assessment without each assessor being

aware of and considering the different findings within the assessment team. Peer review was required so that it couldn't just be a general practitioner who was reviewing a treatment plan of a psychologist; it had to be a psychologist—like-for-like, for example; clearly important.

In addition, there was the requirement of a treatment caseload for any examiner who was reviewing an OCF for assessment or treatment planning purposes. I can't just be a university professor claiming to be a clinical psychologist; I also have to have an active treatment caseload, which suggests that I would then be informed in terms of state-of-the-art practices in terms of treatment and rehabilitation.

The Acting Chair (Mr. Michael Coteau): Thank you. I'm going to have to move to the next question. NDP caucus?

Mr. Jagmeet Singh: Yes. With the replacement of the DAC system with the current IE type of structure, coupled with the 2010 regulations that slashed benefits in terms of the protection that the consumer received, would you agree with me that these are all amendments that disproportionately favoured the insurers as opposed to the consumer?

Dr. J. Douglas Salmon: I would say so, definitely.

Dr. Milan Unarket: Sure, because now the adjusters can just arbitrarily deny treatment. It makes a big difference in terms of cost. They have an inherent bias to reduce the cost.

Mr. Jagmeet Singh: Thank you so much. In terms of improving the IE to reform the IE structure system, returning some of the DAC-like elements that were more fair would be one of your suggestions. In terms of reducing or relieving some of the pressure placed on those who are tasked with the assessments by the insurers, what would be some strategies? Something that I thought, off the top of my head, is that treatment clinicians on a roster, treatment clinicians being used, as opposed to insurer-preferred clinicians—any other suggestions for reforming that one issue of insurer pressure on getting a certain assessment that's favourable for the insurer?

Dr. J. Douglas Salmon: Yes. The idea of this acknowledgement—there were tort reforms requiring, in medical-legal cases, form 53, the duty of acknowledgement towards impartiality and the like. I think it's a very important principle. Certainly, the notion of whenever an individual assessor is reviewing treatment plans and assessment plans—it's critical that they have an experiential base that reflects current treatment, an active treatment caseload. That would be important.

In addition, there has been a suggestion that there be a comprehensive certification program for IE assessors. It's not necessarily the case that somebody who has a treatment caseload and background would necessarily know how to do a disability assessment properly or a post-one-or-four-week disability assessment properly or a cat assessment properly. But certainly, from the standpoint of addressing the treatment and rehab questions, by all means, that kind of treatment background is essential.

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The Acting Chair (Mr. Michael Coteau): Okay. I'm going to go to the government side now.

Ms. Tracy MacCharles: Thank you both for your very comprehensive presentations, which I'm sure will inform the committee in its work.

I have a couple of questions, quickly, on the GCS. Is it true that the GCS of a person can change over time, and is the concept of GCS outcome extended scale a better approach?

Dr. Milan Unarket: The GCS can change over time, but that's why they say the GCS has to be nine or below within a reasonable time period, right?

Ms. Tracy MacCharles: Right, so it can change.

Dr. Milan Unarket: Right, and the impairments that you have secondary to a low GCS have to be related to brain injury or brain impairment.

The other thing is, an expanded scale would be welcome, but the issue is that it has to be done in a timely manner so that people aren't waiting six months, one year, to become cat, because if there's a dispute over whether someone's cat or not, what happens is the patients get denied treatment for one to two years post-injury and their therapeutic window of recovery is gone. You can start giving OT, PT up to three years post, but if you give it within two or three weeks, it makes a significant difference in their functional outcome.

Ms. Tracy MacCharles: And can it be that there are some problems or biases, if someone's drinking—

The Acting Chair (Mr. Michael Coteau): I'm going to have to stop you there, MPP MacCharles. We're at six minutes of questions now.

Ms. Tracy MacCharles: Thank you.

The Acting Chair (Mr. Michael Coteau): Sorry. Thank you very much for coming. We appreciate it.

FSCO—CATASTROPHIC IMPAIRMENT EXPERT PANEL

The Acting Chair (Mr. Michael Coteau): Next I have Pierre Côté, the chair of the FSCO—Catastrophic Impairment Expert Panel. Mr. Côté?

As you're probably aware, 10-minute presentation—

Dr. Pierre Côté: Yes.

The Acting Chair (Mr. Michael Coteau): —five minutes of questions.

Dr. Pierre Côté: Thank you very much.

The Acting Chair (Mr. Michael Coteau): Thank you. Please state your name and you can begin.

Dr. Pierre Côté: My name is Pierre Côté, and I am the chair of the Catastrophic Impairment Expert Panel.

Mr. Chairman and members of the committee, thank you for providing me with the opportunity to speak to you today. I am speaking in my capacity as the chair of the Catastrophic Impairment Expert Panel.

By way of background, I am an associate professor of epidemiology at the Dalla Lana School of Public Health here at the University of Toronto and a scientist within

the Division of Health Care and Outcomes Research at the University Health Network.

In October 2010, the Financial Services Commission of Ontario issued a request for proposal to chair the Catastrophic Impairment Expert Panel. I submitted a proposal to FSCO and was selected for this task. The expert panel was mandated to review the definition of catastrophic impairment located in the SABS and to make recommendations to the superintendent of FSCO on changes to the definition. The overarching goal of the panel's work was to ensure that the individuals who are the most seriously injured in traffic collisions are assessed according to the best scientific and medical evidence.

The expert panel included an independent, multi-disciplinary team of internationally renowned clinicians and scientists who are highly skilled in the evaluation of impairment and in scientific methodology. The panel included: Dr. Arthur Ameis, who is a psychiatrist and the medical director of the Multi Disciplinary Assessment Centre in Toronto; Professor Linda Carroll, who is a clinical health psychologist and an epidemiologist at the School of Public Health at the University of Alberta; Professor David Cassidy, who is senior scientist and epidemiologist at the University Health Network and a professor at the Dalla Lana School of Public Health at the University of Toronto—Dr. Cassidy was also the scientific secretary of a WHO, World Health Organization, task force on the problem of mild traumatic brain injury; Dr. Ron Kaplan, a neuropsychologist in private practice in Hamilton; Dr. Michel Lacerte, who is a practising psychiatrist from London, and he is also an associate professor in the department of physical medicine and rehabilitation at the University of Western Ontario; Professor Patrick Loisel, an orthopedic surgeon and director of the work disability prevention training program at the University of Toronto; Dr. Peter Rumney, who is a well-renowned pediatric neurologist, senior physician and director of rehabilitation at Holland Bloorview kids hospital here in the city; and myself.

With regard to the definition of catastrophic impairment, the expert panel was given two functions: first, to identify ambiguities and gaps in the current SABS definition of catastrophic impairment, and to use emerging scientific knowledge and judgment to make recommendations for changes in the definition. In other words, the expert panel was asked to review the scientific evidence to modernize the definition, which was initially developed in 1996, and to improve the accuracy of the determination of catastrophic impairments following traffic injuries.

The work of the expert panel followed a rigorous and transparent scientific methodology that was approved by all panel members. Our work was conducted under the following guiding principles. The panel based its deliberation and developed its recommendation using emerging scientific knowledge and judgment. The work of the panel gave precedence to valid and reliable scientific evidence over best practices from other jurisdictions or

opinions. All our recommendations were developed following an established methodology called the Delphi methodology, which is a well-accepted scientific method to develop consensus statements in medicine. According to our methodology, consensus was reached when 75% of the panel—that is, six out of eight members—agreed with the recommendation.

The expert panel proposed 10 main revisions to the current definition of catastrophic impairment. The panel reached consensus on all recommendations.

First, we recommend that all injured persons less than 18 years old should be considered pediatric patients. This is particularly important or relevant to the long-term developmental implications of traumatic brain injuries in children.

Second, the expert panel recommends that the American Spinal Injury Association, ASIA, classification of spinal cord injury be used to determine the severity of impairment related to spinal cord injuries. The scientific evidence clearly indicates that this classification has adequate validity and reliability in identifying those with spinal cord injuries and in predicting their outcome.

Third, we recommend expanding the definition of catastrophic impairment related to amputation to a category of impairments that includes severe injuries of the ambulatory system in terms of mobility.

Fourth, we recommend that catastrophic impairment related to blindness be defined as legal blindness.

Our fifth recommendation relates to the determination of catastrophic impairment related to traumatic brain injury in adults. Based on the most recent and valid scientific evidence, we recommend that the extended Glasgow outcome scale, also known as GOS-E, replace the Glasgow coma scale and the Glasgow outcome scale.

Sixth, the expert panel recommends that the American Medical Association guides for the evaluation of permanent impairment—that is, the fourth edition—and the impairment rating of at least 55% whole-person impairment be retained to rate physical impairment that is not covered by the previous definitions that I have just discussed with you.

The panel recommends that physical and mental or behavioural impairments cannot be combined in any valid and reliable manner using the AMA guides. We have reviewed this literature, and this is clear. After review of the scientific evidence, the panel found no valid and reliable methods that can be used to combine physical and psychological impairments; therefore, we could not make any recommendations on a specific method.

Our eighth recommendation relates to psychiatric impairments. We recommend that the superintendent issue a guideline to define the specific post-traumatic psychiatric disorders that will be considered eligible for catastrophic impairment designation. We also recommend that the global assessment of functioning scale be used to measure the severity of a psychiatric condition.

The panel spent a great deal of time and energy to ensure that children with traumatic brain injury are assessed

and managed according to state-of-the-art criteria and in a timely manner. Therefore, we recommend that children who are admitted as in-patients to a level-one trauma centre and show evidence of intra-cranial pathology be automatically deemed to have sustained a catastrophic impairment. Similarly, those who are admitted as in-patients to a publicly funded rehabilitation facility should also be automatically deemed to have sustained a catastrophic impairment. For those who are not admitted to these hospitals, we recommend that the King's outcome scale for childhood head injury, also known as the KOSCHI, be used to assist with the determination of catastrophic impairment secondary to traumatic brain injuries.

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Finally, the panel recommends that an interim catastrophic impairment status be created for adult patients with traumatic brain injuries to ensure that they get good and timely care. The interim designation would apply to those who are accepted for admission to a program of in-patient neurological rehabilitation at a recognized neurological rehabilitation centre in our province.

Similarly, we recommend that the interim catastrophic impairment status apply to any patient whose traumatic physical impairment is at least 55% when that determination is made at least three months after the accident date. The purpose of interim catastrophic impairment status is to ensure that these injured individuals have access to rehabilitation services that are necessary to maximize their health recovery.

In conclusion, Mr. Chairman, the catastrophic impairment expert panel used the best scientific and medical evidence to inform the superintendent on ways to modernize the definition of catastrophic impairment and ensure that Ontarians who are seriously injured in traffic collisions are evaluated or assessed according to state-of-the-art methods.

Once again, Mr. Chairman, I thank you for the opportunity to address the committee.

The Acting Chair (Mr. Michael Coteau): Thank you for your deputation. We'll start with the NDP caucus.

Mr. Jagmeet Singh: What are some of the fears that you have if the cat assessment or the criteria is changed at this point? The direction that it seems to be heading in—how's that going to impact Ontario and how is it going to impact Ontarians?

Dr. Pierre Côté: I think that Ontarians will benefit from the recommended changes, because when they are now seeing an expert physician or neuropsychologist, they will be assessed according to the best scientific and medical methods to determine whether or not their injury meets the criteria which was stated by the Legislature.

Mr. Jagmeet Singh: What are your fears about what could happen if we go in the wrong direction in terms of cat assessments?

Dr. Pierre Côté: My fears in terms of—

Mr. Jagmeet Singh: What would happen to the quality of care that people receive if we don't use all the

proper mechanisms and all the proper assessment techniques and use a state-of-the-art assessment strategy?

Dr. Pierre Côté: Again, I think that the recommendation will actually improve greatly on the current criterion definition, so therefore the care provided to Ontarians, in my opinion, will improve if the recommendations are accepted.

Mr. Jagmeet Singh: You've touched on this, but what is the major factor or the major shortfall with the current system and what's the major benefit of the new system?

Dr. Pierre Côté: The major shortfall with the current system is the lack of valid and reliable criteria used by a physician expert to assess these patients. A lot of these criteria were developed 15, 20, 25 years ago and no longer represent the best scientific and medical knowledge that we have.

The Acting Chair (Mr. Michael Coteau): Thank you. We'll move to the government caucus.

Ms. Tracy MacCharles: Just picking up on your point about the process for children, I'm wondering if you could elaborate on the benefits of that recommendation by yourself and the panel, short-term and long-term. What does this mean for children in Ontario? What does it mean to their future?

Dr. Pierre Côté: It means that if the recommendations are accepted, if a child who has a severe traumatic brain injury meets the criteria that were outlined, they would be allowed to automatically access the catastrophic impairment benefits. And we know that the development or the repercussions of these injuries in children are long-term, and they are very difficult to predict. Therefore, we saw it as our responsibility to ensure that they get proper benefits in the long term to make maximum recovery—to go back to school and social activities, if at all possible.

Ms. Tracy MacCharles: So it's the future for them.

Dr. Pierre Côté: Yes, it is, ensuring that these children and their families—

Ms. Tracy MacCharles: And our future.

Dr. Pierre Côté: Correct.

Ms. Tracy MacCharles: Thank you very much.

The Acting Chair (Mr. Michael Coteau): The opposition side: questions?

Mr. Jeff Yurek: Two quick questions: With this report, you're getting a lot of personal evidence; do you

think it's going to improve it? I agree with scientific evidence as leading the future, but have you done an analysis of how this will affect previous cases that have had to go to court or mediation? There's a lot of grey area now due to how we've evolved, and this is going to make it more black and white. Have you guys looked at that or has anybody done a report as to how that would have affected people getting care previously?

Dr. Pierre Côté: No, we have not done an analysis, since it was not in the mandate of the panel that I was asked to chair.

Mr. Jeff Yurek: Do you know if the government is looking at doing that?

Dr. Pierre Côté: I cannot tell you. I don't know about that.

Mr. Jeff Yurek: My last question is: The superintendent of FSCO has sent us his report to Dwight Duncan on his recommendations. Have you seen that report or have any knowledge of what's in that report?

Dr. Pierre Côté: The superintendent, as a courtesy, told me that he had submitted his report to the minister and consulted me during the process about the meaning of our recommendations. That's the extent of—

Mr. Jeff Yurek: You don't have any further information on what his actual intentions are?

Dr. Pierre Côté: No.

Mr. Jeff Yurek: Do you know when he sent that report to Dwight Duncan?

Dr. Pierre Côté: I have no idea. All I know is that the superintendent told me that he was to submit the report to the minister. I have no other information.

Mr. Jeff Yurek: Do you think it would be beneficial for Mr. Duncan to release that report to all stakeholders and the panel for your review on what his changes are going to be to catastrophic before he implements the changes through regulation?

Dr. Pierre Côté: That's really up to the minister. Our report was published online on the FSCO website and has been heavily looked at. That's really up to the minister to adopt a consultation process that he deems appropriate for his purpose.

The Acting Chair (Mr. Michael Coteau): Thank you, Mr. Côté.

With no other items on the agenda, this meeting is adjourned.

The committee adjourned at 1807.

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