

Hearing Transcript

2017 Automobile Insurance Review

September 10, 2018

PRESENT:

The Board:

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

Board Counsel/ Staff:

Jacqueline Glynn, Board Counsel
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
Jerome Kennedy, Q.C.

Consumer Advocate
Dennis Browne, Q.C.
Andrew Wadden

Insurance Bureau of Canada (IBC)
Amanda Dean
Kevin Stamp, Q.C.
Trevor Foster

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

Presenters:

Accident Victims Panel
Della Ryan
Sheila Elliott
Presenting for the Campaign

Panel:

Valerie Hynes
Kate McGarry
Richard Rogers, Q.C.
Presenting for the Campaign

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1 (9:03 a.m.)
 2 CHAIR:
 3 Q. Good morning. No preliminary matters, I
 4 understand. I guess we'll just go right to
 5 Mr. Kennedy or Mr. Roebathan.
 6 KENNEDY, Q.C.:
 7 Q. Yes, good morning, Madam Chair. Today we
 8 have the Victims Panel; Della Ryan and
 9 Sheila Elliott. The procedure I propose to
 10 utilize, Madam Chair and members of the
 11 Board, will be Ms. Ryan will go first. I'll
 12 ask her some introductory questions and then
 13 she'll take it from there. Then we'll move
 14 to Ms. Elliott. Any questions that anyone
 15 has, I propose that they ask after both are
 16 finished.
 17 CHAIR:
 18 Q. Okay.
 19 KENNEDY, Q.C.:
 20 Q. Thank you. Ms. Ryan, we'll start with you,
 21 please. Could you state your name and
 22 address?
 23 MS. RYAN:
 24 A. Della Ryan, 11 Tampa Drive, Conception Bay
 25 South.

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1 KENNEDY, Q.C.:
 2 Q. And how long have you been living in
 3 Conception Bay South, Ms. Ryan?
 4 MS. RYAN:
 5 A. Twenty years.
 6 KENNEDY, Q.C.:
 7 Q. And who do you live there with?
 8 MS. RYAN:
 9 A. My son and my daughter.
 10 KENNEDY, Q.C.:
 11 Q. How old are your son and your daughter?
 12 MS. RYAN:
 13 A. My son is 15, my daughter is 11.
 14 KENNEDY, Q.C.:
 15 Q. What's your current marital situation, Ms.
 16 Ryan?
 17 MS. RYAN:
 18 A. I'm divorced.
 19 KENNEDY, Q.C.:
 20 Q. And what's the custody arrangements in
 21 relation to your children?
 22 MS. RYAN:
 23 A. Legally it's 50/50, but my son spends most
 24 of his time with me.
 25 KENNEDY, Q.C.:

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1 Q. So you say your kids are 15 and 12?
 2 MS. RYAN:
 3 A. Well, almost 12, yes.
 4 KENNEDY, Q.C.:
 5 Q. What grades would they be in?
 6 MS. RYAN:
 7 A. Ethan is in Grade 10, and Jada is in Grade 6
 8 this year.
 9 KENNEDY, Q.C.:
 10 Q. Are you employed yourself, Ms. Ryan?
 11 MS. RYAN:
 12 A. Yes.
 13 KENNEDY, Q.C.:
 14 Q. And where are you employed?
 15 MS. RYAN:
 16 A. Newcap Broadcasting, NTV/OZ FM. Sorry,
 17 Newfoundland Broadcasting.
 18 KENNEDY, Q.C.:
 19 Q. What do you do there?
 20 MS. RYAN:
 21 A. I'm a marketing consultant.
 22 KENNEDY, Q.C.:
 23 Q. What's a marketing consultant, Ms. Ryan?
 24 MS. RYAN:
 25 A. My job is to take care of a client list, to

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1 prospect new clients, take care of their
 2 advertising needs, go out and shoot
 3 commercials, creatively producing, editing,
 4 everything.
 5 KENNEDY, Q.C.:
 6 Q. How long have you been employed with NTV?
 7 MS. RYAN:
 8 A. Six years.
 9 KENNEDY, Q.C.:
 10 Q. And how are you paid, Ms. Ryan, is it
 11 salary, commission, a combination of both?
 12 MS. RYAN:
 13 A. No, I'm 100 percent commission structured
 14 salesperson.
 15 KENNEDY, Q.C.:
 16 Q. And what does that mean?
 17 MS. RYAN:
 18 A. That means if I don't sell, I don't get
 19 paid.
 20 KENNEDY, Q.C.:
 21 Q. So how long have you been involved in sales
 22 and marketing?
 23 MS. RYAN:
 24 A. Twenty five years.
 25 KENNEDY, Q.C.:

1 Q. Where were you employed prior to working
 2 with NTV?
 3 MS. RYAN:
 4 A. I was with Good Life Fitness for five years.
 5 I took a break from media. Prior to that, I
 6 was with Coast Broadcasting for three years,
 7 and prior to that, I was with VOXM for ten
 8 years.
 9 KENNEDY, Q.C.:
 10 Q. What's your educational background, Ms.
 11 Ryan?
 12 MS. RYAN:
 13 A. I have a criminology background at Memorial
 14 University.
 15 KENNEDY, Q.C.:
 16 Q. And when would you have – is that a
 17 certificate or a degree?
 18 MS. RYAN:
 19 A. A degree/certificate, yes.
 20 KENNEDY, Q.C.:
 21 Q. When would you have completed that?
 22 MS. RYAN:
 23 A. In the early 90s.
 24 KENNEDY, Q.C.:
 25 Q. So in terms of your children, Ms. Ryan, and

1 Q. And could you just give us some brief detail
 2 as to what occurred in the accident you were
 3 involved in?
 4 MS. RYAN:
 5 A. I was returning back to my office on Logy
 6 Bay Road. There was a vehicle in front of me
 7 that was stopped to make a left turn, so, of
 8 course, I stopped to let the car go left,
 9 and when I did, the vehicle coming behind me
 10 just rammed into the back of me. He didn't
 11 – and he told me so, he didn't even touch
 12 his brake. He didn't see me apparently.
 13 KENNEDY, Q.C.:
 14 Q. So Ms. Ryan, what were – first of I want to
 15 deal with the effects of the injury on you
 16 in terms of when did it – what steps did you
 17 take immediately after the accident? Did
 18 you go to the doctor, hospital, things like
 19 that?
 20 MS. RYAN:
 21 A. No. This was Friday afternoon, so I was a
 22 little – I went back to my office
 23 immediately. I was a little shook up, and
 24 called my insurance company and made
 25 arrangements to have my vehicle looked at

1 we're going to deal with prior to the date
 2 of the accident we're talking about here
 3 today, what were your children involved
 4 with, were they involved in activities at
 5 school, and are they still involved?
 6 MS. RYAN:
 7 A. My son is 15, he's 6' 5", he plays on three
 8 basketball leagues. He just returned a
 9 couple of weeks ago from the nationals in
 10 B.C., so his basketball schedule keeps me
 11 gone seven nights a week.
 12 KENNEDY, Q.C.:
 13 Q. And what about your daughter, what grade –
 14 she'll be Grade 6 or 7?
 15 MS. RYAN:
 16 A. She's Grade 6, and thank God, not
 17 athletically inclined.
 18 KENNEDY, Q.C.:
 19 Q. Ms. Ryan, you know why we're here today.
 20 We're going to talk about an accident that
 21 occurred and the effects upon you. When did
 22 the accident occur?
 23 MS. RYAN:
 24 A. On the 15th of December, 2017.
 25 KENNEDY, Q.C.:

1 first thing Monday morning. I went home and
 2 when I woke up on Saturday morning, I was
 3 like, um, okay, yeah, something hit me. On
 4 Sunday morning, I was in a lot of pain, and
 5 by Monday morning I had a zero range of
 6 motion. I couldn't turn my head to the
 7 right or the left, so I immediately went to
 8 my doctor's office, and he took me off work
 9 immediately. I had severe whiplash.
 10 KENNEDY, Q.C.:
 11 Q. Ms. Ryan, before we get into the actual
 12 injury and description of the injury, prior
 13 to December 15th, 2017, did you have any
 14 physical limitations or injuries?
 15 MS. RYAN:
 16 A. No, sir. I had a very active lifestyle.
 17 KENNEDY, Q.C.:
 18 Q. When you say you had a very active
 19 lifestyle, perhaps you could outline for the
 20 Board what you mean by that?
 21 MS. RYAN:
 22 A. Well, I worked at Good Life Fitness for five
 23 years, and I'm a huge advocate for healthy
 24 lifestyle. I've competed in body building,
 25 I've ran marathons. Walking was – I love to

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1 walk. That was my “me time”. I would walk
 2 10k every day, and I would spend at least an
 3 hour in the gym every day, and since the
 4 accident I have been back to the gym on a
 5 couple of occasions to try, but it just
 6 don’t work. I can’t walk any more, I can’t
 7 lift the weights any more. I can’t even
 8 lift my groceries out of the grocery store
 9 any more.
 10 KENNEDY, Q.C.:
 11 Q. So when you talk about being a believer in a
 12 healthy lifestyle, how long had you been
 13 involved in that level of physical activity?
 14 MS. RYAN:
 15 A. For about twenty years.
 16 KENNEDY, Q.C.:
 17 Q. And you say you’ve ran marathons. When would
 18 you have –
 19 MS. RYAN:
 20 A. That was back in 2006, I think, I ran San
 21 Diego. In 2008, I ran Florida.
 22 KENNEDY, Q.C.:
 23 Q. And then in terms of – you say you went body
 24 building competition?
 25 MS. RYAN:

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1 A. I did that provincially here back in 2010,
 2 but I’ve always maintained that – I didn’t
 3 continue to look that way, but I maintained
 4 that workout regime.
 5 KENNEDY, Q.C.:
 6 Q. So I’m going to ask you a question now.
 7 I’ve already vetted the question with the
 8 witness before I’d ask, but how old are you,
 9 Ms. Ryan?
 10 MS. RYAN:
 11 A. Twenty five. I’m 47.
 12 KENNEDY, Q.C.:
 13 Q. Okay, I’m just trying to get an idea when
 14 you were running marathons and doing body
 15 building, how old would you have been?
 16 MS. RYAN:
 17 A. I was in my early 30s. I was actually 40
 18 when I competed in body building.
 19 KENNEDY, Q.C.:
 20 Q. Okay. So this accident occurs. You’re
 21 what, 46 or 47, I guess?
 22 MS. RYAN:
 23 A. Forty seven.
 24 KENNEDY, Q.C.:
 25 Q. So you have a whiplash approximately – is it

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1 nine months ago?
 2 MS. RYAN:
 3 A. Yes.
 4 KENNEDY, Q.C.:
 5 Q. Why don’t you tell the Board the effect that
 6 this injury has had on you, both from the
 7 perspective of your employment, your family,
 8 and your social life?
 9 MS. RYAN:
 10 A. Well, I was taken off work immediately, so
 11 as a 100 percent commission structured
 12 salesperson, there was no income. My
 13 company, thank God, decided to continue
 14 paying me a base salary. That base salary
 15 was nowhere near what my income was used to.
 16 So I was literally in bed from December,
 17 January, February, and my kids didn’t get
 18 anywhere near their – like, mom’s duties are
 19 not put on hold because she’s injured. So
 20 they still had the expectation of having
 21 their cooked meals and their clothes washed,
 22 and I couldn’t do any of that. I had to
 23 depend on other people for every aspect of
 24 my life. I was on medications where I
 25 couldn’t drive. I had to depend on others

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1 to get my son to his basketball practices. I
 2 refused – he was not missing basketball
 3 because mom was injured. Luckily, I was
 4 able to entertain my daughter in different
 5 ways. So my healthy lifestyle was gone. I
 6 had no money coming in. I had no – didn’t
 7 know how I was going to pay my bills or how
 8 I was going to feed my children, and my
 9 March, against my doctor’s orders, I said
 10 I’m going back to work. I said, I have no
 11 choice, I was going to lose my house. I
 12 went back to work on easeback, so I’d work
 13 half days, do what I could do, and I would
 14 come home. I spend most of my time in bed.
 15 I spend most of my time sleeping because of
 16 the medications that I take. Twelve hours a
 17 night is normal for me now. My social life,
 18 I have zero social life. I don’t socialize
 19 with anybody, I don’t go anywhere, I don’t
 20 do anything. Life as I knew it is
 21 completely over, has completely changed. I’m
 22 just trying to get used to the new normal
 23 that this accident has caused. Financially,
 24 because my company paid me for those few
 25 months that I was off work, nine months

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1 later I'm still paying my company back, and
 2 25 years I've been doing this job, I've
 3 never been in debt to my company until now.
 4 KENNEDY, Q.C.:
 5 Q. If I could just stop you there for a second.
 6 Prior to the accident, it sounds like you
 7 got a very busy household. Did you cook
 8 supper daily? Who did the housework, the
 9 cleaning, the washing, all of that?
 10 MS. RYAN:
 11 A. I do. I do everything.
 12 KENNEDY, Q.C.:
 13 Q. And how has that been since the accident?
 14 MS. RYAN:
 15 A. I have my kids one week on, one week off.
 16 So my son needs a cooked meal, he burns
 17 about 10,000 calories a day. So I do what I
 18 can. When I have my kids, it's very, very
 19 difficult. I soldier through it and they
 20 help me out a little bit. Not as much as I
 21 would like, but they help me out a little
 22 bit, and I just do what I can do. I don't –
 23 I can't do everything. They don't always
 24 get that cooked meal.
 25 KENNEDY, Q.C.:

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1 Q. You've talked about your financial situation
 2 since the accident. Prior to the accident,
 3 how were you financially, did you have any
 4 financial problems?
 5 MS. RYAN:
 6 A. All my bills were paid. I was not concerned
 7 about where my next meal was coming from,
 8 that's for sure.
 9 KENNEDY, Q.C.:
 10 Q. So in terms then of the effect on you, we've
 11 heard about your financial, social, your
 12 family life. What about the psychological
 13 or emotional aspects of this injury?
 14 (9:15 a.m.)
 15 MS. RYAN:
 16 A. Well, that's – I think that's the part that
 17 most people overlook when it comes to
 18 accidents such as this. There's so much
 19 focus put on the physical part of it, people
 20 don't realize what you go through from a
 21 psychological perspective. I was diagnosed
 22 with PTSD due to a very traumatic event in
 23 my life about eight years ago, and I like to
 24 think I had that under control. I was
 25 dealing with that, and life was pretty good,

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1 and in the last nine months due to being, I
 2 guess – my doctors call my bedroom my safe
 3 place. That's where I hide, that's where I
 4 go to hide, and it has brought my PTSD to
 5 the forefront bigger, and uglier, and
 6 scarier than I could ever dream possible.
 7 KENNEDY, Q.C.:
 8 Q. Are you still going – are you working at
 9 present?
 10 MS. RYAN:
 11 A. I work. I go into work every morning. I
 12 can't tell you how long I'm going to be
 13 there for. I've never made it to 5 o'clock.
 14 KENNEDY, Q.C.:
 15 Q. So how has all this affected you in terms of
 16 the way you look at life, look at yourself,
 17 look at what's going on?
 18 MS. RYAN:
 19 A. I have to be positive for my kids. I don't
 20 want them to see their mom like that, but I
 21 spend a little bit of time by myself when
 22 they're not there, and life can get pretty
 23 grim at times.
 24 KENNEDY, Q.C.:
 25 Q. What do you mean by that?

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1 MS. RYAN:
 2 A. Depressed, emotional, just – I feel very
 3 defeated. I feel helpless at times.
 4 KENNEDY, Q.C.:
 5 Q. Are you receiving any treatments for your
 6 injury?
 7 MS. RYAN:
 8 A. I see a chiropractor once a week. I see a
 9 massage therapist once a week, and I'm also
 10 in therapy.
 11 KENNEDY, Q.C.:
 12 Q. Do you – and what about your family doctor,
 13 how often do you see your family doctor, or
 14 any other doctors?
 15 MS. RYAN:
 16 A. I see Dr. Aguilar in person every three
 17 weeks, and I have him on speed dial.
 18 KENNEDY, Q.C.:
 19 Q. Okay, so how much – how does this affect
 20 your life in terms of getting to all of
 21 these treatments and trying to stay up on
 22 that?
 23 MS. RYAN:
 24 A. It's difficult because it takes a lot of
 25 time out of my day. You know, when I go to

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1 work in the morning, if I have massage
 2 therapy, I have to turn around and drive
 3 back to Topsail Road to see my massage
 4 therapist, and then I have to go see my
 5 chiropractor, so it takes time out of my
 6 day, but it's so necessary, I wouldn't be
 7 able to function without that.
 8 KENNEDY, Q.C.:
 9 Q. Now in terms of the massage therapy and the
 10 chiropractic, does it help?
 11 MS. RYAN:
 12 A. For the moment, it do, yes.
 13 KENNEDY, Q.C.:
 14 Q. Okay, when you say "for the moment", what do
 15 you mean by that?
 16 MS. RYAN:
 17 A. There's days I've walked into my massage
 18 therapist barely walking, and I felt like
 19 skipping out, I felt so good, but by the end
 20 of the day it's back again. It's a passive
 21 modality for this type of injury. She'll
 22 loosen up the muscles and she'll get the
 23 blood flow going, but my chiropractor is
 24 what really makes – like, when I go to my
 25 chiropractor, I'll get a good day or two out

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1 of my chiropractor.
 2 KENNEDY, Q.C.:
 3 Q. Now after the accident itself, were there
 4 any issues with having the damage to your
 5 car, for example, paid for?
 6 MS. RYAN:
 7 A. No, my vehicle went into the auto shop and
 8 there was \$3,000.00. The whole rear end of
 9 my vehicle had to be replaced.
 10 KENNEDY, Q.C.:
 11 Q. And there was no problem – any problems with
 12 that?
 13 MS. RYAN:
 14 A. No.
 15 KENNEDY, Q.C.:
 16 Q. Okay, in terms then, did you have – do you
 17 know what I'm referring to when I talk about
 18 Section B coverage?
 19 MS. RYAN:
 20 A. I think so.
 21 KENNEDY, Q.C.:
 22 Q. Okay, so your own insurance, monies to pay
 23 for – you purchase a policy that pays then
 24 for your medical and other expenses?
 25 MS. RYAN:

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1 A. Yes.
 2 KENNEDY, Q.C.:
 3 Q. Did you have that policy, do you know?
 4 MS. RYAN:
 5 A. Yes.
 6 KENNEDY, Q.C.:
 7 Q. Did you have private insurance at work?
 8 MS. RYAN:
 9 A. Yes.
 10 KENNEDY, Q.C.:
 11 Q. So has there been any difficulty in either
 12 having your massage therapy or chiropractic
 13 paid for?
 14 MS. RYAN:
 15 A. No.
 16 KENNEDY, Q.C.:
 17 Q. So Ms. Ryan, how do you see this in terms of
 18 the effects of this injury on you, not only
 19 at present, but going into the future?
 20 MS. RYAN:
 21 A. I really don't know because it's one day at
 22 a time for me. It's nine months and I don't
 23 see much, if any, improvement in my
 24 injuries. I wear a belt. That's why I look
 25 so funny. I wear a belt just to keep

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1 everything tight and compressed. I wear two
 2 opioid patches, I change every four days.
 3 So now I'm faced with the possibility of an
 4 opioid addiction, and that's really the only
 5 thing that gets me out of bed. So a week,
 6 two weeks, three months, I really don't know
 7 where I'm going to be.
 8 KENNEDY, Q.C.:
 9 Q. Okay, so now if we look at the situation
 10 physically before the accident, I had asked
 11 you this earlier, did you have any physical
 12 neck or back -
 13 MS. RYAN:
 14 A. Absolutely –
 15 KENNEDY, Q.C.:
 16 Q. Or any type of problems prior to the
 17 accident?
 18 MS. RYAN:
 19 A. No, I was very physically fit.
 20 KENNEDY, Q.C.:
 21 Q. What has been the effect on you on not being
 22 able to be physically active or to go to the
 23 gym, to walk, do things like that?
 24 MS. RYAN:
 25 A. It's very depressing because that was my

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1 entire life. I'm one of these people that I
 2 believe in taking care of yourself before
 3 you take care of anybody else, and I always
 4 made it a point to – like I said, I'm a huge
 5 advocate for a healthy lifestyle. I spent
 6 every day doing some sort of physical
 7 activity, and now I can't do that any more.
 8 I can't even comprehend that.
 9 KENNEDY, Q.C.:
 10 Q. Perhaps you could outline a little bit more
 11 detail for the members of the Board here in
 12 terms of your ability to do things around
 13 the house, everything from washing dishes –
 14 you've mentioned lifting groceries. What
 15 else has been affected in terms of your
 16 ability around the house?
 17 MS. RYAN:
 18 A. I can't do – my son has to – like, simple
 19 things, take out the groceries. My sister
 20 comes over every now and then and does a
 21 clean sweep of my floors. I can't wash out
 22 my bathtub. I can't change my beds. Doing
 23 laundry is extremely difficult for me. I'll
 24 do it for a couple of minutes and then I've
 25 got to sit down and wait and go back and do

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1 some more. It just takes a lot more time
 2 and not everything gets done.
 3 KENNEDY, Q.C.:
 4 Q. What about driving your car, are there any
 5 difficulties in driving your car?
 6 MS. RYAN:
 7 A. That's the hardest thing for me to do, in my
 8 car. That's why I experience most of my
 9 pain.
 10 KENNEDY, Q.C.:
 11 Q. And why is – what do you mean by that?
 12 MS. RYAN:
 13 A. I guess, the way I'm sitting, whatever way
 14 I'm positioned in my car, and I've adjusted
 15 my seat a hundred ways, but I find it very
 16 difficult driving, and I still don't have
 17 complete range of motion to the right, so
 18 changing lanes is very painful.
 19 KENNEDY, Q.C.:
 20 Q. Do you manage to get your son to his
 21 basketball games and leagues?
 22 MS. RYAN:
 23 A. I count on other parents sometimes. His
 24 last practice, I couldn't pick him up. My
 25 brother-in-law went and picked him up for

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1 me. I have to ask for help. I have no
 2 choice.
 3 KENNEDY, Q.C.:
 4 Q. Did you have people assist you prior to the
 5 accident?
 6 MS. RYAN:
 7 A. No.
 8 KENNEDY, Q.C.:
 9 Q. Ms. Ryan, one of the questions that's
 10 probably going to be asked, and I'll deal
 11 with it now, maybe it will, maybe it won't,
 12 but why are you here today?
 13 MS. RYAN:
 14 A. Because I want to be a voice for future
 15 victims.
 16 KENNEDY, Q.C.:
 17 Q. Could you elaborate on that a little,
 18 please?
 19 MS. RYAN:
 20 A. Unless you go through this, or you have a
 21 family member that goes through something
 22 like this, I'm not – I don't have a cane, I
 23 don't have a walker, you don't see a cast.
 24 To look at me, you really wouldn't say
 25 there's a whole lot wrong with me, but

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1 physically and psychologically, I'm broken.
 2 I'm just a broken shell of a person right
 3 now, hence the reason that I take
 4 antidepressants, and for future victims, but
 5 my financial situation, I guess - you know,
 6 I work three/six months ahead of myself at
 7 my job. So when I was off for four months,
 8 it not only impacted that four months that I
 9 was off, but it impacted my future earnings
 10 for a business that I would get six/nine
 11 months a year down the road because I wasn't
 12 out in the community, I wasn't out in front
 13 of my clients, I wasn't out prospecting new
 14 business. So it's going to take me a long
 15 time to get back to where I was to. Like I
 16 said, I'm 25 years doing this job. I should
 17 not be in the position that I'm in right now
 18 trying to figure out how I'm going to feed
 19 my children.
 20 KENNEDY, Q.C.:
 21 Q. So overall, this is probably my last
 22 question for you, and then there will be—you
 23 can add whatever you want, but—and others
 24 may have some questions. How would you
 25 describe the effect of this accident on your

Page 25

1 life?
 2 MS. RYAN:
 3 A. It's horrific. Totally changed my life
 4 completely, my positive outlook that I've
 5 always had. People would come to me looking
 6 for advice on life in general because I was
 7 always such cup-half-full-type person. I
 8 was always such a positive person. And I
 9 don't even want to talk to people anymore.
 10 I find it difficult when I'm having a bad
 11 day, to go out and see a client. I don't
 12 even want to go—I don't want to talk to
 13 anybody. I hide away for the most part. My
 14 life is so different right now that it seems
 15 like I'm not even living it. Somebody else
 16 is living this life; it's not me.
 17 KENNEDY, Q.C.:
 18 Q. When you were stopped waiting for that other
 19 car--you were stopped waiting for the other
 20 car to turn, correct?
 21 MS. RYAN:
 22 A. Yeah.
 23 KENNEDY, Q.C.:
 24 Q. And that car hit you. How long did that all
 25 take?

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1 MS. RYAN:
 2 A. Oh, my God, seconds.
 3 KENNEDY, Q.C.:
 4 Q. Seconds.
 5 MS. RYAN:
 6 A. My life changed in seconds.
 7 KENNEDY, Q.C.:
 8 Q. Okay. Those will be questions for you, Ms.
 9 Ryan. So, anything you'd like to add at
 10 this point?
 11 MS. RYAN:
 12 A. No, I don't think so.
 13 KENNEDY, Q.C.:
 14 Q. So, members of the Board, we can either have
 15 questions for Ms. Ryan now or after Ms.
 16 Elliott finishes. Do you have a preference?
 17 CHAIR:
 18 Q. I think it would be better to go to Ms.
 19 Elliott and then -
 20 KENNEDY, Q.C.:
 21 Q. Thank you. Okay, so Ms. Elliott, we're
 22 going to follow the same procedure we just
 23 used with Ms. Ryan. So, if we could just
 24 get some basic information about you. Could
 25 you state your name and address, please?

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1 MS. ELLIOTT:
 2 A. It's Sheila Elliott, and it's 124 Main Road,
 3 Butlerville in Bay Roberts.
 4 KENNEDY, Q.C.:
 5 Q. And who do you live in Bay Roberts or
 6 Butlerville with? They're different to me
 7 because I'm from that area.
 8 MS. ELLIOTT:
 9 A. Yeah.
 10 KENNEDY, Q.C.:
 11 Q. But in any event, who do you live in Bay
 12 Roberts with?
 13 MS. ELLIOTT:
 14 A. My two daughters.
 15 KENNEDY, Q.C.:
 16 Q. And how old are your daughters?
 17 MS. ELLIOTT:
 18 A. One will be 15 and the other one is--will be
 19 13 at the beginning of January.
 20 KENNEDY, Q.C.:
 21 Q. What's your marital status, Ms. Elliott?
 22 MS. RYAN:
 23 A. Single.
 24 KENNEDY, Q.C.:
 25 Q. Now, I haven't vetted with you--this one with

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1 you, but I'm going to take a chance of
 2 asking you anyway. You don't have to answer
 3 if you don't want to, but how old are you,
 4 Ms. Elliott.
 5 MS. ELLIOTT:
 6 A. I'll be 49 in--next month.
 7 KENNEDY, Q.C.:
 8 Q. Okay. Are you currently employed?
 9 MS. ELLIOTT:
 10 A. No.
 11 KENNEDY, Q.C.:
 12 Q. Okay. In terms of your--have you always been
 13 a stay-at-home mom or--educational
 14 employment history?
 15 MS. ELLIOTT:
 16 A. No, this is a recent thing. My company had
 17 actually gone under after 50 years.
 18 KENNEDY, Q.C.:
 19 Q. Okay.
 20 MS. ELLIOTT:
 21 A. Over 50 years in business.
 22 KENNEDY, Q.C.:
 23 Q. Okay. And how long had you worked at that
 24 company?
 25 MS. ELLIOTT:

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1 A. Almost ten years.
 2 KENNEDY, Q.C.:
 3 Q. Okay. So, you've heard now Ms. Ryan and
 4 some of things we went through with her.
 5 So, your children are again what ages?
 6 MS. ELLIOTT:
 7 A. Fifteen and 12.
 8 KENNEDY, Q.C.:
 9 Q. So, that would be Grades?
 10 MS. ELLIOTT:
 11 A. Ten and seven.
 12 KENNEDY, Q.C.:
 13 Q. Very similar to Ms. Elliott (sic.)?
 14 MS. ELLIOTT:
 15 A. Yes, yes.
 16 KENNEDY, Q.C.:
 17 Q. Okay. Now, your situation is a little—is
 18 different than Ms. Elliott's (sic.) from my
 19 understanding because there were a number of
 20 accidents in which you were involved?
 21 MS. ELLIOTT:
 22 A. Correct.
 23 KENNEDY, Q.C.:
 24 Q. So, your children now, how—what was the
 25 date—how many accidents have you been in, by

Page 30

1 the say?
 2 MS. ELLIOTT:
 3 A. Three.
 4 KENNEDY, Q.C.:
 5 Q. And when was the first one?
 6 MS. ELLIOTT:
 7 A. 2010.
 8 KENNEDY, Q.C.:
 9 Q. So, your children would have been a lot
 10 younger at that point?
 11 MS. ELLIOTT:
 12 A. Yes.
 13 KENNEDY, Q.C.:
 14 Q. Okay. Now, before we get into the details
 15 of that, I understand there was a second
 16 accident?
 17 MS. ELLIOTT:
 18 A. Yes.
 19 KENNEDY, Q.C.:
 20 Q. And what was the date of that?
 21 MS. ELLIOTT:
 22 A. 2012 I believe.
 23 KENNEDY, Q.C.:
 24 Q. And then, I understand there was,
 25 unfortunately, a third accident?

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1 MS. ELLIOTT:
 2 A. Yes. Oh my Gosh, 2014 or '16. I can't
 3 remember.
 4 KENNEDY, Q.C.:
 5 Q. Okay. So, let's deal with the—perhaps you
 6 can tell us about the first collision which
 7 I understand was in December 10th (sic.),
 8 2010?
 9 MS. ELLIOTT:
 10 A. Yeah.
 11 KENNEDY, Q.C.:
 12 Q. Why don't you tell us –
 13 MS. ELLIOTT:
 14 A. December 6th, 2010.
 15 KENNEDY, Q.C.:
 16 Q. Yes. Tell us what happened.
 17 MS. ELLIOTT:
 18 A. I was on my way home, just about to—I was
 19 stopped at the Access Road stop sign in Bay
 20 Roberts, and the position of the stop sign,
 21 you have to stop at the stop sign, and then
 22 kind of ease your way out because there is
 23 oncoming traffic from another road. So, I
 24 did that. And as I was stopped, the truck
 25 behind me came right into me. I did have

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1 another passenger in the car with me. My
 2 head went forward, went back. And pretty
 3 shocking because I was on my way to my
 4 daughter's Christmas concert in Carbonear.
 5 So, we had pulled over at—I was still able
 6 to drive my car and pulled into a parking
 7 lot nearby to speak with the man that was
 8 driving the truck.
 9 KENNEDY, Q.C.:
 10 Q. Okay. And so, you're stopped?
 11 MS. ELLIOTT:
 12 A. Yeah.
 13 KENNEDY, Q.C.:
 14 Q. So, you get rear-ended? Rear-ended is the
 15 common –
 16 MS. ELLIOTT:
 17 A. I'm completely stopped, yeah.
 18 KENNEDY, Q.C.:
 19 Q. Yes, okay. So, did you go to the hospital
 20 right away? Was there an ambulance?
 21 MS. ELLIOTT:
 22 A. No, I –
 23 KENNEDY, Q.C.:
 24 Q. What happened?
 25 MS. ELLIOTT:

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<p>1 A. Sorry. No, I proceeded to go to my 2 daughter's concert because I had no choice. 3 She was waiting on me. The next day I did 4 go to the doctor and go over what had 5 happened regarding the accident. 6 KENNEDY, Q.C.: 7 Q. So, what were the injuries that you 8 sustained in that accident? 9 MS. ELLIOTT: 10 A. My neck, and my lower back, and my neck, and 11 my middle of my back at that point. 12 KENNEDY, Q.C.: 13 Q. Okay. So, was there any course of treatment 14 prescribed for you in relation to this – 15 MS. ELLIOTT: 16 A. Physio, massage, oral pain medication. 17 KENNEDY, Q.C.: 18 Q. Okay. And how long did your—did you do 19 physio first? 20 MS. ELLIOTT: 21 A. I did physio first and went – 22 KENNEDY, Q.C.: 23 Q. For how long? 24 MS. ELLIOTT: 25 A. Oh, well, I was still in physio when the</p>	<p>1 MS. ELLIOTT: 2 A. Yeah. 3 KENNEDY, Q.C.: 4 Q. So, how did this affect your—how did the 5 housework at home, part of this accident? 6 How did this affect the housework, your 7 ability to deal with, interact with your 8 children, things like that? 9 MS. ELLIOTT: 10 A. Well, they also are very active children, in 11 dance, and basketball, and volleyball and 12 softball. And at this point I was in a 13 common-law relationship. So, my partner did 14 pick up some of the stuff, but I had to have 15 my mom come in and help with the cleaning or 16 help with the laundry, or I just—it just 17 didn't get done. 18 KENNEDY, Q.C.: 19 Q. Okay. And so, in terms of—you talked about 20 medications that were prescribed to you. Do 21 you remember the names of those medications? 22 MS. ELLIOTT: 23 A. Tylenol 3 and the other medications I don't 24 remember. 25 KENNEDY, Q.C.:</p>
<p>Page 34</p> <p>1 second accident happened, but I was also 2 doing—I was doing physio two to three times 3 a week, and then, I started with massage. 4 And that was about twice a week. And it was 5 right near my work. So, I didn't have to 6 drive, but I didn't miss any work, maybe a 7 day or two. And my company was very 8 understanding when I did miss a day or two 9 here and there, but I didn't have a choice. 10 Like Ms. Ryan, I'm a single parent of two 11 children, and I have to push through 12 whatever it takes. 13 KENNEDY, Q.C.: 14 Q. Now, my math is not the best, and please 15 correct me if I'm wrong, but this occurred 16 in 2010, then your children would have been 17 seven and five or - 18 MS. ELLIOTT: 19 A. Well, no. Well, Sara would have been - 20 KENNEDY, Q.C.: 21 Q. They would have been young? 22 MS. ELLIOTT: 23 A. Yes, yes. 24 KENNEDY, Q.C.: 25 Q. Okay.</p>	<p>Page 36</p> <p>1 Q. Okay. 2 MS. ELLIOTT: 3 A. Like that was over eight years ago. So—or 4 almost eight years ago. 5 KENNEDY, Q.C.: 6 Q. Yes, okay. So, then you say you're still in 7 physio at the time that the second accident 8 occurred? 9 MS. ELLIOTT: 10 A. Yes. 11 KENNEDY, Q.C.: 12 Q. Do you remember the actual date of the 13 second accident? 14 MS. ELLIOTT: 15 A. I know it was close to going back to school 16 because I was into find shoes for my 17 daughters. We were stopped at Captain 18 Whelan Place and I can't remember the name 19 of the road there. 20 KENNEDY, Q.C.: 21 Q. Is that in Bay Roberts? In Bay Roberts? 22 MS. ELLIOTT: 23 A. And a young girl rear-ended me. 24 KENNEDY, Q.C.: 25 Q. Is that in Bay Roberts, Captain Whelan?</p>

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1 MS. ELLIOTT:
 2 A. No, that was in town.
 3 KENNEDY, Q.C.:
 4 Q. Okay.
 5 MS. ELLIOTT:
 6 A. That was in town.
 7 KENNEDY, Q.C.:
 8 Q. Oh yes, okay. I know where it is, yes.
 9 MS. ELLIOTT:
 10 A. Yeah.
 11 KENNEDY, Q.C.:
 12 Q. Okay, sorry. Continue.
 13 MS. ELLIOTT:
 14 A. So, we were stopped at the lights, and I
 15 don't know if she wasn't paying attention or
 16 not. She rear-ended me. We—like we were at
 17 a complete stop, just waiting.
 18 KENNEDY, Q.C.:
 19 Q. You say "we." Was there someone in the car
 20 with you?
 21 MS. ELLIOTT:
 22 A. There was. I was driving my mother's car.
 23 So, it was myself, and my mom and my two
 24 children.
 25 KENNEDY, Q.C.:

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1 Q. Okay.
 2 MS. ELLIOTT:
 3 A. The two girls were in the back seat and my
 4 mother was in the passenger seat.
 5 KENNEDY, Q.C.:
 6 Q. Okay. So, before we get to that second
 7 accident then, I forgot to ask you, in terms
 8 of the first accident, do you remember what
 9 kinds of coverage you would have had on your
 10 vehicle? Would you have had full coverage?
 11 Would you have simply had –
 12 MS. ELLIOTT:
 13 A. Full coverage.
 14 KENNEDY, Q.C.:
 15 Q. Okay. So, did you have Section B?
 16 MS. ELLIOTT:
 17 A. Yes.
 18 KENNEDY, Q.C.:
 19 Q. Okay. Did you have any private insurance at
 20 the time?
 21 MS. ELLIOTT:
 22 A. I did, yes.
 23 KENNEDY, Q.C.:
 24 Q. Okay. So, were there any problems at all in
 25 any way in terms of having your treatments,

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1 whether they had been physio and massage or
 2 anything else paid for?
 3 MS. ELLIOTT:
 4 A. Not at this point.
 5 KENNEDY, Q.C.:
 6 Q. Okay. So, now let's come to the second
 7 collision. It looks to me to be about 20,
 8 18 or 20 months, or 21 months later?
 9 MS. ELLIOTT:
 10 A. Yeah.
 11 KENNEDY, Q.C.:
 12 Q. So, you were still in treatment at that
 13 time, were you?
 14 MS. ELLIOTT:
 15 A. Oh yes. Yeah, it started to like not be as
 16 frequent. So, say physio would be like once
 17 a week as opposed to three times a week.
 18 And the same with massage. It was being cut
 19 back gradually because I found it did help,
 20 and I was trying all kinds of different
 21 things to make my life better, and
 22 strengthen my back and my shoulders, to
 23 improve my quality of life.
 24 KENNEDY, Q.C.:
 25 Q. Were you still able to drive during that

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1 timeframe?
 2 MS. ELLIOTT:
 3 A. I did. It wasn't always easy.
 4 KENNEDY, Q.C.:
 5 Q. And what do you mean by that?
 6 MS. ELLIOTT:
 7 A. Well, when you're driving, and you can—you
 8 might not be able to have full range of
 9 turning left or right, or looking left and
 10 right, or reversing. So—or even just to be
 11 in traffic because I travelled from Bay
 12 Roberts to St. John's every day. And the
 13 tension that you would get when you're on
 14 the Outer Ring, and most people have driven
 15 on the Outer Ring in rush-hour traffic, the
 16 tension would flare up your neck or just the
 17 pain and the tingling down my arm from
 18 holding onto the steering wheel. Afraid
 19 somebody else is going to rear-end you at
 20 some point, you become so paranoid. Like
 21 I'm sure people around you are wondering why
 22 you're braking all the time or so far back.
 23 It's just you are so paranoid, and it
 24 inflames your previous injuries.
 25 KENNEDY, Q.C.:

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1 Q. So, in terms of how--during this course of
2 treatment, and during the first accident,
3 how was your life before and after that
4 first accident? If I could ask you just do
5 a comparison.
6 MS. ELLIOTT:
7 A. I had no problems. I didn't have any health
8 issues, other than like I'm an asthmatic,
9 but other than that, I never had a back
10 injury, I never had any issues.
11 KENNEDY, Q.C.:
12 Q. Yes.
13 MS. ELLIOTT:
14 A. I was able to clean my house with no problem
15 or –
16 KENNEDY, Q.C.:
17 Q. Was that before or after the accident?
18 MS. ELLIOTT:
19 A. Before.
20 KENNEDY, Q.C.:
21 Q. Okay.
22 MS. ELLIOTT:
23 A. Like I would clean and—but now, even today,
24 like there's days that I can clean, and
25 something like Ms. Ryan here, that you have

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1 to stop in the middle of what you're doing
2 and take a break because your back is
3 hurting, or your shoulders are hurting, or
4 like I said, preparing meals or having that
5 full range. Like I said, I had tingling
6 down my left arm as well as my right arm,
7 when I was rear-ended. So, it's just
8 different things that—or even just to shovel
9 snow in the winter. I can't do that.
10 KENNEDY, Q.C.:
11 Q. Could you do it before the accident?
12 MS. ELLIOTT:
13 A. Oh yes.
14 KENNEDY, Q.C.:
15 Q. Yes.
16 MS. ELLIOTT:
17 A. Yeah, or I do things because I have to,
18 because there is nobody else. My mother is
19 73 years old. I feel I shouldn't have to
20 call on her. Sorry.
21 KENNEDY, Q.C.:
22 Q. Just take your time.
23 MS. ELLIOTT:
24 A. To help me do this because of what has
25 conspired in the last eight years.

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1 KENNEDY, Q.C.:
2 Q. Okay.
3 MS. ELLIOTT:
4 A. Sorry.
5 KENNEDY, Q.C.:
6 Q. Just take your time. Let us know if you
7 want to take a break.
8 MS. ELLIOTT:
9 A. No.
10 KENNEDY, Q.C.:
11 Q. There's some water there or –
12 MS. ELLIOTT:
13 A. That's okay.
14 KENNEDY, Q.C.:
15 Q. Okay. So, in terms of after the first
16 accident, and before the second accident, in
17 terms of—could you get your daughters back
18 and forth to the things they were doing?
19 MS. ELLIOTT:
20 A. I did, yeah.
21 KENNEDY, Q.C.:
22 Q. Okay.
23 MS. ELLIOTT:
24 A. Because I wouldn't let them down.
25 KENNEDY, Q.C.:

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1 Q. Did you have any other family members? You
2 talked about your mother. Do you have any
3 other family members that help you?
4 MS. ELLIOTT:
5 A. Yeah. When me and their father were
6 together, then he would step up, but it was
7 only when I asked. And so, other than my
8 mom, the odd person like a friend would take
9 them, but there wasn't a lot of people that
10 my kids could call on, unless they had—they
11 were on a team and the parents were going to
12 the same place, then I would ask.
13 KENNEDY, Q.C.:
14 Q. So, were you originally from the Bay Roberts
15 or Butlerville area?
16 MS. ELLIOTT:
17 A. No.
18 KENNEDY, Q.C.:
19 Q. No, I can—I know that.
20 MS. ELLIOTT:
21 A. No, I'm from Ontario originally.
22 KENNEDY, Q.C.:
23 A. Okay.
24 MS. ELLIOTT:
25 A. Yeah, we moved here in 2008.

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1 KENNEDY, Q.C.:

2 Q. Okay. Okay, so then, we have the second

3 accident. Please come to that and tell what

4 happens there.

5 MS. ELLIOTT:

6 A. So, like I said, we were stopped at the

7 lights, waiting for the light to turn green.

8 There was quite a bit of traffic at that

9 time. It was a Sunday. I believe it was a

10 Sunday afternoon, and like I said, the young

11 girl that rear-ended us, I don't know if she

12 wasn't paying attention, but the car in

13 front of us had stopped because the lights

14 had changed, and she rear-ended us. So, we

15 got a pretty big jolt. And my kids were

16 pretty shaken up. And after that, we were—

17 and the young girl was shaken up as well,

18 that rear-ended us. And so, we had—we were

19 able to pull off to the side, to a side road

20 and wait for her parents to come. And even

21 my mom was pretty shaken up, and again, she

22 got a jolt. So, again, my neck is going

23 forward and back. And so, I could feel it

24 down my arm and up my shoulders and my neck.

25 Like I said, we proceeded to pull over to

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1 the side road until her parents came. We

2 exchanged information, and after that, we

3 went home. We turned around from the area

4 we were and went back to Bay Roberts. Well,

5 actually I dropped my mom off and me and my

6 girls went to Carbonear Hospital.

7 KENNEDY, Q.C.:

8 Q. And so, when you –

9 MS. ELLIOTT:

10 A. Just to get checked out.

11 KENNEDY, Q.C.:

12 Q. When you went to the hospital, you would

13 have went to the Emergency Ward I'm

14 assuming?

15 MS. ELLIOTT:

16 A. Yes.

17 KENNEDY, Q.C.:

18 Q. Okay.

19 MS. ELLIOTT:

20 A. Yes.

21 KENNEDY, Q.C.:

22 Q. Okay. So, did you see doctor at the

23 Emergency that day?

24 MS. ELLIOTT:

25 A. We did not because we were waiting for over

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1 five hours in the Emerge.

2 KENNEDY, Q.C.:

3 Q. Yes.

4 MS. ELLIOTT:

5 A. We went back the next day to the doctor.

6 KENNEDY, Q.C.:

7 Q. To the doctor?

8 MS. ELLIOTT:

9 A. To my family doctor.

10 KENNEDY, Q.C.:

11 Q. Okay.

12 MS. ELLIOTT:

13 A. Sorry.

14 KENNEDY, Q.C.:

15 Q. So, who is your family doctor?

16 MS. ELLIOTT:

17 A. Yeah, yeah.

18 KENNEDY, Q.C.:

19 Q. Who is your family doctor?

20 MS. ELLIOTT:

21 A. Dr. Christopher Patey.

22 KENNEDY, Q.C.:

23 Q. Had Dr. Patey been your doctor during the

24 first accident also?

25 MS. ELLIOTT:

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1 A. Yes, yeah.

2 KENNEDY, Q.C.:

3 Q. And where is Dr. Patey located?

4 MS. ELLIOTT:

5 A. He is in the Emerge. I believe he's the

6 chief emergency doctor in Carbonear

7 Hospital.

8 KENNEDY, Q.C.:

9 Q. Okay.

10 MS. ELLIOTT:

11 A. But he also has—he works at the clinic in

12 Spaniard's Bay.

13 KENNEDY, Q.C.:

14 Q. Okay. So, the clinic in Spaniard's Bay?

15 MS. ELLIOTT:

16 A. Yeah.

17 KENNEDY, Q.C.:

18 Q. Okay. So, you see Dr. Patey after the

19 second accident. What course of treatment

20 did he prescribe for you, whether it be

21 medication, physio, massage, et cetera?

22 MS. ELLIOTT:

23 A. Yeah. No, just the same thing, to go back

24 to increasing massage and physio, and again,

25 oral pain medication is prescribed, besides

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1 the Tylenol 3s. I'm not a big—I don't like
 2 to take a lot of pills. So, you know, I
 3 took it when I had to or to a point. You
 4 know, like it's just—and I tried different
 5 things, whether it was going through Section
 6 B to go to the gym to try and strengthen up
 7 my back. Like I said, anything I could do
 8 to strengthen my body and get me healthy
 9 again so I—my kids can depend on me, to be
 10 independent and not rely on anybody, and
 11 show them how strong—like I said, I didn't
 12 take hardly any time off work. I picked
 13 places that I could walk to go for physio
 14 and massage. The gym was right across the
 15 parking lot where I used to work. So, you
 16 know –
 17 KENNEDY, Q.C.:
 18 Q. Were you still working at this time, Ms.
 19 Elliott?
 20 MS. ELLIOTT:
 21 A. Yes.
 22 KENNEDY, Q.C.:
 23 Q. Okay. So, how did this—what was the type of
 24 work that you did?
 25 MS. ELLIOTT:

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1 A. Administrative, secretarial work.
 2 KENNEDY, Q.C.:
 3 Q. Okay.
 4 MS. ELLIOTT:
 5 A. That changed a bit. I had to get up more
 6 frequently and walk around. There is some
 7 involvement of moving boxes. So, that I
 8 used to have to get other people to do that
 9 at that point. So, typing, and you know, by
 10 the end of the day or—because I was a
 11 receptionist/secretary, so answering the
 12 phones. So, at work, then we had someone
 13 come in and assess my desk area, realign it
 14 so it was more convenient for me, get a
 15 headset because at that point the company
 16 didn't have a headset that most people use.
 17 So, my day would be like this. And so, by
 18 the end of the day, when I left to go home,
 19 this side of my neck was—and shoulders were
 20 killing me.
 21 KENNEDY, Q.C.:
 22 Q. Okay.
 23 MS. ELLIOTT:
 24 A. Because my neck is like this, answering the
 25 phone.

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1 KENNEDY, Q.C.:
 2 Q. Where did you work? Did you work in St.
 3 John's?
 4 MS. ELLIOTT:
 5 A. Yes.
 6 KENNEDY, Q.C.:
 7 Q. Okay. So, you drove back and forth from Bay
 8 Roberts every day to St. John's?
 9 MS. ELLIOTT:
 10 A. Yes.
 11 KENNEDY, Q.C.:
 12 Q. Okay. So, you've talked about work, and how
 13 in terms of your social life, emotional
 14 health, your relationships, how were these
 15 being affected at this point, if at all?
 16 MS. ELLIOTT:
 17 A. Well, with my kids, my relationship with my
 18 kids, everything had to slow down. I
 19 couldn't be as proactive if we went out, and
 20 just to do certain little things. Like we
 21 all used to go to Zumba class together.
 22 That stopped completely because I couldn't
 23 manage the impact of jumping with my back,
 24 or even going sledding or certain trips.
 25 Like if we went to—when we went away to

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1 Canada's Wonderland, I can't get on a roller
 2 coaster any more, or go down like a
 3 waterslide because of the bumps on –
 4 KENNEDY, Q.C.:
 5 Q. Did you do that before, Ms. Elliott?
 6 MS. ELLIOTT:
 7 A. Yes.
 8 KENNEDY, Q.C.:
 9 Q. Okay.
 10 MS. ELLIOTT:
 11 A. Oh yes, I did all of that with my kids, you
 12 know, or even, you know like Della said,
 13 like just walking. You know, we've done
 14 quite a bit of hiking and stuff. So, all of
 15 that before didn't have an impact on me.
 16 Like when I used to clean, I never had a
 17 problem cleaning. I could go to the grocery
 18 store. And yes, my kids have to do—pick up
 19 the work slack now, whether it's vacuuming
 20 or taking in the clothes or taking the
 21 groceries out of the cart. Like it's very
 22 strenuous on your body when you've been in
 23 the situation I've been in.
 24 KENNEDY, Q.C.:
 25 Q. Okay. So, we have the second accident.

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1 Now, did you again have – were you still
 2 working? So, did you have private insurance
 3 at this point?
 4 MS. ELLIOTT:
 5 A. Yes.
 6 KENNEDY, Q.C.:
 7 Q. And did you have Section B?
 8 MS. ELLIOTT:
 9 A. Yes.
 10 KENNEDY, Q.C.:
 11 Q. Okay. Were there any problems at all in
 12 terms of accessing your Section B insurance
 13 during this second accident?
 14 MS. ELLIOTT:
 15 A. There was at points once my personal medical
 16 coverage was exhausted. At that – at a
 17 certain point, I did have two medical
 18 coverages, personal coverages, and once they
 19 were exhausted, then I had to go to Section
 20 B, but sometimes it was hard to get a hold
 21 of the representative because my massage
 22 therapist or physiotherapist didn't direct
 23 bill to my company, so that left me out of
 24 pocket, which left me short. And trying to
 25 come up with this money or having to have

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1 this business be short on money because I
 2 had to come back the next week and pay them,
 3 they were very accommodating like that, so I
 4 was very lucky, but I mean, at some points,
 5 my lawyer had to be involved and actually go
 6 further and contacting the company from my
 7 Section B.
 8 (9:45 a.m.)
 9 KENNEDY, Q.C.:
 10 Q. So how were your – financially, you've
 11 indicated there was some impact and you
 12 having to pay -
 13 MS. ELLIOTT:
 14 A. Oh yes.
 15 KENNEDY, Q.C.:
 16 Q. - for it out of pocket?
 17 MS. ELLIOTT:
 18 A. Yes.
 19 KENNEDY, Q.C.:
 20 Q. Were there any other financial implications
 21 that you feel were caused as a result of
 22 this accident, accidents?
 23 MS. ELLIOTT:
 24 A. Well, if I missed work or they didn't pay
 25 me, sure, there would be financial – like

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1 paying my bills or providing my kids on –
 2 even just buying groceries or living off
 3 credit cards and stuff like that, like it
 4 all built up.
 5 KENNEDY, Q.C.:
 6 Q. Okay. So, how was it affecting you from the
 7 emotional or psychological perspective at
 8 this point?
 9 MS. ELLIOTT:
 10 A. It's hard on certain days because I'm the
 11 only one really around that my kids can
 12 count on. Like their dad doesn't live close
 13 by. I'm the primary caregiver. They go
 14 with their dad every other weekend, but
 15 other than that, they depend on me. So,
 16 psychologically, it's very hard some days.
 17 So, you know, like I try to do the best I
 18 can. Even though I could be in pain, I try
 19 not to show it because I don't want them to
 20 feel that I'm not capable of doing the
 21 things I can for them and I want to show
 22 them that even though you may be injured,
 23 you just work through it. You persevere in
 24 any way you can.
 25 KENNEDY, Q.C.:

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1 Q. So, now I want – how was your – or what was
 2 your, I guess, diagnosis or prognosis before
 3 the third accident? How were you doing at
 4 that point in terms of your recovery?
 5 MS. ELLIOTT:
 6 A. Before the third one?
 7 KENNEDY, Q.C.:
 8 Q. Yeah.
 9 MS. ELLIOTT:
 10 A. It was like really good. The physio like
 11 was when I needed it. Massage had actually
 12 started to decrease, maybe once every two
 13 weeks, once every three weeks. So, you
 14 know, I finally thought that there was a
 15 light at the end of the tunnel. And then
 16 the third accident happened.
 17 KENNEDY, Q.C.:
 18 Q. Why don't you tell us about that? When – do
 19 you know exactly when it occurred, Ms.
 20 Elliott?
 21 MS. ELLIOTT:
 22 A. February 7th and -
 23 KENNEDY, Q.C.:
 24 Q. On February 7th what year, Ms. Elliott?
 25 MS. ELLIOTT:

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1 A. Like I said, I can't remember if it's '14 or
2 '16, but I know I was almost to work,
3 because I was coming down Torbay Road and
4 the roads were snow covered, getting ready
5 to turn into my parking lot there on Torbay
6 Road and Highland Drive and someone came and
7 sideswiped me and that like completely
8 pushed me right over the edge.
9 KENNEDY, Q.C.:
10 Q. Okay. So, February 7th, 2014, does that
11 sound accurate to you?
12 MS. ELLIOTT:
13 A. Yes.
14 KENNEDY, Q.C.:
15 Q. Okay. So, just to recap, so we have the
16 first accident on December 6th, 2010?
17 MS. ELLIOTT:
18 A. Yeah.
19 KENNEDY, Q.C.:
20 Q. The second accident on September 16, 2012
21 and the third accident on February 7th, 2014,
22 which is how many years ago? Four? Four
23 years ago?
24 MS. ELLIOTT:
25 A. Yeah.

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1 KENNEDY, Q.C.:
2 Q. Okay.
3 MS. ELLIOTT:
4 A. It will be.
5 KENNEDY, Q.C.:
6 Q. Tell us what happened. So, you were
7 sideswiped in a snowstorm. What happens?
8 MS. ELLIOTT:
9 A. So, then I pull over to the side. The car
10 that hit me is nowhere to be seen. So, I'm
11 thinking this is a hit and run. There was a
12 lady behind me. She got the license plate.
13 She was kind enough to stop and see if I was
14 okay. But I was pretty shaken up.
15 KENNEDY, Q.C.:
16 Q. Did the other vehicle stop by the way?
17 MS. ELLIOTT:
18 A. No.
19 KENNEDY, Q.C.:
20 Q. Were they eventually found, do you know
21 that?
22 MS. ELLIOTT:
23 A. They were eventually found.
24 KENNEDY, Q.C.:
25 Q. Okay.

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1 MS. ELLIOTT:
2 A. They had actually – I was told that they had
3 pulled into the parking lot, but I had never
4 – like at the time of the accident, I did
5 not see anybody stop or anything like that.
6 There was damage done to the van that you
7 couldn't even open the passenger side door.
8 KENNEDY, Q.C.:
9 Q. The van would be what you were driving?
10 MS. ELLIOTT:
11 A. Which is what I was driving. So, the van
12 sliding door, there was damage done to that.
13 There was also damage done to the passenger
14 door of the van. So, like I said, I did
15 proceed and pull over to the side. A lady
16 did get out and she said she saw everything.
17 She asked if I was okay and she gave me her
18 name, her information, and she did have the
19 license plate number of the vehicle that did
20 strike me.
21 KENNEDY, Q.C.:
22 Q. Okay. Was the vehicle, the damage to your
23 vehicle ultimately covered?
24 MS. ELLIOTT:
25 A. Yes, it was.

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1 KENNEDY, Q.C.:
2 Q. Okay. So, did you go to like either – what
3 steps did you take in terms of either going
4 to the hospital emergency? What happened?
5 MS. ELLIOTT:
6 A. So, I went to my office first because it was
7 right there, just to tell them what had
8 happened, and then I proceeded to go to the
9 Health Science.
10 KENNEDY, Q.C.:
11 Q. Okay.
12 MS. ELLIOTT:
13 A. I think it was the Health Science or St.
14 Clare's. I can't even remember now.
15 KENNEDY, Q.C.:
16 Q. Did you see anyone there?
17 MS. ELLIOTT:
18 A. I did.
19 KENNEDY, Q.C.:
20 Q. Okay.
21 MS. ELLIOTT:
22 A. Now, if you ask me the doctor's name, I will
23 not remember that. My mind is not very
24 good. But I know I waited for a long time
25 and again, like he just gave me an oral

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1 prescription and sent me on my way.
 2 KENNEDY, Q.C.:
 3 Q. Did you – was Dr. Patey still your family
 4 doctor at that point?
 5 MS. ELLIOTT:
 6 A. Yes, he was.
 7 KENNEDY, Q.C.:
 8 Q. Did you see Dr. Patey after the accident?
 9 MS. ELLIOTT:
 10 A. Afterwards, yes, I did.
 11 KENNEDY, Q.C.:
 12 Q. And when would you have seen him? How long
 13 after this third accident?
 14 MS. ELLIOTT:
 15 A. I think it was three days or so because he
 16 only works Wednesdays at that time when I
 17 was in the accident.
 18 KENNEDY, Q.C.:
 19 Q. Okay. So, what was the course of treatment,
 20 if any, that was prescribed by Dr. Patey?
 21 MS. ELLIOTT:
 22 A. And again, it's almost the same similar
 23 situations, but now the injuries were more
 24 on my upper shoulders and my right side and
 25 my neck. So, he said to increase again the

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1 physiotherapy. Massage started all over
 2 again, the same action as the first
 3 accident.
 4 KENNEDY, Q.C.:
 5 Q. Throughout this process, this horrible
 6 process that you've undergone, have there
 7 ever been any x-rays, CT scans, anything
 8 like that done?
 9 MS. ELLIOTT:
 10 A. Yes, there was.
 11 KENNEDY, Q.C.:
 12 Q. Okay.
 13 MS. ELLIOTT:
 14 A. But of course, with soft tissue injury, it
 15 doesn't show up on an x-ray.
 16 KENNEDY, Q.C.:
 17 Q. Okay. So, did Dr. Patey give you – or has
 18 he given you any prognosis in terms of the
 19 future in terms – and your recovery from
 20 these injuries?
 21 MS. ELLIOTT:
 22 A. Well, there is no recovery. It's just I go
 23 through everyday life, whether – if I'm in
 24 pain, then I'll take pain medication or if –
 25 I purchased a water pillow, a rolling pin to

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1 try and stretch out my back if there's pain,
 2 or I just don't do certain things anymore.
 3 KENNEDY, Q.C.:
 4 Q. You've talked about Section B in the first
 5 and second claims. In the third claim –
 6 excuse me, for the third accident, again was
 7 Section B easily obtained or were there any
 8 difficulties?
 9 MS. ELLIOTT:
 10 A. Well, where it was going from one to the
 11 other, this third accident -
 12 KENNEDY, Q.C.:
 13 Q. Sorry, what do you mean by going from one to
 14 the other?
 15 MS. ELLIOTT:
 16 A. Like from the first accident, my Section B
 17 came into play, and then the second action –
 18 Section B from the second accident. So, at
 19 this point, it just kept going one into the
 20 other because I was still in use of the
 21 Section B.
 22 KENNEDY, Q.C.:
 23 Q. Okay.
 24 MS. ELLIOTT:
 25 A. As far as I know, it was probably in play at

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1 some point because I'm still I massage right
 2 now. Like Dr. Patey said, it was – it's
 3 something I will have to live with for the
 4 rest of my life. As I get older, I'm sure
 5 there will be further repercussions of my
 6 injuries, just that's just the way life is.
 7 As your body gets older, you don't have the
 8 strength you used to have. And so I will
 9 just live with it and do what I can. I'm
 10 not currently working right now, so any
 11 massage that comes out of my pocket.
 12 KENNEDY, Q.C.:
 13 Q. Okay. If I could just ask you that, so –
 14 because I don't think I clarified the point.
 15 When did you actually finish work?
 16 MS. ELLIOTT:
 17 A. April of this year.
 18 KENNEDY, Q.C.:
 19 Q. Okay. So, you were working until April of?
 20 MS. ELLIOTT:
 21 A. April 2018.
 22 KENNEDY, Q.C.:
 23 Q. '18, okay. So, you would have still had
 24 private insurance at the time of the third
 25 accident, would you?

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1 MS. ELLIOTT:
 2 A. Yes.
 3 KENNEDY, Q.C.:
 4 Q. I think you've said earlier that there was a
 5 second insurance you had, second private
 6 insurance?
 7 MS. ELLIOTT:
 8 A. Yes. When I was with my common law spouse
 9 at the time.
 10 KENNEDY, Q.C.:
 11 Q. Okay. And how long since you've been with
 12 your common law spouse?
 13 MS. ELLIOTT:
 14 A. Well, he left – we separated in 2014.
 15 KENNEDY, Q.C.:
 16 Q. Okay. So, around the time shortly after
 17 this accident?
 18 MS. ELLIOTT:
 19 A. Yeah.
 20 KENNEDY, Q.C.:
 21 Q. Okay. Have you been involved in any
 22 relationships, in terms of helping out
 23 around the home, since that point in time?
 24 MS. ELLIOTT:
 25 A. Has he or -

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1 KENNEDY, Q.C.:
 2 Q. No, have you been involved in any
 3 relationships where someone's been helping
 4 out around the home since that point?
 5 MS. ELLIOTT:
 6 A. Just my mother.
 7 KENNEDY, Q.C.:
 8 Q. Okay. Now, during this third claim, I'll
 9 call it a third claim because as you say one
 10 runs into the other -
 11 MS. ELLIOTT:
 12 A. Yes.
 13 KENNEDY, Q.C.:
 14 Q. - were you encountering any problems with
 15 getting your treatments paid for?
 16 MS. ELLIOTT:
 17 A. Yes. It was the same situation. I would
 18 send in – when my coverage was exhausted,
 19 send it in to the representative for the
 20 Section B and there could be weeks or
 21 multiple contacts made with the
 22 representative waiting to hear whether they
 23 would cover my massage or physio when
 24 needed. Therapeutic Services is where I did
 25 go for my – or I do go for my physio and

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1 massage. They tried to contact the
 2 representative as well.
 3 KENNEDY, Q.C.:
 4 Q. Okay. When you say “the representative” who
 5 are you talking about there?
 6 MS. ELLIOTT:
 7 A. For Section B for the RSA.
 8 KENNEDY, Q.C.:
 9 Q. So, you were dealing with RSA at that point?
 10 MS. ELLIOTT:
 11 A. Yes.
 12 KENNEDY, Q.C.:
 13 Q. Okay. So, continue.
 14 MS. ELLIOTT:
 15 A. So, you know, and then I would have to
 16 contact my lawyer and then she would contact
 17 the representative at RSA and then it would
 18 seem like, okay, well then she would
 19 respond. But after me trying to contact
 20 her, as well as Therapeutic Services, it
 21 would be a while, and as soon as my lawyer
 22 got involved, then it seemed to proceed
 23 faster. But I'd have to wait and like I
 24 said, pay out of pocket once my coverage was
 25 exhausted.

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1 KENNEDY, Q.C.:
 2 Q. So, how often would you have had to pay out
 3 of pocket in terms of obtaining your
 4 treatments after your third accident?
 5 MS. ELLIOTT:
 6 A. Sorry?
 7 KENNEDY, Q.C.:
 8 Q. How often would you have had to pay out of
 9 pocket in that timeframe?
 10 MS. ELLIOTT:
 11 A. It could be maybe twice a week I would have
 12 to pay out of pocket.
 13 KENNEDY, Q.C.:
 14 Q. And how much were the – what were the cost
 15 of these?
 16 MS. ELLIOTT:
 17 A. Well, between 60 and 75 dollars.
 18 KENNEDY, Q.C.:
 19 Q. Could you afford that at that time?
 20 MS. ELLIOTT:
 21 A. Well, it went on the credit card, so I had
 22 to. I needed it, so I had to pay it anyway
 23 I could.
 24 KENNEDY, Q.C.:
 25 Q. So, how would you describe the way you were

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1 dealt with by the Section B adjuster in the
 2 third claim?
 3 MS. ELLIOTT:
 4 A. She seemed to be – once everything was – she
 5 responded, then it went well and like I
 6 said, once my lawyer was involved, it seemed
 7 to be no problem, you know. Like I couldn't
 8 understand. I'd send email after email with
 9 all the documentation that they needed and I
 10 wouldn't get any response or I'd go for a
 11 massage and I'd speak to the person on the
 12 desk there and they'd say "oh, well, we
 13 haven't heard from her today. We haven't
 14 heard from her. We've sent her emails. We
 15 faxed her information" and so, in that
 16 sense, it was very frustrating.
 17 KENNEDY, Q.C.:
 18 Q. Okay.
 19 MS. ELLIOTT:
 20 A. Because like I said, I had to either put it
 21 on my credit card or leave an outstanding
 22 balance, which would double up the next time
 23 I went, when I did have the funds to pay it,
 24 and I felt like I shouldn't have to do that.
 25 Like I shouldn't have to deal with the

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1 stresses and that their position to help me
 2 out under Section B.
 3 KENNEDY, Q.C.:
 4 Q. Did you – the third – or excuse me, did the
 5 Section B adjuster ever suggest you didn't
 6 need treatment any more or you know, you'd
 7 had enough treatment? Was there ever
 8 anything like that?
 9 MS. ELLIOTT:
 10 A. To be truthful, I can't remember.
 11 KENNEDY, Q.C.:
 12 Q. Okay.
 13 MS. ELLIOTT:
 14 A. Like I have every email that she's ever sent
 15 me. Like I keep a track record of even –
 16 even now, if there's any prognosis or any
 17 questions or anything involved. They did
 18 actually have me on an assessment with a
 19 different company and they said "okay.
 20 Well, we'll contact you".
 21 KENNEDY, Q.C.:
 22 Q. Okay. When you say an assessment with a
 23 different company, what do you mean by that?
 24 MS. ELLIOTT:
 25 A. Well, assessment – rather than my

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1 physiotherapist and massage therapist from
 2 Therapeutic Services, they wanted to send me
 3 to a different company to, I guess,
 4 reassess.
 5 KENNEDY, Q.C.:
 6 Q. Does the term "independent medical
 7 examination" mean anything to you?
 8 MS. ELLIOTT:
 9 A. Yes, sorry.
 10 KENNEDY, Q.C.:
 11 Q. Okay. Is that what you're talking about?
 12 MS. ELLIOTT:
 13 A. Yes.
 14 KENNEDY, Q.C.:
 15 Q. Okay, continue.
 16 MS. ELLIOTT:
 17 A. And so, I said "okay, that's no problem.
 18 I'll go. Just let me know when and where"
 19 and I never did hear from them until I got a
 20 message one day saying I didn't show up for
 21 my appointment regarding this independent
 22 medical assessment and I said because I
 23 never received anything. If that was the
 24 case, I would have went. I have nothing to
 25 hide from my situation.

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1 (10:00 a.m.)
 2 KENNEDY, Q.C.:
 3 Q. Was there anyone accusing you of hiding
 4 anything?
 5 MS. ELLIOTT:
 6 A. Well, that's the way I felt, I guess.
 7 KENNEDY, Q.C.:
 8 Q. Okay.
 9 MS. ELLIOTT:
 10 A. Maybe that's the way I took it, because like
 11 I said, it's just not my style and it's just
 12 not me, and I would have went, but I did not
 13 receive anything. And at that point, again
 14 I contacted my lawyer saying this is what I
 15 received and I don't – I haven't heard
 16 anything about any appointment. So, again,
 17 she had to be involved in contacting the
 18 representative from RSA to find out what was
 19 going on.
 20 KENNEDY, Q.C.:
 21 Q. Did you ever have that independent medical
 22 examination performed?
 23 MS. ELLIOTT:
 24 A. I did not.
 25 KENNEDY, Q.C.:

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1 Q. Do you know why?
 2 MS. ELLIOTT:
 3 A. I never received an appointment time or any
 4 contact after that.
 5 KENNEDY, Q.C.:
 6 Q. So, we've got three accidents here and the
 7 impacts of them on you. So, what was the
 8 diagnosis of the injury you had in the first
 9 accident, the medical diagnosis?
 10 MS. ELLIOTT:
 11 A. I can't even remember.
 12 KENNEDY, Q.C.:
 13 Q. Were there neck injuries, back injuries,
 14 whiplash?
 15 MS. ELLIOTT:
 16 A. Oh yes, neck, back.
 17 KENNEDY, Q.C.:
 18 Q. Yes, that's what I mean. Yes, sorry. Okay.
 19 MS. ELLIOTT:
 20 A. Like I said, the first one was lower back
 21 and then it had travelled up in neck, and
 22 then tingling down my arm. So, leaves a – a
 23 range of motion that is – like even just to
 24 dry my hair some days or use a curling iron
 25 and like basic stuff that I never had an

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1 issue with before, like I have to take a
 2 break on them. But, and then, like I said,
 3 it proceeded and then it went to the upper
 4 back and my middle back, but it's always
 5 been my neck and shoulders.
 6 KENNEDY, Q.C.:
 7 Q. Ms. Elliott, how has this – we've heard –
 8 you heard Ms. Ryan talk about the physical
 9 and you can see the physical. You know what
 10 -- soft tissue injury, you perhaps can't see
 11 it, but there's ways to test it.
 12 MS. ELLIOTT:
 13 A. Yeah.
 14 KENNEDY, Q.C.:
 15 Q. What's the psychological or emotional impact
 16 of these injuries on you?
 17 MS. ELLIOTT:
 18 A. Well, obviously you can tell it gets to me
 19 because like I never had any of this before.
 20 So, when I have to go through something or
 21 just be constant go, go, go because my kids
 22 are so active, it does take a toll on you
 23 mentally because, like I said, you want to
 24 show your children that to live an honest
 25 lifestyle, go through what you can go,

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1 manage what you can, and then if you don't –
 2 like if I'm in pain or everything is slowed
 3 down, they got to wait on me because I can't
 4 move that fast or I can't get out of bed or
 5 if I go make any kind of gesture of "ow" or
 6 "ooh", they'll say "are you okay, Mom? Are
 7 you okay?" It's like "yeah, just give me a
 8 minute", you know. Like they shouldn't have
 9 to be my crutch to ask me if I'm okay
 10 because I'm their parent. Sorry.
 11 KENNEDY, Q.C.:
 12 Q. Take your time, do you want to take a break,
 13 Ms. Elliott? We're almost finished here,
 14 Madam Chair, I'd say.
 15 MS. ELLIOTT:
 16 A. No, I'd rather just –
 17 KENNEDY, Q.C.:
 18 Q. Get it over with.
 19 MS. ELLIOTT:
 20 A. Yes, sorry.
 21 KENNEDY, Q.C.:
 22 Q. Okay, I only have a few more questions for
 23 you, madam. Now, did you ultimately settle
 24 these matters?
 25 MS. ELLIOTT:

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1 A. I did.
 2 KENNEDY, Q.C.:
 3 Q. And what year was that?
 4 MS. ELLIOTT:
 5 A. Just last year.
 6 KENNEDY, Q.C.:
 7 Q. And do you still have impact from the
 8 injuries, all of these three injuries?
 9 MS. ELLIOTT:
 10 A. Yes.
 11 KENNEDY, Q.C.:
 12 Q. Now, one of the things here that's come up
 13 in some submissions is the role of lawyers
 14 or the role that lawyers play here, how
 15 important has your lawyer been to you, in
 16 terms of getting you through this whole
 17 procedure?
 18 MS. ELLIOTT:
 19 A. Her part in helping me has been, I can't
 20 even describe how important it was.
 21 KENNEDY, Q.C.:
 22 Q. And who is your lawyer?
 23 MS. ELLIOTT:
 24 A. Valerie Hynes.
 25 KENNEDY, Q.C.:

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1 Q. Okay.

2 MS. ELLIOTT:

3 A. And she has been such an advocate for me and

4 a shoulder to lean on and has supported me

5 in many ways and without her, I don't know

6 if I could have done or gotten as far as I

7 could.

8 KENNEDY, Q.C.:

9 Q. Would you have felt comfortable dealing with

10 the insurance agency or adjustors yourself?

11 MS. ELLIOTT:

12 A. Probably not, no. I would definitely say

13 no. I know some people do, but after my

14 experience with Valerie, I wouldn't.

15 KENNEDY, Q.C.:

16 Q. I'm going to ask you one last question now

17 and let you go. I know how hard this is on

18 you, Ms. Elliott.

19 MS. ELLIOTT:

20 A. Okay.

21 KENNEDY, Q.C.:

22 Q. And I asked this to Ms. Ryan and someone

23 else will probably ask it, so I will, like

24 why are you here today?

25 MS. ELLIOTT:

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1 A. I think it's very important, when I was

2 asked to do this panel, it took me a few

3 weeks to respond. I had to think about it

4 long and hard and it's not just a year

5 thing, it's not just, oh, you know, maybe in

6 two years, it's a life altering impact on

7 your life, so I wanted to be on this panel

8 because I felt it was needed to be heard

9 because you can't go back, like I can never

10 go back to waking up without any pain

11 anymore. So, like I said, I just wanted to

12 be there for the people that might not speak

13 up and share my experiences and hopefully it

14 will help in some way and make people

15 understand the results of being injured and

16 the lifestyle you have to lead afterwards.

17 KENNEDY, Q.C.:

18 Q. Okay, is there anything else, Ms. Elliott?

19 Have I forgotten anything? Is there

20 anything else you would like to add?

21 MS. ELLIOTT:

22 A. Not at this point, no, thank you.

23 KENNEDY, Q.C.:

24 Q. Okay, so those would be my questions, Madam

25 Chair, members of the Board.

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1 CHAIR:

2 Q. Thank you so much.

3 KENNEDY, Q.C.:

4 Q. Thank you, Ms. Elliott, Ms. Ryan.

5 CHAIR:

6 Q. Ms. Elliott, Ms. Ryan, would you both be

7 willing to take some questions from –

8 MS. RYAN:

9 A. Yeah, can I have about five minutes to move

10 around a little bit?

11 CHAIR:

12 Q. Absolutely, we can take a break and come

13 back, that will be fine. We will take a

14 five, ten-minute break.

15 (BREAK – 10:08 A.M.)

16 (RESUME – 10:17 A.M.)

17 CHAIR:

18 Q. Thank you. Mr. Gittens, did you have any

19 questions?

20 MR. GITTENS:

21 Q. Thank you, Madam Chair. Ms. Ryan, just a

22 couple of questions I'm going to ask you.

23 I'm actually going to ask you five

24 questions, so we won't be that long I can

25 assure you. First of all, were you aware

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1 coming to the hearing today that one of the

2 issues or some of the evidence presented

3 before this Board has alleged that the

4 insurance industry has been making

5 substantial profits, were you aware of

6 anything of that sort?

7 MS. RYAN:

8 A. Only from what I see on social media and

9 news broadcasts.

10 MR. GITTENS:

11 Q. All right, and were you aware from, whether

12 social media or any other source, that it's

13 in the area of third party personal injury

14 claims that the insurance industry is saying

15 they're making a loss, were you aware of

16 that?

17 MS. RYAN:

18 A. I really don't pay much attention to that.

19 MR. GITTENS:

20 Q. To the details of that stuff, okay,

21 understood. From the manner in which you

22 have described your injuries and the

23 treatments you've had and from the place

24 you're at with regards to your claims, I

25 take it your claims have not yet been

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1 resolved?

2 MS. RYAN:

3 A. No.

4 MR. GITTENS:

5 Q. In terms of settlement and so on.

6 MS. RYAN:

7 A. No, not even been discussed.

8 MR. GITTENS:

9 Q. Okay, so where you have a situation here

10 where at some point, I'm going to make a

11 little presumption, your doctor may have to

12 say, "Well, she seems to have resolved, so

13 this is not a permanent injury", let's make

14 an assumption, if you were to be offered a

15 fix sum of money because I think waiting for

16 this thing to resolve and having to deal

17 with the uncertainty of running up debt and

18 so on is part and parcel of some of the

19 anxiety and depression and stress.

20 MS. RYAN:

21 A. Absolutely.

22 MR. GITTENS:

23 Q. Okay, so if we can resolve that by giving

24 you a big fat cheque for \$7,500 and say, "go

25 away now, all is healed", would you be

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1 prepared to accept that?

2 MS. RYAN:

3 A. God, no.

4 MR. GITTENS:

5 Q. God, no. I mean, that's the end of it, you

6 won't have to worry about taking for the

7 medicals, going back to the doctor, having

8 yourself put through all this anxiety, you

9 have a fixed sum of money –

10 MS. RYAN:

11 A. That's not going to take my pain away,

12 that's not giving my kids back their mom.

13 MR. GITTENS:

14 Q. Well the truth of the matter is no amount of

15 money is ever going to do that, is it?

16 MS. RYAN:

17 A. My focus right now is on getting better, is

18 trying to improve myself.

19 MR. GITTENS:

20 Q. Understood, understood. Right, but the

21 focus of these hearings are to balance off

22 between the claims by the insurance industry

23 that it's hurting and your claim that you're

24 hurting, essentially.

25 MS. RYAN:

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1 A. Uh-hm.

2 MR. GITTENS:

3 Q. So my point to you is this, is there is

4 arrangements which can be put in place that

5 resolves the money issue at some figure in

6 the range of, whether \$5,000, \$7,500, even

7 \$10,000 shall we say, would you consider

8 that a reasonable balancing off of what

9 you've had to deal with compared to what you

10 have to deal with for the rest of your life?

11 MS. RYAN:

12 A. No. And that's not something that I would

13 make a decision on, that's a decision that

14 Steve Marshall would make as my lawyer.

15 MR. GITTENS:

16 A. Okay, he would assist you. Yours is always

17 the final word, but he would give you some

18 input into that decision.

19 MS. RYAN:

20 A. A lot of input.

21 MR. GITTENS:

22 Q. Okay. So if I were to put to you—and this

23 is my fifth question, so we're almost done,

24 that you would take the hit, shall we say,

25 so that everybody else can get, at best,

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1 maybe say \$80.00 off their insurance a year,

2 I'm making that figure up, it might be

3 nothing, but if you were asked to take the

4 hit for the rest of your life, suffer the

5 pain and suffering that you're going

6 through, the anxiety that you're going

7 through, the financial uncertainty that

8 you're going through so that all the other

9 people who pay for insurance can get maybe

10 \$80.00 off a year, would you think that's a

11 reasonable trade off?

12 MS. RYAN:

13 A. That's a difficult question.

14 MR. GITTENS:

15 Q. Let me back off a little bit and ask you how

16 many years have you been driving prior to

17 the accident?

18 MS. RYAN:

19 A. Well I was 17 when I got my driver's license

20 and I'm 47 now.

21 MR. GITTENS:

22 Q. Okay, so about 30 years. Did you pay for

23 insurance each of those years?

24 MS. RYAN:

25 A. Absolutely.

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1 MR. GITTENS:
 2 Q. Do you have any rough idea of how much you
 3 pay a year for insurance?
 4 MS. RYAN:
 5 A. Yeah, I pay about \$2,000 a year.
 6 MR. GITTENS:
 7 Q. Okay, so 30 years, \$2,000, about \$60,000
 8 overall, up to then anyway, but I'm offering
 9 you 5, 7,500 or \$10,000 to go away so the
 10 insurance industry can make a profit, come
 11 on, work with me here, what do you think?
 12 MS. RYAN:
 13 A. \$5,000, \$7,500, I lost –
 14 MR. GITTENS:
 15 Q. But you're helping the insurance industry
 16 make a profit, that's good.
 17 MS. RYAN:
 18 A. I'm not interested in helping the insurance
 19 company make a profit.
 20 MR. GITTENS:
 21 Q. So your answer is no?
 22 MS. RYAN:
 23 A. No.
 24 MR. GITTENS:
 25 Q. Fair enough, thank you. Those are all the

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1 questions I have for you. Ms. Elliott, I've
 2 got roughly the same questions for you just
 3 to get your take on this, but one of the
 4 things that concerns me is there might be an
 5 argument that because you've had three
 6 accidents you might qualify as a person with
 7 a permanent injury. Have you been speaking
 8 to your doctors and your practitioners as to
 9 whether or not there is any possibility that
 10 at some point you will no longer have a
 11 physical injury or physical limitations, or
 12 is there any indication that these physical
 13 limitations will be permanent?
 14 MS. ELLIOTT:
 15 A. The physical limitations are permanent.
 16 There is no question, and whether it's my
 17 physician telling me that or my body telling
 18 me that, I am the owner of my body and I
 19 know what my limitations are, so –
 20 MR. GITTENS:
 21 Q. Uh-hm. When you speak to your doctors,
 22 though, do they ever say words to you, like,
 23 "well wait another three to six months,
 24 let's see how that resolves"?
 25 MS. ELLIOTT:

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1 A. No.
 2 MR. GITTENS:
 3 Q. You haven't been put into that situation?
 4 MS. ELLIOTT:
 5 A. My doctor has said this will impact me for
 6 the rest of my life. If I got for a
 7 specific type of job where I'm not working
 8 at this point, there are certain jobs I
 9 cannot apply for now because of my injuries,
 10 so I'm limited as to what I can work at,
 11 what my limitations are, where I can do,
 12 what I can do, the amount of money I can
 13 make, so to me, that question has already
 14 been answered. It's not, "oh, wait three
 15 months, wait six months", even though I try
 16 and do what I can to improve myself and he
 17 has been nothing but encouraging me, "try
 18 this, try that", it's a constant what can I
 19 do to make a better life for me, but there
 20 are always going to be limitations at this
 21 point.
 22 MR. GITTENS:
 23 Q. From your perspective has the doctor
 24 attempted to say to you, "well we've got to
 25 try to get you back to as good as you can

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1 get"?
 2 MS. ELLIOTT:
 3 A. Oh yes, of course.
 4 MR. GITTENS:
 5 Q. Okay, and have they eliminated the
 6 possibility of your getting to the point
 7 where these injuries will not be a permanent
 8 limitation on you?
 9 MS. ELLIOTT:
 10 A. No, I don't know how to answer that really.
 11 MR. GITTENS:
 12 Q. Okay, if it hasn't been done yet, you won't
 13 be able to answer it, I take it, because we
 14 don't know what's going to happen tomorrow
 15 or six months from tomorrow, correct?
 16 MS. ELLIOTT:
 17 A. No.
 18 MR. GITTENS:
 19 Q. All right, so the first question I asked Ms.
 20 Ryan was whether or not she was aware that
 21 part of what's being presented to this body,
 22 this Board, is a competition or a balancing
 23 between what some of us allege the insurance
 24 industry is making mega profits per year
 25 because evidence has been put before this

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1 Board to suggest over a hundred million
 2 dollars per year for the insurance industry
 3 in this province, understood? Did you ever
 4 hear that before?
 5 MS. ELLIOTT:
 6 A. Again, like Ms. Ryan, social media, just
 7 hearsay.
 8 MR. GITTENS:
 9 Q. Right, okay. And secondly, but in response
 10 to that allegation there has been evidence
 11 put before this Board that suggests that on
 12 the product, third party liability product
 13 for personal injury, that they're actually
 14 making a loss on an annual basis, are you
 15 aware of that?
 16 MS. ELLIOTT:
 17 A. I'm not understanding what you are saying.
 18 MR. GITTENS:
 19 Q. Well, what your claim is, you've been hurt
 20 by a third party, right?
 21 MS. ELLIOTT:
 22 A. Yes.
 23 MR. GITTENS:
 24 Q. And as a result of that claim, you're asking
 25 the insurance companies to pay you a certain

Page 90

1 amount of money. That's called a third part
 2 personal injury claim, understood?
 3 MS. ELLIOTT:
 4 A. Uh-hm, yes.
 5 MR. GITTENS:
 6 Q. And if they got to pay you a big chunk of
 7 money, they're saying, well, if we pay all
 8 these people this big chunk of money, at the
 9 end of the year when we add up the column
 10 that says how much we paid out in personal
 11 injury claims, it's more than we took in in
 12 premiums, I'm making that a very base level,
 13 but you understand what I'm saying?
 14 MS. ELLIOTT:
 15 A. Yeah.
 16 MR. GITTENS:
 17 Q. So my question to you is are you aware that
 18 the insurance industry is alleging that on
 19 that particular product, third party
 20 liability for personal injury, they're
 21 making a loss, were you aware of that?
 22 MS. ELLIOTT:
 23 A. No.
 24 MR. GITTENS:
 25 Q. And I'm going to put to you the same

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1 proposition I put to Ms. Ryan and that is
 2 that if in balancing out the insurance
 3 industry's interest, which is to make a
 4 profit, legitimately so, and your claims to
 5 be compensated for the pain, the suffering,
 6 the anxiety, the inconvenience, the just
 7 messing up with your life that's taken
 8 place, you should accept somewhere in the
 9 range of 5,000, 7,500, maybe \$10,000 and
 10 that that should end the whole issue and you
 11 should go home and have a good life.
 12 MS. ELLIOTT:
 13 A. But I'm not going to have a good life.
 14 There's no ending to it, so that \$5,000,
 15 what is that going to do for me? How is
 16 that going to help my children? How is that
 17 going to help me make a better life for
 18 myself, or \$7,500 when you, you know, you
 19 have to pay for a massage or physio or a
 20 chiropractor or say a gym membership or
 21 something like that, that will be eaten up
 22 within say, six months, say.
 23 MR. GITTENS:
 24 Q. Okay, let's take that out of the equation,
 25 let's say we're going to pay, let's say the

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1 insurance industry is going to pay for your
 2 chiro, pay for your physio, pay for those
 3 specific modalities of treatment, but for
 4 your pain and suffering and all the rest of
 5 the inconvenience, the fact that you've got
 6 to call your brother-in-law to take your
 7 daughter to an outing or something of that
 8 sort, of your mom to assist you, all that
 9 kind of stuff, \$7,500 very quickly, within
 10 the first couple of weeks of the accident,
 11 you don't have to wait four years to get
 12 some sort of settlement later on, would that
 13 make a difference to you?
 14 MS. ELLIOTT:
 15 A. No.
 16 MR. GITTENS:
 17 Q. And would it matter to you that that's being
 18 done in the name of giving everybody in this
 19 province the ability to keep the same
 20 insurance premium or to get maybe 50, 50,
 21 \$70.00 off their annual premium. Doesn't
 22 that sound like a reasonable trade-off?
 23 MS. ELLIOTT:
 24 A. I don't know, I really don't know how to
 25 answer that.

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1 MR. GITTENS:
 2 Q. Okay, so you're not prepared to take the hit
 3 for the rest of us.
 4 MS. ELLIOTT:
 5 A. Probably not.
 6 MR. GITTENS:
 7 Q. Okay, thank you very much. I just wanted to
 8 see if we're on the same page here.
 9 MS. ELLIOTT:
 10 A. No, would you take a hit for everybody?
 11 MR. GITTENS:
 12 Q. No, I won't. I know my answer.
 13 MS. ELLIOTT:
 14 A. I'm not trying to be rude, but I'm just,
 15 sorry.
 16 MR. GITTENS:
 17 Q. I just wanted to see if you were on the same
 18 page, thank you very much.
 19 MS. ELLIOTT:
 20 A. You're welcome.
 21 MR. GITTENS:
 22 Q. Those are all the questions I have, Madam
 23 Chair.
 24 CHAIR:
 25 Q. Mr. Fraize, do you have any –

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1 FRAIZE, Q.C.:
 2 Q. Yes, I have a couple of questions. I'm
 3 going to start with Ms. Ryan. Do you have
 4 any idea how many treatments you've had,
 5 like physio, massage, chiropractor to date?
 6 MS. RYAN:
 7 A. It's been nine months since the accident and
 8 I was seeing my massage therapist twice a
 9 week for the first couple of months, and my
 10 chiropractor once a week, so it's just a
 11 matter of doing the math on that, I guess.
 12 I wouldn't be able to give you a number.
 13 FRAIZE, Q.C.:
 14 Q. You are still receiving those treatments?
 15 MS. RYAN:
 16 A. Absolutely, yes.
 17 FRAIZE, Q.C.:
 18 Q. Now, when you are receiving those
 19 treatments, you have to travel to and from
 20 and you're also getting the treatment.
 21 MS. RYAN:
 22 A. Yes.
 23 FRAIZE, Q.C.:
 24 Q. Would I be correct in saying that would
 25 kill, to use the word, two hours, three

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1 hours?
 2 MS. RYAN:
 3 A. Massage therapy definitely kills two hours
 4 because that's a 50-minute treatment and
 5 it's further away from my home and from
 6 work. My chiropractor, you're in and out in
 7 15 minutes, so I guess an hour by the time
 8 you get there, you're in, you're out, you
 9 get back to work, yeah.
 10 FRAIZE, Q.C.:
 11 Q. So in a particular week you had a massage as
 12 well as chiro?
 13 MS. RYAN:
 14 A. Every week.
 15 FRAIZE, Q.C.:
 16 Q. So that's three hours at least out of your –
 17 MS. RYAN:
 18 A. Yeah, and I'm usually home by 3:00 in the
 19 afternoon. I never make it to 5:00.
 20 FRAIZE, Q.C.:
 21 Q. Now the next step from that, do you need
 22 some downtime after you receive the
 23 treatment?
 24 MS. RYAN:
 25 A. No, not necessarily, I feel pretty good

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1 after the treatments.
 2 FRAIZE, Q.C.:
 3 Q. And with the chiropractor too?
 4 MS. RYAN:
 5 A. I'm in love with my chiropractor. She don't
 6 know that, but -
 7 FRAIZE, Q.C.:
 8 Q. The question I'm posing is I suppose we got
 9 an idea now, right, with massage it takes
 10 about a two-hour block of your time.
 11 MS. RYAN:
 12 A. Yes.
 13 FRAIZE, Q.C.:
 14 Q. Chiropractor, one hour.
 15 MS. RYAN:
 16 A. Yes.
 17 FRAIZE, Q.C.:
 18 Q. Okay, and how about physio, do you have any
 19 physio?
 20 MS. RYAN:
 21 A. I don't do physio.
 22 FRAIZE, Q.C.:
 23 Q. And you're still receiving those treatments
 24 now?
 25 MS. RYAN:

1 A. Yes.
 2 FRAIZE, Q.C.:
 3 Q. And if I may just jump to you, Ms. Elliott,
 4 I got the same question. Now, are you still
 5 receiving treatment?
 6 MS. ELLIOTT:
 7 A. I am. I'm receiving massage. I usually
 8 book in once every six weeks now because I'm
 9 not working, so I have to travel from Bay
 10 Roberts and my massage therapist feels that
 11 that is sufficient, unless something comes
 12 up, I have a flare-up and she said to call
 13 in right away and we will try and fit you
 14 in. Like, Ms. Ryan, I'm in love with my
 15 massage therapist.
 16 FRAIZE, Q.C.:
 17 Q. Is it the same one?
 18 MS. ELLIOTT:
 19 A. No, it's a different one.
 20 FRAIZE, Q.C.:
 21 Q. Okay, now, let me pose the same question to
 22 you, okay. You receive massage?
 23 MS. ELLIOTT:
 24 A. Yes, I still do.
 25 FRAIZE, Q.C.:

1 FRAIZE, Q.C.:
 2 Q. Now, that's massage, what about
 3 chiropractor, did you receive any?
 4 MS. ELLIOTT:
 5 A. I did do chiropractor, I tried it. I did
 6 treatments twice a week for maybe three
 7 months and I didn't find that that was
 8 working as well as the physio and the
 9 massage.
 10 FRAIZE, Q.C.:
 11 Q. And how much time would the treatment be?
 12 MS. ELLIOTT:
 13 A. About two hours.
 14 FRAIZE, Q.C.:
 15 Q. So two hours, okay. Did you have any
 16 physiotherapy?
 17 MS. ELLIOTT:
 18 A. Yes, and it was at the same clinic as my
 19 massage therapist.
 20 FRAIZE, Q.C.:
 21 Q. And would physiotherapy –
 22 MS. ELLIOTT:
 23 A. It's an hour.
 24 FRAIZE, Q.C.:
 25 Q. For the therapy?

1 Q. And when you're receiving a massage, how
 2 much time would it take out of your life, so
 3 to speak? Would two hours sound fair,
 4 including the treatment, or in your case
 5 would it –
 6 MS. ELLIOTT:
 7 A. Well, yeah, it would be three because it's
 8 an hour to come in, an hour for, say the
 9 treatment and then an hour for me to go
 10 home. When I was working, I could walk from
 11 my office to the therapy clinic, which was
 12 just down the road, about, like a five-
 13 minute walk and I was there. So maybe an
 14 hour and a half out of my day. I did it
 15 that way so I could get the treatment, it
 16 was convenient, it was a savings for me, I
 17 didn't have to drive anywhere, I could go on
 18 my lunch hour and that's the way I looked at
 19 it.
 20 FRAIZE, Q.C.:
 21 Q. So you're saying it took, depending on how
 22 we look at it, either three hours or one and
 23 a half hours out of –
 24 MS. ELLIOTT:
 25 A. Yes, yeah.

1 MS. ELLIOTT:
 2 A. Yeah.
 3 FRAIZE, Q.C.:
 4 Q. And then travel?
 5 MS. ELLIOTT:
 6 A. Like I said, an hour and a half when I was
 7 working and then it would be three hours
 8 today.
 9 FRAIZE, Q.C.:
 10 Q. Okay, so two and a half to three hours.
 11 Now, do you recall how many treatments you
 12 had in total?
 13 MS. ELLIOTT:
 14 A. No, sorry, but that's –
 15 FRAIZE, Q.C.:
 16 Q. But my point is, okay, each time you receive
 17 a treatment, whatever it is, it takes a
 18 chunk of your time.
 19 MS. ELLIOTT:
 20 A. Yes.
 21 FRAIZE, Q.C.:
 22 Q. And you're still receiving these types of
 23 treatments, so on—I think you indicated you
 24 settled your claim, but it's still on an
 25 ongoing basis into the future, you still

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1 have to take time out of your life, correct?

2 MS. ELLIOTT:

3 A. Oh yes, yes.

4 FRAIZE, Q.C.:

5 Q. All right. Now, I have to jump back to you,

6 Ms. Ryan, again. Question, would I be

7 correct in saying that the accident, would

8 the accident have had any effect on your

9 personal relationships with people?

10 MS. RYAN:

11 A. Absolutely.

12 FRAIZE, Q.C.:

13 Q. Do you want to tell us how? Like, I mean,

14 an accident, because it affects you, does it

15 stop, like it must have an effect because

16 you're in pain, correct?

17 MS. RYAN:

18 A. I haven't had a date in over a year.

19 FRAIZE, Q.C.:

20 Q. So you think that's affecting you?

21 MS. RYAN:

22 A. Absolutely. The thought of my bringing

23 somebody into my life right now, I'm a

24 burden. I feel like I would be a burden to

25 anybody, especially a romantic relationship,

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1 so yeah, absolutely it has.

2 FRAIZE, Q.C.:

3 Q. And Ms. Elliott, I think you had three

4 accidents and I think you mentioned you had

5 a relationship, was that relationship

6 affected by the accident?

7 MS. ELLIOTT:

8 A. Yeah, I think in a way he was, at times,

9 resentful, you know, because of the

10 accidents, of how it impacted him and then

11 he had to step up to the plate for a little

12 bit, more so than, you know, he ever had to.

13 FRAIZE, Q.C.:

14 Q. Now, you've had three accidents, you've

15 settled. You're still suffering the pain?

16 MS. ELLIOTT:

17 A. Yes.

18 FRAIZE, Q.C.:

19 Q. And into the future and you have to take

20 treatments, and sometimes insurance

21 companies imply that after someone gets

22 their settlement miraculously they're okay.

23 MS. ELLIOTT:

24 A. (laughs).

25 FRAIZE, Q.C.:

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1 Q. I think it's a pile of bunk myself, but

2 what's your opinion?

3 MS. ELLIOTT:

4 A. I totally agree with that. Like I said,

5 before, it's -

6 FRAIZE, Q.C.:

7 Q. It being bunk, right.

8 MS. ELLIOTT:

9 A. It's never, like I can only speak from my

10 experience and at this time or I don't see

11 in the future that it will be okay. It will

12 always be there. It's not going to go away.

13 If it was going to go away, it would have

14 went away by now. Like, I'm still dealing

15 with the treatments, still dealing with the

16 pain every day, or when I do the laundry or

17 when I do anything, like I said, even just

18 drying your hair some days, it impacts it,

19 so it will never be the same for me,

20 personally. Like I said, I can't speak for

21 everybody, but I can speak on my behalf and

22 that's how I feel, that it will never be

23 okay.

24 FRAIZE, Q.C.:

25 Q. Those are all my questions, thank you.

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1 CHAIR:

2 Q. Thank you, Mr. Fraize. Mr. Stamp, do you

3 have any questions?

4 STAMP, Q.C.:

5 Q. Yes, Madam Chair. Ms. Elliott, if I can ask

6 you a couple of questions first, if

7 possible. Do I understand that Ms. Hynes

8 represented you, is that correct?

9 MS. ELLIOTT:

10 A. Yes.

11 STAMP, Q.C.:

12 Q. And did she represent you on each of the

13 three accidents?

14 MS. ELLIOTT:

15 A. Yes.

16 STAMP, Q.C.:

17 Q. So you had the same lawyer for the whole of

18 the piece.

19 MS. ELLIOTT:

20 A. Yes.

21 STAMP, Q.C.:

22 Q. Was your own insurance company the same

23 company through all this piece as well?

24 MS. ELLIOTT:

25 A. There was one that was different.

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1 STAMP, Q.C.:

2 Q. No, no, I mean your own insurance now.

3 MS. ELLIOTT:

4 A. My own personal –

5 STAMP, Q.C.:

6 Q. Your own, say Section B for example, your

7 own car insurance, did you have the –

8 MS. ELLIOTT:

9 A. Except for one.

10 STAMP, Q.C.:

11 Q. Okay, so you had changed insurance companies

12 you said?

13 MS. ELLIOTT:

14 A. No, because I drove my mother’s car and I

15 was injured under her car.

16 STAMP, Q.C.:

17 Q. Oh yes, sure, I got you, of course. And I

18 guess the other people’s insurance, you

19 don’t know who they all were, I suppose, not

20 important to you.

21 MS. ELLIOTT:

22 A. Not—I don’t remember.

23 STAMP, Q.C.:

24 Q. No, not important to you anyway. But tell

25 me this, so you had the first accident, you

Page 106

1 were still being treated for that, although

2 improving somewhat, I think you said; have

3 the second accident, that sort of re-

4 aggravated everything, you were back to

5 doing the same kinds of things all over

6 again, the same intensity of treatment?

7 MS. ELLIOTT:

8 A. Yes.

9 STAMP, Q.C.:

10 Q. And then the third accident, much the same

11 thing all over again?

12 MS. ELLIOTT:

13 A. Well, it was impacted more and more as these

14 accidents were—that occurred, so yes, it

15 would start to get better and then I had the

16 second accident which impacted it more, so

17 and then again the third, you know, so it

18 progressively makes it worse and it, like I

19 said, to this day it’s not –

20 STAMP, Q.C.:

21 Q. And I think you said you resolved your

22 claims, did you say a year or so ago, or two

23 years ago?

24 MS. ELLIOTT:

25 A. Yeah, a year.

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1 STAMP, Q.C.:

2 Q. How long ago was it, do you remember?

3 MS. ELLIOTT:

4 A. I believe it was a year ago.

5 STAMP, Q.C.:

6 Q. About a year ago, and of course Ms. Hynes

7 was directly involved, obviously.

8 MS. ELLIOTT:

9 A. Yes, that’s correct.

10 STAMP, Q.C.:

11 Q. I don’t want to know anything about amounts

12 or anything of that nature, I just want to

13 know if you had any sense of the fact that

14 when you—you didn’t have to go to court, I

15 take it, did you?

16 MS. ELLIOTT:

17 A. No, I did not.

18 STAMP, Q.C.:

19 Q. It was sorted outside of court?

20 MS. ELLIOTT:

21 A. Yes.

22 STAMP, Q.C.:

23 Q. Did you have an understanding that you would

24 have claims for various, what we call heads

25 of damages, for example, loss of future

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1 income and loss of past income, did you have

2 a claim for both past income lost and future

3 income lost?

4 MS. ELLIOTT:

5 A. I believe so, I can’t remember.

6 STAMP, Q.C.:

7 Q. Did you know whether your claim included

8 costs going forward for care for physio and,

9 in your case, massage?

10 MS. ELLIOTT:

11 A. Yes, I believe so.

12 STAMP, Q.C.:

13 Q. And so you had money built into the

14 settlement arrangements for that type of

15 thing as well. What about housekeeping and

16 those kinds of things, did you incur

17 expenses for housekeeping, did that get

18 built into the thing as well?

19 MS. ELLIOTT:

20 A. I can’t remember. That, I can’t remember.

21 STAMP, Q.C.:

22 Q. Okay, obviously you would have relied on Ms.

23 Hynes to explain to you what those claims,

24 those kinds of heads of damages would be and

25 what would be appropriate?

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1 MS. ELLIOTT:
 2 A. Yes.
 3 STAMP, Q.C.:
 4 Q. And you would have relied on her--in the
 5 settlement arrangements you would have been
 6 satisfied that she was satisfied what she
 7 was agreeing to, and you were agreeing to,
 8 was appropriate?
 9 MS. ELLIOTT:
 10 A. Yes.
 11 STAMP, Q.C.:
 12 Q. And that's how it unfolded?
 13 MS. ELLIOTT:
 14 A. That's fine. Thanks, Ms. Elliott for that.
 15 Ms. Ryan, just—your case is, of course,
 16 early on, relatively speaking. I know it's
 17 nine months, seems like a long time, but in
 18 cases of these sorts of things, it tends to
 19 take a while to get them resolved. There's
 20 been no discussion, I think you said, yet on
 21 that whole issue.
 22 MS. RYAN:
 23 A. No.
 24 STAMP, Q.C.:
 25 Q. You're just still working on trying to get

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1 better.
 2 MS. RYAN:
 3 A. Absolutely.
 4 STAMP, Q.C.:
 5 Q. And has anybody suggested to you that a cap
 6 of any sort would apply to you?
 7 MS. RYAN:
 8 A. No, I know that it won't.
 9 STAMP, Q.C.:
 10 Q. Have you had discussion—I mean, I don't want
 11 to get into what your lawyer may have told
 12 you and so on, but do you have any
 13 understanding that a cap will apply to you?
 14 MS. RYAN:
 15 A. No, I don't.
 16 STAMP, Q.C.:
 17 Q. And you don't believe it does?
 18 MS. RYAN:
 19 A. I don't think so.
 20 STAMP, Q.C.:
 21 Q. So do you have any understanding, I mean, I
 22 know one of the lawyers suggested to you
 23 that, you know, you could take 5,000 or
 24 7,500 or \$10,000 and go away, do you have
 25 any understanding that, for example, your

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1 loss of income, you have commission income
 2 and it's been that way for I guess as long
 3 as you've been with NTV. I guess the income
 4 you were very satisfied with it up until
 5 this accident and then you began to suffer
 6 loss of income –
 7 MS. RYAN:
 8 A. Yes.
 9 STAMP, Q.C.:
 10 Q. - because you were getting some kind of
 11 fixed amount from your employer.
 12 MS. RYAN:
 13 A. I'm commissioned structured, but there's
 14 also bonusing opportunities which is a
 15 significant amount of money that I have
 16 obviously missed out on for the last year.
 17 STAMP, Q.C.:
 18 Q. And do you understand that all loss of
 19 income, there's no cap or limit on those
 20 things. It is whatever it is. Do you
 21 understand that?
 22 MS. RYAN:
 23 A. I do, now that you're telling.
 24 STAMP, Q.C.:
 25 Q. Okay, you didn't have this discussion with

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1 anyone else, I'm getting at.
 2 MS. RYAN:
 3 A. No.
 4 STAMP, Q.C.:
 5 Q. Okay. So, the issue that the panel is
 6 looking at, maybe government is looking at,
 7 is essentially what to do with the pain and
 8 suffering claims. So, you know, out of
 9 pocket expenses, loss of income, cost of
 10 care, cost of your chiropractic, cost of
 11 your massage, housekeeping expenses, you
 12 know, car expenses, all those kinds of
 13 things, they are a separate arrangement from
 14 the discussion that is under, I guess,
 15 consideration. Did you have any
 16 understanding of any of that?
 17 MS. RYAN:
 18 A. No.
 19 STAMP, Q.C.:
 20 Q. So, you fully expect, I take it, that
 21 somewhere along the way, somewhere down the
 22 road from now somebody is going to calculate
 23 how much income you've lost or will lose and
 24 pay you for that.
 25 MS. RYAN:

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1 A. I'M not sure if that's exactly how it's
 2 going to happen.
 3 STAMP, Q.C.:
 4 Q. Okay. That hasn't been a discussion that
 5 you've had with anybody.
 6 MS. RYAN:
 7 A. No.
 8 STAMP, Q.C.:
 9 Q. We live in a small community here, Ms. Ryan,
 10 and of course, I see on TV, Roebathan McKay
 11 and Marshall advertise a lot, do you have
 12 anything to do with their advertising?
 13 MS. RYAN:
 14 A. No.
 15 STAMP, Q.C.:
 16 Q. You came here because they asked you to
 17 come?
 18 MS. RYAN:
 19 A. Yes.
 20 STAMP, Q.C.:
 21 Q. Who particularly asked you to come?
 22 MS. RYAN:
 23 A. Steve Marshall is my lawyer.
 24 STAMP, Q.C.:
 25 Q. And he asked you to do this?

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1 MS. RYAN:
 2 A. Yes.
 3 STAMP, Q.C.:
 4 Q. Okay. Did you have any reservations about
 5 doing it?
 6 MS. RYAN:
 7 A. Absolutely not.
 8 STAMP, Q.C.:
 9 Q. Okay. Those are all my questions. Thank
 10 you.
 11 CHAIR:
 12 Q. Thank you. Mr. Wadden?
 13 MR. WADDEN:
 14 Q. Good morning, just a couple of questions.
 15 MS. RYAN:
 16 A. Sure.
 17 (10:45 a.m.)
 18 MR. WADDEN:
 19 Q. Ms. Ryan, I know Ms. Elliott was asked, in
 20 particular, about her relationship with her
 21 lawyer and what it meant to her and the
 22 importance of it to her. I don't that we've
 23 spoken much to you about that outside I
 24 understand Kevin just asked you who your
 25 lawyer was. So, Steve Marshall is who you

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1 deal you directly?
 2 MS. RYAN:
 3 A. Yes.
 4 MR. WADDEN:
 5 Q. Okay. Can you just sort of articulate for
 6 us, if you would, how you find that
 7 relationship in terms of how it is helping
 8 you through the process?
 9 MS. RYAN:
 10 A. Since my accident, with the amount of pain
 11 that I've been in and the medication that
 12 I'm on and the psychological setbacks that
 13 I've had, I don't—I'm not confident in
 14 myself to make any decisions. I depend on
 15 Steve for everything when it comes to, you
 16 know, I'm going to go back to—let's talk
 17 about long term disability; anything do with
 18 my health, my work, moving forward, I do
 19 nothing without consulting Steve Marshall.
 20 And he's there for me 24/7; a phone call, a
 21 text away.
 22 MR. WADDEN:
 23 Q. So, it's fair to say then, notwithstanding
 24 you have treating physicians and things like
 25 that to help you deal with your medical

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1 issues, you find your relationship with your
 2 lawyer to be indispensable in terms of
 3 dealing with the entire process.
 4 MS. RYAN:
 5 A. Absolutely.
 6 MR. WADDEN:
 7 Q. Okay. We spoke to you briefly, I think Mr.
 8 Feltham or sorry, Mr. Kennedy, asked you
 9 about accident benefits and whether you had
 10 it on your vehicle at the time of your
 11 accident and I believe you said yes, Section
 12 B, you do have it.
 13 MS. RYAN:
 14 A. Yes.
 15 MR. WADDEN:
 16 Q. I understand from some answers that Ms.
 17 Elliott gave, she's had some issues with her
 18 accident benefits and we'll get to that.
 19 Have you had any issues in terms of dealing
 20 with your accident benefits provider when it
 21 comes to getting money for whether it be
 22 loss of income or treatments or anything
 23 like that?
 24 MS. RYAN:
 25 A. Other than having to wait a period of time

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1 and not have direct billing. Similar to Ms.
 2 Elliott, my chiropractor, I'm now, I think I
 3 have a bill with my chiropractor for like
 4 \$300.00 because I have to see her every week
 5 and I don't have the money to pay it out of
 6 my pocket. And she is nice enough to allow
 7 me to come in and get services and pay her
 8 when I can.
 9 MR. WADDEN:
 10 Q. Um-hm.
 11 MS. RYAN:
 12 A. But my massage therapist, they are direct
 13 billed through my insurance company.
 14 MR. WADDEN:
 15 Q. Okay.
 16 MS. RYAN:
 17 A. So that's not an issue.
 18 MR. WADDEN:
 19 Q. These are issues not necessarily with your
 20 insurer, but with the service providers
 21 you're using and whether or not they will
 22 bill the insurance company directly or make
 23 you make you pay it and get reimburse.
 24 MS. RYAN:
 25 A. No, it's the insurance company. They won't

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1 add my chiropractor to their list.
 2 MR. WADDEN:
 3 Q. Okay. Will that particular chiropractor
 4 allow for direct billing?
 5 MS. RYAN:
 6 A. Absolutely. She's written letters on my
 7 behalf because of my financial situation and
 8 for some reason, they have a list and they
 9 stick to that list. It really makes no
 10 sense to me, but anyways.
 11 MR. WADDEN:
 12 Q. Okay. Do you have any idea, I mean, as you
 13 probably know, Accident Benefits, that
 14 portion of your policy only has a certain
 15 amount of money within it that would pay for
 16 treatments, et cetera. Do you know where
 17 you are, sort of, on that spectrum? Are you
 18 also out of cash there or –
 19 MS. RYAN:
 20 A. I have no idea. I didn't know there was a
 21 limit.
 22 MR. WADDEN:
 23 Q. Okay. I believe at one point you indicated,
 24 after a number of months of not working, you
 25 said, listen, enough of this, I got to go

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1 back to work.
 2 MS. RYAN:
 3 A. I had no choice; I was going to lose
 4 everything.
 5 MR. WADDEN:
 6 Q. Right. Was it last March, I think –
 7 MS. RYAN:
 8 A. March 1 I started back on ease back against
 9 my doctor's orders.
 10 MR. WADDEN:
 11 Q. Right. And I just want to get some
 12 clarification. You were, did you say you
 13 were getting paid something by your employer
 14 up to that time.
 15 MS. RYAN:
 16 A. My employer, God love them, gave me a base
 17 salary, they kind of just calculated, I
 18 don't know what they based it on to be
 19 honest with you, but they continued to pay
 20 me and since I've gone back to work and
 21 sales have been coming in and I've been
 22 doing my job, I have to pay the company
 23 back.
 24 MR. WADDEN:
 25 Q. Okay.

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1 MS. RYAN:
 2 A. So right now, I went back to work in March;
 3 April, May, June, July, August, September,
 4 six months I'm still in debt to my company
 5 right now for \$6,000.00.
 6 MR. WADDEN:
 7 Q. Okay. Have you availed of any loss of
 8 income benefits from your Accident Benefits
 9 providers, from Section B?
 10 MS. RYAN:
 11 A. I didn't know it existed.
 12 MR. WADDEN:
 13 Q. Okay. Ms. Elliott, just a couple of
 14 questions for you, if you don't mind.
 15 MS. ELLIOTT:
 16 Q. Yes.
 17 MR. WADDEN:
 18 Q. You did speak a little bit about your issues
 19 in dealing with your Accident Benefits
 20 provider. Can you just talk to us a little
 21 bit more about that? All your claims are
 22 settled, is that what you said?
 23 MS. ELLIOTT:
 24 A. Yes.
 25 MR. WADDEN:

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1 Q. Okay. So, you're no longer dealing with
 2 Section B in terms of any of your accidents?
 3 A. That's correct.
 4 Q. Okay. So, we can look at all this
 5 retrospectively. So, just give me an idea
 6 generally about the problems you had in
 7 availing of that coverage?
 8 MS. ELLIOTT:
 9 A. Like I said, it was just contact, waiting
 10 from the Section B representative of RSA;
 11 whether it was, are they going to cover
 12 these services? How many more sessions can
 13 I get? Are they going to cover it? The
 14 waiting period could be three weeks to a
 15 month before she actually responded. And
 16 like I said, once Valerie got involved, then
 17 it seemed to speed up the process. But all
 18 the documentation, once my personal medical
 19 was exasperated (sic.), then I sent her
 20 everything she needed from the two personal
 21 medical coverages I did have at the time,
 22 what was not covered in going forward, like
 23 Ms. Ryan, my services did not direct bill to
 24 the company. So, like I said, they got
 25 involved in trying to contact RSA and they

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1 never responded to her either. So, it was a
 2 waiting period, probably about three weeks
 3 to a month before actually she'd say, okay,
 4 you're good for another five months—five
 5 sessions, say. So, when those sessions were
 6 up, then I'd have to go through the same
 7 process and again. And again, sometimes
 8 they would—the clinic was really helpful and
 9 accommodating saying okay, well pay next
 10 week when you come in or I would just have
 11 to put that charge on my credit card and
 12 deal with it after.
 13 MR. WADDEN:
 14 Q. So, let me put this in context for you as
 15 well. So, Mr. Browne who is next to me is
 16 the Consumer Advocate and I'm his counsel
 17 and we're concerned about a number of issues
 18 in these hearings, but one of them that I'm
 19 focussing on right now is accident benefits
 20 and how consumers can perhaps be better
 21 served, if that's possible, in terms of
 22 their accident benefit coverage. So you're
 23 a consumer, right.
 24 MS. ELLIOTT:
 25 Q. Yes.

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1 MR. WADDEN:
 2 Q. So, can you just give me—now, you can look
 3 back, you've had three accidents, you've
 4 dealt with Section B on all of them. What,
 5 in your view, should change? If, God
 6 forbid, you had another one, and you dealt
 7 with accident benefits again, what would you
 8 like to see different? What do you think
 9 could be better?
 10 MS. ELLIOTT:
 11 A. Maybe just the response time would be more
 12 convenient that you're not waiting three or
 13 four weeks to say yes, okay, we can approve
 14 this. Or when all the document—I understand
 15 sometimes all the documentation is not
 16 received. So then there's another waiting
 17 period. But like in my situation when
 18 everything was received and I knew I sent it
 19 because I had cc'd Ms. Hynes on everything,
 20 any kind of correspondence, also the
 21 therapeutic services were cc'd when those
 22 documents were sent. So, it's just the
 23 response time.
 24 MR. WADDEN:
 25 Q. Okay.

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1 MS. ELLIOTT:
 2 A. Because a lot of people, like most people I
 3 know cannot wait or go out of pocket.
 4 MR. WADDEN:
 5 Q. Sure, yeah.
 6 MS. ELLIOTT:
 7 A. I think that would be helpful in that
 8 situation, is the response time. But like I
 9 said, that was my complaint that I had with
 10 that, is the waiting period. Or even just
 11 to get a response saying, okay, well, I'm
 12 working on this. Hopefully, I'll get back
 13 to you in two days or even—just an
 14 acknowledgement that they had received the
 15 documentation and if that representative I
 16 was dealing with did not, was not—she could
 17 be gone on vacation or whatever the case may
 18 be, which happens, then have somebody else
 19 cover it.
 20 MR. WADDEN:
 21 Q. Okay. So, what I'm hearing is better and
 22 more efficient communication.
 23 MS. ELLIOTT:
 24 Q. Yes.
 25 MR. WADDEN:

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1 Q. Okay. Ms. Ryan, same question, do you have
 2 any thoughts on that as well, from a
 3 consumer point of view.
 4 MS. RYAN:
 5 A. Pretty much exactly what she said and I
 6 believe that every massage therapist or
 7 chiropractor or whatever form of treatment
 8 you're getting, should be on a direct
 9 billing system with the insurance companies
 10 because there's times when I've had to take
 11 a hundred dollars out of my pocket to pay
 12 for therapy that really should have gone to
 13 the grocery store to feed my kids.
 14 MR. WADDEN:
 15 Q. Okay.
 16 MS. RYAN:
 17 A. It just makes life a little bit easier on
 18 the injured.
 19 MR. WADDEN:
 20 Q. Okay. Just give me one moment. Those are
 21 all my questions. Thank you.
 22 BROWNE, Q.C.:
 23 Q. Just a couple of questions, Ms. Ryan.
 24 You're into the medical system. You're
 25 dealing with doctors and physiotherapists

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1 and chiropractors and the like; do you have
 2 any comments on the efficiencies within the
 3 medical system, vis-a-vie your injury?
 4 MS. RYAN:
 5 A. No, I've been treated well. I've been taken
 6 care of very well by my doctor and when I
 7 had to go to the hospital and have x-rays
 8 done, I was actually wheeled out to my
 9 vehicle in a wheelchair because I wasn't
 10 feeling very good that day. So, no, I have
 11 absolutely no complaints there.
 12 BROWNE, Q.C.:
 13 Q. And Ms. Elliott?
 14 MS. ELLIOTT:
 15 A. I feel the same way. My doctor, any type of
 16 medical treatment I've received has been
 17 very helpful, accommodating. Anytime I
 18 needed to get in to see them, it's as soon
 19 as I can.
 20 BROWNE, Q.C.:
 21 Q. And we've had evidence and anecdotally
 22 concerning my own profession, the legal
 23 profession, and our involvement in these
 24 matters. Some people are critical of
 25 contingency fee arrangements and the amount

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1 of money paid to lawyers and how that fits
 2 into the entire system. Do you have any
 3 comment on that, Ms. Ryan?
 4 MS. RYAN:
 5 A. No.
 6 BROWNE, Q.C.:
 7 Q. And Ms. Elliott?
 8 MS. ELLIOTT:
 9 A. I don't have any comment.
 10 BROWNE, Q.C.:
 11 Q. You have no issue with that.
 12 MS. RYAN:
 13 A. I don't even know what it is.
 14 BROWNE, Q.C.:
 15 Q. Well, the percentage that you're paying at
 16 the end –
 17 MS. RYAN:
 18 A. The percentage, that's what I mean.
 19 BROWNE, Q.C.:
 20 Q. If indeed, that is your arrangement, I don't
 21 know.
 22 MS. RYAN:
 23 A. I don't even know what that percentage is.
 24 BROWNE, Q.C.:
 25 Q. You don't know?

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1 MS. RYAN:
 2 A. No.
 3 BROWNE, Q.C.:
 4 Q. Okay. Ms. Elliott, do you have any comment?
 5 MS. ELLIOTT:
 6 A. My opinion on that, what Ms. Hynes has done
 7 for me, no, I don't have an issue on how
 8 that works, the percentage because like I
 9 stated, before, without her and her support
 10 and her knowledge and guidance, has really
 11 helped in what I've received. And like I
 12 said, it's just a learning experience
 13 because without her I wouldn't know half of
 14 the stuff that was going on.
 15 BROWNE, Q.C.:
 16 Q. Sure, and that aside, but you said you had
 17 no idea about if you're paying a percentage
 18 or how you were paying your legal fees or
 19 your legal bill.
 20 MS. ELLIOTT:
 21 A. As far as know, it was a percentage.
 22 BROWNE, Q.C.:
 23 Q. So, you were aware of that from the get-go?
 24 MS. ELLIOTT:
 25 Q. I believe so, yeah. I didn't say I didn't

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1 know. I said, she—I wasn't told what a
 2 percentage amount that my lawyer would
 3 receive, but like I said, without her, I
 4 don't know where I would be.
 5 BROWNE, Q.C.:
 6 Q. But you're aware that that amount came out
 7 of your settlement effectively?
 8 MS. ELLIOTT:
 9 A. Yes.
 10 BROWNE, Q.C.:
 11 Q. Okay. And you had no comment on that in
 12 your—I received your comments and everyone
 13 has heard your comments in reference to your
 14 lawyer and the job that she did for you.
 15 Okay, I have no further questions. Thank
 16 you very much. Thanks for coming forward.
 17 MR. O'FLAHERTY:
 18 Q. I have no questions for the presenters,
 19 Madam Chair.
 20 COMMISSIONER NEWMAN:
 21 Q. Thank you, I have no questions.
 22 COMMISSIONER OXFORD:
 23 Q. No questions.
 24 CHAIR:
 25 Q. The Panel has no questions. I'd like to

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1 thank both of you for your courage and your
 2 willingness to come and share your
 3 experience and I wish you both well.
 4 MS. ELLIOTT:
 5 A. Thank you.
 6 MS. RYAN:
 7 A. Thank you.
 8 CHAIR:
 9 Q. Mr. Kennedy, did you have anything else –
 10 KENNEDY, Q.C.:
 11 Q. No, that's fine, thank you very much.
 12 CHAIR:
 13 Q. Good timing; we'll take our half hour break
 14 now and reconvene with the next panel.
 15 (RECESS – 11:00 A.M.)
 16 (RECONVENE – 11:37 a.m.)
 17 CHAIR:
 18 Q. Good morning to the three of you. Who is
 19 going to introduce the Panel? Mr. Feltham,
 20 I guess, it looks like you're standing up.
 21 MR. FELTHAM:
 22 Q. Yes, Chair and Commissioners, thank you.
 23 Chair and Commissioners, we have now a panel
 24 on behalf of the Campaign to Protect
 25 Accidents Victims who have a presentation

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1 that they're going to share with the Board.
 2 Before we get to that though because there's
 3 been no advance biography information or
 4 anything of that nature shared. So, what
 5 I'd like to do is take the Panel through a
 6 little bit of background, just so the Board
 7 understands who is speaking this morning.
 8 And before I get to that, I'd also like to
 9 mention that Mr. Rogers does have a hearing
 10 impairment, just so there's an awareness of
 11 that. Maybe we'll begin with Ms. Hynes.
 12 Ms. Hynes, can you give us a little bit of
 13 an idea—you're a lawyer?
 14 MS. HYNES:
 15 A. Hi. Yes, I practice at Roebothan McKay and
 16 Marshall. I am a partner there. I was
 17 called to the bar in 2001 and have been
 18 practising in Newfoundland my entire career.
 19 Approximately about 50 percent of my
 20 practice consists of personal injury. I
 21 also practice in corporate commercial
 22 representing BDC and other banking
 23 institutions. I do residential real estate,
 24 commercial real estate and small business
 25 corporate commercial transactions. But I'm

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1 here today to offer my perspective and some
 2 background information of my dealings with
 3 my personal injury clients and my
 4 observations and review of the process so
 5 far.
 6 MR. FELTHAM:
 7 Q. Ms. Hynes, you say personal injury victims
 8 as part of your clientele. Would a large
 9 percentage of that base consist of folks
 10 that were injured in motor vehicle
 11 accidents?
 12 MS. HYNES:
 13 A. Absolutely. I have represented and do
 14 represent people who are making claims under
 15 long term disability or for slip and fall
 16 accidents, chiropractic and medical
 17 malpractice and other types of bodily injury
 18 and psychological injury and different
 19 challenges like that in dealing with
 20 litigation issues generally. But I would
 21 say of my practice, my personal injury
 22 portion of my practice that the vast
 23 majority of that would involve motor vehicle
 24 collisions and victims of motor vehicle
 25 collisions.

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1 MR. FELTHAM:
 2 Q. Thank you. Mr. Rogers, same question for
 3 you, I guess. You're a lawyer in private
 4 practice. You don't work a Roebothan McKay
 5 Marshall, but perhaps you can tell us a bit
 6 about your practice.
 7 ROGERS, Q.C.:
 8 A. Yes, my name is Richard Rogers. I work with
 9 the law firm Rogers Rogers Moyses. We
 10 concentrate on personal injury. I've been
 11 practising for 30 years. One hundred
 12 percent of my practice is personal injury
 13 and the majority of that is automobile
 14 accidents and the remainder would be medical
 15 malpractice. I don't deal with slip and
 16 falls or product liability or anything like
 17 that. So, I'm also here to provide my
 18 perspective on 30 years-worth of dealing
 19 with insurance companies representing
 20 clients.
 21 MR. FELTHAM:
 22 Q. Thank you. And Ms. McGarry?
 23 MS. MCGARRY:
 24 A. Well, I'm also a partner at Roebothan McKay
 25 and Marshall; a new partner at that. I've

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1 been practising for 10 years, called to the
 2 Bar in 2008. I've practised with Roebothan
 3 McKay and Marshall the whole ten years. My
 4 primary practice is also personal
 5 injury/motor vehicle accidents. I do have
 6 real estate practice as well, and wills and
 7 estates, but my main focus would be personal
 8 injury and motor vehicle accidents.
 9 MR. FELTHAM:
 10 Q. Okay, thank you. So, I understand that
 11 there is a presentation that is being
 12 prepared. So, at this point and I may have
 13 questions as we move along, but I'd like to
 14 turn it over to the Panel to commence with
 15 the presentation.
 16 MS. HYNES:
 17 A. So, what we'd like to talk about today is
 18 the issue before us regarding the
 19 implementation or the possibility of an
 20 implementation of a cap on general damages;
 21 what that issue means and what it can mean
 22 for different people. Some victim
 23 perspective, although we heard some
 24 testimony and I don't plan on repeating a
 25 lot of what we've already heard this

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1 morning. We do have some victims'
 2 perspectives and some case law from the
 3 Atlantic Provinces. Then we'd like to
 4 present to you some of the facts that we've
 5 uncovered when we have done research and
 6 throughout this entire process, even some of
 7 the information that the PUB has provided
 8 through your experts as well and through
 9 research with GISA. And then we—the
 10 Campaign actually retained a firm from
 11 Halifax to do some research on the
 12 perspectives of Newfoundlanders and
 13 Labradorians on how they feel about some of
 14 these issues. So, we wanted to present
 15 those findings.
 16 So first, what does a cap mean? The
 17 insurance industry is lobbying to place a
 18 cap on compensation for pain and suffering
 19 for victims of motor vehicle accidents and
 20 injuries, as has been done in other
 21 provinces. Accident victims, regardless of
 22 their stress, physical injury or
 23 psychological harm suffered by them after an
 24 accident will have no affective recourse
 25 against negligent, distracted impaired

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1 drivers. Victims will have no access to
 2 justice.
 3 So, obviously, that's a broad
 4 statement. What I wanted to impress upon
 5 you that we're talking about a minor injury
 6 cap, but we don't profess to feel that there
 7 is such a thing as a minor injury. There
 8 are various different types of injuries and
 9 that have various different impacts on
 10 people, but each of those victims of motor
 11 vehicle collisions through no fault of their
 12 own have suffered an injury that has caused
 13 a life altering change to their life and
 14 it's, I think, somewhat insulting to
 15 determine it as minor. There's strong
 16 evidence to indicate that bodily injury
 17 claims are not only stable in the province,
 18 but declining as evidence that Ms. Elliott
 19 presented in one of her studies, and I mean
 20 Paula Elliott of Oliver Wyman. Claims are
 21 declining. We're at a 20-year low for the
 22 claims in this province. It's been a trend
 23 for a long time and the number of claims
 24 have declined. We've also heard that a cap
 25 will not lower insurance premium. Certainly

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1 Ms. Elliott’s evidence has been that it
 2 would have a minimal impact anyway, when you
 3 look at her figures, but the insurance
 4 industry themselves have come out repeatedly
 5 in all their submissions to the PUB and in
 6 media presentations and indicated that a cap
 7 will not lower insurance premiums. So, our
 8 position on that is that you’re taking away
 9 the rights of innocent victims and in
 10 return, our society, public, will not
 11 achieve any benefit.

12 MR. FELTHAM:
 13 Q. Ms. Hynes, if I could just interject for a
 14 moment, just to go back to the access to
 15 justice component and really for anybody on
 16 the Panel, I wonder if you could elaborate
 17 on that a bit? How do you see, as lawyers
 18 who work in the justice system, how do you
 19 see a minor injury cap potentially having,
 20 as is being considered, how do you see that
 21 as potentially having, creating access to
 22 justice issues for individuals?

23 ROGERS, Q.C.:
 24 A. Again, the frailty that we’re going to have
 25 here is a definition of what is a minor

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1 injury. And if you look at the issues
 2 surrounding such as can a person no longer
 3 work? Well, most people in Newfoundland,
 4 they don’t have the luxury of taking time
 5 off when they have accidents. They will
 6 crawl to work on their hands and knees.
 7 There are very few people that have sick
 8 leave that they can depend upon. A lot of
 9 people don’t have benefits at work, so when
 10 they’re in accidents—and we’re often asked
 11 by insurance companies, well, did they lose
 12 work? Well, of course, they didn’t lose any
 13 work. They have to feed their families and
 14 they’re going to be, like I said, doing
 15 whatever they can to get their body into
 16 their workplace because they will lose money
 17 if they don’t. And often, many of these
 18 people that do have to time off because they
 19 are not physically able to go to work end up
 20 having no income whatsoever. We are not
 21 allowed to lend them money. The Law Society
 22 prevents law firms from providing money or
 23 lending money in any capacity to a client.
 24 So, often the banks won’t look at them and
 25 we have to refer them to lending

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1 institutions such as Seahold or Bridgepoint
 2 and the interest rates are atrocious. So,
 3 these people who have legitimate accidents
 4 with legitimate injuries preventing them
 5 from work are already placed in a horrible
 6 position where they cannot effectively look
 7 after their families.

8 The other thing I want to mention
 9 before I forget, when people lose their
 10 vehicles in car accidents, they never get
 11 the true value of their value of their
 12 vehicle. It’s only what the book value is.
 13 And for many people who have a Toyota
 14 Corolla or a small vehicle that they depend
 15 upon for their family, and it might be six,
 16 seven or eight, years old, when that car is
 17 written off, they’re given a cheque which is
 18 a fraction of what that true car meant to
 19 them. And so right off the bat again,
 20 they’re left in a situation whereby they
 21 have to buy a replacement vehicle, either
 22 they can buy a complete piece of junk which
 23 will require further repairs or that vehicle
 24 that they really looked after, they’re not
 25 going to get anywhere near what they should

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1 be entitled to. So, often I have to tell
 2 clients, you know what? We’ll make up for
 3 it when we get your personal injury claim
 4 and then you can try to get a proper
 5 replacement vehicle. And the pressure on an
 6 individual who is injured in a so-called
 7 minor car accident is immense. Right away,
 8 they have to get to the doctor, they have to
 9 lose time at work, somehow look after their
 10 children. Most people in Newfoundland live
 11 from cheque to cheque. To throw a financial
 12 burden on them immediately following a car
 13 accident is almost incomprehensible to them
 14 and the pressure is immense. So, that’s
 15 what I find essentially happens out of a car
 16 accident right away and some insurance
 17 companies will let them have what they call
 18 a loaner car and that may be from a couple
 19 of days to possibly a week and within that
 20 timeframe they are supposed to be able to
 21 find a replacement vehicle. And if they
 22 don’t, they have to return the loaner car
 23 anyways. So, it’s a lot of pressure on an
 24 individual who has a so-called minor injury.

25 MS. HYNES:

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1 A. I just wanted to add on the access to
 2 justice element of your question. We take
 3 these claims on on a contingency basis which
 4 means that a client retains our services and
 5 we carry the expenses on the file until the
 6 claim settles at the end of the day, from
 7 which we then get paid from a portion of the
 8 settlement. These people can't afford
 9 lawyers. Most people can't afford lawyers
 10 and we see what some legal bills do to
 11 people who are going through divorce and
 12 family law issues, they are absolutely
 13 financially devastating. So, what much
 14 research, our courts and you know, the
 15 general belief is that, if it was not for
 16 these contingency situations, people would
 17 not be provided access to justice. They're
 18 injured after an accident and then as
 19 Richard has indicated, they're under a
 20 tremendous amount of stress financially,
 21 physically and emotionally and burdens are
 22 still on them. And then they're trying to
 23 navigate through a system of property
 24 damage, bodily injury claim, Section B
 25 accident benefits, their own group health

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1 insurer, their employer or they're not
 2 employed, whatever their personal
 3 circumstances is, they have to navigate that
 4 and so they need help. And that's where we
 5 come in, we help with the various aspects of
 6 their claim to try to level the playing
 7 ground because they're up against employers,
 8 insurers companies, both insurance companies
 9 and various different issues. So, if a cap
 10 was placed on general damages and as the
 11 Close Claim Study and the various report
 12 have indicated, it would take away
 13 approximately 77 to 80 percent of someone's
 14 claim. And it would impact between 66 and
 15 77 percent of the collision claims in the
 16 Province. We're talking about a lot of
 17 people who would be falling under this cap
 18 and then generally are faced with a cap,
 19 faced with the challenge of a cap and then
 20 they have taken the impetus for lawyers to
 21 be involved in the claim based on the
 22 contingency situation away. So, more than
 23 anything, I think that the service we
 24 provide and the way that we provide it, you
 25 might not like it, but it provides access to

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1 justice for people who would never be able
 2 to afford legal representation and who are
 3 up against the largest challenge of their
 4 life.
 5 MS. MCGARRY:
 6 A. Could I add something to that as well? When
 7 we're talking about access to justice, the
 8 other point to consider as well is that by
 9 putting a cap in place, it's actually acting
 10 as a complete attach on the justice system
 11 as it is right now. Judges are in the best
 12 position as independent people to decide if
 13 someone has been hurt by someone else
 14 because of a negligent act and that impacts
 15 a person, how that person should be
 16 compensated for the impact it has on the
 17 quality of their life. If you have two
 18 adverse parties in proceeding, why would you
 19 allow one party to set the rules by putting
 20 in some type of definition that's misleading
 21 in its name because when Ms. Hynes goes
 22 through some of the cases where caps have
 23 been put in place, the thing that is going
 24 to come across is these are not minor
 25 injuries, as we understand them to be.

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1 MS. HYNES:
 2 A. So, who loses with a cap? We are privileged
 3 and honoured to represent car accident
 4 victims who have suffered their life
 5 altering effects through no fault of their
 6 own. These are not the people who cause the
 7 accident; these are not the people who are
 8 impaired driving, distracted drivers and
 9 that. These are the victims. They did
 10 nothing wrong. They were driving down the
 11 road; they were walking on the sidewalk;
 12 they were crossing at a crosswalk; they were
 13 a passenger in a car with their family
 14 member and they are injured in an accident.
 15 They can no longer do the things that they
 16 are normally able to do; look after the
 17 children the way that they want to look
 18 after the children; enjoy their life the way
 19 they want to enjoy their life; exercise;
 20 take care of their health; be less of a
 21 burden on our health care system through the
 22 activity that they are involved in trying to
 23 stay healthy. So, we have this unique
 24 perspective that we get to listen to their
 25 stories every single day and it would be

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1 remiss of us if we did not come and tell
 2 what we see on a daily basis because what we
 3 see in terms of the legislation in the other
 4 Atlantic Provinces is unfair, it hasn't
 5 solved the issue. There is still immense
 6 pressure on rates to go up and the justice
 7 has been taken away for some many innocent
 8 victims.
 9 ROGERS, Q.C.:
 10 A. I also believe that the way the system is
 11 set up now it's not fair to single mothers;
 12 it's not fair to individuals who aren't able
 13 to work because again, if the working
 14 element is brought in as part of the
 15 definition of whether or not an individual
 16 has permanent or disabling injuries, if you
 17 can't bring in that component they can no
 18 longer work and just say that they have pain
 19 and suffering, they probably won't surpass
 20 any kind of cap. So, individuals who have
 21 to remain at home for whatever reason, who
 22 are injured in a car accident, probably will
 23 have an even greater uphill battle to prove
 24 that they should exceed the cap, and that
 25 usually means single mothers.

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1 MS. HYNES:
 2 A. So next I'd like to turn you to the victim
 3 impact section of the presentation. You
 4 know, we have three examples of victims who
 5 are here and Della, who you've heard from
 6 already today, and Sheila who you also heard
 7 from today, I think have provided ample
 8 information on that. So, I'm not going to
 9 repeat, but it is available for you. And
 10 next I'd like to turn to some of the cases
 11 in other provinces. The first cast I wanted
 12 to discuss was Fraser v. Haines which is
 13 from the New Brunswick Court of Appeal. The
 14 gentleman injured in this accident suffered
 15 a shoulder injury in a motor vehicle
 16 accident. And I just wanted to double check
 17 the date of his accident, yes, October 26th,
 18 2003 was his injury and this matter was in
 19 the Court of Appeal of 2008. The evidence
 20 in this trial showed that he suffered a
 21 shoulder injury. It was determined to be
 22 minor in nature. He had missed over—he
 23 missed a tremendous amount of work. He
 24 attended physiotherapy for over a year and a
 25 half until his physiotherapist deemed that

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1 there was no further treatment that would be
 2 beneficial to him. Before the accident, in
 3 the course of his employment Mr. Fraser had
 4 used both arms. He worked for the
 5 Government of New Brunswick and he was a
 6 surveyor. And so he would fix iron pins to
 7 map put the various stakes. And after the
 8 accident, initially when they eased him back
 9 to work, Mr. Fraser was unable to do his job
 10 initially. So, they put him in checking
 11 position so he was, you know, more
 12 supervisory. He did not like that position;
 13 he did not find satisfaction. So, he
 14 returned to his normal position, but he had
 15 to be accommodated in that he had to use his
 16 other arm in order to drive the stakes
 17 because his injured arm still, you know,
 18 over a year and a half after the accident
 19 happened was still too painful and not
 20 functioning.
 21 At trial, two years, post-accident, his
 22 orthopedic surgeon testified, Dr. Barheal
 23 testified that this type of shoulder injury
 24 has already reached—you are where you are,
 25 it's already reached optimum maximum

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1 recovery at the two-year point. And this
 2 time had gone and past and Mr. Fraser was
 3 still complaining of problem from his
 4 injuries. The trial Judge found that Mr.
 5 Fraser's capacity to complete household
 6 chores was diminished as well.
 7 Unfortunately, he was – he did fall within
 8 the cap, the definition at the time, and
 9 would continue to fall within the
 10 definition. He had a serious injury, but he
 11 was accommodated, and, therefore, it was
 12 determined – it would be determined that it
 13 didn't have a serious impact in the long
 14 run. The trial judge said that if it wasn't
 15 for the cap, I would have awarded
 16 \$30,000.00, but it falls under the cap, and,
 17 therefore, they capped it at \$2,500.00.
 18 This matter was appealed and the New
 19 Brunswick Court of Appeal went through the
 20 test that they were using in terms of, was
 21 the injury serious in nature, and then what
 22 was the impact, and it demonstrated how
 23 these minor injury caps would be applicable.
 24 The next case I wanted to turn to is
 25 Douthwright v. Duffy, also from the New

<p style="text-align: right;">Page 149</p> <p>1 Brunswick Court of Appeal. Mrs. Douthwright 2 was a passenger in a vehicle. Mrs. Duffy 3 fell asleep at the wheel, crossed over the 4 centre line and caused a serious collision. 5 Mrs. Douthwright suffered injuries through 6 no fault of her own as a result of a head on 7 collision with a tractor trailer. The trial 8 judge found that the plaintiff suffered 9 significant soft tissue injuries which 10 included headaches, neck pain, low back 11 pain, left arm pain, chest pain initially, 12 left ankle pain, sleeping difficulties, 13 post-traumatic stress disorder, and severe 14 driving anxiety. At trial, almost ten years 15 post-accident, the plaintiff's family doctor 16 confirmed she suffered from soft tissue 17 injuries, chronic pain, depression, and 18 anxiety, and she was forced to take multiple 19 medications. In the decision, the plaintiff 20 sought general damages in the amount of 21 \$150,000.00. However, her injuries were 22 considered minor, and, therefore, capped at 23 \$2,500.00. The trial judge stated, "The 24 court has no choice but to apply the 25 legislation in place at the time of the</p>	<p style="text-align: right;">Page 151</p> <p>1 happened on a bridge on the highway in Nova 2 Scotia, and Mr. Farrell – I bring this case 3 to you, I want to draw one point about it. 4 Liability was not found in favour of Mr. 5 Farrell in this case. In this actual 6 decision, Mr. Farrell was not successful in 7 proving that the defendant had been 8 negligent. The trial judge actually found 9 that the defendant – they didn't make a 10 determination if it was an inevitable 11 accident, but they basically felt that his 12 driving did not show any negligence, so they 13 failed to prove negligence. However, 14 because they'd gone through the full damages 15 and liability trial, the justice did still 16 provide reasons and analysis for the damages 17 component. Mr. Farrell had suffered a 18 broken wrist, sprained ankle, broken blood 19 vessels in his nose, left hand injury, as 20 well as soft tissue injuries to his chest 21 and back. At the trial five years post- 22 accident, the plaintiff's family doctor, the 23 plaintiff is Mr. Farrell, the family doctor 24 and orthopaedic surgeon confirmed that his 25 right wrist was an ongoing disability that</p>
<p style="text-align: right;">Page 150</p> <p>1 December 8th, 2005, motor vehicle accident 2 and, therefore, Mrs. Douthwright is awarded 3 \$2,500.00 in general damages. In coming to 4 this conclusion", the judge said, "I can 5 only echo the comments of Justice Scaravelli 6 in Beaulieu, that \$2,500.00 does not 7 compensate Mrs. Douthwright for pain and 8 suffering, absent this legislation. 9 Regrettably, in these circumstances, the 10 court has no alternative but to apply the 11 law as set out in the regulation, 2003. I am 12 certain that Mrs. Douthwright, like other 13 accident victims referred to by Chief 14 Justice Drapeau in LeBlanc v. Bulmer, will 15 have difficulty understanding that her 16 injuries have not been found to be serious". 17 The plaintiff appealed the decision, but on 18 appeal it was dismissed. The finding of a 19 minor injury was upheld. They took some 20 issue with the fact that she had pre- 21 existing mental health issues as well. 22 (12:00 p.m.) 23 The next case is Farrell v. Casavant, which 24 is a Nova Scotia case. Mr. Farrell was 25 involved in a motor vehicle accident that</p>	<p style="text-align: right;">Page 152</p> <p>1 would continue to cause him discomfort and 2 pain for the rest of his life. The 3 plaintiff's right wrist had been immobilized 4 for five and a half weeks following the 5 removal of his cast. He attended 6 physiotherapy. He also attended further 7 physiotherapy that he paid for out of his 8 own pocket. The plaintiff attended 9 chiropractic sessions 18 times for mid back 10 pain. The plaintiff missed four and a half 11 months from work and struggled with certain 12 duties, including climbing ladders. He had 13 been a manager at Wal-Mart, and part of his 14 duties was to climb the ladders throughout 15 the store. He also had to give up certain 16 recreational activities, including darts, 17 bowling, horseshoes. He struggled to help 18 around his house and couldn't play with his 19 grandchildren as he had. At trial, he was 20 61 by this time. The trial judge found that 21 the minor injury cap applied, and he found 22 that the plaintiff's chest, left hand, and 23 ankle injuries healed uneventfully. The 24 decision continued on and said, "The trial 25 judge found that the injury to the</p>

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1 plaintiff's back still caused pain and
 2 discomfort, and further the plaintiff's
 3 right wrist now had an obvious deformity
 4 that caused pain and discomfort.
 5 Nevertheless, the damages would be capped at
 6 \$2,500.00 as per the Insurance Act, because
 7 while the plaintiff suffered an injury that
 8 resulted in a permanent deformity, the trial
 9 judge felt that the deformity was not
 10 serious enough and it was caught under the
 11 legislation". The trial judge went on to
 12 say, "Had the plaintiff not been subject to
 13 the legislative definition of minor injury
 14 and to the cap, I would have not considered
 15 his injuries to be minor, and I would have
 16 awarded him a great sum for his general
 17 damages". I think what – I'm illustrating
 18 these cases because I believe that the
 19 justices in New Brunswick and Nova Scotia,
 20 when the cap was brought in there, struggled
 21 with the legislation at first. Our system
 22 is not perfect. By any stretch of the
 23 imagination, it's not perfect, but I believe
 24 our Chief Justice Beverley McLachlin, former
 25 Chief Justice, when she was here last fall

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1 she said it's not perfect, but it's the best
 2 one out there. Right now, if you're not
 3 injured, you don't get anything, and that's
 4 right, that's the proper thing. Everyone
 5 who's in an accident doesn't suffer an
 6 injury. If you are injured, you deserve to
 7 have your evidence heard and assessed
 8 reasonably based on the case law that has
 9 evolved in our country throughout the common
 10 law jurisdictions, and to be assessed
 11 anywhere along the continuum. In our
 12 country, that continuum flows from zero to
 13 the trilogy of cases from 1978 which capped
 14 general damages in Canada at \$100,000.00,
 15 and \$100,000.00 in 1978 is about \$345,000.00
 16 now, I think, approximately. We have a
 17 range so that we did not turn into the
 18 United States of America and see general
 19 damages going to exponential levels. We
 20 have a reasonable limit right now, and
 21 people are heard, their evidence is assessed
 22 by independent arbiters and a proper
 23 decision is found. The fairness with which
 24 they're dealt with is not legislated away by
 25 an arbitrary cap and a definition that has

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1 changed in Atlantic Canada and throughout
 2 Canada, and is constantly being beat up.
 3 Anything to say?
 4 ROGERS, Q.C.:
 5 A. There are already a number of checks and
 6 balances that are put into place when we
 7 deal with personal injury claims. From the
 8 very beginning, we deal with an adjuster
 9 with the opposing insurance company.
 10 They're well versed in the law, they
 11 understand what the damage figures are
 12 according to case law just as much as we do.
 13 Then we have to get medical information from
 14 a treating physician to back up our
 15 allegations of the nature of the injuries.
 16 Sometimes those medical reports come back
 17 very supportive; often they don't, and as a
 18 result the client's claim can become in
 19 jeopardy. Soft tissue injury, in
 20 particular, isn't always an easy diagnosis
 21 to talk about in terms of future
 22 expectations. It's difficult to treat, and
 23 often it's self-reported because many
 24 diagnostic images won't even show up the
 25 injury. I remember speaking with an

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1 orthopaedic surgeon about that. He said as
 2 technology becomes clearer and better, we'll
 3 have a better understanding of just how the
 4 minute tears of fibres and nerve endings are
 5 easy to diagnose, but he said, right now
 6 we're still limited as to how we can
 7 diagnose it, so we have to ask the patients
 8 to self-report what is wrong with them.
 9 When clients come into my office on crutches
 10 and they have a cast on their leg, it looks
 11 very dramatic, but often a broken bone heals
 12 with no difficulty, and as a result the
 13 damages are not terribly high. When someone
 14 comes in with soft tissue injury, their
 15 whole life is turned upside down. They can't
 16 sleep, and as a result the next day it's
 17 hard for them to function in any capacity.
 18 Their lives are disrupted and their
 19 relationship with their spouse and their
 20 children. They don't want to go on pain
 21 medication, contrary to what the public
 22 thinks. Most people don't want to be
 23 addicted to narcotics. So they're left in
 24 probably one of the worst catastrophic
 25 things that can happen with them, and

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1 insurance companies want you to dismiss
 2 that. They want to tell you that they
 3 should suck it up and move on, because
 4 that's really the problem, it's all mental.
 5 That's not the case. When we deal with our
 6 clientele who have soft tissue injury, we
 7 have no idea what to expect. Often many of
 8 them, their lives are going to be completely
 9 upended. Money to provide to someone who's
 10 injured in many ways is symbolic, because
 11 the person that injures them in a car
 12 accident, well, you can't force them to go
 13 and shovel their walk, we can't force them
 14 to go and clean their house or make their
 15 bed, we can't force them to go and look
 16 after the chickens, but the money will
 17 provide them with that ability maybe to
 18 replace those things that they can no longer
 19 do. It's also an acknowledgement that their
 20 lives have been disrupted. I've never had a
 21 client tell me that the money was worth it
 22 at the end of the day. If they could turn
 23 back the hands of time, they'd rather have
 24 their health back. This is not any kind of
 25 fraudulent ability for them to get some sort

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1 of windfall. It's not, it's never worth it.
 2 I'm concerned that the insurance companies
 3 or what they're asking government here to do
 4 is to go back in time, and not look out for
 5 those people who need help, and to be quite
 6 frank with you, if the insurance companies
 7 don't want to do this business, I'd just as
 8 soon see the government do it, if it's a
 9 mandatory thing, but don't take away what
 10 their rights are. That's going back to the
 11 dark ages.
 12 MR. FELTHAM:
 13 Q. I just have a question for the panel. I'm
 14 just going to read to you from – I don't
 15 think we need to go to this document, it's
 16 going to be one sentence, but this is the
 17 Insurance Bureau of Canada's submission from
 18 February, 2018, to this Board, and we just
 19 reviewed these definitions, that's why I
 20 want to ask you this question, but in it
 21 under reviewing the minor injury definition,
 22 there's a sentence and it says, "The
 23 Maritimes and Alberta definitions apply to
 24 sprains, strains, and whiplash injuries that
 25 do not have a substantial effect on the

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1 injured person's daily life". How does
 2 that, in your view, fit with what you've
 3 seen in the case law that you've presented
 4 and reviewed today?
 5 MS. HYNES:
 6 A. Well, I think the case law shows that even
 7 more than that is being capped. I think the
 8 definition has been interpreted more broadly
 9 because of the serious impairment element of
 10 it at the end, but in my experience, sprains
 11 and strains, you know, these are soft
 12 tissues being torn and stretched, ligaments
 13 and tendons, these – our bodies weren't
 14 built to withstand that trauma. The velocity
 15 of the motor vehicle collision, we weren't
 16 built for that. We were built to walk. We
 17 don't do enough of that either, but we
 18 weren't built to sustain that, and,
 19 therefore, our bodies are never the same
 20 after that trauma because that nice smooth
 21 tissue then turns into scar tissue and
 22 doesn't function the same way, it swells, it
 23 reacts to its little neighbourhood and you
 24 can say it's an abrasion, or you can say
 25 it's a strain, or you can say it's a sprain,

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1 and that sounds so simple, but these are
 2 soft tissues being torn and stretched and
 3 ripped, and they don't function the same any
 4 more. The environment within the body
 5 doesn't function the same any more, and the
 6 swelling and the inflammation and the
 7 spasms, and the headaches, and the pressure,
 8 the pressure on nerves, that overall impact
 9 of that sprain or strain, or whatever you
 10 want to call it, then has a much more
 11 serious impact within the human body.
 12 ROGERS, Q.C.:
 13 A. We apologize, we don't want to sound like
 14 we're taking over the role of physician, but
 15 when you're at it long enough, you do have
 16 an appreciation for a singular type of
 17 injury, and that's coupled with the medical
 18 reports you get back that verify what we
 19 fear and then, of course, the old saying,
 20 "you truly don't appreciate what somebody is
 21 going through until you walk in their shoes
 22 for a mile". Soft tissue injury is a
 23 horrible injury, it's notorious. It doesn't
 24 have a time frame, it doesn't even have a
 25 limit. People who are in what we call

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1 really non-high impact crashes, sometimes
 2 it's even hard for us to appreciate how they
 3 have so much damage in their lives, but it's
 4 true, and people go on to develop all sorts
 5 of things like fibromyalgia or chronic pain.
 6 Out of all the treatments that my clients
 7 tell me about, from acupuncture to
 8 chiropractic, massage therapy,
 9 physiotherapy, the one treatment that seems
 10 to stand out as helping them the most is
 11 massage, but unfortunately it's only short
 12 lived, and you can't have a massage
 13 therapist follow you around all day long
 14 with their table every time the pain starts
 15 to reoccur. A lot of these people are
 16 brave. These two ladies that testified
 17 here, I was so impressed by them to be able
 18 to talk in a public forum about their very
 19 private lives and how they've been affected.
 20 Most people feel that to talk about it is a
 21 sign of weakness, almost like mental health,
 22 and you don't want to talk about your
 23 limitations. For me to say in public that
 24 I have a hearing impairment, and I'm a
 25 lawyer, there are people who will say, holy

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1 smokes, I hope they never put him on the
 2 bench, but those are the sorts of things
 3 that we live with, and if you can
 4 acknowledge your limitations, you're better
 5 for it. We help out clients. I was saying
 6 earlier about checks and balances. There
 7 are many checks and balances in the system
 8 that we work in. Initially, we have the
 9 adjuster and we deal with them for months
 10 and months exchanging information about the
 11 progress of our client. Often if there's
 12 physiotherapy or massage involved, at some
 13 point they're going to be cut off, and then
 14 we have another battle on our hands, and
 15 that's often with our own insurance under
 16 Section B. So once we bring a client under
 17 our protection, we know that there could be
 18 a whole bunch of battles ahead for us. The
 19 most important evidence is what we get from
 20 our physicians, and like I said, some
 21 physicians are great and they understand,
 22 but others too hate to get involved with a
 23 car accident because they tell the client,
 24 oh, no, that means extra work for me.
 25 That's the way it is. Then if we can't get

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1 any satisfaction through the adjusters, we
 2 ask them to send it to their legal counsel,
 3 and the lawyers then usually engage in what
 4 we call a discovery where they go through
 5 the complete history of a person's
 6 background, their physical history, their
 7 medical, their mental, to try and punch
 8 holes in their argument to suggest that
 9 there's really nothing wrong with them, or
 10 that their accident didn't cause as much
 11 aggravation as we purport it did. Then
 12 there's the mediation.
 13 (12:15 p.m.)
 14 ROGERS, Q.C.:
 15 A. If we can't settle it through an exchange of
 16 information and numbers between lawyers or
 17 adjusters, we may hire a private mediator.
 18 That's very helpful, because I'll tell you,
 19 a trial is very difficult for somebody to go
 20 through. It's intimidating, it's long, the
 21 duration is unpredictable, and getting a
 22 decision sometimes takes six months to a
 23 year. If it's a good decision in your
 24 favour, we always expect that counsel for
 25 the insurance company are going to appeal it

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1 and drag it out another one or two years.
 2 So the system the way it works now is not
 3 perfect, but it does work, and we provide a
 4 necessary help to our clientele. I really
 5 feel sorry for those people who think that
 6 they can carry the ball themselves without
 7 any legal background or training, and think
 8 that they're going to get fair treatment
 9 from an insurance company. It's not
 10 uncommon for clients to tell me that they
 11 had a call from an adjuster within 24 hours
 12 of the accident and they were told we will
 13 look after you, and this is the adjuster for
 14 the other driver's insurance. Right away, I
 15 consider that to be a conflict. How can
 16 somebody whose job is to try and get the
 17 lowest amount of payout as possible tell
 18 somebody that they're going to look after
 19 them? I find that actually quite
 20 disgusting. So we do provide that necessary
 21 balance that's necessary for a client to be
 22 properly represented, and it's not an easy
 23 job. We have to wear many hats; lawyer,
 24 counsellor, advisor on financial matters,
 25 and it becomes very frustrating for us as

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1 well.

2 MR. FELTHAM:

3 Q. Mr. Rogers brings up a comment in terms of

4 the Section B, and I was going to ask about

5 this, so maybe this is a good time, but it's

6 come up earlier as well that the two

7 accident victims this morning who spoke, and

8 particularly Ms. Elliott in terms of relying

9 on their legal counsel to assist with

10 respect to Section B accident benefits

11 claims, and I'm wondering from your

12 experiences, you know, how much time do you

13 see yourself spending on Section B related

14 issues fighting for, you know, payments to

15 come in that are delayed, those types of

16 things, and I guess, what kind of issues are

17 you seeing in that regard?

18 ROGERS, Q.C.:

19 A. My understanding is we're the only province

20 left in Canada where Section B is not

21 mandatory, and that should be changed.

22 Section B should be available to everybody.

23 With a client – the first thing I ask a

24 client, "did you carry Section B?" and the

25 vast majority of them have no idea what I'm

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1 talking about. They don't know what their

2 insurance policy is. All they know that

3 they pay X number of dollars a month usually

4 and they don't even know what their policy

5 amount is. There's a really lack of

6 communication between the insurance company

7 and the policy holder.

8 So, once I tell them what Section B, I

9 often have to tell them "I'll look it up for

10 you. I'll contact your insurance and find

11 out if you got it". But then if you do,

12 then the responsibility is on you to contact

13 your insurance company, tell them you were

14 in an accident and if you have Section B,

15 they're going to send you out a number of

16 documents. One of them is an attending

17 physician's form where the doctor who saw

18 you is supposed to indicate the nature of

19 your injuries and perhaps what will be down

20 the road. The other is a bodily injury

21 questionnaire. We help them fill that out

22 as best we can. And that again, is somewhat

23 similar to the attending physician's form.

24 And then, if they lose income, they're

25 supposed to also fill out an employer's

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1 document, which their employer has to fill

2 out.

3 There's no blank cheque in any of this.

4 People really have to work hard to get what

5 they're entitled to and we help them get

6 there. Section B, \$140 a week maximum loss

7 income if you can't work. Come on, I mean

8 that's ridiculous. It's ludicrous. Many

9 other provinces have substantially higher

10 monthly wage replacement.

11 That's one of the problems. The other

12 is when the people go for therapy, when

13 they're finally granted that privilege

14 through their Section B, they're going to be

15 watched just like Workers Comp. They're

16 going to have to have an independent medical

17 assessment at some point by a doctor which

18 is hired by the Section B insurance to

19 determine if therapy is warranted any

20 further. Then we have to – if they're

21 turned away or discontinued, we have to get

22 their physician to write a contrary letter

23 to say "no, don't do this. We have to keep

24 the person on this therapy if they have any

25 chance of getting back to some form of

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1 normalcy". It's hard.

2 Section B sometimes becomes more

3 difficult to deal with than the Section A.

4 So, yeah, there are some problems and issues

5 with Section B. But you know, when you

6 stand back, insurance companies aren't there

7 to pay out money. That's not their job.

8 They don't like to do it. They like to make

9 money. But they will do it. They'll pay

10 out money and sometimes we have to really

11 work hard to threaten lawsuits, to threaten

12 legal intimidation. So, our job is not

13 easy.

14 MS. HYNES:

15 A. I'd just like to comment a little bit on

16 Section B accident benefits. I mean, it was

17 in the Terms of Reference that, you know,

18 accident benefits was something that the PUB

19 was to look at. I found Paula Elliott's

20 report and the information that she was

21 provided by the Closed Claims Study from the

22 Insurance Bureau of Canada to be

23 ridiculously inadequate. Of the 1700, 1741

24 I think it was, claims that were reviewed, I

25 think there was only information on accident

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1 benefits from 382 of those claims. And then
 2 from those 382 claims, which Ms. Elliott
 3 readily admitted was a poor, poor sample,
 4 she found that of the \$25,000 limit that we
 5 have in this province, only a little over
 6 \$3,000, \$3,048 I think it is, was actually
 7 spent from accident benefits.
 8 Section B is a party of first contract.
 9 It's your insurance company. You paid for
 10 that coverage. You paid those premiums to
 11 your insurance company to be there for you
 12 in your time of need. Four years, and in
 13 this province, the determination on the four
 14 years is actually up for debate. And every
 15 single turn on that party of first contract,
 16 that duty of good faith and good dealing
 17 that you dealt with with the insurance
 18 company, victims are harassed to try to
 19 avoid payment. They have to jump through so
 20 many hoops to get the coverages that they
 21 deserve. They are not communicated with
 22 appropriately or in an ample time period.
 23 Then just as they're starting to feel a
 24 little bit better, the accident benefits
 25 adjuster says "oh, we're going to do an IME

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1 now and see how fast we can get you off this
 2 coverage". You know, they don't say that
 3 obviously, but that's their intention. You
 4 know, what's reasonable and necessary for
 5 treatment.
 6 And what I found so disingenuous about
 7 some of the submissions from the various
 8 insurance companies on this topic was that I
 9 absolutely agree with you that everybody
 10 should have mandatory accident benefits and
 11 we have a tremendously high uptake in this
 12 province, thank God, but I agree with you it
 13 should be mandatory. I agree with Richard
 14 and I agree that the weekly indemnity should
 15 be increased to \$250. But someone has to
 16 teach these adjusters how to actually deal
 17 with their own clients, because I spend a
 18 lot of my time dealing with accident
 19 benefits every single day.
 20 Sheila did speak to it, so I don't mind
 21 speaking to it a little bit today. But,
 22 every time she turned around, they were
 23 trying to look to cut her off. Every single
 24 chance they took. It was – it became an
 25 impediment to her recovery because she'd

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1 make one step forward and then it'd be held
 2 back and it'd be held back by the fact that
 3 she'd be cut off her treatment. She'd be
 4 frustrated. She'd feel guilty about the
 5 fact that her physiotherapist and massage
 6 therapist weren't getting paid and she
 7 couldn't afford to pay them, you know. And
 8 then, as she's starting to feel a little
 9 better, "oh, we're going to do an IME", you
 10 know. It's just constant in terms of
 11 accident benefits.
 12 And so, if the limit is \$25,000 or the
 13 limit is \$50,000 in some of the submissions,
 14 what difference does it make if you're only
 15 spending three, and you're cutting them off
 16 at the absolute first opportunity to do it?
 17 And so, some of the submissions give you the
 18 impression that don't worry about this cap.
 19 Don't worry about this cap. We're going to
 20 look after them under accident benefits.
 21 It'll be mandatory then. Well, we have a
 22 tremendous uptake already in this province
 23 of accident benefits, so yes, I think it's
 24 great to do it. But, you're not taking care
 25 of them. You're fighting them every step of

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1 the way and you're making them jump through
 2 so many hoops to get the benefits that they
 3 are entitled to that they paid premiums to
 4 get. So, we can't trust you. We can't
 5 leave these people to you because we see
 6 what you do when we're not involved and what
 7 we have to do to get things back on track
 8 when we do get involved. These are victims.
 9 They're injured. They're trying to get
 10 better and your own insurance company has
 11 turned against you.
 12 And so, you know, my obvious – you
 13 know, and Sheila certainly speaking this
 14 morning brought back to me exactly how much
 15 she had to go through in dealing with them
 16 and how about every six weeks I had to be
 17 involved in her accident benefits claim.
 18 Okay. So, on that note I think we're
 19 going to switch. I think that we have
 20 covered the victim and I wanted to turn to
 21 the insurance profit.
 22 So, one of the things that the
 23 insurance industry has long said and through
 24 their lobbying efforts with government since
 25 certainly back from – the reports that we

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1 have, certainly back to 2015. They have
 2 been stating that the insurance industry in
 3 Newfoundland and Labrador is struggling in
 4 terms of personal automobile insurance
 5 coverage.
 6 I don't know of another product like
 7 insurance to compare it to necessarily, but
 8 insurance – and I think that one of the
 9 counsel here today gave a really good
 10 example with one of the victims this
 11 morning. You pay your premiums. You give
 12 them your money for years and years and
 13 years and years and years and years.
 14 There's no interest paid back to you.
 15 You've paid this money. It's given over to
 16 them. They get to invest that money. Don't
 17 pay any interest back to you, but they get
 18 to invest that money and earn tremendous
 19 interest on their investments. They have
 20 become excellent at the investment side of
 21 things. We've had a bullish market in the
 22 stock market since March 9th, 2009. Record
 23 profits have been made in the stock market.
 24 They're making tons of money.
 25 And so, what I find so interesting is

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1 that their own industry journals and
 2 articles, like Canadian Underwriter, readily
 3 admits that profits for investment income
 4 are up in this bullish market. Well, how
 5 can't it be? They're a huge part of that
 6 investment market and they're making huge
 7 profits and their Canadian Underwriter
 8 regularly reports to that. And that's
 9 great, but that's part of the income that
 10 they make. They are given that privilege to
 11 take our premiums and invest them so that
 12 they can be there for us when other elements
 13 of their business practices may not be going
 14 so great.
 15 So, in the first quarter of 2017, the
 16 insurance industry in Canada reported 986
 17 million in profit from investments alone.
 18 One quarter, one country. And that was more
 19 than double the 482 million from the first
 20 quarter in 2016. That is from Canadian
 21 Underwriter and I have the article there if
 22 anyone wants it.
 23 Then I wanted to turn to the
 24 Superintendent of Insurance Report. We
 25 don't have the 2017 one yet. I'm not sure

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1 what the holdup is, why we don't have it
 2 yet, but the 2016 report showed that on
 3 underwriting alone, so premiums paid in then
 4 claims paid out and claims expenses paid
 5 out, there was a profit of 100 million
 6 dollars in underwriting in Newfoundland and
 7 Labrador alone, 100 million dollars. It's
 8 easy math. It's on the Superintendent's
 9 report. It's easy to calculate.
 10 I also know that that does not include
 11 their overhead and, you know, marketing
 12 expenses and things like that. There are
 13 some – but those are expenses that they have
 14 to share with other products that they sell,
 15 other lines of businesses that they have.
 16 You know, they don't have just an automobile
 17 insurance building. They share office
 18 space. They have marketing people,
 19 adjusters sell and – brokers sell and
 20 adjusters adjust more issues than just one
 21 line of product.
 22 So, you know, I feel that there's more
 23 than enough room in there for them to become
 24 more efficient in their business. I think
 25 that we're going to have testimony from our

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1 financial experts that show that their
 2 operating expenses for the insurance
 3 companies operating in Newfoundland and
 4 Labrador have been very much like a
 5 rollercoaster, I think you'll see. So,
 6 rather than a very steady, you know,
 7 operating expenses and overhead, you'll see
 8 that it goes up and down.
 9 In Alberta, they cap the operating
 10 expenses so that they can't be above –
 11 sorry, a percentage of a premium cannot be
 12 above 22.9 percent of premium can't be more
 13 – no more than 22.9 percent for premium can
 14 be operating expenses. We don't have that
 15 cap in Newfoundland, obviously you guys
 16 would know that.
 17 (12:30 p.m.)
 18 But our operating expenses have never
 19 been below 23 percent of a premium since
 20 they started reporting what operating
 21 expenses are. Because in Newfoundland, they
 22 didn't have to report it forever, and it's
 23 only been more recently that they've had to
 24 report on the operating. It was voluntary
 25 before. So, the GISA data on that is not

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1 excellent.

2 But I think that there's room within

3 100 million dollars to find better

4 efficiencies within your own system, the way

5 you compensate, the way you deal with

6 brokers, the way you market, the way you pay

7 salaries, the offices that you rent, the

8 money that you pay to Insurance Bureau of

9 Canada for their offices on Purdy's Wharf or

10 on Bay Street. There's lots of ways to find

11 efficiencies within the system.

12 The next slide is regarding accidents.

13 The RNC, which of course does not cover the

14 entire province, the RNC crime analysts

15 within the RNC has reported and regularly

16 reports on the number of collisions. So,

17 within the RNC jurisdictions, which would be

18 the Northeast Avalon, Corner Brook and Lab

19 West, they have seen a reduction in

20 accidents from 2013 to 2017. And as Ms.

21 Elliott reported and as the GISA data shows,

22 we are currently at a 20-year low in terms

23 of claims. So, fewer people are making

24 claims than ever before in the last 20 years

25 and that is from GISA.

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1 I'm sorry, I'm supposed to be managing

2 this, aren't I?

3 The next one I wanted to take you to,

4 which is also GISA data, it is a chart on

5 the average Newfoundland premium per vehicle

6 compared to consumer price index for

7 Newfoundland, and it's – it breaks down

8 total coverage and various coverages. What

9 you'll see in this slide is that our total

10 premiums have been rising. There's no one

11 denying that. They have gone up.

12 But what you'll also see is third party

13 liability, which is the portion of the

14 premium that pays out for at-fault accidents

15 – someone gets in an accident like Sheila

16 this morning or Della this morning and they

17 sue somebody else, that person's third party

18 liability coverage pays for the claim. It's

19 not even keeping up with consumer price

20 index. If, as the insurance industry would

21 let you to believe, that they have been, you

22 know, facing these losses for so many years

23 and et cetera, et cetera, et cetera, why is

24 it that third party liability is not even

25 keeping up? You know, it's a question I

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1 have. I don't have an answer for it. But

2 why isn't it keeping up with consumer price

3 index? Why is it – it's not skyrocketing.

4 It's not off the charts. It's not even

5 keeping up with inflation.

6 Collision and comprehensive, which is

7 the green line, collision and comprehensive

8 is far above the consumer price index. And

9 then the other premiums are pretty much

10 straight on flat. We're not seeing, you

11 know, ups and downs. It seems fairly in

12 line. No crazy peaks. But I do have a

13 question as to why it is that third party

14 liability, if that is the problem, if that

15 is the loss, if that is where they're losing

16 money, why is it that the premiums aren't

17 even keeping up with the consumer price

18 index?

19 And we do know in Newfoundland that

20 Newfoundlanders carry a lot of collision

21 coverage. 77 percent of policies in

22 Newfoundland carry collision and

23 comprehensive is even higher, 82 percent of

24 premiums. I'm thinking I'm understanding

25 possibly a bit of explanation for some of

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1 the financial stress that they talk about.

2 Natalie Higgins from Intact Insurance

3 provided an interview with Fred Hutton on

4 the St. John's Morning Show, radio show, on

5 April 4th and he was asked – you know, he

6 asked her what was going on and she said,

7 you know, something as simple as physical

8 damage, when somebody's in a car accident,

9 the cost of repairing a vehicle today is so

10 much greater than what we saw even five or

11 six years ago. With the technology that's

12 being introduced into vehicles, you know, a

13 bumper we could have replaced years ago for

14 seven or eight hundred dollars, today that

15 same bumper is costing us four to five

16 thousand dollars because of all the sensors

17 and the backup cameras and the additional

18 technology that's being built into these

19 vehicles.

20 Those are business issues. Those are

21 not victim issues. The innocent victim

22 who's been involved in a motor vehicle

23 collision through no fault of their own and

24 their injury should not have to pay for a

25 business issue that they haven't kept up

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1 with technology or that they haven't
 2 adjusted, you know, the way that property
 3 damage is dealt with.
 4 We hear stories all the time about
 5 issues in terms of, you know, collision
 6 repair shops. That's – those are in-house
 7 control cost recovery issues that the
 8 insurance industry has to deal with. Those
 9 are not issues that an innocent victim has
 10 to pay for through losing their general
 11 damages.
 12 MR. FELTHAM:
 13 Q. Ms. Hynes, maybe we can go to that slide?
 14 MS. HYNES:
 15 A. Oh, sorry. I'm sorry. That's a quote from
 16 the interview. In that same interview, Ms.
 17 Higgins was asked whether a cap would bring
 18 down rates. And I always stop when I think
 19 about this too. For one thing, a cap is
 20 never going to stop an accident. Not one
 21 accident will be stopped because of a cap.
 22 Accidents will still continue. Compensation
 23 is being capped.
 24 And asked whether a cap will bring down
 25

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1 rates, despite the fact that 77 to 80
 2 percent of a claim is gone, she says no.
 3 And as you can see from every single
 4 submission, whether it's RSA or the
 5 Cooperators or Intact or IBC, you know,
 6 they're all saying their goal is rate
 7 stabilization, not returning any savings to
 8 Newfoundlanders and Labradoreans.
 9 Anyone else? Jump in here. I feel
 10 like I'm gone on a little bit here now.
 11 ROGERS, Q.C.:
 12 A. The other issue that doesn't pop up very
 13 often also affecting the bottom-line in the
 14 insurance companies is what's happening
 15 globally. The insurance companies are
 16 getting smacked badly by fires, flood
 17 damage, hurricanes, natural disasters of an
 18 unprecedented order now which are starting
 19 to creep into their bottom-line. Also, when
 20 they heavily invested in stock markets and
 21 the stock markets go down. We are the last
 22 bastion of Canada to hold out against this.
 23 We are trying to tell them that we're not
 24 interested in your games to try and limit
 25 what people are entitled to for properly

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1 documented injuries. I wonder—I almost
 2 wonder if we're a project now by the large
 3 insurance companies that we're the last ones
 4 holding out and they won't give up and
 5 they'll beat us into submission. I'm proud
 6 of the fact that Newfoundland hasn't given
 7 in. Now, we've heard that British Columbia
 8 who has—had a provincial insurance system
 9 set up has given into the cap or will be
 10 giving into the cap because they've
 11 mismanaged the profits that they've made.
 12 That's a sad commentary. If we're to
 13 properly look after our people, we have to
 14 start with our people who are our greatest
 15 resource. We can't let people from the
 16 outside dictate the way that we treat them
 17 or allow them to be treated. I don't know
 18 if there's any one insurance company in
 19 Newfoundland left standing that's actually
 20 from Newfoundland. Everything has been
 21 bought out. Globalization is hitting, and
 22 all the insurance companies now have head
 23 offices in London, Zurich. Now the banks
 24 are into it because even the banks know that
 25 they make money doing this. We have to look

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1 beyond the stories that they're giving us,
 2 and that is they're there to make profit.
 3 And the profit means that they will do
 4 everything they can legally through
 5 intimidation by going after governments that
 6 might not be doing well in the polls, trying
 7 to influence anybody to follow along with
 8 them through scare tactics. That is what
 9 they do. They're large corporations. And I
 10 think that we have to avoid that and fight
 11 against it.
 12 MS. MCGARRY:
 13 A. And on the next slide, just looking at the
 14 Alberta example alone with respect to a cap
 15 not lowering premiums, Alberta's drivers saw
 16 the biggest increase in insurance rates in
 17 Canada last year. So, rates rose by 8.29
 18 percent year over year and they have a four-
 19 thousand-dollar cap. So, even with a cap,
 20 Alberta car insurance average rates are
 21 higher than they are in Newfoundland and
 22 Labrador: \$1179 annual in Alberta; \$1123 in
 23 Newfoundland in 2017. Rates are on the rise
 24 because of distracted drivers causing more
 25 accidents and more sophisticated cars that

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1 are costing more to repair.

2 MS. HYNES:

3 Q. Feedback. So, we did some opinion research

4 and based on what people currently know, 69

5 percent of residents believe that a cap will

6 mean more profits for the insurance company.

7 So, not—without prompting, without being

8 given any information. “Just based on what

9 you know right now, what do you think a cap

10 will mean?” And they—69 percent replied,

11 “More profits for the insurance industry.”

12 Sixty-two percent of residents agree that a

13 cap will not lower premiums which is four

14 times more than those who believe it will

15 lower costs.

16 MR. FELTHAM:

17 Q. Sorry, Ms. Hynes, that’s –

18 MS. HYNES:

19 A. Oh my, I’m sorry. I’m not multitasking very

20 well. Seventy percent of residents agree

21 the implementation of a cap would take away

22 a victim’s right to fair compensation, and

23 43 percent of those strongly agree that the

24 implementation of a cap would take away a

25 victim’s right to fair compensation. An

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1 overwhelming majority, 81 percent of

2 Newfoundland residents, do not support a

3 system where an insurance adjustor for the

4 party who caused your injuries has the power

5 to tell you what your pain and suffering is

6 worth. And the majority of Newfoundlanders

7 and Labradorians, 70 percent of Newfoundland

8 residents oppose a five-thousand-dollar cap

9 limit, and then the more details on the

10 methodology of that research was provided as

11 well. The last thing, you know, in

12 preparing to speak today, we haven’t had the

13 benefit of Justice Wells’ testimony here

14 yet. He’s away and wasn’t able to provide,

15 but in 2005 when this review was undertaken,

16 retired Chief Justice Alex Hickman provided

17 a correspondence which is still up on the

18 PUB website from the 2005 review, and he was

19 asked to look at minor injury definition at

20 the time. And he compared it to some

21 legislation in Ontario and he provided his

22 thoughts generally on just what we were

23 looking at and the various—and he gave an

24 explanation of what general damages actually

25 do. And he said on page 7 –

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1 MR. FELTHAM:

2 Q. Sorry to interrupt. We do have the letter

3 if we want to bring it up. It was filed

4 with the submission, just so we can all

5 follow along. Is it page 7?

6 MS. HYNES:

7 A. Page 7, please. Just so we know what—

8 everyone knows and is on the same page, what

9 we’re talking about. The second paragraph

10 there, “It is necessary to bear in mind when

11 dealing with non-pecuniary damages that such

12 category covers compensation for pain and

13 suffering, enjoyment of life, the loss of

14 amenities and expectation of life as well as

15 aggravated damages related to the manner in

16 which the wrong was committed. In my view

17 non-pecuniary damages should be regarded as

18 an umbrella designed to ensure that an

19 injured Plaintiff who has been the victim of

20 the torte of another be compensated by way

21 of damages for whatever reasonable loss he

22 or she sustains. One author suggested that

23 the assessment of non-pecuniary damages is

24 amongst other things, designed to provide

25 solace for what has been lost.” And Justice

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1 Hickman also went on to discuss some groups

2 that are particularly vulnerable to a cap.

3 Kate will want to elaborate on this I think

4 a little bit, but we don’t always think

5 about who is most vulnerable. In

6 questioning Ms. Elliott this morning and

7 also Ms. Ryan as well, Mr. Stamp was, you

8 know, clarifying that the cap is not looking

9 to cap your past lost income or your future

10 care expenses, but there’s some people that

11 aren’t going to receive those special

12 damages, that the majority of their claim is

13 the general damages. So, when you talk

14 about a homemaker, a stay-at-home mom,

15 senior citizens who are retired, caregivers

16 who have chosen to stay home, the poor,

17 elderly, students, children, they’re not

18 going to have special damages. They don’t

19 have excess money to report receipts and

20 special expenses like, you know, a

21 housekeeper or you know paying for therapy

22 out of their own pocket and things like

23 this. So, they have—some people have no

24 income at all, the poor, people who choose

25 to stay perhaps. And others who are on a

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1 fixed income, like senior citizens, they
 2 don't—they won't lose necessarily income.
 3 The general damages, the pain and suffering,
 4 the change in their life, the inability to
 5 do the things they want, and that
 6 compensation which is the solace for what
 7 they've lost is the vast majority of their
 8 claim.
 9 (12:45 p.m.)
 10 MS. HYNES:
 11 A. And what Justice Hickman was saying is that
 12 these people will be disproportionately
 13 discriminated against by this cap because it
 14 will have a far greater impact on their
 15 claim than it would necessarily on someone
 16 who has tremendous benefits for their work.
 17 They have a lot of sick leave or they have,
 18 you know, an employer who is very
 19 accommodating and things like that. So,
 20 there's certain segments of our population
 21 that are going to be even a little bit more
 22 impacted, a lot more impacted than others,
 23 and that's something to bear in mind, too,
 24 because they can't otherwise or been made up
 25 for somehow or somehow justified through

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1 special damages.
 2 MS. MCGARRY:
 3 A. So, essentially what you're saying to these
 4 people is that they don't matter because
 5 they're not earning income, that their
 6 quality of life means nothing. And the
 7 other issue that I've thought about, I grew
 8 up in rural Newfoundland, a nice town called
 9 Trepassey, and I represent a lot of people
 10 from all over the province in rural areas.
 11 And we have a lot of trouble proving claims
 12 now because there's limited access to
 13 resources. I have a lot of clients—there's
 14 no family doctors in town. Other people who
 15 they see family doctors coming and going, so
 16 there's no consistent treatment for them.
 17 It's very difficult for them to prove their
 18 claims. They can't go to physio or massage
 19 because it takes them two hours to drive to
 20 get to physio and massage, and doctors have
 21 said in reports that this undoes the
 22 treatment that they're obtaining. If they
 23 have trouble proving their claims now, how
 24 are they going to do that when the cap comes
 25 in?

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1 ROGERS, Q.C.:
 2 A. So, it goes back again to our argument that
 3 the insurance companies have many arrows in
 4 their quivers to make our clients' lives
 5 miserable in terms of proving their claim.
 6 They just don't give out money in a willy-
 7 nilly fashion. We really do have to prove
 8 the claim. So, this introduction of a
 9 potential cap just makes their lives that
 10 much easier.
 11 MR. FELTHAM:
 12 Q. I just have one question for the Panel
 13 around this. I know we're getting to the
 14 end of the presentation, but in talking now
 15 about these particular groups who maybe
 16 don't have lost income claims and those
 17 sorts of things, and as it was referenced,
 18 Mr. Stamp, you know, asking questions
 19 around, well, you know, if you had a lost
 20 income claim, you'd still be compensated for
 21 that, yes, or if you have a future lost
 22 income claim, you still get paid for that,
 23 and if you have a housekeeping bills, they'd
 24 be paid, yes. So, these other heads of
 25 damages are there, but in your practices,

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1 you know, as a proportion or however you
 2 want to express it, you know, how many of
 3 the clients that you see have little perhaps
 4 in the way of those other categories of
 5 damages? Maybe missed a couple of weeks of
 6 work, but now they're able to get back to
 7 work with some accommodations, these types
 8 of scenarios, whereby the claim is largely
 9 made up of general damages. There may well
 10 be people who go on with long-term issues,
 11 but are able to push themselves to manage to
 12 keep working like was described by Ms. Ryan
 13 this morning for example. You know, how
 14 does that factor into the number of people
 15 that you serve and –
 16 MS. HYNES:
 17 A. Well, Ms. Elliott spoke to that really well
 18 this morning I think. She missed a day or
 19 so of work after each of those three
 20 accidents. She had no sick benefits, and
 21 therefore could not afford to not work. A
 22 day or so. Now she lives in pain every
 23 single day. There's no doubt about it, but
 24 she missed a day or so after each of those
 25 accidents. And a lot of that had to do with

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1 she didn't have a car because you know, I
 2 have to wonder if she would have tried to
 3 drag herself there anyway. As Richard had
 4 said earlier, most people, you know, can't
 5 afford to miss work and don't have the
 6 benefits or the income security there and
 7 whether it be \$140 from weekly indemnity or
 8 it be EI sick benefits, they can't afford to
 9 not work. So, they're going to work, but
 10 they're going to work hurt. They're not
 11 working to their full potential. They're
 12 not working productively. They're just
 13 doing the best they can to get by. So, I
 14 see that—and they're mitigating their losses
 15 to the best of their ability by attending
 16 the treatments and doing everything the
 17 doctor tells them to do. I believe that the
 18 general damages, the compensation that they
 19 deserve for all that they go through, all
 20 that they've lost, all that they've suffer,
 21 everything that they feel, is a very
 22 important and significant portion of their
 23 claim. It is in this province adjudicated
 24 very clearly by the case law on what it
 25 takes to get to our normal range for general

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1 damages, Gough versus CBS Taxi for instance.
 2 And it's very clear how much compensation
 3 they deserve, but they have to prove it.
 4 They bear the burden of proving it, and they
 5 prove it, therefore they deserve that
 6 compensation. They were injured through no
 7 fault of their own.
 8 MR. FELTHAM:
 9 Q. And just one more thing to ask about and
 10 I'll direct this to Mr. Rogers perhaps. The
 11 definitions that we see currently in some of
 12 the other jurisdictions it refers to the
 13 sprain, strain and whiplash injury, but it
 14 also then goes further to include any
 15 clinically associated sequelae. So, and
 16 it's clear from the insurance company's
 17 submissions, what they're trying to get at
 18 there is they want to capture the
 19 psychological harms, mental health effects,
 20 those types of things, at least in part, and
 21 beyond that. But I wonder, you know, what
 22 can you say about that in terms of your
 23 experience with clients, the types of mental
 24 health psychological impacts that you have
 25 seen that have flowed from motor vehicle

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1 accidents and soft-tissue injuries?
 2 ROGERS, Q.C.:
 3 A. Mental health is still a hush word in the
 4 personal injury. People don't like to talk
 5 to their doctor about the fact that they're
 6 severely depressed from their accident
 7 because they don't want people to think they
 8 are weak. I was speaking to a personal
 9 injury lawyer in Nova Scotia that claims now
 10 are starting to come forth with PTSD to help
 11 them enable to get over the cap there. That
 12 something that would probably happen here,
 13 too. Once people realize that in order for
 14 them to acquire a certain level of ability
 15 to acquire damages, payout, that they're
 16 going to be more willing to talk about those
 17 injuries that were not very popular before.
 18 So, the mental health issue in a personally
 19 injury similar is to what's going on in the
 20 mental health throughout society now.
 21 People are becoming a little more bit more
 22 willing to talk about it because the damage—
 23 and then with children, I find when we're
 24 representing children, say six years and
 25 under, they're like rubber balls. It's

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1 amazing. The car can be destroyed, but
 2 these kids are physically able to walk away
 3 from it, and the adults are all injured, but
 4 then we ask them are they having nightmares.
 5 And invariably, that's how children are
 6 affected by these, by nightmares, by the
 7 emotional part. And the one thing that
 8 people always tell me when they come in,
 9 they remember the bang. There was like a
 10 moment of quiet and then bang out of
 11 nowhere, and they can't get rid of that. It
 12 just permeates their memory. And now
 13 they're afraid to get into vehicles or their
 14 anxiety levels are such that they don't want
 15 to be involved in social settings where
 16 there's a lot of noise. So, there's a whole
 17 bunch of stuff that's going on behind the
 18 scenes, apart from just soft tissue injury
 19 that you never really hear about.
 20 MR. FELTHAM:
 21 Q. Unless the Panel has anything else, I think
 22 that will conclude that presentation.
 23 MS. HYNES:
 24 A. Yes.
 25 MR. FELTHAM:

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1 Q. Thank you.

2 CHAIR:

3 Q. Thank you. Thank you very much. I'm

4 assuming you're open? You're good for

5 questions?

6 MS. HYNES:

7 A. Yes.

8 MR. GITTENS:

9 Q. Thank you.

10 CHAIR:

11 Q. Mr. Gittens?

12 MR. GITTENS:

13 Q. Thank you. Gentlemen and ladies, throughout

14 the course of your presentation and there's

15 one area that was touched on by Mr. Rogers

16 towards the end there, and that's the

17 natural consequence on the legal context of

18 what would happen once—if a cap is imposed.

19 To farrow that out a little bit, can you

20 tell me, tell us in terms of your practices,

21 the percentage of these matters that go to

22 trial or as opposed to those that settle?

23 MS. HYNES:

24 A. Oh, the vast majority settle. We will see

25 trials on liability sometimes. Damages

Page 198

1 trials are very rare in this province in

2 fact. So, the majority settle. You know,

3 you're negotiating with an experienced

4 adjustor who also has legal representation

5 as well. There's a fulsome exchange of

6 documentation and information, and extensive

7 negotiations back and forth. I mean, we

8 don't go to the insurance adjustor and say,

9 "Stick 'em up. Give us this money." These

10 settlements are negotiated both ways.

11 Everyone agrees to them. Right? We don't

12 take it. So, the current system as it is

13 right now, I believe has tried to find as

14 many efficiencies as possible in terms of

15 resolving these disputes as economically as

16 possible. Trials are really expensive and

17 unpredictable. So, we'll see a lot more

18 mediations and resolutions to these which

19 are far more—you know, the client will have

20 to compromise. They may not get everything

21 that they would have hoped to have gotten

22 and achieved at trial, but they will not

23 have to go through the trial and they won't

24 have the uncertainty of the trial. So, the

25 resolution is more amicable. The insurance

Page 199

1 company is grateful to not have to have the

2 elaborate expense of the trial and the

3 uncertainty of the trial and therefore they

4 also agree then to resolve it. I believe

5 the implementation of a cap, and it is

6 something that Justice Hickman spoke to as

7 well in his—previous to the quote that I

8 provided, is that it will bring on a

9 tremendous amount of litigation initially to

10 interpret the legislation and what it will

11 mean. You'll have people in the system who

12 are used to the old way, and they will not

13 accept a new definition and they will

14 absolutely want to challenge it. That's

15 going to be difficult, and in turn, turn out

16 to me financially burdensome, but at some

17 point in time, there will be a tremendous

18 pressure, I believe on our public systems.

19 But at some point in time there will be a

20 tremendous pressure, I believe, on our

21 public systems. I also think that it will be

22 another pressure that Workers' Comp spoke to

23 when they submitted to the PUB in their

24 response, they're opposed to the cap because

25 they feel as though the current system

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1 allows for workers to opt out of Workers'

2 Compensation and proceed with the tort

3 system and if this cap is brought in, then

4 they will remain on Workers' Compensation

5 more, in more instances, which will put a

6 burden on their system as well, and I also

7 think in terms of public health, people are

8 not going to accept being told by an

9 adjustor that their injury is minor, you

10 know, there's no way that Sheila Elliott

11 would have ever accepted that definition,

12 never. And, you know, because she felt

13 cared for and she described this very well,

14 I think this morning, Dr. Patey was looking

15 after her, her physiotherapist was looking

16 after her, massage therapy was looking after

17 her, her employer was accommodating her

18 injuries and being gracious to her. She had

19 my support. She was able to rehabilitate to

20 the best of the extent that she could

21 possible, but had she been faced with a cap,

22 she absolutely would have been saying, okay,

23 this is not right, who is going to tell

24 these people that this is not a minor

25 injury? Do I need to speak to a specialist,

Page 201

1 do I need to have a CT scan, do I need to
 2 have a MRI, like who is going to tell the
 3 truth here if no one is listening to my
 4 words, that will then in turn also place a
 5 burden on the system for people who are
 6 trying to not be capped.
 7 MR. GITTENS:
 8 Q. Do so I understand you to be saying that in
 9 the immediate future you would anticipate
 10 there would be more litigation in order to
 11 first of all, ferret out what the cap really
 12 means, and the fact that you will have
 13 clients who will not accept minor injury as
 14 being descriptive of themselves, no matter
 15 what?
 16 MS. HYNES:
 17 A. That's my impression and that was the
 18 opinion of Justice Hickman in his letter.
 19 MR. GITTENS:
 20 Q. Okay, let's deal with some specifics then.
 21 You guys are all experienced litigators, is
 22 it worth going to trial on a \$50,000 claim?
 23 ROGERS, Q.C.:
 24 A. No, it's not. In fact, what I tell clients
 25 over in discussions with settlement, look at

Page 202

1 getting fifty cents on the dollar, that's
 2 about the goal, fifty to sixty percent on
 3 the dollar is what you're going to get when
 4 you're dealing with an adjustor or a defence
 5 lawyer, that's your goal. If you're going
 6 to court, you might as well be prepared to
 7 throw everything away and add court costs
 8 against you because what defence counsel
 9 will do, they will put in a sealed envelope
 10 an offer to settle that the judge does not
 11 see and upon conclusion of that trial, if
 12 you cannot exceed that amount, you're going
 13 to be responsible to pay for the other
 14 side's costs. I've always said that trial
 15 is a rich man's playground, it's not for the
 16 faint of heart and it's not for those who
 17 can't afford to lose money.
 18 (1:00 p.m.)
 19 MR. GITTENS:
 20 Q. So you're going to have, as a result of a
 21 potential cap, cases that are less than
 22 50,000, 60, 80, what's the cut-off mark in
 23 terms of making it worthwhile to go to court
 24 and take that chance?
 25 ROGERS, Q.C.:

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1 A. Probably about the hundred thousand dollar
 2 mark, and often it's the strength of the
 3 witness and the strength of the doctor. The
 4 doctor is your most important evidence that
 5 you're going to have, apart from your
 6 client. If the doctor is not supportive,
 7 there's not a chance in hell you're going to
 8 go to trial.
 9 MR. GITTENS:
 10 Q. Okay, so we now have the potential on one
 11 hand of, and I'm going to use the numbers
 12 that have been put to us, 5,000, 7,500 or
 13 10,000 as "take it or leave it money", or
 14 you have the risk now of anybody with a
 15 claim up to, you said a hundred thousand
 16 dollars, having to make that decision to
 17 force this matter to trial. You have a
 18 sense how that balances out in real –
 19 ROGERS, Q.C.:
 20 A. What will happen is a cap comes in place,
 21 people are going to test the waters. There
 22 will be a number of trials upfront and then
 23 once some sort of idea has been set by the
 24 court about what they're looking for, the
 25 trials will either increase or they will

Page 204

1 decrease once the tone is set.
 2 MR. GITTENS:
 3 Q. Okay, so we're still back to a situation in
 4 which the bulk of people will be faced with
 5 either accepting a ridiculously low amount
 6 or taking a ridiculously big gamble?
 7 ROGERS, Q.C.:
 8 A. Yes, absolutely. You know, that's one other
 9 thing, I, as a plaintiff counsel, I consider
 10 our courts to be extremely conservative.
 11 There are certain jurisdictions where courts
 12 are seen as being very favorable, in favour
 13 of the plaintiff. I don't see our courts as
 14 being like that. What they do is they send
 15 a message out there that don't come to my
 16 court thinking that we're going to give you
 17 a blank cheque; it doesn't happen. So
 18 there's a really big concern about going to
 19 courts here, and I'm not saying that what
 20 they do is wrong, I'm saying that's just the
 21 way it is. And when they make their
 22 decisions, they will set parameters and they
 23 will follow parameters. We're not allowed
 24 to judge shop. What that means is we know
 25 who may be on a panel for civil trials at

Page 205

1 any given month, but we don't know who our
 2 judge is going to be until the night before
 3 the trial. That way, we can't decide if we
 4 think it's a risk of going to trial or not
 5 because we feel that some judges are more
 6 sympathetic than others, and that's a fact
 7 of life. So if there are certain judges on
 8 our list that we see are not very helpful to
 9 our cause, we may feel that that's probably
 10 not the best person to have this matter
 11 heard before, because you may have a
 12 decision you don't want to hear.

13 MR. GITTENS:
 14 A. Thank you. No further questions, thank you,
 15 Madam Chair.

16 CHAIR:
 17 Q. Thank you, Mr. Gittens. Mr. Fraize?
 18 FRAIZE, Q.C.:
 19 Q. I have a couple of questions. Mr. Rogers,
 20 just picking up on one of your points, do
 21 you think if they brought the cap in that we
 22 will see many times that sealed envelope
 23 being filed with the amount of the cap?
 24 ROGERS, Q.C.:
 25 A. I apologize, that's my hearing at my

Page 206

1 disadvantage.
 2 FRAIZE, Q.C.:
 3 Q. Referring back to what you were saying about
 4 the procedure whereby an insurance company's
 5 solicitor has put into an envelope, to the
 6 court, saying this is an amount they're
 7 willing to settle for, and if they don't
 8 achieve that, of course, costs go against
 9 you. Would I be correct, do you think I'm
 10 correct that the envelop will now always be
 11 the amount of the cap?
 12 MS. HYNES:
 13 A. I wrote out the question.
 14 ROGERS, Q.C.:
 15 A. Yes, actually, yeah, I believe there will be
 16 more Rule 28 offers of settlement.
 17 FRAIZE, Q.C.:
 18 Q. And do you think that as a distinct
 19 advantage for the insurance companies?
 20 ROGERS, Q.C.:
 21 A. Of course, the insurance company always has
 22 the advantage in any court action because
 23 they have deep pockets; an individual does
 24 not. For them to go up against a
 25 multibillion dollar company, multinational

Page 207

1 company, they're at a disadvantage right off
 2 the start.
 3 FRAIZE, Q.C.:
 4 Q. I think the point I was trying to make is
 5 the cap gives them an uneven battlefield
 6 because right away not only do we have
 7 liability, quantum, but now we've got to
 8 come over this magical definition.
 9 ROGERS, Q.C.:
 10 A. That will go in their favour as well. So
 11 the cards are starting to stack up against
 12 the individual.
 13 FRAIZE, Q.C.:
 14 Q. Correct, I agree with you. You mentioned
 15 something about the effect on kids, and I
 16 was just thinking about one matter that I
 17 was involved with. The children were in a
 18 vehicle where the bags went off and
 19 sometimes when the bags go off, you have
 20 like the smoke, and they, for years, were
 21 scared about getting into a vehicle because
 22 they were scared they were going to get
 23 burned and that has a psychological effect
 24 on those kids and we were able to settle,
 25 but my point is, picking up on what you were

Page 208

1 saying, is that is an effect on kids and
 2 these definitions they're talking about will
 3 somehow enmesh that as well.
 4 ROGERS, Q.C.:
 5 A. The airbags have been a constant double edge
 6 sword in my practice. For some strange
 7 reasons they won't deploy in the most
 8 horrendous of an accident and then in a
 9 minor accident they will deploy, and often
 10 the airbag will cause more damage than would
 11 probably the collision would have caused,
 12 and the children are adversely affected by
 13 it. The sense is from the smell of
 14 gunpowder and talcum powder, the noise and
 15 getting struck in the face, which is like
 16 being hit by a heavy-weight puncher, is
 17 pretty significant, but it can also save a
 18 life. Sometimes insurance companies will
 19 use that against you and say it wasn't our
 20 collision that caused it, the airbag was
 21 what caused the majority of the problems.
 22 So as often as we try to be creative when
 23 we're representing a client, insurance
 24 companies are also creative in what they do
 25 as well.

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1 FRAIZE, Q.C.:

2 Q. Also just one further point. A couple of

3 times I've asked the question when injured

4 parties are receiving treatments, how much

5 time it takes out of their life, if it's

6 massage, if it's chiropractor, if it's

7 physiotherapy, but that over a period of

8 time takes a substantial amount of time out

9 of their life. Now, when it comes to

10 seniors and those that are very old, at the

11 very end of their life, it has a great

12 value. Now that's one of the things,

13 picking up on your point, I think for

14 victims, the cap is grossly unfair for those

15 individuals that are seniors, retired and

16 those that have a limited life left.

17 ROGERS, Q.C.:

18 A. All of a sudden therapy becomes a part of a

19 person's life is probably one of the most

20 difficult things for an individual to go

21 through, and they have to go two to three

22 times a week for an hour session. You

23 better tack on a half hour on the beginning

24 and the end as well to get there. And when

25 these people are looking after their

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1 children or they're looking after an

2 independent business, a small private

3 business, going through the whole process of

4 recovery is a very traumatic thing and

5 people tell us how much their lives have

6 been affected by it, and there's nothing we

7 can do and there's nothing that the

8 insurance companies can do, except deal with

9 it properly, don't hide away from it and say

10 that they're not entitled to compensation.

11 It depends who you speak to. Everybody has

12 a philosophy about all of this. If you ever

13 go to a dinner party, some people are going

14 to tell you they think that the majority of

15 people with soft-tissue injury are

16 absolutely crazy, that they inflate their

17 claims, they inflate their symptoms because

18 they're weak or because they think somehow

19 it's going to result in them getting a

20 bigger claim. It doesn't work like that.

21 We tend to be cynical. We shouldn't be

22 cynical with our own people, we should be

23 looking after them and helping them. You

24 know, it's really easy to deny somebody

25 something and say that they're crazy or that

Page 211

1 they're after something they're not entitled

2 to. We have to look beyond that. I'd like

3 to think that we go beyond that.

4 FRAIZE, Q.C.:

5 Q. Those are all my questions, thank you.

6 CHAIR:

7 Q. Thank you, Mr. Fraize. Mr. Stamp?

8 STAMP, Q.C.:

9 Q. Thank you, Madam Chair. Ms. Hynes, if I

10 could direct this question to you, a series

11 of questions, perhaps. Just tell me, who is

12 the Campaign, please, it's an incorporated

13 company, I know.

14 MS. HYNES:

15 A. Is it?

16 STAMP, Q.C.:

17 Q. Well, four of your colleagues are directors.

18 MS. HYNES:

19 A. Okay.

20 STAMP, Q.C.:

21 Q. Mr. Rogers, Mr. Marshall, Mr. Wicks and I

22 think my friend here is also a director.

23 MS. HYNES:

24 A. Mr. Feltham, okay. So it is, to my

25 practical speaking, it is a collection of

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1 lawyers who are speaking out in the best

2 interest of victims.

3 STAMP, Q.C.:

4 Q. Sure, and so are there a number of firms

5 involved in the Campaign?

6 MS. HYNES:

7 A. Yes, there are a number of firms involved.

8 STAMP, Q.C.:

9 Q. How many firms?

10 MS. HYNES:

11 A. Rogers Rogers Moyse, O'Dea Earle, Roebathan

12 McKay Marshall, Ches' old firm, what's it

13 called -

14 ROGERS, Q.C.:

15 A. Ed Hughes.

16 MS. HYNES:

17 A. Hughes Brannan, seven or eight firms.

18 STAMP, Q.C.:

19 Q. Okay, sure. And these firms all do personal

20 injury work, that's the nature -

21 MS. HYNES:

22 A. Absolutely, yes.

23 STAMP, Q.C.:

24 Q. This is why they're interested in this

25 piece. Which, for purposes of this

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1 discussion, of course, is to try and focus
 2 on, you know, the other side of this
 3 arrangement because, of course, as you say,
 4 you do work on contingency, your client was
 5 here and she spoke glowingly of your
 6 involvement, but there is a contingency fee
 7 arrangement.
 8 MS. HYNES:
 9 A. Yes.
 10 STAMP, Q.C.:
 11 Q. For quite a while, I haven't seen it
 12 recently, maybe it's because of this, but
 13 for quite a while there was an advertisement
 14 on some of the billboards that Roebathan
 15 McKay Marshall had won four hundred million
 16 dollars for clients over the years. Was
 17 that an accurate, roughly accurate number,
 18 do you know?
 19 MS. HYNES:
 20 A. I would say that it must be, it has to be –
 21 STAMP, Q.C.:
 22 Q. Yeah, I mean, I didn't expect they would
 23 tell fibs.
 24 MS. HYNES:
 25 A. Right.

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1 STAMP, Q.C.:
 2 Q. So that arrangement, of course, would result
 3 in a significant contingency fee coming to
 4 Roebathan McKay Marshall as well, would it
 5 not?
 6 MS. HYNES:
 7 A. For certain.
 8 STAMP, Q.C.:
 9 Q. Not to be too precise, but is 25 percent
 10 contingency not an unusual amount?
 11 MS. HYNES:
 12 A. That's very typical, except children.
 13 Children are never 25 percent, the public
 14 trustee will not allow us to change any more
 15 than 20 percent.
 16 STAMP, Q.C.:
 17 Q. Okay, right, so 25 percent, but some are
 18 higher than that, I think is fair to say
 19 too.
 20 MS. HYNES:
 21 A. Liability issues, malpractice sometimes can
 22 be higher, but 25 percent would be the best.
 23 STAMP, Q.C.:
 24 Q. It's a pretty basic rate, isn't it?
 25 MS. HYNES:

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1 A. Pretty basic, yeah.
 2 STAMP, Q.C.:
 3 Q. So there is a lot of money at stake for the
 4 personal injury firms as well who recover,
 5 that's how they make a lot of money doing
 6 the same kind of work that –
 7 MS. HYNES:
 8 A. Certainly, yeah.
 9 STAMP, Q.C.:
 10 Q. Sure, so I guess the point, when this
 11 happens and, of course, a lot of these
 12 claims are big claims; some of them are
 13 small claims. We know, for example, that 40
 14 percent, we're told, of the non-pecuniary
 15 damage claims, 40 percent are less—I'm
 16 sorry, average out at \$15,200.
 17 MS. HYNES:
 18 A. Where are you getting that from?
 19 STAMP, Q.C.:
 20 Q. Right out of Oliver Wyman's report.
 21 MS. HYNES:
 22 A. Okay, which report would that be?
 23 STAMP, Q.C.:
 24 Q. That would be the Closed Claims Study, I
 25 think it is, yeah, Closed Claims Study,

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1 Private Passenger Automobiles Bodily Injury,
 2 and I'm reading from page 7 of that report.
 3 MS. HYNES:
 4 A. Now that was amended after, wasn't it?
 5 STAMP, Q.C.:
 6 Q. I think I'm reading from the correct one.
 7 MS. HYNES:
 8 A. I think I only printed off the –
 9 STAMP, Q.C.:
 10 Q. Yeah, I think –
 11 MR. FELTHAM:
 12 Q. Sorry to interrupt, Mr. Stamp, but perhaps
 13 we can bring the document up if we're going
 14 to be referring to –
 15 STAMP, Q.C.:
 16 Q. Yes, sure, by all means. Here you go. This
 17 is the final report, as I understand it, Ms.
 18 Hynes.
 19 MS. HYNES:
 20 A. Yes.
 21 STAMP, Q.C.:
 22 Q. So it shows cohorts, 20 percent cohorts, 1
 23 to 20, 21 to 40, 41 to 60 and so on. 348 in
 24 all, but one of those, 49, the first one, so
 25 it shows the average non-pecuniary damages –

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1 MS. HYNES:
 2 A. I never noticed that they were all 348
 3 except the first one until just now. It's
 4 interesting.
 5 STAMP, Q.C.:
 6 Q. I guess they had to balance that, so 349 and
 7 then 348, it's 20—they're working at 20
 8 percent groupings?
 9 MS. HYNES:
 10 A. Yes.
 11 STAMP, Q.C.:
 12 Q. And so, right up to 60 percent, the average
 13 non-pecuniary damage claim is only \$24,000,
 14 so the fact of the matter is there are a lot
 15 of small claims that are handled,
 16 presumably, on a contingency fee basis as
 17 well, and I think Mr. Rogers spoke to the
 18 fact that, you know, you have to have a very
 19 big claim to really justify going to trial
 20 because the costs are so high, and of
 21 course, risks to both sides are high as
 22 well. But, so this sets out some, I guess,
 23 indication of the values that we're dealing
 24 with on some of these claims. Some of them
 25 are fairly minor in terms of recovery for

Page 218

1 non-pecuniary damages, right? Would you
 2 agree?
 3 MS. HYNES:
 4 A. That \$15,000 is minor recovery for –
 5 STAMP, Q.C.:
 6 Q. Well, it's certainly, you know, we look at
 7 the average total settlement on a 81 to 100
 8 percent it's \$100,000.
 9 MS. HYNES:
 10 A. Uh-hm, a significant –
 11 STAMP, Q.C.:
 12 Q. That's an average total settlement.
 13 MS. HYNES:
 14 A. For this sample, there is a significant
 15 number of claims that were not very
 16 significant in terms of value, yes.
 17 STAMP, Q.C.:
 18 Q. Well, the point I'm making here is that in
 19 those first two groups of the 40 percent,
 20 the total settlement is made up almost
 21 entirely of non-pecuniary, you know, it's
 22 from 4,500 to 5,000 from average of non-
 23 pecuniary to total and 15,000 to 18,000 in
 24 the case of the second group.
 25 MS. HYNES:

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1 A. Yes.
 2 STAMP, Q.C.:
 3 Q. So it's a –
 4 (1:15 p.m.)
 5 MS. HYNES:
 6 A. I would definitely agree that a claim that's
 7 4,000 up to 15,000 you're probably not going
 8 to see a significant amount of non-
 9 pecuniary.
 10 STAMP, Q.C.:
 11 Q. Right, and it may well be –
 12 MS. HYNES:
 13 A. Or pecuniary damages, sorry.
 14 STAMP, Q.C.:
 15 Q. - because obviously they don't require
 16 treatment as much.
 17 MS. HYNES:
 18 A. They probably aren't missing as much time
 19 from work either, lost income, that kind of
 20 thing.
 21 STAMP, Q.C.:
 22 Q. Maybe so, so minor, relatively, even though
 23 the word is offensive to, I guess some
 24 people, you know it's not to characterize
 25 the person, it's to simply say we have to

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1 call this group something.
 2 MS. HYNES:
 3 A. I wouldn't say that they don't have a lot of
 4 treatment though because, you know, it was
 5 an incompletely inadequate Closed Claims
 6 Study in terms of accident benefits, right,
 7 we have very little information –
 8 STAMP, Q.C.:
 9 Q. But we know the settlements that were paid.
 10 MS. HYNES:
 11 A. Yeah, but we don't know how much the B claim
 12 was worth or the group health benefit was
 13 and whether it had subrogation or not.
 14 STAMP, Q.C.:
 15 Q. But the B claim would be somewhere else,
 16 would it not? That's not in this number
 17 here.
 18 MS. HYNES:
 19 A. I don't know why they didn't find them.
 20 STAMP, Q.C.:
 21 Q. Yeah, but it's somewhere, it's not in this
 22 number here.
 23 MS. HYNES:
 24 A. Um-um.
 25 STAMP, Q.C.:

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1 Q. That's a separate issue.
 2 MS. HYNES:
 3 A. Separate issue, yes.
 4 STAMP, Q.C.:
 5 Q. Sure. So the fact of the matter is that,
 6 you know, while there is this ascertain on
 7 the part of the Campaign and others, that
 8 victims are going to be suffering, there is
 9 a big component of income for those firms as
 10 well in this process?
 11 MS. HYNES:
 12 A. Absolutely.
 13 STAMP, Q.C.:
 14 Q. Okay. Somebody spoke about, I don't know if
 15 it was yourself or Mr. Rogers, perhaps, but
 16 I thought it might have been you, although I
 17 can't remember, why allow one party to set
 18 the rules; in other words, why should an
 19 insurance company, I think is what was
 20 implied, be allowed to set the rules as to
 21 what amounts are to be recovered, and of
 22 course, no insurance company sets the rules,
 23 legislation sets the rules, isn't that true?
 24 Isn't legislation setting the rules?
 25 MS. HYNES:

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1 A. If there is a minor injury cap brought in,
 2 it would be brought in through legislation
 3 and regulations, yes.
 4 STAMP, Q.C.:
 5 Q. And the three provinces, I think, Nova
 6 Scotia, PEI and New Brunswick, all have a
 7 slightly definition?
 8 MS. HYNES:
 9 A. Very similar, but yes.
 10 STAMP, Q.C.:
 11 Q. Similar, but they're not the same.
 12 MS. HYNES:
 13 A. They're not identical.
 14 STAMP, Q.C.:
 15 Q. So each of those provinces, the legislation
 16 has been passed, defining what –
 17 MS. HYNES:
 18 A. And they're all very similar also as well
 19 with Ontario's minor injury for under the B,
 20 you know, that kind of gave a definition and
 21 people have run with it since then.
 22 STAMP, Q.C.:
 23 Q. Right, but the fact is legislation is
 24 defined for whatever reason they use the
 25 word "minor", maybe they could have picked a

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1 different word, but that's what they
 2 described a certain class of injury that
 3 they are going to designate as more minor
 4 and therefore, subject to a cap, that's what
 5 they've done.
 6 MS. HYNES:
 7 A. In the other provinces, yes.
 8 STAMP, Q.C.:
 9 Q. In these other provinces. And on those
 10 cases, for example that you've referred to,
 11 I mean, it's worth looking at, just briefly,
 12 some of those cases again. The Fraser and
 13 Haines case, for example, you know, you
 14 referred to what happened here and the cap,
 15 how the cap was applied, but there's a
 16 couple of paragraphs here worth looking at
 17 again in that –
 18 MR. FELTHAM:
 19 Q. Sorry, Mr. Stamp, maybe we can go back to
 20 the document again.
 21 STAMP, Q.C.:
 22 Q. Yes, sure, is that on the screen? It's a
 23 trial division, at page 2.
 24 MR. FELTHAM:
 25 Q. Sorry, you're referring to the actual

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1 decision, are you?
 2 STAMP, Q.C.:
 3 Q. I am.
 4 MS. HYNES:
 5 A. I'm sorry, I only have the Court of Appeal
 6 decision with me.
 7 STAMP, Q.C.:
 8 Q. Okay, I'll just read to you what the Trial
 9 Division said. It's at paragraph 8 of
 10 Justice Garnett's decision, she says, "Dr.
 11 Barnhill testified that Fraser was suffering
 12 from pain in the anterior aspect front and
 13 side of his left shoulder caused by a soft-
 14 tissue injury. There was a pre-existing
 15 injury to the shoulder caused by a 1993
 16 accident, "I would call it an aggravation of
 17 an earlier problem'." Presumably that's the
 18 doctor saying this, "He said there was "good
 19 potential for improvement" but that optimum
 20 improvement would be reached within two
 21 years of the injury. "He should recover near
 22 full function of his shoulder". He said
 23 "tennis elbow" is a tendon problem which is
 24 caused by overuse and there is no medical
 25 counter indication for using a hammer." And

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1 then he goes on, the trial judge, she went
 2 on to say, this is paragraph 23, I'm sorry,
 3 "New Brunswick Legislation defines serious
 4 impairment and Fraser, Hallett and Cornford
 5 all testified regarding the nature of
 6 Fraser's work and is ability to do it. I
 7 must come to the conclusion"—this is the
 8 trial judge—"I must come to the conclusion
 9 that not only can he do it, he does it very
 10 well, although he says he experiences pain
 11 occasionally, his work records demonstrate
 12 that this does not cause him to miss time
 13 from his work. In addition, he continues to
 14 play hockey and do most of his household
 15 chores which he did before the accident. I
 16 therefore find that his impairment does not
 17 cause substantial interference with his
 18 ability to perform his usual daily
 19 activities or his regular employment." Well
 20 that's a judge saying that, you can't really
 21 fault that, can you?
 22 MR. FELTHAM:
 23 Q. Madam Chair, we don't have this document
 24 that he's referring to extensively and put
 25 to Ms. Hynes.

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1 STAMP, Q.C.:
 2 Q. Well, just got this stuff yesterday, I mean,
 3 we just got this a moment ago –
 4 MR. FELTHAM:
 5 Q. No, no, that's not true, this stuff was
 6 filed on Friday.
 7 STAMP, Q.C.:
 8 Q. I can provide copies to, I will undertake to
 9 do that, Madam Chair, I will provide copies
 10 to everybody.
 11 (UNDERTAKING)
 12 CHAIR:
 13 Q. I think that will be helpful, Mr. Stamp.
 14 MS. HYNES:
 15 A. Kevin, I just wanted to let you know,
 16 Richard can't hear a word you're saying.
 17 You're a bit far away from your microphone
 18 too. I did hear you.
 19 STAMP, Q.C.:
 20 Q. I will undertake to provide copies to
 21 parties of the Trial Division decision and
 22 to the panel, Ms. Glynn, as well.
 23 MS. HYNES:
 24 A. I'm actually, I'm really pleased that you
 25 brought that up, actually, Mr. Stamp,

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1 because it's an example of defence counsel
 2 bringing up a pre-existing issue and using,
 3 you know, any way possible to try to bring
 4 down how an injury might look.
 5 STAMP, Q.C.:
 6 Q. No, no, but the judge brought this up, the
 7 judge took this into account.
 8 MS. HYNES:
 9 A. Yes, I know and you're bringing it up here
 10 too, I mean, Mr. Fraser was at trial, you
 11 know, more than two years after the
 12 accident, still in pain, and the trial
 13 decision, they also found him to be a
 14 credible witness. So we can all pick
 15 different parts of it, but what I think you
 16 were bringing up, too, is the second stage
 17 of the analysis, the serious impairment, so
 18 you can look at a whole bunch of injuries,
 19 but then in someone's opinion that doesn't
 20 have a serious impairment.
 21 STAMP, Q.C.:
 22 Q. And it's not an adjustor's opinion, it's not
 23 a lawyer's opinion, it's a judge's opinion
 24 of the Supreme Court, and by the way, the
 25 Appeal Court decision you referred to, the

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1 Appeal Court corrects a statement made by
 2 the trial judge, this is at paragraph 50,
 3 "The evidence falls"—
 4 MR. FELTHAM:
 5 Q. Again, Madam Chair, we're into these cases
 6 that Mr. Stamp is referring to with
 7 quotations and –
 8 STAMP, Q.C.:
 9 A. My friend has it, she has it in her hands.
 10 MR. FELTHAM:
 11 Q. Yeah, but the rest of the parties don't have
 12 copies of it.
 13 STAMP, Q.C.:
 14 Q. I understood, you filed a case, you don't
 15 think we're not going to look at them? In
 16 any event, paragraph 50 says, and I will
 17 provide a copy of this as well, "The
 18 evidence falls well short of establishing
 19 that there are home related chores that Mr.
 20 Fraser cannot perform. The trial judge
 21 misspoke when she stated that Mr. Fraser can
 22 do most of those chores, implying there were
 23 some he could not do. The evidence shows he
 24 can do all those chores, albeit some more
 25 easily than others." That was the Fraser

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1 case, so the fact of the matter is a trial
 2 judge looked at all of this, looked at that
 3 circumstance, looked at the pre-existing
 4 issues and came to a thoughtful
 5 determination as to what should happen to
 6 that case, and, you know, that's the most
 7 impartial person you can have, a trial
 8 judge.
 9 CHAIR:
 10 Q. Mr. Stamp, will you be referring to any more
 11 of those cases today?
 12 STAMP, Q.C.:
 13 Q. I'm sorry?
 14 CHAIR:
 15 Q. Will you be referring to any more of those
 16 cases today in the same manner?
 17 STAMP, Q.C.:
 18 Q. No, I'll leave the cases, Madam Chair.
 19 CHAIR:
 20 Q. Thank you.
 21 STAMP, Q.C.:
 22 Q. Mr. Rogers spoke about property damages for
 23 cars, lost time from work, these are issues,
 24 but those issues are pecuniary in nature,
 25 are they not, Mr. Rogers?

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1 ROGERS, Q.C.:
 2 A. That's correct.
 3 STAMP, Q.C.:
 4 Q. They're not non-pecuniary, they're not
 5 defected by the cap, this true?
 6 ROGERS, Q.C.:
 7 A. Yes.
 8 STAMP, Q.C.:
 9 Q. Thank you. You also spoke about offers,
 10 court offers and sealed envelopes, how it's
 11 an advantage, but doesn't a plaintiff have
 12 just the same opportunity to put a sealed
 13 envelope in as well? Cannot a plaintiff
 14 relying on their lawyer that represents
 15 him/her, put a sealed envelope and say
 16 "here's my offer"?
 17 ROGERS, Q.C.:
 18 A. The relative outcome for an individual
 19 versus a multibillion dollar company is not
 20 the same. When an insurance company goes to
 21 trial, they are not in risk of losing their
 22 home or their family if they lose. To them,
 23 it's a calculated risk and is business. You
 24 have an individual who goes to trial and if
 25 costs are awarded against them, often it will

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1 cripple them and bankrupt them.
 2 STAMP, Q.C.:
 3 Q. Well one of the issues that they're faced,
 4 both parties have a lawyer –
 5 ROGERS, Q.C.:
 6 A. An insurance company is not afraid of an
 7 individual; an individual is afraid of an
 8 insurance company.
 9 STAMP, Q.C.:
 10 Q. Both parties have a lawyer representing them
 11 in the case, so one lawyer says, "Well, I'll
 12 put an offer in, I think this is what the
 13 reasonable amount to settle should be." The
 14 other side can put an offer in or not, as
 15 the case might be, isn't that true?
 16 ROGERS, Q.C.:
 17 A. Yes, and either party can put in a sealed
 18 envelope a damage award as well that they
 19 hope that the other side will not be able to
 20 beat, but again, there isn't a balance, it's
 21 not two heavyweights going into court
 22 together, it's a heavyweight and a
 23 flyweight.
 24 STAMP, Q.C.:
 25 Q. Well, Mr. Rogers, you've been doing this for

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1 many years, so I don't think you're a
 2 flyweight and I don't take that the wrong
 3 way, but you know, you know the law, you
 4 understand the law.
 5 ROGERS, Q.C.:
 6 A. I sometimes think I know the law, but there
 7 are certain decisions that comes out of
 8 court that blow my mind.
 9 STAMP, Q.C.:
 10 Q. Well we are all affected that way sometimes.
 11 I just want to come back to Ms. Hynes'
 12 remarks about the profit at, I think it was
 13 one hundred million dollars, that was, I
 14 think you understand all of property and
 15 casualty investment income in Canada, is
 16 that right?
 17 MS. HYNES:
 18 A. Yes.
 19 STAMP, Q.C.:
 20 Q. So it's not auto in Newfoundland, it's all
 21 property and casualty –
 22 MS. HYNES:
 23 A. Not the hundred million, no.
 24 STAMP, Q.C.:
 25 Q. I'm sorry, the 400, I'm sorry, I got it –

<p style="text-align: right;">Page 233</p> <p>1 MS. HYNES: 2 A. Yeah, the 986 million. 3 STAMP, Q.C.: 4 Q. I got to get my numbers back, sorry, 986, 5 yes. 6 MS. HYNES: 7 A. Yes, 986, that's property and casualty in 8 Canada for one quarter. 9 STAMP, Q.C.: 10 Q. Right, one quarter but it's all of Canada 11 and, of course, the previous year, the 12 quarter was 482, significantly different. 13 MS. HYNES: 14 A. Yes. Significant gains. 15 STAMP, Q.C.: 16 Q. Well, of course, the next year it could have 17 been down again, I don't know what the 18 numbers were. 19 MS. HYNES: 20 A. Could have been, we've been fortunate to be 21 in a bullish market since March 9th, 2009. 22 STAMP, Q.C.: 23 Q. But the fact is it's up and down, isn't it? 24 MS. HYNES: 25 A. Yes.</p>	<p style="text-align: right;">Page 235</p> <p>1 insurance underwriting profits are up. In 2 2016, automobile insurance companies in 3 Newfoundland and Labrador reported one 4 hundred million in underwriting profit 5 alone." Now, that sounds like that profit 6 is there and then maybe some other profit is 7 added to it and that becomes the total 8 profit, the fact is, as I think you said, 9 but I wasn't sure, that that doesn't have 10 any expenses except the actual claims that 11 have been paid. 12 MS. HYNES: 13 A. And underwriting expenses. 14 STAMP, Q.C.: 15 Q. The underwriting expenses may be there, but 16 it only takes out the claims paid. If I 17 look at – 18 MS. HYNES: 19 A. Premiums paid in, claims paid out and 20 underwriting expenses. 21 STAMP, Q.C.: 22 Q. No, what I have in the chart – 23 MS. HYNES: 24 A. But I think I acknowledge that it doesn't 25 include all overhead and marketing expenses</p>
<p style="text-align: right;">Page 234</p> <p>1 STAMP, Q.C.: 2 Q. But it's taken into account in the rate 3 setting, right? 4 MS. HYNES: 5 A. I hope so. 6 STAMP, Q.C.: 7 Q. Well I think it is, I mean, the panel, the 8 PUB, the Public Utilities Board decides what 9 rates are permissible with guidance from 10 actuaries and so on, of course, but they 11 take into account the very issues that 12 you're referring to, the income, the 13 expenses and so on, which takes me to the 14 superintendent's paper that you referred to 15 for 2016. 16 MS. HYNES: 17 A. Yes. 18 STAMP, Q.C.: 19 Q. And in that you, I think, indicated—I don't 20 know what page, if I can find it, you say 21 "Automobile insurance companies" – 22 MR. FELTHAM: 23 Q. Page 14 of the slides. 24 STAMP, Q.C.: 25 Q. Thank you, it is, thank you. "Automobile</p>	<p style="text-align: right;">Page 236</p> <p>1 and things like that. 2 STAMP, Q.C.: 3 Q. Right. Well if I take the Superintendent's 4 2016 report, Total Earned Premiums, this is 5 automobile now, of course, for the 6 liability, personal accident and other, the 7 total number is \$433,850,000. 8 MR. FELTHAM: 9 Q. Madam Chair, again we're referring to, you 10 know, complicated documents that we don't 11 have on the screen in front of us. Ms. 12 Hynes doesn't have it in front of her. 13 MS. HYNES: 14 A. Oh, it might be 99, Kevin, Mr. Stamp. 15 STAMP, Q.C.: 16 Q. It is actually, but that's not important, 17 that's not the point I'm making. The point 18 I'm making is that it shows earned premium 19 and direct claims, no general expenses, no 20 commissions, no taxes. 21 MS. HYNES: 22 A. No, I think I acknowledged that. 23 STAMP, Q.C.: 24 Q. All those expenses have to be paid out of 25 that.</p>

<p style="text-align: right;">Page 237</p> <p>1 MS. HYNES: 2 A. I acknowledge that. 3 STAMP, Q.C.: 4 Q. And of course, Oliver Wyman says you pay 5 that – 6 MS. HYNES: 7 A. And so they have to be also shared over all 8 products sold. 9 STAMP, Q.C.: 10 Q. That's not shared, that's an auto expense. 11 MS. HYNES: 12 A. The underwriting expenses are auto only. 13 STAMP, Q.C.: 14 Q. Sure, and the general expenses are auto as 15 well. 16 MS. HYNES: 17 A. No, the general expenses are shared. 18 STAMP, Q.C.: 19 Q. No, they've attached the general expenses to 20 automobile and other insurance as well, and 21 the Public Utilities Board looks at that. 22 CHAIR: 23 Q. Mr. Stamp, we're at 1:30 - 24 STAMP, Q.C.: 25 Q. Yes -</p>	<p style="text-align: right;">Page 239</p> <p>1 put to Ms. Elliott at Oliver Wyman in June 2 7th, 2018. It's an ultimate frequency for 3 1,000 car years. It's a single page, a 4 graph. That's it, thank you. So, the point 5 that's been made, I'll direct it to Ms. 6 Hynes, if I may, the point that was being 7 made is that car frequency or accident 8 frequency in Newfoundland is falling, but 9 it's certainly not falling as fast as it has 10 fallen in other jurisdictions according to 11 this document. 12 MR. FELTHAM: 13 Q. Madam Chair, this wasn't the document that 14 was put forward today in the presentation. 15 MS. HYNES: 16 A. It's the next one over. 17 MR. FELTHAM: 18 Q. It's not something that we've presented on. 19 Should we be understanding that we be asked 20 about this document? I don't think it's 21 fair to ask questions of this particular 22 panel about that document. This is an IBC 23 document. 24 CHAIR: 25 Q. I would tend to agree, you are not familiar</p>
<p style="text-align: right;">Page 238</p> <p>1 CHAIR: 2 Q. No, no, I'm just going--it's out appointed 3 hour. If you have much to do, we should get 4 some agreement we're all going to stay or at 5 least give the witnesses a chance to - 6 STAMP, Q.C.: 7 Q. I won't be very much longer. 8 CHAIR: 9 Q. Oh, okay. Is everyone happy enough to stay 10 for - 11 MR. FELTHAM: 12 Q. I guess, I don't know, the consumer advocate 13 has a follow up too, so - 14 BROWNE, Q.C.: 15 Q. I only have two questions so far. 16 CHAIR: 17 Q. Okay. 18 BROWNE, Q.C.: 19 Q. Mr. Stamp might get there. 20 CHAIR: 21 Q. Okay. So, we'll try it for five or ten 22 minutes and see where we go. Thank you, you 23 can carry on, Mr. Stamp. 24 STAMP, Q.C.: 25 Q. I wanted to turn to the document that was</p>	<p style="text-align: right;">Page 240</p> <p>1 with that one. That's fair enough. 2 MS. HYNES: 3 A. I did talk about it - 4 STAMP, Q.C.: 5 Q. Madam Chair, at page 15 of this 6 presentation. There you go. 7 CHAIR: 8 Q. You can take her to the presentation and ask 9 her a question on that document. 10 STAMP, Q.C.: 11 Q. Sure, okay. That's fine. Page 15 of the 12 presentation. Do you have that, Ms. Hynes? 13 MS. HYNES: 14 A. I think we need to go back one. 15 STAMP, Q.C.: 16 Q. No, that's fine, that's the - 17 MS. HYNES: 18 A. Oh, RNC? 19 STAMP, Q.C.: 20 Q. The RNC. 21 MS. HYNES: 22 A. Okay. 23 STAMP, Q.C.: 24 Q. And it shows a decline in accident rate, I 25 guess from 2013, '16 and '17, but have you</p>

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1 compared that decline to the decline in Nova
 2 Scotia and New Brunswick?
 3 MS. HYNES:
 4 A. I have not.
 5 STAMP, Q.C.:
 6 Q. So, Oliver Wyman's documentation of that
 7 might be all we had to go to.
 8 MS. HYNES:
 9 A. I think the next slide or the previous one
 10 talked about claims are down 20 a year low.
 11 STAMP, Q.C.:
 12 Q. Why would you choose to present a frequency
 13 chart that shows 40 percent of the
 14 population of the Province? Why would you
 15 choose -
 16 MS. HYNES:
 17 A. Oh, I don't have the--the information is not
 18 available from the RCMP. If I had access to
 19 the RCMP information, I would have provided
 20 that as well.
 21 STAMP, Q.C.:
 22 Q. But it's available through GISA. The
 23 decline, the frequency is all available
 24 through GISA.
 25 MS. HYNES:

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1 A. And I did provide -
 2 MR. FELTHAM:
 3 Q. I'm so sorry. I think there's a
 4 misunderstanding, Madam Chair. The
 5 following page, this is GISA data, this is
 6 not including 40 percent of the population
 7 of the Province. This is not RNC data.
 8 (1:30 p.m.)
 9 STAMP, Q.C.:
 10 Q. So the chart that's on the next page, 16 is
 11 actually in a sense the red line in Ms.
 12 Elliott's June 7th, 2018 document that she
 13 would have--that's the same line shown in a
 14 slightly flattened way, because it's got
 15 more information points that the June 7th
 16 document than does page 16, but the fact is,
 17 I mean, aren't you concerned that the
 18 frequency is dropping much more rapidly in
 19 other provinces than it is in Newfoundland?
 20 MS. HYNES:
 21 A. The cap is not going to stop one accident
 22 from happening.
 23 STAMP, Q.C.:
 24 Q. No, no, but it means, obviously that if our
 25 frequency of accidents are -

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1 MS. HYNES:
 2 A. And accidents are declining.
 3 STAMP, Q.C.:
 4 Q. If our frequency of accidents are staying up
 5 higher than other provinces, we're going to
 6 be paying a higher premium, which comes to
 7 the point about premiums. Somebody's--I
 8 think you said that--somebody said they
 9 listened to a radio discussion and that
 10 premiums might not come down. I don't know
 11 if they will or not, I know that if we don't
 12 find a solution, premiums are likely to go
 13 up. Isn't that a concern for people as
 14 well?
 15 MS. HYNES:
 16 A. I think that we can continue to support the
 17 decline in claims that's we are already
 18 experiencing through education, enforcement
 19 and other aspects of good public policy,
 20 rather than asking accident victims to give
 21 up their entitlement to general damages to
 22 pay for that.
 23 STAMP, Q.C.:
 24 Q. Well that's the balance--that's what the
 25 legislation hasn't decided what to do with--

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1 legislature hasn't decided what do they do
 2 with these arrangements, what do they do
 3 with increasing the premiums. What's the
 4 solution?
 5 MS. HYNES:
 6 A. But you're assuming that the claims are
 7 what's driving the premiums.
 8 STAMP, Q.C.:
 9 Q. Oliver Wyman tells us that.
 10 MS. HYNES:
 11 A. I don't accept that.
 12 STAMP, Q.C.:
 13 Q. Okay, all right. Those are my questions,
 14 thank you, Madam Chair.
 15 CHAIR:
 16 Q. Thank you. Mr. Browne.
 17 BROWNE, Q.C.:
 18 Q. Thank you, Chair and my question, all the
 19 conversations around the cap, currently we
 20 have a \$2,500 deductible, which is widely
 21 viewed as, well, not very much and probably
 22 not taken into account all that often. What
 23 is the Campaign's view on a higher
 24 deductible, \$7,500 or \$8,000 or something
 25 like that? Do you have any view on moving

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1 to a higher deductible instead of a cap?
 2 MS. HYNES:
 3 A. I just wanted to clarify one point. The
 4 \$2,500 deductible is applied in every single
 5 instance, every single time, every single
 6 claim. It is never overlooked, we don't
 7 overlook it, neither do the adjusters on the
 8 other side, neither do defence counsel. It
 9 is always taken into account.
 10 BROWNE, Q.C.:
 11 Q. But sometimes it's built in, it's easy to
 12 build it in, you know. So, you're looking
 13 for 10,000, 12,500, take the cap of, I mean,
 14 we all know the game. But not to cause
 15 dispersions on my colleagues, but it's
 16 widely viewed as ineffective; I think you'd
 17 have to agree with me on that. Does the
 18 Campaign agree that we should move to a
 19 higher deductible or does the Campaign just
 20 want business as usual?
 21 MS. HYNES:
 22 A. It's been 12 years, I think there's
 23 reasonable things to look at in terms of the
 24 adequacy of the deductible. I don't--after
 25 all these years, I don't have any opposition

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1 to any of these reasonable discussions.
 2 ROGERS, Q.C.:
 3 A. I don't think that you should increase a
 4 deductible just because it's asked for. I
 5 mean, when my partner, Ken Moyses was here
 6 talking about the huge number of
 7 applications that are being made in Nova
 8 Scotia, New Brunswick to their various PUB
 9 boards, whatever they're called there. Over
 10 100 in two years looking for increments to
 11 increase insurance rates and most of these,
 12 the public isn't even aware of it. So, if
 13 you grant insurance companies two percent
 14 increase rate hikes over a number of years,
 15 before you know it they're going to get
 16 everything they asked for. I don't know if
 17 we should automatically say because the
 18 insurance companies are looking for a cap
 19 now that we should compromise and say it
 20 should be a five of a \$7,500 deductible.
 21 That doesn't make any logical sense,
 22 especially if the details are showing that
 23 accidents are going down. That's just
 24 another grab at the consumer.
 25 BROWNE, Q.C.:

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1 Q. It's just that I think the Terms of
 2 Reference, which I don't have in front of me
 3 reference a deductible as well as a
 4 possibility but be that as of May you're not
 5 suggesting any particular amount of a
 6 deductible, you're not addressing that part
 7 of the terms.
 8 ROGERS, Q.C.:
 9 A. But I'd say it's not even necessary. We do
 10 that all day long when we're practising
 11 personal injury law, we're compromising
 12 every day and sometimes it makes me grind my
 13 teeth because I know the client is entitled
 14 to more, but they don't have the strength or
 15 the fortitude to go ahead with the trial.
 16 Sometimes you got to say no, it's not
 17 appropriate.
 18 BROWNE, Q.C.:
 19 Q. When these reforms were brought in, I think
 20 it was 2005, there was also reforms brought
 21 in for interim applications to the court in
 22 certain circumstances where--how effective
 23 has that been in your experience, those
 24 particular provisions?
 25 ROGERS, Q.C.:

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1 A. I've never been part of it, so it would be
 2 inappropriate for me to give you an answer
 3 to that.
 4 MS. HYNES:
 5 A. I've threatened the application, I've
 6 drafted the application, I've couriered the
 7 application over, but the advance then
 8 sometimes comes. The problem with the way
 9 the legislation is provided, it has to do--
 10 you know, and what they're talking about
 11 under the Automobile Insurance Act and I
 12 think it's section 26.7 or 8, there was an
 13 amendment in 2005 that allowed for injured
 14 parties to apply to the court or to ask for
 15 an advance on their settlement. But there's
 16 limitations on it, there can't be an issue
 17 of liability and that includes issues of
 18 causation. So, it is difficult to establish
 19 it, and then there's numerous issues; the
 20 exchange of information, is it necessary and
 21 so when you're asking the insurance
 22 companies for an advance, oftentimes they
 23 ask you for the client's first born. They
 24 want so much information to justify bank
 25 records, pay stubs and all this information.

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1 You know, and it's just generally, it's so
 2 invasive on their personal circumstances and
 3 they're under so much stress already that
 4 they often don't want to proceed that way.
 5 They sometimes take out as Richard had
 6 referred to high interest loans. You know,
 7 if you are cut off from Section B, you can't
 8 afford your treatment, you need your
 9 treatment, you're missing time from work,
 10 you're financially behind, sometimes it's
 11 almost like a consolidation of your debt and
 12 to try to get ahead of the payments. So
 13 that does happen, but no, I have no ever
 14 successfully applied to court for an interim
 15 advance. I have negotiated advances though
 16 in certain circumstances.

17 ROGERS, Q.C.:

18 A. I can answer in a way my experience has
 19 been. The presidents out there are
 20 forgetting interim advances from the court
 21 are not very strong in favour of the
 22 plaintiff. The courts are reluctant to
 23 award any kind of monetary damages where
 24 there has not been a court judgement, they
 25 just won't do it, because things can happen

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1 between that application and before a trial.
 2 For instance, what if the plaintiff dies,
 3 and their claim dies with them and the
 4 insurance company had been forced to put
 5 money over ahead of time or what about if
 6 there was surveillance and all of a sudden
 7 it showed that the person actually wasn't
 8 being honest in describing their
 9 limitations. So, in some ways I can
 10 appreciate why an insurance company would be
 11 reluctant to give over interim payments
 12 where there hasn't been an official court
 13 judgement, but if the other side admits to
 14 no liability and it's pretty well open and
 15 shut that the person can't work as a result
 16 of this, they're paralyzed; I see Mr. Frase
 17 here with a spinal cord injury. If there
 18 are--factors which are so obvious that any
 19 judge would say, "this person needs 10, 20,
 20 \$30,000 to save them from losing their
 21 house", that would be a great example, but
 22 we don't really get that too often, we don't
 23 really get those perfect storm scenarios
 24 where we can go to court and ask the court
 25 for an interim payment because they'll shoot

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1 them down. Most of the decisions I've seen
 2 they've shot down. I can only recall in 30
 3 years, one or two where it was successful.
 4 Maybe the court needs to be a little bit
 5 more open to that possibility, but I'll tell
 6 you, adjusters are the most incredibly
 7 helpful people when they want to be or are
 8 determined to be when I am negotiating a
 9 client's file. I know certain adjusters who
 10 are in my heart, my experience with them is
 11 very positive and I know they're going to be
 12 reasonable and I'm going to be able to do
 13 very good things for my client. There are
 14 others that I say, "oh, no, this is going to
 15 be a real dog fight", and we're going to
 16 have to use every threat that we can to try
 17 and get things that they're entitled to.
 18 So, it's never black and white, some
 19 insurance companies are easier to deal with
 20 than others, some insurance companies give
 21 very good settlements, others don't. So,
 22 it's never consistent in this industry.

23 BROWNE, Q.C.:

24 Q. But you'll grant me you wouldn't need the
 25 permission of the insurance company to make

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1 an interim application on behalf of the
 2 plaintiff?

3 ROGERS, Q.C.:

4 A. Yes.

5 BROWNE, Q.C.:

6 Q. And if these sections aren't working or need
 7 improvement, has the Campaign given any
 8 thought to making recommendations in
 9 reference to those particular sections if
 10 they're not really readily available? You
 11 have or you haven't?

12 MS. HYNES:

13 A. Well, we will be providing more thoughts on
 14 that.

15 BROWNE, Q.C.:

16 Q. Thank you, these are my questions.

17 CHAIR:

18 Q. Thank you, Mr. Browne.

19 O'FLAHERTY, Q.C.:

20 Q. I don't have any questions for the
 21 presenters, Madam Chair.

22 CHAIR:

23 Q. Thank you.

24

25 Upon Conclusion: 1:45 p.m.

CERTIFICATE

I, Judy Moss, hereby certify that the foregoing is a true and correct transcript in the matter of the 2017 Automobile Insurance Review heard before the Board of Commissioners of Public Utilities, 120 Torbay Road, St. John's, Newfoundland and Labrador 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 10th day of September, 2018

Judy Moss

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