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**Lundi 15 avril 2013**

**Standing Committee on  
General Government**

Automobile insurance review

**Comité permanent des  
affaires gouvernementales**

Examen de l'assurance-  
automobile

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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON  
GENERAL GOVERNMENT**

**COMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES**

Monday 15 April 2013

Lundi 15 avril 2013

*The committee met at 1400 in room 228.*

**AUTOMOBILE INSURANCE REVIEW  
FINANCIAL SERVICES  
COMMISSION OF ONTARIO**

**The Vice-Chair (Mrs. Donna H. Cansfield):** Ladies and gentlemen, we're going to call the Standing Committee on General Government to order and our first presenter is the Financial Services Commission of Ontario, FSCO. I'll let the gentlemen introduce themselves. Thank you very much for coming. We'll have 10 minutes for presentation and then 10 minutes for each of the parties to have discussion and ask questions.

**Mr. Philip Howell:** Thank you, Madam Chair. My name is Philip Howell. I am the CEO of the Financial Services Commission of Ontario. With me today is Tom Golfetto, executive director of FSCO's auto insurance division.

I'm very pleased to have the opportunity to present today. I am tabling a submission with current statistics and information on ongoing initiatives to control costs, reduce complexity, and prevent fraud and abuse in Ontario's auto insurance system.

I will also be referring in my remarks to a slide deck which I believe has been distributed to committee members.

We appeared before two standing committees in 2012. Today, I'd like to begin by summarizing progress from several key initiatives since our last appearance before SCFEA in July 2012. The Ontario Auto Insurance Anti-Fraud Task Force released its final report this past November. It contained 38 recommendations which, if implemented, will have a significant impact on reducing fraud in the auto insurance system. The government has already moved forward with seven regulatory amendments that implement five of the task force's recommendations.

A government and industry working group is developing a consumer engagement and education strategy on fraud.

In January 2013, FSCO was given the ability to impose administrative monetary penalties in the insurance sector. This enforcement tool will allow us to more efficiently address contraventions of the Insurance Act.

An action plan has been implemented to eliminate the dispute resolution mediation backlog. All files will be

assigned to a mediator by year-end, eliminating the backlog.

Recently, discussion on insurance rates has intensified. Before I address that discussion, a quick reminder of what auto insurance is: Auto insurance is a contract between an insured and an insurer that undertakes to compensate the insured for eligible costs arising from vehicle damage and personal injuries. The contract also undertakes to protect the insured from any legal claims for injuries or damages caused to others. The premiums paid by a driver represent the cost of transferring the risk of loss to the insurer. Claims costs are paid from premium revenues. The higher the claims cost, the higher the total premiums paid.

The challenge for government is designing and regulating the system to maintain a balance between the premiums paid by the province's nine million drivers and providing appropriate compensation for those injured, currently around 64,000 annually, and those who sustain damage to their vehicles.

The government's 2010 reforms were designed to improve the balance in the system. They were implemented to address rising costs, reduce opportunities for fraud and abuse, and provide drivers with more flexibility and choice when choosing coverages.

Early estimates of the accident benefit claims cost in the system show a reduction of approximately \$2 billion in 2011. These estimates reflect the impact of the 2010 reforms. There is clear evidence that the reforms have stabilized rates. In 2012, rates declined an average of 0.26% and decreased further in the first quarter of 2013.

Between 2006 and 2010, insurers' financial health deteriorated significantly. Their claims costs and operating costs were considerably higher than premiums. It was not until 2011 that we started to see some slight improvement on this front. The history and the improvement are shown on slide 1 in the slide deck you have in front of you.

Ontario has a generous accident benefits system. For example, no other province with private insurance delivery has statutory catastrophic accident benefits coverage. Generous benefit levels clearly drive higher claims costs, and as noted earlier, these costs are funded by drivers' premiums. Generous benefit levels also attract fraud and abuse, which contribute to rising claims costs and, therefore, rising premiums. As shown on slide 2, claims costs per vehicle in Ontario are higher than in any other province.

Slide 3, which shows actual average accident benefits claims costs, illustrates the difference more starkly. The difference is that these costs on slide 3 aren't averaged over all the vehicles in the province. The average injury claim made in Ontario in 2011 was about \$29,000, almost four times the average injury claim made in provinces with similar auto insurance markets. Why? Because maximum benefit levels for comparable accident benefit coverages in other provinces are less generous or unavailable.

A disparity is also seen in claims costs in the GTA compared to the rest of Ontario, as shown on slides 4 and 5. The anti-fraud task force identified the significant role that fraud and abuse play in Ontario's auto insurance system. The result is that Ontario's drivers, particularly in the GTA, where fraud is more prevalent, are paying higher premiums.

As noted earlier, claims costs did come down in 2011. In part, this is due to the minor injury guideline brought in with the reforms which capped treatment coverage for minor injuries at \$3,500. Since the vast majority of automobile injuries are minor, having an effective minor injury guideline is essential if consumer claims costs are going to be contained. Equally important is basing guidelines on the best medical evidence. FSCO has engaged a team of scientists to develop an evidence-based minor injury treatment protocol that will inform future MIG guidelines.

However, it must be remembered that accident benefits coverages are not the only driver of insurance costs in Ontario. I am concerned that the claims trend for third party liability bodily injury coverage is increasing. If this upward trend continues, it will offset some of the decrease in accident benefit costs.

I would now like to turn to how auto insurance in Ontario is priced and describe the rate filing and approval process.

First, I want to emphasize that in Ontario, auto insurance legislation requires FSCO to review and approve rates, not to set them. Insurers file rate proposals which FSCO is then required to review to ensure they are just and reasonable, not excessive and not going to impair a company's solvency. Those standards of review are embedded in the legislation.

It's important to recognize that insurance is priced prospectively. That is, rates must reflect an estimate of how much is needed to cover claims in the years ahead. In order to determine rates, insurers need to estimate how much they need to cover their future claims costs and earn a return on their capital.

To reach this estimate, insurance companies look at how past claims costs have developed. An insurer submits proposed rates based on its actuarial assumptions around four key factors: projected claims costs, operating expenses, investment income, and return on equity, or ROE.

It takes companies four to six weeks to put together a rate filing and submit it to FSCO. Company rate filings contain a substantial amount of detailed data, typically

several hundred pages, which FSCO reviews to ensure all actuarial assumptions are reasonable. This review can take from 30 to 90 days, depending on the complexity of the filing.

After FSCO approves a rate filing, legislation requires the insurer to give 45 days' notice to brokers and 30 days' notice to policyholders. In practice, rates typically become effective 60 days after approval. However, the new rate only takes effect for individual consumers on their policy renewal date. Policy renewal dates are spread evenly throughout the year. Therefore, in some cases, it may take up to a year for a consumer to see the impact after a new rate becomes effective.

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I noted ROE is one factor used in reviewing the reasonableness of rates proposed. Currently, a 12% ROE benchmark is used. In pricing insurance, insurers are no different than any other business. A return on capital invested is required for the business to operate and so must be included in the pricing discussion.

Using an ROE benchmark to determine price does not mean that ROE will be achieved. That depends on the accuracy of other estimates of future costs and the effect of competition in the marketplace. However, whether 12% is an appropriate benchmark is a legitimate question.

**The Vice-Chair (Mrs. Donna H. Cansfield):** Mr. Howell, if I may, you have about 30 seconds left.

**Mr. Philip Howell:** Okay. I've got one page—big font. FSCO has retained experts to conduct a review of the ROE benchmark, and I expect to receive a report later this spring.

FSCO also approves a risk classification systems filed by insurers. These set out the factors an insurer can use when pricing an individual's auto insurance premium.

Our regulatory role, mandated by legislation, is to protect the public interest and promote public confidence in the sectors we regulate. I believe the design and operation of the auto insurance system needs to be focused on the interests of the drivers. This means balancing affordability and appropriate levels of coverage. All stakeholders in the system have a responsibility to ensure the auto insurance system remains viable by maintaining that focus.

**The Vice-Chair (Mrs. Donna H. Cansfield):** Thank you very much, sir.

**Mr. Philip Howell:** Thank you, and I look forward to any questions.

**The Vice-Chair (Mrs. Donna H. Cansfield):** We'll start our questions with the Conservatives. Jeff?

**Mr. Jeff Yurek:** Thanks, Phil. Good seeing you out again—very much.

Just a few questions to go—how long do I have? Five minutes you said?

**The Clerk Pro Tem (Mr. Trevor Day):** Ten.

**Mr. Jeff Yurek:** Ten? Perfect.

You've already said basically that you're to review and approve the rates set, so you don't really have the authority to mandate a 15% rate cut across the board.

**Mr. Philip Howell:** No. That would be government's—

**Mr. Jeff Yurek:** That would be a government's chance. If they did give you the authority to implement a 15% rate cut, how would that be implemented?

**Mr. Philip Howell:** It would depend on what legislative changes they made to allow that. We don't have a system that allows that at the moment.

**Mr. Jeff Yurek:** Okay. And based on what you know about the system, would it be feasible to be able to cut rates 15% within a year—or possible?

**Mr. Philip Howell:** My view is that you cannot do that without impairing the—let me back up. It would depend on if the cuts were intended to be undertaken by every company. If every company had to cut rates by 15% next year without any corresponding changes in benefits coverages or anything that would give certainty around future claims cost growth, there would be many companies that would be effectively put out of business or would at least have to go to their investors and ask for a significant infusion of capital in order to remain in business.

**Mr. Jeff Yurek:** Or would you perhaps see product leave high-cost areas and not be available?

**Mr. Philip Howell:** That's not quite as easy to do because, in Ontario, we have a take-all-comers rule. Companies are required to—subject to their risk classification systems, which we approve and define conditions under which they'll insure someone—for example, if someone has a couple of at-fault accident convictions or traffic violations, a company doesn't need to insure them, but subject to those risk classification systems, insurers basically operate under a take-all-comers rule. So once they've got a customer on their books—you can't just arbitrarily walk away from one part of the province.

What will happen is that companies will take a look at new business, and they may start to renegotiate brokers' contracts. They may change their marketing practices to de-emphasize certain areas and limit the intake of new business. For sure that would happen. There would definitely be an availability issue that would emerge.

The second issue that I think would be of considerable concern, and it's important that legislators bear this in mind, is that virtually all of the insurance companies operating in Ontario are incorporated under the federal corporations act. That means that their solvency regulator is OSFI, the federal Office of the Superintendent of Financial Institutions. Their mandate and responsibility is to ensure that companies aren't exposing themselves to risk of failure. Incidentally, as I noted in my remarks, our legislation requires, when we are reviewing rate proposals, that we take that into account as well. We would never approve rates under the current legislation that would impair a company's solvency. But choosing a number and mandating it without taking a look at individual companies' financial positions would certainly raise alarm bells with OSFI. In the past, prior to the 2010 reforms, they were speaking publicly.

What can OSFI do? Well, they can direct a company not to write any new business. There's a range. They can require companies to inject more capital. Investors in many of these companies might choose not to. All of those would affect companies' decisions about operating in Ontario.

I do need to put one important qualification on the take-all-comers rule. The companies could choose to get out of the Ontario market. We do have rules in place to ensure that that exit is relatively smooth. Is it 180 days, Tom? Yes, it's 180 days after they've given notice of exit that that would come into play. The options for the policyholders of those companies are either move to other companies, not knowing whether the rates would be higher or lower, or be forced into the Facility Association, the insurer of last resort, where the highest rates in the province are.

Arbitrary amounts and arbitrary cuts, in my view, would not be healthy to the state of the overall industry and to maintaining a competitive industry.

**Mr. Jeff Yurek:** Basically, as you said, instead of taking an arbitrary number, your best possible solution to the high auto insurance rates in Ontario would be to step back, get all the parties in a room and come up with a plan of action, and then see what the competitive market comes out with at the end of the day with compatible rates.

**Mr. Philip Howell:** I think the best solution right now is to recognize the way that the system operates and to realize what's driving costs and address some of those, instead of taking a view that the only stakeholder in this system who has a responsibility is the insurer, and maybe the government. It's important to look at all the players, look at all the incentives in the system, the way that they're designed, and realize that perhaps the person who is being most affected and most negatively affected is the ordinary driver—most of whom, by the way, will never make a claim in their life. Yet it's their premiums that subsidize some of the excesses, some fraudulent, some not, that have been seen in terms of driving claims costs. I think looking at those, giving some certainty around some of those cost drivers, is the way to give companies comfort around future claims costs.

There's absolutely no question that there is some rate reduction room in the system. It varies quite a lot by company. There are some companies right now, if forced to come in under the existing rules—we would actually insist that they raise their rates. The reason they don't come in is because companies are also conscious of their competitive positions. They like to play a bit of a long game and realize, "Maybe there's other things we can do to control some of these claims costs without coming in." But under the existing legislation, if companies don't have enough rate adequacy to cover estimates of future claims costs, their rates have to go up.

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So any move that required all companies to cut rates I think would be a very dangerous move. As well as that, I think you would find situations where people would just

have less access to insurance and perhaps be forced into the FA, paying much higher rates than they currently are.

**Mr. Jeff Yurek:** That was a good point you made there. I have an Auditor General note: From 2006 to 2010, 293 rate filings were made, and FSCO approved a higher-than-requested rate in 10%. So that would be—the reason basically is to cover the costs that are increasing, to cover their future—

**Mr. Philip Howell:** Each one of those cases is going to be a little different, but it's the outcome of this process of a company filing a rate proposal which is underpinned by their own actuaries' estimates of where things are going, and then that's subjected to a review by our actuaries.

The reality is, there's a discussion back and forth—

**The Vice-Chair (Mrs. Donna H. Cansfield):** Thank you very much, Mr. Howell and Mr. Yurek. Mr. Singh?

**Mr. Jagmeet Singh:** Thank you very much. Good afternoon. I just want to touch on a couple of quick points. The coverage that we now have in Ontario post-2010 is not amongst the highest coverage in the country by far. At one point we were probably one of the best coverage packages, but no longer. Would you agree with that statement?

**Mr. Philip Howell:** No.

**Mr. Jagmeet Singh:** Okay. When the—

**Mr. Philip Howell:** Remember, in my remarks I—apples and oranges are important here. I explicitly said in my remarks, in jurisdictions where auto insurance is privately delivered; there are higher coverages in the public auto sector, the provinces that have a public auto insurance system.

**Mr. Jagmeet Singh:** Fair enough. And if you include the public and the private, we're amongst the lower, then, in that case?

**Mr. Philip Howell:** No. And it's apples and oranges. It's not a legitimate competition, and making those points for whatever motivation I think actually undermines the discussion that's needed around the integrity of the product in Ontario.

**Mr. Jagmeet Singh:** Fair enough. You indicated that there's room you see in overall rate reduction in the system, given the changes that were implemented in 2010. You agree with that?

**Mr. Philip Howell:** Yes.

**Mr. Jagmeet Singh:** An average rate reduction would mean that some companies would reduce their rates by more and some companies could reduce their rates less, or an average rate reduction—

**Mr. Philip Howell:** Correct.

**Mr. Jagmeet Singh:** —wouldn't mean that every company reduces their rates by 15%?

**Mr. Philip Howell:** Correct. Well, it depends on the nature of the mandate. I have no idea what the government's thinking would be. Every company reduced by 15%? Would it be an average of 15%? Would it be every company by a lower amount? Would it be an average of a lower amount?

**Mr. Jagmeet Singh:** Thank you. I'm going to ask you some questions about GISA and the GISA loss ratio data that's now available. I'm going to take you through certain questions, and if you agree with my general assertion, please indicate that it's correct. If you don't agree with me, please let me know that I have it wrong.

For those who are new to the committee, GISA is, roughly, a statistical agency with an affiliation to IBC, but the data that GISA—

**Mr. Philip Howell:** No. Could I just describe GISA correctly?

**Mr. Jagmeet Singh:** Yes.

**Mr. Philip Howell:** The provinces that deliver insurance privately all have a requirement in their insurance acts that insurers provide statistical data to them.

**Mr. Jagmeet Singh:** Right.

**Mr. Philip Howell:** It predates me, but I think sometime around 2005 or 2006 those provinces got together and recognized that there'd be a benefit to create a not-for-profit company—

**Mr. Jagmeet Singh:** I like GISA's numbers, so I'm—

**Mr. Philip Howell:** No, no, I'm just explaining what it is. Also, it's true that a separate arm of IBC, not the trade arm, do have a statistical provider. Last year—it was five years, six years, since GISA had started—we undertook a completely open, transparent, competitive review. The IBC statistical service provider won that contract for another five years. So they're independent, but they serve the six superintendents in the provinces.

**Mr. Jagmeet Singh:** That's fine.

The overall loss ratio dropped from 95% in 2009 to 65% in 2011. Would you agree with that statement?

**Mr. Philip Howell:** I'd have to check those numbers. I don't have them off the top of my head.

**Mr. Jagmeet Singh:** Okay. I'll ask you to confirm that if you could at some point, then.

**Mr. Philip Howell:** Yes, sure.

**Mr. Jagmeet Singh:** If that's correct, if I'm correct that they've dropped from 95% in 2009 to 65% in 2011—if that was true, would you agree that that means the industry is paying 65 cents in claims and adjustments costs for every dollar it collects in premiums? That's generally how the loss ratio would work, if that's correct.

**Mr. Philip Howell:** Well, there's several different loss ratios. The combined loss ratio is the one that's relevant, because that looks at premiums earned plus expenses plus investment income, and nets that out against claims costs.

**Mr. Jagmeet Singh:** Okay, that's fine. You agree that, and you've indicated this as well—

**Mr. Philip Howell:** And I'm not sure—in fact, I'm fairly certain the numbers that you're quoting don't include estimates for operating expenses.

**Mr. Jagmeet Singh:** Sure.

Statutory accident benefit payouts declined, because of the 2010 amendments, obviously, from \$3.92 billion in 2010 to \$1.96 billion in 2011, which is about a 50% drop in one year. Is that fair to say?

**Mr. Philip Howell:** There was a very substantial drop in the accident benefits coverages, yes.

**Mr. Jagmeet Singh:** Approximately 50%.

**Mr. Philip Howell:** Again, I'd want to confirm that number, but it was substantial.

**Mr. Jagmeet Singh:** Sure.

The industry tells me that the other significant number in calculating the overall costs is something called the expense ratio. This includes commissions, premium tax and other expenses. There seems to be consensus that this amount is about 25%. Do you agree with that?

**Mr. Philip Howell:** We would use that as a notional amount going into a rate review. You have to then look at each company. Some companies are more efficient than others. Some are 20%; some are 30%.

**Mr. Jagmeet Singh:** Sure, okay. That's fine. That's a range, then. So if we took the initial number that you're not sure about, if you took the 65% that I asserted before, and added it to the 25%, we'd get approximately 90%, obviously. If we're using this GISA data in 2011, the auto insurance industry had an overall cost of 90 cents for every dollar it took in in premiums. Does that sound about right to you?

**Mr. Philip Howell:** Tom, do you want to comment on that and the loss ratio?

**Mr. Tom Golfetto:** I'd have to check those numbers, Jagmeet, but by simple math, that would be correct.

**Mr. Jagmeet Singh:** Okay. That sounds good.

So in general, and I've done some rounding up here, but just broadly to get the sense here—I've done all the rounding errors, so if we look at premiums, \$10 billion, benefits, \$6.5 billion, other expenses, \$2.5 billion, before taxes, a profit of about \$1 billion in the industry: Does that sound about right?

**Mr. Philip Howell:** Again, I'd have to confirm, but could I just make an important point on this?

**Mr. Jagmeet Singh:** Yes.

**Mr. Philip Howell:** When you're pricing insurance, it isn't what has happened in the past that matters; it's what's going to happen in the future under the system that we have. Frankly, that's nothing to do with our kind of system. That's the way pricing insurance anywhere works. It's the essence of insurance.

For sure, the 2010 reforms had a dramatic drop in accident benefits, but if you take a look at third party liability claims, you'll see that there's an upward trend there that's somewhat disturbing and there's a lot of evidence that we have seen in the system that with the success of the 2010 reforms in clearing out some of the abuse, a lot of the practitioners are moving into reopening claims or notifying—sorry, taking already open claims and transferring them from an accident benefits claim into a bodily injury claim, because that is the new route to the money, which is through the courts, the tort system.

**Mr. Jagmeet Singh:** Thank you very much, sir. Looking at the Cheng report—are you familiar with the Cheng report that has been released?

**Mr. Philip Howell:** I've seen it, the IBC report you're talking about, yes.

**Mr. Jagmeet Singh:** You indicated there has been about—I'm assuming that there's been about \$2 billion of savings that have occurred, or \$2 billion of profits that have occurred. If the Cheng study indicates—

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**Mr. Philip Howell:** They're not profits; they're reduced claims payouts.

**Mr. Jagmeet Singh:** Sure. The Cheng study indicates that there's about a 28% tax rate reduction, if we use the numbers in the Cheng report. Are you familiar with that number?

**Mr. Philip Howell:** The IBC is appearing after me. You can talk to them about their report and the assumptions they use.

**Mr. Jagmeet Singh:** Sure. Then, long story short, Cheng reports profits—they're indicating it's somewhere around \$263 million. If we use the GISA numbers, we're getting a much higher number. Can you—

**Mr. Philip Howell:** I don't think the GISA numbers you're talking about are profits. They're claims payouts. It's a completely different concept.

**Mr. Jagmeet Singh:** Fair enough. I'll switch channels to another area. You briefly touched on OSFI.

**Mr. Philip Howell:** Yes.

**Mr. Jagmeet Singh:** GISA is the source of data that FSCO uses. I'll read a statement why I think—and I agree with your assertion here that GISA's data is a better tool in setting rates as opposed to OSFI's data. I'll make that assertion by reading a statement from GISA's website:

“The statistical data collected provides information that is used in determining and reviewing rates as well as providing more insight into the costs of insurance. The data captured under the statistical plans is at a finer level of detail (e.g. average costs of claims and the number of claims) than that available through financial reports”—OSFI data—“and is presented on an accident-year basis to allow for an appropriate matching of premiums and claims for determining and reviewing rates.”

That's from the GISA website. In general, would you agree with that statement, that description of the data they're able to collect?

**Mr. Philip Howell:** Yes.

**Mr. Jagmeet Singh:** And this is a statement I'm sure you'll agree with: FSCO relies on GISA in setting the rates.

**Mr. Philip Howell:** That's our source of data that we get from insurers. What we rely on in setting rates, actually, is the detailed data that's provided by each company when they submit a filing.

**Mr. Jagmeet Singh:** Right.

**Mr. Philip Howell:** What the GISA data does is allow us to get aggregate impressions of what's happening to various aspects in the province.

**The Vice-Chair (Mrs. Donna H. Cansfield):** Thank you very much, gentlemen. We'll continue the questioning with Mr. Colle.

**Mr. Mike Colle:** Thank you, Madam Chair. Thank you, Mr. Howell. Here we go again.

I guess the thing is that what we've just heard sort of reminds me of the fact that this is too complicated for the guy or girl trying to drive their car. We're talking about GISA, OSFI, IBC. How can we better explain the insurance product to people? Because right now we've got a situation where the public out there thinks we're going to magically reduce auto insurance rates by 15% by you, Phil Howell, doing it. How are we ever going to get people to understand how auto insurance works so the ordinary person trying to drive through traffic understands the product they have here in Ontario?

**Mr. Philip Howell:** That's a very good question. You're right; it is complex. I will say that if there's a perception in the public that I have the ability to lower insurance rates by 15%—

**Mr. Mike Colle:** They say it's you. You're the guy. You've got to lower them.

**Mr. Philip Howell:**—they vastly misunderstand the powers we have as a regulator.

More seriously, though, I think it underscores the importance of education—one of the reasons we've got this education and fraud awareness strategy work under way—and that's something that has to be ongoing. But, as I said at the conclusion of my remarks, I think all stakeholders, the government and the regulator—us—all have a responsibility to ensure that we place the driver's interest first.

There are two aspects to that interest. One is the fact that insurance is mandatory, so you want to keep it affordable. The second is that you want to ensure that when people are injured, they can get better from those injuries, or when their cars are damaged, they can repair them. It's kind of that simple, in terms of the balance that needs to be struck.

What has happened, I think, is that over time—and the history of the evolution of no-fault in Ontario is probably instructive in this sense—

**Mr. Mike Colle:** We don't want to go into that.

**Mr. Philip Howell:** I'm not going to go into it, but what it's done is create an awful lot of noise around what is a very simple contractual product between an insurer and a company, and you've got to keep that focused.

**Mr. Mike Colle:** That's right. I love keeping it simple. There's a contract that you sign.

The other thing is that what I see happening here is a dramatic shift where you're a regulator regulating private enterprise, basically; now you are going to become more than a regulator. You're going to arbitrarily save 15% in a reduction. Is that going to give you the power, I wonder, to lower the 15% return that the tow truck industry has in this insurance? Are you going to be able to lower the auto body repair industry's profits by 15%? What about the paralegals? Will they have a cut of 15%? Trial lawyers—will they take a 15% cut? Or physiotherapists: Will they take a 15% cut? Medical assessment doctors and a variety of medical professionals: Will they take a 15% cut? Will you have that power? And then the attendant care industry, the insurance industry, the

brokers—will you need the power to ask all of those industry partners to take a 15% reduction so that can be passed on to the Ontario driver?

**Mr. Philip Howell:** Certainly, I don't have those powers. My job is to implement the regulatory legislation in place, and that's what I'll do. Currently I don't have those powers, but you do point to the fact that there are a lot of interests at play here. It isn't just the insurers. There are a lot of people making a lot of money off the insurance product in Ontario, and I think those interests, frankly, are the source of a lot of the noise and the confusion that gets raised around the product, and distracts attention from legislators to focus on what is best for the driver and what's best in the public interest here.

**Mr. Mike Colle:** My colleague has a question.

**The Vice-Chair (Mrs. Donna H. Cansfield):** Mr. Balkissoon.

**Mr. Bas Balkissoon:** Thank you, Madam Chair. I just have two questions, I hope. In this simplistic request of a 15% reduction—you mentioned before that if there's a rate reduction after you have the approval passed on to the insurance company, it takes 60 days. The simplistic resolution that came to the Legislature was to reduce it over the next 12 months. Should this happen politically, would you be able to track this so that you'd know exactly where it's at every month as to the reductions that are happening in the industry, or is that just too complex?

**Mr. Philip Howell:** No. If rates come in and rates get approved, there are effective dates. We, in fact, track them right now on a quarterly basis. So it's possible to track. That's not the challenge.

**Mr. Bas Balkissoon:** Okay. A person like myself who has home insurance and another insurance package together with my automobiles, and my insurer gives me a discount: How do you differentiate that I'm benefiting on my car because of the other ones?

**Mr. Philip Howell:** The other products are not regulated in any way. The rate approval is on the auto insurance. They are, as you know, separate policies, so you get from your company how much you're paying on auto. If you have the same company, you'll get a separate bill for your property that tells you how much you're paying. But the focus of rate reduction has all been just on the auto component of that.

**Mr. Bas Balkissoon:** Okay. You started out by saying that there was \$2 billion less in claims between 2010 and 2011.

**Mr. Philip Howell:** In claims payouts, yes.

**Mr. Bas Balkissoon:** Would you say that—

**Mr. Philip Howell:** For accident benefit coverages, which are less than a third of the total coverages that are paid out on auto insurance.

**Mr. Bas Balkissoon:** I understand. Now that you say that the industry is shifting from the medical claims to actually taking them to court and now making it a court process which would take many years to settle—

**Mr. Philip Howell:** That is not quite what I say. It's not the industry. I'm saying that on the legal side, that profession, there are signs. Again, it's just indications from peculiar things that are happening.



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I don't know if the committee's aware that in Ontario, the judicial system, as is common I think in all judicial systems, has an interest charge that's paid for claims that are in the court system. For all claims, that gets reviewed quarterly and it trends pretty close to market rates. For some reason in Ontario, the pre-claim settlement interest rate on personal injury accidents is 5%, which is way out of whack, and that's recently been reinforced by the committee of judges and lawyers and others who have the authority to determine that. So there's obviously a clear incentive, now that the easy money has gone on exploiting the accident benefits side through the changes that came in the 2010 reforms and other anti-fraud measures, to move claims, to see if claims can be taken through the court system—because if it does, as you know, correctly, it typically takes years for these to settle, and at conclusion the money—and the trial lawyers, of course, tend to operate on a contingency-fee basis, so not only do they have an incentive to get a large settlement from the companies, but they're also going to be earning interest from the time that claim is filed at 5%. Who wouldn't want to park their money these days in that—

**Mr. Bas Balkissoon:** So then, would you agree that the \$2 billion really that you've seen in just one year—we should be very cautious because of this change to the court system, and maybe the \$2 billion is not reality yet? We need to experience that a little longer?

**Mr. Philip Howell:** That's a very good point. The \$2 billion and the numbers that are reported through GISA are all estimates because most of these claims are not settled. GISA data is actually on an accident-year basis, unlike OSFI data, which is on a calendar fiscal year basis—one reason why you can't just jump back and forth using the two data sources without realizing that and adjusting appropriately. But what happens with claims costs is the accident year in which it happens, there'll be an estimate—

**The Vice-Chair (Mrs. Donna H. Cansfield):** Thank you very much, Mr. Howell. I am remiss—could you please introduce yourself as well for Hansard?

**Mr. Tom Golfetto:** Certainly. My name is Tom Golfetto and I'm the executive director of the auto insurance division of FSCO.

**The Vice-Chair (Mrs. Donna H. Cansfield):** Thank you very much, gentlemen, for your presentation. It was most insightful.

**Mr. Philip Howell:** Thank you. You have a difficult challenge—

*Interjections.*

**The Vice-Chair (Mrs. Donna H. Cansfield):** I'd like to think we have a difficult challenge.

**Mr. Philip Howell:** Actually, we do.

#### INSURANCE BUREAU OF CANADA

**The Vice-Chair (Mrs. Donna H. Cansfield):** If I may ask the Insurance Bureau of Canada to please come forward.

Thank you very much for attending this meeting. If I could ask you to introduce yourselves. You have 10 minutes for a presentation, and then we'll do a rotation of 10 minutes of questioning.

**Mr. Ralph Palumbo:** Thank you, Madam Chair. I'm Ralph Palumbo, the Ontario vice-president of the Insurance Bureau of Canada. With me here today are Barb Taylor from IBC, the director of policy for Ontario; Joe Cheng of J. S. Cheng and Partners Inc., actuaries; Neil Parkinson, to my right, who's a partner—audit—and the leader of the insurance sector of KPMG; as well as Pete Karageorgos, IBC manager, consumer and industry relations.

Chair, we have some submissions that we've left with the Clerk, so I'll start in right away.

As I was saying last year in this very spot—the last time we appeared here—I'm here to deliver a fairly simple message, and that is that Ontario auto insurance rates are too high. I think we all agree with that. Like others in this province, the industry wants them to come down. The difference of opinion, of course, is how we do that. The difficulty today, frankly—and what I see—is that political parties played politics with auto insurance, and that's really why we're in the mess we're in. Too often, parties resort to simplistic solutions offered in the guise of public policy. A case in point: the recent motion brought by the NDP in the Legislature. That solution—and I use that word loosely—does absolutely nothing to get to the root cause of the problem which, as we all know, is the product itself. Worse than that, they know that, but they won't say it.

To its credit, the government has expressed its commitment to work with the industry, and indeed with all stakeholders, to come to grips with the issues that require attention. A case in point: the government's unwavering commitment to combat fraud and abuse in the system and its willingness to review the FSCO mediation-arbitration system, and more. Frankly, we need to commend the PC Party as well for its support of the anti-fraud task force recommendations and their call for reform of the mediation-arbitration system and the FSCO rate filing system.

One last point: We remain committed to working with all stakeholders and all elected and non-elected officials to do what's necessary to drive down unnecessary claims costs while ensuring that appropriate benefits for injured motorists ensue, and ultimately to make sure we have more affordable auto insurance.

I said I had one message; I actually have another. It is this: Reforming auto insurance for the benefit of Ontarians is a complex undertaking. Politics and political tricks just won't do it this time—just won't. Simple fixes won't suffice. Please, please, it's time to get it right once and for all. Let's not let the public down again. Thank you, Madam Chair.

**The Vice-Chair (Mrs. Donna H. Cansfield):** Thank you very much for your presentation. It was succinct. So we'll start the rotation. We have—

**Mr. Ralph Palumbo:** Sorry, I should say—

**The Vice-Chair (Mrs. Donna H. Cansfield):** That's okay.

**Mr. Ralph Palumbo:** Before you do that, if you wouldn't mind, we have actuaries who have prepared two reports that I know have been distributed, and they want to make some comments. Before they do that, I'll turn it over to Barb Taylor for a moment.

**Ms. Barb Taylor:** I just wanted to say that ICB has commissioned two independent analyses of the Ontario private passenger results for the past five years. Both reports are based on publicly available financial data reported to the federal and provincial financial service regulator based on annual returns to OSFI forms P&C-1 and P&C-2.

The reports demonstrate that the insurance industry was in a severe loss situation due to inadequate rates prior to the reform. There was a small gain in 2011 and a modest gain in 2012. Both reports showed underwriting losses for all five years. These results show that the 15% premium reduction being called for would basically exceed any profits the industry had made and put the industry in a loss situation.

I'm going to hand it over to Neil from KPMG to give a quick analysis of his report.

**Mr. Neil Parkinson:** Thanks very much, Ms. Taylor. As mentioned, my name is Neil Parkinson. I'm a chartered accountant, a fellow of the Institute of Chartered Accountants of Ontario and leader of KPMG's insurance practice. Also with me I have a colleague, Houston Cheng, a fellow of the Canadian Institute of Actuaries. Together we were the principal authors of the report that was referred to as being available, which was an analysis of Ontario private passenger automobile results for 2008 to 2012, as commissioned by the Insurance Bureau of Canada.

As mentioned, our analysis covers the years 2008 through 2012 and extracts results on the Ontario automobile insurance product from publicly available filings. As mentioned, it came from returns that were filed with OSFI, the Office of the Superintendent of Financial Institutions Canada, as well as all the other provincial regulators in the country. It's important to note, too, that those annual financial statements and returns include the audited financial statements for all the individual companies, detailed analysis of the premiums and claims for those years, together with an independent auditor's report and a report of their appointed actuary on the insurance liabilities.

Those financial statistics allow us to see total Ontario auto insurance results separately for all years in the period. Indeed, as has been mentioned, industry results do show sharp reductions in claims costs in 2011 and 2012 that came, obviously, after substantial losses in 2008 to 2010, where there were significant claims costs and underwriting losses, peaking at an underwriting loss of \$3.1 billion before investment income in 2010.

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With the introduction of changes in the automobile insurance product for policies issued on or after September 1, 2010, savings began to appear in the system and, in fact, costs declined sharply. They were lower fully by

\$1.6 billion just on a straightforward calendar-year-to-calendar-year basis between full year 2010 to 2012. So it does appear that certainly, allowing for the fact that it's not easy to pick out how much of that result actually started to show as savings in the last four months of 2010, there were very substantial changes, and it doesn't seem inconsistent at all with some of the comments that have been made about \$2 billion in savings.

As a result, with those claims costs reductions, the underwriting losses for this product were substantially reduced, but not eliminated, to \$655 million in 2012. When we say "underwriting loss" here, we're talking about premiums less claims and expenses, and prior to any investment income. When you allocate investment income to it, the industry has achieved a small and positive return for 2012: about 3.3%. Effectively, it was break even in 2011.

So despite those improvements and results, which are no doubt welcome to people in the industry, those returns on equity remain well below the pricing limits imposed by FSCO and, indeed, what you would expect for equity returns in most other industries.

One last comment from me: The pre-tax profit reported in the 2012 private passenger auto numbers amounted to about 3.6% of premiums. Putting that in context, that's about how much profit there is left. If you were to reduce premiums by about 3.6%, it would basically have eliminated the profit in 2012. So, unless accompanied by other changes in the costs of the system, claims or otherwise, that's where you're at.

I note that another report with similar conclusions, broadly speaking, was prepared by Joseph Cheng of J.S. Cheng and Partners, and I'd now like to pass things over to Mr. Cheng.

**Mr. Joseph Cheng:** Thank you. I will try to make this simple. In the insurance business, you collect 100 units of premium and you invest the funds together with the capital deployed. You earn 10 units of investment income, for a total revenue of 110, and you pay out claims and expenses of 102, leaving you with eight units of pre-tax profit. You pay two units of tax; all you've got is six. On average, this is what happens, but in any given year you could have a loss or you could have a gain much larger than your target.

In 2010, the industry happened to have one of the worst years, so it incurred roughly minus 10 instead of plus 6. In comes the auto reform and the claim costs drop by roughly \$2 billion. This turned the loss from minus 10 to plus 2. That's the insurance business. I hope this is simple enough.

**The Vice-Chair (Mrs. Donna H. Cansfield):** Thank you very much, Mr. Cheng. I think that was the first time I actually understood an actuary.

**Mr. Joseph Cheng:** Thank you.

**The Vice-Chair (Mrs. Donna H. Cansfield):** Thank you very much for your presentation. Ladies and gentlemen, we'll pass it to Mr. Singh.

**Mr. Jagmeet Singh:** Thank you very much. I have a question beginning with a statement from the GISA

website. I'll be asking you to compare GISA data with OSFI data, just so you know where I'm headed with this. The GISA website states—and I'm going to read this verbatim from the website:

“The statistical data collected provides information that is used in determining and reviewing rates as well as providing more insight into the costs of insurance. The data captured under the statistical plans is at a finer level of detail (e.g. average costs of claims and the number of claims) than that available through financial reports”—OSFI data—“and is presented on an accident-year basis to allow for an appropriate matching of premiums and claims for determining and reviewing rates.” That's a statement from the GISA website.

As far as you're aware, FSCO relies on GISA in setting its rates, or it relies on GISA-type data. Do you agree with that statement?

**Mr. Joseph Cheng:** I think that GISA data is good in all of the ways that you described. It certainly is suitable to establish loss trends in the industry. However, to measure profitability, it is lacking a lot of features. First of all, it is on a undiscounted basis, as if a dollar paid today is exactly the same as one dollar paid in 10 years. As I described earlier—

**Mr. Jagmeet Singh:** Sorry, just to pause you for one moment: I'll be interested in hearing your remarks on these other issues. I have limited time and a limited number of questions, so if you could just answer my question that FSCO, as far as you are aware, relies on GISA for setting its rates—or GISA-like data for setting its rates. Are you aware of that? Or if you're not, that's okay; we can move on to the other area.

**Mr. Joseph Cheng:** Well, I'm not fully aware of what FSCO is relying on.

**Mr. Jagmeet Singh:** That's fine. This might be something you might be able to answer more accurately, because this will be directly to your actuarial experience and this is something that you did use in both of your reports—you relied on OSFI. We've consulted with an actuary, and the actuary indicated that this is their assessment of OSFI: “The financial year data used by OSFI will include a higher bulk reserve than the more accurate accident-year data used by GISA. This error estimate contained in the bulk reserve used by the IBC studies does not have any relation to the actual claim costs and should not be considered as a part of the claims when a more accurate estimate (used in the GISA data) is available.”

That's something I think you can provide your input on, and your opinion on that statement.

**Mr. Joseph Cheng:** I'm not sure where your question is leading.

**Mr. Jagmeet Singh:** Just to the truth. Nothing more than the truth, my friend.

**Mr. Joseph Cheng:** GISA is just a starting point. It's not the final answer. In my example, when you have premium less claims, the GISA number is not claims per se. It's just the first step to arrive at the claims. You cannot use the first step and assume that's the same as the last step for claims purposes.

**Mr. Neil Parkinson:** Sorry, if I might add another comment from my perspective on that, and that is that, first of all, Mr. Howell did refer in his remarks to the GISA data, but I don't think he said he exclusively relied on it. I think he also made reference to the use of a wide range of data, including consideration of the solvency of the companies, so I would say that GISA was certainly used.

As to its superiority or inferiority with respect to OSFI data, it's important to realize a few important things about it. First of all, the GISA data comes in as a bucket—the same claims data that's used by the companies to establish their reserves go in the OSFI data. Just the analysis is different, and it doesn't necessarily include all the costs that are included in the OSFI statements.

Secondarily, the data that's provided by each company is analyzed very close to the coal face for the individual company, expertized by the appointed actuary of that company and its auditor. So that's something that happens on an aggregate basis only.

Thirdly, the GISA data itself is not immutable and does change over time; I think you are looking at 2011 data made available in July or thereabouts of 2012. Since that time, as you might expect, that data will mature and is, in fact, as I understand it, beginning to show further adverse development from the numbers initially reported.

**Mr. Jagmeet Singh:** Thank you very much. Actually, speaking of costs, I think it's important to note—

*Interjection.*

**Mr. Jagmeet Singh:** I'll come to a point where I'm going to ask you to compare the differences, but just talking about costs and the difference between the GISA data and OSFI data, would you agree that the OSFI data that you used in your study includes a number of accounting practices that vary from business to business that essentially reduce the profits for tax purposes—strategically and fully legitimately, but the OSFI data includes different accounting techniques and strategies that are used for tax planning, so that the profits that would be returned under OSFI would be different because of accounting procedures that each company is entitled to use. Do you agree with that statement?

**Mr. Neil Parkinson:** I would agree that there are differences; I would disagree with the characterization of the motivations, like that it's for tax planning purposes or anything like that. I think that it follows the generally accepted accounting principles and standards of practice of the Canadian Institute of Actuaries.

**Mr. Jagmeet Singh:** I'm just going to compare; when I look at GISA numbers compared to the OSFI numbers, I get \$1.44 billion in profits using GISA numbers and \$263 million looking at Cheng numbers. Do you agree that there's almost a \$1.2-billion difference between the two?

**Mr. Joseph Cheng:** I'm not aware that using the GISA number can derive a profit figure, but also I disagree that the GISA number always has a lower claims value than the OSFI data. I don't think that that can be a blanket statement. It all depends on the interest rate at the

time and, as I said repeatedly, investment income is the major source of profit for insurance companies. Ignoring investment income in the GISA figure—just throw it as a non-starter; it cannot be used to measure profitability.

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**Mr. Jagmeet Singh:** Fair comment. My last comment is just that I looked at the reports, both by KPMG and JSCP. If you look at the return on equity year by year, in 2011 there was a significant difference between both your reports. One report says 2.6%; the other report says 0.2%. One report says 4.9% and the other says 3.3%, comparing 2011 to 2012. In fact, at the end of the day, when you look at the increase or decreasing claims costs from 2012 and 2011, we get plus \$300 million for JSCP and minus \$198 million within your own—you're using the exact, same data, and you're coming up with very, very significantly different numbers. I was just confused by that result; your numbers are absolutely different between two companies, looking at the same data.

**Mr. Neil Parkinson:** I'd be happy to answer. From my perspective, if you look at the differences in methodology and assumptions, I think one of the largest—if not the largest—differences between the two is that there is a difference in the basis of allocating investment income. I think Mr. Cheng's is principally driven off premiums; ours is driven off capital and claims reserves. So there is a difference in investment income; there are some other differences in allocation and estimates.

I think it's probably most relevant to say that quite apart from those differences in allocations and estimates, you get broadly the same kind of conclusion in terms of the pattern.

**Mr. Jagmeet Singh:** I'll just challenge you on that one point—

*Interjection.*

**Mr. Jagmeet Singh:** I'll just challenge you on this one point, and both of you can answer this. You essentially get an absolutely different picture. One says there's a loss and one says there's a significant claims decrease, and one says there's a significant claims increase. One is a \$300-million increase, and one is a \$198-million decrease. I mean, that's totally different. You're absolutely different. I'm just wondering why. How can we rely on these reports when they're absolutely different? One is saying a loss, and one is saying an increase.

**Mr. Joseph Cheng:** The investment income side, we noted, included unrealized gain or loss from the investment; that is, if an insurance company buys a security for 100 and it becomes 101 next year, we count that as profit, whereas I believe, in the KPMG report, it does not. So, we actually look at all sources of income—just like your RSP account; if you gain in value you didn't sell it—but we count that as a profit in our calculation.

**Mr. Jagmeet Singh:** Just one final point of clarification. When I indicated the \$1.44 billion that I assessed using the GISA data, we included investment income as well as premium income and looked at costs from the claims side and assessed that that was a \$1.44-billion profit, using both investment income and premium income.

I'd invite you to maybe go back and review, using GISA, if you can find—there's a significant difference in terms of the profits we've arrived at and the profits you're posting in your reports.

**Mr. Joseph Cheng:** I would be happy if you have a report. Then I can comment. I don't know the numbers you just suggested.

**Mr. Jagmeet Singh:** Sure. At the end of the day, though, you would agree with me that this is very enlightening in terms of—

**The Vice-Chair (Mrs. Donna H. Cansfield):** Thank you very much. We'll have to leave that for the next. I turn to Mr. Colle or Mr. Balkissoon.

**Mr. Mike Colle:** Okay. I ask the Chairman to keep a list of all the acronyms used, so that at the end of the day we get an update on what they all mean.

The question I have: Is there any other province besides the provinces that have public auto insurance that has a regulator that sets—not reviews or approves—the rates? To your knowledge, because you're right across Canada, is there another province that sets rates? Could you find that out, anyway? Maybe research can find that out.

**Ms. Barb Taylor:** We can look into that, but as far as I'm aware, none of the privately run provinces have any rate setting.

**Mr. Mike Colle:** If we can get the final determination, we'd appreciate that.

Fraud across Canada on the auto insurance side: Is there any measurement of the level of fraud in Canadian provinces? Are we in Ontario out of whack with fraud levels in the other provinces?

**Mr. Ralph Palumbo:** Absolutely. This is the mecca of fraud in Canada, and more particularly in the GTA. This is where the money is. This is where the fraudsters and those who abuse the process and the system come to operate, absolutely.

**Ms. Barb Taylor:** And KPMG did a recent study for the anti-fraud task force that measured up to about \$1.6 billion a year in fraud.

**Mr. Mike Colle:** Okay. What about the area of third party liability claims? Are we about the national average in this level of liability activity, or are there more claims on that side in Ontario than in other jurisdictions?

**Ms. Barb Taylor:** If you're talking third party liability, you're talking about property damage claims, the number of accidents, as well as—

**Mr. Mike Colle:** Accidents, property, the whole thing.

**Ms. Barb Taylor:** Okay. Definitely the average numbers are higher in Ontario than they are in other provinces for the bodily injury claims.

**Mr. Mike Colle:** Okay. Now, you're the insurance companies. You deal with all these appraisers, assessors, physiotherapists, Hells Angels—you deal with them all. The question is, why can't you go to all these people who deal with auto insurance and tell them, "Listen, we've got the provincial government on our back. They want a 15% reduction"? Why wouldn't you go to the tow truck

industry, the people who do auto body—because you deal with auto body repair; you have to prove the auto body repair claim—the paralegals, the lawyers, the medical assessors—you know, there used to be the old Mad Magazine thing about Spy versus Spy. You get one assessor, then you get another assessor, then you get another assessor. You get about 20 assessments, and the guy's got a pinched nerve in his shoulder. Can't you tell those 20 assessors, "Listen, we're going to cut you down 15%"? Can't you tell all those industry partners, "Everybody's got to take a 15% cut because we've been told by the government we've got to cut 15%"? Can't you do that?

**Mr. Ralph Palumbo:** We could. Ask the folks behind us when they come to testify whether they'd do it; I doubt it.

If the NDP motion is actually made into legislation, you're going to do that to the industry, but do you think these folks are going to agree to do that unilaterally? Of course not. They're not going to. They're not going to listen to us; they never do. The only ones who do work well with us, frankly, are the brokers.

**Mr. Mike Colle:** But can't you tell the auto body repair industry, "Listen, all our claims last year were this much. They're excessive, and they're all going down 15% next year or you don't do business with us"?

**Mr. Ralph Palumbo:** Well, those are arrangements that can be made between a company and the people who they contract with, absolutely. But the difficulty is, those people expect to be paid quite fairly; they do. If you just arbitrarily cut 15%, you're going to find that there are people who just aren't going to help you out and assess claimants.

**Mr. Mike Colle:** One final question I have, and then I'll leave it to my colleague. How many people are in Facility right now in Ontario?

**Ms. Barb Taylor:** I think it's about 5%.

**Mr. Mike Colle:** About 5%. And what has that been like? I know that at one time there was just a huge number of people in Facility. Kingsway was making a fortune there. It was covering everybody in Facility. I don't know if Kingsway is still around—

*Interjection.*

**Mr. Mike Colle:** He's not around anymore? Okay.

Can we just get the data on that?

**Ms. Barb Taylor:** We can provide you with the data from the Facility Association to show you the trends.

**Mr. Mike Colle:** And then the trends, if there's a similar body across the country, a Facility where they're at—Facility is auto insurance purgatory, isn't it? Or hell or whatever you want to call it.

**Ms. Barb Taylor:** It's the insurer of last resort.

**Mr. Mike Colle:** Last resort. Okay.

**The Vice-Chair (Mrs. Donna H. Cansfield):** Mr. Balkissoon.

**Mr. Bas Balkissoon:** I have a couple of simple questions.

Experience has it that last year, across the board, no particular insurance company, rates on average came

down slightly as a result of the reforms that the government brought in in 2012. As a result of your fraud task force, there will be some more work done. What is your opinion on the direction that rates will continue to go in, and if you have a general idea of how much, if we did nothing other than the task force report?

1510

**Mr. Ralph Palumbo:** We couldn't tell you what the number would be, but clearly, as I mentioned in my opening statement, the problem remains the product. Of course rates are too high, but the only way you're going to get those rates down is if you take out unnecessary costs in the system, the kinds of things Mr. Colle was talking about, and in order to do that, you have to take a look at the product itself.

In 2010, when the government brought in its reforms, it was essentially to stabilize prices, which frankly it has done. But if you really want to get at rate reductions, then I think the government has to look at some of the things that it has been asked to do. They set up an expert panel on catastrophic injury. There has been a recommendation; I think the government needs to act on it. On fraud, they have an anti-fraud task force. The recommendations—the government needs to act on that.

We've heard about the backlog in mediation arbitration. It's a mess, and there are too many disputes there. The transaction costs are huge, and the government has to do something about that in order to bring costs down. There are all kinds of other issues in terms of some of the provisions of the SABs that have to be looked at, and the rate filing system has to be reformed to give insurers confidence that when they file for rates, they're going to get a fair return. All of that has to be done.

What the numbers are specifically, we can't tell you just yet. There is some work that we've asked some of our actuaries to do, but we don't have those numbers yet. Even so, it's very difficult—you know, how do you put a number on—

**Mr. Bas Balkissoon:** Can you project: slightly down, slightly up?

**Mr. Ralph Palumbo:** I can tell you quite frankly: If the costs come down, rates will come down.

**Mr. Bas Balkissoon:** Okay. Something that is asked of all of us as elected officials continuously—and I would just look for your advice on what you would recommend if you had one. Quite often, residents who live in my riding—and my riding is one of the areas that is labelled high-risk. You have somebody driving five, six years accident-free, claims-free, and I'm a good example, but my rates still keep going up a couple of percentage points every year. How do you explain that to someone who has a clean driving record? What do you recommend they do?

**Ms. Barb Taylor:** One thing that they can do is shop around, because rates do vary between companies, and often a significant amount. Another thing is, you have to take into account the fact that there is inflation. Insurers have to pay more for repair costs and medical costs. Every year, costs go up. So even though we are in a

system where we hope that costs continue to come down, there are other pressures on costs as well, and those will always be there.

**Mr. Bas Balkissoon:** But if you take inflation, it hasn't been very high in the last couple of years. I'll use myself as an example, My vehicle is getting older and older every year, so it doesn't relate to my rate going up. The only explanation most insurers are giving to their clients is, "You happen to live in a particular area." It's unfortunate.

**Ms. Barb Taylor:** When you do look at the cost by area, some particular areas are actually paying less than they would be paying if they were paying the full complement of costs based on the claims costs that are being paid out in those areas. I think we have some actual statistics that we could provide you for your area to see what the actual claims costs in your area are. You might actually find out that you're paying below what you would be paying if the company were to be paying the full amount.

**Mr. Bas Balkissoon:** Okay.

**The Vice-Chair (Mrs. Donna H. Cansfield):** Thank you very much for your presentation. It was excellent.

**Mr. Jeff Yurek:** I'd like to ask—

**The Vice-Chair (Mrs. Donna H. Cansfield):** Oh, yes.

*Interjections.*

**The Vice-Chair (Mrs. Donna H. Cansfield):** I was thinking mental telepathy with Todd here. I'm sorry, Mr. Yurek.

**Mr. Jeff Yurek:** That's fine. Thank you, Chair. Thanks, guys, for coming out. I'm just going to touch on profitability and then we'll touch on something that we should actually be dealing with. What is your better measure of all the data? Excluding your reports, what data should you be using to accurately measure profitability, and explain why?

**Mr. Joseph Cheng:** I would think that the financial data is still the single best source, because that proves whether you make a profit or not. GISA should be used to complement the financial data, but it's not the driving force to determine profitability. In fact, FSCO would look at the financial statement of the firm, in addition to the rate filing too, before they would give the final approval.

**Mr. Jeff Yurek:** Okay.

**Mr. Neil Parkinson:** I think that I would agree with Mr. Cheng's comment on that as well.

**Mr. Jeff Yurek:** Okay. Thank you.

Now, given what has gone on in the last month here—there was a motion passed in the House, supported by two parties, not the PCs, to cut rates 15%. And, of course, to pass the budget, the NDP want it cut within a year. Can you explain to me what's going to happen in your industry if FSCO somehow gets the powers within a year's time to allow you to cut the rates 15%?

**Mr. Joseph Cheng:** If there's a mandated rate reduction, I would think the companies have no choice but to comply. But the first step they would look at is

trying to minimize the damage. There would be a selection process that would select the better, or try to retain, books of the business that you have, and try not to accept new business if you could, notwithstanding the newcomer rules. But there has to be a way to limit the intake of new business, and I think what will happen is the Facility Association population will grow as a result.

Also, there is another mechanism called the risk-sharing pool. That also would grow. But the losses in that sharing pool would be shared by everybody in the industry. So the industry will still suffer. There might be a few companies that can't afford it, and they will have to exit the market.

**Mr. Jeff Yurek:** Would it be fair to say that young drivers and new drivers to our country would be the ones hardest hit at attaining insurance after this cut?

**Mr. Joseph Cheng:** I would think that it is a likely scenario.

**Mr. Jeff Yurek:** Just going on to rate filing, can you talk about some of the costs, direct and indirect, that are involved, that are costed to the insurance industry in processing a rate file change?

**Mr. Joseph Cheng:** The process of a rate filing change involves gathering your own data first and then maybe external data, like GISA. If you use in-house staff, it's probably part of the payroll structure. So it would involve time and not out-of-pocket expenses.

But if there were no rate filing requirements, obviously, you would need less people in the insurance company, and you would pass along the savings in terms of lower rates.

**Mr. Jeff Yurek:** Do you have an industry average at all of what it would cost administratively, or a ballpark figure?

**Mr. Joseph Cheng:** I have no figures to give you.

**Ms. Barb Taylor:** I have some numbers that I've got. They're a bit old, but I've heard from companies that it could cost anywhere between \$60,000 and \$80,000 to do a rate filing. It depends whether it's done in-house or with outside actuaries, but that's the cost of one full rate filing.

**Mr. Jeff Yurek:** So if it's done outside, it would be a little more expensive, I would imagine. Okay.

**Mr. Neil Parkinson:** If I might add to that, of course, one of the factors in the market is that this is not an especially concentrated industry, so there are a lot of smaller companies in the market, including some Ontario-based ones, that basically have to go outside and incur external advisors' costs to do these rate filings. It probably puts more pressure on the cost structure of some of the smaller regional companies and any of the farm mutuals in your area, if you happen to be in a rural area, for instance. But at any of the smaller companies—I'd say that probably the top 10 mostly can do it on their own, but beyond that, there's a real cash cost, not just a strain on internal resources.

**Mr. Jeff Yurek:** Certainly, yes. I'm a rural riding. I have three mutual companies alone in my riding.

Just another thing: I've always been for technology and improving—and maybe this would help the member

opposite with his dilemma with higher rates. Can you talk about usage-based insurance and give us how that would benefit, if we could get that out on the market as soon as we could?

**Mr. Neil Parkinson:** I would just comment that that's a relatively new area up here. It has been explored in more detail in other jurisdictions. I think that if you look at the cost in the system of paying claims, what usage-based does is help you charge premiums more in one place and less in another. So I don't think it would do much to help the total premium bill, but it may just be a matter of charging the right people more premiums, which, if you're a right person, doesn't sound like a very good deal, obviously.

The other thing is, of course, that's a relatively new, relatively high-technology situation that would favour larger companies that might be able to bear the technology burden more, not a straightforward implement.

1520

**Mr. Jeff Yurek:** Would it be beneficial to, say, commercial companies who are having a problem with taxi companies? For instance, the fleets being covered in insurance that's usage-based so they could actually pinpoint on the cabbie who's doing the driving and charge him, probably, more than others?

**Mr. Neil Parkinson:** Possibly; I'm not sure I could really comment definitively.

**Ms. Barb Taylor:** One of the things that usage-based does is to track the types of driving behaviour that might influence potential losses. What it can do is track people who drive at higher speeds, or maybe have more braking—things like that. If it can track problematic driving, then, yes, from that perspective it would be helpful to be able to determine which drivers are better than others.

**Mr. Jeff Yurek:** So that would help Bas, definitely, with his—

**Ms. Barb Taylor:** It would help you differentiate between the better driver and the not.

**Mr. Jeff Yurek:** Okay.

Did you guys have a question to ask? No? How much time do I have left?

**The Vice-Chair (Mrs. Donna H. Cansfield):** You have about four and a half minutes.

**Mr. Jeff Yurek:** Okay. Can you tell me, going back to usage-based—you say it's a relatively new product—how long it would take you to get it on the market? And why isn't it there already?

**Ms. Barb Taylor:** Well, we recently had a user-based symposium, and what we heard from some of the technology people was that it could take upwards of nine months to a year to actually get it implemented. There's a lot of back-end type of work to set up the system. There's technology involved and there's a system of tracking the individual drivers before you can be able to establish what the rates will be, so for about three to six months, the people have to actually put a recorder machine into their car, and then they have to track the driving.

There also has to be a system of setting up the whole data and how the data are going to be used and collected,

and how it can be used. There are also privacy issues related to the user-based insurance. So all that has to be overcome.

One of the biggest hurdles, as well, is rate regulation. To be able to get it filed with FSCO, there's a lot of hurdles involved in that process.

**Mr. Jeff Yurek:** Okay. Anything you wanted to add that you didn't get out in this presentation? I'll give you the rest of my time.

*Interjection.*

**Mr. Jeff Yurek:** Yes, Mike, you can ask.

**Mr. Mike Colle:** Yes, I wanted to ask how many insurance companies operate in Ontario, just for the for the record? Jeff, you could ask.

**Mr. Jeff Yurek:** Yes, how many insurance industries—

**The Vice-Chair (Mrs. Donna H. Cansfield):** Okay, gentlemen. Thank you very much for your presentation. It was excellent.

*Interjections.*

**The Vice-Chair (Mrs. Donna H. Cansfield):** Okay, we're even.

#### INSURANCE BROKERS ASSOCIATION OF ONTARIO

**The Vice-Chair (Mrs. Donna H. Cansfield):** Our next presenters are the Insurance Brokers Association of Ontario. Thank you very much, gentlemen. Would you please introduce yourselves?

**Mr. Rick Orr:** Hi. My name is Rick Orr. I'm chair and past president of the Insurance Brokers Association of Ontario. With me is our CEO, Randy Carroll.

**The Vice-Chair (Mrs. Donna H. Cansfield):** Thank you very much. You have 10 minutes for your presentation, and then we'll begin the rotation with the Liberals.

**Mr. Rick Orr:** On behalf of the IBAO, I would like to thank the Chair, the members, and the staff of the committee for inviting us here today to provide our input into the committee's auto insurance deliberations.

The Insurance Brokers Association of Ontario represents 12,000 insurance brokers who assist six million consumers across the province of Ontario with their auto and property insurance needs. Our priority is to protect the interests of our customers, from the time they purchase a policy through to when they may need an independent advocate in the event of a claim.

Those not too familiar with the insurance industry sometimes mix us up with the insurers themselves and their association, the IBC. While we often work closely with insurers and IBC, we do not represent insurers. We are licensed and educated professionals whose prime concern is that of our customers, the consumer. Insurance is a complex product and we believe that consumers should get and need expert advice tailored to fit their own individual circumstances and needs, in order to ensure that they are properly protected in the event of a loss. As an association, IBAO often differs on certain policy

matters with insurers, as a broker's prime responsibility is to advocate and serve their customer, often giving a very different perspective from that of the companies themselves.

Today, we'd like to talk to you about auto insurance and give you our perspective on the discussion happening here at Queen's Park. We'd also like to discuss the issue of broker independence that is referenced in the motion establishing this committee.

As you all know, auto insurance, and more precisely, the high price of auto insurance premiums, has been a hot topic here at Queen's Park. The third party has made lower premiums one of the conditions that must be satisfied for them to support the government's upcoming budget.

Indeed, the issue of affordable auto insurance for our customers is a prime concern to IBAO and our members. IBAO supports providing lower rates for our customers and is eager to support measures that will do so in a responsible fashion. However, the key word is "responsible."

One of the key drivers of increasing auto premiums has been the growth in accident benefits. Fraud and abuse of the system have been major contributors to this growth. In response, the government established the Auto Insurance Anti-Fraud Task Force in 2011. The task force established delivered its report, and the government released it in November. The report estimates that fraud and abuse of the system is costing Ontario drivers up to \$1.6 billion a year.

IBAO is very supportive of the task force's final report and would like to see its implementation as soon as possible. If government would implement the report and its remaining 31 recommendations, we believe it could help achieve premium reductions. IBAO was encouraged when this year's throne speech made mention of the government's intent to implement the task force's recommendations.

The key recommendations of the report are regulating health clinics' auto insurance business practices; regulating the towing industry; expanding investigative and enforcement authority for the Financial Services Commission of Ontario; and developing a consumer engagement and education strategy.

Many of the recommendations can be implemented by regulation or other means, but the key recommendations requiring health clinics and tow truck regulation require new legislation.

We know that that the passing of required legislation or regulations to implement these recommendations will take time. That is why IBAO is looking to all parties to support the passing of these needed changes as quickly as possible. Ontario consumers simply cannot afford any further delay tackling the fraud problem. It would be most unfortunate if an election were forced this spring, as that would delay action and reductions for an indefinite period of time.

Tackling fraud will help reduce premiums, but there are other measures that we need to talk about and must be tackled immediately to help lower rates.

There is a large backlog in the dispute resolution process at FSCO. It was identified in the 2011 auditor's report. FSCO has been working to fix this. However, a significant backlog still exists, creating uncertainty for legitimate claimants and delaying the efficacy of the 2010 reforms.

Part of the reason rates have not come down faster as a result of the 2010 reforms is that decisions on post-reform cases have not been adjudicated for over two years now. Only in the past month has a case been decided under the new regime. The recent Scarlett decision challenges the prescribed circumstances in the regulation that determines whether a minor injury falls within the minor injury guideline. Regardless of whether you believe in the validity of the decision or not, it underlines our concerns that the massive backlog has prolonged the uncertainty and has delayed decisions by insurers to reduce premiums based on the 2010 reforms.

The other measure that will help reduce auto rates is the implementation of the new catastrophic definition that has been approved by FSCO and is sitting at the Ministry of Finance. The new definition is evidence-based and was put together by an expert panel. Implementing the new cat definition will end uncertainty for insurers, help the catastrophically injured get treatment faster, with less delay, and allow insurers to better price their product.

I'd now like to move to the issue of broker independence. This is a matter that is of fundamental importance to the IBAO. One of the key advantages of the broker channel versus direct writers or agents who represent only one market is that brokers are independent, and we shop the market for our consumers, often checking four or five and often as many as a dozen different companies, picking the best coverage and price for that customer. Any development that would threaten the perception of independence of the broker channel is of serious concern to the IBAO. Historically, the phenomenon of financial linkages between insurance companies and brokerages has always been present.

When we were last here in May 2012, we tabled a 2005 survey entitled *Managing Conflicts of Interest*, conducted by our regulator, the Registered Insurance Brokers of Ontario, or RIBO. We highlighted the main conclusion of the report, that "there does not appear to be any unexpected concentration issues or any 'steering' issues among brokerages that have a business relationship with a particular insurer in Ontario."

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Recognizing that the survey was seven years old, we committed in May to work with RIBO to update that survey. RIBO has conducted a new survey, and they have authorized us to share with the committee its preliminary findings.

We can report to you that the survey did not reveal any significant statistical change underlying the above conclusion. For example, in 2004, 3.5% of brokerages had insurer shareholders; today, it's 1.7%. In 2004, 7.9% of brokerages had loans with insurers; today, that's 9.4%.



In 2004, all categories together, there were 157 brokerage firms that had a financial linkage or business relationship within companies, or 13%. In 2012, there are 153 brokerage firms, worth 13.1%.

These findings provide comfort to IBAO that the broker channel remains robust. However, we are still concerned that insurers with deep pockets are continuing to flex their financial strength to buy and outright own brokerages, resulting in the potential for steerage and the diminishment of independence over time. IBAO will not hesitate to protect the independence of the broker channel, including asking for regulatory intervention.

When RIBO finalizes its survey, they have indicated that they will share the final report with this committee.

With that, I conclude our report and would be happy to take any questions.

**The Vice-Chair (Mrs. Donna H. Cansfield):** Thank you very much. We'll start with Mr. Colle.

**Mr. Mike Colle:** Again, two more acronyms: RIBO and SABs, okay? Just add them to the list.

I just want to ask your advice. The brokers sort of act as an agent between the companies and the driver. Could the role of the broker be expanded? Because this might be a constructive way of getting rid of that hostility that exists between insurance companies and the consumer.

I'll give you an example. I've got an auto body repair shop. The owner is a guy by the name of Rocky, okay? He tells me a customer of his comes into the office and says, "My car was in an accident. It's across the street at the ABC new car dealer. The tow truck guy told me I had to bring it there." It's across the street, remember. Rocky is just on this side, the east side, and it's the west side. He phones the new car dealer and says, "Listen, one of my customers says that you have his car in your lot. He's my customer. He wants me to fix his car." Well, the new car dealer says, "Sorry, Rocky, you can't get the car. If you want the car, it will be a \$2,000 administration fee." Rocky says, "Well, the car is across the street. I'll come over and drive it over. It's driveable." "It doesn't matter. I have the car. You want the business? You want to repair his vehicle? It's 2,000 bucks in an administration fee."

There is an example of where—you know, we talk about fraud. These are not fly-by-night auto dealers or used car dealers; this is a new car dealer. Couldn't a broker somehow be brought in to say, "Listen, you're all going to end up paying for this in higher fees down the road. Can't you work out something where you can drive the car across the street, get the car fixed, make the customer happy, everybody saves money, and there's really speedy work done on the car?" Could that possibly be an expanded role of a broker? You could be phoned up by Rocky or the guy who had his car in a hostage—whatever it is. Could that possibly be a role you could play?

**Mr. Randy Carroll:** Do you want to take the first part?

**Mr. Rick Orr:** I was going to say that I'll take the second part.

**Mr. Randy Carroll:** I think in fairness, we've actually started a fairly robust consumer education campaign, making sure that consumers understand that they have rights under their policy and they have choices in regard to where they can go to get their car fixed so they actually avoid that type of situation from the beginning. We just launched towards the end of last year a mobile application that has a list of preferred auto body shops, so they can actually get directed to a preferred shop from the accident scene, something that consumers have never had before. Our brokers are actually pushing those out to the consumer at no cost. They're free to the consumer. They can download them into their mobile device. So if they're involved in a motor vehicle accident, they can get directed to a—

**Mr. Rick Orr:** Reputable shop.

**Mr. Randy Carroll:** —reputable shop that's close by, that we have—

**Mr. Mike Colle:** But, Randy, the tow truck guy—six foot six—he's saying, "I got your truck. I'm taking it. You try to get it off me."

**Mr. Rick Orr:** And there's the second part to the answer. It's not an issue for the brokerage, as far as we're concerned. It's part of the anti-fraud task force, and one of the key recommendations is regulating the tow truck industry. If we can put more regulation into the tow truck industry that prohibits the payment of fees from body shops, paralegals, health care practitioners for delivery of that vehicle and that passenger to them, then we can reduce the fraud in the province.

**Mr. Mike Colle:** Okay. Another question is, there are two things that I've talked to the IBAO about over the years that I think will help reduce auto insurance rates, and that is the First Chance system. Could you just explain briefly to the other members of the committee how this might benefit drivers and might help reduce rates?

**Mr. Randy Carroll:** The First Chance discount is really for young drivers or new drivers. The way the system works currently—I've got an 18-year-old, so I'll speak to my own circumstance. If my 18-year-old was newly licensed, and did not go through a driver's training program, there's a star classification within rating that is a six-star classification—six being good, one being poor, zero being really, really bad. So my son, newly licensed, would actually get a one-star rate, which is very high. If my son takes driver's training, he would actually get a three-star rate. Under First Chance, my son would actually get a six-star rate, if they took driver's training. So they would actually earn the best of the best rating. If by chance they were involved in an accident, or did not respect the fact that they were getting a good rate for their first opportunity—so they didn't pick up convictions, if they didn't get into an accident, they'd actually keep that rate versus losing it. It's a lot easier for the broker to have a conversation with the consumer telling them why they lost a rate as a result of driving habit versus having somebody come in and start to pay high rates when they can least afford it, and then try to bring those rates down, down, down over time.

First Chance in the Atlantic seems like it's working okay. It's been there for about four years now. It stumbled out of the gate a little bit, but even when you look at the Atlantic provinces, they didn't have some of the caps that are in place today to help them with that program.

**Mr. Mike Colle:** Yes, I think Nova Scotia was—

**Mr. Randy Carroll:** Nova Scotia and New Brunswick. Yes.

**Mr. Mike Colle:** But this also—not only the young driver, but all of the newcomers. I mean, we get 100,000 newcomers coming to Ontario every year, and they get hit with the one-star or zero rating, right?

**Mr. Randy Carroll:** Yes.

**Mr. Mike Colle:** Because no matter whether they drove 20 years in Singapore, they come here and they're treated like a new driver. Is that still the case?

**Mr. Randy Carroll:** For the most part.

**Mr. Rick Orr:** Yes.

**Mr. Mike Colle:** So the First Chance discount might help.

The other old chestnut is this other very tricky issue of credit scoring. Could you just explain the IBAO's position on that, because I know many people—I've put forward private members' bills about this. Essentially, if they don't—the linkage between auto insurance and home insurance. As you know, they say, "Well, we can't use credit scoring to deny you auto insurance, but we can use it because home insurance is not regulated." They'll say, "Well, we will look at your credit scoring because we couple home insurance with auto insurance." So, in a way, they're backdoor credit scoring.

I've had my discussions with the Insurance Bureau of Canada about this. They don't like the idea of banning credit scoring. But could you just explain the benefits of getting rid of this practice of credit scoring and penalizing people?

**Mr. Randy Carroll:** We really encourage consumers to bundle their products. It makes more sense, and they get more discounts that they're able to put their auto insurance with their home insurance. When they're not allowed or able to because they've got poor credit on property, and they're not able to bundle the insurance, their auto insurance rates go up on average by 10% to 15% as a result of that.

So we've got an industry where we've made an informed decision that credit scoring should be banned outright in the usage as it relates to automobile insurance, pricing and underwriting, but we've got an open game on the property side.

You're right: Insurers will—they kind of have a free market in regard to how they manage the property policy and how they manage the property pricing, and if I've got somebody who's got a poor credit risk on the property side, then I can actually get rid of the automobile insurance by pushing the property price up, or I just lose the property. The consumer loses the discount and is paying more for the auto insurance than they should be. So

without a ban on both sides, the consumer's the one who suffers at the end of the day.

**1540**

**Mr. Rick Orr:** So we remain opposed to the use of credit scoring on property or auto insurance. And keep at it, Mike.

**Mr. Mike Colle:** Okay. The other area's about the relationship between the insurance companies and the brokers. There have been issues in the past where if brokers don't play ball, sometimes they won't be, say, given the opportunities to essentially deal with that company because that company might find a way of almost blacklisting a broker who may not be co-operating as they should with the insurance company. How are the issues regarding your availability of providing products from various different companies? Is that area tightening up or is it more wide open? What's happening in that situation?

**Mr. Rick Orr:** Following the 2010 reforms, of which the intent was to stabilize the auto product, the market has really stabilized. Our belief, when we went out and educated 12,000 members in the province, was that the reforms weren't to reduce the cost of auto insurance, they were to stabilize it. If we didn't do something then, it was going to become completely unaffordable. And it did, it achieved that. It achieved a stabilization—

**The Vice-Chair (Mrs. Donna H. Cansfield):** Thank you very much, Mr. Carroll. We'll now pass the questioning to Mr. Yurek.

**Mr. Jeff Yurek:** Thanks, Chair. Thanks, guys, for coming out today. Can you do an overview for me—we all hear about the insurance industry's profit-loss since 2008. How is that reflected with the brokers of Ontario? I'm sure you must have some story to tell; just update us.

**Mr. Rick Orr:** We follow the OSFI numbers; and you're right, from 2008 we read them, as you do, where the profitability was terrible. They were losing billions of dollars in a year and at that time—there was a question asked earlier about the availability of market. There was definitely where insurers were looking write less risk. I believe Facility was asked earlier in the day, and at that time the Facility population was about 14%, 15% of the market. Today—I haven't got the numbers, but it's below 5%. So as the markets stabilized and made more profit, there was more competition, there was more of an open market and consumers were able to get better rates. But that was the ups and the downs of the market. Right now, we're in a stable-ish place and the market—

**Mr. Jeff Yurek:** And how has that affected the broker industry? How have they weathered the storm? What effects have occurred to them?

**Mr. Randy Carroll:** Insurers are writing business openly. We really don't have availability issues at this point in time. There was a swing to improvement in regards to the overall industry performance. We did improve by about 2.8% to 3% on an overall basis. One of the things that we need to really concern ourselves about is availability and affordability. We've got, like Rick said, a Facility pool that's not being abused. So the swing

with what we've seen from the reforms has been positive. We're hopeful that there's some more room there, but there's a lot of uncertainty that needs to be dealt with before we'll actually see that wiggle room start to come towards the consumer, as far as we're concerned.

**Mr. Jeff Yurek:** Now in regard to the motion passed in the Legislature regarding a 15% rate cut, what's your membership saying about that motion?

**Mr. Rick Orr:** They agree that it needs to be a responsible cut; 15% isn't sustainable. The concern that they've got is that it again comes back to market availability. If a 15% cut were put through the industry, you'd see a lot of shenanigans begin to be in play. Back in 2008, if you were a young driver and you went to a number of direct websites, all of a sudden their website would crash. The delays on hold were just unconscionable. We don't want to return to that. We believe that the open market's there, we just need to fix the product and make it better going forward.

**Mr. Randy Carroll:** You'll have a lot of consumers out on the street looking for product. Insurers will respond by trying to figure out where they're profitable and where they can—and I think I heard earlier—actually reduce that risk, and if they have brokers located in areas that are highly populated, or are not as profitable in others, those brokers will lose their contracts. Those brokers will get cancelled. Those consumers will find themselves on the street trying to find rates somewhere. If that consumer had the misfortune of having an accident in the past six years, that rate that was unaffordable will actually go up again because now they're going to try to find a new home at a higher rating than what they had. So you'll see an exodus from the marketplace.

Some insurers can't afford a 15% mandated reduction and they would have to make some informed choices. We'd be back to availability, we'd be back to affordability, and we'd be back to having the Facility pool as our number one choice of market. It was not that long ago we were there; we don't need to go back.

**Mr. Jeff Yurek:** Now, with regards to if the cut went through and the availability of brokers or the brokerages' business as a whole, would they be in jeopardy, you would think?

**Mr. Randy Carroll:** Somewhat, yes.

**Mr. Rick Orr:** Yes. You lose enough market and—as a broker, you've only got a couple of markets left, and they only have so much capital available. Even solvency becomes an issue if you start taking 15% off.

**Mr. Jeff Yurek:** So this could trickle down to job losses outside of just the insurance industry by itself—

**Mr. Rick Orr:** Outside of the companies, down to brokers, yes, for sure.

**Mr. Jeff Yurek:** Okay. What I've learned is that when you want to implement a discount like the young drivers pool, per se, there's a lot of regulatory burden put on the insurance to put out a full rate application to get a process. Would you agree that it would be beneficial to both brokers and drivers as a whole if we could make that process a little less bureaucratic, and open?

**Mr. Rick Orr:** A year ago I would have said no. But in the last budget, administrative and monetary penalties were put in place which allow FSCO, the regulator, to apply the appropriate fine for the appropriate crime against the insurance companies, which makes them much more accountable.

In the old days, it was either a slap on the wrist or criminal charges against the CEO. Now they can apply the correct monetary fine. So I agree. Something like file-and-use would make the marketplace more competitive but still have protection there for the consumer.

**Mr. Randy Carroll:** It would take the cost burden away as well. If you've got an insurer that wants to lower rates, they can; if you've got an insurer that wants to increase rates—you've got to put guidelines around file-and-use to make sure that it's used the right way and not abused. But I totally agree with Rick. With administrative monetary penalties now in place, our comfort level with that going forward is totally different than what it was, and we would support that 100%.

**Mr. Jeff Yurek:** This is more, I guess, an opinion: My concern for Ontarians is this motion that passed in the Legislature, although some on the other side are saying it's symbolic. Either way, it's a motion of a 15% cut. My concern is that from this day forward until whatever happens, insurance companies aren't touching their rates. They've pretty much frozen them from going down any further, and you might actually see an increase because they know an impending 15% is coming their way. We talked to FSCO earlier today; they don't even have the powers yet to do so. So, I mean, by the time they get the powers, the Legislature might have inadvertently hurt the insurance industry with this motion for the next two or three years before things can get in place. Your thoughts?

**Mr. Randy Carroll:** I think you've got three things; two months ago we had two. We had the uncertainty around the cat definition; we had the uncertainty around arbitration and mediation. Now we have the uncertainty about a mandated decrease. I have not talked to an insurer that would voluntarily bring rates forward coming down with the uncertainty hanging over them that they may be mandated to bring it down further.

So I think we have hurt consumers. The sooner we put that discussion behind us, the better we're going to be.

**Mr. Jeff Yurek:** Okay. I'm speaking too close to the mike. I feel like I'm a rock star or something. Sorry.

**Mr. Randy Carroll:** Well, let me tell you—

**Mr. Jeff Yurek:** How much time do I have left here?

**The Vice-Chair (Mrs. Donna H. Cansfield):** A couple of minutes.

**Mr. Jeff Yurek:** A couple of minutes.

Gentlemen, I'll let you add anything you might have missed in your comments. You've got a minute and a bit; just throw whatever you want out.

**Mr. Randy Carroll:** I'll come back and answer a question that you asked earlier that I don't think you got an answer to, and that was around telematics. I think that telematics does have its place today, looking at the

commercial side of the business, but I think we really need to be cautionary going forward as we look at how that's going to affect the consumer, mom and dad, with the driving of their own vehicles. Who owns the data? Does the consumer own the data? Is the data owned by the telematics provider? Is it owned by the insurance company? And making sure that there's access, and open access, to that data.

1550

Currently, if I'm involved in a motor vehicle accident, or even if I'm involved in an accident and I'm unhappy with my insurer, I have the right to go down the street to another insurer, but I can answer a series of questions for that insurer and let them know how I performed in the past. But if I'm using telematics and I don't have access to the data, I can't answer the questions, so I kind of get tied in to one insurer more than what I would like to be.

As we move down that path, I think we need to make better-informed choices from a government's perspective than what we've seen south of the border and making sure that there are consumer protections in place before we get there.

**The Vice-Chair (Mrs. Donna H. Cansfield):** Thank you very much, Mr. Singh?

**Mr. Jagmeet Singh:** Welcome. Thank you for being here. You touched on broker independence briefly. I just want to touch on that as well. You indicated that there could be—and I think that was a very measured and a very thoughtful way of looking at it—an issue and you said that your regulatory body would work to ensure that that didn't become an issue. Maybe you could just describe the potential that could exist and what RIBO could do to prevent that. You touched on it briefly. If you could just expand on that.

**Mr. Randy Carroll:** If I turn back the clock—at the time I think it was 2002—there was a stipulation that insurance brokerages had to be owned 51% by the principal broker. Within some changes in government legislation and regulation, that requirement was removed. What we see now is, we see insurance companies having the ability to own an insurance brokerage 100%. By buying and competing in the open market, I can tell you that my friend here who's trying to compete against those dollars does not have the same pocketbook as an insurance company when they're trying to grow by acquisition.

I think long term it's something that we need to take a further look at because there is a risk if the insurance companies continue to buy and remove the independents from—as the RIBO report said, it's very minimal at this point in time, but I think there is a risk for that to grow. It's something that we should look at.

**Mr. Jagmeet Singh:** You had briefly touched on, in your report, the current shareholding by insurance companies and its impact. Could you describe that right now, what the impact is, if any?

**Mr. Randy Carroll:** Yes. We've got an association that represents 650 insurance brokerages in the province, and we have about 18 brokerages that would be owned in excess of 50%.

**Mr. Jagmeet Singh:** What type of impact has that had so far for consumers, if any?

**Mr. Randy Carroll:** On the consumer side, I'll let Rick speak to it. I'll speak to it from the broker side.

**Mr. Rick Orr:** Most of them do a good job as far as the consumer goes. Most of them still shop the market, provide choice. There's a select few that prefer their own supplier, but even on that, where they've got a different product that fits a specific niche they will use different niche products. I don't think certainly at this point that the consumer is being selected against.

**Mr. Randy Carroll:** The consumer still has the option of either—

**Mr. Rick Orr:** Going somewhere else.

**Mr. Randy Carroll:**—going or staying, right?

**Mr. Rick Orr:** I certainly advertise, "Call me."

**Ms. Teresa J. Armstrong:** I want to get back to the rate effects that we're talking about. For a little bit of history, I want to ask, have you ever seen a rate reduction in your time as a professional broker?

**Mr. Rick Orr:** We had one in—when was it mandated? Was it 2003?

**Mr. Mike Colle:** 2003. Yes.

**Mr. Rick Orr:** Did you do that?

**Mr. Mike Colle:** Yes.

**Ms. Teresa J. Armstrong:** Roughly what was that reduction in rates?

**Mr. Randy Carroll:** I think the mandated request was around 10% and ended up to be around 14%. I listen; I do.

**Ms. Teresa J. Armstrong:** That's my recollection too.

**Mr. Randy Carroll:** Mine as well.

**Ms. Teresa J. Armstrong:** What was the response of consumers to that legislative rate decrease? And can I ask the reason? Do you recall the reason why it was legislated as a decrease?

**Mr. Randy Carroll:** I don't, actually. I can't recall a reason why. It was before I was a broker. Maybe I wasn't paying as much attention as I do today, but I don't know.

**Ms. Teresa J. Armstrong:** The reaction of consumers: What kind of response did you receive?

**Mr. Randy Carroll:** The reaction of any consumer when prices are going down is positive, right? We totally support any initiative that will actually bring prices down. We just have to make sure that we don't put ourselves back into a framework of destabilization. We've actually got things stable now. We can't go back in reverse, right?

**Mr. Rick Orr:** If we could reform the product and have a corresponding rate, that would be—

**Ms. Teresa J. Armstrong:** Did you think people called you and said, "Did I lose coverage?" because your rates went down? Did you have that reaction?

**Mr. Randy Carroll:** I didn't have any of those calls. You?

**Mr. Rick Orr:** You always get the odd call; sure, you do. It's less "Why?"

**Ms. Teresa J. Armstrong:** Yes. “Did I lose something?”

**Mr. Rick Orr:** We’re Canadians; we’re truly cynical people.

**Ms. Teresa J. Armstrong:** “Did you forget to charge me for something?”

**Interjection:** That’s right.

**Ms. Teresa J. Armstrong:** On that premise, in 2010, the accident benefits were reformed to stabilize premiums. Are we in agreement on that? When people got their renewals, their premiums were pretty much—actually, some of them, a lot of them, went up. Very few stayed the same. But all the notices that were being sent out were alerting consumers that their coverages went down.

Between 2003, when the rates went down and they didn’t think they lost any coverage and they were happy—then their rates stayed the same but they were losing that coverage. What kind of reaction did consumers have at that point?

**Mr. Rick Orr:** It was an interesting reaction, because 2010 was the first time that, as an association, we took it upon ourselves and we committed that we would go out, and we took to the road for a month and we did road shows across the province and met with almost every one of our members. So the education that brokers delivered to their consumers was far in excess of any other change that we’ve had in the product, and it generated a lot of phone calls. It generated a lot of discussion about, “What is it that you need? These are what the changes are, but what are your individual circumstances, and what can we do to make sure that you’re protected in the way that you need to be protected?”

**Mr. Randy Carroll:** It was mixed, the feedback that I received from brokers. Some consumers understood the stabilization, and some were irate. It was all over the map.

**Mr. Rick Orr:** Geographically really drove whether your premiums stayed, dropped or increased.

**Ms. Teresa J. Armstrong:** The options that consumers had the choice to purchase: Did you find a lot of consumers purchased those options, or has anyone taken, statistically, what options are being purchased? Because there were drastic reductions in the accident benefits. Your premiums stayed the same or they went up, and if you wanted an option, you paid more. A lot of people felt they were already paying enough. Have those statistics or reports been kind of followed, tracked?

**Mr. Randy Carroll:** They have been tracked, but loosely, I think.

**Ms. Teresa J. Armstrong:** Okay.

**Mr. Randy Carroll:** Our best guess, from broker distribution, is we had an uptake of around 4%.

But it’s really interesting when you go back and take a look: If I had a conversation with a broker whose client base was industrial, where they had good benefits, then the take-up was minimal. But if I went and talked to a rural broker who was dealing with customers who didn’t have benefits afforded to them, the take-up was higher.

**Mr. Rick Orr:** My own brokerage took it upon ourselves to pick up the phone and have a conversation with every one of our clients. My staff wasn’t very happy with me. We had a take-up rate of over 25%.

**Ms. Teresa J. Armstrong:** I’m going to just pass it to Jagmeet. He has one last question.

**Mr. Jagmeet Singh:** Just a couple of quick points.

The product has changed substantially. Caps have been dramatically lowered. People agree, and I think you might agree as well, that by reducing the caps, fraud was significantly reduced as well. Naturally, people who were claiming higher couldn’t claim that amount fraudulently. But as well, legitimately injured people were no longer receiving the significant savings in the industry.

Post 2003-04, there wasn’t a significant decrease in terms of the industry all of a sudden up and leaving the province. With these significant savings, with the significant profit increase in the industry—I mean, given that, a 15% reduction shouldn’t result in anything as drastic as what you suggested when you were asked by my colleague from the Conservative Party, given the change in the product. But in 2003-04, there wasn’t that significant change in the product. I would say it’s a historic change this time.

**Mr. Rick Orr:** It was a different time, and we weren’t talking the same dollars we are today. Today, the market’s concentrated. We’ve got fewer insurers. We’ve seen the numbers and where the profitability is. There are some insurers that can afford to take some rate. There are others that are losing money today. To force another 15% onto them—how do you force an industry to lose money? I can’t imagine why they’d stay in business.

**Mr. Randy Carroll:** And I think a few of the things that we learned from that as well—we did have exodus from insurers, because we had a problem with our Facility pool. Our Facility pool drastically grew. We had to put guidelines in place to make sure that we had all comers that we didn’t have at that time—that we had restrictions on who could actually be placed in the Facility pool and who couldn’t be placed in the Facility pool.

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So I agree with Rick. I think a lot has changed from that point in time to where we are today.

**Mr. Jagmeet Singh:** You see, I’m sure, that some companies are ready. The Co-operators of Guelph is a company that has filed for about a 10% decrease in certain areas, which is a significant decrease, and they filed for it this year, 2013. There are some companies that have recognized that they’re saving a lot of money, and they’re passing those savings on. Some companies haven’t. An average 15% reduction would see some companies that have already reduced reduce it a bit more, and some companies that haven’t reduced at all have to reduce it significantly. But I think an average reduction wouldn’t require every company to do it the same way.

**Mr. Randy Carroll:** I agree, but I also come back to the uncertainty. If the uncertainty is removed I think you’d actually see a voluntary reduction, because there’s too much of an unknown just in those two categories.

**The Vice-Chair (Mrs. Donna H. Cansfield):** Thank you very much, gentlemen. It was delightful.

**Mr. Rick Orr:** Thank you, Madam Chair.

**Mr. Randy Carroll:** Thank you.

#### ONTARIO TRIAL LAWYERS ASSOCIATION

**The Vice-Chair (Mrs. Donna H. Cansfield):** Our next presenters are the Ontario Trial Lawyers Association. Good afternoon. If I could ask you to introduce yourselves, please. You have 10 minutes for your presentation, and then we'll have a rotation. Mr. Yurek, you'll be taking the first rotation. Is that right, Mr. Yurek?

**Mr. Jeff Yurek:** Sure.

**The Vice-Chair (Mrs. Donna H. Cansfield):** Thank you. Gentlemen, please introduce yourselves.

**Mr. Andrew Murray:** My name is Andrew Murray. I'm the president of the Ontario Trial Lawyers Association. To my left is John Karapita, who is the director of—

**Mr. John Karapita:**—public affairs. There we go.

**Mr. Andrew Murray:**—and my trusty aid at all times.

This is my third occasion to speak before this standing committee, and I've welcomed each of those opportunities. I'm grateful that people want to hear what I have to say for a third time. My comments today are going to include a macro-level policy observation and some micro-level examples from my own filing cabinet and from stories that I hear from our members, because I think that might be one of the best ways that I can help illustrate some of the points and concerns that we have.

On the first two occasions I appeared before this committee, there was a lot of discussion about catastrophic impairment and it was the focus of a lot of debate. We've sort of gone past that in some respects and we've gotten now to the point where there is, more or less, a consensus that the expert panel process was a flawed process. That was a point that the Ontario Trial Lawyers Association was making from day one. Other than perhaps the Insurance Bureau of Canada and maybe Mr. Howell, who appeared earlier today, there seems to be agreement that that process was flawed, and essentially people have gone back to the drawing board. Our group has participated with the latest round of round-table discussions. We understand that it's an ongoing discussion, and that's what it should be.

There's a lot of discussion topically in the news right now about the issue of profits and profitability. Again, it was our organization that called for a reduction in premiums last fall when we started to see some of the increased profitability numbers come out. I do have some macro-level observations to make on that point, keeping in mind that I'm not an actuary or an accountant and my association is not a group of actuaries or accountants. Really, what I have is more questions and observations, I suppose, than answers, but it occurs to us that with the wildly divergent statements as to profitability that we're hearing, when there should only be one number—this is a

financial analysis. The numbers are the numbers. Surely to goodness there has to be a number that makes sense. When I observe that even the IBC experts who testified earlier today had quite significantly different numbers with some of their forecasts, it really calls for an independent review to simply get down to the bottom of what is the right number. That's why our group was one of the groups that recommended having the Auditor General do a comprehensive review to shed some light on these issues. So I would recommend that going forward as something that would be helpful.

I don't have the responsibility, as a legislator, of having to actually tackle this. I can make recommendations. If I were in the Legislature, I would want to know what the numbers are before I started making concrete plans. While we've suggested that there should be a reduction in premiums, we're not in a position to say whether that's 10% or 15% or some other number. There should be a reduction based on what we've seen, but the data has to come out. We seek a transparent disgorgement of all that financial data.

Let me turn to some micro issues in my prepared statements. You should have a benefits statement that was handed out to you. The name of my client has been redacted, and the name of the insurance company has been redacted, because neither is important for the purposes of this committee. But this is the sort of thing that I see in my practice which makes me shake my head, and it should make everyone in this room shake their heads as well. You'll see that the accident happened in September 2012. To date—and this is a very recent statement, from March 20—just under \$1,300 has been paid in medical and rehabilitation benefits. You'll see the insurer-requested examinations. These are the examinations that the insurance company has requested, not that my client has requested or that I've requested. Some \$10,406 spent in insurer-requested examinations in connection with under \$1,300 worth of med rehab benefits paid. That is horribly disproportionate. If you're looking for places where there can be savings, we need to look at places like this. This is not on every single file, of course. This is a bad example, but it's not uncommon in my cabinet, and it's not uncommon in the cabinets of those who belong to my organization.

There's a second handout here; it's a two-page handout. It's the story of Maria Rivera. She's my client. She has given me express permission to use her name. She had an application for catastrophic impairment that she put forward, and it was denied. There's nothing inappropriate about that. The insurer is certainly entitled to deny it. But what happened was that we sought an application for mediation to dispute that denial, because that's the process we have to follow. That happened in March 2012. In August 2012, FSCO published the bulletin saying that the parties can now fail these mediations on consent. Within two weeks, I called the adjuster. We reached an agreement that we would fail this one because it was such a significant issue. It wasn't amenable to resolving at the mediation.

She then sent me a rather contrite letter, and I've excerpted part of it, saying, "I have a corporate directive from on high. I'm not allowed to just fail this. I'm sorry, Andrew." She maintained her relationship with me. It wasn't anything she could do. We then get to our mediation, which was in February 2013, only to be told, "Well, we just want to fail this mediation." So we wasted our time from August to February for no other reason than that the insurer was in a position to do that, and that's a travesty.

We heard earlier about delays in the system, and it goes both ways. So there's a delay in figuring out what is the minor injury guideline going to be and how is it going to be interpreted? I agree. That delay is not good for anyone, and this delay is not good for someone who is so badly injured that she says she has a catastrophic impairment. Her insurer says not, but even if it's not, she's a badly injured person or she wouldn't be there.

The mediation backlog is an area that our organization says needs to remain as a focus for everyone. We've made some improvements. So in this case here, ultimately, after ADR Chambers was appointed as the outsourced mediator, we did get our mediation done in just under a year. That's better than 14 months—we are getting there—but it's not great. It's nothing to brag about.

We talk as an organization about the need for caution and the need to be aware of the three Ps: premiums, which is just one aspect of what we need to look at; protection for the consumer; and profits. In this respect, I'm not sure that I'm saying things that are altogether different from the IBC. We need to have a driver-first approach to this, which includes how much is it going to cost them to insure themselves, and are they adequately protected?

So I would encourage this group not to lurch from crisis to crisis and stamp out a fire without looking at what might be burning over on the horizon. When I was here before, I said, "Don't only look at the catastrophic impairment issue. You need to look at protection, and you need to look at premiums and profits." I'm now here today saying, "Don't look only at the issue of premiums, because that's on the short horizon. We also have to consider other issues." Is catastrophic impairment adequate? Is the minor injury guideline adequate?

Polling our members, we know that those benefits have been eviscerated for the vast majority of people who need to access those benefits. There's a mandatory review that's under way right now that has been commissioned by FSCO. What we don't want to see happen is that that mandatory review leads to the recommendation that, in fact, those benefits be increased from \$3,500, let's say, to \$10,000 or \$15,000, but we now find out there's not money in the system to do it because we've used it all up on reducing premiums.

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So I just say be cautious with anything you do, about the law of unintended consequences. You might need some of that money not to go to premium reduction, not to go to boosted profits, but in fact to go to enhanced protection.

Those are my prepared remarks. I welcome your questions.

**The Vice-Chair (Mrs. Donna H. Cansfield):** Thank you very much, Mr. Murray. We'll start with Mr. Yurek.

**Mr. Jeff Yurek:** Thank you, Chair.

*Interjection.*

**Mr. Jeff Yurek:** Is that good? Is that better?

**The Clerk Pro Tem (Mr. Trevor Day):** You're good.

**Mr. Jeff Yurek:** Perfect. Thanks.

The Auditor General noted in his report that 99% of people who dispute a claim seek legal counsel. Of course, you must notice that—

**Mr. Andrew Murray:** But not everyone comes to me. They should.

**Mr. Jeff Yurek:** My understanding, though, is that during the dispute process, you also have to go to a FSCO-mandated mediated process, but at the same time, my understanding from talking to lawyers and such, is that lawyers talk amongst themselves anyways through a process outside of that mediation process.

**Mr. Andrew Murray:** If there's a lawyer involved, usually at mediations at FSCO, you're dealing with an adjuster. The file is pulled from the adjuster who made the decision to a dispute resolution adjuster that handles all of the FSCO mediations, with varying levels of authority. Some have the ability to resolve a dispute—let's say it's a \$500 pair of orthotics; or sometimes they don't have the ability to resolve the dispute—let's say it's whether the person is catastrophically impaired or not.

**Mr. Jeff Yurek:** Okay. Just basically to my point, what is the use of the FSCO-appointed mediators if there are other mediations going on around it?

**Mr. Andrew Murray:** Well, there aren't other mediations. You can always have a discussion on a file. Speaking for myself, personally, I always take a proactive approach. If it's a new adjuster I've never dealt with, I call them up and I say, "We look forward to working with you. We share a common interest in handling the file," and that usually generates a good rapport that leads to good results.

The FSCO mediation is a mandatory process, and I am unable to progress through any other stages in dispute resolution unless and until I have a report from the mediator that says there's been a mediation that's been held and it's failed. If you're waiting 11 months, then your dispute is waiting 11 months before you can do anything more at all.

**Mr. Jeff Yurek:** Do you need that FSCO-mandated mediation? Could you actually go quicker through the process without having to add that step?

**Mr. Andrew Murray:** Well, now I could, yes; absolutely now. When it was brought in, you must remember it was 60 days. I think conceptually the notion of having a mediation in place for those who might have small issues in the system—let's call it the orthotics or they need a special pillow or it's 15 sessions of massage therapy. We don't want to have every one of those cases going to a trial. That doesn't make any sense either. And

not every one of those people would be represented. So the idea, the concept of having mediations that are timely to get the people talking, just getting the adjuster to have to look at the file, to make them have to, that's a good thing. What's not good is when it takes so long.

**Mr. Jeff Yurek:** Recent numbers say the wait is an average of 414 days for the process.

**Mr. Andrew Murray:** Okay. I wouldn't quarrel that that's the average. But I would say to you all that I'm finding it's faster now with the newer ones coming on through ADR Chambers, so the outsourcing—

**Mr. Jeff Yurek:** Outside of FSCO.

**Mr. Andrew Murray:** Well, it's still considered a FSCO mediation, but they're outsourced mediators.

I will say to you that I am seeing improvement there. I must say that, that there has been some good work done there.

**Mr. Jeff Yurek:** How can we speed up the process?

**Mr. Andrew Murray:** I think you need to consider improving the ability to fail those mediations where it's clearly obvious that the dispute is so large or the gap is so wide that it's not amenable to a mediated resolution. I think that there's probably a better opportunity to use automation with computers. I see ADR Chambers using computers in a way that I didn't see FSCO doing. They send me emails, they say, "Here's the date for your mediation." I like how I'm seeing them do that, so maybe just ask them how they are doing it. That seems to be working.

I think as well that once we somehow clear up the backlog, then, going forward, we might be able to better keep pace. But I would certainly appreciate the flexibility to proceed, without having to wait for 414 days, to the next level of dispute.

**Mr. Jeff Yurek:** One more question. They had a recent arbitration decision—I guess it was the end of last month—Scarlett v. Belair?

**Mr. Andrew Murray:** Yes, I have it right here.

**Mr. Jeff Yurek:** It stated that any person with a marked impairment—that also includes the psychiatric side of things—

**Mr. Andrew Murray:** Yes.

**Mr. Jeff Yurek:** —can be deemed cat and eligible for the compensation, of course.

**Mr. Andrew Murray:** Oh, I'm sorry. Are you talking about Scarlett or are you talking about Pastore?

**Mr. Jeff Yurek:** Scarlett.

**Mr. Andrew Murray:** Okay.

**Mr. Jeff Yurek:** How do you think this is going to impact arbitration/mediation, going forward, with that change? We can talk about the other one also, if you want to chat on that one too.

**Mr. Andrew Murray:** Well, it sounded like you were asking me—when you're talking about marked impairments, that sounds more like Pastore; that's the catastrophic impairment.

**Mr. Jeff Yurek:** Sorry. Yes, Pastore; Scarlett is the MIG.

**Mr. Andrew Murray:** Yes. So which one do you want me to address?

**Mr. Jeff Yurek:** Both.

**Mr. Andrew Murray:** Okay.

Scarlett is the MIG case, the minor injury guideline case. It's the first case. I don't know that we can say that that's going to do anything necessarily, other than point the way, and before people criticize it, you should read it, because it's actually, I think, a very well-reasoned decision. The arbitrator looks at the text of the accident benefits schedule in French as well as in English, as an interpretive aid, which they're allowed to do, goes through the purpose of accident benefits, historically and currently, and looks at this individual in the specific context and says, "This individual has needs that oust him from the minor injury guideline on some very fact-specific and also on some general levels." So I think it might point the way to simply doing what the MIG says it will do, which is allow you to get out of it when you need to get out of it, but I don't think we can read anything more into it than this right now. It's not binding on other arbitrators, it's not binding on the court, and there's not been an appeal decision on it yet, and I'm sure there may well be. I don't know whether it's going to—the next level of appeal would still be within FSCO, to the director's delegate. So I don't think that's going to change things too much.

Pastore, which is the catastrophic decision: I can't tell you how much it's going to change things, because I don't know, and my organization doesn't know, and neither does anyone in this room know, how many catastrophic applicants there are in the system that fit under this marked-impairment category. And if you hearken back to last summer when I was appearing before this committee, I said, "Please release the data on these cat claims so we know: How many quadriplegics are we talking about? How many brain-injured people are we talking about? How many psychologically impaired people are we talking about?" and then, when we're tinkering with the definition, we'll know, are we talking about 15 people in the whole year or are we talking about some larger number?

I suspect it's not going to have a very significant difference, because it doesn't change the approach that people have had in the industry already. But it does clarify, and any clarity is helpful because it allows predictability.

**Mr. Jeff Yurek:** How much time do I have left?

**The Vice-Chair (Mrs. Donna H. Cansfield):** You have about two minutes.

**Mr. Jeff Yurek:** In two minutes, I would like to hear the trial lawyer's thoughts on how we could reform the mediation/arbitration to lower costs in the system so that either they can go to profit or product or to premium reduction.

**Mr. Andrew Murray:** Well, as you probably know, the current system is already a system where insurers have to pay for the mediation process. I feel bad coming here saying that the insurance companies need to pay



more money, but maybe instead of looking at the premium issue only from the perspective of lowering premiums, you might look at it from the perspective of some of those savings—we know there's been \$2 billion of savings in the claims; I don't think that can be argued. I think I heard the actuary admit that today as well. Maybe some of those savings can be directed into the mediation process, hiring more of the outsourced mediators if they're working well, as it seems in my anecdotal observation that they are, maybe shifting some of those dollars there to clear through the backlog, and then, having tackled the backlog, we would be on track, you know, to stay ahead of the wave.

And then, secondly, giving greater flexibility for those cases where the mediation is not well suited to actually resolving the issue. If the insurance company wants to settle the whole file on a lump-sum basis, it's already capable of doing that without having to have a formal mediation, and that's often what happens. They say, "Well, we don't want to pay for physiotherapy, or we don't want to pay for the income benefit, but we'll pay a lump sum amount just to close the whole file down," and I don't know that that has to occur with a FSCO mediator.

There may be people who are unrepresented, and—I said this before—the unrepresented would benefit from a mediator, and probably those who have a paralegal would benefit from the oversight of a mediator as well. I spoke to the mandatory review of paralegals to urge some caution with the extent of paralegals doing accident benefit work when some of these cases for a catastrophic claimant can be in the hundreds of thousands of dollars, probably beyond the scope of what most common citizens would think a paralegal would be capable of handling. They think of them as Small Claims Court, which is \$25,000.

I think that's two minutes.

**The Vice-Chair (Mrs. Donna H. Cansfield):** Thank you very much, Mr. Murray.

Mr. Singh.

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**Mr. Jagmeet Singh:** Thank you very much. Welcome. Thank you for being here.

I just want to touch on a couple of points that you mentioned: the delays in the system that you pointed to in your example that were insurer-side delays, as well as the imbalance that you demonstrated with the actual amount that was being received by one of your clients and the total of the medical rehabilitation and the claimant request payments; comparing that to the total amount of insurer-requested examinations. Basically, we had over \$10,000 that the insurer requested in terms of their examinations and only \$1,300 with respect to what the actual injured person was receiving—

**Mr. Andrew Murray:** So far, yes.

**Mr. Jagmeet Singh:** So far. How prevalent is that in your experience? I know it's only going to be colloquial—if you have more than just colloquial I invite you to say that—but how prevalent is this insurer delay,

as well as this disparity between what's actually being received by an injured person and what the insurers are charging in terms of assessments?

**Mr. Andrew Murray:** There are examples of that that I see repeated over and over, to varying degrees. Some of it, I think, quite frankly, has to do with an adjuster whose hands are tied and who is given so little discretion to do anything that any request of any kind has to be sent out for an independent review, even when common sense would dictate that it is probably not a good way of spending dollars.

I also know that adjusters are horribly overworked. I have a lot of sympathy for the adjusters. They have an enormous mound of files on their desks, and they get calls every day from lawyers, clerks and claimants and have to try to deal with it. What happens is that they don't deal with it. They can't deal with it in a timely way, and that causes a delay as well. It's an inertia that occurs just due to the volume and inadequate resources available to tackle it.

I'm not here to say that these are bad people. It's sort of a systems failure, if I can call it that, but there certainly are too many examples to be comfortable of both delay of this variety, where I said, "Let's just fail the mediation" in August and they said, "No; I'm not allowed to do it," and then in February, they said, "Oh, well, we just want to fail the mediation."

**Mr. Jagmeet Singh:** Right.

**Mr. Andrew Murray:** That's bad.

**Mr. Jagmeet Singh:** I want to turn your attention again to—my colleague from the Conservative Party brought this up—the Scarlett decision. I will make an assertion, and you tell me if you agree with it.

**Mr. Andrew Murray:** All right.

**Mr. Jagmeet Singh:** I've read it, and I agree—or I contend—that the Scarlett decision does exactly what mediation should be able to do: that some people who are put into a minor-injury guideline cap shouldn't necessarily be there. Scarlett doesn't do anything groundbreaking. It's measured, thought-out, reasoned, looking at specific characteristics of that individual in the case, assessing that individual and saying that that person, for specific reasons—and because the guidelines are such that it allows for this mediation process to contest whether or not they should be in MIG—should no longer be in the MIG category.

That's all my understanding of it is. You could provide, perhaps, your legal background and your legal assessment of it—

**Mr. Andrew Murray:** No, I fully agree: You've got it right.

**Mr. Jagmeet Singh:** There you go. If I were to suggest to that that hasn't changed anything in terms of what we already knew—there was supposed to be an opportunity for people to contest it and to get out of the MIG category; some people may do that. A majority of the people are still falling into MIG and are staying there, and some people might come out.

**Mr. Andrew Murray:** It reflects exactly what I and what those people who do my kind of work thought

would happen with this type of case, so it's not a surprise to me. We don't know where it will land ultimately, after there are more decisions.

I'll tell you, as well, that I'm hearing anecdotally—again, from our members—that there are repeated examples of people being miscast into the minor injury guideline—their insurer adopts the position that they're under the MIG—but then they've gone off into some kind of suspended animation thereafter, because it just takes so long to get that resolved. Meanwhile, they're not getting any benefits that whole time. That's a concern for us.

**Mr. Jagmeet Singh:** Okay, thank you.

Your association released some issues regarding the profitability of the industry. I'm going to take you through some of what your report generated and some of what we've contended or asserted as the NDP. Tell me if you agree with these calculations and if they match what your analysis was.

We're looking at the industry profit calculations for 2011. Based on using some GISA data, we get an industry-wide profit of \$1.44 billion. This would include investment income as well as the premium income. We expect that this profit is going to increase by about \$400 million to \$500 million more in 2012 as the caps continue to hold and as the profits continue in the direction that they're going. So we're looking at perhaps a range of close to \$2 billion—this is all after tax.

Have you done any analysis along those lines, and what is your bottom line in terms of—

**Mr. Andrew Murray:** Well, my analysis is a before-tax profit in 2011 of approximately \$2 billion—not after tax, before tax, and that's based on the General Insurance Statistical Agency data which—it will be for legislators to determine what source of data you want to rely on, but we're inspired at least by comments that appear on the GISA website. You had already mentioned one of them, but there's another one on the GISA website that says, "The main purpose for the collection of this data is to provide premium and claim information to support fair rates." It seems to be saying that the main purpose for its existence is to give the numbers to do the very analysis that we're engaged in.

So I have to ask the question, why would we not use that data? And when it's anchored to experience within the year rather than the accident history, rather than the calendar year, aren't we then anchoring it more appropriately to the post-2010 regime and not clouding it with claims that are still continuing on from prior to 2010?

**Mr. Jagmeet Singh:** That actually touches on my next question, which was to assess the preferability between the GISA data and the OSFI data. Are you familiar with the Cheng report and the KPMG report?

**Mr. Andrew Murray:** Yes. Well, let me try to explain it like this from my perspective. I think the GISA data is basically the official bastion of data, so I think this is where you're supposed to look. It'll be for someone else to determine, but the problem I have with looking at the financial data—let's say there's 100 different insur-

ance companies and there's 100, then, different sets of audited financial statements, each with its own actuarial assessment and reserving—it becomes very, very complex, and you're sort of adding together a bunch of small parts.

I would have thought we would have heard the actuaries say that actuaries live in the realm of large numbers. They want the aggregate number because if you look at one person, they might die tomorrow, and that doesn't fit with the mortality rate; or they might live to be 105. But if you look at enough people, you can predict with precision how long those people are going to live and you can transfer that same conceptual approach to the analysis of this financial data. You want all the large numbers that GISA has and you want to strip them of the assumptions and the reserving that's been done on an individual insurer-by-insurer-by-insurer basis.

The other thing that I think you do want to do—and this is as I understand it, so I'll defer to people who are more knowledgeable than me—but there's a very odd situation of reserving that takes place with the financial data. We heard some mention of discounted versus undiscounted numbers. Anywhere in the world, when you hear of a discounted number, you think it's lower: The price is discounted off the price by 10%; you get a 10% reduction. But in this rare world, the discounted numbers that are the preferred numbers according to the two experts who we've heard are actually higher numbers because there are add-backs. This does get complicated and esoteric, but the bottom-line takeaway point is that you shouldn't have discounted numbers that are actually higher. That's another reason to prefer the GISA data, because they don't do that.

**Mr. Jagmeet Singh:** Thank you. And looking at, then, the current profit situation and taking into consideration the general trend that the caps aren't going anywhere—the caps are now the new caps; the minor injury guideline is going to stay the way it is; it's not subject to fluctuating year by year, it is the cap—as well as the \$50,000 cap for the other folks. Given these are legislated changes—they are regulated changes; the industry can predict that they're going to continue in a general direction—given your figures and our figures, which are close, that there's \$2 billion in savings, or if you look at the profit side, based on these 2010 changes, could some of this profit be used, in your opinion, to reduce premiums in a considerable way?

**Mr. Andrew Murray:** Well, I have to say that because we called for this some months ago. We felt that there should be a reduction in the premiums, yes.

I take issue with your notion necessarily that the MIG is cast in stone and it's only going to be \$3,500 in perpetuity. I alluded to the fact that there is a mandatory review of the minor injury guideline, and given everything I'm hearing—granted it's from my side of the table—I would have to think that some sensible heads—

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**The Vice-Chair (Mrs. Donna H. Cansfield):** Thank you very much, Mr. Murray. Mr. Colle?

**Mr. Mike Colle:** Thank you. I'm not going to ask you questions about this guy GLSA, but—

**Mr. Andrew Murray:** Yes.

**Mr. Mike Colle:** I want to ask: The average person says to me, "I've got 10 airbags in my car. I've got these sensors"—some people can afford them—"in my car that if I go off my lane, the car vibrates. I've got cameras in the back. I've got incredible GPS and all this stuff." Cars are much safer now, yet the accident benefit claims are going through the roof. How do you account for this: safer cars; less accidents, in fact, according to the MTO, yet we've got skyrocketing costs for accident claims?

**Mr. Andrew Murray:** I don't pretend to be able to account for it entirely, but I will hearken to the words of two of the presenters at the July round of standing committee hearings that were held in Windsor, who worked with brain injury associations. They said—and this is kind of counterintuitive and somewhat ironic—that because of the improvements in safety devices in cars—the airbags, the belts, all these other things that you've mentioned, sir—people who formerly were killed in car accidents now survive those accidents, coupled with—with our advancing medical technologies, people are saved—literally, they're saved—who would not have been saved 20 or 30 years ago.

What that means, of course—this is a very blunt statement I'm going to make, but if a person dies in the car crash, there are no future-care costs at all. If they survive but with horrific injuries, those are then some of the catastrophic claims that we see. That's only a partial explanation.

I agree that fraud has been part of the system, and I applaud the steps that have been taken to come up with the anti-fraud task force and its 38 recommendations. I had the privilege of appearing before that group, and I felt that I had a very good hearing. Our organization has publicly endorsed probably 85% or 90% of the recommendations that came forth from that group. In fact, we've urged the Liberal government to just ensure that they now get rolled out in an orderly fashion, because there should be some savings there in the system.

The third statement I'll make, or the third observation, is that—and it kind of relates to some of the earlier comments that were made. When we see accident benefits reduced and people are genuinely in need, those needs just don't disappear; they don't evaporate. We do, then, see the value of a lawsuit increased because there's no—there's only a dollar pay once, but if the accident benefit money isn't there to rehab them, then those claims, to the extent that there's an at-fault party, are then transferred into the other system—they don't just disappear—or they're absorbed by OHIP in some fashion.

**Mr. Mike Colle:** The other sort of thing that's hard to understand is that more and more money, it seems—I've dealt with it in the past, and there seems to be this whole thing about assessors assessing assessors, and medical examiners, doctors—everybody's in this assessment business and making good money assessing the assessors. In fact, I think the report from FSCO says a

176% increase in the cost of assessments, yet the assessments don't really provide any medical rehab, don't provide any medical services. From your perspective, what's really continuing to push this assessment business? Why is it still being pushed through the roof?

**Mr. Andrew Murray:** What I hear adjusters say to me routinely is, "I'm not a doctor. It's not my place to make the medical call on whether they should or they should not have this treatment"—although historically, 20 years ago, they would make that call. So there's been a culture change within the insurers, and I don't know if it's sort of a top-down culture change or if it's just that with so many different accident benefit systems, it has now become easier to defer to somebody else to make that decision.

But I think that a lot of this could be resolved by adjusters being given more authority just to make their own decision.

**Mr. Mike Colle:** To make the call.

**Mr. Andrew Murray:** To make the call.

**Mr. Mike Colle:** Yes, whereas now—

**Mr. Andrew Murray:** And I say that this problem of getting an assessment and then denying the claim has only been augmented by these 414-day delays, because then it's off that person's—the overworked person—it's now off their desk; they denied it. It goes off into the ether, and even when it resurfaces in over a year, it's somebody else who has to deal with it, not them. Intentionally or not—I don't think these people are being malicious; it's just the way the system has unfolded—that's the consequence of that environment. It's not helpful.

**Mr. Mike Colle:** The other point that you made, I'd like you to just explain because, as you said, this committee keeps focused on the magic 15% without taking into account the necessity to increase protection for drivers. We're going to get the decrease, yet all of a sudden there are all kinds of cuts in benefits, accident benefits, right through the spectrum, for drivers. Can you expand on that protection aspect of it?

**Mr. Andrew Murray:** I don't think you had the benefit—some people have now heard this talk three times; I apologize. You didn't have the benefit of my discussion of the whole system being considered a three-legged stool, with premiums, protection and profits. You have to keep them all in balance. If your premium leg is too long, it's an unbalanced stool. If you've got too-generous protection, it's unbalanced. The whole thing is moderated perhaps by a fourth leg, which is predictability. If you change it every year, it's so unpredictable that there's excessive cost in the system, nobody can price it, and the consumers don't know what they're getting.

My urge for caution is that—although our organization has called for a reduction in the premiums, it can't be the sole focus of what any of us need to do. We must have a long-term view, not a near-term view, on this issue. Auto insurance has proven to be too thorny and prickly over the last 20 years. It has taught us all a lesson

not just to solve today's problem but to try to solve the problem of five and 10 years down the road.

I think we know that we need to tweak the system in a way that's going to cost more money, whether it's ramping up the mediations to clear the backlog, or whether it's improving the minor injury guideline level of compensation because \$3,500 is not really enough for many people to be back at work. We want them back at work because then they're paying taxes. Then they're able to look after their children. There are benefits to society to having these people rehabbed.

I think that's my point that I'm making: that we have to look at this three-legged stool and think to ourselves, "Is it balanced? Is it fair?" We've been on record for a long time saying that part of that means insurance companies have to make appropriate profit.

**Mr. Mike Colle:** So do you think we can reach this magic 15% reduction in premiums and keep all those protections in mind at the same time and fix the arbitration/mediation system and all these other aspects of accident benefit claims within 12 months, as we're being asked to do?

**Mr. Andrew Murray:** I'd be in a lot better position to comfortably say yes if I had the independent analysis that we've urged because I don't feel that I have data that I can work with in a reasonable way. But I will also add this: If there are as much savings with anti-fraud as we've been told—\$1.6 billion a year, and we asked for those numbers because it seemed rather opaque—and we're now marching on our way to closing that loophole, then, yes, I think we can achieve those targets. I think it's within the realm for us to dream, at least.

**Mr. Mike Colle:** Do you have a question?

**Mr. Bas Balkissoon:** My question is probably in the same direction. I hear you say a lot of things we need to improve in the system. Would you prefer that we concentrate on those things and instead of a 15% reduction in 12 months, we look at a reasonable reduction but, along with that, do some of the things that the task force recommended, do some of the other things that you recommended? Should we look at a whole basket of things?

**Mr. Andrew Murray:** I think, given everything I've said today and over my past two appearances, that I would have to answer in the affirmative. Yes, we want a holistic approach to this. We don't want knee-jerk solutions. We don't want crisis management. That involves looking at the three pillars of the product.

**Mr. Bas Balkissoon:** My last question would be: If the government was to proceed based on the resolution that has been passed, do you anticipate that it will be tougher for folks that have had an accident or had an injury claim to get insurance in the future?

**Mr. Andrew Murray:** I don't know that. I don't have the day-to-day experience to be able to figure that out.

I do know, and I'll just mention this because it's something that people might not be aware of, that if you don't have insurance, your right to sue, even if you're not at fault, is also taken away. Aside from penalties in

provincial offences court, the \$5,000 fine, your right to sue is taken away. I do see people from time to time not at fault—it could be a drunk driver that went through a stop sign and hit them—but if they don't have insurance, then they're not going anywhere with that claim.

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**Mr. Bas Balkissoon:** Thank you very much.

**The Vice-Chair (Mrs. Donna H. Cansfield):** Thank you very much, Mr. Murray, for your presentation.

**Mr. Andrew Murray:** Thank you.

#### CANADIAN AUTOMOBILE ASSOCIATION

**The Vice-Chair (Mrs. Donna H. Cansfield):** Our next presenters are the Canadian Automobile Association. Welcome to the committee. You have 10 minutes for your presentation. It was suggested, and I will—so I don't surprise everyone—give you a heads-up at a minute. Mr. Singh, you'll take the first rotation. Thank you, gentlemen. Please introduce yourselves.

**Mr. Elliott Silverstein:** Thank you and good afternoon, Madam Chair, and members of the Standing Committee on General Government. My name is Elliott Silverstein, and I'm manager of government relations with CAA South Central Ontario. With me here today is Matthew Turack, vice-president, insurance, with CAA.

The Canadian Automobile Association is a national, not-for-profit auto club, one of Canada's largest consumer-based organizations and has been advocating on behalf of members since 1903. Today's Canadian Automobile Association serves 5.8 million members through nine clubs across Canada. CAA South Central Ontario is the largest club in the federation, serving over 1.9 million members as far west as Windsor, north to Sault Ste. Marie and east to Kingston. Provincially, the three Ontario clubs serve over 2.2 million members.

Advocacy is the origin of CAA's existence, from lobbying for the construction of the Trans-Canada Highway, the installation of road signs across the province, our involvement in the launch of the RIDE program, introducing seat belts in all vehicles and advocating for distracted driver legislation, all of which are designed to make roads safer for all users.

Today, CAA continues to advocate on behalf of its members and the motoring public at both the provincial and municipal levels of government through a variety of programs, including the Watch for Bikes program to School Safety Patrol and our Worst Roads.

CAA also works with government ministries like the Ministry of Transportation and key stakeholders like police organizations to be at the leading edge and to promote numerous safety initiatives, including winter driving safety and distracted driving, before the conversations become commonplace among the general public.

Along with our advocacy and our roadside assistance services that are synonymous with our brand, CAA also has an insurance division. Today, I am pleased to be speaking before this committee on behalf of CAA, highlighting a unique perspective to answer the questions

that the standing committee has proposed—specifically, looking at practices and trends, and developing recommendations on how to make auto insurance rates more affordable.

During these hearings, there are a multitude of organizations speaking on behalf of various sectors, and CAA is uniquely positioned to talk about consumers, along with the roadside assistance business—two critical elements of this discussion.

There is little argument that Ontarians are paying too much for auto insurance, and solutions are needed. We recognize changes to the existing system are both complex and multi-faceted. Ontario is also regarded year after year as having some if not the safest roads in North America.

Before delving into roadside assistance and some of the challenges with towing as part of this discussion, I'd like to take a couple of moments to discuss CAA's current and upcoming effort in the insurance base. CAA Insurance has offered its policyholders a 5% discount if they install and use winter tires during the winter months. This is an item that only a handful of insurance companies offer, and we believe it encourages more responsible driving and safer roads.

CAA's insurance division believes that technology can play a significant role in combatting insurance rates while also helping to make Ontario roads even safer. Through advanced technology, such as the telematics device, drivers will be able to better understand their driving habits, using the device and its data to assess where they can correct their unsafe behaviours and ultimately become a better driver. CAA's focus on telematics differs from others, as we believe that there is a tremendous opportunity to help improve safety on our roads, educate drivers and proactively assess the condition of vehicles.

Telematics may be a relatively new phenomenon in Canada, but it has been used in Europe for quite some time. Telematics can also be perceived as a positive step. For drivers who drive safe, are collision-free or don't use their insurance, it could help them see their habits and make improvements. For those who have challenges with their driving habits, it has the opportunity to show the potential for more positive road-user safety and vehicle safety as well.

In recent months, CAA has conducted a pilot of a telematics product and surveyed its participants with an overwhelmingly positive response. The results showed that of those surveyed, 43% would consider enrolling in a telematics-driven product if they received a discount on their auto insurance. Also important to highlight is that 11% of those surveyed would enrol in a telematics program without any incentives or discounts whatsoever.

There have been many conversations over the years about regulating the tow truck industry. Over the years, private members' bills have come forward attempting to regulate the industry. Most recently, the Financial Services Commission of Ontario recommended as part of its Auto Insurance Anti-Fraud Task Force that the government should implement province-wide licensing for

the towing industry to be administered by an administrative authority. The goal of FSCO was to address fraud, alongside road safety and consumer protection issues. CAA is supportive of FSCO's recommendation and has been meeting with key stakeholders on this matter in recent months.

From an auto insurance perspective, regulation of the industry will not only help further the industry's image; it will help prevent the tow truck industry from being used by other industries where fraud is already prevalent. Through regulation, the industry would also include a code of conduct, safety standards, training and proper oversight, not to mention consumer protection as well.

Most collisions will require a tow truck, and if the towing industry is enhanced through an administrative authority, it will help minimize the potential for towing to be a source of fraud, which can then impact auto insurance rates. The introduction of an administrative authority will also help ensure consumer protection, as current municipal bylaws and processes vary by municipality, sometimes simply by just crossing the street. Having a set of consistent standards across the province, coupled with safety and a requirement for electronic commerce transactions, will help protect customers and consumers in a time when they are vulnerable and eager to get out of danger, and help establish paper trails in cases where they don't exist right now.

In short, Ontario has consistently been recognized as having some of the safest roads in North America. There are opportunities to help keep our roads safe and prevent collisions through education and awareness of existing driving habits. There's also a significant opportunity to advance and enhance the towing industry, not only for consumer protection but for operators as well. CAA has long been committed to safety on our roads and we believe that these items discussed today will help, in part, to address some of the challenges we face in this area. Thank you.

**The Vice-Chair (Mrs. Donna H. Cansfield):** Thank you very much, Mr. Silverstein. Mr. Singh?

**Mr. Jagmeet Singh:** Thank you very much. I just want to turn your attention first to your insurance division. If you could just describe the model of how your particular insurance division works compared to other industries. You could perhaps, to provide more clarity, use the example of a co-operative like the Guelph Co-operators and a regular, private, for-profit organization.

**Mr. Elliott Silverstein:** I'm going to turn that over to Matthew to answer that question.

**Mr. Matthew Turack:** The insurance division is a for-profit part of our organization. It largely serves its members, the CAA group of members. We have a member discount associated with such, so we are looked at as a group provider specializing in our membership base but not solely our membership. We have a lot of non-members within our insurance company.

Our insurance division is a direct writer, so we directly sell to consumers through multiple channels. We have a retail channel in terms of insurance agents located in

municipalities throughout Ontario and the Atlantic provinces. We also have a call centre channel, so direct call-in, and we have online quotation.

**Mr. Jagmeet Singh:** Thank you very much.

Switching channels now, you indicated the safety of the roads in Ontario. The Ontario Safety League presented at this committee in its previous sittings and talked about the safety of Ontario roads as well. Could you provide some statistical evidence or data—whatever your findings are—that support this assertion or this idea that the roads here in Ontario are quite safe?

**Mr. Elliott Silverstein:** Certainly. In response to that, first and foremost, the Ontario Road Safety Annual Reports, the ORSARs, are released each year, and certainly the most recent reports that came out a few months ago continue to highlight that Ontario's roads are quite safe. That said, there is certainly work to do in various parts of the province. CAA has remained committed to working with the government and with various stakeholders to try and assess areas where roads need to be improved. That's part of our Worst Roads program we do every year. While it's not a perfect fit, we think that in comparison to many other jurisdictions, Ontario's roads are quite safe.

**Mr. Jagmeet Singh:** One of the mandates of this committee is to talk about how we can reduce auto insurance rates or make them more affordable. Among other things, we want to learn about how we can make the product something that takes care of the citizens and residents of Ontario, and a product that is predictable as well so that we can have some sense of where the product is headed and people have something to rely on.

What, if any, recommendations do you have with respect to reducing premiums or making auto insurance more affordable?

**Mr. Elliott Silverstein:** Well, I think part of what was mentioned in the original presentation was that certainly there are some opportunities going forward: as mentioned with telematics, the opportunity to really assess and understand the habits of drivers, so if there's a good driver out there, recognizing the fact that they are doing that, that they are driving in a safe manner, that they're not speeding and so forth. Having that type of information provides the opportunity to really provide that balance.

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At the same time, we talk about some of the issues around fraud, as mentioned, and our call for the regulation of the towing industry, which is a significant piece for the CAA. Having that resolved will only help down the road as well. You can't necessarily estimate how much it's going to have an impact, but being able to change the habits in those areas is certainly significant and revolutionary in how we look at the way the system is right now.

**Mr. Jagmeet Singh:** I'm going to ask you to try, because I think it's very important that—there's a two-part concern that I have. One is that I assert, and my position is, that there has been significant savings that the

insurance industry is enjoying now because of changes to the regulations in 2010. Those changes have reduced the caps and created an alternative cap, which is the MIG, or the minor injury guideline. Once, people were able to access up to \$100,000 and now that's reduced to \$50,000 and further reduced to \$3,500. I think the IBC's figures or the data is that about 80% of people are being put into the MIG category, which is that \$3,500 category. This has significantly—I think I'd ask you to respond to this—reduced the costs that insurance companies incur year by year. It has also significantly reduced, by nature of having these caps in place, both fraudulent activity as well as legitimately injured people who are not getting the same coverage, so both of those categories of people are receiving less in terms of coverage.

Given that those significant reductions have occurred, my assertions are that there are some savings available now and the premiums should come down, but moving forward with such recommendations with the anti-fraud task force, how can we tie those recommendations into some actual savings? If we work on some regulation of the tow truck industry, as recommended by the task force, how will that tie into a savings for consumers? If we do do some steps to further reduce—I think there are already savings in the system that need to be passed on to drivers, but if there are further implementations, how do we ensure that they're passed on to drivers—for example, a tow truck, and by how much?

**Mr. Elliott Silverstein:** Part of the challenge right now—and I appreciate your question—with respect to the towing industry is that in some jurisdictions there is no price set, no cap, on the amount that a tow truck can charge at the scene of an accident. For example, in the city of Toronto, it's \$192. When somebody has an accident, they know exactly what they're going to be paying when they go to the collision reporting centre. In other jurisdictions, there's no set rate. Therefore, based on the time of day, based on the condition of the weather, based on the day of the week, somebody can charge as little or as much as they want, which makes it cumbersome for the individual, which ultimately then pushes it onto the insurance company. When you see a variation, sometimes a wide variation between rates in jurisdictions sometimes, as I said, by crossing the street—some municipalities have it; some don't—that is a challenge, because when you think about that, the same service is provided and on one side of the road it can be \$192 and on the other side it could be \$1,000. That's a disconnect, because you're getting the exact same service, depending on where the car ended up.

**Mr. Matthew Turack:** Just to add to that, we have seen an impact since the reforms in 2010 on the accident benefits side of the business. As well, as believed and stated back in 2010, we've also seen a shift, and continue to reserve as such, to the bodily injury side, from accident benefits claims to bodily injury claims. Severity continues to be a concern and a watch of ours, as well as, when we file our rates, we include three years' worth of data within that filing. We look for a trend in terms of

how severity and frequency are changing. That trend, while on the accident benefits it's starting to be very positive, bodily injury is still a concern of ours. So we're not yet, as an organization, as an industry—I'm going to speak on behalf of CAA, not the industry stats as a whole. We're following it very carefully. Every time we do file, we continue to take the indication and we continue to take a conservative approach towards that indication in terms of what we can reduce rates as. We look for the trend over time.

One of the differences you mentioned is the difference between GISA and OSFI. OSFI is financial information; GISA is the General Insurance Statistical Agency. Its case-reserving information does not include your incurred-but-not-yet-reported reserves, which are set by the actuaries. There's a difference between calendar-year experience or financial experience and accident-year-loss experience. "Accident year" includes things that are going to develop over time. Our actuaries help us set what that loss experience is going to look like. Over time and over loss experience in history, if the trend continues to be positive, we bring the loss provisions down, and therefore we have continued savings.

But the loss provisions are also part of our financial input. It is part of what keeps insurance companies solvent.

**Mr. Jagmeet Singh:** I actually didn't ask about GISA or OSFI this time. Thank you for that information, anyway.

*Interjection.*

**Mr. Jagmeet Singh:** Good on you.

The accident benefit trend very clearly has gone down. So the accident benefit, obviously, has gone down.

Now, what I assert and what I'm going to put to you is that there may have been a slight increase on the bodily injury side, but in terms of what I see—and it's not a significant, sharp increase; there might be a gradual increase but it's nothing sharp. If you compare the sharp—I think it can only be described that way—decrease on the accident benefit side, there isn't a mirror sharp increase on the bodily injury side or the tort side, the lawsuit side. I think you would agree with that.

**The Vice-Chair (Mrs. Donna H. Cansfield):** Mr. Singh, you have one minute left.

**Mr. Jagmeet Singh:** Yes, thank you.

**Mr. Matthew Turack:** I would agree that the sharpness of the decline and the increase are not the same, but the severity of both accident benefits claims and bodily injury claims are also two distinct numbers from—

**Mr. Jagmeet Singh:** That's right.

**Mr. Matthew Turack:** Bodily injury claim severity, on its own—there are a lot greater amounts, so you don't need the same sharpness of the frequency change to have the same offsetting impact.

**Mr. Jagmeet Singh:** That's a good point, but in terms of the trend, it's not significant at this point, in terms of the tort side yet—

**Mr. Matthew Turack:** I'm not able to answer that. We still need to continue to watch.

**Mr. Jagmeet Singh:** Fair enough. Do you have any questions?

**Ms. Teresa J. Armstrong:** I have a quick question. You guys mentioned winter tires and you mentioned a discount—try to help consumers with their affordability issue in insurance. What's your average—it's 5% on the total premium?

**Mr. Elliott Silverstein:** Yes.

**Ms. Teresa J. Armstrong:** Okay. So how do you monitor a consumer getting their winter tires? Do you ask for receipts? How do they get that discount?

**The Vice-Chair (Mrs. Donna H. Cansfield):** Thank you very much. You'll have to save that answer for another time.

Mr. Colle?

**Mr. Mike Colle:** Just briefly, are you in support of the call for a—can you come up with a 15% reduction in 12 months and not reduce any of your coverage in accident benefits etc.?

**Mr. Elliott Silverstein:** To date, we have not investigated whether the 15% can be done in 12 months. Certainly, I think from our perspective we came in more so today to talk about some of the things that are specific to CAA's area in terms of towing and trying to push that particular item, as it's an area of interest for us, as well as highlighting some of the other aspects to do with safety, so—

**Mr. Mike Colle:** Yes, yes, but you've got an insurance company too.

**Mr. Elliott Silverstein:** Yes.

**Mr. Mike Colle:** So what does your insurance arm say about the 15%? How are you going to come up with the 15% reduction?

**Mr. Matthew Turack:** It's our position that we do believe rates are high and we do want to see them come down, but we do not believe that a broad-stroke approach to a 15% rate reduction would be the right way of going about it. We think that each company needs to file independently. From a specific CAA insurance company, if we took a 15% rate reduction in a one-year period of time, it would put us into a negative underwriting profit position and it would mean that we would have very, very small, if any, returns from the insurance company.

**Mr. Mike Colle:** On the towing side, I know Rocky, the autobody guy, was talking about before—what he came up with—he's really concerned about the tow truck industries that are out there and the characters that are in it. There are some good people but there are some pretty tough people in that business. What he said to me was, "You know, it would be a good idea if you got the CAA to administer the government's towing." Either the CAA could be doing some towing, which you do, in response—

**Mr. Bas Balkissoon:** Dispatching.

**Mr. Mike Colle:** Dispatching. You also act as the government's arm for coordinating a very difficult job—the tow truck industry. What do you think of the CAA maybe taking on a greater role of protecting consumers and doing some coordinating of the towers?

**Mr. Elliott Silverstein:** Certainly, I think that CAA plays a pivotal role. It has and I think it continues to play that pivotal role in taking a leadership role in this particular area. We represent the consumers. We have a roadside assistance service. I think that we definitely want to work through some of our efforts around “slow down, move over,” trying to ensure safety standards for some of the drivers on the side of the road.

I think that there’s an opportunity here, not just for CAA, but for working with various stakeholders, including the police, because we can’t forget them in this whole discussion. If we’re talking about regulating the industry, it’s important that a combination of people are at the table—the police, the insurance bureau, a number of stakeholders—to make sure that all the discussions are taking place before we put legislation in place. CAA has definitely been having conversations with various groups right now to try to base it off of the FSCO conversation. We are happy to work with government as much as possible to really try to solve these challenges, bring it forward and help make the roads safer for not only the drivers, but to protect the consumers as well.

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**Mr. Mike Colle:** And the other thing about towing is—the problem is we deal with Ontario-wide issues. To my knowledge, the tow truck challenges aren’t as great in, let’s say, Ottawa, Thunder Bay, Kingston or Cornwall as they are in the GTA. Has that been CAA’s experience, or do you know—

**Mr. Elliott Silverstein:** Well, right now, we’re seeing a lot of the discussions at the municipal level happening within the GTA. That’s not to say—there are good tow truck drivers across the province and there are challenging ones across the province as well. I think you can’t necessarily paint it with a broad stroke right there.

But definitely in terms of the challenges and where there’s been some pushback, it has certainly been in the 416 and 905.

**Mr. Mike Colle:** Yes. The final question I have is, in terms of the towing industry, do you hire your own independent towers or are they under contract? I know when people make the emergency calls—and by the way, CAA is excellent; I’ve been a CAA member for years—they come and they’re great. But in terms of towing, how do you operate that, for a tower to come to an accident scene?

**Mr. Elliott Silverstein:** If there’s a situation—you’re talking specifically in accidents here? I just want to make sure—

**Mr. Mike Colle:** Yes, an accident scene—vehicle damage.

**Mr. Elliott Silverstein:** Well, if there’s a vehicle breakdown, then certainly you call CAA and a call is dispatched. When there’s an accident that takes place, a member can call CAA, but again, it’s also at the discretion of the police. If the police are looking to clear the scene, there could be situations where an assigned police tow truck will pick up the vehicle before CAA arrives. Depending on the time of day and the weather condi-

tions, it could be 15 minutes; it could be 45 minutes. So certainly if there is a risk to safety or a need to clear the roads, the police ultimately have the final say in that.

**Mr. Mike Colle:** My colleague has a question.

**Mr. Bas Balkissoon:** Just to carry on on that one, it used to be a major problem on highways especially, where the police would have the vehicles removed. If it was your CAA member who was removed, how much of a difference do you see in the towing cost from a private operator to the CAA operator who hasn’t been able to do the job, and how does a member recover that additional cost?

**Mr. Elliott Silverstein:** From a cost perspective, the only real answer I can give you there is that it really depends on the geography. Again, as I mentioned earlier, if you have an accident in the city of Toronto and it’s on a highway, you know it’s \$192. If you have it in other parts of the GTA, it could be \$250; it could be whatever the estimate that’s provided to you.

**Mr. Bas Balkissoon:** But my understanding is that city rates don’t apply on the 400-series highways.

**Mr. Elliott Silverstein:** The city of Toronto has a city rate and a highway rate. So if you’re in the 416 proper, there are two different rates, I think a variation of about \$10 to \$20.

**Mr. Bas Balkissoon:** But only if it’s a city of Toronto licensed tow truck.

**Mr. Elliott Silverstein:** I am not sure.

**Mr. Bas Balkissoon:** The chasers that exist on the highway, they don’t have to carry a city licence.

**Mr. Matthew Turack:** What I can add to that is what we find from the cost of taking individuals to a collision reporting centre, from a CAA perspective, the cost would be very controlled because it’s based on the programs that we have in place; from an independent, outside-of-CAA or appointed police officer tow truck, we do find at times that some of the costs can be very high and extreme.

**Mr. Bas Balkissoon:** I wasn’t aware of that.

You tend to mention telematics quite a bit. When you did your trial, who collected the data?

**Mr. Matthew Turack:** We collected the data on it.

**Mr. Bas Balkissoon:** The CAA did. And your members voluntarily joined the program?

**Mr. Matthew Turack:** With a very robust consent form.

**Mr. Bas Balkissoon:** Okay. They would have been new members who are in your insurance program or just your general membership?

**Mr. Matthew Turack:** We had a mix. We specifically picked a variety of individuals from our membership base who volunteered to participate, some of whom are insured, some of whom are just members.

**Mr. Bas Balkissoon:** Did you have them sign an exclusive that the data belongs to you/it belongs to them?

**Mr. Matthew Turack:** We had them sign a consent form for us to collect the data. If they wish to have the data back and maintain the data themselves, we can provide that for them.



**Mr. Bas Balkissoon:** Because we had a presenter earlier on saying that it's a good system, probably, but without knowing who owns the data and what it will be used for in future years, we should be very cautious. Would you agree?

**Mr. Matthew Turack:** Yes.

**Mr. Bas Balkissoon:** Okay. Thank you.

**The Vice-Chair (Mrs. Donna H. Cansfield):** No further questions?

**Mr. Bas Balkissoon:** No.

**The Vice-Chair (Mrs. Donna H. Cansfield):** Thank you. Mr. Yurek.

**Mr. Jeff Yurek:** I just want to thank CAA for coming in. They rescued my family on the 402 about five years ago—I blew a tire in my Avalanche—and it was great. Thank you very much. I didn't get a chance to personally thank you guys.

The anti-fraud task force that has been finished since last November talks about tow truck regulation, as you mentioned. I take it that you're supportive of it, but can you elaborate on some of the key points of how that's going to help cut the cost down and lower our premiums?

**Mr. Elliott Silverstein:** When you have a collision, most collisions will require a tow truck, so if there are issues that are coming out in those particular areas—if there's a way to regulate the industry to keep standards to ensure that everything is done top-notch from top to bottom in that area, it could help us address some of the challenges we face in other aspects of the industry.

The towing file is certainly one where there are a lot of ethical and a lot of honest people in the industry. There are challenging ones as well. Again, you see the challenging ones and you want to try to resolve them because, unfortunately, those are the horror stories you hear down the road, where somebody is charged \$1,000 or \$2,000 to get a car towed, get their car back and so forth. Certainly, we can resolve those issues. While it's incremental in terms of cost, micro numbers versus macro, every little bit helps.

**Mr. Jeff Yurek:** Just a quick plug: Garfield Dunlop brought in a bill for tow truck operator safety. I'm hoping that when you guys are talking to the government in implementing the anti-fraud task force, you can also implement some of those safety recommendations. I think that's key for the tow truck drivers I've talked to in my riding.

**Mr. Elliott Silverstein:** Absolutely. We partnered with MPP Dunlop on that initiative—actually, on two occasions. In the most recent one, we had over 7,000 of our members sign the petition. Unfortunately, prorogation prevented it from getting to second reading. However, CAA is committed to working with all three parties to ensure the safety of tow truck operators and consumers on the sides of the road when they're in a vehicle breakdown.

**Mr. Jeff Yurek:** Okay, thanks.

Telematics: Usage-based insurance is what I always call it, but "telematics" sounds interesting. Can you explain how you're going to bring that to the market as a

voluntary option for people and what barriers you're facing in getting that product to the market?

**Mr. Elliott Silverstein:** Matthew, do you want to take that one?

**Mr. Matthew Turack:** Sure. We met with the Financial Services Commission of Ontario about a month ago just to review options for rolling the program out. The reason we call it telematics is because, for us at CAA, it is a bigger approach than just use-based insurance. It is about safety; it is about the ability to learn behaviours and change behaviours and get proactive alerts on your vehicle to make sure that we're proactive in preventing breakdowns, whether it's a battery, tire, oil, whatever it may be. So for us, it's a bigger approach, about providing consumers and our members with more safety options as well as environmentally friendly products. Being able to monitor carbon emissions and reduce your carbon footprint is very important to us.

From an insurance perspective, what we're looking at is an enrolment into the program, so a discount for enrolment. We are looking at discounts for verified mileage, kilometres driven, so we can verify what you're telling us is accurate and give you better rates when you drive less, or charge you accurately if you drive more. Looking at speed and time of day, we have some statistics that tell probabilities of loss based on time of day. We are presenting to FSCO in the near future some of our rating criteria based on that. We want to be able to give drivers better rates, and it all comes with discounts, not surcharges, based on driving during those better times of the day or driving with better behaviours.

**Mr. Jeff Yurek:** Why haven't you brought this on the market yet? What's stopping you?

**Mr. Matthew Turack:** Well, (1) we won't roll out a piece of technology until we're logistically ready; (2) we need to make sure that consent piece, as discussed, is very robust, and we understand the ownership of the data and the privacy concerns around the storing of the data; and (3) the technology is not cheap. It does require an investment from the insurance company. We are not allowed to charge for it from an insurance perspective, from a member perspective. It is a very expensive piece of technology. It has come down significantly over the last few years, but it does require an investment from an organization. As a member-facing company, we believe that is member value. We believe that's something our company needs to do moving forward. Our board has yet to decide, but we're looking forward to taking it out to the consumer base and making that investment for the industry.

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**Mr. Jeff Yurek:** How much time do I have?

**The Vice-Chair (Mrs. Donna H. Cansfield):** You have five minutes.

**Mr. Jeff Yurek:** Oh, I've got lots of time.

Now, just going to the rate-filing system, I've heard that there's quite a bit of bureaucracy involved, and FSCO, if you go by their different months, have said it can take six months or a year, if you don't get your data

in to their liking, to change a rate. Can you tell me how much cost is involved with your company with comparing the actual filing and getting actually a rate change?

**Mr. Matthew Turack:** Sure. We have a team of just under six actuaries—some associates, some fully licensed actuaries. We do it all internally; we don't use consultants to do it. So the team of six works on all the provinces that we do write within. A filing generally takes us about three months to prepare. We usually find the Financial Services Commission of Ontario turns it around in about three months to four months, and it's implemented around six months, or two months after that point.

I don't find the bureaucracy to be what I'm hearing from the industry. I think it's a very prudent approach to making sure you justify and provide evidence to back your filings and that it's not reactionary data. We are constantly challenged by the Financial Services Commission to take the appropriate rate indication as indicated by our actuaries and as allowed based on the desired and benchmark returns as set out by the industry and internally.

So I find that the justification of every rating element is actually a very prudent process, a diligent process. It requires the level of science that comes along with an actuary to sign off on, and, I would say, protects our consumers from an ongoing onslaught of marketing and aggressive sales approaches.

**Mr. Jeff Yurek:** Protects the customer?

**Mr. Matthew Turack:** The customer, yes.

**Mr. Jeff Yurek:** So if there wasn't a—I'll just go to my next question. The file-and-use system that's used in other areas of New Brunswick and other parts of the States: What are your thoughts on that, then?

**Mr. Matthew Turack:** I would say you would have various companies take some aggressive approaches to find or reduce or change rates based on their own internal preferences. I think from a broad-standing approach from a consumer basis that would create a lot of competition. It would also drive some insurance companies out of the market.

**Mr. Jeff Yurek:** Would it also bring some insurance companies into the market that are staying out now, like Progressive?

**Mr. Matthew Turack:** Possibly. From what I understand, Progressive's issue with being in the market was not necessarily the rate-filing legislative approach. It was more some of the product and results that we see from some of the provinces. They were really not attracted to the Ontario product—

**Mr. Jeff Yurek:** Why is that? Too rich or too—

**Mr. Matthew Turack:** Because of what the return is and because of the legislative regulatory constraints on the product and the outcome in terms of the limits and the process.

**Mr. Jeff Yurek:** So their ability to make a profit and regulation is keeping them out.

**Mr. Matthew Turack:** Yes. Both, I would say. It wasn't within their appetite, but that's their own—that's my understanding of their perspective on it.

**Mr. Jeff Yurek:** Okay. Thank you.

**The Vice-Chair (Mrs. Donna H. Cansfield):** Thank you very much. Thank you, gentlemen. Enjoy your day.

#### ONTARIO REHAB ALLIANCE

**The Vice-Chair (Mrs. Donna H. Cansfield):** Our next presenters are the Ontario Rehab Alliance. It will be the Liberals who will have the leadoff, Mr. Balkissoon.

**Mr. Nick Gurevich:** Good afternoon, everyone.

**The Vice-Chair (Mrs. Donna H. Cansfield):** Good afternoon. Thank you for your patience. It's been a long afternoon. I'm delighted to welcome you. Please would you give your names for the Clerk, and then you have 10 minutes for your presentations. I'll give you a heads-up for one minute, and then we'll start rotation with the Liberals.

**Ms. Laurie Davis:** I'm Laurie Davis, the executive director of the Ontario Rehab Alliance. With me are three of our board members, and this is our second time presenting to the standing committee. We were here last year, and it's our pleasure to be here again.

Beside me is Patricia Howell—all three of our board members are volunteer board members—a clinician. Justine Hamilton, our vice-chair, is to her right. And on my extreme right is Nick Gurevich, our chair. With that, I'll let Nick and Justine make the formal presentation.

**Mr. Nick Gurevich:** Thank you. The alliance is an association representing 90 companies and over 3,500 health care providers, including physicians, neuropsychologists, physiotherapists, occupational therapists, speech language pathologists and many more. It is these professionals who are the primary providers of health care and rehabilitation services to Ontarians who are injured in automobile accidents.

The alliance is the largest multidisciplinary organization and the only one of its kind which deals exclusively within the auto insurance sector.

While the topic of auto insurance may appear daunting, involving complex regulations and multiple inter-related stakeholders, we would prefer to dedicate this presentation to commenting on it from a high level, examining very fundamental issues.

At the heart of the matter are three factors which must be in equilibrium in order for the system to work properly over the long run:

—privately held, for-profit insurance companies must make a reasonable return on their investment over time, taking into account that cyclicalities play a role in insurer profitability;

—Ontario's drivers must pay a reasonable premium; and

—victims and survivors of automobile crashes must have barrier-free access to a reasonable benefit package.

Currently, this fragile ecosystem is in a state of imbalance. In 2010, the Liberal government implemented wide-sweeping reforms in an effort to boost the profitability of insurers. The crux of the reform was a 70% reduction in the benefit structure available to accident

victims. Despite self-serving insurance-industry-funded reports issued last week to the contrary, the General Insurance Statistical Agency reports that, only one year following the 2010 reforms, the insurance industry realized a fantastic increase in profitability of over \$2 billion. During the same period, the average cost per accident benefit claim plummeted from \$595 to \$292 per vehicle and is still falling, as the full impact of the reform begins to materialize.

Therefore, while insurers have been declaring near-record profits, consumers have been left to pay the highest premiums in Canada while receiving the second-lowest coverage in the country. It's easy to see that the system is broken.

We agree that premiums need to be lower, but this would still leave the system in a state of imbalance if the problems associated with the protection of victims and access to benefits persist. This is a significant problem because it affects 65,000 Ontarians every year. Resolution of issues surrounding protection of victims is paramount because it is the heart and soul behind the need for the insurance product to begin with, and the reason it is mandated. After all, if coverage is inadequate, why should it be required by law?

In keeping with a high-level approach, we would like to note the following current failures within the system.

The quantum of benefits seems to be too low. At \$3,500, our current system offers the lowest level of protection in Canada to about 80% of all victims who, since the 2010 reforms, are deemed to have sustained a minor injury. What's more, as recently highlighted in an arbitration decision, once a victim is relegated to the minor injury guideline, it is virtually impossible to escape it, despite clear need for additional funding for rehabilitation.

Non-catastrophically but seriously injured victims are depleting their available funds of \$50,000 at an alarming rate. Anecdotal reports, which we are currently looking to quantify through a province-wide health care provider survey, indicate that victims who sustain serious non-catastrophic injuries are running out of funds in the middle of their rehabilitation, leaving them unable to resume normal lives by returning to work or school or by functioning in the community.

Rehabilitation does not need to be, nor is it intended to be, indefinite. However, it does need to proceed until a plateau is reached. With the significantly reduced level of auto insurance funding and Ontario's overtaxed public system, which offers far less rehabilitation services than other provinces, those who do not reach a plateau in their rehabilitation will go on living with high levels of disability, relying on social services. It is common to see families torn apart, failed marriages, and the onset of lifelong disability and depression.

The only bright spot in an otherwise sad state of affairs, and the only reason that our coverage is the second-worst in Canada rather than the absolute worst, is the existence of the catastrophic injury designation, which accommodates only 600 victims per year. How-

ever, even this category is under a microscope, based on a flawed expert panel report commissioned by FSCO. The acceptance of FSCO's recommendations would have the effect of increasing the bar for the catastrophic designation and likely cut the number of eligible victims in half.

The barriers to access benefits are too high. As part of the 2010 reform, the government allowed insurers to have discretion over whether to use insurer examinations, which are consultants working for insurance companies. The authors of the previous regulation highlighted the fact that adjusters do not have medical training and are ill-equipped to make health-care-related determinations; hence the requirement for a mandatory opinion of another health care provider as a form of check and balance.

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The 2010 reform waived this mandatory measure and instead put all of the decision-making power for victims' treatment in the hands of adjusters. Without checks and balances in the system, it is of little surprise that treatment denial rates have skyrocketed from 11% before the reform to 42% after the reform, as determined by a sector survey conducted by our organization.

Those few treatment requests that are sent for insurer examinations are handled by assessors who in many instances have been described by judges and arbitrators as biased or unqualified. It is no surprise, then, that at one point over 30,000 files were in queue for dispute resolution. This clearly demonstrates the level of dissatisfaction that victims have with the handling of their claims.

**Ms. Justine Hamilton:** I think you'll see that our recommendations flow from that. We want to try and restore the balance between premiums, profitability and protection, and want to make sure that we don't lose out on the protection side if we're looking at making alterations to anything else.

What we want to try and do is look at what costs can be removed from the system without further impacting the benefits available to people who are seriously injured in accidents. One of the big things we've heard about today is about all the disputes and complexity in the system. Some of the disputes come from the minor injury guideline being insufficient and there being no way to get out of it. We don't need any more people with back surgery and screws put in their backs who are being put into the minor injury guideline and having to wait 400 days for mediation.

The non-catastrophic level of funding needs to be reviewed. It's like giving somebody the mildest version of a cancer drug and saying, "Okay, we're going to apply this to everybody, even with the most severe versions of cancer," and expecting that that's going to work. It doesn't work that way. There has to be some common sense, recognizing that even if funds are available to a certain limit, the adjuster still has discretion on whether that treatment is reasonable and necessary. There's always that discretion built in.

We don't know that changes to the catastrophic definition really need to be made, but if they are going to

be made, they have to be based in rehabilitation science, just like any changes to the minor injury guideline. These are the most vulnerable of the victims out there, and so great care really must be taken before we start changing systems there.

Nick mentioned the huge power that adjusters have to deny treatment without seeking any medical opinion. This whole system really needs to be reviewed so that there are proper checks and balances. When there aren't checks and balances, that's when we end up with these endless mediations and \$4.5-million lawsuit payouts. That will definitely affect the insurer profitability. You would not go to your family doctor and accept the secretary making the recommendations for your medical treatment, nor should you have to accept the adjuster's recommendations for your medical treatment.

Both the five-year review and the anti-fraud task force recommended looking at that insurer examination system and the qualifications—

**The Vice-Chair (Mrs. Donna H. Cansfield):** Could I just give you one minute?

**Ms. Justine Hamilton:** Yes—the qualifications, the credentialing, the accountability; it's been recommended in so many different reports, and absolutely nothing has been done on it. We really need to start making some progress on regulating these assessments.

Of course, we're entirely in support of all the anti-fraud regulations. We've been quite regularly involved with the anti-fraud task force, and many of their recommendations have come from our recommendations to them. We just have to be careful that anything we do to eradicate fraud is not a dragnet fishing approach and does not result in increased barriers to access for legitimate victims.

We'll take your questions.

**The Vice-Chair (Mrs. Donna H. Cansfield):** Thank you very much for your presentation. Mr. Colle, are you going to lead?

**Mr. Mike Colle:** I'll let my colleague start. He has a couple of very good questions.

**The Vice-Chair (Mrs. Donna H. Cansfield):** Okay. Mr. Balkissoon?

**Mr. Bas Balkissoon:** Thank you, Madam Chair.

I understand that in the past you've targeted informing the government on how to deal with reforms so some of the bad actors in the medical system—can you give some specific recommendations to this committee that would be passed on?

**Mr. Nick Gurevich:** Sure. First of all, let me make it clear that most of the health care providers who deliver treatment services to victims of motor vehicle accidents are, in fact, regulated by their own respective colleges, so there is already a form of regulation in place, and that regulation looks at the standards of care provided.

Our recommendations were largely targeted at making sure that the players who are not supposed to be in this marketplace in fact do not come in and that there's a high barrier for entry for those who should not be in this industry and who are there strictly for dishonest profit-

earing from the system. Our approach to it and what we've done when we presented to the anti-fraud task force is, we've basically researched the world to see what other standards and what other models there are, and we came up with a stack this big that we've left with them.

The bottom line is that in order to make sure that the bad apples stay away, you have to know who you're dealing with. The process of licensing should be around who owns the business that provides the service, because, as I've mentioned, the providers are largely regulated. Who is it on top who owns the business? Those folks need to undergo what we think is a fairly thorough background check. There need to be assurances that folks don't have a criminal past, that they are reasonable people, that the folks who may be behind in the background are reasonable people who will not be involved in dishonest dealing.

**Mr. Bas Balkissoon:** So are you saying that a legitimate practitioner who is certified by their own college or association or whatever, is working in a clinic where maybe the owner of the clinic is the bad apple?

**Mr. Nick Gurevich:** Absolutely. That could—

**Mr. Bas Balkissoon:** But in that case, shouldn't the person working for that clinic also have accountability and responsibility?

**Mr. Nick Gurevich:** Of course. What I'm trying to say is that the folks who actually work for clinics that defraud the system are not always aware that they are being taken advantage of. There are people who work in our public sector whose licence numbers are stolen and are used by these people. There are many things that people are just not aware of. That's why they are professional fraudsters.

**Mr. Bas Balkissoon:** Okay. Go ahead.

**Mr. Mike Colle:** Thank you. I think that's very insightful because that's what my experience has been. It's not the people working—the professional health care providers and physiotherapists. There's always someone looking for a quick profit who has bought a company, usually a numbered company, sometimes through a front person. They're just interested in maximum quick profits. Therefore, everybody gets a bad name, and the person who is the owner of the company basically walks scot-free and everybody else suffers the consequences. They were certainly very prolific a couple of years ago; I'm not sure how prolific they still are.

You're regulated; most of the health care providers are regulated. How would we regulate the owners? That is the question this committee will have to deal with, and I'm glad you brought that to our attention.

**Mr. Nick Gurevich:** Of course; absolutely. We think that the task force, based on recommendations that we've brought forward and are included in their final report, absolutely make sense in terms of making sure that operators are licensed. I have folks here who have gone to various faculties of medicine and I will tell you that none of them have gone there to somehow profiteer from the insurance business. No such courses are offered in

faculties of medicine. Those are people who are in a helping profession for a reason.

**Mr. Mike Colle:** The other thing that is quite prevalent, I know, in the GTA is that you've got—it starts with the tow truck driver as the first point of entry. He shows up with a little card for a paralegal and another card for the rehab centre and any other service. He takes your truck away and says, “Don't worry. Don't say anything. We've got you set up tomorrow morning to come to the rehab centre.” Then that person is locked in that system and can't get out. Right from the beginning, almost from the onset of an accident, a person is really in the clutches of these con artists.

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**Ms. Justine Hamilton:** We put together an entire set of recommendations on the licensing of the business aspects of things such as referral fees—managing every aspect of the business. We could easily send that to this committee. It is quite thorough.

**Mr. Mike Colle:** Yes, because in 2003 we did regulate the paralegals, because up until then, we found out that half of them that were acting as paralegals—it was a huge number where basically they had criminal records. There were people who were on this paralegal list and the government registry, and they had criminal records. One of the first rules is, you can't be a paralegal if you have a criminal record. I know they're now under the auspices of the Law Society of Upper Canada. I think that has helped a bit.

The other thing you mentioned that I think is really acutely important: You said that besides the magic 15%, as I call it, you have to think about people getting the right treatment and the right medical access when they get hurt in an accident. We need to ensure that people get that. If you can get them a 15% reduction but then you can't get the proper medical assessment, and you've got the \$3,500 and you've got to wait how many years before you get a hearing, and then you get assessed to death—so what you were saying, basically, is that we've got to make sure that it's not on the magic 15%.

**Mr. Nick Gurevich:** I think what we're saying is that any reduction to premiums cannot jeopardize the protection that we have in place right now. If you do a straight weighted average of the benefits that are available in each one of those three buckets—the minor injury, the serious non-catastrophic, and the catastrophic—we're the second-lowest, because 80% fall into that minor injury bucket, which is the lowest in the country. There's no more room to go down.

**Mr. Mike Colle:** Yes, and—you can go ahead.

**Ms. Justine Hamilton:** We've got our preliminary survey results just starting to come in, about the changes since 2010. Prior to 2010, only about 13% of people had to be referred to the public system because they didn't have enough funding. That's up to 57% right now. These are preliminary results; this is just from 40 organizations at this stage. We're going to keep gathering the data, but just to give you—a quadrupling of people being referred back into Ministry of Health funding because we don't

have adequate coverage, just since 2010. So I agree: You have to be very careful how everything is balanced.

**Mr. Mike Colle:** Yes, because I think most people don't realize that there are two parallel health systems working here. There's the private health care system within the insurance industry; then there's the public. So if you cut people off from getting it on the auto side, they're going to move over to the public side, and then there's the cost to be paid there.

**Mr. Nick Gurevich:** Exactly. I would throw one caution out there, because there's a tendency to compare Ontario to other provinces. When you're looking at the benefits that are available and what the claim costs are, what you have to bear in mind is that public system coverages vary from province to province. We happen to have had lots of different services that have been delisted over the last many years—

**The Vice-Chair (Mrs. Donna H. Cansfield):** Mr. Colle, you have one minute, please. Thank you.

**Mr. Nick Gurevich:** —so more and more falls under the auto insurance coverage, because the system is just not able to address it properly.

**Mr. Mike Colle:** Yes, so they try to get it on that side, because they can't—so it almost works both ways. If you can't get it on the private, you go to the public. If you can't get it on the public, you go to the private.

**Mr. Nick Gurevich:** That's right.

**Mr. Mike Colle:** So then you get higher auto insurance costs and you get less medical coverage. Thank you very much for your presentation.

**Mr. Nick Gurevich:** A pleasure.

**The Vice-Chair (Mrs. Donna H. Cansfield):** Thank you very much. Mr. Yurek?

**Mr. Jeff Yurek:** Thank you, Chair. Thanks for coming in. Just a couple of questions with regard to the fraud with health care professionals' ID. I'll have to get the acronym for Mr. Colle. HCAI—

**Mr. Mike Colle:** Oh, another one.

**Mr. Jeff Yurek:** It's a computer system that they're trying to use. What are your thoughts about—I've heard that there are problems with the HCAI system in general, but those can be fixed, I imagine, with some proper programming. The whole idea of everything going through HCAI: What are your thoughts with using that as the only billing mechanism to help cut down on the use of your billing numbers, to cut down on fraud?

**Mr. Nick Gurevich:** A couple of things in relation to HCAI and fighting fraud: Number one, just before I comment specifically on HCAI, what's important to note is that one of the recommendations that we've made to the anti-fraud task force and has seemed to gain their attention is the fact that we would like a person to be designated as a clinical director within a practice, and that has to be a regulated provider. That regulated provider needs to know about what's going on in the practice so that they're more readily identified and tapped on the shoulder if anything goes wrong. That's one check and balance that we've recommended be put in place.

Specifically with respect to HCAI, Justine can comment on that because she has been involved in a pilot program. There is a measure that we've also recommended whereby the professionals who are registered on HCAI are tied into a verification system to their college to make sure that it's one and the same person and to make sure that they're notified if a clinic registers them as a provider. It's a good idea.

**Ms. Justine Hamilton:** Because they've started that—it's PCT, another acronym, the Professional Credential Tracker, and that's exactly what they're trying to do.

The problem with any system, HCAI or other, is anyone could input my name and college registration number and I might not know about it. I was part of the first pilot—speech pathologists were part of the first pilot—looking at this. It was interesting to see who had my name associated with them. That project has now continued with a couple of other professional groups and should be rolled out shortly.

I think using HCAI is a terrific method of gathering data. We'd like to see the HCAI data released, actually. I think there's a lot of valuable information in there that could inform this whole process, among others.

**Mr. Jeff Yurek:** There are some privacy laws that we've got to get around to get that HCAI info out to be shared.

**Mr. Nick Gurevich:** A high level.

**Ms. Justine Hamilton:** A high level. You don't need to know individual claimants.

**Mr. Jeff Yurek:** I agree with your clinical provider. I've been advocating that. I come from the pharmacy field, and it's already in place. We have designated managers operating all these corporate stores. It's a good way to hold both the health professionals and the owners accountable.

**Mr. Nick Gurevich:** That was one of the models we looked at when we spoke to the anti-fraud task force: the pharmacist model.

**Mr. Jeff Yurek:** It wouldn't take much to copy the College of Pharmacists' regulations. That's a good one.

The 2010 reforms capped assessments at \$2,000. Is that effective, and are assessments still a problem in the system? Or has it gone the other way around?

**Ms. Justine Hamilton:** Keep in mind when we're talking about assessments, we're talking about two types: one that is generated by the claimant and their treating provider; and then another one that's generated by the insurance company that wants to challenge the claim—so just to make sure we're keeping in mind the two sets. Both sets were capped at \$2,000.

Again, it's one of those broad brush strokes and the law of unintended consequences. Some assessments naturally entail a lot of time and some naturally entail very little time. Providing one fee cap for them all probably doesn't accomplish the goal of making sure that you're paying the right amount for the right service. It does accomplish the goal of limiting the dollar volume, but you have to watch the unintended consequences. For

the ones that entail 20 hours or 25 hours of time, are you suffering in the quality or the calibre of the assessments? The ones that require 45 minutes: Are their fees potentially going up a little bit? Because they can.

You just have to be careful any time there are broad brush strokes.

**Mr. Nick Gurevich:** I think that originally, the treatment providers were quite concerned about the \$2,000 cap. But I've been reading a lot of feedback by insurers now that they're finding that this \$2,000 cap has been very problematic. That's something that they themselves wanted to institute because it doesn't give them enough expertise—people just don't want to do it, because they can be working in the public sector and earning more. I think that they're finding the \$2,000 cap challenging.

I will tell you that, generally speaking, on either end of the spectrum, whether it's treatment providers or insurer examiners, the one major, major difficulty with the \$2,000 cap is that it does not take into account the geographic location of the victim. If a victim is lucky enough to be located in the GTA, despite the endless traffic here, there's much more selection and somebody might get to them very quickly. If somebody has the unfortunate luck of residing—Laurie can comment on it—somewhere in the vicinity of—

**Ms. Laurie Davis:** Bobcaygeon.

**Mr. Nick Gurevich:** Right—the selection there is much slimmer, in which case a specialist needs to commute from another location, and sometimes a \$2,000 cap just doesn't accommodate for it. So in a way, it is discriminatory against folks who live in remote areas.

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**Mr. Jeff Yurek:** Thank you. What are your thoughts on if an accident victim goes to a chiropractor, gets assessed by the chiropractor and then mandating the insurance industry, if they want another assessment, that it has to be a chiropractor, not a medical doctor—a peer-to-peer assessment tool so it's comparable, apples to apples? What are your thoughts on it?

**Ms. Justine Hamilton:** It used to be that way, and it has changed since 2010. I think strong consideration needs to be given to that because we all have different regulated scopes of practice. It would be inappropriate to ask me to comment on a neurologist's plan. It would be inappropriate to ask a neurologist to comment on my plan, because we simply do not have a lot of overlap in scopes of practice. It's sort of like if you had problems with your heart. Do you want to hear what your neurologist has to say or do you want to hear what your cardiac surgeon has to say? You probably want to hear the cardiac surgeon's perspective on it.

So I think that like-for-like is important, recognizing that there are some—case managers might have a range of health professionals performing that role, so some consideration has to be given to that. But in general, the like-for-like is a pretty important premise that goes through our whole health system.

**Mr. Nick Gurevich:** The other reason it's important is because it's one more thing that can be a basis for

dispute, which is exactly what I think everybody is interested in preventing.

**Mr. Jeff Yurek:** How much time do I have left there, Chair?

**The Vice-Chair (Mrs. Donna H. Cansfield):** You have about two and a half minutes.

**Mr. Jeff Yurek:** Two and a half minutes.

Can you suggest some ideas to reform the mediation process? How can we cut the costs in that system and make people get treated quicker—because that's the key to getting healthier—but also cut down the cost that I think is part of the reason driving up our premium rates?

**Ms. Justine Hamilton:** I think one of the first things to do is to get people not into the mediation system to begin with. Others may be better positioned to comment about how the mediation process actually works, but the big thing we've seen is that people are thrown into mediation because that's their only avenue. If you put in a treatment plan to request \$2,000 of speech therapy services, and the insurer denies it and decides not to go for an insurer examination, the only option is mediation.

Since the changes in 2010 that made mediation pretty much the only route for people, that's when we started seeing this huge increase in the files being sent for mediation. So looking at changing a lot of those upstream systems to try and prevent those disputes happening would be probably the single best way to solve the mediation issue.

**Mr. Nick Gurevich:** I'm not sure that we've been prepared to talk to that topic, but another thought might be to triage the requests that are coming in based on: What is the nature of the dispute? Some disputes, as I think we've heard from OTLA, are relatively easy to address and are maybe minor in cost. They should be given different consideration and a different route from other types of disputes that are perhaps more complicated to resolve. Perhaps disputes that have to do with health care services are addressed by some sort of an independent party, obviously with medical knowledge, that can see through the issue and sort of bridge the gap.

**Ms. Justine Hamilton:** We did prepare a list of recommendations about exactly that as well, which we could also get to you.

**Mr. Jeff Yurek:** That would be great.

**The Vice-Chair (Mrs. Donna H. Cansfield):** Thank you very much. Mr. Singh?

**Mr. Jagmeet Singh:** Thank you very much. Good afternoon. Thank you for being here today.

I'm going to try to save some time at the end, because you didn't get to touch on point 7 of your presentation, so I'll give you some time perhaps to touch on that.

I want to hear from you, as front-line workers, with respect to the \$3,500 cap. Our understanding is that a majority of people are being put into that cap, and I think you've presented in line with that finding. What is your experience with that? How does that work? Is it that high, that 80% of people are being put into that category? How does that impact people in terms of the type of care that they're getting?

**Ms. Justine Hamilton:** That 80% figure is actually coming from the insurance industry, and that seems to be in keeping with the experiences of a lot of the clinics that do a lot of MIG treatment. I think none of us would argue that there's a basis for a minor injury guideline in the system. I think the challenge with this one is, if you're put into it improperly, you can't get out. So the \$3,500—I think other parties have argued that \$3,500 is probably not the right cap for those even who should be in that guideline. But a huge issue is the people who have been slotted there. A recent case this week: a broken back, surgery to put screws in; there's no way that person should be in a minor injury guideline, but once the insurer puts them there, that's where they stay. I think that would be a huge issue.

**Mr. Jagmeet Singh:** Thank you. Actually, that was one of my areas of concern, was the fact that once you're in there, you have to try to fight your way out, and it's almost impossible.

**Ms. Justine Hamilton:** Through mediation.

**Mr. Jagmeet Singh:** It looks like the statutory benefit cost has dropped about 50% in one year. The fact that the benefits have dropped that much: What's the human impact, if you can put a face to that? What does that mean in terms of the actual people and what type of care they're not receiving now that they could have otherwise received? Briefly, if you could summarize a little bit about what that means or what that feels like.

**Ms. Justine Hamilton:** We'll have really good data on that for you in the next week or so. The survey we initiated just opened on Thursday, so we've only got 42 companies responding right now.

One of the questions we asked was about the outcome. At the end of the day, what was the outcome in terms of getting back to work, getting back to meaningful productive lives? One of the categories was "very poor": being institutionalized, psych ward, jail etc. It went from 2% to 4%. That's a doubling of people ending up in that category. At the top end, with "returning to at least 50% of their pre-accident roles," we'd had about three quarters of people prior to 2010 falling into that category, down to one quarter.

**The Vice-Chair (Mrs. Donna H. Cansfield):** I'm sorry, I'm having a lot of trouble hearing.

**Mr. Jagmeet Singh:** Can you pause the clock, then, while this is—

**The Vice-Chair (Mrs. Donna H. Cansfield):** Yes. Go ahead. I'll give you an extra few seconds. Thank you very much.

**Ms. Justine Hamilton:** I was just saying that our survey data is looking at outcomes pre-2010 and post-2010. On the very low end, a "poor" outcome being in a psych ward, in jail etc., it went from 2% of people falling into that category to 4%. Fortunately, it's still a relatively low number, but 4% on the social system is pretty expensive. At the high end, in the "good" and "very good" outcome category—so returning to at least 50% of your pre-accident roles—prior to 2010 we were at 66% in that category, and down to 27% in that category post-2010.

We're hoping to get tons and tons of responses, but this is the early data that is very much in keeping with our board's experience, for sure.

**Mr. Jagmeet Singh:** I'm going to switch topics today: catastrophic definition now. My position—and the party's position—is that we don't need to see any further reduction in coverage and protection for people. That's not something we want and not something we support. What is your opinion in terms of the industry changes to the catastrophic definition? I met with a lot of professionals and I know that they don't like—there are a lot of issues with it. There's particularly a concern with the methodology used and the expert panel and the way that the voting took place in terms of which areas were given more importance or less importance. Could you just briefly summarize your thoughts on the proposed changes to the catastrophic definition?

**Ms. Justine Hamilton:** Patricia, do you want to? Our cat expert.

**Ms. Patricia Howell:** My name is Patricia Howell. I was the project lead of a group of about 28 experts that took a look at the original recommendations by the FSCO panel, the eight-member panel. As opposed to the FSCO expert panel, we had 28 rather than eight. Our group included a lot of specialists. We had, for example a physiatrist who worked in spinal cord rehab, which was not in the original panel. We had all of the different areas covered. We also had treating clinicians, so OTs and physios who actually work every day with accident victims, and that was not part of the original panel.

The original FSCO panel, six out of eight of them, were not clinicians; they were more epidemiology background and that type of approach—which I think right from that, when they used a Delphi method, where six out of eight could pass something, that means right away the methodology did not work. The Delphi method they used, on which, as I said, they did a consensus vote, six out of eight agreed with something and then that went into the final recommendation: That is a method that really needs to be used with a much larger group, and also with a more consistent group. So if you had a group of psychiatrists commenting on the psychiatric aspect of the cat definition, and you had a larger group and they were all psychiatrists, then that's an appropriate method.

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So the methodology was flawed right from the beginning, and I think the bottom line is that the final recommendations that came up are not fair across all individuals. Certain disability groups like a single-limb amputee qualify, where someone under the psychiatric has to reach such a high threshold that they're almost suicidal and have multiple hospitalizations to reach the same threshold. If you think of how disabled someone would be who's so psychiatrically ill versus someone with an amputation who can still work and look after themselves, the level of disability is not the same across.

In general, they raised the bar. They made it so much more difficult to be deemed catastrophic. When you look that the non-cat that has been cut, there are a whole bunch of people—20% of injuries are running out in six

months to a year. Really, you don't want to be seeing it—it's even more difficult to achieve cat. If anything, it should be easier.

**Mr. Jagmeet Singh:** I'm nervous about the time running out, so I'm going to touch on the anti-fraud task force. I know that you and I and many people in this room all agree that we need to eliminate fraud. Of course, that's something that everyone can agree on. No one's going to disagree with that. But are there any specific recommendations that you have concerns with that you wanted to express at all that you flagged?

**Mr. Nick Gurevich:** I think a concern is with the overall approach to implementation. The recommendations, we agree with. We endorse them. It's the implementation that we have concerns with. Our concern is, when their recommendations get implemented, we would like them to not create additional barriers to access treatment by victims or provide treatment by treatment providers, and I think that even the early recommendations that have been implemented are starting to get that flavour.

I'll give you an example. There has been one recommendation that has been implemented—which we recommended, by the way—in the original task force report, which was that treatment sessions are tracked by the health care providers when they go to see the clients so that if there's a question comes up in connection with fraud, there is something in writing that is being tracked. The recommendation was that insurers could call on service providers to provide them with that proof.

When the recommendation was implemented, the responsibility for tracking was switched from the service provider, from the treatment provider, on to the victim. We deal with lots of victims who are brain-injured—

**The Vice-Chair (Mrs. Donna H. Cansfield):** Mr. Singh, you have one minute.

**Mr. Nick Gurevich:** It is impossible for them, practically speaking, to track these things, and if they don't track, the implication is that they will not receive the funding that they need. The insurer can say, "Sorry; you haven't been tracking this stuff. You can't prove to us that you're received the treatment. We're not paying." That's a problem.

**Mr. Jagmeet Singh:** In the last 30 seconds, anything you'd like to say on your own—any ideas you can throw out there?

**Mr. Nick Gurevich:** The one thing that I would like to put out there is that this end of the table is very poorly funded as compared to the second presentation that sat here today, and we've been recently vilified quite a bit in the media. I would like to make the point to everybody here that there are very much legitimate victims out there. Most of the health care providers are top-notch individuals, and all they want to do is help legitimate victims. We are 100% committed to working with any stakeholder group and working with you folks to make sure that fraud is eradicated.

**The Vice-Chair (Mrs. Donna H. Cansfield):** Wonderful closing. Thank you very much for your presentation and for your patience.



This committee stands adjourned until—

**Mr. Mike Colle:** Wait. I have a couple of questions. Can I ask that we get a list of acronyms and the definitions and explanations of all the acronyms used over the last day?

Secondly, can we ask that representatives from GISA come and appear before this committee? They were referred to all during the day and I'd like to see if they're real people and have them come and present.

My third request is that we get a report on the first-chance discount system for first-time insurers and for newcomers that is used in the Maritimes, especially Nova Scotia, for the committee's deliberations, so we can look and see how it works—the pros and cons of it—and put it in the hopper and see if it helps.

**The Vice-Chair (Mrs. Donna H. Cansfield):** I think it would be prudent to let everybody know that we have not planned any future dates, so I don't know when this would actually happen. I wonder—

**Mr. Bas Balkissoon:** The subcommittee.

**The Vice-Chair (Mrs. Donna H. Cansfield):** I was going to say, could we refer this to the subcommittee for a discussion? Is everyone agreeable?

**Mr. Jagmeet Singh:** That we give the subcommittee authority to make decisions on these—

**The Vice-Chair (Mrs. Donna H. Cansfield):** Then the subcommittee would come back and report to the—

**Mr. Mike Colle:** On the GISA part, but the other things we can do without a subcommittee.

**The Vice-Chair (Mrs. Donna H. Cansfield):** The other is just definitions. That's fine.

**Mr. Jagmeet Singh:** I can put it right now that I agree with the GISA recommendation. We can probably vote on that right now.

**The Vice-Chair (Mrs. Donna H. Cansfield):** I think we should take it to the subcommittee, because we don't have any dates.

**Mr. Mike Colle:** Yes. It's better the subcommittee do it.

**The Vice-Chair (Mrs. Donna H. Cansfield):** As I said, we could invite them, but we don't know when. It could be months or whatever.

Ladies and gentlemen, this committee stands adjourned until Wednesday, April 17, 2013, after routine proceedings.

*The committee adjourned at 1755.*





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