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The Co-operators Group Limited
Groupe Coopérateurs Limitée

July 14, 2008

Mr. Willie Handler
Senior Manager
Automobile Insurance Policy Unit
Financial Services Commission of Ontario
5160 Yonge Street
15th Floor, Box 85
Toronto, Ontario M2N 6L9

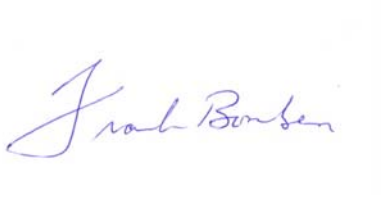
Dear Mr. Handler:

The Co-operators appreciates the opportunity to provide you a submission on the 2008 Ontario Superintendent's Review of Auto Insurance. The focus of our recommendations is to reduce complexity and make the insurance market better for our clients and all Ontarians.

I would be happy to facilitate a follow up meeting with technical experts from The Co-operators and from the Financial Services Commission of Ontario to further clarify our suggestions.

Please contact me if you have any questions or if we can be of any further assistance either by phone 519-767-3055 or email frank_bomben@cooperators.ca.

Sincerely,



Frank Bomben
Director, Public Affairs and Government Relations
The Co-operators

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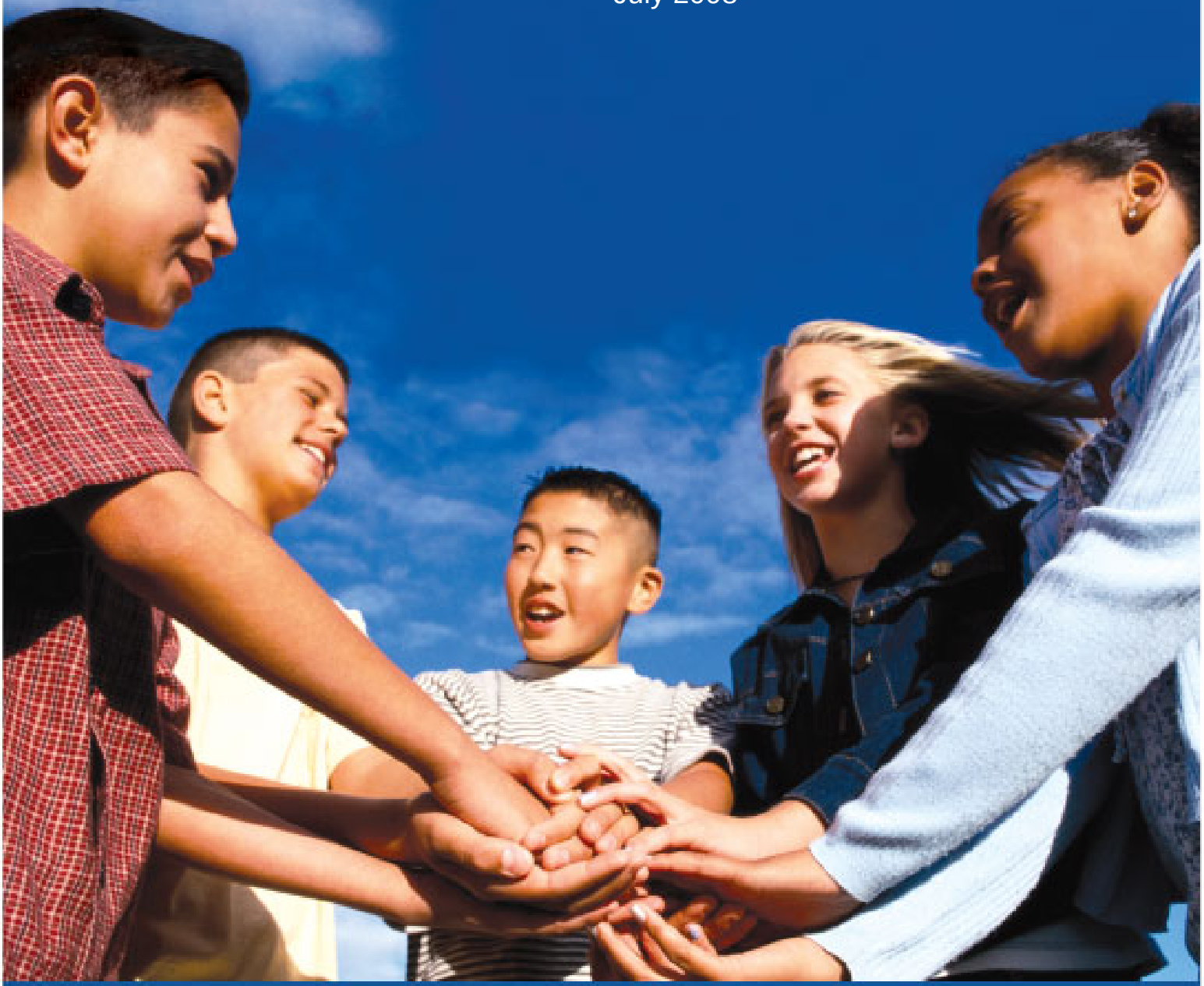
The Co-operators

Recommendations for the Ontario Auto Insurance Five Year Review

July 2008



Une place de choix™

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A Better Place For You™

The Co-operators is pleased to provide input to the Financial Services Commission of Ontario (FSCO) for the Superintendent's Five Year Review of the *Insurance Act, R.S.O. 1990*.

The Co-operators philosophy regarding the delivery of the automobile insurance products to the consumers of Ontario is based on the following fundamental guiding principles:

- **Security**: At its most basic level, insurance provides peace of mind. To provide peace of mind, insurance must provide adequate coverage and have an appropriate measure of financial protection.
- **Affordability**: Insurance must be affordable for a compulsory insurance system to work.
- **Availability:** Insurance consumers have the right to expect reasonable access to a variety of providers who can meet their coverage needs.
- **Simplicity:** Insurance consumers have a right to understand the product they are purchasing and the benefits to which they are entitled if they are injured.

ABOUT THE CO-OPERATORS

The Co-operators is a group of Canadian companies focusing on insurance. As a co-operative, our members are 41 co-operatives, credit unions and like-minded organizations, representing a combined membership of 12 million Canadians. Our Ontario members include: Co-operative Housing Federation of Canada; Credit Union Central of Ontario; Gay Lea Foods Co-operative Ltd.; GROWMARK, Inc.; Ontario Federation of Agriculture; Ontario Natural Food Co-op; and United Steelworkers of America, District 6.

We take great pride in our co-operative structure. It enables us to contribute to the Ontario economy and through our co-operative approach to doing business, and it has ensured that the economic and social benefits of our enterprise remain in the local communities where we operate.

SUPERINTENDENT'S REVIEW

The focus of The Co-operators recommendations is to reduce complexity and make the insurance market better for our clients and all Ontarians. By reviewing the following areas of the *Act* and responding appropriately you help consumers avoid the pain of a future hard market, by anticipating and correcting. These suggestions will help make it easier for consumers to get coverage, and reduce complexity in insurance.

The Co-operators is concerned about how the *Act* is affecting clients in several areas: affordability and availability; consumer protection; statutory accident benefits schedule (SABS); and other issues. Not only are these increasing rates but they are causing inefficiency resulting in higher costs. Some of the areas of concern are as follows.

AFFORDABILITY AND AVAILABILITY:

Definition of Accident

Section 245 of the *Act* requires an insurer to defend any accident that directly or indirectly is caused by the use and operation of the automobile. The word "indirectly" has lead to lawsuits where insurers have been asked to defend where coverage would not normally be considered. By deleting

indirectly from coverage for liability, the definition would be consistent with the coverage under the SABS.

Definition of Insured Person
Under the Act s. 265, c. I.8, it stipulates that the contract must provide coverage to "a person insured under the contract." This is defined as "the insured and his or her spouse and any dependant relative of either, …while an occupant of an uninsured automobile."

Section 224 of the *Act* defines insured for *Part VI (the Act)* to mean "a person insured by a contract whether named or not and includes every person who is entitled to statutory accident benefits under the contract whether or not described therein as an insured person." However, under *O. Reg. 403/96, the Statutory Accident Benefits Schedule* for accidents on or after November 1, 1996 an "insured person" includes "in respect of accidents in Ontario, a person who is involved in an accident involving the insured automobile."

Recent cases *Taggart (Litigation Guardian of) v. Simmons* and *McArdle v. Bugler* expanded eligibility of uninsured motorist coverage beyond the limited group of persons traditionally entitled to such coverage by adopting the definition in the SABS to the coverage in the uninsured motorist portion of the policy. To control the costs associated with uninsured motorist claims, the legislation should be adjusted to clearly indicate that the definition in the uninsured motorist provision applies to these claims.

Recreational and Ancillary Vehicles
The recreational/ancillary vehicle market is growing and frequently we are finding that the consumer is choosing not to purchase insurance coverage for this vehicle type. When an injury occurs in an owned but uninsured recreational/ancillary vehicle, there is a substantial unanticipated SABS coverage exposure. Often a policy insuring a private passenger vehicle responds to injuries sustained when an insured person chooses not to insure their recreational vehicle.

The *Insurance Act* doesn't properly address this situation and we don't believe that providing coverage for this type of situation was anticipated when the *Act* was written. This gap consequently places upward pressure on the cost of insurance for all Ontarians, regardless of whether the individual consumer owns a recreational/ancillary vehicle. We believe it's paramount to provide affordable coverage to all Ontarians.

While still maintaining the original spirit of protecting victims of motor vehicle accidents, SABS coverage needs to reflect owned but uninsured vehicles differently than today. Insured persons should not be allowed to access SABS coverage for injuries sustained in their uninsured vehicles.

Rating Territory Definitions
Territories definitions are intended to measure risk characteristics such as road conditions, vehicle speed limits, crime rates, terrain and weather conditions. Consequently, we believe rating by territory is a just and reasonable predictor of loss which fairly distinguishes between risks and fulfills the statutory standards set out in the *Act*.

Today's territory guidelines promote actuarial soundness through credibility in the size of each territory and provide safeguards for the consumer when a new territory definition is created. The

guidelines further recognize societal fairness and attempts to control the practice of "red-lining" geographic areas.

The Co-operators believes in societal fairness and the inappropriateness of red-lining geographic areas however, the guidelines which today both limit the number of territories and require territory definitions to be contiguous makes it difficult to recognize the logical similarities between like-communities.

We recommend there be no limitation on the number of territories as long as they can be actuarially justified. Alternatively, if a cap remains on the number of territories, then we feel that they should not have to be contiguous, as long as they can be actuarially justified.

Assignment of Collateral Benefits

When we resolve bodily injury claims, the plaintiff's damages are taken care of; however, the tort does not get the full credit for collateral benefits beyond the date of settlement. The legislation requires the insurer to take an assignment of the future benefits which are often uncollectible without the injured party's co-operation. Given the fact that the tort would be paying full reimbursement in these circumstances, there is little if any incentive for the client to co-operate and continue to pursue these collateral sources. In an effort to protect our insured's assets and keep claims within their limits the tort side is often required to pay a premium to settle claims prior to trial and abandon the assignment. The alternative may result in bad faith against the insurer if the award at trial, including the value of the collateral benefits, exceeds the limits of the policy.

We would like to see a mandatory deduction of the commuted value of future income replacement benefits from any collateral source (e.g. SABS, long term disability, Canada pension plan, etc.) made available on bodily injury claims. This would reduce or eliminate the premium currently being paid to settle bodily injury claims. This in turn reduces costs and ultimately impacts on affordability. This also serves to protect the assets of insured's who are being sued as claimant's are encouraged to pursue funding through all available sources rather than simply the bodily injury claim.

Punitive Damages

In *McIntyre v. Grigg (2006)* the Ontario Court of Appeal upheld the award of punitive damages which an insurer had to pay when the insured drove while impaired. Punitive damage awards are meant to punish an insured for committing an unsafe act against an individual. These types of awards have no impact on the behaviour of individuals when their insurance is forced to pay punitive damages on their behalf. Punitive damage awards need to be specifically excluded from bodily injury coverage under the policy.

Modified and Customized Vehicles

At present, insurers can decide on their own level of tolerance - some take a harder line that any modification has to be declared or it is not covered. At times, clients insure the vehicle first, and then modify/customize second. Clients are dissatisfied as they may invest thousands of dollars in modifications, and they expect the insurer to pay these customization amounts, despite the fact that the insurer was not able to charge premiums for that amount of risk.

We recommend the Auto policy include:

- Placing a dollar limitation on customization/modification in the policy (similar to the previous #37 and #38 endorsement for stereos and other electronic accessories and equipment); and
- If the client fails to notify the insurer, then the insurer is not liable to the client for those modification amounts in excess of the stated limit.

Electronic Delivery of Forms

Many of our clients are asking for the opportunity to conduct business over the Internet and would prefer to receive their notices by e-mail. This supports the advancement of electronic technology and addresses the wish for a more environmentally sustainable method of communication.

Other jurisdictions are beginning to explore the availability to send records to the insured in electronic form. A record provided in electronic form is deemed to have been sent by registered mail to the address required under the *Insurance Act*.

CONSUMER PROTECTION:

Increase Minimum Liability Limit

Section 251 (3) identifies a minimum limit of $200,000, exclusive of interest and costs, against liability resulting from bodily injury to or the death of one or more persons and a limit of liability of at least $200,000, exclusive of interest and costs, against liability for loss of or damage to property.

For the protection of Ontario motorists, we recommend increasing the minimum liability limit to $1,000,000. This would simplify the average consumers' insurance needs, recognize inflation and reduce the need to purchase additional coverage with an Umbrella Policy.

Snowmobiles and All Terrain Vehicles

The province of Ontario has taken steps to prevent theft of private passenger cars, and the vehicle manufacturers have installed vehicle immobilizers and OnStar type systems. Further, there is the issue of salvage branding of stolen and total loss vehicles. The Ministry of Transportation (MTO) is the one place where everyone has to register vehicle ownership.
Snowmobiles and All terrain vehicles get stolen regularly and two things are needed:

- Salvage branding to apply to these ownerships, to note that the VIN has been reported stolen; and
- All of these vehicles need to be registered with the MTO before they can be insured.

STATUTORY ACCIDENT BENEFITS SCHEDULE (SABS):

Definition of Catastrophic Impairment (CAT)

Under Part 1, Definitions 2(1.2)(f) recent decisions support that physical and psychological impairment will be combined which has resulted in more claimants determined as catastrophic (55% or more whole person impairment). This combination is an evolving area of abuse. The definition needs to clarify whether or not it is appropriate to combine physical and psychological disabilities. If the intent is to combine them, consideration should be given to increasing the percentage required to be determined catastrophic to 65%. If that approach is taken to provide some balance, we support changes to the definitions to allow for any loss or partial loss of an arm or leg to be determined catastrophic. Alternatively, premium adjustments will be required.

If it is not the intent to combine physical and psychological impairments, this may be done by removing from (f) the words "an impairment or combination of impairments that…" and replacing with "a physical injury only that…". This solves the issue where using the term "impairment" brings in the definition found in section 2 which includes physical, psychological and physiological impairments.

Under section 2(1.2)(g) mental and behavioural disorders, decisions have supported catastrophic determinations when only one of the four domains assessed is found to be marked or extremely impaired. The four domains are in the ability to engage in activities of daily living; social functioning; concentration, persistence and pace; deterioration or decomposition in work or work-like settings. Clarification is needed to indicate all four domains must meet the level of marked or extreme in order to be determined catastrophic.

We are seeing inappropriate catastrophic applications being used as a threat to increase benefit or assessment costs. In order to ensure that catastrophic applications are being used appropriately only physicians should complete the OCF-19. We would like to see cost consequences to OCF-19s where the client clearly won't meet the catastrophic definition. We would also like to see the rebuttal for catastrophic assessments capped under section 38.2.

The wording "condition has stabilized and not likely to improve" found in clause 2(2)(a) should be reinstated, to cover those applications where clients are recently diagnosed with impairments that have not yet received treatment.

Clarification is needed under brain impairment 2(1.2)(e)(i) to clarify that a GCS score of nine or less "directly as a result of a brain impairment" to eliminate unconsciousness due to general anaesthetic, etc.

Application for Approval of an Assessment or Examination

Many clients in Ontario are able to access appropriate treatment and rehabilitation services without any/or a very limited number of, OCF-22 Request for Assessments. Multiple submissions of these forms, is putting excessive premium dollars into the hands of assessors rather than the insured person and treatment/rehabilitation providers. This affects affordability, the complexity of claims handling and administrative costs. This has become an automatic right with funding to prove the tort claim and has moved away from accessing compensation or services under the SABS.

If the number of OCF-22 assessments on non-catastrophic impairments is limited by number or time or dollar limit; this would greatly reduce complexity, enhance compliance and reduce costs. Limiting OCF-22's would significantly reduce expenses without adversely impacting on a client's ability to pursue treatment needs. **To see the rising cost of examinations please refer to the appendix, chart 1.**

Expenses payable under section 24 should be included in the medical and rehabilitation limits of the client as set out in section 19. Additionally, a maximum limit available should be established for section 24 Cost of Examinations (e.g. $5,000 for non-catastrophic losses and $15,000 on catastrophic losses). This will create accountability and reduce abuse. Finally, response timeline for

OCF-22's should be increased to five business days. By incorporating these changes a significant reduction to the number of Insurer Examinations can be made.

Our data shows that the Housekeeping and Home Maintenance Expenses have also increased significantly. We believe this is related to increased use of OCF-22's to support these expenses and the rising costs of assessing ongoing entitlement to the Housekeeping and Home Maintenance Expenses. **To see the rising cost of housekeeping and home maintenance expenses please refer to the appendix, chart 2.**

Pre-Approved Frameworks

The restrictions of the pre-approved framework treatment protocols and Income Replacement Benefit restrictions can be frustrating for clients, treatment providers and insurers. There is also a significant risk that these restrictions would be deemed "unconstitutional" and be later overturned. To make the process simpler for all parties the Pre-Approved Frameworks and their limitations should be eliminated. Insurers should provide up to $1500 automatic approval for medical expenses, including the cost of assessment for the purposes of treatment, for services rendered within six months of the date of the accident.

Stoppage for Return to Work

Section 37 of the *Act* allows for stoppage of income replacement benefits without an Insurer Examination if the insured person returns to work but is silent for the non-earner benefits, caregiver benefits and housekeeping & home maintenance benefit. This means that clients are put through unnecessary insurer examinations which benefit no one and increases costs.

If insurers add a "we agree" clause when the client reports they have returned to or are capable of returning to their pre-accident duties, insurers should be able to stop entitlement to the applicable benefit without the unnecessary insurer examination. Insurers need to be able to stop entitlement in section 37 or not commence entitlement in section 35 when the OCF-3 Disability Certificate says the client is "not disabled".

By returning to the procedure where the client is offered the option to attend an Insurer Examination, rather than the automatic requirement to attend, we will be simplifying the process for our clients and reducing unnecessary assessment costs and administrative requirements. The procedure should be similar to the OCF-17 form in the DAC system. Our experience is that we are required to force the client to attend an Insurer Examination to follow regulatory procedure, even when they do not want to proceed with their claim. We also have to incur the no-show fee.

Insurer Examinations - Availability of Qualified Assessors

The legislation requires that insurers find an assessor within a 50 kilometre range. For the large urban markets this does not pose a problem, however in much of the province, a 50 kilometre radius is too restrictive and we are therefore forced to bring assessors into those areas for an exorbitant fee. We recommend that the distance should be 100 kilometres or the same distance as it would be to their nearest regional hospital.

Income Replacement Benefit Calculations

Benefit calculations are becoming increasingly complex with recent decisions. The high level of complexity creates inaccuracies in calculations, delays in receipt of the necessary information to

calculate the benefit and disputes. The regulations need to be clear and simple for both clients to understand and comply with and insurers to calculate and process efficiently.

The definition of income needs to specify what is and is not included. Using a model similar to that of long term disability policy calculation may help to simplify payout. The calculation would be 65% of gross income (which only includes salary, wage, commission and/or bonuses) as opposed to the current calculation of 80% of net income.

Cancellation Fees
When claimants fail to attend the Insurer Examination, insurers incur cancellation fees. Cost of Examination expenses are increasing dramatically as injured parties feel less obligation to attend. If insurers were provided the right to seek repayment similar to that under section 47(1)(e) during the time of DACs, insurers would be able to avoid some of these unreasonable expenses when no reasonable explanation is given.

Insurer's Right to Dispute
As an insurer, we are not able to initiate litigation or arbitration for entitlement disputes as held in the case the Ontario Court of Appeal *Liberty Mutual v. Fernadez*. Providing insurers with the right to dispute under section 281 of the *Act* will allow insurers to pay the part of the claim we have no issue with and only dispute the portion of the claim that is contentious, making resolutions more attainable in less time, reducing legal fees and reducing the costs absorbed by all our clients. This benefits both the client and the company.

Notice and Application for Benefits
Insurers need a reasonable limitation on the ability to claim past exposure based on when the client applies or reapplies for the benefit. The language in section 32 needs to be strengthened to limit the time a client can go back to 6-12 weeks from the time they apply or reapply.

Overdue Payments
The rate of two percent per month compounded monthly on overdue payments is overly punitive to the insurer. Special awards are available for inappropriate conduct. Instead, by removing the compounding of interest, you remove overly punitive punishment while still requiring insurers to pay 24% interest annually on overdue payments.

Medical Expenses
The restriction in the coverage requires that the expense be incurred within 10 years. If the legislation removed the word "incurred" and substituted the words of OMPP "the insurer will pay all reasonable expenses… as a result of the accident received within the benefit period" then this would reverse the trend of expanding coverage for losses beyond the 10 year benefit period and provide certainty for setting of rates. Alternatively the policy could simply state that there is no coverage for goods and services received outside the time limit. **To see the trend in increased medical expenses please refer to the appendix, chart 3.**

Professional Fee Guidelines
Some health professionals such as social workers are not listed and can charge any hourly rate they choose. The result is that social workers who have less educational requirements than a registered psychologist are able to charge more because the fee guidelines do not dictate their fee. We propose fee guidelines be established for health professionals not currently included.

Notice and Delivery
Section 68 has very restrictive notice requirements which have increased expenses and in some cases, reduced our ability to provide good client service when we require an insured to pick up registered mail or meet with us to accept delivery. These requirements are necessary even when the insurer is approving that which was claimed in its entirety.

In order to simplify the process for all parties where the insurer is approving the amount claimed, they may give the client (and person who completed the form if there is an OCF involved) verbal notice of their approval, followed up by written notice sent via regular mail.

Non-Earner Benefits Deductions
When a client earns supplementary income post accident we are currently not able to make a deduction from their non-earner benefit. They are receiving full compensation for the non-earner benefit plus supplementary income, which ends up costing all other clients.

OTHER ISSUES:

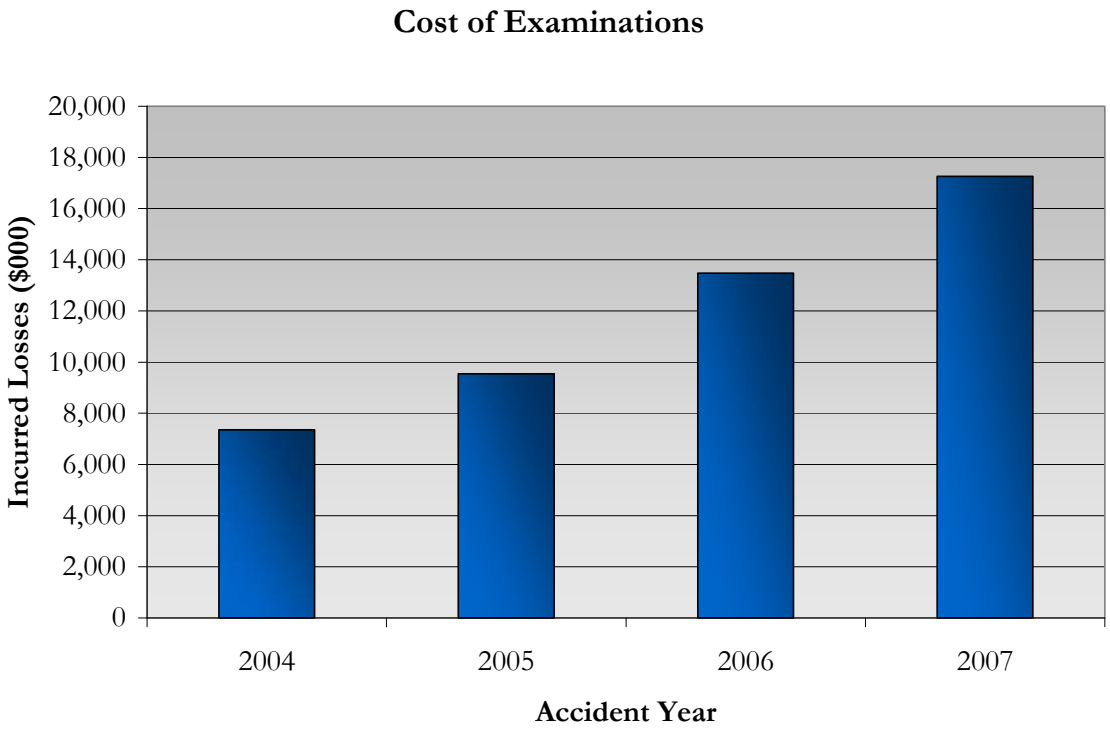
Disclosure Requirements
There appears to be a lack of compliance from solicitors regarding disclosure requirements of section 258.3 the *Act*. Potential cost ramifications don't influence most solicitors. In order to deter the disregard for this regulation, stiffer penalties for failure to comply need to be imposed, possibly including the disentitlement to prejudgment interest.

CONCLUSION:

The recommendations for changes to the *Act* put forward in this brief are designed to promote a greater sense of efficiency and flexibility, and to reduce the cost of insurance for our clients and for Ontario auto insurance consumers. You have correctly pinpointed the key issues: affordability and availability; consumer protection and statutory accident benefits. This Five Year Review is an opportune time to address the current inefficiencies and consider positive adjustments that will benefit both consumers and insurers. At the end of the day, we share a common interest, ensuring that Ontario auto insurance consumers have the appropriate level of coverage that is affordable, accessible and easy to understand. As always, we are most happy to provide you with further detail in person as the review process continues.

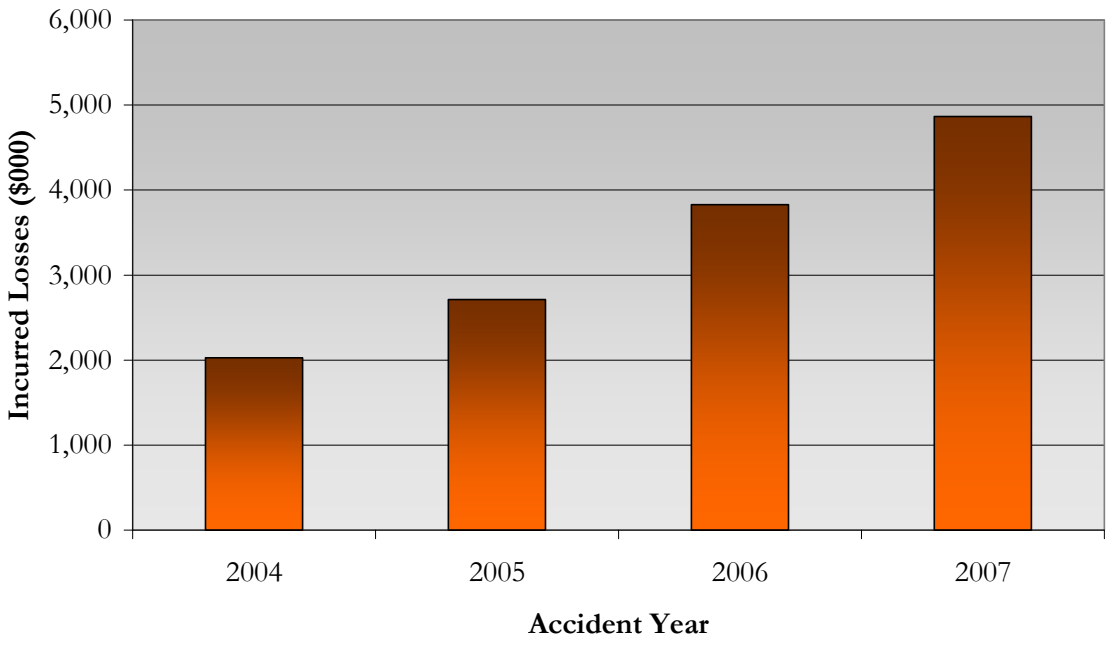
APPENDIX

CHART 1



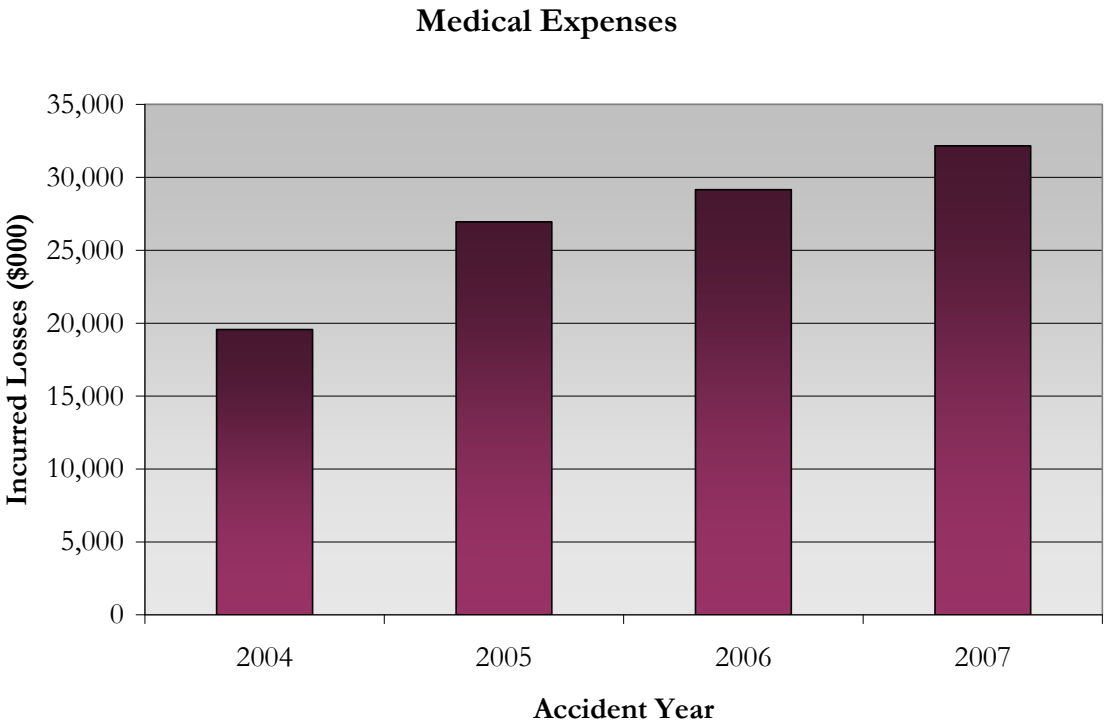
Demonstrates the increase in Cost of Examinations from 2004 to 2007.

CHART 2



Demonstrates the increase in Housekeeping & Home Maintenance costs from 2004 to 2007.

CHART 3



Demonstrates the increase in Medical Expenses from 2004 to 2007.