Friday, November 22, 2002.

10 o'clock a.m.

Prayers.

Mr. Shawn Graham paid tribute to the memory of the late Robert Lenihan who served as a Liberal Member for Moncton City from 1967 to 1970.

Mr. Jean Dubé paid tribute to the memory of the late Roger Pichette who served as a Progressive Conservative Member for the constituency of Restigouche from 1952 to 1960.

Mrs. Fowlie rose on a question of privilege and claimed that statements made by the Leader of the Opposition during the Throne Speech Debate at yesterday's sitting, and referring personally to her, were completely untrue in every respect.

Mr. Shawn Graham rose to inform the House that he stood by his earlier comments.

Mr. Speaker advised the House that it had been formally ruled by successive Speakers that statements by Members respecting themselves and particularly within their own knowledge must be accepted.

Mr. Stiles, from the Select Committee on Private Passenger Automobile Insurance, presented the Final Report of the Committee which was read and is as follows:

November 2002

To the Honourable
The Legislative Assembly of
The Province of New Brunswick

Mr. Speaker:

I have the pleasure to present herewith the Final Report of the Select Committee on Private Passenger Automobile Insurance. Your Committee was appointed during the Fourth Session of the Fifty-fourth Legislative Assembly by resolution of the House adopted January 11, 2002, and empowered to sit after prorogation of the session.

The report is the result of the Committee's deliberations on the pricing, fairness and regulation of Private Passenger Automobile Insurance and what we may reasonably expect the government to achieve through our recommendations. Throughout the process, our goal was to preserve and improve upon what works for consumers, given the rapidly changing insurance industry conditions. Consumers and industry spokespersons indicated the need for answers to the dilemma of rising costs and much give and take concerning the nature and development of the recommendations was required on the part of all concerned. It must also be acknowledged that the Committee's requirement to remain focused on issues within its mandate meant that certain issues such as commercial and home insurance were not considered at this time.

On behalf of the Committee I would like to thank the citizens, industry representatives and others who attended the public hearings, submitted briefs and generously gave of their time to inform us on the issues and to propose innovative and unique problem-solving approaches.

I also wish to express my gratitude to M. Jean Dubé, Vice-chair and to the members of the Committee who worked tirelessly to consider and reflect upon measures to provide fair, accessible and affordable auto insurance for the people of New Brunswick. Our task was made considerably easier through the diligent efforts of our two resource staff, Mr. Don Pellerin and Ms. A. J. McNutt, who provided research and advice on the shape and scope of the report.

Finally, I must express my appreciation to other Members of this House, to various government officials and to the legislative staff who participated in the process and provided support in this endeavour.

Respectfully submitted,

Wally Stiles, MLA
Chairperson

Ordered that the Report be received

The full report of the Committee as presented follows:

EXECUTIVE SUMMARY

The Select Committee on Private Passenger Automobile Insurance is an all-party committee of the Legislative Assembly charged with examining, inquiring into and reporting to the House the results of its study on automobile insurance issues. Through the public hearing process, particular interest was paid to the concerns of individual

New Brunswick consumers, consumer groups, insurers, regulatory agencies and other identified stakeholders regarding identified benefits and drawbacks to the current system. In considering its mandate, the Committee had several objectives.

• To inquire into and report on the status of private passenger automobile insurance availability and pricing in New Brunswick.
• To seek public input on changes that would improve current practice.
• To explore, prioritize, review and recommend options that emerge from the hearing process.
• To make recommendations regarding legislative or regulatory changes that may be considered by government to improve the current system.

Positions and suggestions that emerged from the hearing process and from the research were considered and the Committee came to the consensus that auto insurance is a more complicated issue than any single approach would suggest. In setting goals for the work of the Committee, two guiding premises prevail. The first is that insurance claims processes should not add to the devastation experienced in serious accident situations. People need to get what people need to have. The second is to recommend changes that will achieve fair, affordable and accessible auto insurance for New Brunswick consumers.

Keeping these premises in mind, the Committee reviewed a broad variety of approaches presented by various groups and individuals. The results of individual consultations and expert advice from inside as well as outside government departments and from the industry itself were considered. The information in the resulting report consists of findings from the overall process as well as what the Committee believes to be solid, workable recommendations.

INTRODUCTION

MANDATE OF THE COMMITTEE

Motion 52 was introduced in January of 2002 in response to concerns over rapidly rising automobile insurance rates, especially in the northern region of the province and for senior citizens. The Select Committee on Private Passenger Automobile Insurance was formed to address three broad objectives that were identified in Motion 52, (dispensed, 11, 01, 2002. See Appendix B)

These objectives are summarized here.

• Inquire into and report on the status of private passenger automobile insurance availability and pricing in New Brunswick.

- Make recommendations regarding legislative or regulatory changes that may be considered by government to improve upon the current system.
- Address the following matters among others: jurisdictional comparisons, no-fault insurance, tort-based system alternatives and refinements, territorial rating, and regulation of automobile insurance rates.

JURISDICTIONAL COMPARISONS

The Committee was asked to gather, provide and analyze information on the forms and effectiveness of automobile insurance regimes in other jurisdictions, paying particular interest to the methods comparable jurisdictions are using to address rising insurance rates and threats to availability of private passenger automobile insurance.

NO-FAULT INSURANCE

A second task outlined in the mandate was to gather, provide and analyze information on the practicability, effectiveness and desirability of introducing any system of "no-fault" insurance in New Brunswick, paying particular interest to the concerns of New Brunswick consumers, consumer groups, insurers, regulatory agencies and other identified stakeholders regarding the identified benefits and drawbacks of a "no-fault" system.

TORT-BASED SYSTEM ALTERNATIVES AND REFINEMENTS

The Committee was also mandated to explore any improvements that may be made to the current tort-based system, including a study of possible alternatives and refinements to the current system. Measures such as claims caps and other ways of limiting awards, extending benefits and restricting claims to economic losses to the insured were to be considered. Proposed alternatives and refinements were to be included in the recommendations.

TERRITORIAL RATING

The Committee was tasked with exploring whether any changes are warranted to the present territorial rating regime for automobile insurance. This task included analyzing studies that identify rationales that support or refute rating systems and rate differentials among groups, regions, and urban vs. rural settings.

REGULATION OF AUTOMOBILE INSURANCE RATES

Exploring the role of the Public Utilities Board in the regulation of automobile insurance rates was also among the tasks outlined for the Committee. Specifically, the committee was asked to pay particular attention to any existing deficiencies in the current regulatory regime and to identify proposals for legislative reform.

PUBLIC MEETINGS AND CONSULTATIONS

The Committee was mandated to carry out public meetings and private consultations to provide New Brunswick consumers, consumer groups, insurers, regulatory agencies and other identified stakeholders with the opportunity to express their views, concerns and proposals for potential improvements to private passenger automobile insurance.

Through the analyses and summaries of written submissions as well as conducting additional consultations with key stakeholders, the report to the Legislative Assembly was to include emergent key findings.

FINAL REPORT

The last task outlined for the Committee was to complete and present a report on the research and findings of all aspects of the described work items.

SELECT COMMITTEE GOALS

Following the mandate described in the previous section, the Select Committee on Private Passenger Automobile Insurance established the following goals.

- Recommend changes that will result in fair, affordable and accessible auto insurance for the people of New Brunswick.
- Ensure that the people of New Brunswick are the Committee's primary focus and concern.
- Give priority to solutions regarding insurance issues for the people in northern New Brunswick and for senior citizens in terms of the groups of citizens who are in need of the Committee's most immediate attention.
- Ensure that the claims resolution process never adds to the devastation that auto accidents can have on the lives of victims. People need to get what people need to have. This is a moral premise that we accept.
- Recommend changes and a clear plan of action.

REVIEW OF THE CURRENT AUTOMOBILE INSURANCE SYSTEM

As the Committee began its work, it was apparent that one of its first tasks was to seek accurate and complete information defining the current purpose and function of auto insurance in New Brunswick. Several sources were consulted and a New Brunswick perspective on the matter of a working definition of insurance was formed.

INSURANCE DEFINED

Insurance in its most pure and simple form is about "risk sharing". Throughout our province's history, people have pooled their

resources to help others in a time of need. Insurance is the formalization of this urge to share the risk in an organized fashion. A report to the government of New Brunswick on automobile insurance by W. W. MacArthur (1973) put the concept this way:

> *. . . insurance is a method of shifting the burdens . . . imposed, whether on the party at fault or on the victim. Insurance provides help to those found liable and assistance to those who cannot shift their loss under fault law to the pocketbook or liability insurer of another (Para. 52).*

The wording of the Insurance Act [R.S.N.B., 1973, c.I-12] further defines the meaning of insurance as:

> *the undertaking by one person to indemnify another person against loss or liability for loss in respect of a certain risk or peril to which the object of insurance may be exposed . . . or to pay a sum of money or other thing of value upon the happening of a certain event. (Insurance Act, Chapter I - 12)*

The Insurance Bureau of Canada and the Canadian Accredited Insurance Brokers Course emphasize the following points as the basis of the current insurance system in Canada.

- Insurance provides a means of shifting one's financial responsibility for a loss to another party.
- Payment will be made only in the event of the happening of a certain risk or peril. The insurance meaning of "risk" is the chance of financial loss to which the object of insurance may be exposed.
- The amount of payment is restricted to the amount required to indemnify the insured. The proper application of the principle of indemnity ensures that people receive the actual amount of their loss, no more and no less.
- Insurance covers losses to which the object of insurance may be exposed. Its purpose is to pay for losses which are both accidental and future. It is not intended to respond to losses which are deliberate or have already occurred.
- The indemnity provided can be in the form of a sum of money or other thing of value. The insurer always has the right to settle a claim on the basis of repair or replacement as opposed to the payment of money (Canadian Accredited Insurance Brokers Course Manual, 1992).

The Insurance Bureau of Canada also expands the concept of the value of insurance as follows.

- Insurance provides a mechanism in which the losses of the few are shared among the many.

- The availability of insurance allows people to engage in many ventures without having to set money aside to meet the financial requirements that may arise from future losses.
- In addition to paying for losses, the insurance industry works hard to prevent them and to reduce their severity and frequency.
- Insurance is also fiduciary and is thereby bound by premises and principles of trust that ensure the public is protected through regulation and legislation.
- Canadian insurers employ or contract services from some 150,000 people who work within and for the industry, some indirectly. *(Basic Fundamentals of Insurance Licensing)*

NEW BRUNSWICK'S INSURANCE HISTORY

In Canada, each province is responsible for the administration of its insurance act, usually through a Superintendent of Insurance. The duties include the supervision of the terms and conditions of insurance contracts, the licensing of brokers and insurers in the province, monitoring the financial stability of licensed insurers and investigating and auditing insurers.

The Government of New Brunswick has long recognized the importance insurance plays in our society and accepts responsibility for governance in matters dealing with auto insurance in the province. Premier Louis J. Robichaud, QC, addressed this topic in a 1969 speech to the Association of Superintendents of Insurance of the Provinces of Canada, held in St. Andrews on September 8 of that year. According to Robichaud

> *the insuring public has a right to receive adequate, generous insurance coverage, meaningful service with respect to its need, meaningful service in respect of settlement of losses and such insurance and service at a cost attuned realistically to the product and to the present day realities that the motor vehicle is a necessity and way of life in Canada (Robichaud, 1969, p. 6).*

He went on to observe that

> *Government must constantly keep reviewing the situation. It is a difficult question, one without an easy solution. In New Brunswick, we constantly are keeping under consideration all aspects of the problem. So far, we have accepted the traditional aspect in industry self-regulation and participation. However, if it should appear that this is not the approach that serves the pubic interest, then the government will not hesitate to accept its full responsibilities to the people of the province. . . .The government's duty is to keep a watchful eye over all sectors of the economy to provide basic protection for our people (Robichaud, 1969, p. 9).*

Over the years, governments have provided "protection for our people" (Ibid.) in matters of insurance. Establishing the Select Committee on Private Passenger Automobile Insurance demonstrates the continuing seriousness with which the current government regards auto insurance issues.

Charged with the tasks set out in Motion 52, the Committee understood the need to examine the rapidly changing issues and to deal expediently with recent complications that have arisen for consumers of insurance and the industry. The next section of this report identifies and describes current issues from a variety of perspectives.

INSURANCE ISSUES IN NEW BRUNSWICK IN THE YEAR 2002

It is clear from the research and from the public hearings that there are a number of issues regarding current auto insurance practices in New Brunswick that require attention. It is also clear that recommendations arrived at by the Committee must reflect the perspectives of stakeholders.

To a large extent the public consultation process demonstrated an openness and willingness to share information. Admittedly, some industry stakeholders were more reluctant than others in providing answers to the Committee's questions. Some maintained that certain industry information is regarded as private and confidential. Generally speaking, however, the open forum of public meetings and presentations to the Committee resulted in a co-operative stance by most of those concerned.

This section of the report deals with the issues and information that emerged from consultations, the public hearings and the research. It should be noted that in many instances the varying perspectives and solutions suggested in some presentations directly contradicted solutions suggested by others. It is for this reason that not all of the suggestions emanating from the process translated directly into formal Committee recommendations.

NEW BRUNSWICK INSURANCE INDUSTRY STATISTICS

Insurance, in any form, plays an important role in people's lives.

It provides the needed financial protection in case of loss and plays a very important role in supporting a strong economy, not only from a financial protection perspective, but in the creation of jobs and investments.

Direct insurance jobs include agents and brokers, adjusters and appraisers, office support staff, and auto repair shop personnel. Less directly, are those employed in property repair, construction, second hand auto parts garages, and tow truck businesses. The medical and legal communities may also draw income from the industry.

In New Brunswick alone, Property and Casualty insurance, including auto insurance, is estimated to employ close to 2,800 New Brunswickers directly and indirectly. Invested assets are estimated at more than $1 billion. The economic implications of the growing threat to insurance related positions, especially in the north of the province, are of concern to the Committee.

REGULATORY AND STATUTORY ISSUES

It is important to note that changes to auto insurance regulations are a matter of provincial jurisdiction. Changes to the Insurance Act, when passed by the Legislature, have an impact on existing systems and require compliance. All insurers doing business in the province must follow the regulations provided for under provincial statutes. For example, insurers are registered and licensed under the Insurance Act when they enter the province to do business. Insurers should also be required to provide advance notice before withdrawing from the New Brunswick market.

UNINSURED DRIVERS

Experience demonstrates that unlicensed drivers with uninsured vehicles are a public safety problem. The most obvious solution is to increase enforcement levels and provide deterrents in the way of heavy fines or related punishments for repeat offenders.

Unlicensed drivers with uninsured vehicles involved in accidents are held to be at fault and therefore responsible and accountable for damages resulting from the accident. In this case, the subrogation settlement would be the responsibility of the uninsured driver.

In response to this issue, the Manitoba Public Insurance Program (MPIP), requires drivers to present a certificate of valid insurance before a driver's license is issued, whether or not the client actually owns a vehicle. In addition, any driver convicted of driving without a valid license or insurance must be retested. New drivers are subject to the same restrictions.

MANDATORY INSURANCE

It would seem logical that Section C of Standard Auto Policy No. 1 (SPF No. 1, Loss or Damage to Own Automobile) coverage be made mandatory before a safety inspection sticker is issued. Some presenters suggested that coverage under this section should be mandatory on all registered vehicles.

CITIZENS' RIGHTS AND THE TORT- BASED SYSTEM

The insurance industry reports that the actual number of catastrophic loss victims is relatively small. The difficulties noted by the insurers arise when court awards exceed what the industry regards as reasonable. The industry perspective is that there should not be economic recovery where there has been no economic loss. Benefits under section "A", (the Third Party Liability Section) of the current SPF No. 1, are usually referred to as pain and suffering. Limits to this section are the subject of much discussion in New Brunswick and elsewhere in Canada and in the United States. The industry's opinion is that adjustments to this section of the SPF No. 1 need to be considered and that major adjustments may be necessary, considering the implications of tort law.

Furthermore, under Statutory Conditions (Section 6; - 3) regarding Limitation of Actions, where there is active, good faith negotiation on settlement and where formal legal proceedings have not commenced within the present two-year period, the court should have jurisdiction to extend the limitation period for three months if the court were satisfied that the further right to file legal proceedings would be fair and just in the circumstances.

COMMERCIAL VEHICLE INSURANCE

A related issue that lies outside of the mandate of the committee, but was present in at least two briefs, concerns the issue of commercial vehicle insurance. At present, for example, some trucking companies report that it is less expensive to settle some claims (Section C and deductibles for Section A) than it is to carry insurance. Some arrangement should be made to adjust the third party liability factors and Section C coverage to avoid problems that may occur if any changes are made to the SPF No. 1.

TERRITORIAL RATING

A change from the current practice of regarding all of New Brunswick as one territory for purposes of Section A (Third Party Liability) is a major issue that requires extensive exploration, discussion and direction. Many consumers are of the opinion that any change could unfairly discriminate against certain territories. Territory 1 (Moncton, Saint John and neighbourhood) and Territory 2 (Fredericton and neighbourhoods) consumers may feel that they will in effect be subsidizing the cost of insurance for people within Territory 3 (counties of Madawaska, Restigouche and Gloucester). Territory 3 consumers may not agree that reportedly higher loss costs within their territory can and do drive premium pricing.

In a brief (July, 1984) to the Minister of Justice, H. J. Phillips, Senior Vice-president and Chief Actuary of the Insurers' Advisory Organization, made the following comments based on the organization's research and analysis of Territorial Rating in the Province of New Brunswick.

> *Frequency of claims, claim severity and loss costs all show the same indication, with the major cause of the problem being the frequency of claim. Territory 3 (counties of Madawasksa, Restigouche and Gloucester) with a five year average frequency of collision of 7.89 claims per hundred cars insured is approximately 35 per cent higher than the average for the other two territories. Similarly, Territory 3 for Comprehensive shows the frequency to be 20 per cent higher than the other two territories (p. 2).*

Phillips goes on to observe that

> *Based on this review, it can be concluded that the problem does not lie within the insurance industry. No basic principles of insurance have been violated and the problem and ultimate solution appear to be within the territory itself. Whatever steps possible, after due study of the causes, must be taken to reduce accident frequency and severity. If the problem arises from geographic location, weather, poor roads or enforcement of traffic violations, these must be isolated and corrective action taken as the first step. The premium rate levels by territory would then take care of themselves with an equalization of rates taking place as accident frequency was reduced (Ibid. p. 3).*

Consideration also needs to be given to accident prevention. We know, for example, that fatal vehicle accidents in New Brunswick have diminished dramatically over the years, (from 112 in 1999 to 76 in 2001) but indications are that some areas of the Province (Territory 3) continue to have a statistically higher rate of occurrence than others.

Additionally, two separate IBC presentations indicated that although the frequency of claims is decreasing, the severity, and therefore the cost of claims, is on the increase. Statistics compiled from the annual report of the New Brunswick Coroner's Office confirm the industry's stance.

CORONER'S REPORT

The New Brunswick Coroner's Office publishes an annual report that provides information on all investigated deaths in the province. Part of this office's report is on New Brunswick highway deaths.

The following table indicates the total number of highway deaths (code 620 - Collision deaths) in each Judicial District for years 1999-

2001

District 1 - Fredericton	47
District 2 - Saint John	44
District 3 - Moncton	60
District 4 - Newcastle	22
District 5 - Bathurst	46
District 6 - Campbellton	19
District 7 - Edmundston	19
District 8 - Woodstock	37
Total	**294**

The total number of New Brunswick highway deaths from April 1st to March 31st yearly:

Year 1999	112
Year 2000	106
Year 2001	76

The number of deaths broken down by gender for the years 1999, 2000 and 2001 is indicated in the following table.

Year and Gender breakdown	
Year 1999	
Male	78
Female	34
Year 2000	
Male	82
Female	24
Year 2001	
Male	51
Female	25

The next table breaks out each of these three years by age group.

Age Group	1999	2000	2001
0-15	4	12	3
16-24	24	18	19
25-30	15	15	5
31-40	14	19	14
41-50	17	11	6
51-60	10	10	7
60-65	7	3	2
66-70	6	2	2
70 +	15	16	18

Issues of public safety continue to exist even though the statistics clearly indicate that vehicle fatalities are on the decrease. The insurance industry concludes, as does the Committee, that work needs to continue in this area.

AGE AND GENDER DISCRIMINATION ISSUES

Concerns about age and gender discrimination were presented several times over the course of the public hearings. Suggestions and recommendations presented at the hearings led to the Committee's recommendation (see recommendations section of this report) that all new drivers, regardless of gender and age, be required to take part in driver education programs before applying for testing. With education programs in place, further consideration of reductions in the present premiums for drivers ages 16 to 24 might be possible.

Other presenters advocated a system that would identify and penalize only drivers who prove to be irresponsible or uncaring. Insurance premiums would be tied not to gender, location or age, but to the driving record of the individual. A system of demerits, such as the one currently employed in Manitoba, would link premiums to such factors as an at-fault accident, any two moving violations or any relevant violations of the Criminal Code of Canada. The high rate Facility Association program would then be limited to drivers who are repeat offenders, convicted of impaired driving or dangerous operation of a vehicle.

DRIVER SAFETY

The Province already recognizes the positive results of safe driving courses and the present graduated licensing program. Some presenters suggested that these programs could be expanded to include mandatory Road Side Safety and Driving Safety programs for all new drivers and that funding for programs and enforcement could come from imaginative cost recoverability initiatives. Savings could be realized from reduced costs related to health care and public safety. Financial support could also come from the industry. As another example, Manitoba applies a surcharge when a license is granted for the first time or when a suspended license is reinstated. This practice creates a source of additional revenue for the Manitoba Public Insurance Program (MPIP).

CLAIMS CONTROL

Even with the best safety program possible in place and enforced, there will be accidents. Recent history of the rising costs of claims made against policy issuers makes it clear that there is a need for new approaches to the legal costs involved in the handling of claims.

The cost involved in the actual claims settlement also cries out for attention. A process that makes the claims awarded more proportionate to the level of compensation arranged for before the accident is one idea that has merit.

Some of the following steps might be involved in this type of proportionate compensation.

The present system, for example, allows two full calendar years less one day for an accident claim to be filed. It seems obvious that with the technology now available, the assessment of the costs of injury and damage can be expedited. Auto related initial injury reports could be considered to be the first stage of any claim.

One related idea from the legal community was the creation of an insurance compensation review agency (with a relevant appeal process) where all claims under a set limit would be examined before payment. This overview system would help to solve the problems associated with small claims where out of court settlements are often made for convenience or in an attempt to avoid higher settlements.

It was also suggested during the hearings that a centralized system that could provide damage assessment information on a province-wide basis would be required. Damage would be estimated and information shared through the system. Clear identification of the use of new or reconditioned parts and a statement of the established value of the vehicle were also suggested as partial solutions to abuse issues. Recent reports of "fake" airbags installed on repaired vehicles appears to reinforce the position that more supervision of damage assessment and repair aspects of the insurance system may be required.

FAIRNESS FACTORS

If motorists expect to be protected and compensated by the insurance carried by others, then it is only fair to require all motorists to carry adequate insurance. This would result in a mandatory system that protects victims of accidents and promotes fairness in the industry.

Furthermore, linking vehicle registration, the driver's license and insurance coverage into a package would result in greater stability and fairness in insurance. Enforcement and fines that make uninsured and unlicensed drivers responsible for some part of the costs of claims would also help. One suggestion is that a person carrying a minimum amount of mandated insurance would be unable to obtain compensation for more than the amount carried. This limitation would apply regardless of the amount of insurance

carried by the other party or the finding of who was at fault for the accident itself.

The Committee understands that any reform proposals applying to private operation and ownership of motor vehicles will eventually apply to commercial vehicles as well. While the area of commercial coverage and responsibility is outside the mandate of the committee, consideration of any change to insurance for motorized vehicles will also apply to motor vehicle traffic that is commercial in nature. Issues such as transportation of hazardous waste, physical property damage and third party liability may require far more coverage than the mandated coverage for private vehicles, since the risks of major damages are clearly higher. The Committee, therefore, notes that the matters affected by this report extend beyond its mandate.

REGULATORY REGIME

The issues touched on in this section of the report emerged from a review of the literature that included jurisdictional comparisons as well as a review of past and present New Brunswick regulatory practices. Consultation with industry experts and key stakeholders regarding New Brunswick's current regulatory regime revealed the opinion that more supervision and control of the many factors involved with auto insurance are needed. Insurance needs to be regulated and consumers need to be protected on the basis of insurance carried and claims made. The responsibility for regulatory control should be well understood and respected and firmly established by government. Although the task of oversight is complex and often challenging, the balance point between fair rates and fair claims is too important to be left to the current self-regulating system.

PUBLIC HEARINGS

The preceding section of the report identified current New Brunswick issues in automobile insurance through analysis of the briefs (written and presented), a survey of the literature and a number of consultations. While comprehensive in nature, this part of the report limits itself to those issues that were most often part of the questions and answers posed during the Public Hearing process. The intent was to produce a final report that groups together

- Areas of concern that emerged from the literature.
- Issues that emerged from jurisdictional comparisons.
- Results of consultations with various stakeholders and industry experts.
- Common outcomes from the hearings process.

- Clear recommendations that result in fair, affordable and accessible auto insurance for the people of New Brunswick.

The public hearings that took place in five locations touching all regions of the Province (Fredericton, Saint John, Moncton, Bathurst and Edmundston) over the month of June, 2002, provided the public with opportunity for input to the process. A number of areas of concern (see Appendices) emerged from the public hearings, regrouped here under four main headings.

- Protect the public
- Enhance preventative initiatives
- Explore new approaches
- Address industry issues to make insurance accessible and affordable

A brief description of each of these main headings follows.

PROTECT THE PUBLIC

Protecting the public was a theme that was repeated over the course of the public hearings across the province. Several briefs that presented the perspective of the legal profession in New Brunswick and elsewhere, strongly opposed approaches to reform that encroached on the rights of auto accident victims. The Law Society of New Brunswick for example, presented a 67-page brief outlining the benefits of the tort-based system and the flaws of no-fault systems in other provinces and American states.

The Law Society's brief makes no specific recommendations to the Committee but the major points are clear. The final paragraph of page 49 can be taken as a summary of their presentation.

> *Reforms aimed at reducing the number of accidents and reducing the cost of administering claims should be developed and implemented before taking away substantive rights is even considered an option. Even the removal of profit from the equation by the establishment of a non-profit government owned insurer would be a better solution than depriving innocent victims of accidents their right to full and fair compensation (p. 49).*

Other repeated themes that relate to the issue of protecting the public included control and punishment of uninsured drivers, protection of victim rights and long-term care costs, enforcement issues, higher minimum coverage, harmonization of Atlantic Provinces insurance systems, tighter control over insurance companies and their rates and procedures, elimination of discrimination by age or gender and a prohibition on the use of cell phones while driving.

ENHANCE PREVENTATIVE INITIATIVES

A second theme focused on the desire to improve existing procedures. Items common to this theme included

- Road safety design, construction and improved signage.
- Extending safety and risk education to public.
- Establishing stricter controls over fraud.
- Establishing much tighter inspection of commercial and private vehicles.

Several of the preventative initiatives and improvements that were of concern to presenters are included in the report's recommendations.

EXPLORE NEW APPROACHES

A third theme taken up by many presenters was to explore new approaches and procedures. Several ideas echoed material that had been researched for the Committee's consideration. Many of these ideas were further developed and incorporated into the recommendations section of this report. A summary of these ideas follows.

- Change the drivers' licensing system.
- Establish a small claims commission.
- Use Vehicle Identification Numbers (VIN) for registration and repair systems.
- Set limits on catastrophic loss claims by schedule.
- Make territorial changes that reflect the reality of costs.
- Retest for driver competence and aptitude at staged intervals.
- Impose structured settlements for most non-catastrophic injuries.
- Establish a co-operative effort between companies and government to link registration and insurance.
- Reward good drivers with insurance points.
- Consider changes to the tort system.

INDUSTRY ISSUES THAT MAKE INSURANCE AVAILABLE AND AFFORDABLE

Another theme addressed in many briefs was that the insurance industry itself needs to undertake certain measures in order to make auto insurance more affordable, accessible and fair for the people of New Brunswick. Presenters suggested that the industry

- Reduce the costs of doing business.
- Establish higher minimum coverage.
- Control fraud for both injury and damage.
- Develop strategies to avoid inappropriate pay out of claims by insurers.

- Employ fair and just compensation principles.
- Change the territorial systems.
- Impose court structured settlements.

Suggestions and recommendations from the briefs presented frequently reflected the experiences and practices of other provincial jurisdictions. The research undertaken also supported many of these themes and specific "best practice" models from many jurisdictions. The resultant recommendations are developed in the next section of this report.

RECOMMENDATIONS

The areas of concern developed in this section of the Committee's report emerged from the public hearings and from the tasks as identified, researched and completed in compliance with the Committee's mandate.

CONTROL OF ADVERTISING

Recently, the number of billboards advertising the services of lawyers who specialize in auto accident insurance claims has been increasing in several regions of the province.

Recommendation

The Committee recommends that this matter be referred to the Law Society to explore in terms of the type and suitability of advertising.

AUTO INSURANCE TELEMARKETING

The Committee members viewed the issue of auto insurance telemarketing and its effect on middle market availability with concern. Some telemarketers have no New Brunswick presence (i.e. may not have licensing agreements with the Office of the Superintendent). These marketers come into the province seeking easily serviced consumers on the basis of low-priced coverage.

Four things follow:

- Telemarketers often select the "best" clients, leaving local brokers to deal with less desirable clients who must pay higher premiums based on the amount of risk such clients bring to the table.
- Secondly, it is clear that revenues generated through insurance telemarketing go out of local communities and likely out of the province.
- Telemarketers customarily do not make clients aware of the fact that a chargeable claim often results in policy non-renewal. Once the policy renewal date occurs, the client who is now without insurance must try to go back to the original New Brunswick

agency or broker. The original broker, however, is often not able to serve the client because of the marketer's refusal to renew. At this point, if the original/local broker is able to serve the client at all, a substantial increase in premium usually results.

- Finally, telemarketing companies that come into the province with little in the way of investment are usually the first companies to leave when and if there is pressure on the industry. Clients of such companies are left with little or very high cost service, for which they often blame the original/local broker who is often the innocent victim of the questionable practices perpetrated by telemarketers.

Recommendation

The Committee recommends that insurance telemarketing be more strictly licensed and regulated and that the enforcement of insurance telemarketing regulations be carried out by the Office of the Superintendent.

MIDDLE MARKET GROWTH

The Committee expressed the related concern that the current insurance environment in New Brunswick does not sufficiently support the growth of middle markets. These are the markets that are needed to serve the majority of clients who are presently being unjustly forced into Facility Association. Increasing growth and accessibility to middle markets will benefit these New Brunswickers directly (including consumers in northern New Brunswick and senior citizens) and all New Brunswickers in the long run.

The Public Utilities Board has within its mandate the ability to make positive changes in this area by favouring rulings that encourage growth of middle markets and acting expediently with regard to Facility Association rate filing.

Recommendation

The Committee recommends that PUB ensure the continued presence and growth of middle markets by expedient disposition of Facility Association rate filing requests.

OFFICE OF THE SUPERINTENDENT OF INSURANCE

The responsibilities of the Office of the Superintendent of Insurance need to be examined for efficiency and accessibility. After several months of studying the insurance situation in New Brunswick, it has become apparent that a re-examination of the functions and roles of the Office of the Superintendent of Insurance and the related functions of the PUB regarding auto insurance is required. Each has potential for change that will enhance fairness, affordability and

accessibility of auto insurance for consumers. The Select Committee's mandate is to explore and recommend solutions for the private passenger sector. It has concluded, however, that a new insurance environment needs to exist to ensure all lines of insurance are available and affordable in all regions of the province.

Because auto insurance is mandatory in this province, the government's attention is naturally focused on this line of insurance. Although auto insurance is the largest line of insurance business transacted in New Brunswick (a typically balanced book comprises 65 per cent auto insurance), homeowners insurance and commercial (auto and property) are also important and should also receive attention.

As shown in other parts of this report, the inter-connection among all types of insurance means that what affects one line directly may subequently affect the others. Homeowners' insurance, for example, is as important as auto insurance in the everyday lives of New Brunswickers.

Furthermore, affordable and available commercial insurance supports the growth and stability of the province's economy. It is important to note that although the Committee's mandate is limited to auto insurance, the future of other insurance business remains vulnerable to most of the same factors as auto insurance.

Recommendation

The Committee recommends that there be a co-ordinated effort between the Office of the Superintendent of Insurance and the Public Utilities Board regarding the handling, monitoring and managing of auto insurance, making absolutely certain that the government is well informed and fully aware of emergent issues.

The Committee further recommends that the Office of the Superintendent of Insurance be reviewed and amended to bring its *roles and functions in line with the recommendations in this report.*

CONSUMER ADVOCACY

The Committee expressed concern that New Brunswick trails other jurisdictions with regard to consumer advocacy. Consumers at the public hearings consistently reported that they did not understand why they were being "sent to Facility". While this may be a question of consumer education, it may also mean that someone knowledgeable in insurance needs to advocate for consumers on a daily basis. Furthermore, a consumer advocate would

- Be independent of PUB and the Superintendent's office.
- Monitor for non-compliance and assurance of availability.

- Monitor entry and exit guidelines for Insurance Companies (OIC 70 -162).
- Monitor telemarketing practices.
- Oversee mergers/acquisitions of brokerages.

Recommendation

The Committee recommends legislation to provide for a full time consumer advocate to be appointed by government to intervene in PUB rate hearings, the cost to be paid by the board and passed on to the industry through assessments.

CONTROL OF PROOF OF INSURANCE

All New Brunswick vehicles must carry insurance coverage. One of the problems within the existing system concerns motorists who do not insure their vehicles adequately. An enhanced process for ensuring mandated coverage could be attained through the use of data banks and software programs to enable rapid monitoring and enforcement. Several Canadian jurisdictions currently and successfully combine vehicle registration and proof of insurance. Registration tied directly to insurance coverage ensures that no insurance would mean no registration.

Recommendation

The Committee recommends that insurance coverage be tied directly to vehicle registration with monitoring and enforcement processes as follows:

- Print insurance certification information directly on the New Brunswick vehicle registration form with clear notice that canceling insurance means canceling registration.
- Develop the process through IT solutions developed by e-business.
- Synchronize registration and insurance due dates/renewals.
- Produce license plate stickers as proof.
- Those wishing to cancel insurance would be required to turn in their plates.

CREATE AN ARBITRATED RESOLUTION PROCESS

Our present New Brunswick legal system provides limited options as to how insurance claims are settled. The predominant manner of settlement through the courts is inherently adversarial. This system, though effective in serious injury situations, has proven to be less effective for smaller claims. Smaller claims are defined here as those where there has been no serious injury and where the amount asked for by the victim or offered by the insurer is less than $50,000. In an arbitrated resolution process (ARP), small claims cases could be

resolved without the direct involvement of the courts and to the satisfaction of all concerned; victims, insurers and government.

• For the victim, ARP offers a fair, expedient, less expensive, less confusing and less stressful resolution. ARP allows victims the opportunity to have their say and validates that they were victims of accidents, regardless of fault.
• For the insurance company, ARP offers a speedier and less expensive alternative to a normally time-consuming process. ARP may also curtail the inappropriate industry practice of "paying out" difficult claims thus fighting fraud and judiciously settling what the industry regards as nuisance claims.
• For government, ARP with a clear set of guidelines would clear valuable court time for other matters.

Auto insurance in New Brunswick is a hybrid system that provides certain basic benefits on a no-fault basis, yet allows virtually unrestricted access to tort remedies. The Committee does not wish to move away from a tort-based system, but sees the potential in ARP as an alternative process. By offering a faster, fairer, more expedient and less expensive process, ARP would permit more money to go to the injured without compromising victims' tort rights.

Several briefs from the legal community supported the principle of simplified dispute mechanisms. Each of these briefs provided solid arguments in support of such a system. All suggested that some form of arbitration process would serve all parties well.

For such a system to really accomplish the goals of ARP, however, the system needs to be binding on all parties concerned. Otherwise, any party not satisfied with the decision would likely revert to the direction of the courts. Without the binding factor, such an arbitration process would simply create another bureaucratic level without significant value.

An additional and important factor is the saving of administrative and legal costs in dealing with all such claims that have not been resolved within one year after a legal proceeding has commenced. The Committee's view is that any arbitration mechanism also ensures the victim's right to appeal and that insurers would be less likely to pay for the sake of settlement. Claims benefits under ARP will be directed to those that have suffered a loss. Both parties could also agree to early arbitration if there is a wish to settle in a more expedient manner.

Several briefs suggested that the costs of arbitration be borne equally by the parties so that each has a stake in the resolution of the matter

in a quick and orderly fashion. The arbitration process would consist of lawyers, doctors, medical practitioners, insurance people and lay people. The arbitration process would need to be heard and a decision rendered within a set time period.

As stated by one presenter at the public hearings, arbitration provides a simplified straight forward process for resolving disputes at less cost. Arbitration also assures quick, fair and just settlements.

Recommendation

The committee recommends that an Arbitrated Resolution Process (ARP) be developed as a valuable tool in the service of injured victims, the insurers and government. ARP is a dispute mechanism that is meant to bring about a complete, mandatory, adjudicative and binding system that is more readily accessible to all New Brunswickers.

The Committee further recommends that

- ***The arbitration process be established to deal with economic and non-economic loss for claims under the amount of $50,000.***
- ***The arbitration process could also be used for higher amounts if mutually agreed to by all parties.***
- ***The process ensures victims' rights to appeal.***
- ***The process provides expedient, fair resolution, at lower cost and with less frustration.***
- ***The Law Society and the Department of Justice be asked to develop the process.***

EDUCATION

The Committee considered a number of measures regarding public education. These measures are designed to make the driving public more aware of its own responsibilities for the safety of all drivers. Programs similar to these have been tried with varying levels of success in all the jurisdictions consulted for "Best Practices" models.

Recommendation

The Committee recommends that the following programs and approaches become part of the Government's new directions for driver education and public safety:

- ***Enhance the graduated licensing program.***
- ***Establish compulsory safety driving courses for all new drivers.***
- ***Require mandatory vision testing by the Department of Motor Vehicles (or proof of vision fitness for driving from a licensed optometrist) every 10 years.***

- ***Require completion of mandatory safety driving courses for any repeat offenders convicted under sections of the Criminal Code of Canada that relate to vehicles.***
- ***Enhance classroom road safety programs.***
- ***Place emphasis on educational programs that focus on accident prevention, saving lives and reducing injuries.***

ROAD USER SAFETY

Road user safety initiatives are an important factor in making New Brunswick roads safer. Such initiatives will result in fewer and less severe accidents and a reduction of auto insurance claims. Road user safety includes encouraging changes in driving behaviour and attitude. The Government of New Brunswick promotes road user safety through strategic planning and development and implementation of driver and vehicle related initiatives to raise public awareness.

In this regard, the Committee identified two issues: factors relating to repeat offenders of driving related offences under the Criminal Code of Canada (CCC) and factors concerning improvements to the physical aspects of roads in the province. Accordingly, the Committee's recommendations relating to road user safety reflect both factors.

Recommendation

The Committee recommends that for repeat offenders of driving-related offences under the Criminal Code of Canada (CCC), the government act to

- ***Establish an escalating fine schedule.***
- ***Impose the loss of driving privileges with appeal after five years for repeat offenders under CCC and those charged under the impaired driving legislation.***
- ***Ensure that stricter guidelines are in place for these offenders regarding the re-instatement of driving privileges.***

Secondly, regarding factors concerning improvements to the physical aspects of roads in the province, the Committee recommends

- ***Installation of rumble strips at major intersections and on major highways.***
- ***Inclusion of the installation of rumble strips in future road building initiatives.***
- ***Adding flashing red lights to major stop signs, supplemented by rumble strips at certain major intersections.***
- ***Creation of a New Brunswick Traffic Safety Division within***

the Department of Public Safety that mirrors the successful tasks and procedures already in place in other jurisdictions.

NEW BRUNSWICK AUTO POLICY :
STANDARD POLICY FORM (S.P.F. NO 1)

The Committee, in public hearings, jurisdictional comparisons and with a knowledge base from the research, considered several issues concerning the New Brunswick Auto Policy: Standard Policy Form (S.P.F. No 1).

Insurance is based on the principle of shared risk. Citizens are generally expected to contribute in proportion to their expected outcomes. In insurance, however, claims may be made despite disproportionately low contributions. Responsible citizens should expect to take any steps possible to protect others from hardships they may inflict. New Brunswick drivers must also be conscious about the needs of others. The Committee concluded that coverage could be enhanced in a manner that will assure sharing the risk comes at affordable cost.

The following recommendations are intended to assure that all citizens are properly covered to bring this section in line with its original purpose. These changes also aim to enhance consistency in court interpretations.

SECTION A
THIRD PARTY LIABILITY

The Committee supports the intent that third party liability coverage be sufficiently increased to reflect the rising costs being incurred by accident victims.

Recommendation

The Committee recommends that Section A, Third Party Liability be changed so that Minimum Mandatory Third Party coverage be increased to $500,000 from the present minimum limit of $200,000.

SECTION A
STRUCTURED SETTLEMENT

The Committee supports the position that any large third party award should be used to protect the victims and assure that any award is used as intended; i.e. to protect and assure any future care and needs of the injured.

Upon consulting with and on the advice of members of the legal profession, the Committee supports the position that the use of court-structured awards ensures the protection of minors, head injured victims and other catastrophically injured persons. Court

structured awards also offer court advocacy for victims who can no longer advocate for themselves.

Recommendation

The Committee recommends mandatory court ordered structured settlements for under age victims of auto accidents, and for victims having suffered serious and permanent head injuries, or in any other case judged necessary by the court.

SECTION B

ACCIDENT BENEFITS
SUBSECTION 1 (2)
FUNERAL EXPENSES

This section reads that Funeral expenses " . . . [may be] incurred up to the amount of $2,500, in respect to the death of any one person" (SPF No. 1, p. 2). This amount is low by current economic standards. This amount could be increased either by offering higher limits to the insured at a minimum additional premium or by doubling the amount under this section.

Recommendation

The Committee recommends that the amount specified for funeral expenses (SPF No. 1, Subsection 1 (2), Funeral Expenses) be doubled.

SUBSECTION 2
DEATH BENEFITS AND LOSS OF INCOME PAYMENTS

Death benefits, as they are presently offered, are low. The Committee suggests consideration of the idea that additional death benefits be offered to the insured at an additional premium. This is a practice in other jurisdictions and, in some, has proven to be an attractive addition to the auto policy.

PART II
LOSS OF INCOME
SECTION 2

The term "unpaid housekeeper" no longer truly reflects the importance of this role to the social structure of family life, and the importance of these citizens and workers to society as a whole.

Recommendation

The Committee recommends that

- ***The term housekeeper be changed to reflect the importance of such individuals.***

- ***The benefit amount should be changed to reflect the importance of women to society and their families.***
- ***The benefit period be increased to a maximum of 104 weeks.***
- ***The benefit amount be increased to $125 per week.***
- ***There be an additional amount of $20 per week for each dependent child still residing at home.***

STUDENT BENEFIT

Currently, students attending technical colleges, universities or any other post-secondary institutions, for a period of not less than two years, are not properly covered.

Recommendation

The Committee recommends that any student fulfilling the requirements of an academic or technical program and attending school full time shall be entitled to the same rights and benefits as other employed people.

PART 2

SECTION 3(B)

Amendments to this section will eliminate ambiguity concerning the original policy intent. The Committee recommends that this section be made specific so that long term benefits are clearly understood to be as follows:

The term "to age 65" means exactly that. In some cases the courts have ruled that without the specific age limit stated in the policy description, it could be assumed that benefits could be awarded for any length of time as determined by the court. In some situations there may be continuation of special medical care. If the treatment accustomed to by claimants is not available through the regular social net, the insurer must be responsible to continue such treatments.

Recommendation

The Committee recommends that benefits be awarded until the age of 65 (meaning the day the person turns 65) as follows:

- ***Full weekly benefits up to age 65.***
- ***The benefit amount be reduced by 50 per cent at age 65.***
- ***The amount be further decreased by 10 per cent each year on the date of birth until the age of 70, when all benefits cease.***

SECTION C

LOSS OF OR DAMAGE TO INSURED AUTOMOBILE

This section deals with damages to the insured's owned auto. The possible endorsements under this section may encompass: All Perils,

Collision, Comprehensive, or Specified Perils. This section is not mandatory at present in New Brunswick, and coverage is left to the insured.

Each jurisdiction deals with this section differently. New Brunswick leaves it to the insured to decide whether coverage is wanted. Normal deductibles are $250 for Collision and $100 for Comprehensive. The recent trend, however, has been to have higher deductibles which, in turn, reduce the premium. A related issue is the trend for some companies to insure only those vehicles that are less than ten years of age. It should therefore also be made clear that any vehicle, regardless of age, that has passed the annual New Brunswick inspection not be refused coverage by any insurer.

Concern was also raised that the insured who are "not at fault" are, in some instances, looked upon by various companies as having made claims. Some insurers use accident fault charts to establish a value for the degree of fault claimants are assigned. As a consequence, these claimants are then considered to be "bad risks" by certain insurers, resulting in the refusal of renewal or an increase in premiums.

Recommendation

The Committee recommends that PUB review the industry practice of using accident fault charts as an expedient method for determining fault under Sections A and C and that its use be restricted.

TERRITORIAL RATING

The Committee spent a great deal of time and effort gathering information and weighing options concerning the current New Brunswick territorial rating system. In its deliberations, the Committee considered current and best practices in other jurisdictions, explored the origins of the New Brunswick territorial rating system and examined the implications of change on many levels.

The Committee came to the conclusion that the current system creates a prejudicial situation in areas of the province where accessibility to insurance is an issue. The Committee expressed concern that some regions are penalized more heavily than others and that the system would be fairer if the territories were equally populated.

The 2001 census gives the total population of New Brunswick as 729,458. The three tables below indicate how the population is currently distributed across the insurance territories.

Territory # 1	**Population**
Albert	26,749
Charlotte	27,366
Kings	64, 208
Saint John	76,407
Westmorland	124,688
Total	**319,418**
Percentage of total NB population	43.8%

Territory # 2	**Population**
Carleton	27,184
Kent	31,338
Northumberland	50,817
Queens	11,862
Sunbury	25,766
Victoria	21,176
York	87,212
Total	**255,355**
Percentage of total NB population	35%

Territory # 3 (Old territories 3,4,& 5)	**Population**
Gloucester	82,929
Madawaska	35,611
Restigouche	36,134
Total	**154,674**
Percentage of total NB population	21.2%

While altering the territory boundaries to reflect a more equitable distribution of the population may not immediately solve the problems being experienced by the insured in northern New Brunswick, the Committee concluded that a thorough review of the geographic and population make up of the territories must be conducted.

In addition, the analyses of loss costs as reported by the insurance industry give further indication of the escalating cost differentials among the territories. The next three tables indicate the loss costs in actual dollars and loss costs by percentage by territory for the year 2001 (figures supplied by IBC).

Section A	**Territory #1**	**Territory # 2**	**Territory # 3**
Loss cost per vehicle	$515	$629	$623
Section A Loss Ratio	116%	141%	134%

Table 1 - Loss costs in dollars and loss costs by percentage by territory for the year 2001

Section B	**Territory #1**	**Territory # 2**	**Territory # 3**
Loss cost per value (Accident Benefits)	$104	$117	$175
Accident Benefits Loss Ratio	133%	148%	194%

Table 2 - Loss cost per claim value and loss ratio by percentage for Accident Benefits

Total Policy (All sections combined)

	Territory #1	**Territory # 2**	**Territory # 3**
Loss Cost Per Vehicle (All coverage)	$795	$927	$963
All coverage Loss Ratio	101%	115%	118%

Table 3 - Loss cost per vehicle and loss ratio by percentage for all coverage.

The current New Brunswick system of setting the boundaries that determine the territories is not clearly evident under the Insurance Act. Under the Act, (Section 75 - 1), however, the Office of the Superintendent of Insurance delegates the collection and filing of statistical information to the Insurance Bureau of Canada (IBC). Under the subsequent Section (75 - 2), IBC also creates the Statistical Plan that becomes a required part of the Superintendent's Annual Report. IBC thus collects and cost averages the actual dollar amounts paid out against policy premium revenues collected each year. This statistical information is important in determining the factors that directly govern rate increases and decreases.

After the 1970 Order in Council (OIC 70 - 162), these compiled statistics ceased to refer to territories for the purposes of Section A: Third party liability. The 1970 OIC caused Section A of the Auto Insurance policy (SPF No. 1) to become compulsory for all insured vehicles and the same premium rate was mandated in all parts of the province.

The issue is whether this is fair and equitable for all areas of the province. For example, Table 1 above indicates that even though the identical premium is paid in all parts of the province, the loss cost differs across the three territories.

This trend continues for Section B (accident benefits) of the SPF No.1. Again, actual dollars paid out in accident benefits per claim varies across the three territories by as much as 60 per cent.

Table 3 combines all sections of the policy and shows the average actual dollar difference per vehicle paid out across the three territories plus the loss ratio. The industry maintains that a loss ratio

in the mid seventies percentage results in a "break-even" position for individual brokerages and agencies in their auto insurance lines of business.

Recommendation

The Committee recommends that a review of the territorial rating system be undertaken immediately. Since the setting of territories for rating purposes is closely associated with regulating of rates, it is reasonable to delegate the determination of the new rating territories to the PUB. This includes the responsibility to consider the following factors as the focus of the review:

- ***Changes to territorial rating system need to be carefully examined and adjusted to truly reflect loss costs regionally.***
- ***Territories to be statutorily defined and regulated and OIC 70 - 162 be rewritten to reflect the changes to SPF No 1, Section A.***
- ***The Public Utilities Board, in concert with the Superintendent of Insurance, shall review and re-adjust the current boundaries of the territories to reflect***
  - ***Equitable population distribution,***
  - ***A level playing field, and***
  - ***Equal treatment for all New Brunswickers.***
- ***In accordance with OIC 70 - 162, companies wishing to do business in the Province of New Brunswick must be licensed in New Brunswick and must write in all territories.***
- ***The exit and entry guidelines as stated in the regulations must be re-evaluated with a view to controlling more stringently how and when companies leave the Province. If companies choose to leave, it should be more difficult to re-enter.***
- ***Companies must also adhere to strict exit as well as entry criteria as stated in the regulation.***
- ***Consider a "made in New Brunswick" solution as an option.***
- ***Once territorial rating is redefined, there must be some guarantee that access to insurance will increase, especially in the north of the province.***

PUBLIC UTILITIES BOARD

The Committee concluded that the activities and responsibilities of the Public Utilities Board have diminished since 1997 vis-a-vis auto insurance regulation and control. It also concluded that, at the very least, consideration be given to a return to the pre-1997 regulatory regime.

Recommendation

The Committee recommends that the activities and responsibilities of the Public Utilities Board immediately be restored to the pre-

1997 regulatory regime and that the following factors be reflected in this recommendation:

- ***Companies revert from the current "file and use" system to the former regulatory regime.***
- ***Rate increases (or decreases) for all territories are to be monitored and approved by PUB as per the pre-1997 standards.***
- ***This change in the statute is retroactive to July 1, 2002.***
- ***The industry will act in good faith by refraining from imposing any rate increases during this period.***
- ***The absence of compliance with this good faith premise (the good faith premise being part of the insurance contract) shall result in a retroactive legislated solution.***

UNDERWRITING GUIDELINES

Insurers are currently under no obligation to set common rates or act in similar ways when considering certain cases or risks. Companies operate differently from one another. In a free market system, this means each company sets its own underwriting guidelines depending on the type of risks that the company wishes to attract. The guidelines then become part of the company's rate proposals that the company files with PUB. This file and use system has been the accepted practice (since 1997) that normally assured that there were markets out there for every type of risk.

There are, however, certain minimum standards that are appropriate to the insurance industry.

Recommendation

The Committee recommends that industry standards be established in a uniform and consistent set of guidelines that are known to the buying public. Such guidelines would include concerns over lapse of coverage, age of vehicle, how NSF checks are handled, how each insurer deals with occasional under-age drivers, whether certain claims are "chargeable" or not, questions concerning middle market risk and the rating of seniors. All such underwriting guidelines should be mandatory and made uniform to all insurers transacting business in New Brunswick.

The Committee further recommends that a set of mandatory minimum underwriting guidelines for all insurers wishing to transact business in New Brunswick be developed jointly by the PUB, the Superintendent of Insurance and the Insurance Industry.

Finally, the Committee recommends that the mandatory guidelines and all other guidelines particular to the individual insurers, be

attached to all new policies and be the subject of marketing processes that more thoroughly inform consumers.

DRIVER PROFILING/DRIVER RELATED CONCERNS

The matter of age, geographic location and gender discrimination for auto insurance rates has long been a source of concern. One position on this matter was put forth by the Insurance Bureau of Canada in an April 1985 brief submitted to the New Brunswick Minister of Justice.

> *It is only equitable that youthful drivers as a group should pay more for their automobile insurance than the more mature drivers and that within the group of youthful drivers, young men should pay more than young women. To charge more mature drivers more, simply to give a break in premium to the more youthful drivers, and similarly to charge young women more than young men would, in the opinion of IBC, amount to unfair discrimination insofar as more mature drivers and young women are concerned (IBC, 1985, p. 36).*

Age and gender discrimination factors for all drivers need to be seriously reconsidered and resolved. There is a point in time when any person's driving skills and abilities may begin to deteriorate. Jurisdictional comparisons, industry evidence and indeed seniors themselves generally accept the premise that the insurance industry has the right to require medical examinations in order to assess risk based upon drivers' skills and abilities. Conversely, people should not be punished or made to pay exorbitant rates because of age or gender. Nor, for that matter, should a person be considered a bad risk based simply upon place of residence. Under the present system, convicted impaired drivers may actually pay less premium than some male drivers under the age of 25. A system is arguably unfair when a person is charged for (projected) claims before they actually happen.

Apparent inconsistencies that exist regarding age and gender issues need to be resolved. There is no gender discrimination for people over the age of 25, for example, nor does the industry make any distinction between men and woman over 65. In the opinion of the Committee, requiring medicals for seniors over the age of 70 is a fair practice.

Regarding underage drivers, it is known within industry circles that some parents as well as young drivers find ways to manipulate the system in order to insure youths' vehicles. This practice can produce very serious consequences for parents in the case of serious claims.

Such manipulation creates pressures on the industry side that

eventuate in higher loss costs, court costs and premiums. What some consumers do not readily understand is that the auto insurance policy is a legally binding contract. Since both the insured and the insurer are bound by the contract to act in good faith, coverage could be denied by the courts in cases found to contain a misrepresentation of the facts.

Recommendation

The Committee recommends that PUB re-examine gender and age discrimination (especially gender discrimination for underage drivers and age discrimination for senior drivers) and any other aspects of driver profiling to eliminate discrimination, generally accepting the premise that the insurance industry has the right to assess risk based upon drivers' skills and abilities.

FRAUD AND COST CONTROL

The Committee does not consider fraud to be especially pervasive in New Brunswick. Fraud and the cost control aspects of fraud are internal issues for the insurance companies. There was agreement, however, that the costs of fraud are eventually passed on to the consumer in the form of increased premiums. Therefore, the Committee decided to include a statement of issues that should be addressed by the industry.

Statement on Fraud

The Committee acknowledges that fraud is of concern to the insurance industry and to the public and concludes that some of the following approaches are achieving desired results in other jurisdictions:

- ***Establish and share data bank information concerning false or exaggerated claims.***
- ***Monitor nuisance claims.***
- ***Develop inter-provincial co-operation.***
- ***Apply consequences commensurate with levels of fraudulent activities.***
- ***Create holding compounds for accident vehicles.***
- ***Provide a verification system regarding vehicle repair receipt expenditures.***
- ***Create anti-fraud communication programs.***

Statement on Cost Control

The Committee acknowledges that cost control is of primary importance to the industry and to the consumer. Questions raised during the Committee's deliberations, however, pointed to some areas where the industry could achieve additional measures of

consumer confidence by establishing a more transparent approach. These include

- ***Justification processes concerning operational costs.***
- ***Reasonable premium adjustments.***
- ***More stringent claims management.***

Mr. Allaby gave Notice of Motion 33 that on Thursday, November 28, 2002, he would move the following resolution, seconded by Mr. Lee:

That an address be presented to Her Honour the Lieutenant-Governor, praying that she cause to be laid upon the table of the House all documents, memos, reports, studies, letters and/or e-mails regarding the planning and construction of the interchange on Route 2 at Highway 101 from January 1, 1996.

Mr. Allaby gave Notice of Motion 34 that on Thursday, November 28, 2002, he would move the following resolution, seconded by Mr. Shawn Graham:

That an address be presented to Her Honour the Lieutenant-Governor, praying that she cause to be laid upon the table of the House information/guidelines that was provided to potential investors in Coleson Cove and the Point Lepreau nuclear plant, including any limits on percentage of ownership, type of investments which would be considered, requirements to supply New Brunswick first, pricing of the New Brunswick supply, term of the investments and any requirement to include buy back provisions.

Mr. Shawn Graham gave Notice of Motion 35 that on Thursday, November 28, 2002, he would move the following resolution, seconded by Mr. Allaby:

That an address be presented to Her Honour the Lieutenant-Governor, praying that she cause to be laid upon the table of the House the number of clients in the Prescription Drug Program for the year 2002, the number of clients who received the GIS, the average cost per GIS recipient and the average cost for others.

Mr. Shawn Graham gave Notice of Motion 36 that on Thursday, November 28, 2002, he would move the following resolution, seconded by Mr. Richard:

That an address be presented to Her Honour the Lieutenant-Governor, praying that she cause to be laid upon the table of the House the average class size from K-3 by school district for the school year 2001-2002.

Mr. Richard gave Notice of Motion 37 that on Thursday, November 28, 2002, he would move the following resolution, seconded by Mrs. Mersereau:

That an address be presented to Her Honour the Lieutenant-Governor, praying that she cause to be laid upon the table of the House a list indicating the number of jobs created through the Acadian Peninsula renewal fund, specifying the employer, the type of job, and whether it is permanent or temporary, year-long or seasonal.

Mrs. Mersereau gave Notice of Motion 38 that on Thursday, November 28, 2002, she would move the following resolution, seconded by Mr. Richard:

That an address be presented to Her Honour the Lieutenant-Governor, praying that she cause to be laid upon the table of the House an outline of each existing program which provides support or a subsidy in support of housing for New Brunswickers, including an outline of the goals of the program, the cost of the program in 2001-2002 and the number of clients served by each program in the Department of Family and Community Services.

Mrs. Mersereau gave Notice of Motion 39 that on Thursday, November 28, 2002, she would move the following resolution, seconded by Mr. Allaby:

That an address be presented to Her Honour the Lieutenant-Governor, praying that she cause to be laid upon the table of the House the number of employees at the Regional Office in Sussex for the Department of Environment and Local Government including a list of hirings for the past two years with the names and job descriptions.

Hon. Mr. Green announced that it was the intention of government that following Second Reading, the House would resume debate on the motion for an Address in Reply to the Speech from the Throne.

The Order being read for second reading of Bill 2, *An Act to Amend the Municipalities Act,* a debate arose thereon.

And the debate being ended and the question being put that Bill 2 be now read a second time, it was resolved in the affirmative.

Accordingly, Bill 2, *An Act to Amend the Municipalities Act,* was read a second time and ordered referred to the Committee of the Whole House.

Mr. Speaker delivered the following statement with respect to a point of order raised on Wednesday last by the Member for Shediac—Cap-Pelé.

STATEMENT BY SPEAKER

Before declaring recess, I would like to make a comment on the point of order that was raised on Wednesday regarding the distribution of a ministerial statement.

I have been apprised of the situation, because the Speaker's staff is responsible for distribution of documents we are given, through those who work for this House. I want all members to be aware that the error stemmed from the packing of the two documents, English and French, by a piece of blank paper, and thus, were missed in the hurry to get things distributed on time. As a result, we are taking measures to ensure that this distribution glitch is corrected, and, the French version was there at the same time.

Hon. P. Robichaud rose on a point of order and submitted that Mrs. Mersereau, the Member for Bathurst, was not directing her remarks through the Speaker and had referred to the Minister by his first name and not by the Minister's portfolio or riding.

Mr. Speaker ruled the point of order well taken.

At 12.30 o'clock Mr. Speaker left the chair to return again at 2 o'clock p.m.

2 o'clock p.m.

Mr. Speaker resumed the chair.

The Order being read for second reading of Bill 3, *An Act to Amend the Assessment Act,* a debate arose thereon.

And the debate being ended and the question being put that Bill 3 be now read a second time, it was resolved in the affirmative.

Accordingly, Bill 3, *An Act to Amend the Assessment Act,* was read a second time and ordered referred to the Committee of the Whole House.

The Order being read for second reading of Bill 4, *An Act to Amend the Municipal Assistance Act,* a debate arose thereon.

And the debate being ended and the question being put that Bill 4 be now read a second time, it was resolved in the affirmative.

Accordingly, Bill 4, *An Act to Amend the Municipal Assistance Act,* was read a second time and ordered referred to the Committee of the Whole House.

The Order being read for second reading of Bill 5, *An Act to Amend the Revenue Administration Act,* a debate arose thereon.

And the debate being ended and the question being put that Bill 5 be now read a second time, it was resolved in the affirmative.

Accordingly, Bill 5, *An Act to Amend the Revenue Administration Act,* was read a second time and ordered referred to the Committee of the Whole House.

The following Bills were read the second time and ordered referred to the Committee of the Whole House:

Bill 6, *An Act to Amend the Financial Corporation Capital Tax Act.*
Bill 7, *An Act to Amend the Tobacco Tax Act.*
Bill 8, *An Act to Amend the Tourism Development Act.*
Bill 9, *An Act to Amend the Provincial Court Act.*

The Order being read for second reading of Bill 10, *An Act to Amend the Education Act,* a debate arose thereon.

And the debate being ended and the question being put that Bill 10 be now read a second time, it was resolved in the affirmative.

Accordingly, Bill 10, *An Act to Amend the Education Act,* was read a second time and ordered referred to the Committee of the Whole House.

The Assembly resumed the adjourned debate on the proposed motion of Mr. John Betts, seconded by Mr. Savoie,

That the following address be presented to Her Honour the Lieutenant-Governor to offer the humble thanks of this House to Her Honour for the gracious speech which she has been pleased to make to the Legislative Assembly, namely:

Fredericton, N.B.
November 19, 2002.

To Her Honour,
The Honourable Marilyn Trenholme Counsell,
Lieutenant-Governor of the Province of New Brunswick.

May It Please Your Honour:

We, Her Majesty's most dutiful and loyal subjects of the Legislative Assembly of the Province of New Brunswick, now in session, beg leave to extend our humble thanks to Your Honour for the gracious speech which Your Honour has addressed to us, and we assure Your Honour that all matters which may be submitted to us during the session will receive our most careful attention and consideration.

And after some time, due to the unavoidable absence of Mr. Speaker, Mr. Ashfield, the Deputy Speaker, took the chair as Acting Speaker.

And the debate continuing, after some further time, it was on motion of Hon. Mr. Green on behalf of Mr. Huntjens, adjourned over.

And then, 5.58 o'clock p.m., the House adjourned.