



CFN Consultants (Atlantic) Inc.

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The NOVA SCOTIA

AUTOMOBILE INSURANCE REVIEW

Prepared for:

THE GOVERNMENT OF NOVA SCOTIA
DEPARTMENT OF FINANCE

Department of Finance
Provincial Building, 7th Floor
1723 Hollis Street, PO Box 187
Halifax, NS
B3J 2N3

Submitted by

CFN CONSULTANTS (ATLANTIC) INC

TD Centre
1791 Barrington Street, Suite 300
Halifax, NS.
B3J 3K9



Vendor Name	CFN Consultants (Atlantic) Inc. TD Centre 1791 Barrington Street, Suite 300 Halifax, NS B3J 3K9
Contact Name	Ron L'Esperance
Contact Phone	(902) 491-4279
Contact Fax	(902) 429-5237
Contact e-mail	rlesperance@cfncon.com

Name and Title of Person authorized to sign on behalf of Bidder	
Name: Ron L'Esperance	
Title: Principal	
Signature:	Date: May 31 st , 2011



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Executive Summary

Introduction

CFN Consultants (Atlantic) Inc. (CFN) was contracted to complete a comprehensive review of auto insurance in Nova Scotia. The Review, based on research, a jurisdictional review, stakeholder consultation and two rounds of feedback from the public and key stakeholders called for the completion of an interim report and a final report. The Interim Report was tabled on March 31st, 2011. This is the Final Report on the Nova Scotia Automobile Insurance Review.

The Automobile Insurance Review was led by Ron L'Esperance, an experienced, independent Project Leader. Mr. L'Esperance and was supported internally by seasoned Halifax-based, consultant Jon Corston, a project management professional.

Principal Findings

The review's principal findings are noted here at the high level and examined in detail within this Report. Principal findings in respect to the designated issues identified in the *terms of reference* are as follows:

- a. **Section B Benefits:** These are broadly considered to be too low in Nova Scotia and we are also, for the most part, significantly out of step with the rest of the country in respect to the level of these benefits;
- b. **Minor Injury Protocols:** The diagnostic and treatment protocols, as implemented in the Province of Alberta, are viewed to be effective. These protocols are based on the best medical evidence available in respect to the importance of quick access to treatment and the concomitant impact that has on resumption of activities of daily living (ADL) or return to work for the injured person. These protocols address the three most common soft tissue injuries – strains, sprains, and whiplash associated disorders (WAD) and these definitions are consistent with the new definition of soft tissue injuries in Nova Scotia. These protocols have been successfully implemented in Alberta (04) with variants of this approach implemented in other jurisdictions. There has also been an assessment of the impact of these protocols in Alberta. One of their strongest features is the level of certainty and predictability they give to the consumer and, when implemented with a provision in relation to 'priority of pay' considerations for those using the protocols, eliminates the need for injured parties to first exhaust personal health benefits;
- c. **Optional Tort Product:** It is important that Nova Scotians ultimately have choice and so, as a result of the review, we are recommending that the Office of the Superintendent of Insurance work with industry to develop and price a tort product that will provide that choice to Nova Scotia drivers;



- d. **Fairness to Inexperienced Drivers:** Nova Scotia insurers are voluntarily providing discounts to inexperienced drivers (< 6 years). Industry has effectively adopted the features of the First Chance Discount Program that is mandatory in New Brunswick. This program provides a reasonable rate of insurance for inexperienced drivers, providing that these drivers continue to maintain a clean driving record. To offset the additional risk associated with this demographic, industry has established a *risk sharing pool* (RSP) on a shared basis. An analysis of the financial statements of this pool indicates that it is operating effectively.

In regard to the use of gender as a risk rating factor, many jurisdictions have moved to eliminate this. Presently inexperienced females attract a lower premium. This issue is examined in this report and suggestions and recommendations are advanced to the Office of the Superintendent of Insurance;

- e. **Reimbursement of Volunteer Fire Fighters by Insurance Companies:** This is a complex issue. At its core though, the key public policy issue is whether taxpayers (in this case property taxpayers) should end up paying for the services of volunteer firefighters as a result of automobile accidents; and
- f. **Vicarious Liability and Primacy – Rented and Leased Vehicles:** Other jurisdictions have taken decisive action to limit the liability of rental and lease companies for damages caused by renters and other drivers. Recent jurisprudence in Nova Scotia upholds this principle in respect to leased vehicles.

Recommendations

The key recommendations of the report are as follows:

- a. **Section B Benefits** – Three options are presented for enhanced Section B Benefits including the following:
1. **Option 1** - Adopt all elements of SEF 48 as mandatory in the standard automobile insurance policy. The SEF 48 sets out a comprehensive range of benefits. These are detailed in this Report;
 2. **Option 2** – Include all elements of SEF 48 as listed above under Option 1 as part of the standard auto policy, but, include a provision which allows a 'buy-down' to a 'basic package' – equal to the current existing Section B limits – for those who do not require the enhanced benefits; and
 3. **Option 3** – Include all elements of SEF 48 as listed above under Option 1 as part of the standard auto policy, but include a provision which allows a 'buy-down' to a 'basic package' – equal to the current existing Section B limits – for those who do not require the enhanced benefits. Similarly, include a 'buy-up' provision which enables the insured to 'buy-up', to, in effect, increase the amount of weekly loss of income payment to the lesser of an established upper limit (\$1,000 per week has been suggested) or 80% of the insured person's gross weekly employment from employment.



In the interest of making sure that benefit levels remain current for the selected option, include a provision that benefit levels either be reviewed at regular intervals – e.g., perhaps, every three years – to determine adequacy, or, that benefits be indexed annually in accordance with the Consumer Price Index (CPI);

- b. **Minor Injury Protocols** - Implement a customized, made-in-Nova-Scotia version of the diagnostic and treatment protocols developed in Alberta as a means to improve access and treatment outcomes for Nova Scotians injured in automobile accidents and who have resulting qualifying injuries that would be applicable to the diagnostic and treatment protocols. In effecting this implementation modified legislative or regulatory provisions would be required which, at a minimum, would need to address the priority of pay issue which would make the auto insurance policy the first payer for those using the protocols. It is also suggested that the definition of 'qualified medical practitioner' be broadened to include regulated professionals – physiotherapists and chiropractors – in addition to doctors. A careful and planned implementation path would also be required and adequate lead time established to ensure a successful implementation. Consumer education would also need to be a focus of the implementation;
- c. **Optional Tort Product** – Recommend that the Nova Scotia Office of the Superintendent of Insurance work with industry, including brokers and direct insurers, to develop an optional full tort product to be purchased as an endorsement to an existing policy. This approach enshrines the right of the consumer to choose;
- d. **Fairness for Inexperienced Drivers** – It is recommended that:
 - 1. the current system of providing discounted rates for automobile insurance for inexperienced drivers with a clean driving record continue and that the industry RSP be maintained. This is consistent with the approach taken in New Brunswick and, as such, serves to standardize practices across these two provinces;
 - 2. the Office of the Superintendent of Insurance and industry further examine the 'lapse in coverage' issue to determine if there are more effective measures to address the concerns of insureds in respect to this issue and in light of some of the emerging societal changes now taking place; and
 - 3. the Office of the Superintendent of Insurance actuarially assess the impact of removing gender as a risk rating factor on rate dislocation and use this information as a basis for a further analysis of whether to remove or retain gender as a risk factor.
- e. **Reimbursement of Volunteer Fire Fighters** - There is presently a provision within the standard auto insurance product in Nova Scotia which enables volunteer fire departments to recover their costs in attending to automobile accidents through subrogation of these costs to the at fault party's insurer. Existing variable practices suggest that both volunteer fire departments and insurers may not always be aware of the beneficial impact of the current provisions of the standard auto insurance policy in Nova Scotia and that focused efforts to inform both should satisfactorily address and ameliorate this situation;
- f. **Vicarious Liability and Primacy – Leased and Rented Vehicles** - Recommend that Nova Scotia proceed with an initiative similar to the approach taken in Ontario and Alberta in regard to this matter. This would have the impact of standardizing practices in Nova



Scotia with many other North American analogues in limiting the liability of vehicle lessors and renters. In particular, this initiative would also assist the car rental industry in Nova Scotia and allow them to compete on a more level playing field in being able to secure automobiles for rent, an issue which is often a challenge in Nova Scotia, particularly, in summer. At the same time, the reforms in Nova Scotia need to hold rental companies to best practices in their obligation to those renting automobiles;

- g. **Direct Compensation for Property Damage** - It is recommended that Nova Scotia adopt this claims settlement model on the basis that it will be clearer to the consumer and should result in faster/better customer service, a more efficient system, reduced litigation and increased accuracy in rate setting. As noted, a careful implementation and a public education plan will need to be undertaken prior to the implementation of this claims settlement model;
- h. **Automobile Insurance/Vehicle Registration** - Nova Scotia should assess the viability of adopting an automated solution for insurance confirmation and validation with key partners including the Insurance Bureau of Canada and the Registry of Motor Vehicles. This is, ultimately, a consumer protection initiative designed to reduce the number of uninsured drivers on the province's roadways. Appropriate lead time will be required to support an effective implementation;
- i. **Premium Increase Prohibition for Damages Paid by the Insured** – It is recommended that the *Automobile Insurance Prohibited Risk Classification Factors Regulations* should be amended to prohibit, as a rating factor, the occurrence of an accident where no claim for payment has been made by the insurer. This will effectively mean that premiums cannot be increased if damages for an accident are paid out-of-pocket by the insured.
- j. **Insurance Fraud** - Recommendations are as follows:
 - 1. consider making legislative or regulatory amendments which would have the effect of recognizing insurance fraud and consider adding or amending regulations that would serve to create regulatory offences for insurance fraud, measures that would, in essence, specifically target insurance fraud;
 - 2. the Office of the Superintendent of Insurance, in collaboration with other stakeholders including Justice Officials and the industry, should establish a working group to examine the issue of insurance fraud in Nova Scotia and develop a medium term plan to more proactively address this phenomenon; and
 - 3. it will also be important to address insurance fraud in the consumer education initiative arising from changes being advanced in this Review.
- k. **Introduction of a New System of Classification for Accident Victims**

Consider the proposal to amend the Standard Insurance Policy of Nova Scotia to include two categories of accident victims – non-catastrophic and catastrophic – as a 'parking lot



issue' on the Nova Scotia automobile insurance reform agenda, subject to subsequent further analysis by the Office of the Superintendent of Insurance at a time when the insights gained through the review in Ontario and results of the Alberta consultation process on this issue are available, following the completion of the actuarial analysis on its potential impact in Nova Scotia and following careful analysis and consideration of the potential for over-utilization and fraud issues as reported elsewhere. Consultation between officials of the Office of the superintendent of Insurance and counterparts in Ontario and Alberta and other stakeholders on this issue will be desirable;

l. Pay as You Go Insurance

In the context of this review of automobile insurance, it is important to acknowledge the emergence of this new type of insurance product. While no specific recommendations are being advanced in respect to 'pay as you go insurance', at this time, it is a phenomenon that the Office of the Superintendent of Insurance will likely want to monitor. With changing driving patterns and growing concern in respect to GHG emissions, this may become a more attractive product, particularly, for those living in urban areas whose incentive to drive may be further circumscribed as a result of heavy traffic, the paucity and cost of parking and the ready availability of inexpensive and efficient public transit.

m. Automobile Insurance Issues Impacting Immigrants

Being able to drive and having access to fair and affordable automobile insurance rates is, for many immigrants, an important element of the settlement process. As the Review indicated, there are issues in the current automobile insurance regime and licensing process that, in some cases, may present challenges for immigrants. For the future, it would be helpful for officials of the Office of the Superintendent of Insurance to work with other stakeholders, including the IBC, federal/provincial colleagues engaged in immigration policy and immigration initiatives, the Motor Vehicle Branch, as well as, Non-Government Organizations (NGO's) involved in the settlement process to ensure that issues related to immigrants and access to automobile insurance at fair and affordable prices are appropriately and proactively addressed;

n. Modifying Small Claims Court Act

During the Insurance Review Process, a proposal was advanced to amend the Small Claims Court Act of Nova Scotia to change the Court's jurisdiction to include actions to collect pain and suffering awards to ten thousand dollars (\$10,000) indexed in accordance with the Consumer Price Index for Nova Scotia (CPI). This matter has been examined in consultation with officials responsible for court administration in the Province and is addressed in the context of the Report.



- o. **Consumer Engagement/Education** - Recommendations are as follows:
1. in reflecting on these issues during the review, we looked at the requirements that financial advisors have to conduct an assessment of their clients' investment knowledge and tolerance for risk at the outset of the relationship and, periodically, throughout the relationship. This 'know your client' provision serves to better inform the financial advisor/client relationship. A similar mechanism in the insurance sector, to be completed upon application and/or renewal might, properly designed, have the impact of both better informing the broker of the client's requirements, while, at the same time, helping the client to make well-informed decisions. In addition, some of the measures being advanced in this proposed round of changes are designed in such a way that the consumer must make the decision (i.e., whether to buy-down on accident benefits, whether to purchase optional tort) and these provisions serve to heighten the importance of the consumer having good information on which to make these decisions. It is recommended that Nova Scotia consider the design of such a process to be utilized with clients upon application or renewal of their automobile insurance; and
 2. that the Office of the Superintendent of Insurance, with key stakeholders, design and develop a comprehensive consumer engagement and education initiative to both address auto insurance in general, and the specific changes arising from the review of auto insurance. To effectively execute this proposal, it is recommended that advance work be undertaken to establish a base line of the current state of consumer understanding of auto insurance, establish clear objectives based on this analysis, and periodically monitor performance to both gauge progress and to help in making course corrections designed to improve the effectiveness of consumer education measures. As part of the process of designing a consumer education initiative, focus groups of consumers should be utilized to identify information requirements and to test solutions. Draft consumer education materials should be first tested on consumers before being more broadly distributed.
- p. **Obligation to Review Insurance** - Establish the requirement for a periodic review of automobile insurance in legislation at the option of the Minister responsible for automobile insurance. Ultimately, this can be seen to be a consumer protection initiative in that it would be a commitment to keep the product evergreen and to address inequities that creep into the system over time (e.g. level of Section B benefits);
- q. **Distracted Driving** - The issue of distracted driving is an evolving issue and it is one that is likely to change over time as new information becomes available, as innovative legislative measures evolve and as we know more about effective education and behavioural change campaigns. To this end, the Office of the Superintendent of Insurance should continue to monitor this issue, to report out periodically on new information and findings and to address this issue in the earlier mentioned proposed consumer education initiative;
- r. **Legislative Scanning Exercise** - Legislation and regulations dealing with auto insurance should be reviewed to ensure that it reflects modern business practices, language and procedures compatible with electronic commerce.



In respect to changes being made as a result of this Review and, as a standing principle going forward, the Office of the Superintendent of Insurance should ensure that changes being reflected in legislation and policy are drafted to simplify the provisions, to optimally remove complexity, and that these changes are accompanied by plain language bulletins or advisory documents that clearly and simply convey the meaning and impact of the change in a way that will be understandable to consumers. In respect to the regulatory side, these reviews are now under the purview of the Department of Justice's *Registry of Regulations*. Overall, principles of simplicity and clarity should be underlying imperatives; and

- s. **Medically at Risk Drivers** - it is recommended that the Office of the Superintendent of Insurance, with the Motor Vehicle Branch and other key stakeholders periodically review emerging issues and evidence related to safety considerations for elderly drivers. This would involve monitoring trends, best practices and making policy adjustments as may be required.

Conclusion

One of the key findings in the Automobile Insurance Review is that rates in Nova Scotia have been stable and, in fact, declining over the past number of years. On a comparative basis, automobile insurance rates in Nova Scotia are similar to other provinces in the Atlantic Region and, in fact, more favourable than many other jurisdictions across the country.

Unlike the situation in 2003, this stability allows the Government of Nova Scotia to take measures to improve the automobile insurance system in Nova Scotia in a thoughtful manner without being required to respond to an immediate crisis.

The proposals advanced through this Review seek to address a number of key issues confronting automobile insurance in Nova Scotia in 2011. There has been the opportunity for stakeholder input and consultation with the public over two rounds of consultation – once initially, and subsequently, following release of the *Interim Report*. As such, the *Final Report* reflects the helpful ideas and suggestions advanced by the public and key stakeholders over these two rounds of consultation.

Finally, the proposals being advanced in this Report are complex and, if accepted, following further examination and the completion of actuarial analysis, will require careful implementation. Other jurisdictions where changes of this nature have been implemented have often required external support and expert advice through the implementation process, an observation that is germane to the situation in Nova Scotia where the Office of the Superintendent of Insurance has a small staff.



Chapter 1 – Background and Purpose of Review

1.0 Introduction

CFN Consultants (Atlantic) Inc. (CFN) was contracted to complete a comprehensive review of auto insurance in Nova Scotia. The Review, based on research, a jurisdictional review, stakeholder consultation and two rounds of feedback from the public called for the completion of an interim report and a final report. The Interim Report was tabled on March 31st, 2011. This is the Final Report on the Nova Scotia Automobile Insurance Review.

The Automobile Insurance Review was led by Ron L'Esperance, an experienced, independent Project Leader. Mr. L'Esperance was supported internally by seasoned Halifax-based, consultant Jon Corston, a project management professional.

1.1 Current Situation

In 2009, the Nova Scotia Government committed to complete an independent review of auto insurance to ensure lowest, fairest rates by March 31, 2011.

This commitment arose as a result of significant legislative and regulatory changes introduced into the automobile insurance system in Nova Scotia in 2003 (*Automobile Insurance Reform Act*), the most prominent of which included imposing a \$2,500 cap on soft tissue injuries and changes to the definition of what constitutes a soft tissue injury. This matter has been the subject of court challenges, including a challenge to the Supreme Court of Canada, which was denied.

In April of 2010, the Nova Scotia Government introduced changes to the auto insurance regime to address perceived issues and challenges related to the cap on soft tissue injuries that had been established as a result of the aforementioned 2003 reforms. The key features of these changes included the following:

- a. The cap on soft tissue injuries was increased from \$2,500 to \$7,500;
- b. A new definition of 'minor injury' was established which limited these to 'strains, sprains and whiplash associated disorders (WAD)'. This definition is more consistent with the standardized definition of soft tissue injuries in Canada and beyond; and
- c. These changes became applicable to those injured on April 28, 2010 or later.

At the same time, the Government of Nova Scotia committed to undertaking an overall review of auto insurance, to be completed before March 31st, 2011. The review of automobile insurance was a timely and welcome undertaking in that auto insurance had not been examined for six years. As a mandated product, it is important to periodically assess how the automobile insurance system is functioning and to assure the public that any issues identified are being appropriately addressed.



This review of auto insurance has taken place under very different circumstances than those that had given rise to the changes in the automobile insurance product in 2003. At that time, changes were made principally in response to escalating auto insurance rates that imposed real hardship on Nova Scotians.

The circumstances in 2010 were much different. Auto insurance rates had been stable and declining, though not precipitously, for a number of years. As a public policy issue, automobile insurance does not presently have the prominence that it had in 2002/2003.

As an adjoining initiative, in September, 2010, the insurance regulator, the Nova Scotia Utility and Review Board (UARB) scheduled a hearing to 'examine the effect, if any, of Minor Injury Cap Reform on the Automobile Insurance Industry in Nova Scotia'. The purpose of this hearing was for the Review Board to hear evidence on what impact, if any, the Minor Injury Regulations have had on insurance company profits and claims cost.

The results of this review were released on December 9th, 2010.

The Minister of Finance is responsible for the Insurance Act in Nova Scotia. As such, the results of this review of automobile insurance will provide advice to the Minister of Finance.

This Review is intended to ensure that Nova Scotians continue to have access to appropriate automobile insurance coverage, at rates that are affordable and stable, while providing benefits that are fair to accident victims.

1.2 Project Scope and Time-Lines

The scope of this review was broad and included an examination of the legislative, regulatory and policy framework governing automobile insurance in Nova Scotia. The review assessed whether this framework continues to provide Nova Scotians with access to appropriate automobile insurance coverage, at rates that are affordable and stable, while providing benefits that are fair to accident victims.

Specific *Terms of Reference* (TOR) were established for the Review and included the following topics to be examined during the review:

- a. Section B benefits: adequacy of benefits and appropriateness of limits on medical and rehabilitation benefits and indemnity for loss of income; benefit payment practices - advance payments versus reimbursement; the timeliness and efficiency of the injury assessment process; the relationship of Section B benefits to the settlement of Section A benefits;
- b. The feasibility of Nova Scotia adopting minor injury diagnostic and treatment protocols such as those provided in Alberta;
- c. The design and feasibility of an optional, full tort insurance product for motorists who do not wish to be subject to a minor injury cap;
- d. The fairness of coverage and premiums for inexperienced drivers;



- e. The reimbursement by insurance companies of costs incurred by volunteer fire fighters for clean up after motor vehicle accidents; and
- f. The issue of vicarious liability and primacy with respect to non-negligent short-term vehicle lessors.

However, the scope of the review was not limited only to these topics. Rather, the imperative was to look at the automobile insurance system broadly and to address any issues that arose as a result of that review. The scope included an examination of the legislative, regulatory and policy framework governing automobile insurance. Many issues arose during the insurance review beyond the designated *terms of reference*. These issues are also addressed in this Report.

The *terms of reference* were also clear in the requirement for consultation with stakeholders, the public and government. Two rounds of consultation were undertaken with the general public.

To assist in the Review, an Advisory Committee of key stakeholders was established.

It was agreed that, prior to the implementation, recommendations being advanced should be subject to actuarial review, where it makes sense to do so, to ensure that there are no unintended consequences as a result of their possible implementation.

1.3 Project Deliverables

All project deliverables have been presented to the Department contact for review, approval and acceptance. Specifically:

- a. The Automobile Insurance Review Interim Report was submitted to the Minister by March 31, 2011. The format for the Report included the following elements for each topic as requested in the *Request for Proposals*:
 - 1. background;
 - 2. environmental scan and research summary;
 - 3. issue definition and scope;
 - 4. action options; and
 - 5. recommendations.
- b. A presentation of findings was completed through a prepared power point presentation using a project briefing format; and
- c. The final report has been submitted on May 31st, 2011.

All deliverables have been submitted in electronic format.

All deliverables have been reviewed to ensure development standards and efficiencies are utilized. It is understood that all work products arising from and associated with this review are the property of the Nova Scotia Department of Finance.



Chapter 2 – Process

2.0 Introduction

This chapter outlines the process used in the execution of the Nova Scotia Automobile Insurance Review conducted by the consulting team. The process followed was as described in the team's original proposal to the Department of Finance and all aspects of the process were followed as described. The process was also continuously monitored throughout the execution of the review to ensure compliance with project requirements.

2.1 Process

The following sub-sections describe the result of the various activities conducted as part of this review.

2.1.1 Activity 1 – Start Up and Orientation

The start up phase of the Project was designed to ensure that the consulting team had a complete understanding of the project requirements and to permit any necessary clarifications or nuances related to the project mandate to be incorporated early in the execution process. The Project team formally met with the Departmental officials for a project-launch meeting and has continued to meet with the Project Team on a regular basis throughout the commissioning of this work.

2.1.2 Activity 2 – Research, Jurisdictional Review and Bench-Marking

This activity consisted of the following tasks:

- a. Review of "Minor Injury Cap Review" documentation and other reviews since the implementation of the changes to automobile insurance in 2003/2004. In particular, we carefully examined the impact on rates during the period from the implementation of the changes in 2004 to 2010;
- b. Review of court challenges and jurisprudence associated with these and related changes that have arisen over the past six years, including the result of the UARB hearing into the changes to the cap for soft tissue injuries. This also included a review of jurisprudence in Nova Scotia and elsewhere related to other aspects of auto insurance, including the issue of vicarious liability and primacy for rented and leased vehicles;



- c. Review of other relevant documentation associated with automobile insurance in Nova Scotia including industry publications, annual reports, consumer comments and editorial comment. This also included a Canadian review and a select benchmarking of US analogues as well, particularly, as related to vicarious liability, primacy and the tort product;
- d. Conducting a comprehensive cross-jurisdictional review in Canada, including the Province of Alberta (as noted in the RFP). This cross jurisdictional review included a detailed look at the diagnostic and treatment protocols implemented in Alberta (and variants implemented elsewhere); a comprehensive look at changes to automobile insurance implemented by the Government of Ontario in 2010; how Nova Scotia automobile insurance rates compare within the Atlantic Region and nationally based on a comparison of *average earned premiums*; an examination of optional tort products available in Saskatchewan, British Columbia and US analogues; and, a broad-based examination of best practices in measures to provide effective public education and high quality consumer information on automobile insurance;
- e. Preparation and analysis of options to address findings and the requirements of the *terms of reference*; and
- f. Provided regular briefings to the Department of Finance on the progress of the review and the findings of the research and cross-jurisdictional review phase.

The consulting team organized this project as follows:

- a. December 2010 – Conducted research, undertook the jurisdictional review and advanced the first round of meetings with key informants to identify the broad range of issues related to automobile insurance in Nova Scotia;
- b. January/February 2011 – Undertook a broad range of stakeholder meetings; worked with officials of the Department of Finance to establish a website for the public to offer their views and insights into the auto insurance review and undertook an analysis of those comments; continued outreach to other jurisdictions on strategic issues; and, continued with the research and jurisdictional review component;
- c. March 2011 – Undertook meetings with the Advisory Committee to receive their views and input and prepared the Interim Report which was submitted on March 31st, 2011; and
- d. May 2011 – Officials of the Department of Finance reactivated the insurance review website, posted the Interim Report on the site and a second round of public consultation was undertaken. A final review meeting was held with the Advisory Committee. The Final Report was tabled on May 31st, 2011.



2.1.3 Activity 3 – Stakeholder Meetings and Written Submissions

The specific activities undertaken in relation to stakeholder consultation included the following:

- a. Developed the list of key stakeholders in consultation with Departmental Officials;
- b. Conducted outreach to key stakeholders, arranged meetings and conducted these meetings using a standardized format and interview guide. Many of the stakeholders interviewed also provided written submissions. In some cases, additional information on specific questions was requested;
- c. Reviewed and analyzed of the results of stakeholder meetings and written submissions and used these to further identify any issues that might require more in depth analysis, further examination or detailed supplementary research; and
- d. Provided regular briefings to the Department of Finance on the results of the stakeholder consultation phase.

The consulting team wishes to acknowledge the helpful assistance and extraordinary effort provided by key stakeholders throughout the review. Stakeholders were uniformly courteous, helpful and conscientious in their approach to providing feedback to the consulting team.

2.1.4 Activity 4 – Public Input

The specific components of this activity were as follows:

- a. Working with communications and IT officials within the Department of Finance, a website was established to enable the public to offer their thoughts, insights and responses on the review of automobile insurance. Public respondents were able to comment by way of an e-mail response and an address was also provided for those who wished to make written submissions. Two rounds of public consultation were undertaken; the first in January/February as part of a broad stakeholder engagement/consultation process, and, the second in May to receive feedback on the findings and key proposed directions outlined in the Final Report;
- b. Reviewing and analyzing the results of the public input into the insurance review. A protocol was established with Department of Finance officials so that the consulting team would receive the public feedback tabled each day electronically;
- c. Input received was recorded and analyzed and the issues raised were cross referenced with issues arising from the broader review. A separate listing of the issues public respondents raised was developed and included in the broader issues review; and
- d. The issues raised by the public were part of the regular briefings and discussions held with officials of the Department of Finance.



It is important to note that the feedback received from the public was not based on a scientifically engineered sample. Rather, those who wished to comment did so, and the majority used the e-mail channel to respond.

Submissions varied from short, focused suggestions or observations to longer and more expansive examinations of key issues of interest and concern to the public.

The consulting team is grateful for the feedback received from the public during both rounds of consultation. There were many very thoughtful and, indeed, some very poignant responses which have, ultimately, been helpful in both categorizing issues and in solution finding.

2.1.5 Activity 5 –Advisory Committee Consultation

Two meetings were held with the Advisory Committee in March. The format for these meetings was as follows:

- a. Presentation of the results and findings of the insurance review by the consulting team;
- b. Provision of an overview of the range of issues identified; and
- c. Detailed discussion on proposed solutions. The input of the Advisory Committee was particularly helpful in this regard.

A third and final meeting was held in May to review the results of the second round of public consultation and to receive further feedback from the Advisory Committee prior to completion of the final report.

Members of the Advisory Committee participated in the capacity of representing a diversity of organizations that have a key interest and stake in ensuring a well-performing auto insurance sector. To that end, their input, counsel and advice has been especially helpful.

2.1.6 Activity 6 – Report Preparation and Presentation

During the month of March, 2011, the consulting team produced the Interim Report. Following further public input, a final report, will be prepared and tabled during the month of May 2011.

2.1.7 Activity 7 – Administration and Project Management

Project management and administration was conducted throughout the life-cycle of the project. Both of these activities were the responsibility of the Project Leader and associated colleagues within the CFN Consultants (Atlantic) Inc. office.



2.2 Staffing

The staffing for all phases of this Project was carried out by the following CFN Consultants staff members:

Team Member	Primary Task	Secondary Tasks
Ron L'Esperance	<ul style="list-style-type: none">• Project Leader	<ul style="list-style-type: none">• Analysis• Interviews• Report writing
Jon Corston	<ul style="list-style-type: none">• Research and writing support	<ul style="list-style-type: none">• Analysis• Interviews• Report writing• Project reviews

Table 1 - CFN Consultants Review Team

2.3 Project Plan

A detailed Project Plan was created for this project. This plan incorporated the *work breakdown structure* (WBS) methodology and is utilized as both a planning and a reporting/accountability tool. The use of the charts associated with the project plan enabled the Project Leader and his colleagues to make adjustments in scheduling and tasking assignments as necessary, while, at the same time, managing any project risks.

2.4 Summary

Overall the review of automobile insurance has proceeded very well. All involved – the Minister's office, officials of the Department of Finance, the Office of the Superintendent of Insurance, key stakeholders, members of the public and the Advisory Committee – have been very focussed on using the review to address key issues and concerns in relation to the automobile insurance product, have been helpful and innovative in their proposals and giving of their time, throughout the process



Chapter 3 – Findings

3.0 Introduction

In 2009, Government committed to complete an independent review of auto insurance to ensure lowest, fairest rates by March 31, 2011.

This Chapter of the Interim Report addresses the findings and recommendations arising from an independent review of the automobile insurance system launched by Nova Scotia's NDP Government in November 2010.

As the standard auto insurance policy had not been reviewed for several years, the government wanted to undertake this review to make sure the system is up to date and meets the needs of today's families.

The primary purpose of this Review has been to ensure Nova Scotians continue to have access to appropriate coverage with premiums that are fair, stable and affordable.

As noted, the focus of this review has been on the entire automobile insurance system in the province. In commissioning this review, the government sought the services of an independent reviewer and specified that the review should include research, consultation and feedback from key stakeholders, the public, and government.

A central focus of the review was on the following key issues identified in the *Terms of Reference*:

- a. Section B benefits: adequacy of benefits and appropriateness of limits on medical and rehabilitation benefits and indemnity for loss of income; benefit payment practices - advance payments versus reimbursement; the timeliness and efficiency of the injury assessment process; the relationship of Section B benefits to the settlement of Section A benefits;
- b. The feasibility of Nova Scotia adopting minor injury diagnostic and treatment protocols such as those provided in Alberta;
- c. The design and feasibility of an optional, full tort insurance product for motorists who do not wish to be subject to a minor injury cap;
- d. The fairness of coverage and premiums for inexperienced drivers;
- e. The reimbursement by insurance companies of costs incurred by volunteer fire fighters for clean up after motor vehicle accidents; and
- f. The issue of vicarious liability and primacy with respect to non-negligent short-term vehicle lessors.



This report focuses on the results of the automobile insurance review and will serve as the basis for further consultation with the public and key stakeholders on potential reforms to Nova Scotia's automobile insurance policy.

3.1 Background

Because automobile insurance is mandatory, all drivers must carry insurance. Hence, it is important that the insurance product works as intended - that it is accessible to consumers at fair and affordable rates.

Historically, the late 1990's and the early part of the 21st Century was a challenging and tumultuous time for automobile insurance. Rates had increased significantly, accessibility was a challenge for many and a disproportionate number of insureds found themselves relegated to Facility Association – a risk-sharing pool for those with a higher risk-rating and concomitantly higher premiums. This situation had become a challenge throughout much of Atlantic Canada. Exponential rate increases and access to insurance had become a high profile public policy issue, so significant that it was featured prominently as an election issue in Nova Scotia and New Brunswick in the past decade.

This phenomenon had a deleterious impact on those in the insurance business, on business generally and, perhaps, most dramatically on consumers. Clearly, the system works best when the insurance industry is healthy, making a reasonable return on equity and when consumers have access to a diversified product that meets their individual needs at a fair and affordable price.

As a result of these challenges, the Nova Scotia government, at the time, undertook a legislative review and renewal initiative designed to make automobile insurance more affordable for consumers. The result was passage of new legislation, the *Automobile Insurance Reform Act*, which received *Royal Assent* on October 30th, 2003.

As a way to reduce costs, the government of the day, chose to place a cap on pain and suffering awards for minor injuries. These measures, though unpopular in many quarters, had the impact of reducing rates. Industry reports that rates declined by 23.1% during the period from October 2003 – October 2009. Some industry observers feel that rates may have declined even further, had it not been necessary for industry to establish reserves to cover potential costs associated with soft tissue injuries arising from the uncertainty created by court challenges associated with the \$2500 cap.

Notwithstanding court challenges, including a challenge to the Supreme Court of Canada, this cap on pain and suffering awards for minor injuries endured, including at the prescribed level of a maximum pay-out of \$2,500. Early in its mandate, the current Government of Nova Scotia undertook an initiative to address two key issues considered to be problematic with the earlier cap. These issues included the following:

- a. Perceived fairness of the amount or level of the cap; and
- b. The definition of 'minor injuries' that had been established in 2003.



As a result of a comprehensive review, in April of 2010, the current government of Nova Scotia introduced changes to the auto insurance regime in Nova Scotia. The key features of these changes included the following:

- a. The cap on soft tissue injuries increased from \$2,500 to \$7,500;
- b. A new definition of "minor injury" was included which limited these to "strains, sprains and whiplash" and which brought this definition more in line with standard definitions used in other provinces; and
- c. These changes were designated to apply to those injured on April 28, 2010 or later.

Periodic reviews of the automobile insurance system are important to determine if the product is working as intended and serving the needs of consumers. Automobile insurance is also a very complex product and is often difficult for the consumer to fully understand.

At the time the Government of Nova Scotia implemented these changes, they also committed to the independent review of auto insurance. This review is timely because in the interregnum since 2003, several jurisdictions across Canada have implemented significant changes as a result of their own reviews of automobile insurance.

3.2 The Consultation Process

The independent review of auto insurance commenced November 2010.

During the months of November and December, 2010, the review focussed on conducting research, undertaking a review of a broad range of jurisdictions to sample and better understand current and best practices in relation to the key issues identified in the terms of reference and conducting outreach to a number of key stakeholders on a bi-lateral basis to secure their views and suggestions in respect to the review.

Among others, targets in this portion of the review included lawyers in the Department of Justice who work closely with the Superintendent of Insurance's office located within the Department of Finance. These meetings also included the Chairman and Executive Director of the Utility and Review Board (UARB). The UARB has been appointed to assume the responsibilities of the former Insurance Review Board and is the rate-setting and regulatory body for the insurance industry in Nova Scotia.

In addition, a series of meetings were held in respect to the reimbursement of volunteer fire-fighters issue.

This round of preliminary meetings was helpful in identifying key issues from a variety of perspectives, in helping to better prepare for the consultation phase and in better understanding some of the current challenges associated with automobile insurance from a variety of perspectives.



During the months of January and February 2011, the focus was on formal outreach and consultation with key stakeholders, including industry and with the public.

The primary focus of the stakeholder meetings was to reach out to key organizations representing a broad array of interests in respect to automobile insurance. A list of these organizations is noted below along with information on the actual meetings held.

Date and Time	Association
10 Jan, Monday	Association of Car Rental Operators
11 Jan, Tuesday	Insurance Brokers Association of Nova Scotia
18 Jan, Tuesday	Canadian Independent Adjusters Association
24 Jan, Monday	Atlantic Provinces Trial Lawyers Association
27 Jan, Thursday	Insurance Bureau of Canada
3 Feb, Thursday	Nova Scotia Physiotherapy Association
4 Feb, Friday	TD Insurance
4 Feb, Friday	Department of Transportation and Infrastructure Renewal
23 Feb, Wednesday	Nova Scotia College of Chiropractors
3 Mar, Thursday	Canadian Association of Direct Response Insurers

Table 2 - Stakeholders Meetings

The format for these meetings was to use them as a forum in which to discuss any aspect of the identified terms of reference that were of interest to the individual stakeholders, as well as, to solicit their views on any other issues that might be of concern in respect to auto insurance broadly. Stakeholders were invited to make written submissions and presentations and many did. Submissions presented have been catalogued and will be passed along to officials of the Department of Finance when the final report is submitted.

Stakeholders consulted were unfailingly helpful, enthusiastic, supportive of the review initiative and diligent in formulating their thoughts and suggestions in a manner so as to be optimally useful. A number helpfully undertook further analysis or sought out supporting documents, web links and supplementary information, and later passed these on to the review team. We are grateful for the consistently high level of professionalism displayed throughout this consultation process.

In an effort to secure the views of the public at large, the review team worked with officials of the Department of Finance to establish a web site the public could access to make their views known



on the automobile insurance review. Those wishing to comment could do so in two ways – provide an e-mail response or forward a written response through regular mail. The website was launched January 18 and was actively maintained until February 25. Over this period upwards of 150 people provided comments, and the majority of these were from members of the public.

This website was reactivated in May to receive public comments on the Interim Report and the proposed directions and recommendations being advanced in relation to automobile insurance in Nova Scotia. During this second round of public consultation 37 comments/submissions were received.

From a process point of view, comments were sent to officials within the Department of Finance. The review team received a daily electronic copy of all comments received, as well as, a weekly printed copy. Feedback from members of the public were categorized and tracked on an issues basis. These issues are addressed in the context of recommendations being advanced later in this Chapter.

Public comments received ranged from short e-mails to more in depth comments on particular topics or issues. Many of those who responded obviously took a great deal of time and provided very thoughtful analyses and insights which were most helpful to the review team. The review team is appreciative of the effort of all members of the public who took the time to respond. Their views and insights have been very helpful in the review.

Contiguous with the stakeholder consultation process, the review team also continued outreach to other jurisdictions/key informants on strategic issues that arose throughout the review. Research also continued apace concurrent with the consultation process.

As a support to the review team and to ensure that the review process would benefit from as broad a perspective as possible, the Department of Finance, in designing the review process, had the foresight to also structure an Advisory Committee to provide input to the review team. The Advisory Committee is comprised of the following members drawn from organizations that have an interest and stake in automobile insurance:

Name	Organization
Ken Myers	Insurance Brokers Association of Nova Scotia
William Adams	Insurance Bureau of Canada
John McKiggan	Atlantic Trial Lawyers Association
Ray Wagner	Atlantic Trial Lawyers Association
Scott Leblanc	Association of Canadian Car Rental Operators
Doug Murphy	Superintendent of Insurance

Table 3 - Advisory Board Members



Two meetings of the Advisory Committee were held in March. A third meeting was held in May. The purpose of these meetings was to review the findings related to the insurance review and to discuss proposed solutions.

3.3 General Findings

At a high level, the review of automobile insurance in Nova Scotia reveals a system wherein the rate structure and the automobile insurance product have been stable over the past six years. Insurance rates have declined and continue to decline, though, not precipitously.

It is also clear that Nova Scotia's rates compare favourably within the Atlantic Region/Quebec and are, in fact, significantly lower than in Western Canada. Within Atlantic Canada, auto insurance rates are presently highest in Newfoundland and Labrador with Nova Scotia, New Brunswick and Prince Edward Island rates being generally comparable within a very narrow range of variation.

Issues associated with disproportionately high rates for inexperienced drivers that had been so prominent in the run-up to the reforms in 2003/2004, have improved considerably. This is the result of industry's voluntary extension of rates analogous to those offered under New Brunswick's mandatory 'first chance discount' product, and a well functioning *risk sharing pool* through which to manage this product.

In the period between the introduction of the \$2500 cap on soft tissue injuries in 2004 and presently, there has been several court challenges in respect to the cap, including an application for consideration by the Supreme Court of Canada. In 2010, the Supreme Court of Canada dismissed the application for leave to appeal the *Hartling Case*, effectively, ending the challenge to the \$2500 cap.

The Government of Nova Scotia, as earlier noted, changed the level of the cap to \$7500 and changed the definition of soft tissue injuries to bring it more inline with standard definitions in other jurisdictions, effectively, addressing, for the most part, the lingering issues associated with the former reform. These changes were made effective on a go-forward and not a retroactive basis.

A subsequent review of these measures by the UARB determined that this increase in the cap could be accommodated within the current rate structure. The Board will hold a formal paper hearing in the fall of 2012 to examine the impact of the minor injury reforms as follows – "Since the participants generally appear to agree that it will take more than one year to measure the full impact of the reform, the Board finds that it is appropriate to hold a formal paper hearing where any interested parties may provide evidence and submissions for the Board's consideration in accordance with a prescribed timetable. The Board will schedule this hearing for the fall of 2012, by which time there will be more data available."

As the cap was not a prominent issue raised by the public during the review, it would appear that there is generally a greater level of satisfaction in respect to the changes made by the current government to the cap than was the case with the previous cap.



During the review, the point was made by industry that rates might have further declined in the interregnum between 2004 and 2010 if insurance companies had not been required to reserve against the uncertainty created as a result of the challenges to the cap on soft tissue injuries introduced in 2004. The concern was that a court ruling that would have the effect of the cap being struck down could be applied retroactively. While not all stakeholders necessarily accept this analysis, and while the UARB is just now completing its first full cycle of rate hearings, it does underscore a point that uncertainty in the insurance industry can have an impact on rates.

The corollary to this observation is that when changes are being contemplated or made, care should be taken to ensure that, to the greatest extent possible, all contingencies are considered and that uncertainty is minimized. It is for this reason that we are very interested in seeing that proposals arising from this review are subject to actuarial analysis prior to actual implementation, so that potential impacts can be fully plumbed and properly considered prior to final implementation.

Unlike the run-up to the reforms undertaken in 2004, in 2011, there is not a single issue that is galvanizing attention and, concomitantly demanding action in respect to automobile insurance in Nova Scotia. This is, ultimately, a positive finding in that it provides an opportunity for the Government of Nova Scotia to make changes that are thoughtfully considered without having to operate in an environment of heightened attention and permeated by crisis.

A salutary finding is the fact that consumers generally have a poor understanding of the auto insurance product. This is a significant challenge, and although not unique to Nova Scotia, the importance of consumer education needs to be a central focus going forward, particularly, as changes to the product are contemplated.

Automobile insurance is a very complex product. As a mandatory product, it is important that, to the greatest extent possible, consumers understand what they are buying, and, in fact, tailor their purchase to best reflect their unique needs and circumstances. We would conclude that this is, in fact, generally not happening. In an environment with a product that is very price sensitive, the purchase of insurance is often is a race to a bottom line premium figure that is as low as it possibly can be, notwithstanding that it may not, ultimately, meet the consumer's needs and requirements.

Through the public feedback portion of the review, we heard many poignant stories from members of the public who reported that the insurance product did not serve them well when it came time to use it, as a result of an accident. We heard of a great deal of confusion from members of the public in respect to what to do when injured. We heard stories of insurance settlement processes that took years to finalize and which left the person involved with the feeling that the final result was unsatisfactory.

This lack of understanding of the insurance product is reportedly borne out in polling which the Insurance Bureau of Canada undertakes, and in the feedback provided by the Office of the Superintendent of Insurance of the Department of Finance which regularly deals with complex issues brought forward by insurance consumers. It was also reaffirmed in discussions, during the review, with the consumer advocate for insurance in New Brunswick.

The conclusion to be drawn is that all stakeholders in the process – government, industry, the brokers, the direct insurers - need to redouble their efforts in respect to consumer engagement and



consumer education initiatives, a matter on which we will be offering some further observations arising from this review.

There are also some public misconceptions regarding automobile insurance. One of these is in respect to rates. Some public respondents asserted the belief that rates in Nova Scotia are higher than in the rest of the country, an observation that is not borne out in the examination of jurisdictional comparisons of *average earned premiums*.

3.4 Principal Findings

The review's principal findings are noted here at the high level and examined in detail later in this Report. Principal findings in respect to the designated issues identified in the *terms of reference* are as follows:

- a. **Section B Benefits:** These are broadly considered to be too low and Nova Scotia is, for the most part, significantly out of step with the rest of the country in respect to the level of these benefits;
- b. **Minor Injury Protocols:** The diagnostic and treatment protocols, as implemented in the Province of Alberta, are viewed to be effective. These protocols are based on the best medical evidence available in respect to the importance of quick access to treatment and the concomitant impact that has on resumption of activities of daily living (ADL) or return to work for the injured person. These protocols address the three most common soft tissue injuries – strains, sprains, and whiplash associated disorders (WAD) and these definitions are consistent with the new definition of soft tissue injuries (STIs) in Nova Scotia. These protocols have been successfully implemented in Alberta (04) with variants of this approach implemented in other jurisdictions. There has also been an assessment of the impact of these protocols in Alberta. One of their strongest features is the level of certainty and predictability they give to the consumer and, when implemented with a provision in relation to 'priority of pay' considerations, obviate the need for injured parties to first exhaust their health benefits;
- c. **Optional Tort Product:** It is important that Nova Scotians ultimately have choice and so, as a result of this review, we are recommending that the Office of the Superintendent of Insurance work with industry to develop and price a tort product that will provide that choice to Nova Scotia drivers;
- d. **Fairness to Inexperienced Drivers:** Nova Scotia insurers are voluntarily providing discounts to inexperienced drivers (< 6 years). Industry has effectively adopted the features of the First Chance Discount Program that is mandatory in New Brunswick. This program provides a reasonable rate of insurance for inexperienced drivers, providing that these drivers continue to maintain a clean driving record. To offset the additional risk associated with this demographic, industry has established a *risk sharing pool* on a shared basis. An analysis of the financial statements of this pool indicates that it is operating effectively.



A related issue is the continued use of gender as a risk rating factor in Nova Scotia. Many jurisdictions have moved to eliminate gender as a risk rating factor and presently inexperienced females attract a lower premium. This issue is examined in this report from the point of view of the arguments for and against the use or elimination of gender as a factor in the risk rating process. We also examine related developments globally in respect to this matter;

- e. **Reimbursement of Volunteer Fire Fighters by Insurance Companies:** This is a complex issue. At its core though, the key public policy issue is whether taxpayers (in this case property taxpayers) should end up paying for the services of volunteer firefighters as a result of automobile accidents; and
- f. **Vicarious Liability and Primacy – Rented and Leased Vehicles:** Other jurisdictions have taken decisive action to limit the liability of rental and lease companies for damages caused by renters and other drivers. Recent jurisprudence in NS upholds this principle in respect to leased vehicles.

3.5 Other Issues Identified

This section of the Report provides a high level examination of other issues identified throughout the course of the review – these will also be addressed in greater detail later. These include:

- a. **Direct Compensation for Property Damage:** This claims settlement model is in place and working well in Quebec, Ontario and New Brunswick. It offers significant benefits for the consumer. The principal benefit is that it simplifies the process for the consumer and results in a rate setting process that is more precise as the insurer has direct knowledge of what is being insured;
- b. **Auto Insurance/Vehicle Registration:** There is an emerging interest in implementing automated solutions to enable the Motor Vehicle Branch to check the *vehicle identification number* against an industry data base to validate in real time that a driver has insurance. The system is designed to get uninsured drivers off the road and is viewed to be a superior approach to the manual system presently in place in Nova Scotia. In 2010, the Province of Ontario implemented its *Uninsured Vehicles Program* with a 5-7% denial rate as a result;
- c. **Insurance Fraud:** Fraud is costly to the insurance industry. The *Canadian Coalition Against Insurance Fraud* estimates that 10-15% of every premium dollar pays for fraudulent claims. In Nova Scotia, while widespread insurance fraud is not generally viewed to be pervasive, this review will comment on this important issue; and
- g. **Introduction of a New Classification System for Accident Victims –** During the Review, the position was advanced that Nova Scotia should consider amending the Standard Automobile Insurance Policy, Mandatory Accident Benefits sub-section, to include two tiers of accident victims – catastrophic and non-catastrophic – as some other jurisdictions have done. This issue has been analyzed from a national perspective and is addressed in this Report;



- h. **Pay as You Go Insurance** – This Report examines the emerging phenomenon of ‘pay as you go’ or ‘usage-based insurance’. In the context of this review of automobile insurance, it is important to acknowledge the emergence of this new type of insurance product; and
- i. **Automobile Insurance Issues Impacting Immigrants** - Being able to drive and having access to fair and affordable automobile insurance rates is, for many immigrants, an important element of the settlement process. The Review examines and offers suggestions in respect to the management of several issues in the current automobile insurance regime and licensing process that, in some cases, may present challenges for immigrants;
- j. **Modifying Small Claims Court Act** - During the Insurance Review Process, a proposal was advanced to amend the Small Claims Court Act of Nova Scotia to change the Court’s jurisdiction to include actions to collect pain and suffering awards to ten thousand dollars (\$10,000) indexed in accordance with the Consumer Price Index for Nova Scotia (CPI). This matter has been examined in consultation with officials responsible for court administration in the Province.

As noted earlier, consumer understanding of the automobile insurance product and consumer education is a significant issue around which there is the potential for innovative solutions. Ultimately, as a result of the review, we conclude that a collaborative public education initiative between industry, the Office of the Superintendent of Insurance and, potentially, other stakeholders would be helpful. These suggestions are examined in detail later in this Report.

During the second public consultation phase, some informants commented that in addition to enhanced consumer education efforts, brokers need to take more responsibility in informing their clients in respect to the automobile insurance product and that enhanced education of brokers on the product should be a priority. We have also examined the possibility of a different approach between the broker and the client, something analogous to the ‘know your client’ assessment and analysis that financial advisers are required to complete with their clients.

The review underscores the fact that the delivery of auto insurance is also changing. The internet has enabled customers to communicate with insurers and brokers using the on line channel. This instrumentality can improve customer service, can enhance communication and can streamline the process for insurance customers. In light of this, legislation and regulations dealing with auto insurance should be reviewed to ensure that it reflects modern business practices and procedures compatible with electronic commerce.

Given the complexity of the insurance product, a prominent issue repeatedly raised in the review is the need for, wherever possible, standardization in the insurance system and product. Presently, there are many different insurance regimes across the country. To achieve compliance, private insurance companies operating in these markets need to ensure that they have a clear understanding of the particular regime in each province. Ultimately, this adds costs to the system and creates the potential for greater confusion amongst consumers.

Attempts in the past decade to move toward harmonization of auto insurance legislation and practices in the Atlantic Region have not advanced significantly. Notwithstanding, the value of



creating a more standardized auto insurance product remains a viable objective which, in our view, should be vigorously pursued where possible.

Not unexpectedly, another factor that was frequently raised is the matter of distracted driving, which some feel is at a crisis level. In fact, during the commissioning of this work there were several high profile accidents involving 'texting'. This issue was raised again in the second round of public consultation and, it is fair to conclude, that this is an issue of considerable concern to the driving public.

Causative factors related to distracted driving include the traditional concerns in respect to cell phone use and texting, however, some informants raised the issue of the increasing complexity of automobile entertainment and operational systems, and the fact that some manufacturers are now equipping vehicles so that they can be used as an office, with the requisite connectivity and feature-rich environment that creates a whole new range of distractions. Although the Nova Scotia government has proactively enacted legislation to deal with distracted driving, many informants feel that there is an important public education dimension to this issue as well. Some informants also noted the importance of vigorous enforcement related to transgressions leading to distracted driving.

With changing demographics and an aging population the matter of medically at risk drivers is an issue of concern. This issue will be addressed in this report.

An emerging issue that became a topic of public discourse late in the Review is the issue of *diminished value*. Briefly, this is the difference between what your car was worth pre-accident and post-accident. The difference is referred to as 'diminished value'. This issue was recently profiled in a CBC Marketplace documentary. The debate is whether insurance companies are obligated to pay for diminished value. This matter has been addressed through the courts in the United States, with mixed results – some states ruling in favour of the claimant, and others siding with the insurers. In Canada, it is an issue that will likely be decided in the courts. Presently, there is a case before the courts in the province of British Columbia in respect to this matter. This issue was raised by one member of the public during the public consultation phase.

3.6 Issues Raised by the Public

The website established to receive comments from the public on the insurance review for the initial round of public consultation was well-utilized. Over the course of that consultation phase, there were almost 150 submissions. This section of the report details, at the high level, the substance and nature of this feedback.

Response to the concerns raised by the public are addressed in the context of specific proposals being advanced as a result of the insurance review and are included later in this Report.

At the outset, an important qualifier must be noted. The public comments included in this report are based on the comments received incidentally from the website, and, as such, should not be considered to constitute a scientific sample.



There were many common issues in the comments advanced by the public. In presenting these issues, we have aggregated these common concerns which are summarized below in the following observations:

- a. A high level of frustration with the automobile insurance product and industry was evident in 74.2% of the comments;
- b. There is a prevailing public view that rates continue to be too high - 36.8%;
- c. There is a concern with the requirement to exhaust personal health benefits before accessing Section B Benefits and the requirement for injured parties, in some cases, to have to pay up front for rehabilitation benefits and, subsequently, then, have to recover these costs;
- d. There is significant concern regarding the length of time it takes to settle claims and the power imbalance that exists in the process with insureds reporting a feeling of vulnerability when going through this process;
- e. There is a lack of understanding of the process to be followed when injured;
- f. There is a need for better customer information/communication with the insurance company and adjuster at the time of an accident;
- g. Many who responded stated that they did not use insurance when in an accident because of fear of rate increase which prompted, for some, the question of "what do I have insurance for?" People are particularly incensed on this point – some report having paid a claim, only to have their rates increase anyway;
- h. There is a public perception that insurance companies are paying excessively for some services – body shops, tow trucks to mention only a few – and that fraud is an ongoing part of the system. Some informants see this as 'insurance scamming'. People see these perceived excessive costs as, ultimately, impacting rates and they are strongly against it;
- i. There were numerous comments on the perceived unfairness of rate increases arising from a lapse in insurance coverage;
- j. There was also a concern with the cost of insurance for motorcycles and recreational vehicles – a concern which, through subsequent analysis, is not borne out; in fact, rates in Nova Scotia appear to be quite favourable, relatively speaking;
- k. On the subject of public auto insurance, 10.5% of informants favour public auto;
- l. A number of informants commented that the current insurance system is working well. A number of informants were complimentary on the changes made in 2004 and the impact that these had on both rates and product stability;
- m. Although not a prominent issue, there was considerable divergence of opinion in respect to the cap on soft tissue injuries that included a range of recommendations - raise the cap,



lower the cap, and address the perceived unfairness for those in the 2003-2010 window period for whom the previous cap applies (the retroactivity issue); and

- n. As noted, one respondent raised the issue of 'diminished value'.

These issues have been factored into the proposed solutions and recommendations being advanced.

As noted, a second round of public consultation was undertaken to receive public comments and input on the Interim Report. This round was undertaken in May. An announcement of the second consultation was undertaken, a press release was issued, the Interim Report was made available online and the public was invited to provide comments and feedback in respect to the directions being proposed in the Interim Report. 37 members of the public responded. Comments and insights included the following:

- a. Consumer understanding of automobile insurance would be enhanced by more effective interaction with knowledgeable and responsive brokers. In short, in addition to consumer education, broker education is an important component of a well-functioning automobile insurance system;
- b. Several informants lamented the fact that a recommendation to establish a public automobile insurance regime was not being advanced in the Interim Report;
- c. Some informants felt that the Interim Report was too complex and difficult for ordinary citizens to understand;
- d. Several informants expressed satisfaction with the report, the issues covered and expressed confidence in the current system of automobile insurance in Nova Scotia;
- e. Comments were advanced in respect to the perceived unfairness of the difference in rates based on gender;
- f. As had been noted in the first round, concern was expressed in respect to fraud – exaggerated claims and perceived over-charging associated with insurance claims by a number of providers - and the impact which this activity has on rates;
- g. The challenges facing immigrants in ensuring that newly licensed drivers in Nova Scotia are given credit for experience gained in other jurisdictions and not treated as a newly licensed driver at a concomitant premium disadvantage;
- h. Concerns in respect to the impact of litigation on insurance rates;
- i. A police officer commented on seeing expired insurance cards on a weekly basis and the need to address this issue;
- j. Support was expressed for the adoption of the *Direct Compensation for Property Damage* claims settlement process and for the proposed regulatory change that would limit the



ability of insurance companies to increase rates as a result of a minor accident for which the insured pays;

- k. There were several comments on payments to volunteer fire departments for attending to automobile accidents; and
- l. Toward the end of the second consultation multiple e-mails were received advancing three key imperatives in the automobile insurance reform initiative including, improving accident benefits for those injured in automobile accidents, improved catastrophically injured claimant benefits and an increase in the general damages cap for Small Claims Court so clients/lawyers can pursue a more efficient resolution of minor cases.

A number of the stakeholders with whom bi-lateral meetings had been held in January also made submissions, commenting on the findings and the recommendations outlined in the Interim Report.

All of the comments received – from the public and from stakeholders in the auto insurance industry – have been reviewed. This input has assisted in both identifying new issues and in enabling refinements to issues earlier addressed and are reflected in this Final Report.

3.7 Insurance Standardization

There is recognition that differential auto insurance regimes across provinces creates inefficiencies and, ultimately, adds costs to the product. This issue was raised by a number of stakeholders.

Attempts in the past decade to move toward harmonization of auto insurance legislation and practices in the Atlantic Region have not advanced significantly. Notwithstanding, the value of creating a more standardized auto insurance product remains a viable objective which, in our view, should be vigorously pursued where possible.

While most informants that we spoke to during the Review do not hold out much hope of ever seeing a completely harmonized auto insurance product anytime in the near future, most agree that, where possible, it is helpful to standardize approaches to the development and delivery of the auto insurance product.

There may also be measures that can be taken that would serve to streamline processes and enhance service. One example raised was the inter-provincial licensing of brokers within the Region and the suggestion that this could be done through a 'one-window' approach, electronically, perhaps, utilizing the same process across the Atlantic Region. The issue of having one rate-setting authority was also raised.

These observations and the imperative to 'standardize', where possible, are laudable goals and measures that could serve to take unnecessary costs out of the system while, improving both the overall efficiency of the industry, as well as, the customer service dimension. So, in completing this Review, the extent to which proposals contributed positively to a more standardized approach, at least within the Atlantic Region, was one of the factors that the consulting team used as a 'filter' in assessing proposals for change.



3.8 Principles Underpinning the Review and Future Management Issues

The complexity of the automobile insurance system and the fact that, for the most part, consumers do not always understand the system in the way that they need to dictates that, wherever possible, changes being proposed are filtered through a number of important 'lenses'. Throughout the commissioning of this review of automobile insurance it became clear that, to be optimally effective, any system changes being proposed should steward to the following principles:

- a. Keeping a central focus on the impact of proposed changes on the consumer, consistent with principles of fairness, cost competitiveness and effective communication;
- b. Ensuring that changes being proposed are fully assessed in respect to their impact on rates and their potential to have unintended consequences on the automobile insurance system;
- c. Wherever possible, simplifying the automobile insurance process such that it is more easily understood, more predictable for the consumer and less likely to complicate the product and, concomitantly cost more;
- d. Paying attention to the implementation issues and allowing adequate time to implement the changes such that there is an opportunity to conduct consumer education and properly address any antecedent activities required to support the changes; and
- e. To the greatest extent possible, provide for transparency and clarity for consumers.

In regard to future management issues, the automobile insurance system works best when the insurance industry is healthy, making a reasonable return on equity and when consumers have access to a diversified product that meets their individual needs at a fair and affordable price. This is the fundamental objective of the insurance review.

In looking at the stimulus conditions that gave rise to the automobile insurance crisis of the late 90's and early in the 21st Century, those directly involved point to the fact that there were plenty of signs that the health of the industry was in question and that a crisis was looming. There is also the view that preventative measures might have worked in averting or, at least, minimizing the crisis, had they been applied in a timely manner – before there was a crisis.

It is also clear that there is a great deal of information available in respect to automobile insurance – from the industry, through government and through the rate setting process. To the extent that this information is available, staying abreast of trends in the local/regional/national context; tracking industry performance, and, perhaps, more importantly for consumers, rate factors; monitoring consumer feedback and taking bellwether readings on the health of the automobile insurance system should be able to be easily accommodated.

This is an approach similar to that advanced by the UARB in analyzing the results of the increase of the cap for soft tissue injuries and it is instructive for others as well. In this review, the Board found that, "since the participants generally appear to agree that it will take more than one year to



measure the full impact of the reform, the Board finds that it is appropriate to hold a formal paper hearing where any interested parties may provide evidence and submissions for the Board's consideration in accordance with a prescribed timetable. The Board will schedule this hearing for the fall of 2012, by which time there will be more data available."

While the foregoing uniquely falls within the purview of the insurance regulator, a similar effort in monitoring trends, particularly, in relation to possible reforms being initiated as a result of our review should be equally helpful in avoiding the challenges that arose a decade ago. The question arises whether a **stewardship approach**, whereby, government and industry would periodically meet, on a scheduled basis, to assess industry trends, to monitor performance and to compare notes on consumer feedback might be a helpful mechanism, a sort of 'canary in the coal mine' to identify the health of the industry and to take any preventative action as early as possible so as to avoid escalation into a more challenging scenario. This forum could include a range of stakeholders not unlike the composition of the Advisory Committee established to support the Insurance Review.

The consulting team raises this issue as a helpful suggestion for establishing a formal mechanism that might allow for a more precise approach to responding to emerging trends that have the potential to create challenges for automobile insurance. This approach is also potentially given greater urgency insofar as there are a number of areas identified in this Report that will require further analysis, including actuarial analysis, and evaluation before final direction can be established.

Finally, the proposals being advanced in this Report are complex and, if accepted, following further examination and the completion of actuarial analysis, will require careful implementation. Other jurisdictions where changes of this nature have been implemented have often required external support and expert advice through the implementation process, an observation that is germane to the situation in Nova Scotia where the Office of the Superintendent of Insurance has a small staff complement

3.9 Key Issues and Proposed Solutions

This section of the Report addresses recommended approaches and proposed solutions, both in response to the specific review targets outlined in the *terms of reference*, as well as, for issues which arose during the review, including those advanced by members of the public.

Each of these issues is addressed using the format noted below:

- a. Background;
- b. Environmental scan and research summary;
- c. Issue definition and scope;
- d. Action options; and
- e. Recommendations.



3.9.1 Section B Benefits

- a. **Background** – Section B Benefits are accident benefits. This coverage provides compensation, regardless of fault, if the driver of an automobile, passengers or pedestrians suffer injury or death as a result of an automobile accident. Accident benefits coverage is compulsory in all provinces with the exception of Newfoundland and Labrador. Section B benefits provide for a broad range of requirements – loss of income/income replacement, medical rehabilitation costs, funeral expenses, death benefits for the head of household, the spouse of the head of household and for dependants, and for housekeeping services where relevant.
- b. **Environmental scan and research summary** – Within an Atlantic Canada context, the level of Section B benefits are the same in Nova Scotia and Prince Edward Island. In Newfoundland and Labrador, as noted above, this coverage is not mandatory. Section B benefits are higher in New Brunswick by a significant margin and higher still across the country.

Within Nova Scotia, an insured can presently 'buy-up' through an endorsement – SEF 48. For an additional premium, purchasing this endorsement increases the level of coverage in the categories noted in the following table:

Benefit Category	Section B Benefits – Nova Scotia	Provisions of SEF 48
Medical rehabilitation	\$25,000	\$50,000
Funeral expenses	\$1,000	\$2,500
Death Benefits:		
Head of Household	\$10,000	\$25,000
Spouse of Head of Household	\$10,000	\$25,000
Dependant	\$2,000	\$5,000
Loss of Income – Weekly Payment	\$140	\$250
Loss of income – Principal Unpaid Housekeeper	\$70	\$100

Table 4 – NS Section B Benefits Compared to SEF 48 Benefits

Arising from discussions with a wide variety of stakeholders during the Review, the reality is that very few Nova Scotians purchase this increased coverage, and, as such, traditionally only have access to the standard benefits included in Section B coverage.

Not everyone requires these benefits. Those who have benefits through their employment, for example, will most often have significantly enhanced coverage through these personal benefits, obviating the need to use the Section B coverage.



Late in the process of completing the initial phase of the Review and in formulating recommendations for the Interim Report, a suggestion was received to amend the Standard Automobile Insurance Policy, loss of income sub-section, to also include a 'buy-up' option for policy holders to purchase additional weekly indemnity, with additional premiums.

On its' face, this proposal has some appeal in providing a tailored option to higher income earners, including self-employed persons, who may not have private coverage for accident benefits. The practice of insurers customizing the insurance product through endorsements is an established approach, although the literature consistently reports that few consumers actually avail themselves of these options to enhance coverage.

Section B Benefits in Nova Scotia have not been adjusted since 2005, with the weekly indemnity payment (\$140) not having been adjusted since 1974.

- c. **Issue definition and scope** – The specific request related to Section B benefits in the *terms of reference* sought a review of the following – the adequacy and level of benefits, rehab payment practices, injury assessment; the relationship of Section B benefits to the settlement of Section A Benefits.

On the matter of the adequacy and level of benefits, specific proposals are outlined below that would have the impact of increasing these benefit levels as part of the mandatory insurance policy with an option to 'buy-down' for those who do not require this enhanced level of benefits. We also believe that these benefit levels should be periodically reviewed so that the benefit levels available to insureds in Nova Scotia remain comparable to those elsewhere.

In respect to rehab payment practices, this issue speaks to a matter that was consistently raised in a number of submissions from the public – that is, injured parties having to pay in advance and recover the costs of their rehab services from their insurance company. For some insureds, this practice poses a real hardship and may result in an insured avoiding treatment, which, in some cases can lead to chronic pain and deleterious long term impacts. A variation on this theme is the issue of insureds having to exhaust their own personal health benefits before being able to access these benefits under Section B. These issues are addressed later in this report through the recommendation that Nova Scotia consider adopting diagnostic and treatment protocols that would serve to enhance access to treatment and help those injured in auto accidents get back to their regular activities of daily living or to work more quickly.

In respect to the matter of the relationship of Section B benefits to the settlement of Section A benefits, there was no evidence during the review that this is posing a real challenge for policyholders. A small number of insureds may be 'out of pocket' as a result of having exceeded their Section B benefit entitlements through the injury treatment process, resulting in quantifiable losses that may be able to be recovered through Section A. Although specific detail on the numbers impacted was not able to be secured, principally as a result of the manner in which data on rehabilitation payments is presently collected, key informants from both industry and the Office of the Superintendent of Insurance estimate this number to be very small. Notwithstanding, this issue is expected to be largely eliminated through the proposed increase in Section B benefits.



In regard to the suggestion to amend the Standard Automobile Insurance Policy, loss of income sub-section, to also include a 'buy-up' option for policy holders to purchase additional weekly indemnity, with additional premiums, as has been noted, this proposal has some appeal. In providing a tailored option to higher income earners, including self-employed persons, this proposal may provide a viable option for those who may not have private coverage for accident benefits. However, from a personal financial planning perspective, reliance on accident benefits through the automobile insurance policy may provide a sense of false security. Certainly, prudence would suggest that individuals concerned in respect to ongoing income security should take a more holistic approach to planning for these needs and consider other more appropriate insurance products rather than relying on the auto insurance policy.

Ultimately, in considering this proposal, care needs to be taken to not make the automobile insurance product more complicated than it needs to be, both for the consumer and the broker who has to be able to effectively inform the client on the nuances associated with various coverage options.

In addition, careful consideration needs to be made in respect to the potential impact on rates. Actuarial analysis may be difficult to obtain on such an option given the likely paucity of experience data. As with all options presented in this Report, care needs to be taken to avoid creating conditions that will cause rate increases or instability. There is also the issue of the need for vigilance and effective management of potential over-utilization and fraud, which the literature compellingly suggests is often correlated with increased levels of benefits.

Late in the process of completing the Review, and in formulating recommendations for the Interim Report, a suggestion was also received to amend the Standard Automobile Insurance Policy of Nova Scotia, Mandatory Accident Benefits subsection, to include two tiers of accident victims – catastrophic and non-catastrophic; and an increased limit on payments for necessary medical and rehabilitation benefits in each category. These proposals have been carefully reviewed. This is a significant enough issue that it is addressed separately, in detail, in Section 3.10 below.

Clearly, any change in benefit levels has the potential to increase rates. Consequently, we're recommending that actuarial analysis be completed, on all proposals being advanced in respect to Section B benefits, to determine their potential impact on rates.

- d. **Action options** – There are several potential options to address the level of adequacy of Section B benefits as follows:
1. **Option 1** – Adopt all elements of SEF 48 as outlined above as mandatory; and
 2. **Option 2** – Include all elements of SEF 48 as listed above under Option 1 as part of the standard auto policy, but include a provision which allows a 'buy-down' to a 'basic package' – equal to the current existing Section B limits – for those who do not require the enhanced benefits; and



3. **Option 3** - Include all elements of SEF 48 as listed above under Option 1 as part of the standard auto policy, but include a provision which allows a 'buy-down' to a 'basic package' – equal to the current existing Section B limits – for those who do not require the enhanced benefits. Similarly, include a 'buy-up' provision which enables the insured to 'buy-up', to, in effect, increase the amount of weekly loss of income payment to the lesser of an established upper limit (\$1,000 per week has been suggested) or 80% of the insured person's gross weekly employment from employment.

For the selected option, in the interest of making sure that benefit levels remain current, include a provision that benefit levels either be reviewed at regular intervals – e.g., perhaps, every three years – to determine adequacy or that benefits be indexed annually in accordance with the Consumer Price Index (CPI);

- e. **Recommendations** – Option 1 is the recommended option at this time. This option would serve to increase the level of Section B benefits to a more acceptable level and, when coupled with the proposal noted above for some measure of indexing, would provide a base that could be enhanced over time. However, it is recommended that the three options be subjected to actuarial analysis and the impact of respective options gauged before a final choice is made. Also, the question of the impact of having 'buy-up' and 'buy-down' options available on the complexity of the product will need to be examined in advance of final decisions. And, finally, in considering these proposals, officials need to bear in mind that the history is clear that insureds tend to eschew these options, hence, their utility to the consumer may be limited.

The value of these options resides in their instrumentality in enabling consumer choice in picking the option that best meets their needs, and, in so doing, the theory is that insureds will be better able to customize their requirements more effectively than under the present regime. Also, by building in either a regular review period for benefits enhancements, or including an annual indexing, benefits levels should remain current.

For the consumer, adoption of these proposals would ensure a higher level of Section B benefits when required. The way in which the suggested approach is structured forces the consumer to reflect on the level of benefits required and to make an informed choice based on their needs. For brokers, the manner in which this recommendation is formulated puts the insured clearly in the position of making the choice, thereby, ensuring that the decision making process is at the insured's option.

For optimal effectiveness, these proposals should be implemented in tandem with the proposed implementation of diagnostic and treatment protocols.



3.9.2 Minor Injury Protocols

- a. **Background:** During the Review, stakeholders, including members of the public, raised a number of concerns related to challenges experienced when injured in an automobile accident.
1. comments were received on the lack of clarity on what to do when injured in an automobile accident, i.e. what process to follow;
 2. another factor identified related to the requirement for insureds to exhaust their personal health benefits prior to accessing Section B benefits. In these instances, insureds may find themselves in the situation that they have exhausted their private accident benefits when they may be required as a result of a subsequent injury not related to the auto accident, only to find themselves without these benefits when required. Insureds do not feel that this is fair;
 3. other stakeholders raised the challenges that arise from 'interruption in treatment' where injured parties must wait to determine if a further course of treatment can be approved through their insurer, leading to delays and, in some cases, the need for a more protracted treatment process, or, in the worst case scenario, chronic pain; and
 4. other stakeholders noted the importance of broadening the definition of what constitutes a 'qualified medical practitioner' (QMP) within the insurance system, beyond only medical doctors, to include other health professionals like physiotherapists and chiropractors. This is viewed to be an important factor in streamlining and facilitating greater access to treatment.

Most, if not all, of these challenges can be addressed through a customized, made-in-Nova-Scotia version of the diagnostic and treatment protocols established in Alberta in 2004 and adopted, in part, in Ontario's reforms in 2010.

- b. **Environmental scan and research summary:** These protocols address the three most common injuries in automobile accidents – strains, sprains and whiplash associated disorders (WADs).

In Alberta, protocol treatment is available to persons injured in automobile accidents that have injuries consistent with the definitions within the protocol; however, it is not mandatory. The consumer makes the final decision with input from a health practitioner.

Best medical evidence suggests that quick access to treatment is a key determining factor in helping injured persons to return to ADL or to work. The process features in the Alberta protocols model those in place for workplace injuries and relies on the same medical evidence.

Implemented in Alberta in 2004 and subsequently evaluated, these protocols have been successful in achieving the following:

1. quick access to treatment;



2. greater predictability for injured persons in respect to the process to be followed when injured and through the treatment process;
3. flexibility in terms of the avenue through which to access treatment – i.e., through a medical doctor or a physiotherapist or a chiropractor; and
4. clarity through a 'priority of pay' provision which makes the insurer the first payor after the public health care system, thereby, removing the requirement that the insured needs to first exhaust personal health care benefits.

A survey of claims data recently completed on the performance of these protocols points to a number of positive conclusions including:¹

1. the portion of claimants reported to not be receiving health services in the initial weeks following their injury declined significantly following the introduction of the protocols, pointing to their effectiveness in facilitating quicker access;
2. the proportion of cases requiring specialized medical intervention declined over the survey periods; and
3. an increase in claims closure during the 13-26 week post-injury period.

In Alberta, the treatment protocols were developed by the insurance regulator on a collaborative basis with key stakeholders, including representatives of the provincial health regulatory colleges and the IBC, with the entire implementation process being under the leadership of a highly qualified physician consultant.

- c. **Issue definition and scope:** Based on best medical evidence, these protocols set out broad treatment expectations, including the number of treatments to be undertaken during the first 12 week post-injury period for sprain and strain injuries, as well as, Grade I and Grade II Whiplash Associated Disorders (WAD). These categories account for the majority of injuries resulting from automobile accidents.

These definitions are also consistent with the new definition for soft tissue injuries (STIs) in Nova Scotia.

Based on best medical evidence, the focus of the protocols is on early treatment to enable resumption of activities of daily living (ADL) or return to work.

In Alberta, these protocols were implemented in tandem with significant increases in Section B benefits – a scenario similar to what is being proposed in Nova Scotia.

Key informants involved in the introduction of the diagnostic and treatment protocols point to the importance of the implementation process, particularly, the need to carefully engage the medical community and other health practitioners, including physiotherapists and chiropractors and to manage adjoining risks, such as, provider rate inflation.

¹ *A Survey of Injury Claims Data After Introduction of Injury Care Protocols in Alberta, Canada* – Barbara Sulzenko-Laurie, BA (Hons); Viivi Riis, MSc; and, Elena Grubisic, MSc, 2010.



In coming to a recommended approach on the matter of the adoption of diagnostic and treatment protocols, we spoke to a number of key informants including the insurance regulator in Alberta, officials of the Workers Compensation Board of Nova Scotia and representatives of Doctors Nova Scotia, and the physiotherapy and chiropractic associations in Nova Scotia (who also consulted with their Alberta colleagues). Overall, there is strong support for moving in this direction.

If the Nova Scotia Office of the Superintendent of Insurance accepts the proposed direction in respect to the adoption of diagnostic and treatment protocols, we suggest that actuarial analysis be undertaken in order to gauge the potential impact on rates.

We also suggest that the 'priority of pay' measure that is enshrined in the Alberta protocols also be implemented in Nova Scotia, though care should be taken to not extend this provision to apply outside the use of the treatment protocols. This would require legislative or regulatory change and would have the effect of making the insurer, in this instance, the first payor following the public health system.

Implementation of the treatment protocols would also require a careful analysis of the potential full range of legislative and regulatory change implications by Nova Scotia's Office of the Superintendent of Insurance – new regulations would be required. In addition to the priority of pay issue, there would be a requirement to broaden the definition of what constitutes a qualified medical practitioner within the automobile insurance system in Nova Scotia. Extending the definition to include physiotherapists and chiropractors, who, like doctors, operate within regulated professional bodies, is recommended.

Implementation of these protocols would also require a consumer education program. Alberta has a very clear and concise on-line guide relating to the use of the protocols that would be a helpful analogue in this process.

There is also the matter of whether 'wait list issues' in Nova Scotia's health system may limit access to treatment. Discussions with an official of the Nova Scotia Department of Health and Wellness during the Review, suggests that this is unlikely to pose a significant challenge.

In the interest of ensuring that there is not provider rate inflation, the Office of the Superintendent of Insurance may wish to establish maximum fees payable, perhaps, emulating the process utilized by the Nova Scotia Workers Compensation program through establishing agreements with various provider groups. This would ensure a more level playing field in the provider market and also ensure that the primary beneficiaries of these measures are those injured in automobile accidents.

In summary, to ensure effective cost management, vigilance and careful consultation will be required throughout the implementation process along with a commitment to make subsequent modifications if there is any evidence that this system is producing unintended impacts. Evidence from the aforementioned closed claims study in Alberta suggests the need to be careful that treatment choice does not automatically default to the more complex and intensive treatment range (designed for the more complex injuries), with its concomitant higher cost.



Action option: Adopt a system similar to the diagnostic and treatment protocols in place in Alberta and apply the lessons learned through the implementation process. Ensure that this proposed direction undergoes actuarial assessment. Implementation of treatment protocols in Nova Scotia needs to be carefully considered and adequate time needs to be set aside to complete what is essentially a highly complex process. Alberta utilized an experienced medical consultant to assist in the implementation process – in the protocol design process and in stakeholder engagement – and Nova Scotia may wish to utilize a similar approach. On going consultation with Alberta regulatory officials would be helpful as well. As with most complex undertakings of this type, the details will be critically important and stakeholder engagement will be pivotal to the ultimate success.

- d. **Recommendations:** Implement a customized, made-in-Nova-Scotia version of the diagnostic and treatment protocols developed in Alberta as a means to improve access and treatment outcomes for Nova Scotians injured in automobile accidents, and who have resulting qualifying injuries that would be beneficially treated through the diagnostic and treatment protocols. In effecting this implementation, as noted above, new legislative and/or regulatory provisions would be required which, at a minimum, would need to address the aforementioned priority of pay issue and the definition of a qualified medical practitioner under the Act. A careful and planned implementation path would also be required and adequate lead time established to ensure a successful implementation. Consumer education would also need to be a focus of the implementation.

3.9.3 Optional Tort Product

- a. **Background:** Ultimately, an effective automobile insurance system is one which offers the sufficient choice to enable consumers to customize the product to meet their unique requirements. Having the option to purchase an optional full tort automobile insurance product is an important dimension of that choice factor. Purchasing this option would mean that the insured would not be subject to the cap (\$7,500) that is presently in place within Nova Scotia for soft tissue injuries.

Under full tort, the motorist and policyholder, retains unrestricted rights to bring a lawsuit against the negligent party in an automobile accident to receive compensation for pain and suffering and for things like a loss in quality of life as a result of the automobile accident. Ultimately, the decision on whether to opt for a full tort product, where that choice exists, is a very personal one.

Typically, there is a higher premium for a full tort product, or, alternatively, a significantly higher deductible.

- b. **Environmental Scan and Research Summary:** There are two types of options within the tort system including: full tort and limited tort. Full tort means the injured party retains unrestricted rights to bring suit against the negligent party. Limited tort means that the injured party can only recover very limited sums to cover injuries sustained in the accident.



Within the US, 38 states currently operate under the tort system. In Canada, Saskatchewan and British Columbia offer optional tort products for automobile insurance. Experience in Saskatchewan indicates negligible take-up on this optional rate.

In a 1988 review of automobile insurance in Ontario, the Report of Justice Osborne (Ontario – 1988) found the following - there is no valid reason why the provision of humane no fault benefits and tort law cannot co-exist. The preservation of fault-based access to individualized compensation accords with the public's sense of what is right and, in a modest way, may achieve some deterrence benefits.

- c. **Issue definition and scope:** In the automobile insurance reforms of 2003 undertaken in Nova Scotia, some stakeholders felt that removal of the right to sue for pain and suffering had the impact of unfairly limiting their options and choice.

Enabling consumers to purchase a full tort option would serve to restore that choice factor, the importance of which is a strongly held view of some consumers.

Recognizing that this 'choice' will inevitably carry a higher premium, it will be important that the product is priced so that there is no likelihood that it will be cross-subsidized by the non-tort product.

- d. **Action Options:** There are a number of options for the implementation of a full tort product. Following careful consideration and harkening back to that fundamental principle that has underpinned this Review; that is, the importance of, ultimately, putting the consumer in the driver's seat in deciding what best fits their needs and requirements – we propose the development of a full tort option which the consumer would choose and purchase as an endorsement to their existing coverage. This endorsement would provide the ability for the insured, as well as, their immediate family, to recover from their own insurer amounts in excess of the cap on minor injuries.
- e. **Recommendation:** That the Nova Scotia Office of the Superintendent of Insurance work with industry, including brokers and direct insurers, to develop an optional full tort product to be purchased as an endorsement to an existing policy. This approach enshrines the right of the consumer to choose.

In considering this option, the Office of the Superintendent of Insurance, with industry and the broker community, should also ensure that there is a proactive consumer education program developed to support this product. Actuarial analysis should also be undertaken to ensure that its potential impact on rates will be understood prior to implementation. If it is to proceed, adequate time to properly phase in the product, to make the necessary system changes and rating changes, will be required, including the need for the launch and execution of a comprehensive consumer education program. An estimated time of 12-18 months will be required to support this implementation.



3.9.4 Fairness for Inexperienced Drivers

- a. **Background:** In the run-up to the insurance reforms in Nova Scotia in 2003, the rates for inexperienced drivers became unsustainable, with many of these drivers placed in Facility Association at exceedingly high premiums. In the period since the introduction of the reforms, this has changed significantly with inexperienced drivers now having access to more favorable automobile insurance rates, notwithstanding, the legitimate additional risk they pose based on actuarial analysis. Nova Scotia insurers are currently providing discounts, on a voluntary basis, to inexperienced drivers (< 6 years) comparable to those available in the mandatory New Brunswick *First Chance Discount* program. To support these rates, an industry *risk sharing pool* (RSP) has been established. Overall, these are very favorable rates for inexperienced drivers.
- b. **Environmental Scan and Research Summary:** The government of New Brunswick introduced a program in 2005 that provides a 'first chance' premium discount to give new drivers the opportunity to prove that they are responsible and to give them a break on insurance rates, providing they maintain a clean driving record.

For the most part, Nova Scotia insurers have adopted the New Brunswick program on a voluntary basis, including the development of a *risk sharing pool* to support this book of business. During the Review, numerous stakeholders noted that this system is working very well for inexperienced drivers and a review of the financial reports of the RSP indicates that it is also performing well. These findings are very positive and augur well for the stability of these rates going forward.

A secondary issue is the increase in rates that some insureds incur as a result of a 'lapse in coverage' which impacts their experience rating and may result in them being classified as an 'inexperienced driver', thereby, attracting a higher premium. This issue was advanced during the public consultation phase and causes considerable chagrin for insureds, who often regard it as unfair, notwithstanding its actuarial validity. The threshold for 'lapse in coverage' was changed from six months to twenty four months in regulatory change initiatives undertaken in 2003. While these changes have served to improve the situation, there are still insureds that face the prospect of rate increases where here has been an interruption in excess of 24 months. An examination of this issue with the Office of the Superintendent of Insurance, suggests that, in many cases, these concerns are able to be satisfactorily resolved on a case by case basis and through reasoned dialogue between the insured and the broker/insurer.

Another adjoining issue is the use of gender as a risk rating tool. Nationally, insurance companies are able to use gender as a risk-rating factor in Nova Scotia, Prince Edward Island, Ontario, Quebec, and Manitoba. The provinces of British Columbia, Saskatchewan, Newfoundland and Labrador, and New Brunswick prohibit insurers from using gender in setting rates.

Recently, the European Court of Justice ruled that the use of gender as a risk factor in insurance must end within the European Community by December 21st, 2012. This applies



to life and non-life insurance sectors, including automobile insurance. While still open to further challenge, this ruling aligns with the approach taken in many other jurisdictions.

Presently, inexperienced female drivers attract a lower premium in Nova Scotia. Industry estimates suggest that were gender to be removed as a risk-rating factor, some 'rate dislocation' would result with inexperienced females seeing an increase in rates of up to 15%.

- c. **Issue definition and scope:** The current system in place for inexperienced drivers is working well and does not require further changes at this time.

In regard to the issues that arise in regard to 'lapse in coverage', this is an issue which may be more prominent in the future. As more people put off buying cars, whether the result of the price of fuel or out of environmental considerations, and with more options like 'car-share' springing up across the country, the reality is that insurers will likely be presented with more instances wherein drivers have had lapses in coverage. This is an issue that would benefit from a closer examination between the Office of the Superintendent of Insurance and industry, perhaps, one of the issues that could be reviewed as part of the earlier referenced proposed *joint stewardship* approach between the Office of the Superintendent of Insurance and industry.

In respect to the issue of the use of gender as a risk factor, the reality is that, in the recent past and presently, many jurisdictions have removed gender as a risk-rating factor. While a legitimate measure from an actuarial perspective, removal of gender as a risk-rating factor is what industry refers to as 'social-pricing'. A *Study into the Use of Gender as a Rating Factor Automobile Insurance in Nova Scotia*, undertaken in 2004 by the former Nova Scotia Insurance Review Board recommended that the use of gender as a risk rating factor in rate setting be eliminated.

The 2004 Report concluded the following:

"Our review of available statistics suggests there are differences in the insurance claim rates between male and female drivers, but that for the major coverage, third party liability, the differences have been narrowing over time. We also note that the majority of drivers, even those that are inexperienced drivers, are claims-free."

Within the context of this review, with the broad range of changes being proposed, we are not making an explicit recommendation on the use of gender as a risk-rating factor, but, rather, suggest that the Office of the Superintendent of Insurance have this issue assessed actuarially to update the evidence in respect to its current impact on rates and the extent of likely risk dislocation and, depending on that finding, make a decision, with input from key stakeholders, on whether to move toward elimination and the time frame over which this might be undertaken.

While the validity of the current system may be able to be effectively argued in that it apportions risk based on evidence, the reality is that this is an issue wherein social



convention will likely dictate that use of gender as a risk factor will be unacceptable in the future.

- d. **Action Options:** The recommendations in this instance are straightforward and detailed below.
- e. **Recommendations:** It is recommended that the current system of providing discounted rates for automobile insurance for inexperienced drivers with a clean driving record continue and that the industry RSP be maintained. This is consistent with the approach taken in New Brunswick and, as such, serves to standardize practices across these two provinces.

It is recommended that the Office of the Superintendent of Insurance and industry further examine the 'lapse in coverage' issue to determine if there are more effective measures to address the concerns of insureds in respect to this issue and in light of some of the emerging societal changes now taking place.

It is also recommended that the Office of the Superintendent of Insurance update the actuarial assessment of the impact of removing gender as a risk rating factor on rate dislocation and use this information as a basis for a further analysis of whether to re move or retain gender as a risk factor.

3.9.5 Reimbursement of Volunteer Fire Fighters

- a. **Background:** This issue relates to the matter of whether volunteer fire fighters called upon to respond to automobile accidents should be able to recover their costs from the insurer of the at fault party.
- b. **Environmental Scan and Research Summary:** In discussions with the Department of Transportation and Infrastructure, it appears that in instances where there has been damage to provincial property as a result of an automobile accident and volunteer fire fighters are called out to clean up the site, the Province will reimburse the volunteer fire department and subrogate these costs to the insurer of the at fault party, an approach which is validated in the current rules which are examined below.

In speaking to a variety of stakeholders during the Review, practices in this regard are quite variable with some, but not all, volunteer fire departments billing for these services and some insurers, but not all, paying. Presently, notwithstanding the ability to do so, there does not appear to be any consistent practices within the Province in this regard.

This is an issue, which, among others related to volunteer fire departments, has been advanced by the Union of Nova Scotia Municipalities (UNSM) to the Province, through resolutions arising from one of their plenary meetings.



A review of practices elsewhere and, particularly, in the US, reveals a highly variable approach, with some jurisdictions favoring and permitting the recovery of these costs through the auto insurance policy, while others deny such recovery.

In speaking to a number of representative volunteer fire departments, there is strong support for the recovery of these costs. Volunteer fire departments tell a compelling story of their members being called out for long periods of time, often in very traumatic situations where there has been loss of life, and they also report the necessity of making significant investments in tools, like the 'jaws of life', in order to properly respond to these events.

- c. **Issue definition and scope:** Volunteer firefighters are principally funded through the municipalities and the property taxpayer. The question arises as to whether taxpayers should be responsible for paying for the services of volunteer firefighters as a result of being called to provide services as a result of an automobile accident or whether these costs should be able to be recovered through subrogation to the at fault party's insurer.

Currently, in Nova Scotia, when a person is at fault in a collision, the volunteer fire department is permitted to subrogate against the at-fault party to cover the costs incurred in responding to the scene of the collision.

This principle is embedded in Nova Scotia's *Standard Automobile Policy* – SPF #1 which states under the 'Additional Agreements' part of Section C (Loss of or Damage to Insured Automobile) that:

Where the loss or damage arises from a peril for which a premium is specified under a subsection of this section, the insurer agrees to pay general average, salvage and fire department charges and custom duties of Canada or of the United States of America for which the insured is legally liable.

- d. **Action Options:** As provisions exist in the current Nova Scotia auto insurance policy to address this situation, no specific options are proposed. This matter would be best addressed through enhanced communication between the Office of the Superintendent of Insurance, industry and volunteer fire fighters. The broader issues that volunteer fire fighters have with the province go beyond the purview of the Office of the Superintendent of Insurance and this Review, and would need to be addressed corporately by relevant departments within the province.
- e. **Recommendations:** There is presently a provision within the standard auto insurance product in Nova Scotia, as outlined above, which enables volunteer fire departments to recover their costs in attending to automobile accidents through subrogation of these costs to the at fault party's insurer. Existing variable practices suggest that both volunteer fire departments and insurers may not always be aware of the beneficial impact of the current provisions of the standard auto insurance policy in Nova Scotia, and that focused efforts to inform both should satisfactorily address and ameliorate this situation.



3.9.6 Vicarious Liability and Primacy – Rented Vehicles

- a. **Background:** This issue relates to the matter of limiting the liability of leasing and rental companies for damages caused by renters and others whom they let drive rented or leased vehicles. In the reforms that have taken place in this regard, the responsibility to respond to liability claims is placed first to the renter or driver's policy, with the owner's or lessee's policy being in excess of the driver's policy.
- b. **Environmental Scan and Research Summary:** Other jurisdictions have taken decisive action to limit the liability of rental and lease companies for damages caused by renters and other drivers. Recent jurisprudence in Nova Scotia also upholds this principle in respect to leased vehicles – *Gilbert v. Giffin and Chrysler*.

Federal legislation was passed in the United States in 2005 which has the effect of abolishing vicarious liability for car rental and leasing companies.

Within Canada, Ontario's, *Bill 18*, which came into effect in 2006, imposed vicarious liability on those who rented or leased vehicles and made it applicable both to short term rentals and long term leases. Rightly, it did not, however, completely remove liability from the actual owners of these vehicles. In Ontario, this initiative is enabled by a series of amendments to several pieces of adjoining legislation including the *Compulsory Automobile Insurance Act*, *Highway Traffic Act*, and the *Insurance Act*.

Alberta has also undertaken definitive steps to deal with the issue of vicarious liability and primacy. Bill 49 was passed in December 2007. It capped vicarious liability at \$1 million for non-negligent owners of vehicles leased for periods longer than 30 days. Bill 49 also provides for the reversal of insurance primacy for claims involving vehicles operating under both long-term lease agreements and short-term rental agreements.

As a companion piece to the Alberta reform, Bill 30, which applied the same limits on vicarious liability to owners of vehicles rented for periods of 30 days or less was passed in June 2009. Bill 30 also reversed insurance primacy.

New regulations have been recently approved in Alberta to support these legislative amendments.

- c. **Issue definition and scope:** From a 'fairness' perspective, the fact that those renting or leasing vehicles have no clear insight into the risk posed by a particular driver, it is intuitive that their vicarious liability and the primacy question, in these instances, should default to the driver's own insurance, wherein the insurer has had the opportunity to properly consider and assess risk in respect to that particular individual.

While necessary to undertake, this is a very complex issue and requires careful consideration. There is extensive information available on the implementation processes followed in both Ontario and Alberta which details some of the nuances and challenges associated with the implementation of these changes.



In discussions with stakeholders during the Review, the point was also made that care also needs to be taken in the implementation to ensure that, particularly, in relation to rental vehicles, that the rental companies are also held accountable for their practices. For example, the point was made of the matter of some rental companies providing vehicles without snow tires in winter, a practice that disadvantages the driver and may contribute to an accident. This concept of 'original negligence' also needs to be reflected in any changes being contemplated so that renters are not unfairly disadvantaged.

- d. **Action Options:** There is extensive information available on the implementation of comparable changes in Ontario and in Alberta, including some of the nuances that need to be addressed in dealing with this complex issue. There are also very constructive observations advanced on this matter by the *Canadian Financing and Leasing Association* following their review of the coverage of this issue in the Interim Report. This initiative will require a careful assessment of the legislative and/or regulatory measures required, including an identification of the specific pieces of legislation and/or regulations that may need to be amended. The assessment of the implementation in Ontario and Alberta and consultation with those jurisdictions will also be helpful in identifying the pitfalls to be avoided through the implementation process. Implementation will need to be undertaken in consultation with industry stakeholders and with the Department of Justice. As with the other initiatives identified in this Review, adequate lead time will be required to properly advance legislative and regulatory proposals and to consult with key stakeholders.
- e. **Recommendations:** As a result of the Review, consultation with stakeholders and benchmarking of jurisdictions that have addressed the issue of vicarious liability and primacy, we are recommending that Nova Scotia proceed with an initiative similar to the approach taken in Ontario and Alberta in regard to this matter and detailed above. This would have the impact of standardizing practices in Nova Scotia with many other North American analogues in limiting the liability of vehicle lessors and renters. In particular, this initiative would also assist the car rental industry in Nova Scotia economically, and allow them to compete on a more level playing field in being able to secure automobiles for rent, an issue which is often a challenge in Nova Scotia, particularly, in summer. At the same time, the reforms in Nova Scotia need to hold rental companies to best practices in their obligation to those renting automobiles.

3.10 Other Related Issues

In addition to the key elements of the Review as identified in the *terms of reference*, there were a number of other issues which were identified during the review. This section of the Report identifies these issues and includes a similar analysis on each as reflected above.

3.10.1 Direct Compensation for Property Damage

- a. **Background:** In this claims settlement model, the automobile policy holder deals with their own insurance company on all matters related to their claim. Insurance claimants



collect payments and damage recovery directly from their own insurer. An owner's motor vehicle liability policy insures against liability resulting from loss of or damage to property. Under this model, the insured is entitled to recover, based on the degree of fault of the insured, for damages to his/her automobile and its contents and for loss of use from his/her own insurer as though the insured were a third party. In this model, the insured's right of action is against his/her own insurance company.

- b. **Environmental scan and research summary:** This claims settlement model is in place and working well in Quebec, Ontario and New Brunswick. It is also used extensively in the US. The principal benefit is that it simplifies the process for the consumer and results in a rate setting process that is more precise as the insurer knows exactly what is being insured. During the Review, discussions with the Office of the Superintendent of Insurance of the Government of New Brunswick and the New Brunswick consumer advocate indicated that this system is working well, and is supported by consumers.
- c. **Issue definition and scope:** This is a more efficient system with less litigation and quicker settlement of claims. This claims settlement model is more 'consumer friendly' in that the consumer is dealing with their own company with whom they already have a relationship. This factor contributes to the likelihood of better service for the consumer.

The accuracy of rate setting is enhanced as the insurer has precise information on the vehicle that would need to be repaired or replaced in advance of an accident.

Implementation of this claims settlement model is generally seen to be cost neutral, although there could be some 'premium dislocation' in the initial stages, as insurers make adjustments to rates to more accurately reflect the value of their customers' actual vehicles.

Adoption of this model would help with standardization, particularly, in Eastern Canada.

As with any of the measures being proposed as a result of this Review, a careful approach to implementation would be required including a consumer orientation and education process. In implementing this claims settlement model in New Brunswick, an extensive consumer education initiative was undertaken. Industry lead time of 9-12 months would also be desirable to enable a range of changes to be made, including IT changes, and to design and undertake a program for the education of brokers and consumers.

In implementing this claims settlement model, Nova Scotia can benefit from New Brunswick's experience in adopting this approach over the past four years.

- d. **Action options:** Implement DCPD in Nova Scotia and have an actuarial assessment undertaken. Implementation of this initiative is expected to be cost neutral.
- e. **Recommendations:** It is recommended that Nova Scotia adopt this claims settlement model on the basis that it will be clearer to the consumer and should result in faster/better customer service, a more efficient system, reduced litigation and increased accuracy in rate setting. As noted, a careful implementation and a public education plan will need to be undertaken prior to the implementation of this claims settlement model.



3.10.2 Automobile Insurance/Vehicle Registration

- a. **Background:** Presently in Nova Scotia, a driver has to show proof of insurance in order to register a vehicle and receive plates. However, there is no way to determine whether the driver later cancels his/her insurance, once having received license plates. In addition, during spot checks, police forces involved in the interdiction of drivers on the Province's highways have no way of validating whether a driver is insured beyond the driver's presentation of the 'pink' insurance card. To address these challenges and in an effort to keep uninsured drivers off the road, provinces are looking to automated solutions to enable their respective motor vehicle branches to confirm and validate that any party seeking to register an automobile and receive license plates is, in fact, insured – a system, once implemented, which could also be made available to police forces. Presently, most provinces rely on a manual system requiring the presentation of the pink liability card as proof of insurance at the time of vehicle registration. Insurance can be cancelled once plates have been secured and, presently, there is no system to alert the Motor Vehicle Branch that the driver is uninsured. This is a consumer protection issue with the imperative to reduce the number of uninsured drivers on the province's roadways.
- b. **Environmental scan and research summary:** Other jurisdictions are implementing automated solutions to enable their respective motor vehicle branches to check the Vehicle Identification Number against an industry data base to confirm and validate that the vehicle for which registration and plates is being sought carries the required level of automobile insurance.

In late 2010, Ontario, implemented its Uninsured Vehicles (UV) Program through its Transportation Ministry, which gives effect to the insurance validation and confirmation initiative.

Alberta is in the process of establishing that linkage between auto insurance, vehicle registration and license plates to ensure that any drivers' attempt to cancel insurance after receiving their plates is appropriately flagged.

During the insurance review, officials of the Insurance Bureau of Canada advised that there have been ongoing discussions with the four Motor Vehicle Registrars in Atlantic Canada regarding measures to address 'uninsured vehicles'. IBC reports strong support from the Registrars in respect to a possible automated solution.

- c. **Issue definition and scope:** Developing an automated solution to validate insurance status for individuals seeking to register an automobile would provide a more effective means to tie the license renewal and vehicle registration process to confirmed insurance status, and significantly improve the current manual system which is presently open to exploitation. This initiative has the potential to reduce the number of uninsured drivers on the Province's roads.

Early results of Ontario's Uninsured Vehicles Program show a 5-7% denial rate.



Over time, there is an interest in also extending this capacity to police forces so that traffic officers would be able to verify, in real time, the insurance status of vehicles on the roadways.

Implementation of this initiative would require the Office of the Superintendent of Insurance to work with the insurance industry as, ultimately, the industry's data base would be used and its accuracy would need to be assured. As this also would involve the Registry of Motor Vehicles (RMV) in Nova Scotia, consultation with officials of the Registry will also be required.

There are, yet to be determined, costs associated with the implementation of this system. Cost factors would need to be identified and an appropriate implementation plan established.

In addition, a careful assessment of potential legislative and regulatory change requirements would need to be undertaken, as implementation of this process would potentially require changes to a number of pieces of legislation/regulation, including the *Motor Vehicle Act*.

If accepted, implementation of this initiative would be complex and would require adequate lead time. Benchmarking of the early experience with Ontario's program would be desirable in identifying pitfalls to be avoided through the implementation process. In the Ontario implementation, there were challenges and growing pains so having the benefit of their experience and an understanding of the adjustments that they made following implementation would serve to provide greater success orientation in Nova Scotia's implementation of a similar program.

Once the proposed program is designed, a consumer education initiative would need to be undertaken.

- d. **Recommendation:** Nova Scotia should assess the viability of adopting an automated solution for insurance confirmation and validation with key partners including the IBC and the RMV. This is, ultimately, a consumer protection initiative designed to reduce the number of uninsured drivers on the province's roadways. Appropriate lead time will be required to support an effective implementation.

3.10.3 Premium Increase Prohibition for Damages Paid by the Insured

- a. **Background:** Feedback from the public during the Review raised the issue of the consumer's frustration in not using insurance when in an accident because of fear of a rate increase – prompting the question of "what do I have insurance for?" This also creates a disincentive to report accidents.

Further, members of the public during the consultation process reported actually paying for damages incurred for a minor accident rather than going through their insurance company, only to have their rates increase anyway. This is viewed to be highly unfair by the public.



- b. **Environmental Scan and Research Summary:** This situation arises when an insured reports a minor accident and, subsequently, decides to pay for it without recourse to insurance coverage. In practice, some insurance companies will not include a minor accident that the insured has paid for as a risk-rating factor in setting the subsequent premium. Others will, and it is in the cases where this accident is applied and the insured's insurance premium is subsequently increased, that the public's frustration arises.

In discussions with industry representatives during the Review, this is viewed to be an individual company issue – it is treated variably by companies. Some companies use the forgiveness of these minor accidents, where the insured pays, as a marketing tool and a differentiator in the marketplace. Others treat these as indicative of a level of risk posed by the insured, which logically, in their view, should be reflected in the premium.

In the jurisdictional review undertaken we found an interesting analogue which Nova Scotia may want to emulate. In an effort to address this issue in favour of the consumer, Newfoundland and Labrador has implemented regulatory changes that serve to prohibit, as a rating factor, the occurrence of an accident where no claim for payment has been made by the insurer. This effectively ensures that the consumer is protected from subsequent rate increase in situations where they have personally paid the expenses related to minor accidents, instead of having these claims handled through their insurance company.

- c. **Issue definition and scope:** The present inconsistency in practice in Nova Scotia gives rise to the need to address this issue in the interest of fairness to the consumer. Adopting a regulatory approach similar to that taken in Newfoundland and Labrador would serve to address this inconsistency and also serve to protect the consumer from rate increases arising from minor accidents.
- d. **Action Options:** Adopt an approach similar to that advanced in Newfoundland and Labrador through regulation.
- e. **Recommendation:** The *Automobile Insurance Prohibited Risk-Classification Factors Regulations* should be amended to prohibit, as a rating factor, the occurrence of an accident where no claim for payment has been made by the insurer. This will effectively mean that premiums cannot be increased if damages for an accident are paid out-of-pocket by the insured.

Prior to finalizing this initiative, actuarial analysis should be undertaken to determine the potential impact on rates. It is recognized that this proposal will not be easy to analyze due to the paucity of data.

Care will need to be taken if this initiative is implemented in tandem with the proposals related to Direct Compensation for Property Damage.



3.10.4 Insurance Fraud

- a. **Background** - Fraud is costly to the insurance industry. The Canadian Coalition Against Insurance Fraud estimates that 10-15% of every premium dollar pays for fraudulent claims.

A recent assessment undertaken in the province of Ontario estimates that \$1.3 billion of the \$9 billion paid annually in premiums goes to fund fraudulent claims.

The prevalence of insurance fraud tends to be higher in urban areas. There is no clear estimate of the level of insurance fraud in Nova Scotia, but, it is reasonable to assume that it is comparable to other jurisdictions.

In Nova Scotia one concern identified during the Review relates to vehicle theft and export.

There are presently no explicit legislative penalties in Nova Scotia that specifically address insurance fraud.

- b. **Environmental scan and research summary** – Insurance fraud is a ubiquitous challenge. The range of fraudulent activities is broad and includes staged accidents; accident benefit claims by motorists and passengers that are exaggerated; health and medical providers that bill for services that are not necessary, not provided or where there is overbilling for services; body shops and towing companies that engage in fraudulent schemes and salvaged motor vehicles that are used or repaired more than once with claims for the same or similar damage.

In the benchmarking exercise undertaken as part of this Review, it is clear that, in a North American context, the US has been much more proactive in dealing with insurance fraud. Fifty states and the District of Columbia have established legislation that designates insurance fraud as a specific crime. Other proactive measures include the development of 'model laws' that define insurance fraud as a specific crime. The National Association of Insurance Commissioners in the United States reported that, as of 2006, 48 of 50 US States had adopted some form of the 'model law' prototypes.

These US measures have other dimensions – strongly collaborative efforts between industry and government, hiring special prosecutors for insurance fraud, the establishment of specific offices responsible for the prosecution of insurance fraud and high profile initiatives to give public exposure to the issue of insurance fraud. Some offer rewards and civil indemnification to consumers, as an incentive to report fraudulent activity.

The literature suggests that Canada generally trails the US by 10 years in the active and effective management of insurance fraud.

Recent efforts in Canada, particularly, in Ontario, suggest that this issue is likely to have a higher profile in the future and that all jurisdictions will need to take measures and decisive action to address the incidence of insurance fraud.



During the consultation process, insurance fraud was on the minds of a number of the members of the public who wrote in to us. These informants were very specific in their comments giving explicit examples. The public intuitively understands that, what they call 'insurance scamming' is costing them money – that it has an impact on rates and on their premiums and there is a strong interest in seeing it addressed.

- c. **Issue definition and scope:** In Canada response to insurance fraud is not nearly so well developed as in the United States. Within the *Criminal Code*, there are three main provisions relating to laying charges in respect to criminal insurance fraud. These address fraudulent signatures, identity theft and criminal fraud. In practice, because of the high burden of proof required to secure convictions under the *Criminal Code*, most insurers tend to proceed through civil actions and focus on restitution and recovery. Civil proceedings, however, do not have the deterrence impact that the threat of criminal prosecution poses and are seen to be less effective in preventing fraud.

British Columbia's public insurance scheme has an investigative and prosecutions team. Ontario has recently undertaken a major review of insurance fraud and identified a broad range of initiatives that it is proposing to undertake in respect to insurance fraud, including legislative initiatives.

In Nova Scotia, there are no provisions in the Act to address insurance fraud and no regulatory measures. In Ontario, beyond the *Criminal Code*, the *Ontario Insurance Act* creates regulatory offences for insurance fraud. Section 439 addresses 'unfair or deceptive acts when dealing with insurance companies'.

Analysis suggests that without having insurance fraud, in the multiplicity of forms which it takes, explicitly referenced in insurance acts and, indeed, the *Criminal Code*, there is little deterrence for those with a bent to perpetrate this fraud.

The corollary is that provinces should be explicitly addressing insurance fraud in the specific statutes that fall under provincial purview, and certainly in the statutes governing automobile insurance.

- d. **Action options:** As noted above, this is an issue that is on the minds of the public. If upwards of 15% of the premium can be attributed to fraudulent activity, it provides a compelling target to address and ameliorate. However, it is also clear from the literature review undertaken and benchmarking results, particularly, in US jurisdictions, that this is not an issue that is able to be addressed in either a simple or expeditious manner. It requires collaboration with the insurance industry, with justice officials, with health care regulators and with federal officials. In our view, it would be best advanced as a medium term strategic initiative with industry and other stakeholders following a careful assessment of best practice models and tailored to the specific concerns that arise in the Nova Scotia paradigm.
- e. **Recommendations:** As a first step, in the legislative and/or regulatory analysis process that will inevitably arise as a result of this Review, consider making amendments to the Act or regulations that would serve to specifically recognize insurance fraud and consider adding or amending regulations to create regulatory offences for insurance fraud,



measures that would, in essence, underlie the intent of the Government to assertively address insurance fraud.

Beyond this initial step, the Office of the Superintendent of Insurance, in collaboration with other stakeholders including Justice Officials and the industry, should establish a working group to examine the issue of insurance fraud in Nova Scotia and develop a medium term plan to more proactively address this phenomenon.

At its heart, this is a consumer protection initiative and, so, it will also be important to address insurance fraud in the consumer education initiative arising from changes being advanced in this Review.

3.10.5 Introduction of a New Classification for Accident Victims

- a. **Background:** During the Review, the position was advanced that Nova Scotia should consider amending the Standard Automobile Insurance Policy, Mandatory Accident Benefits sub-section, to include two tiers of accident victims – catastrophic and non-catastrophic – as some other jurisdictions have done. Presently in Nova Scotia, accident victims have access to a standard medical and rehabilitation benefits regime under Schedule B benefits (presently to a maximum of \$25,000, but, recommended to be increased to \$50,000 as a result of this Review). Proponents of this bifurcated approach suggest that victims of accidents pursuing rehabilitation and recovery may exhaust the benefits presently available under this benefits regime. They also point to the fact that the catastrophically injured tend to exhaust these benefits more quickly. In this situation, proponents argue, accident victims are either left without treatment or, alternatively, they or their families must assume responsibility for the payment of these treatments.
- b. **Environmental Scan and Research Summary:** While several provinces have provisions for catastrophic coverage (Ontario, British Columbia and Saskatchewan), Ontario has tended to be the reference province for this issue in Canada.

The history in Ontario since the introduction of a range of generous no-fault benefits some fifteen years ago, including those for the catastrophically injured, has been challenging. Ontario presently has the highest average insurance premium in the country. An analysis of the history in Ontario suggests that these benefit levels have been subject to over-utilization and, in some cases, fraud. Mixed results in terms of health outcomes are also reported. As a result, the Ontario government has been vigorously attempting to reform the automobile insurance system and to reduce the cost of automobile insurance in that Province. To that end, significant changes to the automobile insurance product were introduced in September 2010, including reductions in available medical and rehabilitation coverage. Medical and rehabilitation benefits for non-catastrophic coverage were reduced from \$100,000 to \$50,000 effective September 2010. These changes were reportedly designed to “curb fraud and waste by professionals providing rehabilitation and medical services”.



In addition, to address the challenging issues associated with catastrophic injury coverage, Ontario has appointed a *Catastrophic Impairment Expert Panel* to conduct a two-stage review. The first stage, now complete, included an examination and analysis of the definition of 'catastrophic impairment' as included in the Statutory Accident Benefits Schedule (SABS) with a view to making recommendations to the Superintendent of the Financial Services Commission of Ontario (FSCO) on changes to the definition to ensure that the most seriously injured accident victims are treated appropriately. In Phase II, Panel members will also make recommendations regarding the training, qualifications and experience of assessors who conduct catastrophic impairment assessments under the SABS.

The Phase I report of the *Catastrophic Impairment Expert Panel* was tabled in April 2011. As a result of this review, the Panel proposed revising the definition of catastrophic injuries to improve its accuracy, relevance and clarity. In addition, the Expert Panel sought to improve the fairness of the process for the determination of catastrophic impairment. The Phase II initiative is proceeding. Presumably, the recommendations from Phase I, and the eventual proposals resulting from the completion of the Phase II Review will be studied in detail by the FSCO and it will likely be some time before the proposed changes are actually implemented.

Concurrent with the examination and analysis of catastrophic coverage in Ontario, Alberta has recently launched a public consultation in respect to a possible enhancement to accident benefit coverage for Albertans who are catastrophically injured in motor vehicle accidents. The proposed increase in coverage for these types of injuries is to \$200,000, although, through the public consultation process, respondents are being asked whether the coverage should be increased to \$500,000 – coverage that would be primary to any other coverage such as Blue Cross or an employee benefit plan. The consultation defines the entitlements for which a person with a catastrophic injury would be eligible.

Issues Definition and Scope: While there is a compelling argument that those most grievously injured in automobile accidents should have access to appropriate, timely and on-going medical and rehabilitation treatment to optimize their chances of returning to activities of daily living and/or to work, caution must be exercised in advancing proposals that emulate those that have been reported to have had significant unintended impacts in the jurisdiction with the longest history and experience with them.

This is a complex issue and one which needs to be addressed with the best available data, intelligence and with a great deal of care and attention to detail. It is, however, timely that Nova Scotia should consider this issue. The fact that the aforementioned examination and analysis of the present arrangements in Ontario and prospective approaches in Alberta are being considered will, ultimately, be helpful in informing the best approach to this matter in Nova Scotia.

In considering this matter further in Nova Scotia, attention should also be paid to the potential for over-utilization and for fraud. Consistent with the underlying objective of this Review, if Nova Scotians are to continue to enjoy access to automobile insurance



at fair and reasonable rates, care must be taken not to burden the system with extra costs which, cumulatively, have the potential to both create instability and to drive up the price of the product.

- c. **Action Options:** Nova Scotia could immediately proceed to amend the Automobile Insurance Policy in Nova Scotia to include two tiers of accident victims as noted above, subject to actuarial analysis, notwithstanding, the inherent challenges in assessing this actuarially. This would involve outlining the threshold definitions and the extent and level of benefits available under these definitions. However, in the interest of getting any measures that may be taken right, in the first instance, and, given the significant developmental work that is being undertaken on this issue nationally – in Ontario and Alberta – a more prudent approach would be to schedule this issue for later consideration on the automobile insurance reform agenda, subject to a further review by the Office of the Superintendent of Insurance at a time when the insights gained through the review in Ontario and results of the Alberta consultation process on this issue are available, and following the completion of actuarial analysis on its potential impact.
- d. **Recommendation:** Consider the proposal to amend the Standard Insurance Policy of Nova Scotia to include two categories of accident victims – non-catastrophic and catastrophic – as a ‘parking lot issue’ on the Nova Scotia automobile insurance reform agenda, subject to subsequent further analysis by the Office of the Superintendent of Insurance at a time when the insights gained through the review in Ontario and results of the Alberta consultation process on this issue are available; following the completion of the actuarial analysis on its potential impact in Nova Scotia; and, following careful analysis and consideration of the potential for over-utilization and fraud issues as reported elsewhere. Consultation on this issue between officials of the Office of the Superintendent of Insurance and its counterparts in Ontario and Alberta, and other stakeholders will be desirable.

3.10.6 Pay as You Go Insurance

Pay as you go or usage-based insurance is a phenomenon that has emerged during the past decade. This insurance is comprehensive car insurance with all the benefits typically available within an auto insurance policy. With traditional automobile insurance the driver pays a similar amount regardless of the distance travelled. Pay as you go insurance is different in regard to how the premiums are priced.

In its most basic form, this type of insurance is based on the number of kilometers driven, but can also include considerations beyond simply how much you drive to also include when and where you might drive and factors relating to your own risk as a driver. As such, the premium is calculated dynamically, based on a number of factors.

Insurance companies are able to verify designated factors through either having the driver plug an electronic device into the car (which the insurance company periodically removes and reads the



information captured by the device), or, it can also be accomplished telemetrically through on-board communications systems like *On Star*.

Use of telemetric systems, in which vehicle information is automatically transmitted to the insurer, clearly provides the potential for more extensive monitoring of driver behaviours (time and kilometers driven, cell phone use etc). It also provides a significantly enhanced feedback loop to a driver and the theory is that, by changing the cost of insurance dynamically to track changes in driver risk, drivers will have a strong incentive to pursue safer driving practices.

Development of this type of insurance product is a phenomenon that is building internationally and, in all likelihood, will be more widespread in the next several years. Roughly 35 states in the US have some form of pay as you go insurance. It has also been introduced in the United Kingdom and Australia, among other countries. In the US, pay as you go insurance has been most prominently marketed by Progressive – their *Snapshot Product* which uses a device plugged into the automobile, and GMAC, using its telemetric *On Star* system. Aviva piloted this product in Canada some years ago, apparently with little consumer interest.

One of the factors that may be limiting interest in this product relates to privacy concerns. One insurer, with knowledge of this product, referred to it as “having a bit of a big brother feel to it that likely turns off some customers”.

In addition, the literature is divided on the issue of savings – most of the analyses that we examined, in the commissioning of this Review, suggested that, while there can be savings, there is also greater potential for more administrative charges as insurance under this system may be more frequently adjusted and renewed.

In the context of this review of automobile insurance, it is important to acknowledge the emergence of this new type of insurance product. While no specific recommendations are being advanced in respect to pay as you go insurance, it is a phenomenon that the Office of the superintendent of Insurance will likely want to monitor. With changing driving patterns and growing concern in respect to GHG emissions, this may become a more attractive product, particularly, for those living in urban areas whose incentive to drive may be further circumscribed as a result of heavy traffic, the paucity and cost of parking and the ready availability of inexpensive and efficient public transit.

3.10.7 Automobile Insurance Issues Impacting Immigrants

At a time when the Government of Nova Scotia has advanced a proactive, longer term immigration strategy, it is important to understand the issues related to immigrants and automobile insurance. Ultimately, being able to drive is an important part of the settlement process and there is a need for clarity, transparency and fairness in helping immigrants through this process.

During the course of the review of automobile insurance, two issues related to immigrants and automobile insurance were advanced.

The first was the question of whether inexperienced immigrant drivers (often students), who are licensed to drive in their home jurisdiction, can have access to the lower insurance rates available



to inexperienced Nova Scotia drivers and be covered within the risk pool, once licensed to drive in Nova Scotia. Clarification on this issue was secured from the Facility Association which advises that these drivers are eligible for the Risk Sharing Pool (RSP). If these drivers are in Canada temporarily and are using an international license, then, they would not qualify for the RSP.

A second and, ultimately, related issue came forward in the follow-along round of public consultation. This issue related to the view that immigrant drivers applying for insurance in Nova Scotia should be able to have their driving record in their country of origin recognized by authorities in Nova Scotia both for purposes of securing a Nova Scotia license in the least complex manner, and for later securing automobile insurance without being classified as an inexperienced driver at concomitantly higher premiums. This issue, ultimately, has two dimensions:

- a. How the Motor Vehicle Branch deals with immigrants from the perspective of licensing; and
- b. How an insurance company subsequently rates them for purposes of securing automobile insurance.

This issue of accessing the driving record in the country of origin was explored with the Motor Vehicle Branch (MV) for purposes of clarification of the policy that is followed in this matter. The key finding is that, presently, the policy regarding immigrant drivers is dependant upon the country of origin of the immigrant and whether the Province of Nova Scotia presently has a reciprocal agreement with that country in respect to how these matters are to be addressed.

For immigrants who are from the United States and are in possession of a valid driver's license, the current procedure is as follows:

- a. The applicant must show their license;
- b. No driving abstract needs to be presented;
- c. Rather, the MV Branch checks their system and finds out the individual's status in their home state directly, as the NS MV Branch has access to that data; and
- d. If the prospective driver's status is good, then a NS license is issued without any testing being required and the 2 year graduated licensing requirement is also waived.

For immigrants whose country of origin is South Korea, Germany or the United Kingdom and who have a valid license:

- a. The applicant must show their license;
- b. The MV Branch does not ask for an abstract at this time, but, are contemplating doing that in the future; and
- c. The applicant must take the written and practical tests, and, if they pass these tests, are issued a NS license and the 2 year graduated licensing requirements are waived.



For immigrants whose country of origin is other than the US, South Korea, Germany or the UK (Including Northern Ireland), and, even if these immigrants are in possession of a valid license, they are required to take the written and driving tests before being issued a license and the individual must go through the two year graduated licensing process.

The MV Branch advises that there are bi-lateral discussions underway with ten (10) other countries to extend to their citizens the same waivers as currently exist for South Korea, Germany and the UK. Clearly, there is an advantage to immigrants when these protocol agreements are in place.

Once an immigrant has successfully secured a Nova Scotia driver's license, then, it is the insurance company that rates their risk, a process that may lead to the driver being designated as an inexperienced driver with a concomitantly higher premium even though the immigrant may be able to present a driving abstract from his/her country of origin which attests to the applicant's experience. In discussing this matter with industry, some of the reported challenges include gaining access to driver records from other countries, the challenge, in some cases, of getting these documents translated, the applicability of the applicant's driving experience to the North American paradigm, to mention only a few of the factors that impact on the ultimate rate provided to an immigrant applying for automobile insurance. Further, it would appear that there are inconsistent practices across insurers in terms of how an immigrant's previous driving experience is treated in respect to the rate setting process.

Recommendations:

Being able to drive and having access to fair and affordable automobile insurance rates is, for many immigrants, an important element of the settlement process. As the Review indicated, there are issues in the current automobile insurance regime and licensing process that, in some cases, may present challenges for immigrants. For the future, it would be helpful for officials of the Office of the Superintendent of Insurance to work with other stakeholders, including the IBC, federal/provincial colleagues engaged in immigration policy and immigration initiatives, the Motor Vehicle Branch, as well as, NGO's involved in the settlement process to ensure that issues related to immigrants and access to automobile insurance at fair and affordable prices are appropriately and proactively addressed.

3.10.8 Modifying Small Claims Court Act

During the Insurance Review Process, a proposal was advanced to amend the Small Claims Court Act of Nova Scotia to change the Court's jurisdiction to include actions to collect pain and suffering awards to ten thousand dollars (\$10,000) indexed in accordance with the Consumer Price Index for Nova Scotia (CPI).

The rationale for this proposal was to provide a forum for people who are injured in automobile accidents to be able to pursue damages through self-representation at Small Claims Court to make their claims up to the amount established under the Nova Scotia Insurance Act for minor injuries (\$7,500). Within this proposal, the amount of the proposed limit was set at \$10,000 so as to



include amounts payable under the cap on damages for soft tissue injuries incurred in automobile accidents, and any associated general damage claims.

Presently, Section 11 of the small Claims Court Act limits awards for general damages (i.e. non-pecuniary losses or pain and suffering) to a maximum of \$100. This proposal, if accepted, would see this section of the Act repealed and Section 10 (e) amended to allow for these awards to a maximum of ten thousand dollars (\$10,000).

On its face, this is an interesting proposal. Under the current arrangements related to damages awarded for soft tissue injuries (maximum payout set at \$7,500), those injured in automobile accidents have very limited options for legal representation in situations where they wish to challenge the amount of any award granted. This option would give them another means through which to address their concerns and a forum in which to undertake this appeal.

Officials responsible for court administration in the Province of Nova Scotia report that this matter was reviewed in the recent past. A working group comprised of court officials and which included lawyers, adjudicators and a representative of the Nova Scotia Barristers Society was structured to delve into this matter. This was undertaken when the cap on soft tissue injury awards was \$2,500. Issues that were considered in this review included an assessment of what type of expert evidence might be acceptable for these proceedings, whether general practitioner medical evidence could be acceptable, whether written general practitioner evidence could be accepted and whether there should be a recording of the proceedings to provide a record beyond the adjudicator's report. In final analysis, this proposal was not advanced at that time.

Going forward, and, particularly in light of the increased cap on soft tissue injuries now in place, this is a matter that could be considered again, perhaps, in tandem with any broader review of the Small Claims Court System that may be undertaken in the future. This is a matter that the Office of the Superintendent of Insurance should review in consultation with Justice Officials including court administrators.

3.11 Consumer Engagement/Education

As a mandatory product, automobile insurance is an important issue for Nova Scotians. Almost 150 Nova Scotians took the time to respond to the website established during the Review to secure public feedback. Their comments were thoughtful, helpful and focussed on the issues of concern to them.

At the same time that this interest is present, it is equally clear that auto insurance is not well understood by the public and it is also clear that there are some misconceptions. Polling undertaken by the Insurance Board of Canada consistently reveals that the public doesn't understand automobile insurance in a manner that makes them well-informed consumers.

This is not an issue that is unique to Nova Scotia, however, the fact that there will likely be changes arising from the Review, creates a helpful opportunity to renew efforts to address consumer education.



A clear finding of this Review is that consumer engagement and education is a significant issue in Nova Scotia which requires focussed attention. Arising from the Review, this engagement and education process will, ideally, have two dimensions:

- a. Ensuring a better understanding of automobile insurance in general; and
- b. Assisting Nova Scotians to understand the specific changes that will emerge from this Review.

During the Review, we assessed whether the appointment of a consumer advocate in Nova Scotia would be an effective measure to implement at this time. Our finding in this regard is that there are presently an adequate number of avenues through which consumers can advance issues of concern, including their company, the Office of the Superintendent of Insurance, the IBC and to the General Insurance OmbudService (GIO). As a result, we are not recommending the appointment of a consumer advocate at this time.

As a foundational principle, any comprehensive consumer engagement or education initiative will need to be undertaken on a collaborative basis amongst the key stakeholders in the automobile insurance sector. The key collaborators are the Office of the Superintendent of Insurance, the Insurance Bureau of Canada, the Insurance Brokers Association of Nova Scotia and the Canadian Independent Adjusters Association.

As a result of the jurisdictional review and benchmarking exercise undertaken as part of this Review, there are a number of best practice models in terms of successful consumer initiatives and consumer engagement that will be helpful in the design of a made-in-Nova-Scotia initiative.

Many of the stakeholders are already working hard to engage and inform consumers. IBANS, for example, currently has a helpful consumer oriented question and answer feature on their website that is focussed on educating the public on automobile insurance. The IBC has the helpful, 'ask an expert', feature on their website that provides simple, but, insightful information on key questions relating to automobile insurance.

The *Insurance Brokers Association of Ontario* (IBAO) has developed a **Code of Consumer Rights and Responsibilities**, which may be of interest in Nova Scotia.

The approach taken by the Province of Ontario in the roll out of its recent significant changes to the automobile insurance regime in that province included a comprehensive consumer education initiative. The Ontario brokers association – the Registered Insurance Brokers of Ontario (RIBO) – undertook an extensive education initiative for their members that, in its design, appears to be very comprehensive and worthy of emulation.

The role of the broker is critically important in the consumer engagement/consumer education process. During the Review, insureds presented a number of concerns which should be easily addressed through enhanced communication with their broker or insurer. There was a reported lack of understanding in terms of what to do when an accident occurs. There were many insights on surprises following an accident when insureds found out that they did not have provisions in their individual insurance policy that they thought they had.



Recommendations:

- a. In reflecting on these issues during the review, we considered the requirements financial advisors have in conducting an assessment of their clients' investment knowledge and tolerance for risk at the outset of the relationship and, periodically, throughout the relationship. This 'know your client' provision serves to better inform the financial advisor/client relationship. Notwithstanding the fact that this is in an area which is, of necessity, strongly regulated to ensure consumer protection, the model used offers an interesting example of how another sector addresses the matter of better understanding their client's needs. A similar mechanism or approach in the insurance sector, to be completed upon application and/or renewal might, properly designed, have the impact of both better informing the broker of the client's requirements, while, at the same time, helping the client to make a well-informed decision. In addition, some of the measures being advanced in this proposed round of changes are designed in such a way that the consumer must make the decision (i.e., whether to buy-down on accident benefits, whether to purchase optional tort) and, these provisions serve to heighten the importance of the consumer having access to good information on which to make these decisions. It is recommended that Nova Scotia consider the design of such a process, customized to the auto insurance paradigm, to be utilized with clients upon application or renewal of their automobile insurance; and
- b. That the Office of the Superintendent of Insurance, with key stakeholders, design and develop a comprehensive consumer engagement and education initiative to both address auto insurance in general, and the specific changes arising from the review of auto insurance. To effectively execute this proposal, it is recommended that advance work be undertaken to establish a base line of the current state of consumer understanding of auto insurance, establish clear objectives based on this analysis, and periodically monitor performance to both gauge progress and to help in making course corrections designed to improve the effectiveness of consumer education measures. As part of the process of designing a consumer education initiative, focus groups of consumers should be utilized to identify information requirements and to test solutions. Draft consumer education materials should be first tested on consumers before being more broadly distributed.

3.12 Obligation to Review Insurance

In 2003, the Ontario Legislature amended the *Insurance Act* to include a requirement in section 289.1 that the Superintendent of Financial Services undertake a review of Part VI of the Act and any Regulations made under Part VI at least once every five years or more often, if requested by the Minister of Finance.

Under this arrangement, the Superintendent of insurance is to report back with recommendations to improve the effectiveness and administration of Part VI of the Act and the Regulations. Part VI of the Act and the Regulations includes statutory accident benefits, court proceedings and dispute resolution.



Until this Review, the automobile insurance regime has not been extensively reviewed in Nova Scotia for seven years.

At the outset of the Review and being aware of this provision in the Ontario legislation, we were less than convinced that this measure is necessary. However, having now completed the first phase of the Review, our opinion on this matter has changed.

As is illustrated in our foregoing analysis of some of the issues and in the proposed remedies being advanced to address a range of specific issues, it is clear that, notwithstanding the complexity of the accident benefits system which will require occasional adjustment to respond to emerging issues, there are many other adjoining societal issues that are changing rapidly – technology and its implications for distracted driving, demographic changes and the aging of the population impacting elderly drivers, criminal activities associated with insurance fraud, channels for the sale of the insurance product, to mention only a few.

Recommendation:

In light of the fluid environment that surrounds auto insurance, we believe there is wisdom in establishing a provision in legislation similar to that utilized in Ontario, which would provide, at the option of the Minister responsible, for the opportunity to undertake a periodic review of automobile insurance. Ultimately, this can be seen to be a consumer protection initiative in that it would be a commitment to keep the product evergreen and to address inequities that creep into the system over time (e.g. level of Section B benefits). This may, ultimately, not be necessary if the proposals, noted earlier in this Report, related to the establishment of a more formal mechanism for a joint government/industry stewardship model for auto insurance are accepted. However, having the instrumentality to undertake this type of review at the option of the Minister responsible, would, nonetheless, be a helpful provision.

3.13 Distracted Driving

Not unexpectedly, another factor that was frequently raised during the Review is the issue of distracted driving. Some key informants feel that this phenomenon is at a crisis level. In fact, during the commissioning of this work, there were several high profile accidents involving 'texting' as a causative factor.

Causative factors related to distracted driving include the traditional concerns in respect to cell phone use and texting, however, some informants raised the issue of the increasing complexity of automobile entertainment and operational systems, and the fact that some manufacturers are now equipping vehicles so that they can be used as an office, with the requisite connectivity and feature-rich environment that creates a new range of distractions. Although the Nova Scotia government has proactively enacted legislation to deal with distracted driving, many informants feel that there is an important public education dimension to this issue as well.

The Nova Scotia government has taken proactive measures to address cell phone use and distracted driving through a recent legislative initiative that models best practices.



Recommendation:

The issue of distracted driving is an evolving issue and it is one that is likely to change over time as new information becomes available, as innovative legislative measures evolve and as we know more about effective education and behavioural change campaigns. To this end, the Office of the Superintendent of Insurance, in collaboration with key stakeholders, should continue to monitor this issue, to report out periodically on new information and findings and to address this issue in the earlier mentioned proposed consumer education initiative.

3.14 Legislative Scanning Exercise

The review underscores the fact that the accident benefits system for automobile insurance is very complex and that the public generally doesn't understand automobile insurance. The delivery of auto insurance is also changing. The internet has enabled customers to communicate with their brokers and insurers using the on line channel. This instrumentality can improve customer service, can enhance communication and can potentially streamline the process for all involved.

Recommendation:

- a. In light of this, legislation and regulations dealing with auto insurance should be reviewed to ensure that it reflects modern business practices, language and procedures compatible with electronic commerce; and
- b. In respect to changes being made as a result of this Review and, as a standing principle going forward, the Office of the Superintendent of Insurance should ensure that changes being reflected in legislation and policy are drafted to simplify the provisions, to optimally remove complexity, and that these changes are accompanied by plain language bulletins or advisory documents that clearly and simply convey the meaning and impact of the change in a way that will be understandable to consumers. In respect to the regulatory side, these reviews are now under the purview of the Department of Justice's *Registry of Regulations*. Overall, principles of simplicity and clarity should be underlying imperatives.

3.15 Medically at Risk Drivers

Earlier this year, the high profile death of a 31-year-old woman who was struck and killed by an 83-year-old driver in Toronto has once again raised the sensitive subject of when seniors ought to hang up the keys.

In North America the demographics are such that the issue of seniors' driving and, particularly, medically at risk drivers is referred to as a 'rising tide'. The issue of medically at risk drivers is becoming a preoccupation with regulators on both sides of the border. In the fall of 2010, the US National Transportation Safety Board (NTSB) had this issue on their agenda – the first time in 40 years that the Agency has looked at safety issues for elderly drivers.



By 2036, the numbers of senior citizens in Canada will more than double from 2009. For the first time in almost a century, seniors will surpass the number of children age 14 and under, according to Statistics Canada.

The number of seniors aged 80 or older will almost triple by 2036, and the number of centenarians is projected to triple or quadruple.

According to the US National Highway Traffic Safety Administration (NHTSA), in the past 25 years, the number of drivers 70 and older has grown three times as fast as the total US driver population, and it's estimated that by 2020, twenty percent of the U.S. population will be 65 and older.

Motor-vehicle deaths per capita increase markedly for people 70 years old to 74 years old, according to the US Centers for Disease Control and Prevention. Fatality rates per mile traveled increase starting at age 75 and increase more after age 80, due largely to the susceptibility to injury, according to the Atlanta-based center. Drivers 85 and older are eleven times more likely to die in a crash than drivers aged 40 to 49. Part of this is due to the increased frailty of very old drivers, but per mileage traveled, the likelihood of a being in an accident is significantly higher for older drivers.

The worry is not their age, but the medical conditions that typically accompany old age and can interfere with safe driving and can put these drivers at greater risk of having an accident.

Older drivers may have decreased vision, cognitive function and physical abilities, the CDC says. The public-health effect of these motorists is offset by their safer-driving habits: they wear seat belts more often, tend to limit driving to when conditions are safest and have lower incidents of drunken driving. Older drivers rank far lower than other drivers for incidents of dangerous aggressive driving behavior, but they tend to make more driving errors than other drivers in congested areas and where quick comprehension of signs is required.

The physical factors that impact elderly drivers include the following:

- a. **Vision** - Most aspects of vision typically deteriorate with age. Static acuity - the ability for the eyes to focus on a stationary object - is what's measured for drivers' tests. Dynamic acuity, the ability for the eyes to stay focused on moving objects, decreases greatly with age, and it's not tested in drivers' vision tests. Even if an older driver might have perfect 20/20 static vision, that person's dynamic vision is probably much worse than that of an inexperienced driver with 20/20 vision. There are also other memory and perception aspects of vision that vision tests do not take into account. Older drivers are also much more susceptible to glare, such that is encountered when exiting tunnels or seeing oncoming headlights, and they also have reduced contrast sensitivity, which can make low light conditions problematic even if their vision is sharp;
- b. **Hearing** - Hearing sensitivity deteriorates over time. Some drivers may experience very little hearing loss over time, but keep in mind that the brain's ability to distinguish one sound over another (for example, to hear an approaching siren over music playing on the radio) might still deteriorate;



- c. **Reaction time** - Though it can vary greatly depending on the person, and there seems to be some conflicting information, reaction time is estimated by some researchers at 0.2 to 0.3 second slower for drivers 65 and older, with an accompanying drop in motor skills that can further exaggerate the delay;
- d. **Fatigue** - Older drivers are generally more susceptible to fatigue than younger drivers. Research has shown, however, that older drivers are better at gauging their state of fatigue than younger drivers; and
- e. **Other physical factors** - Due to arthritis, stiff joints, reduced muscle mass, or other health problems, older drivers may have trouble turning their head quickly enough to scan side streets or to glance back while reversing.

The issue of the medically at risk elderly driver is a highly sensitive one – for the families who often have to get their elderly parent to hang up the keys and for physicians who often have to make the difficult recommendation, often, within the context of a long-standing patient-physician relationship.

Demographic trends, and, particularly, in Nova Scotia, which has one of the highest level of elderly people in the country, will exacerbate the challenges in adequately addressing this issue going forward.

The issue of medically at risk drivers was not an issue that was featured prominently during the stakeholder or public consultation process. Rather, it was an issue that was initially raised in discussions with the advisory committee.

Nationally, a jurisdictional review indicates that most provinces are following a similar approach in addressing the issue of managing the risks posed by elderly drivers. Key common features across the country include:

- a. Conditions imposed that permit daytime driving only;
- b. Radius restrictions from residence or local roads only (no highway driving);
- c. Periodic medical tests;
- d. Annual vision tests;
- e. Annual road tests;
- f. Automatic transmission only; and
- g. Application of license class restrictions.

Discussions with the Motor Vehicle Branch in Nova Scotia indicate their satisfaction with the effectiveness of current measures in place to ensure that elderly drivers and medically at risk drivers are operating motor vehicles safely. These measures are reportedly working well. The Motor Vehicle Branch continues to rely on family members, doctors and law enforcement officials to alert



them of an elderly driver that has become a safety hazard. Police forces are required to report any accidents or incidents involving elderly drivers where injury or property damage has occurred. The Registry also acts on all letters from family doctors who identify elderly patients who present as a potential risk by notifying the driver that they are required to be retested. If the driver fails the tests then his/her licence is suspended. If they pass the test, they are considered not to pose a risk and are able to continue driving.

The Nova Scotia Registry of Motor vehicle has carefully studied the policies put in place in other jurisdictions and keeps these in mind in considering policy adjustments as may be required.

In his Spring 2011 Report, Nova Scotia's Auditor General commented on the Department of Service Nova Scotia and Municipal Relations' processes for identifying and taking action on high-risk drivers, as well as, monitoring motor vehicle inspection stations and testers. The Auditor General's Report judged these processes to be inadequate at the time the audit was undertaken. The Report further noted that *"our audit identified a ten-month backlog of collision reports and a three-month backlog of medical reports. These reports are key documents needed to identify and assess drivers who pose a safety risk to the public. We also found significant time delays between the Department's review of drivers' records and intervention action taken"*. These comments are germane to consideration of the issue of medically at risk drivers as discussed in this Review and will need to be an ongoing matter of interest for the Office of the Superintendent of Insurance and industry as well.

Recommendations:

The matter of medically at risk drivers is likely to be an issue of ongoing concern, particularly, in light of demographic changes taking place in society. Going forward, it is recommended that the Office of the Superintendent of Insurance, with the Motor Vehicle Branch and other key stakeholders periodically review emerging issues and evidence related to safety considerations for elderly drivers. This would involve monitoring trends, best practices, liaising with the Department of Service Nova Scotia and Municipal Relations and the Motor Vehicle Branch and making policy adjustments as may be required.

3.16 Summary

This chapter has presented the key findings of the Automobile Insurance Policy Review. This Review has been informed by input received from a broad range of stakeholders including industry, the public and through a comprehensive jurisdictional review and benchmarking exercise.

A prominent issue in the review is the importance of enhancing consumer understanding of the automobile insurance product and the importance of engaging the consumer on the nature and extent of proposals for change being advanced in the Review. This imperative is enshrined in the recommended multi-stakeholder public education and engagement initiative.



Chapter 4 – Conclusions

One of the key findings in the Automobile Insurance Review is that rates in Nova Scotia have been stable and, in fact, declining over the past number of years. On a comparative basis, automobile insurance rates in Nova Scotia are similar to other provinces in the Atlantic Region and, in fact, more favourable than many other jurisdictions across the country.

Unlike the situation in 2003, this stability allows the Government of Nova Scotia to take measures to improve the automobile insurance system in Nova Scotia in a thoughtful manner without being required to respond to an immediate crisis.

The proposals advanced through this Review seek to address a number of key issues confronting automobile insurance in Nova Scotia in 2011. These proposals have been developed through extensive research, a national/international jurisdictional review and through the input of key stakeholders and the public undertaken during two rounds of consultation.

The development of these proposals has been filtered through several key principles. Central among these principles is the need to keep a primary focus on the impact of proposed changes on the consumer, consistent with the objectives of fairness, cost competitiveness and effective communication. Ultimately, these principles and the proposals advanced in this Review strive to ensure that Nova Scotians have access to a stable auto insurance system at rates that are fair and affordable well into the future.

This Review has generated a dynamic automobile reform agenda. Accepted proposals will need to be carefully implemented and a new consumer education initiative is proposed to improve Nova Scotians' understanding of automobile insurance and to effectively inform them of changes arising from the Review.



ANNEX A – STAKEHOLDER MEETINGS



Stakeholder Meetings

Date and Time	Association
10 Jan, Monday	Association of Car Rental Operators
11 Jan, Tuesday	Insurance Brokers Association of Nova Scotia
18 Jan, Tuesday	Canadian Independent Adjusters Association
24 Jan, Monday	Atlantic Provinces Trial Lawyers Association
27 Jan, Thursday	Insurance Bureau of Canada
3 Feb, Thursday	Nova Scotia Physiotherapy Association
4 Feb, Friday	TD Insurance
4 Feb, Friday	Department of Transportation and Infrastructure Renewal
23 Feb, Wednesday	Nova Scotia College of Chiropractors
3 Mar, Thursday	Canadian Association of Direct Response Insurers

Advisory Committee Meetings

Date	Location
01 March 2011	Department of Finance Boardroom
25 March 2011	Department of Finance Boardroom
25 May 2011	Department of Finance Boardroom
30 May 2011	Department of Finance Boardroom



CFN Consultants (Atlantic) Inc.

Reference: NS Auto Insurance Final Report