

# Insult + Injury

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CAMPAIGN TO PROTECT ACCIDENT VICTIMS

## Discussion Overview

1. The Issue
2. Victim Impact
3. The Facts
4. Feedback from Newfoundlanders and Labradorians

# 1 | The Issue

## The Issue – What does a Cap Mean?

- The Insurance industry is lobbying to place a cap on compensation for pain and suffering for victims of motor vehicle accident injury as has been done in other provinces.
- Accident victims, regardless of the stress, physical injury or psychological harm suffered by them after an accident, will have no effective recourse against a negligent, distracted or impaired drivers. Victims will have no access to justice.
- There is strong evidence to indicate that bodily injury claims are not only stable but declining. A cap WILL NOT lower insurance premiums, as confirmed by industry in media interviews (IBC, Intact).

## 2 | Victim Impact

## The Issue – Who loses with a Cap?

- We represent thousands of car accident victims who have suffered the life altering effects of injuries due to an accident.
- We represent mothers who can no longer lift their babies, young men who can no longer climb a scaffold, a healthy 60 year old who can no longer run 5 k to stay healthy.
- As a group, we spend our days helping people who simply cannot access justice on their own.
- What we see coming is very unfair to accident victims and will simply ensure the insurance industry makes more money and takes fair compensation away from innocent accident victims.

## Victim Impact

Is this the policy change the Government of Newfoundland and Labrador is looking for?



I have two kids, 15 and 11. I'm a single mom. A vehicle came behind me and rear ended me. I've always been an active person and now I struggle to walk up a flight of stairs. The most difficult part for me has been taking care of my kids. And my doctor tells me I will probably be living with this for the rest of my life.

~ Della



I've been off work for two and a half years. Financially, we went through a period where we thought we were going to lose our home. There were days where I could not lift my daughter, she was only two at the time.

I'm the one feeling the pain. Just because you can't see it, doesn't mean it's not there.

~ Christina



Getting ready to pull into my driveway, slowing down. A gentleman behind me decides to hit his gas and go in on top of the sidewalk and take me out of my driveway. Financial, physical, mental, the stiffness in the neck, the muscle spasms.

I went from climbing mountains to sitting at a desk.

~ Paul

## Victim Impact – Following Cap in NB (Fraser vs. Haines)

- Facts: The Plaintiff and his 12-year old son were involved in a motor vehicle accident when the Defendant negligently struck the Plaintiff's vehicle.
  - Analysis:
    - The Plaintiff suffered a significant injury to his shoulder.
    - He was forced to miss six (6) months of work following the accident. When he did return to work as a construction worker he had to alter the way he carried out tasks to protect his injured shoulder.
    - He was forced to attend physiotherapy for eight (8) months, after which his physiotherapist stated he would not fully recover. Two (2) years post-accident he still experienced pain in his shoulder.
    - The Plaintiff's family doctor and the orthopedic surgeon who treated him both testified at trial that the Plaintiff was not exaggerating his symptoms.
    - The trial judge in his decision states **"I found Fraser to be a credible witness who did not exaggerate the impact of the injury on his life"**.
  - Decision: Given the duration of the injury, the pain the Plaintiff endured, and the multiple physiotherapy sessions the Plaintiff attended, the trial judge would have awarded \$30,000.00 in general damages, however he was forced to cap the Plaintiff's damages at \$2,500.00 **"due to the legislative cap"**. The Plaintiff appealed the decision and his appeal was dismissed.
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## Victim Impact – Following Cap in NB (Douthwright vs. Duffy)

- Facts: The Plaintiff was a passenger in a vehicle negligently hit in a head-on collision by a tractor trailer.
- Analysis:
  - The trial judge found that the Plaintiff suffered significant soft tissue injuries which included headaches, neck pain, low back pain, left arm pain, initial chest pain, left ankle pain, sleeping difficulties, post-traumatic stress disorder and severe driving anxiety.
  - At the trial, almost ten (10) years post-accident, the Plaintiff's family doctor confirmed she suffered from soft tissue injuries, chronic pain, depression and anxiety and she was forced to take multiple medications due to her condition.
- Decision: The Plaintiff sought general damages in the amount of \$150,000.00, however her injuries were considered "minor" and therefore capped at \$2,500.00. The trial judge stated: **"The Court has no choice but to apply the legislation in place at the time of the December 8, 2005 motor vehicle accident and therefore Ms. Douthwright is awarded \$2,500 in general damages. In coming to this conclusion, I can only echo the comments of Justice Scaravelli in Beaulieu that \$2,500 does not compensate Ms. Douthwright for pain and suffering absent this legislation. Regrettably, in these circumstances, the Court has no alternative but to apply the law as set out in Regulation 2003-20. I am certain that Ms. Douthwright, like the accident victims referred to by Chief Justice Drapeau in Leblanc c. Bulmer, will have difficulty understanding that her injuries have not been found to be "serious"."** The Plaintiff appealed the decision and the appeal was dismissed.

## Victim Impact – Following Cap in NS(Farrell v. Casavant)

- Facts: The Plaintiff (Farrell) was involved in an motor vehicle accident when the Defendant's vehicle slid on ice, crossed over the centre line and struck the Plaintiff's vehicle in January 2004. Emergency crews required the jaws of life to extract him from his vehicle. His injuries upon discharge from hospital included: broken wrist, sprained ankle, broken blood vessels in his nose, left hand injury as well as soft tissue injuries to his chest and back.
  - Analysis:
    - At the trial, five (5) years post-accident, the Plaintiff's family doctor and orthopedic surgeon confirmed his right wrist was an ongoing disability that would continue to cause him discomfort and pain for the rest of his life.
    - The Plaintiff's right wrist had been immobilized for 5 ½ weeks and following removal of his cast he attended 17 physiotherapy secessions. He also attended an additional 6 physiotherapy treatments and paid for them on his own. The Plaintiff attended a chiropractor on 18 occasions for mid back pain.
    - The Plaintiff missed 4 ½ months from work and struggled with certain duties, including climbing ladders upon his return.
  - He also had to give up certain recreational activities including darts, bowling and horseshoes. He struggled to help around the house and couldn't play with his grandchildren like he did before the accident.
  - Decision: The Trial judge found the minor injury cap applied. He found the Plaintiff's chest, left hand and ankle injuries healed uneventfully.
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## Victim Impact – Following Cap in NS(Farrell v. Casavant)

- Decision continued: The trial judge found the injury to the Plaintiff's back still caused pain and discomfort and further the Plaintiff's right wrist now had an obvious deformity that caused pain and discomfort. Nevertheless, the damages were to be capped at \$2,500.00 as per the Insurance Act because while the Plaintiff suffered an injury that resulted in a permanent deformity, the trial judge felt the deformity was not serious enough and it was caught by the legislation.
- The trial judge went on to say that **“Had the Plaintiff not been subject to the legislated definition of “minor injury” and to the “cap”, I would have not considered his injuries to be minor and I would have awarded him a greater sum for general damages.”(at paragraph 224)**

## Victim Summary

- There are thousands of stories like this seen every year.
- The insurance industry does not place value on pain, life altering suffering, mental health impacts and anxiety caused by accidents, yet they want to decide what a person's life altering injuries are worth.
- Our focus to is make sure insurance companies are not allowed to increase their profits based on taking away fair compensation from victims. It is simply wrong.

# 3 | The Facts

## **The Facts – Insurance Profit**

### **Insurance investment profits are up.**

In the first quarter of 2017, the insurance industry in Canada reported \$986M in profit from investment alone.

This was more than double the \$482M in the first quarter of 2016.

**Source: Canadian Underwriter 2017**

### **Automobile Insurance underwriting profits are up.**

In 2016, automobile insurance companies in Newfoundland and Labrador reported \$100M in underwriting profit alone.

That's approximately 23% profit from \$434M in revenue.

**Source: Superintendent of Insurance Report 2016**

## The Facts – Declining Accidents

RNC reports that accidents are down in Newfoundland and Labrador by 25% between 2013 and 2017.

**2013: 4,720**

**2016: 3,559**

**2017: 3,303**

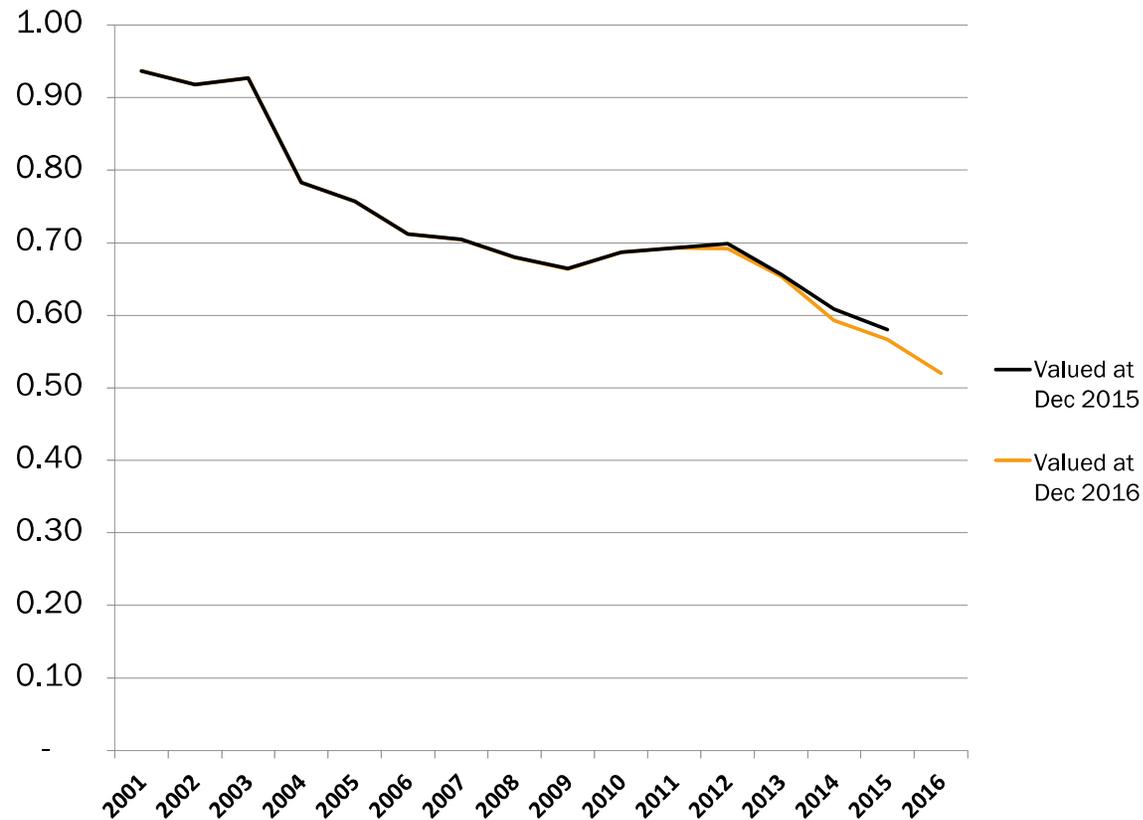
**Source: RNC Accident Statistics 2013-2016**

# The Facts – Declining Injury Claims

Source: General Insurance Statistical Agency

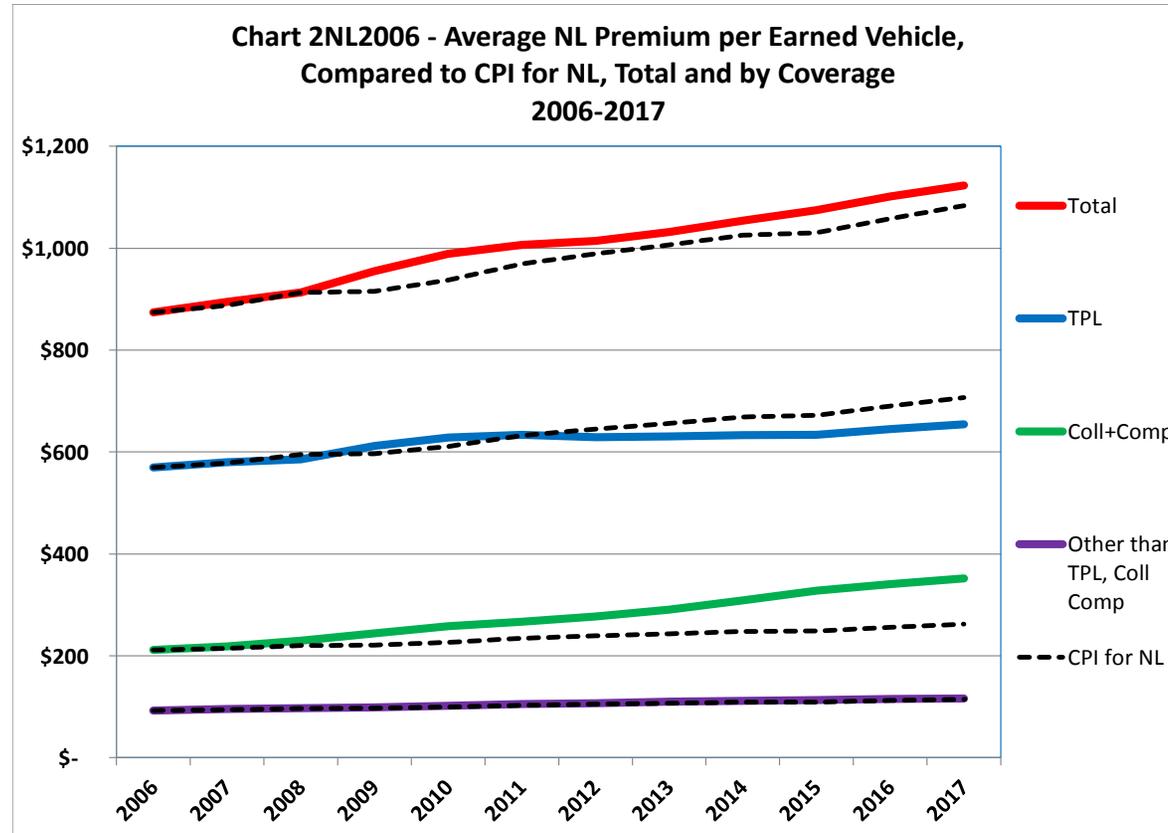
## Accident injury claims are down by nearly 50% since 2001

Avg NL BI Claim Count per 100 Vehicles, 2001 - 2016



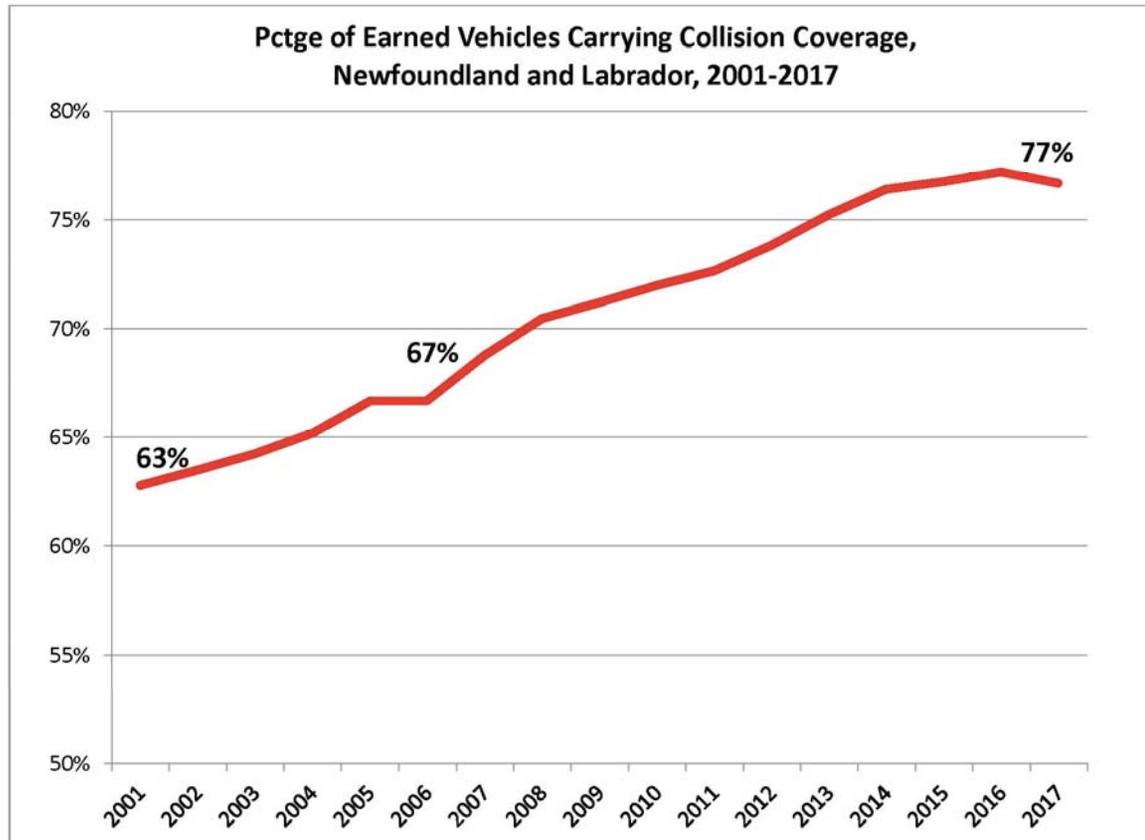
# The Facts – Collision Insurance Driving Insurance Premiums

Source: General Insurance Statistical Agency



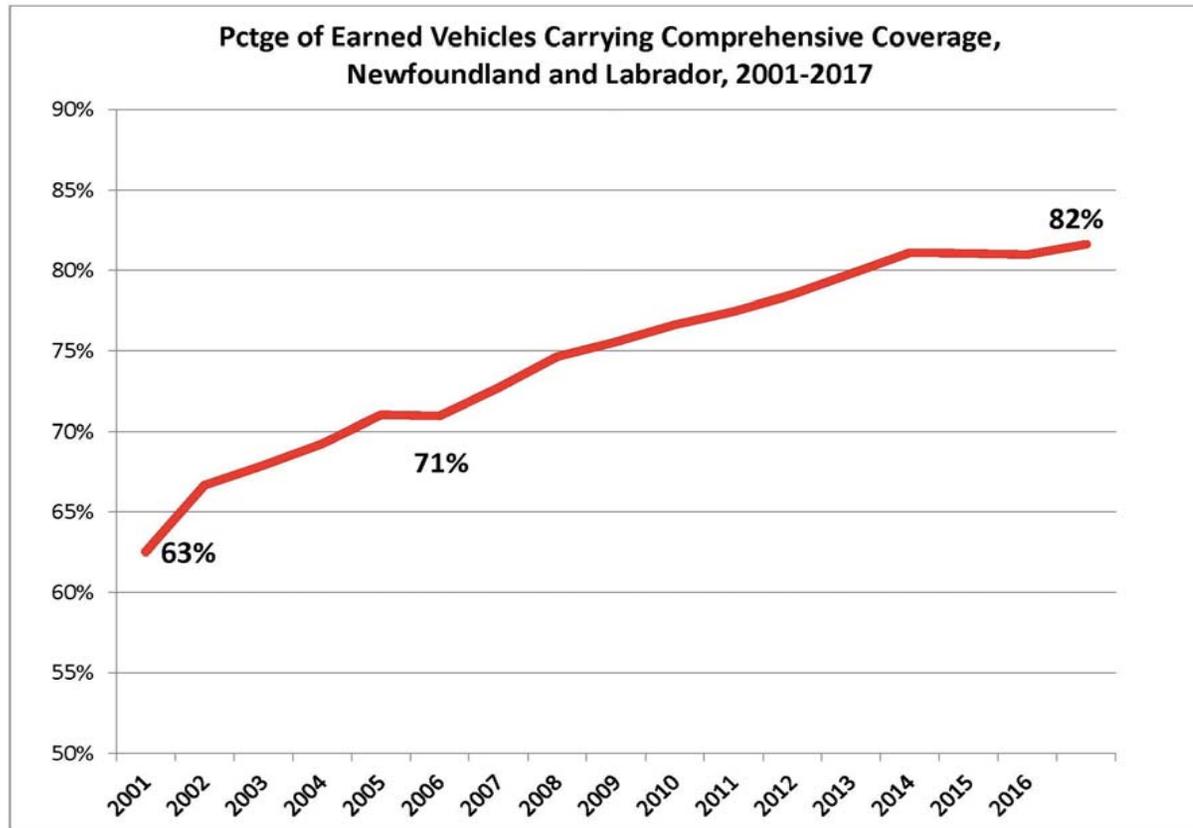
# The Facts – More Vehicles Carrying Collision Coverage

Source: General Insurance Statistical Agency



# The Facts – More Vehicles Carrying Comprehensive Coverage

Source: General Insurance Statistical Agency



## The Facts – Physical Damage Driving Rates As Confirmed by Intact Insurance Vice President Natalie Higgins

*"You know, something as simple even as, you know, the physical damage when somebody is in a car accident; the cost of repairing a vehicle today is so much greater than what we saw even five, six years ago. With the technology that's being introduced into vehicles, you know, a bumper we could have replaced years ago for **\$7-800**...today, that same bumper is costing us **\$4-5000** because of all of these sensors, and, you know, the backup cameras, and all of the additional technology that's now being built into those vehicles."*

Natalie Higgins of Intact Insurance told the St. John's Morning Show Friday, April 13, 2018

## The Facts – A Cap Will Not Lower Premiums As Confirmed by Intact Insurance Vice President Natalie Higgins

**When asked if a cap will bring our rates down:**

*“I think... no”*

Natalie Higgins of Intact Insurance told the St. John's Morning Show Friday, April 13, 2018.

## The Facts – A Cap Will Not Lower Premiums Alberta Example

*Alberta's drivers saw the biggest increase in insurance rates in Canada last year*

*Rates rose by 8.29% year over year.*

*Alberta has a \$4000 Cap*

*Even with a cap, Alberta car insurance average rates are higher than they are in Newfoundland and Labrador - \$1179 annual in Alberta, \$1123 in NL in 2017.*

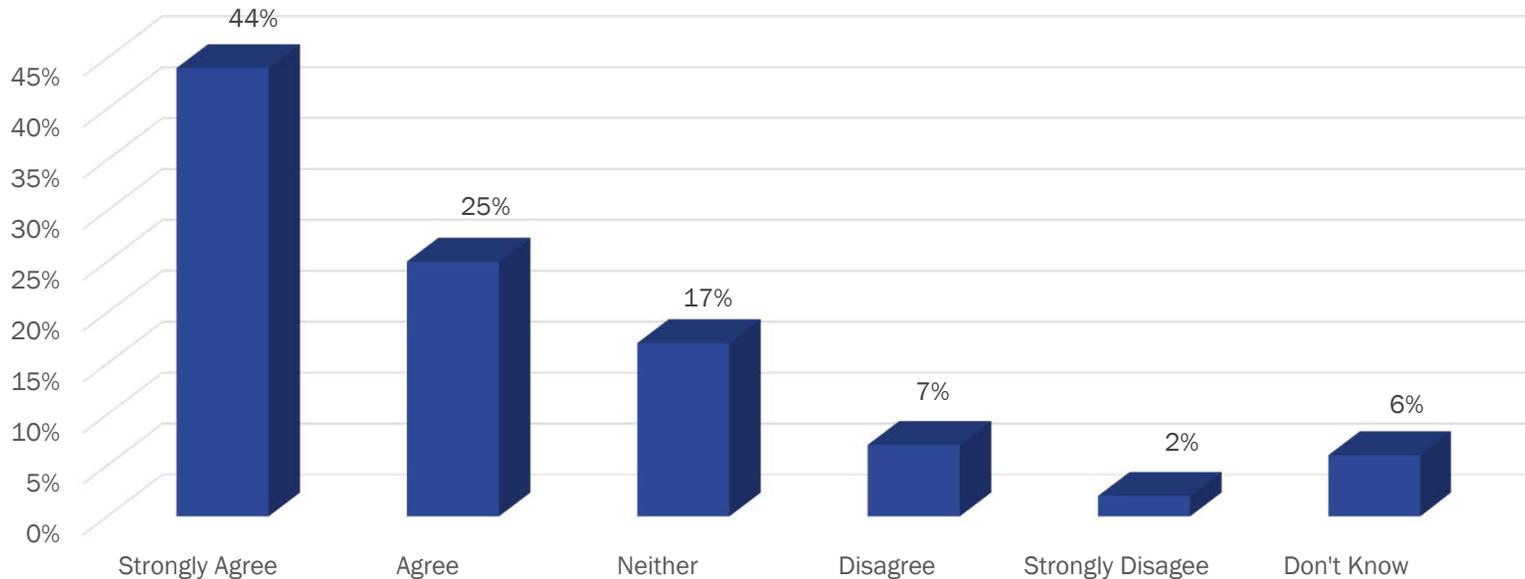
*Rates are on the rise because of distracted drivers causing more accidents and more sophisticated cars that cost more to repair.*

Source: LowestRates.ca

# 4 | Feedback from Newfoundlanders & Labradorians

## Current Opinion Research – Insurance Profits

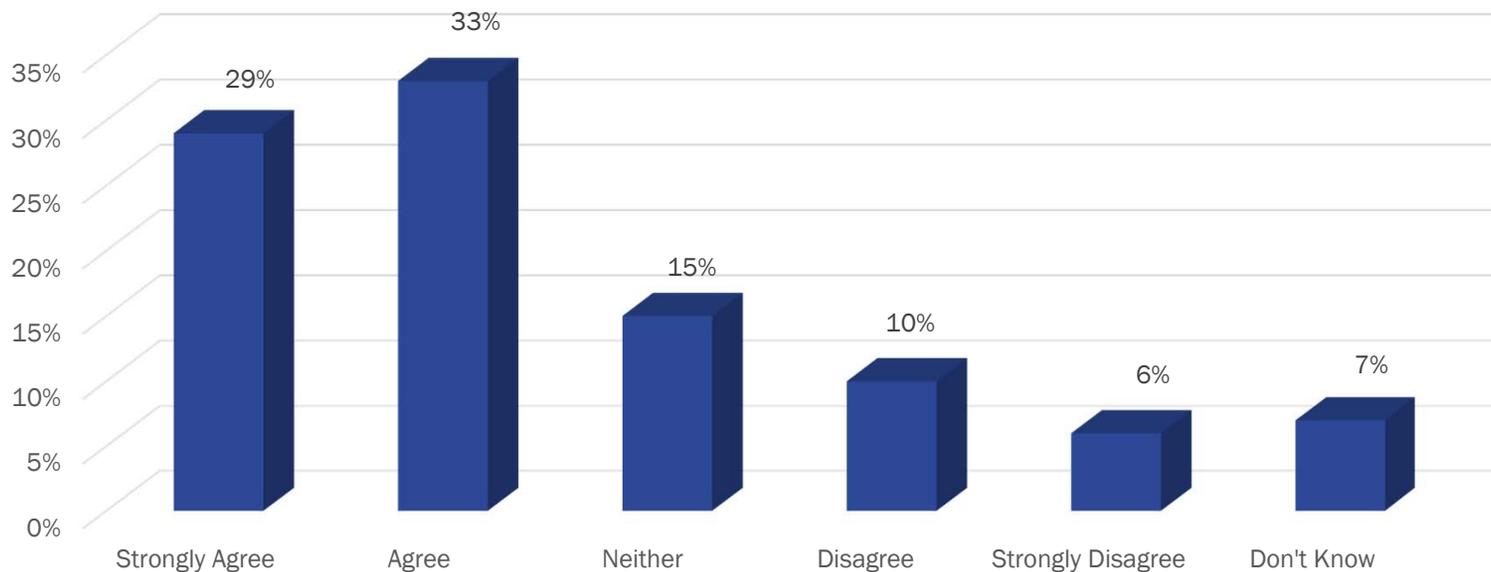
Based on what people currently know, **69%** of residents believe a cap will mean more profits for the insurance industry.



Campaign to Protect Accident Victims Market Research Study | Produced by The Research Design House – Halifax, NS – 1.902.448.8008 – [theresearchdesignhouse.com](http://theresearchdesignhouse.com) | 400 Respondents | Study Conducted from May 8 – 14, 2018 | +/-5% Margin of Error

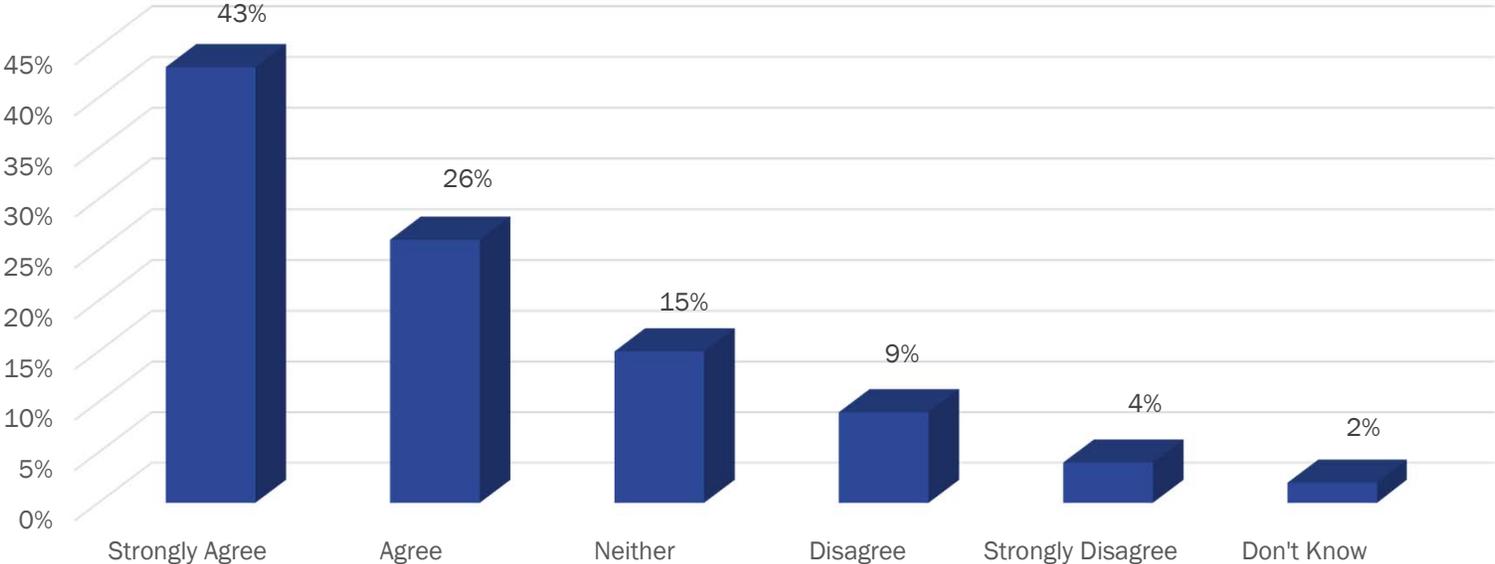
## Current Opinion Research – Lower Premiums

62% of residents agree that a Cap will NOT lower premiums – 4x more than those who believe it will lower costs.



# Current Opinion Research – Take Away Victim Rights

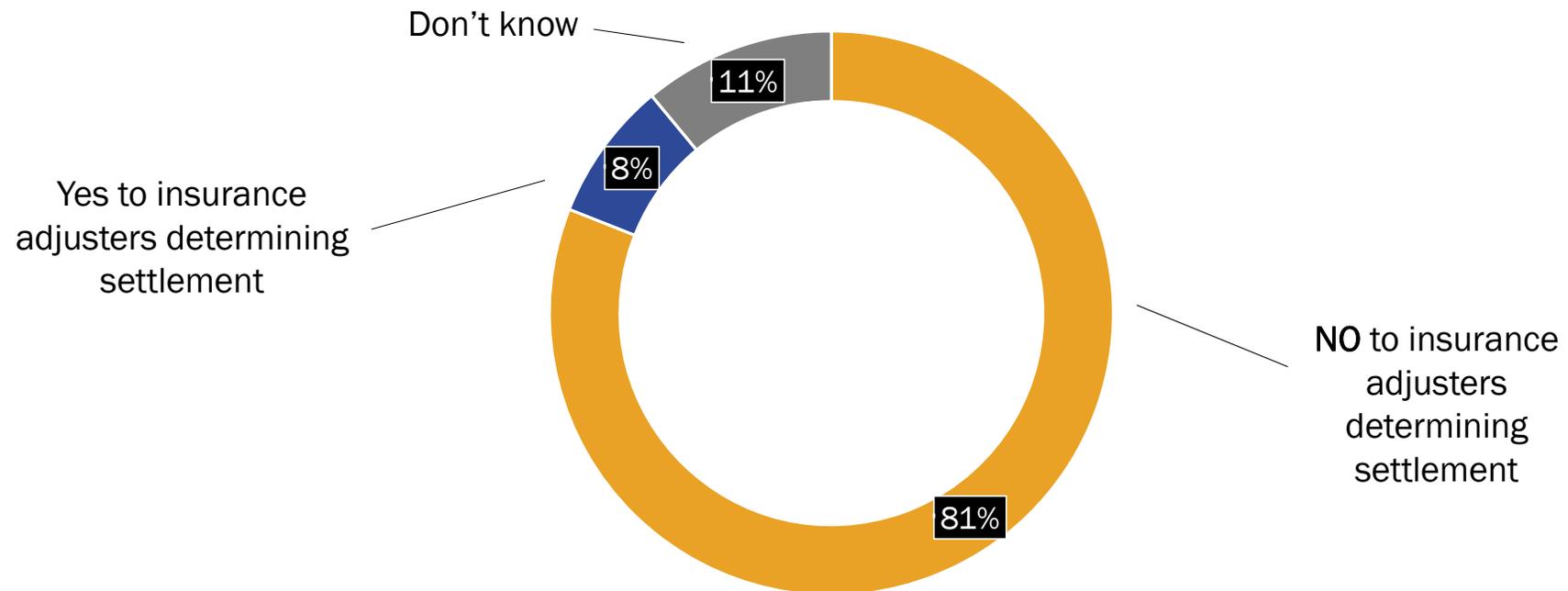
70% of residents agree the implementation of a Cap would take away a victim’s right to fair compensation; **43% strongly agree**.



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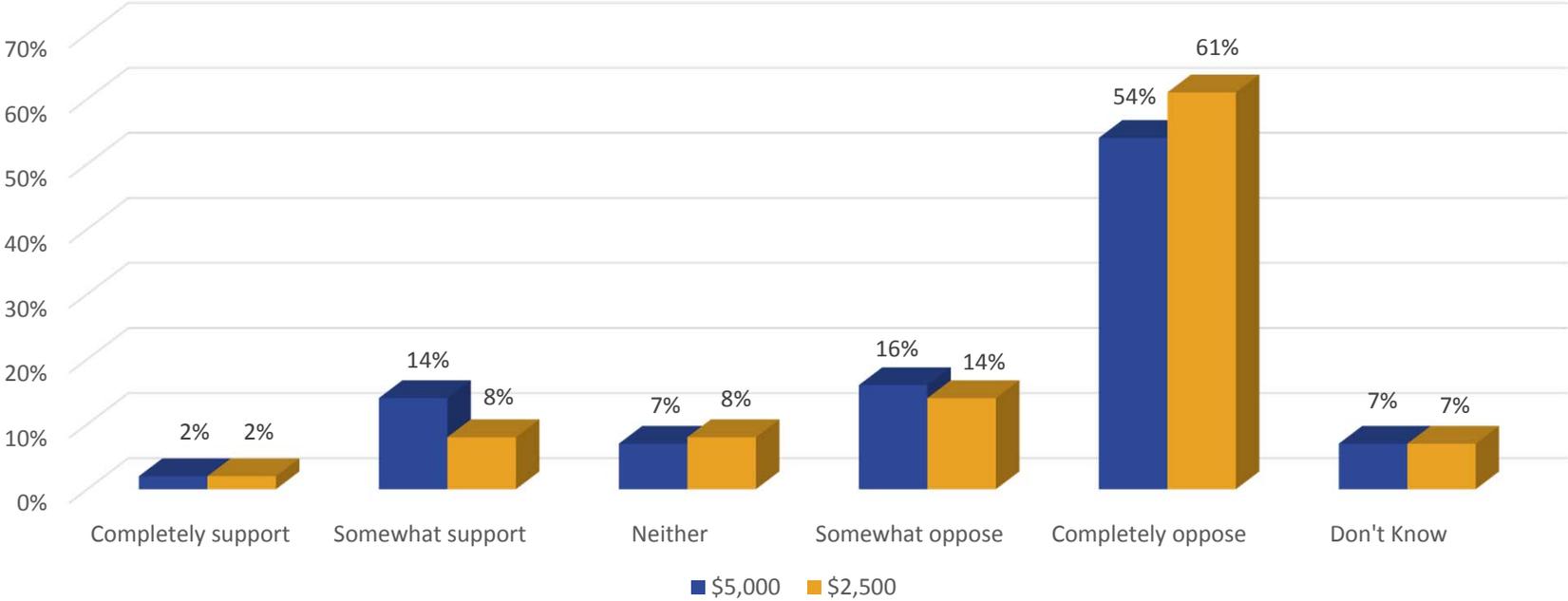
## Current Opinion Research – Determining Compensation

An overwhelming majority (81%) of Newfoundland residents do **NOT** support a system where an insurance adjuster for the party who caused your injuries has the power to tell you what your pain and suffering is worth.



# Current Opinion Research – Opposition to a Cap

The majority (70%) of Newfoundland residents oppose a \$5,000 limit.



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## Justice Alex Hickman Opinion - 2005

- A proposed cap will disproportionate impact students, seniors, children and unemployed
- A cap will seriously affect these people's ability to access the justice system
- Litigation will increase and cost of litigation will be the full responsibility of the complainant making it unattainable and therefore they will lose the ability to recover fair compensation for injuries

# Thank You