

# Long Term Care Covid-19 Commission Mtg.

Meeting with Marsh Canada Ltd  
on Tuesday, November 3, 2020



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MEETING OF THE LONG-TERM CARE COVID-19 COMMISSION

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--- Held Virtually via Zoom, with all participants  
attending remotely, on the 3rd day of November,  
2020, 2:00 p.m. to 2:36 p.m.

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1 BEFORE:

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3 The Honourable Frank N. Marrocco, Lead Commissioner

4 Angela Coke, Commissioner

5 Dr. Jack Kitts, Commissioner

6

7 PRESENTERS:

8

9 Sarah Robson, President and CEO of Marsh Canada

10 Greg Fisk, Managing Director, Healthcare Practice

11 Leader, Marsh Canada

12 Trevor Mapplebeck, Managing Director, Marsh

13 Advisory

14 Shani Briffa, Assistant General Counsel and Chief

15 Compliance Officer

16

17 PARTICIPANTS:

18

19 Alison Drummond, Assistant Deputy Minister,

20 Long-Term Care Commission Secretariat

21 Ida Bianchi, Counsel, Long-Term Care Commission

22 Secretariat

23 John Callaghan, Counsel, Long-Term Care Commission

24 Secretariat

25

1 Derek Lett, Policy Director, Long-Term Care  
2 Commission Secretariat  
3 Adriana Diaz Choconta, Senior Policy Analyst,  
4 Long-Term Care Commission Secretariat  
5 Jessica Franklin, Policy Lead of the Long-Term Care  
6 Commission  
7 Lynn Mahoney, Counsel, Long-Term Care Commission  
8 Secretariat

9  
10 ALSO PRESENT:

11  
12 Olivia Arnaud, Stenographer/Transcriptionist  
13  
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1 -- Upon commencing at 2:00 p.m.

2

3 COMMISSIONER FRANK MARROCCO (CHAIR):

4 Let me just sort of tell you where -- one of the  
5 things we're trying to understand is the business  
6 side of these transactions because we've spent a  
7 fair amount of time focusing on the social side,  
8 but we understand there's a shortage, that there's  
9 38,000 people on a waiting list and 5,000 people,  
10 more or less, in hospital who shouldn't be there.

11 And so we thought amongst ourselves  
12 that it would be helpful to -- and then we were  
13 advised that there was an insurance gap, and then  
14 we realized we really needed to just find out more  
15 about what this looks like, at least from the  
16 perspective of a private provider, just to round  
17 out our understanding of this.

18 So thank you very much for agreeing to  
19 come and help us with this. And we do have a  
20 transcript. We have a reporter, and we post the  
21 transcripts, just so that everybody understands  
22 what we're doing and what we're hearing.

23 And so with that, we're ready when you  
24 are.

25 SARAH ROBSON: Well, thank you very

1 much, Justice Marrocco. We appreciate the  
2 opportunity, and to all the Commissioners, we very  
3 much appreciate the opportunity to speak to the  
4 Commission today.

5           Joining me today -- my name is  
6 Sarah Robson, and I'm the president and CEO of  
7 Marsh Canada, and joining me today are my  
8 colleagues: Greg Fisk, who's the managing director  
9 and our healthcare practice leader for Marsh  
10 Canada; Trevor Mapplebeck, who's the managing  
11 director and national leader of our Marsh advisory  
12 team; and Shani Briffa, who's our assistant general  
13 counsel and chief compliance officer for  
14 Marsh Canada. Shani is also responsible for  
15 government relations and is our key liaison with  
16 insurance industry bodies.

17           Today, we're going to provide an  
18 overview of the current insurance marketplace,  
19 discuss the impact of the COVID-19 pandemic on the  
20 availability of insurance for the Ontario long-term  
21 care sector, and then to explore some potential  
22 insurance solutions to address the challenges that  
23 the sector is facing.

24           I'd like to start with a bit of  
25 background about the Canadian insurance industry

1 and Marsh & McLennan.

2           There are a number of players involved  
3 in the transfer of risk through the commercial  
4 insurance industry. Businesses rely on insurance  
5 to protect their balance sheets, customers, and  
6 employees. They secure insurance to transfer risk  
7 from themselves to the insurer; the insurer, in  
8 turn, transfers some or all of its risks to  
9 reinsurers. This is portrayed in the slide by the  
10 three large circles.

11           In the grey boxes below, brokers, like  
12 Marsh, facilitate the transfer of risk between  
13 policyholders and insurers while reinsurance  
14 intermediaries, like Marsh's sister company,  
15 Guy Carpenter, facilitate the transfer of risk  
16 between the insurance companies and their  
17 reinsurers. Brokers and reinsurance intermediaries  
18 work with a range of insurers and reinsurers to  
19 help their clients access the best possible terms  
20 and conditions for their risk.

21           In contrast, in the grey box at the  
22 top, agents typically represent a single insurance  
23 company and work exclusively on behalf of that  
24 company.

25           So to be clear, we at Marsh represent

1 the policyholders and work with a broad range of  
2 insurers to obtain the optimal terms and conditions  
3 available for their risk.

4 Marsh & McLennan is a global  
5 professional services firm with two operating  
6 segments: Risk and insurance services, and  
7 consulting. Marsh is a global leader in insurance  
8 brokering and risk management solutions. As a  
9 broker, we work with a wide range of insurers on  
10 behalf of our 14,000 clients in Canada.

11 As noted, we represent the buyer, and  
12 we have a comprehensive view on the entire  
13 marketplace for commercial insurance in Canada. In  
14 Canada, Marsh has more than 1,100 colleagues in  
15 14 offices across the country from Vancouver to  
16 St. John's. Our clients cross all sectors of the  
17 Canadian economy.

18 In particular, and of relevance to  
19 today's discussion, we have a dedicated national  
20 healthcare practice. Guy Carpenter, as I mentioned  
21 before, is a global leader in reinsurance and  
22 capital strategies; Oliver Wyman provides strategy,  
23 economic risk management, and brand consulting; and  
24 Mercer is a leader in health, wealth, and career  
25 consulting and solutions.



1                   Together, across Canada, our  
2 Marsh & McLennan companies represent over 3,000  
3 employees. Marsh & McLennan has extensive  
4 experience in facilitating the development of  
5 public-private partnerships to address systemic  
6 risks like those posed by pandemics.

7                   For example, in the aftermath of the  
8 terrorist attacks of September 11th, 2001, in the  
9 United States, Marsh & McLennan played an important  
10 role in helping policyholders, insurers, and that  
11 country's federal government develop the original  
12 Terrorism Risk Insurance Act of 2002.

13                   We currently work with the National  
14 Flood Insurance Program in the United States to  
15 provide a financial backstop to their flood  
16 insurance program. In the United Kingdom, our  
17 company works very closely with government-backed  
18 entities, Pool Re and Flood Re, having been  
19 involved in their formation and subsequent  
20 management for many years.

21                   We engage in jurisdictions around the  
22 world to help create similar partnerships to  
23 address urgent public needs. Since the beginning  
24 of the COVID-19 pandemic, Marsh has been working  
25 with governments in 40 countries around the world,

1 including here in Canada, to facilitate discussions  
2 about pandemic insurance relief.

3 We've seen significant impacts on our  
4 economy and our way of life in the past eight  
5 months as a result of this pandemic. This is not  
6 the first global pandemic we've experienced, but it  
7 is on track to become the most economically  
8 damaging. According to data from Metabiota, it is  
9 estimated that the economic impact of this pandemic  
10 globally could exceed \$2 trillion. In comparison,  
11 the SARS outbreak in 2002 ended up costing the  
12 global economy a mere \$56 billion.

13 This pandemic has had a wide-ranging  
14 impact on all aspects of Canadian life, but some of  
15 the most damaging effects have been felt by the  
16 healthcare sector and, more specifically, by  
17 long-term care.

18 As I mentioned at the beginning, we  
19 have deep experience in the healthcare sector, and  
20 we have a practice that is dedicated to the  
21 healthcare sector and industry.

22 And my colleague, Greg Fisk, is now  
23 going to take a few minutes to talk about how the  
24 pandemic has affected the insurance market for  
25 long-term care in Canada. Greg?

1 GREG FISK: Thank you, Sarah.

2 And thank you, Commissioners, for the  
3 opportunity to address you today.

4 First, I'm going to talk about the  
5 state of the insurance market pre-COVID or prior to  
6 March of 2020, and then I'll discuss what the  
7 market looks like today.

8 The insurance market for long-term care  
9 was experiencing challenges prior to the pandemic.  
10 For more than a decade, starting in the mid-2000s,  
11 commercial insurers' financial performance was  
12 largely driven by investment income that offset  
13 modest underwriting performance, capacity across  
14 all lines was abundant -- which helped keep prices  
15 down -- and generally providing insurers with mid-,  
16 single-digit operating returns.

17 In late 2017 and 2018, however,  
18 commercial insurance pricing started to increase,  
19 and in 2019, the market began a rapid transition  
20 driven by an increase in claims uptick severity and  
21 frequency.

22 So by January of 2020, insurance rates  
23 had actually increased in each of the last nine  
24 quarters on a global basis. In the first quarter  
25 of this year, global property insurance rates were

1 up by 15 percent, while financial and professional  
2 lines, including directors and officers insurance,  
3 rose by nearly 26 percent globally, and general  
4 liability increased by 5 percent.

5 In Canada, property insurance for the  
6 long-term care sector were increasing by  
7 approximately 20 percent on average, and  
8 deductibles were rising in the sector.

9 For this area, water damage claims  
10 drive property insurance losses; as a result,  
11 because of largely aging infrastructure, the  
12 residential infrastructure of the occupancy, and  
13 construction are key drivers to these claims.

14 Most of the lines were stable, and we  
15 weren't seeing significant changes in the kinds of  
16 coverage available, and significantly, prior to  
17 March, many property policies contained coverage  
18 for business interruption losses as a result of the  
19 contagious disease.

20 For general and professional liability  
21 insurance prior to March, we saw premium increases  
22 of between 10 and 20 percent but no real changes to  
23 deductible or other terms in the early part of the  
24 year. It was simply managing costs. That said,  
25 the marketplace for liability insurance for the

1 long-term care sector is quite limited with  
2 approximately five key insurers, sort of three  
3 domestic and two in the U.K., operating in this  
4 space.

5 We're seeing a number of liability  
6 claims in Ontario, which makes this region an  
7 unprofitable region for many insurers due to  
8 increased litigation costs that are driving up  
9 claims for both severity and frequency.

10 And prior to March this year, the  
11 market for directors and officers liability  
12 insurance was generally stable. Pricing was  
13 stable, we weren't seeing limitations on contagious  
14 disease coverage, and premiums were stable as well.

15 So what does the market look like now  
16 after March? Things are very different.

17 For the Ontario long-term care sector,  
18 we are seeing significant increases and reduced  
19 capacity for insurance across the board. Property  
20 premiums are increasing 20 to 30 percent,  
21 deductibles are increasing -- this is specific to  
22 property insurance -- and there is reduced capacity  
23 and limits available for mostly the larger  
24 organizations.

25 Contagious disease coverage is no

1 longer available for business interruption  
2 insurance. For general liability and professional  
3 liability insurance, premiums are increasing in  
4 excess of 20 percent. Key insurers remain but have  
5 removed coverage for contagious disease or COVID  
6 altogether.

7 The global reinsurance market for  
8 contagious disease has all but collapsed, and at  
9 this time, insurers are not accepting new business  
10 in the senior care segment or long-term care  
11 segment. And very significantly for directors and  
12 officers insurance, premiums are increasing in  
13 excess of 20 percent, deductibles have increased,  
14 limits have been reduced, and contagious disease  
15 risk is now being specifically excluded.

16 At this time, I'd like to discuss how  
17 these factors have affected a variety of different  
18 business class in the sector and kind of go through  
19 some different themes.

20 So first is the reduced capacity or  
21 reduced limits available, particularly for  
22 liability and directors and officers insurance.  
23 This is an issue particularly felt by larger  
24 operators who are no longer able to purchase limits  
25 to the same extent. We've had clients forced to

1 reduce insurance limits from 50 million to  
2 25 million for both liability and D&O insurance  
3 simply because there's no insurance available.

4 This has potential for a significant  
5 impact because these larger organizations have more  
6 exposure to larger class action-type claims. Also,  
7 lower limits may not meet lending requirements,  
8 which may impact the ability to secure needed  
9 financing.

10 For higher deductibles, this issue is  
11 felt by small- and mid-size organizations who do  
12 not have capacity to take on more risk or the  
13 internal infrastructure to manage claims  
14 internally. Higher deductibles may also not meet  
15 lending requirements, which tends to impact the  
16 larger organizations.

17 I thought I'd provide you with a couple  
18 of examples, real-life examples of recent renewals.

19 So in one case, we've had a client with  
20 a single location: Deductible has increased from  
21 \$5,000 to \$10,000, and total insurance cost has  
22 increased from \$45,000 to \$60,000. Another client  
23 that had multiple locations: Deductible has  
24 increased from \$50,000 to \$100,000, and total  
25 insurance costs increased from 1.2 million to

1 1.8 million.

2           These are, undoubtably, very difficult  
3 market conditions, but the real crisis and the real  
4 reason we're here today is the inability for  
5 Ontario long-term care organizations to access any  
6 insurance to protect themselves against COVID  
7 claims.

8           Small and non-profit operators cannot  
9 attract or retain board members who are willing to  
10 accept indemnity from the organization as their  
11 only means of protection. Small, mid-size, and  
12 non-profits are also not capitalized to assume  
13 costs of significant COVID actions against them.  
14 Large organizations have been targeted in these  
15 class actions and will assume this risk without  
16 protection of insurance.

17           So some observations and what we look  
18 forward to in 2021: Unfortunately, I expect  
19 conditions to persist for the short term. Ontario  
20 Government's proposed immunity legislation is a  
21 very positive step forward and will help preserve  
22 the ongoing viability of insurance coverage for the  
23 long-term care sector; however, it's not yet  
24 finalized and has yet to be tested. Questions  
25 remain.



1                   And as Sarah mentioned earlier,  
2 insurers manage their risk portfolios through  
3 reinsurance. The upcoming January 1st reinsurance  
4 treaty renewals will provide enhanced clarity with  
5 respect to insurance coverage terms and conditions  
6 for this sector, so we will definitely know more by  
7 Q1 of this next year. And we anticipate that in  
8 the insurance market -- the insurance market will  
9 continue to be challenging.

10                   Property insurance rates are expected  
11 to continue to rise into 2021 after record-breaking  
12 losses in 2020. The liability insurance market for  
13 the Ontario long-term care sector will remain  
14 limited due to those pre-existing market conditions  
15 I discussed earlier and the uncertainty around  
16 contagious disease risk, and underwriting scrutiny  
17 around compliance to guidelines will increase, and  
18 it's expected that it will become a condition of  
19 coverage moving forward.

20                   So in terms of impact on the next  
21 slide, for Ontario's long-term care sector,  
22 insurance market capacity -- albeit limited -- will  
23 likely continue to be available because of two key  
24 factors.

25                   The proposed immunity legislation will

1 limit COVID-19 litigation exposure. Insurers that  
2 remain in the marketplace have implemented new  
3 policy terms and conditions to limit their own  
4 exposure to COVID risk; however, long-term care  
5 organizations, including the non-profits, will  
6 continue to be exposed to costs to defend against  
7 uninsured COVID allegations and the cost to enforce  
8 any immunity, costs to assume contagious disease  
9 liability risk after the emergency period is over,  
10 costs to meet potential new standards of care  
11 needed to purchase the insurance, the increasing  
12 insurance rates themselves, and they will continue  
13 to have challenges attracting and retaining  
14 independent or volunteer board members where  
15 insurance is unavailable.

16 We need to develop new ways to protect  
17 these organizations. So now my colleague,  
18 Trevor Mapplebeck, is going to walk us through some  
19 potential insurance solutions for the long-term  
20 care sector. Trevor?

21 TREVOR MAPPLEBECK: Thank you, Greg.

22 And thank you again, Commissioners, for  
23 the opportunity to speak and address you today.

24 The interdependent nature of pandemic  
25 risk necessitates close cooperation by the public

1 and private sectors in managing its impacts and  
2 ultimately restoring confidence in the working of  
3 the markets, the economies, and society certainly  
4 at large.

5           As Greg referenced, the insurance  
6 market is reducing or eliminating coverage for  
7 infectious disease events for the sector. The  
8 scale of impact of the pandemic cannot be managed  
9 by the Canadian property and casualty insurance  
10 industry alone. The data from the Insurance Bureau  
11 of Canada and PACICC, which is the Canadian  
12 property and casualty insurance insolvency fund,  
13 shows that the capital and surplus available would  
14 be wiped out in under three months if liability and  
15 business interruption loss events were to be  
16 covered.

17           There are, however, options that can  
18 and should be explored by the sector. From the  
19 left side of this slide, there is an opportunity  
20 for the sector to develop risk-sharing or pooling  
21 schemes, including the creation of either a single  
22 entity or group captive insurance company.  
23 Captives are, in essence, licensed and regulated  
24 insurance risk financing structures incorporated by  
25 an individual or group of organizations to fund for

1 future losses.

2 While this is a plausible solution,  
3 it's not a quick solution, nor is it likely  
4 possible without additional financial support,  
5 given the capital that would be required from the  
6 sector or individual organizations to fund  
7 large-scale systemic risk.

8 So the key to building a more proactive  
9 and agile response to the next pandemic will be an  
10 insurance and risk management partnership that  
11 helps to close gaps and incentivizes pandemic risk  
12 preparedness and mitigation efforts across all  
13 levels of government as well as the corporate or  
14 organizational level. This, in turn, will  
15 facilitate access to capital from lenders and  
16 equity markets, giving them better confidence, if  
17 you will, in the credit risk exposure of the sector  
18 at large.

19 Will also limit large-tail risk to  
20 insurers. As I mentioned earlier, the insurance  
21 industry is just not well-enough capitalized to  
22 withstand catastrophic systemic risk. It will  
23 create greater certainty for businesses and  
24 employees, and ultimately, it will enhance the  
25 resilience of the Canadian economy.

1                   Like public-private pooling programs  
2 for catastrophic perils -- such as flooding and  
3 terrorism, as Sarah alluded to at the outset -- and  
4 crop hazards, pandemic risk pooling programs will  
5 likely vary by country based on the unique risk  
6 profiles and risk tolerance of each economy.

7                   Successful models will leverage the  
8 credit of central banks to drive affordability and  
9 create the economic incentives needed for all  
10 stakeholders to enact the measures to mitigate  
11 pandemics.

12                   We have recently presented to the  
13 Federal Government on the need to create this type  
14 of public-private partnership to better insulate  
15 the economy and to enact -- sorry, and from the  
16 financial impact of the next pandemic.

17                   So given the fact that most of the  
18 Ontario long-term care sector are for-profit  
19 organizations, there is an opportunity to develop a  
20 go-forward strategy of risk-pooling or sharing that  
21 is developed by the sector for the sector; however,  
22 there are several complementary requirements needed  
23 in order to develop this possible strategy.

24                   One, the development of minimum risk  
25 management standards around sanitization, care, and

1 facility maintenance along with an auditable  
2 program around these standards. This would be  
3 certainly complementary to the inspections already  
4 undertaken by the Ministry.

5 COMMISSIONER FRANK MARROCCO (CHAIR):  
6 Can I stop you there for a minute?

7 TREVOR MAPPLEBECK: Certainly.

8 COMMISSIONER FRANK MARROCCO (CHAIR):  
9 We're interested in inspections. So would it be  
10 sensible if, as part of this risk-pooling, there  
11 was an insistence that government contribute a  
12 vigorous inspection program?

13 Because we have heard evidence about  
14 the inspection program that was in effect, really,  
15 on the eve of this pandemic occurring.

16 TREVOR MAPPLEBECK: Unquestionably,  
17 Justice Marrocco, yes. I think that enhancing the  
18 auditable inspection program that is in place right  
19 now would certainly create kind of further  
20 incentive, if you will, for the insurance  
21 community/insurers to create a greater appetite for  
22 affording coverage, insurance coverage for the  
23 sector at large.

24 COMMISSIONER FRANK MARROCCO (CHAIR):  
25 So would it be reasonable to say enhancing the

1 inspections not only has a humanitarian side, if  
2 you like --

3 TREVOR MAPPLEBECK: Mm-hm.

4 COMMISSIONER FRANK MARROCCO (CHAIR):  
5 -- but it also has a business side because it  
6 minimizes the risk a little bit?

7 TREVOR MAPPLEBECK: Unquestionably,  
8 yes. I mean, resident care and safety, obviously,  
9 is paramount to everything, but creating the  
10 additional inspections, the additional standards,  
11 risk management protocols, in our language, would  
12 certainly help facilitate the insurance industry's  
13 capability to address this.

14 If you will, I'll give you an example.  
15 We have created these type of structures for the  
16 agriculture sector in Canada and have developed  
17 minimum risk management standards for organizations  
18 before they're permitted access to insurance. And  
19 so not to create kind of a barrier, if you will,  
20 but more an incentive for organizations to adhere  
21 to minimum guidelines for minimum risk management  
22 protocols that obviously would be geared first and  
23 foremost to resident care and safety, but certainly  
24 around the sanitization, cleanliness maintenance,  
25 operational maintenance of the actual facilities or

1 buildings themselves as well.

2 COMMISSIONER FRANK MARROCCO (CHAIR):

3 And the maintenance of proper personal protective  
4 equipment supplies and that sort of thing and an  
5 interest in a proper balance between -- and trained  
6 staff --

7 TREVOR MAPPLEBECK: Yeah, without  
8 question.

9 COMMISSIONER FRANK MARROCCO (CHAIR):  
10 -- all reduce risk.

11 TREVOR MAPPLEBECK: Yeah, everything we  
12 can do to create confidence, if you will, in the  
13 risk transfer partners/insurers that we are seeking  
14 to manage and minimize risk will be beneficial,  
15 unquestionably. I guess we need to take into  
16 context whether, you know, if the creation of these  
17 additional standards will create some economic  
18 challenge for the operators as well.

19 COMMISSIONER FRANK MARROCCO (CHAIR):  
20 Commissioner Kitts?

21 COMMISSIONER JACK KITTS: Do the  
22 insurers use information to, I guess, decide on  
23 insurance premiums or what they are based on their  
24 own inspections or inspections by others?

25 And the second is, have any long-term



1 care homes in Ontario been denied insurance, or  
2 have their insurance premiums increased because of  
3 recognition of increased risk?

4 TREVOR MAPPLEBECK: Greg, perhaps you  
5 can address those two? And then I can add some  
6 context as well.

7 GREG FISK: Yeah. For Question No. 1,  
8 have insurers gone out and done the inspections on  
9 these homes? Traditionally, no. The premiums have  
10 been set largely as a result -- largely determined  
11 on loss experience and claims experience where  
12 insurers would look at claims trends to determine  
13 the level of premium in the underwriting, but I can  
14 tell you that is changing and has changed.

15 There is an expectation from the  
16 insurance community that -- or a hope -- that this  
17 type of enhanced risk management on the part of the  
18 government will take place in that insurers will be  
19 scrutinizing their insurance compliance to those  
20 rules and regulations and make that a part of the  
21 underwriting requirements moving forward.

22 COMMISSIONER JACK KITTS: Thank you.

23 COMMISSIONER FRANK MARROCCO (CHAIR):

24 Was there a recognition before COVID that there  
25 might have been some deficiencies in the inspection

1 procedure or the inspection regime?

2 GREG FISK: Yes, I believe that's the  
3 case. It's been a difficult class.

4 COMMISSIONER FRANK MARROCCO (CHAIR):  
5 All right. Would this have been articulated  
6 anywhere or reduced to writing anywhere so that we  
7 could look at it or subpoena it, but look at it?

8 GREG FISK: In terms of just market  
9 conditions and the overall -- for this sector in  
10 Ontario?

11 COMMISSIONER FRANK MARROCCO (CHAIR):  
12 No, no, but where someone's saying, listen, we're  
13 concerned about your inspection regime; it's  
14 increasing risk, but there's no pandemic, so it's  
15 just at the conversation stage.

16 And then you have the pandemic, and  
17 it's highlighted; then, you suddenly realize, well,  
18 they don't have a plan. They don't have personal  
19 protective equipment. We've got a disaster on our  
20 hands here.

21 GREG FISK: Yeah, I'm not aware of --

22 COMMISSIONER FRANK MARROCCO (CHAIR):

23 Okay.

24 GREG FISK: -- anything that I've read.

25 COMMISSIONER FRANK MARROCCO (CHAIR):

1 All right. Thank you.

2 Sorry, Mr. Mapplebeck. I think I  
3 interrupted there.

4 TREVOR MAPPLEBECK: No, that's quite  
5 all right. I think we were just seeking to touch  
6 on this holistic approach, and certainly from our  
7 firm's perspective, what may be necessary in order  
8 to move forward with an alternative type of  
9 strategy.

10 So we've just kind of talked at length  
11 about development of those minimum risk management  
12 standards, again, complementing or enhancing what  
13 is already done by the Ministry.

14 A second key component of that,  
15 certainly, is that we would need a group of  
16 long-term care operators who are willing to  
17 participate in a risk-sharing or pooling scheme,  
18 sorry; in essence, a group of like-minded  
19 organizations who share a common risk management  
20 philosophy.

21 Third, these organizations must be able  
22 to provide some initial capital to support the  
23 development of a risk finance strategy,  
24 specifically for infectious disease risk, which can  
25 certainly be a challenge for smaller, privately

1 held organizations who have fewer sources of  
2 capital available to them.

3 And finally, there would still remain a  
4 need for governmental support through a combination  
5 of the immunity legislation and a level of  
6 financial backstop to protect the risk-sharing  
7 pool, especially in early years where the capital  
8 is not sufficient to manage systemic risk.

9 So if we consider other public-private  
10 partnership-type structures that have been created  
11 around the world, oftentimes, there's a level of,  
12 in our case, provincial and/or federal and the U.S.  
13 state and federal funds that would be made  
14 available, almost acting as a source of financial  
15 guarantee or reinsurance in behind the structure.

16 Now, of course, this is not an  
17 Ontario-only challenge; rather, it's one of  
18 national concern. So any strategy must contemplate  
19 the factors above across the country, especially as  
20 immunity legislation may differ or perhaps not even  
21 be afforded at all in some provinces or  
22 territories.

23 Similarly, for those organizations  
24 whose operations extend beyond Canada, governmental  
25 response in other countries must be incorporated

1 into these risk strategies. We are seeking to  
2 track immunity in other provinces and across each  
3 U.S. state at this point in time; however, any  
4 strategy that is looked at should likely ring-fence  
5 Ontario and/or certainly Canada overall.

6 So with that, I'll hand it back to  
7 Sarah to wrap things up for us. Sarah?

8 SARAH ROBSON: Thanks, Trevor.

9 And thank you again for the opportunity  
10 to speak with the Commission today.

11 As we outlined in our presentation, the  
12 challenges facing the long-term care sector in  
13 Ontario and across Canada are indeed complex.

14 A holistic approach to the problem is  
15 essential, in our view. An insurance solution in  
16 and of itself will not be sufficient. We must take  
17 a collaborative approach across the broad range of  
18 stakeholders, including government, the long-term  
19 care sector, and the insurance industry.

20 That concludes our prepared remarks.  
21 We'd be happy to answer any additional questions  
22 that the Commission may have.

23 COMMISSIONER FRANK MARROCCO (CHAIR):  
24 Commissioner Kitts?

25 COMMISSIONER JACK KITTS: I just want

1 to go back to the question of whether any of the  
2 long-term care homes were denied insurance based on  
3 just being too high a risk, because if you're  
4 looking at risk sharing, you're going to want to  
5 know who you're sharing with.

6 And so are you aware of any long-term  
7 care homes that were denied insurance over the past  
8 five years?

9 GREG FISK: Oh, I'm sure, you know --  
10 we don't -- it's a limited market. There's only a  
11 few different insurers that operate in this space.  
12 So in some cases, insurers have denied based on  
13 claims history. So when a submission is put  
14 forward and an underwriter feels that the claims  
15 history is just too high, then certainly, they'll  
16 refuse to quote at that time.

17 COMMISSIONER JACK KITTS: And who would  
18 be informed of that?

19 GREG FISK: The home. The organization  
20 would be informed.

21 COMMISSIONER JACK KITTS: Okay.  
22 Thank you.

23 COMMISSIONER FRANK MARROCCO (CHAIR):  
24 Is there a -- maybe we should know the answer to  
25 this, but we don't. At least, I don't.

1           Is there a requirement that you have to  
2 have a minimum level of insurance coverage in order  
3 to be licensed, in order to carry on?

4           GREG FISK: I'd have to get -- I'm not  
5 sure. Generally, limits are set by various things.  
6 It could just be the client's own requirement, or  
7 it could be -- there could be a contractual  
8 requirement via a lender.

9           But if the Ministry itself requires a  
10 certain level to be maintained for each of these  
11 organizations, I'd have to get back to you on that.

12           COMMISSIONER FRANK MARROCCO (CHAIR):  
13 Yeah. And the reason I ask the question is certain  
14 professions will insist that you have coverage in  
15 order to practice that profession.

16           And I was just curious whether there  
17 was a similar requirement, and correct me if I'm  
18 wrong, but it would seem to be a sensible thing to  
19 do because if you can't get insurance, then you  
20 just shouldn't be -- somebody else should be  
21 running the business who can.

22           GREG FISK: Right.

23           TREVOR MAPPLEBECK: Yeah, so not unlike  
24 lawyers, there is a level of mandatory insurance  
25 coverage for doctors, for medical doctors, but I

1 think the facilities themselves, the residences  
2 themselves make their determination on how much  
3 insurance they buy and why.

4 As Greg alluded to, the contractual  
5 obligations from either a lender who requires an  
6 order to offer the loans, that there's a certain  
7 level of insurance in place both for property  
8 insurance and liability risk or professional  
9 liability exposure, but also if they are not the  
10 building owner; in other words, if there's a  
11 landlord that owns the building, then there would  
12 again be a contractual obligation, but that  
13 certainly is more around the value of the property  
14 itself as opposed to any liability risk.

15 COMMISSIONER FRANK MARROCCO (CHAIR):  
16 Well, I do have one question, and that is this: If  
17 you were us and you were going to recommend three  
18 things to facilitate a proper insurance market on a  
19 long-term basis, if you were us, what would you  
20 recommend? What three things would you recommend?

21 And I appreciate you had no notice of  
22 this question because, quite frankly, until I  
23 listened to your presentation, I hadn't thought of  
24 the question, but...

25 TREVOR MAPPLEBECK: Well, I think if we



1 take it back and consider the financial  
2 wherewithal, the capital base of the Canadian  
3 property and casualty insurance marketplace, that  
4 part of the economy can just ill-afford to provide  
5 broad-based infectious disease risk.

6 I think any infectious disease risk  
7 that was contemplated in the past was more about an  
8 individual facility kind of infectious disease  
9 outbreak, like an influenza, within a single  
10 operation.

11 So I'd say given that as kind of fact,  
12 if you will, we'd probably be leaning more toward  
13 the conversations that -- and similar to the  
14 conversations we're having with the Federal  
15 Government and the Provincial Governments right now  
16 around the need for governmental financial support  
17 for the creation of a solution.

18 So I'd say, baseline, let's look at the  
19 risk management protocols that should be in place  
20 for the sector overall and ensuring that those risk  
21 management protocols, standards, policies are  
22 reviewed on a regular and consistent case, i.e.,  
23 probably more frequently than annually.

24 Secondly, engagement with a group of  
25 stakeholders, including the insurance industry,

1 because there would still be a level of  
2 participation required by the insurance industry  
3 overall.

4           And so if we think about the creation  
5 of minimum standards or risk management protocols,  
6 a recognition that there's a role for the insurance  
7 industry both for distribution and for a level of  
8 baseline capital support, but then unquestionably  
9 the need for governmental financial support as  
10 well, whether that's direct participation in  
11 risk -- i.e., providing direct capital -- or  
12 perhaps more like the terrorism reinsurance pool in  
13 the U.S., it provides a level of, in essence,  
14 financial guarantee that it's there and available  
15 when called upon.

16           So I would say, Justice Marrocco, those  
17 would be kind of the three factors that I would  
18 consider, and perhaps Greg or Sarah may have some  
19 additional context.

20           COMMISSIONER FRANK MARROCCO (CHAIR):  
21 Well, thank you. That's helpful. That's extremely  
22 helpful.

23           I don't know if the other Commissioners  
24 have any questions, any further questions?

25           Well, then, I think it falls to me to

1 say we really do appreciate the time and effort  
2 that went into this -- I guess long-term care  
3 insurance 101 -- and we do appreciate it. We see  
4 the problem, and we're just trying to understand it  
5 so that if we decide to make some recommendations,  
6 they'll be sensible.

7 And in that sense, we would be more --  
8 if after this is over and you're reflecting on  
9 this, there's something else you thought should be  
10 brought to our attention, we would really  
11 appreciate receiving it and Ms. Briffa contact our  
12 counsel and convey it that way or any other way you  
13 want, but that may be the easiest way to do it.

14 From our perspective, though, thank you  
15 for a very thorough initial briefing about what  
16 this looks like. It's very helpful to us.

17 SARAH ROBSON: Thank you very much,  
18 Justice Marrocco, and we very much appreciate the  
19 opportunity to spend some time with you today, and  
20 rest assured that we'll continue to be thinking  
21 about potential solutions as well as we advocate  
22 for coverage for our clients as well.

23 So thank you very much. If you have  
24 any further questions of us, please don't hesitate  
25 to reach out through your counsel.

1                   COMMISSIONER FRANK MARROCCO (CHAIR):

2 Thank you, Ms. Robson. That's very kind of you.

3                   COMMISSIONER JACK KITTS: Thank you.

4                   COMMISSIONER FRANK MARROCCO (CHAIR):

5 Well, thank you all very much, and good afternoon.

6                   SARAH ROBSON: Thanks very much.

7

8 -- Adjourned at 2:36 p.m.

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1 REPORTER'S CERTIFICATE

2  
3 I, OLIVIA ARNAUD, CSR, Certified  
4 Shorthand Reporter, certify:

5  
6 That the foregoing proceedings were  
7 taken before me at the time and place therein set  
8 forth;

9  
10 That all remarks made at the time  
11 were recorded stenographically by me and were  
12 thereafter transcribed;

13  
14 That the foregoing is a true and  
15 correct transcript of my shorthand notes so taken.

16  
17  
18 Dated this 3rd day of November, 2020.

19  
20 

21  
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| <b><u>WORD INDEX</u></b> | <b>50</b>          | <b>14:1</b>    | <b>and/or</b>     | <b>27:12</b>  | <b>baseline</b> | <b>32:18</b> | <b>Canadian</b>    | <b>5:25</b>      |                 |                    |              |                 |              |             |              |          |             |              |           |             |             |              |           |              |              |           |               |           |              |            |           |               |           |              |           |             |              |               |           |              |          |             |               |             |                  |             |             |              |             |             |              |             |              |              |              |              |                 |              |           |             |                     |              |             |                |             |            |            |            |                |               |           |             |                  |             |              |           |           |               |           |              |            |           |             |              |              |                  |              |                    |             |                  |             |                |             |              |            |              |           |           |             |              |           |           |
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| <b>\$10,000</b>          | <b>abundant</b>    | <b>10:14</b>   | <b>Angela</b>     | <b>2:4</b>    | <b>basis</b>    | <b>10:24</b> | <b>capability</b>  | <b>22:13</b>     | <b>capacity</b> | <b>10:13</b>       |              |                 |              |             |              |          |             |              |           |             |             |              |           |              |              |           |               |           |              |            |           |               |           |              |           |             |              |               |           |              |          |             |               |             |                  |             |             |              |             |             |              |             |              |              |              |              |                 |              |           |             |                     |              |             |                |             |            |            |            |                |               |           |             |                  |             |              |           |           |               |           |              |            |           |             |              |              |                  |              |                    |             |                  |             |                |             |              |            |              |           |           |             |              |           |           |
| <b>\$100,000</b>         | <b>accept</b>      | <b>15:10</b>   | <b>annually</b>   | <b>32:23</b>  | <b>31:19</b>    | <b>began</b> | <b>10:19</b>       | <b>beginning</b> | <b>8:23</b>     | <b>9:18</b>        |              |                 |              |             |              |          |             |              |           |             |             |              |           |              |              |           |               |           |              |            |           |               |           |              |           |             |              |               |           |              |          |             |               |             |                  |             |             |              |             |             |              |             |              |              |              |              |                 |              |           |             |                     |              |             |                |             |            |            |            |                |               |           |             |                  |             |              |           |           |               |           |              |            |           |             |              |              |                  |              |                    |             |                  |             |                |             |              |            |              |           |           |             |              |           |           |
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| <b>\$60,000</b>          | <b>Act</b>         | <b>8:12</b>    | <b>approach</b>   | <b>26:6</b>   | <b>12:2</b>     | <b>19:16</b> | <b>Captives</b>    | <b>18:23</b>     | <b>CARE</b>     | <b>1:7</b>         | <b>2:20,</b> | <b>21,</b>      | <b>23</b>    | <b>3:1,</b> | <b>4, 5,</b> | <b>7</b> | <b>5:21</b> | <b>9:17,</b> | <b>25</b> | <b>10:8</b> | <b>11:6</b> | <b>12:1,</b> | <b>17</b> | <b>13:10</b> | <b>15:5,</b> | <b>23</b> | <b>16:13,</b> | <b>21</b> | <b>17:4,</b> | <b>10,</b> | <b>20</b> | <b>20:18,</b> | <b>25</b> | <b>22:8,</b> | <b>23</b> | <b>24:1</b> | <b>26:16</b> | <b>28:12,</b> | <b>19</b> | <b>29:2,</b> | <b>7</b> | <b>34:2</b> | <b>career</b> | <b>7:24</b> | <b>Carpenter</b> | <b>6:15</b> | <b>7:20</b> | <b>carry</b> | <b>30:3</b> | <b>case</b> | <b>14:19</b> | <b>25:3</b> | <b>27:12</b> | <b>32:22</b> | <b>cases</b> | <b>29:12</b> | <b>casualty</b> | <b>18:9,</b> | <b>12</b> | <b>32:3</b> | <b>catastrophic</b> | <b>19:22</b> | <b>20:2</b> | <b>central</b> | <b>20:8</b> | <b>CEO</b> | <b>2:9</b> | <b>5:6</b> | <b>certain</b> | <b>30:10,</b> | <b>13</b> | <b>31:6</b> | <b>certainly</b> | <b>18:3</b> | <b>21:3,</b> | <b>7,</b> | <b>19</b> | <b>22:12,</b> | <b>23</b> | <b>26:6,</b> | <b>15,</b> | <b>25</b> | <b>28:5</b> | <b>29:15</b> | <b>31:13</b> | <b>certainty</b> | <b>19:23</b> | <b>CERTIFICATE</b> | <b>36:1</b> | <b>Certified</b> | <b>36:3</b> | <b>certify</b> | <b>36:4</b> | <b>CHAIR</b> | <b>4:3</b> | <b>21:5,</b> | <b>8,</b> | <b>24</b> | <b>22:4</b> | <b>23:2,</b> | <b>9,</b> | <b>19</b> |

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