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Via Email:

Nate Horner
President of Treasury Board and Minister
of Finance
tbf.minister@gov.ab.ca

Nathan Neudorf
Minister of Affordability and Utilities
au.minister@gov.ab.ca

Dear Hon. Minister Horner and Hon. Minister Neudorf:

RE: CBA Alberta's Updated Submissions on Auto Insurance Reform

This letter follows and supplements our past oral and written submissions regarding auto insurance reform, and our attendance at the recent Insurance Summit on May 27, 2024.

As you are aware, the Canadian Bar Association, Alberta Branch ("CBA Alberta") is an organization representing nearly 5,500 lawyers in Alberta. The CBA Alberta volunteer Auto Insurance Working Group is comprised of practicing lawyers from two distinct groups: lawyers who primarily work for insurance companies and those who work primarily for Albertans injured in motor vehicle accidents.¹ This group is challenged to reach consensus on the important issues that Automobile Insurance Reform encounters and has done so on the submissions in this letter.

CBA Alberta recognizes that affordability as a government priority. CBA Alberta shares the government's goal of building the best possible auto insurance system that is also affordable; however proposed changes must always be founded on accurate information supporting a measured and thoughtful approach. Unintended negative consequences to members of the public must be avoided. CBA Alberta cautions the government against making any significant changes to the auto insurance system without properly assessing whether the changes will lead to meaningful premium relief.

¹ The working group is Kathy Briere, Randal Carlson, Shaun Flannigan, Jenny McMordie (co-chair), Kelly Robinson (co-chair), John Roggeveen, Kent West, Raphael Jacob, and Mark Moore.



To that end, in this letter we have opted to address four areas of concern as well as to offer our suggestions to improve affordability:

1. Private no-fault insurance;
2. Overall numbers of personal injury claims are decreasing;
3. Legal fees are not a driver of injury settlements;
4. The 60% threshold: Accident Benefits Overly Restricted;
5. Suggestions for Affordability.

1. Private, No-Fault Insurance

CBA Alberta believes the Government of Alberta should be very cautious about enacting a no-fault system. CBA Alberta acknowledges that vehicle owners in provinces with publicly operated no-fault automobile insurance often pay lower premiums and, that if the Alberta Government wished to establish a public no-fault insurance system on a not-for-profit basis, there might be premium savings in this province as well (although a general cost of living comparison would also be necessary). However, public statements from the Premier have ruled out a public auto insurer, and our understanding is that any no-fault system under consideration would be operated by a private insurer.

CBA Alberta is concerned that a private no-fault insurance system will not lead to long term savings or premium stabilizations for consumers, for the following reasons:

- A. There are costs associated with a privately run system that do not exist in a public system.
- B. The Oliver Wyman report did not review premium levels in any no-fault jurisdiction where insurance was provided by private for-profit companies.
- C. There may be no reduction in claims costs under a no-fault system.
- D. No-fault insurance will do nothing to address the significant costs associated with property damage and vehicle theft.
- E. There will be fewer incentives for good driving behavior under a no-fault system.

A. Additional Costs With Private Insurers

There are costs in a privately-run system that are not seen in a publicly run system. Firstly, there will be costs associated with commission payments to insurance brokers. Secondly, private entities operate to make a profit. Parts of any premium will be allocated for



commissions and profits which will make the premiums higher under a privately-run no-fault system than under any public auto insurance system.

B. Comparisons to No-Fault Jurisdictions with Private Insurers

The only no-fault insurance systems that were reviewed by the Oliver Wyman report were public systems. While Oliver Wyman made assumptions respecting what the premiums might look like in a similar system delivered by private insurers, a more apt point of comparison would be other jurisdictions that implemented no-fault automobile insurance delivered by private insurers. For instance a Rand Corporation study on auto insurance in the United States found that insurance premiums were consistently higher in no-fault states and that gap has widened over time (What Happened to No-Fault Automobile Insurance? | RAND). CBA Alberta acknowledges that it does not have the expertise to comment on whether a similar outcome may occur in Alberta. Nevertheless, before implementing a no-fault system, it would be worthwhile to closely examine the experience with premiums in no-fault jurisdictions where insurance is privately delivered. If the implementation of a no-fault system does not change the price curve on insurance premiums or leads to further increases, Alberta drivers will be in a worse position in the future than they are today.

C. Claims Costs Payable Under No-Fault Insurance

Under a no-fault system the costs incurred by insurers for income loss and health benefits would be greater than under the current no-fault accident benefits, because the government would almost certainly ensure that the replacement program adequately meets the needs of those with longer-term impairments, disability and need for care which are currently addressed through the tort system. Those increased costs will likely be passed on to the consumers. If all parties can access the same benefits regardless of fault, there will likely be more money paid out for income loss and treatment. Those cost increases with expanded benefits for everyone who is injured, including those at-fault, will likely offset the costs saved from eliminating tort claims and may in fact exceed them.



D. No-Fault Insurance Does Not Address Theft and Property Damage Costs

A no-fault system will do nothing to address the significant increase in expenses associated with property damage claims. The difficulties with property damage claims are that vehicles now cost more to repair and replace, there are increased instances of vehicle theft and increased instances of property damage due to weather conditions (hailstorms, forest fires, etc.). None of those pressures on the insurance industry can be solved with adjustments to the personal injury claims system and insurers could use property damage and theft claims to justify increased premiums paid by Albertans.

E. Less Accountability

Moreover, there will be less accountability in a no-fault system. There are certain drivers who ought not to be driving. Despite its flaws, the current system incentivizes good behaviour as drivers who have a history of at-fault claims must pay higher premiums. If there is no penalty for causing an accident, it is possible the total number of claims could rise. The Nous Report (at p. 11) noted that the changes in insurance mode on driver behaviour would have an economic impact but required a more complex analysis than the scope of their desk-top research allowed. It is possible there will be more claims under a no-fault system which could lead to higher premiums.

There is no clear evidence that no-fault insurance will lead to lower premiums and it is possible that a no-fault system will make things worse.

2. Overall Numbers of Personal Injury Claims Are Decreasing

Data in the Oliver Wyman report suggests that personal injury claims may not be driving higher premiums, as alleged by the Insurance Bureau of Canada. In this respect we would refer to pages 21 and 22 of the Oliver Wyman report. The report notes that there are mandatory coverages which are referred to as "Basic Coverage" by Oliver Wyman. The Basic Coverage contains third party liability insurance and accident benefits. Optional coverages are referred to as "Additional Coverage" by Oliver Wyman. The report notes that Basic Coverage has gradually increased since 2013 but was relatively flat in the last two years ending in 2022. The Additional Coverage was relatively flat, but an increasing pattern



emerged beginning in 2016. Personal injury claims are encompassed in the Basic Coverage and those costs have held steady.

Furthermore, Appendix 1.1 from the Oliver Wyman report notes the ultimate claims count for bodily injury decreased from 17,969 in 2019 to 12,013 in 2020. The lower number of claims held relatively steady for 2021 and 2022 at 13,340 for 2021 and 12,862 for 2022. The fact is that the total claims dropped from 2021 to 2022 despite an increase in the number of vehicles. And, although the claim severity jumped from \$74,459 in 2019 to \$83,054 in 2020 the severity dropped in 2021 to \$75,897 and then increased to \$80,407 in 2022. Despite the increase from 2019 to 2020, the claim severity lessened in 2021 and 2022 which also suggests that tort claims are not the biggest driver of insurance premium increases. Also, we note that the loss cost per vehicle was \$481 in 2019 but has since been reduced to \$359 for 2020, \$361 for 2021 and \$364 for 2022.

Given that the last two years assessed in the Oliver Wyman report show a decrease in the overall number of claims, a lessening of the claim severity after a large increase in 2020 and a decrease in the loss cost on a per vehicle basis, tort claims are not driving higher insurance costs. Parties advocating against a tort system may argue that the lower numbers are all attributable to the Covid-19 pandemic. CBA Alberta suggests that position may not be correct. For instance, most Covid restrictions were lifted in 2022 yet 2022 had fewer accidents than 2021 despite being one year further removed from the height of the pandemic and despite the overall number of vehicles increasing from 2021 to 2022. It is more likely that the pandemic ushered in some permanent changes. Many employees who worked from home during the pandemic have continued to work from home or are working in a hybrid arrangement where they work from home some days and from an office other days. It may be worthwhile to assess whether the lower number of overall claims holds steady in 2023 and 2024 before deciding to eliminate tort claims for motor vehicle accidents. If there are indeed fewer accidents and the loss cost per vehicle is less now than it was in 2019, then personal injury claims are not driving increased costs and moving to a no-fault system will not fix the affordability problem.

3. Legal Fees Do Not Drive Rising Injury Settlements

Current misinformation circulating suggests that lawyers working for their clients in personal injury cases are causing increases in auto insurance premiums. This is not at all how the



system works, so CBA Alberta takes this opportunity to give a brief explanation of how typical legal expense is incurred in this area of the justice system.

- There are two distinct kinds of claims by injured people arising from a vehicle accident. Typically, a personal injury lawyer is mostly commonly retained by an injured person for a claim for compensation against the at-fault driver, or less commonly, if they are struggling to receive no-fault Accident Benefits from their own insurer.
- The personal injury lawyer will educate the injured person about the way a personal injury or 'tort' claim is structured and how the law applies to their situation.
- The claim is calculated in accordance with the law and is either negotiated with an insurance adjuster or with an insurance defence lawyer.
- The negotiation will normally include a settlement proposal for the claim being presented based on what outcome could be expected at trial. Any settlement must be agreed by both the insurer and the injured person. Alternatively, if there is no settlement, the case could proceed through the litigation process and ultimately to trial for a decision by a judge.
- Any legal fees charged by the personal injury lawyer, are paid privately by the injured person from their settlement as a percentage of what is recovered for their claim. This allows a vulnerable injured person to be informed and advised by a lawyer without having to pay the lawyer up front.
- Legal fees are never part of settlement discussions because they are not part of the claim and have no impact on the settlement amount or court award.

The value of any legal case is therefore determined not by the legal fees charged but with a careful investigation into the merits of the case to ensure that the injured party is neither overcompensated, nor undercompensated.

Statements which publicize legal fees as a driver of insurance expense risk misleading the public and distract from the worthy examination of the system for improvement and affordability. Any suggestion that case valuations are driven up by legal expense and litigation abuse is incorrect. Any suggestion that lawyers enrich themselves in preference to their clients is false and misleading. The suggestion that lawyers advertise to generate frivolous



claims is incorrect and insulting. CBA Alberta will always stand up for lawyers and speak out against misleading statements and takes this opportunity to do so now.

4. The 60% Threshold: Accident Benefits Overly Restricted

Finally, CBA Alberta is concerned about the IBC Enhancing Care and Expanding Choice proposal ("IBC Proposal") as it pertains to the optional increased medical/rehabilitation benefit. The IBC Proposal suggests that an insured could purchase enhanced coverage for serious injuries defined as those where the Permanent Impairment Rating ("PPI") is 60% or higher. As a point of clarification, CBA Alberta notes that a 60% PPI is extremely rare and would seriously restrict availability of benefits for the majority of claims.

We recommend consulting with the medical community regarding interpretation of the AMA's Guide to the Evaluation of Permanent Impairment ("the Guide") on this point, but CBA Alberta notes, based on the extensive experience of lawyers in these matters, that, for example, we strongly believe the 60% impairment threshold will *not* be met in the following scenarios:

- someone with complete loss of use of the non-dominant arm due to central nervous system dysfunction;
- someone with a fractured skull, brain dysfunction and internal injuries;
- someone who cannot stand without mechanical support (see Tables 13-11 and 13-12 of the Guide); or
- Someone who sustains a hand or lower arm amputation (an amputation at the shoulder will only just achieve the 60% impairment rating required to access the enhanced coverage (Figure 15-9 of the Guide)).

In addition, for lesser injuries, the IBC Proposal provides for a limit of \$5,000 for Section B medical care, unless a physician or nurse practitioner determines that the injury is more serious than a common injury, and the insurer agrees with this opinion. Further, many accident-injured do not have extended health benefits or private resources to fund treatment and are solely dependent upon what Section B adjusters approve for them. If they are off work due to their injuries, that compounds their reliance, and with respect to amounts



payable for income replacement the amount payable seems to be in the discretion of the insurer. Past experience of lawyers indicates that the behaviour of the insurance industry is variable, dependant on internal policies and individual adjusters' subjective judgment, which risks an arbitrary and uneven approach to caring for accident victims.

Caution should be exercised in accepting the IBC Proposal in this regard as the suggested enhanced coverage would only be accessible in the most extreme of cases, and only for those individuals who opted-in to purchase additional insurance. The IBC Proposal would therefore seriously impact many severely injured victims, who would need to receive care within the health care system.

CBA Alberta remains extremely concerned that any proposed changes ensure protection of the tort system and protection of the accident-injured. Radical changes to the system, like a 60% cap, would eliminate all but the very most severe injuries, which would shift the needs of the lesser injured into the public domain and therefore the burden on taxpayers through Alberta Works and Alberta Health. In that circumstance, perhaps auto insurance premiums would decrease slightly, favouring the at-fault drivers who would not be held accountable for the significant harms caused, but the trade-off would be increased burden on the Alberta taxpayer, left footing the bills that are not properly passed on to at-fault drivers by insurers when an at-fault driver causes harm.

5. Suggestions for Affordability

Given your goals with respect to affordability in the Auto Insurance sphere, we also offer and reiterate the following suggestions, noting that policy changes which improve road safety and reduce accidents would have a direct impact to reduce the number of accidents and therefore the number of injury claims. By reducing claims, insurer payouts are reduced and insurers are then empowered to lower premiums.



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Please consider implementing the following:

- devote more resources to policing the roads including the use of photo radar;
- examine whether the current penalties for traffic violations are adequate and whether increasing the penalties for provincial traffic offenses would lead to less risky behaviour;
- consider changes to traffic controls, speed limits and other options that could reduce collisions in high-risk areas;
- reward drivers of vehicles with more safety features such as lane departure warnings and automatic stopping in imminent collision situations with lesser premiums;
- consider allowing insurers, with their insured's informed and express consent, to use geo-tracking technology to monitor a person's driving activity resulting in either increasing or decreasing premiums dependent upon the individual's driving conduct;
- require mandatory driver education at regular intervals;
- to ensure that all accident victims recover from their injuries as quickly as possible, review section B benefits and the way they are delivered to ensure that accident victims receive all medically necessary treatment in a quick, thorough and easy-to-understand manner;
- a mandated discount rate for future damage calculations rather than requiring expert economists to opine on this issue in every individual case; and
- a legislated requirement for the use of winter tires as a result of their undeniable safety benefits.

Thank you for your important work in auto insurance reform. CBA Alberta remains ready to participate and support this process, to ensure a fair and affordable insurance system in Alberta. Please contact us if you need clarification on any of the above or if we can be of further help to you in achieving an improved system.

Sincerely,

CANADIAN BAR ASSOCIATION
ALBERTA BRANCH

Kyle Kawanami, KC
President