

**INSULT TO
INJURY.CA**
CAMPAIGN TO PROTECT ACCIDENT VICTIMS

April 4, 2018

Via courier and email

Ms. Cheryl Blundon
The Board of Commissioners of Public
Utilities of Newfoundland and Labrador
Auto Insurance Review
120 Torbay Road. P.O. Box 21040
St. John's, A1A 5B2

Re: Public Utilities Board Review into Automobile Insurance

Please find enclosed herewith our Actuary report as provided by Craig A. Allen responding to the Oliver Wyman and Cameron reports filed with the PUB in respect of the above noted matter.

I trust this is satisfactory.

Yours very truly,

INSULT TO INJURY.CA



D. BRADFORD L. WICKS, Q.C.

/do
Enclosure

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April 4, 2018

Ms. Cheryl Blundon
The Board of Commissioners of Public Utilities of Newfoundland and Labrador
Automobile Insurance Review
P.O. Box 21040
St. John's, Newfoundland and Labrador
A1A 5B2

Dear Ms. Blundon,

On August 9, 2017, the Government of Newfoundland and Labrador issued the "Terms of Reference for the Public Utilities Board Review into Automobile Insurance."

Part of Phase I of this review called for Cameron and Associates Insurance Consultants to "conduct an audit of taxi closed claims to determine the causes of poor claims experience, including details regarding the underlying causes of loss and high claims costs incurred, and provide any recommendations to reduce claims costs and reduce rates."

At the request of the Campaign to Protect Accident Victims, I have reviewed the March 20, 2018 report of Cameron & Associates "Report on Taxi Review" ("the Cameron report"), and the March 20, 2018 report of Oliver Wyman "Summary of Taxi Experience in Newfoundland and Labrador" ("the Oliver Wyman report") to the Board of Commissioners of Public Utilities of Newfoundland and Labrador ("the Board"). Based on this review, I make a number of observations for the Board to consider.

I am a consulting actuary, based in Somerville, Massachusetts, and have practiced for more than 30 years in Canada and the U.S. I am a Fellow of the Canadian Institute of Actuaries and a Fellow of the Casualty Actuarial Society.

The Cameron Report put forth the following measures as a means of controlling loss costs:

1. An increase in the deductible applicable to general damages on bodily injury claims.
2. The introduction of a monetary threshold, where the deductible is waived if the injury claim for general damages exceeds the threshold.
3. The introduction of caps on general damages on minor injuries.
4. The introduction of verbal thresholds to restrict entitlement to general damages on bodily injury.

These measures would have the effect for many claimants of reducing available compensation for general damages.

To provide further context, the tables below present frequency, severity per claim, and loss cost per vehicle for third party liability coverage for Facility Association (FA) Taxis, for accident year 2015, as submitted by FA to the Board in its December 23, 2016 Taxi and Limousine Rate Revision Application. These are compared to the corresponding statistics for the industry private passenger vehicles (excluding farm vehicles) and commercial vehicles, as published by General Insurance Statistical Agency (GISA).

2015 Accident Year Results, for FA Taxis Compared to Private Passenger Vehicles (excl. Farm) and Commercial Vehicles,

	Earned Vehicles	Ultimate Claim Count	Ultimate Indemnity	Frequency per 1000 Vehicles	Severity per Claim	Loss Cost per Vehicle
FA Taxis	795	181	\$3,846,775	228	\$21,253	\$4,839
Private Passenger Vehicles	320,014	9,439	\$138,478,794	29	\$14,671	\$433
Commercial Vehicles	29,081	633	\$10,438,348	22	\$16,490	\$359

My comments are as follows:

Comment 1

The measures proposed would apply to tort actions arising from bodily injuries for all motor vehicle accidents in Newfoundland and Labrador, and for many claimants would reduce available compensation for general damages.

It can be seen from the table above that the count of earned vehicles covered by Facility Association in the taxi category in 2015 was 795 vehicles. By contrast, the count of all private passenger vehicles (excluding farm vehicles) that year was 320,014 and the count of commercial vehicles was 29,081. These measures proposed would thus reduce available compensation for accident victims in order to address an issue affecting 795 vehicles out of a population of nearly 350,000 vehicles.

Comment 2

It can be seen from the table above that the greatest discrepancy between taxi loss experience and that for the other classes of business is in claim frequency per vehicle, not in severity. For taxis, the frequency is 228 claims per 1000 vehicles, compared to 29 for private passenger vehicles and 22 for commercial vehicles.

The measures proposed may reduce claim frequency, by eliminating claims that do not meet the deductible or threshold proposed. However, it isn't clear that such measures would significantly decrease the loss cost per vehicle, since the claims eliminated by the threshold will be of lower severity than the average.

Further, these measures will not act to reduce the number of accidents. Thus, there would be an increased number of accident victims who would sustain injuries whose compensation will be limited or barred.

By contrast, measures that would reduce the number of accidents involving taxi drivers, particularly those that reduce the number of severe claims, would potentially have a much larger impact on the loss cost per vehicle.

Further, such accident prevention measures would reduce the number of accident victims, and would thus be of benefit to all stakeholders.

Examples include improved driver education and safety training for taxi drivers, better screening of taxi drivers, and measures to improve vehicle condition and roadworthiness. More comment on possible claims prevention programs is provided in Comment 3 below.

Comment3

Facility Association operates as an automobile insurance market of last resort, for owners or drivers of motor vehicles who are unable to obtain coverage through the voluntary insurance market. The association's mission statement states that it strives to keep its market share as small as possible, so consumers may benefit from the competitive marketplace to the greatest extent possible. Thus, Facility Association actively promotes the movement of its insureds to the competitive market.

Facility Association has been stymied in this aim, with respect to the taxi class of business. According p. 2 of the Oliver Wyman report, approximately 95% of the taxis in Newfoundland and Labrador are insured by Facility Association. That this is the overwhelming share of taxis being covered by Facility Association indicates that taxi drivers and owners are not benefiting from the competitive marketplace.

On November 7, 2014, Shawn Doherty, Senior Vice President Actuarial and Chief Financial Officer of Facility Association, testified to the Board that there may be risks currently covered by Facility Association that would meet the risk appetite of insurers in the competitive market. However, Mr. Doherty cites the following factors that are impeding the movement of these insureds to the competitive market.

- Facility Association itself currently lacks the capability to identify and earmark those risks, to aid its efforts to interest the competitive insurance market in them. The statistical plan mandated for Facility Association restricts the amount of statistical detail available to Facility Association, which limits the ability to identify such risks through statistical analysis. In addition, Facility Association does not have, in house, the expertise to identify such risks in the absence of such statistical detail.
- Insurers in the competitive market may currently have or may be able to develop the capability to identify the risks that would meet their risk appetite. However, there is uncertainty about the volume of business that would meet the insurers' criteria, and whether such a volume would merit the insurers making the effort to take on this business opportunity. The long history of unfavorable claims experience for this class of business has generated doubt about the attractiveness of the opportunity, such that Facility Association hasn't been actively promoting it to the competitive insurance market.

Mr. Doherty suggested that the current state of affairs could improve through an effort initiated by an interested group (an example being the taxi industry) to reduce the frequency of claims or severity of claims. To the extent that such an initiative is demonstrated to improve the claims experience, Mr. Doherty stated that Facility Association would be willing to reflect such improvement in its rates.

Further, such an improvement in overall claims experience could be expected to increase the number of taxi risks that would be attractive to the competitive insurance market, and to increase the confidence of insurers that such risks can be managed. That could be expected to increase the number of insurers interested in this business.

In the current Facility Association market for taxis, the premium for poorer risks is subsidized by the premiums of safer taxi drivers who are also relegated to the market of last resort. The migration of the safest drivers to the competitive market, by reducing this subsidy, can be expected to increase Facility Association premiums for the poorest risks, increasing the economic incentive for them to improve their practices or to exit the taxi business.

An example of an initiative to reduce the frequency and severity of taxi claims, suggested by the Campaign to Protect Accident Victims, could be a driver certification program offered by the government. Such a program might include training standards, taxi driving experience, claims records, and violation tracking. Such a program could provide an easily accessible and third party monitored record in real time.

By increasing the access of superior taxi risks to the competitive market and by improving the risk profiles of other taxi risks in order that they qualify for the competitive market, such a program may reduce the costs of insurance for taxis. At the same time, such a program can be expected to reduce the number and seriousness of accidents and injuries, without limiting or barring compensation to accident victims.

The benefits of an effective program to reduce claim frequency and severity would support the shared interests of the public, the government and the taxi industry. Further, such a program would add an additional economic incentive for taxi drivers to maintain good driving practices in order to remain certified to qualify for better rates in the competitive market.

Comment 4

Ontario's experience may indicate potential pitfalls that arise from verbal thresholds. In his 2007 Civil Justice Reform Project¹, the Honourable Coulter A. Osborne expressed concern about the efficacy of Ontario's verbal threshold in keeping loss costs and automobile premiums under control. In particular, Mr. Osborne expressed concern about the costs of medical-legal reports "incurred by both plaintiffs and insurers in developing evidence relevant to the threshold issue."

Further, Mr. Osborne points out that, in Ontario, the threshold issue is determined simultaneously with other issues in the trial. Thus, in Ontario, if it is determined that the threshold has not been met, the plaintiff is barred from suing – but this is not declared until after the entire trial, with its costs, has been completed.

In addition to these costs, Mr. Osborne raises the access to justice implications of barring recovery by those who do not meet the verbal threshold, and the possibility that economically vulnerable individuals such as "children or the unemployed elderly" might be among those who are denied the ability to sue.

In his 2017 report *Fair Benefits Fairly Delivered, A Review of the Auto Insurance System in Ontario*, David Marshall noted that due to its "more generous accident benefits system Ontario has the highest barriers for access to tort. However, despite this, Ontario still has by far the highest third party liability premium among provinces with a similar distribution system."

In Ontario's no-fault accident benefits system, Mr. Marshall makes the point that the costs of competing medical opinions represent expense that is "not received by the accident victim in benefits."² Further,

¹ Honourable Coulter A. Osborne, Q.C., Civil Justice Reform Project, Section 18, Automobile Negligence Claims, November 2007

² David Marshall, *Fair Benefits Fairly Delivered, A Review of the Auto Insurance System in Ontario*, Final Report, April 11, 2017, p.35

Mr. Marshall describes the process of arriving at a determination of whether or not an accident victim fits the accident benefits coverage definition of catastrophic injury.³ He states that “tens of thousands of dollars, in the range of \$15,000 to \$20,000, are spent by the claimant and the insurer on medical reports to arrive at or challenge a determination.” The magnitude of these costs may or may not be similar to what is required to establish whether an accident victim meets the verbal threshold for the tort remedy. However, the point holds that the costs of establishing and challenging a determination of meeting the threshold is expense that is not received by the accident victim.

Comment 5

In its Executive Summary, the Cameron report states that “taxi rate increases have been attributed to continuously escalating loss costs.” This statement is not supported by statistics on taxi claims experience over the 2012 to 2016 period.

Page 4 of the Oliver Wyman report presents the ultimate number of claims and average claims costs for accident years 2012 through 2016.

Regarding these statistics, the report states that “it appears that the changes from year to year are due to random variation; there is no apparent trend in this data.”

Comment 6

As noted above, the Cameron report proposes the introduction of caps on general damages on minor injuries. The following analysis will suggest that the favorable results seen in other provinces that have adopted caps may be brought about primarily by factors other than the caps.

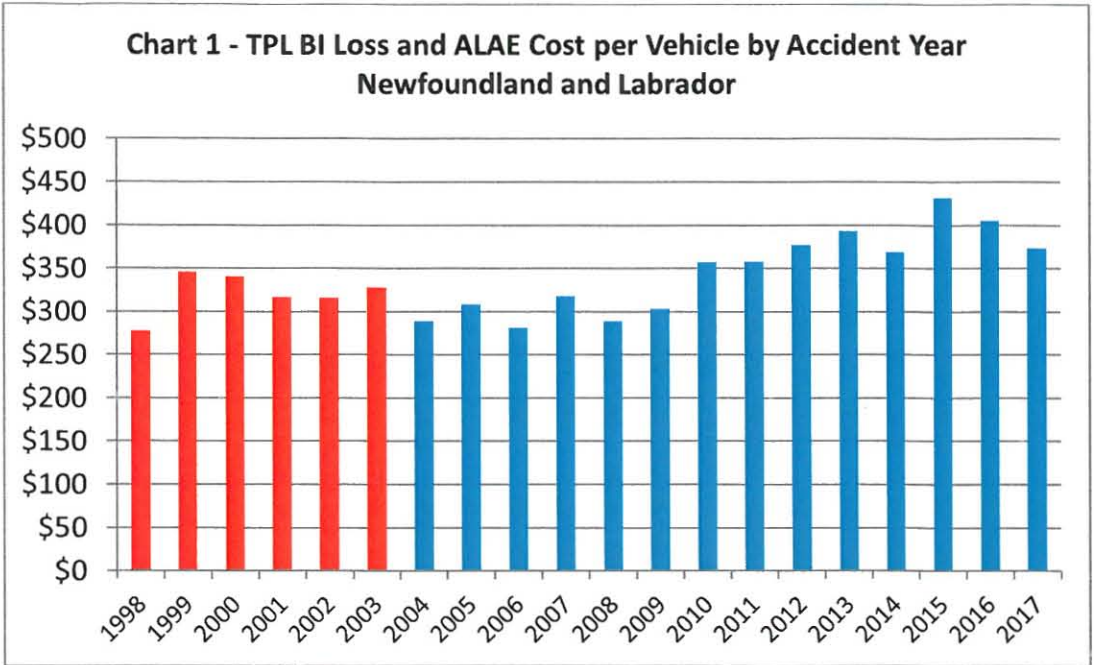
In 2003 and 2004, all four Atlantic provinces introduced reforms, with New Brunswick, Nova Scotia and Prince Edward Island introducing a cap of \$2,500 on general damages on minor injuries while Newfoundland and Labrador introduced a \$2,500 deductible on general damages on minor injuries.

The following charts compare Newfoundland and Labrador with Nova Scotia in their losses and ALAE per vehicle by accident year from 1998 through the first half of 2017. The charts are based on losses, ALAE, earned exposures and loss development factors obtained from GISA.

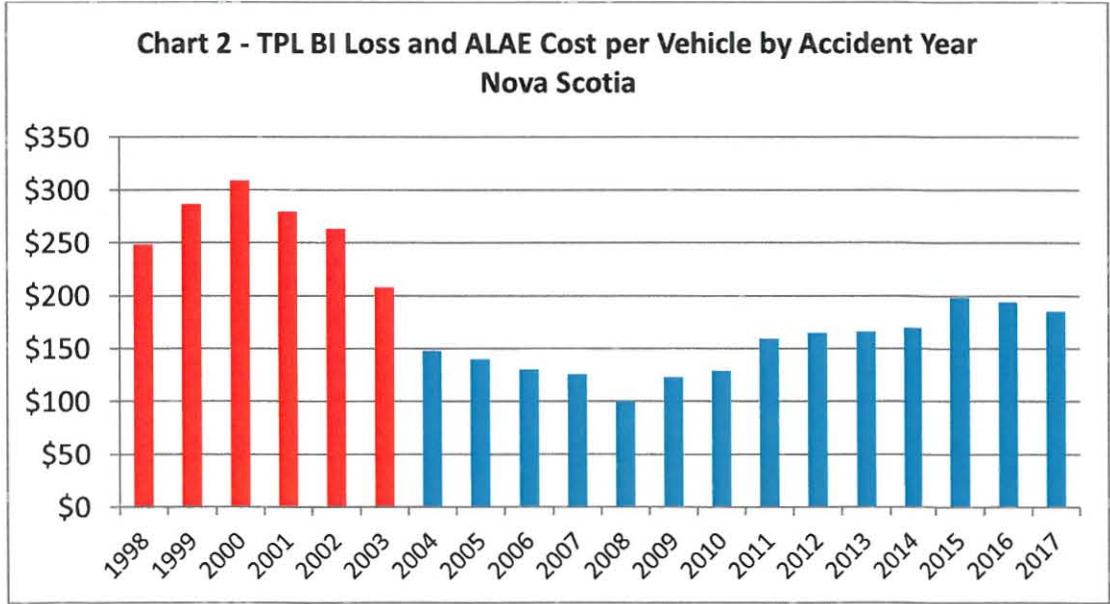
Chart 1 shows loss cost and ALAE per vehicle for Newfoundland and Labrador. Bars in red indicate the pre-reform period of 1998-2003 while bars in blue indicate the post-reform period of 2004-2017.

It can be seen on the chart that the introduction of the deductible in 2004 did not significantly disrupt the year-to-year progression of BI loss and ALAE cost per vehicle.

³ Marshall, 2017, p. 44



For Nova Scotia, Chart 2 shows a steady decline in bodily injury loss and ALAE cost per vehicle after a peak in 2000. However, this decline was well under way at the time the minor injury cap was introduced in 2003. This pattern suggests that the cap may have had only a minor impact on total loss and ALAE costs in Nova Scotia, and that other factors may play a greater role in explaining the reduction in loss and ALAE per vehicle.



I am available at your convenience to discuss these comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Allen', written in a cursive style.

Craig A. Allen, FCIA, FCAS