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See table of contents

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L'Assurance automobile en Alberta

par

J. D.

Dans presque toutes les provinces du Canada, on enquête en ce moment sur l'assurance automobile. On se pose diverses questions comme celles-ci: la conception actuelle ne peut-elle être améliorée, comment pourrait-on mieux traiter l'accidenté, l'automobiliste et la personne transportée, peut-on réduire le coût de l'assurance, l'État doit-il nationaliser l'assurance, doit-il imposer l'assurance obligatoire ? Tout naturellement, les assureurs s'inquiètent de ce bouillonnement. Autrefois, la All Canada Insurance Federation intervenait pour eux. Cette fois, c'est I.B.C. (ou le Bureau d'Assurance du Canada) qui présente leur point de vue aux gouvernements et au public. I.B.C. vient de préparer un long mémoire pour le Comité parlementaire de l'assurance automobile de la province d'Alberta[1]. C'est un des meilleurs qu'il nous ait été donné de lire. Ne sachant pas qui en est l'auteur, il nous est impossible de l'en féliciter. Aussi nous contenterons-nous de reproduire ici les conclusions. Il y a là, croyons-nous, d'excellentes suggestions et un aperçu général de la situation qui mérite qu'on le lise. Le voici. Il s'agit des articles 75 à 91 qu'on trouve en pages 21 à 25:

RECOMMENDATIONS

75. The insurance industry has some doubts as to the propriety of specific recommendations with regard to insurance coverage being put forward by what is clearly a deeply self-interested sector of the economy. It believes the members of the Legislative Committee will wish to reach their own conclusions as to the form of insurance that Society, in general, and the citizens of Alberta, in

[1] Memorandum on Automobile Insurance prepared for the Legislative Committee on Automobile Insurance of the Province of Alberta.

particular, wish to have available to them, and are prepared to pay for. The industry is prepared to assist the Legislative Committee in its effort to express in practical form what it concludes is the wish of the citizens of Alberta. It can be taken for granted that the industry will make insurance available on the indicated pattern and that competition between insurers will ensure that cost will be kept to the minimum.

76. The past few years have seen much discussion on the pros and cons of the present scheme of insurance. This dialogue has developed along lines that the current system can be costed at less than at present by the elimination of unnecessary claims handling practices and the elimination of certain losses considered to be excessive. Nowhere have these concepts been put into practice and we have no statistical evidence to offer in their support.

The industry has had no opportunity of ascertaining likely public reaction to these suggestions; it certainly does not wish to be thought of as putting them forward as exclusive either of each other or of other possible modifications of the present insurance system. These suggestions relate to possible means of reducing and containing the loss and expense content of the present system.

77. A major part of the cost of automobile insurance is involved with the payment of and expense costs related to third party property damage claims. There are various modifications of this statutory liability which might be considered.

This could involve the elimination of responsibility for third party property damage on claims involving only motor vehicles, i.e. on a vehicle to vehicle basis.

Another alternative would be the complete elimination of all responsibility for damage to property of others.

Other modifications for third party property damage could be as follows :

(a) impose a nominal responsibility on the individual — e.g. $100. This minimal property damage liability would not be such as to justify recovery under the present Court system and such claims could very well be disposed of by government appointed assessors sitting locally. Claimants should be encouraged to present cases to the assessors without legal assistance.

(b) provide a deductible on third party property damage — e.g. $250. or $500.

(c) limit the individual's responsibility for third party property damage to some nominal amount, e.g. $500. and eliminate the right of subrogation over this amount.

78. The industry could make available to the insuring public a third party liability policy at a minimum limit of $50,000.00 covering bodily injury only but including on a mandatory basis the medical expense, death and disability benefits now available, or even some extension of them, along the lines proposed in British Columbia.

79. Physical damage coverage in respect of the automobile could be effected by the owner entirely at his own volition to cover broadly the same perils as are now covered under the « All Physical Perils », coverage presently approved by the Superintendent of Insurance of Alberta and to be subject to a deductible applicable to each and every occurrence which would be not less than a minimum figure to be specified by the Superintendent of Insurance.

80. In any of these variations the absence of any right of recovery for damage to an automobile could be reinforced by the imposition of a minimum deductible where the insurance elects to purchase any of the various physical damage coverage available on a direct basis. Thus the insured would always be required to absorb some part of the loss and safer driving would be encouraged.

81. A further suggestion relates to the « general damages » area of loss payments or « pain, suffering and inconvenience ». General damages represent a considerable portion of the money paid out in bodily injury liability settlements. No properly conducted Canadian survey has yet been made but based on American experience — modified for Canadian verdicts — it is probable that thirty-five to forty percent of the loss dollars fall in the general damage area. It has been said that there is an element of overpayment in this area which, if controlled and reduced, could go far in reducing and containing the overall cost of insurance.

82. The major problem of controlling « pain and suffering » as an item of damage is the possible reaction of the public if they really believe they deserve these monies because of the injuries sustained at the hands of a negligent driver. The public seems concerned over

the price of the product, i.e. the insurance policy. However, if a real concern is the value of the product relative to its cost then eliminating an element of damage that the public wants will reduce the value of the product along with the price and may tend to public dissatisfaction.

83. Most of the abuse attributed to general damages appears to be in the small claims areas. At least most commentators on the system have pointed to the « gross overpayment for minor injuries ». For the accident victim with minor injuries, and to present the possibility
16 of genuine cost reduction, we believe it proper to give consideration to limiting the amount collectible for « pain and suffering » simply because the victim has not suffered much. Consideration should be given to a formula related to the amount necessary for hospital and medical expenses resulting from the accident. For example, where the hospital and medical costs are $500. or less the formula might award a maximum payment of forty per cent of that amount for « pain and suffering » It might provide that for cases where hospital and medical expenses exceeded $500. there be allowed forty percent of the first $500. of such expenses plus one hundred percent of expenses in excess of $500. The formula should provide that these amounts would not be automatically paid but would rather be the upper limit for such an award. It might seem equitable that this type of limitation should not apply in cases of loss of a body member or permanent loss of a body function where even one hundred percent of the hospital and medical expenses might be inadequate.

84. 84. This suggestion appears to offer the possibility of

(1) Simplifying claims adjustment on relatively minor bodily injury cases — permitting greater cost control.

(2) Giving the public a more positive payment standard in minor cases.

(3) Preserving the present system for the more serious cases.

(4) Providing a system that fits in well with the new accident benefits.

85. Extreme caution is called for in any attempted pre-evaluation of the savings resulting from either, or a combination, of the foregoing suggestions. As has been indicated elsewhere in this memo-

randum, operation of the competitive free enterprise system would ensure that any reductions in overall cost which are secured as a result of changes in the scope of the automobile insurance policy will be passed back to the general public in the form of appropriately modified insurance premiums.

86. Accident benefits should be made mandatory to be included with all liability policies. The wider application of the offset provisions should mean a reduction in the additional cost. This is referred to in paragraphs (31) and (78) of this memorandum.

87. Alberta has a low claims frequency and a comparatively low average cost per claim. This is the reason why Alberta motorists pay relatively low rates for their insurance coverage. Albertans will wish to retain that position and even to improve on it by further reductions in claim frequency and in severity of claims.

88. It s recommended that Alberta take every step indicated by modern research into the subject to reduce the incidence and effect of automobile accidents. It should in particular have no hesitation in implementing

(a) permanent suspension or refusal to issue a license;

(b) strict enforcement and severe penalties for driving while suspended;

(c) a license review board without political, government or insurance affiliations;

(d) driver education, attitude oriented as well as skill oriented, for young and old;

(e) detection and swift punishment of the drinking driver.

89. The automobile insurance industry, although it is not compelled to do so by law, has voluntarily agreed to insure everyone wishing insurance who can register an automobile or who can obtain a driver's license. It is particularly for this reason that it is recommended that the license review board referred to in (c) above be authorized to listen to appeals from the insurance industry with respect to drivers with bad records.

90. Hospital services provided under the Alberta Hospitals Act are available as a matter of right to all citizens. At the present time the

plan has a right of action to recover from the person at fault in an automobile accident any amount paid out for treatment to injured victims. Those payments form part of the claims on which automobile insurance premium rates are based, so that the purchaser of automobile insurance is called upon to pay more than his fair share of the cost of hospital insurance. It is therefore recommended that Alberta enact legislation which would eliminate subrogation against automobile insurers.

18 91. The common law defense of inevitable accident poses a difficult question. It is recommended that study be given to this defense. The insurers who are members of the Insurance Bureau of Canada are not opposed to an equitable solution designed to relieve the hardship which can now be imposed on the victim by the pleading of this defense against a claim. It does however draw attention to the alternative hardship which will be imposed on the « innocent instrument » in respect of a claim which would otherwise be barred by the inevitable accident defense; and of course complete elimination of this defense increases to a minor, but nevertheless significant, degree the overall amount of automobile accident claims and therefore premiums.

Il nous a semblé qu'il y avait là des vues intéressantes, raisonnables. Même si certaines sont discutables, le lecteur lira avec curiosité, croyons-nous, cette étude charpentée d'un problème que l'on a tendance à traiter plus *émotionnellement*, comme disent nos amis anglais, que froidement comme il mériterait de l'être. Chose curieuse, on ne proteste pas quand le coiffeur double le prix de ses services en deux ans, quand le débardeur obtient trente pour cent d'augmentation de l'État parce que les navires s'accumulent dans le port et que l'Exposition a besoin de leurs cargaisons, quand le dentiste hausse ses honoraires, comme le médecin et tant d'autres. Quand il s'agit d'assurance, par contre, on ne veut pas admettre que le tarif puisse augmenter avec la fréquence des accidents et leur gravité et avec la hausse du sinistre moyen. Et cependant, il y a là des arguments valables. Les assureurs

se défendent comme ils peuvent. Il nous a semblé que le Mémoire de ceux d'Alberta était suffisamment intéressant pour que nous l'apportions au lecteur, même s'il ne s'agit que d'un extrait, comme une contribution valable à une question irritante.

Les suggestions vont de la limitation ou de la suppression de responsabilité pour les dégâts matériels aux tiers, au plafonnement des indemnités réclamées par l'accidenté pour les souffrances qu'il a subies à la suite du sinistre. Il faut retenir surtout, croyons-nous, qu'en Alberta également, on demande à l'État :

a) d'être plus sévère dans l'émission des permis;

b) d'être plus strict envers le conducteur dont le permis est suspendu et qui conduit quand même;

c) d'appliquer la loi dans toute sa rigueur.

Ce qui est la condition première de la diminution des abus, quelle que soit la province. Et dire que dès qu'un magistrat de Colombie Britannique met en doute la validité des textes régissant l'usage de l'alcoomètre, on en suspend l'application dans tout le Canada : les tribunaux prenant l'attitude qu'avant de mettre la loi à exécution, il faut être sûr qu'elle n'est pas entachée de nullité. Il y a là un scrupule valable au point de vue juridique, mais qui, psychologiquement et techniquement, nous ramène loin en arrière. C'est ainsi qu'une décision juridiquement défendable peut avoir des conséquences sociales déplorables.

Rapport annuel du Ministère des institutions financières 1968-69, Québec.

Créé à la suggestion de la Commission Parizeau, ce nouveau ministère groupe les services de contrôle de l'assurance-dépôts, des assurances, des Caisses d'Epargne, des Sociétés de fiducie, des Compagnies, des Valeurs mobilières. Son premier rapport est intéressant par ce qu'il note et annonce. J. H.