

In the matter of a public hearing convened
to consider the impact of amendments to the
Injury Regulation – Insurance Act 2013-37
on automobile insurance loss costs
in New Brunswick

Decision

1. The New Brunswick Insurance Board (the Board) convened a public hearing on October 7 and 8, 2013 for the purpose of considering the expected impact of the *Injury Regulation – Insurance Act 2013-37* (also known as the Minor Injury Regulation (MIR)) on automobile insurance loss costs in New Brunswick.
2. Public notice of the hearing was given and the Office of the Attorney General (OAG) gave notice that it intended to intervene pursuant to subsection 19.71(4) of the *Insurance Act*.
3. The Insurance Bureau of Canada (IBC) was granted formal intervenor status as the Board had requested a report with the industry's position on the matters at issue.
4. Other formal intervenors were Intact (Intact) Insurance Company and the Consumer Advocate for Insurance (CAI).
5. The newly formed Financial and Consumer Services Commission (FCSC) was granted informal intervenor status. Though the FCSC was represented at the hearing, it did not actively participate.
6. The panel of the Board and the parties to the hearing:

Parties List

PARTIES:	INTERVENOR STATUS	REPRESENTED BY:
INSURANCE BUREAU OF CANADA (IBC)	FORMAL INTERVENOR	<p>Ms. Amanda Dean Regional VP - Atlantic</p> <p>Mr. Ryan Stein Director of Policy</p> <p>Ms. Barbara Addie Addie Insurance Services Inc</p>
OFFICE OF THE ATTORNEY GENERAL (OAG)	FORMAL INTERVENOR	<p>Mr. Michael Hynes Solicitor</p> <p>Ms. Isabel Lavoie Daigle Solicitor</p> <p>Ms. Paula Elliott Consulting Actuary</p>
CONSUMER ADVOCATE FOR INSURANCE (CAI)	FORMAL INTERVENOR	Mr. Ronald Godin Consumer Advocate
FINANCIAL and CONSUMER SERVICES COMMISSION (FCSC)	INFORMAL INTERVENOR	Ms. Ella-Jane Loomis Legal Counsel, Enforcement
INTACT INSURANCE COMPANY (Intact)	FORMAL INTERVENOR	Mr. Todd Orrett Vice President Actuarial - Intact Insurance

**NEW BRUNSWICK INSURANCE
BOARD (NBIB)**

Chairman:

Mr. Paul D'Astous

Members:

Ms. Ferne Ashford
Mr. Ken Cochrane
Ms. Francine Kanhai
Mr. Georges Leger
Mr. Matt Tweedie

Consultants:

Mr. Richard Gauthier
Consulting Actuary

Ms. Cathy Fawcett
Legal Counsel

Staff:

Mr. Kevin Duff
Secretary to the Board

Ms. Kelly Ferris
Manager of Insurance Services

7. The hearing before the Board followed approximately 6 weeks of exchange of documents / reports and 2 rounds of written interrogatories.
8. By consent, the Board received as evidence the preliminary submissions and final submissions from OAG, Intact and IBC along with the written interrogatories. Included within the OAG's submissions were the actuarial reports of Paula Elliott from Oliver Wyman. Included within the IBC's submissions were the actuarial reports of Barb Addie from Addie Insurance Services Inc. Intact, an individual company, gave statistics and analysis related to its own internal experience in Nova Scotia where similar reforms recently took place, and its own analysis of the expected impact of the reform in NB as it relates to Intact's particular book of business.
9. The list of exhibits received as evidence is reproduced below:

Exhibit List

SUBMISSION	DESCRIPTION	Submitted By	DATE
1	IBC submission for the NBIB Generic Hearing for the Impact of Injury Regulation	IBC	August 14, 2013
2	Cost Implications of Changes to the Minor Injury Regulations New Brunswick	OAG	August 14, 2013
3	Intact – Submission	Intact	August 23, 2013
4	1 st Interrogs Response IBC to OAG		September 3, 2013
5	1 st Interrogs Response OAG to IBC		September 3, 2013
6	1 st Interrogs Response OAG to Intact		September 3, 2013
7	1 st Interrogs Response Intact to OAG		September 3, 2013
8	2 nd Interrogs Response IBC to OAG		September 25, 2013
9	2 nd Interrogs Response Intact to OAG		September 25, 2013
10	2 nd Interrogs Response OAG to Intact		September 25, 2013
11	OAG Final Submission	OAG	September 30, 2013
12	IBC Final Submission	IBC	September 30, 2013
13	Intact Final Submission	Intact	September 30, 2013
14	Undertaking by Intact	Intact	October 8, 2013

10. The amendments to the MIR came into force on July 1, 2013 and are set out below:

11. ACCIDENTS OCCURRING ON OR AFTER JULY 1, 2013

Application

4.1 *This Part only applies to a minor personal injury suffered by a plaintiff as a result of an accident that occurs on or after July 1, 2013.*

Definitions

4.2(1) *The following definitions apply in this Part.*

“Act” means the Insurance Act.(Loi)

“plaintiff” means a plaintiff in an action for damages arising out of an accident.(plaignant)

“serious impairment” means, in respect of a plaintiff, an impairment of a physical or cognitive function that

results in a substantial inability to perform

the essential tasks of the plaintiff’s regular employment, occupation or profession, despite the plaintiff’s reasonable efforts to use any accommodation provided to assist the plaintiff in performing those tasks,

(ii) the essential tasks of the plaintiff’s training or education in a program or course in which the plaintiff was enrolled or had been accepted for enrolment at the time of the accident, despite the plaintiff’s reasonable efforts to use any accommodation provided to assist the plaintiff in performing those tasks, or

(iii) the plaintiff’s normal activities of daily living,

(b) has been ongoing since the accident, and

(c) is not expected to improve substantially.(déficiency grave)

“sprain” means an injury to one or more tendons or ligaments or to one or more of each.(entorse)

“strain” means an injury to one or more muscles.(foulure)

“whiplash associated disorder” means a whiplash injury that

does not exhibit objective, demonstrable, definable and clinically relevant neurological signs, and

does not exhibit a fracture in or dislocation of the spine.(troubles associés à l’entorse cervicale)

4.2(2) *For the purposes of this Part and section 265.21 of the Act, “minor personal injury” means any of the following injuries, including any clinically associated sequelae, that do not result in serious impairment or in permanent serious disfigurement:*

a contusion;

an abrasion;

a laceration;

a sprain;

a strain; and

a whiplash associated disorder.(blessures personnelles mineures)

Maximum amount recoverable

4.3(1) For the purposes of subsection 265.21(3) of the Act, the maximum amount recoverable as damages for the non-pecuniary loss of the plaintiff for all minor personal injuries suffered by the plaintiff as a result of an accident is \$7,500.

4.3(2) On January 1, 2015, and on January 1 of each subsequent year, the amount referred to in subsection (1) shall be adjusted in accordance with the rate of increase in the Consumer Price Index for New Brunswick, not seasonally adjusted, for all items for the previous 12-month period ending December 31, on the basis of monthly reports published in that respect by Statistics Canada for that period.

4.3(3) The maximum amount recoverable for a given year applies only with respect to accidents that occurred in that year.

4.3(4) The Superintendent shall publish, by January 31 of each year, the maximum amount recoverable for that year in a form and manner that makes the information accessible to the public.

PURPOSE OF HEARING

12. These amendments, insofar as they enhance benefits available to accident victims, will probably have an upward effect on the loss costs (i.e. overall cost per claim) experienced by insurers operating in the Province. This effect is influenced by an anticipated increase both in the severity (i.e. value) of claims for accidents after June 30, 2013 and also a likely increase in the frequency (i.e. number) of claims filed.
13. The Board convened the hearing to allow stakeholders and other interested parties an opportunity to provide evidence and testimony with respect to the possible impacts that the amendments would have on automobile insurance loss costs.
14. The Board considered the submissions of evidence and testimony from the various parties. Following is a summary of the evidence and submissions for each party.

SUMMARY OF EVIDENCE & SUBMISSIONS

1) Insurance Bureau of Canada (IBC)

15. At the request of the Board, IBC prepared a submission (Exhibit 1) that contained an actuarial analysis entitled: *Impact of the July 2013 Automobile Insurance Reforms on New Brunswick Private Passenger (excluding Farmers)*. The report was prepared for IBC by Ms. Barb Addie of Addie Insurance Services Inc. (the Addie Report)
16. Subject to a number of caveats and assumptions, which will be reviewed in greater detail below, the overall finding of the Addie report was that there would be upward pressure on loss costs as a result of the MIR amendments. The magnitude of this pressure varies according to the coverage type selected and the timing for realization of the full impact is highly speculative.
17. The Addie Report produced expected impacts in the form of conversion factors, with three alternate scenarios; all of the impact in year 1, all of the impact in year 1 and 2, and finally all of the impact in years 1-3. The results, showing conversion factors for expected impacts with all of the impact in year 1 are found at page 8 of Exhibit 12 and are replicated below:

18. Sub-Coverage	Conversion Factor
TPL-BI (excluding Health Levy)	1.242
TPL-Total (excluding Health Levy)	1.116
AB-MR	1.379
AB-Total	1.226
UM	1.242

19. To produce these results, Ms. Addie followed the methodology utilized by Dr. Ron Miller of Exactor Insurance Services Inc. in the 2010 generic hearing in Nova Scotia that dealt with similar amendments as those introduced in NB. Ms. Addie analyzed the NS results and integrated the results with the NB analysis.
20. Both in its written submissions and through the testimony of Ms. Addie, IBC recognized the inherent uncertainty in the exercise of estimating the future effects of the amendments. Further, it was urged upon the Board to reflect the reality that each insurer will experience a different impact, based on its own market factors.
21. IBC's submission and the Addie Report therefore were premised by a number of caveats and limitations, including:
22. "...This process has been especially important in light of the inherent uncertainty of all actuarial analyses and in particular the effort to predict the effect of a new product

- design. Very little historical data exists upon which to base actuarial estimates regarding the cost impact of changes to the definition and amounts of minor injury caps, while, as well, the timing and scale of behavioral responses exhibited by stakeholders tend to be ambiguous until some time has passed following a reform.” (Exhibit 12: IBC Final Submission cover letter page 1)
23. “The use of ranges in both actuarial reports is significant, as it highlights the uncertainty inherent in predicting the scale of the behavioral response by claimants and plaintiff counsel to the new product, as well as the timing of the response.” (Exhibit 12: IBC Final Submission cover letter page 1)
24. “All future estimates of claim costs are uncertain. The actual claims costs will not be known until the final claim is closed.” (Exhibit 12: IBC Final Submission – Addie Report page 3)
25. “The uncertainty in the estimates is further increased by introducing reforms.” (Exhibit 12: IBC Final Submission – Addie Report page 3)
26. “The data in the Closed Claim Survey is only a sample and values derived from it and used in the analysis might well differ from the results one would get if one had a complete data set.” (Exhibit 12: IBC Final Submission – Addie Report page 3)
27. “All estimates relate to the all-industry PPAXF experience and may or may not be appropriate for an individual insurer.” (Exhibit 12: IBC Final Submission – Addie Report page 3)
28. “Historically, when reforms have been introduced to the automobile insurance product, the ultimate impact of the changes takes some time to manifest. There is a learning curve for both insurers and claimants alike and it takes time before the full impact of a change can be known. As such it is very likely that 100% of the impact of the change will not be seen in the 2013 fiscal policy year.” (Exhibit 12: IBC Final Submission – Addie Report page 3)
29. “The Nova Scotia reforms are relatively recent (April 2010). Given the long-tailed nature of the TPL-BI sub-coverage, the results to-date may not be fully indicative of what the impact of what the change will be. The data set is quite small for modeling purposes and can be quite sensitive, making some of the results inconclusive.” (Exhibit 12: IBC Final Submission – Addie Report page 3)

2) Office of the Attorney General (OAG)

30. Pursuant to subsection 19.71(4) of the *Insurance Act*, the Office of the Attorney General provided notice to the Board that it wished to intervene in the hearing. The OAG prepared an initial submission in August 2013 that contained an actuarial analysis entitled: *Cost Implications of Changes to the Minor Injury Regulations New Brunswick*. The report was prepared for the OAG by Ms. Paula Elliott and Mr. Ted

Zubulake of Oliver Wyman (the "OW Report"). The OW Report was updated and a final version included with the OAG's Final Submission (Exhibit 11).

31. Subject to a number of caveats and assumptions, which will be reviewed in greater detail below, the overall finding of the OW Report was that there would be upward pressure on loss costs as a result of the MIR amendments. This pressure results from an increase in severity and a possible increase in frequency. The magnitude of the increase will vary according to the coverage type selected and the timing for realization of the full impact is highly speculative.
32. The OW Report produced an estimated expected range of impacts on bodily injury claim severity of between 13% and 29.9% as per the methodology described below, with a selected figure of 20% based on a further sensitivity test. With respect to other coverage types the OW Report provides an estimate of a 25% increase in the claims costs for Accident Benefits (AB) / Medical Rehabilitation coverage. The OW Report also estimates a possible range of impact for AB / Disability of 0% - 5%. The OW Report provides an estimate of the initial year bodily injury coverage cost impact of the MIR amendments to fall within a range of +20% to +25%.
33. To produce these results, OW relied significantly on an analysis that was based on a closed claim study with data collected in February to April 2011. Claims data was collected for 1,600 closed claims from 2002, 2003 and 2009. This data was analyzed to identify the potential changes in the types of claims that were made before and after previous reforms and to apply this information in order to produce an estimate of the potential impact of the current reforms.
34. Both in its written submissions and through the testimony of Paula Elliott, the OAG recognized the inherent uncertainty in the exercise of estimating the future effects of the amendments. Further, it was urged upon the Board to recognize the highly speculative nature of the assumptions utilized in the reports and submission placed before the Board. The Board was asked to consider that the original intent of the current reforms was to benefit the motoring public and that the Board should be careful not to overestimate the impact on the reforms on loss costs until such time as the data becomes more fully developed.
35. As was the case with the IBC submission and report, the OAG's submission and the OW report were premised by a number of caveats and limitations, including:
36. "We are of the view that there is considerable uncertainty as to what the cost impact of the MIR amendments will be and believe that the actual cost impact will remain uncertain for a period of years." (Exhibit 11: OAG Final Submission – OW Report page 2)
37. "We are of the view that there is considerable uncertainty as to what the cost impact of the MIR amendments will be. We, therefore, suggest that it would be prudent for the Board to focus its initial guidance to insurers on the automobile rates that will be in effect in 2014, monitor the claim experience that emerges, and, at least for a period of time, annually issue new guidance for rates to be effective in subsequent years

- regarding the impact of the MIR amendment on costs and future loss trend rates. This is the approach adopted by the Nova Scotia Utility and Review Board.” (Exhibit 11: OAG Final Submission – OW Report page 8) *citation: 2010 NSUARB 236*
38. “It is important to note that due to a lack of sufficiently detailed data and the nature of any forecast, the estimates we present in this report are based on numerous assumptions, both explicit and implicit... ..the actual experience that emerges may be materially different than what we have estimated.” (Exhibit 2: OAG Initial Submission - OW Report page 1)
39. “We estimate that the more restrictive minor injury definition and higher \$7,500 minor injury cap will increase the Bodily Injury coverage average cost per claim by approximately 30%, and the Accident Benefits-medical/rehabilitation average cost per claim by 25%.” (Exhibit 2: OAG Initial Submission - OW Report page 2)
40. “We expect that the Bodily Injury and Accident Benefits coverage claim frequency (propensity of injured persons to file claims) will be impacted by the new minor injury definition and the new \$7,500 minor injury cap; however, the extent to which frequency will be impacted is not clear.” (Exhibit 2: OAG Initial Submission - OW Report page 2)
41. “...because changes in the propensity to file claims would be largely driven by behavioural changes that are affected by a number of factors (such as access to legal representation, insurance company claim settlement practices, whether or not insurance companies offer claim ‘forgiveness’, economic conditions, etc.) and hence are difficult to predict, the degree to which an increase in the cap amount would result in an increase in claim frequency is not clear. We would also expect that changes in claim frequency will not necessarily be immediate – that they would occur over a period of time.” (Exhibit 2: OAG Initial Submission - OW Report page 15)
42. “The claim experience, and hence cost implications, of changes to the MIR will likely evolve over time as the coverage matures (i.e. as case law surrounding changes to the definition is established, and as insurance companies, insured, the legal community, and other stakeholders become more familiar with the new MIR). (Exhibit 2: OAG Initial Submission - OW Report page 17)
43. “The conclusions contained in this report may not be applicable to any specific insurance company whose portfolio of risks, rates, expenses, and operating characteristics may differ from the insurance industry averages that underlie our findings. We believe that our findings are reasonable for the insurance industry as a whole, but may not be appropriate for any individual insurance company.” (Exhibit 2: OAG Initial Submission - OW Report page 23)
44. “The closed claim study reflects only a sampling of New Brunswick private passenger automobile insurance claims, and, as such, is subject to sampling error; that is, sample may not reflect the true population of New Brunswick private passenger automobile insurance claims” (Exhibit 2: OAG Initial Submission - OW Report page 23)

45. "As is the case for any closed claim study of this nature, the assignment of the type of injury code and amount of compensation paid by category of damage is based upon the judgment of the claim adjuster who reviewed the claim file." (Exhibit 2: OAG Initial Submission - OW Report page 23)
46. "...We did not independently examine the data other than to inspect for internal consistency." (Exhibit 2: OAG Initial Submission - OW Report page 23)
47. "The conclusions are projections of the financial consequences of future contingent events and are subject to uncertainty. There may have been abnormal statistical fluctuations in the past, and there may be such fluctuations in the past, and there may be such fluctuations in the future. Due to the inherent uncertainties, actual costs and premiums may vary significantly from our estimates. Thus, no assurances can be given that the actual experience for New Brunswick will not ultimately differ from the estimates contained herein." (Exhibit 2: OAG Initial Submission - OW Report page 24)

3) Intact Insurance Company

48. Intact Insurance Company (Intact) requested and was granted intervenor status in order to make a submission to the Board and to provide testimony at the hearing.
49. Intact provided an initial submission and a report that was based on Intact's experience in Nova Scotia since the 2010 reforms in that province. The report was not actuarially based.
50. Intact clearly indicated that the major constraint on its findings is that the data presented arises from that company alone and is not based on the broader industry wide data used in the other submissions. Intact also acknowledged that Nova Scotia data would not necessarily translate directly into similar experience in New Brunswick.
51. Intact provided its results from Nova Scotia which indicate that Bodily Injury loss costs have increased approximately 32% (with approximately 20% due to increased frequency and 10% due to increased severity) since the implementation of the 2010 reforms. This was mostly due to increased frequency of claims. The data also indicates an increase in Accident Benefit costs of approximately 50%, also due to higher frequency.
52. During cross-examination, Mr. Todd Orrett, testifying for Intact also revealed that Intact had implemented a streamlined claims process that may have had some impact on the increased number of claims that have entered Intact's claims system since 2010.
53. The data on which Intact based its submission was primarily claims data collected by Intact. Estimates of the changes in claims made that were considered 'Minor' resulted in Mr. Orrett agreeing to provide an undertaking to provide additional data. That additional data was provided to all parties before the conclusion of the hearing.

ANALYSIS OF THE EVIDENCE

54. On its face, the evidence presented to the Board seems to be very similar amongst the parties. A range of estimates for the impact on automobile insurance loss costs was presented, based on similar but slightly different methodologies and with the application of similar but slightly different assumptions, caveats and limitations.
55. We agree with the actuarial evidence from Ms. Elliott and Ms. Addie that the impacts of the amendments to the MIR are expected to be gradual over the next few years. In other words, not all of the impact will be experienced in the first or second policy year.
56. The data from Nova Scotia, while somewhat helpful, cannot be given undue weight. The legislative regimes are not identical in NB & NS. The pre-reform minor injury definition was slightly different, the post-reform definition remains slightly different and accident benefits are not identical. Therefore the severity/ frequency analysis in the evidence is, in addition to being based on limited data, not a complete picture that this Board can use to arrive at an estimation of the true expected impact of the changes to the NB legislation. It is notable however, that the estimate provided by Intact falls within the estimated ranges of impact provided by IBC and the OAG.
57. The Board accepts that the range of probable magnitude for the impact on Bodily Injury loss costs is between 20% and 31.3% (as presented in Exhibits 11 and 12). Based on the evidence presented to the Board, it is not possible for the Board to assess the impact with any greater certainty than this range. The uncertainty in the production of an estimated range of impact is highlighted by the analysis provided by OW in Exhibit 11. OW modifies its initial conclusion substantially from a finding of an impact on bodily injury loss costs of 29.6% through the application of a sensitivity test that shows that the low end of the estimate could be as low as 13%. OW then "roughly estimates" (Exhibit 11: OW Report, page 5) the possible impact at 20%, which is the approximate halfway point between 13% and 29.6%
58. It must be remembered that this range of impact is attributable solely to the Bodily Injury loss costs and Uninsured Motorist Coverage. The two coverage types together are but one component of a full policy of automobile insurance. Property damage coverage types are not expected to be impacted at all and Accident Benefit levels could be impacted as well. For those automobiles that have optional coverages, there is not expected to be any impact on those coverage types.
59. The range of impact then, is based on speculation and assumptions, and relates only to a portion of each policyholder's policy. Although beyond the scope of this hearing, The Board is cognizant that the resultant effect on indicated overall premiums would be a factor far less than these ranges. Separate guidelines will be issued by the Board on the permissible treatment of this expected impact in the 2014 and subsequent rate filings. These guidelines will be available concurrently with the release of this decision.

60. Of additional concern is the issue of the timing of the expected impact. Both IBC and the OAG have made arguments that the timing of the impact is highly uncertain and that the final impact will not be known for a number of years. In the short term, impacts for the 2013 half year during which the reforms are in-force are particularly uncertain because it may take additional time for behavioural changes to occur in the driving population. As noted by IBC:
61. "...This process has been especially important in light of the inherent uncertainty of all actuarial analyses and in particular the effort to predict the effect of a new product design. Very little historical data exists upon which to base actuarial estimates regarding the cost impact of changes to the definition and amounts of minor injury caps, while, as well, the timing and scale of behavioral responses exhibited by stakeholders tend to be ambiguous until some time has passed following a reform." (Exhibit 12: IBC Final Submission cover letter page 1)
62. And as noted by the OAG:
63. "The claim experience, and hence cost implications, of changes to the MIR will likely evolve over time as the coverage matures (i.e. as case law surrounding changes to the definition is established, and as insurance companies, insured, the legal community, and other stakeholders become more familiar with the new MIR). (Exhibit 2: OAG Initial Submission - OW Report page 17)

DECISION

64. The Board has reviewed all of the evidence and accepts that there is a probability of an upward impact on the Bodily Injury / Uninsured Motorist loss costs as a result of the amendments to the MIR. The Board accepts that the range of this impact on the Bodily Injury / Uninsured Motorist is probably between 20% - 31.3%.
65. The Board also accepts the evidence as to the inherent uncertainty in the timing of the initial and ultimate impacts of the amendments to the MIR given that the experience will evolve as behavioural change becomes factored into ongoing claims experience.
66. In the circumstances however, where there is limited data to base the foundational assumptions, the Board is unable to prefer one set of assumptions over the other. The finding that the range of 20% - 31.3% (Bodily Injury/Uninsured Motorist loss costs) is sufficiently precise to allow the Board to give guidance to insurers in relation to the effect that will be considered in 2013/14 rate application filings and beyond. However, this guidance must be tempered by the inherent uncertainty in the timing of the ultimate impact of the reforms to the MIR.
67. The Board therefore orders that insurers file all future rate applications in compliance with the Board issued guidance that has been released concurrently with this decision.

Dated this 17th day of October, 2013 at the City of Saint John;

BY ORDER OF THE BOARD

Paul D'Astous

Ferne Ashford

Kenneth Cochrane

Francine Kanhai

Georges Leger

Matthew Tweedie