



PUBLIC UTILITIES BOARD
Automobile Insurance Review

Report to Government

March 2005



Board of Commissioners
of Public Utilities
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The Honourable Dianne Whalen
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Government of Newfoundland and Labrador
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Dear Minister:

In October 2004, the Provincial Government requested the Board to review and report on a number of issues affecting automobile insurance. These issues included the impact of using caps or deductibles to limit monetary awards for pain and suffering, the elimination of age, gender and marital status as rating factors, and other cost savings measures.

In addition to the completion of a number of actuarial studies and other consultant reports the Board invited feedback from consumers, the automobile insurance industry, and other interested parties through various means, including public sessions. We have received valuable information from these submissions and on behalf of the Board we thank those who participated and contributed to this process.

We are pleased to advise that the Board has completed its review and is now submitting its Report.

Respectfully submitted,

Robert Noseworthy,
Chair and CEO.

Darlene Whalen, P. Eng.,
Vice-Chair.

EXECUTIVE SUMMARY

The Issue

Rapidly rising automobile insurance rates continue to resonate as a significant public and political issue. In part this has been the result of a cycle of crisis and reform that has been characteristic of the industry over several decades. Arising from this latest cycle numerous jurisdictions throughout the United States and Canada, and closer to home in Atlantic Canada, have implemented a wide variety of reform measures in an effort to better regulate and stabilize fluctuations in automobile insurance rates. In 2004 Government implemented a series of reforms to address rising rates and other issues affecting automobile insurance consumers in this Province. Among these reforms was a \$2,500 deductible on pain and suffering awards resulting from an automobile accident, a one year rate freeze on insurance premiums which expired on March 16, 2005, a mandated reduction in rates and increased regulation.

The Review

At that time Government introduced legislation to enable it to direct the Public Utilities Board to undertake a review of other automobile insurance issues that may lead to additional reforms. The Terms of Reference forwarded by Government in October 2004 requested the Board to review and report on several issues. This report contains the outcome of the public review conducted by the Board into these issues.

Rates

Automobile insurance rates in Newfoundland and Labrador are entering a period of general stability. As a result private passenger rates can be expected to decline in the near term, regardless of the implementation of further reforms. Commercial rates, on the other hand, may increase somewhat.

Caps/Deductibles

A major focus for the review was the impact on insurance rates of placing various caps and deductible limits on compensation paid for pain and suffering to victims of an automobile accident. The options studied by the Board are similar to those implemented recently in other Canadian jurisdictions and will allow Government to consider alternatives to the current \$2,500 deductible. While all options did not lower insurance premiums, the higher deductible limits and the \$2,500 cap, similar to that recently introduced in New Brunswick, resulted in the greatest estimated savings for consumers. Industry favored the New Brunswick option since it is estimated to result in lower claims costs, is easier to administer, and will harmonize the product in this Province with other Atlantic provinces.

In restricting tort (“right to sue”) through cap or deductible options the Board heard passionate presentations and comments from participants concerning what the Consumer Advocate characterized as the classic “rights versus rates” debate. Many consumers, in particular accident

victims whose lives have changed tremendously due to soft tissue injury, did not favor their rights being restricted. The question for many was *“is it worth forfeiting my rights and the rights of others for the savings in my rates?”* Following his review of the estimated savings attributed to these options the Consumer Advocate commented *“some people might be giving up a lot and most people are getting very little in return.”* The industry on the other hand were steadfast in their resolve that these options were working elsewhere in achieving substantial rate reductions and should be implemented in this Province. With a view to deciding between either a cap or deductible, some consumers favored deductibles, while the industry preferred caps.

The Board acknowledges a decision on this issue will be a difficult one and commends to Government the substantive feedback and commentary from both consumers and the industry as outlined in this report.

The Board also explored the opportunity of providing product choice to consumers of either restricted tort, using caps or deductibles, or full-tort. Depending on Government’s decision with respect to caps or deductibles, there are several additional issues which should be addressed in concert with the implementation of liability product choice.

Other Review Issues

The Board was requested to address a number of additional issues while others were raised by participants during the course of the review. These issues included:

Accident Benefits coverage (also referred to as Section B benefits) provides for immediate reimbursement of certain expenses incurred as a result of an automobile accident regardless of who is at fault. Newfoundland and Labrador is the only provincial jurisdiction where these benefits are not mandatory. There was a general consensus Accident Benefits should be mandatory which will ensure that the 25% of drivers without this coverage will have protection similar to other Canadians.

The **elimination of age, gender and marital status as rating factors** generated considerable discussion, especially from young males under 25 and/or their parents who feel discriminated against because of the current exorbitant rates they pay. The Board examined rating alternatives which are being used in other jurisdictions including the “Alberta grid rating” system and the “First Choice Discount” in New Brunswick. This issue involves significant transfer of premium particularly when considering age and gender factors. There was no clear resolution on this question with strong arguments for and against. The decision is one of social policy, where the availability and affordability of automobile insurance to one group in the demographic population must be balanced against the transfer of risk and higher rates to another group.

Group rating plans are programs sponsored by membership organizations and employers and are underwritten by insurance companies, generally providing premium savings to the group, plan or member/employee. Excepting provinces with public insurance, Newfoundland and Labrador remains the only jurisdiction in Canada that currently does not allow some form of group automobile insurance. Legislative changes will be required to implement this proposal

and various implementation issues have been identified in the report which will need to be addressed with the industry.

The Board was also requested to detail any issues of concern raised by stakeholders at the review, including **public insurance**. The Board heard a great deal from participants regarding public insurance and the experience elsewhere in Canada. A number of participants supported the concept of public insurance as a cheaper and more affordable means of delivering the insurance product. It was well understood by all participants that the Board was not in a position to address the feasibility of public insurance during this review but many supported a detailed study to examine fully its potential in serving future automobile insurance needs in this Province.

Stakeholders also suggested numerous **other cost saving measures**. These included a direct compensation scheme, vehicle inspections, improved accident reduction and safety programs, reduced transactional and regulatory costs, taxation and numerous other suggestions. These cost savings were not quantified in most cases but were presented in a sincere and helpful manner. The Board commends these measures to Government for consideration and the Board would be prepared to undertake any additional analysis necessary.

In addition the Board was impressed by one of the presenters who addressed the **concept of focusing on treatment and recovery** of the automobile accident victim rather than on compensation. Appropriate early intervention and treatment can bring about speedier recovery of the injured person, resulting in lower costs to the system and possibly lower premiums to the consumer. Both the industry and Government may wish to pursue discussion on the benefits and opportunities afforded consumers through development and focus on this longer-term strategic approach.

Throughout the review the Board was struck by the **frustration and low level of customer satisfaction** expressed by consumers in their dealings with insurance companies. This experience was echoed by the Consumer Advocate, relative to his direct feedback from consumers. Consumers were often quite vocal in their complaints that ran the full gamut from the treatment they or their family received respecting an injury claim, application of seemingly arbitrary and unfair guidelines, and the lack of suitable explanation and information available on insurance policies. The Board's research reveals this is not unique to this province and, in hard market conditions which all consumers have recently encountered, customer satisfaction deteriorates and frustration heightens. While Bill 30 reforms relating to underwriting guidelines will address some of these issues, there are other possible measures which may be explored, including an ombudservice, a consumer bill of rights, and a help-line. While Government may wish to consider the implications of this volatile consumer response when considering any further reforms, the Board is of the view that the insurance industry should also be compelled to reflect on by this aspect of the review.

Finally it was acknowledged by many participants that the cycle of crisis and reform does not benefit consumers. During the review the industry proposed a partnership with Government targeted toward a **new regulatory regime** intended to ameliorate the impact of these cycles and provide greater stability for consumers and industry alike. The opportunity presented by this proposal may be of interest to Government.

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1.0 INTRODUCTION

1.1 Scope and Objectives

This report was requested by Government to provide a foundation for the determination of public policy decisions affecting various automobile insurance issues in the Province. Since the formulation of public policy is the mandate of Government, this report does not make any specific recommendations concerning these issues.

The report will present the results of various independent studies, as well as the results of the Board's own research and analysis of various issues. The report also details information presented during public sessions and other comments or input received by the Board on both the issues outlined in the Terms of Reference as well as other matters raised with the Board during the course of the review.

1.2 Mandate and Authority

The Newfoundland and Labrador Board of Commissioners of Public Utilities (the "Board") is an independent administrative tribunal which has responsibility for the supervision of automobile insurance rates and underwriting guidelines in the Province. The Board derives its mandate and authority to regulate aspects of the automobile insurance industry from provincial statutes and legislation, primarily the *Public Utilities Act*, the *Automobile Insurance Act*, and the *Insurance Companies Act*. The *Public Utilities Act* constitutes the Board and provides authority for the Board in discharging its mandate. The *Automobile Insurance Act* sets out the Board's responsibilities with respect to the regulation of automobile insurance rates in the Province. The *Insurance Companies Act* sets out the Board's role with respect to regulation of underwriting guidelines, risk classification systems, grounds for refusing to issue, decline or terminate insurance coverage, and also regulation of Facility Association's rates.

This review was conducted pursuant to a direction from Government under section 3.1 of the *Insurance Companies Act*, which states that:

3.1 (1) The Lieutenant-Governor in Council may by order direct the board to conduct a review of any aspect of insurance in the province on the terms and conditions that the Lieutenant-Governor in Council may specify.

(2) The board may by order require an insurer carrying on business in the province to provide it with the information that the board considers necessary to conduct the review.

(3) The provisions of the Public Utilities Act relating to the constitution, powers, procedures and practices of the board apply to and in respect of the board in the conduct of a review under this section.

(4) The provisions of the Public Utilities Act relating to investigations generally shall apply to and in respect of the board or commissioners of the board in the conduct of a review under this section.

(5) The board shall recover all expenses in connection with a review under this section including costs of counsel, engineers, valuers, stenographers, accountants and other assistants employed or retained by the board as well as the salaries and expenses of the members of the board while employed in and about the review, by assessing insurers who hold a license to provide insurance which is the subject of the review.

(6) The board may assess each insurer in the same manner as if the insurers were public utilities under section 13 of the Public Utilities Act or in another manner that the board considers equitable.

(7) An insurer shall pay an amount assessed under this section within 1 month after it has been notified by the board of the amount, and in default of payment the board may sue for and recover the sum in a court.

(8) The Lieutenant-Governor in Council may appoint, on the terms and conditions the Lieutenant-Governor in Council may determine, a consumer advocate for the purpose of a review by the board under this section.

(9) The costs relating to the consumer advocate shall be paid by the board and shall be included in the expenses recovered under subsection (5).

This section was proclaimed as part of a series of reform measures implemented by Government on August 1, 2004.

1.3 Terms of Reference

Flowing from this legislation, on October 28, 2004 Government issued the “**Terms of Reference for the Public Utilities Board Review Into Automobile, Homeowners, Commercial and Marine Insurance.**” (See Exhibit 1) This Terms of Reference sets out the specific issues which the Board was asked to review. This report relates only to the automobile insurance phase of the review. A further report will address the other types of insurance.

The specific issues relating to automobile insurance as set out in the Terms of Reference are as follows:

“The Public Utilities Board shall undertake a review and report on the issues outlined below with respect to Automobile, Homeowner, Commercial and Marine insurance in the province and in addition shall detail other issues of concern raised by stakeholders participating in the review, including public insurance.”

Automobile Insurance

- *To conduct a closed claims study to determine the costs associated with third party liability bodily injury claims arising from the use of private passenger and commercial automobiles.*
- *To review the impact on rates of the use of a monetary cap of various amounts on claims for non-economic loss for minor/mild injuries and the implications of such a cap for claimants.*
- *To review the impact on rates of the use of a deductible of various amounts on claims for non-economic loss and the implications of such a deductible for claimants.*

- *To review the feasibility and impact on rates of providing consumers one of the following choice options when purchasing liability coverage:
 - 1) *no restrictions on non-economic loss; or a cap on the amount of non-economic loss recoverable; and*
 - 2) *no restrictions on non-economic loss; or a deductible from the amount of non-economic loss recoverable.**
- *In relation to accident benefits, to review the implications of mandating that consumers carry accident benefits coverage with respect to:
 - *the impact on rates;*
 - *benefits to claimants; and*
 - *integration with other insurance plans.**
- *To review the implications to policyholders of the elimination of age, gender and marital status as rating factors, including an examination of alternative rating systems such as the proposed Alberta grid rating system with an allcomers rule.*
- *To review the implications of permitting group rating.*
- *To report on any additional cost saving measures identified by the Board during its review.”*

On December 7, 2004 Government provided additional direction to the Board with respect to the review of the impact on rates of the use of a monetary cap for minor/mild injuries or a deductible on payments for pain and suffering. (Exhibit 2) Government directed the Board to provide an analysis based on caps and deductibles ranging from \$2,500 to \$15,000 at \$2,500 intervals, as well as a \$4,000 cap similar to that in place in Alberta. This direction requested the Board to provide an analysis of the caps based on three definitions of minor/mild injury, and also stated:

“As the terms of reference states, in addition to the projected cost savings of the various scenarios, we require an analysis of the implications to claimants on the various definitions, including the pros and cons of each. Also we would like to hear of any other possible reasonable options put forth based on what comes out of the hearing and your analysis.”

1.4 Consumer Advocate

On September 24, 2004 Mr. Thomas Johnson, LL.B., was appointed as Consumer Advocate, pursuant to section 3.1 of the *Insurance Companies Act*, to represent consumers at the review. The Consumer Advocate participated fully throughout the review by providing information to the public in various media venues, gathering public input, engaging actuarial experts, making written submissions and an oral presentation to the Board, and facilitating additional presentations on specific issues.

1.5 Review Process

1.5.1 Review Committee

Commissioners of the Board who conducted this review were Mr. Robert Noseworthy, Chair and Chief Executive Officer and Ms. Darlene Whalen, P.Eng., Vice-Chair. Commissioners would like to thank the staff of the Board for their support and dedication in completing this review on a timely basis.

1.5.2 Studies and Reports

The Board engaged several consultants who played a critical role in the completion of the various studies and reports conducted for the review. In particular, the Board's consulting actuaries, Mercer Oliver Wyman Actuarial Consulting Limited (Mercer) completed a series of studies to determine the impact on rates of restricting monetary awards for pain and suffering, by using other deductibles or caps using specified injury definitions. These studies included:

1. Private Passenger Automobile Closed Claims Study – 2004, Newfoundland and Labrador. January 18, 2005.
2. Estimates of the Impact on Private Passenger Insurance Premium Resulting from the Implementation of a Deductible or Cap, Newfoundland and Labrador. January 7, 2005. (Revised January 18, 2005)
3. Commercial Automobile Closed Claims Study – 2004, Newfoundland and Labrador. January 18, 2005.
4. Estimate of the Impact on Commercial Automobile Premium Resulting from the Implementation of a Deductible or Cap, Newfoundland and Labrador. January 18, 2005.
5. Report on Other Automobile Insurance Issues: Choice Options for Liability Coverage; Mandatory Accident Benefits; Elimination of Age, Gender, and Marital Status in Rating; Group Rating; and Other Issues. February 1, 2005.

The Board's other consultants: Mr. Bern Fitzpatrick, Insurance Consultant; Dr. Sue Rideout-Vivian, Medical Consultant; and NKHK, Chartered Accountants, also assisted in the analysis and completion of related studies and reports.

These studies and reports were made available to the public on the Board's website at www.pub.nl.ca and became a key focus for public input and comment on many of the issues under review.

The Board utilized a host of other related reports, studies and reference material in conducting this review, including the Report of the Select Committee on the Property and Casualty Insurance Industry in Newfoundland and Labrador (1997) and the Report to the Atlantic Premiers of the Atlantic Canada Harmonization Task Force (September 2003).

1.5.3 Procedures

With the passage of legislation and the accompanying direction contained in Government's Terms of Reference, the Board was given authority to review and report on aspects of insurance in the Province in addition to its usual oversight of rates and underwriting guidelines. The

Board's expertise in the regulation of automobile insurance in the Province allowed the Board to fill this role in a meaningful and timely way.

In the first instance the Board was compelled to examine the application of its existing quasi-judicial procedures in adapting to this new mandate. The Board recognized that a more streamlined approach was necessary to meet its new obligations in a timely manner while still respecting the fundamental principles of accessibility, openness, transparency and cost-effectiveness. The approach adopted would allow the Board to review and report on the many technical and complex issues that would be the subject of the review. The process included: an opportunity for written requests for information to be exchanged among the participants; a public actuarial roundtable rather than a formal right of cross examination; a full opportunity for public input through presentations, written comments, and transcribed voice mail messaging, rather than sworn evidence; and a detailed report with commentary rather than decisions of the Board. This approach was communicated to interested persons who attended a meeting at the Board's offices in December 2004 and was subsequently set out in the procedural guidelines established for this review.

Concerns were initially expressed by some participants in relation to the approach adopted by the Board for the review. Several participants argued that the Board should have adopted processes more consistent with its quasi-judicial procedures. Other participants specifically requested the right of cross examination. Opposition to the process was strongly expressed early in the public sessions by Mr. Jerome Kennedy, Counsel for the Coalition Against No Fault Insurance. During the presentations the Board's Chair/CEO, Robert Noseworthy, provided an explanation as to the adoption of these particular procedures. The participants were invited to submit written comments on the process with suggestions for improvements for future reviews. As the review progressed there appeared to be a greater acceptance of the procedures and the public sessions proceeded smoothly. The Board notes that some of the participants subsequently provided written comments proposing future procedural changes and these will be considered along with any other comments received.

On this matter, the Board highlights the Supreme Court of Newfoundland and Labrador Trial Division comments on the approach taken by the Board, made in the context of an application by the Consumer Advocate for the issuance of subpoenas. Justice Hall stated at paragraph 33:

"I am satisfied that the Terms of Reference granted to the PUB invests the PUB with the mandate to conduct a "review" and to "report on the issues outlined below with respect to automobile...insurance." There is nothing in this mandate which, in my view, takes it out of a public policy recommendation and renders the review and report judicial or quasi-judicial in nature."

1.5.4 Review Schedule

The Terms of Reference were issued in October 2004. The closed claims study was well underway and it and other related studies were completed by January 2005. Participants were then afforded an opportunity to ask questions in writing to assist in their written submissions to be presented during the later public sessions.

During the week of February 14-18, 2005 the Board scheduled a series of presentations of the actuary and the other consultants who assisted with the closed claims studies. The actuaries for the Insurance Bureau of Canada (IBC) and the Consumer Advocate also made presentations. In addition, the Board held a roundtable where the actuaries addressed issues raised in the studies and presentations. These presentations and the roundtable discussion were held before the Commissioners and were open to the public.

During the week of February 21-25, 2005 the Board heard presentations in St. John's from interested groups, organizations, insurance companies, MHAs, and private citizens. The Board also travelled to Corner Brook, Happy Valley-Goose Bay and Gander during the period February 28 to March 3, 2005 to hear presentations from interested persons in those areas. The Board held evening sessions in each location.

In addition to the public presentations interested persons and organizations were invited to make their views known to the Board in writing via the Board's website, by letter or by fax, or by telephone on the Board's toll-free number.

1.5.5 List of Participants

Exhibit 3 provides a complete listing of persons and organizations who participated in the review through either presentations, written comments or other available means.

1.5.6 Communications

A number of key communications challenges were identified surrounding the new approach of the Board and the complicated subject matter for the review. It was necessary to adopt a communications plan that would ensure the opportunity for all interested persons and groups to have full knowledge of the reason for the review, the Board's role in the review, the key dates, explanation of the issues, access to all relevant documentation, and details on how to become involved. A communications approach was developed outlining key messages and tools to ensure that the Board's objectives were met. Some of the communication tools included print and radio ads, public service announcements, an information brochure, a full media relations program, and website content.

The Board notes its communications efforts resulted in the following:

- the public and all interested groups were fully aware of the review and the process and how to become involved;
- information regarding the review was widely disseminated to interested persons and organizations;
- the news media were provided with detailed and timely information; and

- the review generated a great deal of news media coverage which generally focused on the issues of the review and not procedural matters.

The Board however, observes that consumer participation in the automobile insurance review process was lower than anticipated.

1.5.7 Other Considerations

During the review two applications were filed with respect to administrative and procedural decisions of the Board.

The Consumer Advocate made Application to the Supreme Court of Newfoundland and Labrador Trial Division for a Judicial Review of the Board's decision to refuse a request for the issuance of subpoenas to view files used in the closed claims study. This Application was heard on February 16 and 25, 2005 before the Honourable Mr. Justice Robert Hall who issued his decision on March 17, 2005 dismissing the application of the Consumer Advocate, advising that he was:

"...satisfied that the mandate of the Board does not attract any duties of procedural fairness which would compel the Board to require the issuance of subpoenas resulting in the disclosure of a number of selected closed claims files..."

A Motion was also filed with the Board by the Coalition Against No Fault Insurance alleging a reasonable apprehension of bias.

This motion was heard before a separate panel of Board Commissioners and on February 22, 2005, the motion was dismissed with reasons to follow. The reasons were subsequently issued.

1.6 **Report Structure**

In an effort to present the information gathered in a user-friendly format, the Board has organized the report along the issues set out in the Terms of Reference. In addition to the review of the issues expressly identified in the Terms of Reference, the Board has reported on other cost saving measures and other issues identified during the process and has provided additional commentary where appropriate and necessary.

2.0 BACKGROUND

This section is intended to provide useful background information and explanation to assist in consideration of the issues contained in this report.

2.1 Automobile Insurance – General

2.1.1 Insurance Overview

An overview of the automobile insurance systems throughout Canada comparing Newfoundland and Labrador with other provincial/territorial jurisdictions is outlined in Exhibit 4.

As the information in Exhibit 4 shows, the delivery and structure of automobile insurance systems in Canada varies by province, ranging from private, full-tort recovery based systems to public no-fault systems. Some tort systems have restrictions in the form of deductibles and/or caps on pain and suffering awards. The method for setting premiums and rating for insureds also varies. While most provinces use industry standard rating practices, some provinces have, through legislation, restricted the practice of rating of drivers based on age and marital status. Rates for automobile insurance are usually regulated in some fashion, either by an independent regulatory agency or set by Government.

The benefits available under the standard automobile insurance policy also varies by jurisdiction. (See Exhibit 5) All jurisdictions mandate Third Party Liability coverage but the minimum required coverage varies. There are significant differences in the level of coverages available under mandated Accident Benefits coverage.

2.1.2 Insurance Coverages and Pricing

Automobile insurance for both private passenger and commercial vehicles is provided by companies licensed in the Province. Each company establishes its own individual rates, underwriting rules and other practices and procedures under the general supervision of the Board. Each company provides a variety of coverages, including Third Party Liability, Collision, Uninsured Motorist, Comprehensive and Accident Benefits. Third Party Liability coverage provides compensation for an innocent claimant or third party, and includes both the bodily injury and property damages suffered by a third party in an automobile accident as a result of the negligence of the insured. Other coverages compensate the insured person for losses, including damage to the insured vehicle.

A description of the standard automobile insurance coverages along with the proportion of premium relating to all the coverage is set out below.

Automobile Insurance Coverages		
Coverage	Description	% of Premium*
Third Party Liability	Indemnification, up to the policy limit, of the insured for damages arising from Bodily Injury (includes economic loss e.g. wages and non-economic loss e.g. pain and suffering) or Property Damage caused to others arising from the policyholder's negligent operation of the insured vehicle.	45-66%
Collision	Indemnification of the insured for damages caused to the insured vehicle arising from a collision or upset. Subject to a deductible.	15-31%
Comprehensive	Indemnification of the insured for any damage caused to the insured vehicle for any peril other than collision or upset. Subject to a deductible.	7-12%
Specified Perils	Indemnification of the insured for any damage caused to the insured vehicle for the perils specified in the coverage. Specified Perils is a group of 11 named perils such as fire, lightning, theft, windstorm and others. These perils are included under the comprehensive coverage, thus an insured need not purchase both. Subject to a deductible.	2%
Accident Benefits	Partial indemnification paid to the insured and certain others on a no-fault basis for: i) Medical, Rehabilitation and Funeral Expenses; ii) Death Benefits; iii) Loss of Income/Total Disability; and iv) Accidents in Quebec.	7-10%
Uninsured Motorist	Indemnification of the insured for bodily injury and death arising from an accident with an uninsured or unidentified vehicle. In cases of an uninsured vehicle, where the owner or driver is identified, this also covers the insured for property damage to the insured vehicle. Subject to a deductible.	1-3%

*These percentages represent the portion that each coverage bears to the total cost of full automobile insurance coverage in Newfoundland and Labrador, excluding taxes and endorsements, based on the Board's 2005 benchmark study. These vary by Territory within the range.

Premiums for these coverages are determined by each company on the basis of actuarial pricing models. Actuarial¹ pricing models for automobile insurance are forward looking or prospective in nature². Their purpose is to determine the overall amount of premium that should be charged in a future period that, together with expected investment income earned on the cash flows from

¹ Actuaries are persons who compute premium rates, dividends, risks, etc. according to probability based on statistical records. (Source: Random House Dictionary)

² Description of insurance pricing sourced from Canadian Institute of Actuaries, Report on the Task Force on Automobile Insurance Issues, March 2005, pgs 9-10.

the policies written, will be sufficient to meet anticipated future costs and a target profit/contingency margin. These costs are:

- claims and claim adjustment costs;
- commissions and other business acquisition costs;
- premium taxes; and
- policy servicing and other operating expenses.

The general principles of risk assignment suggest that a person who presents a higher risk of causing a claim to be made should be charged a higher premium. For automobile insurance, with literally millions of similar risks (millions of drivers, and millions of vehicles), the process of charging premiums based on risk is done through classification using a variety of rating factors. The premium that is charged to an individual on a personal automobile insurance policy is based on many rating factors, the main ones being:

- Driving experience and characteristics of the drivers of the vehicles;
 - the number of drivers, the at-fault claim history and conviction history of each driver, age, gender and marital status of the driver, and years of licensed driving experience.
- Characteristics of the vehicle itself;
 - make, model and year.
- Where the vehicle is principally driven or garaged;
 - Territory.
- What the vehicle is used for;
 - pleasure, commuting to and from work, or business.

Many provinces put limitations on the rating factors companies are permitted to use. A rating factor accepted in one province may be prohibited in another.

2.2 Automobile Insurance – Newfoundland and Labrador

2.2.1 Industry Structure

The 2003 Report of the Superintendent of Insurance identified 51 automobile insurance companies operating in Newfoundland and Labrador who, by virtue of the *Insurance Companies Act*, also participate in the Facility Association, the insurer of last resort for high risk drivers. The automobile insurance market is highly concentrated in the Province with the top 11 companies writing approximately 84% of all business written in 2003, the top 20 writing 96% and the top 25 writing 99% of the market. The market share by company, on the basis of direct premiums written, for each of the top 25 insurers is shown in the table on page 11.

Newfoundland and Labrador Automobile Insurance Market Share by Company (2003 Direct Premiums Written)			
	Total	Market Share	Total
Unifund Assurance Company	\$ 49,974,000	18.24%	18.24%
CGU Insurance Company of Canada	\$ 41,352,000	15.09%	33.34%
Insurance Corporation of Newfoundland	\$ 30,706,000	11.21%	44.55%
Co-operators General Insurance Company	\$ 26,364,000	9.62%	54.17%
Dominion of Canada General Insurance	\$ 18,963,000	6.92%	61.09%
Metro General Insurance Company	\$ 16,332,000	5.96%	67.05%
Colonial Fire & General Insurance	\$ 12,815,000	4.68%	71.73%
Federation Insurance Company Canada	\$ 11,104,000	4.05%	75.78%
Lombard General Insurance	\$ 7,707,000	2.81%	78.60%
Elite Insurance Company	\$ 7,502,000	2.74%	81.34%
Royal/Sun Alliance Insurance	\$ 6,767,000	2.47%	83.81%
Scottish and York Insurance Company	\$ 6,544,000	2.39%	86.19%
Atlantic Insurance Company Limited	\$ 5,296,000	1.93%	88.13%
Coseco Insurance Company	\$ 5,015,000	1.83%	89.96%
Traders General Insurance Company	\$ 4,480,000	1.64%	91.59%
Primum Insurance Company	\$ 3,864,000	1.41%	93.00%
Lombard Insurance Company	\$ 2,642,000	0.96%	93.97%
Zurich Insurance Company	\$ 2,445,000	0.89%	94.86%
Security National Insurance Company	\$ 2,089,000	0.76%	95.62%
Markel Insurance Company of Canada	\$ 1,825,000	0.67%	96.29%
Personal Insurance Company Canada	\$ 1,744,000	0.64%	96.93%
ING Insurance Company of Canada	\$ 1,490,000	0.54%	97.47%
Pembridge Insurance Company	\$ 1,469,000	0.54%	98.01%
St. Paul Fire and Marine Insurance Company	\$ 1,060,000	0.39%	98.39%
Echelon General Insurance Company	\$ 807,000	0.29%	98.69%

Source: 2003 Report of the Superintendent of Insurance

The automobile insurance market in the Province is also small relative to other jurisdictions as illustrated below.

Comparative Market Size (2003 Direct Premiums Written)			
Province	Private Passenger	Commercial	Total
Prince Edward Island	\$ 62,857,536	\$ 7,367,900	\$ 70,225,436
Newfoundland and Labrador	\$ 224,728,070	\$ 19,682,359	\$ 244,410,429
New Brunswick	\$ 423,829,379	\$ 42,108,410	\$ 465,937,789
Nova Scotia	\$ 435,005,259	\$ 42,682,737	\$ 477,687,996
Ontario	\$ 7,863,784,667	\$ 579,056,162	\$ 8,442,840,829
Alberta	\$ 1,965,027,527	\$ 307,994,284	\$ 2,273,021,811

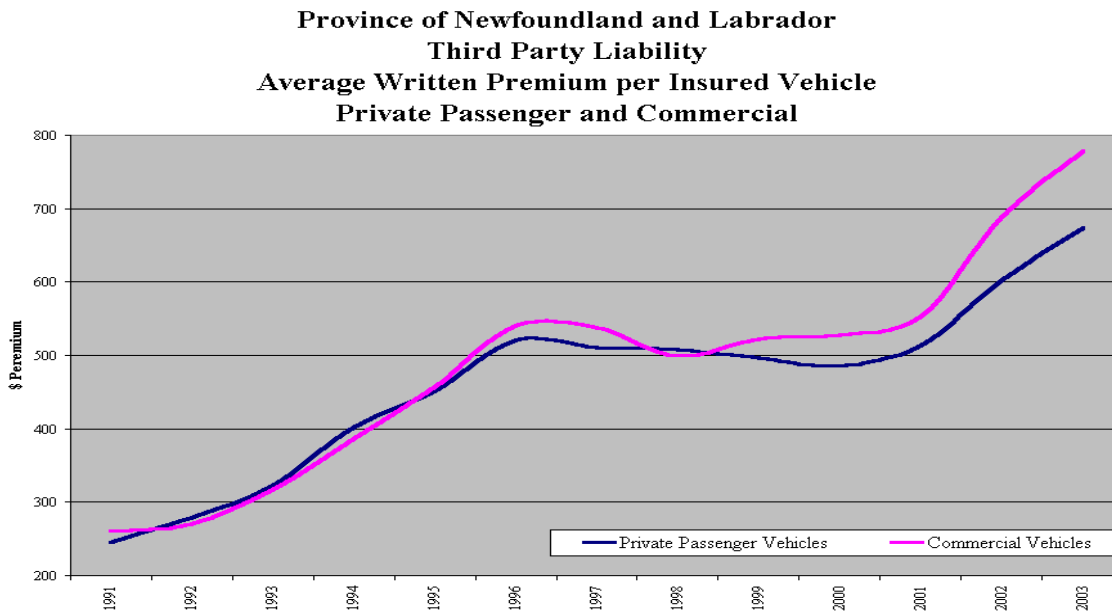
Source: IBC 2003 AU10-D

2.2.2 Insurance Premiums

The written premiums and vehicle data³ for the Newfoundland and Labrador market for 1991-2003 are shown in the following table and graph.

Written Premiums and Vehicles Third Party Liability Coverage Only						
	Private Passenger Vehicles			Commercial Vehicles		
	Written Vehicles	Written Premium	Average Premium	Written Vehicles	Written Premium	Average Premium
1991	203,901	\$ 50,036,888	\$245.40	19,396	\$ 5,055,650	\$260.65
1992	205,546	\$ 57,404,164	\$279.28	16,733	\$ 4,529,477	\$270.69
1993	200,314	\$ 64,763,760	\$323.31	16,037	\$ 5,084,656	\$317.06
1994	207,037	\$ 83,188,527	\$401.81	15,935	\$ 6,154,894	\$386.25
1995	208,100	\$ 94,069,806	\$452.04	13,758	\$ 6,300,669	\$457.96
1996	202,542	\$105,639,561	\$521.57	13,213	\$ 7,145,104	\$540.76
1997	205,215	\$104,881,855	\$511.08	15,296	\$ 8,238,367	\$538.60
1998	210,173	\$106,783,500	\$508.07	16,297	\$ 8,150,150	\$500.10
1999	199,170	\$ 99,072,590	\$497.43	15,573	\$ 8,129,411	\$522.02
2000	220,230	\$106,877,895	\$485.30	17,015	\$ 8,983,650	\$527.98
2001	222,449	\$114,221,889	\$513.47	19,080	\$10,561,848	\$553.56
2002	216,657	\$130,669,428	\$603.12	17,582	\$12,121,236	\$689.41
2003	217,266	\$146,315,373	\$673.44	18,872	\$14,689,133	\$778.36

Source: IBC 2003 AU10-10- D



³ Written premiums are the total premiums charged by insurers operating in the market for all classes of automobile insurance and the vehicle count includes both public passenger and commercial vehicles.

As can be seen from the graph, the rate of increase in premiums for private passenger and commercial vehicles are similar for the period. Premiums for the period ending in 2003 reflect an average annual increase for the latest 5-year period of 9.09% and for the 10-year period of 4.94%.

2.2.3 Regulation and Supervision

Under section 48 of the *Automobile Insurance Act* the Board has the responsibility for the general supervision of the rates an insurer charges or proposes to charge in the province for automobile insurance. In order to fulfill this responsibility the Board requires: i) an annual filing by each insurance company of the rates proposed to be charged; ii) the application by insurance companies for approval of any changes in the rates that have been approved; and iii) the provision of additional information as required to support any application for approval of proposed changes to the rates.

Since 1997 the Board has utilized a benchmarking process in regulating automobile insurance rates. Generally, with few exceptions, the Board has engaged an actuarial firm to conduct an annual review of loss costs and to set benchmark rates for the upcoming year. The Board also has the authority under the *Automobile Insurance Act* to investigate any rates being charged by an insurer, whether or not they have previously been approved by the Board, and to impose penalties for non-compliance with the *Automobile Insurance Act*.

In 2004 amendments to the *Insurance Companies Act* expanded the Board's jurisdiction to include the regulation of underwriting guidelines, risk classification systems, grounds for refusing to issue, decline or terminate insurance coverage, as well as an expanded role in the regulation of Facility Association. As outlined previously section 3.1 was also enacted to give the Board the authority, when directed by the Lieutenant-Governor in Council, "*to undertake a review of any aspect of insurance in the province on the terms and conditions that the Lieutenant-Governor in Council may specify.*"

On March 16, 2005 Government announced its intention to draft legislative amendments that would establish new rules for rate regulation and the elimination of the rate approval process currently used by the Board. By virtue of this pending legislation all rate increases are to be approved by the Board on an individual company filing basis, while rate decreases will be on a file and use basis.

2.3 **Liability Insurance Systems – Tort versus No-Fault**

Automobile insurance in Newfoundland and Labrador is currently provided in the context of a "tort" system with a monetary threshold in the form of a \$2,500 deductible for non-economic losses. Under a tort system a party injured in an automobile accident may seek compensation for losses, both economic and non-economic, from the driver who caused the accident. The injured party is entitled to compensation only to the degree that the other driver is responsible for the accident. The degree of fault under a tort system is determined by the Courts.

The tort system can be contrasted with a no-fault system where accident victims are compensated for their injuries according to their level of damages with no regard as to who caused the accident. There is no requirement to establish fault to access benefits, and benefits are normally paid under a pre-determined scale of payments.

The tort system requires that an injured person be placed in the position he/she was in before the injury as far as this can be done with an award of money. This means that an injured person is compensated for all past and future losses that were caused by the negligent driver. This would include loss of income, loss of earnings capacity as well as the cost of treatments for the injuries. In addition an injured person is entitled to damages for pain and suffering experienced as a result of the accident, to compensate for loss of enjoyment of life, amenities, and expectation of life. These damages are also sometimes referred to as non-pecuniary or non-economic damages as they exclude economic losses such as lost earnings.

To ensure that negligent drivers can appropriately compensate claimants for injuries, it is mandatory, consistent with most other jurisdictions in North America, that every vehicle in the Province be covered by a basic amount of Third Party Liability insurance. This requirement protects both injured persons who are guaranteed minimum recovery and drivers who may otherwise suffer hardship when required to compensate an injured person.

The fact that this Third Party Liability insurance is mandatory has been cited by some as an underlying reason for the interest in automobile insurance reforms. During his presentation to the Board Mr. Jack Harris, MHA, said:

“The reason why we’re all here is because insurance is compulsory. And insurance is compulsory for a very good public policy reason. That we want to ensure that people who are engaged in an activity like driving an automobile which has the ability to endanger the public and cause significant injury, loss of life, property damage to innocent third parties, there’s a good public policy reason why it is compulsory, is that there is a financial responsibility.”

While the tort system may be based on the principle of individual responsibility it has been said that the tort system is not necessarily the most efficient system of providing recompense to persons injured in a motor vehicle accident. In 1978 Chief Justice Dickson of the Supreme Court of Canada noted the view that too much time and money is expended in the determination of both fault and damage in the tort system⁴. This view was also expressed in the report of the Atlantic Canada Insurance Harmonization Task Force which noted that in tort systems there is considerable delay in payment of benefits and that compensation under this system costs as much to administer as is ultimately received by injured parties.

Most jurisdictions across the country have implemented some form of restriction on tort recovery. Currently Ontario has a hybrid system with some no-fault benefits which involve a deductible based on a threshold injury definition⁵. New Brunswick, Nova Scotia, Prince Edward

⁴ SCC *Andrews v. Grand and Toy* 1978, page 458 of 83 D.L.R. (3d) 452).

⁵ Injured parties may sue if the case meets certain conditions, often dealing with the severity of the injury. These conditions, known as a threshold, may be expressed in verbal terms (a descriptive or verbal threshold) or in dollar amounts (a monetary threshold).

Island and Alberta have all introduced caps on pain and suffering awards subject to the injury meeting certain conditions with respect to severity and impairment. Public systems in Quebec and Manitoba have no-fault insurance, British Columbia has full tort, and Saskatchewan provides a choice of either.

Each province in Canada has a unique automobile insurance system that is suited to its own circumstances. Based on this current review the Government of Newfoundland and Labrador will be in a position to further examine its public policies as to where this Province will fall on the tort, no-fault continuum.

2.4 Automobile Insurance Reforms

There have been “cries for reform” in automobile insurance across Canada since the 1970’s. The concerns raised during this review are not new or unique to Newfoundland and Labrador. Most jurisdictions in North America have been studying the issue and making changes for years and in some cases decades. The Province of Ontario for example has been studying automobile insurance reform issues for a number of years with one of its first reports tabled in 1963. While numerous studies have resulted in a variety of reforms and structural changes in the automobile insurance system in Ontario, issues still remain. As recent as last year the Government of Ontario made significant changes to its liability insurance provision increasing the deductible for pain and suffering awards to \$30,000.

An overview of recent reform initiatives in Canadian tort based insurance systems is shown in Exhibit 6. All jurisdictions with restrictions on awards for pain and suffering link the restrictions to a threshold definition for “minor injury” except Newfoundland and Labrador and Saskatchewan. Injuries falling within this threshold are subject to the specific cap or deductible noted in Exhibit 6 for these jurisdictions, while other injuries are eligible for full tort recovery. Newfoundland and Labrador has a deductible of \$2,500 on all pain and suffering payments, whereas Ontario has a deductible of \$30,000 that applies subject to a verbal injury threshold. The remaining jurisdictions maintain caps on pain and suffering payments for minor injuries [Nova Scotia (\$2,500), New Brunswick (\$2,500), Prince Edward Island (\$2,500) and Alberta (\$4,000)]. For the most part, other reform initiatives have included mandated rate reductions or freezes, regulatory intervention, elimination of either age, gender or marital status as rating factors, a no-frills option introduced in New Brunswick, and appointments of a Consumer Advocate or Ombudsperson to assist with dispute resolution between consumers and their insurance companies.

In Newfoundland and Labrador issues surrounding automobile insurance have also been studied in the past. In 1996, in response to various concerns voiced by consumers regarding the significantly increased cost of automobile insurance, the Select Committee to Review the Property and Casualty Insurance Industry was struck by the House of Assembly. In its March 1998 report the Select Committee concluded that a tort based system was best for the Province but that some improvements could be made to address concerns about rising costs. The Committee said at page 8 of its report:

“...current automobile insurance product in Newfoundland and Labrador, with the tort system of bodily injury compensation embodied within it, is not so inadequate and inefficient so as to require wholesale changes. Rather, the present system appears, from the Committee’s point of view, to be preferable to any other system which has been examined. Fundamentally, a system which allows any individual who has endured a loss to pursue appropriate compensation through legal channels has merit. The right to sue is intrinsic in our current system and should not be disregarded. While any type of no-fault product may obviously contribute to a less expensive system of insurance delivery to the extent that legal and transaction costs are reduced, the resulting system of insurance is not necessarily a better one. The Committee’s goal, in addressing all terms of reference, was to identify the most appropriate way to maximize benefit to the consumer, while simultaneously reducing the cost of insurance. To this end, the Committee endorses the continuation of the tort system as it pertains to bodily injury compensation for accident victims. However, the Committee recommends reforms to the present system. These reforms, in combination with many other changes detailed later in the report, should contribute to stabilization of automobile insurance premiums in Newfoundland and Labrador.”

One of the changes recommended by the Committee was the implementation of a deductible of \$15,000 on non-economic damages, which was not implemented. Other specific recommendations affecting the insurance industry were implemented through legislation with respect to the capital requirements of insurance companies, underwriting guidelines, claims adjusting and appraisal practices, and grounds for refusal to issue insurance. In addition Government introduced a graduated licensing system and increased penalties for uninsured drivers.

In late 2003, again in the context of rising insurance rates, Government asked the Board to complete a study on the implementation of deductibles for pain and suffering awards arising as a result of injuries sustained in automobile accidents in the Province. The Board’s report was submitted to Government on March 8, 2004. On August 1, 2004 Government proclaimed a series of reform measures which were previously announced in March arising from this study. In addition, at that time Government announced some new initiatives which included increased supervision by the Board of underwriting guidelines.

In restricting tort recovery Government announced a \$2,500 deductible on pain and suffering damages effective August 1, 2004. At the time Government explained that this reform was put in place as an interim measure in the context of the completion of this review. While full recovery is still permitted for all economic losses such as loss of earnings and property damages, the amount of compensation which would previously have been paid for pain and suffering is now reduced by \$2,500.

During the review the Board heard from a number of groups and individuals who called for further reforms to be implemented by Government to address the many of the concerns which were felt to be outstanding. These concerns centered primarily around increases in and levels of automobile insurance rates, particularly for the mandatory Third Party Liability coverage.

3.0 CLOSED CLAIMS STUDY

3.1 Introduction

The Board was directed to “*conduct a closed claims study to determine the costs associated with third party liability bodily injury claims arising from the use of private passenger automobile and commercial automobile.*”

The last closed claims study for Newfoundland and Labrador was conducted by Exactor Insurance Services Inc. on behalf of the IBC in 1998 (using 1994 to mid-1996 data) and only related to bodily injury claims for private passenger automobile insurance.

In accordance with the Terms of Reference for this review the Board conducted two separate closed claims studies for third party bodily injury claims, one for private passenger and one for commercial. These studies involved the collection and analysis of information relating to third party bodily injury claims arising from automobile accidents in the Province which have been settled and closed over a specific period of time. The results of the studies generally show the kinds of claims being made, including the injuries and the amount of compensation paid out with respect to the various types of damages. The studies were completed for bodily injury damages only, for both commercial and private passenger vehicle claims. Property damage claims were not studied.

In January 2005 two reports setting out the results of the private passenger and commercial closed claims studies in the Province were completed and made available to interested persons.

3.2 Private Passenger Automobile Closed Claims Study

Before beginning the closed claims studies the Board engaged consultants with the relevant expertise and experience to assist in conducting the studies. The first consultant engaged was the Board’s consulting actuary (Mercer) who played the primary role in the analysis of the data and report preparation. The Board also engaged the services of an insurance consultant, Mr. Bern Fitzpatrick who, with his prior experience in the industry, was able to serve as the primary liaison with the insurance industry. The Board also engaged the services of a medical consultant, Dr. Sue Rideout-Vivian who, with a speciality in occupational medicine, advised the Board on medical issues arising from the studies. Finally the Board engaged the services of an accounting firm, NKHK Chartered Accountants, to ensure consistency and compliance by insurance companies regarding data collection.

While the closed claims studies were conducted by the Board with the assistance of its consultants, the data was collected by the individual insurance companies under the direction of the Board. The detailed information needed to complete this study was available from the files maintained by each insurance company.

Because the information was to be collected by insurance companies the first step taken by the Board was to select the participating insurers. The selection of insurers for the private passenger

closed claims study was based on a number of considerations, including individual company market share and the availability of resources to manage the project and allow for appropriate oversight. The insurance companies participating in the private passenger and commercial closed claims studies are listed below along with each company's market share.

Participating Companies in 2003 Closed Claims Study*					
Carrier	Private Passenger		Commercial		Total
	Direct Premiums Written	% Market Share	Direct Premiums Written	% Market Share	
Unifund Assurance	\$ 49,974,000	22.24%	0	0.00%	\$ 49,974,000
Insurance Corporation of Nfld.	\$ 26,431,664	11.76%	\$ 259,993	1.32%	\$ 26,691,657
Co-operators General Ins.	\$ 22,010,000	9.79%	\$ 506,586	2.57%	\$ 22,516,586
Dominion of Canada General	\$ 12,856,956	5.72%	\$ 3,938,139	20.01%	\$ 16,795,095
Aviva	\$ 30,292,759	13.48%	\$ 4,907,315	24.93%	\$ 35,200,074
Metro General Ins.	\$ 13,509,832	6.01%	\$ 469,492	2.39%	\$ 13,979,324
Colonial Fire & General	\$ 11,322,000	5.04%	0	0.00%	\$ 11,322,000
Royal/Sun Alliance Insurance	\$ 1,600,000	0.71%	\$ 2,500,000	12.70%	\$ 4,100,000
Atlantic Insurance Co.	\$ 185,407	0.08%	\$ 4,404,115	22.38%	\$ 4,589,522
	\$168,182,618	74.84%	\$16,985,640	86.30%	\$185,168,258
INDUSTRY TOTAL	\$224,728,070		\$19,682,359		\$244,410,429

* These figures vary from the 2003 Written Premiums reported in Section 2.0 of this report as the figures above do not include business in the miscellaneous class of automobile insurance.

Source: Private Passenger Automobile Closed Claim Study-2004, Mercer, Exhibit 2

After the identification of the participating insurers, the Board sent a request to each company for basic information about every private passenger bodily injury claim closed by the insurer during the three-year period, July 1, 2001 to June 30, 2004. This identified and provided basic information on 6,100 claim files closed during the survey period. From the initial listing of a total of 6,100 claim files Mercer selected a proportional random sample for each participating insurer. This selection was further stratified to ensure a cross section of claims by size or value.

Once the insurers and files were identified the next step was to provide a questionnaire to each insurer identifying the detailed information required to be completed for each file selected. The questionnaire was developed by the Board with the input of its insurance consultant, medical consultant, and actuary. The questionnaire used by the IBC in its 1996 closed claims study served as a starting point for the development of the Board's questionnaire. The IBC's questionnaire was modified to collect more detailed data and expanded data, in particular with reference to neck and back injury profiles.

The questionnaire was sent to each participating insurer with instructions regarding its detailed completion for each claimant identified in the sample. In addition the Board held information sessions and weekly conference calls with participating insurance companies to clarify any issues or concerns surrounding the completion of the questionnaire. This approach was designed to ensure standardized collection of data to form a sound information base for the studies.

The questionnaires were completed on-site by the participating companies and the data collected was provided in electronic format to the Board. The electronic claimant data was reviewed for accuracy and compliance by the Board with the assistance of the insurance consultant, the actuary, and NKHK. The claimant data was then used by the actuary in the resulting analysis and closed claims reports which were completed and made available to interested parties in January 2005.

A total of 1,369 claimant records were detailed in the final private passenger closed claims study database. The total settlement amount for these 1,369 claimants is \$33.7 million, including the allocated loss adjustment expenses.

3.3 Commercial Automobile Closed Claims Study

The same process was employed for the commercial automobile closed claims study with the following adjustments because of the small number of commercial claims:

- i) the study period was extended to cover July 1, 1999 to June 30, 2004; and
- ii) the study reviewed all the claims closed during the period rather than a sample.

A total of 537 claimant records were incorporated in the final closed claims study database for commercial automobile, representing all available claims data during the five-year claims period under review. The total settlement amount for these claimants is \$13.3 million, including allocated loss adjustment expenses.

3.4 Closed Claims Study Findings

Selected findings from the private passenger closed claims study indicated⁶:

- 65% of the claimants were involved in accidents with vehicles insured in St. John's.
- Less than 1% of the claimants settled through court trial, and these claimants received 2.5% of the settlements.
- 96% of the claimants received some award for pain and suffering.
- Of the total claim payments of \$30.8 million, \$18.6 million or 60.4% were for pain and suffering.
- 34% of the claimants received pain and suffering awards over \$15,000; and received 70% of the pain and suffering settlements.

⁶ The settlement amounts in the selected findings for both the private passenger and commercial closed claims studies include all components of the settlement amount paid out, but exclude the allocated loss adjustment expense.

- 17% of the claimants received pain and suffering awards up to \$2,500; and received 2% of the pain and suffering settlements.
- 74% of the claimants had at least one injury described as a strain or a sprain of the neck, back or other area, or a knee or shoulder injury and these claimants received 56% of the total settlements.

Many of the findings from the closed claims study for commercial data are similar to, or not inconsistent with, the findings from the private passenger data closed claims study.

A comparison of the pain and suffering claim amounts of those from the 1996 closed claims study conducted by the IBC and those from the 2004 closed claims study conducted by the Board reveals an increase in both the percent of claimants receiving pain and suffering awards and the amount of those awards, as shown in the following table.

Comparison of Closed Claims Study Results – 1996 and 2004		
	1996 Study	2004 Study
Claimants receiving pain and suffering awards	92.5%	95.9%
Award less than \$2,500	29.5%	17.8%
Award above \$15,000	17.4%	35.6%
Pain and suffering as percent of total claims payments	56.6%	60.4%
Average pain and suffering payment	\$8,839	\$13,613

The actual comparison results are provided in Exhibit 7.

3.5 Comments on the Study Process

There was a general consensus during the review that the current closed claims study process was an improvement over the previous study. Participants commented during the review that the increased level of detail and explanation surrounding the injury types was significant. The IBC’s actuary commented:

“I view in the survey, that claimant injury profile in Question 32(a) was broken down into finer injury categories than in the previous study, and more important still, I think, is the fact that detailed descriptions were provided for these injury categories. Those were missing in the prior survey. I think this is a valuable addition and had the input of Dr. Sue Rideout-Vivian as I understand, in putting those things in it. I mean, there’s a lot less chance for people to make the wrong judgement as to whether a claimant suffered this injury or did not that injury because there was some reasonably precise definitions.”

The Consumer Advocate also expressed support for the methodology and results of the closed claims study, stating during his presentation:

“I think that the closed claims studies that were done were very good and very strong, and I have to tell you that in the balance when we’re looking at the rates and the rights, we have to have

something that we can hang our hat on, and I think that this Board has provided something that a hat can be hung on in terms of the numbers that come out of the closed claims study. I think the medical consultant that was employed was a very necessary exercise. I think the other expertise that was employed by this Board made for a very good closed claims study.”

In its written submission the Insurance Brokers Association of Newfoundland (IBAN) stated:

“IBAN accepts that the report accurately represents the underlying cost of claims in Newfoundland and that the methodology used to generate the report was thorough and reasonable. While there are always opportunities to debate methodology, we are satisfied that on the whole, the findings reflect the underlying costs of claims.”

While there was general support for the methodology employed in conducting the closed claims study, there were suggestions for further improvement. For example some participants suggested the study team would have benefited from the involvement of a lawyer, in addition to the medical consultant. Based on what the Board heard it is clear that the closed claims study methodology and results were sound and reliable, and reasonably reflect the costs for the study period associated with Third Party Liability bodily injury claims arising from the use of private passenger and commercial automobiles in the Province.

4.0 CAPS AND DEDUCTIBLES

4.1 Introduction

The Board was directed by Government to:

- *“review the impact on rates of the use of a monetary cap of various amounts on claims for non-economic loss for minor/mild injuries and the implications of such a cap for claimants; and*
- *review the impact on rates of the use of a deductible of various amounts on claims for non-economic loss and the implications of such a deductible for claimants.”*

The potential introduction of caps/deductibles became one of the central issues in this review. The Board heard more expert opinion and presentations from industry, consumers and others on this issue than any other. Not surprisingly, the views expressed were often conflicting but genuinely and reasonably presented.

4.2 What Restrictions are Under Review?

The Terms of Reference require the Board to review and report on the impact on rates and the implications for claimants of restricting the amount of pain and suffering damages arising from an automobile accident through the use of a cap or a deductible.

Implementation of a cap would place an upper limit on the amount of the pain and suffering damages paid to a person injured in an automobile accident. There would be no limit on the amount of economic losses paid. Various monetary levels of cap were studied, ranging from \$15,000 down to \$2,500. It should be noted that a smaller cap is a greater restriction on recovery since an injured person can receive no more than the capped amount. In concert with the cap a threshold is intended to be implemented whereby only injuries characterized as “minor” would be capped. For example, if a cap of \$5,000 is implemented, an injured person who falls within the definition of a “minor injury” could not receive more than \$5,000 for pain and suffering. Claimants not falling within the definition would not be affected and would not have their compensation capped.

Three definitions of minor injury were provided by Government to be reviewed, all capturing different degrees of severity of injury. (See Exhibit 2)

Definition 1 defines minor personal injury as any *“transitory or temporary neck or back strain or sprain caused to a person which does not reduce the person’s enjoyment of life or cause an interference with the person’s ability to perform his or her day to day activities or work-related activities.”* Since this definition relates only to neck and back strain or sprain, all other injuries cannot be considered to be minor and hence recovery would not be capped. As well, under Definition 1 any injury that has not resolved itself within 6 months is not considered a minor injury. Therefore moderate and severe neck and back strains and sprains would not be

considered minor based on the definitions of moderate and severe used in the closed claims questionnaire.

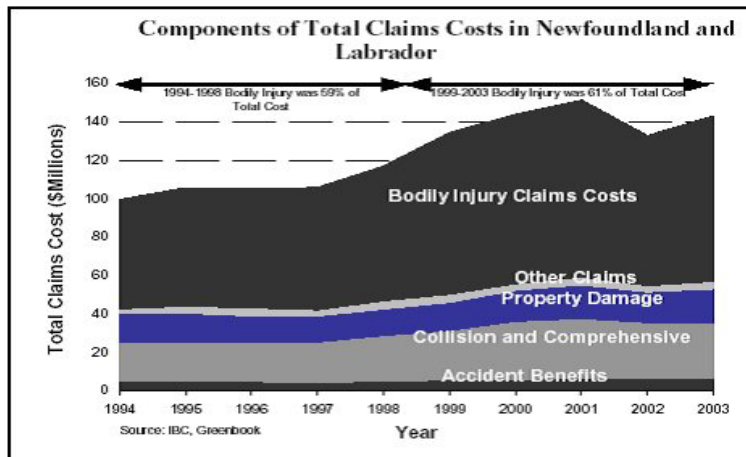
Under Definition 2 a minor injury is not limited to neck or back strains or sprains (as in Definition 1), and therefore includes all injury types. Definition 2 qualifies the level of interference where an injury will no longer be considered minor. “Substantial interference” means that the injured person is still, 12 months after the accident, i) suffering a reduction in his or her enjoyment of life, ii) unable to perform any one or more of the essential elements of the person’s day to day activities, or iii) unable to perform any one or more of the essential elements of the person’s work-related activities.

Definition 3 provides the broadest description of a minor injury resulting in more claimants being capped than with the other injury definitions. This is the same definition recently implemented in New Brunswick. Under this definition minor personal injury means an injury that does not result in permanent serious disfigurement or permanent serious impairment of an important bodily function caused by continuing injury that is physical in nature. “Serious impairment” is defined as an impairment that causes substantial interference with a person’s ability to perform their usual daily activities or their regular employment. As a result any injury that is not both serious and permanent will be subject to the cap.

In addition to a cap the Board was also directed to report on the use of a deductible to restrict recovery of pain and suffering damages. The Board was asked to review the impact of replacing the existing deductible of \$2,500 with a larger deductible of differing amounts up to \$15,000. Unlike a cap, the deductible is applied to every pain and suffering payment without reference to definitions of minor injuries. For example, if a \$5,000 deductible was implemented then all payments for pain and suffering would be reduced by this amount. In contrast to the cap, a higher deductible results in a larger restriction on recovery.

4.3 Why Consider Restrictions on Recovery for Pain and Suffering?

Pain and suffering damages are often cited as a possible area for reform given that these costs make up a significant portion of the total Third Party Liability claims costs. As discussed in Section 3.4, the findings from the Private Passenger closed claims study demonstrate pain and suffering awards make up 60.4% of the total claims costs paid by insurance companies, and are a commensurate part of the premiums paid by policy holders. This fact was also addressed by the IBC in its written submission concerning the need for restrictions on bodily injury loss costs if insurance premiums are to be adequately reduced. The following figure was provided to show the proportion of bodily injury claims costs as a component of total claims costs in the Province.



(Source: IBC Written Submission, page 12)

Opinion was also expressed by consumers during the review that something needs to be done with rising bodily injury costs. One citizen wrote:

“The Atlantic Canada Ins. Harmonization Task Force Report to the Council of Atlantic Premiers identified the core problem of increased premiums as being consistently identified as the increase in bodily injury loss costs. A cap will lower claims costs and in turn reduce premiums.”

BC of Conception Bay South wrote:

“These costs (increased costs associated with minor injury claims) are the cause of much of the increases seen in auto insurance according to Federal Office of the Superintendent of Financial Institutions Report which stated “the scale of claims has been growing, especially for auto insurance, reflecting rising court awards for pain and suffering in cases of minor strains and pains and an increased number of injury claims that are becoming expensive to treat.”

It was argued by the industry that placing restrictions on compensation for pain and suffering would lead to savings and stability of rates. IBAN noted in its written presentation that 85% of Canadians live with some form of restriction on recovery. Generally the restrictions on recovery that have been implemented as reform initiatives in other jurisdictions limit the amount of recovery for pain and suffering.

4.4 Rate Impacts

4.4.1 Study Results

The Board’s actuary conducted a detailed analysis of the data gathered through both the private passenger and the commercial closed claims studies to estimate the effect on premiums of the implementation of the deductibles and caps. Exhibit 8 provides Mercer’s detailed estimates of the potential savings for Third Party Liability, Uninsured Motorist, and All Coverages Combined, for each of the cap and deductible amounts studied. The following summary table shows Mercer’s estimated premium savings in relation to private passenger Third Party Liability for the range of deductibles and caps for each of the injury definitions modelled.

Potential Savings Arising from Cap and Deductible Options (as estimated by Mercer)								
Private Passenger -Third Party Liability								
Net of August 1, 2004 Reforms								
Cap/Deductible Amount	Deductible		Cap					
			Definition 1		Definition 2		Definition 3	
	% Savings	\$ Savings	% Savings	\$ Savings	% Savings	\$ Savings	% Savings	\$ Savings
\$ 2,500	0%	\$ 1	-4%	-\$24	2%	\$ 10	12%	\$67
\$ 4,000	5%	\$ 30	-5%	-\$27	0%	-\$2	8%	\$48
\$ 5,000	7%	\$ 42	-5%	-\$28	-1%	-\$7	7%	\$38
\$ 7,500	13%	\$ 76	-5%	-\$29	-3%	-\$18	3%	\$16
\$10,000	19%	\$111	-5%	-\$28	-4%	-\$25	0%	-\$2
\$12,500	25%	\$145	-5%	-\$28	-5%	-\$27	-2%	-\$13
\$15,000	31%	\$177	-5%	-\$28	-5%	-\$28	-4%	-\$20

In the case of a deductible, with the exception of the \$2,500 already in place, the range of impacts on private passenger rates estimated by Mercer is a savings of 5% to 31% (\$30-\$177) for Third Party Liability. In the case of a cap, the results of Mercer's analysis show that the implementation of a cap with injury Definition 1 will actually result in increased costs for all levels of caps. The use of a cap with injury Definition 2 will also result in increased costs for all but the \$2,500 cap, where the expected savings are 2% (\$10). It seems that injury Definition 1 and 2 (i.e. 6 and 12 month resolution requirement) set the threshold so low that costs are estimated to go up when the existing \$2,500 deductible is replaced. The impacts on private passenger rates for a cap using injury Definition 3 range from 12% (\$67) for a \$2,500 cap to increased costs for caps of \$10,000 and higher.

Similar savings were suggested for commercial Third Party Liability as shown below. It is noted however that the legislated rate reductions of 2004 did not apply to the commercial coverages so the estimated savings are somewhat higher for commercial than private passenger.

Potential Savings Arising from Cap and Deductible Options (as estimated by Mercer)								
Commercial -Third Party Liability								
Cap/Deductible Amount	Deductible		Cap					
			Definition 1		Definition 2		Definition 3	
	% Savings	\$ Savings	% Savings	\$ Savings	% Savings	\$ Savings	% Savings	\$ Savings
\$ 2,500	3%	\$ 31	1%	\$8	4%	\$45	13%	\$133
\$ 4,000	6%	\$ 61	0%	\$4	3%	\$34	11%	\$114
\$ 5,000	7%	\$ 74	0%	\$3	3%	\$27	10%	\$102
\$ 7,500	11%	\$ 113	0%	\$0	1%	\$14	7%	\$ 69
\$10,000	14%	\$ 152	0%	\$0	1%	\$ 7	5%	\$ 52
\$12,500	18%	\$ 191	0%	\$0	0%	\$ 3	4%	\$ 42
\$15,000	22%	\$ 229	0%	\$0	0%	\$ 1	3%	\$ 31

It must also be noted that the estimates of potential premium savings were calculated on an industry wide basis rather than for each individual company or consumer. Therefore the

estimates are not necessarily appropriate for any individual insurer or insured but rather represent what changes would be expected to be appropriate based on the assumptions and actuarial judgement for the industry as a whole, on average.

4.4.2 Other Considerations

During the review participants raised other issues which may influence the estimated rate impacts. For example Aviva suggested that the introduction of a cap would result in claims being settled easier and earlier, and would therefore lead to additional savings. Other participants however suggested that there may be delays in settlements with the uncertainty of the application of the cap to each circumstance and argued that costs would increase.

Another impact on rates with the introduction of a cap is the potential for enhanced rate stability. Industry participants, including the IBC, suggested that proponents of a cap predict that the implementation of a cap would result in a reduction of the loss cost trend and more stable insurance premiums for consumers over the long-term.

4.4.3 Definition Analysis

While there was not a great deal of discussion during the review about the differences between the definitions to be used with a cap there are advantages and disadvantages associated with each. The following observations are relevant to the consideration of the three definitions.

Savings – Using Definition 3 would lead to the highest savings. The other two definitions do not generate significant savings in comparison to the existing \$2,500 deductible. Definition 1 provides negligible savings in comparison to Definition 2, which would generate some savings in the case of the lower caps. It has been suggested that a cap with a time threshold, as in the case of both Definition 1 and Definition 2, is less effective in reducing costs due to the effect of erosion.

Restriction on Recovery - Each of the three definitions represent a different point along a continuum of injury severity. Definition 3 would capture the most claimants and would lead to more injuries being considered minor and therefore subject to the cap. Definition 3 would result in all injuries that were not both serious and permanent being subject to the cap. Definition 1 is the narrowest as it applies only to neck and back injuries not resolved within six months. Definition 2 applies equally to all injury types but is restricted to injuries which do not impact the claimant after twelve months.

Harmonization - Insurers have suggested that the implementation of a cap using Definition 3 would be a step toward the harmonization of the product in the Atlantic Provinces. In relation to harmonization of the product it should be noted that, with the implementation of regulations, Nova Scotia has significantly weakened the effect of the definition limiting its application to occasions where the injury resolves within twelve months. It may be argued that Definition 2 is more similar to the Nova Scotia definition since they both involve a twelve-month resolution period. It should also be noted that the only other jurisdiction in Canada with a cap, Alberta, has

also adopted a different less comprehensive definition of minor injuries. It is more comparable to Definition 1 in that it applies only to specific types of injuries. In Alberta sprains, strains and whiplash injuries that do not result in a serious impairment are capped. It has been suggested by some in the industry that Alberta has the weakest definition of minor injury of any of the caps implemented to date.

Certainty - Definition 3 is expected to lead to the least amount of ambiguity in interpretation given that it uses relatively straight forward language and is the same as the New Brunswick definition. In relation to certainty, Aviva in its written presentation suggested the following changes to Definition 3 to provide even greater certainty:

- Add clause:
“The motor vehicle accident must be the major contributing factor of the permanent serious disfigurement or permanent serious impairment of an important bodily function caused by continuing injury, which is physical in nature.”
- Define “permanent:”
“Permanent” would be defined as an “impairment that has been continuous since the accident, and will continue for the remainder of the person’s life, and is an impairment that is generally known to be life long in most cases.”
- Define “important bodily function”:
“Important bodily function” would be defined as “a function that is necessary to perform the activities that are essential tasks of the person’s regular employment, taking into account reasonable accommodations for the impairment, or a function that is important for normal activities of daily living and is important to most people of similar age and gender.”

4.4.4 Actuarial Issues

In addition to presentations from the actuaries, a roundtable discussion among the actuaries was held for the purpose of focusing on the closed claims study and, in particular, the results of the various studies and reports dealing with the rate impacts of the caps and deductibles options. This roundtable discussion was heard by the Commissioners and was open to the public. Actuaries participating in the roundtable discussion included:

- Board Actuary: Mr. Ted Zubulake of Mercer Oliver Wyman
- IBC Actuary: Mr. Ronald R. Miller⁷
of Exactor Insurance Services Inc.
- Consumer Advocate Actuary: Mr. William Carpenter, Milliman, Inc.

⁷ Due to illness Mr. Miller participated by conference call.

The Board found the roundtable discussion to be a positive means of identifying and exploring areas of differing opinion and additional considerations presented by the actuaries. The ensuing discussion centered on four particular issues involving injury mapping, erosion, trending, and the New Brunswick experience after implementation of a cap.

The Board's use of the medical consultant in the medical mapping of injury types was accepted as a refinement to previous work, including the New Brunswick study where actuaries completed the injury mapping.

Mercer's assumptions for erosion and trending were considered to be within a range of reasonableness and differences were attributable to varying assumptions used in applying actuarial judgment. More specifically Mr. Miller suggested:

- assuming erosion of 75% versus Mercer's 50% will result in somewhat less savings for the deductible options;
- use of the injury mapping applied in New Brunswick, for the \$2,500 cap for Definition 3 would result in estimated savings of \$131 (22%) as opposed to the \$67 (12%) determined by Mercer; and
- third party bodily injury claim costs in New Brunswick may decline by as much as 40% this year following the introduction of the \$2,500 cap with injury Definition 3. He noted this is a very preliminary estimate based on only 12 months experience and does not take into account other contributing factors in addition to the introduction of the cap.

Mr. Carpenter suggested that he would have reached results similar to Mercer's and stated:

"I thought if we were going to approach it, it would be similar to what we would do. I thought it was thoughtful in terms of having a medical expert come in and look at it as opposed to actuaries making judgments about, you know, what would be a minor and what wouldn't be a minor claim. So I thought that was a good aspect of their report. I guess, as far as the actuarial calculations, in effect, we've kind of conducted a peer review of those, and, like I said, our findings are largely consistent with theirs, you know, with the limitation that, you know, we don't know specifically all the assumptions they made, but, you know, barring that, I think the ones we made where we had to make assumptions that weren't in their report, we produced results that were largely consistent with theirs. So I thought it was a reasonable-a good report."

The Board notes the input from the roundtable discussion added measurably to the overall understanding of the actuarial issues and assumptions influencing estimated premium savings. One point that clearly emerged is that there is no single answer to estimating the impact on rates of implementing reforms. The assessment of rate impacts is a forecasting exercise which involves predicting the most probable results based on a series of assumptions and judgment made by individual actuaries while exercising their best judgment. Following the roundtable

discussion and the review of actuarial presentations, it would appear that the rate impacts derived by Mercer for the caps and deductible options are reasonable.

4.4.5 Market Influences

As suggested during the review the worst of the insurance cycle appears to have now passed and market conditions have generally stabilized. There is an expected period of stability or reduction in rates. This view is supported by the Board's recent Benchmark study which suggests private passenger Third Party Liability rate decreases. If the forecasts materialize then it is likely that consumers will see rate decreases in the short-term in addition to the estimated premium savings arising from any reforms implemented.

On March 17, 2005 Government announced its intention to eliminate the benchmarking system used by the Board in favour of a file and use mechanism for rate decreases and individual actuarially justified filings for rate increases. Following this announcement the Board requested Mercer's opinion on what the expected average rate reductions would be in the context of the existing rate levels of insurers and the indicated 2005 benchmarks. Mercer estimated an expected average reduction of up to 12% for Third Party Liability and up to 10% on an all coverages basis for private passenger vehicles. While individual insurance companies may file for actuarially justified rates, all else being equal, the average of these individual rates decreases should be similar to the industry average rates determined in the 2005 Benchmark study. It should be noted, however, that other market factors, such as improved or deteriorated loss experience, may affect this estimate.

Private passenger consumers in 2005 may expect to see a reduction in Third Party Liability of up to 12% and a reduction of up to 10% on an all coverages basis, regardless of the implementation of further reforms. If a \$2,500 cap using injury Definition 3 is implemented and rates for individual companies decrease as indicated by the 2005 benchmarks, the total average expected savings could be up to 24% for Third Party Liability (12% for cap and 12% for market factors) and up to 18% for all coverages combined (8% for cap and 10% for market factors).

For commercial vehicles Mercer advised that the elimination of the benchmarking system would reduce the indicated increase in average Third Party Liability premiums to approximately 8%. Any savings from the possible implementation of a cap or deductible will serve to offset or possibly eliminate the increase in commercial rates depending on the option chosen. Again, assuming the introduction of a \$2,500 cap using injury Definition 3 and individual company rate changes for market factors which are overall consistent with the 2005 benchmarks, Mercer estimates the total average expected savings would be up to 5% for commercial Third Party Liability (13% for cap less 8% for market factors). The impact on rates for all coverages combined was not modeled for commercial but commensurate decreases to that of Third Party Liability may be expected.

4.4.6 New Brunswick Reforms

Mr. Miller, the IBC's actuary, spoke to the impact of the introduction of a cap in New Brunswick. In speaking to this issue he reviewed the claims data available in relation to New Brunswick since the cap was implemented, which covered a twelve-month period. As noted earlier, based on this data Mr. Miller estimated reductions in bodily injury loss costs of up to 40% resulting from the implementation of the cap. While a precise calculation is not possible, a bodily injury loss cost reduction of 40%, all else being equal, would roughly be the equivalent of a premium reduction of 24% in New Brunswick on an all coverages basis.

To the extent that the New Brunswick insurance market can be compared to Newfoundland and Labrador one would expect that there may be savings of the same general magnitude here as well with the implementation of a similar cap. However, without a detailed analysis of the effects of pre-reform rate adequacy, data reliability, and the impact of other market influences on Mr. Miller's savings estimates, a direct comparison is difficult. As an example, Mr. Miller acknowledged that the data is very preliminary given that very few claims settle within the first year of an accident. In addition, it is difficult to isolate rate impacts of one reform from all other possible influences as Mr. Miller observed:

“Any such model is not able to distinguish between different changes in the environment that happen contemporaneously. So, for instance, if it happened that on the first of July, 2003, not only did New Brunswick make this change, but something else that perhaps has a major influence on costs happened at the same time, then what the model fits is the joint effect of all those things at once, and there is no way of unraveling how much would be due to just the legislation reform and how much due to other unspecified factors.”

One of the issues raised during the actuarial presentations and round table discussion was whether in fact it was realistic to think that at this stage the impact of the introduction of the cap in New Brunswick could be quantified with any precision in isolation from other influences on the rates. In this context it might be useful to look to the recent experience in New Brunswick overall. Mr. Don Forgeron of the IBC commented during his presentation:

“Again, just a comment about the reforms in New Brunswick. Premium reductions in excess of 26% and news last week that one of the largest insurers in New Brunswick has filed for an additional seven percent decrease in response to these reforms.”

Mr. Tom Hickey of IBAN also indicated during his presentation: *“New Brunswick experience has shown us rate reductions in excess of 20%...”* and he further stated... *“Another interesting point ... this is from the PUB website in New Brunswick. It says, it shows a decrease of 27.8 percent for liability...”*

This information would appear to suggest that, since the implementation of reforms, consumers in New Brunswick have experienced premium reductions of between 20-28% on an all coverages basis. It must be noted that these premium reductions would reflect, in addition to the \$2,500 deductible, all of the other recent reforms as well as other market factors. In addition to the cap New Brunswick implemented several other reform measures which have likely impacted

rates, including a direct compensation system for property damage, an increase in mandatory Accident Benefits with a No-Frills option, and a First Chance Discount. It is notable that, according to the IBC Green book data, the average third party loss costs for New Brunswick as a whole have been declining since 2002, reflecting a similar declining loss trend as in this Province.

Therefore, while a direct comparison of the specific impact on premiums of a \$2,500 cap in New Brunswick to the expected premium savings for this Province with the implementation of the same cap may not be possible, the actual premium decreases that consumers in New Brunswick appear to be experiencing (20-28% on an all coverages basis) can be compared with the premium reductions estimated by Mercer (24% for Third Party Liability and 18% on an all coverages basis for private passenger).

4.5 Implications for Claimants

4.5.1 Caps versus Deductibles

In written submissions and in presentations to the Board the industry was unanimous in its support for the implementation of a cap similar or identical to the cap recently introduced in New Brunswick.

The IBC in its written submission stated:

“IBC recommends implementation of a statutory reform of the auto insurance product in Newfoundland and Labrador to include a model of automobile insurance reform similar to the one introduced in New Brunswick, to assist in moving toward harmonization of the Atlantic provinces...”

Implementation of these reforms would, according to the IBC, achieve long-term stability of the major cost pressure on automobile insurance premiums in the Province, which are ever increasing bodily injury costs. The IBC points to the results of Mercer’s closed claims study which they say clearly confirms that a large contribution to bodily injury cost is soft tissue injuries, which are typically minor and carry no long-term effects on individuals’ health and functions. The IBC stated:

“There is only one change that will stabilize the price of auto insurance: There must be control over the primary cost driver – claims cost. The amount of compensation that is being paid out to individuals for minor, non-permanent bodily injuries resulting from a vehicle accident. Cost stability is the basis for price stability.”

The IBC points to the results of the introduction of this same reform in New Brunswick, stating that in the two years since this reform was introduced, New Brunswick drivers have benefited from a 26% premium reduction and the Facility Association’s market share fell from a high of 6.6% to an all-time low of 2%.

The implementation of a \$2,500 deductible on non-pecuniary damages in Newfoundland and Labrador in 2004 is not viewed by the insurance industry as an effective way of containing

bodily injury claims costs as compared to the verbal threshold cap model. The IBC stated in its written presentation:

“We estimate that the \$2,500 deductible will serve as an incentive for increasing the reported severity of injuries and very quickly, court decisions will make allowances to return “net” claims settlement, in effect, discounting the effect of the deductible. The assumption of a 50% erosion factor in the Mercer report, “Estimates of the Impact on Private Passenger Insurance Premiums Resulting from the Implementation of a Deductible or Cap” would seem to support this view.”

IBAN also recommended a cap system as a means of controlling loss costs. In its written submission IBAN stated:

“We feel that it is a reasonable compromise between costs and benefits for most consumers while ensuring that those with permanent and serious injuries do not have any tort restrictions. A cap with an appropriate definition of injury will result in a more stable product that is affordable for most consumers and that will still provide access to medical treatment and compensation for other out-of-pocket expenses.”

It is fair to say that caps are seen by the industry as far superior to deductibles in addressing the current concerns, as indicated in the following comments:

“The recent closed claims study by MOW simply provides another example to demonstrate what has been well understood within insurance industry corporate, professional and regulatory circles for some time. Deductibles are not an effective way to reduce costs, particularly at lower levels (like the current \$2,500). The effectiveness of deductibles reduces over time (erosion). Caps can be effective to reduce costs at lower levels (for example \$2,500) if the cap definition is strongly worded and does not insert undue subjectivity or create incentives (like time limits) that can affect how a claimant may behave.” (Written Submission, Unifund)

“The implementation of a deductible is not a long term solution to the problem of rising claims costs and premiums as a result of non-economic loss claim settlements.....A cap is a much more feasible option to control rising claims costs and reduce policy premiums.” (Written Submission, Enterprise Rent-A-Car)

“CADRI supports the implementation of a cap on non-economic losses for minor injuries. It is CADRI’s view that the application of a deductible will have a negligible effect on claims in the short-term and will encourage the inflation of claims in the long run. Claims for minor soft tissue injuries such as sprains or strains are one of the leading causes of escalating insurance costs....It is absolutely essential that this cost be controlled.” (Written Comments, Canadian Association of Direct Response Insurers)

In addition several individuals expressed the belief that a cap would be a better way of dealing with the concerns arising from the subjective nature of assessing pain and suffering damages for soft tissue injuries.

“I feel it would be in the best interest of everyone involved, if our government would implement a cap of \$2,500 on minor injury claims. Not only would this reduce our liability insurance

premiums, but would also deter the “misuses” of minor injury claims, which we all pay for dearly.” (HP of Mount Pearl)

“Therefore a cap, or preferably complete elimination of “soft injuries” from general insurance policies would result in substantial premium reductions. Individuals who feel that they need additional coverage for such items should pay additional premiums for specific add-on benefits of this type. I believe that specifying a minimum deductible to insurance claims for these ‘injuries’ will not have long-term benefit of reducing premiums, as the very nature of the value of these claims are subjective and claims will simply increase to compensate for any imposed reduction – and lead to wasted lawyer fees.” (JLV-D wrote)

Some industry participants also suggested that a cap is more fair than the deductible because it would allow every claimant to have some recovery and a seriously injured claimant to have full recovery. For example, The Co-operators stated in their presentation that, with a deductible there is no payment for minor injuries, whereas with a cap there is payout for a minor injury. Because the deductible is applied regardless of the extent of the injuries, some small claims would be eliminated entirely with the application of the deductible, with the claimants recovering no compensation.

The Consumer Advocate did not agree with industry’s position on the fairness of a cap. In his written submission to the Board the Consumer Advocate suggested that the deductible option would appear to be fairer in principle to claimants in that all claimants would be subject to it. He stated:

“Essentially, a deductible that applied to every claimant would not draw a distinction between claimants based upon whether that claimant’s injuries or impairment fall on one side or another of a particular definition. Therefore the vagaries and uncertainties involved in determining whether one’s injury(ies) or impairment meets a particular threshold is avoided. Indeed it may take many months or even a period of years before it can be determined whether one’s impairment met a threshold as found in Definition Number 3.”

The deductible also seemed to be accepted as an alternate position for those who oppose the adoption of any restrictions on compensation for pain and suffering. For example, the existing deductible was suggested by Mr. Jerome Kennedy of the Coalition Against No Fault Insurance as an “*appropriate balance between the insurance companies ability to make a profit and the right of innocent accident victims to be compensated for pain and suffering.*”

4.5.2 Rates versus Rights

While many participants supported the introduction of recovery restrictions as a means to reduce their automobile insurance premiums, most people recognized that the savings they derive must be weighed against the restriction being placed on their existing rights to receive appropriate compensation for pain and suffering caused through no fault of their own. This issue was characterized by the Consumer Advocate as the classic “*rates versus right debate*” and was a central issue during the review.

The compromise which must be rendered involves balancing the concerns about placing restrictions on the rights of claimants with the potential impact on rates. The Atlantic Canada Insurance Harmonization Task Force noted in its report the compromise which must be made:

“All Canadians well understand that there never was, is not now and will never be enough money compensation to make whole each person injured wrongly in a traffic accident. That said, reasonable Atlantic Canadians would agree that where there cannot be enough for all, the system must strive to provide as much as is necessary and proper for the needs of those who have sustained the most devastating injuries. The cost is ever increasing to that group, even though that group is small in number. It is ironic that the catastrophically injured have had a cap imposed upon their pain and suffering by the Supreme Court of Canada in 1978 and since that time there has been no debate of this restriction by the traffic injured in Canada.”

“However, if the catastrophically injured in Canada have agreed to accept that cap upon their most profound pain and suffering and loss of enjoyment of life, it behooves all remaining Atlantic Canadian traffic injured, whose pain and suffering, while still real, is less than devastating, to now accept reasonable limits on their monetary compensation. This adjustment in expectations is required to attain a fair distribution of the scarce monetary resources to the catastrophically injured and to attain a balance so that as many motorists as possible afford the mandatory basic auto insurance that pays for those injuries.”

The issues to be resolved were set out in the Task Force report as follows:

“7. The real issues are two: how the majority of traffic injured can come to terms with reasonable reduction of their compensation so that Atlantic Canadians can afford the cost of basic mandatory automobile insurance and how motorists can come to acceptance of the realistic and reasonable cost of insurance to pay for the injuries caused by insured motorists?”

8. The principle must be based on recognition of reducing the tort components as far as possible while maintaining the appropriate balance between the cost of premiums and the necessity of reasonable compensation.”

Richard Rogers, one of the lawyers who spoke to this issue, said:

“We simply ask that before doing so, you consider the interest of the individual and their respective rights and freedoms with as much concern as you do the profitability of the insurance companies. In our opinion, the value of those individual rights and protections clearly outweigh the need for the insurance companies to make more money.”

Mr. Reg Anstey of the Federation of Labour addressed the general principle of this rights versus rates debate in his written presentation:

“Most of the suggested remedies center around restricting the rights of victims, for example, caps on pain & suffering and on soft tissue injury. We believe that these proposed solutions would do very little to lower the cost of insurance, while at the same time limiting the rights of individuals and of course preserving the profit levels of the insurance companies.”

The rights that were identified as being possibly affected were the rights of injured persons to compensation, the unfair and arbitrary effect of the minor injury definitions, as well as possible issues of discrimination, and access to the justice system. These issues are discussed below.

Right to Compensation

During the review there was a clearly expressed sense of entitlement to compensation for injuries caused by a negligent driver. Even in the absence of a strict legal right to be compensated there appeared to be a strong sense of this right from a fairness perspective. MS of St. John's wrote:

"With regards to Automobile Insurance, I strongly disagree with any intention to cap compensation claims due to injury – mild, minor, or otherwise. The right to take legal action and the right to be compensated for the negligence of other drivers is a fair and important one. If a person's ability to receive adequate compensation for injuries put upon him/her is taken away, it removes any chance of efficient financial compensation."

The Consumer Advocate weighed in on the overriding issue by stating:

"We've heard from the unions, what they have had to say about those caps and the loss of rights; Mr. Anstey, the Federation of Labour and CUPE (Mr. Wayne Lucas). People hold those things pretty dear, and whether they're constitutional rights or not is beside the point. It's an entitlement now that, these caps-deductibles would to some measure or other impair, and that's really important."

This perceived right is the foundation of the tort system which is based on the principle of individual responsibility. An injured person is entitled as far as possible to be placed in the position he was before the injury. To do this the courts have said that a person injured as the result of the negligence of another is entitled to recover economic losses as well as compensation for the pain and suffering experienced. As noted by The Honourable T. Alex Hickman, Q.C., former Chief Justice of the Supreme Court of Newfoundland and Labrador, Trial Division, in his presentation, compensation for pain and suffering has often been described as "solace" for what was lost.

Given that both the caps and deductible will apply only to the entitlement to compensation for pain and suffering, the cases filed by Mr. O'Flaherty during IBAN's presentation were instructive. While the determination of pain and suffering damages is an individual one, these cases set out the general ranges of pain and suffering awards in this Province. Pain and suffering award can go as high as the limit established by the Supreme Court of Canada for the most severe injuries such as paraplegias, which is now approximately \$250,000. However, as discussed in the cases filed, pain and suffering awards for whiplash and back injuries in Newfoundland and Labrador generally range from \$20,000 to \$80,000. If a cap is implemented these ranges will be irrelevant to claimants with an injury found to be "minor". The "right" or entitlement will be restricted to the cap amount. Unlike the cap, the deductible will reduce the entitlement for all claimants.

Minor Injury Identification

In relation to the cap a particular concern arises associated with the difficulty in defining the threshold and the impact of the threshold on some claimants. If a threshold is established by virtue of a definition of minor injury, and a group of claimants are classified as “minor” on the basis of their injuries, concern was expressed that it may be viewed to be somewhat of an arbitrary distinction. The Consumer Advocate said during his presentation:

“The thing that we also have to recognize is the rather arbitrary distinctions that can make between people in the sense if one person barely doesn’t make the definition and they get \$2,500. The next one meets the threshold and they get the full panoply of these legal rights.”

This distinction creates a group of claimants who are classified as minor and can therefore receive no more pain and suffering damages than the cap amount. This will mean that this group of claimants will pay all of the costs of the savings for policyholders since those who are not considered minor will not suffer reductions in their award.

It was also suggested that it would be difficult to find an acceptable definition of a minor injury given that those who have had first hand experience with injuries seem to take a different view of minor than those who don’t have this same experience. This is reflected in the following comments received from a number of accident victims:

“I feel confident most individuals will agree that a wide range of pain and suffering exists between the extremes of minor pains and strains, and major injuries. However, a cap on claims basically puts all soft-tissue injuries in the same category.....On the surface, your suggestion⁸, for a cap on claims may seem, as you say, the ‘only way’ to go. However, I fail to notice, in your letter, any recommendation, or guideline for determining the nature and extent of such injuries in a timely, accurate, and independent manner, allowing fairness to all involved.” (AG of Paradise)

“I strongly oppose a cap on compensation for pain and suffering. My injuries may not meet the legal definition of ‘serious and permanent’ under the proposed changes; however, the time I’ve lost with my husband, child, and home is definitely permanent and very serious to those of us it affects.” (CB of Bay L’Argent)

“How can any one body decide that all ‘minor injuries’ must fall into the same category? Are all injuries not case specific? There is no mold into which we all, as injured people must be squeezed.” (SH, Address Unknown)

“And what may seem minor to a person who works with an insurance company or to one of those nice people who gets to share in that 4.2 billion dollars is certainly not minor to me. The fact that I might never be able to hike a mountain again, well, that bothers me. The fact that I may never be able to row again, that bothers me. Because I don’t know if I can do these things because at this point in time I don’t think that I would be able to. Maybe five years down the road I would, I’m not really sure. So, I’m not sure how anybody can understand another

⁸ Article titled “A Case for Capping Insurance Awards” written by Mr. Tom Hickey of IBAN to The Telegram (March 5, 2005) stating: “A cap on pain and suffering claims for minor, non-permanent injuries is the only way to substantially reduce automobile insurance rates in this province.”

individual's actual feelings after having an accident. So, I'm not sure, you know, what their criteria is going to be when they say, oh, yeah, we think that's just a little minor injury, so we're just going to give you \$2,500. So, I,I,I guess, speaking from a victim standpoint, would have to say that I would disagree with that, I would disagree with putting a cap on injuries.” (CM of Corner Brook)

Discrimination

During the review many participants argued that restricting peoples rights with caps and deductibles is not fair. Some suggested that this may be discriminatory. While the provisions of both caps and deductibles would apply equally to all claimants the application of either caps or deductibles may have a disproportionate impact on certain people by virtue of the diversity of the population. The Board heard the views of Chief Justice Hickman, who stated that he had concerns that these measures might be discriminatory:

“It also appears to me that the imposition of the proposed caps or deductibles on non-pecuniary damages will impact adversely on certain classes of claimants, such as students, seniors, homemakers, children and unemployed. Claimants falling into such classes will, most likely, be entitled to smaller pecuniary awards and as a consequence, their entitlement to damages for their losses under the caps and deductibles proposed will be proportionally less. By reason of their bearing an undue share of the costs of the proposals, they will be the victims of unacceptable discrimination.”

The opposing view was put forward by other members of the legal community, who cited legal authorities for the view that these measures would not be considered discriminatory. It was also noted that a substantial number of Canadians already experience some degree of restriction to tort recovery. No authorities were presented during the review that these or other analogous restrictions on rights have been found to be unconstitutional.

Access to Justice

In addition to the issue of discrimination, the related and important issue of access to justice was raised in the context of the implementation of restrictions by caps and deductibles. Generally the concern was that these measures may introduce a level of uncertainty as to entitlement which may impede an individual's ability to have legal representation and to effectively and efficiently litigate and settle claims. Chief Justice Hickman stated in his written submission:

“It is also quite possible that the imposition of caps or deductibles will seriously affect the ability of claimant to have access to the justice system. Lawyers will in addition to assisting their clients in deciding whether litigation can be justified will also have to advise their clients as to whether they will be adversely affected by the restrictions imposed under the regulations that are presently under review.”

The Board heard from practicing lawyers who explained that caps may result in a delay in retaining a lawyer. Mr. Steve Marshall of Roebothan•McKay•Marshall, suggested that, in the case of a cap, it may not be possible to assess a client's entitlement to damages for some time and therefore lawyers may not agree to represent a client until some months after the claim. He

expressed a concern that claimants in these cases may lose the benefits of early and comprehensive legal advice. IBAN disagreed and suggested that a delay in lawyers getting involved is not a denial of access to justice.

Other Feedback

The Board heard from a wide variety of people during the review who simply didn't want any restriction on their fundamental right to recover for pain and suffering, either through a cap or a deductible. The Consumer Advocate reported that the majority of the written feedback he received was against caps and deductibles. During his presentation he advised that he received eight or nine written comments calling for caps or deductibles, five of which were from brokers, and forty or fifty written comments from individuals suggesting that they did not want a cap or deductible. In many instances, these individuals had been injured in an automobile accident and shared their experience of how much life had changed for them as a result. Some of the comments received are highlighted below:

"In closing, I just wish to reiterate, that it is not acceptable that anyone should have to accept an arbitrary base flat amount for severe trauma and pain for any accident. Unless you have walked in my shoes (or victims shoes) you will never know the depth and magnitude of the pain endured." (EV of Clarendville)

"So I hope that anyone who is in favour of the cap being placed on pain and suffering compensation really stop and ask themselves, if the few dollars that they'll save on their premiums a year, will be enough to compensate for their pain and suffering if they ever are involved in a accident." (MK, Address Unknown)

"Deductible is an absence of insurance. You don't have insurance. You don't have that much insurance when you have a deductible. So that was the-that's a term that I would like to bring to the attention of the Board, and it's from our family experience,..." (W. Mugford of Gander)

In addition to the general opposition to the introduction of caps and deductibles there were also some specific concerns raised. Specifically participants suggested that:

- Those who cause the loss should pay for it.

"How can a cap be placed on an injury which will affect me forever, why should I be punished for the carelessness of a wreckless driver?" (HL, Address Unknown)

- The benefits of the restrictions are enjoyed only by those purchasing insurance.

"The use of deductibles and caps do not reduce or eliminate the loss that is being subject to the deductible or cap – these mechanisms merely reallocate the burden for the loss from the person who causes it to the person who suffers it." (Consumer Advocate)

"We know in Newfoundland that somewhere in the range of perhaps 25 percent of individuals are policy holders and that those policy holders are the people who receive the savings." (Roebathan•McKay•Marshall)

- It seems inconsistent to limit the restrictions to automobile accidents and not other forms of negligence.

"And why should motor vehicle accidents be treated in the legal system as any different than any other mishap. Are we going to put a cap on suing airlines, businesses, individuals who are guilty of some wrongdoing? Perhaps we should change the entire judicial system?" (GK, Address Unknown)

Unifund rationalized this distinction by stating:

"We believe that Government can justify further restrictions because unlike other types of injuries (like "slip and fall") accident victims are guaranteed, due to mandatory auto liability insurance, that there will be money available to fund not-at-fault accident victims damages."

- Restrictions should not be implemented unless the exact savings are quantified and known to everyone.

"In other words, what's the quid pro quo? Because the one thing that consumers and indeed all claimants will know for sure, if these reforms are brought in, is they will know for sure from day one what the limitation has been on their rights. But it will take some time to determine what the implications will be for their rates for those who pay. That's the uncertainty." (Consumer Advocate)

Mr. Brad Wicks, a lawyer practicing personal injury law in the Province, discussed a survey completed by his firm in March, 2004. Mr. Wicks reported that initially 65% of the respondents favoured lowering insurance rates at the expense of the right to claim for pain and suffering. However, once the details were provided, 77% of respondents were not prepared to accept a \$2,500 cap in return for savings of \$4.50 to \$13.00 a month and 97% were not prepared to accept a \$7,500 deductible. Based on the survey results of the four hundred respondents, he concluded that:

"people simply do not want their tort system with deductibles, they want their tort system with the full ability to claim compensation for innocent victims for their damages rather than saving five or six or seven or ten or thirteen dollars per month."

There seemed to be a general view that the savings estimated are not enough to justify the use of restrictions. The Consumer Advocate echoed these sentiments in his presentation to the Board by concluding:

"So I am in a situation here, quite frankly, where if we accept the Mercer Oliver Wyman number, I could not recommend to someone, in good faith, that based on these numbers, they should do this. I think the bargain is so improvident, it's so obviously an improvident bargain, that it barely needs further explanation. Now do consumers want to see lower rates? Everybody does. But the question is what am I –what type of deductions am I getting and what am I giving up in return? And it's pretty clear from this Closed Claims Study that some people might be giving up a lot and most people are getting very little in return."

4.6 Board Comments

While a diversity of views were presented during the review in relation to the issue of restrictions on recovery of pain and suffering awards the Board observes that there was a consensus on two important points: recent rate increases are a concern, and caps and deductibles are serious limitations on rights that should be implemented only following careful consideration. These two opposing points resulted in considerable dialogue throughout the public sessions on what the Consumer Advocate referred to as the classic “rights versus rates” debate.

It was clear from the actuarial studies, presentations and round table discussions that the implementation of caps and deductibles would in certain cases lead to rate reductions. Mercer’s detailed actuarial studies determined that savings would be generated with the implementation of an increased deductible or a cap. While there were some differences between the three actuaries who participated in the review in reference to the assumptions and other factors used in the studies (e.g. erosion, trending, etc.), these actuarial differences did not undermine the credibility of Mercer’s findings. The actuaries acknowledged that the process used in the studies were improved over other similar studies. The Consumer Advocate expressed confidence in the studies and the IBC felt the expertise brought to the process by the medical consultant was an added refinement to previous studies.

Mercer’s studies set out the rate impacts for each of the reforms under review. Some observations in relation to the estimated savings in these studies include:

- Savings in private passenger premiums would flow from increasing the existing deductible as well as replacing the existing deductible with a cap using Definition 3 for cap amounts up to \$7,500.
- Virtually no savings were found in relation to a cap using Definition 1 or 2 for private passenger premiums.
- A deductible of \$15,000 generates savings on Third Party Liability private passenger premiums of 31% or \$177, which are larger than savings arising from any other reform.
- As expected, the cap which generated the most savings was a \$2,500 cap using Definition 3, which was estimated to result in savings of 12% or \$67 on private passenger Third Party Liability.
- In terms of the commercial rates, savings were estimated for all reforms except a cap using Definition 1. This results from the fact that commercial rates were not subject to the rate reduction mandated by legislation in 2004.

With only one exception, no alternate rate impacts were quantified by the other actuaries. Mr. Miller, the actuary for the IBC, suggested that in the case of the \$2,500 cap using Definition 3 he would estimate the savings to be 22% (\$131) instead of Mercer’s estimate of 12% (\$67). One

explanation for this discrepancy was the difference in approach used to determine which injuries would be considered to be minor. This difference cannot be finally resolved until the courts decide on the appropriate interpretation of this definition.

Mr. Miller suggested, based on the recent New Brunswick experience, his estimated savings may be more accurate. He suggested that the one year data available from New Brunswick suggests rate decreases of 40%. It is noted, however, that this decrease would reflect a number of market conditions not just the introduction of a cap. This would be consistent with the expected Newfoundland and Labrador experience which, if comparable reforms are adopted, may show a comparable reduction in rates from the 2003 levels. This anticipated reduction reflects the 2004 reforms, the indicated overall rate reduction of 10-12% predicted for 2005, and the additional 12% saving estimated by Mercer associated with the introduction of a \$2,500 cap with injury Definition 3.

During the review the Board heard that, whether or not one accepts the \$67 saving estimated by Mercer or the \$131 savings estimated by the actuary for the IBC or the \$177 saving associated with the \$15,000 deductible, these are seen as relatively small savings to justify forfeiting a person's right to appropriate compensation for pain and suffering. For many, the simple question becomes "is it worth it for the savings?" Many injured individuals passionately described how dramatically their injuries have impacted their lives and strongly opposed the introduction of any restrictions. Other participants, including representatives of the industry, suggested that if significant savings are to be achieved placing limits on bodily injury claims is the best option. In the context of this "rights versus rates" debate the Consumer Advocate concluded that, "*some people might be giving up a lot and most people are getting very little in return.*"

The irony associated with this debate was captured for the Board in a situation described by the Consumer Advocate:

"I think last night, as an example, typified it at the Holiday Inn when one of the individuals who presented to the Board indicated that he was in favor of a cap, and that was fair enough, and then another gentleman, a retired gentleman who had expressed to the Board the difficulties he had in an accident, got up and told his story, and with that the gentleman who.... The first gentleman who had by that time gone back to the audience stood up and said, well, I don't want him capped that's not fair."

Those participants that opposed restrictions seem to believe that, of the two options, they would rather have a deductible than a cap despite the concerns in reference to the erosion of the deductible saving. This latter group includes the Consumer Advocate and the Coalition Against No Fault Insurance. Many of the individuals opposed to the use of caps and deductibles suggested other ways of addressing concerns about costs. Other measures suggested were the reduction of fraud, reduction of expenses and oversight of return on investment and return on equity. These issues are discussed later in Sections 10 and 11 of this report.

5.0 CHOICE OPTIONS FOR LIABILITY COVERAGE

5.1 Introduction

The Board was directed to “review the feasibility and impact on rates of providing consumers one of the following choice options when purchasing liability coverage:

- 1) no restrictions on non-economic loss; or a cap on the amount of non-economic loss; and
- 2) no restrictions on non-economic loss; or a deductible from the amount of non-economic loss recoverable.”

Under these choice options a consumer would have the option of choosing between (1) for a lower Third Party Liability premium, accepting a restriction (either through a deductible or a cap) on the amount of damages for pain and suffering they could recover from the at-fault driver for injuries suffered in an accident; or (2) for a higher Third Party Liability premium, having no limitation imposed on damage recovery. Claimants will still be able to recover economic losses such as wages and medical expenses.

This issue was discussed in the Select Committee report, where the Committee made the following observation:

“Supporters of a choice system generally put forth the argument that an individual should have the right to choose the type and level of insurance coverage that he or she considers appropriate. If a person wishes to reduce the cost associated with automobile insurance by voluntarily forfeiting the right to sue for general damages, that is a democratic right. Conversely those who oppose a choice system state that most consumers do not possess an adequate knowledge of the insurance industry and the various types of coverages available in order to make an informed choice. Invariably, they argue that most people who choose the no-fault option do so for financial reasons only and not with an understanding of their insurance needs.”

Other issues raised in the Select Committee report concerning the implementation of a choice system included potential administrative difficulties with different coverages for insureds, and the difficulties in determining appropriate compensation for accident victims such as pedestrians and passengers who may have no insurance coverage as the Select Committee did not recommend restrictions on recovery no recommendation was made with respect to choice.

5.2 Other Jurisdictions

The high cost of automobile insurance has fueled a search for reasonable alternatives to the present systems in both Canada and in the United States.

Saskatchewan

In 1995 in response to the deteriorating financial condition of the Saskatchewan Auto Fund, the Government of Saskatchewan enacted legislation to implement a system of no-fault insurance. Since bodily injury claims were seen as the primary reason for the increasing cost of claims, the

legislation limited the rights of injured parties with regard to claims. In 2002, in response to significant opposition to the no-fault regimes the Government of Saskatchewan introduced Bill 57 which provides for choice of either tort or no-fault coverage.

Under the no-fault coverage option insureds receive a higher level of defined benefits (up to \$61,139 annually to age 65 as income benefits), regardless of the circumstances of the accident. They can sue for expenses not covered by these defined benefits, but they cannot sue for pain and suffering except in very limited circumstances. Under the tort coverage option the insureds receive a lower level of defined benefits (up to \$16,328 annually as income benefits), regardless of the circumstances of the accident. They can sue for expenses not covered by the defined benefits, as well as for pain and suffering. Initially the rates for both the tort and no-fault options were set at the same level, and there are no fees for changing auto insurance coverage⁹. The equivalent rate levels have not changed since implementation.

Although there are examples of strong opposition to the new system in Saskatchewan as it existed between 1995 and 2002, there appears to have been little public discussion since the implementation of choice. IBAN noted in its written presentation that, according to Saskatchewan Government Insurance (SGI): “*just over 4,800 Saskatchewan residents have taken the tort option, a relatively small fraction of the province’s population of just under one million.*”

Pennsylvania

In February 1990 insureds in Pennsylvania were given the option of electing limited tort coverage in their mandatory automobile insurance policies with a minimum premium differential of 15.3% between full tort and limited tort options. In 2003 private passenger automobile rate filings were required to apply a minimum differential of 40% on bodily injury, first party benefits, and uninsured/underinsured motorist coverage. This could be waived if an insurer was able to provide sufficient, credible data to demonstrate that a different limited tort differential was appropriate for those coverages¹⁰.

New Jersey

In 1973 New Jersey implemented no-fault insurance with compulsory first party/liability and some restrictions on lawsuits. In 1989 it instituted an optional system in which all motorists were enrolled in no-fault unless they chose the Personal Responsibility System¹¹.

As of June 2003 consumers in New Jersey have another choice. The Basic Policy contains no compulsory bodily injury liability coverage and allows only a limited right to sue. The Standard Policy includes bodily injury coverage of \$15,000 per person and \$30,000 for all persons and permits a choice between a limited or unlimited right to sue. Both policies have personal injury protection. In both cases additional coverages can be purchased.

⁹ Website: www.sgi.sk.ca

¹⁰ Website: www.ins.state.pa.us/ins/cwp/view.asp?a=1339&q=545100#difference

¹¹ Website: <http://www.consumerwatchdog.org/insurance/fs/fs000218.php3>

Although consumers are realizing the benefits of these reforms through lower rates, with approximately 90% of consumers choosing to limit tort, the availability of options can be a source of confusion for customers. The majority of insureds in New Jersey continue to avail of the default Standard Policy. During the review Mr. Ted Zubulake, an actuary from New Jersey with years of experience dealing with insurance matters, said: *“I’ve been in the insurance business for over 30 years and I find the options all very confusing and as I sit here I can’t honestly tell the Board what I’ve selected.”*

Kentucky

Kentucky is basically a no-fault state that deems that each purchaser of automobile insurance, at the time of purchase, has accepted limitations on his/her tort rights and liabilities in the case of a minor injury. The affected coverages are bodily injury, personal injury protection, uninsured motorist and medical expense. An insured may reject these limitations, but must do so in writing and pay a 10% differential. This law has been in effect since 1975. However, 90% of consumers continue to choose the default coverage and to limit tort.

5.3 Submissions, Presentations and Comments

The Consumer Advocate expressed reservations with respect to the implementation of choice options for liability coverage. In his written submission he stated:

“It is difficult to assess whether consumers would be better off under such a scenario. While most people instinctively like the idea of having a ‘choice’ in principle, it is unclear whether such a complicated product change (as described in the MOW Report of February 1, 2005) would be very well understood. For those who are injured and who are not also insured (eg. pedestrians, children), the difficulties are more perplexing still. Additionally, a choice system is not in widespread use in other jurisdictions and its additional administrative and start up costs which will be borne by consumers are not known. Finally, it is not clear that a relatively small jurisdiction like Newfoundland and Labrador would be a feasible place to institute such a complex system as we simply have a small number of insureds compared to the states of New Jersey, Pennsylvania and Kentucky where an optional system is in place. It also creates the appearance of a two tiered system whereby those with more means end up being fully protected while those not so well off may go with the cheaper option without a full appreciation of the consequences. In principle, it would seem to be fairer and more equitable that if restrictions are going to be placed on legal rights to receive compensation that all should share the burden.”

In his presentation to the Board the Consumer Advocate did not support a choice system as proposed, stating that in his view *“The choice system could be dangerous and the administration would be so difficult that I think one nearly has to be against it.”*

In its written submission IBAN supported choice for consumers for coverage, markets and payment options. However IBAN suggested that additional choice to a mandatory product such as liability insurance “brings pitfalls” and adds complexity to the insurance purchase. From the brokers’ perspective the risks and challenges include potential lawsuits from clients who didn’t understand what they bought, and uncertainty as to how effectively this option would work in a market such as Newfoundland and Labrador. IBAN stated that much more study needs to be

done to determine if a choice option would be an effective alternative for the Province and if so, what form it should take.

Aviva stated that “*There is a cost associated with the consumer education piece of...a choice system. (ie, admin, training, etc).*” According to Aviva Newfoundland and Labrador is a small market in the context of a national company, so a company would be unlikely to develop the specialization needed to effectively provide a choice product in Newfoundland and Labrador.

During a presentation to the Board, Mr. W. Griffin of St. John’s expressed a preference for choice and flexibility:

“If there are proposals in place to change insurance, I certainly would like a choice and flexibility, as to the type of insurance, the type of coverage, the caps, the deductibles and give me the choice, as a consumer, as to what option I can have. I, personally, favour to a certain extent, self insurance, that being I don’t mind paying a higher deductible, I don’t mind looking at house insurance, climbing around on my roof and fixing a shingle, rather than using my insurance for the smaller things. I do like insurance for the disastrous things and the things where I am liable and there’s suing involved and things like that...I’d like that opportunity and choice. So I guess if my one point here tonight is whatever choices you go with, don’t look at it that it’s black and white, either you bring in this and everybody gets the same treatment or you don’t bring in this. You have a deductible at this limit or you don’t have a deductible. Let me, as a consumer, choose. That’s all I have to say.”

While the IBC stated in its written submission it generally supports offering customers choice in the way of more individualized insurance products, it advised caution with respect to whether choice regarding non-economic recoveries would benefit the consumer or the industry. Quoting a report commissioned by the IBC on the merits of this type of “dual” product the IBC noted problem issues surrounding additional costs imposed on the system and the huge amount of public education that would be required under a choice system.

5.4 Impact on Rates of Implementing a Choice System

In its report Mercer stated that the premium savings estimated from a cap or deductible on the amount of non-economic loss recoverable for the various scenarios considered would be relevant under a choice system. However Mercer pointed out that these estimates may not be relevant over time as it is possible that the risk characteristics of consumers that select the restricted tort recovery option would differ from those of the consumers that opt for no tort recovery restriction. This would affect the estimated premium savings. Mercer stated that whether this would be the case cannot be known at this time. The specific loss experience would have to be monitored and, over time, premiums would have to be adjusted to reflect the actual experience that emerges.

Experience in other jurisdictions where choice in the recovery of non-economic loss already exists suggests there may be a measurable differential in rates between the restricted and unrestricted options. Only Kentucky and Pennsylvania have had sufficient experience to be able to measure loss costs, and Kentucky has maintained the same 10% rate differential since 1975

with no indication of pending change to this policy. In Pennsylvania the initial differential of 15.3% is now, thirteen years later, indicated to increase to 40%.

In Saskatchewan, where tort coverage was not available between 1995 and 2002, the choice of the tort option by consumers looking to recover non-economic losses would tend to increase loss costs for this group of customers. This has not yet been reflected in rates as the initial rate for tort coverage was set equal to that for no-fault, and there have been no subsequent rate adjustments.

5.5 Feasibility Issues

Issues to be considered in implementing a choice system identified by Mercer to be ongoing expenses associated with the set-up and administration of a choice system, consumer education, and premium equalization.

The implementation of a choice system will involve start-up costs and ongoing expenses as insurers will need to modify their policy issuance computer systems, statistical capture and reporting computer systems, policy forms, marketing material, and other internal processes to accommodate the new coverage.

Consumer education will also have to be an important component of a choice system if implemented. As highlighted previously by the Select Committee and presenters throughout this review, it will be critical that consumers understand the product they are purchasing and the implications of the choice being offered. It was noted in the review of other jurisdictions that consumers seemed to elect the default coverage suggesting that they may not understand the choice available or actively choose between the alternatives.

A choice liability option can work reasonably well where all insurance is provided by the same insurer, such as a public company as in the case of Saskatchewan. However where insurance is provided by a number of individual companies, as in Newfoundland and Labrador, a choice system may create an imbalance between the premiums collected by individual insurers and their payments, since parties involved in an automobile accident under a choice tort system may have different types of coverages. Mr. Zubulake of Mercer described this during his presentation:

“This issue arises because when a consumer elects to limit his or her tort recovery for a reduced third party liability premium, that person hasn’t really actually changed his third party liability coverage. Again, third party liability coverage protects a consumer for injuries that he or she causes others. It has nothing to do with the compensation that person receives for injuries that he or she suffers. So, if a consumer that elects the tort recovery restriction for a reduced premium injures someone else that has not elected a tort recovery restriction, then the at-fault driver’s insurance company must pay that injured party in full even though it collected a lower premium from its consumer.”

“So there’s an imbalance in this system, the system between the premiums that companies collect and what they have to pay out, because they can only control their insureds but they protect their insureds for injuries they cause others and they have no control over what options those insureds select. So, as a result there has to be a re-balancing, if you will, of the premiums, there has to be

a redistribution of the third party liability premiums collected by the insurers in such a system, that operate in such a system, so that companies again receive premium that's in balance with the losses they have to pay out. And again, so as a result a mechanism would need to be established to redistribute the third party liability premiums among companies. And in New Jersey they have such a mechanism, is one example."

This redistribution of premiums would require the development of a system to track premiums and loss costs for each company and rebalance revenues and costs. This would result in additional costs to the system which must be ultimately born by consumers. The cost of the development of such a system may not be practical in a small market such as Newfoundland and Labrador.

5.6 Board Comments

The effect on rates of implementing a choice of either full tort recovery for non-economic losses or limited tort recovery is, on the surface, promising. During the review a number of stakeholders expressed the view that there should be no restriction on recovery. There were, however, others who supported restrictions. The introduction of a choice would respond to each of these views. However there are definite issues associated with the introduction of a choice option. Choice implies that customers are aware of the options, are educated as to the consequences of choosing an option, and are capable of making an appropriate choice. In addition practical matters must also be addressed such as defining the product, the rate differential, start-up costs, and premium equalization mechanisms.

In the United States, despite attempts to introduce federal legislation to implement choice options, few states have been willing to make this move. The intuitive reason would be that no-fault states see this as an imposition of additional costs, while tort states see it as a possible loss of rights.

6.0 MANDATING ACCIDENT BENEFITS COVERAGE

6.1 Introduction

The Board was directed to “*review the implications of mandating that consumers carry accident benefits coverage with respect to: the impacts on rates; the benefits to claimants; and integration with other insurance plans.*”

Accident Benefits, also referred to as Section B coverage, provides for immediate reimbursement of certain expenses incurred as a result of an automobile accident without regard to who is at fault. In Newfoundland and Labrador the coverage provides the following benefits to insured persons:

- medical expenses - \$25,000 per person, including rehabilitation; time limit of 4 years;
- funeral expenses - \$1,000;
- disability income benefits – 104 weeks partial disability; lifetime if totally disabled; maximum \$140/week; 7 day waiting period; \$70/week for unpaid housekeeper with a maximum of 12 weeks; and
- death benefits – death within 180 days (or 2 years if continuously disabled prior to death); death of head of household: \$10,000 plus \$1,000 for each dependent after the first; death of spouse \$10,000; death of dependent child \$2,000.

This coverage provides benefits on a no-fault basis in cases where an individual has no collateral source benefits such as an employment related health plan or where benefits provided through these sources do not completely cover the expenses of the individual.

Unlike other provinces, in Newfoundland and Labrador Accident Benefits coverage is an optional coverage. According to industry statistics approximately 75% of persons purchasing automobile insurance in the Province have Accident Benefits coverage. The Province-wide average vehicle premium for Accident Benefits is \$56.00¹².

The possibility of making Accident Benefits coverage mandatory, like Third Party Liability, has previously been considered in this Province. The Select Committee studied this issue and recommended that Accident Benefits be made mandatory. The Committee’s report commented that individuals often find themselves unprotected where there is no Section B coverage and they require immediate medical treatment such as physiotherapy. As well the report stated that a significant number of people are not even aware that they do not have Section B coverage until an accident occurs and they have to submit a claim. The report also stated that the current level of benefits have been in place since 1992 and should be increased. The following changes to the

¹² Proposed Newfoundland and Labrador Private Passenger and Commercial Automobile Insurance Benchmark Ranges for 2005, October 12, 2004

benefits available through Accident Benefits coverage were recommended by the Select Committee:

- increase medical and rehabilitation benefit to \$35,000 (currently \$25,000);
- increase weekly income replacement benefit to the lesser of: a) \$250 (currently \$140) and b) 100% of net income;
- increase death benefit to \$15,000 for principal income earner and \$15,000 for spouse (both currently \$10,000); increase benefit for dependents to \$5,000 from \$2,000; and
- increase funeral benefit to \$2,500 (currently \$1,000).

It was suggested by the Select Committee that the current levels of benefits “*are inadequate and are likely a contributing factor to the proliferation of Section A (Third Party Liability) claims in recent years.*” The recommended changes were proposed in conjunction with recommendations for changes to the tort law system to help control claim severity and offset the additional costs associated with enhanced Section B benefits.

During this review the level of Accident Benefits did not emerge as a significant issue. It is noted that the current level of benefits available to claimants in this Province under Accident Benefits is similar to the benefits available in Nova Scotia, Northwest Territories and Prince Edward Island (See Exhibit 5). While New Brunswick has recently enhanced Accident Benefits coverage, it also implemented a “No Frills” option which provides benefits similar to those in other jurisdictions in Atlantic Canada.

6.2 Other Jurisdictions

CANADA

Although Accident Benefits coverage varies from province to province, there are some similarities in the coverage on a regional basis. Exhibit 5 provides an overview of the benefits and features of Accident Benefits (Section B) coverage in Canada. Highlights for certain jurisdictions are noted below.

New Brunswick

- Standard coverages include medical payments to a limit of \$50,000 per person per year for a four year period. The death benefit for the first person is \$10,000 with \$1,000 for each additional person.
- Recently introduced a “No Frills” option whereby a driver has the option of selecting reduced Accident Benefits coverage for a lower premium. Under this option, medical, funeral, death, income replacement and home support benefits are cut in half.

- For both the “Standard” and “No Frills” option, Accident Benefits coverage is secondary to the amount recoverable under any other plan or law, except for similar insurance provided under another automobile insurance contract, available to the insured.

Nova Scotia

- Accident Benefits coverage is provided within four years from the date of the accident to a limit of \$25,000 per person for services and supplies, up to \$1,000 for funeral expenses in respect of the death of any one person, and death benefits of \$10,000 for the head of the household or the spouse.
- Accident Benefits coverage is secondary to the amount recoverable under any other plan or law, except for similar insurance provided under another automobile insurance contract, available to the insured.

Ontario

- Accident Benefits provides coverage of up to \$100,000 per person in normal circumstances, \$1 million if the injury is catastrophic. The death benefit is \$25,000 for the head of the household or the spouse.
- Ontario is currently considering a customized accident benefits coverage option, similar in some respects to what was introduced in New Brunswick. Ontario is also looking for ways to allow consumers with collateral benefits to opt out of this coverage.
- Since 1990 auto insurers in Ontario are “last payers” with respect to other benefits that an injured individual may have.

Alberta

- Accident Benefits may pay for all reasonable expenses incurred within two years from the date of the accident, to a limit of \$50,000 per person for services and supplies, \$2,000 for funeral expenses in respect of the death of any one person, \$400 for grief counselling expenses in respect of the death of any one person, and a death benefit of \$10,000 with add-ons in certain situations for the head of the household or the spouse/interdependent partner.
- Accident Benefits provides primary coverage when insurers elect treatment under Alberta Regulation 122/2004, Diagnostic and Treatment Protocols Regulation, and secondary coverage if the insurer does not elect. Where the treatment program is elected, private insurance plans such as Blue Cross or other plans will no longer be the first payer for minor injury treatment. Section B will be the first payer for

treatments within the protocols, with patient's private coverage preserved for future needs.

British Columbia

- Autoplan Accident Benefits will pay reasonable medical and rehabilitation expenses to a limit of \$150,000 for each insured person injured, with a death benefit plus add-ons in various cases of \$5,000 for the head of the household and a payment of \$145/week for 104 weeks for the first survivor.
- Autoplan does not cover expenses that may be claimed under other existing insurance policies, medical or hospital plans, or the Workers' Compensation Board.

UNITED STATES

- In Florida, Hawaii, Massachusetts and Minnesota consumers can reduce their Accident Benefits premiums by electing to have a deductible applied to their coverages.
- In Michigan consumers have an option of coordinating their Accident Benefits coverage with the coverage provided by their health insurance carrier.
- In California consumers can select lower coverages and benefits for a reduced premium.
- In New Jersey consumers have a wide assortment of options to choose from in selecting their Accident Benefits coverages. With each option, there is a different premium and consumers can customize their insurance program.

6.3 Submissions, Presentations and Comments

In his written submission the Consumer Advocate observed that it is not known why approximately 25% of those purchasing automobile insurance do not purchase Accident Benefits coverage. He stated that the possible reasons include: the coverage may not be offered or understood at the point of purchase; cost concerns; or in the particular circumstances of the customer the product may not be required.

According to the Consumer Advocate lack of access to Section B benefits can have the effect of prolonging an injured person's recovery period or impeding recovery following an accident. These could lead to higher claims costs and financial hardship on the claimant. It was the Consumer Advocate's position that mandatory Section B benefits would benefit consumers overall.

The IBC recommended mandatory Accident Benefits coverage in the standard automobile insurance policy to bring the Province in step with other provinces and to ensure that injured parties have a basic level of compensation if they are involved in an automobile accident.

IBAN acknowledged that mandatory Accident Benefits coverage would result in additional premium costs for some consumers, but stated that the benefits outweigh the disadvantages. According to IBAN:

“Every jurisdiction in Canada has this as a part of their minimum coverage requirements, and for good reason. We feel that every policy should be structured so that regardless of fault, individuals have access to coverage for basic medical treatment as well as other out-of-pocket expenses. As indicated in the report there may be opportunities to move costs out of TPL into Accident Benefits. As well, with a larger pool of risk, there may be an opportunity for the overall cost of the product to decrease. We would encourage government to implement this important reform.”

Aviva recommended the implementation of mandatory Accident Benefits coverage to complement the tort reforms. According to Aviva mandatory Accident Benefits would provide injured parties with a basic level of treatment and care, regardless of fault. In Canada, there are several different models of mandatory first party Accident Benefits coverage. Aviva endorses the “Program of Care” model, as opposed to the more traditional models. This model is centered on treatment as opposed to compensation and specifies the appropriate type and timing of healthcare intervention for a specific category of injury or disease. These models are based upon best practices and current scientific evidence regarding recovery patterns and effective clinical intervention.

Meloche Monnex stated that making Accident Benefits mandatory would provide coverage where the liability for an accident is in dispute and a person has no collateral benefits. However, according to Meloche Monnex, it would be unfair to force every consumer to buy an expensive coverage that not all of them would use. Accident Benefits is a secondary coverage and presumably consumers who have access to other collateral benefits, like employment related health plans, may not require this type of coverage. Meloche Monnex recommended a careful assessment of the impacts of making Accident Benefits mandatory before changes are made.

The Co-operators expressed the view that all drivers in Newfoundland and Labrador should have Accident Benefits as a basic element in their automobile insurance policy. The Co-operators encourages its customers to have this coverage with the result that 98% of its policyholders have Accident Benefits coverage. The Co-operators stated that the most fundamental principle for a successful, fair and effective automobile insurance system is security for all consumers. Consumers should have adequate coverage and benefits to ensure that they are protected when a serious accident occurs.

In their presentation to the Board representatives of The Co-operators provided the following additional comments:

“Newfoundland and Labrador is the only jurisdiction in Canada that does not require mandatory Accident Benefits coverage.”

“Some Newfoundlanders and Labradorians have coverage through other sources such as employee benefit plans but the vast majority, particularly our large seasonal workforce, does not.”

“Consumers need to have the appropriate coverage when they suffer an injury in an automobile accident.”

“With Accident Benefits, immediate treatment is available, it covers drivers, passengers, self-employed, retirees, students and seasonal workers.”

Ms. Sharon Horan, an occupational therapist, also spoke to the need for mandatory Section B benefits to promote recovery:

“...I can say from my vast experience that it has been very frustrating as a health care provider to see those individuals very late in a claim who did not have Section B coverage, who are not in the position to have group insurance, did not have the financial cash flow to actually seek appropriate rehabilitation early on in their injury claim. And as a result of that, when we see them, which is often two or three years later when this thing is finally trying to get settled, and you see someone who started out with what really could have been, I think, a very simple and uncomplicated injury, but in fact, now they’ve gotten into some very chronic pain issues and some chronic mobility issues. I really do feel, I guess, if I have an opinion, that on that one issue, I would like to see us look towards Section B being more of a mandatory process and we can ensure that any individual that’s injured, irrespective of fault, would have that opportunity to seek the appropriate rehab early on.”

The Board also heard from a number of individuals who were not satisfied with the treatment they received from their own insurer with respect to Section B claims. For example, AG of Paradise wrote to describe “*the deplorable manner in which I was treated concerning my Section B disability income*”. During the public session in Gander Mr. Keating, speaking on behalf of his family who were all injured in a not-at-fault automobile accident, express his frustration at the process and at having to fight with his own insurance company for Section B benefits.

6.4 Implications of Mandating Accident Benefits Coverage

In its “Report on Other Automobile Insurance Issues” Mercer discussed Accident Benefits and the impacts of making this coverage mandatory in Newfoundland and Labrador with respect to benefits to claimants and impacts on rates.

Mercer described the advantages to some insureds in terms of benefits under a mandatory Accident Benefits coverage system. Making the coverage mandatory will not provide additional benefits to those 75% of automobile insurance consumers that already carry it. With the mandated purchase of Accident Benefits, the remaining 25% of consumers will have the ability to look to this coverage once other coverages are exhausted. These consumers will also see an increase in their automobile insurance premiums with the addition of mandated Accident Benefits coverage.

In terms of rates, with the addition of premiums from the 25% who do not currently carry Accident Benefits, there may be a slight decrease in Accident Benefits premiums overall, especially if these insureds have other available insurance. Mercer stated that mandating Accident Benefits coverage may also result in a movement of costs from Third Party Liability to Accident Benefits, resulting in a reduction of Third Party Liability premiums. This may happen over time as the portion of the additional 25% of insureds who are injured by the negligence of another driver collect benefits from their Section B insurer instead of the third party insurer¹³.

During his presentation to the Board Mr. Zubulake of Mercer provided the following additional comments on the impact on premiums of mandating Accident Benefits:

“If it’s the case that those that don’t carry Accident Benefits today would never submit an accident benefits claim because they have other insurance they carry that is primary, the premiums for all of the drivers in the province could very well be reduced somewhat because we’re adding, because 25% more drivers will be paying for accident coverage that they don’t need and so that savings, if you will, will be spread out among all drivers in the province.”

“...unless insurers were permitted to give a discount for making accident benefits secondary over other coverage.”

“The benefits in this province are fairly modest compared to some other provinces. But, again, because the benefits are relatively low, it’s unlikely that there would be much of a cost reduction. If there is any, it would be quite small, I would think.”

Therefore, as a group, consumers that are mandated to carry this coverage will have to pay more for their total insurance package but other consumers’ premiums may decrease slightly.

Making Accident Benefits mandatory may also promote recovery as every injured person will have access to early treatment with this coverage.

¹³ Auto Insurance Reform for Canada’s Tort Provinces, Working Paper 2003-05 by Norma L. Nielson, Ph.D., and Anne E. Kleffner, Ph.D., Haskayne School of Business, University of Calgary, August 5, 2003.

6.5 Integration with Other Insurance Plans

Accident Benefits is currently a secondary coverage in Newfoundland and Labrador, which means that benefits are paid only where the claimant has no other coverage or insufficient other coverages. While this approach minimizes the costs in the automobile insurance system it shifts costs to other insurers such as group employment medical coverage. Most other jurisdictions in Canada with privately run insurance systems have taken this same approach with Accident Benefits coverage being secondary to other coverages. The only exception to this is Alberta where a claimant can elect to take Accident Benefits first if they agree to follow a prescribed treatment regime. With Accident Benefits as the primary insurer there is an opportunity for standardized treatment programs for accident victims as in the case of Alberta.

Concerns were also raised by some accident victims who presented during the review that, with Accident Benefits as the secondary payer, coverage under their other insurance plans are often exhausted, thereby leaving no coverage available for future non-automobile related claims.

While the costs may be more appropriately assigned by making Accident Benefits first payer it must be acknowledged that such a change is likely to lead to a substantial increase in the costs of the coverage and perhaps ultimately a small decrease in the costs of the other insurances that would no longer incur these losses. The Board is not aware of any studies or other information quantifying the level of these increases and savings. It is notable that in New Jersey, where there is a choice option in relation to making Accident Benefits primary or secondary coverage, the rate differential for one insurer is 25%. To measure the actual shift in costs it would be necessary to conduct a detailed study of Accident Benefits similar to the closed claims study completed for Third Party Liability costs. As well it would be necessary to undertake research on the other insurance which is primary in these cases.

6.6 Board Comments

In general stakeholders supported making Accident Benefits a mandatory coverage for automobile insurance consumers in the Province for the following reasons:

- will provide access to benefits for those consumers who currently do not purchase this coverage and have no access to other coverages through personal or employer related plans;
- will bring Newfoundland and Labrador in line with other jurisdictions in Canada; and
- may, with access to treatment and rehabilitation benefits, promote recovery for injured persons.

The policy decision for Government with respect to this issue involves a choice between allowing consumers to choose to purchase this coverage, as is the case now, or requiring all consumers to purchase the coverage. If Accident Benefits coverage is made mandatory 25% of consumers who do not currently purchase this coverage will see an increase in their premiums commensurate with the cost to the insurer of providing this benefit. While these consumers may have increased premium costs, costs to consumers overall may decrease slightly as the total premium for this coverage will be collected from all insurers.

It is noted that this Province is currently the only province that does not have mandatory Accident Benefits coverage. Mandating this coverage will ensure all insureds in Newfoundland and Labrador have access to these benefits, as in other jurisdictions in Canada. As well all automobile insureds in the Province will have access to a consistent level of benefits.

If Government wishes to enhance the level of benefits, as recommended in the Select Committee report, the overall costs of providing this Accident Benefits coverage will increase with a corresponding increase in premiums. It is noted that the current level of benefits in this Province is comparable to those in Nova Scotia and Prince Edward Island, and the recently introduced “No-Frills” Accident Benefits policy in New Brunswick.

7.0 ELIMINATION OF AGE, GENDER AND MARITAL STATUS AS RATING FACTORS

7.1 Introduction

The Board was directed to “*review the implications to policyholders of the elimination of age, gender and marital status as rating factors, including an examination of alternative rating systems such as the proposed Alberta grid rating system.*”

Under the current automobile insurance system operating in the province, age, gender and marital status are factors which are used in setting rates for both Third Party Liability and Collision coverages for principal operators under age 25. While age and gender are used to determine rates for both male and female principal operators, only male principal operators have the additional factor of marital status considered. Upon attaining age 25 all principal operators are rated in a similar fashion with no consideration for age, gender or marital status. For principal operators under age 25, there are two classifications for female operators while there are six for males. Exhibit 9 provides a description of the classification of principal operators for rating purposes, on the basis of age, gender and marital status.

7.2 Other Jurisdictions

In British Columbia, Manitoba and Saskatchewan, where Third Party Liability automobile insurance is offered through a public system, age, gender and marital status are not used as rating variables.

As of December 23, 2004 insurers in New Brunswick are not permitted to use age and marital status as rating variables. The use of gender is still permitted. As of January 2005 a “First Chance Discount” for new drivers was established. This is described in more detail in Section 7.7.

In Nova Scotia insurers are not permitted to use age and marital status as rating variables as of November 1, 2004 as per the *Automobile Insurance Prohibited Risk-Classification Factors Regulations*. In 2004 the Nova Scotia Insurance Review Board completed a study into the use of gender as a rating factor, which recommended to Government that gender should be eliminated as a rating variable. This recommendation has not been implemented to date.

In Ontario, Prince Edward Island and Quebec insurers are permitted to use age, gender and marital status as rating variables.

Alberta has established a Grid Rating System to set the maximum amount an insurer may charge for automobile insurance for Third Party Liability and Accident Benefits coverage. In setting the maximum grid rate, age, gender and marital status are not considered as factors. Individual insurers are permitted to use these factors in setting rates within the grid. Alberta’s Grid Rating System is discussed in more detail in Section 7.7.

The practice in the United States varies by state. California has in place very specific rules for the way automobile insurance premiums are determined, under which the use of age is prohibited and the use of gender and marital status is subject to limitation. The use of age and gender as rating variables is prohibited in Massachusetts, Hawaii and North Carolina. Michigan and Montana prohibit the use of gender and marital status only, and Pennsylvania prohibits the use of gender only. Most other states allow insurers to use age, gender and marital status as rating variables.

7.3 Concerns About the Use of Age, Gender and Marital Status as Rating Variables

It has been suggested that the use of age, gender and marital status as rating variables makes insurance unaffordable and perhaps inaccessible for some insureds. Certainly, one of the objectives of eliminating age as a rating variable is to make automobile insurance more affordable and accessible to young drivers. This appears to be the motivation for recent changes in New Brunswick, Nova Scotia and Alberta. New Brunswick eliminated the use of age and marital status as rating variables in late 2004 and implemented a “First Chance” premium discount as of January 2005. According to the New Brunswick Government’s news releases this discount is intended to give new drivers the opportunity to prove they are responsible and to give them a break on insurance rates provided they maintain a clean driving record.

The issue of whether the use of age, gender and marital status as rating variables is discriminatory was considered by Supreme Court of Canada in the context of an allegation of discrimination in 1983 against Zurich Insurance. The Court concluded that the rating practices of the insurer did not offend the *Ontario Human Rights Act*¹⁴. The Court found that charging higher automobile insurance premiums to young, unmarried male drivers is prima facie discriminatory and contravenes the Ontario Human Rights code. However, the practice was saved by section 21 of the Code which stated that prohibitions against discrimination are not infringed where a contract of automobile insurance differentiates on reasonable and bona fide grounds because of age, sex, marital status, family status or handicap. The majority found that the premiums were based on sound and accepted insurance practice, since statistical evidence showed that young, male drivers are involved in proportionately more serious accidents than other drivers. The Court noted that there was no practical alternative, as alternative statistical bases of risk classification were not available at the time of the complaint.

In October 1999 the Ontario Human Rights Commission released a discussion paper “Human Rights Issues in Insurance” for public consultation, which was followed by a subsequent consultation report issued in October 2001. This report provides the following summary of industry’s position with respect to the use of age, gender and marital status as rating variables¹⁵:

¹⁴ Zurich Insurance Co. v. Ontario (Human Rights Commission) (1992), 16 C.M.R.R. D/225 (S.C.C.) Website: www.ohrc.on.ca

¹⁵ Human Rights Issues in Insurance – Consultation Report. Ontario Human Rights Commission. October 2001; page3/30 (available at <http://www.ohrc.on.ca>)

“Representatives of the auto insurance industry are of the view that age, sex and marital status continue to be bone fide and reasonable factors in assessing driver risk in accordance with the 1992 Supreme Court of Canada decision in Zurich. Although other variables, like personal driving records, years of driving and average loss history of vehicles by make and model, are also used, the industry’s review to date (confirmed in a June 2000 study) concludes that there are currently no suitable alternatives to replace age, sex and marital status. At the same time, there are other jurisdictions such as British Columbia and Massachusetts that do not rely on age, sex and marital status in risk assessment. The industry contends, however, that such public schemes have lead to rate dislocation (higher costs not proportionate with risk for certain groups) and product availability problems.”

7.4 Submissions, Presentations and Comments

This issue was a concern for a large number of consumers during the review. About one third of all written and telephone comments commented on this issue. In general, parents of young men and young men themselves favored a change to a system that does not include age and gender as rating variables. DW of Bonavista Bay, the father of a 16 year old son, wrote:

“The cost for my son’s insurance, without the driving course, was nearly \$1,500.00. The cost for each of the other five students?? Approximately \$300.00. Why the big difference in the cost? His five friends were female. His insurance was \$1,200.00 more because he just happened to be born male. This has got to be the most blatant form of discrimination that anyone can think of.”

AS of Blaketown wrote:

“I do not feel that I should have to pay \$190.00 per month to be insured on my parents’ vehicles, whereas the cost to have insurance if I were a female would be approximately \$30.00 per month. Why not have the same rate??? ... And up the premiums if there is a claim.”

Although parents and young men felt strongly that the use of age and gender in setting premiums was discriminatory, young women were not exempt from feeling that they were being treated unfairly. EF wrote in an email:

“The other reason my insurance is skyrocketing is of course due to my age. For what it is worth, being under 25 does not make me a reckless driver.”

Others expressed a variety of opinions. BC of Stephenville, in a telephone message, said that: *“...there should be no limits based on age, sex, when you get your insurance.”* BR of St. John’s, on the other hand, stated in an email:

“I also do not believe that age and gender distinctions should be eliminated in insurance costs. It is a statistical fact that young men have more accidents and are more likely to be reckless drivers. They therefore should pay higher premiums. If it is now true that young women are now exhibiting the same level of recklessness, then their premiums should go up too. Why should my premiums subsidize the bad driving habits of others?”

DB of St. John’s, in website comments, expressed his preference for the status quo:

“I agree with a rating system based on age and driving experience. This should remain within any new insurance regulations. It has been proven that younger and less experienced drivers are a higher risk and thus a higher cost to insure. I also realize that there are anomalies in any group, but to be fair to all people those groups with a higher risk should have the higher premium. “

JM of St. John’s felt that: *“While age discrimination appears to be an issue, defining it as years of experience driving may be more appropriate.”*

Dennis M. Browne, Q.C., of St. John’s, suggested in a letter that if:

“...new drivers ages 16 and 17 have accidents disproportionate to any other age group, resulting in increasing claims...The Board could well include in its recommendations that Government increase the age limit for driving.”

The Consumer Advocate, in his presentation to the Board, explained that he had learned from his discussions with people that:

“They want to see young people get a break on insurance, but the difficulty is they likely don’t understand what it means for other consumers. And actuarially, we are told that these people are in a higher risk and, as a matter of principle, those who cause the loss should pay the burden.”

He went on to say:

“So that is a matter of fundamental social policy, which quite frankly I am unable to resolve, because the implications, the amount of consumer education that would have to be done in order to get a consensus on an issue like that ...”

In written submissions to the Board, as well as in presentations, the insurance industry expressed its reasons for wanting to differentiate between younger drivers and those with more years of experience. Aviva, in its written submission, supported

“...the continued use of age and gender as rating criteria...Age, gender and marital status are amongst the strongest auto insurance risk predictors. To do away with those factors could have a significant impact on rates that consumers currently pay. Depending on what alternative criteria are adopted, consumers (young females and more experienced drivers) will pay more and others (young males) could pay significantly less than today.”

The Co-operators stated in its presentation that:

“Historical experience has shown that age and gender have been predictive of loss cost experiences and are important indicators to determine appropriate pricing. However, we respect that the elimination of these variables for rating purposes is a social policy decision that may be made by the Government of Newfoundland and Labrador. But as a word of caution, consumers must understand that the removal of these variables will have a positive impact, lower rates for some segments of the population in terms of premium, notably, young male drivers, but that would be offset by a negative or higher rates faced by more experienced drivers. Artificially

lowering rates for young drivers at the expense of more experienced drivers will create confusion and annoyance, particularly for those with clean driving records.”

In its written presentation the IBC explained that:

“The insurance industry believes that it is in the public interest to match price with risk and that there is no better measure of relative risk than age and gender.”

Meloche Monnex, on the other hand, felt that the implementation of:

“...a system similar to the New Brunswick First Chance Discount for new drivers, supported by a risk sharing pool would provide insurers additional flexibility to handle the cases of drivers whom they perceive to be priced at less than a sufficient actuarial level.”

This would, according to Meloche Monnex, allow more affordable insurance for young drivers as:

“A new driver could be defined as anyone with less than 5 or 6 years of driving experience. In order to be eligible for the discount, new drivers must have and maintain a clean driving record (i.e. no at-fault accidents or motor vehicle violations). The new driver would be credited with a number of years of claim free driving experience (6 years in New Brunswick).”

7.5 Review of Available Information

In addressing this issue the Board reviewed available information on the current demographics of automobile insurance policyholders in Atlantic Canada and in Newfoundland and Labrador on the basis of age and gender.

The charts on page 63 show the most recent information available for 2003, by age and gender for Third Party Liability for average premium and claim cost per vehicle, earned vehicles, claims frequency, and severity. This information is in relation to principle operators and does not reflect the experience or premiums of occasional operators.

In reviewing these charts the following general observations are noted:

- The average Third Party Liability premium for males under age 25 was significantly higher than for males aged 25 and over. Males under age 25 paid average Third Party Liability premiums ranging from just over \$2,500 in the 15-18 year old range to approximately \$1,300 in the 23-24 year old range. This compares to an average premium of approximately \$550 for males over 25.
- The average Third Party Liability premium for females under age 25 was also higher than for females aged 25 and over. Females under age 25 paid average Third Party Liability premiums ranging from just over \$1,400 in the 15-18 year old range to approximately \$1,000 in the 23-24 year old range. This compares to an average premium of approximately \$550 for females over 25 years old.

- The average claims cost for both male and female principal operators under age 25 is significantly higher than the claims cost for males over age 25. In the under age 25 group the average claims cost per earned vehicle is higher for males than for females.
- It appears that there are significantly fewer under 25 principal operators than over 25 principle operators.
- The claims frequency for both male and female operators under age 25 is higher than the claims frequency for both males and females over age 25.
- While the claims severity for male and female principal operators under age 25 is slightly higher than for male over age 25.

It is noted that these observations are consistent with the information for 2001 and 2002 data for the Province and are also consistent with the data for the 2001 to 2003 for the Atlantic Provinces, as shown in Exhibit 10. The same observations noted above for Third Party Liability can also be made for Collision coverage.

In addition to the review of statistical data the Board also reviewed a Statistics Canada research paper¹⁶, which examines the driving characteristics of both the young and the aging population. The paper, based on 2000 Canadian Vehicle Survey data concluded, among other things:

“Older drivers drove more than younger drivers, which was not surprising, given that the older age group accounted for relatively double the population and number of licensed drivers. More interesting was that although the older age group drove three times the distance than the younger age group, there were 50% more younger drivers involved in accidents.”

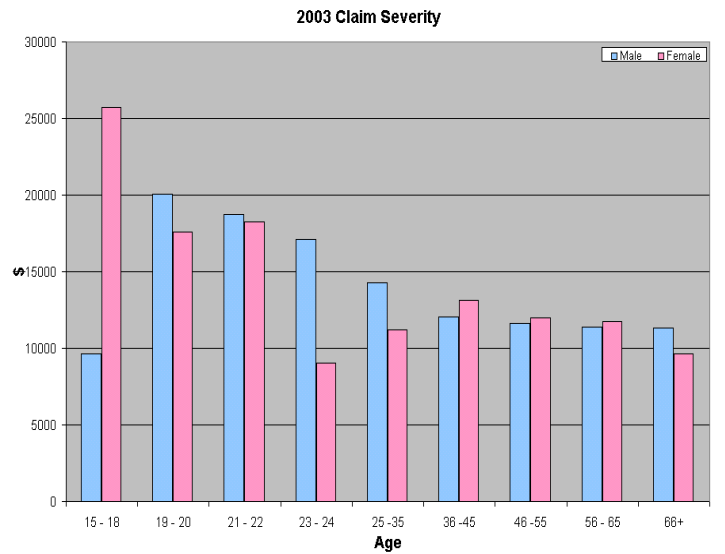
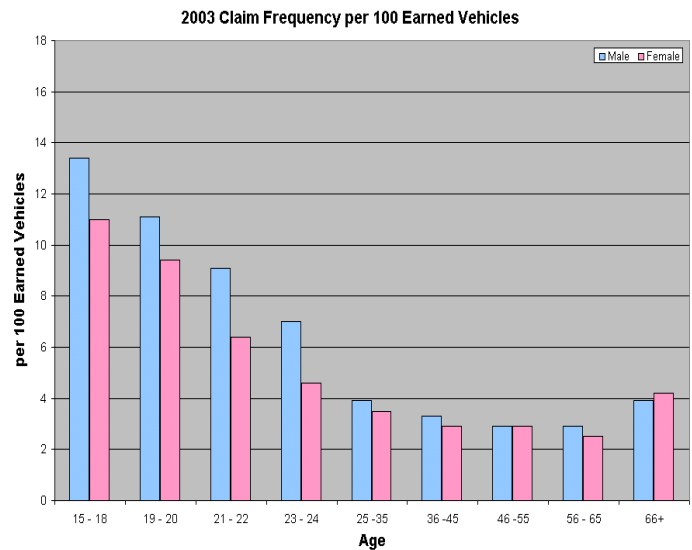
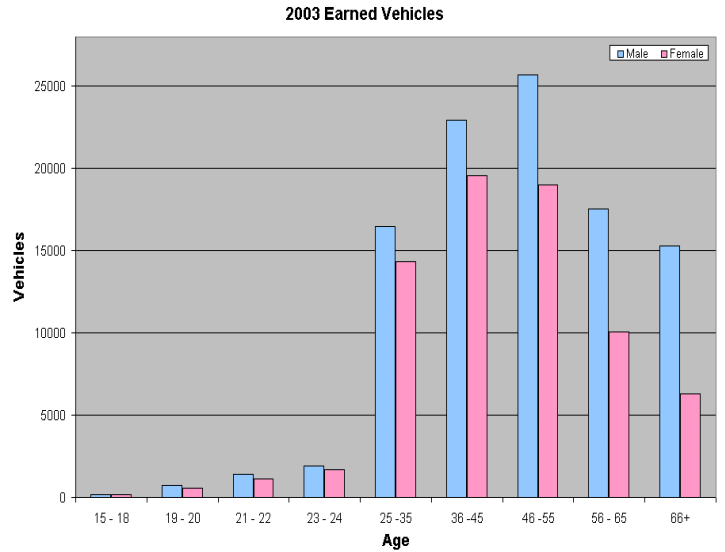
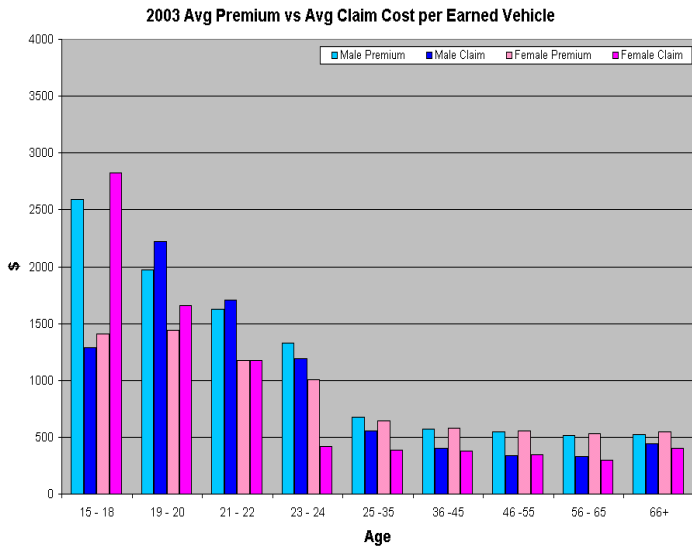
The report also found that males dominated every age group for number of licensed drivers, collisions and distance travelled.

The information reviewed by the Board does appear to support the industry’s position that age and gender reflect relative risk. The IBC also noted in its written submission to the Board:

“Despite the introduction of graduated licensing schemes in most jurisdictions, young drivers represent almost 9% of drivers killed and more than 11% of those seriously injured even though they account for less than 5% of the licensed driver population. There is also strong evidence that young men have more frequent and severe collisions than do young women.”

¹⁶ Driving Characteristics of the Young and Aging Population, John Nicoletta, Transportation Division, Statistics Canada. 2002

Third Party Liability Newfoundland and Labrador 2003 Data by Principal Operator, Age and Gender



SOURCE: IBC response to PUB-1-IBC, based on Automobile Insurance Experience, Driver/Vehicle Classification Exhibits, Atlantic Provinces, Product AU25-D

In his presentation to the Board Mr. Zubulake of Mercer noted that the difference in claims experience between males and females seems to be narrowing. As well he pointed out that some suggest that the data collected by the IBC is not detailed enough to show what's causing the difference between males and females since the frequency rates published by the IBC are simply a measure of the number of claims divided by insured cars, they do not reflect the number of miles driven. Mr. Zubulake stated that some argue that the reason why males seem to have a higher frequency rate than females is because males drive more than females, and that a more appropriate system is one based on miles driven and not gender. Another factor which may be appropriate is years licensed.

7.6 Implications for Policyholders

The elimination of age, gender and marital status as rating variables would result in changes in the amount of premium paid by individual insureds. Those currently paying higher rates based on their age, gender or marital status will achieve lower rates while other classes of insureds will be required to pay higher rates to offset the loss of required revenue, all other factors remaining unchanged. This is known as premium dislocation.

With respect to the specific impact on premium levels, in its presentation the IBC referenced studies completed in New Brunswick and Nova Scotia. One study found that the impact of removing age and gender in Nova Scotia would result in newly licensed principal male drivers seeing a decrease in rates of 15.1% while newly licensed female drivers would see an increase of 26.6%. In New Brunswick the study showed that, with the removal of just age as a rating variable, there would be a reduction in premiums for young drivers while rates for mature drivers would go up significantly depending on their experience.

In its 2004 study "Actuarial Costing of Private Passenger Automobile Product Changes" prepared for the Board, Mercer also estimated the shift in premiums for insureds under age 25 if gender was removed as a rating variable. Mercer's estimates of the percentage of premium changes are shown below:

Estimated Average Premium Changes for Third Party Liability*	
Married Males Under 25	-17% to -24%
Single Males Under 25	-33% to -46%
Females Under 25	-4% to -16%
Insureds 25 or over	+5% to +6%

* Assumes insurers will not charge additional premiums for occasional operators.
 (Source: Actuarial Costing of Private Passenger Automobile Product Changes, Mercer, March 2004, page 27)

This chart shows that insureds over age 25 will experience an increase in Third Party Liability premiums while both males and females under age 25 will see premium decreases. The specific impact on premiums will also depend on whether insurers replace age, gender and marital status with other rating variables and what restrictions are placed on those actions. It will also depend on whether Government imposes any limitations on the amounts by which individual policy premiums can change. In its "Report on Other Automobile Insurance Issues" Mercer stated that the actions taken by insurance companies in Nova Scotia suggest that individual companies will

take different approaches to rating automobile insurance in a rating environment that does not permit the use of age, gender or marital status. Mercer identified the following possible reactions of insurers:

- Some companies would make no other changes to their existing classification rating structure;
- Some companies may refine their existing rate structure by placing more emphasis on variables such as mileage driven and claim history; and
- Some companies may introduce surrogate rating variables such as years licensed, perhaps coupled with refinements to their existing rate structure, or with a completely new rating structure.

For these latter two groups of companies, the resulting premium impact for individual insureds will depend on what changes are made and what rate differentials are assigned to the new classes. For example, some insurers may respond to the elimination of age as a rating variable by replacing it with a rating plan based on number of years of driving experience. The effect of this alternative rating plan is that most young drivers who were put in a high rate category by virtue of their age will continue to be charged higher premiums because they are inexperienced drivers. An extension of this is that new drivers over age 25 will also be rated accordingly and charged a higher premium, as opposed to under the current system where there would be a distinction based on age.

Elimination of age as a rating variable may also affect discounts currently offered to certain insureds. At present the majority of insurers providing automobile insurance services in this province offer age related discounts. These are often referred to as Mature or Seniors Discounts, Seasoned Driver Discount or Experience Discount to name a few. These discounts range from 5% to as high as 15% with the majority in the 10% to 15% range. (See Exhibit 11) Many of these discounts apply to Third Party Liability, Collision coverages and other coverages as well. The elimination of age as a rating variable may result in these discounts, in their current form, being prohibited. This elimination will directly impact those policyholders currently qualified for and receiving the discount by increasing their premiums by the amount of the lost discount.

The elimination of age, gender and marital status should result in more affordable insurance for younger drivers, and in particular young male drivers. This increased affordability may provide access to insurance to those who could previously not afford it. This increase in availability of insurance to young males may result in an increase in the number of these drivers. If these drivers are statistically at a higher risk of having a claim, overall loss costs may increase unless alternative rating variables are used.

7.7 Examination of Alternative Rating Systems

Alternative risk classification systems prohibiting the use of age, gender or marital status as rating variables have been explored and implemented in other Canadian jurisdictions.

Alberta

Recent reforms in Alberta resulted in the implementation of a Grid Rating System. Under this system the maximum amount an insurer may charge for automobile insurance for Third Party Liability and Accident Benefits coverage for an insured is set. This system takes into consideration claims, convictions, and driving experience as well as the geographic location of the insured vehicle but does not reflect age, gender and marital status. Insurers set rates within this system using their own rating manual which can reflect rating factors including age, gender and marital status. If the insurer's calculated rate is less than the grid rate, the insurer can charge that amount to the insured. If the calculated amount exceeds the grid amount, only the grid maximum may be charged. In terms of applicability, it would appear that the grid system is similar to a benchmark maximum price system with age, gender and marital status permitted as rating variables, up to the grid maximum premium amount.

Alberta has also established an "all comers rule" which essentially, with some exceptions, prohibit insurers from declining a risk. In conjunction with this rule there is a Risk Sharing Pool wherein insurers not wishing to accept 100% of a risk may cede that risk to the pool at the applicable insurer's rate or the grid maximum, whichever is lower. The pool is operated by the Facility Association and replaces the traditional Residual Market Mechanism previously operated in Alberta by the Facility Association. Insurers using the pool share in the results, as opposed to the traditional residual market mechanism where all insurers shared the costs whether or not they placed risks in the pool.

In its presentation to the Board Meloche Monnex provided the following comments on the Alberta Grid Rating System and its suitability for Newfoundland and Labrador:

"In our opinion, this system is very complex, expensive to implement and will not necessarily deal effectively with the issue of providing affordable premiums for young drivers. Another problem with the Alberta grid-rating system is that it allows for too many risks to be actuarially subsidized (more or less 15% of the market). At the moment, the grid-rating system is not only contributing to the subsidization of young drivers, but also high risk drivers, which we believe was not the objective when the process was developed. Newfoundland and Labrador is a relatively small market and we do not think that the Alberta approach, which has not yet proved itself, should be implemented in Newfoundland and Labrador. We believe that the New Brunswick approach is more reasonable and more suitable for a small market like Newfoundland and Labrador."

A similar sentiment was echoed in the Co-operators presentation:

"The Alberta rating grid is extremely complex to administer. It requires, it requires a substantial amount of time and effort on the part of the government to maintain it. And there's easier ways to get at what is essentially social policy. So, that's primarily why we're not in approval of that. In New Brunswick, for instance, they have accomplished it by eliminating age and gender rating variables. So, its in both cases the provinces, I believe, have the same, have the same goal, and that was to subsidize groups of drivers that were paying higher insurance premiums based on their experience. Specifically, young people, people without a lot of driving experience. So there's substantially easier ways to accomplish that goal."

The “all comers rule” of Alberta is not unlike the approach recently taken in this Province, since insurers are now prohibited from refusing insurance on the basis of age and marital status.

New Brunswick

As referenced earlier New Brunswick recently eliminated the use of age, gender and marital status as rating variables and instead introduced a “First Chance Discount”. The “First Chance Discount” is governed by the following rules:

- *“All new drivers will be eligible to receive this premium discount.*
- *The discount may be subsidized through a risk sharing pool by all policy holders.*
- *The discount will be available to new drivers (including those who already have insurance), parents with new drivers covered on their policy or other individuals who cover a new driver under their contract of insurance.*
- *Drivers who have successfully completed an approved driver training program will receive credit for equivalent of six (6) years driving experience.*
- *Drivers who do not take an approved driver training program will receive credit for the equivalent of three (3) years driving experience.*
- *The discount is expected to give new drivers and their parents, on average, a 30 per cent reduction on the cost of coverage associated with new drivers.*
- *This benefit will be available to both new drivers with their own policy and to parents with children listed as occasional drivers.*
- *One at-fault accident or conviction for a driving or other relevant offence will result in ineligibility for or elimination of this discount. Such drivers will lose their driving experience credit and will then be assessed according to their actual experience.”*

During the review, Meloche Monnex in its written submission supported the implementation in Newfoundland and Labrador of a system similar to New Brunswick’s “First Chance Discount” for new drivers, supported by a risk sharing pool, as was done in New Brunswick. This risk sharing pool would provide insurers additional flexibility to handle the cases of drivers perceived to be priced at less than a sufficient actuarial level. According to Meloche Monnex the risk sharing pool would allow insurers to serve new drivers placed under the pool the same as any other client, with no distinctions between their coverages and level of service. Proper funding mechanisms of the risk sharing pool would need to be established. Similar pools are currently in place in Quebec, Ontario and Alberta.

British Columbia

The ICBC in British Columbia does not use age, gender or marital status as rating variables in assessing risk on assigning premiums. Instead average claim, repair history, engine size and safety features of each car model are assessed. In rating drivers the ICBC uses a Claim-Rated

Scale where all drivers start at a base rate and then cumulative discounts over time are provided to drivers with no at fault claims. As a result driving experience becomes a significant risk factor for determining premiums. While this applies to all drivers, young drivers are affected more because they have fewer years driving experience to be used in applying discounts.

Ontario

In the late 1980s the former Ontario Auto Insurance Board was given the responsibility by government to “*design an auto insurance rate classification plan that would not include the use of age, sex and marital status.*” The government of the day in Ontario declined to implement the alternate scheme for several reasons: rate dislocation would occur without these variables; higher costs would be passed on to consumers; there would be costs to the industry associated with the research and implementation of the revised system; and significant information technology resources would be required. Age, gender and marital status are still permitted as rating variables in Ontario.

One variable suggested as an alternative to age as a risk assessment factor is annual driving distance. This factor was discussed in the Ontario Human Rights Commission’s report which stated¹⁷:

‘However, actuarial data to date has not shown annual driving distance to be a useful indicator of risk. With this indicator, drivers more or less fall into two categories – those that drive a lot and those that don’t. Two categories do not sufficiently split the population for risk classification. And, although data on annual driving distance is still tracked by some, most jurisdictions in Canada do not differentiate on this basis.’

7.8 Board Comments

There are strong arguments for and against the elimination of age, gender and marital status as rating variables. Ultimately this decision is one of social policy where affordability and availability must be balanced against appropriate risk assessment and pricing. There are indications that at least age and perhaps to a lesser degree gender are reflective of risk. However it was clear in the review that the current method of assessing and pricing risk results in premiums which may not be affordable for certain insureds. Some even suggest that the premiums are so high as to prevent individuals from obtaining insurance. If age, gender and marital status are eliminated alternative rating variables designed to reflect risk may be used. Unfortunately there is little statistical information collected to support alternate rating variables.

An additional consideration is whether Government should impose restrictions on the information collected by insurers from consumers applying for insurance, whether to impose restrictions on insurers’ ability to reject certain risks, and whether it is necessary to restrict insurers from varying the commissions paid to brokers based on the age, gender or marital status of the applicant.

¹⁷ Ontario Human Rights Commission, “Human Rights Issues in Insurance: Consultation Report, October 2001, page 15/30 Website: www.ohrc.on.ca

Measures may be used to address concerns of premium dislocation on the amount of any increases or decreases in premium charged to individual policyholders as a result of the elimination of age, gender and marital status. For example the Nova Scotia Insurance Review Board imposed an initial premium dislocation cap of 10% when age and marital status were eliminated as rating variables.

Elimination of age, gender and marital status may also require additional controls over underwriting practices so that insurers don't put certain classes of drivers, whose premiums are determined to be inadequate as a result of the elimination of age, gender and marital status, into Facility Association. This would result in those drivers paying higher premiums than they would otherwise pay in the regular market. Existing controls on underwriting guidelines prevent this with respect to age and marital status. If gender is also eliminated as a rating variable then these controls may be expanded to include gender. Enforcement of these controls on underwriting practices should avoid concerns about insureds being placed in Facility Association or otherwise being refused insurance.

With controls on underwriting guidelines in place in addition to restrictions on rating practices it may be necessary to consider the implementation of some sort of risk sharing pool. If a risk sharing pool is not introduced with this change then particular insurers, those for whatever reason have a large portion of high-risk insureds, may suffer worse than average loss experience.

8.0 IMPLICATIONS OF PERMITTING GROUP RATING

8.1 Introduction

The Board was directed to “review the implications of permitting group rating.”

In its “Report on Other Automobile Insurance Issues” Mercer provided the following description of group automobile insurance rating plans:

“Group automobile insurance rating plans are programs sponsored by membership organizations and employers and are underwritten by insurance companies that either also sell individual insurance policies (i.e., regular market) or that specialize in selling group insurance. Group rating allows organizations, associations, unions, and corporations to provide their employees or members lower automobile insurance premiums than they would pay by purchasing insurance individually. The premium savings varies by group, plan, and member/employee, but generally ranges from 5% to 15% or more.”

There are two general types of group rating plans: true group rating and mass merchandising. True group rating plans are those plans offered through a sponsoring agent such as an employer or other recognized organized group. Mass merchandising plans are generally targeted to individuals whose members have some form of common association such as a profession or membership in an association such as a labour union or alumni group, to name a few.

The key attributes of group rating plans are summarized below. While these are not exacting requirements, they do represent the general features of each type of plan.

Group Rating Plans Key Attributes	
True Group Rating	Mass Merchandising
Master insurance policy with certificates issued to members	Individual insurance policies issued to each participant
Minimum participation ratio of employees or membership in organization	No minimum participation ratio
No individual risk selection, insurer must take all comers	Individual risk selection, companies may decline to insure a specific group member
Simplified risk rating system	Standard risk rating system used in general market
Rates based on expense considerations and group loss experience	Rates based on market rates less a discount to reflect expense savings
Loss experience for the group tracked	Group loss experience not generally tracked
Premiums paid in full or partially by the employer	Premiums paid by policyholders

(Source: Transcript, February 1, 2005, pages 185-191; Mercer’s “Report on Other Automobile Insurance Issues”, pages 27-28)

Under Section 46(1) of the *Automobile Insurance Act*, group rating is effectively prohibited:

“An insurer shall not fix or make a rate or schedule of rates or charge a rate for automobile insurance to a group of persons because of the members of that group

- (a) *being engaged in a trade, calling, profession or occupation*
- (b) *being members of a guild, union, society, club or association;*
- (c) *being engaged in common employment; and*
- (d) *enjoying common occupancy of the same building or group of buildings,*

or where for another reason the fixing or making of a rate or schedule or the charging of a rate for automobile insurance would result in a lower cost for automobile insurance for the members of the group than those members would have to pay if they entered into contracts separately.”

8.2 Other Jurisdictions

Mercer provided an overview of group automobile insurance in other jurisdictions. Outside of Newfoundland and Labrador group automobile insurance is permitted (or not prohibited) in all provinces except those with Government insurance (British Columbia, Saskatchewan and Manitoba). Group insurance was prohibited in New Brunswick until 2003; group insurance plans are now allowed subject to the approval of the New Brunswick’s Insurance Board. Nova Scotia and Ontario permit group rating with certain restrictions.

Group rating is generally permitted in the United States. Most states allow mass merchandising group plans. Some permit true group plans and some prohibit group insurance.

8.3 Submissions, Presentations and Comments

Most industry presenters supported group rating, indicating that group rating will enhance competitiveness and result in lower rates.

The Co-operators stated: *“Group rating has the potential to enhance price competitiveness for consumers and enhance availability as consumers have the option to purchase coverage through various sponsored groups.”* However the company did not offer comment on how best to accomplish the introduction of group rating or how price competitiveness would be achieved.

Similarly, in their presentation to the Board, the panel from Meloche Monnex stated: *“Eliminating the restriction on group rating would also allow insurers operating in Newfoundland and Labrador to offer many - or to offer lower rates to many consumers and will enhance pricing competitiveness for consumers.”* Meloche Monnex further indicated: *“Group rates should be permitted through a clear and strict definition of an eligible group to avoid abuse and we recommend that regulation be adopted on this issue to establish an effective framework.”* The company indicated a preference for a model similar to that of Nova Scotia with certain refinements to the information disclosure requirements.

In its written submission IBAN stated that it does not have difficulty with group rating as long as the group’s rating is justified on an actuarial basis. According to IBAN groups should have identifiable risk characteristics that would make it eligible for preferred rates. IBAN did express

a concern with “artificial” groups that do not have risk characteristics in common, which would be classified as mass merchandising plans. IBAN stated:

“We feel that these types of groups can only cause disruptions in the market. Further these groups may be unfairly subsidized at the expense of consumers in the ‘general pool.’ As such, we would prefer that ‘marketing groups’ not be permitted.”

The Consumer Advocate expressed the following opinion in his written submission with regard to group rating:

“Group Rating...should result in an overall cost savings to consumers in Newfoundland and Labrador. However, there are several public policy issues that would have to be considered carefully before the prohibition on group rating was lifted in this province. Given that group rating is permitted in all other provinces which have private systems of insurance and given the lower costs for consumers that can be achieved by the same, it would appear to be an option very worthy of consideration.”

In his presentation to the Board the Consumer Advocate further commented:

“ With respect to group rating.... I think in balance, I’m in favour of it, but I do have some concerns as to whether there could be creaming of the market, leaving other people who are not in the group to be in the less attractive pool. ...So my sense is that ...group rating ought to be implemented provided that it doesn’t provide for too much dislocation and disturbance to the market.”

Mr. Wayne Lucas of CUPE, in his presentation to the Board, indicated that while individuals from organized groups sometimes benefit from lower costs in some areas, automobile insurance should not be one of those areas. He advised the Board:

“But you know when you’re talking about something that’s as important as insurance and insurance rates,...I think all citizens of Newfoundland and Labrador should be treated equally in that respect. So I think my answer would have to be that I’m not in favour of group rating with insurance with regards to that.”

8.4 Implications of Permitting Group Rating

Group rating may result in a small overall cost savings to consumers in Newfoundland and Labrador. These savings will result from efficiencies gained by writing simpler plans and from administrative savings associated with marketing and advertising. The savings will however only accrue to those insurance consumers who are rated under or participating in the group plan. The extent of the savings will depend on the level of savings the insurer can achieve and the extent to which these lower costs are passed on to those insurers who are rated under a group plan.

It should be noted that there is a distinction between true group rating and mass merchandising. Mass merchandising allows insurers to use membership in certain groups to offer discounts, and the premiums are based on standard market risks with no risk rating to reflect the group’s expected loss experience. A true group rating plan sets premiums based on the risk

characteristics of the group members, and the loss experience of the group is tracked separately from the general market.

In considering the issue of group insurance there are a number of issues and questions that would have to be addressed, as outlined by Mercer in its “Report on Other Automobile Insurance Issues”. These include decisions on whether:

- all types of group rating (true group rating and/or mass merchandising) will be permitted;
- the groups for which group rating will be permitted will be defined or restricted by regulation;
- plan participation and eligibility will be voluntary;
- insurers will be permitted to refuse to include, or cancel members in the group/plan and, if so, under what conditions;
- group rates, rating variables, and policy language should be subject to prior approval.

As most jurisdictions in Canada, with the exception of publicly run systems, currently allow (or do not prohibit) group rating there is experience and knowledge from other jurisdictions that can be considered.

8.5 Board Comments

With the exception of those provinces with government plans, Newfoundland and Labrador is the only jurisdiction in Canada that does not allow some form of group automobile insurance. It was generally accepted that group insurance should result in cost savings for some insurance consumers. However those consumers who do not have access to or belong to the organization or group to which the group insurance is targeted will not benefit.

While the industry participants who spoke to the issue of group insurance generally supported the concept, the concern of IBAN with respect to mass marketing plans and the potential for market dislocation should be noted. This concern could be addressed by regulations specifically setting out the framework for the operation of group insurance in the Province, including definitions of an eligible group and the conditions under which group insurance can be provided.

A decision to permit group rating will require a legislative change as the *Automobile Insurance Act* currently prohibits this practice.

9.0 PUBLIC AUTOMOBILE INSURANCE

9.1 Introduction

The Terms of Reference required the Board to “*report on other cost savings measures and to detail other issues of concern raised by stakeholders, including public insurance.*”

To assist the Board and stakeholders participating in the review, and given that public insurance was identified specifically as part of the Terms of Reference, Mercer provided information and references on public automobile insurance in its “Report on Other Automobile Insurance Issues”.

9.2 What is Public Automobile Insurance?

Public automobile insurance was launched in Saskatchewan in 1944 with Manitoba, Quebec and British Columbia following suit in the 1970s. In each case, the introduction of public automobile insurance was motivated by public discontent concerning the high cost, availability or service provided by existing insurers. Public insurance is usually administered through a crown corporation and provides the mandatory auto coverage required by law often leaving private companies to compete in selling additional optional coverages. The insurance product is sold directly by the public corporation or through private brokers. By contrast, the remaining provincial/territorial jurisdictions have privately delivered automobile insurance systems where all coverages, mandatory or optional, are supplied by private sector insurers and brokers. Government generally retains rigorous public policy and regulatory oversight in jurisdictions with only private delivery.

The chart on page 75 summarizes Canada’s public automobile insurance programs.

9.3 Submissions, Presentations, and Comments

Mr. Jack Harris, the leader of the Newfoundland and Labrador New Democratic Party (NDP) and the MHA for Quidi Vidi, strongly supported public insurance in his presentation to the Board. According to Mr. Harris public insurance will bring the “fairest” and “cheapest” rates, and have lower overhead. He further argued that the lack of a profit element means that more money is kept in the system for the benefit of the public. He also held the position that there are fewer uninsured drivers, and greater investments in auto safety improvements under a public system. In his view public automobile insurance would eliminate discriminatory rating factors such as age and gender. He also accused opponents of public automobile insurance of social/political bias. Mr. Harris stated that he is an advocate of the British Columbia style system with no limitation to court access or tort recovery.

Summary Public Automobile Insurance in Canada				
	Saskatchewan	Manitoba	Quebec	British Columbia
Governance	Saskatchewan Government Insurance (SGI)-Crown Corporation established 1944.	Manitoba Public Insurance (MPI)-Crown Corporation established 1971.	Société de la assurance automobile du Quebec (SAAQ)-Crown Corporation established 1978.	Insurance Corporation of British Columbia-Crown Corporation established 1973.
Product	Choice: No-Fault and tort. Mandatory coverage only. Competes with private firms for other insurance products.	Mandatory coverage only. Competes with private firms for other insurance products.	Bodily injury only. Property damage through private companies.	“Basic Insurance” coverage only. Competes with private sector for other insurance products.
Delivery	Saskatchewan Auto Fund (SAF) also administers vehicle and driver licensing.	Decentralized claims and customer service along with vehicle and driver licensing. Sales through private brokers.	Sales through private brokers.	Sales through private brokers.
Premium/Rating System	Vehicle based, with surcharges from no-fault accidents and traffic convictions.	Vehicle, location and driving record. Surcharges for at-fault accidents and merit/demerit for traffic convictions, etc.	Class of vehicle only.	Vehicle, use and location. Surcharges based on penalty points accumulated for at-fault accidents and traffic convictions.
Tort Restrictions	Personal Injury Protection Plan (PIPP) limits no-fault claims. \$5,000 deductible for tort recovery system.	Modest no-fault benefits (PIPP) with appeal process available.	Pure no-fault system. No right to sue.	Full tort system but no crash-no cash policy.
Financing/Funding	Non-profit. Includes licensing revenues. Rate Stabilization Reserve used to accrue annual deficits/surpluses.	All revenues retained including any surplus. Deficits funded by Government.	Funded from Government general revenues in addition to uniform premiums and licensing revenues.	Non-profit. Funded from Government general revenues.
Road and Safety Programs	Yes.	Yes.	Yes.	Yes. Also includes significant initiatives aimed at claims, improving patient recovery and fraud.
Other Notable Features	Also has SGI Canada Services that sells insurance in other provinces.	Transitional Assistance Board established to mitigate moving from private to public insurance system.	All Quebecers and visitors covered by bodily injury coverage on Quebec roads.	Licenses are linked to insurance.

Ms. Victoria Harnum (Advocates For Fair Auto Insurance) supported Mr. Harris' position and the possible use of a British Columbia model or some combination of the Manitoba, Saskatchewan, and British Columbia models. Ms. Harnum also recommended that a Select Committee be struck to study public insurance in the Province. Her group also collected 7000 signatures in 2004 in support of public auto insurance. According to Ms. Harnum "*The only way to fix [insurance] is to tear it all apart and start all over again.*" ... "*[W]e need a public system.*" This petition was presented to the House of Assembly by Mr. Harris on December 8, 2004 and was defeated with the Minister of Government Services, referring to the conduct of this review.

Mr. Wayne Lucas of CUPE also made a presentation strongly in favour of a public, not-for-profit system like Manitoba, Saskatchewan, or British Columbia. Mr. Lucas firmly maintained that public auto insurance would: reduce rates by 30-50%; be owned by drivers and paid for with premiums; cost tax payers nothing to set up or maintain; have administration savings of 15-25% of premium, (which, in his view, represented the greatest cost saving characteristic of public auto insurance); and eliminate "discriminatory" factors like age, gender, and marital status.

Mr. Gordon Adair, on behalf of the Coalition Against No Fault Insurance, also spoke in support of a British Columbia style public system. He maintained public auto insurance would provide the best system with no limitation on access to the courts. Mr. Adair rejected the use of caps and deductibles, and proposed that a public auto system in Newfoundland and Labrador could provide for safety initiatives, and public education programs as they have in British Columbia. He also discussed the fact that in British Columbia they have brought in graduated licensing and have their license plates linked to insurance to prevent the operation of uninsured vehicles. If one wishes to cancel their insurance they must also turn in their plates. Mr. Jerome Kennedy speaking on behalf of the Coalition Against No-Fault Insurance suggested that "*[m]aybe public insurance is the way to go.*"

Mr. Reg Anstey of the Newfoundland and Labrador Federation of Labour stated that profit levels of industry are a real problem. He strongly supported the implementation of a public not-for-profit system, which he felt would offer the lowest rates. He prefers the British Columbia model system that is sold through brokers.

One person commented that the Government should create public insurance due to the "enormous corporate profits" that leave the Province. Another from St. John's held the view that private insurance makes too much money "*on the backs of the poor*", therefore create a public system. DW of Holyrood suggested that the Province take insurance from private industry, because "*...private industry cannot provide an essential service.*" Another person held the position that public insurance is fairer in rating variables. DM of St. John's wrote that they had lived in British Columbia and appreciated the ICBC as "*efficient, and easy to deal with.*" One citizen wrote in against public insurance, and argued that private enterprise is more efficient.

Both the IBC and IBAN both spoke in favour of finding free market solutions to the current problems that were facing the industry. Aviva also spoke in favour of private delivery, but indicated a willingness to provide a Government designed product. The Dominion of Canada also supported a Government designed product provided by private companies. In general, the

IBC opposes Government run insurance, and attributes much of the negative consumer and industry experience over the last several years to a slow reaction by Government in dealing with public policy issues related to insurance issues.

Some held the position that it is not the method of delivery that mattered, but the design of the insurance product. The Consumer Advocate offered this assessment; *“Who delivers the product at the end of the day... should not be the issue.”* The Dominion of Canada, quoting the report of the Atlantic Canada Insurance Harmonization Task Force, stated that it was the characteristics of the product that was relevant, not the mode of delivery and maintained that the core issue in rate increases was the increase in bodily injury claims. Mercer stated: *“There are strong arguments both for and against public insurance.”*

Several participants indicated they believed that a full-fledged study of public insurance should be undertaken.

- Mercer stated *“[P]ublic insurance may be the one [issue] that could involve the largest study. This is a very complex subject.”*
- The Consumer Advocate stated in his presentation *“I would go as far as to suggest that this province explore public insurance.”*
- Ms. Victoria Harnum of Advocates for Fair Auto Insurance spoke in favour of appointing a select committee to study public insurance in Newfoundland and Labrador.
- Mr. Jack Harris, MHA stated that public insurance is *“a serious option; one that deserves a full and thorough study and consideration of the public policy implications of going that route.”*
- There were also a number of comments from private citizens that supported a complete study of public insurance.

9.4 Other Studies on Public Automobile Insurance

In considering the issue of public insurance, Mercer noted that, while numerous studies have been conducted on the costs and benefits of public insurance, the studies do not all reach the same conclusions.

- A September 2003 study titled “Review of Automobile Insurance Rates” conducted by the Consumer’s Association of Canada (CAC), concluded that *“public auto insurance systems offer the lowest rates for consumers.”*
- However, a November 2003 report titled “Two Hundred Bucks More: The Premium cost of Public Auto Insurance,” by the Fraser Institute, concluded that British Columbia, Manitoba, and Saskatchewan are the most, second most, and fifth most

“expensive provinces in which to insure an automobile” respectively. The report calls the aforementioned CAC study, *“the worst example of inappropriate statistical usage...”* The Institute also released a report in 2004 titled *“Lemons and Peaches: Comparing Auto Insurance Across Canada.”* This study found that *“...provinces with public auto insurance schemes have relatively high premiums, partly owing to tax subsidies and inadequate financial reserves.”*

- On the IBC’s website an article titled “The Reality of Government-run Auto Insurance” states that, contrary to what is typically believed (what IBC refers to as myths), government-run automobile insurance systems do not provide the lowest rates for drivers, do not provide the most generous benefits for consumers, do not better control claim costs, and is costly to start-up and maintain.
- A November 28, 2003 report prepared by the IBC titled “Economic Impact of Government Auto Insurance in New Brunswick” concluded, among other things, that should New Brunswick change to a government-run automobile insurance system, there would be (1) an estimated over 10% reduction in premium due to reduced commissions and the tax-free status of the Crown insurer, (2) a net loss to the provincial GNP of \$64 million per year, (3) a net loss of jobs in many communities throughout the province, and (4) start-up costs of \$102 million.

Mercer indicated that the IBC’s position on the issue of public insurance is not unexpected, but its arguments warrant strong consideration if a move toward public insurance is contemplated. Mercer also noted that a report by the Auto Insurance Consumer Advocate of Nova Scotia¹⁸ stated: *“It is unclear at present whether a publicly-run insurance system could resolve the problems faced by Nova Scotians.”*

In addition to the studies referenced by Mercer, the Board notes the report of the Atlantic Canada Insurance Harmonization Task Force, to the extent possible, undertook a comparison of the costs and benefits of public versus private insurance systems. This report attempted to identify the start-up costs and the effects on current providers that the creation of a public system would impose. The report concluded that the creation of a public system in Atlantic Canada would not address the long-term problems facing automobile insurance consumers. It also determined that the design of the product was the key factor in the cost of insurance, not the nature of the provider, and that increasing costs were the result of increasing personal injury costs. Moreover, this report recommended that Atlantic Canada could achieve broad benefits if the rating processes and personnel were consolidated into one centralized operation.

As part of its recent studies on automobile insurance reform, New Brunswick’s Select Committee on Public Automobile Insurance recommended a public system. However, a follow-up report¹⁹ commissioned by the Government recommended against public insurance. This

¹⁸ Auto Insurance Consumer Advocate of Nova Scotia, Consumer Advocate’s Final Report, September 2003

¹⁹ Report of the Office of the Attorney General for the Province of New Brunswick on the Review of The Final Report of the Select Committee on Public Auto Insurance (Eckler Partners Ltd. Consultants and Actuaries, June 24, 2004.

report suggested the Select Committee study overstated the projected savings of a public system and that the use of the Manitoba model for comparison was not fully justified given differences between the provinces in regards to population, timeframe, market conditions and other factors.

Similarly, the New Brunswick Automobile Insurance Review Report²⁰ advised against a public system. The opinion in this report was again that the Select Committee overstated prospective savings in a public system. The report also stated that start-up, capitalization, and pre-operating costs will be higher than the Select Committee predicted. Price Waterhouse Coopers also suggested that there are significant risks in setting up a public system because: it is a complex process; the timetable is too aggressive; politics would become involved in pricing; and there could be trade implications for the Government taking over foreign owned companies that could file formal complaints through the World Trade Organization (WTO) or similar organization. The report was also critical of the Select Committee's methodology.

New Brunswick ultimately rejected public insurance on June 29, 2004 and subsequently announced a series of reforms to the existing insurance product.

9.5 Board Comments

This particular issue has drawn out meaningful and ideological arguments from presenters on both sides. Union representatives claimed the problem with the private system stems from too much corporate profit and the answer is a public system. Other supporters of a public system argued that it is a "fairer" system overall and has proved to deliver the lowest rates. The insurance industry countered that public insurance systems are inefficient and end up being an additional cost to the taxpayer. Opponents also note that, except for British Columbia, all other public systems achieve lower rates restrictions on recovery of damages relating to pain and suffering. Many presenters argued that savings are a function of the design of the product and not the administrative mechanism used in its delivery.

In noting the argument that savings are engendered by design and not the delivery model, the Board does make the point (not raised directly during the review) that a single agency administering public insurance does have the added opportunity to target and focus on the management of broader issues. For example, issues linking license plates to the issuance of insurance to protect against uninsured motorists as implemented in British Columbia, or quicker access to appropriate treatment to speed patient recovery, a key factor in reducing long-term costs. These are typical issues that if addressed may inject savings into the system and whose success may depend more on the delivery mechanism than the product.

Most people who supported a review of public insurance, including the Consumer Advocate, recognized it as a complex subject which would require careful examination before a final public policy decision could be made. The Board notes there is a considerable body of empirical data that has already been concluded, particularly in New Brunswick, and as well the report of the Atlantic Canada Insurance Harmonization Task Force in which this Province participated. The Task Force report, however, found there was a dearth of objective evaluations of public models

²⁰ Prepared for the New Brunswick Office of the Attorney General, by Price Waterhouse Coopers, June 25, 2004.

in Canada, particularly in comparison with one another. As a result, the report noted it is difficult to draw objective conclusions as to whether public automobile insurance models achieve their optimum efficiency and efficacy.

The Board acknowledges that little new information relating to public insurance was brought forward at this review and the question for Government is whether or not to embark upon a closer examination of the merits of public insurance. It is clear, however, that if Government is to seriously consider the evaluation of a public system flowing from this report that a complete and thorough study will have to be undertaken to address issues such as start-up, on-going financial implications, market dislocation and transition, delivery mechanism, impact on existing private insurers, and additional cost-benefits to consumers of changing the delivery system and/or the insurance product.

10.0 OTHER COST SAVINGS MEASURES IDENTIFIED

10.1 Introduction

The Terms of Reference also required the Board to “report on any additional cost savings measures identified by the Board during the review.” Several potential cost savings measures were raised by various stakeholders, both in written submissions and presentations to the Board. These included uninsured motorists, direct compensation, taxation, elimination of fraud, and other measures.

The sections below outline the comments and positions on these issues.

10.2 Uninsured Motorists

10.2.1 Introduction

Under section 75(1) of the *Highway Traffic Act*, and section 21(1) of the *Automobile Insurance Act* a person may not operate a motor vehicle in this province without having in place mandatory liability coverage of at least \$200,000. The penalty, as stated in the *Highway Traffic Act*, for an offense is a minimum fine of \$2,500 to a maximum fine of \$4,000, or, in default of payment of the fine, a minimum of 40 days to a maximum of 134 days in jail. Fines for a second offence range from \$3,000 to \$5,000. In addition either the court or the registrar, upon receiving information of the conviction from the court, shall order that the plates and motor vehicle license of the person convicted be returned to the registrar.

In spite of these legal requirements the law recognizes that there may be vehicles in operation in this Province that do not carry the required minimum liability coverage. In order to protect persons and property which may sustain a loss as a result of the operation of such vehicles, section 33(2) of the *Automobile Insurance Act* sets out the requirements for mandatory uninsured motorist coverage on all automobile insurance policies. This will cover damages sustained as a result of an accident with an uninsured vehicle, and the responsibility of Facility Association to manage this coverage.

Section 98(2)(b) of the *Insurance Companies Act* sets out the Regulations for Facility Association in administering claims by persons not covered by automobile insurance policies who suffer injury or damage occasioned by an uninsured vehicle; a prime example of this would be a pedestrian or bicyclist.

In its report the Select Committee made a series of recommendations with respect to the issue of uninsured motorists. These recommendations were focused on increased penalties in terms of higher fines, and other measures such as confiscation of a vehicle’s license plates and suspension of drivers’ licenses. The Select Committee also recommended that uninsured motorists driving or occupying their vehicles at the time of an accident not be able to sue an at-fault party.

In addition to the increased fines and penalties the Select Committee recommended that:

- *“Any insurance company, broker or agent, upon becoming aware of a policy cancellation, be obliged by legislation to report such cancellation to the Motor Vehicle Registry. This is in conformity with the current situation whereby the Motor Vehicle Registry provides a driver’s abstract to insurers. This process should be reciprocal.*
- *The Province, through the Motor Vehicle Registration Division, demand return of a vehicle’s license plate upon confirmation that an insurance policy has been cancelled and an alternate policy has not been purchased. Should the individual possessing the license plates fail to respond, a fine be imposed, minimum of \$2000. If the individual is subsequently found operating the concerned or any other uninsured vehicle, the penalty should be as previously outlined in the ‘Penalties’ section.”*

It is noted that in December 1998 the Government passed an amendment to the *Highway Traffic Act* increasing the fines for uninsured motorists as recommended by the Select Committee. The revenue collected from fines is paid into the Provincial treasury and not to the insurance industry, thus the fines are not directed at offsetting the costs to the system imposed by uninsured drivers.

Uninsured drivers impose costs which must be paid by other insureds and therefore increase the overall costs of insurance in the Province. The Financial Statements of Facility Association, October 31, 2003, on file with the Board, show in the Statement of Operations by Province (Notes 10 and 11) that for 2002 the Uninsured Automobile Fund had an underwriting gain of \$221,000 while for 2003 the same fund had an underwriting loss of \$59,000. This figure does show that uninsured and under insured automobiles do exist in this province, but it does not show the number of vehicles being driven without insurance.

10.2.2 Submissions, Presentations and Comments

The comments received during the review suggested that people continue to have concerns about uninsured drivers. From information presented to the Board it appears that many people believe that the problem is widespread. Ms. Charlene Johnson, MHA, stated in her presentation:

“... for some people in our area the choice they are sometimes faced with is to purchase insurance or to drive without it because they cannot afford it.”

Mr. Kevin Keating of Gander told the Board during his presentation:

“Another thing I notice too is people I know got no insurance. They go and they walk into an insurance place, they pay the first months 100 bucks, and they get a thing saying they’re good until February, 2006, and they don’t pay the second month, and keep that little pink slip for another eleven months.”

The Consumer Advocate paraphrased the comments of a presenter by saying that:

“The gentleman last evening allowed, at the Holiday Inn, in the space of an hour, he could probably find you 100 people driving around without insurance.”

In his final submission the Consumer Advocate stated:

“I raised this issue in my previous written submissions and during my presentation to the Board on February 25, 2005. This is a very serious problem in our province and it costs all consumers who play by the rules and pay their way. The fact is that fines only go so far as fines only punish people when it is too late – they have already been operating a vehicle without insurance and without contributing to the insurance premium pool. A system must be devised whereby it is much more difficult at the front end for people to operate a vehicle without insurance. The fact is that it is quite easy in this province to operate a vehicle without insurance and everyone knows it. One of the presenters in Gander on March 2, 2005 related how a gentleman he knew actually operated a vehicle for 19 years without insurance. The presenter stated:

‘He finally got caught and he laughed and said I’m still money in.’

It is simply intolerable that consumers in this province are taxed the highest in North America on their premiums and so little is being done to tackle the uninsured motorist problem.”

10.2.3 Number of Uninsured Drivers

In its submission to the Select Committee in 1997 the Atlantic Automobile Insurance Coalition estimated the number of uninsured drivers operating without the mandatory insurance coverage in this Province at between 4.7% and 6.6%, or approximately 10,000 to 14,000 automobiles at that time. Mr. Don Forgeron of the IBC stated during his presentation that with respect to the number of uninsured drivers “...the figure of three to six percent comes to mind for Newfoundland.”

The problem of uninsured motorists is not specific to Newfoundland and Labrador, or to Canada. A study covering the period from 1995 to 1997 and released in 2000, undertaken by the United States based Insurance Research Council²¹, estimated that 14%, or about one in seven, of American drivers were uninsured, with the percentage of drivers uninsured estimated from as high as 32% in Colorado to as low as 4% in Maine. Liability insurance is compulsory in 47 states and the District of Columbia. Only New Hampshire, Tennessee and Wisconsin do not have compulsory auto insurance liability laws²².

During the review the Newfoundland and Labrador figure was compared to the figure for British Columbia, when Mr. Jack Harris explained in his presentation that, according to his information, “...BC has a remarkably low level of uninsured drivers, somewhere around 2 or 3 percent max. The national average is around 10 to 15 percent.”

In the United Kingdom a July 2004 study²³ estimated that, despite the legal obligation to be insured against third party risks before driving a motor vehicle, 5% of motorists in the United

²¹ Insurance Research Council – website: <http://ircweb.org/news/2001-02-01.htm>

²² Website: http://www.insurance.ca.gov/PRP/Policy_Research/Auto/char_um.pdf

²³ Secretary of State for Transportation, Professor David Greenway, University of Nottingham, Uninsured Driving in the United Kingdom, website: http://www.nottingham.ac.uk/economics/staff/details/david_greenaway.html

Kingdom drive without insurance. The study noted that this incidence is high relative to some, though not all, member states in the European Union.

10.2.4 Characteristics of Uninsured Drivers

Some work has been undertaken to determine the reason why some drivers choose to drive without insurance. Although price is an issue for this uninsured group of drivers that can, according to a California study²⁴, be generally described as coming from a less advantaged segment of society, attitude can also play a part. Less trust of insurance companies and the perception of oneself as an outsider to the current insurance system are factors that are not so readily analyzed and addressed. According to the reports, it appears that there is a core group of uninsureds, with low incomes and feelings of alienation from the current system, which are unlikely to purchase automobile insurance regardless of cost reductions and/or outreach efforts.

10.2.5 Initiatives Undertaken

Examples of initiatives undertaken in the United States and Canada to address the issue of uninsured motorists are described below.

i) Reporting Database Systems

Several states have implemented reporting database systems designed to track whether vehicles registered in the state are insured²⁵. In some cases, such as Colorado, corresponding legislation was enacted which allowed administrative suspension of the offender's driving privileges if evidence of insurance was not made available to an enforcement officer upon request. In other states, such as Georgia, a variation of the system allowed it to identify and fine uninsured drivers. South Carolina has used its system to put in place a daily fine, which must be paid before a vehicle can be reinstated.

ii) Low-Cost Auto Policies

In August 2004 California announced a campaign to insure low-income drivers in Los Angeles County and in the City and County of San Francisco. These drivers must (a) be at least 19 years old; (b) have a good driving record that meets specific criteria, (c) have a household income level that does not exceed 250% of the federal poverty level, and (d) own a car valued at less than \$12,000. The policy is a private insurance policy administered by the California Automobile Assigned Risk Plan, and covers liability only at reduced liability limits that satisfy the state's financial responsibility laws.

²⁴ Characteristics of Uninsured Motorists, website:
http://www.insurance.ca.gov/PRP/Policy_Research/Auto/char_um.pdf

²⁵ Insurance Information Institute, NY, February 2005, website:
<http://www.iii.org/media/hottopics/insurance/compulsory>

iii) No Pay, No Play

California, Delaware, Louisiana, New Jersey and Michigan have instituted a system of “No pay, no play”, which prohibits uninsured drivers from collecting damages for non-economic losses, such as pain and suffering, when involved in an accident with an insured driver. This system is expected to encourage more drivers to purchase insurance. This restriction has been challenged in the courts of New Jersey and Louisiana and has been upheld.

iv) Using Brokers to Issue Insurance Policies and Plates/Decals

In addition to selling insurance coverage, brokers in British Columbia provide the decals and plates that are to be affixed to automobiles. Mr. Gordon Adair, former head of finance of ICBC, explained in his presentation to the Board that if the insurance policy is cancelled, the plate must be returned. Mr. Adair credits this system with the apparent low percentage of uninsured motorists in British Columbia.

10.2.6 Board Comments

The problem of uninsured motorists, while a concern and a cost driver, is not unique to Newfoundland and Labrador. While there are no available statistics to show the actual number of uninsured drivers it would appear the rate of these drivers in Newfoundland and Labrador is comparable to other jurisdictions in North America.

There are options available to reduce the rates of uninsured drivers, some aimed at prevention and some aimed at penalties. While some of these measures appear to be effective in reducing the number of uninsured drivers, as in British Columbia, it appears that there is likely to always be a portion of the driving population who will not purchase insurance. The lower incidence in British Columbia suggests that prevention measures are most effective. Government may wish to review the British Columbia system to determine if any of the measures in place there can apply in Newfoundland and Labrador.

10.3 **Direct Compensation**

10.3.1 Introduction

Direct compensation is a system where a driver who in an accident is compensated by his/her own insurance company for property damages caused by a third party. This means that the claimant does not have to deal with the at-fault party’s insurer to collect reimbursement for damage to his/her vehicle and rental car expenses while repairs are being carried out. This may avoid the conflict, delays and expense associated with collecting benefits from the third party insurer.

Direct compensation does not change the claimant’s right to sue for other damages. Those rights are maintained, while claims for property damage are generally settled faster.

10.3.2 Submissions, Presentations and Comments

The introduction of a direct compensation system was supported by a number of insurance companies during their presentations as a possible means of reducing costs, primarily due to savings in administrative costs.

In its written submission Meloche Monnex stated:

“We believe the implementation of a Direct Compensation arrangement in Newfoundland and Labrador would also result in a fairer approach to pricing which is more reflective of the true economic costs associated with driving different types of vehicles. A deductible could also be required under such a regime as is currently the case in Ontario. This would further reduce the costs by eliminating minor claims. We find this is a very effective form of handling large numbers of property damage claims.”

In subsequent correspondence to the Board Meloche Monnex provided the following comments on the savings that could be achieved by implementing a direct compensation arrangement in the Province:

“The savings resulting from the implementation of a direct compensation arrangement would be reflected mostly in the administration of property damage claims. This is because there would be less litigation costs between parties involved in accidents, less investigation costs by insurance companies and some savings associated with speedier settlements for insureds. Although these costs savings are a certainty, we do not have enough data to calculate precisely the impact on the average premium in such a short period of time. However, based on previous studies, we expect that these costs savings would not be significant, probably less than 1% overall. Greater savings would be achievable because of his/her deductibles on property damage coverage.

On the other hand, the implementation of direct compensation would create more coverage options for consumers, including the use of deductibles, and reduce the consumer’s level of frustration of recovering damages from someone else’s insurer.”

During its presentation, in response to a question from the Chair, The Co-operators stated:

“We would certainly support a direct compensation system for physical damage for a number of reasons. First and foremost, it allows us to deal with our—to take care of our own insureds. So, we have an opportunity to get their vehicles repaired, we control the time lines that it’s done under, we control the quality. And we would prefer to provide that claim service rather than have another insurer provide that claim service. So, a piece of this is regardless who’s responsible for the accident, your own insurer pays for the physical damage to your vehicle.”

10.3.3 Other Jurisdictions

As part of its recent reforms New Brunswick implemented a direct compensation regime. Insureds maintain the right to sue for other damages, such as non-pecuniary damages, though subject to a \$2,500 cap in the case of minor injury.

Ontario has two direct compensation schemes, one for property and one for personal injury and death. Damages each is to receive as predetermined by a list of at-fault rules. The system does not provide automatic payment if both cars are owned by the same person or if someone damages his/her own car while driving someone else's. There is no automatic coverage of contents. Consumers in Ontario are generally satisfied with direct compensation²⁶ but there are some minor disagreements with the fault rules.

Quebec has a direct compensation scheme but insureds have no right to sue.

In the Provinces that have direct compensation systems, rates are set in part by the type of vehicle, so an insurer that carries a large number of expensive vehicles would have already taken in premiums to cover the greater cost of damages to the more expensive vehicles. Older vehicles will receive lower premiums than newer vehicles.

10.3.4 Board Comments

Direct compensation was not an issue specifically referred to the Board in the Terms of Reference and discussion on this issue was limited during the review. One insurer proposed the concept as a cost saving measure and another insurer supported the concept. Other participants did not express views on this issue.

Direct compensation is a no-fault first party recovery system which allows for reduced claims costs where consumers elect the deductible. The opportunity for savings through a direct compensation scheme arises mainly from the reduction of costs associated with minor claims by providing the insured a deductible option. To a lesser degree savings are also achieved by avoiding the costs associated with the adversarial system.

10.4 **Taxation**

10.4.1 Introduction

In this Province two taxes totaling 19.6% are applicable to insurance premiums. These taxes are comprised of a Retail Sales Tax (RST) of 15% and a premium tax of 4% which is incorporated in the rate itself. The RST rate was initially 12%. However, when taxes in Newfoundland and Labrador were harmonized with those of the other Atlantic Provinces, Government increased the RST from 12% to 15%. This RST continues to apply to insurance premiums under the Retail Sales Tax Act. According to Mr. Bradley George of the Canadian Federation of Independent Business, the RST of 15% charged on premiums is often mistaken for Harmonized Sales Tax (HST), which does not apply to insurance premiums. He also noted that the only other province to charge RST on insurance premiums is Quebec, with a rate of 9%, and that most if not all jurisdictions apply an insurance companies tax ranging from 2% to 4%.

²⁶ JBM Murray, "Looking to Ontario for Fairer Reform" Best Review, Vol. 94, Iss.5; Oct. 93, 56-60.

The Select Committee recommended in its report that, given that approximately twenty percent of premiums go toward Government taxes, the provincial Government immediately look at reducing the level of taxation on insurance.

10.4.2 Submissions, Presentations and Comments

The issue of the level of taxation on insurance was raised by a number of presenters. The Consumer Advocate stated that “...the level of taxation on insurance products... is unconscionable.” Furthermore, he noted “...some consumers made reference to the high level of taxation on both auto and homeowners insurance.” The Consumer Advocate also quoted an IBC report that states that Newfoundland and Labrador has the highest premium tax rate in Canada, and recommended that “...serous consideration ought to be given to reduce this significant and inordinate burden on consumers in this province.”

The IBC identified taxation as one of the key factors in the increasing cost of auto insurance, along with increasing costs of settling bodily injury claims. It stated that the property and casualty industry is one of the most heavily taxed of the entire financial services industry, and that Newfoundland and Labrador has one of the highest tax rates of all the provinces. In its written submission the IBC indicated that in 2003 taxes paid by the industry (for all product lines) exceeded the total claims payout for that year - \$88 million in claims versus \$100 million in taxes. The RST on premiums and the premium tax comprised approximately \$79 million of this total. The IBC stated:

“IBC believes that the government’s interest in lowering taxes is genuine, but contends that the government must recognize the direct contribution that it makes to insurance costs through taxation and its important role in reducing this burden.”

IBAN also raised the issue of the level of taxation on insurance premiums in its written submission and during its presentation to the Board, and noted that consumers in this Province pay among the highest rates of tax on automobile insurance premiums in North America. IBAN also pointed out that, since the RST is separate from the HST, input tax credits are not available and, as such, this is a bottom-line net cost to both business and consumers. As insurance rates have continued to rise in recent years, Government has also benefited from increased tax revenue. IBAN stated:

“While we appreciate the financial challenges facing government, this is an obscenely high rate of taxation on a major purchase that is mandatory for all owners of automobiles. We would recommend that government examine ways to lower this tax, perhaps phasing in reductions over time.”

The St. John’s Board of Trade advised the Board that it had, in the past, called on the Provincial Government to eliminate the 15% tax that consumers pay on insurance premiums. In its opinion, “This tax inflates the already high cost associated with purchasing insurance”.

In its written submission Unifund stated:

“Unifund suggests it is wrong for Government to collect a risk-free guaranteed 15% on every auto insurance policy in the province. This is almost double the province’s share of HST. This equates to a return that is higher than the average commission paid to auto insurance brokers. It is also far higher than the return on equity currently permitted by auto insurance companies that must bear the risk of financial loss. The only stakeholder that appears to do better than Government is trial lawyers who earn an estimated 25% in average contingency fee.”

Unifund stated that the most effective cost relief for consumers would come from an elimination of the sales tax on automobile insurance. However, recognizing that Government cannot eliminate taxes overnight given current fiscal realities, Unifund recommended that, as Government’s fiscal situation improves, it can and should implement general sales and premium tax reductions for the benefit of automobile insurance consumers.

Several public comments were also received on this issue. RC of St. John’s wrote *“...to insult the working class with a special 15% tax is ridiculous. I would like the PUB to take action in forcing the government to remove this tax.”*

RC of St. John’s, who had recently moved back to the Province, wrote:

“I was also shocked to learn the 15% insurance tax this province levies on insurance that is not found anywhere else in the country! How can we allow this to occur. The high rates are one issue, however to insult the working class with a special 15% tax is ridiculous. I would like the PUB to take action in forcing the govt to remove this tax. Certainly this has received very little scrutiny in the press or legislature.”

GM of Corner Brook asked that Government remove the tax on automobile insurance, while FA of Bay Roberts asked that it be reduced.

10.4.3 Board Comments

Since Newfoundland and Labrador has the highest rate of taxation in North America on insurance premiums, stakeholders commenting on this issue stated that a tax of 19.6% was excessive. As Government searches for ways to address the concerns of consumers about the high cost of insurance, the Consumer Advocate, the insurance industry, CFIB, the Board of Trade and many citizens all felt that this was one area that was within the control of Government. As a result they looked to Government to either reduce or eliminate this high level of taxation that increased the burden on consumers who purchase insurance.

10.5 **Concerns About Insurance Fraud**

10.5.1 Introduction

In its written submission the IBC discussed the issue of insurance fraud as a contributing factor to high insurance costs. According to the IBC the Canadian Coalition Against Insurance Fraud

conducted a poll in 2000 that, by its measure, determined that 46% of Canadians believed insurance fraud was easy while 5% thought it was acceptable. According to the IBC insurance fraud costs the Canadian property and casualty insurance industry \$1 billion a year, of which \$50 million accounts for the portion from Atlantic Canada.

In the context of the question as to whether there is widespread fraud there are also suggestions that the tort system may overcompensate certain claimants. There appears to be a perception that even if it is not fraud some people who are not injured receive settlements. This concern was discussed in the Atlantic Canada Insurance Harmonization Task Force Report where it cites some opinions that the tort system overcompensates minor injuries and under compensates catastrophic injuries.

10.5.2 Submissions, Presentations and Comments

Several presenters suggested that fraud is a common problem in automobile insurance claims and a contributor to the steadily rising rates.

One individual stated “...*there is too much fraud in the system and much too great an incentive to perpetuate it in the present system.*”

RG wrote:

“In my opinion, the problem in the system is not caused by the legitimate claims-it is caused by fraudulent claims. Everyone knows someone who has milked the system to some degree – it is up to experts to determine has to stop that. I have no answers on how to do that but legitimate claims deserve proper compensation.”

The Consumer Advocate offered this observation:

“I don’t see it as fraud against the insurers; I see it as fraud against consumers.... and, quite frankly, people who abuse [the system] should be punished and punished severely, because it obviously costs all of us and deprives legitimate claimants of their rights which is absolutely unfair.”

Some presenters argued against the notion of widespread fraud in the insurance industry. Mr. Richard Rogers, of Rogers Bussey Lawyers, a trial lawyer practicing personal injury litigation, said:

“During [my] sixteen years practicing I can say with pretty great accuracy that the number of claims that I’ve discovered through the actions of defense council through surveillance and so on that proved to be fraudulent or highly exaggerated I could count on one hand.”

Mr. David Bussey, also a trial lawyer, suggested during his presentation that fraudulent claims are not as easy to carry out as some have argued. He offered the following opinion based on his experience:

“It is our opinion as personal injury lawyers, that the argument that illegitimate and inflated claims are being paid is an invalid one. The insurance companies are not forced to pay anything that is not justified and one can only assume that an industry so focused on the bottom line would not pay out without full justification for doing so.”

Ms. Sharon Horan, who treats injured people as part of her occupational therapy practice, offered this observation:

“And for the record, I would just to say that my experience, over all of these years that I’ve been in this business, that really I don’t see that. I don’t see the fraud. I really do not believe that the people who come in and claim to be in pain are actually lying about being in pain. I think these people are very legitimate in their suffering. What I believe though is that the system has failed them in many ways, and they end up in a situation where, unfortunately, their injuries become more chronic and more pain focused.”

During the review, it was suggested that measures be adopted to combat fraud. One citizen wrote:

“One important way to make that determination easier is to investigate and punish fraudulent claims more stringently.”

Mr. Gordon Adair said that British Columbia set up fraud hotlines to combat fraud.

The IBC explained that it works to try and educate the public on the costs of fraud by sponsoring research, fraud investigation, and public education. In its presentation the IBC stated:

“[W]e’ve been successful in changing public opinion to the point where people do recognize that fraud is a crime and they themselves end up paying the cost of fraud in the end.”

10.5.3 Board Comments

It is clear that there is a real difficulty in ensuring appropriate but not excessive compensation. An injured person should be placed, so far as can be done with money, in the position he or she was before the injury. Compensation should not be a bonus. It should be an incentive to recovery and not an incentive to malingering.

Although there were conflicting views regarding the extend of fraud, one would expect that there is some aspect of this within the system. While it is difficult to quantify the level of fraud it is even more difficult to identify ways to reduce it. The IBC indicated that it has focused on public education and fraud investigation. It seems that this may be an area where insurers can focus their efforts without the need for Government intervention. They may wish to pursue the British Columbia approach with fraud hotlines or the focus on recovery approach suggested by Ms. Horan. While some participants suggested that caps and deductibles may alleviate concerns in relation to fraud, these measures would apply without regard to the legitimacy of the claim and therefore should be considered with caution in this context.

10.6 Other Cost Savings

In addition to the specific cost saving measures identified and discussed above, there were several other issues raised during the review that may, according to some, present opportunity for cost savings. These are discussed below.

10.6.1 Vehicle Inspections

The Consumer Advocate expressed support for the reinstatement of vehicle inspections. In fact he went as far as to suggest that “[I]nspections are a no-brainer.” In his written submission the Consumer Advocate provided the following comment from a private citizen:

“Reinstate yearly vehicle inspections, but have them staggered so that it is on going for different vehicles so that there isn’t a bottleneck in any given month. In addition, it spreads the work for the motor vehicle inspectors and the garages over the whole year.”

Another comment from the Consumer Advocate’s report stated:

“Undoubtedly, there are unsafe vehicles on our roads and these can cause accidents and losses to other road users. Enhanced vehicle inspections for older vehicles can only help improve safety on our roads.”

Both the Law Society and IBAN also supported reinstatement of vehicle inspection.

In its written submission the law firm of Roebathan•McKay•Marshall identified the reinstatement of vehicle inspections as another potential cost saving measure:

“[I]nspections, traffic safety education programs, and those sorts of things are things that in our view, would help with the preventative end as opposed to taking away from innocent victims [under a cap or deductible].”

The Automobile Dealers Association of Newfoundland and Labrador also supported reinstating vehicle inspections:

“Members of our industry with the support of consumers’ groups, the insurance industry, and the general public are of the opinion that regularly inspected vehicles on our provincial roads and highways will result in a general lowering of accidents as the motoring public are reinforced of their responsibilities related to vehicle Safety. This will result in a further potential lowering of insurance rates.”

Mr. Jeff Mackey, a graduate student doing his research on the insurance industry, expressed the contrary view. He expressed some doubt towards the potential for lowering accident rates or costs through reinstatement of vehicle inspections:

“I’ve seen evidence from both sides..[on vehicle inspections].. and, when I worked for the department, I had a number of meetings with some advocates for this. Its been my experience in a lot of the research I’ve done that there are jurisdictions across Canada that require inspections

and others that don't [and] there doesn't seem to be a correlation between inspections and the number of accidents. The number of accidents attributed to vehicle defects is fairly low in this province...[therefore I am not sure that it's a road that [one] needs to go down.]"

10.6.2 Accident Reduction Campaigns

Accident reduction campaigns can take many forms from photo radar, radar boards that announce how fast a driver is going, cameras at red lights, as well as road repair and other types of programs that are undertaken to increase road safety. These types of programs are undertaken in many different jurisdictions across Canada, and are not unique to public or private systems.

In his written submission the Consumer Advocate supported accident reduction campaigns:

"Consumers would benefit from well publicized accident reduction campaigns. Efforts to improve road safety and awareness must be seen as part of the solution."

Mr. Gordon Adair, on behalf of The Coalition Against No Fault Insurance, referred to the ICBC's accident reduction campaigns as a major factor in maintaining stable premiums in British Columbia:

"So, by implementing these safety features; by getting after the illness rather than the symptom, which is what IBC would like us to do, claims [in BC] have stayed very stable for the last 5-6 years." ... "ICBC put up about 60-70 million dollars a year, which is 3-4% of premium, and they go and repair intersections."

Mr. Adair also detailed some of the accident reduction campaign measures undertaken in British Columbia. Such programs include: graduated licensing, red light cameras, seat belt enforcement, commercial vehicle inspections, radar reading boards, increased penalties for impaired driving and similar offences, fraud and theft protection, along with public education. To point out the effectiveness of these programs he explained that, with the removal of the red light cameras, speeds on these roads once again increased.

In order to increase road safety, thereby the number of accidents and consequently loss costs, Government may consider linking some of these initiatives to the revenues raised from insurance premium taxation.

10.6.3 Commission Fees

Commission fees are the amounts paid by insurance companies to brokers for selling policies and for managing, underwriting, processing and other necessary services. These other services, according to Mr. Tom Hickey of IBAN, involve going *"to the markets ... and try and match up the consumer with the market that would best meet their needs"*, or, according to Mr. Scott Beattie of The Dominion of Canada, could include advocating *"for their customers in the claims process...."*

The rates paid for these commissions generally range between 7.5% and 12.5%, according to the type of policy that is being written. IBAN confirmed this was the case in its presentation: “*In some lines we get lower, but I think if you looked at the bulk of our business, it’s done for 12½ percent commission....*” This is consistent with the commissions paid by the ICBC in British Columbia a public system which, according to Mr. Adair, pays its brokers from approximately 5% to 15%, according to the type of policy.

During the review the Consumer Advocate requested information from companies on the rates and payments of commissions. Although some companies responded to the questions of the Consumer Advocate by providing their rates, others declined, stating that the specific rates of the commissions paid to brokers and agents for the sale of private passenger automobile insurance are proprietary and confidential information of the company.

In his final submission to the Board the Consumer Advocate stated:

“The Consumer Advocate believes that it is clearly in the interests of consumers that they be informed as to how much of their premium dollars go towards commissions. As I have previously stated, brokers have a right to be remunerated for their valuable services but consumers have a right to know what those commissions are so these can be taken into account as they shop for coverage. I have extreme difficulty with the responses of certain insurers to Requests for Information which refuse to disclose the specific rates of commission paid to brokers and agents for the sale of auto insurance in this province. Certain insurers have taken the position that this “disclosure of such information would harm the commercial interest and competitive position” of the insurer. Interestingly, other insurers have indeed complied and have provided their commission structures which certainly undermines the position of those insurers who refuse to disclose. Frankly, it is an insult to consumers that they be charged commissions without their being told what they are being charged. The refusal to disclose this information is tantamount to telling consumers that they have no right to know what they are paying. It is recommended that all commissions be disclosed to consumers at the point of sale by being expressly disclosed on the insurance invoice and in all quotes.”

Ms. Victoria Harnum of the Advocates for Fair Auto Insurance stated in her presentation to the Board:

“We have companies offering extra commission to brokers for steering clients their way or for reaching a certain amount of sales...the bottom line is that the brokers are human and they will place drivers with the company who offers the highest commission or incentive.”

During his presentation Mr. Steve Marshall of Roebothan•McKay•Marshall stated:

“I’m wondering why not, I mean, if my premium dollars are being paid and a portion of that goes as a commission, unknowing to me, to the person who sold me the policy to sell it to an underwriter, I think we ought to know the details of that.”

Although rates for insurance are set on a prospective basis, and efforts are made to include reasonable allowances for operational costs, including commissions, it may serve the public interest to enhance reporting and disclosure requirements to include more definitive information

on actual costs, including commission fees paid. The industry should also consider whether it should institute a disclosure policy for commission fees and similar such costs that are included in quotes and premiums, as recommended by the Consumer Advocate.

10.6.4 Transactional or Regulatory Costs

In its presentation to the Board The Dominion of Canada raised the issue of transactional or regulatory costs and the impact of such costs on consumers. These costs include the cost of the rate review process and the costs of the claims management system. The Dominion of Canada also stated that:

“A system that requires consumers to pay for elaborate mechanisms that create only a fleeting benefit, will cause [consumers] to pay more and more, as tinkering is done and changes are made.”

In urging consideration of the transaction costs The Dominion of Canada stated:

“A product that is designed to meet consumers’ fairness, accessibility and affordability, tests will guarantee that premiums are spent on appropriate compensation and that controls are in place to make sure the system is not burdened by transaction costs that do not benefit consumers and injured victims.”

According to The Dominion of Canada, stability, competition, and choice will be accomplished more easily if Government puts measures into place to avoid unnecessary transaction costs. Specific examples identified by presenters as ways to reduce transaction costs include claims protocols, mandatory structured settlements, discount rate changes and contingency fee reform.

i) Claims Protocol/Rules of Practice

In its written presentation Aviva recommended that a claims protocol be established in order to move claims toward more timely resolution. According to Aviva these changes would take more claims out of the system and result in cost savings. Aviva recommended the claims protocol be established by regulation and proposed the following protocol:

- Written notice of the claim is to be given to the defendant by plaintiff’s counsel within 30 days after the plaintiff has retained counsel. The time period will be waived if the claimant is hospitalised or otherwise incapacitated.
- After receipt of notice, the defendant may require the plaintiff to undergo examinations by one or more health professionals at the expense of the defendant (or his/her insurer). This requirement does not alter any rights for a defence medical or other examination rights of the defendant as part of the litigation process.
- The plaintiff is to provide the defendant with a statutory declaration, if so required, describing circumstances surrounding collision, nature of claim and all documentation pertaining to the claim within 60 days following the loss.

- The plaintiff is to provide evidence of his/her identify, if so required by the defendant.
- The plaintiff is required to provide copies of all medical records in respect of their treatment arising from the accident, including records from Accident Benefits examinations within two weeks following treatment.
- In order to ensure each production and disclosure of attending physician medical reports (including Accident Benefits files), the plaintiff will be required to produce these reports within 6 months of the defendant being put on notice.

The IBC also supported the concept of a claims protocol in its presentation as a means of faster resolution of claims, and therefore lower costs.

Other possible initiatives that could be considered to improve claims processing include mechanisms such as mediation and an alternative dispute resolution mechanism. These types of interventions could reduce transactions costs in legal fees as well as quicker resolution of claims.

The Consumer Advocate also linked the issue of mandating Accident Benefits to the need for claims protocols to ensure claimants are able to access necessary treatments. He stated:

“Regardless of whether Government decides to make these benefits mandatory or not, it is clear that for those with such benefits it is very important that valuable rehabilitation opportunities not be lost by needless “red tape” and its attendant delays. The sooner claimants get treated the better from the standpoint of trying to minimize both non-pecuniary and pecuniary claims. The Consumer Advocate would favour the development and use of section B claim protocols. Such protocols could be developed with the input of insurers, section B service providers and claimant representatives.”

ii) Mandatory Structured Settlements

In an ideal form a structured settlement is a financial package intended to provide for a claimant over the long-term. The package could involve periodic payments over a fixed term or the life of a claimant. It is usually an annual payment designed to meet current and future needs of a claimant, and it can be indexed to a CPI inflator, or provide periodic lump-sum payments for items such as vans or wheelchairs. There are benefits in potential tax savings for claimants as well as investments security. The tax-free status of a claimant provides for reduction of loss costs.

In its written submission Aviva recommended that Government:

“Amend legislation to mandate structured settlements with future income loss and future care costs claims, while allowing discretion between the parties on mutual agreements not structure. Structured settlements should be required on claims involving brain damaged individuals, those having catastrophic injuries and minors with serious impairments.”

iii) Changes To Discount Rates

The discount rate is the rate at which anticipated future payments are reduced to reflect the fact that the payments are being made today instead of in the future. This percentage reflects the time value of money. In its written submission Aviva suggested that the Government increase the discount rate from 2.5% to 3.5% to bring it in line with other jurisdictions.

iv) Contingency Fees

The issue of legal costs and contingency fees was raised by some presenters with some arguing that contingency fees serve an important function for claimants, and others suggesting these fees are adding to the increased costs in the system.

Chief Justice Hickman offered the view that:

“under a very forward thinking and desirable rule under the Law Society Act, solicitors are now...permitted to accept a case on a contingency basis.”...“This is a relatively new innovation...[b]ut it has had a very salutatory effect because it allows...people of limited income easier access to the courts.”

Mr. Brad Wicks Roebathan•McKay•Marshall also saw value in the availability and use of contingency fees:

“[I]n the absence of contingency fees, I would say most people would not come see a lawyer.” He also added that *“...contingency fees are controlled through our court system and, you know, there are those who criticize contingency fees in saying... lawyers are making pot loads of money as a consequence... It is a lot of work and a lot of risk goes into it.”*

Mr. Glen Roebathan, also of Roebathan•McKay•Marshall, stated:

“...contingency fees are not a cost to the system...[because they]... come from the compensation that a client receives as a result of his injuries.”

Others argued that contingency fees were one of the reasons that personal injury claims were on the rise and therefore partially responsible for the increase in costs which translates to higher rates.

IBAN suggested that the implementation of a cap may deter contingency fee arrangements:

“...because the value of money claims is reduced [a] cap may operate, in fact, not may, but will operate to delay lawyers from entering into any contingency agreement until much later ...when they are of the opinion, based on medical evidence, that a threshold has been met.”

In its submission to the Board Aviva stated: *“It is recommended that the level and quantum of lawyers contingency fees be revisited.”* However Aviva did not provide any specific details or proposals with regard to the specific issues associated with the contingency fees.

The IBC considers contingency fees to be a direct cost to the system. According to the IBC, a report from Manitoba conducted before the province adopted no-fault insurance in 1994 determined that 34-40% of victim settlements went directly to legal firms in the form of fees. In addition, a 1995 KPMG report in British Columbia calculated total legal costs under the province's tort-based insurance system at more than \$200 million. Similarly, the KPMG report noted that up to 33% of claimant pay-outs in British Columbia go to law firms. In referencing these figures the IBC pointed out that none of this money goes to the treatment of accident victims²⁷.

The issue of contingency fee reform was addressed by the Select Committee in its report. The Select Committee acknowledged that the contingency fee arrangement serves a very useful purpose in that it allows individuals to pursue appropriate reimbursement for losses through the judicial system who otherwise could not do so if they were subject to the hourly fees which would have to be paid to a lawyer to litigate a claim. However the Committee stated in its report :

"...the Committee views the contingency fee structure, in some instances, as contributing to disproportionate fees for lawyers and subsequently less benefits for the injured client. For example, in the cases of undisputed liability, an attorney may commit a minimal amount of time and effort to a case yet receive a sizeable fee. This is especially true in cases of significant loss where damages exceed the liability limits as dictated by the insurance policy."

The Committee recommended that a contingency fee only be applied to awards in excess of the amount of an early offer of settlement. According to the Committee this reform would address the concept of "value added" in that a claimant's lawyer is reimbursed only for the amounts obtained beyond the level of the early offer.

10.6.5 Board Comments

These other cost savings measures were identified by a number of presenters and may offer further opportunity to reduce automobile insurance costs in the Province. However, without additional study and information, the specific cost savings associated with any or all of these measures cannot be determined. It is noted that some of the measures, such as claims protocols and improvements in claims management, could be initiated voluntarily by the industry as part of a co-operative effort without any policy or legislative direction.

²⁷ IBC Website: http://www.ibc.ca/home_alta_insurance_myths.asp

11.0 OTHER ISSUES

11.1 Consumer Reaction – Frustration and Low Customer Satisfaction

11.1.1 Introduction

While not specifically raised in the Terms of Reference and not impacting directly on cost savings, one of the issues that resonated loudly with the Board during the course of the review was the frustration and a low level of satisfaction among consumers in their dealings with insurance companies. The main themes underlying this consumer discontent centered on the following:

- the lack of transparency and explanation by insurance companies involving basic consumer issues such as premium increases, policy renewals, claims impact/procedures and policy adjustments;
- the sense of consumers that their own insurance company is not always acting in the customer's best interest, particularly when administering and processing a claim dealing with personal injury; and
- the resulting frustration and angst leads to the perception that consumers are powerless and are severely disadvantaged in their dealings with insurance companies, having little or no remedy or recourse to satisfactorily assist them.

The Board heard these concerns directly from consumers and through the Consumer Advocate in reference to a variety of issues.

11.1.2 Submissions, Presentations and Comments

The Consumer Advocate indicated he had received commentary expressing a number of “horror stories”. He observed that consumers have little idea of how they are being rated and the criteria being used to determine their premium. He further commented that consumers are often surprised as to how their rates are affected by a claim. The Consumer Advocate felt consumers should be informed as to how their individual premium is being priced as well as the consequences of a claim so that they are in a position to make an educated choice as to whether or not to make the claim or pay it on their own. He suggested consumers often see their rate hikes as being tied to illogical, unclear or unfair rating decisions and become frustrated that the automobile insurance rating rules lack transparency and clarity. In his presentation the Consumer Advocate stated:

“...I don't know how much of a level of interest there is in the insurance product, but my suspicion is that there's a high level of interest when you have a problem. And I believe that there should be an insured's bill of rights, an insured's bill of rights that can tell people, in plain language, what happens if I make a claim. What happens if I get tickets? What are the rating rules that apply to me? What are the sorts of rates and discounts that I should be told about?”

What happens if I leave to teach English as a second language and come back and have a lapse in insurance? These are fundamentals. There should be a go-to place where people don't have to face the mumbo jumbo of three people at the one office telling them something inconsistent, for a product that they pay a lot of money for."

While not blaming the brokers for this state of affairs, the Consumer Advocate opined that an ombudsperson may be appropriate:

"...someone at arm's length who has all of the rating manuals, who know these insurers inside and out and who can walk these people through the maze and have a hot line to the insurance companies to straighten these issues out."

In his final submission the Consumer Advocate concluded:

"The input from the public meetings held by the Board across the province, in my view, certainly demonstrated how powerless and frustrated consumers can become when dealing with insurance issues. I previously spoke to these issues during my presentation to the Board. I remain convinced that consumers should have access to a dedicated service whereby interventions with insurers can be made on behalf of the consumer in a timely manner and definitive answers can be obtained for the consumer."

DW of Holyrood expressed the view in a written comment that:

"trust in this industry is very important. After all it is this industry that people look to when their lives have turned into turmoil. It is this industry that people and companies pay premiums to, year after year on every aspect of their lives. Premiums they expect to get protection from at some of the worst moments of their lives."

In reflecting on his own experience DW further noted:

"Who would have thought that experience was going to be my best protection when dealing with the insurance industry! Wasn't experience something I was trying to avoid? Wasn't protection and peace of mind what I was buying from the insurance industry, even though I hoped never to need it?"

In a written comment DH of St. John's outlined a general sentiment which seemed to be shared by consumers:

"They (insurance companies) should be made to put in writing as part of the policy what the affect of an accident or comprehensive claim has on their policy. All discounts should be disclosed and explained to the customer so they have a better knowledge and understanding."

Another individual wrote:

"Furthermore, renewal notices should provide policy holders with a complete and clear breakdown of rates so they fully understand what they are being charged for."

A number of individuals indicated that Government, having made auto insurance coverage mandatory, has an obligation to ensure that consumers are treated fairly and openly and have appropriate redress for complaint.

In discussing this issue the Board felt that the personal experiences of two particular presenters in St. John's and Gander would be instructive and helpful.

During his presentation to the Board in St. John's, Mr. Dan Meades, a high school teacher, recited a number of experiences whereby he expressed frustration and bewilderment in dealing with his insurance company. He queried: *"who is responsible for making insurance companies play fair and tell the truth?"* Mr. Meades advised that he made numerous contacts with Consumer and Corporate Affairs (Provincial) but with little success in obtaining a hard copy of his rights. He stated: *"So I went in to fight against my insurance companies defenceless. I had nothing in my hand, I had nobody backing me."*

Mr. Meades spoke to the impact (an additional \$3,000 per year for 6 years) stemming from his 24 year old son's second accident in 7 years, with both claims totaling less than \$4,000. As a result, Mr. Meades was deemed a bad credit risk by his insurance company and was required to pay his insurance premium up-front rather than through automatic deductions, which he had been doing for years previous. He noted a situation some 13 years ago where he was ticketed for a seatbelt infraction and 18 months later his wife received a speeding ticket and his insurance increased by \$1,500 annually for a five-year period. In addition, he explained how his daughter was placed in the high-risk, high-premium Facility Association for a small shortfall in her bank account resulting in an NSF cheque. He also recounted that his 24 year old niece had to go back to a driving record equivalent to a 17 year old because she had allowed her insurance policy to lapse as a result of accepting summer employment in Alberta. Mr. Meades also described the difficulty in obtaining adequate answers to questions on his insurance bill as well as the reluctance of insurance companies to share information with customers including claims settlement and their impact on premiums. He said his experiences have so intimidated him that he recently undertook his own repairs on a leaky roof following an ice storm and will not contact his insurance company regarding claim inquiries for fear of incurring a penalty resulting from the enquiry. In conclusion Mr. Meades questioned:

"Is there any group, possibly government, who has the power and the will to help the consumer? And this is how I ended up at this hearing."

Mr. Kevin Keating, a businessman from Gander, who had a recent accident involving himself and his entire family (4 persons total) for which he explained was not his fault, made an impassioned presentation at one of the public sessions. Mr. Keating described at length his frustration with the process he was encountering, the lack of support even from his own adjustor, his experiences in dealing with the insurance company in attending to the rehabilitation requirements of himself and his family, and the toll it was taking on him personally and his business to protect his interests during this arduous process. He referred to his experience which was still very much on-going as confusing, unfriendly, unsympathetic, unfair and generally lacking in the support he thought he had paid for through a lifetime of premiums without a prior

claim. Mr. Keating noted the process he was experiencing would prove extremely difficult for a passive person who may be unable or lack the fortitude to fight for his/her rights.

During his presentation Mr. Hickey of IBAN reflected that the consumer concerns raised were likely fair based on what has gone on in the marketplace, particularly over the last three years. Mr. Hickey felt that a lot of the underwriting rules contained in Bill 30 should alleviate some of the arbitrariness and other rule applications. He acknowledged that, because of the nature and complexity of the product, consumer education is difficult and is not necessarily of interest to people as part of a standard explanation of the protections afforded under an individual insurance policy. Mr. Hickey outlined a volunteer initiative of the Brokers Association in assisting homeowners who were experiencing difficulty in securing insurance in downtown St. John's. He further noted the Superintendent of Insurance handles customer complaints, the IBC has a help line for clients (on which he had no particular feedback) and some provinces have appointed an ombudsperson for insurance - a concept which has only been introduced in recent years. Mr. Hickey concluded that with the passage of Bill 30 addressing underwriting guidelines and providing consumer rebates over the past year, the worst consumer problems have now eclipsed the most difficult period in the insurance cycle and are off the public radar. He warns, however, if no action is taken over the next couple of years of predicted stability that consumer frustration and anxiety will once again return and need to be addressed.

Similarly, Ms. Brigid Murphy of The Dominion of Canada, in response to a question posed by the Chair as to what the industry can do to address consumer concerns, stated:

"...increased transparency and increased partnership I think in the interests of consumers desire for stability is what the industry needs to be doing. I think also there have been some good initiatives in jurisdictions moving people out of the facility association, some voluntary rules about memorandums of understanding around some behaviours that companies will not engage in, those kinds of things I think are part of what the industry can do. But all of the stakeholders, I think, have to actually work together and be transparent. And I'm not sure we can avoid cycles, but we can probably avoid the extremes of cycles."

11.1.3 Board Comments

The low level of satisfaction concerning transparency and explanation afforded by insurance companies to consumers on basic matters such as premium increases, policy, rewards/adjustments and claims impacts/procedures should be compelling for the insurance industry, Government and regulators. The frustration and emotion displayed by consumers regarding this lack of transparency and understanding frequently outweighed responses to many of the other issues contained in the Terms of Reference. These feelings were further manifested by the sense of powerlessness of the consumer to either resolve his/her dilemma or obtain a satisfactory explanation or have suitable redress/remedy to assist them.

This input was derived from a relatively small sample of consumers who contributed to the review and contains information which is mostly anecdotal. However, while some additional consumer research may be required by the industry and/or Government to focus any specific proposals or plan of action, the issue of consumer dissatisfaction stemming from this perceived

lack of transparency and disclosure in the insurance business is not inconsistent with trends experienced in other jurisdictions.

In exploring ways to address this issue the Board notes the comments of Mr. Hickey of IBAN that he feels the underwriting rules contained in Bill 30 will alleviate some of the current arbitrariness.

The Consumer Advocate suggested that consumers be fully informed of how their premium is derived and how it is affected by claims allowing an opportunity to the insured to pay the claim out of his/her own pocket if this is more beneficial. In particular the suggestions of the Consumer Advocate regarding an insured's bill of rights and a dedicated service enabling interventions with insurers on behalf of consumers, either a help line or possibly an ombudsperson, provide some opportunity for addressing many of the consumer concerns.

i) Consumer Bill of Rights/Code of Conduct

In late 2004 the IBC announced insurers would be putting in place what it referred to as a plain-language Code of Consumer Rights and Responsibilities. The Code describes key consumer rights such as the right to clear information about coverage and the claims settlement process, and the right to information about how their insurance sales representative is being paid. Other information concerning company ownership links of brokerages and financing links will also be made public. The IBC indicated it was announcing these initiatives in Ontario with a view to sharing these actions with all provincial ministers in charge of insurance.

During his presentation Mr. Bradley George of the Canadian Federation of Independent Business (CFIB) discussed a recent presentation the CFIB made to the Standing Senate Committee on Banking, Trade and Commerce. In this presentation the CFIB recommended the property and casualty insurance industry work with Government and the CFIB to develop and implement its own voluntary Code of Conduct to help overall service levels to the small business community. Such a code should be on par with the Code of Conduct for banks and be based on the following four fundamental principles: the client's interest must come first; the right to be informed; the right to advance notice of any changes to an insurance policy; and the right to redress. CFIB outlined to the Senate Committee each of these key principles in a draft Insurance Code of Conduct.

In British Columbia the ICBC has a Code of Conduct for insurance agents, salespersons and adjusters that says:

“good faith is honesty and decency of purpose and a sincere intention on your part to act in a manner which is consistent with your client's or principal's best interests, remaining faithful to your duties and obligations of an insurance licensee.”

In Ontario the property and casualty industry operates under a formal Code of Conduct for Accident Benefits Regulations. This code outlines honesty, competence, courtesy and an obligation to the claimant as the major standards of conduct that must be maintained.

In New Jersey insurers are mandated to mail their customers a consumers' bill of rights containing some 13 rights involving such issues as price quotes, timely responses to enquires and a reasoned explanation from the insurance company as to why coverage is denied or a policy cancelled. The regulation is aimed at better educating consumers by requiring companies to notify new and existing customers of rights and responsibilities regarding auto insurance.

ii) Ombudsperson

With respect to the Consumer Advocate's proposal to enable independent intervention on behalf of consumers with insurance companies, it is noted that seven out of ten provincial jurisdictions have ombudsperson services in place for insurance consumers. Provinces with public insurance systems (i.e. British Columbia, Manitoba, Saskatchewan, and Quebec) maintain this intervention separate from the public insurance entity.

In British Columbia, the ICBC must answer to the independent Office of the Fairness Commissioner. This Office conducts reviews and makes recommendations to the ICBC management and Board of Directors regarding unresolved customer complaints. If appropriate action is not taken by the ICBC on the Commissioner's recommendations, the matter is made public.

In Manitoba, if a consumer is dissatisfied with a decision of MPI a consumer is able to apply for an Independent Review by a retired Manitoba judge for a \$25 fee. If there is a disagreement over an injury claim the insured can appeal to an independent Automobile Injury Compensation Appeal Commission for a final decision. A consumer may also appeal rate increases and surcharges through the Rate Appeal Board, but he/she must appeal fault regarding an accident through an independent review or small claims court. If a consumer is still dissatisfied then he/she may contact the Provincial Ombudsperson who can investigate complaints about any Manitoba Government department or agency, including MPI.

In Saskatchewan, SGI relies on the Office of Provincial Ombudsperson to review consumer complaints that cannot be resolved internally. The Provincial Ombudsperson can investigate and make non-binding recommendations which can be made public if not acted upon. The Ombudsperson in Saskatchewan is also required to submit annual reports outlining complaints received and action taken. Insurance complaints to the Saskatchewan Ombudsperson rank third behind complaints concerning Justice and Social Services and well ahead of issues related to Workers' Compensation, SaskPower, SaskTel, SaskEnergy and Health.

Similarly, in Quebec the SAAQ must answer to the Office of the Protecteur du Citoyen, which is similar to a provincial ombudsperson and reports to Government. The Protecteur du Citoyen makes recommendations and can make an issue public if the SAAQ does not follow these recommendations.

Ontario and Alberta have a dedicated Ombudsperson for insurance. Both were created by legislation and were established as part of a more general regulatory reform in each province.

Ontario's Insurance Ombudsperson is accountable to the Financial Services Commission of Ontario (FSCO) and is part of a trend in private-sector ombudsperson schemes whereby an entire association of business firms investigate complaints from customers against member firms. The first industry in North America to create an Ombudsperson service was the banking industry in Canada in 1996 followed closely by the insurance industry in Ontario.

In Alberta an insurance consumer can approach the ombudservice, which can conduct non-binding mediation. If that fails then a consumer can apply to the Automobile Insurance Resolution Committee. If the Committee cannot resolve the case then it can either close the complaint or refer the issue for binding arbitration to the Alternative Dispute Resolution Institute of Canada.

As part of its recent regulatory reform in New Brunswick the Office of the Consumer Advocate for Insurance was created. This office examines rating, territories, and provides general assistance to consumers. The industry must finance this office which provides yearly reports, represents consumers in hearings held by the New Brunswick Insurance Board and acts in the general interest of consumers.

Other suggestions raised by various presenters to address consumer related issues included: a dedicated help line, possibly attached to Government or the Public Utilities Board, to handle consumer complaints and enquiries concerning auto insurance; expanding the regulation of underwriting guidelines as was recently done with Bill 30 to enhance consumer protection; and making available consumer information and product choices. Another mechanism may involve a formal memorandum of understanding signed between industry and Government containing minimum regulations and/or standards for supplying improved customer information and customer service by insurance companies.

In addition to any Government initiatives which may be contemplated to protect companies in relation to the above, the insurance industry, possibly in conjunction with the IBC, may wish to proactively consider proposals to improve customer satisfaction and awareness for insurance consumers in Newfoundland and Labrador.

11.2 Insurance Industry Profits

11.2.1 Introduction

The profits of automobile insurers was another issue that attracted a great deal of attention during the review. This heightened interest in insurance company profits was due in part to the IBC's announcement on February 18, 2005, two days following the commencement of the Board's public sessions, of the estimated 2004 financial results for Canada's home, auto and business insurance companies. Industry data indicated that the industry's 206 companies posted combined net earnings in 2004 of \$4.2 billion yielding a shareholders' return on equity of 20.6%. In a paper designed to place these profits in a historical context, the IBC acknowledged that profits in 2004 will likely set a new record which will lead to accusations against insurers of

gouging their customers with high premiums while protecting excessive profits²⁸. Indeed, the issue of profits, in particular the figure of \$4.2 billion, resonated in subsequent presentations and comments to the Board throughout the remainder of the review.

The Consumer Advocate observed he would be astounded if consumers did not question these profit levels, stating:

“...consumers I would expect are in a ‘show me’ mood. The Board has gone through great lengths and has expended a great amount of energy to obtain these studies. And I don’t know if the answer lies in tying approvals to an individual company basis, ... but it seems to me that nonetheless, the consumer on the street would ask the question, what have these profits been? What are they currently and take that into consideration.”

In reviewing profits the first consideration is to understand how profit is measured within the industry. Automobile insurers have two sources of profit - underwriting profit and investment income. Underwriting profit is derived from the insurance operation itself and is the sum of claims costs, commissions, premium taxes and the insurer’s own operating costs subtracted from earned premiums. Investment income is the second component of the profit equation and is used to augment revenue from insurance premiums. Because claim payments lag the collection of insurance premiums, insurers have a timing “float” resulting in available funds that can be invested until required to meet claim obligations. Investment income is earned on both the underwriting operations of the company and/or any available surplus. The investment portfolio of an insurance company generally comprises government and corporate bonds, term deposits, mortgages, shares and other financial investments.

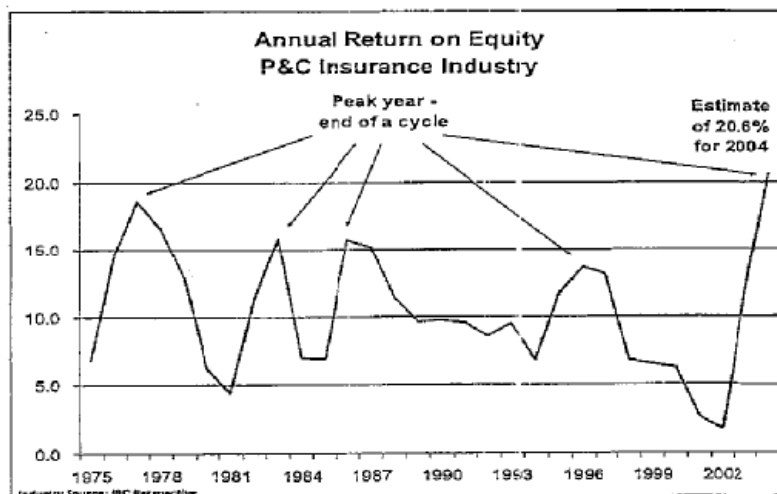
A company’s return on equity (ROE) is the after-tax profit from both sources, i.e. underwriting operations and investment income, expressed as a percentage of shareholder’s equity or surplus.

As part of its rate approval process the Board requires each company to provide, as part of its rate filing, underwriting profit included in the forecasted ROE incorporated in its proposed rates. It is also noted that, as part of its 2005 benchmarking study, the Board found that a return on investment (ROI) of 7% as part of an ROE of 10% were appropriate for determining industry-wide benchmark rates in the Province.

11.2.2 Submissions, Presentations and Comments

In addressing the issue of whether the reported insurance company profits are excessive, the industry argues the long-term cyclical nature of the insurance business must be taken into account and not just the profit picture for any particular one to two year period. In supporting this position The Dominion of Canada referred in its presentation to information prepared by the IBC illustrating the historical business cycles that prevail in the property and casualty insurance business.

²⁸ Explaining the Canadian Property and Casualty Insurance Industry’s Profits and Prices in Light of Historical Context. Doug Hogan, Senior VP and CFO, IBC. Revised Feb. 18, 2005 (Filed by The Dominion of Canada, Feb. 22, 2005)



(Source: IBC)

This illustration reflects four distinct cycles which the industry indicates have occurred over the past 27 years, varying in length from three to ten years, with an average length of seven years. The cycles have demonstrated dramatic shifts in earnings ranging from a low of 1.7% in 2002 to a high of 20.6% in 2004 with each of the four cycles having average ROE's of 11.2%, 9.9%, 10.6% and 8.7% with an average over the full 27-year period of 10.1%. The Dominion of Canada noted that, over this latest cycle from 1997 to 2004, the industry has experienced an average ROE of 8.7% while experiencing record high and low earnings over this same period.

According to The Dominion of Canada price and earnings are the result of the dramatic swings in the property and casualty business cycle. These cycles are affected by three key factors:

- a lag in measuring the cost of insurance and its impact on pricing;
- changing investment returns which subsidize underwriting results; and
- the economics of competition whereby companies may be reluctant to raise rates when faced with the implications from a competitive marketplace.

In its presentation the IBC also indicated factors which may influence the industry's business cycle, including the response of customers to rising prices, the limited availability of the product in a local market and the actions of Government. The Dominion of Canada concluded:

"...current profit levels are justified in the context of its current business cycle's earnings and in comparison to its historical long-term level of earnings. Further, that level of return is not close to being excessive. It is a respectable return for investors whose capital is at risk in covering Canadian's liabilities, properties and automobiles....However, this provides little comfort to consumers who have seen their premium rates sky rocket in recent years."

Representatives of The Co-operators offered a somewhat different perspective stating:

“First of all considering product reform shouldn’t be done based on whether insurance companies are profitable or not. That doesn’t seem like that right reason to embark on this trail.”

“This decision making should be focused on a question of availability, affordability versus security for consumers, not focused on profitability or a lack of profitability for insurance companies. It shouldn’t be based on where we are in the market cycle.”

FW of St. John’s wrote in an email:

“...the insurance industry, like public electric utilities, are not so much regulated industries as they are regulated monopolies. In fact, unlike electric utilities who are more scrutinized and work diligently to make their case on their right to make a rate of return, the insurance industry is less regulated and allowed to make ‘gross’ profits, as they did in the past year”.

In a telephone call NW of Conception Harbour stated:

“So I got a 10% increase in my premium, on a \$200,000 liability. That’s all I can afford: \$200,000. So it makes no wonder these profits are obscene,”

Ms. Colleen Morrison, who made a presentation to the Board in Corner Brook, had this to say:

“They made 4.2 billion dollars in profits this past year. I don’t know, I didn’t make 4.2 billion dollars last year and I don’t imagine anybody in this room did.”

Mr. Gary Collins of Carmanville, in his presentation to the Board in Gander, said:

“They are going to make their 4.2 billion dollars again probably next year. They’re making a bloody fortune.”

During the presentations others raised the profits of the insurance companies in relation to discussion of the implementation of caps or deductibles and the related loss of rights that were being proposed during this review, or in the discussion of public insurance.

With regard to the issue of rights and rates, the Consumer Advocate stated:

“...how much can rates come down in the current setting before we are asked to make what is an irretrievable decision about our rights and about our rates.”

One individual in his written comments stated:

“I do not think there should be a cap on soft tissue injuries just to save a few dollars on your premiums. The insurance companies are making huge profits already.”

Another individual in his written comments stated:

“How ironic that this whole topic is being reviewed now, in light of the recent admission by the Insurance Industry of another year of record profits! I’m all in favor of caps on deductibles for pain and suffering but with profits of 4.2 BILLION dollars in hand ...maybe it’s time you considered caps on insurance rates.”

Mr. Jack Harris, MHA and Leader of the NDP Party in the Province, made a presentation to the Board in support of public insurance. In making a reference to profit he said:

“But the profit I think is important. What does it represent? I really don’t know... In any event, to suggest that a not for profit system is going to have more money to return to consumers because they’re not paying out a profit I think is an unassailable point of view.”

Ms. Victoria Harnum, of Advocates for Fair Auto Insurance, stated in her presentation:

“The insurance industry in Canada has just reported a record breaking profit of 4.2 billion for 2004. Quite frankly, I’m surprised that this hearing is still proceeding. Surely no one thinks we still need caps or deductibles. This announcement is a slap in the face to all of us.”

Mr. Wayne Lucas of CUPE stated:

“Drivers in this province deserve a public non-profit insurance like British Columbia, Saskatchewan and Manitoba...It’s pretty ironic that this week figures show private insurance companies in the country with a 4.2 billion dollar profit last year. Imagine what consumers could do with their share....”

Mr. Reg Anstey of the Federation of Labour stated:

“They got four billion in one year. That’s a lot of money. And at the end of the day from where we sit, unless you deal with the real driver of costs here, which is the profit levels of the insurance companies, the demand of shareholders for more, more, more and unless you deal with that, at the end of the day the rest is only tinkering...”

In his presentation the Consumer Advocate referred to the insurance industry’s latest cycle as the “perfect storm”, where continuing underwriting losses combined with lower investment yields to produce historical low returns. The Consumer Advocate noted, however, that this was not only a perfect storm for the insurance companies but also for consumers who experienced unprecedented increases in automobile insurance premiums.

The Consumer Advocate noted that 2003 was the first time in 25 years that the property and casualty industry had an underwriting profit according to the “Facts of the General Insurance Industry in Canada (2004).” The Consumer Advocate further pointed to the following 2003 profit information provided by the Superintendent of Insurance during the review:

Average Underwriting Profit (%) – 2003 All Insurers				
	Automobile	Personal Property²⁹	Commercial Property	All Lines
National Regulated	9.1 ³⁰	33.9	68.1	18.0
Provincial Regulated	7.0	41.5	41.8	15.0

The Consumer Advocate submitted that, according to Mercer’s April 2004 report, “Study of Homeowner, Commercial Property, Liability and Marine Insurance”, a generally accepted rule of thumb for profit reasonableness is 5% of premiums. The Consumer Advocate stated:

“...and the Board will be getting into other phases of the non-regulated insurance, you know, there’s no two ways about it that some of those profit levels in my judgment based on those reasonable standards are just excessive. And now I know you have to take a long view approach and see where they have been but you know, when you were talking about 45 or 50 cents on a dollar as being profit that raises questions. Consumers would not find that that is a benefit of a free wheeling, free enterprise system.”

While acknowledging this information, it is noted that the issue of an appropriate ROE for automobile insurance was recently considered by this Board in a hearing to set the industry wide automobile insurance benchmark rates. In A.I. 1(2005) the Board addressed the extensive evidence that was provided by experts in the area of rate of return and accepted an ROE of 10% for the automobile business line of this industry in this Province. This compares to the industry reported long-term average ROE of 8-10% Canada-wide for all lines.

11.2.3 Board Comments

In the context of the arguments of some in the industry that one must consider profits over a number of years given the cyclical nature of the business and that reforms should focus on things like availability/affordability of the product rather than profits of insurance companies, the figures that undoubtedly resonated with participants during the review were the record profits for 2004 of \$4.2 billion and the 20.6% ROE. While there are no comparable figures yet available for the full calendar year by jurisdiction, there is no reason to believe based on the Q3-2004 figures provided by the Superintendent of Insurance that similar trends for all lines of business would not exist in this Province. The automobile insurance market in Newfoundland and Labrador is estimated to represent less than 1% of the national market for all lines of insurance and accordingly the share of profit attributable to automobile insurers in this Province would be proportionately a small piece of the total.

It is not difficult to understand the public reaction to substantive product reform, including a possible restriction of rights, given the industry’s announced profit figures for 2004 released during the review. The public perception is further understandable when the profit figures are not transparent and available information is by all lines of business and not specific to

²⁹ Personal and Commercial Property is not regulated by the Public Utilities Board.

³⁰ The Board notes that while 4 of the 8 largest national auto insurers operating in the Province earned an average profit of 17.7%, 17.7%, 17.8% and 24.5%. The remaining 4 national companies experienced underwriting losses of (3.2%), (11.7%), (18.9%) and (50.8%).

automobile operations in Newfoundland and Labrador. As clearly stated by LE of Conception Bay South, in his written comments:

“I feel that the Insurance Companies have been crying wolf for quite a while in regards to the matter of profitability. It would seem to me that they have been making large increases in rates for several years, while they have been claiming that they are simply trying to offset the amounts being paid out in injury claims. I have not seen anything released publicly that would clearly demonstrate that new pay outs for injury claims are causing a problem with their profit margin.”

Unfortunately neither the IBC nor the Superintendent of Insurance maintains the detailed statistics necessary to determine the segregated profit by line of business by province. The statistical data collected by the Superintendent of Insurance could be reviewed bearing in mind not only improved regulation and compliance but formulation and development of public policy. These measures should not only reflect underwriting profits/losses but return on investments (ROIs), annual earnings and return on equity (ROEs).

The information requirements of the Board with respect to profit may increase with Government’s recently announced policy to require companies to provide individual actuarial justification with each application for an increase in rates.

While the rates for the other lines of business are not currently regulated they will, in accordance with the Terms of Reference, be reviewed as part of the next phase of the Board’s insurance review.

11.3 Focus on Treatment and Recovery

Ms. Sharon Horan, an occupational therapist, suggested in her presentation to the Board that, according to some studies, the tort system is not the best system for promoting recovery. She questioned if *“....we’ve looked significantly enough at whether or not financial compensation has an impact on injury recovery”* and suggested that *“...we need to look at what structure it is that best supports the greatest functional recovery.”*

During her presentation Ms. Horan discussed a model for recovery referred to as “The SPICE Model” which is focused on helping people recover as quickly as possible. This model sets out the five key elements that are necessary for speed recovery:

- Simplicity – in terms of keeping simple injuries simple and not complicating them more than they need to.
- Proximity – injured people need to remain connected to their workplace and participate in regular activities to the extent possible.
- Immediacy – injured people need immediate access to reassurance and treatment needs to occur in the first 12 weeks of injury.

- Centrality – all parties who are communicating to the injured party need to speak the same language and not send mixed messages.
- Expectation – people will recover based on the expectation that is set for them.

Ms. Horan emphasized that the focus has to be on early intervention as research shows that, at six-months post-injury the likelihood that an injured person will return to work if he/she has been away from the workplace falls below 50%, and if he/she has been off work for one year the likelihood of return to work falls below 20%. For people who have been off work for two years the likelihood they will ever return to work falls below 2%.

“And so when we look at about the time lines that many of these claims are taking to get resolved, you know, we’re creating a situation which is a host of reasons that may or may not be totally related to the injury itself, but started because of the injury. We’re actually putting these people in a position where the likelihood they’ll ever return and future income losses then are obviously huge to the system.”

The issue of the need for early treatment and intervention in soft tissue injuries has been recognized in other jurisdictions in Canada. As part of the recent reforms implemented in Alberta, a diagnostic and treatment process for minor injuries was established to promote quick recovery through fast and effective treatment. This optional scheme is directed at people suffering from sprains, strains and minor whiplash and provides for 12 weeks of therapy immediately following their accident. The program has the following elements:

- Prior approval from insurance companies not needed to begin treatment.
- Patients will not have to pay out of pocket as care-providers directly bill the insurance companies.
- Patients can choose their preferred medical doctor, chiropractor or physiotherapist as their primary health care practitioner, who will diagnose the injury according to specified diagnostic protocols, instruct in the treatment process, and follow the patient’s therapy.
- The patient’s primary health care practitioner is to provide the insurer with documentation of the diagnosis, planned treatment, and expected outcomes with the patient’s consent.

The focus of this program is on education about how best to speed recovery, including early return to usual activities and work. If recovery is not progressing as quickly as expected, the client is referred to an Injury Management Consultant for further advice and treatment. Following 12 weeks of therapy under treatment protocols, sprain, strain or minor whiplash injuries that have not resolved would continue to be treated, covered by Section B benefits or recovery from the at-fault party.

The information presented by Ms. Horan with respect to the complex and not well understood factors which interrelate to lead to the recovery of persons who have experienced soft tissue injuries in motor vehicle accidents was very compelling. While this issue has been studied in other jurisdictions no clear answer has yet emerged as to what system would benefit recovery. Government may wish to consider this issue in the context of further reforms as a way to reduce long term costs on the insurance system and for that matter health care costs.

The closed claims study indicates that only 6.2% of total claims costs incurred for third party liability bodily injury was for medical and rehabilitative costs. A system focused on recovery rather than compensation may result in a higher proportion of the settlement awards being paid for medical and rehabilitative costs, with a potential for an overall reduction in loss costs.

If steps are taken toward a recovery focused model consumers are likely to see a reduction in premiums in the long term. An additional benefit of such an approach may also be an increase in the level of satisfaction as claimants recover quicker and others perceive that claimants are more appropriately compensated.

11.4 Territories

While outside the specific Terms of Reference issued by Government, the issue of territorial rating and designation of the territories was raised by several individuals.

The territorial designations, i.e. those parts of the province that comprise the three rating territories, are determined by the Superintendent of Insurance. The current territorial designations are as follows:

Territory 1 - Avalon District, Statistical Plan Code 004

Consisting of the City of St. John's, including that part of the Island east of Highway 202, being a line between the communities of Old Shop and Chapel Arm in Trinity Bay to the North and between Long Harbour and Ship Harbour in Placentia Bay in the South.

Territory 2 - Bonavista and Burin District, Statistical Plan Code 005

Consisting of that Territory east of a line drawn from Port Blandford in Bonavista Bay to English Harbour East in Fortune Bay, excluding the Avalon District.

Territory 2 - Remainder of the Province, Statistical Plan Code 007

Consisting of those parts of the Province of Newfoundland and Labrador, excluding the Avalon, Labrador and Burin and Bonavista Districts.

Territory 3 - Labrador District, Statistical Plan Code 006

The entire area of Labrador

Speaking on behalf of her constituents, Ms. Charlene Johnson submitted that the residents of the Trinity-Bay de Verde district should be part of Territory 2 and not Territory 1. In supporting her request Ms. Johnson noted the rationale for the most recent change in Territorial boundaries in 1997, in which the residents of Burin, Bonavista and Clarenville were moved from rating Territory 1 to Territory 2. The change was based partly on the fact that residents of Chapel Arm do not commute to St. John's for work on a regular basis. Ms. Johnson submitted that the same argument applied to the residents of the Trinity-Bay de Verde area. She proposed that drivers with high mileage or those who travel frequently to St. John's should have the option of paying a higher premium but that *"the 70-year old man in Bay de Verde over 150 kilometers outside the city who only drives to the post office and the local grocery store, he should only be required to pay the base rates for Territory 2. He should not be subsidizing the rates of people near and within the city."*

Ms. Victoria Harnum also advised the Board during her presentation that in 2000 her group, Advocates for Fair Auto Insurance, collected over 13,000 signatures asking Government to re-examine the territorial zones in Trinity Bay and Conception Bay North. She stated that it is her group's belief that *"it was unfair that we were paying the same rate as St. John's while towns like Gander, Corner Brook and Norman's Cove were paying about half that rate."*

Several other letters of comment were also received on this issue. LRH, who lives and works in Whitbourne, wrote to question why she has to pay insurance based on the area of St. John's when other people living in Norman's Cove and Long Harbour and commuting to St. John's and Clarenville were paying less. She feels this is discrimination and suggested that *"all communities be treated equal and divide it all across the board, lowering Territory 1 cost and increasing Territory 2s to allow more equalization."*

RS of Dunville wrote:

"I am a resident of Dunville, NF, approximately 75 minutes from St. John's. I am paying insurance rates based on Territory 1, (same as St. John's) yet in a community nearby about the same distance from St. John's as Dunville, (Norman's Cove) they are paying much lower rates, being allocated to Territory 2. I feel the risk of having an accident living in Dunville is not at all as high as if we were living in St. John's."

The statistical plan requires that data be collected (as of 1997) on the loss experience for Bonavista/Burin – Territory 2 Stat Plan Code 005. There is now a credible statistical data base which can be used to observe whether the change in Territorial boundaries at the time was justified. The information is contained in the Board's 2005 benchmark study³¹ and is summarized below:

³¹ Proposed Newfoundland and Labrador Private Passenger and Commercial Automobile Insurance Benchmark Ranges for 2005, October 12, 2004.

Territorial Analysis Third Party Liability				
Plan Code	Year	Exposures	Ultimate Loss Cost per Exposure	Number Of Claims
004 - Avalon	1999	78441	674.73	3659
	2000	82734	712.69	4152
	2001	87970	647.81	4433
	2002	87150	590.56	3815
	2003	91178	652.73	4207
005 - Bonavista/Burin	1999	11268	507.40	281
	2000	13219	448.65	409
	2001	14566	442.43	457
	2002	14039	358.46	413
	2003	15556	416.88	400
007 - Remainder	1999	66893	282.43	1897
	2000	66803	290.31	1840
	2001	69040	321.09	2020
	2002	70351	276.28	1861
	2003	73508	279.77	2054
006 - Labrador	1999	10697	268.27	350
	2000	10905	194.38	332
	2001	11180	209.50	315
	2002	13689	237.19	300
	2003	11397	228.29	320

It can be observed from the data that the experience for the Bonavista/Burin area is different than that of Territory 1, suggesting that the decision to move the Territorial boundary was appropriate. However the experience is also different than that of Territory 2, the current territorial designation for the Bonavista/Burin area. In fact, based on the available data, it could be argued that the Bonavista/Burin region be established as a rating territory on its own accord as the larger population group of Stat Plan Code 007 appears to be subsidizing drivers located in Stat Plan Code 005.

In assessing whether the territorial designation for Trinity-Bay de Verde area should also be changed it would be advisable to implement a new statistical plan code for the proposed area and direct industry to track the loss experience for the new Statistical Code for a minimum period of two years. This will provide a base of information on which an informed decision can be made.

12.0 SUMMARY CONSIDERATIONS

12.1. The Call for Reforms

The impact of the cyclical nature of the insurance industry, particularly during periods of rising insurance premiums, always prompts consumer and media response and calls for political action. The IBC referred to this as part of the cycle of “crisis and reform” which was described by the IBC in its written submission:

“The insurance cycle poses serious problems insofar as the ‘hard’ market/rising price phase can be painful to consumers, and the atmosphere of political crisis that often results is seldom conducive to public policy solutions that can deliver long-term stability to the auto insurance market. Another casualty of the cycle is public confidence in the insurance industry; by the time solutions are in place, the financial consequences of the initial round of price increases are well known.”

During his presentation Mr. Steve Marshall of Roebothan•McKay•Marshall provided his perspective on how these events unfold. He stated:

“I saw a movie a few years ago called ‘Groundhog Day’ where this guy kept waking up and it was the same day over and over again. Well, we’ve been at this now for 12 years. We made our first appearance, I think, at seminars and we spoke to the legislative committee of the House of Assembly, we submitted report, we’ve gone to other town hall meetings, round table discussions at the ministerial level. Again it’s been over a decade of this issue of insurance companies saying we’re not making any money, we need to get some concessions and we need it to come from this particular class of people which are people who we represent, the victims.”

Mr. Tom Hickey of IBAN also spoke to impact of the insurance cycle on the calls for action:

“The worst is over. Like, the worst consumer problems have already passed. We’re now at that level period where for a couple of years stability in insurance has already, as you’ve seen, has sort of gone off the public radar. The unfortunate thing is the old groundhog day effect, and if we just sit and just walk away and leave it all alone again, four years from on we’re back here again.”

While there appears to be an indication of stability within the industry in the short term, it was predicted that the cycle and the problems experienced by the industry in recent years will return if reform measures aren’t implemented.

Unifund observed in its written submission:

“The past experience means failure to introduce a meaningful reform will lead to higher than inflationary increases in auto accident injury awards and therefore, insurance premiums.”

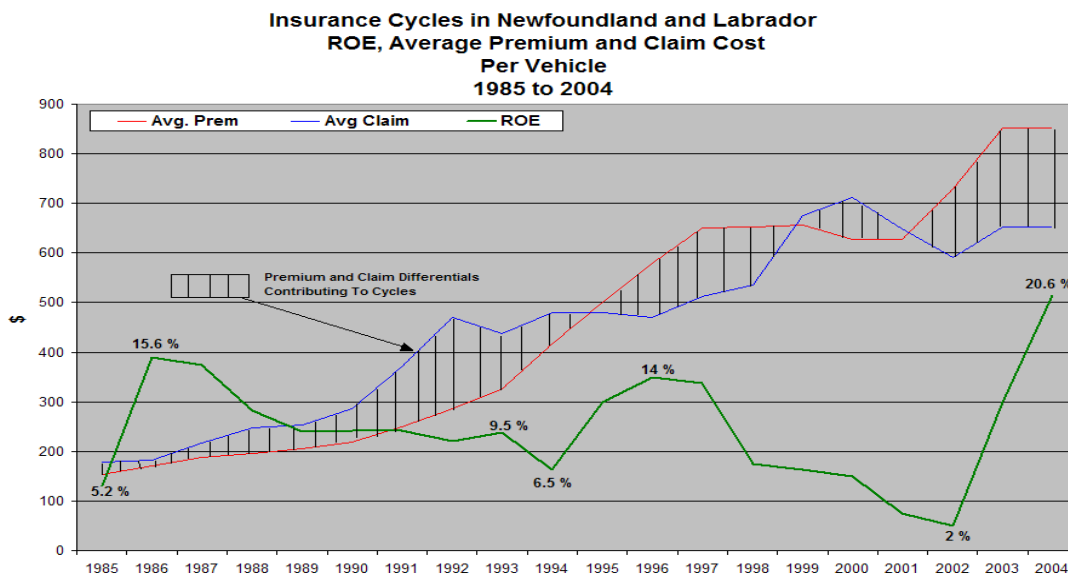
“Consumers need their Government to show leadership to introduce meaningful positive reforms that improve the product and reduce claims cost inflation and ultimately premium inflation over the long term.”

The Board also heard from consumers that they would like to see closure to this issue.

During the review a diverse range of opinions were expressed as to which measures should be taken to address the issues. Other jurisdictions in Canada have adopted a range of reforms recently but it is too early to provide any measure of their success. While there is some opportunity to further evaluate certain public policy initiatives if need be, there is a clear expectation that appropriate automobile insurance reform measures will be implemented by Government to meet the long-term needs of consumers and the industry in supplying automobile insurance at stable and affordable rates.

12.2. A Period of General Rate Stability Ahead

The cycles in the industry are demonstrable although the lengths of these cycles have varied. The chart below is a compilation by the Board showing the cyclical performance of the industry plotted in relation to average premiums and claims for Third Party Liability in the Territory 1 for the period 1985 - 2004. As can be seen the performance of the industry has rebounded remarkably in recent times with average premiums for Third Party Liability exceeding claims costs by a significant margin. Based on the cyclical nature of the industry as reflected in this chart, the price of automobile insurance should be entering a period of relative stability coupled with expected decreases in premiums. As Ms. Voll with the IBC pointed out *“what happens to claims happens to premiums”*. With average Third Party Liability claims currently substantially lower than premiums, as indicated in the chart, one would anticipate the cyclical adjustment in premiums to begin to track downward closer to claims costs.



This expectation was also set out in The Dominion of Canada’s written presentation:

“Nevertheless, premium rates have increased significantly in the last several years. Aren’t the recent years more indicative of the direction of future pricing? Will this recent trend continue at the expense of consumers while insurers sustain the current profit levels? ...The answer is ‘No’. Prices have already begun to decrease for automobile coverage and for some business coverages. The cycle is continuing as it has in the past. Earnings and prices have peaked and are declining, as 2005 will undoubtedly confirm.”

In addition, Mr. Tom Hickey of IBAN stated:

“You know, right now we’re at the peak of the cycle. And I think the IBC talked about this cycle of reform. And it’s quite predictable if you look at it historically. So, I mean, the reality is in the next few years we’re probably not going to see significant rate increases. We may even see some slight decreases for some companies. So there’s certainly no pressure right now for to make a short-term fix. We don’t have a crisis situation like we did in New Brunswick where the government nearly lost the election over it.”

In answering the question of what this decrease might look like, the Board notes that individual insurance companies may respond with different levels of rate reductions depending on their particular market and competitive circumstances. With respect to premium reductions that may be anticipated for private passenger vehicles in the industry overall, the Board reiterates its earlier observation that Mercer has estimated average reduction in private passenger rates of 12% for Third Party Liability coverage and 10% for all coverages combined.³² The Board notes that these expected rate reductions are caused by normal cyclical market fluctuations and should occur independent of any reform measures introduced by Government.

With respect to commercial rates, the Board similarly reiterates its previous observation that Third Party Liability increases will be limited to approximately 8%³³ with all coverage increases estimated to be in the 5-8%³⁴ range.

12.3 Options Along the Tort/No-Fault Continuum

In the context of the detailed discussion and review of the issues surrounding the use of caps and deductibles it is clear that the right to compensation must be balanced against the desire for lower rates. In making this policy choice Government has four basic options:

Option I - No Restriction on Recovery

Option II - No Additional Restrictions on Recovery

Option III - A Increased Deductible

Option IV - A Cap in Place of the Existing Deductible

³² The previous estimated savings for caps and deductibles were based on the Board’s 2005 Benchmark Study “net of 2004 reforms”. Given Government’s policy decision to eliminate the benchmarking system, Mercer was requested by the Board to provide revised estimates of eliminating the benchmarking system. Mercer indicated this estimate could be high or low depending on whether industry loss experience improved or deteriorated in 2004.

³³ Determined by Mercer.

³⁴ Estimated by Board.

Options I and II tend to favour the right to compensation while Options III and IV tend to favour lower rates.

- **Option I - No Restriction on Recovery:** The Board was not specifically asked to review the removal of the existing \$2,500 deductible. While many participants took the position that they did not want any restriction on recovery this view was not necessarily expressed in the context of the possibility of removing the existing deductible.

- **Option II - No Additional Restrictions:** Government may decide in the context of the following considerations that no further restrictions on recovery should be implemented at this time.

- There is a predicted period of relative rate stability in the short term, indicating the immediate pressures in relation to rates will ease.
- There are other available ways of introducing savings for consumers, for example, accident reduction campaigns and reducing transaction costs which may not raise the same concerns regarding fairness, discrimination and access to justice. The only persons who benefit are those who buy insurance. Restrictions only apply in the case of automobile accidents.
- A significant portion of consumers strongly support the tort system. They feel that there should be no restrictions on their right to be compensated for automobile accident injuries especially in the context of improving insurance company profits.
- Many people see the current situation as a reasonable compromise in the context of the limited savings resulting from additional restrictions on recovery.

- **Option III - An Increased Deductible:** Government may decide in the context of the following considerations to introduce a larger deductible which will result in lower rates.

- Many people in the industry suggest that the existing \$2,500 deductible is too low to generate significant savings in loss costs.
- If more savings are sought the deductible is the preferred option of those participants who are against any restrictions. People are generally more familiar with the concept of a deductible and it is seen as being more fair given that it would apply to every claimant.

- The estimated savings with the application of various deductible amounts are:

Third Party Liability Deductible Savings		
Deductible Amount	Percentage Savings	\$ Savings
\$ 4,000	5%	\$ 30
\$ 5,000	7%	\$ 42
\$ 7,500	13%	\$ 76
\$10,000	19%	\$111
\$12,500	25%	\$145
\$15,000	31%	\$177

- Option IV - A Cap in Place of the Existing Deductible: Government may decide in the context of the following considerations to replace the existing deductible with a cap which would apply to minor injuries.

- A cap is viewed as a better alternative than a deductible since it is subject to less erosion. The experience in Ontario, which has recently increased its deductible from \$15,000 to \$30,000, provides an example of the impact of erosion on a deductible.
- A cap would allow every claimant to collect some compensation for pain and suffering though some may receive a very small amount (i.e. \$2,500 or less).
- A cap would make it easier for insurance companies to settle claims than a deductible, but may add to the uncertainty of claimants who cannot easily determine whether the cap applies.
- Only those claimants fitting within the prescribed definition of minor injury will suffer restrictions on their recovery. Therefore these claimants will bear all the costs of the premium savings and not always proportionately (i.e. more serious ‘minor injuries’ might have otherwise been entitled to a payment of up to \$25,000, and with a cap, could be limited to \$2,500).
- Other Atlantic Canadian provinces have recently introduced a cap.
- If a cap is implemented on minor injuries several options were reviewed in terms of defining a minor injury.

- i) Injury Definitions 1 and 2 – The use of either of these definitions would result in the cap applying to a small number of claimants. Neither would generate any significant savings as a replacement for the existing deductible. These could be argued to be similar to the Nova Scotia and Alberta definitions which have received negative commentary from the industry.
- ii) Injury Definition 3 - This is the same as the definition that was recently implemented in New Brunswick and would result in the cap applying to a larger number of claimants. Implementation of a \$2,500 cap with injury Definition 3 will generate estimated savings of:

Third Party Liability Cap Savings - Definition 3		
Cap Amount	Percentage Saving	\$ Savings
\$7,500	3%	\$16
\$5,000	7%	\$38
\$4,000	8%	\$48
\$2,500	12%	\$67

- iii) There are other alternative definitions in place in both Nova Scotia and Alberta which were not modelled given that they fall somewhere on the continuum of severity of the three definitions reviewed, likely closer to injury Definitions 1 and 2.

12.4 Other Potential Reforms

In addition to the options in relation to restrictions on recovery there are a number of other reform alternatives which could be considered, some of which address concerns about the cost of insurance and others which address consumer satisfaction issues.

I Choice – Government may decide to provide consumers with a liability coverage choice between restricted and unrestricted recovery of pain and suffering damages. Choice is currently not being pursued by other privately run tort based systems in Canada but is provided in Saskatchewan under its public insurance system. The primary considerations in this policy decision are consumer education, premium equalization, and other administrative issues.

II Mandatory Accident Benefits – Government may decide to require that every consumer carry Accident Benefits coverage, similar to the minimum tort coverage and consistent with every other Canadian province. The primary considerations in this policy decision are integration with other coverages, the level of existing benefits and the primary versus secondary coverage issue.

III Elimination of Rating Variables – Government may decide to prohibit the use of age, gender and marital status as rating variables, consistent with many other Canadian provinces. The primary considerations in this policy decision are premium dislocation, availability, and knowledge of alternative rating factors and risk distribution for insurers.

IV Group Rating – Government may decide to remove the prohibition against group rating, consistent with other jurisdictions in Canada. The primary considerations in this policy decision are the level of regulatory oversight and controls on this practice.

V Public Automobile Insurance – Government may decide to commission a study of the benefits and feasibility of moving toward a public auto insurance system as in British Columbia, Saskatchewan, Manitoba and Quebec.

VI Other Cost Saving Measures – Government may decide to implement any number of a series of measures suggested during the review as potential means to reduce automobile insurance costs. These include measures to: i) reduce the number of uninsured motorists; ii) implement direct compensation for property damage; iii) reduce taxation on insurance; iv) reduce fraud; v) reduce the number of accidents through the introduction of mandatory vehicle inspections and accident reduction campaigns; and vi) reduce expenses through oversight of commission fees and measures to reduce transactional and regulatory costs.

VII Consumer Satisfaction Issues – In the context of other cost focused reforms Government may decide to address concerns in relation to the low level of consumer satisfaction with automobile insurance in general. These measures include: i) implementation of consumer protections such as an ombudsperson, a bill of rights and/or a telephone help line; ii) encourage increased consumer education by the industry with respect to product information; iii) improved information collection in relation to insurance company profits; iv) measures to increase the focus on recovery of accident victims; and iv) review of territorial boundaries.

12.5 Reform Implementation

Whatever product reform Government decides to implement it must be determined with regard to the stability and functionality of the industry or else the reform intended to help consumers could do more harm than good.

In its written submission IBAN stated: “Should Government elect to introduce reforms in order to reduce premium costs, it must be done in a fashion that does not cause undue disruption in the market place resulting in difficulties for consumers in obtaining insurance.” IBAN also stated:

“Bill 30 features across the board rollbacks, which did not take any account for the individual circumstances of individual insurers. As a result, those who felt unduly prejudiced by the rollbacks stopped taking new business and contemplated withdrawal from the market. This had a negative impact on consumers and brokers who experienced reduced choice of market for clients.”

In its written submission Unifund spoke to the need for Government to implement reforms with an effective date to allow for proper implementation. Depending on the reform measure

implemented companies may require changes to their technology systems, policy procedures or regulatory reporting/compliance. Unifund felt an appropriate transition period should be allowed and stated:

“Any auto insurance reform that changes the basic product and will result in changes to policy wording or premium rating, should be introduced with sufficient lead time (6 months) so that Government, regulators (PUB) and insurers are able to properly adopt the change and communicate the change to customers. If possible, any changes should be effective January 1 so as to allow for easier analysis of the effect of change on claims experience (which is traditionally done on a calendar year basis).”

Unifund also identified what they determine is a regulatory disconnect between the Office of the Superintendent of Financial Services (OSFI), the national regulator of insurance companies in regard to solvency, and the Superintendent of Insurance and the Board, which regulate market conduct and rates in the Province. These bodies can often view an issue with very different perspectives. In order to better serve the general public and consumers Unifund recommended:

“That the PUB and the provincial Superintendent of Insurance work to create regular communication mechanisms with OSFI such that the public policy objectives of the regulation of rates, market conduct and solvency are better coordinated.”

In addressing the need to moderate the cycle of reform and crisis and achieve long-term stability, the IBC also recommended the introduction of a regulatory regime in partnership with the industry based on a proactive stewardship and risk based system. Such an approach is focused on a market conduct supervisory model, which monitors key indicators such as the frequency and severity of claims, trends in loss cost developments, claims handling, changes in premiums in relation to other financial indicators, to name a few. According to the IBC such a pro-active system is necessary if the industry and government are to undertake strategic monitoring of the industry in the province with a view to taking necessary action in advance of the crisis, rather than reacting to the crisis once it has occurred. Ms. Voll of the IBC stated that the value of such an approach is:

“...that instead of having it come to the public policy arena in the guise of an insurance income problem, we can have a conversation at a different stage in the game about availability, about affordability and the early warning signs that one of these things is about to go off the rails.”

The Board strongly encourages and supports a partnership approach involving Government and the industry as proposed above. The predictability of the cycle is inevitable without pro-active intervention by both parties. The Board heard a number of participants voice their expectation that they would be back here in three to four years addressing the same issues all over again (remember “Groundhog Day”). It would be instructive for both Government and the industry to meet on this issue with a view to discussing what initiatives may be put in place to serve the mutual long-term interests of ensuring a stable market for the industry and affordable and available automobile insurance for consumers.

LISTING OF EXHIBITS

EXHIBIT	DESCRIPTION
1	Terms of Reference For the Public Utilities Board Review Into Automobile, Homeowners, Commercial and Marine Insurance
2	Letter to the Board from the Honourable Dianne Whalen, Minister, Department of Government Services, Government of Newfoundland and Labrador, dated December 7, 2004 - Re: Definition of Minor/Mild Injury, Cap Limits and Deductible Amounts
3	Listings of Persons and/or Parties who: <ul style="list-style-type: none"> i. Made Oral Presentations to the Board during the Public Sessions ii. Submitted Written and/or Telephone Comments to the Board
4	Table - <u>Overview of Automobile Insurance in Canada</u>
5	Table - <u>Automobile Insurance in Canada – Mandatory Minimum Benefit Summary</u>
6	Table - <u>Overview of Reform Initiatives - Canadian Tort Based Insurance System, March 26, 2005</u>
7	Table - <u>Comparison of Closed Claims Study Results between 1996 and 2004</u>
8	Tables- <u>Potential Savings for Private Passenger and Commercial Automobile Premiums arising from various reform options (as estimated by Mercer)</u>
9	Table - <u>Private Passenger Automobile Insurance - General Risk Classification System</u>
10	Graphs- <u>Newfoundland and Labrador Driver/Vehicle Classification Exhibit II Data (IBC Product - AU25-D) for the years 2001, 2002 and 2003</u>
11	Table - <u>Current Approved Age Related Discounts offered by Insurers in the Province of Newfoundland and Labrador</u>

TERMS OF REFERENCE
FOR THE PUBLIC UTILITIES BOARD REVIEW
INTO AUTOMOBILE, HOMEOWNERS, COMMERCIAL AND
MARINE INSURANCE

The Public Utilities Board shall undertake a review and report on the issues outlined below with respect to Automobile, Homeowner, Commercial and Marine insurance in the province and in addition shall detail other issues of concern raised by stakeholders participating in the review, including public insurance.

Automobile Insurance

- To conduct a closed claims study to determine the costs associated with third party liability bodily injury claims arising from the use of private passenger and commercial automobiles.
- To review the impact on rates of the use of a monetary cap of various amounts on claims for non-economic loss for minor/mild injuries and the implications of such a cap for claimants.
- To review the impact on rates of the use of a deductible of various amounts on claims for non-economic loss and the implications of such a deductible for claimants.
- To review the feasibility and impact on rates of providing consumers one of the following choice options when purchasing liability coverage:
 - 1) no restrictions on non-economic loss; or a cap on the amount of non-economic loss; and
 - 2) no restrictions on non-economic loss; or a deductible from the amount of non-economic loss recoverable.
- In relation to accident benefits, to review the implications of mandating that consumers carry accident benefits coverage with respect to:
 - the impact on rates;
 - benefits to claimants; and
 - integration with other insurance plans.
- To review the implications to policyholders of the elimination of age, gender and marital status as rating factors, including an examination of alternative rating systems such as the proposed Alberta grid rating system with an all-comers rule.
- To review the implications of permitting group rating.
- To report on any additional cost saving measures identified by the Board during its review.

TERMS OF REFERENCE (CONTINUED)

Homeowners Insurance

- Report on issues which may be raised surrounding availability and accessibility of this insurance in light of the associated profit margins and identify ways in which these issues may be addressed such as through:
 - rate regulation;
 - alternative means of providing this insurance, including the introduction of risk sharing pools; and
 - underwriting guidelines.

Commercial Insurance

- Report on issues which may be raised surrounding availability and accessibility of this insurance in light of the associated profit margins, particularly in reference to the hospitality/tourism industry, as well as, not-for-profit organizations, volunteer organizations and other individuals involved in volunteer activities. Identify ways in which these issues may be addressed such as through:
 - rate regulation;
 - alternative means of providing this insurance, including the introduction of risk sharing pools, caps or deductibles; and
 - grouping or classification of commercial consumers in setting rates.

Marine Insurance

- Report on issues that may be raised with respect to the accessibility and availability of marine insurance.
- Report on possible reasons for high loss ratios and year to year variation.

Note: In addition to the issues the Public Utilities Board is directed to undertake in these Terms of Reference, the Board is undertaking public hearings to review its benchmarks in respect to both commercial and private passenger automobile insurance and issues surrounding how benchmarks are established such as rate of return on equity, rate classification systems, reserves and benchmarking policies and procedures generally.



GOVERNMENT OF
NEWFOUNDLAND AND LABRADOR

Exhibit 2
Page 1 of 3

Department of
Government Services
Office of the Minister

December 7, 2004

Mr. Robert Noseworthy
Chair
Public Utilities Board
P.O. Box 21040
St. John's, NL A1A 5B2

Dear Mr. Noseworthy:

Re: Definition of Minor/Mild Injury, Cap Limits and Deductible Amounts

As you know, included in The Terms of Reference for the Public Utilities Board Review into Automobile, Homeowners, Commercial and Marine Insurance are the following:

- " - To review the impact on rates of the use of a monetary cap of various amounts on claims for non-economic loss for minor/mild injuries and the implications of such a cap for claimants.
- To review the impact on rates of the use of a deductible of various amounts on claims for non-economic loss and the implications of such a deductible for claimants."

In order for you to carry out this aspect of the Review, government provides the following direction:

Definitions of Minor/Mild Injuries

Please provide an analysis based on each of the following three definitions of minor/mild injury.

Definition 1

- (1) A person shall not recover in an action in the province in relation to a minor personal injury caused to the person as a result of the use or operation of an automobile an amount of non-pecuniary damages in excess of \$XXX.

- (2) "Minor personal injury" means any transitory or temporary neck or back strain or sprain caused to a person which does not reduce the person's enjoyment of life or cause an interference with the person's ability to perform his or her day to day activities or work-related activities.
- (3) "Interference" shall mean that the person is:
 - (a) with respect to the person's day to day activities, unable to perform any one or more of the essential elements of one or more of those activities;
 - (b) with respect to the person's ability to perform his or her work-related activities that the person is unable to perform any one or more of the essential elements of one or more of the activities required in the person's pre-accident employment which he or she had a reasonable possibility of carrying on but for the injury.
- (4) "Work related activities" means the activities required by the person's pre-accident employment, including self-employment, and includes those activities which he or she had a reasonable possibility of carrying on but for the injury.
- (5) "Day to day activities" shall mean any one or more of the essential elements of the activities that are reasonably important to persons similarly capable and similarly active.
- (6) Any injury that has not resolved within 6 months from the date of the initial injury shall not be a "minor personal injury".

Definition 2

- (1) A person shall not recover in an action in relation to a minor personal injury caused to the person as a result of the use or operation of an automobile in the province an amount of non-pecuniary damages in excess of \$XXX.
- (2) "Minor personal injury" means an injury, including a neck or back strain or sprain, caused to a person which does not cause substantial interference to the person's enjoyment of life or the person's ability to perform his or her day to day activities or work-related activities.
- (3) "Substantial Interference" means that the person is still, 12 months after the occurrence of the event giving rise to the cause of action,
 - (i) suffering a reduction in his or her enjoyment of life,
 - (ii) unable to perform any one or more of the essential elements of the person's day to day activities, or
 - (iii) unable to perform any one or more of the essential elements of the person's work-related activities.
- (4) "Work-related activities" means the activities that are required by the person's pre-accident employment, including self-employment, and includes those activities which he or she had a reasonable possibility of carrying on but for the injury.
- (5) "Day to day activities" means the activities that are reasonably important to persons who are similarly capable and similarly active.

Definition 3

- (1) A person shall not recover in an action in relation to a minor personal injury caused to the person as a result of the use or operation of an automobile in the province an amount of non-pecuniary damages in excess of \$XXX.
- (2) "Minor personal injury" means an injury that does not result in:
 - (a) permanent serious disfigurement, or
 - (b) permanent serious impairment of an important bodily function caused by continuing injury which is physical in nature.
- (3) "Serious impairment" means an impairment that causes substantial interference with a person's ability to perform their usual daily activities or their regular employment.

Caps Limits

Please provide an analysis based on caps of \$2,500 to \$15,000 at \$2,500 intervals, as well as \$4,000 as is in place in Alberta.

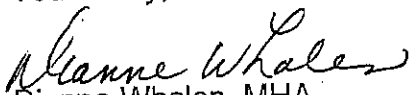
Deductible Amounts

Please provide an analysis based on deductibles of \$2,500 to \$15,000 at \$2,500 intervals.

As the terms of reference states, in addition to the projected cost savings of the various scenarios, we require an analysis of the implications to claimants on the various definitions, including the pros and cons of each. Also, we would like to hear of any other possible reasonable options put forth based on what comes out of the hearing and your analysis.

I trust this direction is clear, but if you have any questions please contact my Assistant Deputy Minister, Winston Morris.

Yours truly,



Dianne Whalen, MHA
Conception Bay East & Bell Island
Minister

**BOARD OF COMMISSIONERS OF PUBLIC UTILITIES
2005 AUTOMOBILE INSURANCE REVIEW**

LISTING OF PRESENTERS

	ORGANIZATION	PRESENTER	PRESENTATION DATE AND LOCATION
1	Insurance Bureau of Canada	(i) Don Forgeron (ii) Jane Voll	February 21, 2005 St. John's
2	Member House of Assembly District of Signal Hill Quidi -Vidi and Leader of the New Democratic Party	Jack Harris, Q.C.	
3	Coalition Against No Fault Insurance	(i) Jerome P. Kennedy (ii) Gordon Adair	February 22, 2005 St. John's
4	Dominion of Canada	(i) Bridget Murphy (ii) Scott Beattie	
5	Advocates for Fair Auto Insurance	Victoria Harnum	
6	Rogers Bussey	(i) Richard Rogers (ii) Dave Bussey	
7	Aviva Canada	Karin Ots	
8	Property and Casualty Compensation Corporation	Paul Kovacs	February 23, 2005 St. John's
9	Consumer Advocate	i) Winston Morris, Superintendent of Insurance ii) Chief Justice Hickman	
10	Roebothan McKay Marshall	i) Brad Wicks ii) Glen Roebothan iii) Steve Marshall	
11	Law Society of Newfoundland and Labrador	Jamie Martin	February 24, 2005 St. John's
12	The Co-operators	i) Kevin Sheppard ii) Rob Wesseling iii) Katie Suljak	
13	Graduate Student	Jeff Mackey	
14	Meloche Monnex Inc.	i) Rick Evans ii) Brian Sypher	
15	Private Citizen	Leo Browne	
16	Private Citizen	Don Bugden	
17	Private Citizen	Derrick Atwill	
18	Private Citizen	Dan Meades	
19	Private Citizen	William Griffin	

**BOARD OF COMMISSIONERS OF PUBLIC UTILITIES
2005 AUTOMOBILE INSURANCE REVIEW**

LISTING OF PRESENTERS (CONTINUED)

	ORGANIZATION	PRESENTER	PRESENTATION DATE AND LOCATION
20	Canadian Federation of Labour	Wayne Lucas, President	February 25, 2005 St. John's
21	Automobile Dealers Association of Newfoundland and Labrador	Bill Matthews, President Bill Matthews Volkswagen Audi	
22	Canadian Federation of Independent Business	Bradley George Director of Provincial Affairs	
23	Fit for Work	Sharon Horan, President	
24	Newfoundland and Labrador Federation of Labour	Reg Anstey, President	
25	Member House of Assembly District of Bay de Verde	Charlene Johnson	
26	Insurance Brokers Association of Newfoundland	i) Tom Hickey ii) Peter O'Flaherty	
27	Consumer Advocate	Thomas Johnson	
28	Private Citizen	Matthew Pynn	February 28, 2005 Corner Brook
29	Private Citizen	Colleen Morrision	
30	Way's Trucking	Marvin Way	
31	Private Citizen	Ford Mitchelmore	
32	Private Citizen	Caroline Dostie	March 1, 2005 Happy Valley-Goose Bay
33	Private Citizen	Paul Dostie	
34	Private Citizen	Jeremiah Perry	
35	Private Citizen	Kevin Keating	March 2, 2005 Gander
36	Private Citizen	Gary Collins	
37	Private Citizen	William Mugford	
38	Private Citizen	Jonathon Flynn	
39	Private Citizen	Eugene Flynn	
40	Private Citizen	Calvin Way	
41	Private Citizen	Vance Clarke	
42	Private Citizen	Robert Guthreau	

**BOARD OF COMMISSIONERS OF PUBLIC UTILITIES
2005 AUTOMOBILE INSURANCE REVIEW**

WRITTEN COMMENTS RECEIVED*

	Name	Address	Date Received
1	EL	Mount Pearl	Mar. 1, 2004
2	H & RP	Mount Pearl	Oct. 18, 2004
3	AS	St. John's	Dec. 7, 2004
4	JM	St. John's	Jan. 10, 2005
5	RJMCD	Deer Lake	Jan. 12, 2005
6	RC	St. John's	Jan 14, 2005
7	DW	Holyrood	Jan. 14, 2005
8	EC	New Harbour	Jan. 17, 2005
9	Ob	St. John's	Jan. 17, 2005
10	DH	St. John's	Jan. 17, 2005
11	L & R OS	Unknown	Jan 17, 2005
12	JD	Conception Bay South	Jan 17, 2005
13	SW	Unknown	Jan. 17, 2005
14	RC	Mount Pearl	Jan. 17, 2005
15	AS	St. John's	Jan. 17, 2005
16	WB	Unknown	Jan. 18, 2005
17	RA	Unknown	Jan. 18, 2005
18	JN	St. John's	Jan. 18, 2005
19	MH	Gander	Jan. 19, 2005
20	DB	Mt. Pearl,	Jan. 19, 2005
21	DH	Witless Bay	Jan. 19, 2005
22	MHS	Unknown	Jan. 19, 2005
23	MS	St. John's	Jan. 19, 2005
24	JVP	Unknown	Jan. 20, 2005
25	DMCG	St. John's	Jan. 21, 2005
26	MF	Unknown	Jan. 24, 2005
27	EW	Unknown	Jan. 24, 2005
28	DB	St. John's	Jan. 24, 2005
29	GM	Corner Brook	Jan. 26, 2005
30	BP	Carbonear	Jan. 26, 2005
31	DW	Bonavista Bay	Jan. 27, 2005
32	RW	Mount Pearl	Jan. 31, 2005
33	GT	Unknown	Jan. 31, 2005
34	ML	Unknown	Feb. 4, 2005
35	YM	Unknown	Feb. 4, 2005
36	WM	Alberta - (formerly NL)	Feb. 4, 2005
37	RL	Mount Pearl	Feb. 4, 2005
38	GK	Unknown	Feb. 7, 2005
39	RG	Unknown	Feb. 7, 2005

* **NOTE:** Persons initials and general address used to protect confidentiality of personal information

**BOARD OF COMMISSIONERS OF PUBLIC UTILITIES
2005 AUTOMOBILE INSURANCE REVIEW**

WRITTEN COMMENTS RECEIVED* (CONTINUED)

	Name	Address	Date Received
40	HL	Unknown	Feb. 7, 2005
41	CB	Bay L'Argent	Feb. 8, 2005
42	RI	Unknown	Feb. 9, 2005
43	RK	Unknown	Feb. 9, 2005
44	DOK	Unknown	Feb. 9, 2005
45	DB	Unknown	Feb. 13, 2005
46	WH	St. John's, NL	Feb. 14, 2005
47	South Coast Insurance Agency Limited	Bonavista, NL	Jan. 19, 2005 Feb. 23, 2005
48	Canadian Association of Direct Response Insurers (CADI)	Willowdale, ON	Jan. 27, 2005 Mar. 3, 2005
49	H & JN	Summerville	Feb. 15, 2005
50	AG	Paradise	Feb. 16, 2005 Feb. 26, 2005 Mar. 4, 2005 Mar. 11, 2005
51	DP	Unknown	Feb. 16, 2005
52	RG	Unknown	Feb. 16, 2005
53	PL	Unknown	Feb. 16, 2005
54	BC	CBS	Feb. 15, 2005
55	EF	Unknown	Feb. 15, 2005
56	RC	Cape Ray	Feb. 17, 2005
57	EV	Clarenville	Feb. 17, 2005
58	WFM	Gander	Feb. 17, 2005
59	GAL	Paradise	Feb. 18, 2005
60	SM	St. John's	Feb. 22, 2005
61	DMB	St. John's	Feb. 22, 2005
62	Unknown	Corner Brook	Feb. 25, 2005
63	RL	Unknown	Feb. 15, 2005
64	RM	Mount Pearl	Feb. 19, 2005
65	LRH	Unknown	Feb. 21, 2005
66	RS	Unknown	Feb. 21, 2005
67	SP	Unknown	Feb. 21, 2005
68	PT	Unknown	Feb. 21, 2005
69	RF	St. John's	Feb. 23, 2005
70	SH	Unknown	Feb. 23, 2005
71	SB	Rushoon	Feb. 24, 2005
72	RF	Torbay	Feb. 25, 2005
73	TF	Unknown	Feb. 25, 2005
74	GK	St. John's	Feb. 25, 2005

* NOTE: Persons initials and general address used to protect confidentiality of personal information

BOARD OF COMMISSIONERS OF PUBLIC UTILITIES
2005 AUTOMOBILE INSURANCE REVIEW

WRITTEN COMMENTS RECEIVED* (CONTINUED)

	Name	Address	Date Received
75	MC	Unknown	Feb. 26, 2005
76	JS	Blaketown	Mar. 1, 2005
77	CS	Blaketown	Mar. 1, 2005
78	AS	Blaketown	Mar. 1, 2005
79	AS	Blaketown	Mar. 1, 2005
80	BF	St. John's	Mar. 1, 2005
81	CS	Gander	Mar. 1, 2005
82	MH	Portugal Cove-St. Philips	Mar. 1, 2005
83	M & R H	O'Donnell's	Mar. 2, 2005
84	CK	Baine Harbour	Mar. 2, 2005
85	VM	Unknown	Mar. 2, 2005
86	JLAV-D	Unknown	Mar. 3, 2005
87	MK	Unknown	Mar. 5, 2005
88	MD	St. John's	Mar. 4, 2005
89	St. John's Board of Trade	St. John's	Mar. 4, 2005
90	DH	Unknown	Mar. 4, 2005
91	MS	St. John's	Mar. 4, 2005
92	BR	St. John's	Mar. 4, 2005
93	PP	Unknown	Mar. 4, 2005
94	S	Unknown	Mar. 4, 2005
95	BH	Unknown	Mar. 4, 2005
96	FW	St. John's	Mar. 4, 2005
97	LE	Conception Bay South	Mar. 4, 2005
98	GK	Conception Bay South	Mar. 4, 2005
99	RC	Cartwright	Mar. 9, 2005
100	SP	Upper Island Cove	Mar. 11, 2005
101	CB	Unknown	Mar. 11, 2005
102	MW	Halifax, NS	Mar. 11, 2005
103	FJL	Grand Falls-Windsor	Mar. 11, 2005
104	DW	Marystown	Mar. 11, 2005
105	DS	Sunnyside	Mar. 11, 2005
106	RC	St. Anthony	Mar. 11, 2005
107	AW	Unknown	Mar. 11, 2005
108	MY	Conception Bay South	Mar. 11, 2005
109	Enterprise Rent-A-Car	Enfield, NS	Mar. 11, 2005
110	Unifund Assurance Company	St. John's, NL	Mar. 11, 2005
111	DG	Pouch Cove	Mar. 15, 2005
112	SK	Conception Bay South	Mar. 18, 2005
113	JMS	St. John's	Mar. 24, 2005

* NOTE: Persons initials and general address used to protect confidentiality of personal information

**BOARD OF COMMISSIONERS OF PUBLIC UTILITIES
2005 AUTOMOBILE INSURANCE REVIEW**

TELEPHONE COMMENTS RECEIVED*

	Name	Address	Date Received
1	RN	Unknown	Feb. 2, 2005
2	NW	Conception Harbour	Feb. 23, 2005
3	SC	Unknown	Feb. 22, 2005
4	MH	Unknown	Feb. 17, 2005
5	M	Unknown	Feb. 11, 2005
6	DS	Unknown	Feb. 12, 2005
7	BC	Stephenville	Feb. 2, 2005
8	LA	Unknown	Feb. 2, 2005
9	GW	Unknown	Feb. 16, 2005
10	EW	Unknown	Feb. 2, 2005
11	FA	South River	Feb. 2, 2005
12	GB	Unknown	Unavailable
13	MP	Corner Brook	Feb. 2, 2005
14	CB	Rushoon	Unavailable
15	EP	Unknown	Feb. 2, 2005
16	EM	Unknown	Unavailable
17	NW	Conception Harbour	Feb. 22, 2005
18	MB	Port Saunders	Unavailable
19	LC	St. John's	Unavailable

** NOTE: Persons initials and general address used to protect confidentiality of personal information*

Overview of Automobile Insurance in Canada

	NL	NS	PEI	NB	Que.	Ont.	Man.	Sask.	Alta.	BC	NWT & Nunavut	Yukon
Governance	Private	Private	Private	Private	Public	Private; hybrid no-fault/tort.	Public	Public; hybrid no-fault/tort.	Private	Public	Private	Private
Tort Restrictions	\$2,500 deductible on Pain and Suffering awards.	\$2,500 cap on Pain and Suffering awards on "minor injury" as defined.	\$2,500 cap on Pain and Suffering awards on "minor injury" as defined.	\$2,500 cap on Pain and Suffering awards on "minor injury" as defined.	No right to sue, pure no-fault.	Verbal threshold; \$30K deductible pain and suffering awards.	Modest no-fault benefits with appeals process.	\$5,000 deductible on tort recovery.	\$4,000 cap on Pain and Suffering.	Full tort but policy of "no-crash no-cash".	No restriction on right to sue for pain and suffering.	No restriction on right to sue for pain and suffering.
Premium/Rating	Industry standard.*	Industry standard but banned use of age and marital status in 2004.	Industry standard.	Industry standard but banned use of age and marital status in 2004.	Industry standard for property damage, and flat rate by vehicle class for bodily injury.	Industry standard.	Vehicle, location and driving record. Surcharges for at-fault accidents and convictions.	Vehicle based with surcharges for at-fault accidents and convictions.	Grid system. Surcharges or discounts on base rate due to driver and vehicle characteristics.	Vehicle use and location. Surcharges based on penalty points for at-fault accidents and convictions.	Industry standard.	Industry standard.
Road and Safety Programs	Graduated licensing, and educational programs.	Graduated licensing, and educational programs.	General government programs.	Graduated licensing along with increased enforcement.	Graduated licensing and mandatory driver training.	Graduated licensing, enforcement and driver education.	Education programs directed at youth, citizen watches and enhanced penalties.	Graduated licensing pending; education, citizen watches and enhanced penalties.	Enforcement, and education. (Red light cameras, etc.)	Graduated licensing, (Red light cameras, education programs etc.)	General government programs.	Graduated licensing and general government programs.
Regulation	Increases: Prior approval. Decreases: file and use.	Prior approval all filings.	Prior approval all filings.	Prior approval all filings.	Use and file for optional. File and use for mandatory.	Prior approval.	Prior approval.	Government determines rates and coverages.	Benchmark and some prior approval.	Prior approval for ICBC.	Unavailable.	Unavailable.
Average Claims Costs (1998-2002)												
5 year average claims costs per Car \$ **	661	666	572	843	505	822	588	525	727	631	Unavailable.	Unavailable.
2002 claims costs per car \$	657	688	572	842	515	928	714	575	761	639	Unavailable.	Unavailable.
Average Yearly Cost Increase	4.4%	5.6%	4.0%	2.8%	2.2%	8.2%	10.2%	5.7%	2.4%	6.3%	Unavailable.	Unavailable.

* The industry standard according to IBC is where premiums are set by; primary driver's record of offences and at-fault accidents; other drivers who have access to vehicle; the characteristics of the vehicle such as likelihood of being stolen, type and age; use of vehicle such as work or pleasure; and, where and how far you drive. The characteristics of the primary driver in regards to age gender and marital status are also used.

** Data reproduced from *Report on the Task Force On Automobile Insurance Issues*, Canadian Institute of Actuaries, March 2005; except BC, which was calculated from data available in their annual reports.

Automobile Insurance in Canada – Mandatory Minimum Benefit Summary*

	NL**	NS	PEI	NB	Que	Ont	Man	Sask No-Fault	Sask Tort	Alta	BC	NWT and Nunavut	Yukon	
Section “A” Benefits (Third Party Liability)														
Compulsory Minimum liability coverage.	\$200K	\$500K; or \$200K for No Frills.	\$200K	\$200K	\$50K; \$500K for Off Road Vehicle.	\$200K	\$200K	\$200K	\$200K	\$200K	\$200K	\$200K	\$200K	
Section “B” Benefits Mandatory Accident Benefits or Personal Income Protection (PIP)														
1st payer or Last Payer.	Last Payer.	Last Payer.	Last Payer.	Last Payer.	First Payer.	Last Payer.	First Payer.	First Payer.	First Payer.	First Payer.	First Payer. ***	Last Payer.	Last Payer.	Last Payer.
Death Benefit (HOH).	\$10K plus \$1K for dependants.	\$10K plus \$1K for dependants.	\$10K plus \$1K for dependants.	\$10K plus \$1K for dependants.	\$55K min. to \$275K max; plus \$26K to \$48K for dependants according to age.	\$25K for spouse; \$10K for dependants.	\$49K - \$325K plus \$23K - \$43K for each dependant according to age.	50% of benefit received if survived; min \$56,768.	45% of net earnings; \$45,000 min. \$52,788 max.	\$10K plus \$2K for dependants.	\$5K + modest weekly benefits. 104 week limit.	\$10K plus \$1K for dependants.	\$5K plus \$1K for dependants.	
Medical Benefits	\$25K per person; 4-year time limit.	\$25K per person; 4-year time limit.	\$25K per person; 4-year time limit.	\$50K, 4-year limit.	No Limit.	\$100K per person; \$1M if injury catastrophic.	No Limit.	\$5M per person.	Severe Injury = \$150,000 max. Non-severe injury = \$20,000 max.	\$50K per person.	\$150K per person.	\$25K per person.	\$10K per person.	
Funeral Benefits.	\$1K	\$1K	\$1K	\$2K	\$4K	\$6K	\$6.5K	\$7.7K	\$7.7K	\$2K	\$2.5K	\$1K	\$2K	
Gross income versus net income.	80% of net.	80% of gross.	80% of gross.	\$50K per person; 4-year limit.	90% of net; max \$52K.	80% of net.	90% of net wages.	90% of net max. \$58K.	45% of net \$45 - \$58K.	80% of gross.	75% of gross.	80% of gross.	80% of gross.	
Maximum Disability Benefits.	\$140 week; 104 weeks for partial disability. Lifetime for total.	\$140 week; 104 weeks for partial disability. Lifetime for total.	\$140 week; 104 weeks for partial disability. Lifetime for total.	\$250 week; 104 weeks for partial disability. Lifetime for total.	3 years for partial disability. Lifetime for total.	\$400 week; 104 weeks Lifetime if suitable employment unavailable.	\$64K per year.	\$680 week max.	\$150 for partial disability. \$300 week for total.	\$300 week.	\$300 week; 104 weeks after which is reduced by any pension income.	\$140 week; 104 weeks for partial disability. Lifetime for total.	\$300 week.	

The extra coverage over and above the mandated coverage includes; an increase in the level of mandated coverage such as increasing your liability from \$200,000 to \$1million; uninsured motorist protection; collision or upset; specified perils; comprehensive; and, all perils. This optional coverage applies in all Canadian jurisdictions unless noted. Uninsured motorist coverage varies widely, from none in Alberta, to \$25,000 in Ontario, and as much as \$2,000 in Manitoba. Some jurisdictions require that the uninsured motorist be identified. In Quebec the Fonds d'indemnisation administered by the SSAQ compensates victims for property damage caused by an uninsured motorist or an unidentified third party. There is a \$10,000 limit. In Quebec and Ontario Direct Compensation – Property Damage may apply.

(IBC)

Last payer means that auto insurance only pays whatever benefits that are not covered by whatever other insurance a claimant may have. For example, if a person has a workplace disability plan, then that plan will pay first leaving the auto insurer to top up benefits if necessary. As a result, for those who are in last payer jurisdictions there is often an overlap between mandatory Section B coverage and employer and individual medical, disability and life insurance coverages. This principle is designed as a cost saving measure.

*Amounts at 2004 levels according to IBC. **Accident Benefits coverage is optional in Newfoundland and Labrador. ***Section “B” benefits are the first payer if claimant follows proscribed treatment plan.

**Overview of Reform Initiatives
Canadian Tort Based Insurance System
March 26, 2005**

NL	NS	NB	PEI	ONT	ALTA
<ul style="list-style-type: none"> - \$2,500 deductible on pain and suffering awards - Mandated 15% reduction in premiums overall - Rates frozen March 17, 2004 for one year - Other minor tort reforms - Underwriting guidelines regulated - Rate regulation system changed 	<ul style="list-style-type: none"> - \$2,500 cap on pain and suffering awards for minor injuries as defined - Mandated 20% reduction in premiums - Rate frozen until November 1, 2004 - Other minor tort reforms - Elimination of age and marital status as rating factors - Underwriting guidelines regulated - Introduced rate regulation 	<ul style="list-style-type: none"> - \$2,500 cap on pain and suffering awards for minor injuries as defined - Required insurers to file and justify new rates or face a 20% rollback of their current rates - Elimination of age and marital status as rating factors - Underwriting guidelines regulated – First Chance Discount to provide new drivers with relief from high insurance premiums - Reintroduced rate regulation - No frills option made available - Consumer Advocate created 	<ul style="list-style-type: none"> - \$2,500 cap on pain and suffering awards for minor injuries as defined - Eliminated age of operator and vehicle as rating factors - Underwriting guidelines regulated - Introduced rate regulation 	<ul style="list-style-type: none"> - \$30,000 deductible on pain and suffering awards for minor injuries as defined, increased from \$15,000 (1996), increased from \$10,000 (1991) - Ombudsman position created - Injury assessment centres introduced - Accident Benefits dispute resolution service - Insurance product option being considered 	<ul style="list-style-type: none"> - \$4,000 cap on pain and suffering awards for minor injuries as defined - Grid rating system established - Rating by age, gender and marital status permitted but premium charged cannot exceed grid maximum - Premiums frozen - Freeze to be extended to September, 2005 - Insureds may choose immediate Accident Benefits payments but must follow specific treatment regiment - Tri-level dispute resolution service for rates charged

Comparison of Closed Claims Study Results – 1996 and 2004

Private Passenger Automobile Closed Claims Study - 2004

Breakdown of Non-pecuniary (pain & suffering)	Number of Claimants		Amount of Settlements		Settlement
	#	%	\$	%	Avg. Size
\$0	55	4.02%	-	0.00%	-
\$0 < and <= \$2,500	234	17.11%	349,910	1.88%	1,495
\$2,500 < and <= \$4,000	100	7.31%	334,065	1.79%	3,341
\$4,000 < and <= \$5,000	85	6.21%	413,395	2.22%	4,863
\$5,000 < and <= \$7,500	102	7.46%	667,866	3.59%	6,548
\$7,500 < and <= \$10,000	129	9.43%	1,194,332	6.41%	9,258
\$10,000 < and <= \$12,500	85	6.21%	993,030	5.33%	11,683
\$12,500 < and <= \$15,000	111	8.11%	1,586,633	8.52%	14,294
\$15,000 < and <= \$25,000	266	19.44%	5,425,852	29.13%	20,398
\$25,000 < and <= \$50,000	180	13.16%	6,054,717	32.51%	33,637
\$50,000 < and <= \$75,000	12	0.88%	733,443	3.94%	61,120
\$75,000 < and <= \$100,000	8	0.58%	720,000	3.87%	90,000
Greater than \$100,000	1	0.07%	150,000	0.81%	150,000
Total Valid	1,368	100.00%	18,623,243	100.00%	13,613
Total Invalid	1	0.07%	-	0.00%	-

Private Passenger Automobile Closed Claims Study – 1996

Breakdown of Non-pecuniary (pain & suffering)	Number of Claimants		Amount of Settlements		Settlement
	#	%	\$	%	Avg Size
\$0	104	7.54%	-	0.00%	-
\$0 < and <= \$2,500	377	27.32%	439,069	3.60%	1,165
\$2,500 < and <= \$4,000	124	8.99%	424,123	3.48%	3,420
\$4,000 < and <= \$5,000	72	5.22%	344,327	2.82%	4,782
\$5,000 < and <= \$7,500	146	10.58%	932,764	7.65%	6,389
\$7,500 < and <= \$10,000	144	10.43%	1,288,983	10.57%	8,951
\$10,000 < and <= \$12,500	87	6.30%	1,004,073	8.23%	11,541
\$12,500 < and <= \$15,000	104	7.54%	1,467,137	12.03%	14,107
\$15,000 < and <= \$25,000	141	10.22%	2,796,378	22.93%	19,832
\$25,000 < and <= \$50,000	66	4.78%	2,332,236	19.12%	35,337
\$50,000 < and <= \$75,000	10	0.72%	654,373	5.36%	65,437
\$75,000 < and <= \$100,000	3	0.22%	281,000	2.30%	93,667
	2	0.14%	232,910	1.91%	116,455
Total Valid	1,380	100.00%	12,197,373	100.00%	8,839
Total Invalid	0	0.00%	-	0.00%	-

NOTE: Excludes claimants with no loss payment other than allocated loss adjustment expense.

**Province of Newfoundland and Labrador
Private Passenger Automobile
Potential Savings Arising from Deductible Options
Net of August 1, 2004 Reforms (as estimated by Mercer)**

Deductible Amount	Third Party Liability		Uninsured Motorist		All Coverages Combined	
	% Savings	\$ Savings	% Savings	\$ Savings	% Savings	\$ Savings
\$2,500	0%	\$1	0%	\$0	0%	\$1
\$4,000	5%	\$30	5%	\$1	3%	\$30
\$5,000	7%	\$42	7%	\$1	5%	\$42
\$7,500	13%	\$76	13%	\$1	9%	\$77
\$10,000	19%	\$111	19%	\$2	13%	\$112
\$12,500	25%	\$145	24%	\$3	17%	\$146
\$15,000	31%	\$177	29%	\$3	21%	\$178

**Province of Newfoundland and Labrador
Private Passenger Automobile
Potential Savings Arising from Capping Options, Definition 1
Net of August 1, 2004 Reforms (as estimated by Mercer)**

Deductible Amount	Third Party Liability		Uninsured Motorist		All Coverages Combined	
	% Savings	\$ Savings	% Savings	\$ Savings	% Savings	\$ Savings
\$2,500	-4%	-\$24	-4%	\$0	-3%	-\$25
\$4,000	-5%	-\$27	-5%	\$0	-3%	-\$28
\$5,000	-5%	-\$28	-5%	\$0	-3%	-\$29
\$7,500	-5%	-\$29	-5%	\$0	-3%	-\$29
\$10,000	-5%	-\$28	-5%	\$0	-3%	-\$29
\$12,500	-5%	-\$28	-5%	\$0	-3%	-\$29
\$15,000	-5%	-\$28	-5%	\$0	-3%	-\$29

**Province of Newfoundland and Labrador
Private Passenger Automobile
Potential Savings Arising from Capping Options, Definition 2
Net of August 1, 2004 Reforms (as estimated by Mercer)**

Deductible Amount	Third Party Liability		Uninsured Motorist		All Coverages Combined	
	% Savings	\$ Savings	% Savings	\$ Savings	% Savings	\$ Savings
\$2,500	2%	\$10	2%	\$0	1%	\$10
\$4,000	0%	-\$2	0%	\$0	0%	-\$2
\$5,000	-1%	-\$7	-1%	\$0	-1%	-\$8
\$7,500	-3%	-\$18	-3%	\$0	-2%	-\$18
\$10,000	-4%	-\$25	-4%	\$0	-3%	-\$25
\$12,500	-5%	-\$27	-4%	\$0	-3%	-\$28
\$15,000	-5%	-\$28	-5%	\$0	-3%	-\$28

**Province of Newfoundland and Labrador
Private Passenger Automobile
Potential Savings Arising from Capping Options, Definition 3
Net of August 1, 2004 Reforms (as estimated by Mercer)**

Deductible Amount	Third Party Liability		Uninsured Motorist		All Coverages Combined	
	% Savings	\$ Savings	% Savings	\$ Savings	% Savings	\$ Savings
\$2,500	12%	\$67	11%	\$1	8%	\$67
\$4,000	8%	\$48	8%	\$1	6%	\$49
\$5,000	7%	\$38	6%	\$1	4%	\$38
\$7,500	3%	\$16	3%	\$0	2%	\$16
\$10,000	0%	-\$2	0%	\$0	0%	-\$2
\$12,500	-2%	-\$13	-2%	\$0	-2%	-\$13
\$15,000	-4%	-\$20	-3%	\$0	-2%	-\$21

**Province of Newfoundland and Labrador
Commercial Automobile
Potential Savings Arising from Deductible Options
Pre-August 1, 2004 Reforms (as estimated by Mercer)**

Deductible Amount	Third Party Liability		Uninsured Motorist		All Coverages Combined	
	% Savings	\$ Savings	% Savings	\$ Savings	% Savings	\$ Savings
\$2,500	3%	\$31	3%	\$0	2%	\$31
\$4,000	6%	\$61	6%	\$0	5%	\$61
\$5,000	7%	\$74	7%	\$1	6%	\$75
\$7,500	11%	\$113	11%	\$1	9%	\$114
\$10,000	14%	\$152	14%	\$1	12%	\$153
\$12,500	18%	\$191	18%	\$1	15%	\$192
\$15,000	22%	\$229	21%	\$2	18%	\$231

**Province of Newfoundland and Labrador
Commercial Automobile
Potential Savings Arising from Capping Options, Definition 1
Pre-August 1, 2004 Reforms (as estimated by Mercer)**

Deductible Amount	Third Party Liability		Uninsured Motorist		All Coverages Combined	
	% Savings	\$ Savings	% Savings	\$ Savings	% Savings	\$ Savings
\$2,500	1%	\$8	1%	\$0	1%	\$8
\$4,000	0%	\$4	0%	\$0	0%	\$4
\$5,000	0%	\$3	0%	\$0	0%	\$3
\$7,500	0%	\$0	0%	\$0	0%	\$0
\$10,000	0%	\$0	0%	\$0	0%	\$0
\$12,500	0%	\$0	0%	\$0	0%	\$0
\$15,000	0%	\$0	0%	\$0	0%	\$0

**Province of Newfoundland and Labrador
Commercial Automobile
Potential Savings Arising from Capping Options, Definition 2
Pre-August 1, 2004 Reforms (as estimated by Mercer)**

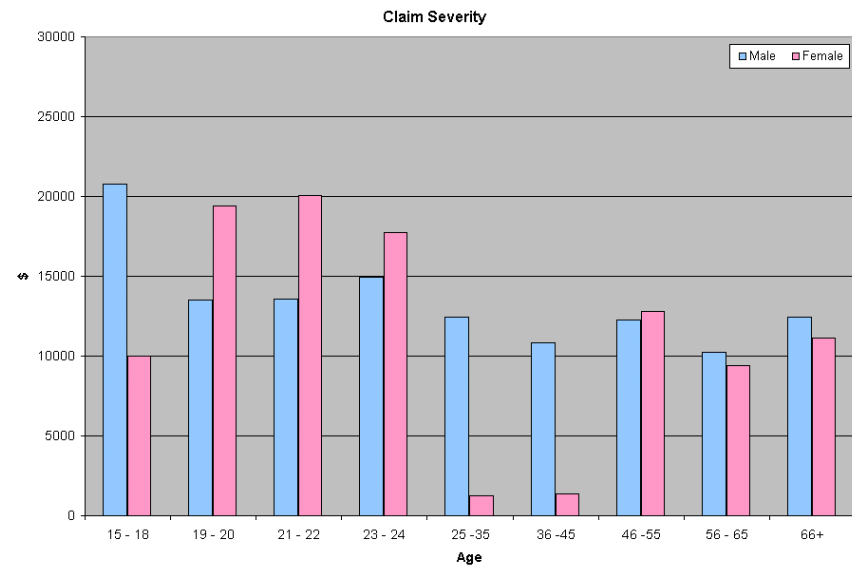
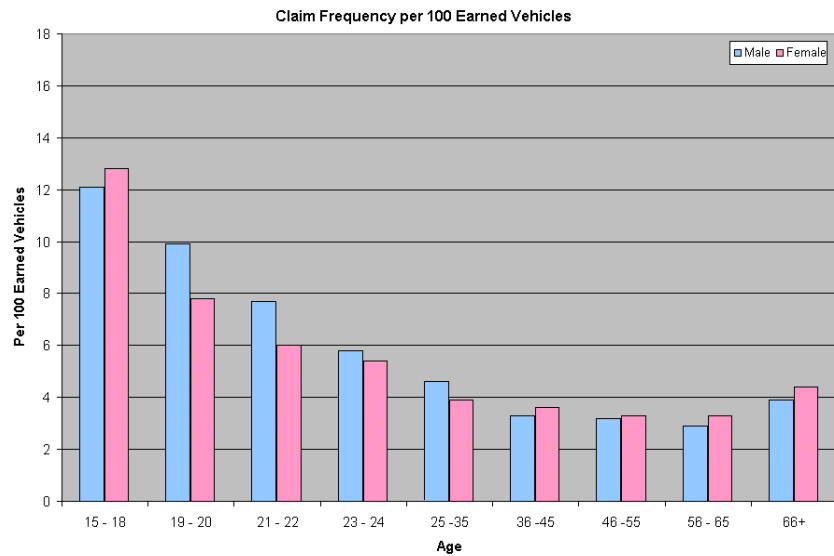
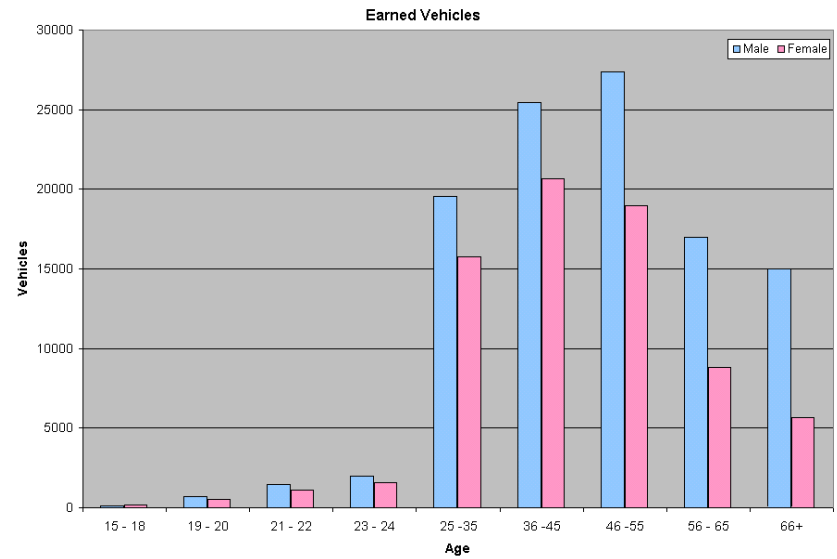
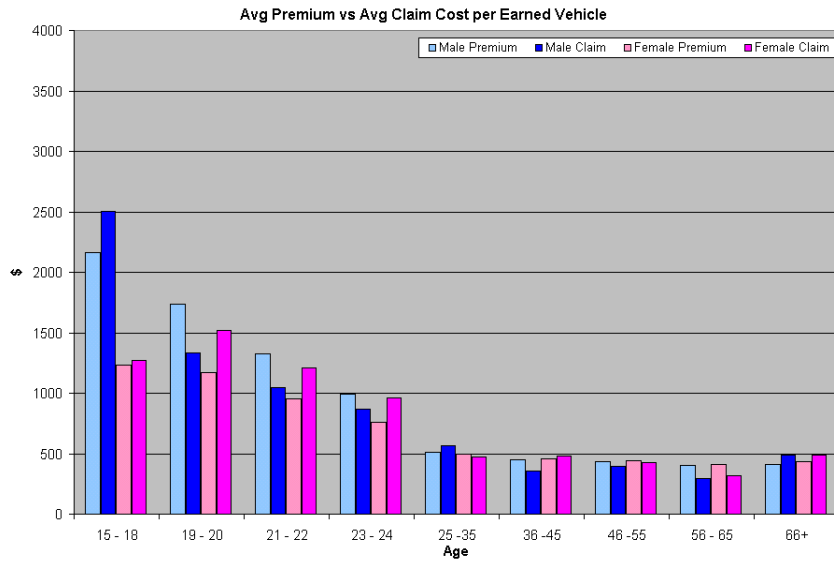
Deductible Amount	Third Party Liability		Uninsured Motorist		All Coverages Combined	
	% Savings	\$ Savings	% Savings	\$ Savings	% Savings	\$ Savings
\$2,500	4%	\$45	4%	\$0	4%	\$46
\$4,000	3%	\$34	3%	\$0	3%	\$34
\$5,000	3%	\$27	3%	\$0	2%	\$27
\$7,500	1%	\$14	1%	\$0	1%	\$14
\$10,000	1%	\$7	1%	\$0	1%	\$7
\$12,500	0%	\$3	0%	\$0	0%	\$3
\$15,000	0%	\$1	0%	\$0	0%	\$1

**Province of Newfoundland and Labrador
Commercial Automobile
Potential Savings Arising from Capping Options, Definition 3
Pre-August 1, 2004 Reforms (as estimated by Mercer)**

Deductible Amount	Third Party Liability		Uninsured Motorist		All Coverages Combined	
	% Savings	\$ Savings	% Savings	\$ Savings	% Savings	\$ Savings
\$2,500	13%	\$133	12%	\$1	11%	\$134
\$4,000	11%	\$114	11%	\$1	9%	\$115
\$5,000	10%	\$102	10%	\$1	8%	\$103
\$7,500	7%	\$69	6%	\$0	6%	\$69
\$10,000	5%	\$52	5%	\$0	4%	\$52
\$12,500	4%	\$42	4%	\$0	3%	\$43
\$15,000	3%	\$31	3%	\$0	2%	\$31

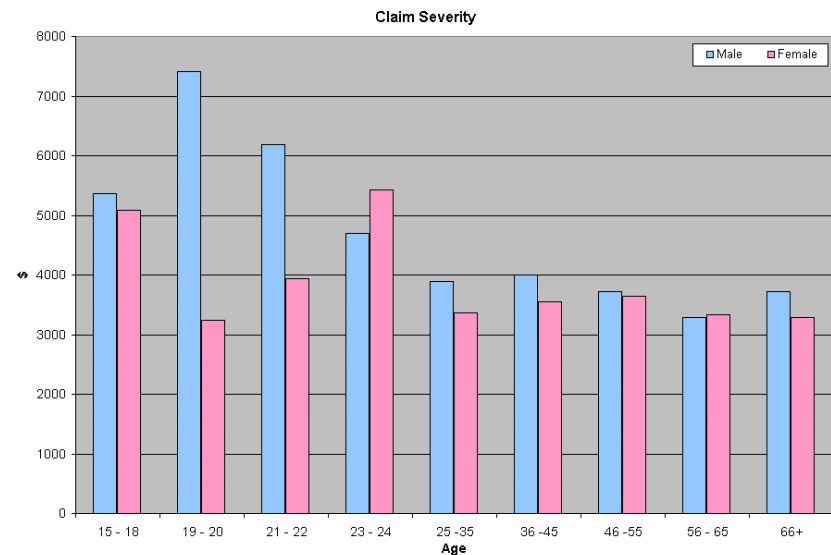
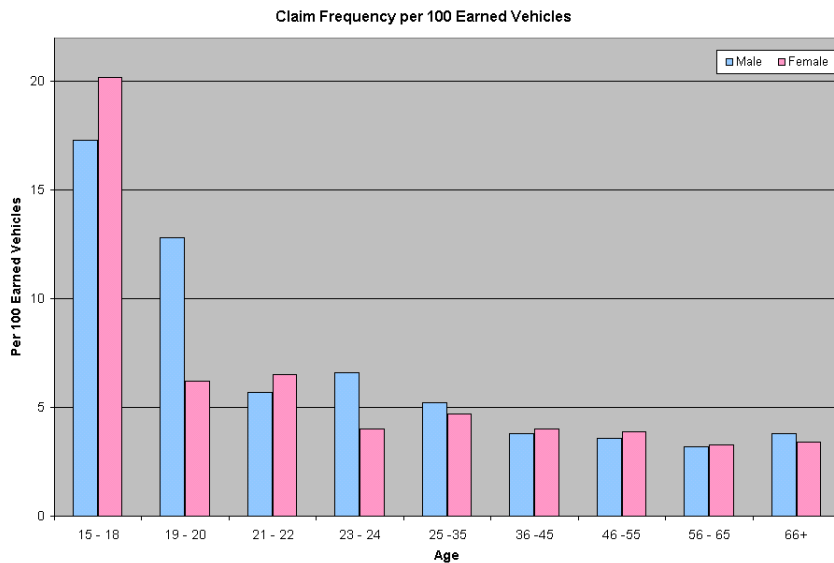
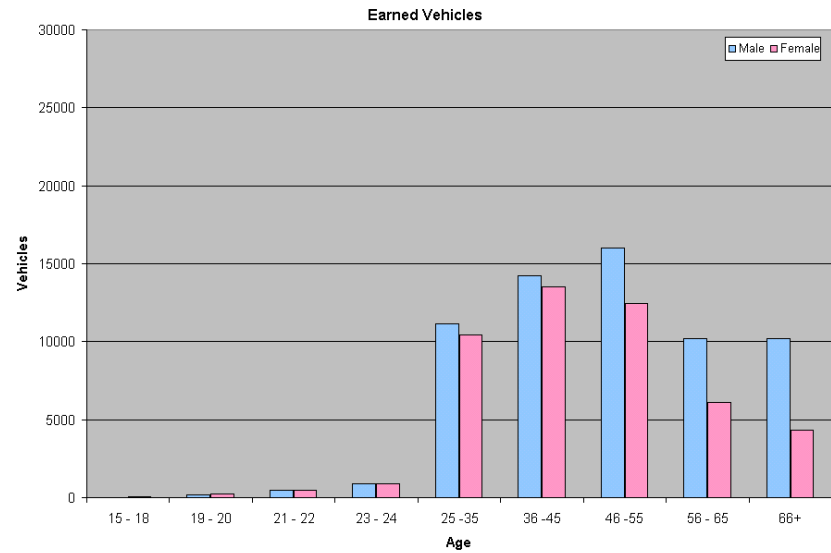
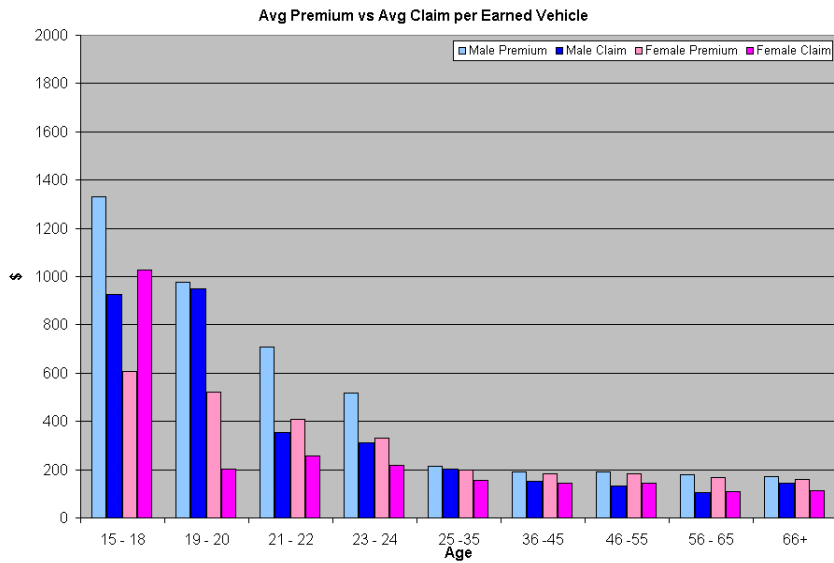
Private Passenger Automobile Insurance General Risk Classification System					
Principal Operator whether applicant or not			Use	Class	
Age					
16, 17, 18	Male	Married residing with spouse		08	
		Unmarried		10	
	Female			18	
19, 20	Male	Married residing with spouse		08	
		Unmarried		11	
	Female			18	
21, 22	Male	Married residing with spouse		09	
		Unmarried		12	
	Female			19	
23, 24	Male	Married residing with spouse		09	
		Unmarried		13	
	Female			19	
25 and over		No male driver under 25 years of age	No unmarried female driver under 25 years of age	Pleasure: Automobile not used for driving to and from work, or for professional or vocational purposes	01
			No married female driver under 25 years of age without driver training	Pleasure: Automobile not used for driving to and from work, more than 15 road miles (25 km one way)	02
			More than 25 km to/from Work - Pleasure		03
			Business or Business and Pleasure		07
	Occasional male driver under 25 years of age where the principal operator is rated as 01, 02, 03 or 07		06		
	Occasional female driver under 25 years of age where the principal operator is rated as 01, 02, 03 or 07		05		
	others		see above		

Third Party Liability Newfoundland and Labrador 2001 Data By Principal Operator Age and Gender



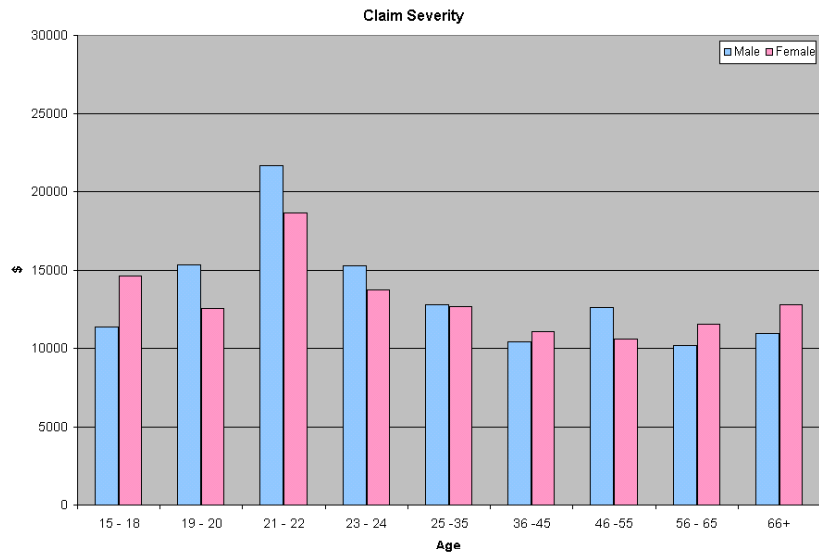
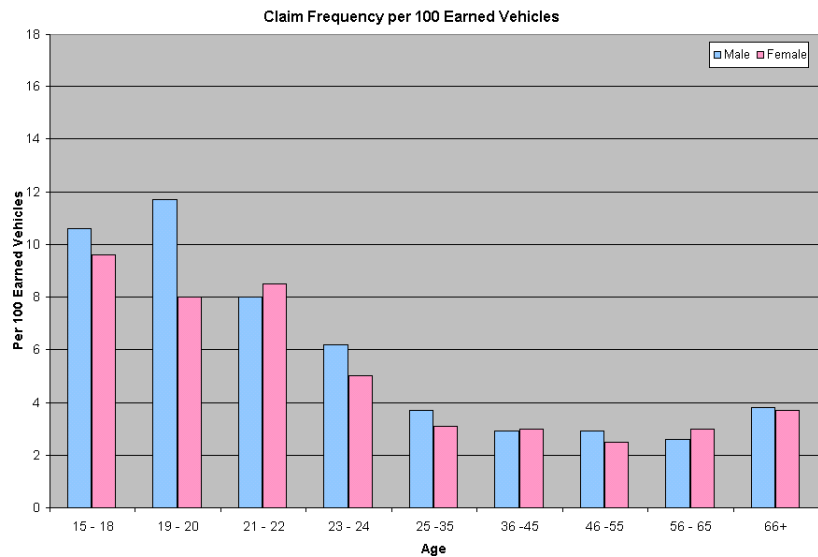
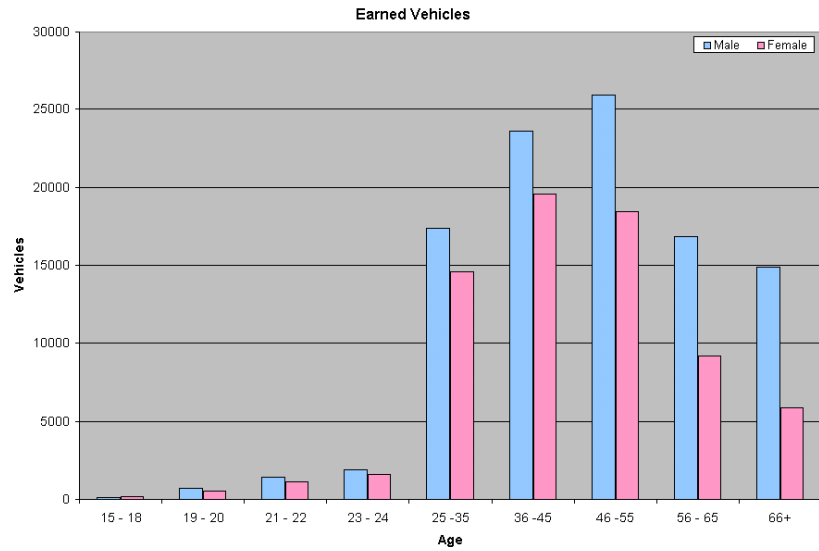
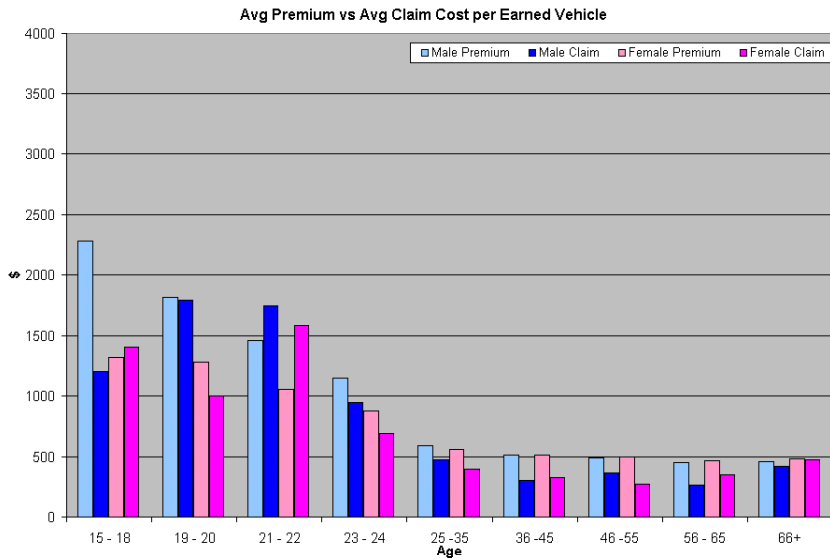
SOURCE: IBC response to PUB-1-IBC, based on Automobile Insurance Experience, Driver/Vehicle Classification Exhibits, Atlantic Provinces, Product AU25-D

Collision Newfoundland and Labrador 2001 Data By Principal Operator Age and Gender



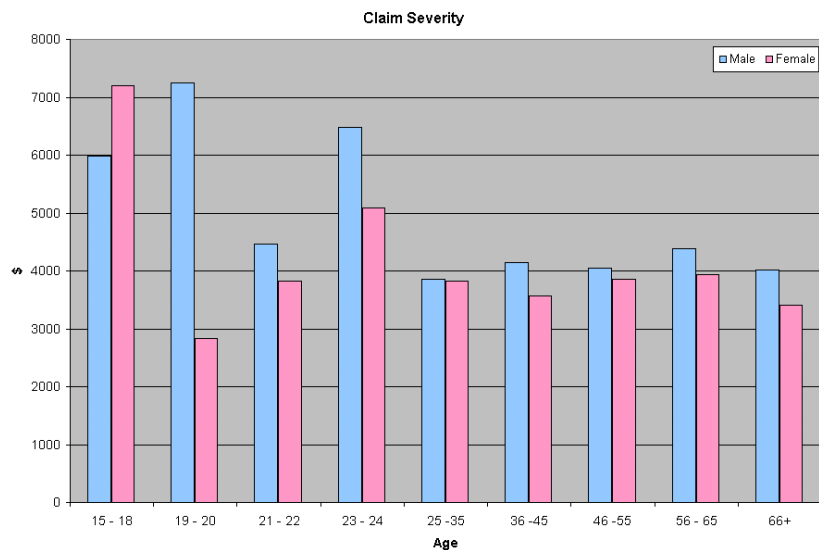
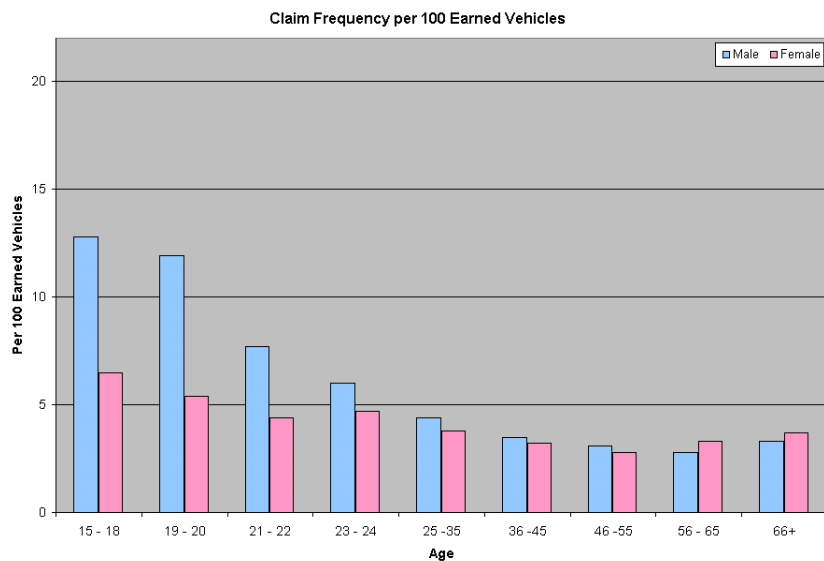
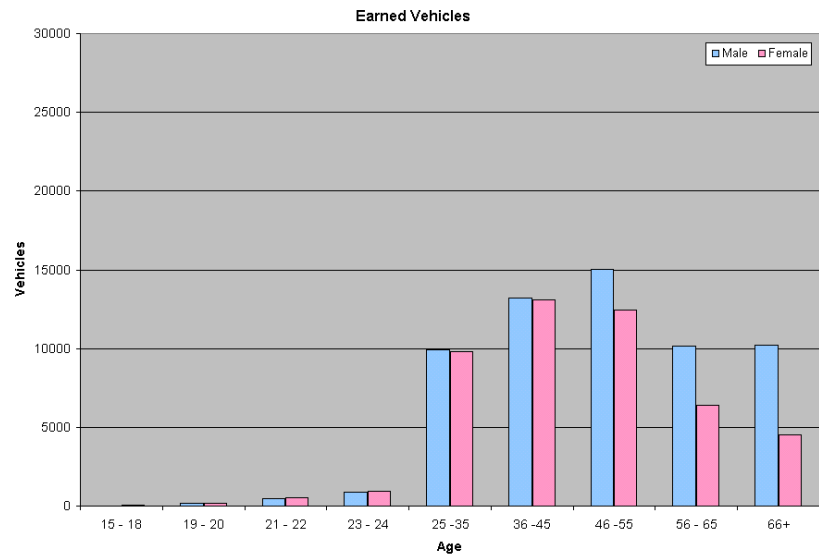
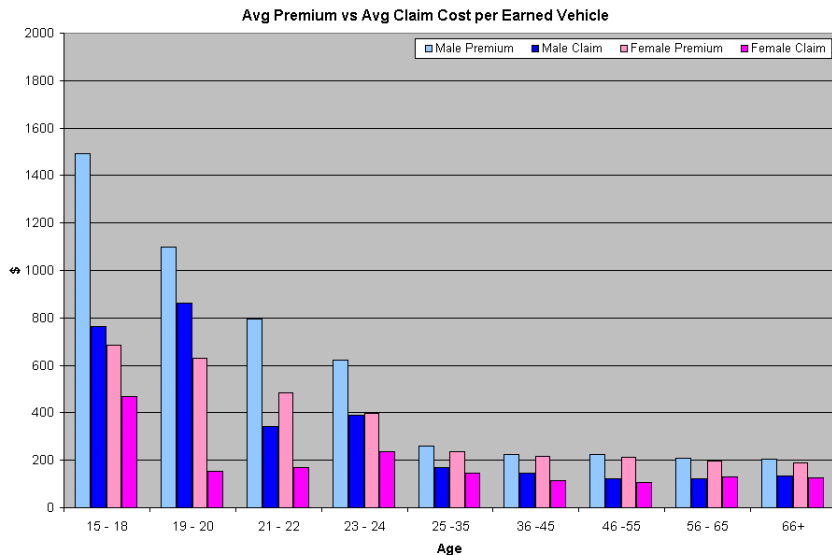
SOURCE: IBC response to PUB-1-IBC, based on Automobile Insurance Experience, Driver/Vehicle Classification Exhibits, Atlantic Provinces, Product AU25-D

Third Party Liability Newfoundland and Labrador 2002 Data By Principal Operator Age and Gender



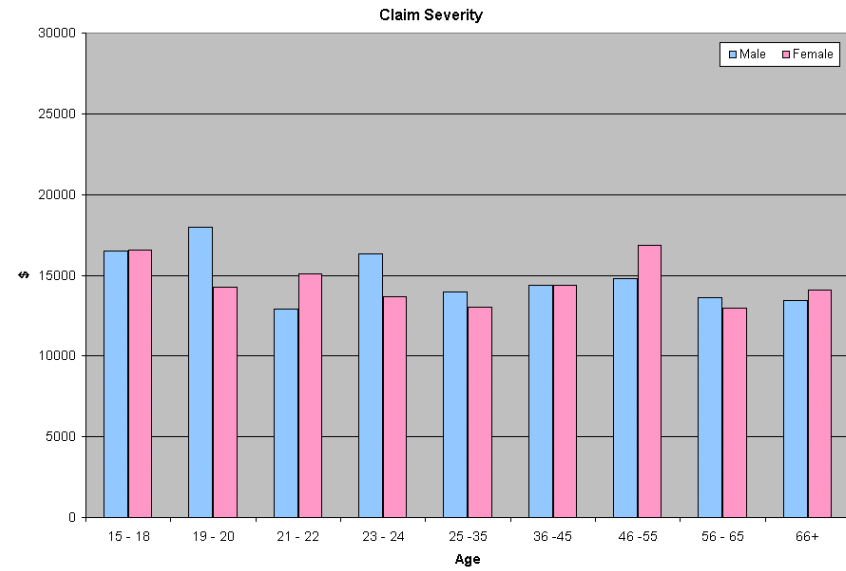
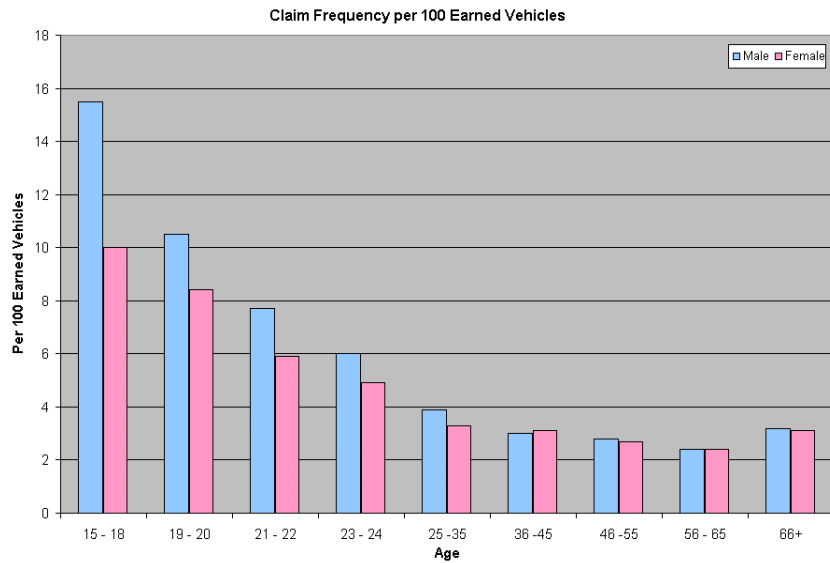
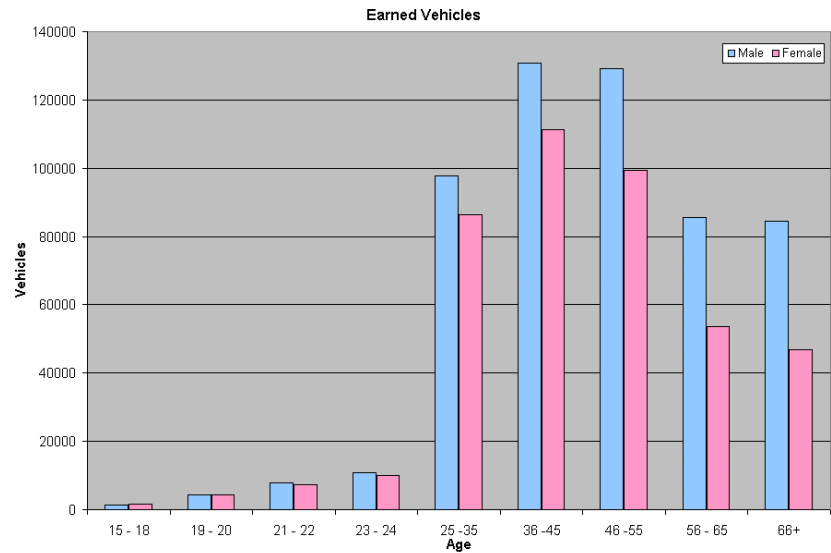
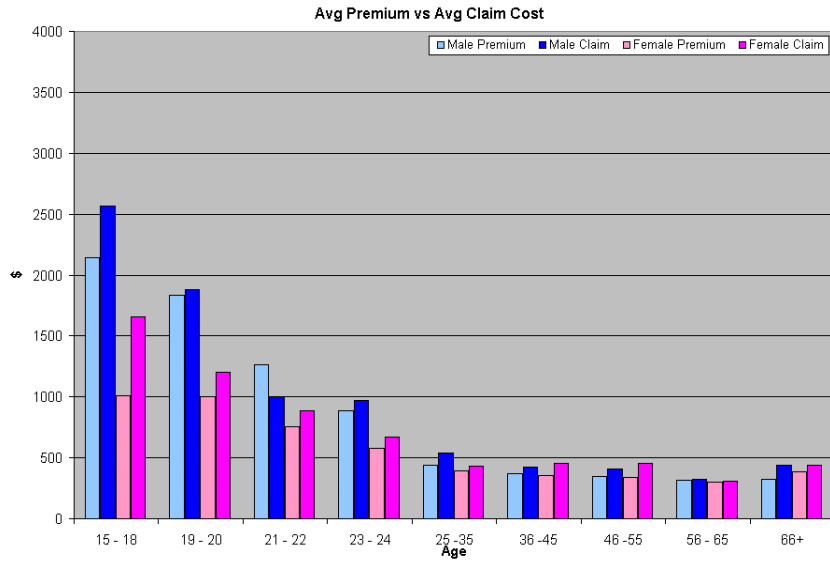
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Collision Newfoundland and Labrador 2002 Data By Principal Operator Age and Gender



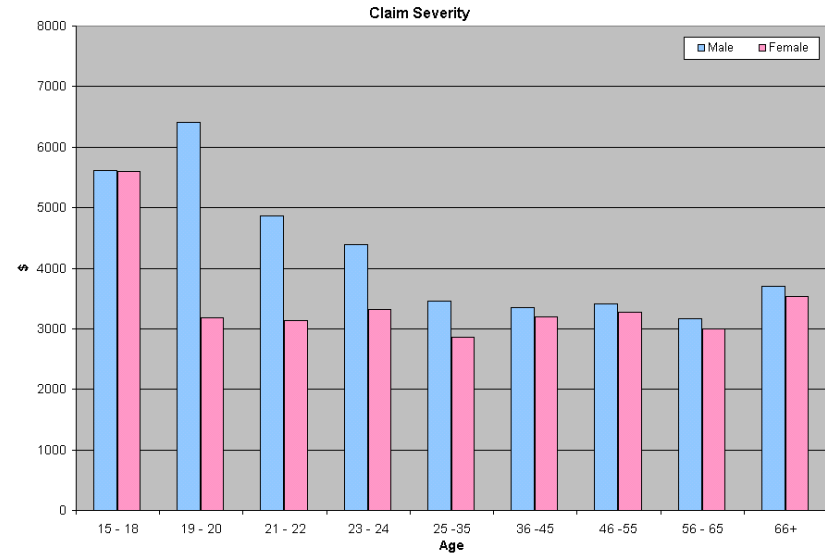
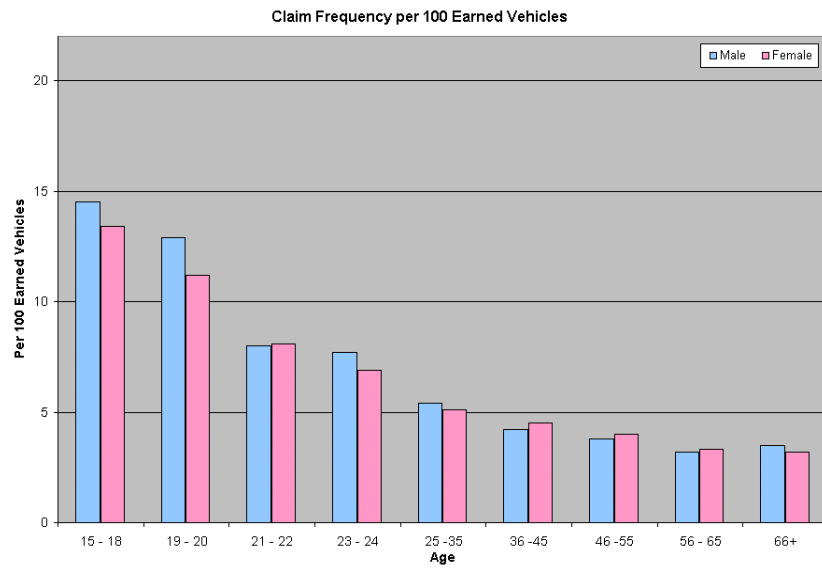
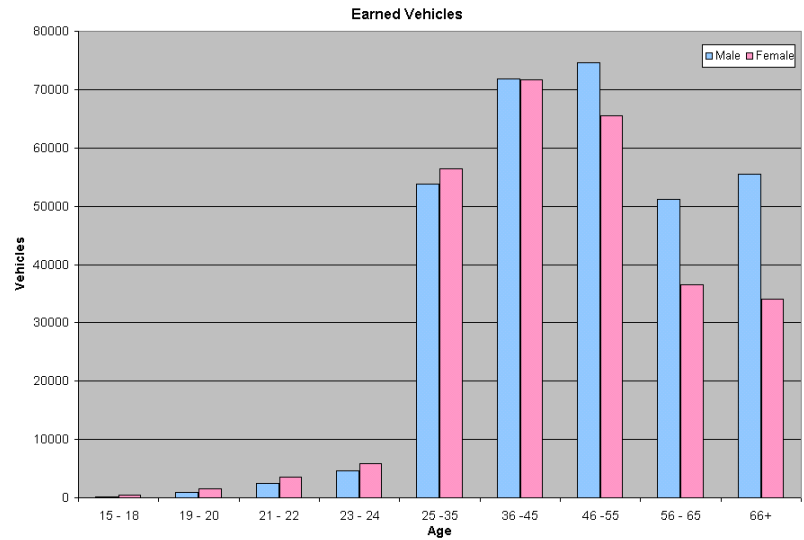
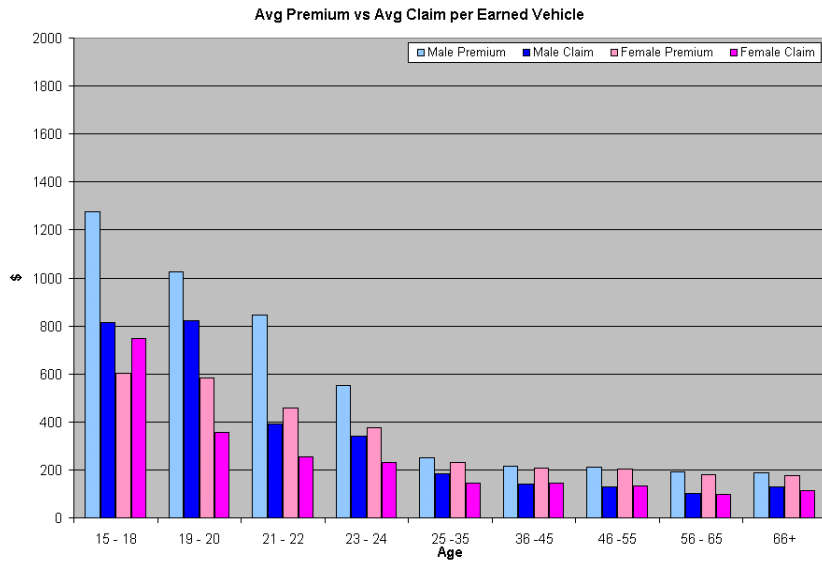
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Third Party Liability Atlantic Provinces 2001 Data By Principal Operator Age and Gender



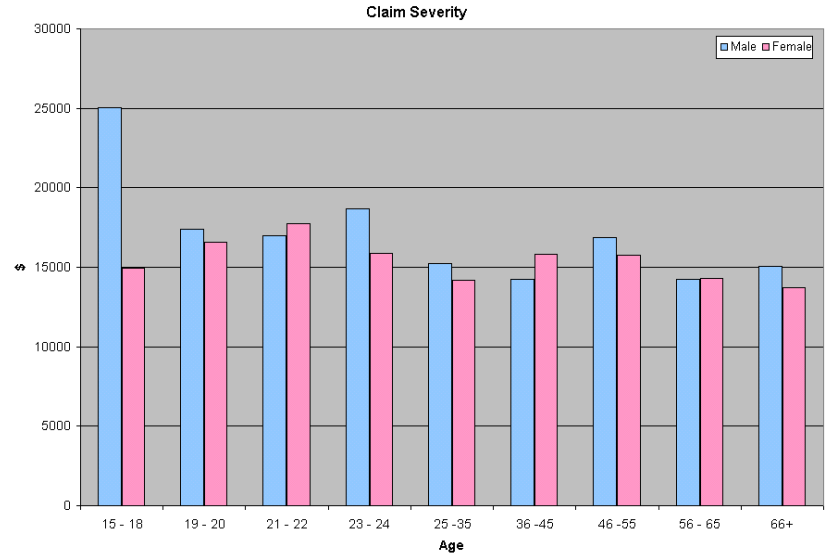
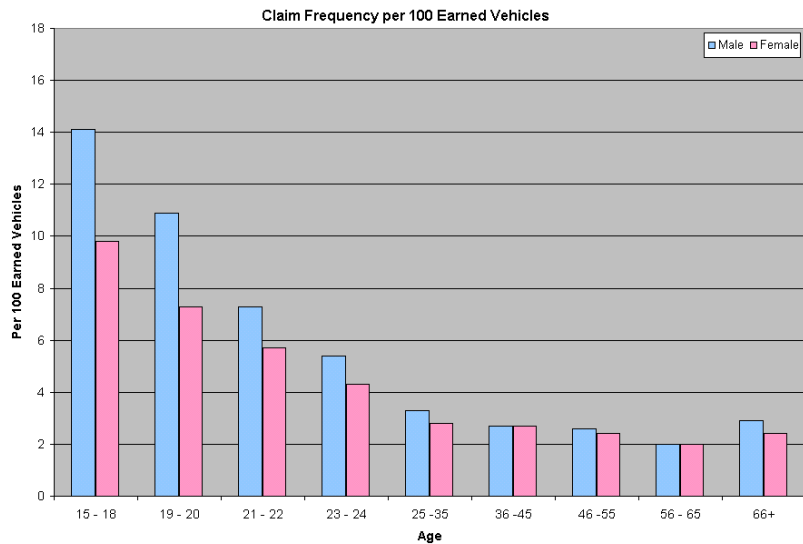
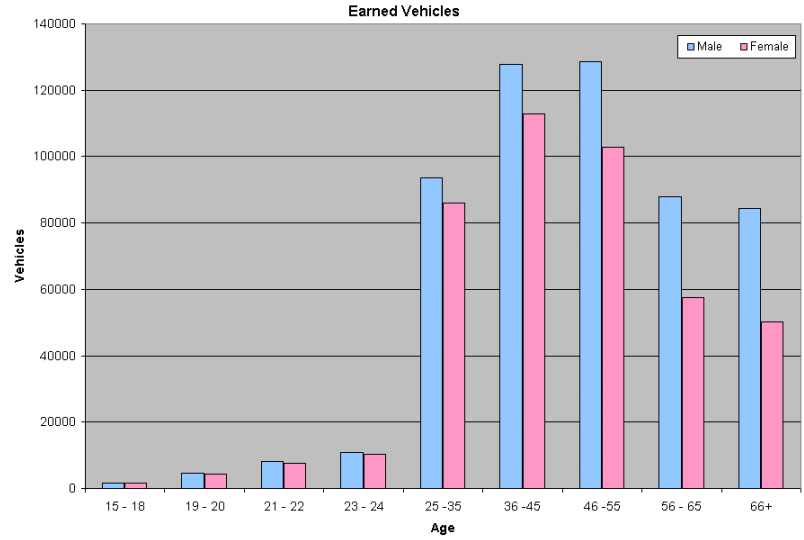
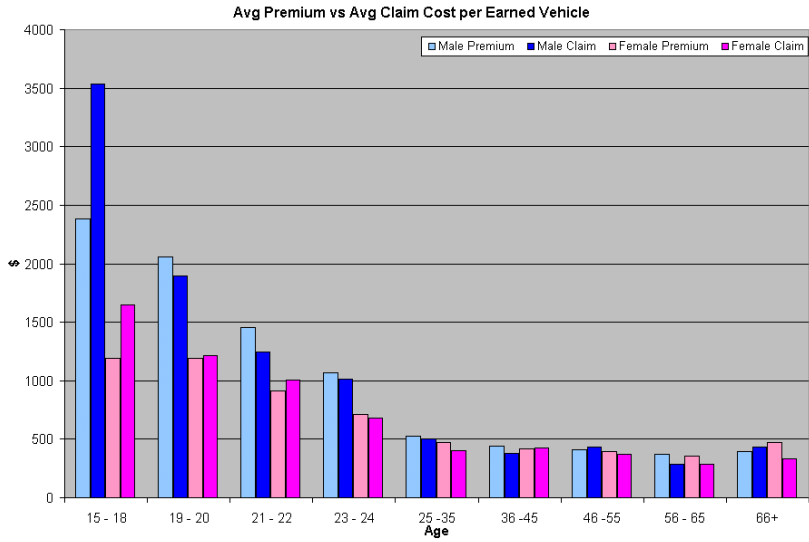
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Collision Atlantic Provinces 2001 Data By Principal Operator Age and Gender



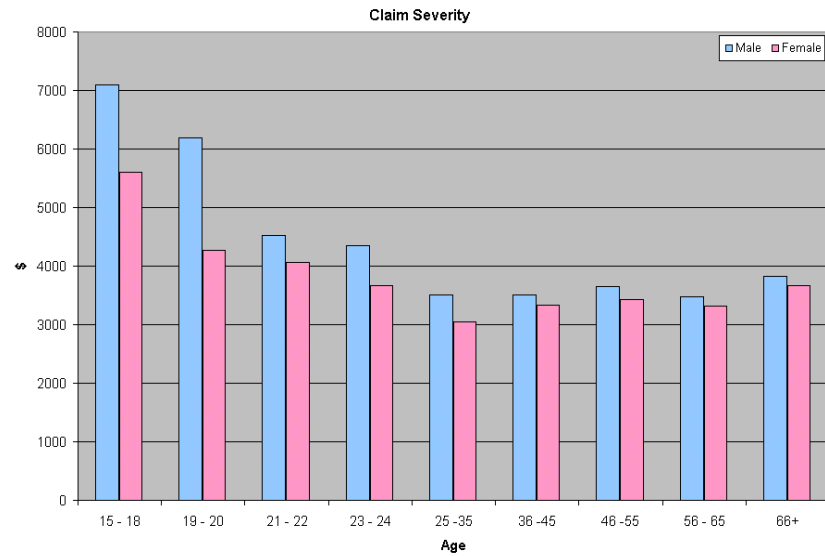
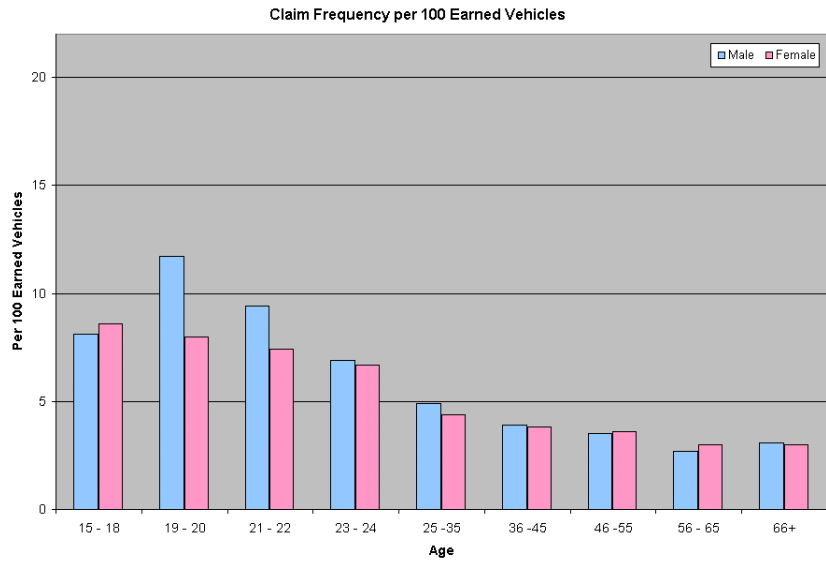
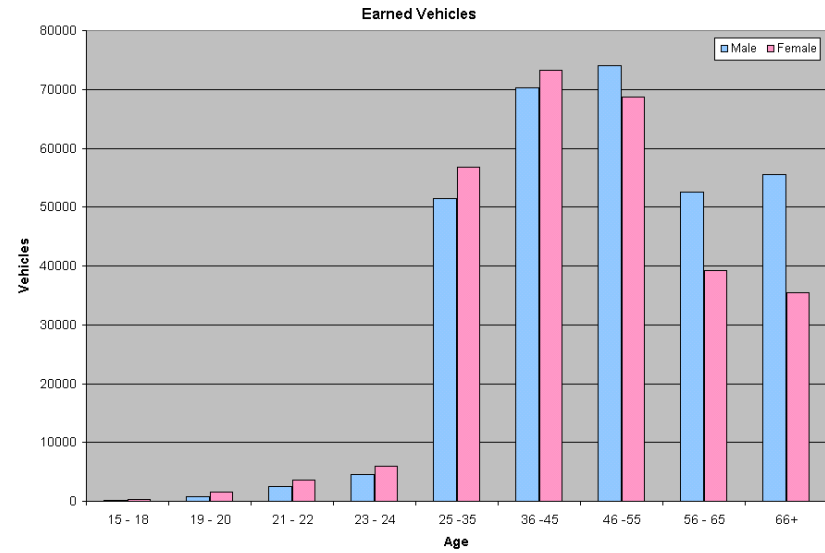
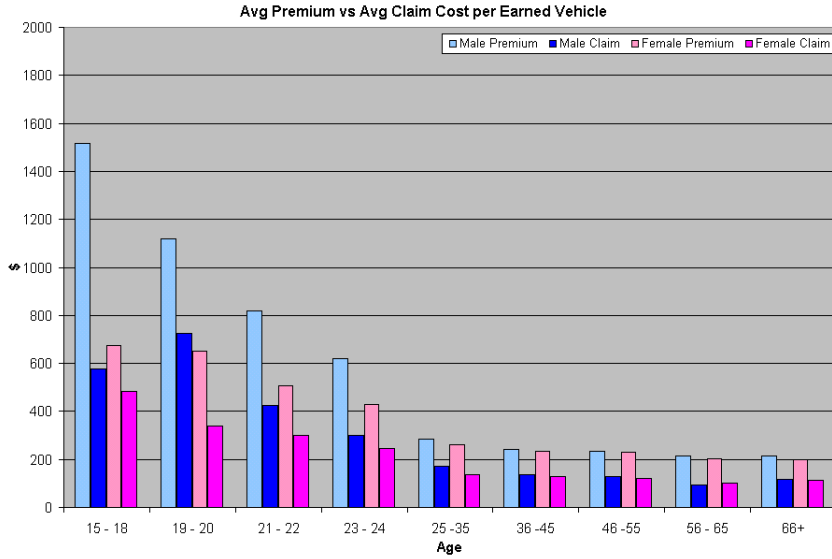
SOURCE: Automobile Insurance Experience, Driver/Vehicle Classification Exhibits, Atlantic Provinces, Product AU25-D

Third Party Liability Atlantic Provinces 2002 Data By Principal Operator Age and Gender



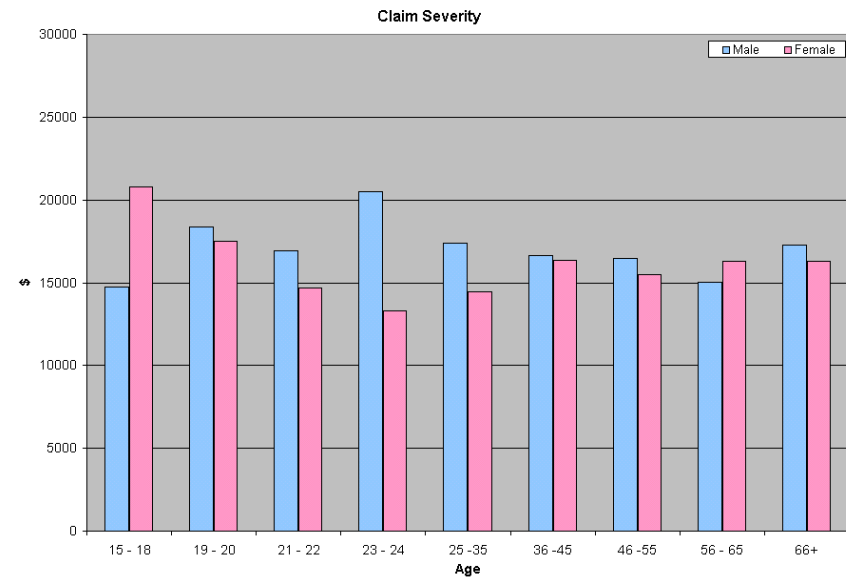
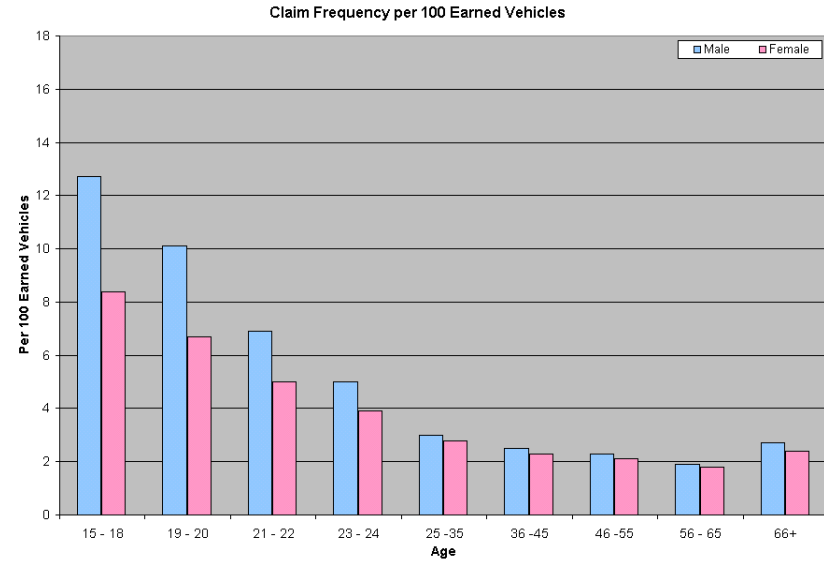
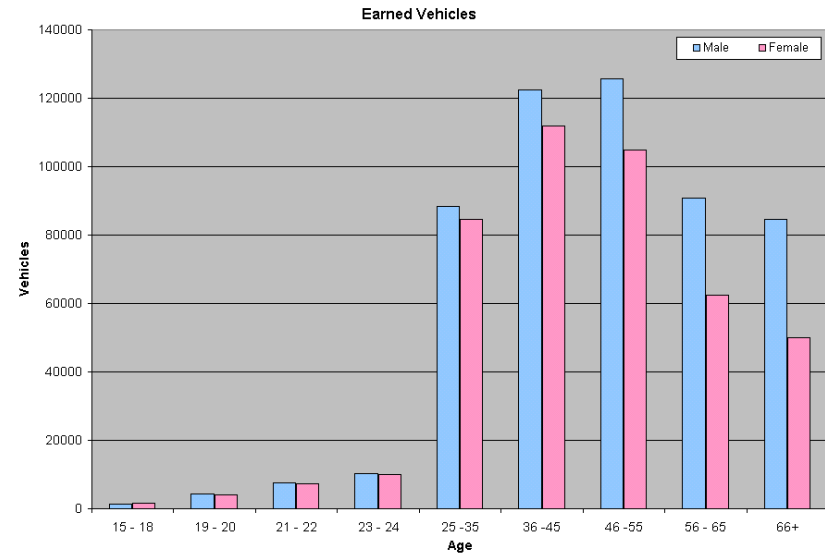
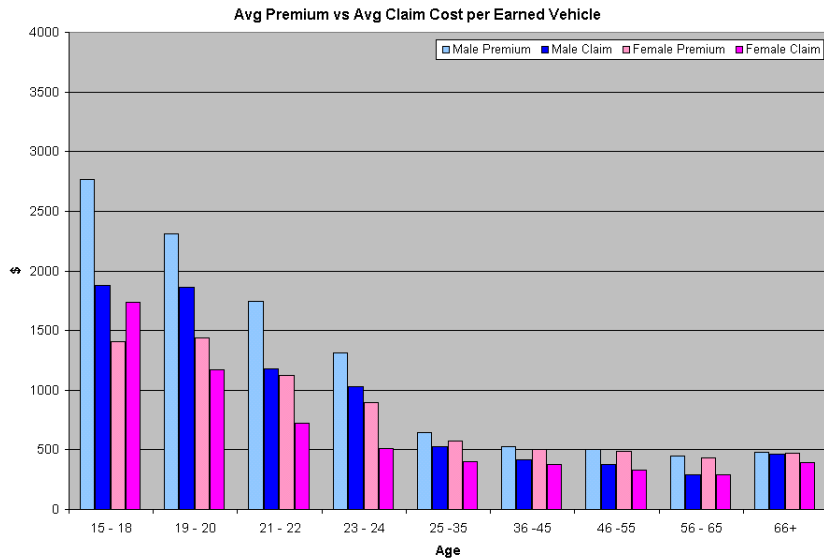
SOURCE: Automobile Insurance Experience, Driver/Vehicle Classification Exhibits, Atlantic Provinces, Product AU25-D

Collision Atlantic Provinces 2002 Data By Principal Operator Age and Gender



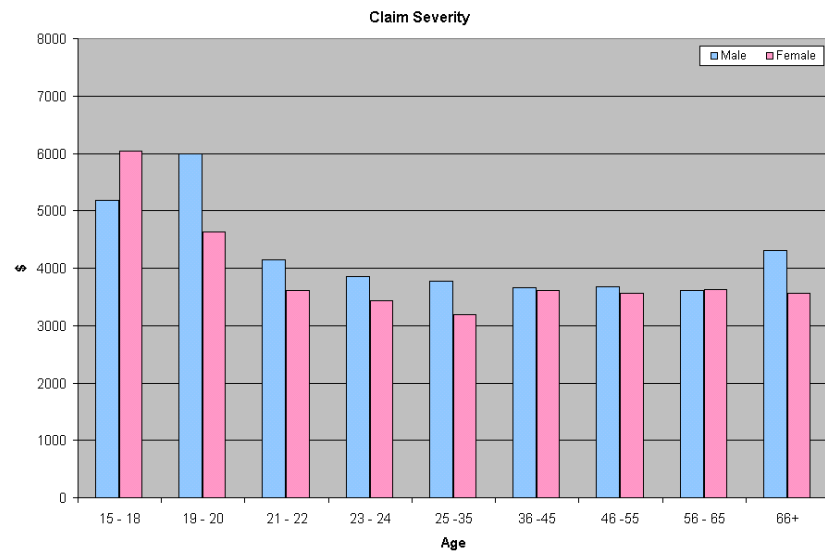
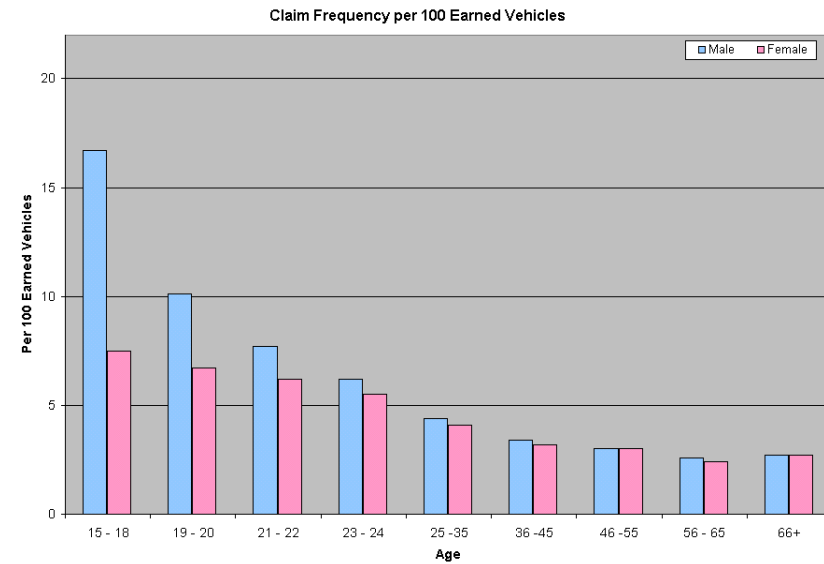
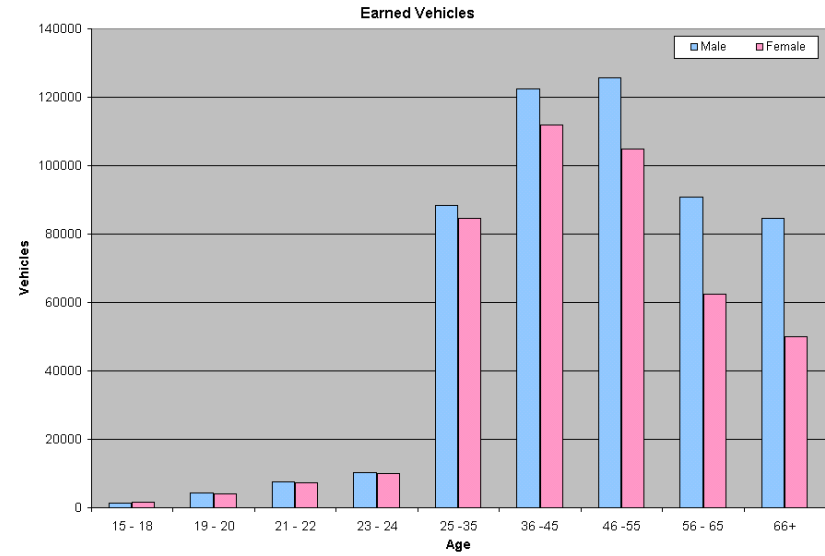
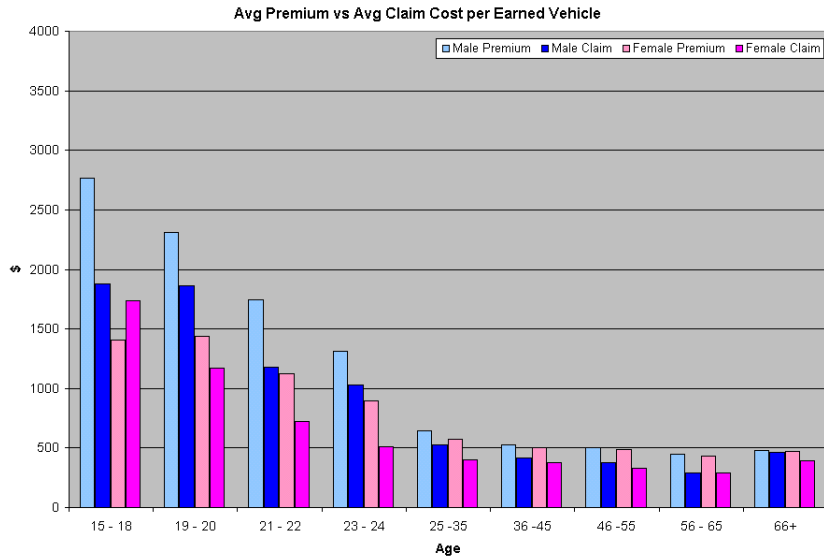
SOURCE: Automobile Insurance Experience, Driver/Vehicle Classification Exhibits, Atlantic Provinces, Product AU25-D

Third Party Liability Atlantic Provinces 2003 Data By Principal Operator Age and Gender



SOURCE: Automobile Insurance Experience, Driver/Vehicle Classification Exhibits, Atlantic Provinces, Product AU25-D

Collision Atlantic Provinces 2003 Data By Principal Operator Age and Gender



SOURCE: Automobile Insurance Experience, Driver/Vehicle Classification Exhibits, Atlantic Provinces, Product AU25-D

Province of Newfoundland and Labrador Current Approved Age Related Discounts Offered by Insurers		
	Discount Description	Amount
Company A	Mature Driver aged 40 - 70	5%
	Select to age 49	8%
	Select aged 50 - 72	10%
	Select aged 72 - 74	5%
Company B	Mature Driver aged 31 - 69	10%
Company C	Mature Driver aged 40 - 70	5%
Company D	Preferred Driver	5%
Company E	Mature Driver aged 50+	10%
	Preferred Driver	10%
Company F	Mature Driver aged 35 - 44	5%
	Mature Driver aged 45 - 54	10%
Company G	Mature Driver aged 50 – 59	10%
	Preferred Driver aged 40+	5%
Company H	Mature Driver aged 50+	10%
	Preferred Driver aged 45 – 70	10%
Company I	Mature Driver aged 30 – 34	5%
	Experienced Driver	8%
Company J	Mature Driver aged 50+	10%
Company K	Mature Driver aged 45+	10%
Company L	Mature Driver aged 50 – 75	10%
Company M	Mature Driver aged 50 – 75	10%
Company N	Mature Driver aged 35 – 44	5%
	Mature Driver aged 45 – 54	10%
Company O	Mature Driver aged 40 – 49	5% - 10%
	Mature Driver aged 50 – 54	10% - 15%
	Mature Driver aged 55 – 70	15% - 20%
	Mature Driver aged 71 – 79	10%



PUBLIC UTILITIES BOARD
Automobile Insurance Review

Public Utilities Board

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