THE DEVELOPMENT AND POLICY IMPLICATIONS
OF AUTOMOBILE INSURANCE IN BRITISH COLUMBIA

By

DOUGLAS KNOX HARRISON
B. Com., U.B.C. 1967
LL.B., U.B.C. 1970

A THESIS SUBMITTED IN PARTIAL FULFILMENT OF
THE REQUIREMENTS FOR THE DEGREE OF
MASTER OF BUSINESS ADMINISTRATION

in the Faculty
of
COMMERCE AND BUSINESS ADMINISTRATION

We accept this thesis as conforming to the
required standard

THE UNIVERSITY OF BRITISH COLUMBIA
April, 1972
In presenting this thesis in partial fulfilment of the requirements for an advanced degree at the University of British Columbia, I agree that the Library shall make it freely available for reference and study. I further agree that permission for extensive copying of this thesis for scholarly purposes may be granted by the Head of my Department or by his representatives. It is understood that copying or publication of this thesis for financial gain shall not be allowed without my written permission.

Faculty
Department of Commerce and Business Administration

The University of British Columbia
Vancouver 8, Canada

Date May 8, 1978
Abstract

The purpose of the thesis is to review the development of the compensation system for traffic victims in British Columbia and to determined what changes are required in order to improve the equity, efficiency, and effectiveness of the system. The study examines this question from a broad perspective because of the inter-relationships among motor vehicle transportation, traffic safety, and the compensation system.

The methods of investigation were twofold. The first step was to read all the pertinent literature on the subject which could be found in Vancouver. The second step was to communicate by telephone, by mail, or in person with individuals who possessed special knowledge with respect to one or more aspects of the subject matter. The latter research was invaluable because it updated the information available in the literature, revealed the practical ramifications of different concepts, and provided British Columbia viewpoints to a world wide problem.

The conclusions of the thesis are based to a large extent on value judgments because of the paucity of quantifiable data and the absence of an actuarial analysis.

In general the writer feels that more stringent procedures must be employed in the issuance and renewal of licences, and the public must accept automatic suspensions of licences for repeated traffic violations or accident involvement. Simulta-
neously, improvement in vehicle and roadway design, and emergency treatment of crash victims must be undertaken.

The writer concludes that a no-fault, direct writer, and privately operated automobile compensation system is feasible at this time, and will provide a more equitable, effective, and efficient system of allocating premium dollars to a broader range of traffic victims.
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>CHAPTER</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>I INTRODUCTION</td>
<td>1</td>
</tr>
<tr>
<td>II THE EVOLUTION OF COMPENSATION FOR MOTOR VEHICLE TRAFFIC VICTIMS IN BRITISH COLUMBIA</td>
<td>5</td>
</tr>
<tr>
<td>III AUTOMOBILE ACCIDENT COMPENSATION IN OTHER JURISDICTIONS</td>
<td>27</td>
</tr>
<tr>
<td>IV THE WOOTTON COMMISSION REPORT AND THE CURRENT BRITISH LAW</td>
<td>58</td>
</tr>
<tr>
<td>V THE PRACTICAL RAMIFICATIONS OF THE NO-FAULT LEGISLATION</td>
<td>86</td>
</tr>
<tr>
<td>VI TRAFFIC SAFETY - WITH PARTICULAR REFERENCE TO DETERRENTS TO MOTOR VEHICLE ACCIDENTS</td>
<td>123</td>
</tr>
<tr>
<td>VII COMPULSORY INSURANCE, THE FAULT SYSTEM, THE COST OF DIFFERENT COMPENSATION SCHEMES, AND PUBLIC ADMINISTRATION OF MOTOR VEHICLE INSURANCE</td>
<td>155</td>
</tr>
<tr>
<td>VIII POLICY IMPLICATIONS</td>
<td>187</td>
</tr>
<tr>
<td>FOOTNOTES</td>
<td>221</td>
</tr>
<tr>
<td>BIBLIOGRAPHY</td>
<td>255</td>
</tr>
</tbody>
</table>
## List of Schedules

<table>
<thead>
<tr>
<th>Schedule</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>How Canadian Auto Insurance Plans Compare</td>
<td>55</td>
</tr>
<tr>
<td>II</td>
<td>B.C. Royal Commission on Automobile Insurance - Death and Disability Proposals</td>
<td>68</td>
</tr>
<tr>
<td>III</td>
<td>Current Death Benefit Provisions in B.C.</td>
<td>74</td>
</tr>
<tr>
<td>IV</td>
<td>B.C. Royal Commission on Automobile Insurance Proposed Rates and Demerit Point System</td>
<td>80</td>
</tr>
<tr>
<td>V</td>
<td>Current Demerit Point System for Licence Suspensions in B.C.</td>
<td>84</td>
</tr>
<tr>
<td>VI</td>
<td>Accident Benefits Premium Private Passenger Business</td>
<td>99</td>
</tr>
<tr>
<td>VII</td>
<td>Differences between the Board Proposals and CUA Rate Indications</td>
<td>100</td>
</tr>
<tr>
<td>VIII</td>
<td>The Independent Insurance Conference Proposed Rate</td>
<td>103</td>
</tr>
<tr>
<td>IX</td>
<td>Frequency of Bodily Injury Claims</td>
<td>108</td>
</tr>
<tr>
<td>X</td>
<td>Relationship of Injuries and Deaths to Cars Insured in British Columbia 1966-1970</td>
<td>112</td>
</tr>
<tr>
<td>XI</td>
<td>Traffic Victims Indemnity Fund Experience, 1969-71.</td>
<td>113</td>
</tr>
<tr>
<td>XII</td>
<td>Ratio of Claims to Casualties in B.C.</td>
<td>121</td>
</tr>
<tr>
<td>XIII</td>
<td>Report of Motor-Vehicle Accident</td>
<td>125</td>
</tr>
<tr>
<td>XIV</td>
<td>Time Distribution of Fatalities and Injuries in B.C.</td>
<td>135</td>
</tr>
<tr>
<td>XV</td>
<td>British Columbia Traffic Accident Statistics 1960-1971</td>
<td>153</td>
</tr>
</tbody>
</table>
List of Schedules - Continued

Page

Schedule XVI - Cost of Claimant's Lawyer Fees . . . . 168
Schedule XVII - Breakdown of the Premium Dollar . . . 169
ACKNOWLEDGMENTS

To all those individuals who contributed information, opinions, and advice, and especial thanks to Professors, Dr. P.A. Lusztig and Dr. G.M. Dickinson, of the Faculty of Commerce and Business Administration at the University of British Columbia, the former for his cogent advice in respect of informational sources, and the latter for his suggestions and criticisms in respect of this thesis.
CHAPTER I

INTRODUCTION

In 1896 the automobile was such a novelty that it was displayed as an oddity in the Barnum and Bailey circus in the United States.¹ Eleven years later only one hundred and seventy-five motor vehicles were registered in British Columbia.² Yet by 1970 there were over one million motor vehicle registrations³, or from a different perspective, over twenty-eight vehicles per road and street mileage in this province.⁴ In the period between 1907 and 1970 the motor vehicle became an overwhelming force in the formation of nearly everyone's mode of life, vocational and recreational, and unfortunately a way of disability and death for too many.

As the last quarter of the twentieth century approaches, more than a few academics, scientists, politicians, and concerned citizens are asking whether the automobile has become obsolete as a means of transportation because of environmental problems: vehicle exhaust pollution, destruction of neighbourhoods in order to construct freeways, ruination of the aesthetic beauty of cities and landscapes, and the waste of unwanted cars. More importantly there must be some question as to the validity of motor vehicle transportation in light of the tremendous costs involved in highway construction, the idle time spent by drivers and passengers in traffic congestions, and the terrible
slaughter of drivers and passengers on our roadways.

However in 1972, regardless of one's viewpoint, in respect of the automobile and possible alternative forms of transportation one must confront reality, which in the present context means that the motor vehicle will remain as the basic method of conveyance in the foreseeable future, e.g., the next twenty-five years, and probably much longer in the British Columbia case because of the small population centres, (aside from Vancouver), the large land area, and the lack of any practical initiative on the part of either the civic or provincial governments. Consequently greater highway casualties can be expected, in spite of improvements in road, traffic control signs, and car designs, because the province's motor vehicle registrations and the resultant traffic density will continue to rise. Therefore the student of motor vehicle accidents is in the unenviable position of attempting to ascertain which palliative will best perform the twin tasks of rehabilitating the disabled and maintaining the economic status of the automobile accident victim and/or his dependents.

The approach the writer intends to follow in presenting this thesis is to provide the reader with the prerequisite background to the current British Columbia legislation, then to analyze some of the facets of the law which have become evident during its two years of operation, and lastly to comment on recent, and some not so recent, suggestions as to
possible improvements in the traffic accident reparation system and to indicate what form automobile compensation may take in the future. It should be noted at this time that the thesis will be primarily concerned with compensation in respect of bodily injury, and only the significant aspects of the law and different proposals pertaining to property damage will be acknowledged.

The first few chapters will deal with the development of motor vehicle compensation in British Columbia and in other jurisdictions. Hopefully this resume will enable the reader to understand why some of the present difficulties exist, and what practical alternatives are available. Also the British Columbia Royal Commission on Automobile Insurance (hereafter referred to as the Wootton Commission) will be reviewed and the fate of its proposals as indicated by the 1969-1972 legislation will be discussed.

The next two chapters will enquire into such matters as loss ratios, court delays, and a broader eligibility base for automobile accident compensation which were prime targets of the Wootton Report, and to decide to what extent the amendments to the legislation have ameliorated these deficiencies. Also attention will be focussed on the causation and deterrence of accidents with special emphasis on how the no-fault provisions may have affected the deterrence, in respect of traffic accidents, which some people associate with the pure tort system.
The final chapters will broach such topics as the desirability of compulsory insurance, the justice and morality of the fault system, the cost of automobile insurance, and the efficacy of governmental involvement in automobile insurance. The writer will also suggest that certain provisions of the present no-fault law should be amended. Lastly the writer will attempt to predict the type of automobile injury and death compensation scheme which may be operative in British Columbia in the future.

Before commencing with the body of the thesis the following table may convince the reader of the magnitude of the motor vehicle accident crisis and why a systematic, equitable, efficient, and effective automobile accident compensation plan is required in British Columbia.

<table>
<thead>
<tr>
<th>British Columbia Motor Vehicle Data</th>
<th>1950</th>
<th>1960</th>
<th>1970</th>
</tr>
</thead>
<tbody>
<tr>
<td>Motor Vehicle Registrations</td>
<td>270,312</td>
<td>564,351</td>
<td>1,024,738</td>
</tr>
<tr>
<td>Accidents</td>
<td>18,029</td>
<td>26,091</td>
<td>60,778</td>
</tr>
<tr>
<td>Injuries</td>
<td>5,720</td>
<td>11,311</td>
<td>22,568</td>
</tr>
<tr>
<td>Deaths</td>
<td>188</td>
<td>294</td>
<td>559</td>
</tr>
</tbody>
</table>

Sources: 1) Dominion Bureau of Statistics
   b) 53-203 The Motor Vehicle - 1950
CHAPTER II

THE EVOLUTION OF COMPENSATION FOR MOTOR VEHICLE TRAFFIC VICTIMS IN BRITISH COLUMBIA

Introduction

Compensation for traffic victims in British Columbia is derived from two general sources. The major source of reparations is a tort action which enables an injured party (plaintiff or claimant) to sue a blameworthy party (defendant) in Court, and if successful, to recover damages (compensation). A description of the development of this system is the focal point of this chapter.

The reader should be aware of the fact that in addition to compensation from a legal suit or settlement (parties agree as to liability and damages before trial) the traffic victim may also receive reparations from other sources. These would include the victim's own insurance coverages: collision and comprehensive, medical and hospital and accident and life, and miscellaneous sources such as sick leave pay, Workmen's Compensation, Canada Pension Plan, and the Traffic Victims Indemnity Fund.

Before commencing with a description of the tort action system the reader should be cognizant of the extent of compensation which was received by automobile accident victims.
under a pure tort scheme. In order to analyze the adequacy of reparations for traffic victims some criterion must be employed to measure the losses suffered by those individuals. The yardstick which was used by the Wootton Commission was economic (dollar) loss because of the difficulty in measuring physical losses, eg. pain and suffering. Economic loss was defined to encompass property damage, medical, hospital, and other out of pocket expenses, and income loss resulting from a traffic accident.

The determination of income loss is not a simple task. As pointed out by the Commission it entailed predictions pertaining to future occupational and income levels, rate of pay, employment status, maintenance costs, working life, and the selection of an appropriate interest rate to discount future incomes.

The writer does not intend to discuss all of the forementioned factors, but certain significant points deserve attention. The Commission employs an interest rate of 7.5 percent to discount future incomes and this seems quite appropriate in light of present interest rates and what may be reasonably anticipated in the future. Secondly the division of the valuation of the services of housewives into two groups, eg. one for those housewives who are caring for children under 12 years, and another for those who do not have any responsibility
for children in that age group, is a realistic approach. Surely caring for young children is the most important and time consuming activity of a housewife. Thirdly the assumption that there would be no improvement in the occupational or educational levels of traffic victims is obviously going to contribute to a lower economic loss base than occurs in the real world. But practical constraints, problems of estimation, preclude any other approach. Lastly the use of a 2 percent figure in respect of annual wage increases is extremely conservative when the current and expected rates of wages are considered. Wage increases take account of the rate of inflation, job promotions, and the general increases gained by economic growth. In many cases any one of these factors by itself would be conducive to a 2 percent annual wage increase. Although this estimate is quite low, in the writer's opinion it is not a serious flaw in the estimation of the economic loss suffered by traffic victims. This conclusion is based on the fact that future levels of income by age with a given education level were estimated from Dominion Bureau of Statistics data. Consequently some of the wage increases would be considered in these estimates since the groupings reflect past salary levels which were attained by means of salary increases as the individual grew older.
Therefore the writer thinks that the Commissioners considered all of the important points in respect of income loss and in general their assumptions in respect of particular aspects of the estimation were valid from a practical viewpoint, eg. virtually impossible to gauge occupational or educational advancements.

At this point let us review the results of the survey. The study revealed that traffic victims in fatality, serious injury, and minor injury cases recovered (from all sources) only 20 percent, 44 percent, and 85 percent of their economic losses, respectively. Minor injury was defined as cases in which medical expenses were less than $500, the victim was off work for fewer than three weeks, and there was no permanent physical impairment affecting the victim's employment. Furthermore the tort action (tort suits, tort settlements and the Traffic Victims Indemnity Fund payments which are based on a right of tort action) accounted for only 5 percent and 25 percent of economic loss in fatality and serious injury cases, respectively. These low recoveries are very significant because the tort action is supposedly the main source of compensation.

Consequently it is evident that traffic victims in British Columbia who were involved in serious injury or fatality traffic accident cases were not receiving satisfactory compensation in the period immediately prior to 1970. In that year
certain amendments became operative and the details of these provisions and their impact will be reviewed in the coming chapters.

Law of Torts

Let us now focus our attention on the law of torts which is supposed to be the backbone of automobile accident reparations. The tort or wrong with which we are most concerned is that of negligence. The concept of negligence is a venerable doctrine which existed as early as the fifteenth century as illustrated by the Case of Thorns in which Baron Anderson said,

"though a man doth a lawful thing, yet if any damage do thereby befall another, he shall answer for it, if he could have avoided it."\(^5\)

The key to this passage is that the activity is "lawful" and hence not subject to criminal sanctions, yet there is an element of fault, which even though unintentional, causes damage or injury. Such judgments in different cases are the basis of the common law, and provide judges with a "ratio" or principle
which may serve as a guide to future decisions. The reasoning in the forementioned case is that in a situation in which one party has exercised reasonable care and the second party has been somewhat careless then it would be logical to ask the blameworthy party to bear the loss. Obviously, morality played an important role in this decision, although today the three professed objectives of tort law are compensations for the injured party, deterrence against similar acts, and punishment of the offender. However, in attempting to accomplish these three goals the tort system leaves a lot to be desired.

In today's legal practice the tort of negligence has been refined so that there are really three requirements which must exist in order that the plaintiff (claimant) may recover damages from the defendant. The first requirement is that the defendant "owed a duty of care" to the plaintiff. The present test in respect of this element is "foreseeability". If the proverbial "reasonable man, standing in the defendant's shoes, would have anticipated that want of care on his part might endanger the physical or mental health of a person in the plaintiff's position then the defendant "owed a duty of care" to the plaintiff. The second prerequisite is that the defendant failed to adhere to a reasonable standard of care,

"the omission to do something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do."
The final requisite is that the plaintiff must prove that the defendant's conduct caused the injury and that it could be reasonably foreseen that the negligence on the part of the defendant might cause an injury or loss, similar to that which was occasioned.\(^9\) *Hughes vs Lord Advocate* is authority for the proposition that the exact details need not be foreseen as long as the "kind" of injury was foreseeable and a known source of danger was the cause of the accident.\(^10\) As is quite obvious, these terms are fairly nebulous and hence judges and juries have a certain degree of freedom in arriving at their decisions. Generally it appears that everything is done to find that the defendant was negligent in order to compensate the plaintiff, unless there is an overriding policy reason for protecting the defendant, eg. must be some limitation on his duty of care in order to save him from crushing economic losses or chain reaction events over which the defendant has little or no control.

It is also essential to recognize that the burden of proof or obligation to prove that the defendant was at fault in terms of the above requirements rests with the plaintiff, and consequently unless that obligation is satisfied the plaintiff will not recover any damages. In civil cases, "all the plaintiff is required to do in order to succeed ... is to satisfy the jury that on the balance of probabilities an inference of negligence should be made."\(^11\)
This burden is less rigorous than that in criminal cases in which the Crown must prove its case beyond a reasonable doubt,

"If at the end of and on the whole of the case, there is reasonable doubt, created by the evidence given by either the prosecution or the prisoner, ... the prosecution has not made out the case and the prisoner is entitled to acquittal."\(^{12}\)

In order to assist the plaintiff in surmounting the burden of proof the doctrine of *res ipsa loquitur* was developed for certain fact patterns,

"Where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have management use proper care it affords reasonable evidence, in the absence of explanation by the defendants, that the accident arose from want of care."\(^{13}\)

However it must be realized that,

"it is error to regard the maxim *res ipsa loquitur* as operating to change the burden on a plaintiff to prove negligence into a burden to disprove negligence", but rather, "if he (the plaintiff) proves, to the satisfaction of the tribunal, facts which bring the maxim into operation, then unless the defendant produces an explanation equally consistent with negligence and no negligence the plaintiff will succeed."\(^{14}\)

In British Columbia these legal definitions have tremendous significance for the plaintiff and defendant alike because contrary to most other provinces in Canada, this province has a large volume of civil jury cases.\(^{15}\) Hence unless the nuances of the legal terminology are understood by the jury one of the
parties may receive an injustice if the decision were compared with the theoretical outcome of the same case adjudicated by a judge sitting alone, who presumably has a solid grasp of such subtleties. Also the extensive use of a jury probably leads to some delays because of the time required; to select a jury, to explain the points of law to the jury, and to allow the jury the opportunity to deliberate. However when the duration of this delay is compared with the waiting period from the date an action is filed to the date of the trial the first mentioned delay in a particular case would not be significant, eg. waiting period to get a trial in Vancouver is one year. Possibly the extra time consumed may be relevant when the system is viewed as a whole.

Legislative Measures

Now that some insight has been gained into the nature of a tort action let us review some of the case decisions and legislative steps which are pertinent to a motor vehicle injury claim. It is to be noted that legislation enacted by a government is generally designed and implemented to cure a defect in the common law, or in other words, to make the current law conform more closely to contemporary mores and values.

In 1809 the case of *Butterfield vs Forrester* came to trial, and the decision had a profound effect on all tort actions, but particularly those involving the automobile. The "ratio decidendi" (principle) of the case was that in situations
in which the plaintiff (victim) was at fault, regardless of the degree, he could not recover any damages from a defendant who was at fault, even if the latter was the more blameworthy of the two.\textsuperscript{17} Hence, in common law, any fault, referred as "contributory" negligence, on the part of the claimant was a total bar to his efforts to recover damages via a tort action.

Approximately thirty years later the legal position of the "contributory" negligent plaintiff was alleviated to some extent by the decision in \textit{Davies vs Mann} in which the doctrine of "last clear chance" was first enunciated.\textsuperscript{18} The maxim was to apply in circumstances in which, though the plaintiff was at fault, he would still be entitled to recover damages from a blameworthy defendant provided that his (the plaintiff's) improper action preceded that of the defendant and the former's plight could have been foreseen by the defendant, and yet the latter carelessly failed to take the appropriate steps to avoid the accident.\textsuperscript{19} This doctrine is still good law today, but it is confined to circumstances, as was the fact pattern in the above case, where the plaintiff is negligently in a risky, yet static position, and the defendant is in a dynamic role, eg. a streetcar ramming a car which was improperly resting across the tracks because the operator of the tram failed to keep a proper lookout.\textsuperscript{20}
However the latter decision was not really that helpful in automobile accident cases because most mishaps involved two or more moving cars, and hence the "last clear chance" doctrine was not applicable. This rather peculiar situation arose because the common law developed long before any one had even thought of, let alone invented, a self-propelled vehicle and hence the "contributory" negligence rule was a complete anachronism in the era of the motor vehicle.

The Contributory Negligence Act

Consequently when the automobile became popular in Canadian jurisdictions legislative action was taken to provide for a more equitable solution to the automobile accident compensation problem. The Contributory Negligence Act which was passed in 1925 in British Columbia permitted the negligent plaintiff to collect damages to the extent of the defendant's degree of fault. In reality the Act is misnamed because it abrogated the "contributory" negligence rule and substitutes a "comparative" negligent rule in its place. No matter how it is described, it was an important advance in the compensation of traffic accident victims, and it illustrates why the desire for reform in automobile accident reparations is very strong in the United States. In most American states the old "contributory" negligence rule still applies and hence the eligibility for compensation is greatly restricted.
Manufacturer's Liability

In 1932 a case in the tort law field opened new avenues for plaintiffs who were seeking compensation for their injuries. *Donoghue vs Stevenson* decided that a consumer of a product could sue the manufacturer of that product in spite of the fact that there was no contract between the two parties. In England the principle has been extended to cover traffic injury situations so that an injured pedestrian successfully sued the repairers of a lorry which was involved in the accident because of faulty workmanship. The latter case is an important precedent which could well be applied in Canada. The former case is extremely important when one is reminded of Ralph Nader's crusades against unsafe automobiles and the number of cars which are recalled because of defective parts. The reason why it is advantageous to have the right to sue the manufacturer rather than the dealer is that in some cases the dealer will lack the resources to pay the assessed damages.

The Gratuitous Passenger

Another relevant point in the discussion of automobile compensation concerns the gratuitous passenger. Apparently insurance companies feared that if gratuitous passengers were permitted to sue the driver of the car in which they were riding, the situation would be conducive to fraud because in most cases the two parties would be friends or relatives.
To a certain extent this is true because the British trial system worked, and still works on the adversary basis, which presumed that the two parties are true opponents who would give no quarter because they would suffer the consequences, and hence each side attempted to further its own selfish cause. In the gratuitous passenger situation, especially in situations in which the driver had insurance and the driver and passenger are friends, the insurance companies argued that the driver would have a natural bias toward his friend, especially since he would not be paying the court award. Also collusion between the driver and his passenger might occur, and because of the death of independent witnesses the insurer might have a problem in attempting to expose this arrangement. On the other side of the coin most passengers were, and are, of the gratuitous variety and hence restrictions on their recovery rights would seriously impair any broad based compensation scheme.

In 1938 an amendment was passed which signaled that the insurance industry lobby had won the day. The provision of the Motor Vehicle Act barred any suit by a gratuitous passenger against his driver. However by 1942 a compromise was introduced, and in place of the denial of a negligence suit, the legislature substituted a lower standard of care in respect of a gratuitous passenger and his driver, eg. such a passenger could only recover if he could prove that the driver had been "grossly" negligent.
Definitions of the term "grossly" negligent are quite rare, but the following is fairly descriptive,

"[Gross negligence] is a matter of degree to which, in the circumstances, conduct lies below the reasonable inattention to consequences." 26

Although this provision reduced the chances of recovery it is important to keep in mind that in some jurisdictions in Canada the gratuitous passenger had no recourse of action against his driver until recently. 27 Before leaving this topic it should be made clear that "gross" negligence provision only applied where the gratuitous passenger was suing the driver in the car in which he was riding, and only ordinary negligence had to be proved when the gratuitous passenger was suing the driver of another car involved in the accident. Also as will be seen in a later chapter the "gross" negligence rule has been repealed in British Columbia.

Financial Responsibility Laws

Now let us turn our attention to some other British Columbia legislative provisions which were designed to ensure that the accident victim received some compensation if he was able to prove that the other driver was at fault. In 1932 the so-called financial responsibility laws were enacted, and the most prominent feature of this legislation was the right of a Commissioner of Motor Vehicles to suspend an individual's
driver licence and licence plates; if that individual failed to pay a judgment arising out of a traffic accident, or if he were convicted of certain motor vehicle or criminal offences. In order to have the suspension of the drivers licence revoked, and the licence plates returned, the individual had to pay the judgment or fine, and in addition had to show his financial responsibility by purchasing liability insurance or posting a bond or other securities with the Commissioner. In addition the insurer was held to be absolutely liable in respect of the prescribed limits even though the insured owner may have breached a statutory condition of the automobile policy. Prior to this amendment such circumstances would have provided the insurer with a legitimate reason for refusing to pay a liability settlement or judgment pertaining to the insured. 

In 1937 another amendment was passed which effectively made the owner of a car legally liable for any tort claim which arose as a result of his car being involved in an accident and being driven by another person with his consent, expressed or implied. This section was significant because often the driver of a car may not have had insurance or other financial resources where as the owner was probably more prudent and/or wealthy, and hence the plaintiff can recover his losses. 

In spite of these amendments many victims were still left without any compensation, even where they could prove that the defendant was negligent, because both the driver and/or owner
did not carry insurance or were without financial backing, or because the defendant was a hit and run driver or a driver of a stolen car in which case the 1937 amendment did not apply. It should be pointed out that prior to the implementation of the Wootton Report recommendations, which is the period under discussion in this chapter, insurance was only compulsory for drivers under twenty-one years, and this provision was not passed until 1959.  

Safety Responsibility Laws

As a result of these deficiencies certain important amendments were passed in 1947. These sections of the Motor Vehicle Act attempted to fill the compensation gaps by encouraging drivers to be financially responsible before they became involved in accidents, and hence permit traffic victims to recover compensation (safety responsibility laws), or if that approach failed then the Act specified that a fund be created from which certain categories of uncompensated victims could recover, eg. motor vehicle casualties with "dry" judgments. The philosophy behind the safety responsibility laws was that rather than run the risk of a licence suspension because of involvement in an accident, or because of an unsatisfactory driving record, combined with the failure to hold a valid financial responsibility card or insurance, the driver would make himself financially responsible. In addition,
in the case of an accident, unless the owner could establish his financial responsibility the police were authorized to impound his car until proof of financial responsibility was shown or the driver of the pertinent car was found to be innocent. This sanction was repealed in 1963, apparently because it was considered to be too harsh.

Also unless the driver could prove his financial responsibility he would not be eligible to have his licence reinstated if it had been suspended because of his failure to pay a judgment, or his violation of certain vehicular, criminal offences. However in spite of these worthy measures it was estimated that approximately 10 per cent of British Columbia's drivers were not financially responsible in 1967, eg. no automobile insurance or financial responsibility card. Hence that group of drivers were allowed one "free bite", before their licences would be suspended and/or they would have to give proof of their financial responsibility. Recognizing the shortcomings of the financial responsibility laws the Traffic Victims Indemnity Fund was created "to provide" compensation for automobile victims of uninsured, financially irresponsible drivers, hit-and-run drivers, and drivers of stolen vehicles. The limits imposed by the legislation in relation to compensation available from the fund are the same as that of statutory minimum for liability policies, eg. $50,000 in one accident. It should also be noted that the
victim must establish that another party has been negligent in order to recover from the fund, and that the hit-and-run and stolen vehicle provisions only apply to bodily injury and not to property damage because of the risk of fraud and collusion. This fund helped to fill the compensation gaps, but it certainly did not eliminate them.

**Damages**

Another aspect of the tort reparation system which should be discussed is the assessment of damages by a judge and jury. The following is not meant to be an exhaustive study of the topic, but merely a broad outline to enable the reader to gain some understanding of the current tort law, and to serve as a basis for comparison with various proposals which were enacted, after the Wootton Report, in British Columbia or those which may be introduced in the future.

The first feature of the damage award is that it is made in a single lump sum basically because it is more expedient than periodic payments and because it is the traditional way of granting the common law remedy of damages. The assessment falls into two broad categories. The first is referred to as "special" damages and this covers losses which have been incurred prior to the trial and can be precisely calculated, eg. medical payments. The second category is called "general" damages, and covers future expected losses which cannot be calculated, but only estimated.
Included in this class is the category of damages known as "pain and suffering" which encompasses reduced life expectation and the restriction of enjoyment of life because of the victims' disabilities. In the leading Canadian case on damages assessment for tortious liability, *The Queen vs Jennings*, it was held that the loss of enjoyment of life is not reduced by the fact that the plaintiff is unaware of his condition. The plaintiff is also entitled to receive a traditional sum in respect of his loss of life expectancy.

Also the accident victim has a right to further general damages under the "head" of expected future loss of earning capacity. There is some doubt as to the relevant period for which damages should be awarded, eg. should the victim's pre-accident or post-accident life expectancy be utilized as a basis. An Australian case is an authority for the proposition that it is the pre-accident life expectation period where as the British courts favour the post-accident period. The forementioned leading Canadian division does not clarify the Canadian law.

It is also interesting to note that the *Jennings* case decided that income taxes should not be a factor in the calculation of loss of earnings. Recently this approach was distinguished so that the rule in the above case only applies in non-fatal injury situations, and if a traffic victim has died before the trial, then the compensation awarded
to his dependents will make allowance for income taxes which the deceased would have paid if he were alive, and gainfully employed. 54

Lastly it should be pointed out that there is a reduction for the "contingencies of life", eg. chance the plaintiff would become ill or unemployed if the accident had not occurred, and no attention is paid to the inflation factor. 55

Two other issues in respect of damage assessment should be recognized. Firstly a lawyer will often delay a trial on behalf of a plaintiff in order that his (plaintiff's) medical condition has stabilized so that the lawyer and court can estimate future losses with greater accuracy. This delay is the result of the single lump sum award procedure.

Also it may be of interest to note that according to common law the death of a tort victim severely limited the compensation awarded to his survivors. 56 However this defect has been overcome via the legislative route and hence the survivors do not lose any significant right to damages because of the victim's death. 57

Summary

Now that the prominent features of the pre-Wootton Report period have been outlined it may be useful to briefly recite the major problems of the tort compensation system. These
disadvantages may then be compared with the difficulties inherent in proposed schemes or recently enacted legislation which will be discussed at a later stage.

Firstly there are three classes of drivers who cannot recover under the tort system. They are the negligent driver who is involved in a single car accident or is in a multiple car accident in which he is 100% at fault, the driver who is involved in an "unavoidable" accident, eg. no party can be blamed, and thirdly those drivers who because of the burden of proof and other legal roadblocks cannot obtain a judgment against a defendant. This latter category is also very pertinent to the gratuitous passenger situation.

Secondly there is the gap between economic loss and compensation recovered which results from the proviso that the plaintiff must not be partially negligent. This, of course, assumes that the plaintiff can prove negligence against a defendant. If not the gap widens.

Thirdly there is the delay factor. In Vancouver an automobile accident will not come to trial until one year after the claim is filed.\(^{58}\) This holdup can cause severe economic hardships and retard efforts to rehabilitate the victim.

Fourthly the system is expensive since for every $1.60 paid in auto insurance premiums only $1.00 is returned in the form of loss benefits.\(^{59}\) On top of this there is the
cost of solicitor's fees, eg. 11-16% of the plaintiffs award.  

Lastly there is some suspicion that in order to obtain compensation, or from the other standpoint, in order to avoid a judgment individuals tend to be somewhat dishonest, and this makes the tort system of compensation even more uncertain and is conducive to disrespect of the law in general.

This is the compensation system as it existed prior to the implementation Wootton Report recommendations. Is there a better scheme, maybe the next chapters will provide us with an answer. However the reader should be forewarned that unfortunately, or possibly fortunately, the argument as to whether there is a better method of handling automobile compensation claims, is almost impossible to prove quantitatively.
CHAPTER III

AUTOMOBILE ACCIDENT COMPENSATION IN OTHER JURISDICTIONS

Introduction

In this chapter we will be examining the reparation systems in other jurisdictions in order to gain some insight into the practical alternatives to the British Columbia automobile accident compensation system which was operative prior to the implementation of the Wootton Report recommendations in 1970. These working plans, as contrasted with proposals, are valuable guides because practice can be quite different from theory, eg. social, economic, and political factors may preclude the introduction of the "best" theoretical proposal. Also we are able to learn whether a particular approach has been effective as indicated by the attitude of the relevant parties, eg. traffic victims, governments, lawyers, taxpayers, etc.

Conversely it must be recognized that the institution of law reform in a designated country depends to a large degree on the societal attitude toward the proposed legislation. In particular the political philosophy, in its broadest sense, of the citizens who will be subject to the law is crucial. Hence the prerequisite of any viable alternative is that it is in step with the present political outlook of the majority of the people in the jurisdiction in which the law will be introduced. Therefore although a system may appear to function extremely well in one country, for the
forementioned reason it may be unacceptable in another since it violates the status quo.

With these points in mind it is proposed that we review the salient features of the automobile accident compensation schemes: in three continental European countries; France, West Germany, and Sweden, in two American states; Massachusetts and Florida, in two Canadian provinces; Saskatchewan and Ontario, and in New Zealand. The first seven of these jurisdictions have enacted, on or before January 1, 1972, operative legislation which departs from the pure tort approach which was discussed in the last chapter. Also the reader should be cognizant of the fact that supporting and complementary facilities, eg. social insurance schemes, particularly in continental Europe, are really component parts of the traffic victims reparation system. These features will be mentioned in the applicable cases. The eighth jurisdiction in the above list is New Zealand, and the reason why it is pertinent to our topic is that a Bill presented to the New Zealand Parliament has recommended that tort action should be abolished for traffic accident cases. Although this proposal is not law as of January 1, 1972 it is significant and requires our attention.

France.

France belongs to the civil law group, eg. laws which
are profoundly influenced by Roman law and are based on codes rather than judicial decisions, but the traditional source of compensation, similar to common law jurisdictions, is the law of tort. However unlike most common law systems, the burden of proof lies upon the defendant rather than on the claimant. By means of a court decision, Article 1384, of the Civil Code of 1804 which reads in part,

"... one is liable not only for the damage caused by one's own act, but also for that caused ... by the things which are in one's custody,"

was interpreted as meaning that there was a presumption of fault or liability on the part of the custodian, eg. generally the owner. Consequently that party is liable for damage unless he can prove that the accident was caused by the fault of the victim or a third party. Also if the custodian can prove, "the occurrence of a fortuitous event", he will be exonerated to the extent that the accident was not "normally" foreseeable and hence unavoidable, eg. if not "normally" foreseeable then no liability, if abnormal to a certain extent, then a reduction in liability to the same degree.

Articles 1382 and 1383 provide the substantive portion of the tort law, and state that an individual is liable for injury or damage caused by his blameworthy conduct, which may only consist of lack of care or imprudence.
Referring to Article 1384 again it should be pointed out that in an accident involving a pedestrian and a car the custodian, is confronted with a *prima facie* presumption of fault, and in a collision involving two or more vehicles, if negligence cannot be established then each driver and his passenger(s) can take advantage of the presumption of fault and recover full compensation. This may be contrasted with the common law tort provisions in which case, on the same facts, neither party would be entitled to recover.

If the defendant custodian in the French situation is unable to prove his lack of negligence the plaintiff would recover full damages, but if the claimant is "contributorily" negligent then compensation is awarded on a "comparative" negligence basis.

As is the situation in common law jurisdictions, the gratuitous passenger if a relative is not placed in a very desirable position since no insurance covers the liability of a driver in respect of his "family" passengers, and therefore they can only recover if the other driver is at fault. If the gratuitous passenger(s) are not related to the driver or custodian then they may recover from the drivers and owners of both cars who are jointly liable.

It is noteworthy that 76 percent of the injured victims receive some compensation, eg. 50 percent receive full compensation and 26 percent realize about 53 percent of their
loss in the form of tort awards. However as M. Tunc reveals the French courts in awarding compensation disregarded the conduct of the parties, and provided compensation to the victim, eg. pedestrians received awards in 95 percent of the cases, despite the fact that in 70 percent of the cases they were the only cause of the accident. As is the situation in common law jurisdictions averages can be misleading and 24 percent of the accident victims received no compensation, eg. especially in the relative, gratuitous passenger circumstance and this indicates that the system has some undesirable loopholes, despite its relative effectiveness, as compared with Ontario or British Columbia. The generosity of the court decisions are the result of the existence of liability insurance which encourages judges to distort the law since they realize that the insurance companies and not the defendant will bear the loss. Liability insurance in France is compulsory and a Fund has been set up to cover the cases of uninsured or hit and run drivers.

Superimposed on the legal rights of accident victims is the social security scheme. At least 65% of the French population are covered by the social security system, which provides benefits to cover medical and pharmaceutical costs. The scope of coverage depends on certain fee schedules, but in many cases total reimbursement is provided. Benefits
are also available to compensate for loss of income in cases of partial or permanent disability or death. The periodic disability benefits range from one-half to two-thirds of the victims wage, but there is a specified ceiling on the wage which may be used in the calculation of benefits, eg. maximum base wage is eight times the minimum wage. The benefit may be replaced or revised depending on the adequacy of the award in relation to the victim's condition. If after three years he is deprived of two-thirds or more of his earning ability, he will be entitled to a pension equal to one-third of his former income if he is still able to work in some capacity, or if totally disabled then his pension rises to one-half of his former income. If the traffic victim dies as a result of the accident then his family receives a lump sum equal to three months of the deceased's salary.

Another major source of compensation is the mutual fund or society which, it is estimated, covers one-third of the population against accidents, and hence increases the percentage of the population which has some form of compensation in respect of traffic accidents.

Life insurance and collective labor laws also contribute to the relief of the auto accident victim.

In respect of the tort action the victim is allowed to cumulate his insurance and mutual society benefits with his tort recovery but his social security payments will be de-
ducted from any successful tort action awards.\textsuperscript{25}

Briefly the major defects of the French compensation system for traffic victims are similar to those in North America, eg. court congestion, settlement delays, costs and inefficiencies of the system, uncertainty of awards, etc.\textsuperscript{26} However unlike Canada, a more comprehensive social security scheme is operative in France, and hence the forementioned difficulties, basically associated with the tort action, are not so overwhelming.

\textbf{West Germany}\textsuperscript{27}

West Germany is also a member of the civil law group, and the tort action is an important source for traffic reparations. However there are two legal basis for liability in motor vehicle accidents; general tort and a special motor vehicle keeper's liability, eg. generally the "keeper" is the owner of the motor vehicle.\textsuperscript{28} It is important that the reader understands that there are significant differences between the two basis of liability. Broadly speaking the dissimilarities are related to the fault concept and the scope of compensation.\textsuperscript{29}

Let us first review the features of the motor vehicle keeper's liability. In respect of legal responsibility, the keeper, as a defendant, can only escape an adverse judgement,
"... if he can prove that the accident was caused by an 'unavoidable occurrence'."  

This category would include such circumstances in which the conduct of another driver, pedestrian, cyclists, or animal was the cause of the accident, and at the same time the keeper must prove that both he and his driver, if the owner was not driving, exercised reasonable care, eg. neither were contributorily negligent.  

It should be noted that if both parties were "contributorily" negligent then there is a proportional reduction in liability. Also the term "unavoidable occurrences" does not encompass the mechanical defects situation, and hence in this situation the keeper is absolutely liable in spite of the fact that he was not negligent.  

Lastly unless the car is being used with the owner's consent the special liability is not applicable.  

In summary, this basis of legal action shifts the burden of proof to the defendant (keeper) and also restricts his range of defences.  

As far as the scope of compensation is concerned there are limitations on the awards available under the special keeper's liability form of action. In the case of death or bodily injury the maximum award is U.S. $68,000 or an annuity of U.S. $4,000, and a U.S. $14,000 limit in the case of property damage. These benefits are designed to cover such items as medical and burial expenses, loss of
income, and necessary income to provide for increased needs.\textsuperscript{36} Non-pecuniary or general damages, which pertain to pain and suffering and disfigurement are excluded from the heads of damages under this cause of action.\textsuperscript{37}

In respect of the general tort style of action the claimant must prove that the defendant was at fault, but apparently the case law eases the onus of proof in these suits, but not to such an extent, that liability can be established as readily as under the special keeper's provisions.\textsuperscript{38} Also the compensation is unlimited in relation to monetary awards and non-pecuniary heads of damages can also be recovered, but especially in regard to the latter, the awards are not as generous as those in the United States.\textsuperscript{39}

To avoid the frustration and agony of uninsured drivers, liability insurance was made compulsory in 1939 to cover awards up to the limits set out under the special motor vehicle's keeper liability.\textsuperscript{40} Also there are Funds set up to handle such contingencies as uninsured or hit-and-run drivers, and insolvent insurers.\textsuperscript{41}

As is the situation in most European countries, social insurance plays an important role in the traffic victim compensation system. In Germany the victims of motor vehicle accidents rely more heavily on social insurance than they do on tort recovery.\textsuperscript{42} Basic medical coverage is available to everyone under one form or another of the accident and sick-
ness plan. The social insurance also provides between 75-85 percent of a victim's gross wages if he is employed and temporarily disabled, and a pension, related to the victim's gross wage, length of time insured, and the general wage level, in case of permanent disability. Both the accident and pension insurance offer survivor benefits in death cases, and the pensions are adjusted to match changes in general wage levels.

In conclusion it would appear that the dual legal actions and comprehensive social insurance program provide very extensive compensation in respect of traffic victims, but unfortunately no estimate of the scope and degree of reparation is readily available, but it is reported that 85 percent of the population is covered by the health insurance scheme.

Sweden.

The laws of Sweden and other Scandinavian countries are based on codes yet judicial decisions are significant in the development of the rules which govern tort cases. The tort law of Sweden is founded on negligence, but the onus of proof lies on the defendant. By a special statute governing motor vehicle liability the driver and owner must prove that the driver was not negligent and that the accident was not caused by a mechanical defect. Unless they succeed on the first issue both owner and driver are liable, and the owner
is legally responsible if he cannot establish the second point. If both parties in the accident are negligent then the comparative negligence rule is applied.

Let us peruse the rights of the different possible victims of a traffic victim, eg. passengers, pedestrians and drivers. As far as the passenger is concerned he would appear to be in an enviable position. There is no guest statute and the passenger's right to personal injury compensation is not impaired by the negligence of his driver. One of the few circumstances in which the passenger's negligence will reduce his award is if the victim accepts a ride when he knows the driver is drunk. These provisions are quite different from the rights of gratuitous passengers involved in a British Columbia traffic accident before 1969-1970, since the Contributory Negligence Act stated that negligence on the part of passenger or his driver would reduce his right to compensation from the other driver. In 1969-70, the provision was repealed in respect of a gratuitous passenger's right of recovery in cases in which his driver was contributorily negligent.

The pedestrians do not fare so well. In spite of the presumption of fault which may be invoked against the owner and driver, the owner and driver may exculpate themselves in certain cases, and even if they are not completely successful they can argue that the victim's contributory negligence
should reduce his damages.\textsuperscript{56}

The driver is in the worst position since in a single car accident he will have no claim in tort, in most cases, and in a multiple car accident the "comparative" negligence rule will apply.\textsuperscript{57}

In order to provide some relief, especially for drivers, a voluntary accident benefit policy is available to cover disability and death but this still leaves a gap in cases of minor injury and medical expenses not defrayed by the national insurance plan.\textsuperscript{58}

Liability insurance for automobiles was made compulsory in 1929, and unlike most other jurisdictions the insurance is operative even though the owner is not liable, eg. injury caused by a stolen car.\textsuperscript{59} Another dissimilarity is that the insurance coverages have maximum, rather than minimum limits, but are so high that they are only academic in nature, eg. U.S. \$5 million for personal injury.\textsuperscript{60}

Working in conjunction with the tort system is the social security scheme which is so extensive, that, as is the case of West Germany, in reality it provides the basic protection, and tort awards and private insurance are merely supplements to the national insurance plan.\textsuperscript{61} Under this scheme medical expenses are almost fully covered. A traffic victim's hospital and medical care are free if he is treated in his home municipality.\textsuperscript{62} If he goes elsewhere he will have
to pay all expenses above those which would have been assessed if he were treated in his local hospital. If the victim is not hospitalized then only 75 percent of the doctor's fees are reimbursed, and he will also be required to pay for drugs and rehabilitation services, although those last two items are heavily subsidized by the government (state and local).

Extensive compensation is available for loss of income and for survivor's benefits. For temporary disability the average rate of compensation is 70 percent of loss income. In cases of permanent disability there is a basic pension which is designed to provide a minimum standard of living, eg. U.S. $1,700 a year, and the portion to be paid out depends on the beneficiary's degree of disability.

To provide reparation for loss of income there is the national supplementary pension which can provide up to 60 percent of the average income of the traffic victim, but it is based on past earnings, eg. contributions made by individual to welfare of the state, rather than his expected future loss of earnings.

As far as survivor's benefits are concerned, widows are entitled to a percentage of the basic pension, eg. up to 90 percent of the basic amount. Dependent children pensions are also available to a maximum of 25 percent of the basic amount if one parent dies. The supplementary pension will
provide a widow with up to 40 percent of the pension the deceased would have drawn, and a sum is also given out for each dependent child, under 19 years.  

The national insurance plan is financed by income related assessments levied against insured, taxes, and employer contributions based on company salaries.  

Any receipts received under the national insurance scheme are deducted from tort awards.  

In addition to the tort system and social insurance scheme there are a number of voluntary private insurance benefits and coverages provided by employers. Group and life insurance have become very popular and medical insurance is also available to cover gaps in the national insurance program. In respect of employer benefits many civil servants and others have contractual sick-leave and disability benefits to protect themselves in times of injury or death.  

Despite the reported conservatism in tort awards in respect of monetary amounts, the use of annuities rather than lump sums enables the courts to adjust benefits according to the particular circumstances of the individual case, and the broad scope, and depth of the national insurance scheme would appear to provide the Swedish auto accident victim with very extensive compensation.
In the United States there has been considerable activity in the proposing and enacting of no-fault laws in order to remedy some of the defects which exist in the state systems of compensation for the traffic victim. By January 1, 1972 a number of states will have enacted various forms of accident benefit insurance, eg. Massachusetts, Florida, Delaware, Illinois, Oregon, and South Dakota. In addition to these states, a number of others will consider such proposals in 1972, and New York and Michigan will go a step further, and debate the merits of abolition of tort actions in the case of motor vehicle accident claims. However, for the purposes of this thesis the Massachusetts and Florida laws will be discussed because they were enacted and operative before January 1, 1972, and the accident benefit provisions are compulsory features of mandatory motor vehicle policies, and this characteristic distinguishes them from the legislation of most of the other states.

Massachusetts

Massachusetts has been a pioneer state in the evolution of traffic compensation in the United States. In 1927, almost thirty years prior to a provision in any other state, the Massachusetts legislature made automobile liability policies compulsory. However it should be noted that the limits were really quite low, eg. U.S. $10,000 for personal injury
or death arising out of one accident, until 1970 when the limits were raised to U.S. $40,000. Also significant is the fact that the insurers are private insurance companies and not the government. The compulsory insurance, until 1970, did not apply to guest passengers or property damage, but these exceptions were included in the compulsory automobile policy in that year. Also it must be remembered that Massachusetts did not and does not have a comparative negligence provision and hence the chances of a successful tort claim are not very good, and there is no traffic fund to provide reparations in the case of the hit and run, uninsured driver, or stolen car situations and hence there was a large gap in the automobile accident compensation system.

To digress for a moment the reader should be aware of the extent of the compensation gap as revealed by a thorough study performed at the University of Michigan. This report, which is unique since it is one of the few attempts to obtain data on this pertinent subject, is taken to be representative of the compensation picture in most American states. The study disclosed that only 37 percent of the victims of motor vehicle accidents received compensation from the tort claim source, and only 77 percent of the victims received reparations from all sources. This latter figure is misleading since those who were seriously injured received only fractional recompense for their economic loss, and the overall recovery
rate was only 50 percent of the total economic loss. The tort settlements or awards accounted for slightly more than 50 percent of the compensation. However life insurance, automobile collision insurance, workmen's compensation, employer's voluntary or contractual payments, and social security benefits helped to raise the percentage of economic loss recovery to its still inadequate rate. Consequently the low recovery ratios and the high cost of insurance premiums encouraged the lawmakers to seek alternatives to the basic tort system.

After much debate, stimulated to a large extent, by the work of Keeton and O'Connell, a no-fault provision in respect of accident benefits was enacted in 1970, and became effective on January 1, 1971. The highlights of the Act are the no-fault provisions which pay all reasonable medical, hospital, and funeral costs, and wage losses to a limit of U.S. $2,000 if incurred within two years of the accident. An additional restriction is that the wage compensation cannot exceed 75 percent of the victim's "average weekly wage for the year preceding the accident". Payments may also be awarded for services which were normally performed by the victim on a gratuitous basis, eg. housewife cleaning the home. The categories of victims covered by the new law include the insured, members of his household, person's driving with the owner's consent, guest passengers, and pedestrians struck by
the insured vehicle. Those not eligible for compensation by reason of their conduct are: impaired drivers under influence of alcohol or drugs, drivers committing felonies, avoiding arrest, and drivers intent on committing suicide.

Another significant section excludes recovery for pain and suffering in tort cases unless the victim's medical expenses exceed U.S. $500 or unless there is permanent disfigurement, loss of a body member, permanent loss of sight or hearing, or death. This is an attempt to limit court awards for non-pecuniary damages which have become extravagant. Lastly there is a tort immunity for the defendant up to the limit of the two-party accident benefit coverage, provided the defendant has the no-fault coverage himself, but the insurer of the defendant is liable for the full award if the defendant is at fault, eg. the victim's insurer can recover no-fault benefits and expenses from negligent defendant's insurer, but not from the defendant himself.

How has the plan worked in practice? Third party bodily injury claims dropped 25 percent in the first five months, in a state which has a claims rate 2 1/2 times the national average, and simultaneously the average claim cost in respect of personal injury (liability and accident benefit insurance) declined from US. $205 to US $131 during the first three months of operation. The scheme, assuming accidents have remained reasonably stable, must have continued to be effective through-
out 1971, because the Commissioner of Insurance ordered a cut of over 27 percent for compulsory insurance (bodily injury liability and accident benefits) in respect of the 1972 policy year.98

In spite of this seemingly impressive performance some critics are not happy. The three major areas of controversy are: the limitation on pain and suffering damages, the modification of work loss payments, and the compensation in respect of the negligent driver. The first two points, the critics claim make compensation awards rigid and inequitable, and the latter provision is immoral since the commentators feel that the driver should be punished for his transgressions and certainly should not be entitled to compensation.99 These arguments are raised to indicate to the reader that the hybrid-no-fault and tort system, although it appears to be an improvement to many it is not universally accepted and, as will be indicated later, there is some justification for this dissent, but the reader must recall that economic, sociological, and political realities may hinder the immediate introduction of a theoretically sound proposal.

Florida

The Florida no-fault law became effective on January 1, 1972.100 The major difference between this enactment and its Massachusetts counterpart is the size and scope of the
no-fault benefits. The bodily injury and death benefits have a U.S. $5,000 limit, and a maximum of 85 percent of gross income is permitted under the loss of income, disability benefit provision. Also there is a provision for funeral expenses up to a U.S. $1,000 limit, providing the U.S. $5,000 general restriction has not been surpassed.

The individuals covered by the Act, eg. the insured, relatives residing in the household, passengers, pedestrians struck by the insured vehicle etc., and the medical benefits, eg. ambulance fees, dental services etc., are similar to the Massachusetts plan. However the Florida provisions may be slightly broader in respect of medical coverage since rehabilitative services are specifically mentioned in the pertinent section.

Other differences between the two pieces of legislation is the insurer's right of subrogation and the pain and suffering provisions. The insurer in Florida has a right to the benefits paid on a no-fault basis to a victim, provided he can prove that the defendant in a tort action was at fault, eg. no tort immunity for the defendant as is the case in Massachusetts. In respect of pain and suffering and mental anguish the victim can only recover under this head of damages in cases of: medical expenses exceeding U.S. $1,000, permanent impairment, permanent disfigurement, loss of a body member, a fracture of a weight bearing member, or death. Hence the
right to such damages is even more restricted than under the Massachusetts provision.

Two other important features of the Florida Act are that insurance or other forms of security covering bodily injury liability and accident insurance is compulsory, and insurance premiums must be reduced by 15 percent for 1972.\textsuperscript{107}

The Florida law represents some improvement over the Massachusetts legislation, basically because of the higher limits on accident benefits. Also it quite probably is a sign of the increasing role that no-fault insurance will play in motor vehicle accident compensation in the immediate future.

The most progressive automobile insurance scheme in the United States exists in the state of Delaware where the compulsory minimum no-fault benefit pertaining to loss of income, medical and rehabilitation expenses etc., is U.S. $10,000 for an individual traffic victim, and dissimilar to any other current North American plan the driver has an option to purchase additional no-fault insurance to whatever limit he desires.\textsuperscript{108}

Canada.

The development of traffic victim compensation in nine of the Canadian provinces, prior to the release of the Wootton
Report, is similar to that set out in the second chapter of this thesis. The basis for compensation was tort suits and various gap filling measures, eg. Traffic Victim Indemnity Funds and comparative negligence provisions, became standard across Canada. The exception was the province of Saskatchewan and its scheme has had a profound influence on the present laws of all the Canadian provinces and legislation outside the country as well. By 1970 all Canadian provinces had voluntary or compulsory accident benefit schemes.

In this thesis we will confine our attention to Saskatchewan, Manitoba, Ontario, and British Columbia since these provinces currently have compulsory accident benefit provisions in their automobile policies. In this chapter we will review the Saskatchewan and Ontario laws since the former represents the original scheme and the latter the most advanced. The Manitoba legislation will be mentioned only briefly since it is almost identical to the Saskatchewan plan, and the British Columbia approach will be discussed in detail in the next chapter.

Saskatchewan

In 1946 the Saskatchewan Automobile Insurance Act was introduced and its major and revolutionary feature was the compulsory no-fault accident benefit form of compensation. The accident benefits fell into four categories: survivor
payments, loss of income compensation, disability reparations, and out-of-pocket recompense.

The survivor or death benefits provide up to $10,000, eg. $5,000 for the primary dependent, generally the wife of the insured, plus $1,000 for secondary dependents, children, up to a maximum of $5,000 in the case of demise of the head of the household who earns the family's income.\textsuperscript{111} If a wife should be killed in an auto accident and she is not the wage earner, than the husband is entitled to $2,000 or if a child should die in a car mishap then provided the child is living with his parents and under 18 years the parents are eligible for an award on a graduated scale depending on age, up to a maximum of $1,000.\textsuperscript{112} Basically this section provides survivors with compensation for loss of a bread winner's income and the benefits due on the death of a wife and child are given partially to cover expenses formerly provided free of cost by the housewife, and also as a heart balm. These benefits are only payable if the death occurs within ninety days of the traffic accident, or within two years of the mishap if the victim has been totally and continuously disabled since that event.\textsuperscript{113} Also the plan covers funeral expenses up to $300.\textsuperscript{114} If the head of the household is a victim of a traffic accident and disabled he is entitled to a weekly indemnity up to $25 per week if he is totally disabled, or up to $12.50 a week if he is partially
disabled for a maximum of two years. A housewife can recover similar indemnities for similar injuries, but only for a maximum of twelve weeks. Also it should be noted that these benefits are only payable after the first week, presumably to avoid minor and/or fraudulent claims. Again this section is aimed at income replacement.

In addition to the loss of income benefits there is a disability payment which covers such permanent disabilities as eye and hearing impairments, amputations, disfigurements etc. The maximum award is $4,000 and the measurement of damage is calculated by means of a schedule.

Also the victim is entitled to a supplementary benefit up to a $2,000 limit for out-of-pocket expenses not otherwise reimbursed. It should be noted that all these benefits may be cumulated in the appropriate situation.

In addition to these no-fault benefits which the Saskatchewan motor vehicle owner or driver is required to purchase, he is also obligated to buy two party collision coverage, eg. property damage to his own car, and third party liability coverage pertaining to bodily injury and property damage to a minimum of $35,000.

Therefore the Saskatchewan scheme is the hybrid of no-fault and tort which has been copied in Massachusetts and Florida as we have just observed, but the no-fault benefits are more generous. Also it is noteworthy that unlike the
Massachusetts and Floride plans the insurer does not proceed against a defendant in order to recover benefits paid to a victim under the no-fault provisions. The plaintiff is at liberty, to try and recover damages in tort, but the award will be reduced by the amounts he has received under the no-fault provisions.

There are certain restrictions on the eligibility for accident insurance benefits. In some circumstances such as a victim participating in a race or speed test or riding in a street car or trolley bus there is no right to accident benefit compensation. Where as a person who is injured or killed; while riding in an unregistered vehicle, while driving with an expired licence, or while under the influence of drugs or alcohol, is disqualified from receiving benefits unless he is killed or permanently incapacitated. The theory here would appear to be to refuse compensation except in situations in which the survivors, who are innocent, would suffer dire consequences, eg. permanent loss of earnings of the breadwinner.

In the hit and run or stolen car situation the insurer becomes the nominal defendant so recovery can be gained for bodily injury only up to the $35,000 liability insurance maximum.

The most significant aspect of the scheme has not yet been divulged. The insurer for all basic compulsory insurance
to the required minimum limits is the government, the Saskatchewan Government Insurance Office. Private insurers are allowed to compete with the government for extended policies which cover benefits beyond the statutory minimums and apparently in respect of 50 percent of such policies the residents of Saskatchewan chose to purchase security from private insurance companies.\textsuperscript{127} By way of comparison in Manitoba the government is the sole seller of automobile insurance.\textsuperscript{128}

The data on the cost of insurance premiums and the handling of no-fault claims is quite interesting. The owner's premium for motor vehicle insurance is based only on the wheel base of the car and its model year.\textsuperscript{129} The driver's premium, is only $3 if he has not been convicted of any traffic or criminal offences, eg. a demerit point system.\textsuperscript{130} There are additional surcharges if the driver is under 25 years, or if he has been at fault in an accident.\textsuperscript{131}

As far as the effectiveness of the plan is concerned, over the last twenty-five years the loss ratio on net premiums written has ranged from 83-87 per cent.\textsuperscript{132} Also delays have been kept to a minimum, eg. death benefit claims were reportedly paid in six to eight weeks, and lawyers were involved in only 2 percent of the no-fault claims.\textsuperscript{133}

The main criticisms of the Saskatchewan system revolve around the rigidity and miserly extent of the no-fault awards,
and the governmental participation in the scheme. In addition the critics point to the fact that Saskatchewan is a rural area with a low motor vehicle density, and therefore its results in respect of infrequent lawyer involvement, and low accident experience, eg. contributing to lower premiums, are not comparable to other jurisdictions.  

Ontario

The Ontario scheme is unique in respect of both the accident benefit and liability provisions of the motor vehicle policy. The Ontario motorist is not required to purchase liability coverage, but if he fails to do so, then he is compelled to pay $25 to the Motor Vehicle Accident Claims Fund, but he receives no insurance protection. Hence he is encouraged to purchase liability insurance, and if he does, such a policy must include accident benefit provisions. This plan became operative on January 1, 1972.  

The Ontario scheme is significantly different from the Saskatchewan and Manitoba plans which are similar in almost every respect. Motor vehicle insurance remains in the hands of private insurers. Also important distinctions between the Ontario and Saskatchewan plans are evident in respect of rehabilitation benefits, coverage for unpaid housekeepers, and collision insurance. The Ontario approach provides up to $5,000 per victim for medical and rehabilitation benefits,
and since most of the medical coverage would be supplied by the federal Medical Care plan, almost all of that sum, in most cases, could be used for rehabilitation expenses. However there is a four year limitation on such outlays.\textsuperscript{141} In relation to the unpaid housekeeper, eg. housewife, $35 a week is available for a maximum of twelve weeks.\textsuperscript{142} In the Saskatchewan and Manitoba schemes a similar sum, eg. $25 is made available to a housewife, and the only real change is that the purpose of the payment is revealed. Another notable difference is the collision coverage which is voluntary in Ontario, but compulsory in Saskatchewan and Manitoba.\textsuperscript{143} In respect of liability insurance, Ontario as forementioned has a quasi-voluntary scheme, while Saskatchewan and Manitoba have compulsory schemes but the limits in Ontario and Manitoba are $50,000 as compared with $35,000 in Saskatchewan.\textsuperscript{144} Lastly unlike the Saskatchewan and Manitoba plans, the Ontario scheme does not contain dismemberment benefits, but the loss of income and death benefits are the most generous of any provincial scheme, eg. up to $70 weekly for life for permanent disability which causes total loss of income, no limit on $1,000 available to each dependent child in fatal accident cases, and lastly there is no waiting period in respect of accident benefits.\textsuperscript{145}

In summary (see Schedule I for a comparison of the different plans), the Ontario scheme represents an improvement over the Saskatchewan plan in respect of the scope and completeness of
# How Canadian Auto Insurance Plans Compare

<table>
<thead>
<tr>
<th>Type of Coverage</th>
<th>Ontario (Present Plan)</th>
<th>Ontario (New Plan)</th>
<th>British Columbia</th>
<th>Saskatchewan</th>
<th>Manitoba Nov. 1, 1971</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Basis for Coverage</strong> (No-Fault)</td>
<td>Optional</td>
<td>Mandatory</td>
<td>Compulsory</td>
<td>Compulsory</td>
<td>Compulsory</td>
</tr>
<tr>
<td>Disability Income Benefits</td>
<td>$35 per week</td>
<td>80% of Wages (Max. $70 weekly)</td>
<td>Employed Person</td>
<td>Employed Person</td>
<td>Employed Person</td>
</tr>
<tr>
<td></td>
<td>104 weeks temporary</td>
<td>50% Gross Wages (Max. $50 weekly, Min. $30 weekly)</td>
<td>partial @ 12.50</td>
<td>$50 per week</td>
<td>$50 per week (Lifetime)</td>
</tr>
<tr>
<td></td>
<td>104 weeks permanent</td>
<td>104 weeks temporary</td>
<td>lifetime—total &amp; permanent</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7-day waiting period</td>
<td>First day cover</td>
<td>7-day waiting period</td>
<td>7-day waiting period</td>
<td>7-day waiting period</td>
<td></td>
</tr>
<tr>
<td>Contributory</td>
<td>Non-contributory</td>
<td>Non-contributory</td>
<td>Non-contributory</td>
<td>Non-contributory</td>
<td></td>
</tr>
<tr>
<td>Housewife</td>
<td>$12.50 per week (Max. 12 weeks)</td>
<td>Housewife</td>
<td>Housewife</td>
<td>Housewife</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Unpaid housekeeper</td>
<td>$50 per week (Max. 26 weeks)</td>
<td>$500 weekly—total</td>
<td>$12.50 weekly—partial</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Plus $1000 each dependent child</td>
<td>No limit</td>
<td>(Max. 12 weeks)</td>
<td>(Max. 12 weeks)</td>
<td></td>
</tr>
<tr>
<td>Married Male</td>
<td>Various—but not $5000 usual</td>
<td>$5000</td>
<td>$5000</td>
<td>$5000</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Death within 3 months after accident</td>
<td>(Death within 2 years after accident)</td>
<td>(Death within 6 months after accident)</td>
<td>(Death within 2 years after accident)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Head of Household</td>
<td>Head of Household</td>
<td>Head of Household</td>
<td>Head of Household</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Age limits: none</td>
<td>Age limits: none</td>
<td>Age limits: none</td>
<td>Age limits: none</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Plus $1000 each dependent beyond first</td>
<td>$1000 each dependent beyond first</td>
<td>$1000 each dependent beyond first</td>
<td>$1000 each secondary dependent to limit of 5</td>
<td></td>
</tr>
<tr>
<td>Unmarried Person with living parents</td>
<td>Schedule based on 1% of principal sum</td>
<td>Not included</td>
<td>Not included</td>
<td>Scheduled benefits (Maximum $1000)</td>
<td></td>
</tr>
<tr>
<td>Dependent Child</td>
<td>Scale by age (Maximum $1000)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Scale by age (Maximum $1500)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dismemberment Benefits</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Medical Payments Benefits</td>
<td>$2500 per person other than Ontario Hospital, Ontario Medical</td>
<td>$5000 per person including rehabilitation</td>
<td>Bedside injury policy limits for all injured persons excludes government medical and hospital plans</td>
<td>$2000 per person discretionary to meet expenses</td>
<td>$2000 per person as excess over any other cover except auto insurance</td>
</tr>
<tr>
<td>(Time limit: 2 years)</td>
<td>(Time limit: 4 years)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Funeral Expense Benefits</td>
<td>$500 maximum</td>
<td>$500 maximum</td>
<td>$500 maximum</td>
<td>$300 maximum</td>
<td>$500 maximum</td>
</tr>
<tr>
<td>Damage to own car (collision &amp; comprehensive) (no-fault insurance)</td>
<td>Optional</td>
<td>Optional</td>
<td>Optional</td>
<td>Compulsory (200 deducted for all losses)</td>
<td>Compulsory (200 deducted for all losses)</td>
</tr>
<tr>
<td>(Public Liability Property Damage) Fault Protection</td>
<td>Minimum $50,000</td>
<td>Minimum $50,000</td>
<td>Minimum $50,000</td>
<td>Minimum $50,000</td>
<td></td>
</tr>
<tr>
<td>Minimum $55,000</td>
<td>Optional ($25 to Motor Vehicle Accident Claims Fund but no ins. protection)</td>
<td>Optional ($25 to Motor Vehicle Accident Claims Fund but no ins. protection)</td>
<td>Compulsory</td>
<td>Compulsory</td>
<td></td>
</tr>
<tr>
<td>Administration By:</td>
<td>Private Insurers</td>
<td>Private Insurers</td>
<td>Private Insurers</td>
<td>Government monopoly</td>
<td></td>
</tr>
</tbody>
</table>

benefits and again is indicative of the growing trend toward no-fault as compared with tort compensation in the traffic accident area.

New Zealand

The legislation of New Zealand, pertaining to the motor vehicle is not really unique if one adheres to the arbitrary cut-off date of January 1, 1972. Compulsory insurance was introduced in 1928, but aside from this provision the New Zealand system is similar to those in other common law jurisdictions. However within the next few months, it appears that the New Zealand Parliament will adopt a pure no-fault scheme to cover loss of income, medical, and rehabilitation expenses, and non-pecuniary losses for all accidents involving employed personnel, whether at work or not, and all traffic victims, whether employed or not. A Bill was introduced on December 15, 1971 and recommended the abolition of tort action in respect of the forementioned accidents. The scheme would provide an indemnity of 80 percent of lost earning capacity to a maximum of N.Z. $160 (C.$200) per week in the event of death or disability, and the award would be automatically increased as wage levels rise. In addition there would be payments of lump sums for loss of parts of the body to a maximum of N.Z. $5,000, and further benefits to a limit of N.Z. $7,000 in respect of loss of enjoyment of life.
and other economic losses. The Accident Compensation Commission, an independent governmental authority, would be created to administer the scheme. Finances pertaining to road accidents would be derived from annual charges on automobile registrations and driver's licences.

This brief description of the proposed New Zealand approach is enlightening because the apparent adoption of the no fault system has forced the government to study all the essential features of such a system, eg. financing and appeal procedures etc. and this supplies the student of motor vehicle compensation in other countries with practical guidelines in respect of a similar scheme in a different jurisdiction.

Summary

The systems of motor vehicle compensation in the different countries, we have reviewed, indicates that there are many alternatives to the problem, but in the last five years there has been a definite trend toward no-fault insurance. This pattern it is suggested has occurred and will continue to occur, to a greater degree, because of the realization by governments and the public that the cost-benefit trade-off under the tort system is inefficient, and a practical, more efficient system has been developed - the no-fault method of compensation.
CHAPTER IV

THE WOOTTON COMMISSION REPORT AND THE CURRENT BRITISH COLUMBIA LAW

Introduction

On January 25, 1966 the government of British Columbia appointed the Wootton Commission. The Commissioners were instructed to inquire into all matters pertaining to the insurance of motor vehicles and the compensation of traffic accident victims. In particular they were to investigate the existing status of a number of relevant aspects of the motor vehicle insurance and compensation system and make proposals to ameliorate the deficiencies which were revealed by the study:

a) the costs and delays of the tort system,

b) the proportion and adequacy of automobile compensation in relation to economic loss,

c) the appropriateness of the cost of insurance in light of its benefits,

d) the role of the Traffic Victims Indemnity Fund,

e) the possible changes in motor vehicle insurance necessitated by the introduction of certain social insurance plans, eg. medical care scheme,

f) the justification of increases in automobile insurance premiums,

b) the comparison of the effectiveness of the tort compensation system with a partial or total no-fault approach,
h) the role which the government should play in the insurance plan, and

i) the practical measures which would have to be taken in order to effectively implement any of recommended changes.  

The scope of the Report is set out in some detail in order to provide the reader with an understanding of the various component parts of any motor vehicle compensation system. These pieces must be fitted together like a jig saw puzzle in such a manner that the comprehensive scheme is as efficient and effective as possible. However as we shall discover, practical constraints preclude the implementation of an economically optimal solution.

In this chapter the major recommendations of the Wootton Commission will be reviewed and the writer will attempt to indicate the fate of these proposals as manifested by governmental action or inaction in the form of legislation, eg. amendments to acts or regulations. Three Acts were most directly affected by the Report of the Commissioners which was released in 1968. They were the Insurance Act,\textsuperscript{4} the Motor Vehicle Act,\textsuperscript{5} and the Contributory Negligence Act.\textsuperscript{6} Also the regulations pursuant to the first two Acts contain some very significant provisions. At a later stage in this thesis the practical effects of the legislation in respect of the shortcomings of the tort system will be discussed, and if possible, the writer will attempt to determine, to what degree
the present legislation has remedied the defects which were disclosed by the Wootton Commission.

The writer will develop the comparison between the Report proposals and the current law by first outlining the basic compensation system and later filling in the important details. This approach has been adopted because specifics are only meaningful when they are viewed in the context of the general framework. On the other hand the revelation of the bare skeleton of the scheme will not allow the reader to gain insight into the nuances which often determine the success or failure of a system in a practical environment, where no case can be ignored.

Wootton Commission Recommendations

The reparation system which the Wootton Commission recommended was founded on the concept of self-insurance. Every driver would be obliged to purchase a basic two-party accident policy to cover himself and other possible road accident victims in respect of total disability or death, and he could, on a voluntary basis, buy collision insurance to indemnify himself for damage to his own vehicle, and/or a supplementary policy to provide compensation in excess of the basic accident policy limits or under other "heads" (categories) of damages in respect of bodily injury or death. The cornerstone of the proposed scheme, however, was the abolition of the tort action pertaining
to motor vehicle accidents. Consequently the amount of compensation, if such a plan were implemented, would depend entirely on the benefits available under the compulsory basic accident policy, the supplementary and collision insurance contracts, and such other non-tort reparation sources as the Medical Care and Canada Pension Plans. The reasons given by the Commissioners for the adoption of the envisaged scheme were the high costs, the unnecessary delays, and the uncertainty of compensation which were inherent features of the tort reparation system.

**Legislation**

What was the response of the British Columbia government to this proposal? On January 1, 1970, the overwhelming majority of the 1969 amendments, to the forementioned Acts, became effective, and the result was, in essence, a compromise between the existing pure tort reparation system and the total no-fault scheme recommended by the Wootton Commission. Limited accident benefit insurance was included in the (now) compulsory motor vehicle policy, along with third party liability coverage pertaining to bodily injury and property damage, but collision and comprehensive insurance remained as a voluntary supplement to the mandatory provisions of the policy. It should be noted, for the sake of accuracy, that the relevant sections of
the Motor Vehicle Act do not require the owners and drivers to purchase automobile insurance, but if they do not then they must hold a financial security card. This card is issued by the Department of Insurance to individuals who post a bond or deposit cash or securities to the extent of the minimum limits imposed by law, eg. $50,000 in respect of third party liability coverage.

If the victim of a motor vehicle accident suffers damages which surpass the benefits available under the accident benefit portion of the policy, he still retains the right to sue any blameworthy party in tort, and hence this is the reason for the compulsory liability portion of the automobile insurance package. A provision of the Insurance Act provides that the no-fault benefits, which are paid by an insurer to an insured, release any tort defendant and his insurer, to the extent of such reparations, if the defendant is insured. But apparently this has not always been the case in practice, because of para-legal manoeuvering, eg. accident benefits are handed out in the form of loans so that if a tort settlement is reached, then the insurer can recover his payments.

Also the Insurance Act, states that there is to be a $250 limitation on tort recovery for property damage. This section was not proclaimed because of opposition from the insurance agents, the law profession, the Superintendent of Insurance, and the Consumers Association of Canada.
The motor vehicle accident victim, provided he is insured, has access to certain limited benefits. These include total disability, death, medical, rehabilitation and funeral expense coverages which are available on a no-fault basis. In 1969 this plan would appear to have been a practical compromise between the conventional pure tort scheme and the pure no-fault approach suggested by the Wootton Commission. Especially since the Report indicated that the serious injury and death cases demanded remedial action, supra p.8.

Detailed Comparison of Wootton Commission and Legislation

As we begin our discussion of the details of the Wootton Commission's recommendations and the present legislation, one issue was and still is the subject of a controversy, the role of the government in a motor vehicle insurance scheme. The Commissioners recommended and the Insurance Act provides that the government via its delegated agency, the Automobile Insurance Board, (hereinafter referred to as the Board), shall act as a watchdog in respect of automobile insurance, eg. premium increases, availability of insurance at a reasonable cost to all persons including bad risks, etc., but private companies will
retain their monopoly as exclusive sellers of motor vehicle insurance. However in order to possess some leverage vis-à-vis the insurance industry, the Report and the Insurance Act would have given and give, respectively, the government the right to become involved in the marketing of car insurance if the private sector cannot or will not furnish motor vehicle policies to those deemed eligible, or if they cannot or will not maintain the premiums at a fair level. By means of the authority granted by a section of the Insurance Act, the Lieutenant-Governor in Council may establish a fund "to provide all or part of the motor vehicle liability insurance prescribed under... this Act." To date this provision has not been proclaimed, but the possibility of such action presumably is of considerable concern to the Insurance Industry.

This seems to be an appropriate juncture to review the operations of the Board. Although the section giving the government the authority to establish the Board was proclaimed in force as of January 1, 1970, it was not until January 26, 1971 that the constituent members were appointed. Quite likely this delay was designed to provide the Insurance Industry with an opportunity to show its reaction to the new legislation, and when the industry failed to be cowed, as evidenced by the proposed and later imposed liability insurance rate increases in 1971, the government attempted to put some teeth into the new provisions.
The duties and powers of the Board are, in general, similar to those recommended by the Wootton Commission, eg. to investigate rates, benefits, costs; to administer moneys paid to the Board for traffic and road safety research; to correlate statistical data; to establish the maximum premiums each year; and to make recommendations concerning the advisibility of governmental participation in the automobile insurance field. In two respects, the Insurance Act provisions differ from the Report proposals. Firstly the Board as of this date has not been given the power to review insured's complaints in respect of no-fault payments as was suggested by the Wootton Commission, and hence presumably, the victim's only recourse is to take his dispute to the courts. It is also significant that the Report proposed that the decision of the Board in such a matter would be final, eg. no right of appeal to the courts. The failure to grant the Board such authority, eg. to hear claimant's dissatisfaction, is most peculiar since it holds hearings in respect of general automobile insurance rates, and in regard to surcharges levied on assigned risk plan drivers. Secondly the Wootton Commission recommended that neither the British Columbia Superintendent of Motor Vehicles nor the Superintendent of Insurance should be named to the Board, yet in fact the latter is the current vice-chairman of the Board. This advice would appear to be sound since the Board, ideally, should be independent of the other government departments and their vested interests; eg. impartial overseer of entire motor
vehicle scene.

**Beneficiaries and Benefits**

The next pertinent topics are the details of the beneficiaries covered, and the benefits available under the basic accident policy recommended by the Wootton Commission, and under the accident benefit insurance contract provided by the Insurance Act.

The *Report*'s basic accident policy would cover the named insured, and members of his family, who are resident in his household, if injured or killed in a traffic accident, when riding in a vehicle driven by one of the aforementioned individuals, while a pedestrian or cyclist, or when riding in a car driven by someone other than the above. Because motor vehicle premiums were to be based on accident involvement as well as convictions for traffic offences, the policies covering the drivers, of the car(s) implicated in the accident would serve as first loss insurance to passengers, and any other relevant insurance as a backup, eg. in cases of uninsured drivers. To supply reparations to pedestrians and cyclists who are not covered by a driver's policy, eg. no driver in the household, and to pay out of province motorists, an Automobile Insurance Compensation and Safety Research Fund would be set up and financed by a gasoline and diesel tax - 1¢ a gallon. This plan appears to be slightly incongruous if driver premiums are
to be strictly related to accident involvement. Also it is probably less expedient from an administrative viewpoint, eg. more claims must be handled through the Fund, but on the other hand, by definition, accident benefit insurance is only designed to compensate the insured and his relatives and friends, and not every potential traffic victim.

In addition it is noteworthy that the Commission proposed voluntary liability coverage if a driver was going to venture into jurisdictions in which the tort system was still in force.\textsuperscript{32}

Now let us turn our attention to the benefits available under the Report proposals. The Commissioners recommended that benefits should be payable in only two circumstances, eg. total disability and death.\textsuperscript{33} The Wootton Commission's basic accident policy provided a maximum death benefit of $20,000.\textsuperscript{34} This award would be paid if the deceased were 18 years or older, and if the victim were younger then payments would be made on a graduated scale ranging from $1000 for a casualty in the 0 - 5 age group to $15,000 if the victim was in the 16-17 age bracket.\textsuperscript{35} (see Schedule II). This benefit was aimed at income continuation for the family unit.\textsuperscript{36} Yet there was no stipulation that the recipients had to be dependent on the victim for financial support. Hence as one observer pointed out, the social utility of such an award was somewhat dubious.\textsuperscript{37} If the level of benefits is inadequate as might have been the case in this instance, then the insurance funds which were to be paid to non-dependent beneficiaries, could have provided greater utility if the funds were given to inadequately compensated dependent beneficiaries.
**Schedule II**

**B.C. Royal Commission on Automobile Insurance-Death and Disability Proposals**

### TABLE 20:1

**Graduated Scale of Death Benefits**

<table>
<thead>
<tr>
<th>AGE</th>
<th>BENEFIT</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 - 5 years</td>
<td>$1,000</td>
</tr>
<tr>
<td>6 - 9 &quot;</td>
<td>3,000</td>
</tr>
<tr>
<td>10 - 11 &quot;</td>
<td>5,000</td>
</tr>
<tr>
<td>12 - 15 &quot;</td>
<td>10,000</td>
</tr>
<tr>
<td>16 - 17 &quot;</td>
<td>15,000</td>
</tr>
</tbody>
</table>

Beneficiaries shall have the option of either accepting the above amount of death benefit on a single payment basis, or taking the actuarial equivalent as a weekly benefit.

### TABLE 20:2

**Graduated Scale of Disability Benefits**

<table>
<thead>
<tr>
<th>AGE</th>
<th>BENEFIT</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 - 5 years</td>
<td>$10 per week</td>
</tr>
<tr>
<td>6 - 9 &quot;</td>
<td>15 &quot; &quot; &quot;</td>
</tr>
<tr>
<td>10 - 11 &quot;</td>
<td>20 &quot; &quot; &quot;</td>
</tr>
<tr>
<td>12 - 15 &quot;</td>
<td>25 &quot; &quot; &quot;</td>
</tr>
<tr>
<td>16 - 17 &quot;</td>
<td>40 &quot; &quot; &quot;</td>
</tr>
</tbody>
</table>

Compensation shall be adjusted upwards as the disabled child moves from one age bracket to the next.

**Source:** *B.C. Royal Commission on Automobile Insurance*, 1968, p. 610 & 613.
The disability compensation which would be payable if the proposals had been adopted, only covered the total disability case in which the injury "prevents the injured party from working at his usual gainful occupation, or at some other occupation for which he is reasonably suited by education, training or experience." 38 In respect of a housewife a disability benefit is also available if she is "unable to carry out her normal housekeeping responsibilities." 39 The recompense was to be paid on a weekly indemnity basis to employed, unemployed, or retired income earners, housewives, and on a reduced basis to children under the age of 18 years. 40 The benefit in general, was to be paid for the duration of the disability, after a one week waiting period. 41 The limit on the award under the basic accident policy was $50 per week in respect of income earners and housewives, and graduated scale of benefits for children ranging from $10 a week to $40, for the same period and depending on whether the victim was in the 0 - 5 or 16 - 17 age group. 42 As the child moved from one age bracket to another his indemnity was adjusted upwards until the $50 maximum was reached. 43 Notable on account of its absence is a lack of a provision for increases in these benefits to correspond to rises in the general cost of living or general wage rates.

The Commissioners also recommended that there be no coverage
of medical and hospital expenses since they anticipated the Medical Care Plan, would compensate the victims for these costs except for the three month waiting period, eg. resident requirement, and this contingency would be covered by the Fund. Also they recommended that if a traffic victim was covered by Workmen's Compensation then he would be disqualified from receiving automobile insurance benefits.

In summary the recommendations of the Wootton Commission pertaining to the basic accident benefits were extremely limited in scope, and the weekly indemnities were not overly generous, but considering the cost of this insurance not much more could be reasonably expected. Also there appeared to be some discrepancies in the provisions of benefits and the stated objectives of the driver policy. However, the prime concern of the Wootton Commission appeared to be a compulsory no-fault accident coverage, for every potential traffic victim, which would provide at least subsistence benefits, and each person was entitled to purchase supplementary insurance to increase the size and scope of his compensation. Possibly the critical flaw in this logic, was and is that automobile victims cannot or will not anticipate their exposure to traffic accident risks, and hence would be inadequately protected if and when they become road accident casualties.

At this point we will focus our thoughts on the present British Columbia legislation. The individuals insured under the
limited accident benefit policy, under either the owner or
driver policy, are the insured, any passengers in his car,
and those defined as insureds, eg. the insured's wife and any
dependent relatives, if they are residing in the same dwelling
premises as the insured.\textsuperscript{46} Two aspects of this insurance require
explanation. First an insured victim is entitled to benefits
if he is entering, riding, driving, or alighting from a motor
vehicle or if struck by an automobile while a pedestrian or cy-
cclist.\textsuperscript{47} This provision is significant because a section
of the Insurance Act prohibited, and still prohibits a daughter,
son, wife, or husband of an insured from suing the insurer of
the forementioned insured in a tort action, eg. the insurer
is not liable to these parties under a motor vehicle policy if
these individuals are entering, riding or alighting from the
family car.\textsuperscript{48} Also it should be noted that the owner's policy
is the first loss insurance, and other accident benefit cover-
age is excess insurance,\textsuperscript{49} but it is important if the owner
does not carry any insurance. If there is no right of recovery
against the Traffic Victims Indemnity Fund, eg. in the uninsured
vehicle, hit-and-run or stolen car situations, then the fore-
mentioned beneficiaries can collect under the excess insurance
policy.\textsuperscript{50} A proposed amendment would make insurers absolutely
liable in respect of accident benefits payable to occupants of
or pedestrians struck by insured vehicles, despite the fact
that the driver of the vehicle breached a statutory condition.\textsuperscript{51}
However the insurer still has a recourse against the driver in respect of such payments and hence if a member of the family is injured, the family unit has no "net" compensation.

Therefore those eligible for benefits under the present legislation are similar to those recommended by the Wootton Commission. Hence the gaps in the present law are in respect of a victim; who is a negligent pedestrian or cyclist, who does not hold or is not covered by an owner's or driver's policy, and who is struck by an uninsured, hit-and-run, or a stolen vehicle, or who is an occupant or driver in a stolen or uninsured car (assuming the driver of such a vehicle is at fault). These traffic victims are not covered by either liability or accident benefit insurance and do not receive compensation from the Traffic Victims Indemnity Fund because they are at fault.

Compensation available under the limited accident benefit insurance covers loss of income in the event of total disability or death, and medical and rehabilitation expenses not reimbursed by the medical plans, and funeral expenses. The death benefits, similar to the Report recommendations, depend on the age of the deceased. However the benefits are also related to the status of the deceased, eg. head of the household, the primary income provider, spouse in a two-parent household, and dependent children, eg. under 18 years old and financially dependent on the head of the household for financial support, or over 18 years old and financially dependent on the head of
the household because of physical or mental infirmity. The maximum recompense to which the beneficiaries are entitled if the head of the household dies, is a $5,000 lump sum, plus in the case of one or more survivors $50 per week plus $10 for each dependent other than the first for 2 years, and an additional $1,000 lump sum for each dependent other than the first. The benefit limits in respect of the death of a housewife and children in a road accident are, respectively $2,500 and $1,500. The benefit depends on the age of the traffic casualty, eg. maximum benefit for head of household and housewife is awarded if they are in the 10-64 age bracket, whereas the children's benefit reaches a peak if the victim is in the 10 - 17 age group. For the full compensation picture see Schedule III.

The benefits are apparently provided on the assumption that during the forementioned periods the financial hardships and/or mental anguish will reach their zenith. Also some thought has probably been given to the availability of other social insurance benefits, eg. the Canada Pension Plan, and the uncertain life expectancy at age of 65 or older, so in large part the payments appear to be logical.

Also to be noted is the condition that death benefits will be reduced if any payment has been made under the disability award section in respect of the same accident. This seems to be an attempt to limit accident benefit payments, and economic-
Schedule III

Current Death Benefit Provisions in B.C.

Subsection 2.—Death and Total Disability

Part 1.—Death Benefits

A. Subject to the provisions of this Part 1, for death which ensues within 180 days of the accident, a payment—based on the age and status at the date of the accident of the deceased in a household where spouse or dependents survive—of the following amount:

<table>
<thead>
<tr>
<th>Age of Deceased at Date of Accident</th>
<th>Status of Deceased</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Head of Household</td>
<td>Spouse in Two-parent Households</td>
<td>Dependent Children</td>
</tr>
<tr>
<td>-------------------------------------</td>
<td>-------------------</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>Up to age 4 years...................</td>
<td>..............</td>
<td>..............</td>
<td>$500</td>
</tr>
<tr>
<td>5 to 9 years.........................</td>
<td>..............</td>
<td>..............</td>
<td>1,000</td>
</tr>
<tr>
<td>10 to 17 years.......................</td>
<td>$5,000</td>
<td>$2,500</td>
<td>1,500</td>
</tr>
<tr>
<td>18 to 64 years.......................</td>
<td>5,000</td>
<td>2,500</td>
<td>1,000</td>
</tr>
<tr>
<td>65 to 69 years.......................</td>
<td>3,000</td>
<td>1,500</td>
<td>1,000</td>
</tr>
<tr>
<td>70 years and over....................</td>
<td>2,000</td>
<td>1,000</td>
<td>500</td>
</tr>
</tbody>
</table>

In addition, with respect to death of head of household,

(a) where there are two or more survivors—spouse or dependents—the principal sum payable is increased $1,000 for each survivor other than the first;

(b) where there are one or more survivors, $50 per week plus $10 per dependent other than the first, payable each week for a period of 104 weeks. Any weekly benefit shall terminate upon death of all survivors.

B. For the purposes of this Part 1,

(1) The spouse of head of household shall be deemed to be the spouse with the lesser income in the year preceding the date of death;

(2) a deceased person whose only surviving dependents are parents of such a person shall be deemed a head of household if such parents, at the date of accident, were residing in the same dwelling premises as the deceased person and were principally dependent upon him for financial support;

(3) the words "dependent child" as used herein shall mean a child
   (a) under the age of 18 years for whose support the head of household is legally liable and who is dependent upon the head of household for financial support; or
   (b) 18 years of age or over, residing in the same dwelling premises as the head of household who, because of mental or physical infirmity, is wholly dependent upon the head of household for financial support;

(4) the total sum payable shall be paid with respect to death of head of household or spouse to the surviving spouse. If there is no surviving spouse in the household, no amount shall be payable unless there are surviving dependent children or dependent parents, as defined in (2).

Source: B.C. Regulations 43/71.
ally and socially is not justifiable since the financial needs of the dependents upon the death of the victim in the above case are as great or greater than the case in which the victim is killed instantaneously in an accident.

Lastly by an Order in Council the limitation period in respect of a death following an automobile accident, e.g., 180 days, was repealed on June 30, 1971,\(^6^0\) so consequently death benefits are payable under the limited accident coverage if the accident is the cause of death.

Unlike the Manitoba and Saskatchewan schemes there is no limit on the death benefits, assuming the dependent requirement can be met, and the traffic victim is a head of a household. If the casualty is either a housewife or a child, and generally in the case of a head of a household, the death benefits will be much lower than those suggested by the Wootton Commission.

Compensation is also available, in the form of a weekly indemnity, to traffic victims who are "wholly and continuously" disabled, if they were employed or had been employed for at least six out of the last twelve months prior to the accident date, and the injury prevents the victim from performing "any and every duty pertaining to his occupation or employment."\(^6^1\) The benefit is payable, after a seven day waiting period, until the victim recovers and can engage "in any occupation or employment for which he is reasonably suited by education, training
or experience", or until he reaches the age of 65 years, when it may be reduced, eg. other benefits. The weekly indemnity is 80 percent of the beneficiary's gross wage, subject to a maximum of $50 per week, and a minimum of $40 per week, unless the recipient is a "dependent" child in which case the benefit will not exceed his average wage. This benefit may be restricted if the victim is covered under group or life insurance in respect of disability, eg. if the total benefits payable under all insurance contracts exceed his gross income then the benefit from the accident insurance will only be paid to the extent of the proportion that this insurance bears to the aggregate of benefits in relation to the total loss suffered. This approach makes sense because the victim should have an incentive to return to work, eg. such payments are not taxable, and the social utility aspect should be considered, eg. eliminate unnecessary costs.

A housewife is also eligible to receive $50 a week for a maximum duration of 26 weeks, if she is "completely incapacitated and unable to perform any of her household duties."

The disability benefits are very similar to those recommended by the Wootton Commission with the only substantial differences being the eligibility requirements, eg. unemployed or retired casualties do not receive compensation under the present law. Hence retired individuals or students who have worked for 6 and of the preceding 12 months are not eligible for disability
benefits, yet must pay the premiums. Also there is a limitation on the duration of such benefits which may be awarded to a housewife, and this is different from the Report proposals, eg. no limitation period.

The provisions of the current legislation, dissimilar to the Commissioners' recommendations, include coverage of: funeral expenses up to a maximum of $500, and all reasonable medical and rehabilitation costs to a maximum of $50,000.\textsuperscript{67} Although there is a condition that these latter payments are only made if they have not already been covered by law, eg. Medical Care or Hospital Care Plans. This protection does fill in any gaps in the medical coverage, eg. three months resident contingency, and provides rather complete rehabilitation treatment insurance in conjunction with the Medical Care Plan.\textsuperscript{68}

In addition to these benefits the traffic victim retains the right to recover damages under uncompensated "heads" or beyond the limits imposed under accident insurance, in respect of loss of income, or funeral and medical expenses via a tort action.

In summary it would appear that the accident benefit provisions of the \textit{Insurance Act} are broader in scope, but the death and disability benefits are less generous, as compared with the Wootton Commission recommendations.
Exclusions

Another interesting contrast between the Report and the law is the exclusion of certain individuals from the list of eligible beneficiaries in respect of the accident policy. Only suicide or self-inflicted injury cases would be disqualified from compensation under the Commissioners' proposals. The exclusions listed by the Insurance Act include the above circumstance and many more, no coverage; if automobile is being used in a speed race or for the purpose of "any illicit or prohibited trade or transportation, if bodily injury or death caused by radioactive material, or if victim is entitled to workmen's compensation." Also the insured will not be entitled to medical, rehabilitation or funeral expenses or disability benefits if the injury or death is sustained while he is driving a car; under the influence of alcohol or drugs, without a valid licence, or while unauthorized or unqualified by law.

The first group of exclusions applies to all categories of victims who are occupants of the car and pedestrians in speed race situations, and prohibits any form of accident benefit recovery to the above victims. The second group of disqualified victims applies only to the driver, eg. not occupants, and even then the beneficiaries of the casualty, if he (the driver) is killed while driving under the specified circumstances, can still recover death benefits, presumably because
the dependents were not at fault in respect of the deceased's transgressions, and will become an economic burden if not compensated. The only possible reasons for the disqualification of the injured driver or the total exclusions set out in the first group is the conventional morality point of view that the wrongdoer shall not gain a benefit from his illegal activities. The Wootton Commission would appear to have rejected such anachronistic notions, arguing that the primary concern is compensation for traffic victims, not upholding the morality of society. 72

Premiums

Although the issue of motor vehicle premiums will be discussed in more detail in a later chapter some aspects of the method of premium determination require attention at this point. The Wootton Commission recommended that the basic accident policy premium and licence suspensions should depend on a demerit point system founded on accident involvement and provincial Motor Vehicle and Criminal Code convictions. 73 (See Schedule IV). The essential feature of the scheme is that driver's licences would be divided into four categories; white, green, yellow, and red, and the colour would indicate the demerit point rating, eg. white licence - 0-3 demerit points, red licence 7-10 demerit points etc. 74 The premium would be lowest for a driver holding a white licence, eg. $16.76,
Schedule IV-1

B.C. Royal Commission on Automobile Insurance Proposed
Premium Rates and Demerit Point System

Premium Rates

<table>
<thead>
<tr>
<th>Driver's Licence</th>
<th>Percentage of Total Licensed Drivers</th>
<th>Estimated Maximum Premium for Basic Policy</th>
</tr>
</thead>
<tbody>
<tr>
<td>White</td>
<td>86%</td>
<td>$16.76 = $1,442.76</td>
</tr>
<tr>
<td>Green</td>
<td>3%</td>
<td>21.36 = 649.33</td>
</tr>
<tr>
<td>Yellow</td>
<td>5%</td>
<td>23.91 = 119.53</td>
</tr>
<tr>
<td>Red</td>
<td>6%</td>
<td>26.48 = 153.88</td>
</tr>
</tbody>
</table>

Wt. Total = $1,785.27

DEMERIT POINT SYSTEM

WHITE Driver's Licence: _ _ _ up to a maximum of 3 demerit points
GREEN Driver's Licence: _ _ _ over 3 - maximum 5 demerit points
YELLOW Driver's Licence: _ _ _ over 5 - maximum 7 demerit points
RED Driver's Licence: _ _ _ over 7 - maximum 10 demerit points

TABLE 20:3

<table>
<thead>
<tr>
<th>Accidents</th>
<th>in 1 year</th>
<th>in 2 years</th>
<th>in 3 years</th>
<th>in 4 years</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2</td>
<td>3</td>
<td>2</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>3</td>
<td>6</td>
<td>4</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>4</td>
<td>9</td>
<td>7</td>
<td>7</td>
<td>5</td>
</tr>
<tr>
<td>5</td>
<td>SUSPEND</td>
<td>10</td>
<td>10</td>
<td>7</td>
</tr>
<tr>
<td>6</td>
<td>SUSPEND</td>
<td>SUSPEND</td>
<td>SUSPEND</td>
<td>10</td>
</tr>
<tr>
<td>7</td>
<td></td>
<td></td>
<td></td>
<td>SUSPEND</td>
</tr>
<tr>
<td>Section</td>
<td>Description</td>
<td>Demerit Points Each</td>
<td></td>
<td></td>
</tr>
<tr>
<td>---------</td>
<td>-------------------------------------------------</td>
<td>---------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>192</td>
<td>Death by criminal negligence</td>
<td>10</td>
<td></td>
<td></td>
</tr>
<tr>
<td>193</td>
<td>Injury by Criminal negligence</td>
<td>10</td>
<td></td>
<td></td>
</tr>
<tr>
<td>221 (1)(B)</td>
<td>Criminal negligence</td>
<td>10</td>
<td></td>
<td></td>
</tr>
<tr>
<td>221 (2)(B)</td>
<td>Failing to remain</td>
<td>10</td>
<td></td>
<td></td>
</tr>
<tr>
<td>221 (4)</td>
<td>Dangerous Driving</td>
<td>10</td>
<td></td>
<td></td>
</tr>
<tr>
<td>222</td>
<td>Drunk Driving</td>
<td>10</td>
<td></td>
<td></td>
</tr>
<tr>
<td>223 (A)(B)(C)</td>
<td>Ability impaired</td>
<td>10</td>
<td></td>
<td></td>
</tr>
<tr>
<td>225 (3)(A)</td>
<td>Driving while under suspension</td>
<td>10</td>
<td></td>
<td></td>
</tr>
<tr>
<td>153</td>
<td>Following too closely</td>
<td>4</td>
<td></td>
<td></td>
</tr>
<tr>
<td>54</td>
<td>Failure to report an accident</td>
<td>4</td>
<td></td>
<td></td>
</tr>
<tr>
<td>138</td>
<td>Driving without due care and attention</td>
<td>6</td>
<td></td>
<td></td>
</tr>
<tr>
<td>69</td>
<td>Permitting use by unlicenced drivers</td>
<td>8</td>
<td></td>
<td></td>
</tr>
<tr>
<td>56</td>
<td>Impersonation</td>
<td>10</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## Schedule IV-3

### B.C. Royal Commission on Automobile Insurance

#### Proposed Demerit Point System (Cont.)

### B.C. Motor Vehicle Act - Violations

#### 2 Demerit Points Each

<table>
<thead>
<tr>
<th>M.V.A. Sec.</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>127</td>
<td>Traffic Control Light (Red Light)</td>
</tr>
<tr>
<td>128</td>
<td>Traffic Control Light (Arrows, flashing red and pedestrian crosswalk)</td>
</tr>
<tr>
<td>144</td>
<td>Change of lanes</td>
</tr>
<tr>
<td>149</td>
<td>Passing on right</td>
</tr>
<tr>
<td>157</td>
<td>Left turn other than intersection</td>
</tr>
<tr>
<td>158</td>
<td>Right turn other than intersection</td>
</tr>
<tr>
<td>159</td>
<td>Reverse turn</td>
</tr>
<tr>
<td>160</td>
<td>Signals on turning</td>
</tr>
<tr>
<td>163</td>
<td>Yield at intersection</td>
</tr>
<tr>
<td>164</td>
<td>Yield right-of-way on left turn</td>
</tr>
<tr>
<td>165</td>
<td>Entering through highway</td>
</tr>
<tr>
<td>166</td>
<td>Emerging from alley</td>
</tr>
<tr>
<td>174</td>
<td>Railway crossing controlled by mechanical device</td>
</tr>
<tr>
<td>175</td>
<td>Railway crossing stop sign</td>
</tr>
<tr>
<td>176</td>
<td>Commercial vehicles at railway crossing</td>
</tr>
<tr>
<td>180</td>
<td>Improper stopping</td>
</tr>
<tr>
<td>182</td>
<td>Improperly parked</td>
</tr>
<tr>
<td>184</td>
<td>Caution in backing</td>
</tr>
<tr>
<td>185</td>
<td>Seating a motorcycle</td>
</tr>
<tr>
<td>189</td>
<td>Distance following fire engine</td>
</tr>
<tr>
<td>191</td>
<td>Driving on sidewalk</td>
</tr>
<tr>
<td>194</td>
<td>Opening door</td>
</tr>
<tr>
<td>197-8</td>
<td>Safety equipment</td>
</tr>
<tr>
<td>143</td>
<td>Driving on right except when passing</td>
</tr>
<tr>
<td>148</td>
<td>Duty when meeting oncoming vehicles</td>
</tr>
<tr>
<td>150</td>
<td>Safe passing on left</td>
</tr>
</tbody>
</table>

#### 3 Demerit Points Each

<table>
<thead>
<tr>
<th>M.V.A. Sec.</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>18.8</td>
<td>Obedience to Restriction</td>
</tr>
<tr>
<td>134</td>
<td>Obedience to speed signs (construction)</td>
</tr>
<tr>
<td>135</td>
<td>Obedience to flagman</td>
</tr>
<tr>
<td>139</td>
<td>Slow Driving</td>
</tr>
<tr>
<td>140</td>
<td>Speeding</td>
</tr>
<tr>
<td>141</td>
<td>Speed playground or school zone</td>
</tr>
<tr>
<td>142</td>
<td>Meeting or passing school buses</td>
</tr>
<tr>
<td>145</td>
<td>Passing when meeting oncoming vehicles</td>
</tr>
<tr>
<td>146</td>
<td>Passing on solid double lines</td>
</tr>
<tr>
<td>151</td>
<td>Clear view required on passing</td>
</tr>
<tr>
<td>154</td>
<td>Driving against barrier</td>
</tr>
<tr>
<td>155</td>
<td>Entering Controlled Access Highway</td>
</tr>
<tr>
<td>156</td>
<td>Proper turn at intersection</td>
</tr>
<tr>
<td>167</td>
<td>Emergency vehicle approach</td>
</tr>
<tr>
<td>169</td>
<td>Right of way between pedestrian and vehicle</td>
</tr>
<tr>
<td>177</td>
<td>Stop sign</td>
</tr>
<tr>
<td>186</td>
<td>Requirement before moving vehicle</td>
</tr>
<tr>
<td>196</td>
<td>Transport Explosives</td>
</tr>
</tbody>
</table>

as compared with $26.48 for the holder of a red licence, and since credit would have been given for traffic violation free years, and the demerit point rating for accidents would be lowered over the passing years, if no further accidents had occurred. The licences and insurance would be issued annually on the insured's birthday.\(^{75}\)

If the driver accumulated more than 10 demerit points his licence was automatically suspended.\(^{76}\)

The point which does not seem equitable, but is more expedient administratively was the assessment of demerit points for accidents regardless of fault. The Commissioners' felt that this approach was reasonable because accident prone drivers should be penalized or ruled off the roads,\(^{77}\) and possibly this action would result in greater traffic safety.

In current practice the motor vehicle insurance premium is based on percentage surcharges levied on the standard manual premium.\(^{78}\) However a modified demerit point system has been instituted in respect of licence suspensions.\(^{79}\) (see Schedule V). If the driver amasses 9 demerit points, then his licence will either be suspended or the driver will be put on probation.\(^{80}\) Also for each 10 demerit points the driver must pay a $25 fine in addition to other penalties, eg. suspension of his licence.\(^{81}\) It should be recognized that the current demerit system is based solely on traffic violation convictions.
Schedule V-1

Current Demerit Point System for Licence Suspensions in B.C.

| SCHEDULE |
|-------------------------|------------------|
| **2 POINTS**            | Driving Offence  |
| Sections (Motor-vehicle Act) |                  |
| 124 Disobeying a Peace Officer. |
| 127 Disobeying a traffic-control device. |
| 128 Failing to stop at traffic-control light. |
| 137 Driving over newly painted sign or marking. |
| 144 Changing lanes illegally. |
| 149 Passing on right. |
| 152 Disobeying traffic signal or sign. |
| 157 Illegal left turn. |
| 158 Illegal right turn. |
| 159 Making an illegal reverse turn. |
| 160 Failing to signal a turn. |
| 161 No proper signalling equipment. |
| 162 No proper signalling equipment for right-hand drive vehicle. |

| **3 POINTS** |
|-------------------|------------------|
| Sections (Motor-vehicle Act Regulations) | Driving Offence |
| 4, s. 4.04 (h) Misuse of high beams. |
| 7a, s. 7a.01 Loud and unnecessary noise from motor-vehicle. |

| **6 POINTS** |
|-------------------|------------------|
| Sections (Motor-vehicle Act) | Driving Offence |
| 138 Driving without due care and attention. |

| **10 POINTS** |
|-------------------|------------------|
| Sections (Motor-vehicle Act) | Driving Offence |
| 18 (2a) Driving without insurance. |
| 20 Driving while right to obtain licence is suspended. |

Sections (Criminal Code of Canada) | Driving Offence |
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>192 Causing death by criminal negligence.</td>
<td></td>
</tr>
<tr>
<td>193 Causing injury by criminal negligence.</td>
<td></td>
</tr>
<tr>
<td>221 (1) (b) Criminal negligence.</td>
<td></td>
</tr>
<tr>
<td>221 (2) (b) Failing to remain at scene of accident.</td>
<td></td>
</tr>
<tr>
<td>221 (4) Dangerous driving.</td>
<td></td>
</tr>
<tr>
<td>222 Driving while ability impaired.</td>
<td></td>
</tr>
<tr>
<td>223 (2) Breath sample not provided.</td>
<td></td>
</tr>
<tr>
<td>224 Driving with more than 80 mgs. of alcohol in blood.</td>
<td></td>
</tr>
<tr>
<td>225 (3) (a) Driving while under suspension.</td>
<td></td>
</tr>
</tbody>
</table>
Schedule V-2
Current Demerit Point System for Licence Suspensions in B.C. (Cont

2 POINTS

Sections (Motor-vehicle Act) Driving Offence
163 Failing to yield right-of-way at intersection.
164 Failing to yield right-of-way on left turn.
165 Failing to yield right-of-way on entering a through highway.
166 Emerging from an alley without due care.
171 Failing to exercise duty to pedestrian.
174 Failing to stop at railway crossing controlled by mechanical device.
175 Failing to heed railway stop sign.
176 Commercial vehicle failing to stop at railway crossing.
182 Leaving vehicle improperly parked.
184 Failing to exercise due caution backing up.
185 Improper seating on motor-cycle.
187 Improper control and operation of vehicle in canyon or defile.
188 Coasting vehicle with gears in neutral.
189 Failing to maintain proper distance following fire-engine.
190 Driving over fire-hose.
191 Driving on sidewalk.
192 Opening door when unsafe.
195 Illegally depositing articles on highway.

Divisions (Motor-vehicle Act) Regulations Driving Offence
3 Offences with regard to number-plates.
4 Offences with regard to lamps.
7 Offences with regard to other equipment.
22 Illegal operation of antique motor-vehicle.
24 Illegal operation of vehicles of unusual or novel size.

3 POINTS

Sections (Motor-vehicle Act) Driving Offence
18 (2) Failing to obey restriction on driver's licence.
134 Failing to obey construction speed zone.
135 Failing to obey construction zone flagman.
139 Driving too slowly.
140 Speeding.
141 Speeding in playground or school zone.
142 Failing to stop on meeting or overtaking school bus.
143 Failing to drive on right (except when passing).
145 Passing when meeting oncoming vehicle.
146 Passing on solid double line.
148 Failing to drive safely when overtaking another vehicle (or when being overtaken).
150 Failing to drive safely passing on left.
151 Passing with not clear view for safe distance.
153 Following closely.
154 Driving against highway division barrier.
155 Improper entry to controlled-access highway.
156 Improper turn at intersection.
167 Failing to stop when emergency vehicle approaches.
169 Failing to yield right-of-way to pedestrian.
177 Failing to stop properly at stop sign.
186 Moving vehicle on highway when unsafe to do so.

Source: B.C. Regulations 15/70

---85---
This systematic approach to licence suspensions is logical, but the difficulty in practice is trying to enforce the sentence, eg. people driving while their licence is under suspension.

**Contributory Negligence Act**

Another point which was mentioned in a previous chapter, but deserves comment here because of the direct or indirect influence of the Wootton Commission's recommendations. Amendments were made in respect of the *Contributory Negligence Act*, eg. a passenger can sue his driver and other faulty parties as joint tortfeasors - each is responsible to the claimant to the extent of the plaintiff's total loss, and the *Motor Vehicle Act*, eg. a gratuitous passenger can recover damages from his driver if he can show "ordinary" negligence. These changes enhance the traffic victim's tort recovery prospects to a considerable extent, especially in the case of the heretofore maligned, gratuitous passenger.

**Age of Driver Licence Applicants**

A final feature of the British Columbia legislation was also inspired by the Wootton proposals. A section of the *Motor Vehicle Act* provides that the age minimum for driver's licences is to be raised from 16 to 18 years, unless the applicant has successfully completed a driver-training course.
however this section has not been proclaimed.

The reasoning of the Commissioners was apparently based on the assumption that the older age limit would rid the highways of immature and irresponsible drivers, even though the statistics showed a higher accident frequency in the 18 and 19 year old bracket as compared with the 16-18 age group. Quite possibly this reasoning is subject to scepticism since surcharges indicating blameworthy driving habits are applied to all motor vehicle policies in which the male insured is under 25 years.

**Conclusion**

In conclusion it is apparent that many of the major recommendations of the Commission were implemented in part or in total by the government. The outstanding exception was the failure to abolish fault. This departure was not surprising considering the formidable groups which opposed this suggestion during the hearings of the special Committee of the Legislature which was formed to study the *Report*. The resulting legislation overcame many of the flaws in the compensation system, yet a gap between economic loss and reparations still exists, and automobile insurance remains expensive in relation to the benefits paid.
CHAPTER V

THE PRACTICAL RAMIFICATIONS OF THE
NO-FAULT LEGISLATION

Introduction

The Wootton Commission recommended the abolition of fault and the adoption of a complete no-fault, self-insurance, scheme in respect of bodily injury or property damage resulting from motor vehicle accidents. This concept was proposed because of a number of inherent defects in the tort system. In short these shortcomings were:

1) the relatively low loss ratio which reflected the inefficiencies of the system in respect of the determination and attribution of fault, and hence resulted in higher premium charges;

2) the delay and legal costs associated with the ascertainment, eg. settlement or judgment of compensation for the traffic victim;

3) the inadequacy of compensation relating to the serious and fatally injured motor vehicle casualties, and

4) the court congestion which was aggravated by automobile accident claims.

In this chapter the writer will attempt to analyze the extent to which the amendments to the Insurance Act, which produced the present hybrid system of part fault and part no-fault, have
overcome the flaws in the pure tort system as outlined by the Wootton commission. Unfortunately the information required for a complete examination of the current scheme is not available. This predicament is due to the relatively short period during which the scheme has been operative, and to the inability to obtain precise answers to pertinent queries without undertaking an extensive research survey. Hence for the purposes of this thesis reliance must be placed on data which can be gleaned from certain publications, eg. the Statistical Exhibit, and Submissions to the British Columbia Automobile Insurance Board, etc., and interviews with individuals who possess some degree of expertise in relation to the different aspects of the prevailing system.

Automobile Premiums

The primary cause of the appointment of the Wootton Commission was the widespread and loud outcry of motor vehicle drivers and owners over the seemingly annual increases in automobile insurance premiums. However the present hybrid scheme, as we shall see, has not resulted in any decrease in the overall cost of motor vehicle coverage, eg. compulsory, accident benefits and bodily injury and property damage liability protection.

When the amendments to the Insurance Act became effective on January 1, 1970, the accident benefit provisions were "read in" free of charge by the Insurance Industry in respect of automobile
insurance policies written in 1969 but extending into the 1970 calendar year. However as the policies were renewed in 1970 and 1971 the owner or driver of a motor vehicle was generally charged between $21 to $22 as a premium for his accident insurance.

In order to understand the reason for the dissimilar rates, some insight is required in respect of the operations of the Automobile Insurance Industry. At the present time there are three rating bureaux in British Columbia and their function is to gather pertinent statistics, give advice to their members and in some cases, to prescribe and enforce rates in respect of this group. In effect a large number of companies have delegated their authority over pricing decisions to the bureaux. The three organizations are the Canadian Underwriters' Association, (C.U.A.), which has the largest membership, the Independent Insurance Conference (I.I.C.), a relative newcomer, established through an amalgamation, of smaller bureaux, and the Insurance Bureau of Canada (I.B.C.), which was established in 1964 and has the C.U.A. and I.I.C. as corporate members as well as twenty seven other independent companies. The I.B.C. also has the responsibility of collecting data from a broad base and subjecting the information to statistical and actuarial analysis in order to serve as a guide in respect of "fair and adequate" premium rates, and to provide
the Federal Superintendent of Insurance with a yardstick to measure the propriety of rates and the performance of individual companies. In addition to these Company Groups there are a small number of firms which are independent of the I.B.C. and appear to be subsidiaries of American insurance companies, eg. Allstate, Wesco . etc. Consequently the premium levied in respect of the accident benefit, or any component of the policy package, depends on the rating bureau, if any, with which the particular firm is affiliated, eg. C.U.A. and I.B.C. charged $22 and the I.I.C. assessed $21 in respect of the accident benefit premium in 1970 and 1971 policy years.

One company, Wesco Insurance Limited claimed, via its former president, Mr. Brian Rudkin, that its rate in respect of accident benefits was only $13. However it has been learned from a number of sources that Westco did not really provide accident benefit insurance in all cases. The objective of the legislation was that payments made in relation to accident benefits by an insurer to his insured, would correspondingly reduce any tort settlement or award which would otherwise have been payable to the insured victim or his insurer. Apparently in situations in which one of Westco's insureds had a tort claim against a third party, eg. another party had been negligent, the accident benefits were given to the victim in the form of a loan, so that if or when the insured casualty won his case, he was entitled to recover full tort damages because
the loan arrangement did not affect the tort award, eg. same position as if no accident benefits had been paid. Therefore this ploy would certainly reduce Westco's claim frequency and benefit payouts, and thereby permit it to charge lower rates.

After the recent decision in Adrian vs Enns (unreported) in which it was held that an innocent traffic victim did not have to avail himself of his right to accident benefits, eg. he could sue the negligent party for all his losses, an amendment was introduced in the British Columbia Legislature. The Bill provides that the road accident victim, in a negligence suit, can only recover those damages which are not covered by the accident benefit insurance. Consequently once this Bill is enacted British Columbia will have a true hybrid insurance system; no-fault to the extent of the limited accident insurance benefits, and fault for damages in excess of the accident benefit limits or of a different nature, eg. non-economic losses.

In an interview with Mr. Ian Henley, President of the Automobile Insurance Claims Managers of British Columbia, and in addition a member of the Insurance Committee of the British Columbia Bar, it was learned that prior to the Adrian vs Enns case, despite the rather nebulous drafting of the legislation, particularly in regard to Section B (the accident benefit section), the insurers have attempted to give a liberal interpretation to the wording of the Insurance Act. In particular they paid accident benefit claims, in spite of the knowledge that the
decision in the forementioned test case was predictable, because
this was the apparent intent of the government, if not of the
legislation, and unless some understanding was reached chaos
would reign to the detriment of both insured and insurers.
After the court decision he stated that the position of the
Industry has not changed, and once the Bill is enacted the
legislation will correspond to the general practice in the
Insurance Industry.

Before commencing a discussion of the determination of
the charge for these accident benefits it is noteworthy that
unlike those of Manitoba or Saskatchewan and apparently that
of the original plan of the British Columbia Superintendent of
Insurance, the premiums in respect of third party liability
and accident benefits were to be calculated and noted separ-
ately on the policy. All three rating bureaux proposed that
the compulsory components of the automobile policy should be
combined and a single premium should be developed for third
party liability and accident benefit coverage. Their reason-
ing was that the risks were, and are interrelated, eg. an
increase in accident benefit claims will generally affect the
number or scope of third party liability claims. However
to this date the Board has not permitted the Industry to merge
the two premiums, presumably because they want to ensure full
disclosure of all aspects of the rate making procedure in
respect of accident benefits, as separate and distinct from
liability premiums, and to provide the motoring public with some idea of the costs of each of the parts of the automobile insurance package. In the writer's view, if the Board is to fulfill its watchdog role and in the interest of public knowledge, a detailed breakdown, pertaining to premium determination and loss experience of each and every component of the automobile policy is not only desirable, but essential. It is not possible to believe that the Insurance Industry cannot accurately derive the premiums in respect of accident benefits and liability coverage as separate items, especially after greater experience is gained in respect of the former provision.

Let us now look at the manner in which accident benefit rates were, and are determined. For the first two policy years (1970 and 1971), Mr. C.L. Wilcken, the I.B.C. actuary, and Dr. J.S. McGuiness, President of John A. McGuiness Associates of New Jersey, (Consultants in Actuarial Science and Management), ascertained, that a premium of $22 could be actuarially supported. This total was composed of two elements, $13 for broaden indemnity under no-fault (personal accident) and $9 in respect of an anticipated transfer of indemnity, previously included under bodily injury liability. As noted earlier the actual premium in respect of accident benefits was either $21 or $22 depending on the rating bureau affiliation, but the important features of the levy were that it was a flat rate for all drivers and
owners in British Columbia, and that there was an expressed allowance of $9 in respect of an expected transfer of claims from bodily liability to accidents benefit coverage, and therefore one may have anticipated a similar decrease in liability premiums in the scheme's first year of operation, eg. 1970.

At this juncture some attention should be given to third party liability premiums. Unlike the accident benefit coverage the liability premium depends on the age and driving record of the insured, eg. accidents and convictions, the rating territory in which he resides, and the usage category of his automobile, eg. pleasure or commercial. The rationale for this rate determination is that the above factors are pertinent in the estimation of risk in respect of a particular driver or owner. If this is a logical analysis, and it appears to be, then one may question the flat rated accident benefits. Quite obviously some drivers, because of their motoring habits and territory in which they normally travel are exposed to greater accident risks as compared with other drivers, and hence a flat rate may not seem to be appropriate. Particularly when it is also noted that the number of insureds in respect of an accident benefit coverage can range from one to five or more depending on the number of dependents in the owner or driver's family. This writer speculates that the single charge pertaining to accident benefits is an attempt to provide all
motor vehicle casualties with minimal coverage at the lowest possible rate, and hence good drivers are really participating in a social insurance scheme in which they may not collect any benefits and yet are supporting those who do become involved in accidents to some extent.

Since the accident insurance benefits were included in the automobile policy, it is interesting to note the premiums which have been charged for third party liability coverages. An average basis must be employed because as was indicated above, each liability policy is tailor-made to a particular driver or owner. The liability premiums, covering bodily injury and property damage, rose about 6 percent in 1970 as, compared with the 1969 rates, in spite of the forementioned $9 transfer to accident benefits coverage, and increased another 12 percent in 1971.\(^{27}\) In 1972 the Industry has projected a 5.9 percent increase.\(^{28}\) Consequently it would appear that the changes in the legislation have not appreciably influenced the automobile liability premiums.

However it is important to recognize that during this period, medical, rehabilitation, and repair expenses have risen and the wages of victims, lawyers, and the administrative staff have also increased, so that the end result has been a reported underwriting loss for the British Columbia Automobile Insurance Industry for the past three years.\(^{29}\) In addition it should be pointed out that the Industry has
suffered a cumulative underwriting loss of $22 million during the past 21 years. ³⁰

Therefore it appears that the Automobile Insurance Industry in British Columbia has not been profitable (if the accounting for reserves in respect of future losses and expense allocation between different insurance lines has been accurate, eg. not too conservative, and if investment income was ignored) over the past two decades, and especially in the last few years. Hence to some extent, at least, insurers must rely on other insurance "lines" to overcome the underwriting deficit in respect of automobile insurance if they are to make an overall underwriting profit. This picture if accurate, certainly has far reaching ramifications in respect of the appraisal of the present scheme and the recommendation of any proposed alternative plan.

At this stage of the chapter the writer will focus on an edict of the Board which was made in early December, 1971. The Automobile Insurance Industry in British Columbia was given the option of either lowering their accident benefit rates from their 1970 and 1971 levels to $14, or presenting their objections to this order at a one-day hearing. Not too surprisingly, the Industry opted for the latter course of action, and the hearing was held on January 12, 1972. Evidently this confrontation between the Board and the Industry was sparked by the low loss ratio of approximately 44 percent in respect of accident benefits which was disclosed in the 1970 Statistical
Exhibit. (see Board Letter, in Schedule VI.).

In response to the forementioned letter, the C.U.A. prepared a comparison between their rate making pertaining to accident benefits in 1970 and 1971 and that proposed by the Board. (see Schedule VII). Before perusing the differences the reader should be aware of the recent history in respect of the loading or expense factor relating to motor vehicle premiums. In 1930 a 45 percent loading factor was employed after the Hodgins Report was released, but this rose to 47 percent in British Columbia when a 2 percent premium tax was levied in 1948 in order to pay for the T.V.I.F. benefits. In 1953 the component was reduced to 37 percent, and sliced twice more to 33 percent in 1966, and to 30 percent in 1970. The itemized expense factors were

<table>
<thead>
<tr>
<th></th>
<th>1966</th>
<th>1970</th>
</tr>
</thead>
<tbody>
<tr>
<td>commissions</td>
<td>12.5-15.0 percent</td>
<td>12.9 percent</td>
</tr>
<tr>
<td>other expenses</td>
<td>16.0-13.5 percent</td>
<td>10.5 percent</td>
</tr>
<tr>
<td>taxes and licenses</td>
<td>---</td>
<td>2.2 percent</td>
</tr>
<tr>
<td>premium tax (T.V.I.F)</td>
<td>2.0 percent</td>
<td>2.0 percent</td>
</tr>
<tr>
<td>profit and contingencies</td>
<td>2.5 percent</td>
<td>2.5 percent</td>
</tr>
</tbody>
</table>

However because of a short-fall in respect of T.V.I.F. amounting to almost 2 percent of liability premiums, the loading component is in reality closer to 32 percent in respect of liability premiums. As noted by the Wootton Commission the expense factor did, and still does not compare favourably
The available information about the Board's rate change proposal appears in their letter dated December 6, 1971, a copy of which faces this page. The elements of this proposal and of the CUA rate calculations have been re-arranged in comparable form and are set out below.

### Comparison of Rating Elements for Accident Benefit Coverage

<table>
<thead>
<tr>
<th>Item</th>
<th>1970 Board</th>
<th>1970 CUA % of prem.</th>
<th>1971 CUA % of prem.</th>
<th>1971 CUA % of prem.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pure loss cost and loss adjustment expense:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Death and disability combined below</td>
<td>$11.12</td>
<td>51.0</td>
<td>$11.90</td>
<td>54.6</td>
</tr>
<tr>
<td>Medical, rehabilitation and funeral expenses combined below</td>
<td>$3.00</td>
<td>13.8</td>
<td>$3.20</td>
<td>14.7</td>
</tr>
<tr>
<td>Based solely on 1970 data as at June 30, 1971</td>
<td>$8.57</td>
<td>62.1</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Projection factors:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Allowance for late reported claim (ISNR)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Allowance for growing usage of accident benefits and transfer from SI liability coverage</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Allowance for inflation (loss cost projection)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>10.14</td>
<td>73.5</td>
<td>14.59</td>
<td>67.0</td>
</tr>
<tr>
<td>Expenses:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commission</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Premium tax</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Insurer internal expense</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>3.58</td>
<td>26.0</td>
<td>6.64</td>
<td>30.5</td>
</tr>
<tr>
<td>Underwriting Profit and contingencies:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Superintendent's standard</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Proposed reduction</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>0.28</td>
<td>-2.0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>0.07</td>
<td>-0.5</td>
<td>0.55</td>
<td>2.5</td>
</tr>
<tr>
<td>Total</td>
<td>$13.79</td>
<td>100.0</td>
<td>$21.78</td>
<td>100.0</td>
</tr>
</tbody>
</table>

The difference between C.U.A. 1970 and 1971 elements is due to a transfer of approximately 4% unallocated loss expense for the cover to claims expense.

Source: C.U.A. Submission to the B.C. Automobile Insurance
with the Saskatchewan scheme in which the same component has always been less than 20 percent since its inception in 1946, and yet the scheme, unlike the private insurers in British Columbia, has been profitable in each of the last five years, and in total for its twenty-five years of operation. 37

Returning to an examination of the comparative loss-expense ratios as set out in Schedule VII the first significant point is that the expense ratio was reduced in 1971 as compared with 1970 by 4.5 percent. As indicated at the bottom of the schedule, this difference is the result of transfer of claims expense from the loading, to the loss factor of the automobile insurance premium. Consequently the 30 percent expense factor which was given earlier in respect of 1970 motor vehicle premiums would also have been applicable to the 1971 policy year if a consistent accounting approach had been utilized. It should also be recognized that within the loss ratio there was provision for adjusting and legal expenses so that the 30 percent expense figure is really misleading, eg. expenses absorb more than 30% of the premium dollar. Lastly, it was learned during a telephone conversation with Mr. W.H. Day, Secretary of the Board, that the accounting method for the expense ratio which was employed by the C.U.A. in 1971 is similar to that which was used by the Board, eg. the 26.0 percent expense ratios contained similar component expenses.
However one dissimilarity between the Board's proposal and that of the C.U.A. is quite clear. The Board suggested that there be an additional 2 percent reduction in respect of the underwriting profit and contingency factor because of investment income which accrued on unearned premiums and delayed payments of claims (see Schedule VI). This stand by the Board undoubtedly resulted from the finding of the Wootton Commission that the average investment earnings of Fire and Casualty Insurance Companies was 4.45 percent before tax. In reply the C.U.A. stated that the Automobile Insurance Industry as a whole suffered losses in each of the last three years, and in thirteen out of the last twenty-one years. Also they claimed that there had not been a detailed study on the relationship between investment income and ratemaking, but currently such an examination is being conducted by outside experts sponsored by the I.B.C. and the C.U.A.

By way of contrast the I.I.C. would have accepted a 27.5 percent loading factor (compared with the Board's 26.5 percent and the C.U.A.'s 28.5 percent), (see Schedule VIII), yet it also recommended that a decision, in respect of a investment income reduction pertaining to the profit and contingency item, be delayed until the forementioned study is completed, and the matter can be discussed as a separate issue. To this writer the proposal in respect of the reduction in the profit and contingency factor did, and does seem to be a pertinent point
d) "The factors used in calculating the Accident Benefit Premium."

The Conference has carefully considered the factors used in the Board's calculation of an Accident Benefit premium. The Conference has also produced its own calculation of indicated premium as part of its general assessment of rate levels for 1972 as follows:

1970 Loss Cost (18 months) 8.52

add for I.B.N.R. and negative development of known claims 10%  .85

1970 Est. Final Loss Cost 9.37

Factors for 1972 Projection.

Inflation 2% per annum = 2%

Increased usage 12½% per annum = 12.5%

Total annual adjustment = 14.5%

Projected two years = 14.5 x 2 = 29%

Estimated 1972 Loss Cost 129 x 9.37 = 12.09

Required 1972 Premium with 27½% expense, profit and contingency allowance

\[
\frac{12.00 \times 100}{725} = 16.67
\]

Indicated Manual Premium (rounded) = 17.00

As will be noted, this approach parallels the generally used technique of establishing rates for other covers from the loss cost (Pure Premium) experience section of the Green Book and starts with the actual loss costs per car insured. The logic is not dissimilar to the Board's approach, the main points of difference being in the omission of any reference to investment income, the recognition of inflation as a factor in rising loss costs, the substantial variance in our estimate of increased usage and finally the use of Conference expense and loss cost provisions in arriving at an adjusted premium for 1972.

in the determination of the profit factor. In the writer's opinion an approach similar to that employed by Utilities Commissions would appear to be logical. If this method were utilized then the Board would prescribe an allowable rate of return in respect of total income eg. both underwriting and investment income which would be included in the profit factor.

So much for the percentage breakdown. As far as the actual premiums are concerned there was a wide variation, eg. $14, $17, and $22, pertaining to the proposals of the Board, the I.I.C., and the C.U.A., respectively. Aside from the dispute over the investment income factor, which only accounted for approximately 25% and 50%, in a comparison of the Board's proposal with that of the I.I.C. and the C.U.A., respectively, the overwhelming difference arose from the determination of the loss cost which in turn, is the foundation for the loading factor. The loss portion of the accident benefit premiums for the Board, the I.I.C., and the C.U.A., was $10.14 $12.09, and $15.57, respectively. The reason for the differences were the inclusion of inflationary allowances, approximately 2 percent for both the I.I.C. and the C.U.A., and a larger provision for anticipated increased use of the accident benefit coverage, eg. both the I.I.C. and the C.U.A. recommended that the allowance in respect of anticipated usage should be approximately double the Board's percentage (see Schedules VII and VIII). In Addition the C.U.A. wanted to make provision for catastrophic claims.
In brief, it would appear that the inflation factor was, and is not an essential element in the accident benefit ratemaking process because the death, disability, and burial payments are fixed by statute, and hence the only benefits affected by inflation would be medical and rehabilitation expenses. However it is doubtful that these last two items necessitate a 2 percent inflation adjustment. In respect of the other loss cost differentials, the last, a catastrophic claims allowance, would require an actuarial analysis beyond the scope of this paper, and the second, accident benefit claims frequency will be discussed at a later stage.

Nine days after the hearing the Board established $15 as the flat rate for accident benefit insurance, and the Industry was admonished, not to raise their third party liability rates, above the already projected 5.9 percent increase, in order to compensate for the decrease in accident benefit premiums. The writer learned that the reason for the adjusted premium for accident benefits was due to the partial acceptance by the Board of the Industry's more conservative projections in respect of unreported claims in the 1970 policy year and increased use accident benefits in 1972.

Before leaving the topic of automobile insurance premiums it should be mentioned that in respect of the first year in which accident benefits were included in the automobile policy, 1970, the loss ratio of accident benefits and liability
coverages were 41 percent and 82 percent respectively, and the combined loss ratio was 73 percent. This latter figure is expected to climb to 75 per cent when the 1970 policy year was completed on December 31, 1971.  

If the automobile insurance loss cost is analyzed in its totality, eg. every type of coverage - collision, all peril, liability etc. is included, the loss ratios for 1968, 1969 and 1970 are 68.62 percent, 76.94 percent, and 74.20 percent, respectively. These figures combined with the stated loading factor of 30 percent confirm that the Automobile Insurance Industry has not made an underwriting profit for the last three years. In addition this data indicates why the Industry has annually imposed higher motor vehicle premiums, especially in 1970, after the severe losses in 1969.

**Accident Benefit Claim Frequency**

The next heading which is scheduled for discussion is an examination of the claims frequency in respect of the accident benefit insurance. A starting point for this aspect of the plan is the frequency of claims as set out in the 1970 *Statistical Exhibit*. For the 18 months of the 24 month period covered by 1970 automobile policies, the frequency of claims in respect of accident benefits was 1.44 per 100 cars insured. In order to put this figure in context, an attempt was made to determine the frequency of claims in relation to bodily injury liability.
In the 1970 *Statistical Exhibit* the bodily injury and property damage liability claims are combined, and hence it was essential to obtain an estimate of percentage of liability claims which involved bodily injury. In a letter received from Mr. C.L. Wilcken, the I.B.C. actuary, he stated that studies showed that in other Canadian provinces bodily injury claims frequency was 15 percent of the total liability frequency. In addition to this information this writer performed his own analysis, see Schedule IX, and derived a claims frequency of approximately 17.5 percent. Therefore given the total liability frequency of 8.2 in 1969, which is the last year prior to the introduction of accident benefits one concludes that the bodily injury frequency per hundred cars lay between $15\% \times 8.2 = 1.2$ and $17.5\% \times 8.2 = 1.4$, in respect of the 1969 policy year.

In attempting to estimate the frequency of automobile accident claims in the coming years there are a number of factors which must be considered. Firstly, as calculated in Schedule E, approximately 45 percent of accident victims would make claims on liability policies. Consequently if the limited accident benefit coverage completely eliminated the compensation gaps, and assuming the Bill is enacted, and all victims are persuaded to utilize their accident benefit coverage, then the maximum accident benefit claim frequency would probably lie between $\frac{100}{45} \times 1.2 = 2.6$ and $\frac{100}{45} \times 1.4 = 3.1$. Also it must be assumed
Schedule IX

Frequency of Bodily Injury Claims

a) Injuries and Deaths in B.C. - potentially covered by 1969 policy.

<table>
<thead>
<tr>
<th>Year</th>
<th>Claims</th>
</tr>
</thead>
<tbody>
<tr>
<td>1969</td>
<td>23,077</td>
</tr>
<tr>
<td>1970</td>
<td>23,127</td>
</tr>
<tr>
<td>average</td>
<td>23,102</td>
</tr>
</tbody>
</table>

1969 Total Number of Claims in respect of Private Passenger Cars

\[
\text{No. Cars Insured} = 668,514 \\
\text{Claims Freq. per 100 cars ins.} = \frac{668,514}{8.2} = 54,818
\]

Therefore if every injury and death were claimed bodily injury claims as percentage of total liability claims would equal

i) \[ \frac{23,102}{54,818} = 42.1\% \]

but at least some claims in respect of injuries and deaths would be made on other insurance categories eg. commercial vehicles, farmers' vehicles, and logging trucks, taxis, buses etc.

ii) hence a 3% reduction from 42.1% to 39.0% would not be unreasonable, eg. 4,113 liability claims in respect of commercial and farmers vehicles in 1969.

iii) Therefore estimated maximum recovery rate in respect of private passenger coverage = 39%.

b) Also a study by the Wootton Commission showed that only 623 of 1253 injury and death victims recovered any

i) sort of tort settlement, eg. 49.5%, but death benefits were given too much weight, and

ii) hence population result would be closer to 49%.
In addition some of the forementioned tort recoveries would be paid by the Traffic Victims Indemnity Fund and hence would not show up as an insurance claim.

From figures provided by the Wootton Commission an estimate can be made of the extent of these reparations.

Total T.V.I.F. benefits in case of serious or fatal injuries in respect of the sample
= $56,372 or 9% of total compensation in these cases.

Average claim size in relevant year, eg. 1963
Assumed that claims would be paid in period from June 1/63 to May 31/65
- hence

\[
\text{Average} = \frac{\text{Amounts paid in 1963-64-65}}{\text{claims in 1963-64-65}}
\]

\[
= \frac{510,300 + 614,538}{2}
\]

\[
= \frac{243 + 220}{2}
\]

= $562,469

Average T.V.I.F. Claim = $2,424

Therefore approximate number of T.V.I.F benefits in respect of serious injury and fatality cases in the Wootton Commission sample
= \(\frac{\$\ 56,372}{\$\ 2,424} = 23\).

- if an estimate of other T.V.I.F. claims was made in respect of non-serious injury cases the figure would probably not exceed 5-7 claims.

- consequently 30 T.V.I.F. claims in total pertaining to the Wootton Commissions sample would be this writer's best estimate.
iii) hence this would result in a $\frac{30}{1253} = 2.5\%$ reduction in expected personal injury liability claims.

iv) Hence estimated percentage of traffic victims recovering compensation via third party claims = 46.5\%

However this percentage 46.5\% is probably still too high because of recoveries paid out of the defendant's own pocket or via the financial security filed with the Motor Vehicle Division, eg. 138 cases in 1969.

Consequently a further reduction of 1.5\% may be appropriate.

Therefore estimated number of traffic victims recovering on third party, bodily injury claims, v) is 45\%.

c) Hence percentage of total liability frequency which pertains to bodily injury

\[ i) = 39\% \times 45\% = 17.5\% \]

that bodily injury per 100 insured cars will remain relatively stable, as it has been over the past five years (see Schedule X).

Quite obviously the maximum claim frequency, which will be assumed to be 2.85, eg. average of the two estimates, will not be reached, assuming injuries and deaths per insured car remains relatively stable, because of some other considerations. The present limited accident benefit coverage excludes certain victims from compensation, eg. impaired drivers, those receiving workmen's compensation, etc., some victims will not fit the definition of insured as set out in the Definition Section, and others will suffer injuries which do not "wholly and continuously" disable them beyond the one week waiting period, and yet they would be eligible for tort awards. In addition as illustrated by Schedule XI there are still rather large numbers of claims being paid by the Traffic Victims Indemnity Fund which indicates that a sizeable percentage of drivers remain uninsured, and hence casualties involving such drivers may not qualify for accident benefits.

Consequently it is rather difficult to estimate the expected claims frequency in respect of accident benefits. The I.I.C. in their brief state that a 25-30 per increase over the next few years is not unlikely, and this would mean a frequency of approximately 1.9 per 100 cars insured, eg. $\frac{130}{100} \times 1.44$.

From Mr. Ian Henley it was learned that some claims which
Schedule X

Relationship of Injuries and Deaths to Cars Insured in British Columbia

1966 - 1970

<table>
<thead>
<tr>
<th>Year</th>
<th>Injuries plus Deaths</th>
<th>Cars Insured</th>
<th>Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>1966</td>
<td>19,969</td>
<td>536,256</td>
<td>.37</td>
</tr>
<tr>
<td>1967</td>
<td>20,059</td>
<td>569,223</td>
<td>.35</td>
</tr>
<tr>
<td>1968</td>
<td>21,519</td>
<td>616,759</td>
<td>.35</td>
</tr>
<tr>
<td>1969</td>
<td>23,057</td>
<td>668,514</td>
<td>.35</td>
</tr>
<tr>
<td>1970</td>
<td>23,127</td>
<td>720,000*</td>
<td>.32</td>
</tr>
</tbody>
</table>

*estimated.

Sources. 1) 1971 Statistical Exhibit p. 6
## Traffic Victims Indemnity Fund Experience
### 1969 - 1971

<table>
<thead>
<tr>
<th>Year</th>
<th>Potential Claims Outstanding*</th>
<th>Reserve</th>
<th>Claims Processed</th>
<th>Payments</th>
<th>Total Claims</th>
<th>Total Reserve and Payments</th>
</tr>
</thead>
<tbody>
<tr>
<td>1969</td>
<td>198</td>
<td>$1,086,850</td>
<td>829</td>
<td>$1,390,713</td>
<td>1,027</td>
<td>$2,475,569</td>
</tr>
<tr>
<td>1970</td>
<td>200</td>
<td>700,600</td>
<td>408</td>
<td>317,379</td>
<td>608</td>
<td>1,017,979</td>
</tr>
<tr>
<td>1971</td>
<td>220</td>
<td>939,250</td>
<td>302</td>
<td>54,884</td>
<td>522</td>
<td>994,134</td>
</tr>
</tbody>
</table>

*Approximately 90% of these claims will recover

Source: Mr. K.F.V. Malthouse - Director of T.V.I.F.
properly belonged in the accident benefit category, were placed in the third party liability heading because of uncertainties in respect of the new law, and hence he feels the 1.44 frequency understates the actual experience for 1970. Also as mentioned earlier the liberal interpretation of the provisions of the Act, and the apparent ease with which victims were, and are obtaining doctor's certificates, in order to be classified as "wholly and continuously" disabled may indicate, as implied by Mr. Henley, that more traffic victims are eligible for disability benefits than one might suspect, e.g. the casualty may only have a twisted knee which prevents him from working at his manual labouring job.

A third factor is that some lawyers have been reluctant to accept accident benefits on behalf of their clients, because of their monetary interest in liability claims. In addition as illustrated by the Adrian vs Enns case, some victims want the blameworthy party to pay, even if they have a right to accident benefits, but since the legislation will be amended, both of these blockades to accident benefit claims will be removed.

Medical and rehabilitation benefits are also important in respect of the accident policy. Such matters as the hospital co-insurance charge, ambulance costs, drug expenses, and rehabilitation fees over $50 are all covered, and therefore the potential claims frequency is quite high.
This writer speculates that once traffic victims become more familiar with the benefits of accident insurance, given the amendment in the legislation, the continued liberal interpretation of the no-fault provisions, and the continued relative ease in obtaining a doctor's certificate in respect of traffic injuries, a claims frequency of 2.2 - 2.3 per 100 insured cars in the next few years would not be unreasonable, eg. a 50 percent increase.

**Delays and Legal Costs**

Two aspects of the tort system which greatly concerned the Wootton Commission were the legal costs and delays involved in the compensation process. The Commissioners found that on average approximately 16 percent of total payout by the insurer was received by the claimant's lawyer. Research by the Wootton Commission also revealed that the median time from the date of the accident to the date of final compensation was 5 months, 9 months, and 4 months in cases of fatalities, serious injuries, and minor injuries, respectively. If a suit was involved then the delays increased to 10 months, 21 months and 16 months, in cases of fatalities, serious injuries and minor injuries, respectively. The longer waiting period in respect of serious injuries is probably due a deliberate decision by the claimant's lawyer to delay the settlement or trial until his client's injuries have stabilized because he
knows that once a settlement or award is reached, there is no second chance if his client suffers a relapse.

If the traffic victim is able to meet the eligibility requirements of the accident benefit provisions then his concern over delays and legal costs have been largely eliminated. The *Insurance Act* requires that initial benefits in respect of disability benefits are to be paid within 30 days after proof of a claim is received by the insurer, and a maximum delay of 60 days is permitted in respect of death, burial, medical, and rehabilitation benefits. It also should be noted that the insured has 30 days in which to give notice to his insurer in respect of an accident benefit claim, and 90 days from the date of the accident to prove his claim.

According to Mr. Malthouse, the I.B.C. Manager for British Columbia, the insurer has no difficulty in paying the benefits within the prescribed period, and in fact is only too willing to process the claim as quickly as possible. Mr. H. Midgley, an Inspector of Insurance for British Columbia, corroborated this statement and he indicated that the only complaints he has received in respect of accident benefits resulted from the failure of the victim to establish proof of his claim. Mr. Midgley also stated that the instances of fraud or collusion have been no greater than in respect of any other type of insurance coverage, eg. automobile collision and comprehensive, fire etc.
Mr. Malthouse, in response to a question pertaining to lawyer involvement in accident benefit payments, indicated that to his knowledge no such cases had come to his attention. However in an interview with a prominent insurance lawyer, Mr. G.R. Schmitt, it was learned that the drafting of section B, which pertains to accident benefits could be described as "a dog's breakfast", eg. there are a number of unclear definitions, but because of the expense associated with a suit in respect of such issues, the victim was being advised to sue in tort. But as far as he could recall no lawyer had become involved in a dispute over payments after the eligibility issue had been settled.

Consequently the twin defects in relation to the legal aspects of the tort compensation system appear to have been largely overcome providing the traffic victim can qualify for accident benefits.

Inadequacy of Compensation in Respect of Fatality and Serious Injury Cases.

The Wootton Commission underscored the financial strain in respect of traffic victims who were seriously injured or killed. These individuals suffer the largest economic loss, and recover a rather low percentage of that loss., eg. 44 percent and 20 percent, in cases of serious injury and death, respectively. It is to be presumed that the current hybrid scheme
provides at least minimal benefits in most cases of death or total disability. In addition to these benefits the innocent victim can also sue in tort to recover "full" compensation, and in these cases the accident benefits tide him over the long waiting period. Admittedly the minor injury cases may not be eligible for weekly indemnities, but they will be fully compensated for all medical and rehabilitation expenses, and the Wootton Commission showed that they recover a high percentage of the economic loss via the tort source, eg. 85 percent.\textsuperscript{62} In respect of negligent, minor injury victims it is possible that they are receiving some weekly indemnity payments, if their injury "wholly and continuously" prevents them from working for a duration of longer than one week.

Unfortunately without a comprehensive survey it is impossible to state what percentage of traffic victims recover either accident benefits or tort settlements or awards, or to what extent total economic loss is being recovered, but certainly the percentage and extent of recoveries is greater than under the previous pure tort system.

\textbf{Court Congestion}

Another reason for the proposal of the Wootton Commission to abolish the fault system in respect of motor vehicle claims was the concern over court congestion. The commissioners re-
ported that although only 6.3 percent of the motor vehicle actions commenced went to trial, such claims and trials if eliminated would relieve court calendars to some extent.\textsuperscript{63} To put this problem in perspective it was disclosed during the recent swearing in of a British Columbia Supreme Court Justice, that there was currently a two year backlog of cases.\textsuperscript{64}

In order to obtain some data in respect of the impact of the motor vehicle accidents on the British Columbia Supreme Court the writer undertook some investigations.

Firstly the month of January was carefully studied for the period 1968-1970 in order to learn what percentage of automobile accident filed where going to trial eg. a trial in which a decision is made by a judge and jury, or a judge as opposed to a consent judgment reached by the parties themselves. These are the results:

\begin{tabular}{|c|c|}
\hline
Year & Percentage \\
\hline
1968 & 6.2\% \\
1969 & 9.3\% \\
1970 & 10.0\% \\
\hline
\end{tabular}

Also in respect of 1969 and 1970, especially 1970 there are a number of cases in which a full trial may still take place.

The second aspect of this minor study was to determine the percentage of total actions filed in Vancouver Supreme Court Registry which pertained to motor vehicle accidents. A three
month sample, eg. January, May and September, was conducted in respect of the 1967 - 1971 period. The percentages follow:

<table>
<thead>
<tr>
<th>Year</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1967</td>
<td>40.3%</td>
</tr>
<tr>
<td>1968</td>
<td>37.4%</td>
</tr>
<tr>
<td>1969</td>
<td>35.6%</td>
</tr>
<tr>
<td>1970</td>
<td>33.3%</td>
</tr>
<tr>
<td>1971</td>
<td>31.9%</td>
</tr>
</tbody>
</table>

However despite the decline in the percentage of motor vehicle claims to total claims, the absolute number of claims has climbed. It should be noted that the overwhelming majority of claims filed in the Supreme Court Registry would pertain to serious injuries or deaths, because unlike the Small Debts Court, having limited jurisdiction of up to $500, or the County Court, having limited jurisdiction up to $5,000, unless the parties otherwise consent, the Supreme Court has unlimited jurisdiction, but the lawyer's fees are higher than in the first two Courts. Therefore it is reasonable to assume that most serious injury or death cases would be filed in the Supreme Court, because minor injury claims and property damage disputes could be handled more quickly and cheaply in either of the other two Courts. Also one should be aware of the fact that a traffic victim has a one year statutory limitation period in which to file his claim, commencing with the date of the accident. Hence the year in which the injury or death was
suffered, probably will not match the year in which the
claim was filed, eg. trial is only a last resort if a settle-
ment cannot be reached. The results follow:

<table>
<thead>
<tr>
<th>Year</th>
<th>Injuries &amp; Deaths</th>
<th>Average Injuries &amp; Deaths over 2 yrs.</th>
<th>Claims Filed in Jan, May &amp; Sept.</th>
<th>Ratio of Claims to Injuries &amp; Deaths</th>
</tr>
</thead>
<tbody>
<tr>
<td>1966</td>
<td>19,970</td>
<td>20.059</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1967</td>
<td>20,059</td>
<td>20,789</td>
<td>470</td>
<td>2.3%</td>
</tr>
<tr>
<td>1968</td>
<td>21,519</td>
<td>22,298</td>
<td>466</td>
<td>2.3</td>
</tr>
<tr>
<td>1969</td>
<td>23,077</td>
<td>23,102</td>
<td>491</td>
<td>2.2</td>
</tr>
<tr>
<td>1970</td>
<td>23,127</td>
<td>23,052</td>
<td>505</td>
<td>2.2</td>
</tr>
<tr>
<td>1971</td>
<td>22,976</td>
<td></td>
<td>505</td>
<td>2.2</td>
</tr>
</tbody>
</table>

Sources: 1) Monthly and Annual Reports of Dept. of Motor Vehicles,

2) Supreme Court Cause Books - Vancouver

Schedule XII

Consequently it would appear that in spite of the introduction
of accident benefit insurance there has been no appreciable
effect on the number of serious injury and fatality claims or
trials, and these are cases in which the victims should be
eligible for accident benefits. Therefore one must conclude that
lawyers and/or their clients in such cases are not satisfied
with the limited accident benefits and sue in tort in order to
recover further damages.
Conclusion

The limited accident benefit legislation has certainly closed the compensation gap and eliminated delays in payments and lawyer fees in instances in which the traffic victim qualifies and elects to take advantage of these benefits. However the scheme has not solved the problem of rising automobile insurance premiums, nor the costs, delays and court congestion involved with the liability claims. Therefore from a practical standpoint the current motor vehicle compensation is an improvement over the pure tort system, but still leaves a good deal of room for improvement.
CHAPTER VI

TRAFFIC SAFETY - WITH PARTICULAR REFERENCE
TO DETERRENTS TO MOTOR VEHICLE ACCIDENTS

Introduction

This chapter focuses on the current knowledge in respect of the causation and deterrence of motor vehicle accidents. Of particular interest is the ramifications of a compulsory liability scheme and/or a partial or total no-fault compensation scheme in relation to traffic safety.

Unfortunately neither the data nor the resources are available to establish the precise effects of the compulsory, liability and limited accident insurance plan which became effective on January 1, 1970 in British Columbia. Consequently the writer was forced to rely on studies performed in other jurisdictions in North America, and on the opinions of experts as to how these experimental findings may apply to the British Columbia environment. Consequently the primary purpose of the review of the literature is to eliminate some of the myths about motor vehicle accidents and to form a tentative basis for the analysis of the deterrence of road accidents. In addition some statistics in respect of the British Columbia accident picture will be mentioned.
Pertaining to this last point, certain facts should be clarified at this stage. By law each accident involving death, injury, or property damage in excess of $200 must be reported to the police, and they in turn provide a form (see Schedule XIII) to be filled out by all drivers who were involved in the accident. The accident report cannot be used to lay charges under either the Criminal Code, nor under the Motor Vehicle Act, nor can it be utilized by another party as evidence in a civil suit. Its only function is to provide the Motor Vehicle Department and the Police with statistical information in order to reduce the number of highway accidents. Unfortunately in spite of the commendable purpose of these forms they do not currently provide some essential, and reliable information. The drivers in spite of their immunity with respect to their declarations are not always prepared to jeopardize their positions, and in at least some cases will be unable to recall what really occurred. These flaws are not corrected by the police because in the majority of the cases they do not attend the accident scene, and even if they do they apparently provide very little useful information in respect of the particulars of the accident in the section which they are required to complete.

However it is understood that a more effective reporting system is under investigation by the Motor Vehicles Department, and therefore a more reliable foundation may be forthcoming.
### PROVINCE OF BRITISH COLUMBIA
#### REPORT OF MOTOR-VEHICLE ACCIDENT

This report shall be without prejudice, and shall be for the information of the Superintendent of Motor-vehicles, and of police forces in this Province, and shall not be open for public inspection.

#### FOR R.C.M.P. USE ONLY

1. **TIME and LOCATION of ACCIDENT**
   - Date of accident: 
   - Day of week: 
   - Time: 
   - Daylight: 
   - City or town: 
   - Road or street: 
   - M. Miles: 
   - Enabled: 
   - Other: 

2. **ACCIDENT INVOLVED**
   - Another motor-vehicle: 
   - Pedestrian: 
   - Overtaken: 
   - Animal: 
   - Non-collision: 
   - Bicycle: 
   - Motor-cycle: 
   - Train: 
   - Fixed object: 
   - Other: 

3. **1st VEHICLE**
   - Driver's Licence No: 
   - Driver's Licence No: 
   - Phone No: 
   - Address: 
   - Age (Years): 
   - Sex: 
   - Driving experience (Years): 
   - Driving distance (Miles): 
   - Class of vehicle: 
   - Type of vehicle: 
   - Owner: 

4. **2nd VEHICLE**
   - Motor-vehicle Licence No: 
   - Driver's Licence No: 

#### CHECK WITH X EACH ITEM DESCRIBING THIS ACCIDENT

- **Vehicle Condition of Vehicles**
  - 1. Apparently good. 
  - 2. No control present. 
  - 4. Steering mechanism defective. 
  - 5. Head-lights dim. 
  - 6. Punctured or blowout. 
  - 7. Head-lights out (both). 
  - 8. Tail-light out or obscured. 
  - 9. Head-lights out (one). 
  - 10. Right out or deflection. 

- **Traffic Control**
  - 1. No control present. 
  - 3. Automatic traffic signal. 
  - 4. Stop sign. 
  - 5. Warning signs, slow signs, etc. 

- **Weather Conditions**
  - 1. Clear. 
  - 2. Snow. 
  - 3. Cloudy. 
  - 4. Fog or mist. 
  - 5. Smoke or dust.

#### FOR DEPARTMENTAL USE ONLY

- **2**
### IMPORTANT

Select sketch that resembles most closely the section of road or street where accident occurred. Indicate with lines or arrows the paths of vehicles or persons, also the direction and distance to the nearest town or intersection.

---

### POINT OF IMPACT

- 1: Front
- 2: Right front
- 3: Left front
- 4: Right side
- 5: Left side
- 6: Rear
- 7: Right rear
- 8: Left rear

---

### NAMES AND ADDRESSES OF KILLED AND (OR) INJURED AND WITNESSES

<table>
<thead>
<tr>
<th></th>
<th>Age</th>
<th>Male</th>
<th>Female</th>
<th>Killed</th>
<th>Injured</th>
<th>Taken to Hospital</th>
<th>Driver</th>
<th>Passenger</th>
<th>Pedestrian</th>
<th>Cyclist</th>
<th>Witness</th>
<th>Describe Nature of Injuries</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

---

### MAKE BRIEF STATEMENT OF PARTICULARS OF ACCIDENT

---

Dated at ___________, B.C., this ___________ day of ___________, 19 ___________.

Original: To be forwarded to police authority of area in which accident occurred for notation and transmittal to Superintendent of Motor-vehicles, Victoria, B.C.

---

### TO BE COMPLETED BY POLICE AUTHORITY

<table>
<thead>
<tr>
<th>Was insurance card produced?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
</table>

Make and year of vehicle ____________________________ Speed zone ____________________________

---

Date and time report received: 3:10 a.m.
which will enhance the efficacy of remedial measures.

To put automobile accident fatalities in perspective, there are more deaths due to highway crashes than all other causes in Canada, expect for cancer and heart disease. Also in the period from 1954 to 1966 over 46,000 people were killed on Canadian roadways and this toll was higher than the fatalities incurred by the Canadian Armed Forces during World War II. Therefore as the Wootton Commission pointed out it is somewhat strange that comparatively little money and research has been, and is devoted to the reduction of highway casualties.

Causal Factors of Traffic Casualties

Before one can assess the potential of different forms of deterrents some insight into the relevant factors in connection with motor vehicle accidents must be gained. The fundamental point which is often overlooked is that the number and degree of traffic injuries depend on driver attitude and behaviour, the design of the motor vehicle, the state of the roadway environment, and the post-accident emergency care. Therefore if one is interested in reducing the number of highway casualties and property damage, attention must be paid to all four variables. However, in so doing one must not fall prey to the fallacy, "that the priority ranking of countermeasures, in terms of their ability to influence the end result of concern,
must parallel the ranking, in order of their relative contribution, of causes influencing those end results.\textsuperscript{9} Hence although the prevalent, but unproven view is that 88 percent of all accidents are caused by human failure, 10 percent by mechanical failure, and 2 percent by "acts of God",\textsuperscript{10} it would be illogical to spend time and money in that proportion in respect of remedial activities, eg. research and programs.

Instead considerations of a cost-benefit analysis would dictate that emphasis should be placed on the "most effective" means of loss reduction.\textsuperscript{11}

Klein and Waller suggest that if this line of reasoning were followed, the order of priorities should be:

1) vehicle design improvement,
2) improving emergency health services, and
3) efforts devoted to changing driver behaviour but based on sound research.\textsuperscript{12}

This cost-effectiveness approach is graphically illustrated by a United States Health service estimate which indicated that the expenditures required, in order to save one life on American highways, ranged from $87 (to increase the use of seat belts), to $88,000 (to improve driver performance and behaviour).\textsuperscript{13}

The essential point which must be grasped is that a concerted program with respect to all four of these variables of traffic safety is required, and if funding is a problem then
money should be directed toward the factor(s) which will most likely contribute to the reduction of the highway causalities.

The Design of the Motor Vehicle

Ever since Ralph Nader wrote "Unsafe at Any Speed" in 1965, the presence or absence of safety features in respect of the automobile has attracted widespread attention from both the public and the government. The mandatory seat-belt regulations, and the recall of motor vehicles because of defective parts are only two of the more obvious indications of the deep concern about the reliability and safety of today's automobiles. However in spite of this attention a study suggested that mechanical defects may have been responsible for over 12 percent of all traffic accidents on New York freeways, and it was estimated that "at least 40 percent and possibly 80 percent of the motor vehicles on the highway have at least one-safety related defect."

In British Columbia, in spite of province wide Vehicle Testing stations, the rather cursory accident statistics disclosed that over 4 percent of vehicles involved in traffic accidents in 1970 were mechanically defective or ill-suited for the driving conditions, eg. no chains were employed when the roads were covered with ice or snow. This figure is probably a gross underestimate of the causative contribution of defective or ill-suited vehicles because of the incomplete,
or non-existent examination of vehicles involved in accidents, and the willingness to attribute the crash to human error even though mechanical inadequacies may have played a role in the causation of the accident, eg. in some cases there will be multiple causes, but accident rhetoric dictates that when in doubt, blame the mishap on "the nut behind the wheel".¹⁹

Unfortunately even if cars are more carefully built so mechanical defects are reduced and/or if inspection procedures are improved and repeated more frequently, there will still be a certain percentage of potentially dangerous vehicles on the roadways. Consequently the best hope for reduction of injuries and fatalities in respect of the motor vehicle, lies with the design, eg. collapsable steering column, or auxiliary devices eg. air-bags, which will minimize the internal impact between the vehicle and its occupants, eg. altering the automobile package.

The Roadway Environment

One source estimated that "between 30-35 percent of all highway fatalities occur in non-collision accident, most of which involve vehicles leaving the roadway."²⁰ The same researcher pointed out that such standard roadside features as trees, lightpoles, roadside signs, ditches, and guardrails all represent potentially fatal obstacles as the car leaves the highway.²¹ He indicated that by raising the height of roadside signs, by
making collapsable light-poles, by removing trees from the vicinity of the roadway, by contouring the ditches in an appropriate fashion, and by altering the design of guard-rails many injuries and fatalities may be prevented.\textsuperscript{22}

Another study suggested that while "intersection areas account for less than one-third of the study road and its traffic they produce 70 percent of total accidents"\textsuperscript{23} The same investigation indicated that roadside features, eg. large signs, stores, taverns, gas stations etc., increase accident frequency.\textsuperscript{24}

These findings have significant implications for the improvement of traffic safety, but as the Wootton Commission pointed out that while properly engineered freeways lessen the number of accidents, the restricted space in urban centres, and the sparsely populated rural areas, make such projects extremely expensive.\textsuperscript{25} In addition, as evidenced by the current controversy in Vancouver in respect of the third crossing of Burrard Inlet, it is not unlikely that debates over the allocation of public funds, eg. to increase or improve highway systems, or to start rapid transit projects, will continue for some time, and hence in the transition stage, eg. from automobiles to rapid transit, the highway environment may not receive the attention or funds it deserves.
The 1970 Annual Report of the Superintendent of Motor Vehicles disclosed that the roadway was defective, obstructed, or under repair in over 3 percent of the fatal accidents, and in about 2 percent of mishaps involving injuries. Again these figures probably understated the true picture because of the inadequate investigation of the accident scenes.

Also the Report revealed that approximately 32 percent, and 39 percent, of fatalities, and injuries, respectively occurred on non-dry road surfaces, and one immediately asks whether the forementioned frequencies over-represent the vehicular traffic group which travelled during such conditions, and secondly, if the non-dry road surface was a causal factor in itself or in combination with other factors, how much would it cost to reduce the influence of this factor.

[Ideally], "one of the fundamental principles of safety engineering is to anticipate every possible type of accident which may occur because of machine failure or human failure and then to establish safeguards to minimize the hazards or injury which may result when such failure occurs".  

Realistically, attempts must be made to improve the highway environment as much as possible within the boundaries of present research and available funds. Unfortunately because of British Columbia's rugged terrain such improvements require unique research and are more costly to implement, but the high casualty rate on British Columbia roads, eg. 2.9 injuries
or deaths per one million vehicle miles (highest rate in Canada in 1970),\textsuperscript{29} which is probably due in part to this province's topography, cannot be ignored.

**Post-Accident Emergency Treatment**

There is some indication that in spite of the advances in emergency care with respect to traffic victims, many facets of such treatment could still profit from changes in order to reduce the seriousness of traffic injuries.

The treatment of such injuries involves four basic components: first aid, ambulance service, emergency care, and rehabilitation. One authority, Dr. William Haddon, pointed out that although members of the public must be prepared to provide the initial aid, since no medical experts will be available in most cases, the overwhelming majority of the public were, and are quite incapable of dealing with emergency situations, and hence the lack of crucial assistance may often adversely affect the degree of the injury.\textsuperscript{30} Dr. Haddon also disclosed that studies showed that transportation of crash victims from the scene of the accident to a hospital was inadequate in many cases because of poor communications and planning of ambulance networks.\textsuperscript{31} In addition ambulance personnel were not sufficiently trained to cope with the wide variety of traffic injuries and other emergencies.\textsuperscript{32}
With respect to emergency care facilities, studies indicated that the quality of such places and the essential medical staff, depended on their location, eg. rural hospital service tended to be of a much lower standard then that of urban treatment centres. Also emergency wards were not properly equipped in respect to manpower to handle accident cases in the late evening and early morning hours. This disclosure is significant because more than 50 percent of traffic deaths and more than 37 percent of traffic injuries in British Columbia, during 1970-71 occurred between 7 PM - 7 A.M. (See Schedule XIV).

Of interest is the number of fatalities and injuries in Vancouver, which one may presume has the best emergency treatment facilities in British Columbia. In 1970 and 1971, only 40 out of 559 deaths, and only 39 out of 633, deaths respectively, occurred in Vancouver as compared with the British Columbia totals, and yet injuries in the same area accounted for more than 20 percent of the comparable British Columbia figure. Quite obviously the ratios of deaths to injuries, eg. 1970-40/5,359 and 1971-39/5,085 might have been influenced by other factors, eg. fewer high speed areas in which the fatality rate was presumably higher, but one suspects that the emergency care and possibly the ambulance service played a significant role in the relativity low ratios.

It is presumed that rehabilitation treatment of traffic
### Schedule XIV

**Time Distribution of Fatalities and Injuries in B.C.**

<table>
<thead>
<tr>
<th>Year</th>
<th>DEATHS</th>
<th></th>
<th></th>
<th>INJURIES</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>7 P.M.</td>
<td>7 A.M.</td>
<td>TOTAL</td>
<td>7 P.M.</td>
<td>7 A.M.</td>
<td>TOTAL</td>
</tr>
<tr>
<td>7 P.M.-7A.M.</td>
<td>4 A.M.</td>
<td>7A.M.-7P.M.</td>
<td></td>
<td>7 P.M.-7A.M.</td>
<td>7A.M.-7P.M.</td>
<td></td>
</tr>
<tr>
<td>1965</td>
<td>228</td>
<td>208</td>
<td>193</td>
<td>421</td>
<td>4,310</td>
<td>7,246</td>
</tr>
<tr>
<td>1966</td>
<td>254</td>
<td>238</td>
<td>191</td>
<td>445</td>
<td>5,080</td>
<td>7,609</td>
</tr>
<tr>
<td>1967</td>
<td>242</td>
<td>223</td>
<td>219</td>
<td>461</td>
<td>4,882</td>
<td>7,812</td>
</tr>
<tr>
<td>1968</td>
<td>260</td>
<td>235</td>
<td>200</td>
<td>460</td>
<td>4,992</td>
<td>8,307</td>
</tr>
<tr>
<td></td>
<td>984</td>
<td>904</td>
<td>803</td>
<td>1,787</td>
<td>19,264</td>
<td>30,974</td>
</tr>
<tr>
<td>1969</td>
<td>225</td>
<td>209</td>
<td>242</td>
<td>467</td>
<td>5,661</td>
<td>9,202</td>
</tr>
<tr>
<td></td>
<td>1,209</td>
<td>1,113</td>
<td>1,045</td>
<td>2,254</td>
<td>24,925</td>
<td>40,176</td>
</tr>
<tr>
<td>1970</td>
<td>241</td>
<td>222</td>
<td>230</td>
<td>471</td>
<td>5,615</td>
<td>9,036</td>
</tr>
<tr>
<td>(11 months)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1971</td>
<td>268</td>
<td>245</td>
<td>231</td>
<td>499</td>
<td>4,865</td>
<td>8,206</td>
</tr>
<tr>
<td></td>
<td>509</td>
<td>467</td>
<td>461</td>
<td>970</td>
<td>10,480</td>
<td>17,242</td>
</tr>
</tbody>
</table>
## Schedule XIV - Continued (2)

<table>
<thead>
<tr>
<th>Year</th>
<th>Nite Deaths Total</th>
<th>7 P.M. - 4 A.M. Totals-Nite</th>
<th>Injury Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. 1965-1968</td>
<td>55.0%</td>
<td>50.5%</td>
<td>38.2%</td>
</tr>
<tr>
<td>2. 1965-1969</td>
<td>48.1%</td>
<td>49.5%</td>
<td>38.2%</td>
</tr>
<tr>
<td>3. 1969</td>
<td>48.1%</td>
<td>44.8%</td>
<td>38.1%</td>
</tr>
<tr>
<td>4. 1970-71</td>
<td>52.5%</td>
<td>48.1%</td>
<td>37.8%</td>
</tr>
<tr>
<td>5. 1960-64</td>
<td>53.9%</td>
<td>48.2%</td>
<td></td>
</tr>
<tr>
<td>6. 1960-69</td>
<td>53.6%</td>
<td>49.0%</td>
<td></td>
</tr>
</tbody>
</table>

*Source - Annual Reports of the Superintendent of Motor Vehicles*
victims would, as was the case with emergency treatment, depend on the location of the facility, but in some situations this handicap can be overcome by transporting the victim to a high quality rehabilitation centre if the funds are available.

The Motor Vehicle Accident Driver

The primary concern in traffic safety because he is thought to be "responsible" for the overwhelming majority of accidents, is the driver who is involved in motor vehicle accidents, although the studies about to be discussed would tend to cast doubt on this prevailing view.

In order to analyze remedial action in respect of this individual, certain facets of his character should be revealed. However in spite of the increasing attention given to this subject, it is difficult to make categorically, many conclusive statements. One of the reasons for this predicament is the lack of adequate research, and secondly psychology and sociology are relatively young sciences. Therefore one must approach the experimental studies with some caution, but the data they provide is better than no information at all, and hence it must be used on a tentative basis, until further studies are performed, in order to analyze the automobile driver and suggested deterrent measures.
Alcohol

One of the areas in which conclusions can be drawn, is in respect of the drinking driver. One source indicated that 60 percent of "responsible" drivers involved in fatal accidents had been drinking, and over 50 percent of the same group had a blood/alcohol reading of 0.10 percent or higher. Or stated in a different fashion another exhaustive study demonstrated that those individuals who would have been violating the law in British Columbia, eg. having a reading of 0.08 percent or higher, were involved in 5 times as many accidents as would have been anticipated. These findings are corroborated by the work of Dr. Duncan Macpherson who examined the Vancouver scene in respect of traffic accidents. His analysis revealed that in accidents resulting in moderate or serious injury, the blameworthy driver had been drinking in almost 64 percent of the cases.

The only real point of contention pertaining to the drinking driver is his alcoholic habits. At least one study, suggested that the "social" drinker was, and is the prime offender. More recently the chronic alcoholic has been given the dubious distinction of being the real menace to highway safety. The "problem" drinker unlike the "social" drinker was over-represented in severe crashes, and hence appears to deserve the most attention. However it would be a mistake to assume that the social drinker is not an important factor in less
serious injury and property damage cases. Hence a concerted approach is required in respect of both types of drinking drivers, and it is indicated that such slogans, as "if you drink, don't drive", do not contribute to the solution of this problem.43

Drugs

Apparently the role of drugs in traffic accidents has not been thoroughly researched, and at this point in time it is suspected that they are only a minor causal factor, unless their effect is combined with that of alcohol.44

Fatigue

Fatigue is another important causative variable in traffic accidents. As the Wootton Commission pointed out the highest incidence of traffic accidents involving injuries occurred between 4 P.M. - 6 P.M., and quite likely was due to frustration and fatigue.45 In 1970 there were 2,542 accidents involving fatalities or injuries between 4 P.M. - 6 P.M., as compared with only 969 similar accidents during the morning rush hour, eg. 9 A.M. - 9 P.M., in British Columbia.46

Also The Annual Report of the Superintendent of Motor Vehicles indicated that 8 out of the 673 drivers involved in accidents in 1970 were extremely fatigued,47 but because of the reluctance of drivers to admit possibly damaging information, and the use
of the adverb, "extremely", this factor is probably understated to a considerable intent.

Driver Age

The works collated by Klein and Waller suggested that young drivers, eg. under 25 were, and are over-represented in fatal accidents, and "are involved in a higher proportion of single-vehicle crashes and other crashes in which there is commonly little question as to the driver's culpability." 48 Again the Wootton Commission confirmed these findings when it disclosed that vehicle drivers in the 16-25 age group accounted for approximately 19 percent of all British Columbia drivers, yet they were involved in 30 percent of all reported accidents. 49

However as Klein and Waller explained, it is quite possible that the high accident frequency of young drivers is not "due to wilful risk taking", but to their lack of experience, eg. "at an early point on the learning curve." 50 Other possible reasons for their rate of accident involvement are their attempts to adjust to the social pressures exerted by their peers, the unreliability of their vehicles, eg. many in this age bracket have second-hand automobiles, and also it is suggested that the young may use "more hazardous portions" of the highway system or travel more frequently at "hazardous times", eg. at night. 51
As far as the elderly drivers are concerned they appear to have a much higher crash rate as compared with middle age drivers, but a study indicated that this phenomena was not due to age _per se_, but to the higher rate of disease and illness prevalent amongst older individuals, e.g. heart disease, senility etc.  

**Accident Repeaters**

During the 1950's and early 1960's it was common to read of the large number of accidents which implicated the "accident prone" driver. More recently in a classic study by Cresswell and Froggatt, it was concluded that "data does not support the contention that there were [comparatively] many, if indeed any ... drivers in the population ... who were accident prone." Consequently the accident research workers now employ the term "accident repeaters" to describe those individuals who have recurring mishaps because of chance or different exposure rates.

More recent research has suggested that accident repeaters might have more difficulty than the non-accident group in meeting social and personal demands, and were emotionally unstable. Although these rather limited experiments do not provide foolproof results, they do provide some guide for future research and acknowledge the possible existence of more causative factors.
Suicide and Homocide

The highway is probably the scene of a number of suicides and homocides each year, but as Dr. Haddon pointed out, until there is an adequate investigation of deaths by violence, there will be no reliable data as to the number of misclassified deaths, eg. traffic fatalities which are really suicides or homocides. 58

Drivers who "cannot" or "will not" conform

Klein and Waller suggested that there were an undetermined number of drivers, who "cannot" conform, eg. chronic alcohics, inexperienced drivers, drivers travelling on icy streets, etc., and who "will not" conform, eg. the incorrigibles, and hence these driver are "largely immune to conventional deterrent measures". 59 Although the exact dimensions of the forementioned driver groups were unknown, it was thought that they are neither "small nor stable", 60 and therefore these observations have significant implications as far as deterrents are concerned, and illustrates why current thinking stresses changes in the roadway and automobile design, as opposed to driver improvement.
Pedestrians and Cyclists

A related area to our topic of traffic safety is the injuries and fatalities suffered by pedestrians and cyclists. These two categories of victims accounted for approximately 19 percent of all traffic fatalities in British Columbia in 1970. The statistics showed, as might be expected, that about 56 percent of the pedestrian fatalities were 50 years or older, whereas 90 percent of bicycle deaths were inflicted on individuals under 19 years.

Also studies have shown that more than 50 percent of pedestrian fatalities have consumed some alcohol.

In these areas, as in the others forementioned, every reasonable attempt must be made to find the causative relationship between these victims and the accident, so appropriate corrective steps can be taken.

Deterrents

Three basic assumptions underlie all deterrent measures, with respect to traffic accidents:

"1) that the driver is capable of consistently safe behaviour,

2) that his lapses into unsafe behaviour are within his conscious control and are often deliberately committed because they offer him some advantages, and

3) that the threat of punishment will counterbalance the advantages he seeks to gain from unsafe behaviour."
In addition in order that a deterrent be effective:

1) There must be a strong societal sanction for the use of punitive or deterrent measures,

2) The potential offender must be sufficiently susceptible to societal sanctions and pressures so he will respond to the fullest extent to which he is capable, and

3) The potential offender must be capable of changing his behavior in the intended direction.\(^6\)

However as was just observed, there are considerable numbers of people who may be incapable of controlling or adjusting their behavior, eg. those drivers who "cannot" or "will not" conform. Secondly the societal pressures, in respect of most drivers, who can drive safely and properly, and have conscious control of their vehicles "most of the time",\(^6\) are rather minimal even with respect to the most flagrant traffic offenders, eg. a driver who receives a traffic summons is regarded as an unfortunate victim of an arbitrary enforcement officer enforcing an unreasonable standard.\(^7\)

In addition as far as traffic regulations are concerned, there is further room for skepticism about the efficacy of such measures, because it has not clearly been established that a causal relationship exists between driving behavior resulting in traffic violations and that resulting in traffic accidents.\(^8\) Also the extremely low apprehension and enforcement rates tend to negate any possible deterrent effects of traffic regulations.\(^9\)
Consequently the concept of criminal law as a deterrent to traffic accidents appears to be somewhat shaky.

However some studies indicate that certain preventive measures do have some effect. There is some evidence which suggests that increased enforcement will reduce the number of moving violations,\textsuperscript{70} eg. speeding, however because of the cost factor involved, this approach has severe limitations. Some driver improvement actions such as advisory letters, suspensions and probation of driver licences, would appear to reduce the recidivism rate, and in the case of repeating offenders, such steps will extend the duration between violations.\textsuperscript{71}

For example one study showed that the control group, the suspension group, and the probation group, had 37 percent, 22 percent, and 10 percent, further violations, respectively.\textsuperscript{72}

It is interesting to note that such actions have been utilized in British Columbia for some time.

In respect of licence suspensions there is some indication that drivers fear such a sanction more deeply than a number of other forms of punishment. In a survey taken in Michigan a number of individuals were asked to choose which form of punishment was the least desirable,

1) a $250 property damage accident, in which one's own car is damaged but no injuries are suffered,
2) an accident involving minor personal injury,
3) a drunk driving charge, or
4) a suspension of a licence for one year.  

The sample group regarded the one year suspension as the most harsh penalty. This finding was concurred with by Mr. Jim Attridge, Manager of the Vancouver Traffic and Safety Council, who felt that the potential loss of freedom, privacy, and mobility, provided by the motor vehicle by means of a suspension, was to the biggest deterrent to accidents.

Unfortunately with respect to licence suspensions there are at least two rather significant complications. Firstly the threat of suspension is really only present in a limited number of cases, eg. serious motor vehicle offences, Criminal Code violations, bad driving record, or an unsatisfied judgment, and even in these cases the low apprehension and conviction rates neutralize the deterrent to some extent, and also there is a good chance that this type of driver will have been involved in accidents before the suspension will be imposed for one of the above reasons. Secondly it is estimated that approximately 50 percent of all drivers who have had their licences suspended, will drive in any event. Consequently unless enforcement of suspended licences and other traffic violations can be increased the deterrent of licence suspensions will not as effective as possible.
As far as most academics are concerned, eg. Keeton and O'Connell 77 and Klein and Waller, 78, the biggest deterrent by far is the fear of personal injury. Presumably their conclusion was based on the premise of either self-preservation and/or risk avoidance, which according to common sense logic would appear to be the primary concern of most drivers, eg. inapplicable to chronic alcoholic, or emotionally unstable individuals. However in order to be a significant factor one must hypothesis that "near misses", property damage accidents, and traffic deaths and injuries sustained by friends and relatives, reinforces the self-preservation or risk avoidance motives because the likelihood of a particular person actually being involved in an accident involving injury is quite low, eg. only 2.9 casualties per one million miles in British Columbia. 79

The Fault-System

It would appear that only one writer is seriously prepared to argue that the fault system in respect of bodily injury and property damage resulting from a traffic accident has a significant deterrent effect on accident causing, driver behaviour. Lawrence Lawton's hypothesis is that the fault system which forces contact between the blameworthy driver and different hostile elements, eg. the other driver, the police, the claimant's lawyer, the claimant's insurer, "all focus the community abhorrence of an accident caused by a negligent
driver", on such an individual.  

In summary the Lawton Model attempts to demonstrate that an individual's behaviour can be directed toward a norm held by a group (society) and the intensity of the pressure exerted on the individual depends on the degree and number of personal contacts between the individual and the group.

This analysis would appear to suffer from a number of flaws, both from "psychological and legal view points. Klein and Waller stated that "Lawton's interpretation of "premise" experiments is not shared by the experimenters themselves, by social psychologists in general, or by other behavioral scientists familiar with the purposes and the backgrounds of these experiments." In addition the critics felt that all the model really does is to demonstrate the influence of group norms and in many cases pertaining to driver behavioural groups, the driver will belong to a deviant subgroup and the negative and infrequent reinforcement toward society's norm will be outweighed by the daily reinforcement of the deviant norm.

From a legal viewpoint, the analysis can also be subjected to valid criticism. The rules of civil liability have become increasingly pre-occupied with making whole the tort victim's losses "[and hence]" the law of torts has apparently relegated to a very minor rule that portion of its influence which operates to prevent the occurrence of dangerous conduct or to deter its repetition."
In addition as pointed out by Keeton and O'Connell because,

"the meaning of a negligence standard for a particular fact situation in traffic accidents is uncertain "[and because there is]" a continuing tendency to brand as negligent more and more conduct that is neither avoidable nor morally culpable, ... the educational and psychological effect of adjudication [is] sharply reduced."85

Moreover it is possible that the "adversary system and the admonitory tone" of the settlement negotiations and proceedings may result in the driver believing that he was driving properly, and it was really the other party's fault.86

As far as the facts are concerned, the relative infrequency of serious accidents, eg. only 2.9 casualties per one million miles in British Columbia, the small percentage of third party claims which go to trial, eg. approximately 1 percent,87 the insulation effect of liability insurance88, and lawyers, and the attitude of the driver's closest contacts, eg. regard accident involvement as bad luck and are more worried about "responsible driver's" health, then showing disapproved of his possible "fault", consequently the model should not be considered as illustrating any possible deterrent effects of the fault system.

Possibly the remote relationship between the fault system and deterrents to traffic accidents was best set out by Blum and Kalven, who are strong proponents of the tort system with respect to the traffic accidents. They concluded that the
deterrent point was a very faint argument on behalf of the fault liability principle."  

Compulsory Insurance

In 1908 the first reported trial in British Columbia in respect of a negligence action involving a motor vehicle was held, and within 16 years the first British Columbia case disputing a motor vehicle liability policy was decided. By 1969 it was estimated by the Motor Vehicles Department that 92 percent of all drivers in British Columbia were insured and by 1972, two years after the introduction of the compulsory insurance provision the figure has risen to an estimated 94 percent.

The purpose of the disclosure of this data is to illustrate that liability insurance has existed in British Columbia almost as long as the negligence action involving the motor vehicle. Also it acknowledges the fact that the mandatory coverage instituted in 1970 has not altered the number of insured drivers to any great extent.

Consequently when one attempts to analyze the effects of the compulsory insurance in British Columbia one is in effect analyzing the effects of liability insurance per se. As far as the uninsured are concerned, under either a compulsory or voluntary scheme they may be irresponsible, eg. high risk drivers who would be on the assigned risk plan if they were insured or
they may be individuals who are just unwilling to conform to society's norms. In neither case is it likely that their lack of insurance coverage encourages these individuals to be a better drivers, because they obviously do not regard their involvement in an accident as significant or likely, eg. they do not carry insurance protection.

To put the point succinctly, one is comparing, the possible deterrent effect, in respect of careless driving which results in traffic accidents, under liability insurance in which a small but fairly certain penalty (increased cost of insurance) with a rather remote yet catastrophic sanction (a large settlement or judgment). 93

In summation it would appear that neither alternative is a significant deterrent to traffic accidents, in the present form. 94 However it has been suggested by Guido Calabresi that by allocating the costs of accidents to the cost of that activity, the market will determine in which activities people will engage, and hypothetically when accident cases are included in risky ventures, individuals will be deterred from participating therein, 95 There are a number of practical problems with this approach, eg. deciding which activity causes which cost, but it does provide a fresh analysis to an old problem. 96

To conclude it should be noted that in the recent study performed in the United States, 68 percent of those involved in accidents causing personal injury claimed that the prospect
of tort liability made no difference to their driving behaviour which resulted in accidents.97

In respect of the British Columbia experience in 1970-71 when the hybrid system of compulsory limited accident and liability insurance was operative, the number of highway casualties has remained almost stable, eg. very close to 1969 totals. (see Schedule XV).

Conclusion

On the basis of the information presently available it would appear that the deterrence of bad driving habits which result in accidents is not a significant component of the tort system in practice and that other means such as licence suspensions or probations or fear of injury appear to be more significant factors in the shaping of the attitudes and performance of drivers. Currently the impact of such factors is unknown, but whatever role they do play is thought to be much more important than that of the tort system.

Consequently reparation schemes can be introduced in which the victim of motor vehicle accidents can recover damages almost immediately, and the promotion of traffic safety through the use of effective deterrents can take place at a different time and place, eg. no need for the compensation of victims and deterrence of bad driving attitudes or behaviour to occur simultaneously.
## Schedule XV

British Columbia Traffic Accident Statistics 1960 - 71

<table>
<thead>
<tr>
<th>Year</th>
<th>Deaths</th>
<th>Casualties</th>
<th>Casualty accidents</th>
<th>Casualties per 100 registered vehicles</th>
<th>Casualties per 1 million miles</th>
<th>vehicles per roadway mile</th>
</tr>
</thead>
<tbody>
<tr>
<td>1960</td>
<td>294</td>
<td>11,605</td>
<td>7,796</td>
<td>2.1</td>
<td>3.0</td>
<td>--</td>
</tr>
<tr>
<td>1961</td>
<td>320</td>
<td>12,421</td>
<td>8,348</td>
<td>2.0</td>
<td>3.1</td>
<td>--</td>
</tr>
<tr>
<td>1962</td>
<td>385</td>
<td>13,767</td>
<td>9,078</td>
<td>2.1</td>
<td>3.2</td>
<td>--</td>
</tr>
<tr>
<td>1963</td>
<td>360</td>
<td>14,945</td>
<td>9,779</td>
<td>2.2</td>
<td>3.2</td>
<td>--</td>
</tr>
<tr>
<td>1964</td>
<td>393</td>
<td>17,304</td>
<td>11,455</td>
<td>2.5</td>
<td>3.4</td>
<td>--</td>
</tr>
<tr>
<td>1965</td>
<td>500</td>
<td>18,074</td>
<td>11,978</td>
<td>2.4</td>
<td>3.2</td>
<td>--</td>
</tr>
<tr>
<td>1966</td>
<td>520</td>
<td>20,169</td>
<td>13,135</td>
<td>2.5</td>
<td>3.3</td>
<td>23.6</td>
</tr>
<tr>
<td>1967</td>
<td>559</td>
<td>20,559</td>
<td>13,155</td>
<td>2.4</td>
<td>3.1</td>
<td>24.6</td>
</tr>
<tr>
<td>1968</td>
<td>574</td>
<td>21,519</td>
<td>13,759</td>
<td>2.3</td>
<td>3.0</td>
<td>26.1</td>
</tr>
<tr>
<td>1969</td>
<td>542</td>
<td>23,077</td>
<td>15,333</td>
<td>2.3</td>
<td>3.1</td>
<td>27.3</td>
</tr>
<tr>
<td>1970*</td>
<td>559</td>
<td>23,127</td>
<td>15,124</td>
<td>2.2</td>
<td>2.9</td>
<td>28.1</td>
</tr>
<tr>
<td>1971*</td>
<td>636</td>
<td>22,976</td>
<td>15,344</td>
<td>--</td>
<td>--</td>
<td>--</td>
</tr>
</tbody>
</table>

*On July 1, 1970 property damage minimum (for reported accidents) was increased from $100-$200 and hence may have also affected reported casualties.

**Sources**

1) Annual Reports - Superintendent of Motor Vehicles for B.C.
2) Road and Street Mileage - D.B.S. 53-201.
3) Motor Vehicle Traffic Accidents - D.B.S. 53-206
4) Monthly summaries of Department of Motor Vehicles - Traffic Accidents
However more research is required to determine which measures will motivate the driver to adhere to non-accident driving behaviour. In addition a concerted and dynamic effort is needed with respect to the improvement of the highway environment, the design of safety features in the motor vehicle, and the emergency care system. Of especial concern will be the allocation of scarce resources, eg. funds and expertise during the transition from the era of the motor vehicle to the era of mass rapid transit.
CHAPTER VII

COMPULSORY INSURANCE, THE FAULT SYSTEM, THE COST OF DIFFERENT COMPENSATION SCHEMES AND PUBLIC ADMINISTRATION OF MOTOR VEHICLE INSURANCE

Introduction

Compulsory insurance, the fault system, the cost of different compensation schemes, and public administration of motor vehicle insurance represent four possible facets of an automobile reparations plan. These items and their implied alternatives may be considered as variables in an equation. In simplistic terms one is searching for a scheme which will provide immediate, equitable, and complete compensation at the lowest possible "cost". However in order to realistically evaluate the "cost" of a particular plan, one must reflect on the legal, economic, social, psychological, and political ramifications of such a system because compensation cannot be isolated from its environment.

Unfortunately most of the forementioned factors cannot be quantified and hence when an individual, group, corporation, or government decides that a specific combination of variables with respect to motor vehicle compensation is to be preferred, they must, if they are being rational, place subjective weights on the advantages and disadvantages of the various components. However it must be recognized that practically everyone in his role as individual or as part of an organization, eg. government or corporation, has a vested interest
in the variables which make up the reparations system. Hence an individual's logic is often distorted by his role in society and consequently one must carefully examine the reasoning of any proposal which originates from a source possibly subject to bias.

In this chapter the writer will review the issues, trying to indicate the validity of the conflicting viewpoints as impartially as possible, and then suggest in some instances why one approach pertaining to one of the aspects of compensation appears to be convincing. Quite obviously such evaluations depend to a great extent on individual value judgments and one's perception of the past, present, and future development of the tort law concept, the welfare and role of the individual in society, and the economic system. However by exploring these points and subjecting them to close scrutiny, the writer hopes, at the very least, to focus attention on those arguments which are rational and merit attention in charting the future course of motor vehicle compensation.

Compulsory Insurance

By January 1, 1972, British Columbia, Saskatchewan, Manitoba and Nova Scotia had compulsory automobile liability insurance laws, and the first three provinces also had mandatory requirements pertaining to accident benefit insurance. Also surveys taken in British Columbia in 1970, and in Canada
in 1972, suggested that compulsory insurance was acceptable to the overwhelming majority of Canadians, eg. 88 percent, and 97 percent, respectively, were in favour of mandatory automobile insurance. Consequently, as far as this writer is concerned, the widespread adoption of compulsory insurance and the apparent public acceptance thereof, permits him to review this aspect of motor vehicle compensation in a rather cursory fashion.

One line of argument put forward by insurance companies concerned their fear of governmental control, eg. compulsory insurance would inevitably lead to exclusive governmental marketing of automobile insurance, or at least strict governmental regulation of rates. The latter event has materialized to a certain extent in the form of the British Columbia Automobile Insurance Board, and the former development may result, but in both instances the cause of governmental involvement was and will be, respectively, the lack of competition in the Industry which leads to inflated premiums. In the writer's opinion such occurrences are not related to the implementation of a compulsory insurance scheme.

A second objection in respect of compulsory insurance was that drivers and owners of vehicles would be deprived of their freedom of choice, eg. to insure or not to insure. However as the Wootton Commission pointed out mandatory coverage had become common in a number of other fields, eg. Workman's
Compensation, Unemployment Insurance and Medical Care, and such coverage was employed "to protect, preserve, and permit a free society to prosper," and the same reasoning would still be applicable today. In the final analysis some portion of all of the driving public must pay for the costs of compensation and it is more equitable that everyone contribute because of the semi-random nature of traffic accidents, eg. any driver may be involved in an accident, and the maximum number of drivers should shoulder the uninsured motorist burden, eg. finance the Fund.

Regarding economic arguments to compulsory requirements, enforcement problems, higher claims frequency, and propensity of drivers or owners to only purchase the minimum coverage, the evidence which was submitted to the Wootton Commission appeared to refute these claims. The information provided by the Report indicated that the enforcement problems were not overly expensive and the number of insureds did increase when insurance was made mandatory in other jurisdictions, eg. New York. In respect of the British Columbia experience this writer suggests that the rather small (2 percent) increase in the percentage of insured drivers, when compulsory insurance was introduced, was due to the relatively high number of drivers and owners previously indemnified (92 percent), lax enforcement provisions, eg. no annual renewal of driver licence's which would require proof of insurance as a prerequisite, and
the transient nature of many of British Columbia's motorists, eg. unsettled and reluctant to obey rules (British Columbia has the highest crime rate of all the Canadian provinces). Pertaining to the other two points the Saskatchewan example showed more than 50 percent of drivers purchased supplementary insurance, and a higher claims frequency which is generally associated with compulsory insurance is not an evil if victims who were formerly deserving, but not compensated now receive reparations. The British Columbia experience is difficult to appraise since accident benefit insurance was introduced at the same time as compulsory insurance, but it is known that the claim frequency of third party liability claims remained almost constant, eg. 8.2 per 100 insured cars in 1969 as compared with 8.1 per 100 insured cars in 1970, and accident benefit insurance was not utilized to its fullest intent.

The other issues which are raised in respect of compulsory insurance, appear to be without substance. As indicated earlier in this thesis, insurance, be it voluntary or compulsory, was not, and is not intended to deter or to control bad driving performance, and hence the change from a voluntary to a compulsory scheme is unlikely to have any marked effect on traffic safety (see chapter 6). The argument of the Industry was that if a compulsory scheme were introduced many of those individuals who exhibited bad driving behaviour which was evidenced in the form of convictions or accidents would be
eligible for insurance, where as under a voluntary scheme they would not be covered, and discouraged from driving. However this logic ignores two important points. Firstly there was and is, no guarantee that an uninsured motorist will stay off the road, and secondly prior to and after the adoption of compulsory insurance, assigned risk pools or similar devices were and are available in order to spread individual risks amongst all insurers in proportion to their automobile liability insurance business. Therefore it cannot be stated that compulsory insurance has really altered underwriting judgment or the number of bad drivers who ply our highways.

Lastly no scheme is foolproof and there will always be some uninsured drivers, but compulsory insurance does narrow the gap between the number of insureds, and the driver population. If the Wootton Commission proposal is adopted, eg. furnishing and replenishing the Traffic Victims Indemnity Fund by means of a tax on gasoline, all drivers would contribute to the pool, thereby reducing the financial burden which is currently borne by the "responsible" motorists, eg. 2 percent premium tax on liability insurance.

In summary it would appear that a compulsory scheme has already become entrenched in British Columbia and is accepted by the overwhelming majority of drivers. There are a number of reasons why compulsory insurance enjoys this favourable status
vis a vis voluntary insurance: Firstly it is more equitable in respect of the financial burden. Secondly it insures more complete compensation coverage. Thirdly it is conducive to the internalization of the costs of motoring, eg. compensation is paid to a greater extent by motorists as opposed to the public at large (welfare benefits). Lastly it is less expensive and cumbersome to operate, eg. the role of the Traffic Victims Indemnity Fund will be reduced and the role of the safety and financial responsibility laws can be eliminated.

The Fault-System

As was discussed in the second chapter of this thesis the tort system has existed for long time, and yet over the years the rules and the objectives of this system have changed considerably in order to keep the law in step with the attitudes and conditions of different eras. When the law of torts came into prominence in the nineteenth century it applied to:

an environment of slow moving vehicles and animals wherein a conduct expected of man was significantly influenced by customary rights.15

Today,

the stresses and strains and other conditioning influences arising from the complex ingredients of the twentieth century, technological civilization and the social structure in and around it ... brings men into a much closer inter-relationship with other men and machines.16
Likewise over the same period there has been a change in
the emphasis on which goals the tort law would serve. Hence,
in the past as much attention was paid to seeing
that the defendant got what he deserved for his
wrong doing as there was to inquiring whether
the plaintiff received as much or more than he
needed as a matter of compensation or rehabilitation. 17

Today,

with the increase in the payment of damages by collective
agencies like insurance companies, or the state itself,
and in such cases, with the punitive elements (never
capable of entirely rational explanation) thus completely
destroyed, it was perhaps inevitable that more attention
should be given to the question of compensation. 18

Also there is,

the inevitable gap between what really happened and
our reconstruction of the events through the fallible,
fact finding process - especially so in automobile
litigation. 19

In respect of this latter appraisal it is claimed that,

the tort-liability system was never designed for
situations arising out of high speed ground trans-
portation, where accidents occur with split-second
timing, [and] where the question of fault is
difficult and illusory. 20

In addition the question of individual culpability is
dubious since,

one study has shown that the automobile driver must
make 200 observations and 20 decisions each mile he
drives. The potential is so great that it would be
natural for even the most careful drivers to make
errors in judgment. The average driver does make
errors, one per each two miles driven. 21
Consequently,

a substantial but largely immeasurable member of violations and crashes occur which involve generally competent drivers who are suffering temporary lapses from their normal adequate levels.\textsuperscript{22}

Also since a number of drivers "cannot" or "will not" conform to satisfactory standards of driving behaviour,\textsuperscript{23} it is difficult to envisage many automobile accident cases in which morality and justice are being satisfied by the imposition of the usual tort penalty, eg. damages. Especially when "the amorphous standard of reasonable care",\textsuperscript{24} is an objective measure and hence quite inapplicable in many cases, eg. when a person is unable or unwilling to adhere to the standard, or by chance a driver error or lapse has occurred at an inopportune time. In the writer's opinion morality and justice will only be served in situations in which the driver has performed in a clearly blameworthy fashion, and he is physically and mentally capable of conforming to non-accident driving behaviour almost 100 percent of the time. Those drivers who cannot or will not consistently maintain a certain standard of driving, should not be licensed because driving should be viewed as a privilege which is only granted to those who are able and will conform to specified norms. The desired optimum is the trade-off point where individual freedom of action equals public safety on the highway.
In reply to the criticisms of the morality and justice aspects of the tort system, the defendants state,

our studies indicate that a large proportion of all automobile accidents are uncomplicated events in which the fault determination is very easy and that many of the more complex accidents can be accurately analyzed by experts,

and,

It offends the conscience of society that the careless and irresponsible motorist should receive the same benefits as the person he injured [as would occur under a no-fault scheme].

In addition two of the more articulate and rational advocates of the tort law, Blum and Kalven, assert that:

1. "The whole concept of fault, even in our torts system, is so closely tied to views on personal responsibility and hence to values that have deep cultural and religious roots."

2. "All adjudication is vulnerable to inadequacies of evidence", so why single out auto accidents.

3. The fact that, "the law, exaggerates the contribution of the actor's fault to an accident", eg. other causally contributing factors - highway design, traffic density, etc., is not peculiar since "the law dealt with the actor because he is a reachable cause and because his contribution to the event was relevant and decisive."

4. It does not matter that tort law does not fit the crime because its purpose is "to compensate and not to punish".
5. "The popular impression that all drivers are alike in being occasionally negligent is very likely an overestimation for it fails to take account of the many minor adjustments in conduct which are made when men engage in what seems to be essentially the same risky behavior", some drivers take more risks of a given magnitude than others.\(^3\)

The writer's response to the forementioned points would be:

1. The beliefs and attitudes of our society in the last third of the twentieth century are considerably different from those of previous centuries, particularly the nineteenth, eg. decline of the importance of religion, the new morality in respect of personal and corporate behaviour, the tendency to blame the system, the environment, the government, or society, rather than the individual - Vietnam war crimes, and the willingness of society to relieve the individual of possibly crushing financial hardships even where the individual may have been at fault - workmen's compensation.

2. The automobile accident should be separated from other accidents because of the split-second time sequences, which make it difficult if not impossible, to recreate the true accident picture, and hence, lawyers supporting the trial jury are willing to admit that in the ordinary automobile accident, the case that is actually tried by a jury is a case that never in fact took place, and is the result of conjectural recall, imagination, colourful dramatization, and pure inventiveness.\(^3\)

3. The fact that the law exaggerates the individual's role is unjust and undoubtedly is the result of the emphasis on the need for a defendant and the anachronistic concept of "total" individual responsibility. However with the recognition of other causal factors and possible defendants,
and development of other forms of compensation systems this inequity should be eliminated.

4. From a morality viewpoint the law should fit the crime and the simple answer in respect of tort law is to segregate the awarding of compensation from the determination of punishment.

5. Certainly some drivers are better or more fortunate than others, eg. involved in fewer accidents, but unless society is prepared to restrict licences to superb or fortunate drivers, it seems paradoxical that society should permit such drivers on the road and then when the inevitable accident results, because of factors beyond their control, to assess fault on an individual basis, eg. society has allowed these individuals on the highway and therefore, logically, should bear part of the financial burden and legal responsibility for traffic accidents. If licences were restricted to capable drivers, as the writer suggests, then this approach would be more valid.

These answers represent one person's point of view, but basically one's stand on the issues depends on his perception of the role of personal responsibility in the twentieth century, the accuracy of tort trials, pertaining to motor vehicles accidents, and the degree of individual culpability in traffic accidents. Consequently in the writer's opinion the morality and justice of today's society will not be adversely affected by the abolition of the fault system in respect of traffic accidents.

Cost

The cost of automobile insurance was, and is, the major reason for the agitation for reform of the traffic accident
compensation system. The scope of this thesis does not permit an actuarial analysis of the cost of various schemes, but it is possible to identify the expenses of the present system, and to suggest which factors can be eliminated under different proposals. Also it is manifest that the cost of automobile insurance will depend on the range and size of benefits, and the degree to which other elements in the traffic accident picture share the burden of accident costs.

In any motor vehicle insurance scheme some administrative expenses will be necessary in order to determine the validity and size of claims. However as illustrated in Schedules XVI and XVII the two expense factors which can be eliminated or reduced are lawyers' fees and agents' commissions. Some individuals claim that a pure no-fault plan would lead to greater lawyer involvement and expense because of the anticipated disputes between claimants and insurers as to the eligibility for and extent of compensation. This has not proved to be the case in practice in respect of accident benefits insurance in British Columbia, or Saskatchewan.

Agents' Commissions

At the present time 12 1/2¢ of every premium dollar is absorbed by insurance agents, unless the insured is covered by
Schedule XVI

Cost of Claimants' Lawyer Fees

1. Average lawyer's fee for traffic accidents involving injury or death, eg. litigation or settlement = 15.9%¹

2. Wootton Commission's sample indicated 225/623 or 36.1% of those receiving a net tort settlement or award, hire a lawyer.¹

3. Consequently the cost of claimants' lawyers as a percentage of all net tort awards = 15.9% x 36.1% = 5.7% (assuming that the 63.9% of net tort settlement cases in which lawyers were not hired were of identical average size, but quite obviously such is not the case. eg. if a lawyer is hired the settlement is larger. Hence 5.7% is a very conservative estimate.

4. If the above estimate is employed the cost of a claimant's lawyer out of average premium dollar = 62.5¢ x 5.7% = 3.6¢

5. In reality the true cost of claimant lawyer fees is probably at least 15.9% x 50% (eg. settlements or awards in which claimants hire a lawyer amount to one-half of the total value of the settlements or awards which are made)² = 8.0%.

6. Therefore a more realistic, but still conservative estimate would place the cost of the claimant's lawyer's fees at 62.5¢ x 8.0% = 5.0¢.

Sources: 1) British Columbia Royal Commission on Automobile Insurance, p. 99, 388 and 405.
Schedule XVII

Breakdown of the Premium Dollar

<table>
<thead>
<tr>
<th></th>
<th>1967 Liability</th>
<th>Accident Benefits</th>
<th>Direct Writers and No-Fault X</th>
</tr>
</thead>
<tbody>
<tr>
<td>Premium Tax</td>
<td>2.0¢</td>
<td>2.0¢</td>
<td>2.0¢</td>
</tr>
<tr>
<td>Administrative Expense</td>
<td>16.0</td>
<td>11.5</td>
<td>11.5</td>
</tr>
<tr>
<td>Agent's Commission</td>
<td>12.5</td>
<td>12.5</td>
<td>12.5</td>
</tr>
<tr>
<td>Profit and Contingency</td>
<td>2.5</td>
<td>0.5</td>
<td>0.5</td>
</tr>
<tr>
<td>Expense Factor*</td>
<td>33.0</td>
<td>26.5</td>
<td>26.5</td>
</tr>
<tr>
<td>Allocated Claims Expense†</td>
<td>4.2</td>
<td>8.7</td>
<td>4.0</td>
</tr>
<tr>
<td>Claimant's Lawyer Fees</td>
<td>5.0</td>
<td>5.0</td>
<td>--</td>
</tr>
<tr>
<td>Total Expenses</td>
<td>42.2</td>
<td>40.2</td>
<td>30.5</td>
</tr>
<tr>
<td>Loss Payout</td>
<td>57.8</td>
<td>59.8</td>
<td>69.5</td>
</tr>
<tr>
<td>Premium Dollar</td>
<td>$1.00</td>
<td>$1.00</td>
<td>$1.00</td>
</tr>
</tbody>
</table>

*The components items are adjustable but total is allowable maximum.

† includes adjuster and legal fees paid by insurer in respect of identifiable claims

X potential expense itemizing if all lawyers' fees and agents commissions were eliminated, eg. similar to Saskatchewan scheme.

0 4 percent increase under no-fault to cover increase in expenses formerly performed by agents.

Sources - 1) British Columbia Royal Commission on Automobile Insurance, Queen's Printer 1968, p. 305, 314 and 325.

2) Schedule XVI

a direct writer. The latter companies sell their policies over the counter at their place of business. The other companies employ agents who operate from separate offices and use the personal selling technique in order to market automobile policies.

The functions performed by agents include: marketing the policy, finding insurance companies which will cover high risk drivers, explaining the provisions of a policy to an insured, advising an insured as to his insurance needs, informing the insured as to his rights when an accident occurs, and acting on behalf of the insured if there is a dispute with the insurance company.

In reply Mr. A. Schwaia, a senior underwriter with Wesco Insurance Co., which is a direct writer states that: 1) automobile policies can be marketed by advertising, 2) high risk drivers should be forced to fend for themselves, 3) the services of direct writers are as good as those of companies which use agents, 4) information and advice concerning the policy can be supplied at the insurer's place of business, and 5) the agent cannot impartially represent the insured against the insurance company because the agent is linked to the insurance company.

In the writer's opinion four fundamental questions must be resolved in order to advocate acceptance of a direct writer
scheme. Firstly the high risk driver, who has not had his licence suspended must be covered by insurance. The machinery in theory is already available to ensure that such drivers can obtain insurance at reasonable rates. The Facility which provides coinsurance of high risk drivers and the sharing of their losses amongst all insurers has been operative for a number of years. It is the successor to the Assigned Risk Plans in which insurers were assigned risks in proportion to their automobile liability premium business. The losses however were incurred by the individual companies who held the risk and were not shared by the Industry.

The other vital cog is the Automobile Insurance Board which has the responsibility of regulating rates and insuring that all drivers can obtain insurance at reasonable rates. Hence it should be possible for the high risk driver to purchase insurance at reasonable rates and without too much trouble providing the Board is willing to fulfil its appointed role.

The second point concerning the marketing of and providing information, advice, and service for automobile policies in outlying areas is a problem. Undoubtedly offices could be set up in strategic locations to provide insurance to unpopulated areas, but there would be less personal contact between the insured and his insurance representative because of the greater distance between the two parties. Such difficulties are not really insurmountable if the system is well organized and working efficiently.
Also much of the personal contact can be replaced by telephone or mail communication.

The third question relates to the education of the public as to their insurance needs. The writer feels that if insurers employed informational advertisements and if insurance company personnel were prepared to provide information and advise to insurers then this problem can be largely solved. Especially when drivers become familiar with the system after some years of operation.

Lastly the biggest barrier to a direct writing scheme is the position of the industry. The three large rating bureaux have shown no inclination to move toward such a system and until at least one of these bureaux and its membership does, direct writing will not be utilized to any great extent. There is a natural reluctance on the part of insurance companies to abandon the agency system. The agents provide the same companies with automobile insurance business in other areas of North America and business in other "lines" of insurance in British Columbia. Consequently the insurance companies are caught in a squeeze between the consumer who wants less expensive automobile insurance and the agents who provide the companies with profitable business in other "lines" and in other jurisdictions.

There would appear to be three ways in which this reluctance
to accept a direct writer system could be resolved. Firstly by means of competition from direct writers (Liberty Mutual Insurance Co., Wesco Insurance Co., B.C. Motorists Insurance Co., and Vanco Insurance Co.) Secondly by regulating rates. The Board would set the premiums at such a level that only direct writers could operate at a profit. Thirdly a governmental monopoly could be introduced. In the writer’s opinion a combination of the first and second methods would appear to be most expedient.

In discussing the merits of a direct writing scheme one must not expect that such a plan would completely eliminate the 12.5¢ expense factor. Instead of personal selling, advertising would be employed. This expense must be carefully controlled or the cost savings resulting from the adoption of a direct writing scheme will absorbed by advertising expenses. In addition the providing of advice, information, service, and billing which is presently provided by an agent will have to be done by insurers themselves. Therefore although it is reasonable to expect some significant savings from a direct writer system, i.e. estimated 8¢ per premium dollar, 4.5¢ of the present 12.5¢ expense per premium dollar will remain.
Other Considerations

As mentioned earlier the 2 percent premium on third party liability policies which finances the Traffic Victim's Indemnity Fund, could be eliminated, and replaced by a gasoline tax which would mean that all drivers would share the burden, and also that the expense factor in respect of the premium dollar would be reduced.

In addition two other costs which must be considered in the contemplation of a switch to a no-fault proposal are the increase in the number of insureds and the possible increase in fraudulent claims. In chapter V of this thesis it was indicated that approximately 45 percent of all victims receive third party liability insurance benefits,\(^3\)\(^6\) where as one may reasonably expect the recovery rate under a first party system to reach approximately 80-90 percent or more, depending on the scope of benefits. This definitely is a legitimate concern, and must be carefully examined in predicting the cost of premiums under a no-fault scheme. The other commonly mentioned source of
increased cost pertains to fraud and collusion, but in practice in British Columbia, 37 and Saskatchewan 38, because of the requirement to give notice of a claim within a short period after the occurrence of the accident, the frequency of such incidents has been no higher than those which arose under the tort liability system.

Also it should be recognized that under a first party plan, insurers would be able to predict losses with a greater degree of accuracy because, "both elements of the risk of loss how often claims will be presented (accident and claims frequency) and how much will be paid (average claim cost)," can be determined. 39 Under the third party system only the first element can be estimated. 40 Consequently the rating system is more logical, equitable, and quite possibly more efficient.

If one is going to attempt to discover ways of reducing automobile insurance premiums two other aspects of insurance demand attention,

1) Decreasing the benefit coverage by setting compensation limits and/or making auto insurance excess as opposed to first loss insurance, 41 and

2) Utilizing other sources in addition to the owners or drivers of motor vehicles, eg. manufacturers of vehicles and government departments responsible for highway design and upkeep. 42
In respect of the first alternative, the scope and degree of benefits, there is a wide divergence of opinion. No one will disagree that burial, rehabilitation, and medical expenses and loss of income should be covered, but the extent of compensation is debatable. In this writer's opinion there is a conflict between the availability of insurance at the lowest possible rates for all, and the demand for complete indemnity. Fortunately the use of a compulsory minimal coverage plus the right to tort action or voluntary supplementary insurance (under a no-fault scheme) largely overcomes this quandry. Still there is the problem of deciding on the benefits under the compulsory section of the accident insurance package, and it is difficult to gauge what the cut-off point should be in the absence of actuarial data. However this writer believes that compulsory insurance should provide loss of income benefits approximately equal to the average personal income in the province, with lower benefits for those not earning such amounts, eg. must be some incentive for victim to return to work. The current indemnity pertaining to burial, medical, and rehabilitation expenses appears to be satisfactory.

The more heated controversy at present is whether "pain and suffering" damages should be available under a no-fault scheme. The basic argument for the retention of this "head" of damages is that it is traditional, and fills the gap in
compensation in cases in which the young victim is unable to reach his or her full potential, eg. a loss of income award in tort case is based to some extent on anticipated earnings, but is greatly influenced by the victims current economic status, and his current level of advancement-education or proficiency in his occupation. In addition pain and suffering furnishes reparations for loss of dignity (disfigurement) inability to pursue a chosen career, and actual physical and mental pain.

In reply the critics state that pain and suffering is subject to fabrication, exaggeration and hallucination, and impossible to measure precisely. In addition there is an indication that in British Columbia those who receive such awards do not really deserve or need them, eg. minor injury cases receive almost full compensation, where as personal injury and fatality cases realize only minimal benefits. Also some commentators assert that the notion of indignity as part of physical injury law should not be recognized in a damage system because dignitary harm or vengeance does not have a place in a modern scheme for handling personal injuries. However the Accident Compensation Bill in New Zealand, the Workmen's Compensation Act in British Columbia, and the Automobile Accident Insurance Act in Saskatchewan all provide some form of non-economic loss compensation in the case of permanent injury or disfigurement.
Consequently it would appear that the alternatives in respect of non-economic damages are:

1. Eliminating pain and suffering as a "head" of damages,
2. paying "pain and suffering" damages on the basis of a schedule, or
3. permitting an arbitrator to determine the amount, if any, of non-economic damage awards.

If such awards are to be included in the compensation system the latter is preferable since it allows individual case consideration, but would obviously be more costly and slower than the scheduling of benefits. Again the most expedient and in some way the most equitable means is to make such coverage optional so those individuals who desire such coverage can purchase it for a price, and if this approach were adopted then individual case determinations should prevail.

Recently in separate articles it has been proposed, by Keeton and O'Connell,\textsuperscript{51} and Calabresi,\textsuperscript{52} that motorists be given a choice as to which system (fault or no-fault) they prefer, and permit them to insure under that scheme. The difficulty in practice would occur in cases in which an accident involves one or more drivers who have chosen different plans. Keeton and O'Connell would overcome this problem by having all drivers carry some compulsory liability insurance,\textsuperscript{53} where as Calabresi suggests that an uninsured motorists pool be set up and funded by charges on no-fault insurance.\textsuperscript{54}
In this writer's opinion such proposals are not feasible from either an administrative or cost point of view.

Consequently every driver must be insured under the same system, and providing the public can be educated by means of commercial messages from insurers and governmental bulletins etc., to consider additional accident benefit coverage, there is every reason to believe that a pure no-fault scheme, utilizing compulsory and voluntary insurance is viable and less expensive than the pure tort or hybrid scheme now in use.

As far as shifting some of the onus to other activities as proposed by Thorpe and Calabresi, the concept is certainly laudatory since it places the onus on the real causal factors of accidents. Hopefully it may possibly deter some individuals from engaging in such activities as well, but the main impact is designed to strike at car designers and highway builders where it is thought to be most effective, eg. the financial statements. The theory is that if these factors are assessed the costs of accidents their profits will be reduced, but if the car manufacturers and highway builders can reduce the number of accidents by improving automobile and highway designs, respectively, they can regain their lost income.

However two large obstacles stand in the path of such a scheme. Firstly accurate data must be obtained in order to assess the degree of responsibility of each causal factor.
and this will not be easy given the present standards of accident investigations, and the suddenness of auto accident. Thorpe points out that possibly with the utilization of computers and better analysis of accidents such a scheme might become operative. The second stumbling block is the potential for the causal factors to avoid the incidence of such costs, eg. driver buys insurance, manufacturer raises the price of his cars, government raises taxes, construction firm raises bids, etc. At the end of the day, it really comes down to which part of the population is going to shoulder the financial burden, and to hope that an automobile manufacturer, highway contractor, or a governmental department will share the burden is being optimistic, but possibly worthy of a trial.

In respect of the shift of automobile accident costs to other insurance programs, eg. workmen's compensation and medical care, such provisions are praiseworthy since they eliminate the waste and inefficiency of the duplication of benefits. However they externalize the cost of motoring to a certain extent, and this result is somewhat inequitable since those who enjoy the use of the highway should pay the full price. But in practice any attempt to allocate such costs between the various social insurance schemes would probably be expensive and difficult from an administrative point of view. However if costs could be allotted to their causal activities, eg. by making automobile coverage the "first loss"
insurance, the system would be more equitable, and just as important, it would clearly reveal the real cost of highway crashes, which in turn may stimulate the concerned parties to institute some significant remedial measures.

Therefore it would appear that in practice the automobile driver and owner will be responsible for the financial load relating to traffic accidents. However as mentioned there are ways of increasing the efficiency of the insurance scheme so more dollars can be paid out to cover losses, but to expect such proposals (no-fault) to lower insurance premiums is a moot point because of the increase in the number of claimants. Without an actuarial study no conclusive answer can be given on this point.

Government Involvement

Some commentators have suggested that a government operated scheme may result in a more efficient system. For example Terrence Ison indicated that there are three possible reasons for governmental administration of an automobile insurance scheme.

1. economies of scale,
2. elimination of agency commissions and insurance profits, and
3. elimination of contribution and indemnity between insurers.58
If a pure no-fault and direct writer system were adopted the latter two economies, with the exception of insurer's profits, would be eliminated in any event, and in respect of profits, since a deduction has been made in respect of investment income, such gains are unlikely to be significant.

Pertaining to the first point, it is entirely possible that some savings may be gained, by a governmental insurance scheme but it is difficult to measure the extent of such savings. The best guide available to this writer is the experience in Saskatchewan in respect of the government operated scheme. One source credited that approach with such economies as, simultaneous application for driver's licence, owner's registration, and automobile insurance, centralized claims offices, ready access to information concerning all traffic accidents, and a larger volume of business permits the government to accept nearly all risks. In addition the S.G.I.O. does not pay any corporate tax, has a lesser need for reinsurance and enjoys an advantage in selling voluntary coverage because people must purchase compulsory insurance from the government.

On the other hand certain points regarding the Saskatchewan scheme should be acknowledged. Firstly although the compulsory insurance expense ratio is below 20 percent, the same ratio is approximately 40 percent in respect of
voluntary coverage written by the government, mainly because of a 20 percent commission paid to governmental agents. Secondly very few of the automobile claims in Saskatchewan involve lawyers. It is estimated that the services of solicitors were only employed in 600 of 7,104 claims which concerned personal injury (accident benefit or liability coverage). Yet one source indicated that damage awards for personal injury were relatively similar to those in Ontario, but slightly lower than the level in British Columbia. One possible and significant reason for the low lawyer involvement, even with respect to liability claims, is the fact that in many cases both parties will be insured by S.G.I.O. Hence the settlement process is much more simple, and does not require the employment of lawyers. Thirdly there is some question about hidden costs, eg. allocation of overhead expenses to different governmental activities. These points are mentioned so that the reader can gain a better understanding of the costs of the Saskatchewan scheme.

The other comparison which may be useful is the analogy of workmen's compensation. In 1970 the administration expense of the British Columbia Workmen's Compensation Board accounted for about 11.5 percent of total payouts, eg. expenses and loss compensation. However this writer does not believe the aforementioned figure is comparable to governmental administrated automobile insurance schemes because of such factors as:
1. ease and efficiency of collection of funds from businesses, eg. relatively small number and static location,

2. company assistance in administering work claims,

3. fixed nature of work injury,

4. homogeneity of the type of injury and income of victims, eg. easier to schedule benefits,\textsuperscript{68}

5. no marketing costs, and

6. no difficulty in respect of insuring individuals are fully covered, eg. one compulsory comprehensive scheme.

For these reasons and in light of the Saskatchewan scheme experience, it would appear to be impossible to operate an automobile compensation scheme with the same expense ratio as that which pertains to workmen's compensation in British Columbia.

Quite probably the forementioned economies of scale would permit a governmental scheme to function at a lower expense ratio as compared with that of a privately operated plan, assuming a decline in employee attitude and morale, and governmental "red tape" are avoided. However such cost savings which are really immeasurable, must be weighed against possible rigidities and lack of innovations, resulting diseconomies in other lines of insurance, and less individual service.\textsuperscript{69} It would seem to this writer, that since overcharging is not a major problem in the British Columbia Insurance Industry,\textsuperscript{70} and the British Columbia Automobile Insurance Board has been empowered to regulate rates.\textsuperscript{71} Governmental administration
is unlikely to result in significantly less expensive, or more attractive insurance, eg. service and types of coverage, if private enterprise accepts a pure no-fault, direct writer scheme.

As noted earlier an unproclaimed section of the Insurance Act would permit the government to sell insurance if the cost of a privately operated scheme is not commensurate with the risks. This writer believes this provision reinforces the leverage of the Auto Insurance Board, and also serves as a warning to the Industry that they must adhere to reasonable practices and to search for economics, or they will lose their business, and be replaced by the government.

More generally the question of whether the automobile insurance scheme remains in the hands of private insurers rests with the party in power, and undoubtedly if the New Democratic Party were to gain a majority, motor vehicle insurance would be sold exclusively, at least the compulsory part of an insurance package, by the government. In Saskatchewan the government allows private insurers to compete in respect of supplementary coverage, whereas in Manitoba and in the N.D.P. brief to the Wootton Commission, a state monopoly, is in effect, and was proposed, respectively. However, such a step is probably more of a political measure, than a proven means of providing a panacea for the cost "ills" of the Insurance Industry, unless the insurers cannot or will not reduce or eliminate the role of agents which is a significant
part of the expense factor.

**Conclusion**

As stated at the outset of the chapter all the writer could reasonably do was to outline the viewpoints pertaining to these controversial topics, and attempt to indicate the validity of the different arguments. While only limited evidence is available the writer in the next and last chapter will analyze the information compiled in this and the preceding six chapters. Hopefully this approach has enabled the reader to gain a relatively objective understanding of the issues, and hence he will be in a position to comprehend and criticize the writer's conclusions.
CHAPTER VIII

POLICY IMPLICATIONS

Introduction

In this chapter the writer will examine the information which has been compiled in the previous chapters. The objective of the writer will be to ascertain what implications this data has in respect of future policies in relation to traffic safety and the compensation of traffic victims.

Traffic Safety

This topic was discussed in Chapter VI and from that source there would appear to be a number of tentative conclusions which may be drawn. As indicated in that chapter the research and statistics may not be as conclusive as one would desire, but they do shed some light on the general picture and it would be unwise to ignore the implications.

The first point is that improvement of vehicle and roadway design and emergency care is essential if highway casualties are to be reduced in numbers and severity, because it is, and will be virtually impossible to ensure that individuals will conform to an error-free driving standard. This situation will exist because such accident causing factors as drinking, fatigue,
physical distractions, and lack of mental concentration which lessen an individual's driving performance, cannot be eliminated, but merely reduced. Consequently extensive research in and implementation of safety devices in vehicles and better roadway engineering, and upgraded emergency care must be undertaken because traffic accidents are inevitable and it has been shown that it is more effective to alter the driving environment as compared with changing driver behaviour, supra p. 128.

Secondly, the foregoing should not be interpreted as meaning that bad driving behaviour is to be ignored. From discussions with various individuals who are interested in traffic safety, the most striking point is the apparent lack of public anxiety over the large toll of highway casualties. What is most important is to convince the public that traffic safety and traffic violations are serious matters. Somehow drivers must be educated to apply all of their physical and mental capacity to the task of driving when they are behind the steering wheel, and simultaneously they must accept the fact that erratic driving behaviour or violation of traffic laws is a potentially fatal exercise which deserves condemnation rather than condonation from the driver's associates and relatives.

The rather limited research which has been reported on this topic would indicate that the use of a probation or a suspension
of a driver's licence is the most effective means of encouraging individuals to drive in a more lawful and safer manner. Pertaining to this matter of driving behaviour a demerit point system including accident involvement and traffic violations would seem to be the most appropriate way to determine which sanctions will be employed and at what juncture because repeated occurrences of either event indicates an inability or unwillingness to drive in a safe manner. Also the demerit point scheme dramatizes the individual's driving behaviour and hence will hopefully discourage any further transgressions of the law or unsafe conduct, e.g. demerit point score is present in the mind of the driver and also he is aware of the total at which point he will lose his licence. In order to make this system more effective it is suggested that impoundment of the vehicle take place if the driver of that car has had his licence suspended or if there is more than one driver then a different coloured set of plates should be used so that the police can recognize such a vehicle and subject it to spot checks. Such drastic measures are necessary in order to reduce the number of drivers who operate their vehicles in spite of the fact that their licences have been suspended.

At the same time it appears that it is necessary to restrict the number of licences which should be granted in the first place. Many drivers are either physically or mentally incapable of driving with the required minimum level of skills.
Therefore it is suggested that more strict driving tests and medical examinations should be used to keep inadequate drivers off the road before they become involved in their first accident. In addition similar tests and examinations should be required at regular intervals. The proposed interval would be every five years for individuals under 60 years and every three years for those over 60 years. These tests would be free, with the funds for this program being derived from an added charge on the driver's licence fee.

The first prerequisite for such a plan is general acceptance by the public of the concept that driving is not a right, but a privilege which is only given to those individuals who demonstrate and continue to exhibit a certain proficiency in driving skills and who obey traffic laws, and who are not involved in accidents. Another important condition which must be present in order to make such an approach feasible is the existence of alternative forms of transportation, and at the present time this is a real stumbling block.

The final point which must be mentioned in respect of traffic safety is the (suggested) deterrent effect of compulsory insurance and the tort system. The overwhelming majority of the experts think that accidents are independent of the system of compensation and the existence of compulsory automobile insurance. The writers feel, and this writer agrees, concern for
one's self preservation and/or the fear of a licence suspension, supra p. 146-147, are larger deterrents with respect to bad driving behaviour as compared with involvement in a tort trial as a defendant. This conclusion is based on behavioural assumptions, which have not been tested statistically, but have a strong intuitive appeal.

The British Columbia experience, in the years 1970 and 1971, with the compulsory hybrid tort-accident benefit scheme does not provide any conclusive results. The data indicated that during the period the new scheme has been operating the total casualties have remained relatively constant, supra p.153. Yet the reasons for this picture cannot be deciphered because of the numerous factors involved. For instance the forementioned data shows traffic density rising, which one would expect to be a positive factor in relation to the number of accidents, at the same time it is probable that more stringent law enforcement, eg. increase in use of radar traps and new laws with respect to drinking drivers, supra p.138, have had a negative effect on accident experience. Also the reader must remember that the change in the reporting requirements has probably had a negative effect on the frequency of accidents and casualties, supra p. 153. Hence it is virtually impossible to accurately assess the impact of the new scheme on traffic safety, and this problem will remain unanswered until research can precisely measure the effect of the above and other pertinent factors.
Likewise the whole area of deterrents in respect of bad driving behaviour will remain unsettled until studies are performed in this field.

Also as pointed out by Thorpe it is possible that if other elements in the traffic accident mix were charged with their share of the responsibility for traffic accidents then individuals may be discouraged from participating in the hazardous activity of driving, eg. by charging automobile manufacturers for faulty vehicle designs which would probably cause them to raise their prices, or such action may encourage such factors as automobile manufacturers or roadway engineers to improve the designs of the vehicle and the streets, respectively, and hence to reduce accidents. There is no concrete evidence that such a plan would work, but given the present concern and publicity about safety in respect of automobiles such steps are worthy of a trial. Under a pure no-fault scheme any money collected from such sources, after an investigation and hearing which would be distinct from the compensation of a traffic victim, would be used for traffic safety research.

Costs of Administering an Automobile Accident Compensation Scheme

Ideally an automobile compensation scheme would pay out every dollar it collected in the form of loss compensation. However in practice this is not possible because the merits of each
claim must be ascertained and there are expenses associated with the collection and disbursement of premiums and benefits, respectively. Also if a scheme is to be privately operated some allowance must also be made for a profit factor which is essential for the survival of private enterprise. Lastly some consideration should be given to the fact that an inefficient system which yields lower benefits per premium dollar may not be a shortcoming if the system is viewed in its wider perspective because the cost inefficiencies permit a number of individuals to be employed when they may otherwise be on welfare. Therefore one must attempt to balance the trade-off between the cost of insurance to owners and drivers of automobiles with the cost of unemployed workers to society.

As indicated in chapter VII, supra p.169, the actual loss payout of third party liability and accident benefit policies in relation to the premium dollar in 1972 are estimated at 59.8¢ and 69.5¢, respectively. Also as can be readily seen from the same schedule the only change from the pre-Wootton Commission loss payout ratio in 1967 has been made in respect of the profit factor. As described in Chapter V this adjustment resulted from a ruling of the Automobile Insurance Board that the contingency and underwriting profit factor was reduced from 2.5¢ to 0.5¢ per premium dollar. The Automobile Insurance Board took this step in order to give recognition to the fact that the largest portion of insurance company profits are derived from investment income, and not the underwriting business.
What is peculiar is the fact that a 2¢ reduction in the profit factor was applied to both the liability and accident benefit policies. Investment income is derived from the return on unearned premiums and on delayed payment of claims. This latter factor is substantially different for the above policies. The delay in payment of accident benefits is 30-60 days at the most, supra p.116, whereas the delays for liability claims range from 5 to 21 months, supra p.115.

Therefore it would be reasonable to expect a greater reduction in respect of liability policies because the potential for earning investment is much greater. Money is available for longer periods, and hence a larger reduction should be made in respect of liability policies if the hybrid compensation scheme is retained.

Now let us review the advisibility of further decreases in insurance costs in order to obtain a larger loss payout per premium dollar. Basically the variables that are adjustable are the elimination of the middlemen, eg. insurance agents and lawyers, economies of scale in the collection of premiums and distribution of claims, and elimination of the profit factor by means of governmental operation.

No-Fault

When the accident benefit scheme was introduced it resulted in an estimated increase in loss payouts of 10¢ per premium dollar
as compared with that of liability policy payouts. The reason for this increase was the virtual elimination of lawyers, eg. both the insured's and the claimant's lawyers, and a reduction in adjusting expense because of the more simplified and non-adversary approach, eg. eligibility for benefits was, and is the only question since benefits are clearly spelled out. Hence it is manifest that substantial savings are possible if lawyers are not utilized in the compensation process, eg. a pure no-fault scheme. However it is likely that if such a scheme were adopted it would be necessary to forbid disputes between insureds and their insurers from reaching the judicial court system because such actions would seriously reduce any potential cost savings in a no-fault scheme, eg. necessary to limit the number of cases which will involve the expense of lawyers. In place of a trial, the writer suggests that an Administrative Review Board should be set up to handle any complaints between insureds and insurers. This tribunal would be more informal than a judicial Court and would not necessarily require the use of lawyers or case precedents. It would be similar to the Board of Review which operates in connection with the Workmen's Compensation Act and has exclusive jurisdiction to hear and determine all disputes pertaining to Workmen's Compensation. The decision of the Board of Review is final and not subject to review in any Court.²

Obviously the operation of such an administrative tribunal would entail some expense, but it would be minimal in comparison with the present Court system and the money presently being
absorbed by lawyers, eg. in more complicated cases lawyers would still become involved, but hopefully the majority of hearings would not require any lawyers.

As far as the feasibility of such a scheme is concerned it would appear that the Insurance Industry is prepared to accept a no-fault scheme. In their recent *Submission to the Quebec Royal Commission on Automobile Insurance*, the Canadian Underwriters Association proposed increased accident insurance benefits (as compared with other Canadian provinces) and the adoption of a compulsory no-fault scheme in respect of property damage,\(^3\) and the writer has been informed that this is indicative of the attitude of the Industry.\(^4\) The writer thinks that if the Industry will promote the above plan then they would probably be prepared to accept a pure no-fault system.

The legal profession appears to be divided on this question and hence if such a scheme were proposed the profession would probably not take a united stand either for or against the abolition of tort action in respect of automobile accidents. Hence a no-fault scheme if introduced in the Legislature in the next few years would probably be accepted by the politicians, the public, the Industry, and even the law profession.

In respect of the economic effects on the legal profession if a no-fault scheme was adopted, there is no information which is readily available to determine the precise effects of such
a step, and is an area for further study which lies beyond the scope of this thesis. However in this writer's judgment insurance lawyers could find work in respect of other lines of insurance or other areas of the law and hence the economic impact would not be that severe.

Consequently when all factors are considered the writer would propose that because of the cost savings and lack of adverse side effects that a pure no-fault scheme should be adopted in British Columbia.

Direct Writers

The second middleman of interest in our study is the insurance agent. Currently the agent accounts for 12.5% of every premium dollar, and it would appear that if a direct writer scheme were introduced some savings could be obtained. However it is difficult to predict just how large those savings may be because some of the agent's functions, ie. marketing, advising insureds, and servicing of automobile policies, would have to be performed by the insurance companies themselves. The facts provided by the Industry indicated that in the policy year 1970 (January 1, 1970 - December 31, 1971) over $100M. of net premiums were earned in the automobile "line" in British Columbia. Hence applying the agents' allowance of 12.5 percent it is evident that agents absorb more than $12.5 million of automobile insurance premiums.
In the writer’s opinion a reduction of 8¢ per premium dollar would not be unreasonable for a number of reasons. Firstly many of the fixed costs of the agency system, ie. rent payments on fixtures and buildings, property taxes, heat and light charges, and general management, salaries, could be eliminated because the number of offices and personnel would be reduced. Secondly since motor vehicle policies are fairly simple and standard the need for expert advice and information is limited. Thirdly a compulsory scheme, as is presently operating, reduces the need for marketing of these policies since every driver and owner is obligated to insure himself. Also under a compulsory-supplementary insurance package scheme the marketing costs in respect of the supplementary insurance are decreased because contact between the insured and the insurer is necessitated by the compulsory insurance requirements. Hence it is less expensive to sell a policy to a captive customer as opposed to the public at large. Lastly certain economies of scale may be expected as insurance companies perform some of the agent's functions by means of more intensive use of office machinery. In addition the fact that the insured will be encouraged to deal with the company over the counter or by mail, as opposed to an agent who goes to the customer's business or residence to make a sale will also decrease costs.

As indicated in Chapter VII there may be some problems associated with a direct writing scheme. Firstly the acceptance of high risks by insurers may be a problem. The proper use of
the Facility and the moral suasion of the Automobile Insurance Board could partially ameliorate the potential trouble. Yet at the present time there are limitations on the percentage surcharges which can be levied on automobile policies and this practice has some undesirable repercussions. Since bad drivers are not shouldering their full share there is some subsidization of the bad driver by the good driver. This situation is not only inequitable and disquieting to the good driver, but direct writers are reluctant to accept these risks because they are unprofitable. Two solutions to this quandary are readily available. Either remove the surcharge limits and charge each driver the appropriate market rate or retain the surcharge limits, eg. under the proposed demerit point scheme, and bar those drivers who exceed the limits from our roadways. The writer prefers the latter approach since it is essential to keep such drivers off the road if traffic safety is to be advanced. The only foreseeable problem with such an approach is enforcement, but as mentioned earlier there are ways of tightening the laws, eg. impoundment of vehicles if driver's licence is suspended.

The second problem in respect of a direct writer system concerns individuals who live in sparsely populated regions of the province. By judicious location of insurance offices and by use of the telephone and mail this shortcoming can be largely overcome. With the shift of the population to urban centres this drawback will also be decreased in magnitude. Those indi-
viduals who continue to reside in rural areas will have to accept less service. Any scheme should be designed to cope with the needs of the majority of the insureds, providing the minority are not completely neglected.

Lastly a direct writer scheme must guard against the possibility that economic savings will be lost through advertising. With the removal of personal selling, which was provided by the agents, some form of marketing will still be required and advertising is the logical alternative. The writer feels that if the Board is vigilant and regulates rates if necessary, such a possibility can be averted.

In respect of the acceptance of a direct writing scheme by the Industry in British Columbia, it appears doubtful that such a step will be undertaken without some encouragement. This situation exists because of the three large rating bureaux which greatly influence Industry policies, the powerful agents association and their solid bargaining position, and the scarcity of direct writers operating in British Columbia.

The three large rating bureaux, I.B.C., C.U.A., and I.I.C., and their memberships all use the agency system. In this writer's opinion these associations are tightly-knit groups which would not permit any of their members to become direct writers, unless this approach become the policy of the bureau itself. Therefore in order to make a direct writing scheme a
reality, some means must be found to persuade at least one of the three bureaux to adopt such a system.

The second practical barrier to a direct writing approach is the Agents Association of British Columbia. This group is in a very strong bargaining position because they are united and secondly they provide profitable business for the Insurance Industry in respect of other "lines" of insurance. Consequently even if the Industry desired a change to a direct writer format it would meet considerable opposition from the agents group.

The third problem is the paucity of direct writers in British Columbia at the present time: Liberty Mutual Insurance Co., B.C. Motorists Insurance, Wesco Insurance Co., and the recently incorporated Vanco Insurance Co. Until the companies without agents became a threat to the business of the members of the three bureaux no voluntary action will be taken by these latter companies. Hence some attempts should be made to encourage the development of new companies operating on a direct writer basis.

One way to encourage the adoption of direct writing by existing companies is for the Board to lower rates to the point that only direct writers can successfully operate at a profit. This policy of regulating rates already fits within the purview of the Board's activities.
Also the Board should only permit new automobile insurance companies to be incorporated or to operate branch offices in British Columbia if they are prepared to operate a direct writing system.

Undoubtedly such measures would cause some companies to abandon the automobile insurance business. Yet at the same time it may force the rating bureaux, to individually or collectively, to take a stand against the agents and adopt a no-agent system. This scenario is a real possibility if the insurance companies think they could survive without agents in other "lines" of insurance or if they can convince the agents group that it is a possibility. In either case it would weaken the bargaining position of the agents to a considerable degree and make the companies more responsive to consumer wishes, the directives of the Board, and their own interests.

One result of such a proposal might be that few companies would want to sell automobile insurance because of the low premiums. But it should be remembered that under the proposed scheme each driver would pay a premium commensurate with his risk exposure. Therefore each driver would represent a profitable customer for direct writers. This situation is important because at the present time the direct writers are concentrating on the good drivers and leaving the more risky drivers to companies which employ the agency system. Consequently if the companies who are
accepting bad drivers refused to operate under a direct writer system, a gap in the market would develop.

Two solutions to this problem are available. Either persuade the direct writers to accept these high risk drivers by pointing out that they represent potentially profitable business. Or if the industry refuses to co-operate then the government will be forced to take over the automobile insurance business.

What will be the economic impact of such a change? This writer thinks that most of the agents could continue to find employment as agents in other "lines" of insurance and some could be hired by insurance companies to do the same work they have always done. But in the short term there is likely to be some unemployment.

In conclusion the writer feels that a direct writing scheme is preferable to an agency scheme because of 1) the lower costs and 2) the loss of service and disruptive economic effects can be alleviated.

Administrative Costs

A third area in which potential cost savings exist is in the collection of premiums and distribution of benefits. The former can be reduced to some extent by the collecting of premiums in large volumes. This could be done in the form of group
automobile insurance plans for organizations and companies, ie. premiums are deducted on a monthly basis from individual's cheques as are unemployment insurance and Canada Pension Plan contributions. It also is suggested that administrative expense in the payment of benefits would be simpler and less expensive. There would be less paperwork, and no contribution and indemnity between insurance companies. Although it should also be recognized that expenses under a pure no-fault system may well increase because of the use of periodic payments, as opposed to lump sum payments which are awarded under the tort system, eg. more payments per claim. Through the use of computers such payments should not constitute a substantial expense, because some of the paperwork and employee time can be eliminated.

In the writer's opinion such economies are available and may be instituted under a no fault scheme. A further 2¢ saving per premium dollar is therefore possible.

**Governmental Operation**

A government operated scheme could lead to further cost reductions both from the elimination of profit and from management economies. The profit saving would be small. As mentioned earlier the underwriting profit has been set at 0.5¢ of the premium dollar. Therefore any profit earned by insurance companies must be earned from investment income. Yet if the government were to operate the automobile insurance business there is a possibility
if not a probability, that such a scheme would earn less investment income than a privately operated plan. This event could be anticipated because of the reluctance of a government managed operation to invest in more risky, higher yielding securities. Consequently it would be difficult to predict that a governmental scheme would increase the loss factor because of a reduction in the profit factor.

A governmental monopoly could in theory exploit the management economies of large production. This could be achieved through a greater computerization of policies and a reduced need for re-insurance. In addition if one assumes that a pure no-fault scheme were rejected by the legislators, a governmental scheme would cut out the cost of (contribution and indemnity) payments made from one insurance company to another insurance company.

A no-fault scheme would eliminate the expense of contribution and indemnity to a large extent because most losses would be covered by one insurer, except for re-insurance cases. Also the right of action by one insurer against another in relation to prepayments under the liability system would no longer exist.

In conclusion the writer feels that the potential savings by a governmental monopoly are relatively small. At most a 3¢ saving per premium dollar could be expected. This presupposes that some control is placed on bureaucracy.
The writer would not recommend a governmental scheme unless the Industry proves unco-operative to the earlier suggestions. This conclusion is based on the assumptions that the public in general does not want a governmental scheme, and that governmental employees are not as motivated or as innovative as those in a private company.

Insurance Coverage, Premiums, and Benefits Insurance Coverage

As mentioned earlier the issue of voluntary as compared with compulsory insurance has been largely resolved in favour of compulsory insurance because of the greater efficiency and equity of such a system. Hence the only change under the proposed no-fault scheme is that a supplementary coverage would replace the present right to tort action.

Two other aspects of insurance procedures deserve attention. Firstly the rather minimal increase in insureds under the compulsory scheme, supra p.158, can partially be attributed to poor administrative procedures. Consequently it is suggested that driver's licences should be renewed every year on the driver's birthday and only upon proof of insurance. Obviously this procedure may lead to some enforcement difficulties with respect to renewal of licences. Hence the writer suggests that all owners and drivers be required to purchase the compulsory portion of the insurance package, and the loss to any occupants of
the car in case of an accident will be absorbed by the
driver's insurance if any exists, and the owners policy will
serve as excess insurance. Hopefully this will encourage the
owner to think twice before allowing an uninsured person to
drive his car, eg. in such instances there should be a financial
sanction for such an oversight, possibly an increase in premiums
or even an increase in demerit points. Also the periodic exami-
nation in respect of a driver's licence will alleviate this
shortcoming to some extent.

The driver's or owner's policy in addition to covering all
occupants in a car in which the insured is driving or owns,
will indemnify the insured and his wife and children when they
are pedestrians or cyclists. Children would be defined as under
19 years or over 19 years and totally dependent on the insured
because of infirmity.

The Traffic Victims Indemnity Fund would still be required
in order to provide coverage for individuals not protected by
automobile insurance. These categories would include out of
province motorists and British Columbia pedestrians or cyclists
who do not drive cars or who do not have parents driving cars.
The fairest system of funding such a pool is in the form of a
gasoline and diesel tax so all drivers, insured and uninsured,
contribute to the financial burden.
Benefits

A no-fault scheme would ensure that a broader range of traffic victims and their dependents would receive compensation. Also such a plan would considerably reduce the delays in payment after an accident has occurred, supra, p.116. and simultaneously would reduce the present court congestion, supra, p. 121.

The questions in respect of benefits under a no-fault scheme are the scope, amount, and eligibility for benefits.

The controversy surrounding the scope of benefits is mainly associated with the question as to whether psychic losses, eg. "pain and suffering" should receive any compensation. As forementioned the Workmen's Compensation Act, The Saskatchewan Automobile Insurance Act, and the New Zealand Bill, supra p.177, all provide some sort of reparations for disfigurement or permanent disability which does not necessarily result in a reduced earning capacity. These types of losses can be scheduled or assessed because they are physically obvious and can be subjected to a fairly objective examination. "Pain and suffering" on the other hand is virtually impossible to measure and also there is probably little utility to society in such payments since money will not erase any past or present pain. Psychic loss, unlike economic loss, is an individual rather than a societal burden. Consequently the writer is in favour of the removal of
"pain and suffering" as a "head" of damages in the automobile accident case. In respect of disfigurement and impairment the writer is inclined toward the use of voluntary insurance in such instances.

In cases of permanent damage to a star athlete's legs or permanent scars on the face of an actress, any economic losses incurred because of automobile accidents would be recovered under the compulsory and supplementary policies which pertain to income loss. In addition the individual could purchase voluntary coverage with respect to disfigurement or impairment to any limit he so desires, eg. similar to a life insurance policy.

Another situation which should give rise to compensation in a no-fault scheme is the case of partial disability which prevents the individual from earning his pre-accident level of wages. The writer thinks that it is most important that all economic loss receives at least minimal compensation because it represents a burden on the resources of society. This is especially important in this instance because the lack of such an award, at present, may be encouraging malingering since only the totally disabled cases receive compensation. If partial disability payments were available this award may encourage him to perform some work, and yet he could still be entitled to benefits. At present if he returns to work for one day he has lost his rights to any further compensation in relation to income loss.
The amount of benefits in cases of total or partial disability or death is another problem which faces the architect of an automobile compensation scheme. In this writer's opinion the present level of compulsory insurance benefits are inadequate. The $50 a week award in the case of total disability is at best a bare subsistence level of income. The writer suggests that a higher level of benefits should be made available under the compulsory provision of the insurance package in order to ensure that most victims under the proposed no-fault scheme do not have to rely on other sources which would indicate that the plan is incomplete. The objective of the automobile insurance compensation plan is to recoup all economic loss suffered by a traffic victim, to some reasonable minimum level.

The envisaged scheme would set the dividing line between the compulsory and supplementary (voluntary) insurance coverage at the average individual income level of the province of British Columbia. In 1971 the average according to the Canadian Statistical Review was approximately $150. Permanent disability awards would equal 70 percent of the victims average weekly salary in order to allow for the absence of income tax. It is imperative that the scheme does not encourage the individual to stay off the job. In respect of supplementary insurance a larger allowance must be made because of higher tax rates.
Death benefits would also be paid on a periodic basis as contrasted with the current form of recompense, in a lump sum. This approach is suggested because the form of the payment more accurately simulates the situation if there had been no accident, and also precludes the dependents from foolishly spending the lump sum in a short period.

The partial disability award would be calculated on the difference between the post and pre-accident earnings. The maximum pre-accident earnings under the compulsory section of the insurance package would be limited to the average individual income level of the province. It should be recognized that any income earned by the victim from partial employment will be taxable, but the partial disability benefit will not be assessed. Hence in order to give the individual some incentive to return to work under the partial disability scheme, the total return (income earned plus partial disability benefit) must exceed that offered under the "head" of total disability. Therefore the writer would suggest that the victim be eligible to receive 80 percent of the difference between his past and pre-accident income in the form of a partial disability benefit.

In addition it is recommended that all income awards should be tied to the Cost of Living Index, and automatically increased as the Index rises.
The five categories of individuals who must be singled out for disability benefits are the child (under 19 or over 19 and financially dependent on his parents because of illness), students, the old age pensioner, the unemployed worker, and the housewife.

The writer feels that if the unemployed individual and the pensioner are insured they should be entitled to benefits according to their past and present income levels, respectively.

The housewife should receive a benefit equal to half of her husband's salary with a maximum of $75 under the compulsory section of the insurance package. If she is earning an income then she is entitled to benefits commensurate with her salary.

The student (19 years or older and attending an educational institution on a full time basis) should be encouraged to insure himself to the average wage level of the province. Furthermore as his education level increases he should be advised to purchase supplementary coverage.

A child who is covered under either his own policy or that of his parents should be awarded $50 a week (minimum disability for all active or potential workers) until age 19. When he reaches that age his benefits should be increased to the highest level permitted under the compulsory section which would be 70 percent of $150 ($105) at the present time.
The death benefits would be calculated and paid in the same manner as if victim was totally disabled. The eligibility of beneficiaries for such payments would be restricted to financially dependent relatives. These would be cases in which the deceased provided financial support for the beneficiary. The husband of a deceased housewife would be entitled to her death benefits until he remarries. Children in a two parent household would receive their parent's death benefits until they reached the age of 19. Parents would receive no death benefits in the case of the death of any of their children unless totally dependent upon the victim for financial support.

The permanently disabled or disfigured cases (non-economic loss) would receive compensation according to the degree of disability or disfigurement and their insurance coverage. Such coverages would be voluntary, and no such awards would be available under the compulsory part of the insurance package.

The present benefits concerning medical, rehabilitation, and burial expenses would continue to be paid at their present level under the compulsory coverage.

Benefits under the Traffic Victims Indemnity Fund would be awarded on the assumption that the victim's income was equal to the average income of the province. Thus victim would receive the maximum coverage which is set out in the compulsory policy.
Supplementary (voluntary) coverage would be available for all categories of losses beyond the limits which are provided by the compulsory insurance. Economic loss coverage would however be restricted to the insured's present level of earnings, unless substantial evidence of improvement could be expected, i.e. the student case. British Columbia motorists travelling to other jurisdictions still using the tort system could purchase voluntary liability insurance.

Collision and comprehensive insurance for property damage would be voluntary because such a loss does not create an economic burden on society. Also the voluntary approach may assist in keeping the poor driver off the road since his failure to insure will leave him without any car if he cannot afford the cost of repairs.

If a compulsory and supplementary insurance scheme is to be effective the government and the Industry must embark on an educational advertising campaign to make people aware of their insurance needs. It may be assumed that those individuals with higher incomes are better educated, and hence will be able to determine their insurance protection needs without too much difficulty, i.e. the ones requiring supplementary insurance.

Eligibility for Benefits

The other problem concerns the eligibility for benefits. In the writer's view unless there is a strong policy reason for
disqualifying an individual from benefits such sums should be paid. The victim who is denied benefits under an automobile compensation scheme will be forced to rely on other sources, and hence this procedure will result in the inequitable externalization of costs to some extent. Consequently there should be only three exceptions to the right to insurance benefits. Firstly in the case of intentional injury or death because such behaviour must be discouraged at all costs. Secondly in the instance of driving without insurance because there must be some incentive for an individual to insure himself and his dependents. Lastly in circumstances in which there is overlapping benefits between governmental social insurances, Workmen's Compensation, Canada Pension Plan, and/or Medical Care Plan, or life and accident insurance, and automobile insurance. Collected funds must be awarded only to the extent of the loss suffered in order to make all schemes as efficient and effective as possible. Scare funds must be channelled to victims so they all receive adequate compensation, and this objective can only be attained if excess reparation cases are eliminated.

**Premiums**

Premium rates are another important factor in an efficient and equitable scheme. The writer is assuming that motorists will continue to shoulder the financial load and little significant financial help can be expected from other factors in the automobile
accident scene. These factors would include automobile manufacturers and highway engineers.

In general it appears difficult to justify flat rated premiums unless one believes that those drivers involved in accidents should be subsidized by good drivers. In this writer's view it would appear more equitable and logical to assess rates on the basis of expected loss. As mentioned earlier the no-fault scheme permits the insurer to estimate the possibility of accident involvement and also the potential loss of a particular insured. Therefore the writer would suggest a rating system based on the insured's demerit point standing (reflecting both accident involvement and traffic violations), his loss potential, income level and number of dependents, and possibly the territory in which he generally drives.

Although such a system is good in theory it may be impractical because of the expense of such fine classifications. These expenses would be incurred in the rate-making process and also in administering each case. Consequently some compromise between equity and efficiency must be struck.

The envisaged scheme would involve the grouping of insureds into one category. For example income levels under compulsory insurance coverages would be divided into three classifications; 1) gross income of $50 a week or less, 2) gross income of $51 to $100 per week, and 3) gross income of $101-$150 per week.
Dependent categories might be: 1) single, 2) married and one child, and 3) married and more than one child.

Such a scheme would not only be more equitable than the present flat rate approach, but may also contribute to safer driving if a fair, yet strict demerit point scheme is employed. The demerit point approach may deter accidents because the driver will realize that greater accident involvement and/or more traffic violations will lead to higher rates and an eventual suspension.

As far as the actual rates are concerned the writer has no actuarial sources of information on such matters. It can be stated that cost savings in a no-fault, direct writer, and privately operated scheme are possible. But whether such savings and the elimination of the duplication of benefits will off-set the large increase in the number of beneficiaries under a no-fault scheme and the proposed benefits is a moot point.

Conclusion

In the opinion the writer the adoption of a direct writer, pure no fault, privately operated scheme is the next logical step in the development of compensation for traffic accident victims. Basically the proposed plan is similar to that suggested by the Wootton Commission. In the four year period since the release of the Report the attitudes of the Industry and to a certain extent the attitudes of the public and the legal profession have changed so that at the present date the proposed scheme is both attractive and feasible.
Outline of Proposals

1. The tort action should be abolished in respect of all automobile accident claims, eg. bodily injury and property damage.

2. Compensation for traffic victims would be paid on a no-fault basis. Drivers and owners of automobiles would purchase insurance averages which would be partly compulsory and partly voluntary, eg. all drivers should have their own policies.

3. The compulsory component of the insurance package would cover only economic loss, but in contrast with present accident benefits partial disability, would also be indemnified. Burial, medical, and hospital expenses (not already covered by government insurance) would be covered under the compulsory section.

4. Compulsory benefits in respect of income loss would be raised to $150 in order to internalize the costs of motor vehicle accidents and to ensure more satisfactory compensation.

5. Supplementary coverages would be available in respect of economic losses above the compulsory limits. Also non-economic loss protection, eg. permanent disability or disfigurement could be purchased.

6. Death benefits under either the compulsory or supplementary insurance would be paid on a periodic rather than a lump sum basis.

7. Collision and comprehensive insurance would be voluntary under the proposed scheme.

8. An administrative tribunal would be created to hear disputes between insurers and insureds, and no right of appeal will be permitted to a Court of Law.

9. Disqualifications for benefits will be limited to situations in which there is intentional self-inflicted injuries, the driver or owner has failed to purchase insurance and the victim has received recompense from governmental insurance schemes.

10. Housewives, students, pensioners, unemployed individuals, and children will all be entitled to some disability benefits.
11. The payment of death benefits will hinge on financial dependency between the victim and his relations. In order to be financially dependent the beneficiary must rely on the victim for financial support, eg. wife or child under 19 years, or totally dependent-rely on him because of infirmity, eg. any near relative.

12. Premiums would be based on the insured's income classification, eg. $50 or less per week, his dependents, his rating territory, and his demerit point level, eg. no subsidization of high risk drivers.

13. A Traffic Victims Indemnity Fund would be retained to pay out of province motorists injured in accidents and those individuals who are not owners or drivers of cars in British Columbia.

14. Driver's licences and owners' registrations would be renewed annually and only upon proof of insurance.

15. Driving licence suspensions will be automatic when a certain demerit rating level is reached. The system would be based on both accident involvement and traffic violations.

16. Vehicles will be impounded if a driver's licence is suspended, but if there is more than one driver of that vehicle a different coloured licence plate will be employed, and that vehicle is subject to spot checks.

17. A direct writer scheme will be encouraged by means of governmental regulation.

18. The plan would be administered by private insurance companies unless they refused to adopt the direct writer method and the no-fault approach. In such an event the government would take over the operation of the scheme.

19. Automobile manufacturers and highway engineers as well as other causative factors would be assessed fines in proportion to their contribution to any accident. This necessitates a more thorough investigation of the accident scene and the cause of accidents.

20. Finances for the Traffic Victims Indemnity Fund and the research of accidents would be derived from the forementioned fines and a tax on gasoline and diesel fuel.

21. More strict driver's tests and medical examinations would be employed before a driver was permitted on the road, and would also be employed every five years on a periodic, renewal basis.
ADDENDA


-220-
FOOTNOTES


5 Province of British Columbia Royal Commission on Automobile Insurance, Queen's Printer, 1968.
CHAPTER II

FOOTNOTES

1Province of British Columbia Royal Commission on Automobile Insurance, Queen's Printer, 1968, p. 109.

2Id. p. 109-110.

3Id. p. 110-111.

4Id. p. 112-115.

5Case of Thorns (as reported in Bessey vs Olliot and Lambert (1681), 83 E.R. 244).


7Id. p. 67.

8Blyth vs. Birmingham Waterworks (1856), 156 E.R. 1047, 1049.


10(1963) A.C. 837.


13Scott vs London and St. Catherine Docks (1865), 159 E.R. 665.


Id. p. 155.

(1809) 103 E.R. 926.

(1842) 152 E.R. 588.

Ibid.


S.B.C. 1925 C. 8, S. 1.

(1932) A.C. 562.

Stennett vs Hancock and Peters (1939) 2 A.LI E.R. 578.

S.B.C. 1938 c. 42, S. 3.


Cowper vs Studer (1951) S.C.R. 450, 456.


Ibid.


34 Id. S. 84.
35 Id. S. 86.
37 Motor Vehicle Act, supra, footnote 33, at S.16
39 Motor Vehicle Act, supra, footnote 33, at S. 83.
40 Id. S. 85.
41 B.C. Royal Commission, op. cit., supra, footnote 4, at p. 396.
42 Id. p. 444.
43 Id. p. 447.
44 Id. p. 448.
45 Harris, Donald, op. cit., supra, footnote 6 at p. 72.
46 Id. p. 73.
47 Ibid.
49 Benham vs Gambling (1941) A.C. 157.
51 Oliver vs Ashman (1962) 2 Q.B. 210.
52 The Queen vs Jennings, supra, footnote 48.
53 Ibid.

55 Harris, Donald, op. cit., supra, footnote 6 at p. 76.

56 Baker vs Bolton (1808), 1 Comp. 493.


58 Linden, Allen, op. cit., supra, footnote 15, at p. 155.

59 B.C. Royal Commission, op. cit., supra, footnote 4, at p. 405.

60 Id. p. 52.

CHAPTER III
FOOTNOTES


2 Id. p. 1.


4 Tunc, Andre, op. cit., supra, footnote 1, at p. 2-3.

5 Ibid.

6 Ibid.

7 Id. p. 2.

8 Id. p. 3.

9 Ibid.

10 Id. p. 4.

11 Ibid.

12 Id. p. 5.

13 Ibid.

14 Ibid.

15 Id. p. 6.

17 Id. 9.
18 Ibid.
19 Ibid.
20 Id. p. 10.
21 Ibid.
22 Ibid.
23 Id. p. 11.
24 Ibid.
25 Ibid.
26 Id. p. 13-15.

28 Id. p. 37.
29 Id. p. 38.
30 Ibid.
31 Id. p. 38-39.
32 Id. p. 39.
33 Ibid.
34 Ibid.
35 Id. p. 41.
36 Id. p. 40.
37 Ibid.


40 Pfennigstorff, Werner, *op. cit.*, *supra*, footnote 27, at p. 46.

41 *Id.* p. 48.

42 *Id.* p. 49-50.

43 *Id.* p. 50.

44 *Id.* p. 51-52.

45 *Id.* p. 52.


49 Hellner, Jan, *op. cit.*, *supra*, footnote 47, at p. 133.


52 *Id.* p. 134.


54 S.B.C. 1962, c. 15, s. 2.

55 *Contributory Negligence Act*, S.B.C. 1970, c. 9, s. 1.

57 Id. p. 136.

58 Ibid.

59 Id. p. 136-137.

60 Id. p. 137.

61 Id. p. 115.

62 Id. p. 117.

63 Ibid.

64 Id. p. 119.

65 Id. p. 120.

66 Id. p. 120-121.

67 Id. p. 122.

68 Ibid.

69 Id. p. 123.

70 Ibid.

71 Ibid.

72 Id. p. 124.

73 Id. p. 123-124, and p. 130.

74 Id. p. 129.

75 Id. p. 132-133.


Keeton, Robert, and O'Connell, Jeffrey, *op. cit.*, supra, footnote 16, at p. 76.

*Massachusetts General Annotated Laws, c. 90, S. 34A, and S. 113C.*

Keeton, Robert, and O'Connell, Jeffrey, *op. cit.*, supra, footnote 16, at p. 77.

*Massachusetts Laws, supra, footnote 79.*


*Id.* p. 138-139.

*Id.* p. 5 and 196.

*Id.* p. 4.


Keeton, Robert and O'Connell, Jeffrey, *op. cit.*, supra, footnote 16.

*Massachusetts Laws, supra, footnote 79, at c. 90, S. 34M.*

*Id.* C. 90, S. 34A.


*Id.* C. 231, S. 6D.

Massachusetts Laws, supra, footnote 79, at c. 90, S. 34M.

No Fault Wins, op. cit., supra, footnote 76.


Id. S. 7(1) (a and b).

Id. S. 7(1)(C).

Id. S. 7(1).

Ibid.

Id. S. 7(3)(a)

Id. S. 8(2)

Id. S. 4 and 12.


The Statistical Exhibit, 1970, p. iii.

S.S. 1946, C. 11.


Ibid.

Ibid.
114 Ibid.
115 Id. S. 22.
116 Ibid.
117 Ibid.
118 Id. S. 21.
119 Ibid.
120 Id. S. 23.
121 Id. S. 35 and S. 39.

122 Province of British Columbia Royal Commission on Automobile Insurance, Queen's Printer, 1968, p. 34.

123 Automobile Accident Insurance Act, supra, footnote 111, at S. 39.

124 Id. S. 20.
125 Ibid.
126 Id. S. 31.

127 B.C. Royal Commission, op. cit., supra, footnote 122, at p. 35.


129 Saskatchewan Regulations, 72/71, Schedule B.
130 Id. Schedule A.
131 Id. S. 5(2) and S. 37.

Keeton, Robert, and O'Connell, Jeffrey, op. cit., supra, footnote 16, at p. 145.


Finlay, Gordon, op. cit., supra, footnote 128.

Ibid.


Finlay, Gordon, op. cit., supra, footnote 128.

Ibid.

Ibid.

Ibid.

Ibid.

Ibid.

Ibid.

Ibid.

Ibid.

Keeton, Robert, and O'Connell, Jeffrey, op. cit., supra, footnote 16, at p. 194.


Ibid.

Ibid.

Ibid.

Ibid.

Ibid.
CHAPTER IV

FOOTNOTES

1. Province of British Columbia Royal Commission on Automobile Insurance, Queen's Printer, 1968.

2. Order in Council 1966/239.

3. Ibid.


7. B.C. Royal Commission, op. cit., supra, footnote 1, at p. 605.

8. Id. p. 609.

9. Id. p. 624.

10. Id. p. 606-607.

11. Insurance Act, supra, footnote 4, at s. 235A, and Motor Vehicle Act, supra, footnote 5, at s. 2(2a).

12. Ibid.

13. Motor Vehicle Act, supra, footnote 5, at s. 91(1).


15. Id. S. 248(2).


19 Insurance Act, supra, footnote 4, at sec. schedule.

20 Id. p. 717-724, and Insurance Act, S.B.C. 1969, c. 11, S. 250M.

21 B.C. Royal Commission, op. cit., supra, footnote 1, at p. 717-729.

22 Insurance Act, S.B.C. 1969, C. 11, S. 250M.

23 British Columbia Regulations, 42/71.

24 Insurance Act, supra, footnote 22, at s. 2500.

25 B.C. Royal Commission, op. cit., supra, footnote 1, at p. 714.

26 Ibid.

27 Insurance Act, supra, footnote 22, at s. 250J.

28 British Columbia Regulations, 42/71.

29 B.C. Royal Commission, op. cit., supra, footnote 1, at p. 609-610.

30 Ibid.

31 Id. p. 633-636.

32 Id. p. 622-623.

33 Id. p. 609-613.

34 Id. p. 610.

35 Ibid.
36 Ibid.


38 B.C. Royal Commission, op. cit., supra, footnote 1, at p. 611.

39 Ibid.

40 Ibid.

41 Id. p. 612.

42 Id. p. 613.

43 Ibid.


45 B.C. Royal Commission, op. cit., supra, footnote 1, at p. 699.

46 Insurance Act, supra, footnote 22, at Second Schedule, S.B., Def.

47 Id. S. 248(1).

48 Id. S. 231.

49 Id. S. 248(3).

50 Id. S. 246.


52 Ibid.

53 Insurance Act, supra, footnote 22, at Second Schedule, S. B.

54 Id. SS. 2, Part I.
55 Id. SS. 2, Part I, B(3).
56 Id. SS. 2, Part I, A.
57 Ibid.
58 Ibid.
59 Id. SS. 2, Part I, B(8).
60 British Columbia Regulations, 151/71.
61 Insurance Act, supra, footnote 22, at Second Schedule, S. B., Part II.
62 Ibid.
63 Ibid.
64 Ibid.
65 Ibid.
66 Ibid.
67 Id. S, B(1).
68 Medical Care Act, supra, footnote 44.
69 B.C. Royal Commission, op. cit., supra, footnote 1, at p. 623.
70 Insurance Act, supra, footnote 22, at Second Schedule, S.B., Excl.
71 Ibid.
72 B.C. Royal Commission, op. cit., supra, footnote 1, at p. 624.
73 Id. p. 624-629.
74 Id. p. 625.
75 *Id.* p. 620-621.

76 *Id.* p. 625.

77 *Id.* p. 628.

78 *British Columbia Regulations, 42/71.*

79 *Motor Vehicle Act, supra,* footnote 17, at s. 15.

80 *British Columbia Regulations, 15/70.*

81 *Motor Vehicle Act, supra,* footnote 17, at s. 4.

82 *Contributory Negligence Act,* S.B.C. 1970, c. 9, s. 1.

83 *Motor Vehicle Act, supra,* footnote 17, at s. 12.

84 *B.C. Royal Commission, op. cit., supra,* footnote 1, at p. 629.

85 *Motor Vehicle Act, supra,* footnote 17, at s. 2(2d).

86 *B.C. Royal Commission, op. cit., supra,* footnote 1, at p. 629.
CHAPTER V

FOOTNOTES

1 Province of British Columbia Royal Commission on Automobile Insurance, Queen's Printer, 1968, p. 606.

2 Id. p. 401.

3 Id. p. 607.

4 Id. p. 121-122.


6 B.C. Royal Commission, op. cit., supra, footnote 1, at p. 182.

7 Id. p. 181.

8 Id. p. 183-185.

9 Id. p. 186-187.

10 Id. p. 200-201.


12 I.B.C. Submission, op. cit., supra, footnote 5, at p. 3.

13 Independent Insurance Conference, Submission to the British Columbia Automobile Insurance Board, Jan. 6, 1972, p. 4.


19 I.B.C. Submission, op. cit., supra, footnote 5, at p. 3-4.

20 Id. p. 8.

21 Id. p. 3.

22 Ibid.


24 Ibid.

25 B.C. Royal Commission, op. cit., supra, footnote 1, at p. 237.

26 British Columbia Regulations, 43/71 Definitions.

27 Per Mr. Kenneth Malthouse, B.C. Manager of I.B.C. and the Director of the T.V.I.F.


30 Ibid.

31 B.C. Royal Commission, op. cit., supra, footnote 1, at p. 304-305.

32 Id. p. 305.


34 B.C. Royal Commission, op. cit., supra, footnote 1, at p. 305.

36 Ibid.


38 B.C. Royal Commission, op. cit., supra, footnote 1, at p. 354.


40 Ibid.


42 Id. p. 6.


44 No Fault Car Insurance Cut, op. cit., supra, footnote 28.

45 Per Mr. W. H. Day, Secretary of the Board.

46 C.U.A. Submission, op. cit., supra, footnote 11, at p. 11.


50 British Columbia Regulations, 43/71, Special Provisions, Definitions.

51 Id. Definitions, S. 1.

52 Id. Part II of SS. 2.

54 *B.C. Royal Commission, op. cit., supra*, footnote 1, at p. 54.

55 *Id.* p. 76.

56 *Id.* p. 74 and 78.

57 *British Columbia Regulations, 43/71*, S. 7.

58 *Id.* S. 3.

59 Of Guild, Yule, Schmitt, Lane, Hutcheon and Collier.

60 *British Columbia Regulations, 43/71*.

61 *B.C. Royal Commission, op. cit., supra*, footnote 1, at p. 113.


63 *Id.* p. 98.


65 *Insurance Act, supra*, footnote 15, at s. 223, Statutory
Condition 6(3).
CHAPTER VI

FOOTNOTES


3 *Id.*, S. 54(5).

4 Per Mr. Arthur Sharpe, Administrative Officer, Driver Licence Division, Motor Vehicle Branch, Victoria.

5 *Ibid*.

6 Province of British Columbia Royal Commission on Automobile Insurance, Queen's Printer, 1968, p. 413.

7 *Ibid*.

8 *Ibid*.


10 *Ibid*.

11 Klein, David, and Waller, Julian, *Causation, Culpability, and Deterrence in Highway Crashes*, Dept. of Transportation, 1970, p. 120.

12 *Ibid*.


19 Tarrants, William, op. cit., supra, footnote 9, at p. 55.


21 Id. p. 710-715.

22 Ibid.


24 Id. p. 222.

25 B.C. Royal Commission, op. cit., supra, footnote 6, at p. 414.


28 Stonnex, Kenneth, op. cit., supra, footnote 20, at p. 709.


31 Id. p. 615-616.
32 Id.

33 Id. p. 617.

34 Id. p. 616.

35 Sharpe, Arthur, supra, and Vancouver Police, Traffic Division Statistics (not reported).

36 Klein, David, and Waller, Julian, op. cit., supra, footnote 11, at p. 75.


39 B.C. Royal Commission, op. cit., supra, footnote 6, at p. 417.


41 AMA, Alcohol and the Impaired Driver. 1968, p. 7.

42 Klein, David, and Waller, Julian, op. cit., supra, footnote 6, at p. 417.

43 Tarrants, William, op. cit., supra, footnote 9, at p. 57.

44 Klein, David, and Waller, Julian, op. cit., supra, footnote 11, at p. 80-81.

45 B.C. Royal Commission, op. cit., supra, footnote 6, at p. 416.


48 Klein, David, and Waller, Julian, op. cit., supra, footnote 11 at p. 82-83.
49 B.C. Royal Commission, op. cit., supra, footnote 6, at p. 428.

50 Klein, David, and Waller, Julian, op. cit., supra, footnote 11, at p. 83-84.

51 Id. p. 84-86.

52 Id. p. 88, citing Waller and Goo Study (unreported).


58 Haddon, William, op. cit., supra, footnote 30, at p. 614.


60 Ibid.


62 Ibid.

Klein, David, and Waller, Julian, op. cit., supra, footnote 11, at p. 129.

Id. p. 118.

Id. p. 129.

Haddon, William, Suchman, E., and Klein, D., op. cit., supra, footnote 55, at p. 496.


Ibid.

Ibid. p. 434.


Ibid.


Ibid.

Opinion given during an interview.

Per Mr. Harry Petrie, Corporal of the Vancouver City Police, Traffic Division.


Klein, David, and Waller, Julian, op. cit., supra, footnote 11, at p. 137.


Lawton, Lawrence, op. cit., supra, footnote 16, at p. 76.
81 Id. p. 78-79.

82 Klein, David, and Waller, Julian, op. cit., supra, footnote 11, at p. 133.

83 Id. p. 134-135.


85 Keeton, Robert, and O'Connell, Jeffrey, op. cit., supra, footnote 77, at p. 248.


87 B.C. Royal Commission, op. cit., supra, footnote 6, at p. 98.


90 Winters vs British Columbia Electric Railway Co. Ltd. (1911), 15 B.C.R. 81.

91 McLure vs The General Accident Assurance Co. of Canada (1924-25), 35 B.C.R. 33.

92 Sharpe, Arthur, supra, footnote 4.

93 Keeton, Robert, and O'Connor, Jeffrey, op. cit., supra, footnote 77, at p. 252-253.

94 Id. p. 253.


CHAPTER VII

FOOTNOTES


4 Province of British Columbia Royal Commission on Automobile Insurance, Queen's Printer, 1968, p. 200-201 and 381 and see supra p. 90.

5 Id. p. 575.

6 Id. p. 569-571.


8 B.C. Royal Commission, op. cit., supra, footnote 4, at p. 35.

9 Id. p. 573.


12 B.C. Royal Commission, op. cit., supra, footnote 4, at p. 578.

13 Id. p. 376.

14 Id. p. 461-462.

Id. p. 19.


Ibid.

Weiler, Paul, "Groping Towards a Canadian Tort Law; The Role of the Supreme Court of Canada," (1971), 21, Univ. of Toronto L.J. 279, 280.


Id. p. 129-130, quote from U.S. Congressional Record, 92nd Congress, 1st Session, 1971, Vol. 117, No. 22.


Id. p. 130-133.

Weiler, Paul, op. cit., supra, footnote 19, at p. 278.

Ibid.


Ibid.

Id. p. 12.

Id. p. 13.


34 Per Kenneth Malthouse, Manager of Insurance Bureau of Canada in B.C.


36 *Supra*, p. 108-110.

37 Per Mr. H. Midgley, Inspector of Insurance, Vancouver.


40 *Ibid*.


42 *Id.* p. 312-318.


50 R.S.S. 1965, c. 409, S. 21, as amended.


53 Keeton, Robert, and O'Connell, Jeffrey, op. cit., supra, footnote 51, at p. 250.

54 Calabresi, Guido, op. cit., supra, footnote 52, at p. 269.

55 Thorpe, Philip, op. cit., supra, footnote 41, at p. 328-329.


57 Thorpe, Philip, op. cit., supra, footnote 41, at p. 329.


59 Supra, p. 102.


61 Id. p. 380.


63 Per Dr. Christoph Haehling Von Lanzænauer, Professor, School of Business Administration, U. of Western Ontario, who
is currently studying the Canadian Insurance Industry.

64 Per Mr. J. P. Brown, Executive Officer of Saskatchewan Government Insurance Office.


66 *Id.* p. 21-22.


70 *Id.* p. 726.


72 *Id.* S. 250P.

73 *B.C. Royal Commission, op. cit.*, *supra*, footnote 4, at p. 35.

74 Finlay, Gordon, *op. cit.*, *supra*, footnote 1, at p. 57.

75 *B.C. Royal Commission, op. cit.*, *supra*, footnote 4, at p. 717.

Copyright © 2001 by ABC Publishing Inc.

CHAPTER VIII

FOOTNOTES


2 Workmen's Compensation Act, S.B.C. 1968, c. 58, S. 79.


4 per Mr. Kenneth Malthouse, Manager of I.B.C. in B.C.


6 Insurance Act, S.B.C. 1969, c. 11, s. 2500.


8 Income Tax Act, S.C. 1970-71, c. 63, s. 6 (1)f and s. 56 (1)a.
BIBLIOGRAPHY

Books and Studies


6. Department of Transportation Studies on Automobile Insurance and Compensation, U.S.A., 1970:

   a) *Comparative Studies in Automobile Accident Compensation*.
      
      i) Harris, Donald, "Analysis of the British Auto Accident Compensation System", p. 65.


      iii) Linden, Allen "Automobile Insurance Breakthrough in Canada", p. 149.

   iv) Pfennigstorf, Werner, "Analysis of the German Auto Compensation System", p. 33 and

b) Klein, David and Waller, Julian, Causation, Culpability and Deterrence in Highway Crashes,

c) Public Attitudes Toward Auto Insurance.


a) Campbell, B., "The Effects of Driver Improvement Actions on Driving Behavior", P. 638,


c) McMonagle, Carl, "The Effect of Roadside Features on Traffic Accidents", p. 217 and


Submissions, Reports and Statistics


11. *Province of British Columbia Royal Commission on Automobile Insurance, Queen's Printer, Victoria, 1968*. 


Articles and Periodicals


33. Smith, W., "Drinking and Driving", (1960-61) 3 *Criminal L.Q.* 65.


Statutes and Regulations


2. British Columbia Regulations, 15/70; 41/71; 42/71; 43/71 and 151/71.


7. Florida Automobile Reparations Reform Act, c. 71-252.


12. Insurance Act, S.O. 1971, c. 84.


Cases

4. Butterfield vs Forrester (1809) 103 E.R. 926.
5. Case of Thorns (as reported in Bessey vs Olliot & Lambert (1681), 83 E.R. 244).
Experts who supplied information and opinion

1. Mr. Jim Attridge, Manager of the Vancouver Safety Council, Vancouver, B.C.


3. Mr. W.H. Day, Secretary of the British Columbia Automobile Insurance Board, Victoria, B.C.

4. Dr. Christoph Haehling Von Lanzcnauer, Professor School of Business Administration, University of Western Ontario, London, Ont.

5. Mr. Ian Henley, President of B.C. Claims Managers and member of Insurance Committees of B.C. Bar Association, Claims Manager of Unigard Mutual Insurance Co., Vancouver, B.C.

6. Mr. Kenneth Malthouse, Manager of I.B.C. for B.C. and Director of T.V.I.F., Vancouver, B.C.

7. Mr. H. Midgley, Inspector of Insurance, Dept. of the Attorney-General, Vancouver, B.C.

8. Corporal Harry Petrie, Vancouver City Police-Traffic Division, Vancouver, B.C.

9. Mr. Gilbert Schmitt, Law partner in firm of Guild, Yule, Schmitt, Lane, Hutcheon, & Collier, Vancouver, B.C.

10. Mr. Arthur Sharpe, Administrative Officer, Driver Licence Division, Motor Vehicle Branch, Victoria, B.C.

11. Mr. A. Schwaia, Senior Underwriter, Wesco Insurance Co., Vancouver, B.C.

12. Mr. C.L. Wilcken, Actuary of I.B.C., Toronto, Ont.