



Government Response to the Report
of the Select Committee on Private
Passenger Automobile Insurance

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Introduction:

In mid 2001, New Brunswick consumers began to express to government their concerns regarding significant increases in premium costs for automobile insurance, difficulties in accessing coverage and underwriting practices used by some insurance companies. In response to the concerns of New Brunswickers, the Government established a Select Committee on Private Passenger Automobile Insurance through a unanimous motion of the Legislative Assembly.

This all-party Committee was given a broad mandate to examine the issues of availability and pricing of automobile insurance in New Brunswick and to make recommendations regarding legislative and regulatory changes that might be considered by Government to improve the current system. The Committee was also given specific tasks to fulfill its mandate. These included undertaking a review of other systems in place in Canada, and determining if our automobile insurance system would be improved through the introduction of a system of no-fault insurance, amendments to the current tort-based system, changes to the territorial rating system and changes to the rate approval process for the Public Utilities Board.

The Committee held public hearings through out the Province. Various stakeholders, including individual consumers, consumer groups, insurance industry associations, insurers and representatives of the law associations and legal community made public presentations and submitted written briefs.

Following a review of submissions, the Committee completed its written report. The report was tabled in the Legislative Assembly on November 22, 2002. The Select Committee is to be commended for its work in collecting information, considering the viewpoints of stakeholders and formulating unanimous recommendations for government's consideration.

As the evidence presented to the Select Committee established, the problem of escalating automobile insurance rates is not restricted to New Brunswick. This is a national phenomenon, and neighbouring provinces such as Nova Scotia, Newfoundland and Labrador and Prince Edward Island are also engaged in examining the issue.

The government of New Brunswick has carefully reviewed the recommendations in the Select Committee report. One of the central goals established by the Committee was to recommend changes that will result in fair, affordable and accessible automobile insurance for New Brunswickers. The Government agrees with this fundamental goal and has developed a plan to address the issues surrounding automobile insurance in our province, building on the Select Committee's recommendations. In some cases, Government will go beyond the recommendations as part of the overall plan to maximize fairness, affordability and accessibility in automobile insurance.

Response to the Select Committee's recommendations:

1 - The Committee recommends that this matter [control of advertising] be referred to the Law Society to explore in terms of the type and suitability of advertising.

The Government supports the Committee's recommendation as a means to help address affordability of automobile insurance. The Minister of Justice has met with the Law Society and will write to them to advise of the Committee's recommendation regarding control of advertising and to seek advice on whether additional restrictions on lawyer advertising would be effective and appropriate.

2 - The Committee recommends that insurance telemarketing be more strictly licensed and regulated and that the enforcement of insurance telemarketing regulations be carried out by the Office of the Superintendent.

The Government shares the Committee's concern with the need for regulation of insurance telemarketing. At this time, both the insurance and telemarketing industries are subject to extensive regulation. The Government, through the Department of Justice will work with industry and consumer groups on the development and promotion of consumer information, including disclosure requirements, to enhance consumer protection.

3 - The Committee recommends that PUB ensure the continued presence and growth of middle markets by expedient disposition of Facility Association rate filing requests.

The Government agrees that growth of middle markets will help improve competition and provide greater access to more automobile insurance choices. The Government therefore agrees that all rate filing requests and investigations should be disposed of expediently and supports the recommendation. The Minister of Justice will write to the Chair of the Public Utilities Board in furtherance of this recommendation.

To further stimulate competition and improve accessibility, the Government has directed the Department of Justice to study the implications of allowing our Province's credit unions and caisses populaires to provide automobile insurance.

4 - The Committee recommends that there be a co-ordinated effort between the Office of the Superintendent of Insurance and the Public Utilities Board regarding the handling, monitoring and managing of auto insurance, making absolutely certain that the government is well informed and fully aware of emergent issues.

The Committee further recommends that the Office of the Superintendent of Insurance be reviewed and amended to bring its roles and functions in line with the recommendations in this report.

The Government agrees that more regular communication between the Office of the Superintendent of Insurance and the Public Utilities Board would be beneficial. Therefore, the Superintendent of Insurance will initiate regular meetings with the PUB, to ensure timely and complete information is shared continually. The Government reviews the role of the Superintendent on an ongoing basis, and will continue to do so, and will amend the Superintendent's role as needed.

5 - The Committee recommends legislation to provide for a full time consumer advocate to be appointed by government to intervene in PUB rate hearings, the cost to be paid by the board and passed on to the industry through assessments.

The Government agrees with enhancing consumer protection to ensure the affordability of automobile insurance. To this end, the Government will create a new Automobile Insurance Review Panel as part of the Public Utilities Board to review future rate increases, monitor insurance issues affecting both companies and consumers, and undertake analysis and collect accurate statistics on accidents, claims, and industry performance to ensure third party assessment of the automobile insurance market in New Brunswick.

The Government will also strengthen the role of the Department of Justice in providing consumer information and guidance on automobile issues to the public, so New Brunswickers can make more informed choices about insurance.

6 - The Committee recommends that insurance coverage be tied directly to vehicle registration with monitoring and enforcement processes as follows:

- Print insurance certification information directly on the New Brunswick vehicle registration form with clear notice that canceling insurance means canceling registration.***
- Develop the process through IT solutions developed by e-business.***
- Synchronize registration and insurance due dates /renewals.***
- Produce license plate stickers as proof.***
- Those wishing to cancel insurance would be required to turn in their plates.***

The Government agrees that reducing the instances of uninsured drivers, whose accident claims lead to higher premiums for everyone else, will help improve affordability and fairness of automobile insurance. The Government will reestablish closer links between insurance coverage and the motor vehicle registration system, by reinstating the requirement to show proof of insurance before registering a motor vehicle and by working with all interested stakeholders to assess the feasibility of implementing this recommendation.

7 - The committee recommends that an Arbitrated Resolution Process (ARP) be developed as a valuable tool in the service of injured victims, the insurers and government. ARP is a dispute mechanism that is meant to bring about a complete, mandatory, adjudicative and binding system that is more readily accessible to all New Brunswickers.

The Committee further recommends that:

- ***The arbitration process be established to deal with economic and non-economic loss for claims under the amount of \$50,000.***
- ***The arbitration process could also be used for higher amounts if mutually agreed to by all parties.***
- ***The process ensures victims' rights to appeal.***
- ***The process provides expedient, fair resolution, at lower cost and with less frustration.***
- ***The Law Society and the Department of Justice be asked to develop the process.***

The Government recognizes the potential benefits of alternate dispute resolution options as a means to help improve affordability of automobile insurance. The Department of Justice will invite the Law Society of New Brunswick, the Canadian Bar Association-New Brunswick branch, representatives of the insurance industry and interested consumer and stakeholder groups to work with Government to assess the potential benefits of implementing this recommendation.

8 - The Committee recommends that the following programs and approaches become part of the Government's new directions for driver education and public safety:

- ***Enhance the graduated licensing program.***
- ***Establish compulsory safety driving courses for all new drivers.***
- ***Require mandatory vision testing by the Department of Motor Vehicles (or proof of vision fitness for driving from a licensed optometrist) every 10 years.***
- ***Require completion of mandatory safety driving courses for any repeat offenders convicted under sections of the Criminal Code of Canada that relate to vehicles.***
- ***Enhance classroom road safety programs.***
- ***Place emphasis on educational programs that focus on accident prevention, saving lives and reducing injuries.***

The Government agrees that improved driver education and road safety will help reduce accident rates, a factor relating to affordability of automobile insurance. The Government is directing the Department of Public Safety to work with all interested stakeholders to further assess the initiatives contained in this recommendation and determine how to move forward on them.

9 - The Committee recommends that for repeat offenders of driving-related offences under the Criminal Code of Canada (CCC), the government act to:

- ***Establish an escalating fine schedule.***
- ***Impose the loss of driving privileges with appeal after five years for repeat offenders under CCC and those charged under the impaired driving legislation.***
- ***Ensure that stricter guidelines are in place for these offenders regarding the reinstatement of driving privileges.***

Secondly, regarding factors concerning improvements to the physical aspects of roads in the province, the Committee recommends:

- ***Installation of rumble strips at major intersections and on major highways.***
- ***Inclusion of the installation of rumble strips in future road building initiatives.***
- ***Adding flashing red lights to major stop signs, supplemented by rumble strips at certain major intersections.***
- ***Creation of a New Brunswick Traffic Safety Division within the Department of Public Safety that mirrors the successful tasks and procedures already in place in other jurisdictions.***

The Government agrees that road user safety initiatives are an important factor in reducing the number and severity of motor vehicle accidents, and as a result, the number of automobile insurance claims. The Government will review the fine schedule under the *Motor Vehicle Act* and the matter of guidelines respecting the reinstatement of driving privileges. Furthermore, the Government will study initiatives such as ignition interlock devices to combat impaired driving.

This Government is committed to improving road safety. Our pledge to complete the twinning of the Trans-Canada Highway demonstrates this. The Government has also taken steps to install rumble strips and/or flashing lights at some highway intersections, based on traffic volumes and on the number and severity of motor vehicle accident at such intersections. Rumble strips have also been installed on the shoulder of some sections of the Trans-Canada Highway in the province, with a view to reducing the incidence of vehicles leaving the road surface. The Department of Transportation will examine the effectiveness of more rumble strips, flashing lights at intersections, and other measures to reduce the number and severity of motor vehicle accidents.

The Department of Public Safety established the New Brunswick Highway Safety Committee in the Fall of 2001. The Committee's goal is to support, facilitate and promote activities related to highway safety. Currently, the Committee is undertaking initiatives respecting prevention, education and the encouragement of effective enforcement. The Government, therefore, will not be creating a new Traffic Safety Division within the Department of Public Safety. However, Government will ensure that the New Brunswick Highway Safety Committee is aware of the Select Committee's recommendation.

10.1 - The Committee recommends that Section A, Third Party Liability be changed so that Minimum Mandatory Third Party coverage be increased to \$500,000 from the present minimum limit of \$200,000.

10.2 The Committee recommends mandatory court ordered structured settlements for under age victims of auto accidents and for victims having suffered serious and permanent head injuries, or in any other case judged necessary by the court.

10.3 - The Committee recommends that the amount specified for funeral expenses (SPF No. 1, Subsection 1 (2), Funeral Expenses) be doubled.

10.4 - The Committee recommends that:

- The term housekeeper be changed to reflect the importance of such individuals.***
- The benefit amount should be changed to reflect the importance of women to society and their families.***
- The benefit period be increased to a maximum of 104 weeks.***
- The benefit amount be increased to \$125 per week.***
- There be an additional amount of \$20 per week for each dependent child still residing at home.***

10.5 - The Committee recommends that any student fulfilling the requirements of an academic or technical program and attending school full time shall be entitled to the same rights and benefits as other employed people.

10.6 - The Committee recommends that benefits be awarded until the age of 65 (meaning the day the person turns 65) as follows:

- Full weekly benefits up to age 65.***
- The benefit amount be reduced by 50 per cent at age 65.***
- The amount be further decreased by 10 per cent each year on the date of birth until the age of 70, when all benefits cease.***

The Government agrees ensuring appropriate benefits for accident victims under Sections A and B of the Standard Automobile Policy will help bring more fairness to automobile insurance. The Government therefore supports in principle

recommendations 10.1 through 10.5. The Department of Justice will work with stakeholders to assess both the potential benefits and the potential consumer cost increases of increasing the standard policy coverages and benefits as proposed. With respect to recommendation 10.2, the Department of Justice will assess the benefits and costs associated with mandating structured settlements in certain situations.

11 - The Committee recommends that PUB review the industry practice of using accident fault charts as an expedient method for determining fault under Sections A and C and that its use be restricted.

The Government has directed the Superintendent of Insurance to review with the insurance industry the use of fault charts and the disclosure of fault determinations, with a view to improving fairness in automobile insurance.

12 - The Committee recommends that a review of the territorial rating system be undertaken immediately. Since the setting of territories for rating purposes is closely associated with regulating of rates, it is reasonable to delegate the determination of the new rating territories to the PUB. This includes the responsibility to consider the following factors as the focus of the review:

- ***Changes to territorial rating system need to be carefully examined and adjusted to truly reflect loss costs regionally.***
- ***Territories to be statutorily defined and regulated and OIC 70 - 162 be rewritten to reflect the changes to SPF No 1, Section A.***
- ***The Public Utilities Board, in concert with the Superintendent of Insurance, shall review and re-adjust the current boundaries of the territories to reflect:***
 - ***Equitable population distribution,***
 - ***A level playing field, and***
 - ***Equal treatment for all New Brunswickers.***
- ***In accordance with OIC 70 - 162, companies wishing to do business in the Province of New Brunswick must be licensed in New Brunswick and must write in all territories.***
- ***The exit and entry guidelines as stated in the regulations must be re-evaluated with a view to controlling more stringently how and when companies leave the Province. If companies choose to leave, it should be more difficult to re-enter.***
- ***Companies must also adhere to strict exit as well as entry criteria as stated in the regulation.***
- ***Consider a “made in New Brunswick” solution as an option.***

- ***Once territorial rating is redefined, there must be some guarantee that access to insurance will increase, especially in the north of the province.***

The Government agrees that the current restriction on territorial rating for third party liability rating purposes is a factor affecting accessibility to automobile insurance in northern New Brunswick. The Government will therefore remove the restriction preventing insurance companies from rating third party liability in the current territories which exist in New Brunswick.

The Government will follow the Select Committee recommendation and ask the new Automobile Insurance Review Panel to conduct an examination of the impact of allowing insurance companies to create their own territories, in concert with the new rate regulations the Government is putting in place, to ensure that it would lead to more competition, consumer choice and greater accessibility to automobile insurance.

13 - The Committee recommends that the activities and responsibilities of the Public Utilities Board immediately be restored to the pre-1997 regulatory regime and that the following factors be reflected in this recommendation:

- ***Companies revert from the current “file and use” system to the former regulatory regime.***
- ***Rate increases (or decreases) for all territories are to be monitored and approved by PUB as per the pre-1997 standards.***
- ***This change in the statute is retroactive to July 1, 2002.***
- ***The industry will act in good faith by refraining from imposing any rate increases during this period.***
- ***The absence of compliance with this good faith premise (the good faith premise being part of the insurance contract) shall result in a retroactive legislated solution.***

The Government agrees that the introduction of the “file and use” system in 1997 has not benefited consumers as intended, and that strengthening the PUB’s ability to regulate rates will help address the issue of affordability of automobile insurance. The Government will therefore create a new Automobile Insurance Review Panel to support the Public Utilities Board in reviewing future rate increases. The role of the new Automobile Insurance Panel will be to review future rate increases, monitor insurance issues affecting both companies and consumers, and undertake analysis and collect accurate statistics on accidents, claims, and industry performance to ensure third-party assessment of the automobile insurance market in New Brunswick.

The Government will impose new regulatory requirements on the insurance industry through amendments to the Insurance Act to create a new rate regulation system that adopts the best elements of both the pre-1997 and the current system of rate regulation.

Specifically, the Government will propose amendments:

- Requiring insurers to file their rates at least once every 12 months;
- Requiring an insurer who files new rates more than twice in any 12-month period to appear before the new Automobile Insurance Review Panel; and
- Requiring an insurer wishing to raise its rates by more than 3% over any 12-month period to appear before the new Automobile Insurance Review Panel to justify the increase.

14 - The Committee recommends that industry standards be established in a uniform and consistent set of guidelines that are known to the buying public. Such guidelines would include concerns over lapse of coverage, age of vehicle, how NSF checks are handled, how each insurer deals with occasional under-age drivers, whether certain claims are “chargeable” or not, questions concerning middle market risk and the rating of seniors. All such underwriting guidelines should be mandatory and made uniform to all insurers transacting business in New Brunswick.

The Committee further recommends that a set of mandatory minimum underwriting guidelines for all insurers wishing to transact business in New Brunswick be developed jointly by the PUB, the Superintendent of Insurance and the Insurance Industry.

Finally, the Committee recommends that the mandatory guidelines and all other guidelines particular to the individual insurers, be attached to all new policies and be the subject of marketing processes that more thoroughly inform consumers.

The Government agrees that as a matter of fairness, insurers should only base a decision whether or not to insure a person on factors that legitimately reflect the person’s risk. The Government further agrees with the Committee that underwriting practices of certain insurers need to be addressed.

Government will introduce amendments to the Insurance Act and regulations to prohibit insurers from refusing to insure a person, and from canceling or refusing to renew a person’s existing automobile insurance policy, on the basis of any one or any combination of the following grounds:

- age of the person
- age of the vehicle
- past claims under the policy for which the person was not at fault
- one missed premium payment
- lapse in coverage
- the fact that a person insured under a group plan has left the group
- the fact that a person has been refused coverage by another insurer or had another insurer decide not to renew the person’s coverage, or
- the fact that a person is or has been insured by the Facility Association

15 - The Committee recommends that PUB re-examine gender and age discrimination (especially gender discrimination for underage drivers and age discrimination for senior drivers) and any other aspects of driver profiling to eliminate discrimination, generally accepting the premise that the insurance industry has the right to assess risk based upon drivers' skills and abilities.

The Government strongly opposes discrimination. The Government will help address this issue by strengthening the role of the PUB and regulating underwriting practices, as set out in the responses to recommendations 13 and 14.

16 - The Committee acknowledges that fraud is of concern to the insurance industry and to the public and concludes that some of the following approaches are achieving desired results in other jurisdictions:

- ***Establish and share data bank information concerning false or exaggerated claims.***
- ***Monitor nuisance claims.***
- ***Develop inter-provincial co-operation.***
- ***Apply consequences commensurate with levels of fraudulent activities.***
- ***Create holding compounds for accident vehicles.***
- ***Provide a verification system regarding vehicle repair receipt expenditures.***
- ***Create anti-fraud communication programs.***

The Government endorses this recommendation and will work with industry in support of their efforts to reduce insurance fraud.

17 - The Committee acknowledges that cost control is of primary importance to the industry and to the consumer. Questions raised during the Committee's deliberations, however, pointed to some areas where the industry could achieve additional measures of consumer confidence by establishing a more transparent approach. These include:

- ***Justification processes concerning operational costs.***
- ***Reasonable premium adjustments.***
- ***More stringent claims management.***

The Government endorses this recommendation. Government has raised the Committee's concerns with transparency in cost-control efforts to industry representatives.