



July 24, 2018

Automobile Insurance Rate Board  
2440 Canadian Western Bank Place  
10303 Jasper Avenue  
Edmonton AB T5J 3N6  
via email: [airb@gov.ab.ca](mailto:airb@gov.ab.ca)

Re: AIRB Annual Review

With roots dating back to 1949, TD Insurance (“TDI”) is a member of TD Bank Group (“TDBG”), the second largest financial service organization in Canada. TDI offers a wide range of insurance products, including credit protection, life, health, travel, home and automobile.

TDI is the largest direct response insurer, in Canada, with more than 2.2 million policies, and more than \$3 billion in written premiums as of January 2018. TDI employs more than 3,900 people across Canada, with offices in Alberta, Ontario, Québec, Nova Scotia and New Brunswick.

Our home and auto insurance products are underwritten by wholly owned insurance companies: Security National Insurance Company, TD General Insurance Company, TD Home and Auto Insurance Company, and Primum Insurance Company.

The TDI business model is direct response, meaning service is provided directly to clients, without using third-party intermediaries. As a result of our position as the largest direct response insurer in Canada, no one talks to more Canadians about automobile insurance than we do. The processes and technology that we use allow us to provide quality service in a timely and efficient manner.

TDI is the second largest automobile insurer in the province with offices in Calgary and Edmonton. Our automobile market share is 16.1%.

TDI conducts its business across a variety of jurisdictions and we are pleased to draw upon our expertise and share our experience in operating with a variety of models. We are committed to working with the government to maintain a healthy auto insurance environment that is efficient, affordable, cost effective and sustainable to meet the needs of Albertans.

TDI appreciates the opportunity to present comments and recommendations to the Alberta Automobile Insurance Rate Board (“The Board”) as it undertakes its consultation to review Alberta industry loss experience for private passenger vehicles to establish industry benchmarks to be used in the review of insurers' PPV filings for basic and additional coverage.

Our submission focuses on the following topics:

1. Bodily Injury
2. Loss Trends
3. Impact of Ministerial Order (Cap of 5% on rates)
4. Gender X
5. Cannabis

### **Bodily Injury**

The industry has experienced adverse development and increasing loss trends for the bodily injury coverage. Similarly, TDI has experienced deterioration for the Bodily Injury coverage. Herein, we will provide our view on the potential causes that are contributing to the increase in claims costs. The key contributing factors are related to erosion of the Minor Injury Regulation, changes in case law and economic factors.

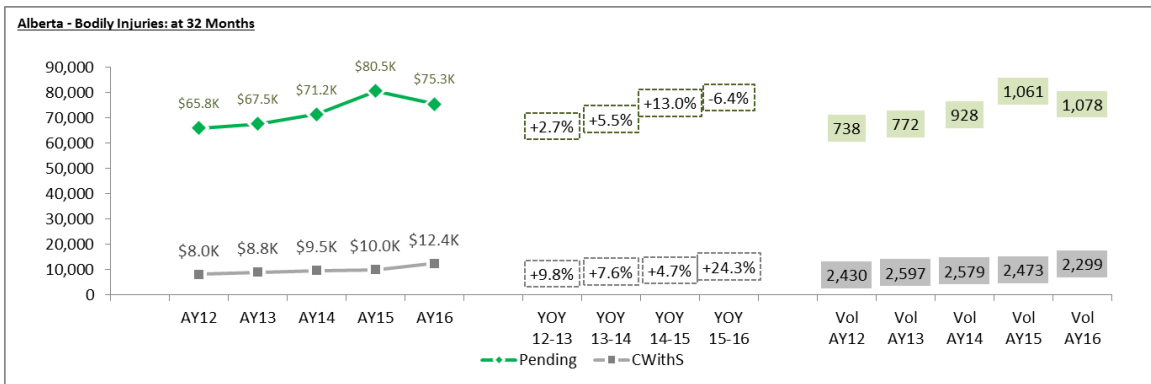
With the introduction of the Minor Injury Regulation in Alberta in October, 2004, it was assumed that the regulation would assist in controlling rising insurance costs by capping the damages of injuries deemed to be minor. At that time, it was the impression of insurers and insureds that the minor injury definition would capture almost all soft tissue related injuries. The regulation appeared to have its intended effect until the release of the *Sparrowhawk v Zapoltinsky* decision in 2012. In *Sparrowhawk*, Temporomandibular Joint Disorder ("TMJ") was determined not to be a "minor injury". This case has been viewed as the beginning of the erosion of the Alberta minor injury definition. Erosion continued through other decisions such as *Jones v Stepanenko* and *McLean v Parmar*. After the *Sparrowhawk* decision, there was a significant increase in claims involving alleged TMJ injuries and the continued erosion of the definition regarding other conditions related to soft tissue injuries such as psychological sequela. This is a pattern that we have seen in other provinces, including Ontario. After definition erosion, the response is typically to review applicable legislation and attempt to tighten or clarify the minor injury definition through legislative amendment.

This is what has occurred in Alberta over this past year. The minor injury definition was revisited and clarified to specifically include TMJ in its definition assuming there is no damage to bone, disc or teeth. It was also amended to include physical or psychological conditions that arise from a soft tissue injury. The expected downstream impact to this amendment is twofold. It is anticipated that the frequency of claims for both TMJ injuries with bone and/or teeth damage and psychological injuries that are claimed to be distinct from the underlying soft tissue injury will increase. In addition, if Alberta follows the path that has been observed in other provinces subsequent to definition amendment, we will likely see more claims of Chronic Pain and brain injury which will attract higher general damage awards on non-minor injury claims. We also anticipate after a few years, we will once again start to see erosion of the amended definition through Court interpretation.

The economic climate in Alberta has also impacted personal injury litigation. With the downturn in the economy and in particular the oil industry, we have seen an influx of new lawyers into this area of law. This influx has changed the profile of litigation when we compare it to 7+ years ago. Arguably, litigation has become more complex and the quality of plaintiff representation has improved.

Furthermore, we know that there is a correlation between bodily injury costs and file cycle time. Generally, costs increase with the age of a claim. To this end, as insurers we try to reduce cycle time on claims to help control costs. In Alberta, there is a significant backlog of court cases resulting in trials being scheduled two to three years out from trial date selection. This will result in increased claims costs due to higher file cycle times.

TDI has seen that the trend in claims closed with settlement (see graph below CWithS, at 32 months of development) is also increasing, in line with the increase we are seeing in pending claims. The most recent accident year 2016 (at 32 months of development) is seeing the highest increase in average claims settlements. This further suggests that all the above mentioned factors are putting pressure on claims settlements and it is not solely caused by more prudent case reserving practices. Note that we also observe that the increases are present for claims that involve legal representation as well as those that do not.



Note: above graph shows Average Incurred (Case Reserve + Indemnity – Recovery + ALAE), Gross of RSP and excluding ULAE and IBNR Includes PPA, Motorcycle and other recreational vehicles

TDI observes similar increasing loss trends for Bodily Injury as those selected by Oliver Wyman. As shown above, TDI continues to see an upwards trend in the average incurred amount of the Bodily Injury claims. A prudent approach to loss trend selection is necessary, in light of all the factors mentioned herein and the associated uncertainty, which continue to put pressure on this coverage.

### Loss Trends

TDI observes increasing loss cost trends for all coverages; similar to those selected by Oliver Wyman.

Like the industry, TDI also observes an upward trend in the comprehensive loss cost, mainly due to a sharp increase in the frequency of theft claims. This trend is continuing into 2018, which will put upward pressure on the comprehensive loss trends for the next years.

### Impact of Ministerial Order (Cap of 5% on rates)

Though trends not as large for coverages other than Bodily Injury, they are clearly positive and increasing for all coverages. The ministerial order cap of 5% will limit the industry's ability to

take rate actions in response to the deterioration of the loss cost experience and its ability to address rate inadequacy for the automobile product in Alberta.

As such, the automobile insurance market may require additional rate increases in the following years to account for both the upward loss cost trend and rate inadequacy, in the absence of product reform.

### **Gender X**

TDI appreciates the Alberta Rate Board's focus on modernizing its approach on gender specific rating variables. Allowance to provide equal treatment for all customers regardless of binary or non- binary driver license disclosure is a positive step forward. TDI recommends the Board allow insurer discretion with regard to rate filings in which amendments to this rating factor are used, this simplified and flexible approach will allow insurers to maintain their competitive rate structure, and voluntarily offer rates which best suits the needs of the company and best serve Alberta drivers.

### **Cannabis**

With the federal legalization of cannabis coming into force in October, there is a tremendous amount of uncertainty that comes with it, and uncertainty creates many rating challenges. As each province will have its own jurisdictional approach, we felt it best to highlight some of these areas which need to be considered with respect to the impact of cannabis legalization on the provision of auto insurance:

- Enforcement vs legalization – Changes needed to hwy traffic act to address legal limits, and thresholds for impairment
- Criminal Code amendments – allowance for insurers to re file convictions based on major/criminal ratings
- Road side impairment tests – establish thresholds for impairment and protocols for accurate, efficient roadside testing
- Cancellation vs re underwriting of auto policies for those found to be guilty of offence

Thank you for the opportunity to provide these comments, and for taking the time to consider them. We welcome the opportunity to discuss them at your convenience. Please contact Lynn Whitehead with any questions ([lynn.whitehead@tdinsurance.com](mailto:lynn.whitehead@tdinsurance.com) or 416-484-3931).