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CAMPAIGN TO PROTECT ACCIDENT VICTIMS

April 10, 2018

Ms. Cheryl Blundon
The Board of Commissioners of Public
Utilities of Newfoundland and Labrador
120 Torbay Road. P.O. Box 21040
St. John's, A1A 5B2



Dear Ms. Blundon,

Re: Request for Postponement of Automobile Insurance Review Hearings

Thank you for your response of April 8th, to Mr. Feltham's letter of March 26th in which you confirm that, as set out in the work plan, "... the Board's report would be provided to Government by June 30th 2018". I further note the following excerpts from your letter:

"... the established timelines are challenging for everyone involved given the scope of the issues to be addressed, most of which are complex and technical in nature."

"The Board recognizes the significance of the issues in this review and is committed to ensuring that interested persons have the opportunity to provide meaningful input within the established schedule." [Emphasis Added]

"Considering the work to be done by June 30th, 2018, the timelines are tight for everyone involved, including the Board. The Closed Claim Study in particular is a significant undertaking requiring the collection of data from industry which normally requires nine months to complete. In this case the collection of the data which forms the basis of the Board's actuarial consultant was conducted by the Insurance Bureau of Canada ('IBC') over the period of October 2017 to early March 2018. This allows 6 weeks for the completion of the actuarial reports by the Board's actuarial consultant. It is also notable that completion of the public sessions in May allows only one month for the Board to consider all of the issues in this review and complete the report."

"While this is not a quasi-judicial proceeding, the Board has stated that this report will be conducted in accordance with the Board's established principles of accessibility, openness, transparency and cost effectiveness."

As previously expressed to the Board, we have significant concerns that the Board has determined that it will report by June 30th, 2018. As noted above, it has thereby imposed upon itself a time frame which is far outside the norm. The Closed Claim study itself

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which usually takes 9 months is being done in slightly half of that; thereby calling into question the quality of “the rush job” results to be relied upon by your actuarial consultant in its analysis (which results are already subject to criticism because of the fact that IBC, which has its own policy agenda in the area of insurance reform is both providing the raw data and conducting the closed claim study).

Your consultant then has only six weeks or less to report and will not release its report until mid-April. With hearings to be scheduled in May (with exact dates as yet unset), this leaves only a few weeks pre-hearing to commission a professional review of your consultant’s report (and the closed claim study itself), have drafted and finalized a responsive report and to prepare for presentation at the hearing; including, cross-examination of the consultants and others appearing before the Board to test the conclusions reached. In that latter regard, we note the comments of the Consumer Advocate, Dennis Browne Q.C. in the attached article originally published on March 22nd, 2018 in *The Telegram* to the following effect:

“These are early days, early stages. These reports have not been tested. They’re like any expert reports in a court of law. **The report itself doesn’t stand on its own merits. It has to be tested, subject to examination, and cross-examination.** Until we get all the reports, we’re in a preliminary stage.”[Emphasis added]

The Board will have only one month to report after the unconfirmed dates in May when the public hearing will be set. I would note these dates are being set without consultation with parties such as our Campaign. As the Board well knows from its many other proceedings (including its ongoing recently postponed GRA hearing) where parties are represented by Counsel and need to make arrangements for out of province experts to appear (as we will be), this creates a virtual impossibility for us (and any other interested party), to provide “**meaningful input**” as noted in the above excerpt from your letter of April 6th. As a case in point, we know now that both one of our Counsel and one of our consultants is unavailable in the latter part of May.

Against this background, this then begs the question as to why this important review must be completed by June 30th. This has the impact of compromising all interested parties in this matter for the very reasons the Board outlines above. Our Campaign cannot provide the best possible input that it can to further our mandate of protecting the interests of future accident victims. They are the Newfoundlander and Labradorians whose rights will be taken away if the pain and suffering damages cap under review (and advocated for by IBC, the authors of the Closed Claim Study) is implemented by government based on conclusions of the Board, which are in turn predicated on wholly inadequate and rushed reports, proceedings, analysis, and responses. This is not how good government policy should be made. This is particularly so where legislation based on such policy would arbitrarily take away the entrenched right to compensation for

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thousands of innocent Newfoundland and Labrador accident victims to come under long established common law principles. This does not meet the Board's fundamental principles of "accessibility, openness and transparency"; which I would argue includes gathering and testing of all necessary information from all perspectives to produce a high quality, accurate, and complete report.

We note that this review has been ordered under Section 3.1(1) of the Insurance Companies Act on terms and conditions to be set by the Lieutenant –Governor in Council. These terms and conditions were set in an attachment to the transmittal letter to the Board from Minister Gambin-Walsh dated August 9th, 2017. No date for reporting is stipulated in that letter or the attached terms of reference. She does however say in the letter:

"Please provide me with a copy of your work plan and estimated time lines for the review when finalized."

It is only in your work plan that the June 2018 Report filing date is stipulated. I see no record of any other communication with the Board requesting or requiring that a Report be filed by June 30th. If I am wrong in this, I would appreciate it if you would direct me to relevant correspondence from Government to the Board. Indeed, I would expect that as the legislator, Government would want to ensure as a matter of due diligence and good public policy that all necessary information, analysis, and viewpoints are properly considered in any report produced by the Board upon which Government may exercise its legislative function.

Government does not appear to have imposed an arbitrary and compressed deadline standing in the way of a high quality and reliable report and the making good public policy. Further, we understand that there is urgency to complete the already postponed GRA hearing referred to below on a more timely basis (which is a matter of the most significant public and Government interest) and that May dates have not been offered to the interested parties in that matter because of the planned, but unset, hearing dates for the Automobile Insurance Review. A postponement would allow these dates to be used for this important matter and at the same time allow the Board to produce the best quality report it can.

Ultimately, whether or not Government has asked for a report by June 30th or any other timeline (which the record as I have seen does not appear to support), it is the Board which is the master of its own process and can adjust timelines as it requires to ensure accessibility, openness, and transparency. As mentioned above, it has recently done so (albeit in a different context) in the GRA hearing where it said on page 6 in response to the successful application of the Consumer Advocate for a postponement based on the need for additional information:

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“The Board agrees that Hydro is entitled to have its case heard as filed and that it should not be forced to refile its general rate application with different proposals or frame its proposal in a fundamentally different way. This does not mean however that Hydro should not be required to provide the information which is found to be reasonable and necessary for the Board and the Intervenors to understand and assess its proposals.”

We ask at this time that in light of the foregoing, the Board in furtherance of the governing principles it has adopted for this review (and thereby ensuring that it can make conclusions based on the best information reasonably available), for a postponement of the yet to be scheduled hearing dates in May which is to consider both recently provided, complex, and technical reports (and most importantly the closed claim study report prepared by IBC and the associated actuarial review) which is the centerpiece of this review and which has yet to be completed.

Our Campaign finds itself in a position that it cannot adequately respond to the avalanche of information recently available and yet to come with the anticipated hearing in May. It cannot therefore properly represent the interests of the future Newfoundland and Labrador victims of negligent, distracted, uninsured, and impaired drivers (many of which victims are not holders of insurance policies).

It therefore requests a postponement of the hearing dates beyond May to meaningfully make its presentation to the Board (and otherwise participate). This we understand would result in a re-evaluation of the arbitrary date by which the Board had planned to produce its report. We would encourage the Board in fact to take whatever time it feels necessary to consider the complex and technical evidence it will have before it so that it can fulfill its basic function here of assisting Government in the making of sound public policy and legislation. This would be consistent with its procedural practice and available investigative powers in this review pursuant to Sections 3.1 (3) and (4) of the **Insurance Companies Act**, RSNL c. I-10 as am. and, inter alia, Sections 82, 83 and 84 of the **Public Utilities Act**, RSNL c P-47 as am.

We await the Board's reply.

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Yours very truly,

D. Bradford L. Wicks Q.C.

A handwritten signature in black ink, appearing to read 'Val' L. Wicks', with a large, stylized flourish extending to the right.

Campaign to Protect Accident Victims

cc. The Honourable Sherry Gambin-Walsh

The Honourable Andrew Parsons Q.C.

More insurance options, not injury caps, the answer for St. John's taxis: lawyer

David Maher (david.maher@thetelegram.com) (mailto:david.maher@thetelegram.com)

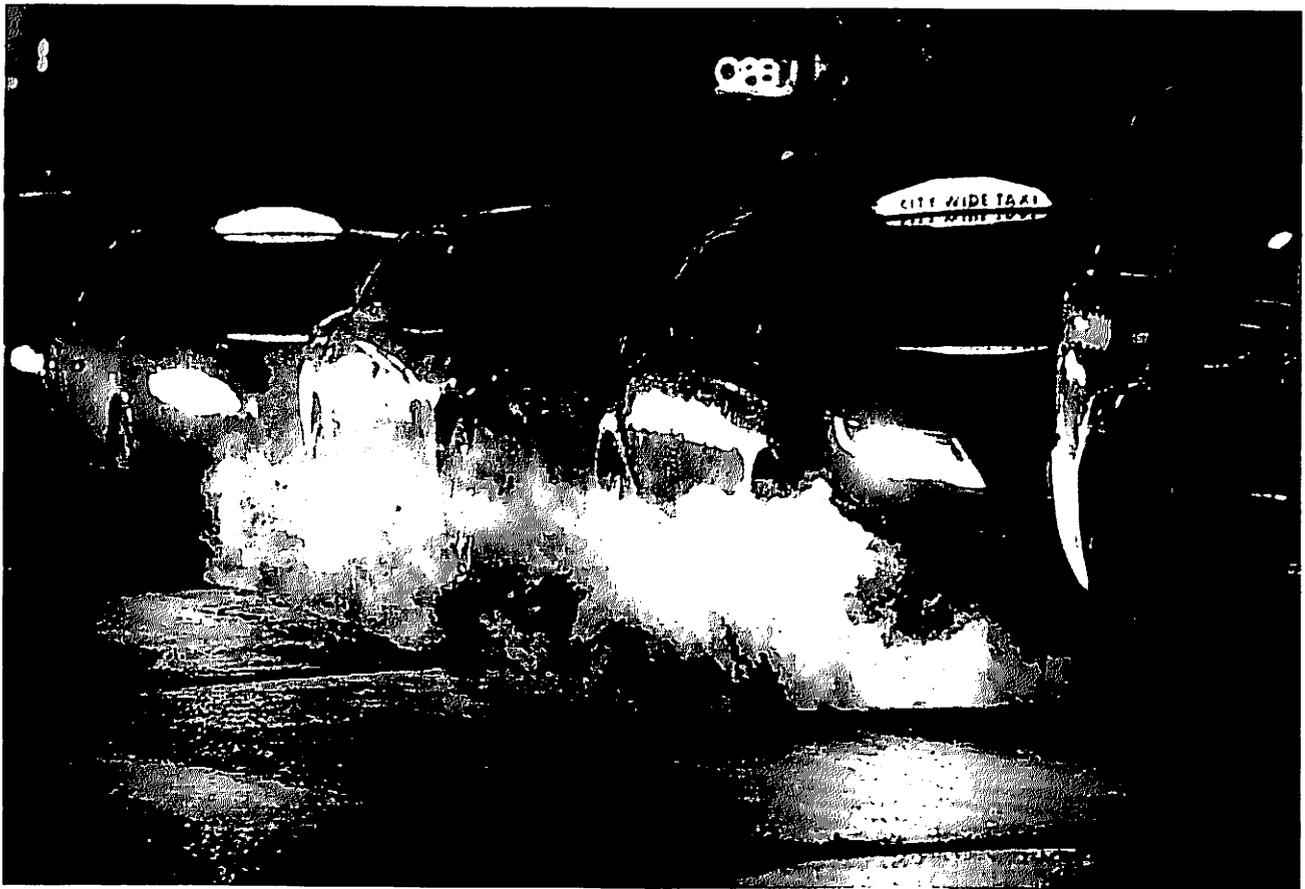
Published: Mar 22 at 10:15 p.m.

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Taxis await customers on George Street. - Keith Gosse

Consumer Advocate Dennis Browne urges patience in auto insurance review

Minor injury caps are one option to bring down insurance costs for taxi drivers in the province, but personal injury lawyers insist they're not the way to go.

The first two reports as part of the overall review were released by the Board of Commissioners of Public Utilities (PUB) on Tuesday, outlining taxi insurance claims across the province.

One report, filed by Toronto-based Cameron and Associates, found that the biggest impact on increasing costs for taxi claims had to do with how the companies reported incidents. Many incidents since 2010 were late being reported, or not reported at all. Increased investigation led to increased costs to insurance companies.

Some taxi drivers involved in incidents were not listed on the insurance for the cars, which meant no premium being collected by unlisted drivers. The lack of listing caused increased costs to the insurance company, which in turn raised costs to those insured.

The report says in addition to what taxi companies need to change, insurance companies need to radically change the insurance offered to taxi drivers. The report recommends increased deductibles, caps on minor injury claims and a framework for treatment of minor injuries.

In 2016, insurance companies took in \$2.5 million over 158 claims. Those claims cost the insurance companies \$4.3 million in payouts through third-party liability insurance. The average cost per claim to companies was \$27,731.

A minor injury cap would see a limit, but on small injury claims. Currently, there's no such limit in this province. In Ontario, there's a \$3,500 cap on how much can be claimed for minor injuries.

Imposing minor injury caps on all drivers in the province, one of the options being explored in the auto insurance review, would decrease the average payment per insurance claim.

Another part of the issue is that taxi drivers are only allowed to be insured through Facility Association, a company of last resort for high-risk drivers, according to Steve Marshall, partner with Roebothan McKay Marshall.

Marshall says instead of putting minor injury caps in place, taxi drivers need to be given more choices in insurance, to bring down expenses.

"Taxi drivers ought to be allowed to apply and get commercial coverage (from other companies). Don't make them go to Facility, because the good drivers are getting lumped in with the bad," said Marshall.

"Bad taxi drivers should go to Facility. There's an incentive then for that bad driver to become a good driver and get out of Facility. By making the taxi insurance profitable by capping all the damage they cause, then you're punishing 500,000 people for 400 taxi drivers."

But Consumer Advocate Dennis Browne urges patience when it comes to the auto insurance review being conducted by the PUB.

"These are early days, early stages. These reports have not been tested. They're like any expert reports in a court of law. The report itself doesn't stand on its own merits," said Browne.

"It has to be tested, subject to examination, and cross-examination. Until we get all the reports, we're in a preliminary stage."

The findings of nine reports ordered for the auto insurance review are expected to be completed by June. Hearings at the PUB are expected to start in late May.

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