

# **REVIEW OF THE CURRENT AUTOMOBILE INSURANCE SYSTEM**

A CONSULTATION PAPER

Copyright information: © Queen's Printer for Ontario, 2001  
ISBN 0-7794-2090-X

## TABLE OF CONTENTS

I	INTRODUCTION .....	<a href="#">1</a>
II	DISCUSSION .....	<a href="#">2</a>
	Existing Regulatory Structure and Context for Change .....	<a href="#">2</a>
	Background .....	<a href="#">2</a>
	Goals of the Review of the Current Automobile Insurance System .....	<a href="#">3</a>
III	COMPENSATION FOR CHILDREN AND SEVERELY INJURED ADULTS ...	<a href="#">4</a>
	Issues Raised by the Definition of Catastrophic Impairment .....	<a href="#">4</a>
IV	BENEFITS .....	<a href="#">6</a>
	Streamlining the Statutory Accident Benefits System .....	<a href="#">6</a>
	Treatment of Income Continuation Benefits .....	<a href="#">7</a>
	Eligibility .....	<a href="#">8</a>
	Other Issues .....	<a href="#">10</a>
	Designated Assessment Centres .....	<a href="#">11</a>
V	RATING ISSUES .....	<a href="#">13</a>
	Collateral Benefits .....	<a href="#">13</a>
	Definition of Fleet .....	<a href="#">14</a>
	Group Insurance .....	<a href="#">14</a>
	Expedited Rate Filing Process .....	<a href="#">15</a>
VI	PHYSICAL DAMAGE, THEFT AND ROAD SAFETY .....	<a href="#">16</a>
VII	OTHER ISSUES .....	<a href="#">20</a>
	Other Tort Issues .....	<a href="#">20</a>
	Settlement Regulation .....	<a href="#">20</a>
	Definition of Automobile .....	<a href="#">21</a>
	Paid Representatives and the Dispute Resolution System .....	<a href="#">21</a>
	Information Sharing .....	<a href="#">22</a>
	Other Amendments .....	<a href="#">22</a>
VIII	APPENDICES .....	<a href="#">24</a>
	Appendix A .....	<a href="#">24</a>
	Appendix B .....	<a href="#">25</a>
	Appendix C .....	<a href="#">26</a>

## I INTRODUCTION

*Review of the Current Automobile Insurance System* is being circulated to solicit comments and suggestions for possible legislative and regulatory amendments to the current automobile insurance system, as framed by the Automobile Insurance Rate Stability Act (Bill 59).

The government intends to introduce reforms in 2002 that will improve the system for consumers, health professionals, lawyers, and industry participants. Amendments will ensure that Ontarians continue to be provided with a fair, balanced and cost effective automobile insurance system.

John O'Toole, Parliamentary Assistant to the Honourable James Flaherty, Minister of Finance, will lead consultations on this paper with consumers, health professionals, lawyers and industry participants. Feedback and advice to the Minister from this consultation process will provide valuable input to changes being considered to the current automobile insurance system.

This consultation paper provides an overview of the current automobile insurance system and discussion points for the consultation process. The consultation will address some of the concerns of system participants and provide a framework for a review. To facilitate consultations and to solicit written comments, this paper includes a number of questions.

Interested parties are invited to make written submissions by November 5, 2001. Written submissions should be sent to:

John R. O'Toole, M.P.P.  
Parliamentary Assistant to the Minister of Finance  
7 Queen's Park Crescent  
Frost Building South, 7<sup>th</sup> Floor  
Toronto, Ontario  
M7A 1Y7

Please note, all submissions received are subject to the access and privacy provisions of the Freedom of Information and Protection of Privacy Act. If for any reason you feel that your comments should not be shared with other parties, please indicate this in your covering letter.

All submissions should indicate a contact person and contact details (return address, telephone, fax and e-mail address).

Parties interested in making an oral presentation to John O'Toole should contact Derron Bain at (416) 325-1713 or send an e-mail to [Derron.Bain@fin.gov.on.ca](mailto:Derron.Bain@fin.gov.on.ca).

*Review of the Current Automobile Insurance System* and the indicated appendices are available on the Ministry of Finance website at [www.gov.on.ca/fin](http://www.gov.on.ca/fin).

## II DISCUSSION

### Existing Regulatory Structure and Context for Change

The Automobile Insurance Rate Stability Act<sup>1</sup> (Bill 59) came into force on November 1, 1996 and is the basis for the present automobile insurance system. Bill 59 has succeeded in reducing and stabilizing automobile insurance rates since it was implemented (See Appendix A). The government remains committed to an ongoing review of the system. The government is conducting this review to maintain an automobile insurance system that is fair, balanced, and cost effective.

The marketplace has changed since Bill 59 was introduced. Pressures on the system include increased medical benefit costs, automobile repair costs, and the number of accidents. In addition, various groups have expressed concerns with particular areas of the automobile insurance system. All users of the automobile insurance system are encouraged to participate in this review to ensure that a fair, balanced, and cost-effective product is maintained. By distributing this consultation paper, the government is taking a first step towards possible changes to the current system.

This review is seeking to continue to improve on the success of the current automobile insurance system. It should be noted that a fundamental change in the balance between statutory no-fault accident benefits and tort damages is not contemplated at this time. Areas to be reviewed include: access to compensation for children and severely injured adults; benefits for injured victims under the Statutory Accident Benefits Schedule (SABS); the automobile insurance rate filing system; physical damage coverage, theft, and road safety; and other related issues.

### Background

Bill 59 was introduced in response to concerns over rapidly escalating automobile insurance premiums. It expanded the right of innocent auto accident victims to sue for economic losses and it reduced mandatory statutory accident benefit levels. At the same time, Bill 59 gave consumers the choice to purchase both additional coverage and higher deductibles for physical damage coverage.

Other reforms included strong anti-fraud measures, higher fines for uninsured motorists, establishment of an Insurance Ombudsman, premium discounts for retirees, an improved dispute resolution process, and a simplified rate filing process.

---

<sup>1</sup>See [www.gov.on.ca/fin](http://www.gov.on.ca/fin) for a copy of Bill 59.

In keeping with the government's commitment to review and fine tune the automobile insurance system, the government reviewed Bill 59 in 1998, two years after its introduction. Legislative changes were introduced as the *Automobile Insurance Consumer Protection Act (AICPA) (Bill 90 and Bill 21)*, received First Reading December 1998 and April 1999.<sup>2</sup> The government did not re-introduce the bill due to a lack of consensus among interest groups.

Building pressures on the current system call for a review and possible fine-tuning changes. Industry groups are reporting increased pressure as costs rise. Major cost drivers include increasing medical benefit costs (See Appendix B) and rising vehicle repair costs. The significant increase in the number of vehicles and drivers on Ontario roads over the last few years is a contributing factor. (See Appendix C)

Interest groups have also indicated concerns regarding specific aspects of the automobile insurance system. In response, a panel was struck in June 2000 by the then Parliamentary Assistant to the Minister of Finance, Mr. David Young, to review the present definition of catastrophic impairment. In addition, Mr. Young put together an industry working group to review how access to collateral benefits could be used as a rating factor. Both groups have submitted their reports and the results are included in this consultation.

Other concerns regarding access to, and the effectiveness and fairness of, the automobile insurance system have been raised.

*Review of the Current Automobile Insurance System* sets out discussion points for the consultation, outlines some of the concerns groups have expressed, and provides a framework for a review of the automobile insurance system.

### **Goals of the Review of the Current Automobile Insurance System**

- maintain stable automobile insurance rates for consumers
- enhance fairness and balance in the current automobile insurance system
- improve the effectiveness of the current automobile insurance system

---

<sup>2</sup>See [www.ontla.on.ca](http://www.ontla.on.ca) for copies. Click on Bills - Bills Archive - 36 Parliament - Session 2 (Bill 90) and Session 3 (Bill 21).

### **III COMPENSATION FOR CHILDREN AND SEVERELY INJURED ADULTS**

Under the current automobile insurance system, those who are injured in automobile accidents receive no-fault accident benefits as set out in the SABS. Optional medical, rehabilitation, and attendant care benefits are available for purchase which give an individual access to \$1 million in additional coverage.

Severely injured adults and children whose condition meets the definition of catastrophic impairment have access to a higher tier of accident benefits. Innocent accident victims can also sue for additional compensation.

#### **Issues Raised by the Definition of Catastrophic Impairment**

The definition of catastrophic impairment is recognized as one of the key features of Bill 59. Individuals with injuries that meet this definition have access to a second tier of enhanced medical, rehabilitation, attendant care, and other statutory accident benefits as well as access to tort (if not at-fault).

Concerns have been expressed that the definition of catastrophic impairment does not adequately address the needs of children, as well as severely injured adults who have been involved in automobile accidents, and does not provide adequate access to tort to recover losses resulting from an accident.

In the absence of a detailed technical review of the existing definition, the 1998 review of the automobile insurance system proposed changes to address the needs of children. The proposal deemed children to have purchased the optional medical and rehabilitation benefits which would provide them with \$1 million of additional coverage. In addition, the proposal expanded children's access to tort by permitting them to sue for serious and permanent injuries. However, it was recognized that the definition of catastrophic impairment may still require further examination with respect to children and severely injured adults.

#### *New Definition Proposed*

In June, 2000, the then Parliamentary Assistant to the Minister of Finance, David Young, directed that the Advisory Panel on the Definition of Catastrophic Impairment (the "Panel") be established to review and make recommendations on the definition of catastrophic impairment. The Panel, which consisted of doctors, lawyers, and insurer representatives, submitted its report and recommended several changes including a revised definition of catastrophic impairment which would better recognize the special circumstances of children and severely injured adults. (See our website [www.gov.on.ca/fin](http://www.gov.on.ca/fin) for the current definition of catastrophic impairment and the actual text of the Panel's recommendations.)

**Question #1:**

Should the recommendations of the Panel be adopted as proposed?

If the Panel's recommendations are adopted:

- Is there any reason to deem children to have purchased optional benefits?
- Will children have the same access to tort as adults?



## **IV BENEFITS**

Statutory accident benefits provide basic compensation for most Ontarians who have been injured or killed in an accident, while allowing an enhanced level of accident benefits to those who sustain catastrophic injuries. Drivers can also purchase additional coverage to meet their individual needs.

Bill 59 introduced a number of measures to reduce costs and stabilize rates by adding more control over medical and rehabilitation benefits. Since its introduction, Bill 59 has been successful in stabilizing costs in many areas. However, some features have been identified as requiring adjustment.

Increasing medical and rehabilitation costs have been identified as one of the leading cost drivers in the current automobile insurance system. According to the most recent automobile insurance statistics (supplied by auto insurers) analyzed by the Financial Services Commission of Ontario (FSCO), the loss costs (the amount of money needed per policy to cover claims) for medical benefits coverage increased by 8.0 percent between 1999 and 2000 (See Appendix B).

There is now more than four years' experience with the current system of accident benefits. It is appropriate to review the automobile insurance system to see if changes are needed.

### **Streamlining the Statutory Accident Benefits System**

Streamlining the statutory accident benefits system addresses the need to provide an effective delivery of benefits and treatment, while promoting fairness, balance, stability, and cost effectiveness.

### **Streamlining the Treatment Plan Process**

Issues have been raised pertaining to the operation of the treatment plan process. A treatment plan, which is prepared by a regulated health professional, identifies the treatment an injured individual requires as a result of an automobile accident.

Concerns have arisen over:

- the length of time required for the treatment plan process (from completion and submission to the insurer of the initial form, insurer review and response, and possible Designated Assessment Centre (DAC) review and determination of treatment);
- appropriate levels of disclosure and conflict of interest protections when a treatment plan has been waived; and

- pay-pending-dispute provisions (i.e. requirement for insurer to pay for treatment until dispute regarding entitlement or amount of treatment is resolved) covering chiropractic and physiotherapy treatment.

**Question #2:**

What can be done to streamline and improve efficiencies in the treatment plan process?

### **Treatment of Income Continuation Benefits**

In addition to compensation from the automobile insurance system, there are other sources of compensation that may be available to injured persons as a result of an automobile accident. These may include benefits provided by an employer, purchased separately by the individual, or available from the government in the form of health, social, or disability programs. In the context of auto insurance, these sources of benefits are known as collateral benefits. Examples include:

- sick leave plans
- private disability insurance
- Canada Pension Plan (CPP)

In order to prevent individuals from recovering more than their actual or projected losses as a result of injuries sustained in an automobile accident, damage awards assessed by a judge must be reduced by the total value of statutory accident benefits and the collateral benefits to which the victim is entitled. This includes all payments available under an income continuation plan or received under a sick leave plan.

Concerns have arisen regarding the definition of “income continuation plan” and “loss of earning capacity” in the current legislation. The Ontario Court of Appeal has ruled that the CPP disability benefit is not an income continuation benefit and therefore should not be deducted from tort damages.

The court decision to allow auto accident victims to claim income continuation benefits from multiple sources is not consistent with the intent of the legislation, which is to permit individuals to recover no more than their actual or projected losses as a result of injuries sustained in an automobile accident. Changes to the Insurance Act and the SABS will be needed to address this issue.

**Question #3:**

What changes, if any, should be made to the legislation and regulations to clarify what types of benefits ought to be deducted from tort damage awards and no-fault benefits?

**Eligibility**

**Clarification**

*Funeral Expenses*

The current maximum payment for funeral expenses is \$6,000. Individuals may purchase optional coverage to \$8,000. Current research suggests that basic funeral and burial costs have increased significantly and often exceed the maximum amounts in the SABS. When the benefit levels were developed, consideration was given to the fact that many individuals carry other insurance which covers the cost of funerals.

**Question #4:**

What are appropriate limits for funeral expenses?

*Benefit Entitlement After 65*

Currently, the non-earner benefit for people over age 65 at the time of an accident is phased out over a four-year period. Concerns have been raised that this may not be fair.

**Question #5:**

Should the phase-out of the non-earner benefit for people over 65 be continued in its current form?

### *Weekly Disability Benefits*

The weekly income replacement and non-earner benefits are provided to claimants who suffer from impairments as a result of an automobile accident. If there is a disagreement over the continuation or existence of a disability, claimants and insurers have access to neutral third-party assessments through DACs. In order to protect claimants from possible financial hardship, insurance companies are required to continue to pay weekly income replacement or non-earner benefits pending the outcome of a DAC review.

Concerns have been raised that it is possible to continue receiving benefits although one may no longer be disabled by requesting a DAC assessment and awaiting its outcome. In some cases, claimants have requested a DAC review and then failed to attend the assessment.

The possible abuse of this review process, in order to continue receiving benefits, increases claim costs and DAC assessment costs. Insurance companies have suggested amending this process to allow insurers to recover payments made to claimants for this review period if a DAC finds a claimant is not disabled. This suggested change may remove any incentives to abuse the DAC process.

#### **Question #6:**

Should insurers be permitted to recover benefits paid during DAC reviews if the claimant is found not to be disabled?

Who should be responsible for the cost of cancelled or missed DAC assessments?

### *Co-ordination with the Workplace Safety and Insurance Board (WSIB)*

In 1997, the Workplace Safety and Insurance Act was implemented. A worker who has received workplace insurance benefits must receive WSIB approval in order to sue an at-fault party in an automobile accident. Approval is given if the injured worker repays any benefits paid out by the WSIB. This often results in workers having to switch between the workplace and auto insurance systems.

Since benefits are not payable under the automobile insurance system until the decision to sue is made, workers who have already received workplace insurance benefits face a significant disincentive to bringing an action.

Since 1990, workers who leave the workplace insurance system in order to sue an at-fault party have been able to claim accident benefits under the automobile insurance system. This ability to claim accident benefits was introduced in 1990 when subrogation was eliminated.<sup>3</sup>

Amendments could be made to the Insurance Act to permit subrogation by the WSIB. If the Insurance Act (and SABS) are amended, injured workers would no longer need to receive accident benefits but would receive workplace insurance benefits while pursuing a tort action.

**Question #7:**

Should the Insurance Act be changed to permit subrogation by the WSIB?

**Other Issues**

*Assessments*

The current SABS provides that insurers pay for the cost of assessments, examinations, certificates, reports, and treatment plans.

Concerns have been expressed that too much of the limited funds available for rehabilitation is being spent on assessment rather than treatment. In addition, there is confusion regarding what assessment costs insurers are required to pay under the SABS.

**Question #8:**

What can be done to balance the costs associated with assessments and treatment while ensuring fair access to treatment for injured victims?

*Definitions*

The SABS includes a definition of “health practitioner” and a definition of “case manager”. Health practitioners are authorized under the SABS to certify disability and treatment plans. It has been suggested that the current definition of “health care practitioner” should be expanded.

---

<sup>3</sup>When a company pays a loss for which some person other than the policyholder is responsible, the company's right to recover its loss from the guilty party is the right of subrogation.

Case managers are an unregulated profession in Ontario. Concerns have been raised that the current definition of “case manager” does not specify professional qualifications.

**Question #9:**

What types of changes are needed to the definitions of “health practitioner” and “case manager”?

### **Designated Assessment Centres**

Designated Assessment Centres (DAC) were introduced in January 1994, as part of the Bill 164 changes to the automobile insurance system. DACs were created for claimants and insurers to use when they need a neutral third-party assessment of a claimant’s injuries and his/her entitlement to certain accident benefits. The objective of the DAC system is to provide the parties to a dispute with prompt, impartial assessments. By providing this information to the parties, DACs can be instrumental in facilitating the early resolution of disputes between claimants and insurers without the need for mediation or arbitration.

The reforms introduced under Bill 59 created the “Minister’s Committee on the Designated Assessment Centre System” (DAC Committee) to oversee the DAC system. The DAC Committee, made up of health professionals, consumers, lawyers and insurers, is responsible for ensuring that all DACs meet the goals of providing unbiased and prompt assessments in a fair and cost-effective manner.

Concerns have been raised about conflict of interest situations related to DACs. Some groups have suggested that DAC assessors should not be able to perform DAC examinations and other third-party examinations. Concerns have also been expressed about the ability of parties to direct claimants to specific DACs.

Some groups have indicated that the DAC process has become costly. Cost control suggestions include:

- the development of an expedient process to deal with simple issues; and
- imposing fee and utilization schedules for DAC assessments as has been done for various health care professions.

**Question #10:**

Are there any suggestions to maintain and enhance the integrity and neutrality of the DAC system?

Do you have any suggestions to address the costs of the DAC system?

## V RATING ISSUES

### Collateral Benefits

In Ontario, the use of collateral benefits as an element of a risk classification system (i.e. used in rating an auto insurance policy) is specifically prohibited. Collateral benefits are defined in Regulation 664 as income continuation plans, sick leave plans, medical, surgical, dental, and hospitalization plans, “or any other arrangement or plan providing coverage to a person...that the insurer would otherwise be required to pay for”.

The Insurance Act provides that insurers are “second payers”, i.e. all collateral benefit plans pay first in the event of an auto accident; the auto insurance plan then pays the remainder. If collateral benefits were used as rating factors, auto insurers could charge lower rates to those individuals with collateral benefit plans, because payouts by insurers would be expected to be lower in the event a claim is made. However, those without collateral benefit plans would see their premiums increase.

In December, 2000, an insurance industry Working Group was formed to make recommendations on the use of a policyholder’s access to private health and disability benefits (“collateral benefits”) as rating factors in Ontario’s auto insurance system.

The Working Group reported in March, 2001. The report presents a model for implementation and its impact on consumers, insurers, brokers, and benefit plan administrators (See our website [www.gov.on.ca/fin](http://www.gov.on.ca/fin) for the summary of the Working Group Report). It recommends a simple voluntary approach. The major highlights are:

- Voluntary use by insurers, but must be offered to all applicants and policyholders after an appropriate filing is approved by FSCO, i.e. insurers can choose whether or not to rate based on collateral benefits;
- Insurance cannot be refused due to lack of access to collateral benefits;
- Claims cannot be refused if an injured victim misinformed the insurer of his/her collateral benefits;
- Rating would be based on whether the principal driver has collateral benefits; and
- Lower rates or discounts will only be given to those consumers who report to their insurer that they have collateral benefits.

If an insurer chose to use collateral benefits as rating factors, it is likely that the “base” premium on accident benefits would increase for all policyholders, as the insurer would initially not know which policyholders have access to collateral benefits. Discounts would then be provided to those policyholders who have collateral benefits. Changes to rating the existing policy would be made at renewal time.



**Question #11:**

Are there any concerns with implementation as proposed by the Working Group?

**Definition of Fleet**

The following terminology, commonly referred to as the fleet definition, is found in both section 4 and section 15 of Regulation 664 under the Insurance Act.

*contracts of automobile insurance that insure groups of **at least five vehicles** that are **under common ownership or management** and that are **used for business, commercial or public purposes**. (emphasis added)*

Contracts insuring fleets are excluded from some regulatory requirements of the Insurance Act that apply to vehicles that are individually insured (in particular, the rate and risk classification approval process).

Generally, fleets are operated by businesses, often large companies, that are sophisticated purchasers of insurance. These purchasers do not need as extensive regulatory protection as individual consumers.

There has been some confusion about the definition of fleet, particularly how it relates to individual lessees. Leasing has become a popular alternative to purchasing a vehicle outright. Individuals, regardless of whether they own or lease a vehicle, are entitled to the same regulatory protection.

**Question #12:**

What changes should be made to clarify the definition of fleet?

**Group Insurance**

In 1994 the section of the Insurance Act that had prohibited insurance companies from giving groups preferential rates for automobile insurance was repealed. Regulation 664 was enacted in September 1994, to ensure there would be premium stability and legitimacy for the groups involved. The rationale was that the public, as group members, could benefit from lower rates while being protected through rate regulation.

Currently insurers are permitted, by regulation, to offer group discounts to organized groups defined in the regulation. Examples of groups include employee groups, unions, professional associations and alumni associations. These type of group discounts may be supported by reduced loss costs and expenses associated with marketing to the group.

Recent concerns have been raised. These concerns revolve around:

- whether the definition of an organized group should be tightened, for example, to set a minimum group size or to include only groups with close affinity, (i.e. do not permit non-profit organizations);
- whether the responsibilities of group sponsors need to be clarified.

**Question #13:**

Are any changes needed to Regulation 664 governing group rating and group marketing plans?

### **Expedited Rate Filing Process**

Under the Insurance Act, automobile insurers must file rate and risk classification changes with FSCO. Bill 59 introduced an expedited rate filing process.

If an insurer files for automobile insurance rates below a prescribed percentage (the “benchmark”), then a simplified, expedited filing can be submitted . The benchmark was set at zero in 1996 and has not changed. Further restrictions on using the expedited process are set out in Regulation 664.

The insurance industry has raised concerns regarding the level of regulatory control in the rate filing process under the current auto insurance system.

**Question #14:**

Should the criteria for the expedited rate filing process set out in Regulation 664 be modified?

Are there any other specific improvements which can be suggested for the rate filing process?

## VI PHYSICAL DAMAGE, THEFT AND ROAD SAFETY

When Bill 59 was introduced, it was recognized that rising repair costs were affecting insurance premiums and therefore new measures were introduced to reduce the cost of certain physical damage coverages. Coverages associated with vehicle damage include: direct compensation, a mandatory coverage which provides protection against damage to the insured vehicle to the extent the driver was not at fault in the accident; and collision and comprehensive, optional coverages which provide further protection against damage to and theft of the insured motor vehicle. A standard \$300 deductible for collision and comprehensive coverage was introduced as well as an optional \$300 deductible for direct compensation. In addition, pre-insurance inspections were introduced by Bill 59. Inspection of vehicles to identify pre-existing damage and aftermarket equipment (equipment that is not produced or distributed by the vehicle manufacturer) can prevent fraudulent claims and reduce costs in the system.

Rising direct compensation and collision costs continue to affect insurance premiums. Today's automobiles contain many costly features, such as electronic components, and consequently the cost of repairing these vehicles is much higher. More expensive specialty vehicles such as sport utility vehicles also have contributed to significantly higher repair and replacement costs.

### *Changing Physical Damage Deductibles*

One way to reduce insurance premium pressures is to consider changes to physical damage coverage.

A minimum standard \$300 deductible (for collision and comprehensive coverage) has been in place for four and a half years during which time the cost of vehicles and repairs has increased. In a related area, for any vehicle that has \$1,000 or less damage due to an accident, the incident is reported to an Accident Reporting Centre rather than directly to the police; Ontario Regulation 537/97, section 11, defines minor accidents as physical damage of \$1,000 or less. Further increasing the standard deductible for collision and comprehensive coverage would reduce the cost of physical damage coverage.

#### **Question #15:**

Given the increasing costs associated with physical damage coverage, should changes such as increased deductibles be considered?

### *Reducing Vehicle Theft*

Although comprehensive coverage covers many losses other than theft, such as hail, vandalism, and other damages unrelated to collisions, theft accounts for 50 percent of the amount paid by auto insurers in comprehensive claims for new vehicle models. The Vehicle Information Centre of Canada (VICC) has determined that engine immobilizers are the most effective means of preventing drive-away thefts. An immobilizer is an electronic device that arms automatically when a vehicle is switched off and prevents unauthorized starting of the vehicle. Both vehicle manufacturers and aftermarket manufacturers now offer VICC-approved theft deterrent systems.

**Question #16:**

Should insurers be required to offer discounts for cars that have approved immobilizers?

Should there be penalties when proper precautions are not taken to prevent theft (e.g. leaving keys in the ignition)?

### *Vehicle Rating*

When pricing insurance, an insurance company takes into account three primary variables: the driver, the location, and the car. Most companies have changed to the Canadian Loss Experience Automobile Rating (CLEAR) system, developed by the VICC when evaluating the car. CLEAR takes into account the actual claims experience of different models of cars to rate them. CLEAR has been developed using two basic steps: first, predicting insurance loss costs for each vehicle, based on its characteristics, using statistical modeling; and second, adjusting the predictions each year using the most recent data available for each model of car. Therefore, those who drive safe vehicles should pay lower premiums for accident benefits coverage and those who drive cars that incur less damage in accidents should pay lower premiums for physical damage coverage. However, the system does not charge higher premiums for those vehicles that cause more damage.

**Question #17:**

Should higher rates be charged for vehicles that cause more injuries and damage?

## *Aftermarket Parts*

Insurance companies have traditionally used both Original Equipment Manufacturer parts (OEM - parts produced and distributed by the vehicle manufacturer) and aftermarket parts to repair and replace components of an automobile damaged in an automobile accident. Aftermarket parts are those parts not produced or distributed by the original vehicle manufacturer. The use of aftermarket parts is generally acknowledged as providing significant cost advantages over OEM parts. The increased use of aftermarket parts can assist in containing the rising costs of collision repairs.

The increased use of aftermarket parts has been tempered by criticism centred on poor quality, weak durability, and the lack of a certification program in Canada for collision repair parts.

The Canadian Vehicle Research Council (CVRC) has recognized both the cost savings associated with the use of aftermarket parts and concerns over their use. In order to promote increased use and confidence in aftermarket parts as a means to control the rising cost of collision repairs, the CVRC has recommended that the Canadian insurance industry adopt an existing collision repair parts certification scheme for use in Canada<sup>4</sup>.

The collision repair industry, through the Collision Industry Standards Council of Ontario (CISCO), has been working over the past few years on developing standards for the industry.

### ***Question #18:***

Should the insurance industry adopt a certification program scheme for the use of aftermarket collision parts?

## *Importance of Road Safety Initiatives*

The Ministry of Transportation (MTO) promotes road user safety through strategic planning, development, and implementation of driver and vehicle related initiatives directed at raising public awareness of road safety issues and encouraging change in driving behaviour and attitudes. Examples of initiatives undertaken with road user safety groups include:

---

<sup>4</sup>Canadian Vehicle Research Council, *A Policy Paper With Respect to The Use of Aftermarket Collision Parts*, Position Paper No. CP00-01, June 2000

- an immediate 90-day suspension for drivers who have been drinking,
- impoundment of any vehicle being driven by a person who is suspended under the Criminal Code for driving-related convictions,
- impoundment of critically defective commercial vehicles,
- establishment of the Ontario Advisory Group on Safety Driving, which includes a wide representation of organizations committed to road safety,
- the graduated licensing system, and
- senior driver road safety programs which address seniors' driving issues.

In addition, MTO is working with the insurance industry on two major information sharing projects: The Driver Record Licensing Agreement and the Uninsured Vehicle Project (See Information Sharing in Section VII).

Clearly, road safety initiatives are an important way to make our roads safer which will contribute to fewer, and less severe, motor vehicle collisions, thereby reducing automobile insurance claims.

**Question #19:**

Are there road safety improvements which would decrease automobile insurance premiums?

## VII OTHER ISSUES

### Other Tort Issues

Some groups have suggested that improvements and changes to the tort process would make the auto insurance system more effective. Some of these suggestions have included:

- reviewing the procedures for threshold motions;
- reviewing the section of the Insurance Act which addresses noncompliance with respect to procedural requirements for tort claims; and
- reviewing the section of the Insurance Act which provides that there is no subrogation for collateral payer for payments made prior to the trial of an action.

**Question #20:**

Are any changes to the current automobile insurance system necessary to make the tort process fairer and more efficient ?

### Settlement Regulation

The settlement regulation was enacted in 1994 under the Insurance Statute Amendment Act, (Bill 164) to set out minimum standards (e.g. disclosure) that must be met before claimants agree to “cash out” and settle their claims. Following the implementation of Bill 59, concerns were expressed over the complexity of this regulation.

A working group, which included representatives of the insurance industry, Ministry of Finance, and the legal community, has developed proposals for changes to the regulation to simplify and clarify the minimum settlement requirements.

The proposed changes include a standard disclosure statement designed to improve the level of consumer awareness regarding the implications of signing a settlement. Overall, these changes will protect consumers by providing a more understandable process while simplifying the requirements on insurers. (See our website [www.gov.on.ca/fin](http://www.gov.on.ca/fin) for the current regulation and the proposed detailed recommendations.)

**Question #21:**

Do you have any concerns with the proposed settlement regulation?

**Definition of Automobile**

A number of recent court decisions have demonstrated the need for increased clarity in the definition of “automobile.” The current definition has resulted in some confusion as two definitions are provided in the Insurance Act. In addition, the emergence and use of new recreational vehicles and other motorized vehicles contribute to a need for revising the definition.

**Question #22:**

How can the definition of “automobile” be updated?

**Paid Representatives and the Dispute Resolution System**

There are a number of paid representatives providing advice to accident victims who are active in the FSCO Dispute Resolution System. These individuals go by many titles such as: accident benefit consultants, accident specialists, paralegals, or accident benefit representatives. These individuals generally assist injured persons in the completion of accident benefit claims forms and act as their representatives in the mediation, arbitration, and appeal process. Currently, these representatives are not regulated.

Concerns have been raised about the conduct and competence of some of these unregulated individuals in providing services to auto insurance claimants.

In 2000, the Ministry of the Attorney General completed a review of paralegals in Ontario which was conducted by the Honourable Peter deC. Cory. The Ministry of the Attorney General continues to consult on the recommendations made in the deC. Cory report.

**Question #23:**

Should conditions or restrictions be placed upon the unregulated paid representatives in the Dispute Resolution System?



## Information Sharing

The *Automobile Insurance Consumer Protection Act (AICPA)*, introduced following the 1998 review of Bill 59, included an amendment to the Compulsory Automobile Insurance Act (CAIA) to permit the collection of vehicle insurance information by MTO from the insurance industry. An electronic linkage is being developed between MTO and the Insurance Bureau of Canada to support the collection of insurance status information on motor vehicles registered in Ontario. Vehicle insurance status will be confirmed electronically by MTO at the time of vehicle permit issuance, renewal and/or transfer. This initiative will promote greater road user safety and provide for more effective and efficient administration. Amendments to the CAIA are required to fully implement this project.

### Question #24:

Are there suggestions to forward to MTO regarding the implementation of the Information Sharing Initiative?

## Other Amendments

Other proposed changes to the Insurance Act, the SABS, and the CAIA following from the 1998 review of Bill 59 included:

- an amendment to the Insurance Act to require insurance agents and direct writers to disclose to applicants that they represent only one insurer. This amendment mirrors a provision included in Bill 59 requiring brokers to disclose to consumers which insurers they represent.
- an amendment to the Insurance Act and the Motor Vehicle Accident Claims Act, to specify that the Motor Vehicle Accident Claims Fund will pay the accident benefits for claims of an insolvent insurer and these funds will be recovered from the insurance industry. This would ensure that claimants are protected against insolvent insurers and would continue to receive accident benefits, which include income loss, medical, and rehabilitation expenses, on a timely basis.
- an amendment to the Insurance Act to exempt the most serious cases from the non-pecuniary loss (such as pain and suffering) deductible. Exemption would apply to claims for non-pecuniary losses that exceed \$100,000 in awarded damages (\$50,000 for Family Law Act awards). Given the seriousness of injuries of claimants who receive the highest awards, it does not seem appropriate to include an additional burden of the deductible. The deductible is intended to discourage those with the least serious claims.

- an amendment to the SABS to permit minimum and maximum fee rates or a fee range and other expenses to be included as part of the Professional Fees Guidelines. Currently, the SABS stipulates that insurers are not liable to pay for expenses exceeding the maximum rate or amount established in the Professional Fees Guidelines. The range is required because some of the fee schedules negotiated between the insurance industry and the health professional associations have included a minimum amount that the insurers would have to pay.
- an amendment to the CAIA to allow for an affidavit sworn by an officer representing an insurer to be admissible in court as proof that the motor vehicle was or was not insured on the date(s) set out in the affidavit. Provision will be made for cross-examination upon notice by the defendant.

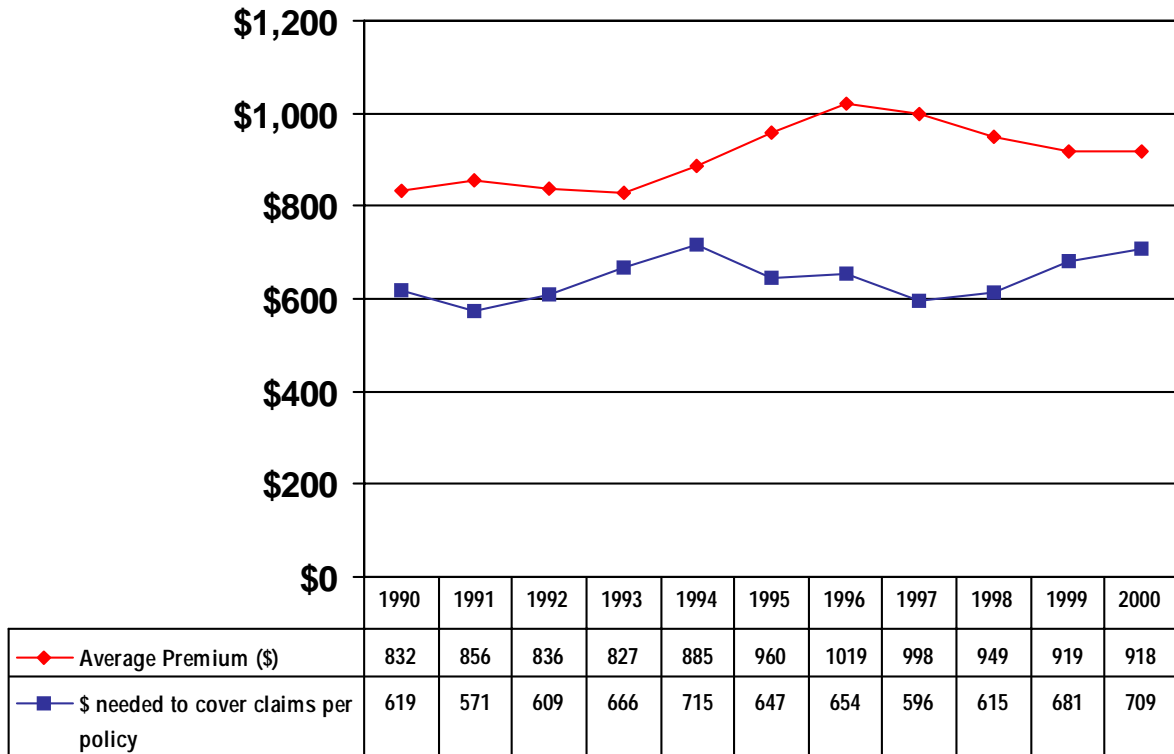
***Question #25:***

Do you have any concerns regarding these proposals?

## VIII APPENDICES

### APPENDIX A

#### AVERAGE PREMIUM AND LOSS COSTS FOR A POLICY INSURING ONE VEHICLE



#### Notes:

- 1 Average premium is the earned premium for the year.
- 2 Ultimate loss costs (dollars needed to cover claims costs) per policy includes only losses and allocated loss adjustment expenses. It excludes unallocated loss adjustment expenses.
- 3 The total loss costs for a policy is the sum of the average loss costs for each coverage for a single vehicle.
- 4 Information is shown by accident year.

## APPENDIX B

### ULTIMATE LOSS COSTS - PRIVATE PASSENGER INSURANCE

Coverage	1999	2000	\$ Change	% Change
TPL - Bodily Injury	\$129	\$122	(\$7)	-5.1%
TPL - DCPD and PD	\$125	\$133	\$8	6.4%
<b>TPL - Sub-Total</b>	<b>\$254</b>	<b>\$255</b>	<b>\$1</b>	<b>0.6%</b>
AB - Medical Benefits	\$105	\$113	\$8	8.0%
AB - Rehabilitation/LTC	\$33	\$32	(\$1)	-4.1%
AB - Disability Income	\$51	\$54	\$3	6.1%
AB - Death, Funeral & Quebec	\$4	\$4	\$0	0.0%
<b>AB - Sub-Total</b>	<b>\$193</b>	<b>\$203</b>	<b>\$10</b>	<b>4.9%</b>
Uninsured Motorists	\$6	\$5	(\$1)	-14.4%
Underinsured Motorists	\$3	\$4	\$1	38.1%
Collision	\$144	\$159	\$15	10.4%
Comprehensive	\$81	\$83	\$2	2.5%
<b>Total Loss Costs for a Policy</b>	<b>\$681</b>	<b>\$709</b>	<b>\$28</b>	<b>4.1%</b>

**Key:**

TPL	Third-Party Liability
AB	Accident Benefits
DC/PD	Direct Compensation/Property Damage
PD	Property Damage
LTC	Long-Term Care

**Notes:**

- 1 Ultimate loss costs (dollars needed to cover claims costs) per policy includes only losses and allocated loss adjustment expenses. It excludes unallocated loss adjustment expenses.
- 2 The total loss costs for a policy is the sum of the average loss costs for each coverage for a single vehicle.
- 3 Information is shown by accident year.

## APPENDIX C

### ONTARIO ROAD USE INDICATORS

Year	1996	1997	1998	1999	2000
<b>Number of Active Passenger Vehicles in Ontario</b>	5, 120, 509	5, 222, 698	5, 369, 972	5, 525, 687	5, 663, 736
<b>Number of Licensed Drivers in Ontario</b>	7, 231, 241	7, 405, 808	7, 727, 756	7, 918, 314	8, 121, 374

The number of active passenger vehicles in Ontario grew **10.6 per cent** from 1996 to 2000, an increase of **543, 227** vehicles.

The number of licensed drivers in Ontario grew **12.3 per cent** from 1996 to 2000, an increase of **890, 133** drivers.