

Newfoundland and Labrador
Auto Insurance Review

~ May 2018 ~



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Introduction

To reduce and stabilize premiums and improve health outcomes by focusing auto insurance on access to treatment instead of cash payments, IBC has recommended implementing a non-pecuniary damages cap with the following components:

- A \$5,000 cap with annual inflation adjustments; and
- A minor injury definition that includes sprains, strains and whiplash injuries, including any clinically associated sequelae, whether physical or psychological in nature, that does not result in a serious impairment.

This reform proposal complements another IBC reform proposal to make accident benefits mandatory, enhance medical and rehabilitation benefits up to \$50,000 and disability income up to \$250 per week, and establish pre-approved evidence-based treatment protocols.

This submission supplements IBC's February 2018 submission by providing additional analysis and insight from Oliver Wyman's auto insurance review reports.¹ Oliver Wyman's reports demonstrate that a disproportionate amount of claim settlements is attributed to cash payments for non-pecuniary damages instead of treatment. They also demonstrate that significant bodily injury claim cost savings are needed to improve market conditions and protect consumers from potentially large premium increases.

Non-Pecuniary Damages Payments

Oliver Wyman found that the \$25,208 average non-pecuniary damages payment represents 64% of the \$39,580 average total settlement.² For people with potential minor injuries, the proportion of payments that are for non-pecuniary damages is even larger. Oliver Wyman defines an injury as potentially minor if it fits into one or both of the following categories:

- Class 1, meaning minor sprains, strains, joint injuries or minor lacerations, contusions, bruises or burns; and
- Class 2, meaning temporomandibular joint (TMJ) disorder without a fracture, chronic pain, psychological or emotional injury, other fractures, concussion or mild traumatic brain injury.³

¹ The Oliver Wyman reports considered are *Profit and Rate Adequacy Review, Closed Claim Study Summary* and *Minor Injury Reform Cost Estimates*. All reports are for private passenger automobiles, Newfoundland and Labrador, March/April 2018.

² Oliver Wyman. *Closed Claim Study Summary – Private Passenger Automobiles, Newfoundland and Labrador Insurance Industry*. April 2018.

³ None of the people categorized into class 1 or class 2 have a class 3 injury. A class 3 injury is a serious neck injury, spinal cord injury, amputation, permanent loss of sense, internal organ injury, significant weight-bearing fracture, permanent disfigurement or scarring, post-concussion syndrome, serious lacerations or burns, permanent brain injury, serious back, knee, shoulder or other joint injury, TMJ disorder with jaw fracture and deceased. These injuries are not minor.



For the 1,492 people in these injury classes, the \$21,895 average non-pecuniary damages payment comprises 70% of the \$31,461 average total settlement.⁴

These massive non-pecuniary damages payments correspond directly to auto insurance legislation that emphasizes cash payments over health outcomes. The ability to take an injury that is expected to heal in a few days, weeks or months, and turn it into tens of thousands of dollars in cash is why 82% of injury claims involve personal injury lawyers.⁵

This personal injury lawyer representation rate is unusually high. Closed claims studies that IBC conducted in Alberta in 2015, New Brunswick in 2011 and Nova Scotia in 2009 have personal injury lawyer representation rates between 58% and 63%.

That so many Newfoundland and Labrador claims have personal injury lawyers is a symptom of the problem that has caused consumers to have to pay hundreds of dollars more for insurance than Maritime consumers even though Maritime consumers purchase higher medical, rehabilitation and disability income benefits. Although auto insurance is about collecting premiums from many people to pay for the claims of a few people, the \$409 per vehicle cost of bodily injury claims that all Newfoundland and Labrador consumers have to cover is associated with less than 2,000 claims per year.⁶

Reform Costing Analysis

Oliver Wyman calculates a 2017 required premium of \$1,327, which is almost \$200 or 17% higher than the \$1,131 average premium in the market.⁷ Reducing consumers' vulnerability to potentially large premium increases and restoring cost stability requires approximately 30% in bodily injury claim cost savings. These savings would bring the required premium within 5% or less of the average market premium.

Increasing the Non-Pecuniary Damages Deductible

The projected bodily injury claim cost savings and required premium reduction associated with increasing the non-pecuniary damages deductible to \$5,000, \$7,500 or \$10,000 would barely improve market conditions. That is because deductibles are susceptible to erosion from inflation and from settlements increasing until they become a small cost of doing business.

Even in Oliver Wyman's most optimistic scenario of a \$10,000 deductible reducing bodily injury claim costs by 13%, the resulting required premium of \$1,262 is still 12% higher than the \$1,131 average market premium, leaving consumers facing more than a \$100 potential premium increase.⁸ A deductible's inability to keep claim costs stable is why all

⁴ Oliver Wyman. *Closed Claim Study Summary – Private Passenger Automobiles, Newfoundland and Labrador Insurance Industry*. April 2018.

⁵ Ibid.

⁶ IBC calculations based on data from GISA. Excludes the health levy.

⁷ Oliver Wyman. *Profit and Rate Adequacy Review – Private Passenger Automobile, Newfoundland and Labrador Insurance Industry*. March 2018. Oliver Wyman calculates the 2017 required premium based on a weighted average of 20%/30%/50% for accident years ending June 30, 2015, 2016 and 2017, respectively.

⁸ Oliver Wyman. *Minor Injury Reform Cost Estimates – Private Passenger Automobiles, Newfoundland and Labrador Insurance Industry*. April 2018.



other provinces with tort-based auto insurance legislation have a minor injury cap or, in the case of British Columbia, are in the process of implementing one.

Establishing a Minor Injury Non-Pecuniary Damages Cap

Depending on its design, a cap can improve market conditions and stabilize premiums. Oliver Wyman bases its bodily injury claim cost savings estimates and associated projected required premium reductions on three assumptions:

1. Newfoundland and Labrador uses either the New Brunswick or Nova Scotia minor injury definitions, both of which result in between 66% and 76% of injured people settling within the cap;
2. The cap reduces non-pecuniary damages payments and allocated loss adjustment expenses; and
3. The cap could reduce the minor injury frequency rate by up to 15%.

Percentage Reduction in Total Settlements and Allocated Loss Adjustment Expenses

	0% Frequency Change	5% Frequency Change	10% Frequency Change	15% Frequency Change
\$5,000 Cap	21% to 27%	23% to 29%	25% to 31%	27% to 34%
\$7,500 Cap	19% to 24%	20% to 26%	22% to 28%	24% to 31%
\$10,000 Cap	16% to 21%	18% to 23%	20% to 25%	21% to 28%

IBC table based on data from Oliver Wyman.

Average Accompanying Required Premium Reductions

	0% Frequency Change	5% Frequency Change	10% Frequency Change	15% Frequency Change
\$5,000 Cap	\$112 to \$139	\$121 to \$151	\$131 to \$163	\$140 to \$175
\$7,500 Cap	\$97 to \$123	\$106 to \$135	116 to \$147	\$125 to \$159
\$10,000 Cap	\$83 to \$108	\$92 to \$120	\$102 to \$132	\$112 to \$144

IBC table based on data from Oliver Wyman.

Commentary

Although Oliver Wyman's estimates are within a reasonable range overall, the government should consider the following four points when interpreting the results and considering the potential effect on market conditions and consumers.

1. *Likelihood of the Claim Frequency Rate Declining*

It is unlikely that the cap could significantly reduce the minor injury frequency rate. Although after establishing caps, both New Brunswick and Nova Scotia experienced bodily injury claim frequency rate declines, other factors may have contributed to the



declines. Across Canada, since the early 2000s, there has been a national trend of declining bodily injury claim frequency rates. Even Newfoundland and Labrador, with its \$2,500 deductible, has been experiencing a decline since the early 2000s. Up until the last few years, British Columbia, which has no bodily injury claim cost controls, had been experiencing a decline as well.

These two examples indicate that factors other than the cap have been contributing significantly to the claim frequency rate declines in New Brunswick and Nova Scotia. One likely factor is the improvements in vehicle safety.

Bodily Injury Claim Frequency Rate (per 100 vehicles) by Province

	NL	NB	NS	PE	AB	BC
2000	0.99	0.93	0.77	0.67	1.09	1.63
2004	0.78	0.54	0.57	0.52	0.77	1.33
2008	0.68	0.39	0.39	0.34	0.62	1.15
2012	0.69	0.31	0.42	0.29	0.59	1.21
2016	0.52	0.27	0.38	0.24	0.52	1.48
Change	(47%)	(71%)	(51%)	(64%)	(52%)	(9%)

IBC calculations with data from GISA, IBC's consulting actuary, Dr. Ron Miller, and ICBC.

Even if the cap could reduce the claim frequency rate in current conditions, it is unlikely that a \$10,000 or \$7,500 cap could reduce the rate to the same degree as a \$5,000 cap. Nevertheless, given how much the claim frequency rate has declined since the early 2000s, even with a \$5,000 cap, any further decline would be minimal.

2. Importance of the Minor Injury Definition

It is also unlikely that a cap based on a minor injury definition modeled after the Nova Scotia definition, which applies only to sprains and strains, would cover the same number of claims as a definition modeled after the New Brunswick definition, which is based on the prevailing medical literature on motor vehicle collision injuries. The prevailing medical literature states that common collision injuries are known to present as clusters of physical, psychological and pain conditions, and that most people with these injuries recover in a few days, weeks or months.⁹

Nova Scotia is now the only province with a definition covering only sprains and strains. Ontario, New Brunswick and Prince Edward Island have definitions covering sprains and strains and the psychological, emotional, pain or TMJ conditions often ancillary to sprains and strains. As of June 2018 and April 2019, Alberta and British Columbia, respectively, will also have definitions that align with the prevailing medical literature.

⁹ Ontario Protocol for Traffic Injury Management Collaboration. *Enabling Recovery from Common Traffic Injuries: A Focus on the Injured Person*. December 2014.



To apply the cap to conditions ancillary to a minor sprain or strain, the Ontario, New Brunswick and Prince Edward Island definitions include the terminology “*including any clinically associated sequelae*”. The Alberta definition specifically states that a TMJ injury can be a sprain or strain and that a physical or psychological condition can be associated with a sprain or strain. The B.C. definition includes similar terminology and also lists several conditions, such as “*a physical or mental injury, whether or not chronic, a pain syndrome, or a psychological or psychiatric condition*”.

Minor Injury Definitions by Province and Effective Date

NS (2010)	ON (2010)*	NB (2013)	PE (2014)	AB (2018)	BC (2019)
A sprain, strain or whiplash that does not result in a serious impairment	A sprain, strain, whiplash, contusion, abrasion, laceration or subluxation and includes any clinically associated sequelae to such an injury	A contusion, abrasion, laceration, sprain, strain or whiplash, including any clinically associated sequelae , that does not result in a serious impairment or in permanent serious disfigurement	A sprain, strain or whiplash, including any clinically associated sequelae , that does not result in a serious impairment	A sprain, strain or whiplash that does not result in a serious impairment A TMJ injury is a sprain, strain or whiplash unless it involves damage to bone, teeth or articular disc A physical or psychological condition or symptom that arises from and resolves with a sprain, strain or whiplash is not separate from the sprain, strain or whiplash	A physical or mental injury, whether or not chronic : an abrasion, a contusion, a laceration, a sprain, or a strain, a pain syndrome, a psychological or psychiatric condition or another prescribed injury, including a symptom or a condition associated with the injury , that does not result in a permanent serious disfigurement or serious impairment

**The Ontario minor injury definition is associated with the accident benefits \$3,500 medical and rehabilitation benefits cap. For bodily injury claims, Ontario legislation requires that the injury be permanent and serious. In 2018, a \$37,983.33 deductible applies to non-pecuniary damages unless the non-pecuniary damages are \$126,610.07 or higher.*

Using the Nova Scotia definition in Newfoundland and Labrador would result in as much as 66% of people settling within the cap, but most likely less, as the cap would be susceptible to gradual erosion. The erosion could end up being substantial given the combination of a definition that does not cover conditions commonly associated with sprains or strains and a high personal injury lawyer representation rate in the province.

Up until recently, the Alberta definition was identical to the Nova Scotia definition. Between 2012 and 2015, two Alberta court decisions confirmed that injuries that the medical literature deems minor were not minor for the purpose of applying the cap because the definition covered only sprains and strains. These decisions caused the



average bodily injury claim cost to increase by more than 9% per year over a five-year period.¹⁰

The pressure on consumers' premiums from these cost increases caused the Alberta government to act. In a May 17, 2018 news release, the government stated the following.

This amendment will make it clear that sprains, strains and whiplash injuries are considered minor injuries. The relating physical and psychological symptoms, along with temporomandibular joint (TMJ) injuries, are also considered minor injuries.

While these changes will help keep auto insurance affordable and fair, they will not affect other claims, including lost income, medical expenses or property.

In Newfoundland and Labrador, using a definition modeled after the Ontario, New Brunswick, Prince Edward Island, Alberta or British Columbia definitions, which align with the prevailing medical literature, would likely result in 76% of people settling within the cap.

3. Risk with a High Minor Injury Cap

The savings associated with the \$7,500 and \$10,000 caps are less secure than the savings associated with the \$5,000 cap. That is because the higher caps provide more financial incentive for personal injury lawyers to take on minor injury claims and use the litigation process to increase cash payments even though these common claims can easily settle without legal involvement.

In Nova Scotia, upon increasing the cap in 2010 from \$2,500 to \$7,500 and linking it to inflation, the average bodily injury claim cost increased by 29% in only two years.¹¹ Since then, the average cost has increased by 4.5% per year, which is significantly more than inflation.¹²

Nova Scotia Average Bodily Injury Claim Cost

2009	2010	2011	2012	2013	2014	2015	2016
\$32,090	\$33,391	\$41,541	\$42,472	\$43,366	\$48,131	\$49,190	\$51,837

IBC calculations with data from GISA. Includes ULAE but excludes the health levy.

The main reason for this average cost trend is fewer bodily injury claims that incur amounts less than \$20,000, which is a proxy for minor injury claims. Between 2009 and

¹⁰ IBC's consulting actuary, Dr. Ron Miller's calculations, based on data from GISA. Excludes the health levy.

¹¹ IBC calculations with data from GISA. The 29% average bodily injury claim cost increase is between 2009 and 2011.

¹² IBC calculations with data from GISA.



2014, the proportion of bodily injury claims with incurred amounts less than \$20,000 declined from 83% to 70%.

Bodily Injury Claims Size Distribution at Three-Year Development Level (2016)

	2007	2008	2009	2010	2011	2012	2013	2014
\$20,000 or Less	81%	81%	83%	80%	77%	74%	75%	70%
Greater Than \$20,000	19%	19%	17%	20%	23%	26%	25%	30%

IBC table with data from GISA exhibit AUTO5001-ATL, 2016. GISA does not develop the size of claim distribution exhibits to ultimate values. The estimates are based on claims at the most up to date three-year development level. Claims with a total incurred amount of \$0 are excluded. Incurred claim size includes indemnity payments and case reserves.

In New Brunswick, since increasing the cap in 2013 from \$2,500 to \$7,500 and linking it to inflation, the average bodily injury claim cost has increased by 69% or 14% per year.¹³ The proportion of bodily injury claims with incurred amounts less than \$20,000 declined from 85% to 77% over a two-year period.

New Brunswick Average Bodily Injury Claim Cost

2012	2013	2014	2015	2016
\$41,258	\$49,549	\$53,625	\$60,075	\$69,666

IBC calculations with data from GISA. Includes ULAE but excludes the health levy.

Bodily Injury Claims Size Distribution at Three-Year Development Level (2016)

	2007	2008	2009	2010	2011	2012	2013	2014
\$20,000 or Less	86%	84%	84%	83%	84%	85%	81%	77%
Greater Than \$20,000	14%	16%	16%	17%	16%	15%	19%	23%

IBC table with data from GISA exhibit AUTO5001-ATL, 2016. GISA does not develop the size of claim distribution exhibits to ultimate values. The estimates are based on claims at the most up to date three-year development level. Claims with a total incurred amount of \$0 are excluded. Incurred claim size includes indemnity payments and case reserves.

Although the \$7,500 or higher caps are common in the Maritimes, other provinces have taken different approaches. Alberta's cap, originally set at \$4,000, is now \$5,080. British Columbia, which has been a full-tort jurisdiction without cost controls, is establishing a \$5,500 cap, effective April 2019.

4. *Enhanced Accident Benefits*

Making accident benefits mandatory, enhancing medical and rehabilitation benefits and establishing pre-approved evidence-based treatment protocols are important

¹³ IBC calculations with data from GISA. The 69% or 14% per year average bodily injury claim cost increase is between 2012 and 2016.



complements to a cap. Although crucial to helping injured people recover from their injuries, these measures will increase accident benefit claim costs by a modest amount. Maximizing bodily injury claim cost savings, which correspond to reducing cash payments, would help accommodate the enhanced accident benefits.

Summary of Analysis

A cap is unlikely to cause the claim frequency rate to decline although, a \$5,000 cap could cause a small decline. Nova Scotia's older definition, which covers only sprains and strains, is different than New Brunswick, Prince Edward Island, Ontario, Alberta and British Columbia's up-to-date definitions, which cover all injuries that the prevailing medical literatures deems minor. The higher the cap, the less likely the projected savings materialize.

To achieve close to the 30% bodily injury claim cost savings needed to improve market conditions, protect consumers from potentially large premium increases and accommodate the enhanced accident benefits, the government should establish a \$5,000 cap. The cap should be linked to inflation and apply to all injuries that the prevailing medical literature deems minor.

To ensure that the cap remains an effective cost control, the government should be prepared to update it over the years to reflect legal, medical and other market developments. The Superintendent of Insurance can support this effort by reporting on the state of the market annually.

Anticipated Savings based on Up-to-Date Minor Injury Definition

	Total Settlements and Allocated Loss Adjustment Expenses	Reductions on Required Premium
\$5,000 Cap	27% to 29%	\$139 to \$151
\$7,500 Cap	24%	\$123
\$10,000 Cap	21%	\$108

IBC table based on data from Oliver Wyman. Assumes up to a 5% minor injury claim frequency rate decline for a \$5,000 minor injury cap.

Conclusion

Emphasizing care instead of cash is an important public policy change from the current auto insurance legislation. As mentioned above, the B.C. government is pursuing similar reforms, specifically a cap and pre-approved evidence-based treatment protocols. A recent statement from the B.C. Attorney General David Eby describes the consumer benefit of focusing auto insurance on improving health outcomes.

As announced in February, we're shifting the focus away from maximizing payouts to a care-based insurance system – where taking care of people injured in a crash is the top priority...



...By introducing a limit on payouts for pain and suffering for minor injuries, along with the other changes, [Insurance Corporation of British Columbia] will save more than \$1 billion annually – helping put money back into the treatment and recovery for people injured in car crashes.

These changes will truly have a dramatic impact in making the injured customer ICBC's top priority, and in helping those injured in a crash recover more quickly.

Given the benefits to injured people and all consumers, the Newfoundland and Labrador government should have full confidence in the proposed cap and accident benefits reforms.