

# The Consumer Advocate

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**Private and Confidential**

Board of Commissioners of Public Utilities  
120 Torbay Road  
P.O. Box 21040  
St. John's, NL A1A 5B2

**Attention: Cheryl Blundon**

Dear Ms. Blundon:

**Re: 2018 Review into Automobile Insurance - Newfoundland and Labrador**

Enclosed please find the Submission of the Consumer Advocate dated October 12, 2018

Yours truly,



Andrew Wadden  
Counsel for the Consumer Advocate

Encl.  
/bb

**The 2018 Review into Automobile Insurance in  
Newfoundland and Labrador:**

**Submission of the Consumer Advocate**

**October 12 2018**

**Submitted by  
Dennis Browne, Q.C.  
Consumer Advocate**

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## **The 2018 Review into Automobile Insurance in Newfoundland and Labrador: Submission of the Consumer Advocate**

### **Overview**

1. On August 9, 2017 the Public Utilities Board was instructed to undertake a review of issues with respect to automobile insurance in the Province and other issues of concerns raised by stakeholders participating in the review (the “Review”). Terms of Reference for the Board of Commissioners of Public Utilities (the Board) included Phase 1 which consisted of a closed claims study into private passenger automobile insurance and a separate closed claims study into causes of high taxi claims costs. Phase 2 consisted of a review of the existing private passenger automobile insurance products, with the Board being asked to assess and recommend possible options to contain costs. A public hearing, with the various studies commissioned by the Board in Phase 1, were subject to stakeholder scrutiny.
  
2. On September 13, 2017 under the authority of Section 61 of the *Automobile Insurance Act* and subsection 3.1(8) of the *Insurance Companies Act* and pursuant to OC2017-290 the Consumer Advocate was appointed for automobile insurance matters including representing consumers during the review undertaken by the Board referenced above.
  
3. Hearings commenced June 5, 2018 and continued until June 14, 2018, concluding September 6-14, 2018 with a final submission on September 27, 2018. The Schedule enabled all stakeholders to participate comprehensively. The subject on a cap on compensation for minor injuries came to be the concern of most participating parties. However, the Terms of Reference also directed the Board to examine issues including to review the current mandatory Section A/Third Party Liability limit of \$200,000 and the rate implications of increasing the limit and, review Section D Uninsured Automobiles Coverage in the province. The Board was also tasked to review the impact of offering Direct Compensation for Physical Damage to automobiles (Section C/“DCPD”), to report on measures to improve Highway Safety and Automotive accident prevention, and to report any other costs savings or improvements on any aspect of automobile insurance offered. In preparing the case for consumers, meetings were held including with representatives of the taxi industry, Registrar of Motor Vehicles, the Royal Newfoundland Constabulary, insurance

industry and the Campaign to Protect Accident Victims as represented by the legal profession. While the report herein does not address each and every reference issue distinctly, the totality of our recommendations will have that impact.

4. In this province Insurers are required to provide pertinent information to a purchaser of insurance on delivery of the policy and with any renewal or cancellation including the following:
  - When selling an insurance policy, the client's interests take priority over the interests of insurance companies, agents, brokers and representatives.
  - The product recommended must be suitable to the client's needs.
  - Consumers have a right to privacy as outlined in the federal Personal Information and Electronic Documents Act (PIPEDA). In general, information will be used only for the purpose for which it was collected, unless the client provides proper authorization, and except as permitted by law.
  - An insurance company cannot cancel or non-renew coverage or increase a premium for an incident which results in no claim being paid.
  - Consumers have a right to know the insurance companies and agent, broker or representative represents for the product being sold.
  - Consumers have a right to know any conflicts or potential conflicts of interest the agent, broker or representative may have.
  - Consumers have a right to know ownership and financing arrangements between agents, brokers or representatives and insurance companies they represent.
  - Consumers have a right to know compensation arrangements that agents, brokers, or representatives have for the product purchased, including the amount of commission being paid for the transaction.
  - Consumers have a right to know in writing why any insurance coverage has been denied, non-renewed or cancelled and any notice period required by law to cancel the policy.
  - Consumers have a right to know the complaint resolution process of the insurance company.
  - At point of sale or renewal an agent, broker or representative must provide the following information:
    - - The full range of deductibles available and the cost of insurance applicable with each of the deductibles.
    - - The various coverages available, the cost of these coverages and any discounts available.

- - The total premium of all quotations obtained for the product being sold, and, upon request, a detailed breakdown by coverage of the premiums quoted.

These consumer rights must be observed by insurers and may be enforced through the Office of the Superintendent of Insurance for the Province.<sup>1</sup>

5. In this submission rate design and caps on compensation and the focus on reducing the frequency and severity of accidents have been examined. Our roads can be safer. This can be achieved by more robust enforcement and coordination of key players. The taxi experience in this province can be improved by instituting driver monitoring, enforcement of Service NL taxi related measures taken in 2018, and by having Facility Association re-examine their rating approach. Insurers have a role to play by implementing various methods of vehicle data monitoring for taxis and private passenger vehicles.
6. This submission deals with the insurance product, and that it may be improved by increasing the existing deductible for injury claims, making accident benefits mandatory with enhanced medical and rehabilitation benefits, the establishment of pre-approved evidence-based treatment protocols and instituting direct compensation for property damage.
7. This submission looks at the high number of uninsured drivers which can be reduced by assigning license plates to individuals, and creating a mechanism for better communication/notification as between insurers and the Motor Vehicle Registry.

### **Taxis: The Causes of Poor Claims Experience and Recommendations to Reduce Claim Costs and Rates**

8. The Board was required to commission an audit of taxi closed claims to determine the causes of poor claims experience, including details regarding the underlying causes of loss and high claim costs incurred, and provide any recommendations to reduce claim costs and reduce rates.

9. Representatives of the taxi industry testified consistently that their premiums are crippling with no relief in sight. The taxi industry has been placed into Facility Association “Facility” where premiums are exorbitant. The mission of Facility is as follows:

*The Facilities Association mission is to administer automobile insurance residual mechanisms, enhance market stability and guarantee the availability of automobile insurance to those eligible to obtain it. We strive to keep the market share of the residual markets as small as possible to consumers may benefit from the competitive marketplace to the greatest extent possible.* <sup>2</sup>

Every insurer in the Province licenced to write automobile insurance is required to become and remain a member of Facility. Facility is often referred to as the insurer of last resort. While the concerns of the taxi industry need to be addressed no witness suggested an all-encompassing solution.

10. It is clear from the March 20, 2018 Oliver Wyman report re the Taxi Experience in Newfoundland and Labrador that the insurance industry has consistently been incurring losses relative to premium revenues in providing insurance to taxis. Moreover, the Cameron and Associates Report on Taxi Claims of the same date, indicates that taxi rate increases have been attributed to continuously escalating loss costs. Cameron also concludes that significant delays in reporting by taxi companies may have had a negative impact on the loss experience.<sup>3</sup>

11. Put simply, the number of accidents in which taxis are involved, relative to how many taxis there are on the road, is high. Facility was asked by the Board how many drivers/taxi vehicles were insured with Facility each year between 2012-2016, but Facility indicated they did not have data on individual drivers. Facility was able to provide “Taxi exposures” written, being 685 in 2016.<sup>4</sup> Anecdotally, representatives of the taxi industry advised that there are about 450 taxis operated on the Avalon, with about 2165 “TX” plates in the Province.

12. The Board also asked Facility for comment on rating the driver, not the vehicle. Facility stated:

*Based on our underwriting experience Taxis generally tend to assign multiple drivers to operate a single vehicle as well, experience high turnover. Therefore, it will be much more reliable and appropriate to use the vehicle loss history as an underwriting factor as opposed to driver.*<sup>5</sup>

13. The Automobile Insurance Act states as follows:

**6.1** (1) An agent, a broker or a representative shall, in writing, inform a person to whom it provides automobile insurance through the Facility Association

(a) of the reasons why the insurance is being placed through the association;  
(b) how long the person is anticipated to be provided with insurance through the association **based on the person's driving record**; and

(c) what steps the person may take to qualify for insurance other than through the association, and shall provide a copy to the association.

(2) An agent, a broker or a representative shall annually, while it provides automobile insurance to a person through the Facility Association, inform the person, in writing,

(a) of the reasons why the insurance is placed through the association;

(b) how long the person is anticipated to be provide with insurance through the association based on the **person's driving record**;<sup>6</sup> **(emphasis ours)**

14. It appears that the decision of Facility to use vehicle loss history as opposed to driver record, is inconsistent with the language of s.6.1 of the Automobile Insurance Act. While there is logistic difficulty in separating the two given multiple drivers can operate the same vehicle, it nevertheless imposes a heavy financial burden on taxi drivers who have a good driving record.

15. Notably, measures for monitoring of vehicles have been utilized in other provinces such as in Nova Scotia, where the average written taxi premium was significantly lower in 2016 than here (\$2,431 vs. \$4,241).<sup>7</sup>

16. In Nova Scotia, Intact insurance offers the “my Driving Discount” program, which uses an application installed on a mobile device for the collection and processing of driving data for rating and discount purposes. The Application is provided by OCTO Telematics North America LLC. The application uses a mobile device’s instrumentation (such as GPS, accelerometer, etc.) to collect information about driving behaviour and transfers collected data (such as hard braking, rapid acceleration) ultimately to Intact. The collected data assists in analyzing driving behaviour in order to determine eligibility for a discount and a policy update.<sup>8</sup> Intact representatives determined this to be an effective measure in relation to premium reduction. Similar technology implemented in this Province would prove useful for taxis.



17. Measures recently undertaken by the Provincial Government (May 2018) will assist in improving the taxi experience. For example, there had been no requirement for persons seeking a Class 4 taxi driver's licence to have any specialized driving training. That has been revised requiring operators to successfully complete the defensive driving course, complete an on-road assessment and up to five hours practical driving experience from a professional driving school. This assessment must include highway and urban driving, parking in traffic and backing-up scenarios. Applicants must complete a test in traffic administered by a Motor Registration Division Driver Examiner.<sup>9</sup>
18. Facility Association should take note of all of the above and act accordingly.<sup>10</sup>

### **Monetary Cap on Claims for Non-Economic Loss for "Minor/Mild" Injuries and the Implications of Such a Cap for Claimants**

19. A cap in the context of seeking compensation for pain and suffering after an accident ("non-pecuniary damages") places an upper limit on the amount of pain and suffering damages payable to a person injured in a motor vehicle accident. It appears entitlement to economic loss such as loss of income would not be impacted. This review is not the first time the idea of a cap has been examined. It was also discussed at length during the 2005 automobile insurance review.
20. Various and conflicting expert reports were reviewed at the hearings. Ultimately the question of the value of a cap from a consumer's perspective remains unclear. The Insurance Bureau of Canada (IBC) were questioned about this at the hearings. They provided evidence as follows:

*MR. WADDEN:*

*Q. ...The cap comes in, let's assume it's a \$5,000 cap, what do you think the average consumer in Newfoundland can expect their insurance bill, in terms of their car, to go down by?*

*MR. STEIN:*

*A. I don't know what they expect.*

*MR. WADDEN:*

*Q. What do you think it will go down by? What can a consumer expect? If the consumer is being asked to accept a cap, let's just say we recommend, okay, we're fine with a cap, we're going to have a \$5,000 cap in Newfoundland and Labrador, and we're recommending it, because we assume there's going to be some sort of quid pro quo here, the consumer is going to benefit in terms of their annual insurance bill for the vehicle. How much is it going to go down?*

*MS. DEAN:*

*A. In this scenario, it would stay the same until claims pressures are relieved and premiums can act accordingly.*

*MR. WADDEN:*

*Q. It would stay the same, initially?*

*MS. DEAN:*

*A. Initially, according to the scenario and the actuarial numbers as presented by Oliver Wyman.*

*MR. WADDEN:*

*Q. Okay. How long would it stay the same? Give me an estimate? ....we got to be able to tell the consumers, "here's what you can expect, folks, if you accept this cap. Here's what's going to happen to your bill and here's when it's going to happen".*

*MS. DEAN: A. It would depend on--number one, it would depend on company experience, so, some companies may do a lot better in, let's say the first three years than others. Those companies would be able to adjust their rates quicker than some others. So, again, we get back to trying to predict consumer behaviour and how all of this is going to impact those claims costs and, of course, the frequency. Will we have no change, will we have increased frequency, or will we have a frequency drop?<sup>11</sup>*

21. Dr. Fred Lazar (*Associate Professor of economics at the Schulich School of Business*), testified that premiums are unequivocally already too high, and consumers have overpaid. Moreover, the return on equity currently being afforded to insurers is causing a shift of risk to consumers.<sup>12</sup>
22. Oliver Wyman offered that a cap of \$5,000 would result in anywhere from in \$112.00 - \$175.00 average reduction in premium<sup>13</sup>
23. A cap in other jurisdictions has resulted in litigation to determine if a claimant falls within the legislative definition of "minor injury" which would be subject to the cap. This could prove an expensive proposition for consumers. Currently our Courts determine the value of claims, rather than pre-determined legislative definitions. Consumers should maintain their right to access the Court system unencumbered. The imposition of caps will impact adversely on consumers generally.

24. On balance after considering all of the evidence it is difficult to conclude that that the introduction of a cap would be an improvement or translate into long term stable rates for consumers.

### **The \$2,500 Deductible and the Potential for an Optional Increase**

25. Current automobile insurance regulations are as follows:

#### **Deductible on non-pecuniary damage**

6. For the purpose of section 39.1 of the Act, the amount by which the damages to which a plaintiff is entitled in relation to each cause of action for non-pecuniary loss or damage shall be reduced is \$2,500.

26. The deductible as it currently exists means that a claim for pain and suffering resultant from a motor vehicle accident, is subject to the application of a \$2,500 reduction.
27. If a purpose of the current deductible was to stabilize and reduce rates, then that purpose has not been fulfilled. Anecdotally, this deductible is viewed as part of the cost of doing business does not always enter settlement discussions as between insurers and injured parties. The Terms of Reference required a review of the impact on rates of continuing with the current deductible or increasing it.
28. There is varying evidence concerning the profitability of the insurance industry in this province and its long term sustainability. On balance after considering all of the evidence, it is in the best interests of consumers at this juncture to continue with a deductible regime, but one which will ensure reduced and sustainable premiums. A change to the legislation referenced above with an increase in the deductible of up to \$10,000 is therefore recommended.
29. This substantial deductible would be more difficult to disregard and could serve to balance the interests of insurers and consumers, provided that the insurers are committed to premium reduction and long term premium stability. There is evidence a deductible of \$7,500, could result in premium savings of \$45.00. A deductible of \$10,000, could result in premium savings of \$65.00.<sup>14</sup> These savings are not impressive. The industry must offer better.
30. Furthermore, the deductible may be optional. For those consumers who do not want to opt into the legislated deductible, the industry can offer the purchase of an appropriate policy.

## Accident Benefits Coverage (“Section B”)

31. The Board was commissioned to review Section B/Accident Benefits Coverage and the impact on rates with respect to a list of variables.
32. Consumers require a more robust accident benefits regime. Increasing coverage and options in this area does not appear to be contingent upon invoking a cap or deductible. At the June 12 hearings, IBC stated under questioning:<sup>15</sup>

*Mr. WADDEN:*

*Q. Can we just go to page three of your initial submission, I guess that’s the February submission. Under “Consumer Outcomes”, that first paragraph there, just something I wanted to get a better understanding of. If you go about three lines down, it indicates, “Maritime consumers also have access to more medical rehabilitation and disability income benefits”. I’m sort of hooked on the word, “more”, there, can you just elaborate on that a bit more for me? Exactly what does “more” mean? Flush it out for me.*

*MR. STEIN:*

*A. More means a few things. So, the accident benefits limits in, we’ll just focus on the two main ones, medical rehabilitation in Newfoundland and Labrador is \$25,000; in the Maritime provinces it’s \$50,000. Income replacement is, in Newfoundland and Labrador, \$140 per week; in the Maritime provinces, it’s \$250 per week. And then the third thing which we’ve put an emphasis on is Nova Scotia has it and Alberta has it, no other jurisdiction in the Maritimes has it. I use the diagnostic and treatment protocols, which is four people with sprains, strains or whiplash, they get access to pre-approve--they get access to evidence based treatment on a pre-approved basis. So, you don’t have to apply for it, you just go into treatment, the treatments designed to last for, you know, 21 treatment visits or 90 days for physiotherapy, chiropractor, if you need to visit a physician and then, you know, some massage and some acupuncture is also available.*

*MR. WADDEN:*

*Q. Okay. Just to get an understanding of how the two issues are tied together, is it the view of IBC that, for that to happen, for Newfoundlanders to be able to access these, we’ll say added benefits, more robust accident benefits program, is that reliant upon the institution of a cap or could that be done in any event?*

*MR. STEIN:*

*A. **It could be done in any event, of course**, but, you know, adding in more treatment does have a cost and one of the ways of reducing those costs is to, you know, reduce the cash payments on the other end. **(emphasis ours)***

33. The IBC has quite rightly stated that accident benefits in our province enables access to fewer treatment options than in the Maritimes and Alberta. That accident benefits are optional and low is problematic when someone is seriously injured in a collision.<sup>16</sup> NL is the only jurisdiction in

Canada where accident benefits are not mandatory. We concur with IBC's reform proposal as it relates to accident benefits in this province:

1. Make accident benefits mandatory;
2. Enhance medical and rehabilitation benefits to \$50,000 and disability income to \$250 per week;
3. Establish pre-approved evidence-based treatment protocols.

Re. the development of the treatment protocols.

1. The treatment protocols should consist of up to 10 or 21 treatment visits, depending on the injury's seriousness, for up to 90 days, as in Alberta and Nova Scotia;
2. Treatment within the protocols should be pre-approved and the auto insurer should be the first payer;
3. Eligible injuries should be sprains, strains and whiplash, including any clinically associated sequelae, whether physical or psychological in nature, regardless of the injury's seriousness. All people with these injuries should benefit from the pre-approved evidence-based treatment;
4. Also as in Alberta and Nova Scotia, physicians, physiotherapists and chiropractors should be the only health providers eligible to coordinate treatment within the protocols. However, they should be able to use some of the injured person's treatment visits for massage therapy, acupuncture, dental services, psychological services and occupational therapy;
5. All health providers should have to abide by a government-issued fee schedule, modeled after the fee schedules in Alberta and Nova Scotia.<sup>17</sup>

34. Overall, this proposal (which largely mirrors that of Intact) will be less cumbersome for the consumer who needs to avail of the accident benefits regime. Allowing the injured person's insurer to be first payor will enable that individual a shorter path to treatment and the ability to in all likelihood deal with only one insurer. Moreover, an increase in accident benefits coverage will finally allow for an increase in what has been a dismal level of disability income (\$140/week).

35. Implementation of a new accident benefits regime while beneficial to the consumer, will not be without its challenges. As confirmed during the testimony of Viivi Riis (Registered Physiotherapist with a master's degree in Rehabilitation Science) it will require collaboration between government and various stakeholders:

*So, the government pulls together stakeholders prior to implementation, discusses with stakeholders what the plans are for implementation. So, for example, the medical association, the chiropractic association, the physiotherapy association, they could then convey this information back to their members prior to implementation. Most of these associations also have private practice groups which are the people that most typically treat auto collisions and so, these private practice groups would get more and more involved. The insurance industry would also be considered a stakeholder and would be given preliminary information and my experience has been government pulls these stakeholders together. I have worked with all stakeholder groups to produce training and we had insurance adjusters, health care providers and actually lawyers, plaintiff lawyers, in the same room. So, we all heard the same information. A lot of questions, good questions were raised which gave guidance to the government in terms of where do we need to issue interpretive bulletins to clarify the intent of the new regulation. So, that's what we've done in the past. And as I also mentioned earlier, in Alberta, we followed up with monthly stakeholder conversations where we shared what's working, what's not working. So, insurance companies would call me and say "you know, we've got chiropractors and they're always trying to put in for 30 visits for temporomandibular joint". I'd contact the registrar of the College of Chiropractors in Alberta and say "is this reasonable practice?" The registrar would say "well, not really. I'll talk to them." Or the health – a physiotherapist would call the physiotherapy association and say "this adjuster refuses to approve any of my recommendations for this treatment" and the physiotherapy person would contact me and I'd talk to the insurance company and say – I try to give them information about why this is perhaps not a reasonable approach or a supportable approach. (12:30 p.m.) So, we did a lot of very casual back and forth without having to go through disputes and engaging lawyers in the early stage of a process. So, I personally thought that was really good and I know in conversations I've had with other stakeholder groups, they also felt that worked really well.<sup>18</sup>*

It is worth noting that notwithstanding what appears to be the general consensus amongst those involved in this review that mandatory accident benefits is a sensible reform, most vehicle owners (94.6%) currently avail of the coverage. The transition to a mandatory requirement is not likely to have an impact on industry premiums, losses or profitability.<sup>19</sup>

### **Direct Compensation for Physical Damage**

36. We agree with the positions put forward by Intact and the Insurance Brokers Association of Newfoundland ("IBAN") in this regard. Indeed, there does not seem to have been any debate about this particular issue at the hearings. Direct Compensation for Property Damage allows drivers to be compensated by *their own* insurer for property damages resulting from a collision caused by another party. Currently, consumers do not have the option of dealing with their own insurer for this aspect of a claim following an accident. Rather consumers currently must often

deal with another party's insurer. This change represents a streamlined process for the consumer, who will have the advantage of dealing with a representative of a familiar insurance company. It should allow the claims process to function more efficiently, resulting in an expeditious compensation process. We understand this recommendation to be a "cost neutral" measure.<sup>20</sup>

## **Uninsured Automobile Coverage ("Section D") & the Problem of Uninsured Drivers**

37. Uninsured automobile claims frequency is linked to the high percentage of uninsured vehicles in this province. The RNC recorded 1347 insurance coverage violations in 2017.<sup>21</sup> To reduce these types of claims, the number of uninsured vehicles must be reduced.

38. IBAN has noted a practical step for addressing this problem:

*Assigning Licence Plates to Individuals In many provinces - license plates are associated with the individual, not the vehicle. That means that if a person sells a car or buys a new one, they bring their existing license plate with them. In contrast, in Newfoundland and Labrador a plate stays with the car, regardless of owner. Associating a license plate with an individual makes it easier for law enforcement and the Motor Vehicle Registration Division to track those with and without insurance.<sup>22</sup>*

39. There is evidence of a failure in communication between the insurer and Motor Vehicle Registration after a policy has been cancelled. Protocols must be developed to communicate the cancellation of a policy, so that Motor Vehicle Registration is notified forthwith and to ensure this information is passed on to law enforcement. It is noteworthy that recent changes to the Highway Traffic Act impose fines for an inability to produce insurance. This is a good step, however until appropriate measures are taken to notify of policy cancellation these systemic costs will continue unabated.

40. In the 2005 Board Automobile Insurance Review Report to Government this problem was cited but there is no evidence to suggest a solution was subsequently developed.<sup>23</sup>

## **Highway Safety and Automotive Accident Prevention**

41. Special attention needs to be paid to this particular term within the Terms of Reference, as accidents are the real source of issues for all parties.
42. Improving safety and reducing accidents has three main pieces: **(i)** Municipal efforts in accident avoidance and safer roads; **(ii)** Law enforcement efforts including education, awareness, and enforcement, and; **(iii)** Consistent review and improvements to the Highway Traffic Act to ensure appropriate resources are deployed to maintain safety on the roads.

### **(i) Municipal Efforts**

43. The Board received evidence from Garrett Donaher, Transportation Engineer with the City of St. John's (Manager of Transportation Engineering). Mr. Donaher addressed issues concerning traffic safety.

### **Traffic Calming**

44. A traffic calming study is initiated when concerns emerge pertaining to a given area or street. Data is collected by the City consequently on the number of vehicles travelling that street and the rates of speed. There is then a two-step evaluation conducted to determine if traffic calming is an appropriate remedy. Upon completion of the screening process a particular street is scored based on evaluators which include the location and uses of the road, location of sidewalks, schools, and parks. Eligible projects are placed in order of priority base on their score.<sup>24</sup>
45. Once a traffic calming project is initiated, area residents are surveyed and a determination is made as to appropriate measures to reduce volumes of traffic and reduce the speeds.<sup>25</sup>
46. Such measures include "Vertical Deflection", "Horizontal Deflection", and "Restrictions".
47. "Vertical Deflection" is the first of three measures to be considered:



*Effectively, what it means is we're putting a barrier in the road that is going to cause a vehicle to move vertically. So those types of treatments are speed humps and speed cushions primarily. They create a barrier in the road that people want to slow down and proceed over it cautiously.*

*... vertical deflection is one of the most effective tools that we have to affect speed<sup>26</sup>*

48. "Horizontal Deflection" is another criterion. Efforts are designed to cause drivers to shift their path along a particular roadway. Curb extensions are a form of horizontal deflection to narrow the effective asphalt along an area whereby drivers approaching an area perceive increased complexity, causing reduced speed.<sup>27</sup>
49. "Restrictions" are employed to ensure no left turns from a given street, or no entries. These are devised to prevent a certain path of travel and reduce the volume of traffic, consequently reducing risk.<sup>28</sup>

#### **Other Measures**

50. Traffic circles are devised to cause lower speeds because the line of traffic is obstructed by a central island in a circular intersection. As a vehicle proceeds through the traffic circle, the driver must shift his vehicle to complete small turns causing the driver to slow down. Speed is critical in the reaction time in responding to a situation. Also, the lower the speed, the lower the severity of a collision.<sup>29</sup> Traffic circles significantly reduce the "conflict points" which are present in a four-way intersection. Traffic circles have proven successful in the reduction of collisions and their severity.<sup>30</sup>
51. Of the 5214 collisions reported by the RNC in 2016,<sup>31</sup> 811 noted a left turning vehicle manoeuvre as a collision factor.<sup>32</sup> Municipalities can assist the reduction in these accidents by way of access management. Mr. Donaher noted:

*...left turns are the most difficult movement to make through any given intersection. They involve looking at the most different things. At a regular intersection you have two different crosswalks, you have to pay attention to two different directions of traffic. If it's a busy road, then those two different directions of traffic that you're look at might have more than one lane in each direction. You've got the opposing traffic coming towards you as well. So, there's a lot that is going on when you're making a left turn, and that creates a riskier environment. There's more likelihood of something going wrong in a driver's response when they have so many things that they need to be paying attention to at once. So, the concept of access management is to reduce the number of intersections and the complexity of those intersections along a corridor. So, if we have, for*

*example, a busy commercial corridor that has a large number of driveways all along the corridor separated by some major traffic signals, if we can reduce the number of driveways that are between those signals, maybe consolidate them or restrict those driveways to right turns only, so right turning into the driveway or right turning out but not being able to turn left across the road, then we can reduce those riskier left turns and improve the safety overall of that corridor by taking out a large amount of the risk involved.<sup>33</sup>*

52. Transportation Engineer Donaher also referred to the utility of photo enforcement. In other provinces photo enforcement has been implemented and assists in reducing speeds and intersection violations such as running red lights. Photo enforcement is a form of automated enforcement, which, notwithstanding initial costs and legislative changes, would be of significant value in creating safer roads.<sup>34</sup>

### **(ii) Law Enforcement Efforts**

53. On September 27, the Board heard from Inspector Paul Didham, of the Royal Newfoundland Constabulary. Inspector Didham has worked in the Traffic Services Division and most recently has been assigned to Operation Patrol Services. Operation Patrol includes responsibility for Traffic Services. Inspector Didham has provided expert testimony in Courts pertaining to collision reconstruction and impaired driving. Inspector Didham's evidence referenced three main efforts in improving safety and preventing accidents: Education, Awareness, and Enforcement. The RNC's corporate plan notes these three pillars. Each of these pillars were implemented by way of the 2014-2017 RNC Corporate Plan.

#### **Education/Awareness**

54. Education includes educating police officers and the public. Officers in particular are educated on the causes of collisions. The public is engaged by way of active media, including social media. Media advisory groups including local television and radio are employed for messaging. Operations have been devised for targeting various driver infractions including cell phone usage while driving.

#### **Enforcement**

55. Inspector Didham noted:

*the enforcement side is our most effective deterrent to improper and unsafe driving habits<sup>35</sup>*

56. Fatalities are derived from four causes: impaired driving, non-compliance with seatbelt, speeding or aggressive driving, and distracted driving. Between 2013 and 2017, the RNC reported collisions fell from 6284 to 4752 in their jurisdiction. <sup>36</sup>

COLLISIONS - 2013-2017					
ALL JURISDICTIONS					
Reports					
	Property Damage	Non-Reportable Property Damage	Non-Fatal	Fatal	Total
<b>2017</b>	3303	421	1025	3	<b>4752</b>
<b>2016</b>	3560	426	1225	3	<b>5214</b>
<b>2015</b>	3889	410	1277	13	<b>5589</b>
<b>2014</b>	4508	383	1204	5	<b>6100</b>
<b>2013</b>	4720	310	1247	7	<b>6284</b>

The RNC attributes this drop in accidents to the Education, Awareness, and Enforcement pillars implemented by way of the 2014-2017 RNC Corporate Plan.

### Data Monitoring

57. With the introduction of Event Data Recorders police will have a modern enforcement tool. Inspector Didham stated:

*basically an event data recorder, and just to give you a snapshot of it, you know, an airplane has a black box in an airplane. Very similar, vehicles especially newer ... say 2004 and up, all vehicles have a form of an event data recorder or crash data recorder, both are synonymous...they capture very similar information and generally – and when I say generally, it’s pretty much the same with all of these pieces of equipment. What happens is that when a vehicle is involved in a collision, any of the data that happened and it’s usually within the previous five seconds up to the point of collision, so you know, driving down the road doing your 100, five seconds after that you’re involved in a collision, all the data that was available in that computer is stored and that data can include your speed, your seatbelt use, heavy braking, steering. If you’re involved in a collision, your angle of departure, your angle of approach in the collision. So, we can use it investigatively for our files to determine any contributing factors or if there was any offences that were committed. either judicial authorization to obtain that information or consent. So, a lot of cases when you look at our numbers and you see that we have – 2017 we have 4,700 collisions. Why didn’t we have 4,700 downloads or more if there was two vehicles involved. A lot of cases, we didn’t have the authority to get that. So, you know, if we didn’t believe an offence occurred that would satisfy a judge to sign a warrant or someone wouldn’t give us consent. So, that information, when we download it – and I’m just going to use a number, and this is an approximate number, I would say in 2017, we may have downloaded 100-120 cars, vehicles that were involved in a collision. So, really it’s not a very large number when you look at the amount of collisions that our people investigated. However, that data, once it’s stored or downloaded by us and analysed -- we have four officers*

*that are trained in Traffic Services to download and analyse those reports and they can testify to those reports as to what the data means. Now, it's very clear data because it actually says speed at five seconds and it's stored, in a lot of cases, every quarter of a second. It's captured for every quarter of a second....So, it's a very easy form to read. However, we have trained people that can actually come into Court and testify to that. That data is available to anybody outside of the police if you come into possession of the vehicle afterwards. So, if we release a vehicle after a collision, after the investigation is done, we release it to the insurance or to the private owner and they want to go get it downloaded, that information is still stored there.*

*MR. WADDEN:*

*Q. Inspector Didham, you mentioned what this particular apparatus records. You mentioned speeding, braking, steering. We could tell as well if someone at the time of the collision had their seatbelt on?*

*INSPECTOR DIDHAM:*

*A. Yes.*

*MR. WADDEN:*

*Q. Okay. And I appreciate what you're saying it's only used in certain types of collisions, but this data is available in most vehicles, assuming they're 2004 onward. You have four people on the RNC who are trained to extract this data from a vehicle. Any reason why someone outside of the RNC couldn't be trained to do that?*

*INSPECTOR DIDHAM:*

*A. No reason at all.*

*MR. WADDEN:*

*Q. Okay. So, is it fair to say that an insurance company, if they wished to, if they wanted to take something like this on, with the consent of their customers, their consumers, they could do this too? They could get that training?*

*INSPECTOR DIDHAM:*

*A. Presumably, yeah. I'm not an insurance company, but, ... but I don't see any issue with that, no.*

*MR. WADDEN:*

*Q. Okay. But it's a tool that can be used is the point?*

*INSPECTOR DIDHAM:*

*A. Oh yes, certainly.<sup>37</sup>*

58. Data from an event data recorder is underutilized. The release of such data in the event of an accident could be consented to by insureds at the time of purchasing a policy. The data could then be procured, by the insurer via trained staff. Such data could be a significant tool in accident investigation, and moreover much like the telematic system used by Intact, serve as a deterrent

for unsafe driving, as drivers would know that their actions in the moments prior to an accident would be recorded and fully available to the insurer.

### **Other**

59. With societal changes, new issues emerge for consumers and insurers. The implementation of Bill C-45 is one such concern. Law enforcement have been preparing by way of national committee participation and training of officers. Cannabis must be kept out of vehicles. Enforcement will be key.

60. Law enforcement must continue their enforcement strategy, with focused and persistent efforts, so that accident numbers can continue to decrease.

### **(iii) Provincial Government Legislation**

61. In June 2018 the Provincial Government implemented various amendments to the Highway Traffic Act. The amendments were designed to reduce excessive speeding, stunting, and street racing by adding license suspensions and vehicle impoundments as new penalties. These are key changes.

62. The most critical of these amendments is an offence for driving without due care and attention, which carries with it a minimum fine of \$2,000. This may result in the reduction of accidents stemming from distracted driving. The above referenced changes were made to the Highway Traffic Act in consultation with law enforcement. This collaboration ensures continuous improvement in road safety, reduced accidents and distracted driving.

63. Notably, these changes to the Highway Traffic Act were completed in consultation with the RNC, the RCMP, and the Newfoundland and Labrador Association of Fire Services. Such collaboration would be more robust, by ensuring the involvement and contribution of municipalities. This 'Province of Newfoundland and Labrador Highway Traffic Act Committee'<sup>38</sup> is making a positive contribution to resolving safety issues.

**(iv)Other issues – Distracted Driving**

64. It is of interest that of the 5214 collisions reported by the RNC in 2016, none were noted as having distraction by a communication device as a collision factor. For distraction by a communication device to be noted as a factor, it would have to have been reported by those being questioned by police following an accident. The likelihood of a driver admitting to distraction, is obviously low. Anecdotally, however, distracted driving is prevalent in this province.

65. The ways and means of coping with cell phone usage remains a problem. Insurers need to work with the cell phone providers and law enforcement to bring this form of distracted driving to an end.

**Summary/Recommendations**

66. Our Recommendations are contained throughout our submission.



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**Dennis Browne, Q.C .  
Consumer Advocate**

## References

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- <sup>1</sup> Government of NL: <https://www.releases.gov.nl.ca/releases/2007/gs/0125n05principles.htm>
- <sup>2</sup> <http://www.facilityassociation.com>
- <sup>3</sup> See p. 19, Report on Taxi Claims Review by Cameron & Associates, March 20 2018.
- <sup>4</sup> See p.1, 2017 Automobile Insurance Review Additional Information, provided by Facility Association, September 25 2018.
- <sup>5</sup> See p.5, 2017 Automobile Insurance Review Additional Information, provided by Facility Association, September 25 2018.
- <sup>6</sup> RSNL1990 CHAPTER A-22.
- <sup>7</sup> See p.1, 2017 Automobile Insurance Review Additional Information, provided by Facility Association, September 25 2018.
- <sup>8</sup> <https://www.intact.ca/en/personal-insurance/vehicle/car/my-driving-discount/terms-and-conditions.html>
- <sup>9</sup> <http://www.releases.gov.nl.ca/releases/2018/servicentl/0516n01.aspx>
- <sup>10</sup> Also pf potential value is the concept of a 'Risk Sharing Pool', as Recommended by Intact in their Auto Insurance Plan for Newfoundland and Labrador, at p.11:  
<http://www.pub.nl.ca/insurance/2017AutoInsReview/submissions/Intact%20Financial%20Corporation%20-%20Interested%20Party%20&%20Submission%20-%202018-03-20.pdf>
- <sup>11</sup> See p.179-181, hearing transcript, June 12 2018.
- <sup>12</sup> See pp. 130-1; 170-1; 174-5, hearing transcript September 13 2018; Further, it is our view that a 10% ROE target guideline is too high in the present low-interest rare environment.
- <sup>13</sup> See p.3, Oliver Wyman, Minor Injury Reform Cost Estimates – Private Passenger Automobiles – Amended, May 17 2018.
- <sup>14</sup> See p.4, Oliver Wyman, Minor Injury Reform Cost Estimates – Private Passenger Automobiles – Amended, May 17 2018.
- <sup>15</sup> See pp. 167-9, hearing transcript, June 12 2018.
- <sup>16</sup> See p. 9, IBC written submission, February 2018.
- <sup>17</sup> See p. 10, IBC written submission, February 2018.
- <sup>18</sup> See pp. 185-7, hearing transcript, September 12 2018.
- <sup>19</sup> See p.11, Oliver Wyman, Other Coverages Review – Private Passenger Automobiles, April 25 2018.
- <sup>20</sup> See p. 5, IBAN May 2018 submission:  
[http://www.pub.nl.ca/insurance/2017AutoInsReview/submissions/Insurance%20Brokers%20Association%20of%20Newfoundland%20and%20Labrador%20\(IBAN\)%20-%20Submission%20-%202018-05-18.PDF](http://www.pub.nl.ca/insurance/2017AutoInsReview/submissions/Insurance%20Brokers%20Association%20of%20Newfoundland%20and%20Labrador%20(IBAN)%20-%20Submission%20-%202018-05-18.PDF) and See p.8, Auto Insurance Plan for Newfoundland and Labrador:  
<http://www.pub.nl.ca/insurance/2017AutoInsReview/submissions/Intact%20Financial%20Corporation%20-%20Interested%20Party%20&%20Submission%20-%202018-03-20.pdf>
- <sup>21</sup> See the RNC 2017 Juristat report at p.49: <https://www.rnc.gov.nl.ca/wp-content/uploads/2018/08/2017-Juristat-Annual-Report-July-27-2018-FINAL.pdf>
- <sup>22</sup> See pp. 2-3, IBAN May 2018 submission:  
[http://www.pub.nl.ca/insurance/2017AutoInsReview/submissions/Insurance%20Brokers%20Association%20of%20Newfoundland%20and%20Labrador%20\(IBAN\)%20-%20Submission%20-%202018-05-18.PDF](http://www.pub.nl.ca/insurance/2017AutoInsReview/submissions/Insurance%20Brokers%20Association%20of%20Newfoundland%20and%20Labrador%20(IBAN)%20-%20Submission%20-%202018-05-18.PDF)
- <sup>23</sup> See p.82, Public Utilities Board Automobile Insurance Review Report to Government, March 2005:  
<http://www.pub.nl.ca/down/PUBFinalReport-Mar31-05.pdf>
- <sup>24</sup> See pp. 7-9, hearing transcript, September 14 2018.
- <sup>25</sup> See p. 9, hearing transcript, September 14 2018.
- <sup>26</sup> See p.14 and 17, hearing transcript, September 14 2018.
- <sup>27</sup> See pp. 19-20, hearing transcript, September 14 2018.
- <sup>28</sup> See pp. 21-3, hearing transcript, September 14 2018.
- <sup>29</sup> See pp. 26-7, hearing transcript, September 14 2018.
- <sup>30</sup> For further discussion of conflict points, see pp. 27-29, hearing transcript, September 14 2018.

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<sup>31</sup> See the RNC 2016 Juristat report at p.48: <https://www.rnc.gov.nl.ca/wp-content/uploads/2018/02/2016-Annual-Juristat-Report.pdf>

<sup>32</sup> Statistics provided to the Consumer Advocate by the Registrar of Motor Vehicles on 10 July 2018.

<sup>33</sup> See pp. 38-41, hearing transcript, September 14 2018.

<sup>34</sup> See pp. 43-7, hearing transcript, September 14 2018 and; for further discussion re automated enforcement in the City of Edmonton, see [https://www.edmonton.ca/transportation/traffic\\_safety/automated-enforcement.aspx](https://www.edmonton.ca/transportation/traffic_safety/automated-enforcement.aspx)

<sup>35</sup> See p.13, hearing transcript, September 27 2018.

<sup>36</sup> Royal Newfoundland Constabulary Statistical Report, Collisions, 2013-2017.

<sup>37</sup> See pp. 53-8, hearing transcript, September 27 2018.

<sup>38</sup> See p.46, hearing transcript, September 27 2018.