

NEWFOUNDLAND AND LABRADOR
BOARD OF COMMISSIONERS OF PUBLIC UTILITIES
120 Torbay Road, P.O. Box 21040, St. John's, Newfoundland and Labrador,
Canada, A1A 5B2

2017 Automobile Insurance Review
September 27, 2018

Present:

The Board:

Darlene Whalen, Chair and CEO
Dwanda Newman, Vice-Chair
James Oxford, Commissioner

Board Counsel/ Staff:

Ryan Oake, Regulatory Analyst
Peter O'Flaherty, Q.C. Hearing
Counsel

Parties (Alphabetical Order):

**Atlantic Provinces Trial Lawyers
Association**
Ernest Gittens

Campaign to Protect Accident Victims
Colin Feltham

Insurance Bureau of Canada (IBC)
Amanda Dean
Michael Gillingham

Spinal Cord Injury NL
Thomas Fraize, Q.C.
Lara Fraize-Burry
Kalli Fraize

Presenters:

Inspector Paul Didham, RNC
Presenting on behalf of the
Consumer Advocate
Justice Robert Wells, presenting
on behalf of the Campaign

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1 (1:34 P.M.)
 2 CHAIR:
 3 Q. Good morning everybody. Welcome back. I
 4 don't have any opening remarks. I'm just
 5 going to go right to you, Mr. Wadden. You
 6 can introduce your presenter.
 7 MR. WADDEN:
 8 Q. All right. Thank you very much, Madam
 9 Chair. You'll recall when we were here last
 10 day and we had Mr. Donaher from the City, I
 11 referenced for the Board and everyone in the
 12 room that the Consumer Advocate's – one of
 13 the Consumer Advocate's main concerns and
 14 main focuses here is within the Terms of
 15 Reference to report on the measures to
 16 improve highway safety and automotive
 17 accident prevention in Newfoundland and
 18 Labrador and we had Mr. Donaher here in that
 19 vein and we have today Inspector Paul Didham
 20 here in the same vein to come at it from a
 21 slightly different angle, and I'd just like
 22 to start by welcoming you, Inspector Didham.
 23 Thank you very much for taking time to come.
 24 INSPECTOR DIDHAM:
 25 A. Thank you.

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1 MR. WADDEN:
 2 Q. And maybe the best way to start here today
 3 is to kind of introduce you to everybody in
 4 the room. Perhaps you could talk a little
 5 bit about your background. Tell us how long
 6 you've been with the RNC.
 7 INSPECTOR DIDHAM:
 8 A. I've been a police officer for 24 years. Of
 9 those 24 years, I've been with the RNC for
 10 almost 19, so since July of 2000. Previous
 11 to my joining – years joining with the RNC,
 12 I was with the City of Summerside Police
 13 Services in Summerside, Prince Edward
 14 Island. So, my years, you know, just get
 15 into my years with the RNC. As it relates
 16 to traffic and accident investigation work,
 17 I completed the collision reconstruction
 18 program at the Canadian Police College in
 19 Ottawa in 2001. So, I've been working in
 20 that field. I'm a forensic collision
 21 reconstructionist with the RNC.
 22 From November of 2014 to June of this
 23 year, June 2018, I was the sergeant in
 24 charge of the Traffic Services Division for
 25 the Royal Newfoundland Constabulary. And

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1 since June of 2018 until now, I've been
 2 assigned as an inspector with the Royal
 3 Newfoundland Constabulary, Operation Patrol
 4 Services, and under that umbrella, I still
 5 am responsible for our Traffic Services,
 6 amongst other divisions within the RNC.
 7 MR. WADDEN:
 8 Q. Okay. And Inspector Didham, I understand
 9 from speaking to you previously that in
 10 terms of your work historically, you've been
 11 involved oftentimes testifying in trials
 12 with respect to things like accident
 13 reconstruction. Is that the case?
 14 INSPECTOR DIDHAM:
 15 A. That's correct.
 16 MR. WADDEN:
 17 Q. Okay. And over your years, I realize you've
 18 played different roles, but throughout those
 19 years, I guess you had a lot of direct
 20 involvement with accident investigations?
 21 INSPECTOR DIDHAM:
 22 A. That's correct.
 23 MR. WADDEN:
 24 Q. Okay. And you still have direct involvement
 25 or –

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1 INSPECTOR DIDHAM:
 2 A. I do. I have some direct involvement, not
 3 as much as I would have had prior to June of
 4 this year. Generally right now, my role is
 5 to manage files and to take care of
 6 resources and things like that. So, I don't
 7 have a direct investigative role per se, but
 8 I am involved in the decision making process
 9 as to how files unfold and things like that,
 10 but generally, the day-to-day work and the
 11 investigative work is handled by the rank of
 12 sergeant and a constable.
 13 MR. WADDEN:
 14 Q. Okay. And as part of your role, current
 15 role that is with the RNC, I think we
 16 discussed the fact that you also have some
 17 work to do oftentimes outside of the office
 18 with other groups. For example, I know I
 19 think you told me you've been involved in
 20 some of the changes that were taken under
 21 the Highway Traffic Act back in June?
 22 INSPECTOR DIDHAM:
 23 A. That's correct. When I was promoted in
 24 2014, I also had to assume some roles in a
 25 variety of committees, both municipal

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1 committees and provincial committees and
 2 national committees. So, currently I'm a
 3 member of the City of St. John's Police and
 4 Traffic Committee. I'm a member of the
 5 Province of Newfoundland and Labrador
 6 Highway Traffic Act Committee and that
 7 committee, in particular, deals with
 8 reviewing the Highway Traffic Act, looking
 9 at amendments or adjustments to the Highway
 10 Traffic Act. I'm also a member of the
 11 Provincial Advisory Board on the committee
 12 with the RCMP and other enforcement agencies
 13 as it relates to road safety. So, we meet
 14 on those as well. So, those are three
 15 committees in particular that I'm a part of
 16 as it relates to traffic work.

17 MR. WADDEN:
 18 Q. Okay. So, what I want to get into really is
 19 sort of a general discussion about what the
 20 RNC does and what the RNC can do, perhaps
 21 more importantly, to reduce accidents within
 22 their jurisdiction and I think perhaps the
 23 best place to start there is with what you
 24 refer to as the three pillars. I think you
 25 referenced them as being education,

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1 awareness and enforcement. Can you talk to
 2 us about those, what they mean and how you
 3 implement them?

4 INSPECTOR DIDHAM:
 5 A. Sure. As a preamble to it, when I became
 6 sergeant in charge of our Traffic Services
 7 Division in 2014, November of 2014, I was
 8 tasked with -- the RNC has a corporate plan
 9 that's put in place every three years and
 10 for the corporate plan from 2014 to 2017, as
 11 part of that corporate plan, our executive
 12 initiates top priorities or goals that we
 13 put in place to direct our resources. And
 14 for those three years, our number one goal
 15 and objective was to improve highway safety
 16 and so when I was -- when I moved into the
 17 sergeant's role in November of 2014, I was
 18 tasked with putting together a plan of how
 19 we could look at improving highway safety
 20 and ultimately, when we look at improving
 21 highway safety, one of the measures that we
 22 can use or one of the pieces, you know, for
 23 lack of a better term, a measuring stick
 24 that we can use is to see if we can reduce
 25 the number of collisions that are happening

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1 on our highways and the severity of those
 2 collisions.

3 So, like was brought up to me when I
 4 looked at that process, you know, we had to
 5 look at a way and a strategic plan to put in
 6 place on how we were going to deal with that
 7 because our numbers had bloomed to, you
 8 know, really a serious problem for us that
 9 we say, you know, almost 6300 collisions in
 10 2013 and the population that we have that we
 11 policed at the time, and that's all of the
 12 RNC jurisdiction, both the northeast Avalon,
 13 Corner Brook and Labrador, those numbers
 14 were very concerning to us.

15 So, when we looked at that, when I sat
 16 down with our team and we started putting
 17 things together, we came up with a plan that
 18 we had to tackle this problem basically in a
 19 three-pronged approach and that's what Mr.
 20 Wadden had mentioned. We looked at
 21 educating the public, raising awareness to
 22 the problem and enacting and putting in
 23 place some enforcement initiatives to deal
 24 with those issues that we found were the
 25 main causes of these incidents that were

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1 happening.

2 MR. WADDEN:
 3 Q. Yeah, that's great, and perhaps let's look
 4 at those three prongs for a moment. Give me
 5 some -- educate -- the education piece.

6 INSPECTOR DIDHAM:
 7 A. Yeah.

8 MR. WADDEN:
 9 Q. What does that mean? What would you guys be
 10 doing there?

11 INSPECTOR DIDHAM:
 12 A. So, what we did there when we looked at the
 13 education piece, the first piece of
 14 education, to be honest with you, we had to
 15 educate our own police officers that there
 16 was a problem. You know, our own members --
 17 I saw it, being in the role that I was in at
 18 the time, and the team that were working
 19 with me, but our general patrol officers and
 20 some of our traffic officers weren't aware
 21 that there was such a significant problem
 22 with the amount of collisions and the
 23 severity of the collisions that were
 24 happening within our jurisdictions and
 25 throughout the province. So, educating our

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1 own officers regarding that fact.
 2 As well, we wanted to educate the
 3 public, you know, in the fact that you know
 4 what there's a number of things that were
 5 going on that were problematic to us that we
 6 were identifying as issues as it related to
 7 the safe movement of vehicles and
 8 pedestrians in the province. And so, you
 9 know, how that was done, again, we met with
 10 our – I met with our patrol officers. We
 11 also set up meetings and we partnered with a
 12 number of community organizations, town
 13 councils, city councils, public interest
 14 groups to bring that education piece to them
 15 and education and awareness sort of goes
 16 hand in hand and they're almost synonymous
 17 when we're talking about this topic here
 18 because, you know, it's hard to talk about
 19 just education without bringing the
 20 awareness part of it.
 21 So, that's – when we were meeting with
 22 these groups, we wanted to educate them on
 23 the problem, make them aware of the
 24 initiatives that we were putting in place,
 25 make them aware of the issues that we were

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1 having internally as it relates to
 2 resources. You know, we're not a body that
 3 we have unlimited resources that we could
 4 just throw at a problem and hopefully it
 5 gets fixed.
 6 MR. WADDEN:
 7 Q. Right.
 8 INSPECTOR DIDHAM:
 9 A. So, we needed their input and we needed to
 10 partner with those groups and basically
 11 drill down to see what the main problems
 12 are. In addition to that, we put in place a
 13 strong and very active media and social
 14 media campaign. As part of that, we
 15 partnered with a number of social media
 16 advisory groups, conventional media outlets
 17 such as NTV, CBC and VOXM and groups like
 18 that. So, numerous times, you know, either
 19 myself or someone of the RNC that works in
 20 my team, we would have – we would appear on
 21 Open Line or Cross Talk. And we also put in
 22 place, we worked with CBC on a very large
 23 program called Driven and that's currently
 24 still an active program that we have with
 25 CBC and that basically identified the issues

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1 that I had spoken of regarding the education
 2 and awareness piece.
 3 And you know, as well, we brought
 4 forward some issues about how all of these
 5 incidents are affecting our own members as
 6 well. Because, you know, I can speak
 7 personally and say that it's very – it's one
 8 thing to talk about it, the issues as it's
 9 affecting the public because this is a huge
 10 issue obviously because we're all here for
 11 that, but it's also an issue personally and
 12 for our own officers because it's very
 13 difficult when we see these numbers
 14 continuing to increase, the severity of the
 15 collisions increasing and the effects that
 16 it's having on our own officers. It was
 17 devastating to them as well. So, trying to
 18 engage our people to keep them active in
 19 this type of work was becoming problematic
 20 for us as well.
 21 MR. WADDEN:
 22 Q. Okay. So that gives us a good picture of
 23 the education/awareness piece and I
 24 understand – appreciate what you're saying
 25 about the campaign you did with CBC. So

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1 that's ongoing?
 2 INSPECTOR DIDHAM:
 3 A. It is. It's still ongoing and you know,
 4 there are times that come up that we may
 5 have a project or something specific that we
 6 want to raise awareness or bring education
 7 to the public on and we'll contact one of
 8 the media outlets or all of the media
 9 outlets actually and I mean, they've been
 10 great to work with as well because, you
 11 know, of course, it's a big issue for
 12 everybody within the province and we get
 13 good strong messaging and good partnerships
 14 with those groups on that.
 15 (1:45 p.m.)
 16 MR. WADDEN:
 17 Q. Okay. The third pillar and from what I
 18 gather from speaking to you, perhaps the
 19 most important pillar is enforcement. And
 20 we'll flush this out as we go along, but can
 21 you just start by, even though it may seem
 22 obvious on its face, explaining to us what
 23 you mean when you say enforcement?
 24 INSPECTOR DIDHAM:
 25 A. Well, we can talk about education and

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1 awareness and we can – and again, that’s
 2 very important, you know, that the public
 3 and our own officers are aware of the issues
 4 that are going on. But one thing we did see
 5 as part of this three-pronged approach was
 6 that the enforcement side is our most
 7 effective deterrent to improper and unsafe
 8 driving habits and you know, I think it’s
 9 fair to say that, you know, if we upped our
 10 enforcement efforts or if we put more
 11 strategic enforcement initiatives in place
 12 to deal with a specific issue. For
 13 instance, you know, if we had a speeding
 14 issue on the Outer Ring Road early in the
 15 morning, you know, if any of us are driving
 16 in there and we’re speeding, we’re caught
 17 speeding in the morning and get a ticket in
 18 a certain place, quite likely we’re not
 19 going to do the same thing tomorrow. So, it
 20 acts as a very good deterrent for us. And
 21 that’s the approach we took on that.
 22 It’s not – it wasn’t to be heavy-
 23 handed, but we were seeing that, you know,
 24 as it relates to the enforcement side of
 25 things, we looked at the four big killers on

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1 our highway, which is what we refer to as,
 2 you know, the four big killers and those
 3 four being impaired driving, non-compliance
 4 with seatbelt, speeding or aggressive
 5 driving and distracted driving. And again,
 6 because we’re not – or we don’t have huge
 7 abundance of resources to tackle problems,
 8 we had to be very strategic as how we put
 9 out our resources to deal with these issues.
 10 So, what I asked our members to do over
 11 the last three and a half years was if we
 12 went out and we focused on those initiatives
 13 primarily, you know, and there were other
 14 things that we would look at as well, but
 15 primarily if we just focus on those four
 16 enforcement initiatives to see what kind of
 17 a reaction and what kind of a deterrent that
 18 would be to those unsafe and improper
 19 driving habits.
 20 MR. WADDEN:
 21 Q. Okay. Can we bring up on the screens page
 22 nine of the 2014 to 2017 RNC Corporate Plan?
 23 Thank you. So, Inspector Didham, this is
 24 something you provided us with and we’re not
 25 going to go down through the whole thing

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1 here. We’re just putting it up sort of for
 2 everybody’s information. Page nine sort of
 3 discusses various measures that you intended
 4 at the time this document was created to put
 5 in place to reduce accidents on the roads,
 6 most of which align with what we just
 7 discussed, the education, the awareness and
 8 the enforcement.
 9 One of the things we talked about, and
 10 I think it’s mentioned there in the
 11 document, is high visibility and selective
 12 enforcement. Can you talk to me a little
 13 bit about those concepts and why they’re
 14 effective?
 15 INSPECTOR DIDHAM:
 16 A. Sure. And that’s basically what I was
 17 referring to earlier, you know.
 18 MR. WADDEN:
 19 Q. Yes.
 20 INSPECTOR DIDHAM:
 21 A. In any form of policing, and of course,
 22 we’re limited to the resources that we can
 23 put at any particular problem. As it
 24 relates to improving highway safety, that’s
 25 also a fact for that. So, when it comes to

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1 the high visibility, we wanted to be in high
 2 problem areas. You know, having our cars
 3 fully marked; being out there, being visible
 4 for the public to act as a deterrent and to
 5 let people know that we’re out there to look
 6 after the issues that we were seeing with
 7 the safety on our highways. So, you know,
 8 that’s the aspect that we wanted to do
 9 there. As it relates to the strategic
 10 enforcement part of things, I believe that’s
 11 how you referred to it?
 12 MR. WADDEN:
 13 Q. I think I said selective enforcement.
 14 INSPECTOR DIDHAM:
 15 A. Selective, okay, yeah. Selective
 16 enforcement is not a word or a term that I
 17 would use all the time, but strategic is one
 18 that I would look at.
 19 MR. WADDEN:
 20 Q. Okay.
 21 INSPECTOR DIDHAM:
 22 A. Because again, we don’t want to seem like
 23 we’re actually selecting the type of
 24 enforcement we’re doing because we’re out
 25 enforcing everything really, you know. If

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1 it's illegal, it's illegal. That's part of
 2 our job. But the strategic enforcement part
 3 is tied to the resources that we have and
 4 what we can put out there and deal with
 5 specific problems. So, that's what we would
 6 be referring to there.
 7 MR. WADDEN:
 8 Q. Okay. For example, if you set up a – if the
 9 RNC set up a stop one day over the holidays
 10 at some intersection in town looking
 11 specifically for impaired driving, what
 12 would be the term for that sort of
 13 procedure?
 14 INSPECTOR DIDHAM:
 15 A. We do that throughout the year all the time
 16 as it relates to – and we call those
 17 operational plans.
 18 MR. WADDEN:
 19 Q. Okay.
 20 INSPECTOR DIDHAM:
 21 A. So when – and again, that's a part of our
 22 strategic enforcement plan, our objectives.
 23 So, throughout the year -- we're doing one
 24 the long weekend of October and it's a
 25 common one. There's a national – there are

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1 national programs that we become a part of
 2 every year. One of them is in October, the
 3 first weekend in October. It's called
 4 Operation Impact. So, all police forces
 5 across the country are involved in that and
 6 we put together an operational plan to look
 7 at – and this year again, it's focused on
 8 trying to deter unsafe and improper driving
 9 habits and to focus on again those four big
 10 killers that I mentioned that we see
 11 commonly as it relates to the collisions
 12 that we're having.
 13 Another one is in the long weekend in
 14 May. That's Canada Road Safety Week so that
 15 starts the Tuesday before and it runs right
 16 through to Monday after the long weekend.
 17 Again, a very similar concept as to
 18 Operation Impact but a little bit longer.
 19 During those – and again, we look at –
 20 those are just two. We do strategic or
 21 selective enforcement on – we'll do an
 22 operation or a couple of operations each
 23 year on seatbelt use and we'll also do one
 24 around Christmas. You'll see us out coming
 25 Christmas, we'll be doing some media

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1 campaigns and we'll be doing extra road
 2 checks, safety checks, extra enforcement as
 3 it relates to impaired driving. So, those
 4 are the types of things that we do strategic
 5 throughout the year.
 6 It's spotty, for lack of a better term,
 7 because again when we're trying to do these
 8 things, we have to bring a number of
 9 resources together. Our uniformed officers,
 10 when we're looking for people basically,
 11 wherever we can, to put out there to deal
 12 with these types of initiatives because in
 13 order to do them effectively and safely, we
 14 have to have a certain number of people that
 15 we engage in this.
 16 We also partner with the RCMP, Service
 17 NL Highway Enforcement officers, municipal
 18 enforcement agencies and other groups, MADD
 19 and groups like that when it comes to these
 20 types of initiatives, which again raises the
 21 awareness and education piece and also
 22 allows us to engage other officials to
 23 assist and to jointly work on these
 24 enforcement operations.
 25 MR. WADDEN:

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1 Q. Okay. So, let's talk a little bit about
 2 what I presume are the results that came
 3 from the 2014-2017 Corporate Plan and try
 4 and focus in on what precisely garnered
 5 those results. Can we bring up the
 6 Statistical Report that I sent the Board
 7 yesterday? Yeah. Great, thank you.
 8 Now, Inspector, so we see there, if we
 9 look at – let's look at that top box,
 10 collisions all jurisdictions 2013 to 2017.
 11 We see in 2013 total collisions are 6284 and
 12 2017, we've whittled it down, I'll say, to
 13 4752, right?
 14 INSPECTOR DIDHAM:
 15 A. That's correct.
 16 MR. WADDEN:
 17 Q. So, depending on how you look at it, shaved
 18 off a fair chunk of collisions?
 19 INSPECTOR DIDHAM:
 20 A. Yeah, about 25 percent.
 21 MR. WADDEN:
 22 Q. And that of course is in line with the
 23 period of time that the corporate plan
 24 dictated certain measures that we've already
 25 talked about and the three pillars. And if

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1 I had to say to you, look, accidents have
 2 obviously gone down in 2017. There's
 3 probably ten different – 50 different
 4 variables we can talk about that caused
 5 that. What would you pinpoint as the main
 6 couple of things that let that happen?
 7 INSPECTOR DIDHAM:
 8 A. To let the numbers come down?
 9 MR. WADDEN:
 10 Q. That got us to bring those numbers down to
 11 4700?
 12 INSPECTOR DIDHAM:
 13 A. The three things that we talked about here.
 14 MR. WADDEN:
 15 Q. Okay, all those things.
 16 INSPECTOR DIDHAM:
 17 A. Our education, our awareness and our
 18 enforcement campaigns that we've been doing.
 19 MR. WADDEN:
 20 Q. Okay.
 21 INSPECTOR DIDHAM:
 22 A. Just to give you – and the reason we feel
 23 this is so is number one, we see it
 24 ourselves in the numbers of collisions that
 25 we have. We've increased our enforcement

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1 initiatives.
 2 MR. WADDEN:
 3 Q. Yeah.
 4 INSPECTOR DIDHAM:
 5 A. And just to use an example from – and this
 6 isn't specific data, but still it's
 7 relevant. In the 1980s, the Province of
 8 Newfoundland had the highest rate of non-
 9 compliance with seatbelt use and our
 10 statistics show that. So, in the mid-1980s,
 11 from the mid-1980s to the early 1990s, the
 12 RNC initiated a very strong program and
 13 basically a zero tolerance program as it
 14 related to seatbelt use. So, our officers
 15 would come in and if you were caught not
 16 wearing your seatbelt, you got a ticket.
 17 There was no discretion used. It was hammer
 18 down basically. And it wasn't done to be
 19 heavy-handed. It was done to – again, to
 20 bring up the compliance and to improve
 21 safety at the time of course again. And
 22 when we ramped down that program in the
 23 early '90s, we had the highest compliance.
 24 So, within seven years or so, we went from
 25 the lowest compliance to the highest

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1 compliance.
 2 And that's what we're seeing here as it
 3 relates to these numbers. We hope that
 4 these numbers continue to decrease what
 5 we're seeing here, these current numbers
 6 from 2017. I can say, even though it's not
 7 here right now, that the first two quarters
 8 of 2018, our numbers have decreased again,
 9 not significantly, another couple of
 10 percentage points down from last year, but
 11 they have decreased again for the first two
 12 quarters of this year.
 13 MR. WADDEN:
 14 Q. Okay.
 15 INSPECTOR DIDHAM:
 16 A. We hope to see that continue. However,
 17 we're – from a resource basis, I don't mind
 18 saying, we're almost maxed out. We're
 19 pretty much maxed out as to what we can do
 20 without initiating or doing something more
 21 == with more resources or, you know,
 22 basically shift gears and keep the pedal
 23 down.
 24 MR. WADDEN:
 25 Q. I got you, okay. And I'm going to bring you

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1 to that point on resources, because I know
 2 it's key in terms of enforcement.
 3 INSPECTOR DIDHAM:
 4 A. Yeah.
 5 MR. WADDEN:
 6 Q. First, let's just have a quick look at the
 7 2018 to '21 corporate plan and can we go to
 8 page -- I believe it's 20? Great, thank
 9 you. So, this is the updated corporate plan
 10 and the issues with respect to improved road
 11 and highway safety are under goal seven.
 12 Help me flesh this out a little bit.
 13 Objective 7.1 working closely with community
 14 partners and stakeholders. So, is that what
 15 you were talking about when you said working
 16 with groups like MADD, working with city
 17 councils, things like that?
 18 INSPECTOR DIDHAM:
 19 A. That's exactly, yeah.
 20 MR. WADDEN:
 21 Q. Can you give me any sort of – so, this is
 22 where we are right now. This is the 2018
 23 version. So, are you able to discuss any
 24 sort of update as to what's going on in that
 25 vein?

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1 INSPECTOR DIDHAM:
 2 A. Basically, we've continued on from 2014 to
 3 now.
 4 MR. WADDEN:
 5 Q. Right.
 6 INSPECTOR DIDHAM:
 7 A. Those partnerships have strengthened.
 8 MR. WADDEN:
 9 Q. Okay.
 10 INSPECTOR DIDHAM:
 11 A. And not saying that we didn't have good
 12 partnerships with those groups prior to 2014
 13 because we did, but we really focused on
 14 building and fostering those relationships
 15 since then. We didn't work closely, even
 16 with our own other provincial police agency,
 17 the RCMP, when we're dealing with
 18 enforcement and awareness initiatives.
 19 We also have – one of the other
 20 programs that we have in place as it relates
 21 to working with community partners, one of
 22 the – there's a firm in town actually that
 23 donated a distracted driving simulator to us
 24 to use that our Community Services Division
 25 actually. So, as part of the distracted

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1 driving issue and problem, we have police
 2 officers with our Community Services
 3 Division that are actually out working with
 4 community partners, working with schools,
 5 businesses and doing presentations. We
 6 actually have – it's a computerized
 7 distracted driving simulator. So, somebody
 8 can come in and actually see the effects of
 9 driving while using a distracting device,
 10 whether it be a cellphone – you know, when
 11 we talk about distracted driving, generally
 12 that's what we're referring to these days,
 13 you know.
 14 So, that's basically when we're talking
 15 about working closer with community
 16 partners, that's what we're doing. We're
 17 meeting with town councils. I mean, I was
 18 down in Petty Harbour just last week with
 19 one of our sergeants and we go down to meet
 20 with groups on a variety of policing issues
 21 or concerns that a group might have or a
 22 council might have and inevitably, within 10
 23 minutes, 15 minutes, it resorts to traffic
 24 because it's our biggest problem. It's the
 25 biggest complaint or biggest issue that

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1 communities, town and groups are having with
 2 society is the movement of traffic and the
 3 safe movement of traffic. So, inevitably,
 4 no matter where we go, and it's a common
 5 theme. If I go to Petty Harbour, I was in
 6 Petty Harbour only a few months prior to
 7 that and it was the same issues. So, again,
 8 strengthening and fostering those
 9 relationships is what we're going to
 10 continue to do.
 11 MR. WADDEN:
 12 Q. Okay. And just moving slightly down the
 13 list that references the educational
 14 opportunities.
 15 INSPECTOR DIDHAM:
 16 A. Yeah.
 17 MR. WADDEN:
 18 Q. Can you give me a current state of affairs
 19 when it comes to that objective?
 20 INSPECTOR DIDHAM:
 21 A. Yeah. Same thing what I discussed
 22 previously and maybe I should have waited
 23 was the distracted driver simulator. So, I
 24 mean, that's a big part of our – we know
 25 that distracted driving is one of the

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1 highest problem areas as it relates to the
 2 motoring public today. I mean, let's face
 3 it, we can go up and sit at any traffic
 4 light and look around, you know, it's a
 5 problem and we know that and so we're trying
 6 to tackle that.
 7 One of the ways we're trying to tackle
 8 that is having our officers engage community
 9 members and different groups within the
 10 community starting young. You know, we
 11 start with early drivers and new drivers and
 12 we're out and we can meet with them and we
 13 give them the opportunity to see, by using
 14 this distracted driving simulator, and it's
 15 not treated as a video game or a joke. We
 16 advise them when we're providing them with
 17 the – because we give another presentation
 18 on the consequences of driving, you know,
 19 while distracted and we show sometimes
 20 scenes and graphic images, not something
 21 that's going to be everlasting, but we give
 22 them an idea of what the consequences are of
 23 driving like that. And we do that – we
 24 primarily focus on younger drivers because
 25 we want to build those good driving skills

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1 at that age. However, it's available to any
 2 group. We've gone to – we've went to Nalcor
 3 and we've been out with a number of
 4 different groups with these types of
 5 initiatives.
 6 (2:00 p.m.)
 7 MR. WADDEN:
 8 Q. Okay. Now, I know the next point on that
 9 particular document speaks to enforcement.
 10 We're going to come back around to
 11 enforcement because it's obviously – we can
 12 tell already that it's the key to everything
 13 and we'll get there in a moment.
 14 But I just want to jump for a second to
 15 a couple of the RNC juristat reports and I
 16 want to look at the 2016 and 2017 reports.
 17 2016, we can bring up page 52 and 2017, we
 18 can bring up page 51. What I want to do
 19 here is just by way of example on those
 20 pages, just try and drill down and give
 21 people an on the road, if you will, pardon
 22 the pun, idea of what's going on on the
 23 streets of, in this case, St. John's.
 24 So, that's the 2016 report and if I
 25 look at the top there, that first table, I

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1 see you're breaking down collisions by
 2 streets in metro obviously and Topsail Road,
 3 I see 297. Kenmount Road, I see 260. Can
 4 we bring up the 2017 version of that table
 5 which is on page 51 in the 2017 document?
 6 Okay. Bang again. Topsail Road and
 7 Kenmount Road are the winners with 259 and
 8 227. So, we know that accidents are going
 9 down and I can tell you that without doing
 10 it, if we went back and looked at the
 11 previous juristat reports, we'd see similar
 12 things, right?
 13 INSPECTOR DIDHAM:
 14 A. Sure.
 15 MR. WADDEN:
 16 Q. So, even though accidents are going down,
 17 there seems to be what we'll call hot spots,
 18 right, and I'm only using a couple of
 19 examples in the City. What in the heck is
 20 going on on these particular roads that the
 21 accidents are sort of standing at the same
 22 level, just consistent accidents every year?
 23 INSPECTOR DIDHAM:
 24 A. The biggest issue there, our biggest
 25 contributing factor to all that is the

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1 volume, volume of traffic. Volume hasn't
 2 changed – unless there are changes that
 3 basically deter drivers from using those
 4 streets, whether it be construction or
 5 something else goes on in those areas that's
 6 going to lower the amount of volume of
 7 traffic that's using those streets on a
 8 daily basis, we're going to have numbers.
 9 And again, we're hoping that these numbers
 10 go down, but the biggest issue or the
 11 biggest contributing factor will be volume.
 12 MR. WADDEN:
 13 Q. Right, okay. And if we look down that list,
 14 and this list is fairly consistent
 15 throughout the years, what we see there are
 16 streets that everyone, I think, can
 17 understand have fairly heavy volumes
 18 throughout the year, right?
 19 INSPECTOR DIDHAM:
 20 A. Yeah.
 21 MR. WADDEN:
 22 Q. And you're telling me the only – one of the
 23 main ways, aside from enforcement obviously,
 24 to help this situation is reduce the volume
 25 on those particular streets?

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1 INSPECTOR DIDHAM:
 2 A. Either reduce the volume or look at – and
 3 again, I'm not an engineer, but I do work
 4 closely with the City. You mentioned Mr.
 5 Donaher. I'm quite familiar, we work
 6 closely on a number of different
 7 initiatives. And I know the City is doing a
 8 good job because they are constantly
 9 reviewing different portions of streets to
 10 see if there's changes can be made as it
 11 relates to traffic calming and things like
 12 that. Whether it be reducing the volume or
 13 reducing – if there are specific issues,
 14 whether it be a left turn or if there's
 15 people pulling off of parking lots or
 16 intersections trying to cross three lanes of
 17 highway.
 18 MR. WADDEN:
 19 Q. Right.
 20 INSPECTOR DIDHAM:
 21 A. If there's something that can be done, you
 22 know, to deter that or to change something
 23 like that in areas that there's problems –
 24 because we can find out what the
 25 contributing factors are of collisions in

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1 these areas. So, if that's something that
 2 comes up or if there's a spike in, you know,
 3 whether it be rear-end collisions or left-
 4 turn collisions in specific areas, then you
 5 know, the City will generally look at it to
 6 see if some changes to design can be made to
 7 help.
 8 MR. WADDEN:
 9 Q. Right. So, in some cases it might come down
 10 to a city engineering issue. If it's
 11 determined that a particular street like
 12 Kenmount Road that left turns are a
 13 significant problem as it relates to
 14 collisions, then okay, City, let's try and
 15 look at a way to prevent having left turns
 16 on Kenmount Road at all?
 17 INSPECTOR DIDHAM:
 18 A. Exactly.
 19 MR. WADDEN:
 20 Q. Okay, got you. And of course, every street
 21 would have its own individual issues. We're
 22 only looking at one there, but what I'm
 23 hearing at the end of the day is if we want
 24 to reduce collisions in all these heavy
 25 volume streets, there are things that a

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1 municipality can do and there are things
 2 that the RNC can do to assist when it comes
 3 to enforcement for example?
 4 INSPECTOR DIDHAM:
 5 A. Certainly, yeah.
 6 MR. WADDEN:
 7 Q. Okay. Just moving down to the next table on
 8 that page, if you will, you and I discussed
 9 this the other day and I was somewhat
 10 perplexed because this table discusses
 11 accident in metro that have the heaviest
 12 volume of – the intersections rather that
 13 have the heaviest volume of collisions and
 14 that's the 2017 table and that has – say the
 15 first one there is Torbay and Stavanger.
 16 The next one is Allandale and Prince
 17 Phillip.
 18 Can be bring up the 2016 version of
 19 that table on page 52 of the 2016 report? I
 20 think there we see Topsail Road and
 21 Commonwealth Avenue. Now, we don't need to
 22 bring it back up, but I noted to you the
 23 other day when we were talking, Topsail Road
 24 and Commonwealth Avenue 2016, you've got a
 25 record of 15 accidents. But if you look at

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1 the 2017 table, I don't think it's even
 2 there. So, why is it in some years we see
 3 intersections with a heavy load of accidents
 4 and in some years we see those same
 5 intersections with much lower or nil?
 6 INSPECTOR DIDHAM:
 7 A. In this case here, I looked back on that
 8 because it was – we were discussing it the
 9 other day. That particular area, Topsail
 10 Road and Commonwealth Avenue and the nearby
 11 area was undergoing significant construction
 12 and that again brought down the volume of
 13 traffic and the amount of traffic was being
 14 used there, and we see that it also brought
 15 down the speeds of vehicles proceeding
 16 through there because it was more
 17 controlled. There was a lot of traffic
 18 controls in place, flag people, signage and
 19 things like that. So, basically from – if
 20 we – what I use to the area from Blackmarsh
 21 Road at Topsail Road west to the
 22 Commonwealth Avenue area, there was a lot of
 23 construction going on at that time.
 24 MR. WADDEN:
 25 Q. Right. So, just – so it happens essentially

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1 that the keys to preventing accidents, which
 2 is enforcement, getting people to slow down,
 3 happened by way of a result from a
 4 construction site?
 5 INSPECTOR DIDHAM:
 6 A. Exactly.
 7 MR. WADDEN:
 8 Q. Right, and that actually stopped it?
 9 INSPECTOR DIDHAM:
 10 A. Yeah.
 11 MR. WADDEN:
 12 Q. Okay. Can we talk a little bit about how
 13 the RNC operates in tandem with the
 14 Registrar? I understand every couple of
 15 weeks you folks send out reports. Is that
 16 right?
 17 INSPECTOR DIDHAM:
 18 A. That's right.
 19 MR. WADDEN:
 20 Q. Okay. So, how do – tell me the ways in
 21 which the RNC and the Registrar work
 22 together. What is your communication?
 23 INSPECTOR DIDHAM:
 24 A. It's multi-faceted. Basically when it comes
 25 to the actual working with the Registrar to

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1 collect data or collect information. So,
 2 any motor vehicle accident that's
 3 reportable, so it's either above \$2,000
 4 damage or if there's an injury or an offence
 5 that has been committed, has to be reported
 6 to the police. So, any of those reports
 7 that we receive, once they are received and
 8 concluded by our investigating officers, we
 9 have a reader, a person actually that
 10 approves the conclusion of the
 11 investigation. That data and that whole
 12 file is scanned. It's actually under the
 13 vehicle collision reporting system. And we
 14 send that off, email that off to the
 15 statistics at the Motor Registration
 16 Division. That's the data portion of it.
 17 MR. WADDEN:
 18 Q. Right.
 19 INSPECTOR DIDHAM:
 20 A. If you want me to get into it, we also work
 21 with Motor Registration throughout the year
 22 on initiatives as well.
 23 MR. WADDEN:
 24 Q. Right, yeah.
 25 INSPECTOR DIDHAM:

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1 A. So, that's something we do with them. Like
 2 just this spring you may have heard we did
 3 an initiative and we took some heat over it
 4 actually because there was some concerns
 5 over the taxi industry and the safety of the
 6 taxis that were on the road. So, we were
 7 contacted by Motor Registration and Motor
 8 Registration, of course, is a branch of
 9 Service NL and under the Motor Registration
 10 umbrella comes the Highway Enforcement
 11 branch. So, we worked with the Highway
 12 Enforcement officers and we went out and
 13 teamed up with them, partnered with them,
 14 and we did an initiative where we actually
 15 stopped and inspected all the taxis in the
 16 St. John's, Mount Pearl, Paradise area and
 17 inspected them.
 18 MR. WADDEN:
 19 Q. Right.
 20 INSPECTOR DIDHAM:
 21 A. And it was a safety inspection. It was also
 22 to do with to see if proper licensing and
 23 things were in place for those companies.
 24 This winter – and we do it again as we near
 25 the winter for safety again, most likely,

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1 you know, sort of giving people a heads up
 2 on it now, I guess. We're going to be going
 3 out doing the same thing with passenger
 4 vehicles. So, you know, we'll do spot
 5 inspections on vehicles throughout our
 6 jurisdiction, not just taxis, all vehicles
 7 to ensure that they're compliant with safety
 8 of their vehicles, tires, brakes, you know,
 9 basically getting people ready for the
 10 winter to ensure that – you know, try to up
 11 safety, increase safety.
 12 MR. WADDEN:
 13 Q. Okay. So, these are sort of – because
 14 earlier we spoke about sort of operationally
 15 focused things such as, you know, seatbelt
 16 stops and things like that the RNC would do,
 17 impaired driving focus. This is slightly
 18 different in that you're doing sort of an
 19 operationally focused thing in tandem with
 20 another group, in this case NL service
 21 inspectors, I guess?
 22 INSPECTOR DIDHAM:
 23 A. That's right, yeah.
 24 MR. WADDEN:
 25 Q. And that's going to continue through -

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1 INSPECTOR DIDHAM:
 2 A. Yeah, we can do that quite often. Again,
 3 it's a partnership that we've built over the
 4 years and we're fostering and improving
 5 things. We do joint training with them on
 6 certain initiatives. We had just a couple
 7 of months ago two of the Service NL
 8 inspectors came in and provided training to
 9 all of our frontline officers, our patrol
 10 members, on how to inspect motorcycles for
 11 compliance with the exhaust systems.
 12 Because again, you may have heard there was
 13 a big issue with the noise of motorcycles.
 14 Prior to May of this year, we didn't have
 15 the ability to inspect them ourselves
 16 because we weren't trained to and that's
 17 something we partnered with Service NL. So,
 18 they came in and provided us with that
 19 training.
 20 MR. WADDEN:
 21 Q. Okay. Can we bring up the 2017 Juristat
 22 Report again at page 49? Just pan down.
 23 Yeah, we're good there. Thank you. I'm
 24 bringing this up while I was talking about
 25 the Registrar because we had a conversation

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1 with Mr. Doody, the Registrar, and discussed
 2 with him one of the big problems that we've
 3 seen throughout these hearings is that
 4 there's a high number of uninsured drivers
 5 and I think everyone – every party here
 6 would like to figure out a way to try and
 7 reduce those numbers, and I think the number
 8 we see there in 2017 is 1,190 insurance
 9 coverage violations.
 10 And just to be clear, step back for a
 11 moment, when we look at all these numbers in
 12 the Juristat reports, these aren't be all
 13 end all numbers. The reality is there's a
 14 lot more than that out there uninsured,
 15 isn't there?
 16 INSPECTOR DIDHAM:
 17 A. There are. I mean, these are just the ones
 18 we're catching.
 19 MR. WADDEN:
 20 Q. Those are the ones you're catching within
 21 your jurisdiction?
 22 INSPECTOR DIDHAM:
 23 A. Right.
 24 MR. WADDEN:
 25 Q. Right, exactly. So, I mean, that's high

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1 enough as it is, but we know there's more.
 2 INSPECTOR DIDHAM:
 3 A. Well, it is. I mean, these are numbers just
 4 relating to insurance. I mean, another
 5 number that we haven't captured, and I'm not
 6 sure if you're aware of or not, is the
 7 number of vehicles we're impounding each
 8 year, you know. Unsafe or uninsured or
 9 suspended drivers, we're impounding about
 10 750 vehicles per year just in the northeast
 11 Avalon and of those, about 65 percent are
 12 crushed, are gone for scrap metal.
 13 MR. WADDEN:
 14 Q. If we look at this uninsured number, do you
 15 have any suggestions as to how we can get
 16 this number down? Does it come down to
 17 enforcement again or is there operationally
 18 a way we can do it, you know, somehow as
 19 between the RNC and the Registrar or
 20 involvement of insurers? What can we do?
 21 INSPECTOR DIDHAM:
 22 A. It'll be just a suggestion because it's
 23 something that's outside the parameter of
 24 the police to do, other than the enforcement
 25 side.

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1 MR. WADDEN:
 2 Q. Sure.
 3 INSPECTOR DIDHAM:
 4 A. But, I mean, if there was something that
 5 could be done with the insurance companies
 6 and the Registrar, whether it be sharing of
 7 information or I'm not sure how the ATIPP
 8 legislation would deal with that, but you
 9 know, if there's some way for the insurance
 10 to notify the Registrar who can then notify
 11 the police that a person is operating
 12 without insurance, you know. If we're
 13 provided with that information that could
 14 assist.
 15 MR. WADDEN:
 16 Q. And in recent – I think recent changes to
 17 the Highway Traffic Act in June, there's now
 18 an onus on a driver to prove that they're
 19 insured when they're stopped by an officer,
 20 I guess, right?
 21 INSPECTOR DIDHAM:
 22 A. That's right.
 23 MR. WADDEN:
 24 Q. But practically, if you stop me, that means
 25 I produce my card of insurance from the

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1 broker, from the insurer. But I suppose,
 2 even if I produced that for you, unless you
 3 call them, it's possible that that's – that
 4 insurance is not active, isn't it?
 5 INSPECTOR DIDHAM:
 6 A. It is.
 7 MR. WADDEN:
 8 Q. Does that happen?
 9 INSPECTOR DIDHAM:
 10 A. It happens. It happens, and not only is –
 11 another problem that comes, and I briefly
 12 touched on it, is that when we contact
 13 insurance, sometimes they're not allowed to
 14 provide us with that information.
 15 MR. WADDEN:
 16 Q. Right.
 17 INSPECTOR DIDHAM:
 18 A. So, if I call looking for is your insurance
 19 active, I have your card and I call and say
 20 I'm with the RNC, I need to know if your
 21 insurance is active, they're prohibited from
 22 providing me with that information and I
 23 can't blame them, because really I can call
 24 and say I'm a police officer but really,
 25 they don't know who they're talking to,

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1 number one.
 2 MR. WADDEN:
 3 Q. Right, sure.
 4 INSPECTOR DIDHAM:
 5 A. And so, you know, the connection is not
 6 officially made. You know, so I can see
 7 that being an issue. And again, so that's
 8 something that really should be addressed.
 9 MR. WADDEN:
 10 Q. That's a problem that's going to require at
 11 least three or four parties working together
 12 to try and get it fixed.
 13 INSPECTOR DIDHAM:
 14 A. Exactly.
 15 MR. WADDEN:
 16 Q. Okay. I know you had some involvement,
 17 actually a fair amount of involvement with
 18 the Highway Traffic Act changes, now that
 19 we're talking about them, back in June. In
 20 fact, I believe you were part of a
 21 committee. You mentioned that committee
 22 earlier.
 23 INSPECTOR DIDHAM:
 24 A. That's correct.
 25 MR. WADDEN:

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1 Q. What was the name of that committee?
 2 INSPECTOR DIDHAM:
 3 A. It's the Provincial – Province of
 4 Newfoundland Highway Traffic Act Committee.
 5 MR. WADDEN:
 6 Q. Okay. So, some of the changes that came
 7 about as a result of the work of that
 8 committee, and there were a number, and
 9 we'll just talk about a couple. One of them
 10 was, you know, higher fine for driving
 11 without due care. I think it's a minimum
 12 now of \$2,000. Much bigger fines, as I
 13 understand it, for excessive speeding, if
 14 you're doing more than 50K over the posted
 15 limit.
 16 INSPECTOR DIDHAM:
 17 A. Yeah.
 18 MR. WADDEN:
 19 Q. Talk to us a little bit about how these
 20 changes came about.
 21 INSPECTOR DIDHAM:
 22 A. Again, in discussions with that committee,
 23 one of the things we realized was that some
 24 of the fine structure, as it relates to a
 25 lot of the offences under the Highway

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1 Traffic Act was antiquated and outdated and
 2 needed to be updated, revised and increased.
 3 I mean, when we're talking about driving
 4 without due care and attention which can be
 5 a very serious matter and which would have
 6 huge consequences, devastating consequences,
 7 carried a fine back then of \$100. So,
 8 really when we look at for it being a
 9 deterrent, so if somebody was going to be
 10 stopped and given that ticket, a fine of
 11 \$100 was not – we decided that that was not
 12 much of a deterrent, especially, you know,
 13 what it could cause.
 14 Likewise with the speeding issue.
 15 There was an issue with, you know, our
 16 previous Highway Traffic Act only addressed
 17 speeds of up to 31 kilometres an hour and
 18 above. So, if you were caught doing 60 over
 19 or you were caught doing 32 over, the fine
 20 and the points were the same. And we all
 21 know, just using common sense, that that's a
 22 problem. And so that's where – again, we
 23 looked at it and we asked – and again, I'll
 24 give kudos to the Provincial Government on
 25 that. All of the recommendations that we

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1 made when we looked at improving the Highway
 2 Traffic Act, which of course is a living
 3 document because things change as needed to
 4 happen, all of the recommendations that we
 5 put in place or we submitted were accepted.
 6 (2:15 p.m.)
 7 MR. WADDEN:
 8 Q. Right, okay. So, this might be a good time
 9 to get into sort of what is obviously the
 10 real meat of the problem and that's
 11 enforcement. Talking about these changes to
 12 the Highway Traffic Act and of course, we
 13 can up a fine and one might say that's a
 14 deterrent, but unless I actually get caught
 15 doing it, maybe I'm not all that deterred.
 16 INSPECTOR DIDHAM:
 17 A. Right.
 18 MR. WADDEN:
 19 Q. You need to catch me on the phone. You need
 20 to catch me doing 160 on the highway.
 21 INSPECTOR DIDHAM:
 22 A. That's right.
 23 MR. WADDEN:
 24 Q. So, my understanding from speaking to you is
 25 that there are some movements about, we'll

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1 say, to increase the ability of the police
 2 to enforce. Can you talk to me a little bit
 3 about that?
 4 INSPECTOR DIDHAM:
 5 A. I can, and actually there was a media story
 6 out this morning about it.
 7 MR. WADDEN:
 8 Q. Okay.
 9 INSPECTOR DIDHAM:
 10 A. Because it was passed on to a media outlet
 11 within the Province. So, the RNC executive
 12 has – and I was a part of that, not that I’m
 13 a part of the executive, but I was a part of
 14 the proposal that we put together for the
 15 Provincial Government to look at bolstering
 16 and improving and increasing our Traffic
 17 Services members, our traffic enforcement
 18 officers within our jurisdiction to tackle
 19 and to work on the enforcement side of
 20 things. As part of that initiative and that
 21 objective, the chief, Chief Joe Boland has
 22 approached all the municipalities, currently
 23 we’re looking at the northeast Avalon as a
 24 pilot for this, but has approached all of
 25 the municipalities to look at assisting us

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1 with resources as it relates to increasing
 2 our numbers for our traffic enforcement, our
 3 actual human resources and our vehicles and
 4 equipment. And we’ve had extremely positive
 5 feedback from those groups so far. I know
 6 the Chief is in discussions with the
 7 Provincial Government on that right now and
 8 we’re moving forward with that with the
 9 anticipation that this will come to
 10 fruition. But again, it has to come, final
 11 approval, through the Provincial Government
 12 process.
 13 MR. WADDEN:
 14 Q. Right.
 15 INSPECTOR DIDHAM:
 16 A. But it is moving along and you know, I know
 17 that there’s a lot of positive feedback
 18 coming from the Province and our other
 19 partners as it relates to that.
 20 MR. WADDEN:
 21 Q. Okay. And Inspector Didham, I don’t know if
 22 you mentioned it, and you may not be at
 23 liberty to, so just tell me if that’s the
 24 case, but can we talk numbers? Can we talk
 25 what we’re looking at trying to get on the

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1 roads?
 2 INSPECTOR DIDHAM:
 3 A. Well -
 4 MR. WADDEN:
 5 Q. You know, only say what you can.
 6 INSPECTOR DIDHAM:
 7 A. I don’t want to get into the numbers, but it
 8 is a significant improvement.
 9 MR. WADDEN:
 10 Q. Yeah, okay.
 11 INSPECTOR DIDHAM:
 12 A. Because I can’t – I don’t want to say it’s a
 13 certain number and then it comes back, no,
 14 we’re not going to go with that number;
 15 we’re going to go with either more or less
 16 and then the Chief is calling me and saying
 17 “what’d you say that for?”
 18 MR. WADDEN:
 19 Q. I guess the bottom line is, fair enough, the
 20 RNC has made significant efforts as of now
 21 to try and get more men and women on the
 22 roads dealing with these particular issues?
 23 INSPECTOR DIDHAM:
 24 A. Oh, it is. Look, it’s been a high priority
 25 for us for a number of years, and in

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1 particular for the last five years for sure,
 2 and again, this is another way of showing
 3 and, you know, partnering with everybody to
 4 show that this is a high priority and we’re
 5 not going to stop until we get this under
 6 control.
 7 MR. WADDEN:
 8 Q. Okay.
 9 INSPECTOR DIDHAM:
 10 A. Or at least do our part.
 11 MR. WADDEN:
 12 Q. Now, deterrents can come, as you and I
 13 discussed, in other formats. One of the
 14 things I mentioned to Mr. Donaher and I
 15 discussed with you that in other
 16 jurisdictions we often see photo
 17 enforcement. Notwithstanding the
 18 legislative requirements that have to come
 19 along with that to allow police to issue
 20 tickets based on photos at intersection by
 21 cameras and the cost, of course, associated
 22 with it, in your view is that something
 23 effective that we could do here in the City?
 24 INSPECTOR DIDHAM:
 25 A. Certainly.

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1 MR. WADDEN:
 2 Q. Okay.
 3 INSPECTOR DIDHAM:
 4 A. Certainly it is, and I know the Province is
 5 – they’ve either moved significantly forward
 6 with that process or were nearing actually
 7 moving into that concept in certain
 8 capacities, construction zones, school zones
 9 and things like that.
 10 MR. WADDEN:
 11 Q. Right. Start with say the most important
 12 spots, which would be school zones, of
 13 course, and construction zones and move
 14 outward from there?
 15 INSPECTOR DIDHAM:
 16 A. Exactly, yeah.
 17 MR. WADDEN:
 18 Q. Okay. You and I also discussed a concept I
 19 found very interesting, something called
 20 event data recorders. Can you tell the
 21 Board and everybody in the room exactly what
 22 that is and what their usefulness can be?
 23 INSPECTOR DIDHAM:
 24 A. Sure. So, basically an event data recorder,
 25 and just to give you a snapshot of it, you

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1 know, an airplane has a black box in an
 2 airplane. Very similar, vehicles especially
 3 newer vehicles – and when I say newer
 4 vehicles I’m probably going to date us, but
 5 from say 2004 and up, all vehicles have a
 6 form of an event data recorder or crash data
 7 recorder, both are synonymous. Some
 8 companies call it a crash data recorder.
 9 Some call it event data recorder. But in
 10 any case, they capture very similar
 11 information and generally – and when I say
 12 generally, it’s pretty much the same with
 13 all of these pieces of equipment.
 14 What happens is that when a vehicle is
 15 involved in a collision, any of the data
 16 that happened and it’s usually within the
 17 previous five seconds up to the point of
 18 collision, so you know, driving down the
 19 road doing your 100, five seconds after that
 20 you’re involved in a collision, all the data
 21 that was available in that computer is
 22 stored and that data can include your speed,
 23 your seatbelt use, heavy braking, steering.
 24 If you’re involved in a collision, your
 25 angle of departure, your angle of approach

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1 in the collision.
 2 So, we can use it investigatively for
 3 our files to determine any contributing
 4 factors or if there was any offences that
 5 were committed. However, for policing
 6 purposes, we need either judicial
 7 authorization to obtain that information or
 8 consent. So, a lot of cases when you look
 9 at our numbers and you see that we have –
 10 2017 we have 4,700 collisions. Why didn’t
 11 we have 4,700 downloads or more if there was
 12 two vehicles involved. A lot of cases, we
 13 didn’t have the authority to get that. So,
 14 you know, if we didn’t believe an offence
 15 occurred that would satisfy a judge to sign
 16 a warrant or someone wouldn’t give us
 17 consent.
 18 So, that information, when we download
 19 it – and I’m just going to use a number, and
 20 this is an approximate number, I would say
 21 in 2017, we may have downloaded 100-120
 22 cars, vehicles that were involved in a
 23 collision. So, really it’s not a very large
 24 number when you look at the amount of
 25 collisions that our people investigated.

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1 However, that data, once it’s stored or
 2 downloaded by us and analysed -- we have
 3 four officers that are trained in Traffic
 4 Services to download and analyse those
 5 reports and they can testify to those
 6 reports as to what the data means. Now,
 7 it’s very clear data because it actually
 8 says speed at five seconds and it’s stored,
 9 in a lot of cases, every quarter of a
 10 second. It’s captured for every quarter of
 11 a second.
 12 MR. WADDEN:
 13 Q. Okay.
 14 INSPECTOR DIDHAM:
 15 A. So, it’s a very easy form to read. However,
 16 we have trained people that can actually
 17 come into Court and testify to that. That
 18 data is available to anybody outside of the
 19 police if you come into possession of the
 20 vehicle afterwards. So, if we release a
 21 vehicle after a collision, after the
 22 investigation is done, we release it to the
 23 insurance or to the private owner and they
 24 want to go get it downloaded, that
 25 information is still stored there.

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1 MR. WADDEN:
 2 Q. Inspector Didham, you mentioned what this
 3 particular apparatus records. You mentioned
 4 speeding, braking, steering. We could tell
 5 as well if someone at the time of the
 6 collision had their seatbelt on?
 7 INSPECTOR DIDHAM:
 8 A. Yes.
 9 MR. WADDEN:
 10 Q. Okay. And I appreciate what you're saying
 11 it's only used in certain types of
 12 collisions, but this data is available in
 13 most vehicles, assuming they're 2004 onward.
 14 You have four people on the RNC who are
 15 trained to extract this data from a vehicle.
 16 Any reason why someone outside of the RNC
 17 couldn't be trained to do that?
 18 INSPECTOR DIDHAM:
 19 A. No reason at all.
 20 MR. WADDEN:
 21 Q. Okay. So, is it fair to say that an
 22 insurance company, if they wished to, if
 23 they wanted to take something like this on,
 24 with the consent of their customers, their
 25 consumers, they could do this too? They

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1 could get that training?
 2 INSPECTOR DIDHAM:
 3 A. Presumably, yeah. I'm not an insurance
 4 company, but -
 5 MR. WADDEN:
 6 Q. No, no, I understand.
 7 INSPECTOR DIDHAM:
 8 A. - but I don't see any issue with that, no.
 9 MR. WADDEN:
 10 Q. Okay. But it's a tool that can be used is
 11 the point?
 12 INSPECTOR DIDHAM:
 13 A. Oh yes, certainly.
 14 MR. WADDEN:
 15 Q. Right.
 16 INSPECTOR DIDHAM:
 17 A. And it should be noted that this equipment
 18 and this type of data is always improving.
 19 So, the parameters that are in place now of
 20 what we can download and analyse, when we
 21 started this in, you know, 2004 or 2005 the
 22 parameters were smaller. We could get speed
 23 and a couple of more things. Now it's we're
 24 getting more data from it and that's - you
 25 know, presumably that's only going to

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1 increase as advancements in technology
 2 increase.
 3 MR. WADDEN:
 4 Q. Aside from the obvious key of enforcement,
 5 are there other ways you can suggest to
 6 curtail speeding? We've talked about
 7 cameras. We've talked about these
 8 apparatuses in vehicles. The City uses
 9 things like speed humps, medians and these
 10 have been proven effective. To your
 11 knowledge, are those things helpful as well
 12 in reducing speeding?
 13 INSPECTOR DIDHAM:
 14 A. They are. I mean, they identify - I mean,
 15 we have identified areas of concern and the
 16 City is very fortunate and it's good on them
 17 to have it, that we have traffic engineers
 18 and traffic specialists within the City that
 19 they can utilize and it's a great resource
 20 to have. They can get out and do the
 21 studies and collect the data and put in
 22 place things like speed bumps or medians or
 23 roundabouts or four-way stop signs and
 24 whatnot to curb traffic and to calm some
 25 traffic issues. Other municipalities are

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1 not so fortunate because I mean, a cost
 2 comes with that.
 3 A number of occasions, I've gone out
 4 and worked with municipalities on a form of
 5 highway design or intersection design to
 6 assist them with if there was some sight
 7 line obstructions or if there was some
 8 issues that they were having with speeding
 9 in particular. One case, there was a
 10 problem down in Pouch Cove that they were
 11 having speeding on the main road going
 12 through Pouch Cove and being that it's a
 13 very narrow piece of roadway and it's a
 14 heavily congested area with pedestrians and
 15 houses down there, they were having an
 16 issue. They wanted to try to slow traffic
 17 down. And we went down and as a suggestion
 18 - of course, it's got to come from them to
 19 be implemented, and as a suggestion to them,
 20 we looked at putting in a four-way stop in
 21 the area that they were having a problem
 22 with and that's what they enacted and within
 23 two months, there was not one more complaint
 24 there. It resolved the issue. So, there
 25 are issues then it comes to traffic timing

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1 that can be put in place to deal with
 2 speeding and issues.
 3 MR. WADDEN:
 4 Q. Okay. I think I know the answer to this
 5 given everything you've already said to me,
 6 but I mean, we know distracted driving to be
 7 a problem. We know that more measures have
 8 come in now under the Highway Traffic Act.
 9 Anecdotally, everybody in the room I'm sure
 10 can speak to seeing people on their phones
 11 daily in their vehicles. No doubt it is a
 12 cause of accidents.
 13 INSPECTOR DIDHAM:
 14 A. Certainly.
 15 MR. WADDEN:
 16 Q. Even though when we look at the numbers in
 17 the Juristat reports they might reflect say,
 18 you know, very low numbers in terms of
 19 people, that's because it's not reported by
 20 the person doing it and the person in the
 21 other vehicle probably didn't see it. But
 22 it's happening. So, how do we stop it?
 23 INSPECTOR DIDHAM:
 24 A. You're right, it's probably the most
 25 inaccurate number that you're going to see

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1 as it relates to the contributing factor to
 2 a collision.
 3 MR. WADDEN:
 4 Q. Right.
 5 INSPECTOR DIDHAM:
 6 A. Because outside of somebody witnessing a
 7 collision happening and then they report it
 8 to the police saying "I saw that person on
 9 their phone or texting" that we can take
 10 enforcement action on, we don't have the
 11 authority – currently we don't have the
 12 authority to ask for or demand or get
 13 judicial authorization for someone's phone
 14 records to determine if they were on their
 15 phone. It can't be a fishing trip for us.
 16 We have to have some form of evidence to
 17 either go get a search warrant or some other
 18 form of judicial authorization to obtain
 19 that data to determine it. So, it is a huge
 20 issue. How do we do it? Again, it comes
 21 down to the enforcement side.
 22 MR. WADDEN:
 23 Q. Yeah.
 24 INSPECTOR DIDHAM:
 25 A. It's going to be one of the biggest

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1 expectations and biggest piece of
 2 information that we're going to put to our
 3 officers if and when this initiative, this
 4 larger traffic group comes together that
 5 we're going to be tackling, that we're going
 6 to be working on.
 7 So again, for our side of things, we'll
 8 continue on with the education and awareness
 9 piece. I believe the Provincial Government
 10 has done a great job as it relates to the
 11 legislation because we're in the top group
 12 within the country as it relates to the
 13 penalty and the points that come with
 14 distracted driving legislation, breaches of
 15 that Act. And now we just need to connect
 16 the enforcement side of it for our purposes.
 17 MR. WADDEN:
 18 Q. Okay. We're almost into October and so it's
 19 obvious what's coming on October 17th, Bill
 20 C45 will come into effect and if retailers
 21 are available to operate here, they will be
 22 able to sell cannabis. Now we're not going
 23 to get into those laws or the reasons behind
 24 them or anything, but I just want to get a
 25 general understanding of what the RNC's

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1 concerns are in relation to cannabis. In
 2 other words, do they fear an increase in
 3 collisions? And if that concern is there,
 4 what will the response be?
 5 INSPECTOR DIDHAM:
 6 A. Quite frankly and openly, I hope that our
 7 numbers don't increase. I think I'm being
 8 over optimistic in saying that. Looking at
 9 the statistics from states in the United
 10 States that have – you know, in 2012, when
 11 we got Colorado and Washington state that
 12 brought in legalization of marijuana and
 13 cannabis, their injury and fatality rate
 14 went through the roof afterwards. Like, you
 15 know, basically doubled. And to say it's
 16 concerning for us is an understatement.
 17 That being said, over the last year we
 18 have two officers, myself and another
 19 officer, who are on a national committee
 20 dealing with the legislation that's coming
 21 in, that's provincial and federal
 22 legislation that's coming in. We're
 23 training officers. We're running short in a
 24 number of our areas because we have officers
 25 that are actually sent away for training.

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1 We're preparing as best we can to deal with
 2 the issue of cannabis that's coming in.
 3 And I'm not talking about people, you
 4 know, consuming in their own private life
 5 and all that kind of stuff. Our biggest
 6 concern is we got to try to keep it out of
 7 cars and out of vehicles. The provincial
 8 legislation that's coming in, I know that's
 9 going to address that. Again, that's a
 10 living document that may require tweaking as
 11 time goes by, as things start to unfold and
 12 as other issues arise or maybe it needs even
 13 to be softened. Who knows as we move along?
 14 But again, it's something that the Province
 15 is fully aware of.
 16 Both police forces, both us and the
 17 RCMP, we're jointly training all the time as
 18 it relates to this concept and this problem.
 19 It's the biggest issue that we're going to
 20 be dealing with federally as it relates to –
 21 and provincially, as it relates to new
 22 legislation that's coming in. You know, and
 23 again, it's coming down to properly putting
 24 out our resources to deal with it.
 25 So, again, I'm hoping that things don't

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1 go the other way, go downhill. I'm not
 2 overly optimistic that it won't for a period
 3 of time. But again, we're working on things
 4 to be prepared for it as best as we can.
 5 Again, nobody can really have a looking
 6 glass to look through now to be able to see
 7 how bad it's going to be or how the effect
 8 is going to be. But again, the messaging is
 9 out there. The Province has started
 10 messaging just recently about this and our
 11 messages are going to be again about the
 12 education and awareness. We're going to be
 13 heavy on that over the next period of time
 14 and as it unfolds after October 17th, we're
 15 going to be heavy on the enforcement side of
 16 it as well.
 17 (2:30 p.m.)
 18 MR. WADDEN:
 19 Q. And just staying with that for a moment, I
 20 mean, I get that after this comes into play,
 21 I think Bill C46 will give you extended
 22 powers in terms of enforcement when it comes
 23 to cannabis. Can you just give me an idea
 24 though how are you dealing with it now? I
 25 mean, obviously it's happening now anyway.

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1 INSPECTOR DIDHAM:
 2 A. Yeah.
 3 MR. WADDEN:
 4 Q. There are people who will drive impaired in
 5 terms of marijuana. How does an officer
 6 deal with that now? Do we see a lot of
 7 that?
 8 INSPECTOR DIDHAM:
 9 A. We do. Look, you know, you may remember
 10 last year that the numbers came out and it
 11 was out in a lot of local media outlets that
 12 the province, and in particular the
 13 northeast Avalon area, had the highest
 14 concentration, the highest per capita rate
 15 of impaired driving in the country. That's
 16 true. We're seeing it. We're arresting and
 17 dealing with approximately 400 impaired
 18 drivers every year and that number has not
 19 decreased. It's always been 380, 420 every
 20 year. So, the number has been consistent
 21 each year.
 22 We have officers that are trained to
 23 deal specifically with drug recognition
 24 evaluation. So, we have 12 officers now
 25 that are trained, eight of which are here in

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1 the northeast Avalon that are trained to do
 2 psychophysical testing on a suspected
 3 impaired driver by drug.
 4 MR. WADDEN:
 5 Q. Okay.
 6 INSPECTOR DIDHAM:
 7 A. And we also have a number of officers who
 8 are trained to deal with the alcohol side of
 9 things. So, when it comes to breath
 10 testing, you know, conventional old-school
 11 what we refer to as breathalyser testing.
 12 So, I'm one of those as well. And so,
 13 that's – it's a high priority for us to
 14 ensure that our officers are trained and
 15 ready for this.
 16 Almost all of our frontline uniformed
 17 officers are trained in standardized field
 18 sobriety testing. So, it's basically the
 19 first level of drug recognition evaluation
 20 testing. The second step, of course, is to
 21 be a full DRE trained officer, but almost
 22 all of our frontline officers are trained to
 23 be SFST compatible and able to do the
 24 roadside testing. It's our objective and
 25 our priority to have everybody trained and

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1 we have more training this fall to deal with
 2 that issue.
 3 MR. WADDEN:
 4 Q. So overall in everything you've said, the
 5 key is enforcement, enforcement,
 6 enforcement, along with the other pillars,
 7 education, awareness and you're working on
 8 increasing your ability when it comes to
 9 enforcement?
 10 INSPECTOR DIDHAM:
 11 A. That's right.
 12 MR. WADDEN:
 13 Q. Okay. Madam Chair, I've had Inspector
 14 Didham for over an hour here asking him
 15 questions. I think the reality is we could
 16 have him here for a couple of days if we
 17 really wanted to drill down. But we don't,
 18 and there are other folks here who may have
 19 some questions. So, maybe we should hand it
 20 off to the other people in the room.
 21 CHAIR:
 22 Q. Thank you. Thank you, Inspector Didham.
 23 Mr. Gittens, did you have any questions?
 24 MR. GITTENS:
 25 Q. Yes, thank you, Madam Chair. Inspector

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1 Didham, putting aside – because I think you
 2 said no one can predict what's going to
 3 happen with the marijuana legislation or the
 4 impact. You have your concerns, but I take
 5 it you don't have any specific figures to
 6 tell us what percentage there might be an
 7 increase by? Is that correct?
 8 INSPECTOR DIDHAM:
 9 A. That's right.
 10 MR. GITTENS:
 11 Q. Okay. So, putting that particular aspect
 12 aside, the figures you've shown us for the
 13 last 2017, '16, '15 indicate about a 25
 14 percent decline over the last four years in
 15 motor vehicle accidents in the province or
 16 just in the area?
 17 INSPECTOR DIDHAM:
 18 A. Just the RNC jurisdiction.
 19 MR. GITTENS:
 20 Q. Just the RNC jurisdiction. So, there is
 21 this issue of marijuana. There's also the
 22 issue of distracted driving, as to whether
 23 that's increasing or anecdotally we think it
 24 is, but in terms of the figures before this
 25 Board, we can safely say that there has been

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1 a 25 percent decrease in the number of
 2 accidents in your jurisdiction over the last
 3 four or five years?
 4 INSPECTOR DIDHAM:
 5 A. That's correct.
 6 MR. GITTENS:
 7 Q. Okay. And you know of nothing else that's
 8 going to effectively change that trend,
 9 apart from the things we've just talked
 10 about, the distracted driving and perhaps
 11 the marijuana?
 12 INSPECTOR DIDHAM:
 13 A. That's correct.
 14 MR. GITTENS:
 15 Q. Okay. Can you tell the Board whether or not
 16 the volume – when I say volume I mean the
 17 extent of the damages to vehicles, is that
 18 something that the RNC tracks as well?
 19 INSPECTOR DIDHAM:
 20 A. No. Generally what we track is if a
 21 collision is reportable as it relates to the
 22 damage value once it exceeds \$2,000, we
 23 don't track anything after that unless it's
 24 happening to our own vehicles. But
 25 generally, if it's a private or commercial

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1 vehicle and if it's in the tens of thousands
 2 of dollars, generally no, we don't track
 3 that.
 4 MR. GITTENS:
 5 Q. Okay. So, you can't indicate whether or not
 6 more expensive accidents are happening, just
 7 the fact that more – fewer are happening
 8 each year?
 9 INSPECTOR DIDHAM:
 10 A. That's correct.
 11 MR. GITTENS:
 12 Q. Okay. You've mentioned that the RNC is
 13 working with a number of other agencies and
 14 you've mentioned the City as being one of
 15 them, and we've had someone from the City
 16 explain the initiatives they're taking to
 17 assist in making driving more safe for
 18 Newfoundlanders and Labradoreans. And in
 19 addition to that, you've mentioned a new
 20 initiative that will be unfolding in the
 21 next short while that you said a lot of
 22 resources are being put into. Am I getting
 23 that correct?
 24 INSPECTOR DIDHAM:
 25 A. Yeah, that's our proposal to the provincial

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1 government and the municipal partners that
 2 we have. It's looking very positive that
 3 that's going to come to fruition, but until
 4 it does, it's not there yet, but it's
 5 looking very likely that that's what's going
 6 to happen.
 7 MR. GITTENS:
 8 Q. Okay. And I thought – you sounded a little
 9 bit pleased with the fact that the resources
 10 were going to be there on 6 September
 11 (phonetic), promised in any event, at a high
 12 level. Is that the impression I got from
 13 your testimony?
 14 INSPECTOR DIDHAM:
 15 A. Yeah. It's at a high level of discussions
 16 right now and my optimism is high because
 17 all the feedback that I've been receiving is
 18 very positive and that it's – you know,
 19 unless something comes up that stumbles or
 20 trips us up on this initiative, it's moving
 21 along very positively.
 22 MR. GITTENS:
 23 Q. I'll just caution you to be mindful because
 24 politicians promise a lot before they
 25 actually deliver. But in any event, the

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1 fact of the matter is you're saying there's
 2 been a downward trend. You're anticipating
 3 some initiatives that will assist in the
 4 enforcement and so on?
 5 INSPECTOR DIDHAM:
 6 A. Yes.
 7 MR. GITTENS:
 8 Q. So therefore one can only say if you put
 9 those two together, we're looking overall at
 10 a continued downward trend as long as we
 11 don't factor in the marijuana issue or the
 12 distracted driving issue?
 13 INSPECTOR DIDHAM:
 14 A. Yeah, and even factoring those in, we're
 15 hopeful that those numbers will continue to
 16 go down because again we're hoping to have
 17 those resources or the issues surrounding
 18 resources worked on and resolved basically.
 19 MR. GITTENS:
 20 Q. Okay. Coming at it from a consumers'
 21 perspective, I'm aware that the newer
 22 vehicles tend to have a lot more what I
 23 would call safe driving accessories or
 24 options. They seem to be able to park
 25 themselves and to tell you every time you're

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1 drifting into the next lane, things of that
 2 sort. Is there any study or have you guys
 3 kept track of whether or not these new
 4 vehicles are better or safer in terms of the
 5 number of accidents that have been
 6 occurring?
 7 INSPECTOR DIDHAM:
 8 A. Well, generally, I agree with you. More
 9 vehicles, especially you know, within the
 10 last three or four years, the improvements
 11 to technology within the vehicles now, with
 12 side curtain airbags, with retractors on
 13 seatbelts, with lane departure warning
 14 devices, and a lot of these additions are
 15 coming as standard equipment on cars now.
 16 You know, at one time a lot of it was
 17 options that you could buy for extra money,
 18 you know. But generally now, a lot of these
 19 vehicles, because they're safety oriented,
 20 are coming as standard equipment which is
 21 fantastic and you're correct, I do believe
 22 that, you know, generally in society we're
 23 seeing the effects of that because the
 24 seriousness of at least what we're seeing
 25 for our collisions, personal injury and

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1 fatalities have gone down as well. And I
 2 would like to believe that that has been a
 3 contributing factor to it.
 4 MR. GITTENS:
 5 Q. Okay. So, as the years go by, when we have
 6 these things that tell us it's going to stop
 7 whether we like it or not because you're too
 8 close to the car in front of us, the reality
 9 is over the next several years, we can still
 10 anticipate that adding to the downward trend
 11 in the number of motor vehicles?
 12 INSPECTOR DIDHAM:
 13 A. Hopefully, yeah. That's certainly a good
 14 concept and I agree it should.
 15 MR. GITTENS:
 16 Q. Okay. Thank you very much. Those are all
 17 the questions I have, Madam Chair.
 18 CHAIR:
 19 Q. Thank you, Mr. Gittens. Mr. Fraize?
 20 FRAIZE, Q.C.:
 21 Q. We have no questions.
 22 CHAIR:
 23 Q. Thank you. Mr. Gillingham?
 24 MR. GILLINGHAM:
 25 Q. Yes, thank you. I guess I should introduce

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1 myself. I'm here for Kevin Stamp today and
 2 the IBC. My name is Michael Gillingham.
 3 So, Inspector Didham, I'll just have a few
 4 brief questions, I guess, or I'll try to
 5 keep them brief anyway so you don't have to
 6 hear me talking all afternoon.
 7 Earlier you mentioned that the RNC
 8 partners with various interest groups and
 9 community groups and city councils and so on
 10 for safety initiatives. Is that right?
 11 INSPECTOR DIDHAM:
 12 A. That's correct.
 13 MR. GILLINGHAM:
 14 Q. And my understanding is they've also
 15 partnered before with the Insurance Bureau
 16 of Canada?
 17 INSPECTOR DIDHAM:
 18 A. Yeah.
 19 MR. GILLINGHAM:
 20 Q. And insurance companies and so on, right?
 21 INSPECTOR DIDHAM:
 22 A. That's right.
 23 MR. GILLINGHAM:
 24 Q. So, what sorts of initiatives could you tell
 25 us about that the RNC has worked with the

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1 insurance companies on?
 2 INSPECTOR DIDHAM:
 3 A. We've worked with the IBC on a number of
 4 initiatives. One in particular I can
 5 remember is the Child in Safe Seats program.
 6 So, inspecting and training our officers to
 7 inspect safety, you know, for children's
 8 seats, infant seating, how it's positioned
 9 in the vehicle, how it's installed in the
 10 vehicle. That's one of the programs that
 11 we've worked with the IBC on.
 12 There are other training initiatives
 13 regarding identifying stolen vehicles and
 14 basically – I haven't – perhaps you can
 15 correct me because I haven't partaken in
 16 this training part because it was more
 17 designed for our stolen vehicle officers
 18 that deal with stolen vehicles, but I know
 19 the IBC has assisted us and provided
 20 training to our members to deal with
 21 identifying vehicles that have been involved
 22 in stolen – that are stolen and have been
 23 involved in stage collisions and things like
 24 that.
 25 As well, with the Provincial Insurance

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1 Brokers Association of Newfoundland and
 2 Labrador gratefully they provided the
 3 police, the RNC with two big message signs
 4 and radar feedback signs. So, if you see
 5 signs that construction companies use with
 6 messages on there, you know, slow down and
 7 things like that, we have two very similar
 8 signs with that, but they also have radars
 9 on them. So, if we want to put those out
 10 and collect data from what we believe are
 11 problem areas or high complaint areas, we'll
 12 put that out in areas and collect the data
 13 to determine whether or not a complaint is
 14 viable or if it's not really.
 15 MR. GILLINGHAM:
 16 Q. Sure.
 17 INSPECTOR DIDHAM:
 18 A. And those are offered to towns and
 19 municipalities as well to use for their
 20 purposes as well, for the same – basically
 21 the same issues.
 22 MR. GILLINGHAM:
 23 Q. Sure. And Inspector Didham, I believe we
 24 discussed briefly the issue of uninsured
 25 motorists on the road. I appreciate how

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1 these drivers – the answers may seem
 2 somewhat self-serving, but in your time as a
 3 police officer, as a constable and sergeant
 4 and so on, do these drivers give a reason
 5 for why they're not carrying insurance?
 6 INSPECTOR DIDHAM:
 7 A. Most of them will – and again, this is just
 8 speaking from stopping a lot of the people -
 9 MR. GILLINGHAM:
 10 Q. Right.
 11 INSPECTOR DIDHAM:
 12 A. - can't afford it. That's what a lot of
 13 people – that's the usual response for those
 14 who actually admit to it, because a lot of
 15 the times, the high majority of the people
 16 that are stopped are not actually admitting
 17 to it.
 18 MR. GILLINGHAM:
 19 Q. Sure.
 20 INSPECTOR DIDHAM:
 21 A. Especially with the new legislation that the
 22 onus comes back to them to advise us, but
 23 generally, either at roadside or during the
 24 Court procedure, because some of these cases
 25 end up in Court, when we're testifying, the

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1 information comes out it was cost
 2 prohibitive.
 3 MR. GILLINGHAM:
 4 Q. So, costs of insurance for these people are
 5 one reason they cite, I guess, for not
 6 having insurance on the rig?
 7 INSPECTOR DIDHAM:
 8 A. Yeah.
 9 MR. GILLINGHAM:
 10 Q. And I think you mentioned that it can wind
 11 up in Court, so I guess from the enforcement
 12 standpoint, I guess they could be issued
 13 ticket? What are the consequences of not
 14 carrying insurance on your vehicle?
 15 (2:45 p.m.)
 16 INSPECTOR DIDHAM:
 17 A. Well, apart from just a ticket, which is
 18 \$2300 and six points and that increases, of
 19 course, with subsequent offences, a lot of
 20 times it results in some people will –
 21 they'll have a suspended driver's license
 22 because of it because they ran out of points
 23 basically. So again, that becomes more of a
 24 problem and you know, it's just a snowball
 25 effect because when people have a suspended

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1 driver's license, there are provisions under
 2 the Highway Traffic Act that allow for
 3 imprisonment for having a suspended driver's
 4 license. So, I mean, something that could
 5 seem fairly insignificant to a layperson
 6 saying "well, I got stopped for not having a
 7 driver's license" well, really it was a
 8 suspended driver's license and now you're
 9 commanded or directed to go to Court, not
 10 just a ticket that we would issue. We would
 11 actually give them an appearance notice to
 12 appear in Court and then lo and behold, when
 13 you go to Court, they got two-three months
 14 in prison because of it. So, again, it has
 15 a snowball effect. And we see that – you
 16 know, that's not uncommon to see.
 17 MR. GILLINGHAM:
 18 Q. Right. And I believe that earlier there was
 19 some discussion as well about, I guess,
 20 potential measures that insurance companies
 21 could take, and I believe the sharing of
 22 information with Motor Vehicles and I think
 23 data recorder potentially being installed in
 24 cars. I suppose you can't really speak to
 25 what changes in regulation would be required

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1 for those steps to occur, could you?
 2 INSPECTOR DIDHAM:
 3 A. Not really, no. I mean, that's something
 4 that I think you could work with either the
 5 deputy ministers of the Department of
 6 Justice and Public Safety on any
 7 requirements there. One thing I would like
 8 to add, because it's good you brought up
 9 there because you triggered my mind on it,
 10 is that as a police agency, I can tell you
 11 that it's great to work with groups such as
 12 the IBC and IBAN and different groups and
 13 we're always open to that. So, if there's
 14 any initiatives that you can see or anything
 15 that – any suggestions that you can see that
 16 we can be a part of, then by all means, we
 17 are open to that.
 18 MR. GILLINGHAM:
 19 Q. Sure. Thank you, Inspector Didham. I just
 20 have another, I guess, just sort of a brief
 21 question on – I'd like to refer, if I could,
 22 to the Corporate Plan for 2014 to 2017.
 23 INSPECTOR DIDHAM:
 24 A. Yeah.
 25 MR. GILLINGHAM:

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1 Q. And I'm just looking for your assistance,
 2 Inspector, I guess, to understand a little
 3 bit about where this data comes from. So,
 4 what I'd like to do is refer to the first
 5 sentence there, I guess, under improve
 6 highway safety. So, it says here just to –
 7 I'll just read it out. "A review of the RNC
 8 police reported incidents by classification
 9 in 2013 indicated over 60 percent of
 10 incidents in RNC jurisdictions related to
 11 provincial traffic violations, motor vehicle
 12 accidents and Criminal Code of Canada
 13 traffic impaired violations." So, they talk
 14 about the term there at the start of that
 15 sentence as RNC police reported incidents.
 16 So, an incident would be reported to the
 17 RNC, I believe you mentioned if the
 18 vehicular damage exceeds a certain amount
 19 potentially?
 20 INSPECTOR DIDHAM:
 21 A. Yes.
 22 MR. GILLINGHAM:
 23 Q. And if there's an injury I believe was
 24 another circumstance you indicated a
 25 collision be reported to the RNC?

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1 INSPECTOR DIDHAM:
 2 A. Yeah.
 3 MR. GILLINGHAM:
 4 Q. But there's a recognition here, it would
 5 appear to me, are there certain incidents
 6 which may not be reported to the RNC?
 7 INSPECTOR DIDHAM:
 8 A. That's right.
 9 MR. GILLINGHAM:
 10 Q. Sure.
 11 INSPECTOR DIDHAM:
 12 A. The best – if I can – maybe I could give you
 13 some clarity on all that there, those
 14 numbers.
 15 MR. GILLINGHAM:
 16 Q. Absolutely, sure.
 17 INSPECTOR DIDHAM:
 18 A. Basically what it's referring to is that
 19 goal number one back in this previous
 20 corporate plan and of course, goal number
 21 seven, which is not to diminish the
 22 importance that we put on improving highway
 23 safety, it's basically put in place because
 24 we deal with such a high volume of traffic-
 25 related incidents, and what I refer to

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1 traffic-related incidents, if we have
 2 impaired driving calls, motor vehicle
 3 collisions, general traffic complaints,
 4 someone calls in because someone got cut off
 5 or things like that, traffic stops. So
 6 anytime we stop a vehicle and issue a ticket
 7 or have a contact with a person, things like
 8 that. Last year in 2017, just to give you
 9 an idea, we had 46,500 of those types of
 10 incidents, just in the RNC's jurisdiction.
 11 We answer about approximately, and this is a
 12 good approximate so it's not a wide number,
 13 about 80,000 calls per year, call for
 14 service in the Royal Newfoundland
 15 Constabulary area. So, when you look at the
 16 number of complaints and personal contacts
 17 or, you know, interactions that we have with
 18 either a caller, a traffic stop, a motor
 19 vehicle collision, it's a high percentage as
 20 it relates to the number of incidents that
 21 we deal with relate to traffic-related
 22 matters.
 23 MR. GILLINGHAM:
 24 Q. Sure. So, the RNC really depends, I guess,
 25 when it comes to reporting of accidents for

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1 participation of the public, I guess, the
 2 motoring public?
 3 INSPECTOR DIDHAM:
 4 A. Yeah.
 5 MR. GILLINGHAM:
 6 Q. So, the data that is reflected in this
 7 corporate plan and in the various Juristat
 8 reports, a lot of that is based on reporting
 9 by people involved in accidents, I suppose
 10 potentially witnesses, hospitals and so on,
 11 right?
 12 INSPECTOR DIDHAM:
 13 A. Right.
 14 MR. GILLINGHAM:
 15 Q. Okay. Sorry, one moment. So, I just want
 16 to refer to another line. I guess the next
 17 sentence in that opening section there where
 18 it says "in 2013". So that clause just says
 19 in 2013, they say there's 6,284 motor
 20 vehicle collisions in the RNC jurisdictions
 21 overall. I believe you talked about that.
 22 Then it says "this represents five percent –
 23 an increase of five percent from 2012". It
 24 says the number of motor vehicle accidents
 25 resulting in personal injury in RNC

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1 jurisdictions decreased by an overall of
 2 2.43 percent and there's some more numbers
 3 there from 1,278 in 2012 to 1,247 in 2013.
 4 So, to my observation at least, this is the
 5 only document of the Juristat reports and
 6 the corporate plans which reference personal
 7 injuries. So, how does the RNC, I guess,
 8 regard or what would it regard as a personal
 9 injury?
 10 INSPECTOR DIDHAM:
 11 A. There is a report here that deals with non-
 12 fatal.
 13 MR. GILLINGHAM:
 14 Q. Non-fatal?
 15 INSPECTOR DIDHAM:
 16 A. Can we look in the Juristat reports?
 17 MR. GILLINGHAM:
 18 Q. Sure. You'd be referring, for example, --
 19 and we can probably take any of the Juristat
 20 reports, in the 2015 report or -
 21 MR. WADDEN:
 22 Q. Which one are you looking at, Inspector?
 23 INSPECTOR DIDHAM:
 24 A. This one here.
 25 MR. WADDEN:

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1 Q. You're looking at the statistical report
 2 that we submitted to the Board yesterday.
 3 MR. GILLINGHAM:
 4 Q. Sure, the statistical report. That works as
 5 well. So, the statistical report and are
 6 you referring to the non-fatal injury column
 7 in the -
 8 INSPECTOR DIDHAM:
 9 A. That's correct.
 10 MR. GILLINGHAM:
 11 Q. Or I should say the column doesn't use the
 12 word "injury"
 13 INSPECTOR DIDHAM:
 14 A. Right.
 15 MR. GILLINGHAM:
 16 Q. But are you saying that column, those are in
 17 fact injuries or just collisions?
 18 INSPECTOR DIDHAM:
 19 A. They're injuries and they're not fatal.
 20 MR. GILLINGHAM:
 21 Q. So, there is no column for -
 22 INSPECTOR DIDHAM:
 23 A. Personal injury.
 24 MR. GILLINGHAM:
 25 Q. Right. And when someone is injured in a

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1 motor vehicle accident, there's a
 2 requirement that they report that to the
 3 RNC?
 4 INSPECTOR DIDHAM:
 5 A. That's correct.
 6 MR. GILLINGHAM:
 7 Q. Inspector, what about the situation where
 8 someone may be involved in a motor vehicle
 9 accident; there may be very minor damage to
 10 the vehicle, under \$2000 let's say, and it's
 11 perhaps weeks or maybe even months later
 12 that the individual in the accident starts
 13 to develop a stiff neck, a pain in their
 14 back or something else which is attributable
 15 to the accident in the view of their medical
 16 professionals and the doctors and so on, are
 17 they expected to report that collision then
 18 to the RNC?
 19 INSPECTOR DIDHAM:
 20 A. They are. You know, again, it's not
 21 something that happens a lot, but it has
 22 happened in the past. I do recall some
 23 incidents similar to that where a person
 24 will call us, you know, up to a year even
 25 and they would report to us that they were

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1 involved in this collision. We would not
 2 have even any documentation. It's
 3 problematic for us because a lot of times
 4 the other party may not be known. So, if
 5 there were two parties involved and the
 6 damage was relatively minor, they don't have
 7 the information but they still want to make
 8 a report to us about the injury. So, we
 9 will take that report then. Even though
 10 there's a requirement under the Highway
 11 Traffic Act to report it within a period of
 12 time, we will take the report from them.
 13 MR. GILLINGHAM:
 14 Q. Right. But I think as you said that was
 15 relatively uncommon, is it?
 16 INSPECTOR DIDHAM:
 17 A. It is, yeah.
 18 MR. GILLINGHAM:
 19 Q. And the RNC, I suppose, has no way of
 20 tracking - if nobody reports a potential
 21 injury, there's no way for the RNC to track
 22 those numbers of unreported accidents?
 23 INSPECTOR DIDHAM:
 24 A. No. And in addition to that, there are
 25 times, I'm sure, that people actually are

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1 involved in matters where no one is injured
 2 but the property damage exceeds \$2,000 and
 3 for whatever reason they decide not to
 4 report it to us, even though, yes, there's a
 5 requirement under the Highway Traffic Act
 6 legislation to do it. Some people just -
 7 whether, you know, they don't want it on
 8 their driving abstract or they don't want to
 9 have their insurance involved, things like
 10 that. Some people just decide not to report
 11 it to us.
 12 MR. GILLINGHAM:
 13 Q. So, this data, I guess that sort of brings
 14 us back to what I believe you mentioned
 15 earlier. It depends on the public, people
 16 involved in the accidents, to report this
 17 information to the RNC?
 18 INSPECTOR DIDHAM:
 19 A. Sure it is, yeah.
 20 MR. GILLINGHAM:
 21 Q. So, even if collisions are down, Inspector,
 22 I guess we look at - we'll stay on this
 23 document, the Statistical Report. Even if
 24 collisions are down, can it be said that
 25 injuries resulting from collisions are down?

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1 INSPECTOR DIDHAM:
 2 A. Sorry?
 3 MR. GILLINGHAM:
 4 Q. We have, I guess, in the chart here in the
 5 total column we can see how the number of
 6 collisions have decreased, but I guess the
 7 number of injuries, are you saying would
 8 that be reflected – that would be reflected
 9 in the non-fatal column?
 10 INSPECTOR DIDHAM:
 11 A. That’s correct.
 12 MR. GILLINGHAM:
 13 Q. Right. And of course, there’s no way for
 14 the RNC to track the number of claims for
 15 bodily injuries in the civil process that
 16 involves all us lawyers?
 17 INSPECTOR DIDHAM:
 18 A. No.
 19 MR. GILLINGHAM:
 20 Q. There’s no tracking of that information?
 21 INSPECTOR DIDHAM:
 22 A. No idea about that.
 23 MR. GILLINGHAM:
 24 Q. Those are all my questions.
 25 CHAIR:

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1 Q. Thank you, Mr. Gillingham. Mr. Feltham?
 2 MR. FELTHAM:
 3 Q. I don’t have much to ask, Inspector Didham,
 4 but I did want to ask you about RCMP
 5 knowledge in terms of that. Presumably RNC
 6 has jurisdiction in the province -- most of
 7 the balance of the province would be under
 8 the jurisdiction of the RCMP?
 9 INSPECTOR DIDHAM:
 10 A. Most of the – sorry?
 11 MR. FELTHAM:
 12 Q. The balance of the province that the RCMP
 13 doesn’t – sorry, the RNC does not cover?
 14 INSPECTOR DIDHAM:
 15 A. That’s right. Geographically speaking, the
 16 RCMP covers more territory. Population
 17 wise, the RNC covers a little more than half
 18 the population. So that’s the balance, I
 19 guess.
 20 MR. FELTHAM:
 21 Q. And you’ve spoken of the various efforts and
 22 measures being taken by the RNC in terms of
 23 enforcement and education and so on. Do the
 24 RCMP have similar committed resources in
 25 their jurisdictions for those components?

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1 INSPECTOR DIDHAM:
 2 A. I’d like to be able to respond to you on
 3 that. Again, I have counterparts within the
 4 RCMP that I work closely with, but I think
 5 it would be unfair for me to comment on how
 6 they deploy their resources as it relates to
 7 these types of initiatives.
 8 MR. FELTHAM:
 9 Q. Right. So, you don’t know whether they have
 10 distracted driving simulators that they put
 11 in schools or things of that nature?
 12 INSPECTOR DIDHAM:
 13 A. There are times that we send ours out to
 14 them. So, we do share resources like that.
 15 I mean, there’s been times when members in
 16 Gander wanted to use it or Grand Falls with
 17 the RCMP. So, we do – we have very close
 18 working relationships with the RCMP. So,
 19 when it comes to resources or specialized
 20 resources, we share those a lot of times.
 21 MR. FELTHAM:
 22 Q. And I wanted to ask you about taxi cabs.
 23 So, some of the data that’s come before the
 24 Board has indicated that there’s a much
 25 higher frequency of accidents involving

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1 taxis versus the private passenger
 2 automobile, the general population.
 3 INSPECTOR DIDHAM:
 4 A. Right.
 5 MR. FELTHAM:
 6 Q. I don’t know if you have any – in your
 7 experience on the enforcement and education
 8 side, any recommendations as to what the
 9 taxi industry might do in that regard to
 10 bring their numbers down?
 11 INSPECTOR DIDHAM:
 12 A. You know, just one piece of equipment we
 13 have – and again, I know it’s a significant
 14 issue with taxi companies. I mean, I know
 15 the cost of insuring is high throughout the
 16 country, but perhaps one piece of equipment
 17 that could be used, a lot of companies are
 18 going with it now, automated vehicle
 19 locators. We have them in our police
 20 vehicles. We refer to them as AVL, so it’s
 21 a GPS tracking device that we have in our
 22 cars, so it can track everything, similar to
 23 what the CDR, the crash data recorder,
 24 reports. This piece of equipment reports it
 25 live. So, if you have – we have monitors in

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1 our communications centre. So, if our
 2 patrol cars are travelling, it's show us the
 3 speed they're going, whether the lights are
 4 on, siren is on, where they're located, you
 5 name it. It shows all of that data. So, I
 6 mean, if that's something that – and I can
 7 say that in speaking with the people who
 8 installed it with us, because I was a part
 9 of that committee, it's not a huge
 10 significant cost for it. Again, that's a
 11 suggestion. It's something that private
 12 companies would have to look at, but maybe
 13 that's something that they can look at.
 14 MR. FELTHAM:
 15 Q. Those are my questions. Thanks.
 16 CHAIR:
 17 Q. Thank you, Mr. Feltham.
 18 O'FLAHERTY, Q.C.:
 19 Q. I don't have any questions. Thank you,
 20 Madam Chair.
 21 COMMISSIONER OXFORD:
 22 Q. No questions.
 23 CHAIR:
 24 Q. I have no questions as well. Thank you very
 25 much, Inspector Didham.

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1 INSPECTOR DIDHAM:
 2 A. Thank you.
 3 CHAIR:
 4 Q. That was very interesting.
 5 INSPECTOR DIDHAM:
 6 A. Good. Thank you.
 7 CHAIR:
 8 Q. I'm going to suggest maybe we take a quick
 9 break, five minutes at the most. Thanks
 10 again, Inspector Didham.
 11 (BREAK – 3:00 p.m.)
 12 (RESUME – 3:07 p.m.)
 13 CHAIR:
 14 Q. So, over to you, Mr. Feltham. Introduce
 15 your presenter. Welcome Justice Wells.
 16 MR. FELTHAM:
 17 Q. Thank you, Chair, Commissioners. Our next
 18 presenter is Justice Robert Wells. Justice
 19 Wells did provide a brief outline, I'll say,
 20 of what he intends to speak on today, at
 21 least in part. Justice Wells, thank you for
 22 coming and sharing your perspective with us.
 23 Let me know if you can't hear me or if you
 24 need me to speak up, but I think maybe what
 25 we can do is start with a little bit about

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1 you. We know that you're a Supreme Court
 2 Justice, retired now. But perhaps you could
 3 take us back a little bit earlier in your
 4 professional life and bring us forward in
 5 terms of the kind of work that you've done
 6 and your role as a Supreme Court Justice and
 7 then into your retirement.
 8 JUSTICE WELLS:
 9 A. Can you hear me okay?
 10 MR. FELTHAM:
 11 Q. Sure can.
 12 JUSTICE WELLS:
 13 A. It's I who don't hear so well now. Anyway,
 14 yes, I was called to the Bar of England and
 15 Wales in – I was born of course in
 16 Newfoundland and grew up here. Called to
 17 the Bar of England and Wales in 1958 and
 18 then two months later, three months later, I
 19 had transferred into the Bar of
 20 Newfoundland. You could do that then by
 21 writing an examination in statutes and local
 22 practice and procedure.
 23 My first professional work was with the
 24 Department of Justice. It wasn't called the
 25 Department of Justice then. It was always

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1 called the Department of the Attorney
 2 General and there wasn't a minister of
 3 justice, there was an attorney general and
 4 people at my level were called legal
 5 assistants to the attorney general.
 6 So, I did a lot of criminal work in the
 7 four years that I was there and then I
 8 decided to go into private practice myself
 9 and give that a try. I had no clients or
 10 prospective clients. Of course, I had not
 11 gone to law school with any of my
 12 contemporaries. And anyway, so I went into
 13 practice and the late Justice Lloyd Soper
 14 knew that I was going to do so and he said
 15 "can I come with you?" He was ten years
 16 senior to me. And I said "well, yes". So,
 17 it started off with Soper and Wells, then
 18 became Soper, Greene and Wells – no, Wells
 19 and Greene, and then ultimately it became
 20 Wells O'Dea Halley and the O'Dea Halley – or
 21 the O'Dea name is still on the firm, and
 22 that all happened in the '60s.
 23 So, in the '60s, after leaving the
 24 Department, I did a lot of criminal work and
 25 it merged into a lot of civil work. So, by

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1 the '70s, I was doing almost entirely civil
 2 work, civil litigation, and in these days,
 3 you had to do everything if you were
 4 practising law. So, you did conveyance and
 5 you did estate work. You did whatever you
 6 could do. The one thing that I never
 7 touched was tax and I don't know any more
 8 about it now than I knew about it then and I
 9 would not act for anybody on a taxation
 10 matter. But civil litigation was really
 11 what I did.
 12 And in other respects, I became active
 13 in Canadian Bar and ultimately became
 14 president nationally of the Canadian Bar and
 15 that was an interesting year and I learnt a
 16 lot about the profession at that time and of
 17 course, I became a Bench of the Law Society
 18 before that and ultimately president of the
 19 Law Society before the yearly presidencies
 20 were legislated, so I was president of the
 21 Law Society for about five and a half years.
 22 And then after Canadian Bar, I practised for
 23 a very short time before going to the Bench.
 24 MR. FELTHAM:
 25 Q. And in what year would that have been?

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1 JUSTICE WELLS:
 2 A. Um?
 3 MR. FELTHAM:
 4 Q. In what year did you go to the Bench?
 5 JUSTICE WELLS:
 6 A. I went to the Bench in 1986 and I was there
 7 for 22 years until I became 75 and then I
 8 retired and that was somewhat more than ten
 9 years ago.
 10 MR. FELTHAM:
 11 Q. And you say retired, but I guess that's only
 12 retired from the judicial work.
 13 JUSTICE WELLS:
 14 A. I only retired from the Bench. After about
 15 eight or nine years working in let's say
 16 supposed retirement but doing things like
 17 the Helicopter and Safety Inquiry,
 18 mediations and arbitrations and other
 19 consultations, other sort of work, as I got
 20 into my 80s, I began to think about
 21 retirement and my wife was in favour of that
 22 also, and anyway, within the past year, I've
 23 made the decision and I am now retired.
 24 MR. FELTHAM:
 25 Q. So, going back just to your work as a

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1 Supreme Court Justice, I gather in that role
 2 you would have had opportunity to interact
 3 in your role as a judge with injury
 4 claimants, those injured in automobile
 5 accidents who are involved in dispute with
 6 the insurers?
 7 JUSTICE WELLS:
 8 A. Yes, I can explain that to you. When I went
 9 to the Bench first, there were no judicial
 10 involvement in settling matters, you know,
 11 no settlement conferences. And after I was
 12 a judge for several years, we had a visit –
 13 because judges visit other jurisdictions –
 14 we had a visit from a judge named Teddy
 15 Miller in the Queen's Bench, similar court,
 16 in Alberta, and he explained how they were
 17 doing settlement conferences. And we sort
 18 of looked at each other and wondered if that
 19 was what we were appointed to do. But, I
 20 had done a tremendous amount of civil
 21 litigation which involved personal injury
 22 work before that, so I got interested in
 23 that and was asked by the Chief Justice at
 24 the time if I would draft up some rules,
 25 which I did, and we began taking settlement

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1 conferences. And they turned out to be
 2 very, very successful and I did a lot of
 3 them and recruited other judges to do them
 4 also. So that as a judge -- you know, as a
 5 practising lawyer I negotiated with other
 6 lawyers, particularly say lawyers in the
 7 firms that acted for insurance companies and
 8 I did more than hundreds perhaps of these
 9 over the years. But then as a judge, I
 10 began to do them on a fairly regular basis.
 11 Now I still kept up my end, you know,
 12 in actual litigation, but I did less
 13 criminal work and more civil work and more
 14 settlement conferences. The way I worked
 15 that was I would do three a week because I
 16 found in settlement conferences, you had to
 17 be prepared. If you weren't prepared, you
 18 were almost useless. So, I would prepare on
 19 a Monday or prepare on a Monday for Tuesday.
 20 Wednesday I'd prepare. Thursday I'd prepare
 21 and the next week I would do two, preparing
 22 actually on Sunday for Monday and working
 23 through the week that way.
 24 (3:15 p.m.)
 25 And we, as a Court had a very, very

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1 high ratio of success in settlement
 2 conferences, so that it was easy to fall
 3 behind unless you pushed really hard and
 4 pushed meant your colleagues and yourself
 5 because they were there waiting for the
 6 settlement conference. And as I say, we had
 7 a high rate of success.
 8 MR. FELTHAM:
 9 Q. And so, I gather these settlement
 10 conferences, they're involving an insurance
 11 – in terms of injury claims.
 12 JUSTICE WELLS:
 13 A. Yes, okay.
 14 MR. FELTHAM:
 15 Q. An insurance company on one side and you
 16 have an injured accident victim on the other
 17 side.
 18 JUSTICE WELLS:
 19 A. Plaintiff, yes.
 20 MR. FELTHAM:
 21 Q. A plaintiff and the -
 22 JUSTICE WELLS:
 23 A. Yes, you couldn't – you had to – before you
 24 could have a settlement conference, you had
 25 to have a standing before the Court, namely

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1 you had to be a plaintiff and there had to
 2 be a – there was almost invariably a lawyer
 3 on the other side who was a lawyer for the
 4 insurance company involved.
 5 MR. FELTHAM:
 6 Q. And the idea being that the settlement
 7 conference would help the parties reach a
 8 settlement without having to go to Court,
 9 trial?
 10 JUSTICE WELLS:
 11 A. Without having to go to trial.
 12 MR. FELTHAM:
 13 Q. Right.
 14 JUSTICE WELLS:
 15 A. You had to go through a pre-trial conference
 16 first in which that judge got a grasp of
 17 what the case was all about and decided
 18 whether there would be appropriately a
 19 settlement conference or not. So that if
 20 that was decided in that way, then the
 21 settlement conference went on the list and
 22 the list was taken in turn and we worked at
 23 them.
 24 Now, with regard to the settlement
 25 conference, it was very, very much like a

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1 mediation because you went into it and it
 2 was a process. Most settlement conference
 3 on personal injury matters took a day,
 4 sometimes might take two days, but usually
 5 it was a day. And you went in there
 6 allowing the parties to speak and
 7 encouraging the parties to speak, as well as
 8 their counsel, because people felt that they
 9 had to tell their own story and they did it
 10 sometimes very effectively. If you didn't
 11 give them the opportunity to speak
 12 themselves, they could well feel that all
 13 this was in the hands of lawyers and the
 14 judge and they didn't have a proper hearing.
 15 But when they could explain to a judge their
 16 side of things, that was very important, and
 17 usually these things took a morning and then
 18 began discussion after the break on the
 19 parameters of the case.
 20 The thing that I learnt – you learn
 21 things the hard way. The thing that I
 22 learnt was that you couldn't say as a judge
 23 "this is worth" or such and such a matter is
 24 worth 7,000; 70,000 whatever. You could
 25 only say that once and then you were done.

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1 So, what I used to search for was a range
 2 and where did I get the range to suggest?
 3 From previous judicial judgments, and we had
 4 the judgments of Newfoundland; we had the
 5 judgments of the Court of which I was a
 6 member; we had judgments of the Court of
 7 Appeal and we could refer to other judgments
 8 and ultimately to the Supreme Court of
 9 Canada and the Supreme Court of Canada, of
 10 course, was binding on everybody.
 11 But most cases are distinguishable, not
 12 insofar as the law is concerned, but as to
 13 the interpretation and the facts. And of
 14 course, the judicial role is interpreting
 15 the facts in the light of the law. So, you
 16 could get to the point, especially with good
 17 counsel, where between you and they were
 18 very knowledgeable about the law, counsel,
 19 because all – as everybody knows, all
 20 judicial decisions were recorded and
 21 published, as they are today. In my day, of
 22 course, started was published in Law Reports
 23 on paper. Now, of course, it's electronic.
 24 But they're published, so you know what
 25 other judges or judges, if you're not a

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1 judge, you know what they have decided in
 2 particular matters and you know the range
 3 that they put on various matters.
 4 So that in a personal injury case, if
 5 you could establish with the two lawyers
 6 with whom you were dealing, if you could
 7 establish a range, be it high or a low
 8 depending on the matter – if you could
 9 establish a range say in a personal injury
 10 between say 50 and 70,000, then you'd start
 11 to really work. And when I say not just the
 12 judge, but the lawyers with their clients,
 13 they'd be caucusing all the time, sometimes
 14 with the judge, sometimes without the judge
 15 and the other side would be caucusing. So,
 16 if you could work on the range and get the
 17 range to something that was fairly
 18 reasonable and within the limits of the
 19 judicial decisions that had been made, then
 20 I will think if the range is not too far
 21 apart, a settlement is well going to grow
 22 out of this. And that's where the real work
 23 began of discussion, discussion, caucusing,
 24 reasoning, more discussion with the other
 25 side, sometimes alone, sometimes altogether,

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1 and we had in – I don't know what other
 2 judges did – judges never know what other
 3 judges did until they read the Law Reports,
 4 but we began to have a very high settlement
 5 rate.
 6 Now, there always was a high settlement
 7 rate before settlement conferences and
 8 before arbitrations because people like the
 9 Late Justice Gushue and I, who were
 10 contemporaries, we settled dozens and dozens
 11 of personal injury matters.
 12 But, the judicial settlement process
 13 was a more formal process and it – after I
 14 left the Bench, people who were doing
 15 arbitration used to say to me, “well, you
 16 know, we have fewer arbitrations and you
 17 caused that” in the settlement conferences.
 18 But anyway, that joke aside, after I left
 19 the Bench, I did a lot of work sometimes in
 20 settlement – the equivalent, not only in
 21 arbitrations but in mediations because if
 22 you could get the same sort of result in a
 23 mediation which was not an expensive matter
 24 for the two clients, whereas litigation as
 25 we know is quite expensive, if you could get

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1 a settlement, everybody won. That's how I
 2 saw it. From me, as a judge or as a
 3 mediator, there was a satisfaction of
 4 getting the case settled and for the
 5 parties, it was a great relief to have this
 6 – especially on the plaintiff's side, to
 7 have the case settled, and on the
 8 insurance's side because they didn't have to
 9 settle if they didn't want to. They could
 10 always say no and take the court route. But
 11 the mediation route was a less expensive way
 12 and a lot of people in the insurance
 13 companies had a great grasp of the decisions
 14 that had been made by the courts and were
 15 sometimes just as able in the matter as
 16 lawyers because it was important to have the
 17 insurance company's representative there
 18 along with the lawyer if you were going to
 19 achieve a settlement. Sometimes that was
 20 not possible, but you'd give them the
 21 opportunity to telephone the head office or
 22 whosoever they were dealing with there to
 23 agree to a settlement. And that's how most
 24 of them got settled.
 25 And when you got into the mediation

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1 business, as I did later on, the same thing
 2 really applied. It was less formal, but it
 3 followed the same pattern. If you could
 4 find a range within which the matter fell,
 5 there was a good chance of getting it
 6 settled. If somebody wanted 100,000 and you
 7 knew as a mediator that 40,000 or 30,000 was
 8 more appropriate, you knew that the
 9 insurance company knew that as well. So,
 10 unless you could get a range into which both
 11 could fall, then the real work started and a
 12 settlement was usually achieved.
 13 MR. FELTHAM:
 14 Q. And Justice Wells -
 15 JUSTICE WELLS:
 16 A. It's a long way of answering a short
 17 question, I suppose.
 18 MR. FELTHAM:
 19 Q. I think you're getting to the answer of what
 20 your sentence has indicated in your letter.
 21 JUSTICE WELLS:
 22 A. Now, I'm talking -
 23 MR. FELTHAM:
 24 Q. They explain the mechanisms.
 25 JUSTICE WELLS:

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1 A. I'm really answering for the Board who may
 2 not be as familiar as most of the lawyers
 3 here are with the settlement process.
 4 MR. FELTHAM:
 5 Q. And just getting back to your letter, you
 6 speak of how judicial decisions influence
 7 out-of-court settlements in personal injury
 8 claims under the system we have now.
 9 JUSTICE WELLS:
 10 A. Yes.
 11 MR. FELTHAM:
 12 Q. And you spoke of the range?
 13 JUSTICE WELLS:
 14 A. Yes.
 15 MR. FELTHAM:
 16 Q. And these ranges often relate, I gather, to
 17 non-pecuniary general damage awards?
 18 JUSTICE WELLS:
 19 A. Yes. The thing that has developed is say
 20 when I was negotiating with lawyers for the
 21 insurance companies 50 years ago, you didn't
 22 have all these breakdowns. You considered
 23 everything rolled up in a package and agreed
 24 on a certain amount. But as the courts were
 25 hearing more of these, breakdowns occurred,

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1 you know. There would be, of course,
 2 pecuniary loss, loss of wages, loss of say a
 3 motor vehicle or whatever, hospital
 4 expenses, medical expenses otherwise, and
 5 began to sort of consider particular
 6 expenses and add them up, and then address
 7 the pain and suffering matter or the soft
 8 tissue injury, whatever, and eventually
 9 arriving at a judgment or something that
 10 could be within a range of a settlement
 11 conference or a mediation.
 12 MR. FELTHAM:
 13 Q. And in terms of those judicial decisions, I
 14 gather that range, from your perspective, is
 15 well known to those on the outside who are
 16 trying to negotiate the settlement of the
 17 case?
 18 JUSTICE WELLS:
 19 A. Oh, absolutely, because lawyers for the
 20 plaintiff, all they had to do was go to the
 21 Law Reports, even if they had no experience,
 22 but experience helped and experience showed,
 23 but still, the judicial decisions were
 24 available to everyone and I tell you who
 25 knew them very, very well, I've seen some

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1 very competent people in action and that was
 2 the insurance company representatives as
 3 well as the insurance company lawyers. So,
 4 both sides knew where the Courts had come
 5 from and therefore both sides would help in
 6 establishing a range.
 7 Now, if something – I've known
 8 individuals who thought that probably a
 9 \$50,000 matter was worth 500,000. Well, of
 10 course, that's beyond the bail. But usually
 11 with lawyers on both sides, you can – they
 12 would caucus with their clients all the time
 13 because they had to persuade their clients
 14 of what was reasonable and what a court
 15 might allow or the range in which a court
 16 might work. So, there was a lot of
 17 persuading, particularly of plaintiffs.
 18 Insurance companies were more knowledgeable.
 19 Their representatives are sometimes perhaps
 20 as knowledgeable as their lawyers because
 21 that's what they dealt with on a day-to-day
 22 basis.
 23 (3:30 p.m.)
 24 MR. FELTHAM:
 25 Q. And I gather, and perhaps you can elaborate

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1 on this, but – because it goes back to these
 2 ranges that you speak of, but in the present
 3 system that we have where decisions are made
 4 as to what general damages are worth for an
 5 injury, we already have effective limits on
 6 what one can receive for particular
 7 injuries, do we not?
 8 JUSTICE WELLS:
 9 A. Well, put it this way, judgments over the
 10 years have widened – not widened, I'm sorry
 11 – have become more significant. Not that
 12 judges look at it from an inflationary point
 13 of view necessarily, but costs of all kinds
 14 have increased. So, if it's the repair or
 15 loss of a motor vehicle, if it's medical
 16 expenses, everything has increased. Just as
 17 inflation, you know, applies to most things,
 18 price of food perhaps or whatever, so it
 19 applied over the years to judgments. So, I
 20 remember, you know, 50 years ago settling
 21 matters like a quadriplegic for probably
 22 \$100,000 whereas today that would be a
 23 vastly greater amount because the ranges
 24 have increased substantially over half a
 25 century to my personal experience.

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1 MR. FELTHAM:
 2 Q. And in terms of though if someone has a
 3 broken leg or as an injury as a result of an
 4 accident or they have an injured neck, the
 5 Courts have effectively prescribed ranges
 6 for what those kinds of injuries are worth?
 7 JUSTICE WELLS:
 8 A. I would say there are – yes, they have made
 9 judgments, not necessarily prescribed. They
 10 have made judgments which show ranges. Now
 11 that’s one of the very difficult roles of a
 12 judge because let’s take the whiplash. Some
 13 people can recover fairly quickly from a
 14 mild whiplash. Some people never recover.
 15 You see you can’t settle too early if you’re
 16 acting as a plaintiff’s counsel. You have
 17 two years limitation period when you must
 18 issue – within which you must issue a
 19 statement of claim. But you have to wait
 20 for your client to get better or worse or to
 21 see what happens. And I would say when I
 22 was a practising lawyer to the lawyer on the
 23 other side, look, I’m issuing a statement of
 24 claim. I may have to amend it later.
 25 There’s no rush in your filing a defence,

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1 nothing like that. But we have to wait to
 2 see how my client gets on. And lawyers
 3 still have to do that because even in a
 4 settlement conference in the Court, you
 5 can’t have a – well, you shouldn’t – and I
 6 don’t think the Court would allow a
 7 settlement conference involving personal
 8 injury within two or three months of an
 9 accident, even if they could hear it,
 10 because you have to know how this is going
 11 to work out.
 12 And as I say, some people may suffer
 13 soft tissue injuries and get over it fairly
 14 quickly. Some people may suffer soft tissue
 15 injuries which may nag them for a long time
 16 or even for life. So, the advantage of the
 17 Court process is that it looks at every
 18 aspect because when you’re a judge, you will
 19 get lawyer – besides the lawyers, you will
 20 get expert evidence from doctors and they
 21 will be from the insurance company’s doctors
 22 who very often come from Toronto, and after
 23 a while, as a sitting judge, you get to know
 24 them. So, when they walk into Court, “good
 25 morning, Doctor so and so” because you’ve

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1 had that doctor as a witness before.
 2 Whereas the witnesses for the plaintiff are
 3 whatever doctors have been treating them.
 4 Sometimes GPs, in the first instance, and
 5 then of course specialists, but you hear
 6 from a wider variety than you hear from the
 7 insurance companies who seem to have their
 8 specialists as well as non-specialists, I
 9 suppose. There’s no limit on there, so you
 10 hear all this evidence and there’s no limit
 11 on the amount of relevant evidence that you
 12 can hear and no limit on the amount of
 13 relevant argument that you can receive.
 14 So, I don’t see how any matter,
 15 personal injury or anything else, could get
 16 a better – get better treatment than is
 17 received by the Court. Now, a Court makes a
 18 decision, not everybody agrees so there may
 19 be appeals from either side, but at least
 20 the treatment has been given and the Court
 21 of Appeal has access to that treatment and
 22 the Supreme Court of Canada, if it goes all
 23 the way up, has access to everything that
 24 took place down the line.
 25 So, it’s an expensive procedure, I

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1 grant you that. Not that the Court costs
 2 any money or the Court of Appeal or the
 3 Supreme Court of Canada, the issue of
 4 Statements of Claim, things like that, but
 5 to the Courts are there for the people and
 6 the litigants and would-be litigants, but of
 7 course, they have to pay everybody. You
 8 know, going that route would be very wise to
 9 have a lawyer. Some people try to go, some
 10 plaintiffs, on their own but that’s not very
 11 wise. So, you know, you get lawyers and
 12 it’s the legal costs that comprise the Court
 13 costs for the most part and the winning
 14 party gets costs against the losing party.
 15 And there are other things that I won’t
 16 go into in detail, like offers that can be
 17 made that are not known to the judge which
 18 if the offer is exceeded well and good, but
 19 if the offer is such that the plaintiff
 20 didn’t get as much as the offer, the costs
 21 may go the other way and may include
 22 solicitor and own client costs which are
 23 higher, but I don’t think I need to expound
 24 on these sort of things.
 25 But out of it all, especially when the

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1 Supreme Court of Canada speaks, ranges are
 2 reachable by people who want to resolve the
 3 matter because if everything went to Court,
 4 the Courts would be swamped within a year.
 5 MR. FELTHAM:
 6 Q. And Justice Wells, just to switch a little
 7 bit on the topic, I wanted to ask you about
 8 something else and I need to set this
 9 question up a little bit, but there was an
 10 insurance review before this Board in 2005
 11 and at that time, Justice Hickman provided
 12 some commentary, a letter to the Board.
 13 JUSTICE WELLS:
 14 A. Yes, I've read the letter.
 15 MR. FELTHAM:
 16 Q. Okay. And in that, one of the things that
 17 he notes is that legislative caps which are
 18 also under consideration now as they were
 19 then -
 20 JUSTICE WELLS:
 21 A. Yes.
 22 MR. FELTHAM:
 23 Q. - with respect to general damages for
 24 personal injury in automobile cases -
 25 JUSTICE WELLS:

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1 A. Yes.
 2 MR. FELTHAM:
 3 Q. - one of the things that he noted was that
 4 these kinds of caps have a disproportionate
 5 effect on certain categories of vulnerable
 6 people and he refers to children, senior
 7 citizens and students, stay-at-home moms.
 8 There's a number. And he does so on the
 9 basis that these are categories of
 10 individuals who their primary form of
 11 compensation, damages recovery in injury
 12 claims is often general damages.
 13 JUSTICE WELLS:
 14 A. Yes.
 15 MR. FELTHAM:
 16 Q. So, if we cap those at a low level of say
 17 \$5,000 -
 18 JUSTICE WELLS:
 19 A. Now, I'm assuming that the Board has Justice
 20 Hickman's, retired Justice Hickman's letter,
 21 and I take no issue with that. One thing
 22 that stands out to me in the letter is that
 23 he foresaw, and I think he's probably right,
 24 that there would be a great deal of
 25 controversy and litigation perhaps over what

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1 fell -- if there was a cap, what would fall
 2 above the cap and what would fall below the
 3 cap because I'm injured, soft tissue injury.
 4 The cap is -- well, let's say it's 5,000;
 5 could be whatever. My injuries are worth
 6 more than the \$5,000 cap and who's to say
 7 they're not except a Court. So, I can see,
 8 as Judge Hickman saw, I can see litigation
 9 over what falls above the cap or might fall
 10 above the cap or what might fall below the
 11 cap.
 12 MR. FELTHAM:
 13 Q. And in your experience, you know,
 14 proportionately speaking, the number of
 15 injury claims that you had exposure to that
 16 went to trial versus the ones that settled
 17 before trial, proportionately I gather most
 18 would be resolved before having to go to
 19 trial?
 20 JUSTICE WELLS:
 21 A. Before trial?
 22 MR. FELTHAM:
 23 Q. Yes.
 24 JUSTICE WELLS:
 25 A. Oh yes, after a trial, that's it, you know.

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1 It's a done deal. The only persons who can
 2 change the result of a trial judge's
 3 decision are the Courts of Appeal and the
 4 Supreme Court of Canada and after that, you
 5 can't go any further.
 6 MR. FELTHAM:
 7 Q. Okay, Justice Wells, I don't have any
 8 further questions for you but some of the
 9 other parties might or the Board might.
 10 JUSTICE WELLS:
 11 A. Yes. Before I take questions, I would like
 12 to make one or two comments directly to the
 13 Board, if I may?
 14 MR. FELTHAM:
 15 Q. Sure.
 16 JUSTICE WELLS:
 17 A. The matter of courts deciding important
 18 things for individuals, for corporations,
 19 for all of us didn't come easily. It
 20 started to develop in probably the 13th and
 21 14th centuries in England under our system
 22 and it started, interestingly enough, when
 23 the kings were able to seize power from the
 24 nobles who were a fractious lot and
 25 difficult for kings. But when the kings

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1 established their right to make decisions,
 2 the kings sat at first on disputes. But
 3 when it was discovered, and fairly quickly I
 4 suspect, that the king couldn't hear
 5 everything, the king began to appoint people
 6 to hear in his stead and that's where the
 7 Court of Queen's Bench or King or Queen's
 8 Bench judges came from and that's our
 9 Supreme Court Trial Division and that's the
 10 High Court in England, which like ourselves
 11 at the Trial Division, they're courts of
 12 unlimited jurisdiction. We're not set up by
 13 statute but by long usage under which the
 14 law has been developed by the Queen's Bench,
 15 Supreme Courts, Courts of Appeal and the
 16 Supreme Court of Canada. It has a long
 17 history of establishing itself as a court,
 18 but it didn't establish itself as a court
 19 with no limit on jurisdiction all of a
 20 sudden. This thing grew.
 21 When I was called to the Bar here, we
 22 didn't have a Crown Proceedings Act and I
 23 was a lawyer in the attorney general's
 24 department and matters often were referred
 25 to me where there would have been a claim

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1 against the Crown, but no, we had no Crown
 2 Proceedings Act. You couldn't sue the Crown
 3 no matter what.
 4 (3:45 p.m.)
 5 So, sometimes the Crown would make what
 6 they called an ex gratia payment in lieu of
 7 whatever right the individual might have.
 8 Sometimes not. And I saw cases which I
 9 thought, as a member of the Bar, were
 10 absolutely unjust, where the Crown said "no,
 11 we're not going to compensate".
 12 So, I got a bee in my bonnet there and
 13 I wasn't as calm as I am now years ago, so I
 14 was elected to the House of Assembly in 1972
 15 and I made almost got to say a lot of
 16 speeches. I made my share. And every time
 17 that I spoke, I said we should have a Crown
 18 liability act or a Crown proceedings act in
 19 Newfoundland because we haven't got one, but
 20 other places have. And I made the speech so
 21 often, I got a few sour looks, not everybody
 22 agreed, but after hearing me on about this
 23 for some months, one day on the order paper
 24 there appeared notice. Nobody spoke to me
 25 about it in advance, but there appeared

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1 notice of a Crown proceedings act or Crown
 2 liability act. So, there was a case where
 3 the jurisdiction of the Court was increased
 4 in my time, let alone 400 years ago.
 5 So, it's been a steady process and I
 6 guess I, when I hear of something like a
 7 cap, I, as a former lawyer and a former
 8 judge, don't want to see things taken away
 9 from the Court where that's where they get
 10 the full treatment and judgments from the
 11 Court are what guides the people who settle,
 12 which are the vast majority, out of Court.
 13 So, there's an ancient expression when
 14 navigators used to steer by the stars, the
 15 North Star in this hemisphere and the
 16 Southern Cross and the expression goes that
 17 the stars they steer by. So, decisions of
 18 the Court are the stars that people who try
 19 to settle things and want to settle things
 20 steer by. And changes have occurred for the
 21 better just in my own time.
 22 So, when somebody talks about taking
 23 something away from the Court and putting an
 24 arbitrary cap on it, no matter what the cap
 25 is, it – it doesn't seem right to me because

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1 the Court is the organ that can give the
 2 full treatment and its decisions guide what
 3 happens in settlements. So, that's my
 4 feeling.
 5 Now, I don't represent anybody here
 6 today. I come as an interested citizen.
 7 How did I get here? I know, of course, a
 8 lot of the more senior lawyers and a lawyer
 9 named Jim Hughes Q.C. and I were having a
 10 conversation once about something else and
 11 he mentioned the cap and we chatted about it
 12 and I told him how I felt, just as a retired
 13 individual and a retired judge, and he said
 14 "well, maybe you could speak to the Public
 15 Utilities Board" and I said I'd have no
 16 objection. So, I'm here as a citizen, I
 17 suppose, now but I certainly don't represent
 18 anybody.
 19 And if you're read my CV, on a couple
 20 of occasions I've represented not insurance
 21 companies, but the insurance industry or
 22 part of it nationally in their ombuds
 23 program. So, although I acted for
 24 plaintiffs and I acted as a neutral judge
 25 and a neutral mediator, I have really, I

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1 suppose, in the broadest sense, acted for
 2 both sides and I certainly have no bias
 3 against insurance companies. They fulfil a
 4 vital function.
 5 It's the notion of a cap that bothers
 6 me or put it this way, if I ask myself if
 7 you had an injury, a personal injury, be it
 8 small or great, would you rather have a
 9 court which can get the full notion or would
 10 you rather be governed by a cap, or if you
 11 were going to settle, would you rather have
 12 access and use Court decisions as a guide
 13 rather than a cap. So, there's where I come
 14 from.
 15 CHAIR:
 16 Q. Thank you, sir. Are you open to taking some
 17 questions from others in the room?
 18 JUSTICE WELLS:
 19 A. So, I don't know if there's anybody else has
 20 any questions.
 21 CHAIR:
 22 Q. Mr. Gittens, would you like to -
 23 MR. GITTENS:
 24 Q. There's just three issues that I'd like to
 25 put -- because we happen to have Justice

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1 Wells here, I'd like not to lose the
 2 opportunity to ask him these three
 3 questions.
 4 JUSTICE WELLS:
 5 A. Have I got something that aids hearing?
 6 MR. GITTENS:
 7 Q. I'll speak up, Justice Wells.
 8 JUSTICE WELLS:
 9 A. Speak up, yes. I have a hearing aid in but
 10 I'll listen intently.
 11 MR. GITTENS:
 12 Q. Not a problem. Okay. We've mentioned on a
 13 couple of occasions the extreme cost of
 14 taking matters to Court, but I want to
 15 suggest to you the reality is -- and I'm
 16 going to put a figure on it, you can agree
 17 or disagree, but if you have a sense you can
 18 tell the Board, please. My understanding is
 19 less than two percent of the matters that
 20 are filed in the Court ever get to a trial.
 21 JUSTICE WELLS:
 22 A. Personal injury matters, I would say you're
 23 correct. I never thought of a particular
 24 percentage, but if the Court had to hear all
 25 the matters which came before it, it would

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1 be swamped in no time and that's why I chose
 2 to speak about the influence of Court
 3 decisions on out-of-court settlements rather
 4 than just the Court decisions because that's
 5 where the rubber really hits the road, to
 6 use that expression, is outside of Court
 7 where lawyers for insurance companies and
 8 plaintiffs and you know, work on settlements
 9 and achieve settlements. I've seen it
 10 happen so often.
 11 MR. GITTENS:
 12 Q. The second question I wanted to put to you
 13 was we've established that just a few of
 14 these cases end up in litigation and as
 15 compared to the total number that comes
 16 before the Court. There is in the public's
 17 mind, I suggest, a belief that settlements,
 18 Judge awards in personal injury, like in the
 19 US, is getting out of hand or has gotten out
 20 of hand. In reality, in the Canadian
 21 jurisdictions, the Supreme Court of Canada
 22 put a cap itself, a limit on the total value
 23 of even a paraplegic, a quadriplegic, of
 24 around 300 to \$400,000, somewhere in that
 25 ballpark, and everything else is somewhat

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1 lower when we're talking about personal
 2 injury, we're talking about damages. Do you
 3 -- have you experienced people coming with
 4 inflated ideas, either to trial or to
 5 settlement conferences, when you or the
 6 lawyers had to talk them back?
 7 JUSTICE WELLS:
 8 A. Yes, I have experienced that. I mean, who
 9 knows what the general public thinks or
 10 where it gets its opinions, but obviously
 11 the media report huge settlements in the
 12 millions for things in the US particularly
 13 and it's easy for a member of the public to
 14 have a very inflated idea of his or her
 15 entitlement in a Court. So, I have myself
 16 observed people whose, you know, idea of
 17 what they ought to be recompensed or paid as
 18 a result of injuries is as high as five or
 19 six times, perhaps more than they would
 20 actually get at a trial. In other words,
 21 outside the range.
 22 MR. GITTENS:
 23 Q. Okay.
 24 JUSTICE WELLS:
 25 A. Yes, I've seen that.

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1 MR. GITTENS:
 2 Q. Okay. The third question I have is in
 3 relation to what I would call the
 4 amalgamation of the cases that you've dealt
 5 with and seen over the years, whether it be
 6 as a judge or as a mediator, you've
 7 mentioned that the insurance industry's
 8 representatives, whether it be the adjuster
 9 or the lawyer acting for the insurance
 10 industry -
 11 JUSTICE WELLS:
 12 A. Or the representative of the company.
 13 MR. GITTENS:
 14 Q. In Toronto or Montreal or wherever they
 15 might be.
 16 JUSTICE WELLS:
 17 A. Comes down very usually and is present.
 18 MR. GITTENS:
 19 Q. They are all part of that negotiating
 20 process where they also know what the range
 21 is for a particular type of injury and for
 22 any of these settlements to have occurred,
 23 they would have had to have participated and
 24 agreed to that amount of settlement?
 25 JUSTICE WELLS:

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1 A. Oh, absolutely.
 2 MR. GITTENS:
 3 Q. So, I would suggest to you with somewhat
 4 incongruous of them to come forward later
 5 and say "we feel that these settlements are
 6 too great for any particular type of injury
 7 and it's causing us losses" where they have
 8 participated themselves in the setting of
 9 that amount or whatever that damage claim
 10 would be. Do you see anything incongruous
 11 about that?
 12 JUSTICE WELLS:
 13 A. Well, let me describe the process as I
 14 understand it. In some cases, it is the
 15 claimant himself or herself who deals with
 16 the insurance company's representative,
 17 usually an adjuster, and they may settle the
 18 matter at that level. The individual may go
 19 to a lawyer and the lawyer will interact
 20 with the lawyers for the insurance company
 21 or issue a statement of claim and along the
 22 way that may be settled. That's how most of
 23 them were settled back in the '70s and '60s
 24 when I started doing this sort of work in
 25 the '60s. It may then be escalated by the

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1 issue of a statement of claim which brings
 2 it within the ambit of the Court. So then,
 3 there will likely be a pre-trial conference
 4 at which it would be decided, as I said
 5 earlier, whether there should be a
 6 settlement conference or not.
 7 But once the insurance company's
 8 lawyers are involved or at any level, the
 9 insurance company is not forced to settle
 10 unless a Court says – makes a judgment of
 11 some kind. They can say no at the outset.
 12 They can say no when they get a statement of
 13 claim. They can say no at the settlement
 14 conference. They can say no at the
 15 mediation.
 16 MR. GITTENS:
 17 Q. So, they are actively involved in that
 18 process?
 19 JUSTICE WELLS:
 20 A. They are involved in the process and they
 21 know perhaps – they know as well and perhaps
 22 better because they're dealing with it every
 23 day than lawyers sometimes for the
 24 plaintiff. But, that's what they do. So,
 25 yes, there is no settlement without their

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1 agreement.
 2 MR. GITTENS:
 3 Q. So, finally, I take it the essence of what
 4 you're putting before the Board today is a
 5 fundamental principled objection or concern
 6 about the fact that the litigation process
 7 which allows people who have minor injuries
 8 or whatever their beliefs might be an
 9 opportunity to express themselves, get their
 10 day in court, before resolving these issues?
 11 JUSTICE WELLS:
 12 A. If it goes to a settlement conference, see
 13 plaintiffs themselves very often, usually
 14 perhaps I would say, want to be heard by a
 15 judge. There is a difference between being
 16 heard in a settlement conference and giving
 17 sworn evidence in a courtroom, but to a lot
 18 of plaintiffs, I think to most of them as
 19 individuals, the fact that they have their
 20 say and that a judge is there listening is
 21 important. If you think of it, you know, we
 22 all, when we're involved in something,
 23 especially as personal and immediate as
 24 injury, we all want to have our say before a
 25 neutral person. If we think about it, any

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1 of us had an injury, would you rather have
 2 your say before a judge, either in a
 3 courtroom or a settlement conference room,
 4 or would you rather have somebody say to you
 5 “well, there’s no point in you saying
 6 anything because in your type of injury,
 7 there’s a cap”. Well, I know where I’d
 8 rather be and I think I know where most
 9 people would rather be, getting the
 10 treatment – I don’t mean to pun here, but
 11 getting the treatment from the system of a
 12 specific look at their injuries and what the
 13 result of their injuries is or will likely
 14 be and have a decision made or an agreement
 15 come to on that basis rather than a cap on
 16 any stage of the proceedings. That’s my
 17 view. Now, you may not be surprised I’ve 59
 18 years this fall as lawyer and judge and I
 19 guess that’s the way I think.
 20 MR. GITTENS:
 21 Q. Thank you, Justice Wells. Thank you, Madam
 22 Chair.
 23 (4:00 p.m.)
 24 CHAIR:
 25 Q. Thank you, Mr. Gittens. Mr. Fraize?

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1 FRAIZE, Q.C.:
 2 Q. No questions.
 3 CHAIR:
 4 Q. Thank you. Mr. Gillingham?
 5 MR. GILLINGHAM:
 6 Q. Thank you, Justice Wells. Just to introduce
 7 myself, my name is Michael Gillingham. I’m
 8 here for the Insurance Bureau of Canada.
 9 JUSTICE WELLS:
 10 A. Yes.
 11 MR. GILLINGHAM:
 12 Q. So, I just have a couple of brief questions-
 13 JUSTICE WELLS:
 14 A. All right.
 15 MR. GILLINGHAM:
 16 Q. - on some of the topics you’ve touched on
 17 here today and if I’m not speaking up, let
 18 me know. People tell me I speak too loud.
 19 JUSTICE WELLS:
 20 A. I can hear you all right.
 21 MR. GILLINGHAM:
 22 Q. Yeah, I tend to be a little loud.
 23 JUSTICE WELLS:
 24 A. In five years’ time, I may not be able to,
 25 but as of now, I’m okay.

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1 MR. GILLINGHAM:
 2 Q. Justice Wells, you touched on the advantages
 3 of going to trial and I guess giving people
 4 an opportunity to have their say in Court
 5 and to sort of add to the level of judicial
 6 precedent that we have. You also have the
 7 unique experience of having a mediation and
 8 arbitration practice after your departure
 9 from the Bench. What would be the relative
 10 advantages of a mediation? Why do parties
 11 come to you looking for mediation generally?
 12 JUSTICE WELLS:
 13 A. They would come, in my experience, on the
 14 recommendations of their lawyer and the
 15 agreement of the lawyer for the insurance
 16 company. So, both sides have to agree to a
 17 mediation and both sides have to agree to a
 18 settlement conference, although there is a
 19 caveat on that because the first line judge
 20 in the judicial system would be the one to
 21 order a settlement conference. But if one
 22 side didn’t want it, I don’t think they’d be
 23 even there.
 24 MR. GILLINGHAM:
 25 Q. Right. And so it’s a consensual process

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1 between both parties? There’s a benefit, I
 2 suppose, to both parties in coming to a
 3 mediation?
 4 JUSTICE WELLS:
 5 A. Yes, it’s the settlement conference or the
 6 mediation and you know, settlement
 7 conferences have, in my experience anyway --
 8 and I was doing a lot of them for the last
 9 six years that I was on the Bench, I think
 10 we were running at between 85 and 90 percent
 11 success overall, but I could go as far as to
 12 estimate 90 percent or more in personal
 13 injury work as distinct from other sorts of
 14 cases. When it comes to mediation on
 15 personal injury matters, the success rate,
 16 in my opinion, and in my experience and in
 17 my opinion, because there are lots of
 18 mediators – I don’t know if there are lots,
 19 but there are others anyway – is very, very
 20 high because people who have a sense of how
 21 to deal with others and how to reason with
 22 others and explain the situation as to what
 23 they might get in Court, some people do this
 24 better than others and a lot of lawyers are
 25 very skillful at that because they’re an

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1 essential part of the mediation or
 2 settlement conference process. So, that's
 3 why the success rate is so high.
 4 MR. GILLINGHAM:
 5 Q. And the parties, I suppose it would be fair
 6 to say, are looking to control the expenses,
 7 the expense that it would cost to go to a
 8 trial?
 9 JUSTICE WELLS:
 10 A. Yes.
 11 MR. GILLINGHAM:
 12 Q. Potentially, I guess, they have more control
 13 in the predictability of the outcome as well
 14 in a mediation because either side can -
 15 JUSTICE WELLS:
 16 A. That's right. Mediations are not that
 17 expensive.
 18 MR. GILLINGHAM:
 19 Q. Correct. My understanding as well, much
 20 more limited mind you. And the time,
 21 Justice Wells, to get to a trial, we've
 22 talked about settlement conferences and pre-
 23 trial conferences. Of course there are many
 24 other potential steps under our Rules of
 25 Court, interrogatories, discoveries,

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1 applications to court. In your experience,
 2 what are the timeframes from when somebody
 3 commences their claim to get to trial? Is
 4 it a long - we've talked about the expense,
 5 but of course, my understanding is it can
 6 take a very long time to get to trial as
 7 well. Is that accurate?
 8 JUSTICE WELLS:
 9 A. I think so. When I was a young lawyer, you
 10 could get a matter to trial in the Supreme
 11 Court, whatever it was, by going to see a
 12 judge and saying "would you be able to hear
 13 this or would you recommend another judge
 14 for this?" There were only three judges all
 15 together. And you could get a trial in
 16 about three months. But as time passed,
 17 there were more hoops to jump through for
 18 litigants and lawyers and I think, whereas
 19 you mentioned interrogatories and all that
 20 sort of thing, all these are hoops through
 21 which a client must jump, you know, through
 22 his or her lawyer.
 23 MR. GILLINGHAM:
 24 Q. Sure.
 25 JUSTICE WELLS:

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1 A. And lawyers have to be paid. They have also
 2 to make a living. And these things add up
 3 and so, the other thing is the trials,
 4 because of all this, are getting more
 5 expensive and that, I think, is a deterrent
 6 in some people's minds and of course, there
 7 are contingency arrangements that are
 8 entered into where the lawyer actually takes
 9 the risk. Different lawyers have different
 10 opinions on all, as I put it, these hoops to
 11 jump through and I remember when we adopted
 12 discoveries, I was working on a matter with
 13 a very senior Ontario lawyer, litigator who
 14 afterwards became a judge, and he said to me
 15 - he was a lawyer then, as was I, he said to
 16 me "you're out of your minds" and it was the
 17 length of discoveries, you know, and all
 18 these hoops which now lawyers and their
 19 clients have to go through have lengthened
 20 the process and lengthening the process
 21 causes further expense, and that's why I
 22 said to the Board what I want to talk about
 23 to you is not so much the trial process, but
 24 the effect that the trial process and the
 25 results of judgments from the highest court

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1 in the country down through to the trial
 2 courts is available to everyone and can
 3 influence the settlement process, and it
 4 does. It has to, because if it gets outside
 5 what is a reasonable range, the lawyer for
 6 the defendant or the lawyer for the
 7 plaintiff is going to say "forget it. We're
 8 wasting our time".
 9 MR. GILLINGHAM:
 10 Q. And Justice, so let's take a situation where
 11 the parties go to trial and there's a
 12 successful litigant and you mentioned
 13 earlier that there could potentially be
 14 costs awarded.
 15 JUSTICE WELLS:
 16 A. Yes.
 17 MR. GILLINGHAM:
 18 Q. So, just to sort of clarify for the Board,
 19 costs are not typically the total cost that
 20 it takes to go to trial, of course, they're
 21 not full indemnity? Is that correct?
 22 JUSTICE WELLS:
 23 A. No, ordinary costs are not the full costs of
 24 counsel, but in the case under our system
 25 that you're talking about, if you got a

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1 moment, I'll explain this a bit better. If,
 2 for instance, I'm a plaintiff and I want
 3 \$50,000 and you are prepared, as a
 4 defendant, to offer 45,000 or 40,000, if
 5 when the trial is over – now the Judge
 6 doesn't know or is not allowed to know
 7 anything about such offers, but if the
 8 judgment ends up by being less than what the
 9 defendant offered, then the plaintiff can be
 10 liable for costs on a solicitor and own
 11 client basis, which is higher, much higher
 12 than the usual costs and that can happen to
 13 either side because the judge knows nothing
 14 about and is not allowed to know. It's a
 15 sealed envelope in the Registry with these
 16 offers in them and the judge does not see
 17 them before the trial or before his decision
 18 or her decision. So, yes, costs can be very
 19 significant to either side if they make a
 20 poor assessment of what might happen.
 21 MR. GILLINGHAM:
 22 Q. And I suppose the point I was attempting to
 23 make was they certainly don't represent,
 24 however, the full expense, I would gather,
 25 of what it could cost the parties to go to

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1 trial?
 2 JUSTICE WELLS:
 3 A. Oh, no, no, because even if you're paying
 4 the other side costs including own counsel,
 5 the party is still paying his or her own
 6 lawyer or the insurance company whoever, so
 7 that it would be these costs plus these
 8 other costs, you know.
 9 MR. GILLINGHAM:
 10 Q. Correct.
 11 JUSTICE WELLS:
 12 A. So, that's what makes litigation and can
 13 make litigation very, very expensive. I
 14 mean, I've had to award sometimes – the
 15 longest trial I ever had was 200 sitting
 16 days, where I had other trials of 90 days,
 17 shall we say, and that builds up a lot of
 18 costs and sometimes the parties will agree
 19 to say to the judge formally, "we would like
 20 you to assess the costs" when they know
 21 which way the costs are going to go, and it
 22 hurt me to do it, but I have assessed costs
 23 of up to \$600,000 on a 90-day trial, 91-day
 24 trial, and that was upheld by the Court of
 25 Appeal. So, you can see how expensive it

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1 can get through people who draw out
 2 litigation unwisely.
 3 MR. GILLINGHAM:
 4 Q. Sure. Justice, I'd just like to switch
 5 gears a little bit and talk about, I guess,
 6 the issue of a cap or potential cap.
 7 JUSTICE WELLS:
 8 A. Yes.
 9 MR. GILLINGHAM:
 10 Q. There's been some discussion about that.
 11 And I guess a cap would be a limitation, if
 12 you will, on the person's right to recover
 13 general non-pecuniary damages if their
 14 injury should fall within a certain class or
 15 category.
 16 JUSTICE WELLS:
 17 A. Yes.
 18 MR. GILLINGHAM:
 19 Q. And you mentioned the Crown Proceedings Act,
 20 sort of your own personal experience and
 21 your involvement with that piece of
 22 legislation. Is it true there are still
 23 other pieces of legislation, many I would
 24 submit, which can actually restrict a
 25 person's right to recovery?

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1 JUSTICE WELLS:
 2 A. Oh yes. The one that comes immediately to
 3 mind is the Workers Compensation Board.
 4 MR. GILLINGHAM:
 5 Q. Correct.
 6 JUSTICE WELLS:
 7 A. Comes immediately to mind where they have
 8 caps. But they, as I understand it, and I
 9 have limited knowledge obviously of the
 10 Workers Compensation Board, but I think they
 11 go into the injury very, very carefully
 12 before choosing call it a cap if you wish,
 13 but they give it pretty careful treatment I
 14 think. But I would also say this, as a
 15 practising lawyer, I saw in my office a lot
 16 of people who didn't like the awards of the
 17 Workers Compensation Board, but of course
 18 were not able to do anything about it.
 19 MR. GILLINGHAM:
 20 Q. Sure. And I suppose, Justice, to even take
 21 it more generally, we have a Limitations of
 22 Actions Act, of course, or a Limitations Act
 23 I guess is the appropriate citation. That
 24 piece of legislation that can also restrict
 25 somebody who may have a meritorious claim if

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1 they do not file in time. I think you
 2 mentioned two years.
 3 JUSTICE WELLS:
 4 A. Absolutely. That is the bugbear of any
 5 lawyer in that field. When I was in that
 6 field as a lawyer, I had a certain cabinet
 7 by my left-hand on the side of my desk in
 8 which all personal injury matters were and I
 9 reviewed that cabinet every week and
 10 thankfully I never missed a limitation
 11 period. So, yes, limitation periods can
 12 restrict a person's right to get before the
 13 Courts.
 14 MR. GILLINGHAM:
 15 Q. And the selection, for example -
 16 JUSTICE WELLS:
 17 A. But of course, they then have a right not to
 18 sue the proposed defendant, but to sue their
 19 lawyer.
 20 MR. GILLINGHAM:
 21 Q. For missing the limitation period.
 22 JUSTICE WELLS:
 23 A. For missing the limitation period, which is
 24 the dread of any lawyer with that process
 25 that you might miss a limitation period.

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1 MR. GILLINGHAM:
 2 Q. I can confirm that's the fear that's always
 3 in the back of my mind certainly.
 4 JUSTICE WELLS:
 5 A. Yes.
 6 MR. GILLINGHAM:
 7 Q. But take the two-year limitation period, for
 8 example, that selection of two years,
 9 there's nothing particularly magical about
 10 that number, is there? The Legislature just
 11 chose two years instead of two and a half or
 12 two and three-quarters or ten months, any
 13 claim beyond two years is out essentially.
 14 Is that your understanding?
 15 JUSTICE WELLS:
 16 A. Yes.
 17 MR. GILLINGHAM:
 18 Q. Yes. So, even a meritorious claim, somebody
 19 has a good claim, they could essentially
 20 lose the right to recover under that claim
 21 due to a limitations issue?
 22 (4:15 p.m.)
 23 JUSTICE WELLS:
 24 A. Yes. One of the more recent deviations from
 25 that is in sexual assault matters, let's say

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1 six or seven – no, probably ten or twelve
 2 years ago now, the Limitation of Actions Act
 3 was amended to take away any limitation
 4 periods on suing for sexual assault. Now, I
 5 haven't looked at that Act for some time,
 6 but yes, it allows – what I can't remember,
 7 and somebody here would know, whether that
 8 applies only to infants, you know, people
 9 below a certain age who might be sexually
 10 assaulted as children or any sexual assault.
 11 I'd have to defer to someone else here who's
 12 more familiar with that Act because I
 13 haven't looked at it for several years.
 14 MR. GILLINGHAM:
 15 Q. I wouldn't be able to answer that either,
 16 Justice. I honestly do not know. But in
 17 addition, we've mentioned the Limitations
 18 Act and the Workers Compensation Act, but
 19 there are certainly other examples. So, for
 20 example, if let's say that I want to build a
 21 house and I'm living in a watershed. There
 22 could potentially be regulation, maybe
 23 municipal regulation or provincial
 24 legislation, which could restrict my ability
 25 to do something which my neighbour in

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1 another community or down the street could
 2 potentially do, build a shed, dig a well or
 3 so on.
 4 JUSTICE WELLS:
 5 A. I agree with you, but it would not limit
 6 your right to go to Court and challenge the
 7 decision.
 8 MR. GILLINGHAM:
 9 Q. Sure, yeah.
 10 JUSTICE WELLS:
 11 A. Whereas a cap would limit your right, as I
 12 understand it, to go to Court challenging
 13 the application of the cap. Wouldn't it?
 14 MR. GILLINGHAM:
 15 Q. Yes, yeah.
 16 JUSTICE WELLS:
 17 A. Yes.
 18 MR. GILLINGHAM:
 19 Q. And I guess to round back to a piece of
 20 legislation that sort of began this, the
 21 Crown Proceedings Act or whatever
 22 permutation it may be called now, I believe
 23 my current understanding of that piece of
 24 legislation, there's still certain
 25 restrictions for what you can and cannot sue

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1 the Crown for. Is that correct?

2 JUSTICE WELLS:

3 A. I have no doubt. I'm not familiar with it.

4 I don't dispute that at all.

5 MR. GILLINGHAM:

6 Q. Sure. So, for example, liening Crown land,

7 I don't know if that's always been a portion

8 of that piece of legislation, but the

9 ability to lien the Crown in terms of

10 mechanics lien is a restriction in that

11 piece of legislation. Are you -

12 JUSTICE WELLS:

13 A. Yes, I've looked at that, had occasion to

14 look at that in the Crown Lands Act, yes.

15 MR. GILLINGHAM:

16 Q. So, a builder or someone who may be

17 constructing works on Crown land, that

18 particular avenue, a lien at least, that

19 option may not be available to them?

20 JUSTICE WELLS:

21 A. No. And as my memory of the Act is that you

22 don't - you cannot now acquire squatter's

23 rights against the Crown, but if you have

24 occupied property for a certain number of

25 years, you have a good basis for applying

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1 for the Crown grant, but that doesn't give

2 you an absolute right to get it.

3 MR. GILLINGHAM:

4 Q. Sure.

5 JUSTICE WELLS:

6 A. But you don't accrue squatter's rights and a

7 clear title against the Crown as you used to

8 be able to.

9 MR. GILLINGHAM:

10 Q. Sure. So, there are examples, I suppose, of

11 - I believe the term you may have used was

12 taking something out of Court, the

13 legislation, I guess, taking something out

14 of the hands of Courts, there are examples

15 of that in various other areas of the law,

16 right?

17 JUSTICE WELLS:

18 A. No doubt.

19 MR. GILLINGHAM:

20 Q. Sure. That's all the questions I had,

21 Justice Wells.

22 JUSTICE WELLS:

23 A. Okay, thank you.

24 CHAIR:

25 Q. Thank you, Mr. Gillingham. Mr. Browne?

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1 BROWNE, Q.C.:

2 Q. Judge Wells, how are you? Good to see you

3 again.

4 JUSTICE WELLS:

5 A. Yes, Mr. Browne.

6 BROWNE, Q.C.:

7 Q. Just now someone was talking about lawyers

8 and about lawyer is sued because they missed

9 the limitation. He goes to his insurer and

10 there's a deductible, quite often I think

11 it's \$5,000.

12 JUSTICE WELLS:

13 A. I believe that's what it is now, you know.

14 BROWNE, Q.C.:

15 Q. And there's a deductible in a lot of things.

16 In your home insurance, there's a deductible

17 and right now there's a deductible in

18 personal injury of \$2500.

19 JUSTICE WELLS:

20 A. Yes.

21 BROWNE, Q.C.:

22 Q. As representing consumers, we're attempting

23 to balance interests here. Some people are

24 finding their insurance costs too high. The

25 insurance industry says it's on account of

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1 claims; the claims are too high, a lot of

2 personal injury on the go. And therefore

3 we're trying to come up with some moderate

4 accommodation, I guess. That's one of the

5 reasons we're here for. One of the

6 reference points, the reference question,

7 said should there be a deductible, to

8 increase the deductible from 2500 to 7500 or

9 thereabouts. Do you have any comments on

10 that? Would a deductible suit all the

11 interests perhaps?

12 JUSTICE WELLS:

13 A. My personal preference would be - well, I

14 don't think you could retain both a cap and

15 a deductible. My personal preference would

16 be to see a deductible there and if

17 increased in a reasonable way, not to treble

18 or something like that, but if it increased,

19 I would find that less objectionable than a

20 cap.

21 BROWNE, Q.C.:

22 Q. Yes, thank you, Judge Wells.

23 O'FLAHERTY, Q.C.:

24 Q. Thank you, Madam Chair. I do have a

25 question just for clarification, Justice

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1 Wells. Good afternoon, Justice Wells. Can
 2 you hear me?
 3 JUSTICE WELLS:
 4 A. Good afternoon.
 5 O'FLAHERTY, Q.C.:
 6 Q. There have been a number of references to a
 7 rule which permits a lawyer to make an offer
 8 on the part of his or her client, the
 9 unreasonable refusal of which may have
 10 significant financial repercussions for the
 11 refusing party, correct?
 12 JUSTICE WELLS:
 13 A. Yes, that's what I was talking about. The
 14 offer must go to Court in a sealed envelope
 15 and is not known to the Judge, to any judge.
 16 O'FLAHERTY, Q.C.:
 17 Q. Right. So, this is a good opportunity for
 18 us to clarify something for the Board and
 19 for the parties. That rule was brought in
 20 after I was called to the Bar and while you
 21 were a member of the Bench. So, it was
 22 after 1990.
 23 JUSTICE WELLS:
 24 A. Yes, it was, yes.
 25 O'FLAHERTY, Q.C.:

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1 Q. And the source of the rule, just so you can
 2 let the Board know, the rules come from the
 3 Rules Committee, correct?
 4 JUSTICE WELLS:
 5 A. Yes.
 6 O'FLAHERTY, Q.C.:
 7 Q. And so effectively, it emanates from the
 8 Bench and with the assistance of the
 9 profession, the Bar, correct?
 10 JUSTICE WELLS:
 11 A. Yes, that's correct.
 12 O'FLAHERTY, Q.C.:
 13 Q. Can you share with the Board what is your
 14 knowledge of why it was felt necessary by
 15 the Rules Committee of the Court to
 16 introduce that particular rule?
 17 JUSTICE WELLS:
 18 A. I don't know, Mr. O'Flaherty, if I can
 19 answer that. I was never a member of the
 20 Rules Committee.
 21 O'FLAHERTY, Q.C.:
 22 Q. Okay.
 23 JUSTICE WELLS:
 24 A. And what their reasoning was for any rule, I
 25 suppose they thought it was the right rule

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1 to make, but I was not part of the reasoning
 2 of that rule.
 3 O'FLAHERTY, Q.C.:
 4 Q. Okay. And you don't recall from your
 5 decision making what the genesis or purpose
 6 of the rule was?
 7 JUSTICE WELLS:
 8 A. Not offhand, no.
 9 O'FLAHERTY, Q.C.:
 10 Q. Okay.
 11 JUSTICE WELLS:
 12 A. No. Just state the rule again for me.
 13 O'FLAHERTY, Q.C.:
 14 Q. It's Rule 20A of the Rules of the Supreme
 15 Court.
 16 JUSTICE WELLS:
 17 A. Yes.
 18 O'FLAHERTY, Q.C.:
 19 Q. And it was the rule that was brought in
 20 which permitted an offer to be made from one
 21 party -
 22 JUSTICE WELLS:
 23 A. Oh yes, yes, yes.
 24 O'FLAHERTY, Q.C.:
 25 Q. Yes.

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1 JUSTICE WELLS:
 2 A. That has been used, absolutely.
 3 O'FLAHERTY, Q.C.:
 4 Q. Yes, and I was really asking you if you had
 5 any recollection of why the Court felt that
 6 it would be of any assistance to the
 7 practice to bring that rule in.
 8 JUSTICE WELLS:
 9 A. I think, I suspect – I wasn't part of it,
 10 but I suspect that rule was made to deter
 11 unreasonable positions taken by one side or
 12 the other. In other words, if it looked as
 13 though this was a \$50,000 matter that I had
 14 and I was trying to get 100,000, that rule
 15 could operate against me if I persisted.
 16 So, I think it was to cause lawyers and
 17 their clients to be more realistic.
 18 O'FLAHERTY, Q.C.:
 19 Q. And to encourage settlement?
 20 JUSTICE WELLS:
 21 A. Yeah.
 22 O'FLAHERTY, Q.C.:
 23 Q. Thank you, Justice Wells.
 24 COMMISSIONER NEWMAN:
 25 Q. No questions.

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1 COMMISSIONER OXFORD:
 2 Q. No, no questions.
 3 CHAIR:
 4 Q. I have no questions. Thank you very much,
 5 Justice Wells, for taking the time to come
 6 and give us your views.
 7 JUSTICE WELLS:
 8 A. Been a pleasure to talk here before you.
 9 CHAIR:
 10 Q. Thank you very much. I guess, did you have
 11 anything to follow up, Mr. Wadden?
 12 MR. WADDEN:
 13 Q. No, Chair.
 14 CHAIR:
 15 Q. Which brings us to the end of the hearing
 16 phase of this review. I'd like to thank
 17 everyone for their contribution and
 18 cooperation over the past few months. It's
 19 been very helpful. We've heard some very
 20 thoughtful presentations that I'm sure will
 21 be of great use to the Board as we prepare
 22 our report. Our schedule provides for
 23 submissions by the parties October 12th. Is
 24 that my understanding?
 25 MR. WADDEN:

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CERTIFICATE

I, Cindy Sooley, hereby certify that the foregoing is a true and correct transcript in the matter of a 2017 Automobile Insurance Review hearing heard before the Board of Commissioners of Public Utilities on the 27th day of September, 2018 and was transcribed by me to the best of my ability by means of a sound apparatus.

Dated at St. John's, Newfoundland and Labrador this 1st day of October, 2018

Cindy Sooley

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1 Q. That's correct.
 2 CHAIR:
 3 Q. Okay. And after that, I guess, we have a
 4 bit of work to do. Thank you very much.
 5 BROWNE, Q.C.:
 6 Q. Thank you.
 7 (UPON CONCLUSION AT 4:25 P.M.)
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