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Mercredi 30 avril 2014

Standing Committee on General Government

Fighting Fraud and Reducing Automobile Insurance Rates Act, 2014

Comité permanent des affaires gouvernementales

Loi de 2014 de lutte contre la fraude et de réduction des taux d'assurance-automobile

Chair: Grant Crack
Clerk: Sylwia Przezdziecki

Président : Grant Crack
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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

COMITÉ PERMANENT DES AFFAIRES GOUVERNEMENTALES

Wednesday 30 April 2014

Mercredi 30 avril 2014

The committee met at 1604 in room 151.

FIGHTING FRAUD AND REDUCING AUTOMOBILE INSURANCE RATES ACT, 2014

LOI DE 2014 DE LUTTE CONTRE LA FRAUDE ET DE RÉDUCTION DES TAUX D'ASSURANCE-AUTOMOBILE

Consideration of the following bill:

Bill 171, An Act respecting insurance system reforms and repair and storage liens / Projet de loi 171, Loi concernant les réformes du système d'assurance et le privilège des réparateurs et des entreposeurs.

The Chair (Mr. Grant Crack): I'd like to call the meeting to order. I'd like to welcome members of the committee to this afternoon's meeting, as well as Hansard and the Clerk and legislative research. Today, we'll be reviewing Bill 171, which is An Act respecting insurance system reforms and repair and storage liens.

We have eight delegations today, according to a previous motion adopted by the committee. Each presenter will have five minutes for their opening remarks, followed by nine minutes of questioning. I can only assume the committee agreed to three minutes, three minutes and three minutes, from each party. We will be proceeding in that regard.

ONTARIO CHIROPRACTIC ASSOCIATION

The Chair (Mr. Grant Crack): At this time, I'd like to welcome, from the Ontario Chiropractic Association, Dr. Bob Haig, chief executive officer, and Dr. Moez Rajwani, a chiropractor. Welcome, gentlemen. You have five minutes, and the floor is yours.

Dr. Bob Haig: Thank you very much, Mr. Chair, and members of the committee. My name is Bob Haig. I am the chief executive officer of the Ontario Chiropractic Association. With me is Dr. Moez Rajwani, who is a chiropractor and a member of the association, and does some of our auto insurance representation.

We're here to talk about the licensing scheme that's included in Bill 171. There are two documents in front of you. One is the remarks that I'm making now. The other one is a joint issue note that was put together by the Ontario Chiropractic Association and the Ontario Physiotherapy Association. You'll be hearing from them later on this afternoon.

Over the last several years, the government has engaged in a number of very positive initiatives to address fraud and the cost of fraud. We've actively participated in and supported those initiatives, but there are two challenges that remain with the new system. First of all, while costs and administrative burden have increased for providers, our members remain vulnerable to not being paid in a timely fashion or sometimes not being paid at all. Secondly, by not making both a direct billing and a direct payment between the provider and the insurer a requirement of the system, we increase the risk that fraud may continue to occur.

In 2010, when the HCAI system for forms submission was introduced, we voluntarily agreed to adopt that system. Despite the added administrative burden for small and independent practitioners, the process was embraced by the chiropractic profession in order to support anti-fraud efforts. We also participated in the anti-fraud task force by making presentations and providing a detailed submission on the licensing of providers.

Chiropractors are, of course, already regulated in their business practices by the College of Chiropractors of Ontario, which has a statutory mandate to regulate chiropractors in the public interest. The CCO has regulations, standards of practice and guidelines dealing with business practices, advertising, conflict of interest and professional misconduct, and breaches of those can lead to investigations and, potentially, disciplinary action, including suspension of a member's certificate of registration.

The new licensing system will once again add some administrative and cost burdens for chiropractors without there being any net benefit of this duplication of oversight for those clinics that are owned and operated by regulated health professionals.

The HCAI program authorizes direct payment by insurers to regulated health professionals. Similarly, Bill 65 states that an insurer is authorized to pay licensed service providers directly for listed benefits, but unfortunately, the practice adopted by some insurers has been to pay claimants directly for health care services. These payments sometimes come as late as six months after the services have been delivered, so not only does this extend the time that the provider is waiting to be paid, but sometimes they just don't get paid at all.

In order to bill insurers directly, providers must become licensed. Becoming licensed involves increased costs through licensing and renewal fees and increased administrative burden through the application process and through ongoing audits. But as the system stands now, incurring these costs and burdens to become licensed does not offer the provider a net benefit, particularly the benefit of being assured direct and timely payment.

As I said, there's a risk that by allowing insurers to pay claimants directly, we are unnecessarily increasing the risk that some fraud will continue. By having billing and payment made directly between providers and insurers, we reduce the number of parties who can engage in fraudulent activity, and where fraud does occur it's easier to identify.

Direct billing to the insurer in conjunction with direct payment to the provider stands to minimize the opportunity for gain through fraud on the part of a claimant or someone acting on the claimant's behalf.

Finally, I would like to make the point that direct payment to providers was an integral part of the original HCAI plan. It was part of the reason why providers agreed to participate and to have it go ahead, but that provision was subsequently dropped during the implementation of the original HCAI.

Our recommendation is that the licensing program under the Insurance Act, as amended by Bill 65, and the proposed amendments under Bill 171 be further amended to require insurers to pay providers directly for approved services and to do so in a timely manner.

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Specifically, the OCA recommends that Bill 171 be amended such that section 228.2 of the Insurance Act is amended to require insurers to pay licence holders directly, as follows:

"Payment by insurer

"288.2(1) An insurer is required to make payments for listed expenses directly to a person or entity who holds a service provider's licence at the applicable time, as determined in accordance with the regulations."

I want to thank you for listening to our concerns, and we're happy to answer any questions.

The Chair (Mr. Grant Crack): Okay. Thank you very much. We'll start on my right. We'll go with the government first, and then we'll do the rotation amongst the other parties as well. Ms. Damerla.

Ms. Dipika Damerla: Thank you, Mr. Haig and Mr. Rajwani, for your time. I just had a quick question: Generally, what percentage of the chiropractors who you represent have insurance as their business? Not insurance directly, but insurance claimants or injured people through auto insurance.

Dr. Bob Haig: Oh, who treat auto accident victims?

Ms. Dipika Damerla: Yes. What percentage of their clients would be—

Dr. Bob Haig: Almost every chiropractor would treat some. The volume would vary quite a bit from one practice to another one. There are some practices, I suspect, where there's a fairly high volume of it, but I think that on average, it would be less than 10%.

Ms. Dipika Damerla: Less than 10%. So some of those concerns around—and we hope that we'll be able to make a system with as little burden as possible, but it's a balance between controlling fraud and making sure that the small business guy isn't overburdened.

Given that it's fairly low, around 10%, I presume that it won't be too onerous in the big picture—the changes that we're proposing?

Dr. Moez Rajwani: The licensing, regardless of whether 10% of your patient base is auto or 90%, still requires you to be licensed.

Actually, the lower percentage in some ways makes more of a burden, because when you have a large percentage, you may be able to get additional staff to support. When you're a one-practitioner facility with maybe one front desk staff, the burden of going through this process to see, maybe, a new patient who is an auto patient maybe once a month—it's quite a bit of an administrative burden for them.

Ms. Dipika Damerla: But they don't have to take that patient. Right?

Dr. Moez Rajwani: They don't have to, but it becomes a deterrent to the patient, because that means that the patient would have to pay out of their pocket. But yes, they don't have to.

Ms. Dipika Damerla: Okay. Thanks very much.

The Chair (Mr. Grant Crack): Thank you. We'll move to Mr. Yurek from the Progressive Conservatives. Welcome, sir.

Mr. Jeff Yurek: Thanks, Chair. It's good to see you.

The Chair (Mr. Grant Crack): It's good to see you, too. Thank you.

Mr. Jeff Yurek: Thanks very much, guys, for coming out. A question: Do you have any numbers for what it costs the health care providers who aren't getting payment directly? Do you have any idea of the implications on their business?

Dr. Bob Haig: We don't have numbers. It is a common complaint by members.

Moez, do you want to just come up with the mechanisms?

Dr. Moez Rajwani: Yes. There are two cases where it happens most commonly. One is within the minor injury guideline and the minor injury cap, where there are fixed amounts of funding available in that cap. Sometimes insurers will pay that full amount to a claimant directly and then ask the patient to pay the chiropractor directly, although the whole process has gone through the HCAI system and approval and all the paperwork have been done through the electronic system.

The second time it commonly happens is when there is a settlement. Let's say I saw a patient up until September 1. I submit my bills, and then in November or December, there may be a settlement of that case. That settlement may be full and final, where the insurer and the claimant decide that the total amount will include the services that were rendered before September 1.

There's no responsibility for anybody to inform the chiropractor of that. What happens is that in January, when he doesn't get paid, he calls the insurance company and the insurance company says, "Well, we paid the client directly." So although the whole process has been done and there's a 30-day limit in which to get paid, sometimes it doesn't happen. Then it becomes the burden of the chiropractor to now try to find a patient who hasn't been in their office for six months and recover that funding.

Those are the two scenarios that happen most commonly.

Mr. Jeff Yurek: Would you envision a system where they pay you directly and then send notification to the claimant, letting them know that payment has been sent? Would that—

Dr. Moez Rajwani: Yes, and that's a responsibility of the regulation. Every two months, the insurer has a responsibility to share with their claimant all the money that has been spent on their medical and rehab benefits. In September 2010, that was one of the changes so that clients, patients and claimants know exactly how much funding has been paid to their service provider.

Mr. Jeff Yurek: Going to your next point where you're talking about your college, are you asking the government, when they develop the regulations on this bill, to let the colleges perhaps take care of the health care professionals who are registered with them and only those who aren't health care professionals go through the licensing process?

Dr. Bob Haig: That had been our original position. We believed that the colleges were quite capable of regulating the business practices of regulated health professionals and saw the value of a licensing system as being primarily for those clinic owners and clinics that were not owned and operated by regulated health professionals.

There is a concern, as I said, that there's some duplication of oversight effort here, and any way to minimize that would be helpful.

Mr. Jeff Yurek: It works well in the pharmacy model. The college is quite strong in weeding out fraud and bad health care professionals in pharmacy, and I think that would work well for professional health care providers that are out there.

The Chair (Mr. Grant Crack): Thank you very much. The three minutes is up.

Mr. Jeff Yurek: I'm not done yet.

The Chair (Mr. Grant Crack): My apologies.

We'll move to the NDP. Mr. Singh.

Mr. Jagmeet Singh: I want you to do a couple of things for me. I'll just lay out my questions, and then you can perhaps give your feedback. One is, if you can take me through how the direct payment would, in your view, benefit in terms of reduction of any potential fraud. You've touched on it, but could you just elaborate a bit more on that?

Before you do that, are there any concerns that you have? One that you have indicated is potential duplication with the regulation requirement. Are there any other concerns, perhaps with transparency, perhaps with the mechanism by which it is proposed in this legislation, any other problems you see with the regulation component? On my analysis of it, it seems to be okay, but are there any issues, as health care providers, that you see with the requirement to register?

Dr. Bob Haig: On the first one, when we think of auto insurance fraud, we tend to think in terms of people defrauding insurance companies. Health care providers get defrauded in the circumstances because they are providing services and not receiving payment, so that's the fraud that I'm talking about taking place there. It's essentially money not being paid for the services that it was intended for, so that's a form of fraud.

It's relatively minor compared to some of the large figures we hear about, but for an independent practitioner, it's very significant. It's very significant.

The second question was around—

Mr. Jagmeet Singh: Any concerns besides what you indicated, that there is duplication in terms of having your own licensing body that provides oversight and now having a secondary kind of source of oversight? Any other issues beyond that?

Dr. Bob Haig: Well, at this point, we don't really know how onerous the process will be or how costly it might be, so obviously those are concerns.

Mr. Jagmeet Singh: Are there any suggestions that you have to improve it or to perhaps mitigate either it being too onerous—I guess with cost, it's to make it as affordable as possible. That's pretty straightforward. But with respect to it being onerous, any suggestions in terms of how we can assist so it's not too onerous?

Dr. Bob Haig: I don't know if Moez can—

Dr. Moez Rajwani: Our original recommendation was that for regulated health professionals, the licensing process should be very streamlined with basically a registration process, and then, if there's a recovery cost that's appropriate. For non-regulated health professionals where there's no regulatory body managing them, we could understand a much more detailed licensing process for them, because the licensing process would be the only check and balance for that body, but we just didn't want a duplication. So we understand registering and ensuring that clinic A is part of the system, but when we start having a double auditing system and we have double of everything, that becomes a challenge.

Mr. Jagmeet Singh: That's fair. A two-tier system.

The Chair (Mr. Grant Crack): Thank you very much. Again, my apologies. We're on a tight time frame with the number of deputants today, so thank you very much, Mr. Haig and Mr. Rajwani. We appreciate your input.

THE ADVOCATES' SOCIETY

The Chair (Mr. Grant Crack): We will have The Advocates' Society, Mr. Eric Grossman, who's a member. Welcome, sir. The floor is yours. You have five minutes. We welcome you.

Mr. Eric Grossman: Thank you, Mr. Chair, and members of the committee.

The Advocates' Society is a not-for-profit association of over 5,000 lawyers throughout Ontario and the rest of Canada. Over 1,500 of our members are litigators who practise in the area of personal injury and insurance law. As these members represent both the plaintiffs and defendants in personal injury cases, the society reflects the diverse views of the personal injury bar.

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It is noteworthy that on the issue about which I speak to this committee today, lawyers on both sides of the bar are in full agreement. Indeed, I have the privilege to sit before you as representative of the Canadian Defence Lawyers organization and, amazingly—being a defence lawyer—also the Ontario Trial Lawyers Association, which represents the defence and plaintiff bars respectively in providing these comments.

The concern that is equally shared by plaintiff and defence lawyers alike pertains to just one subsection of Bill 171. That is the proposed section 14 of the bill which seeks to create subsection 280(3) of the Insurance Act, removing the right to sue in a court proceeding for accident benefits.

In the province of Ontario, there has never been a deprivation of the right to go to court to pursue one's remedy against an insurer. Since enhanced no-fault benefits were introduced in 1990, 24 years ago, injured persons have had the right to choose whether to go to court or to an administrative tribunal to pursue their denied claims. Before then, going to court was their only remedy.

Even if other provisions in Bill 171 are supportable and prove beneficial to consumers in this province by way of lowered insurance rates, there isn't anyone who can stand before you and say that the removal of the right to choose to go to court will reduce premiums. I'm here to tell you that it will not and why it will not.

Before I do, I want to address a critical issue of access to justice and fairness. As a practising Toronto insurance defence lawyer, I can tell you loudly and clearly how the problems of the Ontario insurance system are largely big-city driven, with tow trucks, body shops, clinic owners and operators, health practitioners, paralegals and, yes, even lawyers contributing to the problem. However, this legislation is not being imposed just on the GTA; it applies to the entire province. While arbitrators from the greater Toronto area will fan out across the province to hear cases, they are not local members of the community like local judges and jury members are.

So when a resident of Prescott or Rainy River gets told by his insurer that he need not receive weekly income benefits anymore because he can be retrained to be an office worker, he will not have the opportunity to have six members of the community sit as a jury to decide whether such a job exists and is available, or to have a local judge in Fort Frances or Prescott, knowledgeable about the local economy, make the decision. This has always been the case since no-fault benefits were introduced in Ontario in 1969. Instead, he'll be obliged to have a Toronto-centred arbitrator make this decision.

I had the privilege of co-chairing a conference for the CDL attended by 200 insurance industry and legal reps earlier this month at which Justice Cunningham spoke. I agreed with much of what he said and, indeed, much of what he wrote in his report. When addressing the right to sue being removed he said that everyone needs to realize that the accident benefit system is designed to address the immediate treatment needs of accident victims, and the focus must be removed from the money available in the system.

We all can agree that treatment needs are critical, but we have a system which provides in excess of $2.5 million in benefits to accident victims without regard to fault in the most serious cases. It's not realistic to ignore that money that is available and sought in these cases and focus only on immediate treatment needs.

I promised to tell you why the removal of a right to sue will not reduce premiums, and I plan on doing so with my remaining time. Unfortunately, the insurance system in Ontario is neither easy to navigate nor simple to explain. Injured victims have the right to pursue the at-fault motorists by way of tort and to pursue a basket of statutory benefits, regardless of fault, from their own insurer. The two systems work hand-in-glove. Every dollar an accident benefit carrier pays out acts as a credit to the tort insurer. Worse still, the credit applies after liability is established. So if an accident benefit carrier pays out $50,000, and the tort claim is assessed at $100,000, but there is a 50-50 split in liability between the two drivers of the cars, the $50,000 AB settlement offsets the entirety of the tort award. It would be negligent for a lawyer to settle the accident benefit case in advance of that tort case because that realizes that credit. It never happens, and this change to the law will not cause it to happen. Rather, you will have two proceedings, one at the tribunal, and the other in court; whereas now most cases of this nature are not split, and you would have both cases dealt with at once in court. Two cases rather than one is twice as expensive.

Another example of a problem deals with the issue of an insurer's bad faith. Now lawyers who believe an insurer needs to be held to account for unfairly treating their insurees sue in court for this relief. The underlying accident benefit claim that was denied is obviously critical by way of foundation for proving that bad faith. There can be no doubt that with this bill as currently drafted the victim would have to go to the Licence Appeal Tribunal for the denied benefits rather than to court. Depending on the benefit at issue, there may be a paper-review decision, an abridged-arbitration decision or a full hearing, and the decision would be made on entitlement. If the decision favours the victim, that person can then still go to court in a separate proceeding to claim bad-faith damages.

The Chair (Mr. Grant Crack): Thank you very much. I apologize again. We've got a very tight time frame here today. We'll start with the Progressive Conservatives. Mr. Yurek?

Mr. Jeff Yurek: Thanks, Chair. Eric, do you need more time?

Mr. Eric Grossman: I had one paragraph, but—

Mr. Jeff Yurek: Okay. Go ahead.

Mr. Eric Grossman: Okay. Thanks.

The system is complex. There are a number of examples of huge problems that this will cause. The additional cost insurers will face and pass over to the public with the removal of the right to sue is clear. The vast majority of Justice Cunningham's recommendations are an excellent step towards improving the system with major cost savings to be had which should lead to reduced premiums.

The memberships of all three organizations are all convinced that there is one serious flaw in the removal of the right to sue: It will add costs to the industry. I have some suggestions as to how to fix it if you want to hear them.

I thank you for your attention. I'd be pleased to answer your questions.

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

The Chair (Mr. Grant Crack): You've got about two and a half minutes.

Mr. Jeff Yurek: Can you give us your suggestions in two and a half minutes?

Mr. Eric Grossman: Yes, I can. The thrust of it is that in the complex cases, the bigger cases, you still have to have the right to sue. There's a three-stream process recommended by Justice Cunningham with the third stream being for the most complex cases. After the claims are handled by the registrar and are designated to that third, most complex stream, if someone is then given a right to sue if that's what they prefer, that's an option.

The other two streams are less significant concerns in my submission. The second option is to say, if you have a concurrent tort claim and if you are suing already in court, in whose instances, indeed, give that person the right to go to court for their accident benefits. If it's a stand-alone accident benefit case, the concern isn't as real. Certainly, if there's a bad-faith component to a claim, there has to be the ability to have that bad-faith case handled in court concurrent with the underlying issues. Because if you don't, if you keep them segregated, then you're going to get a disconnect between what the decision-maker on the benefits will say and what the decision-maker on the bad faith will say.

The Chair (Mr. Grant Crack): About 30 seconds.

Mr. Jeff Yurek: Thanks.

The Chair (Mr. Grant Crack): Okay. Thank you very much, Mr. Yurek. We'll move to Mr. Singh from the NDP.

Mr. Jagmeet Singh: I'm just going to pick up from your suggestions. If you can just make it very clear—I've also come to the same conclusion. I guess greater legal minds have done a better job than I have. But the issue, if you have two different streams—if you could just explain how you can come up with two different resolutions to that and how that would complicate the matter, and instead of making things better and streamlining it, it would actually add greater confusion and potential conflict and problems.

Mr. Eric Grossman: Part of the challenge with this tribunal process is that you have an expedited hearing, which is a good thing. But because of that you're going to have a very condensed hearing where condensed evidence will be led. And on the basis of that condensed evidence, a decision-maker will form an opinion as to whether the items in dispute are reasonably withheld, denied or not, and find them payable. So you may not hear from the treating family doctor or from the family members because there's a limited amount of evidence that can be led on this issue. At the end of the day, the finding that's made in respect to whether the benefit was properly withheld, denied or not will be made on the evidence that's before that decision-maker. Whereas, if you go to court, the judge will want to hear the whole story on what the insurer did wrong to justify an allegation of bad faith. The finding that's made by the tribunal will be key evidence on that decision. It may be that not all of the evidence was put before that tribunal. That's where the disconnect comes.

Mr. Jagmeet Singh: You made the argument that at the end of the day this wouldn't reduce costs. I want you to drive that message home again. I think it's an important message to highlight: that removing the right to sue on the SAB side is not going to reduce cost overall. I just want you to drive that message home.

Mr. Eric Grossman: Sure. This tribunal process that was recommended critically speeds up the process. That's a good thing in most cases, but in some cases, people have strategically decided that they don't want to resolve their accident benefit claim. They want to keep it live because they have a tort claim outstanding, and their tort claim outstanding critically relies upon being able to argue that they haven't settled everything and that they do have an ongoing dispute. If they settle it in advance, they don't have that argument. There's a credit that's created as a result. They prefer to leave the claim in limbo and deal with the tort and the accident benefit concurrently, and get them dealt with at the same time.

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If you force arbitrations ahead, as the system suggests, there will be additional costs by having more hearings. We hear statistically that only 98% of the cases get settled. This system will cause more of them not to get settled, and that will add cost. There will be adverse decisions that will add cost that right now aren't going to decision because they're being settled on a compromise, which compromise reduces cost. The effects that are going to arise as a result of this are significant and understated by a lot of people who aren't looking at this carefully.

The Chair (Mr. Grant Crack): Thank you very much. We appreciate it. We'll move to the government. Ms. Damerla.

Ms. Dipika Damerla: Thank you so much, Mr. Grossman. I just need a clarification, because the way it

was explained to me—and I am by no means an expert in this—you said that the right to sue has been taken away. My understanding is, you have to first go through the tribunal and then you can go to court.

Mr. Eric Grossman: No. Section 280(3) says, "No person may bring a proceeding in any court with respect to a dispute described in subsection (1)...." That is an accident benefit. The only thing they can do after that is appeal that decision—

Ms. Dipika Damerla: In court.

Mr. Eric Grossman: —to court. But appeal is very, very different than going before a judge and arguing a case. An appeal is limited to deciding whether the decision-maker acted properly or improperly.

Ms. Dipika Damerla: Fair enough. Thank you for that clarification. That's helpful.

I do hear what you say, but I also heard you say that the vast majority of cases, when they go through the tribunal, will not only be expedited, but will also get settled. The reason I say that is, I have been fighting very hard for condo residents in my riding. The only thing, if you have a condo dispute right now, is you end up in court, and it's very expensive for all parties. They have been fighting, actually, for exactly the opposite, which is, "Can we have something that doesn't mean we always end up in court?" It's a reversal of roles that I'm hearing here, where you're suggesting everybody ought to be able to go to court directly, because common sense suggests that going through mediation and arbitration is probably the best way for the vast majority. Would you agree with that?

Mr. Eric Grossman: Generally, that's true. Appreciate that currently, a plaintiff, through their representative or directly, has a choice as to which model to follow, whether they want to go to arbitration or whether they want to go to court. That is being removed in this draft legislation. They are no longer given the option of choosing which of the two fora to pursue. That, in my submission, is not appropriate. They should still have the choice. My view is that the choice should be given to them in limited circumstances. In complex cases where they're already going to be in court anyway on their tort case, they shouldn't have to go to two places at once. If they have a complex case where the tort interweaves so heavily with their accident benefits, to keep them disconnected, again, is very expensive.

Ms. Dipika Damerla: Let me just rephrase. If in the vast majority of cases the tribunal system works—and I hear you on the small percentage that it might not—that would drive down costs in the system, would it not?

The Chair (Mr. Grant Crack): We're out of time, so a quick answer, please.

Mr. Eric Grossman: I'm not sure I understood the question. Could you repeat it? Sorry.

Ms. Dipika Damerla: Yes. I'm saying, if the tribunal mechanism is suitable for the vast majority of disputes, and that is used, would that not bring down costs in the system?

Mr. Eric Grossman: Absolutely.

Ms. Dipika Damerla: Thank you.

The Chair (Mr. Grant Crack): Thank you very much, sir. We appreciate it.

FAIR VALUE COMMITTEE

The Chair (Mr. Grant Crack): We'll move on to the Fair Value Committee. We have with us Mr. Larry Gold. He's a facilitator. I believe we have him via teleconference. Is that correct?

Mr. Larry Gold: That's correct.

The Chair (Mr. Grant Crack): Welcome, sir. You have five—

Mr. Larry Gold: Thank you.

The Chair (Mr. Grant Crack): Sorry, you have five minutes for your presentation and three minutes of questioning from each of the parties.

Mr. Larry Gold: Thank you, Chair, and thank you, members of the committee. I'd like to thank the committee for this opportunity and privilege to address you on what we consider to be a very important piece of legislation.

I'd also like to commend this government, including all the party representatives on both sides of the House, who have spoken out in support of the anti-fraud provisions embedded in this bill. As an Ontarian, I am proud of the government's proactivity and determination to reduce insurance costs.

I am most impressed that we are not just seeing "talk the talk," but that we are in fact seeing "walk the walk." This government is clearly listening to its industry stakeholders and to the impacted consumers.

I'd like to specifically address what I call the "back end" of the bill. I'm specifically referring to the contemplated amendments to the Repair and Storage Liens Act. These proposed regulatory amendments proactively address the epidemic problem of abusive vehicle storage fees and the related issue of storage notice, both of which issues are fuelling out-of-control insurance costs.

Why are these proposed regulatory amendments so vitally important, you may ask. Both of these issues—storage and notice—represent seriously problematic areas where opportunists have taken advantage of legislation that was well-intentioned and well-drafted.

Unfortunately, opportunists become creative and, as our government policy advisers have stated time and time again, fraud tends to follow the money. These abuses have fuelled insurance costs, which in turn have fuelled insurance premium spikes.

Creative scammers can only be harnessed by creative and flexible legislation. This is exactly what these regulatory amendments that are embedded at the back end of the bill bring to the table. I am not for one minute suggesting that everyone within the industry who is involved is a scammer, but there are certain elements of the population who are opportunists, and they are making it extremely difficult for the well-intentioned service providers.

The money necessary to support insurance premium reductions has to come from somewhere. Insurance pre-

miums do not magically reduce themselves. Please allow me to give you a quick and dirty explanation of these two issues—storage fees and notice—and the proactive remedies designed by the government with the unequivocal blessing and support of the lion's share of the industry's stakeholders.

With regard to the issue of notice, the requirement that the people who are ultimately required to pay the storage invoice must be given early notice, earlier than the current 60-day notice period—so that they can react and limit the cash drain.

The simplistic explanatory example which I will give you would suggest as follows: If you want me to pay for dinner, please tell me where and when dinner will be held and how much it's going to cost me. Don't tell me a week later, "By the way, you are paying for last week's dinner, and it's going to cost you an arm and a leg."

The related issue of fair value: The existing Repair and Storage Liens Act states—I'm paraphrasing—that the amount to be paid for daily storage fees is the amount agreed upon between the parties, and in the absence of agreement, the fair value will be the amount to be charged. Unfortunately, until now, no one has had a clue as to what these two words—"fair value"—mean.

Up until now, Ontario has been the wild, wild, wild—I think I've put enough wilds in it—west of fair value. That is now changing. With the support and co-operation of the government, the entire industry stakeholder community has come together under the banner of what is called the Fair Value Committee, in order to determine and define fair value and its parameters.

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Who are the stakeholders? It is an impressive, unprecedented gathering of divergent industry interests who would typically not be able to agree on what is the time of day: Canadian banks, the Canadian Financing and Leasing Association, provincial-municipal law enforcement, the Ontario bar, Ontario bailiffs, the towers, the vehicle storers, the Canadian self-storage industry, the insolvency bar, Insurance Bureau of Canada, consumer advocacy people, municipalities and, most importantly, the industry's strategic partner—this is the government. This is exactly how government is supposed to work.

Let me conclude by leaving you with one cautionary note: Band-aids are good. They stop the bleeding. However, you ultimately have to trace the source of the bleed. This legislation will stop the bleed. However, based upon my research and investigations in this matter, I have concluded that an underlying issue must be addressed, which is the issue of abandoned vehicles. That's a discussion for another day, but it's a discussion that must be had. I do not have time to explain it in this five-minute allotment, but we'd be pleased to brief any interested parties offline.

Thank you for your time and attention.

The Chair (Mr. Grant Crack): Thank you very much, sir. We shall start with the NDP: Mr. Singh.

Mr. Jagmeet Singh: Sure, thanks. Thank you, sir. Can you just explain how the Fair Value Committee is made up?

Mr. Larry Gold: It's made up of a constituency of all of the various industry stakeholders from both sides of the issue, i.e., the vehicle finance community, insurance, towers, storers, the self-storage industry. Everyone has come to the table in order to be able to assist in the quantification of fair value such that in any given towing/storage situation, we are able to determine—and the words "fair value" just mean fair or equitable—what the appropriate value is for daily storage. It doesn't matter if it's a piece of property north of the 16th Sideroad that has no more than a fence around it and a gravel lot, as opposed to a property in downtown Toronto. There's a distinction made based upon property value and the quantification of what the total asset value is that generates the income flow. There has to be a distinction between a—

Mr. Jagmeet Singh: Sir, is there a website or is there an organization? Is this an ad hoc committee?

Mr. Larry Gold: At this point, it is an ad hoc committee. There is a website under construction at this point.

Mr. Jagmeet Singh: Okay. Your primary concern is with respect to the storage and the notice surrounding the storage?

Mr. Larry Gold: Three issues: (1) the issue of what is fair value; (2) the notification period; and issue—well, those are the two primary ones. Let me leave it at that for now.

Mr. Jagmeet Singh: Okay. Thank you very much. I appreciate your input.

The Chair (Mr. Grant Crack): Thank you very much, Mr. Singh. We'll move to Ms. Damerla, from the government side.

Ms. Dipika Damerla: Thank you, Mr. Gold, for that excellent presentation and some great examples in that, to help us understand.

I heard you say that, right now, when it comes to storage, Ontario is the wild, wild, wild, wild west. You had four "wilds" in there. Should this legislation pass, how many "wilds" would come off?

Mr. Larry Gold: All of them, only because—and let me just give you a little example. I get calls all the time. Yesterday's call was from a bailiff who brought to my attention a situation in which a vehicle was stored at a demanded price of $160 a day. The day before, another bailiff called with a situation in which a vehicle was stored for 58 days at a price of $70 a day.

This is not just an issue that's impacting insurance. It is also creating havoc within the vehicle finance industry. How it's going to eliminate it is, that part and parcel of the Fair Value Committee's undertakings are going to be the creation of a designation which I would refer to as an industry fair-value certified supplier. What that means is that for the benefit of your consumer and for the benefit of the police, there will be [*inaudible*] on a vehicle that effectively says, "I am a fair-value storer. I am a fair-value tower." What it means is that that gives you the satisfaction in the fact that this particular tower or storer adheres to what the industry has determined to be fair value for service.

Ms. Dipika Damerla: Essentially, what I'm hearing from you is that this legislation will pretty much solve the problem that is at hand now and will help reduce insurance costs in the system.

Mr. Larry Gold: If you read your regulation, the regulation as drafted will be the basic codification of the creation or the acceptance or incorporation by reference of the determination of the industry as to what is fair value, because this government, as with many governments, doesn't want to get into the business of rate-setting, because it's not their area of expertise. As far as I know, there has only been one instance in the last number of years in which the government has interceded in order to establish rights, and that was in the payday loan area.

Ms. Dipika Damerla: Thank you very much.

The Chair (Mr. Grant Crack): We shall move to the PCs. Mr. Yurek.

Mr. Jeff Yurek: Thanks, Mr. Gold, for calling in and giving us that information. I was trying to write down everybody that you have in your organization or your group. Were there any insured people, people who were taken for money, involved in your committee? I know you have consumer activists.

Mr. Larry Gold: Yes, let me explain something to you. There's a bit of a red herring going on out there in terms of the media. The media really likes the stories of the highway piracy. The bottom line is that the real problem that you have doesn't necessarily involve the consumer who was taken off the highway and had to pay a ridiculous bill. The real problem that you have, in terms of understanding insurance costs, is the fact that the consumer has no idea in the world of what fair value is, and they are put into situations in which, for example, a vehicle is towed off of a highway. They may even agree to whatever the vehicle tow rate or the storage rate is, but at the end of the day, it is the insurers who are being required to pay the bill. While it's important to make sure that the insurers are being protected, the consumers are really being protected on the back end, because there are very few instances—and you have IBC in your audience there—in which the consumer is directly paying the tow bill or the storage bill. In 90% of the situations, they're paying it indirectly because of the fact that increased storage and tow bills are translating into increased insurance premium costs because the money has to come from somewhere.

Mr. Jeff Yurek: A "no" would have been great, but thank you.

My other question is: Is there anything missing in this bill that you think should be added, other than the abandoned vehicles problem?

Mr. Larry Gold: In terms of the fair value and the notice issue, I think it's comprehensive. I don't think you want to overregulate. I like the idea of it being embedded in a regulation which has some flexibility.

Mr. Jeff Yurek: Thank you.

The Chair (Mr. Grant Crack): Thank you very much. We really appreciate you appearing by teleconference, Mr. Gold, and we wish you all the best.

Mr. Larry Gold: My pleasure.

ASSOCIATION OF MANAGEMENT, ADMINISTRATIVE AND PROFESSIONAL CROWN EMPLOYEES OF ONTARIO

The Chair (Mr. Grant Crack): We also have with us this afternoon representatives from AMAPCEO, the Association of Management, Administrative and Professional Crown Employees of Ontario. I believe we have Mr. Michael Mouritsen, director of operations and planning. You brought people that perhaps you could introduce to the committee, Mr. Mouritsen.

Mr. Michael Mouritsen: Thank you. I'd be happy to.

The Chair (Mr. Grant Crack): You have five minutes, followed by three minutes of questioning.

Mr. Michael Mouritsen: Mr. Chairman and members of the committee, my name is Michael Mouritsen. I'm director of operations and planning on the staff of the Association of Management, Administrative and Professional Crown Employees of Ontario, known, mercifully, by our acronym AMAPCEO. I'm joined today by Barbara Gough, the elected secretary of the association, who works as a senior policy adviser in the Ministry of Training, Colleges and Universities in Toronto; and by Robert Janiga, a labour relations officer at AMAPCEO. Our president, Gary Gannage, wanted to be here today, but is unfortunately having to deal with the fallout from Mr. Milloy's request for a no-board report in our current round of bargaining. That's the only bargaining pitch I'll make in the presentation today.

We appreciate this opportunity to comment on Bill 171. AMAPCEO represents 12,000 public servants, most of whom work for the Ontario public service, in every ministry, in over 130 communities across Ontario, and in 11 cities outside of Canada. We also represent employees in seven bargaining units outside the OPS, including two independent offices of the Legislature: the Office of the Provincial Advocate for Children and Youth and the recently created Office of the French Language Services Commissioner.

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We're appearing before you today on behalf of our members who work as mediators and arbitrators in the dispute resolution services branch at FSCO. The current cadre of mediators and arbitrators who are now full-time career public servants are a phenomenal resource for the people of this province. They are widely respected by accident victims, the provincial bar and the insurance industry. They provide incredible value to the automobile dispute resolution process.

We believe it is in the public interest that mediation and arbitration functions remain in the public service and that mediators and arbitrators continue to be salaried public service professionals. The arguments for moving these functions to the private sector or to a rostering system do not seem compelling to us. Indeed, the risk of jeopardizing the quality and impartiality of the current system in moving to an alternative approach seems huge, with potential negative impacts on both consumers and the insurance industry.

One of the proposals in Bill 171 is to move the automobile dispute resolution function from FSCO to the Attorney General's Licence Appeal Tribunal, with arbitrators being appointed as order-in-council adjudicators for limited terms. In addition, the adjudicators would handle both mediation and arbitration. We think this is a mistake on a number of levels that will ill serve both victims and insurers.

First, to be clear on the implications of this bill, this is a divestment. Our members, 20 arbitrators and almost 40 mediators, expect to be surplused when the act is proclaimed and implemented. Some arbitrators may choose to apply for and be appointed as limited-term order-in-council adjudicators, but if successful, they will lose their union representation, their job security, their benefits and their participation in the pension plan. Everyone else, unless they can find a position to which they can be redeployed, will have to look for work outside the Ontario public service and find a new job. This is a disruption to them personally and to their families, but it is also an unnecessary disruption in the provision of high-quality services to the public.

Second, mediation and arbitration are two distinct professions requiring different skill sets and expertise. Our mediator members, who have years of experience working on the front line of automobile dispute resolution, do not believe that the system will be improved or become more efficient by adopting this model. Rather, they are convinced consumers will experience a deterioration in service and quality. I've cited in the brief some benefits of keeping them as professional public servants.

Third, much has been made of the so-called backlog in mediation cases at FSCO. During second reading debate, the erroneous impression was left that there is currently a backlog of 16,000 cases waiting for mediation. This is totally false. There was a backlog, which began when the government changed the regulations affecting the responsibilities of FSCO, increasing the workload of staff without increasing the number of staff—this, in spite of a recommendation from senior management at FSCO to increase staff or risk creating a backlog. As the backlog began to grow, requests for increased staffing were rejected by cabinet because of the government-wide FTE constraint program, even though the insurance industry pays for the dispute resolution process on a cost-recovery basis.

In other words, it is fiscal and human resource policies that led to the backlog, not the structure, the processes or the quality of the personnel.

In any event, as of last August, the backlog of files to be mediated was permanently eliminated. For the fiscal year ended March 31, 2014, just over one third of all disputes were kept out of the arbitration system because they were fully settled at mediation, with an additional 10% settled partially, meaning that the issues were reduced, clarified or streamlined going forward—

The Chair (Mr. Grant Crack): Okay. Thank you very much. I know you have some to go yet, but we went over time. Sorry about that.

We'll move now to the government. I believe—

Interjection.

Mr. Michael Mouritsen: That would be great. Thank you.

Fourth, as the arbitrators noted in their submission during the Cunningham review, there is a real risk that the independence of the adjudicators, or at least the perception of their independence, may be compromised in moving to a system of order-in-council appointments. To be considered a fair adjudicative process, decision-makers must be independent and be perceived to be so. The Supreme Court has stated in other jurisprudence that the hallmarks of independence are security of tenure, financial security and institutional independence. All three of these hallmarks are at risk in divesting the arbitration function to limited-term order-in-council appointments.

In conclusion, Mr. Chairman, we are as much in favour as anyone else in fighting fraud and reducing insurance rates. We just don't see how disrupting the careers of the professional public servants who are now fulfilling the mediation and arbitration functions will help accomplish this goal. Our members are convinced that consumers and the insurance industry will suffer a reduced quality of dispute resolution, and we urge the committee to question the wisdom of this aspect of the bill and consider amendments that would keep these functions in the Ontario public service.

Thank you, again, for the opportunity to speak, and we're happy to answer any questions.

The Chair (Mr. Grant Crack): Thank you very much. You have a minute and 40 seconds.

Mr. John Fraser: I just have one question and one comment in terms of the appointment process. We have a number of adjudicative boards and administrative tribunals across this province that are all order-in-council appointments. I appreciate very much what you're saying. I hear very clearly what you're saying in your remarks, but I don't think I would characterize those boards as having the perception of being unfair or unjust—and that processes of administrative justice in those boards are executed. I just want to put that as a comment that I would have to you.

I very much appreciate your presentation. You've made yourself very clear. Thank you.

The Chair (Mr. Grant Crack): Thank you very much. We'll move to Mr. Yurek.

Mr. Jeff Yurek: Thanks, Chair. Thanks for coming out. The backlog in mediation is gone now. Is there a backlog in arbitration?

Mr. Michael Mouritsen: Not to my knowledge.

Mr. Jeff Yurek: There's no backlog at all? There's no wait time?

Mr. Michael Mouritsen: I don't believe it's an issue.

Mr. Jeff Yurek: The question was, is there a backlog?

Mr. Michael Mouritsen: I don't know.

Mr. Jeff Yurek: When FSCO last year wanted to clear out the mediation, did they not hire an independent group to come in and help?

Mr. Michael Mouritsen: They did.

Mr. Jeff Yurek: So it worked that an outside agency, that weren't public servants, actually came in and was able to do the job?

Mr. Michael Mouritsen: Yes, and the reason that happened was that the government's FTE constraint program was used as an excuse basically not to hire temporary replacements in-house, which is what most ministries do. If there's a backlog anywhere else in government, they hire temporary staff who are there for a year or two and then leave. That could have been done, but instead they piloted basically an outsourcing arrangement.

Mr. Jeff Yurek: And it worked—it worked out. So you're saying if it moves to a different ministry or order-in-council tribunal, it's not going to work?

Mr. Michael Mouritsen: It reduced the backlog. I think there's some question among our members as to the quality of the decisions that were made.

Mr. Jeff Yurek: Thank you.

The Chair (Mr. Grant Crack): Okay. Thank you. We'll move to Mr. Singh, NDP.

Mr. Jagmeet Singh: Yes. One of the issues you touched on was the importance of independent decision-makers. You listed three criteria or hallmarks of independence that were presented by the Supreme Court of Canada. Can you explain how those three components—security of tenure, financial security and institutional independence—are met by the existing existing mediators and arbitrators and would not be met, in your opinion, by order-in-council appointments?

Mr. Michael Mouritsen: Well, I won't be able to do as good a job as the arbitrators themselves did in their brief to Judge Cunningham.

Mr. Jagmeet Singh: Sure.

Mr. Michael Mouritsen: But as I understand it, the security of tenure that a professional public servant has, means that, among other things, he doesn't have to worry about his benefits or his pension plan or his financial security. He comes in, he's provided with an office—or she—and they can do their work unencumbered by fear of whether they're going to be reappointed in three or four years, and that's a huge issue for our members.

Mr. Jagmeet Singh: One of the other issues is that the quality of service—I highlighted institutional knowledge. The current mediators and arbitrators would have significant institutional knowledge. How would you compare that to transferring those services to the Licence Appeal Tribunal? Also, can you talk about the capacity of the Licence Appeal Tribunal to deal with the volume?

Mr. Michael Mouritsen: The loss of the expertise I think will be huge. These folks are, as I said in the brief, at the front line of the dispute resolution process. Over time you naturally build up expertise. You can do your job more efficiently, but you can also have a better appreciation of the context. I mean, these are the experts in what many would argue is a very arcane, specialized field. The loss to the system is going to be huge.

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Mr. Jagmeet Singh: And in comparison with the existing mediators and arbitrators, the current system, their ability to deal with high volume—they've been dealing with a high volume—

Mr. Michael Mouritsen: Absolutely.

Mr. Jagmeet Singh: —compared to the Licence Appeal Tribunal. Are you able to make a comparison if they're in a position to deal with the volume that they potentially—

Mr. Michael Mouritsen: Unfortunately, I can't.

Mr. Jagmeet Singh: Okay. Finally, one of the suggestions that I've considered—and would this satisfy, do you think, your concern: Justice Cunningham's concern was that the same group or body that regulates the industry shouldn't also be the group that makes the decisions—the decision-makers, in terms of resolving disputes. So moving those decision-makers, those arbitrators and mediators—keeping the same ones but moving them into a different department. So taking them out of FSCO and moving them into the Ministry of the Attorney General but keeping the same actual arbitrators. In your opinion, would that address Justice Cunningham's concerns but also maintain the institutional knowledge and independence of those existing arbitrators and mediators?

Mr. Michael Mouritsen: Absolutely. We'd be happy to represent them in the Ministry of the Attorney General.

Mr. Jagmeet Singh: Thank you very much.

The Chair (Mr. Grant Crack): Thank you very much. We really appreciate you coming forward. Thanks for your insight.

ASSOCIATED CANADIAN CAR RENTAL OPERATORS

The Chair (Mr. Grant Crack): Next we have the Associated Canadian Car Rental Operators. We have Mr. Craig Hirota, member services manager. Thank you very much for coming. The floor is yours. Welcome, Mr. Hirota.

Mr. Craig Hirota: Thank you for the opportunity to speak in front of the committee. Dear members of the Standing Committee on General Government, my name is Craig Hirota. I am the member services manager for Associated Canadian Car Rental Operators, or ACCRO. ACCRO speaks on behalf of the vehicle daily rental industry in Canada.

The vehicle rental industry in Ontario operates approximately 50,000 vehicles composed of Avis Budget Group Inc., Discount Canada, Enterprise Holdings Inc., Hertz Canada, U-Haul Canada and over 160 independently operated car and truck rental businesses.

ACCRO was fortunate to be involved in the Towing and Storage Advisory Group which discussed provincial oversight of the towing and storage industry. We were pleased to see many of the recommendations implemented in Bill 171 and Bill 189, the Roadside Assistance Protection Act.

One of the concerns voiced by our members is the extremely high cost associated with tow and storage

invoices arising from vehicle accidents or mechanical breakdowns. The collective experiences of our members support the need for consistent, province-wide regulation in order to establish predictable costs.

I would like to comment specifically on the portion of Bill 171 that amends the Repair and Storage Liens Act. During the Towing and Storage Advisory Group meetings it was clear that prompt notification of owners and lienholders was a key component in managing storage costs. While the act leaves the specific circumstances that would apply to a reduced notification period to future regulations, it is our expectation that the subsequent regulations would reflect the recommendations that arose out of the Towing and Storage Advisory Group meetings: A maximum 15-day notification period—our industry's preference would be even less—owners and lienholders notified, and applicable to any storage situations not specifically directed by the owner or lienholder.

Prescribing notification requirements is only the first step. ACCRO, on behalf of all vehicle owners, urges the government to remain committed to Bill 171 and Bill 189 so the consumer will no longer have to endure questionable business practices designed to circumvent existing bylaws and regulations.

I will close with a recent, real-world example with names redacted to emphasize the need for strong provincial regulation of the towing and storage industry. In this unfortunate and all-too-common example, the owner was notified well within the contemplated 15-day requirement. However, actions taken by the tow and storage operator led to three additional days of unnecessary storage charges.

A vehicle was towed by a towing company to a body shop. The customer was supposed to return for Saturday, March 22, but did not come back in. The manager of the rental office was off Monday but contacted the customer on Tuesday the 25th in the morning.

The customer let us know that he was involved in an accident on Saturday and that the vehicle was towed. He did not know where it was towed to initially. No information was given to the customer at the time of the tow with a location, nor did the customer give consent to have the vehicle towed to the shop in question. Lack of information given by the tow company at the time of the tow led to one day of unnecessary storage.

The customer called back the next day, March 26, to let the rental office know that the vehicle was at a body shop. The manager called the shop, and they were initially unsure about whether the vehicle was there or not. They said they'd give the manager of the rental office a call back when they located it. They never called back. This was the second unnecessary day of storage.

The rental office manager called the body shop the next day, the 27th, and they were told the vehicle was there, but they didn't have anyone there who could give them the payout information. They said they would call them back when they had this. No call came till 5 p.m. The rental office manager called back, and they said they were closed for the day and to call the next day at 11 a.m. This is the third unnecessary day.

The manager called them the next day and was notified the total payout was $4,124.50.

A tow from an accident scene and six days of storage—and this was all within the GTA—three of them unnecessary, for $4,124.50. The rental car company in this example was able to renegotiate the bill to $2,800, so the extra three days amounted to a per-day storage rate of over $400 a day, plus HST.

Examples like this are common and affect consumers as well as rental fleet operators. Anyone driving a vehicle on Ontario roads is at risk for this type of abuse. Many times, the costs are borne by a consumer's insurance company. Other times, they are absorbed by consumers themselves. In addition to prompt, timely notification, any vehicle owner should be able to expect to recover their vehicle from a storage lot without having to play games designed to pad the storage bill.

That's my presentation.

The Chair (Mr. Grant Crack): Thank you very much. We shall move to the Progressive Conservatives. Mr. Yurek.

Mr. Jeff Yurek: Thanks, Craig, for coming out and giving this deputation. Were you part of the Fair Value Committee?

Mr. Craig Hirota: We have been contacted by Mr. Gold to participate. We haven't participated in any meetings yet, but we're scheduled to attend their next meeting on May 8.

Mr. Jeff Yurek: Okay. Judging from your story here, this type of situation could occur to everyday vehicle owners. I know that the Fair Value Committee says they don't have them on the committee and don't think it's necessary—it's a red herring—but it seems like it happens outside the insurance industry as well.

Mr. Craig Hirota: Certainly, our experience in the rental industry is that towers don't discriminate against whoever's car they pick up. They treat everybody the same, which is to say that sometimes they treat us very poorly.

I think what Mr. Gold may have been referring to is that oftentimes the individual consumer defers that cost to his or her insurer, and so the consumer doesn't as often get stuck personally with the bill. But there are a lot of folks who don't have comp and collision on their vehicle, so I would assume they would run into a similar situation. Then that also leads into the abandoned vehicle issue that Mr. Gold mentioned as well.

But certainly with rental vehicles, there are many situations where our members have to pay for the bill themselves because there is no insurance that covers physical damage, or there is no renters' insurance that would step up and indemnify. So yes, it happens to our industry quite often.

Mr. Jeff Yurek: Anything in Bill 171 that you think should be added?

Mr. Craig Hirota: No, I don't. We came to present because we wanted to stress to keep moving forward. We like the start. We like Bill 189 as well; obviously, we're not here to discuss that, but Bill 189 has a lot more meat

with respect to how the towing and storage industry will be regulated. We're very happy that the government has remained committed to implementing the recommendations from the anti-fraud task force.

Mr. Jeff Yurek: Thanks very much.

The Chair (Mr. Grant Crack): We'll move to Mr. Singh.

Mr. Jagmeet Singh: Thank you, sir, for being here.

Mr. Craig Hirota: You're welcome.

Mr. Jagmeet Singh: How common or how significant an issue is this in terms of your industry with respect to storage costs being inflated due to some of these issues around notice and practices that are designed to pad the bill?

Mr. Craig Hirota: When we were preparing for our participation in the Towing and Storage Advisory Group meetings, I canvassed some of our larger members for their tow and storage data. One company was able to respond with a month's worth of tow and storage invoices. Assuming everybody else has the same experience, which in my experience would be correct, our industry spends roughly $30,000 to $40,000 a month in tow and storage bills. The percentage of that which would be, I guess, excessive or at least contain the perception that they're excessive is at least 75%. Most large fleet companies will negotiate service provider contracts for their own internal tows and mechanical breakdowns. The rates that they are able to negotiate are typically 25%, 30% of the going accident-chaser rates that we see on the invoices submitted by our members.

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Mr. Jagmeet Singh: That's very helpful. Thank you. Can you break down for me how these two components—one, the notice requirement—how that would assist your industry in reducing the costs? And—well, first, start with that.

Mr. Craig Hirota: For our industry, oftentimes we do know our car is in a situation. The renter will eventually tell us, either through our own internal follow-up methods—we'll ask a renter why they're not back yet, and they'll say, "Oh, I got in an accident over the weekend"—or the renter will volunteer. So oftentimes we know something has happened.

The problem we more often run into, as opposed to the lending institutions, is that when we have notice, we're often not given the opportunity to obtain the vehicle as promptly as we would like. So I guess part and parcel to notification—I don't know if this will be covered further in Bill 189, but there should be a duty that, if you give notice, the customer should have the expectation that they can act on that notice immediately and not have to wait for one person, who may be on lunch or on vacation or gone to play golf, who is the only person who can write an invoice, or that they only accept cash, which I know has been addressed in Bill 189 as well with payment types, and we're very happy to see that.

Mr. Jagmeet Singh: Sure. The second component—the example you raised was the three unnecessary days. It seemed to be that there was almost a concerted effort to delay the ability to actually go and pick up the vehicle. Would this bill be able to assist you in any way with respect to that?

Mr. Craig Hirota: The bill as written, I don't think, would address that issue. That would be required in some subsequent consumer bill of rights or regulations that govern the tow and storage industry. The reason, in that example, that one rental car company ended up paying out a $2,800 bill for a tow and three days of storage is because the only alternative is to pay the money into court and adjudicate it at a later date. You get your car out, but the money's held in court. Then you have to go to court and basically fight it out.

You run into a couple of issues: One, it's very time-consuming, so it becomes a pick-and-choose-your-battles on which ones you're going to fight. Two, there is that issue of fair value. I've seen invoices with per-day rates of anywhere from $100 to $300. I think it would be difficult for a judge to determine what is truly fair. If everybody is charging 100 bucks a day, maybe the judge thinks 100 bucks a day is fair.

The Chair (Mr. Grant Crack): Thank you very much. We appreciate that. Ms. Damerla from the government side.

Ms. Dipika Damerla: Thank you, Mr. Hirota, for your excellent presentation. The example that you gave really very clearly spelled out many of the problems that are in the towing industry today and how they are pushing costs up in the insurance industry and thereby pushing premiums up. So thank you so very much.

I heard you say that on Bill 171, and I guess Bill 178 as well, you want us to move forward. I couldn't agree with you more. I have to say that, on the government side, for at least eight weeks now we've been trying to bring this bill to committee, but as you know, it's a minority government and you can only do it if at least two of the three sides agree. Just on Monday—I have to give credit to the Conservatives—they agreed with us. So here we are, moving it forward.

I certainly hope that we'll be able to keep working through, because from what I'm hearing, and then what I heard Mr. Gold say as well, the wild, wild, wild west of towing and storage might come to an end once both of these bills are in place.

Mr. Craig Hirota: Thank you. It's good news. It's a very complicated issue. There are a lot of stakeholders at play. Hopefully, the part that we're very interested in is able to move forward if everything else can be resolved to everyone's satisfaction.

Ms. Dipika Damerla: Thank you.

The Chair (Mr. Grant Crack): Thank you very much, Mr. Hirota, for coming. We appreciate your insight.

Mr. Craig Hirota: Thank you.

INSURANCE BROKERS ASSOCIATION OF ONTARIO

The Chair (Mr. Grant Crack): Next we have, from the Insurance Brokers Association of Ontario, Mr. Arthur Lofsky, government relations consultant, and, I believe,

Debbie Thompson, chair, as well. Welcome to the two of you. You have five minutes. We look forward to your remarks.

Mr. Arthur Lofsky: Thank you. Hello, everyone. My name is Arthur Lofsky. I am the IBAO's government relations consultant. I'm joined by Debbie Thompson, who is the chair and past president of the Insurance Brokers Association of Ontario.

For those who may not know, the IBAO represents over 12,000 insurance brokers, who assist six million consumers across Ontario with their auto and property insurance needs. We are licensed and educated professionals. 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 at the time of a claim, often giving a different perspective from insurance companies themselves.

Bill 171: The IBAO strongly supports all aspects of Bill 171, the Fighting Fraud and Reducing Automobile Insurance Rates Act. This is a vital fraud-fighting piece of legislation and needs to be passed as quickly as possible. It is a prerequisite to help achieve the government's promised rate reduction targets. Consumers need this bill passed if there is going to be any chance of getting rates down responsibly.

We're happy to see the government continue to implement these much-needed reforms to fight fraud and lower rates for drivers. However, it's important to understand that the reforms underlying the promised reductions will take time. Not passing this bill will make it nearly impossible. Attempts to delay or weaken this bill unnecessarily are not in the best interests of consumers, and the IBAO will be vocal if games are played with this legislation.

Bill 171 lowers prejudgment interest to a reasonable rate; fixes the dispute resolution system, as recommended in the Cunningham report; protects consumers from untrustworthy repair and storage shops; and helps implement health clinic licensing.

Since our time is limited, I want to concentrate on two aspects of the bill which have attracted attention. The first is prejudgment interest, PJI. Bill 171 fixes a long-standing anomaly regarding prejudgment interest. PJI is the interest paid to claimants on non-pecuniary general damages, also known as "pain and suffering," due to collisions. It is calculated from the date a plaintiff commences an action to the date a judgment is rendered. It is intended to compensate and ensure a plaintiff is "kept whole" while he or she waits for a judgment on his or her case. The current PJI was fixed in legislation at 5% in June 1990, when the prime rate was 13%. All other forms of PJI in Ontario are set based on prevailing interest rates.

Bill 171 aligns the prejudgment interest rate with the interest rate for special damages, also known as "economic loss," at 1.3%. This measure alone will save millions of dollars and speed up dispute resolution without affecting a deserving victim's benefits in any way.

The IBAO believes the current generous PJI is incenting certain bad actors to abuse the system, to delay dispute resolution as long as possible, to take advantage of the generous interest rate.

The trial lawyers association is engaging in a campaign claiming that this will harm their clients because they will only receive the prevailing rate of interest. This is false. The IBAO believes that if trial lawyers are sincere about their clients' pecuniary interests, then they could lower their contingency fees from 40% to 25% of a claimant's settlement. The province of New Brunswick caps contingency fees respecting auto settlements at 25%. Perhaps that's something the government should consider, to help get auto rates down.

Dispute resolution: The second aspect of Bill 171 we'd like to address is the section concerning dispute resolution. It begins to implement the recently completed Cunningham report, which said that the current system is broken. If implemented properly, the new system will put an end to chronic backlogs.

Indeed, there are 17,000 cases backlogged in the arbitration system. My prepared remarks say 10,000; I just wanted to draw your attention to that. I've just learned it was 17,000.

The new system intends to hear and decide a case within six months, start to finish. Contrary to what you may have heard, the right to sue has not been taken away. Tort claims can proceed just as they have always proceeded.

The IBAO believes it is vitally important to get on with the implementation of Justice Cunningham's report. The current system is delaying timely resolution of disputes for our customers and is unnecessarily expensive and inefficient. Implementing the Cunningham report will provide timely access to a workable dispute resolution system and will lower costs in the system, which are ultimately paid by all of us.

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The IBAO is respectfully asking the committee to refrain from making any material changes to these parts of the bill as this will cost consumers unnecessarily.

We'd be happy to answer any questions you might have.

The Chair (Mr. Grant Crack): Thank you very much, Mr. Lofsky. We'll start with the NDP and Mr. Singh.

Mr. Jagmeet Singh: You indicated that the right to sue has not been removed. What basis do you have for saying that the right to sue has not been removed with respect to the statutory accident benefits component?

Mr. Arthur Lofsky: Suing includes tort; tort is still allowed to go ahead. The whole arbitration system envisioned is meant as a specialized place to hear all the legal disputes that there are involving auto insurance. Just like Ms. Damerla said, I think it's actually preferable to have a more simplified system, and her condo story that she told is a demonstration of that.

Mr. Jagmeet Singh: Just to clarify, though, the right to sue on the SAB side: That is removed—just for clarity purposes, just for accuracy. Just to be accurate. I don't mind that you're—

Mr. Arthur Lofsky: Well, no. You can go to court after if you don't like what happens at arbitration or in the dispute resolution system.

Mr. Jagmeet Singh: But you're not going to accept that there's a removal of the right to sue on the SAB's level. You don't want to—

Mr. Arthur Lofsky: I think the dispute resolution is your suing. That's where you deal with these issues.

Mr. Jagmeet Singh: I'm not sure why don't want to admit—

Mr. Arthur Lofsky: You only go to dispute resolution when you have a dispute, and that's suing.

Mr. Jagmeet Singh: That's okay. Then your concern around—you were very clear to say you'll be vocal about games being played. Why did you focus on that? What are you attempting to say?

Mr. Arthur Lofsky: Given the timing of a possible election, we think it's very important that we get this bill passed as soon as possible. I know it goes to clause-by-clause on Monday. If it's delayed beyond that day, we think it could be threatened. We would ask, respectfully, that the committee do its best to get clause-by-clause dealt with on Monday so it can go back to the House as soon as possible.

Mr. Jagmeet Singh: Okay. In terms of the IBAO's perspective, is your perspective in terms of what's best for the consumer or what's best for the insurance industry, or in terms of your position—where you're coming from, just so I understand the lens through which you're viewing this. What is your lens?

Ms. Debbie Thompson: As insurance brokers, we always advocate on behalf of the consumer. That is first and foremost in our minds, from the time a client comes to us looking for a policy to the time they need assistance with a claim. We're not licensed to adjust claims, but we do act on behalf of the consumer at all times.

Mr. Jagmeet Singh: Okay.

The Chair (Mr. Grant Crack): Okay, 10 seconds.

Mr. Jagmeet Singh: That's fine. Thank you.

The Chair (Mr. Grant Crack): All right; thank you very much. We'll move to the government: Ms. Damerla.

Ms. Dipika Damerla: Thank you for that excellent presentation. Welcome, Mr. Lofsky and Ms. Thompson.

I understand that insurance rates have started to go down in Ontario. Perhaps you could give us some idea of what's happening on that score.

Ms. Debbie Thompson: Yes, we have seen the first round of reduction in rates. On average, the first filing that has gone through and that customers are seeing is anywhere between 4.5% to 6%. The next filing is scheduled to go through, and customers should see that in August of this year, for the total 15% to be completed by August 2015.

Ms. Dipika Damerla: The 6% that you mentioned has already taken place. How much more do you think insurance rates would go down if Bill 171 were to become law?

Mr. Arthur Lofsky: It's hard to put an actual number on it. I think we can only say with certainty that if it doesn't pass, there won't be a chance of getting to the 15% in a responsible way.

Ms. Dipika Damerla: Typically, I know it becomes the law of the land, but it sometimes takes time for it to work through the system—the savings. Any idea of how long it might take for the savings to start accruing in the system once the changes are made?

Mr. Arthur Lofsky: I think I would leave that to the IBC when they're up here to answer that question.

Ms. Dipika Damerla: My last question is going to be: There's no question—I've heard many, many people speak and explain why—costs would go down in the system. The other question is: How do they get passed on to the customer? Would you be able to talk about that?

Mr. Arthur Lofsky: Well, it's essentially a closed system, as the superintendent of FSCO likes to say. When costs go up, those have to be passed on to the customer; when costs come down, in a competitive system, companies like to undercut their customers and get that business, so they eventually get passed on to the customer. If that does not happen, the regulator is there to ensure that the rates charged are reasonable.

Ms. Dipika Damerla: So there are really two mechanisms by which the customer—

Mr. Arthur Lofsky: There's competition, and there's the regulator that's overseeing, by statute, what is the reasonable rate of return.

Ms. Dipika Damerla: Thank you very much.

Mr. Mike Colle: Can I ask a question, Chair?

The Chair (Mr. Grant Crack): You have 25 seconds.

Mr. Mike Colle: I just want to ask about that 18-year-old that was killed by a motorist, and then the motorist is suing the family of the 18-year-old that was killed. Is that under the auto insurance accident benefits that they're suing the victim? I don't know if you know it.

Mr. Arthur Lofsky: I've seen that case. It's a deplorable example of some perverse incentives that are in our justice system. Following that logic, you can go out and hurt or kill someone, and because you feel bad about it, you can sue that person's family. We don't know if it's on the auto policy; I'm not sure. Nevertheless, it's despicable.

The Chair (Mr. Grant Crack): So we'll move to the Progressive Conservatives. Mr. Yurek.

Mr. Jeff Yurek: It's good to see you guys here today.

Mr. Arthur Lofsky: It's nice to be here.

Mr. Jeff Yurek: It's good to be anywhere every day, isn't it?

However, I have a question on the prejudgement interest. It was in legislation at 5%, and now we want to put it back at 1.3%. What are your thoughts on maybe a floating rate so that politicians never really have to look at this again?

Mr. Arthur Lofsky: Well, it is indeed going to be floating under this legislation. The Attorney General sets all sorts of prejudgement interest on a quarterly basis. This indeed would take it out of the politicians' hands.

Mr. Jeff Yurek: That's what we want to do.

Mr. Arthur Lofsky: Yes.

Mr. Jeff Yurek: A question also with arbitration—I'm glad you gave numbers of a 17,000 backlog in arbitration. AMAPCEO recently—10 minutes ago—claimed that that's not an issue. So is it true, then, that we don't need to touch the dispute resolution mechanism at all if we follow what AMAPCEO is saying? Can you respond to that?

Mr. Arthur Lofsky: It sounds like they're interested in making sure that their members' positions are preserved in the migration over to the Attorney General. I would say this: I think it's worthwhile to preserve their knowledge and put them to work in the dispute resolution system.

Beyond that, I think that the current system is clearly broken. It's taking years, in some cases, for people to get their settlements. Anyone who is opposed to trying to get a handle on that and get deserving victims' settlements in a timely fashion, I don't believe are actually acting in their interests—if they claim to.

Mr. Jeff Yurek: So the backlog is an issue?

Mr. Arthur Lofsky: Clearly. The term "access to justice" is being thrown around, but what is more obvious than that? The access to justice is not timely at all. These changes will make access to justice much more timely—six months, max.

Mr. Jeff Yurek: How much time have I got, Chair?

The Chair (Mr. Grant Crack): You've got 48 seconds.

Mr. Jeff Yurek: Oh, I've got time for this question.

The Liberals raised a good question about what happens when the savings are attained and passing it down. For that to actually occur, it's got to go through another rate filing process.

Mr. Arthur Lofsky: Mm-hmm.

Mr. Jeff Yurek: I've been advocating for a change to the file-and-use system. I know there are some members of FSCO here who are probably going to shake their head at me, but anyway, we'll work together on that. How do you think that would be? If that was put in place, would we see savings come a lot quicker to our insured people?

Mr. Arthur Lofsky: As an association, we support moving to a file-and-use system, with the recent changes, with administrative monetary penalties in place. Theoretically, if these changes are passed, they will have a chance to filter through to the customer through the competitive marketplace faster if you have a faster system where rates can be approved.

Mr. Jeff Yurek: Thanks.

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The Chair (Mr. Grant Crack): Thank you very much, and thank you both for coming before the committee.

Mr. Arthur Lofsky: Thank you.

ONTARIO PHYSIOTHERAPY ASSOCIATION

The Chair (Mr. Grant Crack): Now we have the Ontario Physiotherapy Association. We have this afternoon Dorianne Sauvé, chief executive officer.

Welcome, Ms. Sauvé. You have five minutes.

Ms. Dorianne Sauvé: Thank you for the introduction, and I thank the committee for this opportunity to appear.

As the Chairman said, I am the CEO of the Ontario Physiotherapy Association and a registered physiotherapist. I am also the co-chair of the Coalition of Health Professional Associations in Ontario Auto Insurance Services and bring the perspective of our 10 member associations, representing over 20,000 regulated health professionals, over half of whom work in this sector.

I want quickly to make a couple of general points about the regulation of clinics and then to a specific recommendation regarding Bill 171.

My general points are these:

First, fraud is estimated to account for between 9% and 18% of auto insurance claim costs in Ontario. The OPA and the coalition have been and will continue to be supportive of any initiative that does actually reduce fraud in auto insurance—or anywhere else in health care, for that matter.

Second, to the best of our knowledge, it's never been calculated—the amount of fraud attributable to regulated health professions. We believe this is an important point because, in the absence of that information, there's no way of knowing if the actions taken to counter fraud by health care professionals are proportionate, appropriate or cost-effective. Many of these actions taken during the last reform—the introduction of HCAI, the minor injury guideline and other changes to the benefit system—have already resulted in a significant reduction of costs in this sector. KPMG in their interim report estimates an overall 46% reduction in AB costs as a result of reforms. When regulation of clinics was initially proposed, the full impact of these measures was not known. We maintain that this impact must be fully evaluated to determine whether an additional regulatory system is really needed.

Third, regulated health professionals who assess and treat in auto insurance are registered by colleges established under the RHPA. Those colleges exist to set and enforce appropriate levels of professional conduct and standards of practice to administer a complaints and disciplinary process that is available to everyone, including insurance companies.

Insurance fraud is professional misconduct and could result in disciplinary action up to and including revocation of one's registration to practise. Our position has been that, in the case of clinics managed or owned by regulated health professionals, any additional regulatory system must not duplicate or interfere with the functioning of our professional regulatory colleges. The approach proposed to date is inconsistent with this position.

The role of professional regulatory colleges is to address complaints related to the practice of their registrants, and that includes business practices. In the case of clinics owned by regulated health professionals, using the professional college system would avoid the duplication of a secondary regulatory system and the costs associated with that.

We don't know how much the licensing system will cost. We suspect that, with the cost of administering,

auditing and enforcement for thousands of clinics in Ontario, the cost will be high. Licensing will add costs to health care. In effect, the cost of reducing fraud for auto insurance will be transferred to health care providers and that additional cost may end up impairing claimants' access to the services and access to their practitioner of choice. Because we suspect that, for many practitioners, particularly sole practitioners—small and medium-sized clinics—the cost of licensing could well be prohibitive.

However, we do understand that the course seems to be set for licensing, which brings me to a specific recommendation we'd like to make regarding Bill 171.

This recommendation is to propose a redress of a material imbalance and address another potential source of fraud within the system.

Bill 65 specifically states that the insurer is authorized to pay licensed service providers directly for listed services. Unfortunately, in some cases, the insurer chooses to pay the claimant directly. The claimant is then expected to pay their provider. Again, unfortunately, in many cases, claimants do not pay their providers within a reasonable time, or at all, leaving providers without reimbursement for approved and delivered assessments and treatments.

Experience in other payment models, such as OHIP, WSIB and extended health, indicates that direct billing to the insurer with direct payment to the provider reduces everyone's transaction costs and minimizes or eliminates the opportunity for personal gain through fraud, whether intentional or unintentional, by claimants or others acting on their behalf.

In addition, if the intention is to limit the ability to direct-bill insurers for accident benefits to licence holders who must bear the additional cost of a burdensome and expensive licensing system, then we believe that requiring insurers to pay licence holders directly for their services is appropriate.

We are seeking this amendment to Bill 171 to require insurers to make payments for listed services which have been approved by the insurer directly to the holder of the service provider licence under subsection 288(2) of the Insurance Act, as amended by Bill 65. Though this amendment will not address the larger concerns I have raised, it would represent some accommodation for health care practitioners who must bear the cost of regulation.

Thank you for your time and your attention, and I welcome your questions.

The Chair (Mr. Grant Crack): Thank you very much, Ms. Sauvé. We will go to the government side. Ms. Damerla.

Ms. Dipika Damerla: Thank you, Ms. Sauvé. I just had a quick question. When I go to my dentist, I get the cheque and then I pay my dentist. You were suggesting that that model, where the claimant gets paid and then they have to go and pay the dentist, could result in fraud. I'm just trying to understand what the difference might be in a model like that. Is there a similar level of fraud where dental patients don't wind up paying their dentist, is what I'm trying to understand.

Ms. Dorianne Sauvé: I've never managed to leave my dentist's office without having to pay out of pocket before I leave the office. In this case, we are providing a service. We go and we submit a treatment plan. We do an assessment. We can't get paid for the assessment until it's approved. We submit a treatment plan. That's approved. We deliver the approved services. We don't get to find out that the insurer is going to choose to pay the claimant directly until after the services are delivered and nobody is walking in our door.

It's really not a comparison between what happens in a dental office and what happens through the auto insurance system for health providers.

Ms. Dipika Damerla: That's interesting, because the reason I brought that up was, my daughter has braces, so it's a similar plan. They don't expect me to pay the $3,000 up front. As the insurance company pays, I pay them. Maybe it's not a regular model, but I was just curious.

I know Mr. Colle has some questions. I'll leave that to him.

Mr. Mike Colle: Yes, painful. Anyway, I'm sure that the legitimate physiotherapists are not the problem. That's been my experience. But what about the ownership of the physiotherapy clinics? Do you have to be a physiotherapist to own a physiotherapy clinic?

Ms. Dorianne Sauvé: You don't have to be a regulated health professional to own a clinic of any type, necessarily, in Ontario. Again, there are multiple levels of ownership structures that are present in Ontario. I think that's why, as a coalition and as an association, the OPA submitted that there should be a different system for licensing or registering clinics that are not owned by regulated health professionals versus clinics that are owned by regulated health professionals who are already subject to auditing and standards associated with their business practices.

I think that there's an opportunity to look at what is reasonable regulation based on whether or not you're subject to another coexisting regulation system.

Mr. Mike Colle: Because it has been my experience in the past where there were clinics in Toronto, in the GTA, owned by organized crime. They were using a front of one, perhaps, registered health professional, but then they had some other people they called "physiotherapists" working in the clinic. They weren't actually doing any therapy, but they were very good-looking, very attractive—but they were providing, supposedly, this therapy.

I guess what you're saying is, maybe one of the root causes of that is who owns them, and are they in any way regulated or checked? Because as I've said before, I think the registered health professionals are not the issue; it's these characters who see money to be made in physiotherapy, and they see accident victims as maybe their target audience.

Ms. Dorianne Sauvé: I think—

The Chair (Mr. Grant Crack): Very quickly, please.

Ms. Dorianne Sauvé: Yes—I think you're bringing up two really important points. One is that in Ontario, we

don't have the protection of professional descriptors, so anyone can start up a clinic and say they provide physiotherapy, and as long as they're not holding themselves out, that's an issue. So the transparency to the public isn't there.

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But the other thing that you're bringing up is, the way that this system has been built and currently going to go forward under this bill, there is no differential for the cost that will be associated with an owner that is not a regulated health professional and the owner that is. What you are saying is that good actors, the legitimate people, regulated health professionals within that system—to me, there's a mix-up here. If we acknowledge that these people aren't the problem, then why are they being asked to pay the same as those owners who are not regulated health professionals?

The Chair (Mr. Grant Crack): Okay. Thank you very much. I appreciate it. Mr. Yurek.

Mr. Jeff Yurek: Thank you for coming in. I'm just going to make a comment to start; maybe it will help Ms. Damerla understand. In one of my pharmacies, before they transformed most of the system to an HCAI-like system that regulates what gets billed and what doesn't, there were quite a few people who would get a cheque for the drugs that I gave them. Of course, when in customer service, which I'm sure you're doing, you let them have a charge account, and hopefully, they bring the cheque in and follow up. However, there is the odd family that decides that that's their money once they get it. You never see the cheque, and you have to take the loss in the business.

So I take your point very seriously, that that is an area that we should be looking at and maybe try to help small business throughout the province ensure that they get paid for the services they actually do offer. I think that's an excellent amendment that we should have further discussion on as a committee, because it does affect small business. I just want to put that comment out there, which leads me to my question about you.

You've mentioned the HCAI system. If we did implement direct payment from the insurance companies due to covered service of the HCAI, do you think we could grow the HCAI system to actually create a better computer system where we can actually weed out fraud using the computer system and try to decrease what's going on out there?

Ms. Dorianne Sauvé: Well, I think anything that can encourage increased use of the HCAI system is going to be better all around, one, for information gathering and, two, for exactly these kind of things—is there a potential to add to the online education or immediate payment, direct payment, back to the provider who has input all of this information?

But I'm concerned, when we look at this system, that we're looking at it in terms of regulating clinics and that you're going to actually lose people participating within the HCAI system, because they might not choose to be licensed in order to direct-bill, so they won't be participating within that system. It reduces the effectiveness of what I think has a huge potential to help identify trends or issues related to fraud. We have something that has a real potential to help us identify and flag issues but will become less effective if less people participate in it, and less people will choose to participate if the cost of licensing doesn't really match up to what they see as a business case for them.

The Chair (Mr. Grant Crack): Thirty seconds.

Mr. Jeff Yurek: Thank you.

The Chair (Mr. Grant Crack): Mr. Singh.

Mr. Jagmeet Singh: Good morning—or good afternoon, sorry. I'm stuck in the morning still.

One of these suggestions you had was essentially—well, there are two suggestions. One is potentially a direct payment option so that the insurer would pay the service provider directly. That's one of your suggestions. Do I have that right?

Ms. Dorianne Sauvé: If you require that some of them be licensed in order to bill the insurer directly, then having the opportunity for the insurer to pay that provider directly should be required.

Mr. Jagmeet Singh: Right. So there is actually some incentive for the licensing.

Ms. Dorianne Sauvé: Yes.

Mr. Jagmeet Singh: The second component of that—I don't know if it's the second, but an additional point was that having a different system set up for, if the owner of a clinic is a regulated health professional, they would be subject to the regulatory body for that health profession, and they would have audits and various checks and balances in place, including audits, including misconduct, potentially, for fraudulent activities. They would maybe have a basic registration versus a more onerous and more thorough registration process or an oversight mechanism for those who are unregulated. Is that something that would satisfy one of your concerns, at least?

Ms. Dorianne Sauvé: Absolutely. Again, you go back to the HCAI system as an opportunity to really act: If we enhance it as that registration system for regulated health professionals, then the corresponding regulation system for non-regulated owners would be smaller and obviously less costly and less onerous.

Mr. Jagmeet Singh: That makes sense. Were there any other issues around the regulation of service providers that you saw any problems with or any ways to ensure that it was done in a more effective manner or a less onerous fashion for you?

Ms. Dorianne Sauvé: I think, again, it comes back to—we are already regulated for our business practices as regulated health professionals. I think that there's a system set up that we can easily look at registration and reporting mechanisms that can be tied into that and strengthen even that, but at this point in time I think that we really need to go to what was mentioned as potentially more of the source of the problem, which is the non-regulated health professional owners or areas where there's more of an intentional approach to fraud.

Mr. Jagmeet Singh: That's fair.

The Chair (Mr. Grant Crack): Sixteen seconds.

Mr. Jagmeet Singh: Sixteen seconds? That's good. That's my time. Thank you.

Ms. Dorianne Sauvé: Thank you.

The Chair (Mr. Grant Crack): Thank you very much. I appreciate it, Ms. Sauvé.

INSURANCE BUREAU OF CANADA

The Chair (Mr. Grant Crack): Finally, we have the Insurance Bureau of Canada. We have Mr. Ralph Palumbo, vice-president for Ontario; Ryan Stein—is he with us today?—and Ms. Barb Taylor, director of policy for Ontario. Thank you very much. We welcome you. You have five minutes.

Ms. Barb Taylor: Good afternoon. My name is Barb Taylor. I'm the director of policy for Ontario region for the Insurance Bureau of Canada. I am accompanied by legal consultant Lee Samis, and Ryan Stein, the director of policy from IBC. We appreciate this opportunity to present to the committee on Bill 171.

We understand that attempts at reforming the auto insurance product inevitably lead to arguments that insurers will be enriched at the expense of consumers. Bill 171 does not do that. Too often, those arguments come from people who, in fact, are enriching themselves on the system and at the expense of consumers.

Bill 171 is an attempt to appropriately reduce unnecessary cost where it is right to do so, with the ultimate objective of reducing premiums. Two important provisions in the bill focus on combatting fraud and abuse. Service provider licensing, which is also a key recommendation of the anti-fraud task force, will bring regulatory oversight to an industry that has been rife with fraud and abuse. This abuse affects premiums that consumers pay for their insurance. It will also establish an audit system and ensure that only clinics that are licensed can be paid directly by insurers. In addition, the bill amends the Repair and Storage Liens Act to reduce unreasonable storage costs for vehicles damaged in motor vehicle accidents. The bill will also deal with broken-down, ineffective, inefficient processes for resolving disputes.

The fiscal mediation arbitration system: The system was originally designed to provide a low-cost, effective way to resolve accident benefits disputes. The original objective was to provide an alternative to the courts—a quick and cost-effective alternative. That cannot happen when the system is dysfunctional, as it is today.

IBC supports the removal of jurisdiction from the Financial Services Commission of Ontario to a new body with a mandate: the Licence Appeal Tribunal under the auspices of the Ministry of the Attorney General. Tribunal members would be appointed by order in council. There would be accountability and tenure under a fixed renewable term. The system would be funded by assessments against insurance companies with no new costs to taxpayers. In addition, the bill assigns prejudgment interest that is paid on pecuniary damages at 1.3%, similar to a rate that is paid on non-pecuniary damages, pain and suffering, which is now at 5%.

PJI, prejudgment interest, is meant to compensate a claimant for lost time value of money. It should reflect the value of money, so that the claimant receives the full value of the claim award as if he or she received it on the day that he or she served notice of the claim. The 5% PJI on non-pecuniary awards was set in 1989, when interest rates were very high. They were double-digit rates that were in excess of 12%. That is not the case today. The PJI rate is not linked to any external indices, so the result is a prescribed rate of interest on non-pecuniary damage that is disproportionate to the actual interest rates today. It's an overstatement, based on original principles, to what was originally established.

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Overall, Bill 171 will lead to reduced premiums for hard-working consumers by implementing key recommendations from the anti-fraud task force report and making needed changes to the automobile insurance system. It would do this by reducing the opportunity for those in the car accident business to unduly profit from the benefits available in the current system today.

So, if passed, Bill 171 would:

—fix the dispute resolution system;

—maintain the ability of claimants and insurers to appeal decisions to the courts;

—maintain the right of claimants to pursue tort claims in court;

—reduce prejudgment interest rates;

—calculate both rates of interest on the basis of an external link—for example, the Bank of Canada;

—maintain the ability of the courts to award prejudgment interest;

—reduce the ability of fraudsters to charge exorbitant storage rates; and

—facilitate the implementation of service provider licensing systems.

The public needs Bill 171. It needs to be passed. It needs legislators to stop playing political games with automobile insurance and, with this bill, to get down to the business of implementing measures that will allow regulations that will revitalize this important aspect of the automobile insurance system. We are asking for your support in Bill 171. It needs to be referred to the Legislature for third reading, and then it needs to be passed.

We would be happy to answer any questions you might have, and we have provided a written submission.

The Chair (Mr. Grant Crack): Thank you very much. One out of eight that actually hit the five-minute mark. Congratulations.

We'll start with the Progressive Conservatives. Mr. Yurek?

Mr. Jeff Yurek: Thank you, Chair.

Thank you for coming in today. With Bill 171 having become a need for Ontarians and the insured, would you agree that it's a need because the government has mandated a 15% cut instead of working with the industry?

Ms. Barb Taylor: Absolutely. FSCO has already had about 88% of the insurers filing rates so far. The rates have come down by 5.7%. But in order to reach the government's target, additional reforms need to be put in place. That basically is what needs to happen.

Mr. Jeff Yurek: Would you agree that if the government was clearly wanting to lower rates immediately for people throughout Ontario, they would change to a file-and-use system in this province?

Ms. Barb Taylor: A file-and-use would definitely be something that would be supported by the industry. Basically, it would be a system that would allow companies to quickly file their rates, and then basically the system works such that if there's no objection from the regulator, then they can go ahead and use those rates, usually after about 30 days. So that would definitely bring rates down immediately. But again, there are still some lags in the system, because rates do go into effect over a 12-month period.

Mr. Jeff Yurek: Sure. So file-and-use would get the savings to the people much sooner.

Ms. Barb Taylor: Much quicker, yes.

Mr. Jeff Yurek: So would you be opposed if an amendment was posed to implement a file-and-use system in Ontario?

Ms. Barb Taylor: Absolutely not.

Mr. Jeff Yurek: Okay.

Thank you, Chair.

The Chair (Mr. Grant Crack): Thank you very much, Mr. Yurek. We'll move to Mr. Singh.

Mr. Jagmeet Singh: Thank you so much for being here today. One of the things that has come up is—the comments have been that Bill 171 is necessary to bring the premiums down. I certainly see how many of the amendments here will save the insurance industry costs. Is there a mechanism or any guarantee that reducing the costs for the insurance industry will actually result in reducing premiums? Can you explain that mechanism? How does that happen?

Ms. Barb Taylor: Definitely. There is a mechanism in place. FSCO has now got the authority to order filings. Like I said, 88% of the insurers have already had requests from FSCO to do an ordered filing. So what happens is, they're usually given about a 60-day time frame. The company comes in and submits their filing. My understanding from companies is that a lot of the companies have actually taken rates below what they had in their actuarial indications. So a company might have come in saying that their actuary indicates a 5% reduction and they got minus 10% instead of 5%. So FSCO has definitely been on top of the companies in bringing the rates down. We want to make sure those rates are sustainable.

Mr. Jagmeet Singh: Sure. Would you be able to perhaps give an indication of what percentage savings each of the amendments would be able to provide? For example, if the interest rate was reduced from 5% to 1.3%, what percentage savings would that result in? Or if the dispute resolution system was changed and the right to sue was removed from the statutory accident benefits side, what percentage reduction in premiums would that result in? Are you able to break that down?

Ms. Barb Taylor: Not totally, but I have heard about prejudgment interest from a couple of companies that have done some internal work themselves. One of the companies indicated that it could be as much as a 1% overall reduction for the entire industry based on their own data.

I'm not sure—Ryan, did you have something else you wanted to—no.

Mr. Jagmeet Singh: Are you able to cost out these schedules or each of these amendments or each of these components of this bill and cost out what each of them would save you?

Ms. Barb Taylor: Some of them are more difficult to do the actual costing. Some of them, we might be able to do that. It definitely depends on the actual details. Once you have the details, we can send something to actuaries and get costing.

Mr. Jagmeet Singh: Sure. So would you be able to provide, for example, X dollars and savings to the industry? What would that translate to the consumer? If you're able to save $100 million or $1 billion, what would result in? How much savings would that be for the consumer? Would that be a 5% reduction? Would that be 1% reduction? Are you able to cost that out?

Ms. Barb Taylor: I'm fairly certain that an actuary could probably do that, yes.

Mr. Jagmeet Singh: And would you be able to provide that to this committee, a costing of what the savings are?

Ms. Barb Taylor: It would be very difficult. As I said, I have to only do this on specific regulations where there's actually numbers involved because, some things like, for example, the licensing of clinics, there are no actual numbers involved as to how much fraud would be saved or how much the system would cost.

Ryan, did you want to—

Mr. Ryan Stein: Yes. I just wanted to add: The PGI Barb already explained, but a lot of the other provisions are setting the groundwork for regulations that are going to come after and put in place the whole system. So they will undoubtedly have stability and fight fraud and reduce costs, but this is just setting the groundwork for the bigger thing, for the remainder of the work to come.

Mr. Jagmeet Singh: So basically it'll save you money, because you're not able to say how much it's going to save the consumer money?

The Chair (Mr. Grant Crack): Okay. Thank you very much. We'll move to the government side. We went over about a minute there; apologies. Mr. Colle.

Mr. Mike Colle: Oh, thank you. I was in this room a while ago and I talked about my auto body repair guy, Rocky, who said that this client of his had the car towed to the dealership across the street, which is a brand name dealership. It had to be repaired, so the client says, "Rocky, can you phone the dealer and get my car?" So the dealer says, "Two thousand bucks." But Rocky said, "But I can drive the car across the street. I've got to pay

2,000 bucks to get the car so I can fix my client's car?" "Two thousand bucks."

That 2,000 bucks: Is it eventually passed on to the insurance company? Do you pick up that 2,000 bucks for driving the car across the street, the way the system is now?

Ms. Barb Taylor: The way the system works now, a lot of those exorbitant costs are passed in to the insurance company and hence they get passed on to consumers.

Mr. Mike Colle: Do you ever question the person who asks for the $2,000 to drive the car across the street, whether that's legitimate?

Ms. Barb Taylor: I'm sure that the insurance companies have their claims adjusters, as well as their SIU units that do look into investigating situations where there's potential fraud in the towing industry.

Mr. Mike Colle: In fact, the other day, the insurance brokers were here. One of the brokers told me that in a minor bender that was probably under $1,500, the car was basically taken hostage by one of these tow truck operators, whatever you—pirates. It ended up costing $6,000 to get that car out of hostage from some pen out there somewhere in the GTA. Six thousand bucks. Is there any way that the insurance companies could challenge that right now, or do they just pay?

Ms. Barb Taylor: I'm sure there are ways to challenge it, but certainly more regulation and legislation are needed around the towing industry and storage facilities. That's one of the things we do appreciate in this bill: that there are provisions for giving notification. As well, I believe there's Bill 189 from the consumer services ministry. Again, that legislation is important and needed to help reduce costs and reduce fraud in the system so these costs don't get passed on.

Mr. Mike Colle: But does the insurance bureau ever track these people who hold these cars hostage for thousands of dollars? I'm sure you must know who they are, because this has been going on for 40 years, where they're basically taking cars from scenes of an accident—the tow truck driver gives them the assurance, "Everything is okay; I'll take care of it," and then you find, a day later, that you can't get your car back. Then you phone your insurance company, who says, "Well, I can't get it back either. It will cost you so much money."

Do you know who these characters are that basically make thousands of dollars just—in fact, almost, again, they essentially take the car from the scene of the accident, when the poor accident victim is probably not thinking straight and they're assured, "No, the car will be—we'll take of everything."

Is there anything insurance companies can do to track these people that do this on a routine basis, and say, "We don't do business with these people, and we won't pay"? Can you say you won't pay these pirates that steal cars from people and hold them hostage?

The Chair (Mr. Grant Crack): Quick response, please.

Ms. Barb Taylor: One of the things the insurers have been doing recently is, they've joined what's called CANATICS, which is where they are able to gather information jointly through each other, so that they can gather information where there is fraud happening not only to one company but to multiple companies. That can kind of show a trend of particular providers or towing companies that are causing huge and fraudulent fees. This system is going to be starting soon, and that's one of the ways that insurers are dealing with fraud.

Mr. Mike Colle: But if all the insurance—

The Chair (Mr. Grant Crack): Okay, thank you very much. Thank you, everyone. I know Mr. Colle would continue until 6:30.

I would like to thank everyone for being a delegation today, all eight of you. I'd like to thank the members of committee.

I just want to remind the committee and each party that the deadline for filing the amendments to the Clerk on this act is Friday at 12 noon—this Friday.

Thank you very much, everyone. This meeting is adjourned. Have a great evening.

The committee adjourned at 1802.

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