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Current trends in Canadian Automobile Insurance [1]

by

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In Canada, the evolution of automobile insurance shows a rather interesting trend. There is a marked desire for change, but at the same time the kind of opposition which is commonly observed in countries where the law of negligence governs automobile claims. Significantly enough, these various pressures are brought to bear without hindrance but do not have, for all that, the same effect throughout the country. Each of the ten provinces is free to act as it pleases in matters relating to contracts,[2] since the Constitution leaves the central government without any specific powers in such

[1] Paper presented in Chile, last November, to the members of the XIIth Hemispheric Conference.

[2] Nova Scotia, New Brunswick, Quebec, Ontario, Manitoba, British Columbia, Prince Edward Island, Alberta, Saskatchewan, Newfoundland.

matters. Throughout the years, a modus vivendi has been arrived at. In spite of more and more restrictive interpretation of the Constitution, first by England's Privy Council and then by Canada's own Supreme Court, it is now general practice to acknowledge the central government's authority[8] on the management and operations of insurance companies coming under its jurisdiction. This has allowed the Federal authorities to exercise adequate supervision over most
246 insurers. On the other hand, the central government has had to relinquish to the provinces policy wording and rating, both fields being governed by civil law which the Constitution leaves entirely to the provinces. Thus a potentially chaotic situation has gradually fostered an undoubtedly smooth (albeit somewhat complicated) arrangement, with the provinces furthermore retaining control over insurers whose operations are meant to remain within the licensing province. On the whole, things go well enough, co-operation and goodwill being the guiding principles. However, each provincial body is free to develop its own initiatives, which explains the variety of the plans and influences we are about to study.

Generally speaking, each province has the right to set up whatever rules it finds best suited to its requirements in connection with insurance wordings. Thus, until recently, eight of the ten provinces had the same policy, while one (Saskatchewan) had decreed compulsory insurance, by the same token brushing aside the law of negligence at the primary level, and another (Quebec) had a policy quite similar to that of the other eight but with a few peculiarities more or less catering to its Code of Civil law. As you know,

[8] But not on contracts or tariffs, however. Thus, we are faced in Canada with this rather paradoxical situation whereby those who exercise statistical control over Company Management and Operation, have no influence on the sources and importance of income received through the insurance operations themselves.

the Province of Quebec is one where the language and legal customs and procedures are predominantly French. The complications born of all this can well seem appalling, especially in view of Canada's immensity, requiring 4 days and 5 nights of travelling by train to cross from one ocean to another. True enough, but this diversity of powers also allows for a diversity of solutions. To better understand this, one must think of Canada in terms of two zones of influence. One comprises the Prairies and Western provinces such as British Columbia, Alberta, Saskatchewan and Manitoba, where the trend is towards change, be it real or merely in the offing. In that zone, tradition plays a minor role and new ideas are free to move in through wide windows uninhibitedly — if often undiscriminately — open to the future. These provinces usually act as gateways through which new concepts ultimately make their way into the more conventional circles of the East. The second zone is made up of the Eastern provinces where the thinking is against too radical an evolution. Changes take more time to develop, the tendency being to improve the present form by adding voluntary benefits in certain cases where the law of negligence can be partly corrected. It must be noted here that the pace towards change is definitely quicker in socialisticly-inclined provinces, although even then the government does not eliminate competition with private insurers, except in Saskatchewan where the primary level is exclusively handled by a state-owned firm.

Let us now look at the main aspects of the evolution, which will enable us to observe how and when the Canadian experience shows originality.

The major item is, thus, the tendency to discard, partly or entirely, the law of negligence in matters of claims settlement. This is what Saskatchewan has been doing since 1946.

At that time, the government instituted compulsory insurance and created an accident insurance plan allowing for settlement of injuries without the need to discuss anything but quantum. Already at that time, there was the kind of thinking which was later to be advocated in the U.S.A.[4] by Professors Keeton and O'Connell and, in France, by Professor Tunc. Recently, the province of British Columbia has, at least up to a certain point, fallen into step with Saskat-
248 chewan. As for Manitoba, following his election to power, the Prime Minister has announced his intention to revamp his province's automobile insurance laws along the lines of the other Western provinces. There is some possibility that Alberta may do likewise.

Let us first inquire into the nature of the various steps taken so far. They vary from one Western province to another, but all share one common feature: the intention to make sure that everyone has insurance and the desire to arrange for every claimant to be indemnified up to a given point without any need to prove a third party's liability. There is also an obvious desire to put an end to unfair settlements and to excessive delays in the hearing of court cases.

Here, in regional order, is an outline of the plans in force.

I — First, in Saskatchewan

Saskatchewan's initiative tends mostly:

i) To arrange for people injured in auto accidents to be indemnified without having to prove fault on the part of a third party. Overall coverage is $10,000 with $5,000

[4] The Basic Protection Plan, which is an attempt to correct the flaws in the existing rules, that is to say, at least in the opinion of its authors, their « inadequacies, delays, injustices, excessive practices and corruptions. »

applicable to the death of the head of a family and $1,000 to each dependent. If the accident gives rise to permanent disability, compensation is based on a schedule of benefits appearing in the Act [6] but subject to a limit of $4,000. There is also provision for temporary disability in the form of a weekly indemnity of $12.50 or $25 depending on whether the disability is partial or total.

ii) To provide for the repairs to motor vehicles involved in accidents, regardless of fault, there being a deductible which varies according to the kind of vehicle; for instance, it is of $200 for a private passenger car or a farm truck.

iii) Furthermore to provide Public Liability insurance on the basis of $30,000 for bodily injuries and $5,000 for property damage. Payments made under sections II and III — outlined above — of the Act are deductible from these limits, so that in effect, overall coverage for any one accident is limited to $35,000. So much so that any amount paid by virtue of the hospitalisation or health insurance plans of the province must be refunded by the claimants.

On the whole, the coverage is minimal, without any thought given to the question of negligence. People are indemnified not because a third party is liable towards them but simply because, having been involved in an accident, they have sustained damages which must be repaired. This does not deprive the injured party of any rights he may have against the author of the accident, over and above a certain level. So, long before it was proposed in the U.S.A. by Professors Keeton & O'Connell or, in France, by Professor Tunc, Saskatchewan had a system of compensation without fault. In short, the philosophy behind it is a follows: motor vehicles present a hazard whose effects call for insurance,

[6] The Saskatchewan Automobile Accident Insurance Act, 1946.

and liability concepts must be set aside as obstacles to the main requirement which is the reparation of such damages.

As is often the case with government sponsored plans, the limits of liability are unquestionably inadequate. The Act therefore goes on to authorize voluntary insurance through its governing body or private insurers, in the form of an excess package policy providing for:

250 a) An increase of from $30,000 to $40,000 of the bodily injuries limits pertaining to the primary coverage.

b) Excess public liability coverage for B.I. and P.D. up to « inclusive » limits of $500,000.

And here is where the law of negligence comes back into its own.

If the assured so wishes and agrees to pay the required premium, the new policy may also eliminate the original deductible of $200 (more or less), in all but collision or upset claims.

Without going into too such detail, we wish to note, by way of a résumé:

1) that the province of Saskatchewan came out with a real « first » in automobile insurance as early as in 1946. It enacted a governmental insurance plan, made it compulsory within its boundaries and thus did away with the hitherto sacro-saint law of negligence. And this up to a certain point beyond which it may be brough back into play when necessary or possible;

2) that although the province discarded the law of negligence in respect of bodily injuries and damages to the automobile, again as early as in 1946, it kept the practical applications of this new system down at a relatively low level,

allowing the law of negligence to step in as soon as the minimum limits are exceeded;

3) to carry this new law to its logical conclusion, the government instituted a state-owned agency called the Saskatchewan Government Insurance Office. For all practical purposes, this is nothing short of an insurance company, operating along conventional lines, with an individual policy containing various exclusions closely resembling those to be found in the policies issued by private insurers. Just as the latter, the Saskatchewan Government Insurance Office has premiums, limits of liability and conditions all conforming to legal requirements; furthermore, it has reinsurance outlets. In short, it operates just as any full-fledged insurance company;

4) that for excess coverage, the government has given the taxpayers a choice between this government office and private insurers. Oddly enough, premium income is just about the same for both groups.

And now, for a quick look at the results of the said law, as revealed in a report to the Board of Inquiry set up in British Columbia in 1966.[6] Following is an except from the first volume (page 42) of the report:

1961-62	deficit	$ 382,965
1962-63	deficit	$ 993,169
1963-64	deficit	$ 752,818
1964-65	deficit	$ 573,618
1965-66	deficit	$ 991,273
1966-67	surplus	$ 54,380
1967-68	surplus	$1,770,047

Upon coming to power, in Saskatchewan, the Thatcher government took resolute steps to insure a healthier operation.

[6] Royal Commission on Automobile Insurance.

It ordered a rate increase which, in the normal course of events, proved sufficient to restore a safe balance and allow for a reserve such as can stabilize the rate structure, momentarily at least.

Regardless of what may be thought of the initiative taken by the Province of Saskatchewan, we believe that it should be acknowledged:

252 i) that the experiment is an interesting one, even though it may, to a certain extent, cater to negligence, thoughtlessness, and to some people's devil-may-care attitudes, since all concerned can at least rely on the benefits of the primary coverage, come what may.

ii) that even though compulsory coverage at the primary level offers a certain solution to the problem of indemnity, it is not a panacea:

a) because its limits are very low;

b) because it carries exclusions and finally because it cannot fully eliminate the law of negligence, which reappears beyond a certain amount. With its usual pusillanimity, the state only allows for benefits barely sufficient to cover minor, albeit the most frequent cases. So far, the schedule of benefits has just been adequate for the simplest cases. It has long been outdated. The plan is undoubtedly in tune with social reality but it is in our view quite out of proportion with present needs. This is what prompted the government to leave room for excess coverage, as we have just seen. At that level, it has no objection to competition between its plan and private insurance, a somewhat strange attitude no doubt related to strong lobbying on the part of private enterprise.

c) because it does not offer a solution to the problem arising out of drivers coming from outside the province.

II — The evolution of Automobile Insurance in British Columbia

In the province of British Columbia, the situation is a bit different, although it was still, at least partly, akin by intent to the Saskatchewan plan. After having charged a Board of Inquiry with the task of determining what new attitudes should be taken on Automobile Insurance, the Government has adopted in 1969 the following policy:

a) Automobile insurance is compulsory within the province for a limit of $50,000 for bodily injuries; the liability for property damage may be limited by law to $250 when accidents occur between residents of British Columbia.[6a] Once it has been issued, no policy may be cancelled by the insurer.[6b] We have here two new provisions, of which the first one is quite serious, limiting as it does property damage coverage to $250; it seems that the legislating body has failed to grasp its shortcomings.

While maintaining claimants' legal rights to sue third parties, the Act provides for automatic compensation without fault, along lines which, briefly, are as follows:

i) If the assured is the head of a family, $5,000 for death plus $1,000 per surviving child and a weekly indemnity payable for two years; [7]

ii) A weekly indemnity of up to $50 in the case of total disability, such indemnity being payable, in certain circumstances, up to the age of 65 years; payments made after that age will be reduced by the amounts received as governmental pensions. Finally, rehabilitation costs will be included in the

[6a] This was the original intention. Pending the results of further inquiries, this new concept has been temporarily set aside.

[6b] Again this has been changed. The new policy has since been issued with a cancellation clause of fifteen days.

[7] In the case of the head of a family, it is $50 per week, plus $10 per surviving child.

medical expenses and shall be covered by the new policy up to the limits of the liability section. This will presumably be an expensive feature for the insurers.

Thus, although the law of negligence is maintained, the injured may count on indemnities which — restricted though they may be — are paid without any argument. Again, this is a compromise between traditional ideas and new concepts.

b) For the basic coverage, a maximum tariff is to be set each year by a governmental commission.

c) Although automobile insurance is still in the hands of private insurers, the government has reserved the right to nationalize the industry if it fails to live up to its obligations. This is a Damocles' sword hanging over every insurer's head.[8]

[8] It is rather interesting to read the objection voiced to state insurance in British Columbia by the Board of Inquiry of British Columbia in their report: « Taking all of these facts into consideration, the Commissioners have concluded that:

(a) the 1946 social and economic environment of Saskatchewan which was significant in the introduction of the very workable government plan of automobile insurance is quite different from that which exists in British Columbia today.

(b) under an exclusive governmental fund there would likely be rigidities and more limited innovation which would more than off-set reductions in the percentage of the premium dollar siphoned away in expenses.

(c) the magnitude of the savings will in any event be significantly reduced under the new approach to compensation recommended in this Report.

(d) there are external diseconomies inherent in the introduction of an exclusive government fund for automobile compensation, including a reduction in the servicing available to the consumers of other lines of insurance and finally that:

(e) effective competition is, in fact, attainable in automobile insurance, and that the industry is not a natural monopoly. The injection of such competition and its preservation is possible and will result in great improvements in efficiency and fairer pricing.

The Commission, based on its study of the advantages and disadvantages of each method outlined in this Chapter, recommends that, initially, the opportunity be given to the private insurers solely to market in British Columbia the Basic Policy, the Supplementary Insurance, and the Collision Coverage.

However, if the industry shows a disinclination to participate in the offering to the public of the new types of contracts recommended by the Commission, and under the conditions which it has proposed, or other conditions satisfactory to government, or at a later date shows a disinclination to compete, then the Government of British Columbia should take over the sole selling in British Columbia of all automobile insurance. »

III — Initiatives taken in Common Law provinces, except British Columbia and Saskatchewan, and in Quebec

As already mentioned, the tendency in these provinces has been to try to adapt the automobile insurance contract to the new « compensation without fault » concepts without giving up the conventional forms. Just as used to be done in the case of medical expenses, in consideration of a premium anyone having sustained an automobile accident is allowed:

a) Reimbursement of medical, surgical, dental, ambulance, nursing and funeral expenses up to the amount subscribed by the assured;

b) Indemnities which vary according to the extent of the injuries, notwithstanding the absence of fault on the part of the assured. These are based on set percentages of the limit chosen by the insured. In case of death occurring within 90 days of the accident, certain amounts are paid to the surviving relatives as per a schedule appearing in the policy.

c) A weekly indemnity in the case of total disability for a maximum of four years.

A special coverage is added to the foregoing in the case of damages caused by uninsured third parties. However, it does not apply in Canada, where there are already unsatisfied judgment funds available to automobilists, passengers or pedestrians.

These are optional benefits which may be added to a standard liability policy. For bodily injuries, the law of negligence is not done away with. Additional benefits are simply thrown in, to be paid under certain conditions and without any argument as to whether or not the assured may be liable. There is no question of discarding the present practice; the insureds are simply offered amounts which are voluntarily

paid by the insurer, either for incurred costs, or for certain disabilities or for death. All things considered, it is a sort of personal accident coverage latched on to an existing automobile liability policy.

As may be seen, trends vary considerably from one province to another, going from partial rejection of the law of negligence to its full retention, albeit mitigated by voluntary payments of premium based benefits. All in all, there is a system in Canada which, while something of a hybrid, is nevertheless aimed at the correction of excessive practices. Where is it heading to? Probably a combination plan, to remain so as long as trouble is experienced in properly assessing the overall effects of the discarding of the law of negligence. The human overtones and apparent logic of the Keeton-O'Connell and Tunc concepts are most attractive indeed. They do seem, at first sight, capable of producing a better solution for the average case. Theoretically, it may appear as if claims would be settled more expediently, and that a measure of standardisation could be achieved through new rulings.

It is not said, however:

a) that operating costs will not be higher; at least on that score, some actuarial representations are, to say the least, sobering;

b) that by being deprived of substantially higher awards in cases where the third party is liable, the assured is not inexcusably victimized. The impediment is not absolute, but the insured's requirements must be higher than certain standards before he can or must sue.

However, the Saskatchewan experiment is, theoretically at least, a valid one. It seemed to me that its record could

well be found worthy of displaying here, as evidence of a first attempt.

There is another Canadian initiative in the automobile insurance field, which is worth mentioning here. It is known under the name of « Facility », a carefully chosen euphemism meant to avoid embarrassing the powers that be.

For all practical purposes, the Facility is a reinsuring arrangement allowing the apportionment among all insurers operating in a certain area of risks falling under the following classes:

1. Those classified by the insurer as being of an inherently dangerous nature, such as taxi drivers, drivers of less than 25, or more than 65 years of age, etc.;

2. Drivers whose individual experience is poor (suspended licenses, civil or criminal judgments for violations to Motor Vehicle Acts or traffic by-laws, liquor, speeding, driving without a license, etc.).

In the first case, the insurer used to retain 15 per cent of the risk. This has been increased recently to 22 per cent, the rest being spread among all other insurance companies in the province, each being assigned a pro-rata share based on the ratio of its own automobile business to the total amount of such business written in the province. In the second case, reinsurance is total. In all cases, the assignment is automatic, as governed by a central office apportioning premiums and losses alike by means of a computing system.

Born of political necessity, this system has made a good showing in practice. In fact, it is insurance carried to its most logical conclusion as it means spreading out the risk among all insurers. So long as rates are high enough, the operation should be a profitable one. What happens in practice however

is that the rates are inadequate. In the first case (risks of an inherently dangerous nature) the regular rate is applied; in the second case, it is upped anywhere from 10% to 100% but here again the premium income seems, on the whole, too weak, producing a less than satisfactory loss ratio. On the other hand, automobile risks are no longer subject to be rejected as was sometimes the case under the previous system called the « Assigned Risk Plan » which, from a public relations point

of view, was not too good. Although a basically political device, hurriedly resorted to under public pressure on the eve of an election, the « Facility » has been proven to be an excellent arrangement in terms of technical expediency. It could be a healthy form of insurance, given proper tarifs and if smaller companies did not use it as a means of increasing their business at the expense of the larger ones by the sole device of out-bidding competition. The large companies have taken care of that problem by arranging for a reduction in the reinsurance commission and by forcing the ceding company to retain a higher proportion of the risk; to such an extent that the operation should be partially turned into a burden for the original insurer, in relation to its costs.

Gentlemen, I have given you an outline of the evolution of Canadian automobile insurance in the past few years. I trust I have not erred in presuming that its originality could be of interest to you. Outside of the above mentioned features, Canadian automobile insurance is hardly anything but conventional, with lean years, in terms of underwriting results, succeeding profitable ones, especially when competition is too bitter to allow for the required rate increases. But is this not the common lot of insurers, wherever they are so numerous as to give rise to unbridled competition, which could well be disastrous if tariffs did not follow their usual see-saw pattern

tempered, true enough, by the authorities. The latter do not hesitate to step in, whenever the insurers' pessimism or requirements call for too radical an increase. Thus in our society, automobile insurance has become a thing both feared and dearly held on to, which is as well illogical and profoundly human.

September 1969.

HOW THE COST OF LIVING AFFECTS THE CAR INSURANCE INDUSTRY IN CANADA

I.B.C. Montreal

La hausse du coût de la vie ne peut pas ne pas exercer une influence sur le coût de l'assurance automobile. L'augmentation des salaires entraîne celle du prix des voitures, celui des réparations déclenche la hausse de la note du garagiste pour les pièces et la main-d'œuvre. Tout s'enchaîne dans ce domaine comme dans les autres. L'inflation a partout le même résultat, quelle qu'en soit la forme au niveau des prix ou des tribunaux. Surtout quand la fréquence des accidents augmente avec la circulation plus intense et quand les arrêts des tribunaux apportent leur part qui n'est pas négligeable. Et c'est ainsi qu'à son tour le tarif automobile augmente. On n'y peut malheureusement rien, car tout se tient. Mais pourquoi reprocherait-on aux assureurs d'augmenter leur tarif de dix pour cent en quatre ans si l'on accepte que le prix des services médicaux passe de 100 en 1965 à 122 en 1969, que les salaires en général soient de 30 pour cent plus élevés, que le prix d'un garde-boue soit de 35 pour cent plus haut et que la note du dentiste augmente de près de 22 pour cent. C'est ce que démontrent les graphiques que contient la très intéressante plaquette que vient de sortir en anglais Insurance Bureau of Canada. Pour en convaincre les francophones, on voudra sans doute avoir un texte français. En attendant, nous signalons l'autre à nos lecteurs.