



# Automobile Insurance Changes *Discussion Paper Responses*

April 28, 2010

In response to concerns about fairness, the government of Nova Scotia undertook a review of the existing minor injury cap on pain and suffering awards for injuries resulting from automobile accidents. The purpose of the review was to develop and analyze alternatives to the cap and assess the fairness of compensation while ensuring that premiums remain affordable.

To inform the process, public input was sought through a discussion paper released in January with a deadline of February 15, 2010 for responses. The discussion paper provided background information about the cap, the types of awards it limits, those it does not, and summarized known issues with the cap. The Office of the Superintendent of Insurance received and analyzed 220 responses.

The majority of submissions were from individuals impacted by the minor injury cap and their advocates. Submissions were also received from the legal community, insurance industry, the broader business community and individuals concerned about the affordability of automobile insurance premiums.

## What We Heard

**Submissions from the legal community** generally reflected support for returning to a full tort system of automobile insurance, and supported the view that the current cap is “unfair”. These submissions noted that the tort system places responsibility for an automobile accident on the at-fault driver, but that the cap reduces the incentive to be a good driver by lessening the consequences for accidents.

**Submissions from companies and organizations** in the insurance industry suggested that availability of insurance, stability of insurance rates and the cost to consumers of automobile insurance should be considered in any alternatives developed to amend the existing cap.

**Submissions from injured persons** impacted by the cap, and their advocates, overwhelmingly expressed concern the current cap is unfair.

Areas of concern expressed by persons impacted by the cap included:

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

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

*Definition of ‘Minor’ Injury:* Injuries are being captured by the cap that most reasonable persons would not consider to be “minor”.

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

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

## Summary of Responses to Discussion Paper Questions

**Question One:** *Should there be limitations placed on pain and suffering awards?*

Submissions from accident victims and their advocates almost unanimously do not support the existing cap on pain and suffering awards, citing concerns discussed above.

Those opposed to the removal of the cap cited concerns about fraud and increased cost of automobile insurance.

**Question Two:** *: If so, what alternatives should be considered regarding the existing cap on pain and suffering awards that are fair to victims of automobile accidents and maintain affordable insurance premiums?*

Submitters suggest a wide array of possible alternatives to the cap, including:

- increasing the cap amount;
- changing the “minor injury” definition;
- indexing the cap to inflation;
- implementing a tiered cap (i.e. low cap for very minor injuries and somewhat higher caps for more severe injuries).
- replacing the cap with a \$2,500 deductible like Newfoundland and Labrador or some other form of deductible;
- providing optional insurance coverage that allows consumers to “opt out” of the cap

**Question Three:** *Should alternatives to the existing cap on pain and suffering awards be applied retroactively?*

The idea of retroactively changing the cap appeals to injured parties impacted by the cap and their advocates, as they feel that the cap has affected their ability to obtain fair compensation for their pain and suffering.

The insurance industry and business community oppose retroactive changes and express concerns about potential effects on premiums, and the impact on business climate, business investment and economic growth in Nova Scotia caused by an uncertain regulatory regime.