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The Psychologists' Association of Alberta, the voice of psychology in the province, is committed to enhancing the quality and effectiveness of psychological services, and to the development of solutions for mental health care.

Amongst our members are psychologists who are involved in the assessment and rehabilitation of persons who have had traumatic injuries, including those sustained in car crashes. Psychologists have special expertise in the assessment and rehabilitation of persons who have had such injuries. Our expertise is recognized and relied upon by the Alberta Government, including Alberta Human Resources and Employment (e.g., the Assured Income for the Severely Handicapped AISH program) and the Court of Queens Bench. We are typically asked to assess and comment on the nature, severity, and implications of these traumatic injuries and associated disability. Over the last many years, we have become very familiar with Alberta automobile insurance policies and benefits.

We therefore applaud your review of automobile insurance, which we consider long overdue.

We are particularly pleased with the proposed increase in access to accident benefits for medical and rehabilitation services, through the increase in "Section B" benefits, from $10,000 to $50,000. We believe this will go a long way towards reducing the burden of care on the public system. We are also enthused that best practice treatments to manage injuries need not have prior insurance approval. As has been demonstrated with whiplash, concussion, injury-induced anxiety disorders, and other injuries, early intervention is often the key to reducing long-term disability.

As psychologists and citizens, we also believe that actions have consequences. Thus, we agree that specific drivers found to be at fault should bear the burden of increased premiums –not others in their demographic or geographic group. However, we also believe that effective consequences are time-limited – even jail time can be reduced for good behaviour – and a mechanism needs to be developed to reduce surcharged premiums over time, as the driver's behaviour improves.

That having been said, we are concerned that the right to sue for pain, suffering, and future care by the survivor of an automobile accident could be limited to medically verified physical impairments. Further, we understand that injuries are to be adjudged as "Serious" and "Permanent" as early as three months after injury. Individuals sustaining injuries that do not meet these criteria would have limits placed on their rights to sue. Thus, individuals with serious and permanent psychological and mental impairments that are not apparent at three months would no longer be able to sue for pain and suffering, altered relationships, loss of quality of life, altered function in the community and family, and documented future treatment needs. Our Association is of the firm belief that if the government chooses to eliminate an individual's right

to sue for psychological and mental impairments, it would be discriminatory. Presumed to have but a minor injury, without long-term consequences, these persons would be prematurely "shut out" at the three-month mark, with no legal recourse.

This is important because, unfortunately, not all persons with so-called "Less Serious" disorders will respond to currently available treatment methods. Moreover, while most persons with pain, mild traumatic brain injury, and some psychological injuries will eventually recover, it is not possible to accurately predict at the three-month mark who will recover, and who will have persisting impairments and disability. Based on our past experience, we are concerned that some of these individuals will become a burden to publicly funded systems, including the health system and income support programs.

Definition of "Serious" and "Less Serious" injuries: the Law of Unintended Consequences. While we are pleased with the recognition of severe traumatic brain injury, para- and quadriplegia, loss of sensation, some fractures, and other conditions as "Serious" injuries, we are concerned that the wording of the proposed legislation might unintentionally exclude other injuries and conditions that, while not life-threatening, have serious and permanent implications. We believe there are at least three types of these injuries: chronic pain, mild-to-moderate traumatic brain injury, and psychological injuries. At present, none of these "soft tissue" injuries are reliably "verified" with current medical imaging techniques, including MRI, and so might be classified as "Less Serious" Designated Injuries. We are aware that while some insurance-commissioned "studies" indicate nearly all cases of soft tissue injuries recover by one year, we are also aware that such studies are fundamentally flawed, and other, better-executed studies document ongoing impairment and disability in a sizable minority of these persons.

Specific to **chronic pain**, we are concerned that "Serious" pain must be "determined by an objective and verifiable medical diagnosis." Of course, this definition likely excludes the vast majority of chronic pain, the cause of which is beyond the reach of current medical technology. One need only consider the case of headache, the most frequent pain complaint to physicians around the world. All would agree that headaches exist, and that some are very severe, even debilitating. Yet, most headaches occur in the absence of any identifiable underlying tissue damage. Chronic pain is a real problem, which can cause significant consequences for a person's life, but, by some definitions, does not become "chronic" until the six-month mark. It might therefore be premature to term persisting pain as chronic just three months after injury.

Similarly, though **mild- to moderate traumatic brain injury** can profoundly affect a person's attention, memory, problem solving and interpersonal skills, the underlying microscopic injury does not consistently and reliably manifest itself in brief neurological examinations, CT or MRI scans, or other medical assessment methods. Mild and moderate traumatic brain injury does manifest itself in everyday life, including the workplace and home. Still, it will not be known if these issues are permanent until at least 6-12 months after injury. Although the courts have relied on neuropsychological assessment to verify and document these impairments and disabilities,

and to rule out feigned or exaggerated injuries, the proposed legislative changes would designate them as "Less Serious Injuries."

Finally, we are very concerned that **injury-induced mental health issues** were excluded from the list of "Serious" injuries. Debilitating, injury-caused symptoms can range from depression, fatigue, anxiety, insomnia, nightmares, and intrusive flashbacks of the accident to full-blown Post-Traumatic Stress Disorder (PTSD). Symptoms of PTSD, which occur in 10 - 46% of all survivors of car crashes[1,2], can impede a return to normal living, but cannot be diagnosed until the one-month mark. Though PTSD is treatable, it is the rare case that receives treatment within three months. In part, this is because many primary care physicians fail to recognize its symptoms, which are typically experienced while driving, not in the physician's office.

We appreciate that the courts will ultimately determine whether an injury is “Serious” or “Less Serious.” However, we believe that if the government chooses to eliminate an individual’s right to sue for psychological and mental impairments, it would be *prima facie* discrimination that would not withstand a judicial test.

In this context, we would point out that there is no valid actuarial basis for the distinction between physical and mental disabilities. Distinctions between these categories, seen in underwriting of life and disability insurance and some private health insurance policies, are based on outdated studies, draw the wrong conclusions from good studies, and rely on irrational stereotypes. Further, we believe that any such distinction will become, as in other jurisdictions, a scientific and judicial quagmire, with judges trying to determine whether a given impairment is “mental” or “physical.” As our understanding of medicine and the cognitive neuroscience of emotion grows, such mind/body distinctions become increasingly arbitrary, outdated, and scientifically unsound. For example, we now know that symptoms of post-traumatic stress disorder, long thought a purely "psychological" reaction to a threatening stressor, are associated with trauma-induced biochemical and structural changes in the amygdala, deep within the brain.[3,4,5]

It is also arbitrary and scientifically unsound to try to describe chronic, persisting, and debilitating pain as *either* physical *or* psychological; body, brain, emotion, and behaviour are all affected in a chronic pain situation. It is true that some patients report more pain than would be implied by the extent of observable tissue damage. However, this does not “prove” that such patients are psychologically disordered, malingering, or both. Rather, Canadian[6] and others’[7] research on chronic pain shows that there are very real neurobiological changes that occur in the human central nervous system that heighten a person's sensitivity to painful stimuli, leading to chronic, disabling pain.

A similar situation exists in cases of mild and moderate traumatic brain injury, in which a person’s coping skills and emotional experiences, resident in the brain, can also be disrupted by injury.

To those who suggest that mental and psychological impairments cannot be assessed with the same degree of precision as physical injuries, we recommend the International Classification of Diseases (now in its 10th revision) and the Diagnostic and Statistical Manual of Mental Disorders (now in its 4th edition). These texts standardize and codify results from the continuously evolving investigative tools of medicine and psychology.
On this point, assessing psychologists are very aware that not all claims of injury are valid. However, rather than inappropriately assuming that all persons are malingering, Alberta psychologists have addressed the issue scientifically, by developing measures of symptom validity that are now used throughout the world.

Before the courts can determine whether an injury is "Serious" or "Less Serious," we are concerned that many persons (i.e., the moderately brain injured teacher and mother who cannot meet her responsibilities at home or work; the framing carpenter whose fractured and painful shoulder now keeps him from working in the cold and wet; the cab driver who must change jobs because a car crash resulted in chronic PTSD) will suffer without redress. We worry that these persons will end up consuming public resources, including publicly funded health services and income replacement programs. As consultants to the Alberta Human Resources and Employment's AISH program, we already have seen such unintended consequence occur on many occasions.

Please understand that we are not necessarily opposed to legislation that excludes transient injuries and impairments, and that requires that the individual demonstrate a serious and permanent impact on his or her life. However, we do believe that such adjudications must be made by knowledgeable professionals, and must not be restricted to diagnoses, but to the implications of the injury in a given individual's life. We believe that such decisions can be more accurately made at the 12-18 month mark than three months after injury. Finally, we strongly believe that the test needs to be the degree of disability, not the diagnosis, or the medically defined impairment.

Members of our Association would be pleased to expand on these points with members of the Renner Commission, including Dr. Ohlhauser, or interested others.

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