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Article abstract

Le 22 juin 1990, le parlement ontarien adoptait une loi créant un nouveau régime d'assurance-automobile. Cette loi donne suite à certaines recommandations du rappor Slater, déposé en mai 1986 et du rapport Osborne, déposé en février 1988. L'auteur explique de façon globale les enjeux de cette législation et, principalement, décrit la nature et les mécanismes de fonctionnement de ce nouveau régime, connu sous le nom d'*Ontario Motorist Protection Plan*.

The Ontario Motorist Protection Plan

by

Christopher J. Robey[1]

Le 22 juin 1990, le parlement ontarien adoptait une loi créant un nouveau régime d'assurance-automobile. Cette loi donne suite à certaines recommandations du rappor Slater, déposé en mai 1986 et du rapport Osborne, déposé en février 1988.

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A new and radically different system for the compensation of people injured in automobile accidents in Ontario will come into force on the 22nd June 1990.

At the time of writing, the legislation has just passed the legislature and final regulations remain to be issued. In addition, there remain many unanswered questions which will require action either from the courts or the regulators before their final determination. This text is therefore based only on the situation known at the time of writing, the beginning of June 1990.

Background

The seeds of the new system were sown in the upheaval of the Canadian insurance and reinsurance markets in the second half of 1985, which hit particularly hard the liability market.

In response to this situation, the government of the day set up a task force to seek out "solutions for cost and capacity problems in the property and casualty insurance industry in Ontario." This task

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force, known officially as the "Ontario Task Force on Insurance" and more commonly as the "Slater Commission," reported in May 1986.

As the title of the task force suggests, it dealt with the whole range of property and casualty insurance issues, not just automobile insurance. In fact, automobile insurance, including the wider issue of tort reform, took up only about 25% of the final report.

The prime recommendation of the Slater Commission on automobile insurance was that the government and the insurance
 industry work together to develop a framework for the private delivery of a complete first party no-tort system. A high threshold no-fault system was given as an alternative.

Along with this recommendation, the Slater Commission suggested rate regulation and standard rate classification systems for the industry, including the elimination of age, sex and marital status criteria.

In the meantime, the crisis in liability insurance was dying down, the industry, prodded by the government, having arranged to provide a secure market for difficult to place risks. The liability crisis had in any case been limited to commercial business and had not touched the personal lines market.

However, with the price of automobile insurance affecting mainly the consumer and fueled by an average 24% increase in premiums in 1986, discussions about this branch moved more strongly into the political arena. A rate freeze was imposed in April 1987 and automobile insurance was a major topic in the provincial election campaign of September 1987.

During the campaign, the premier of the province said that he had "a specific plan to reduce car insurance rates."

On winning the election with a majority government, he appointed a commission of inquiry under the Honourable Mr. Justice Coulter A. Osborne to inquire into "the tort system of compensation for injury by automobile accident and the consequences of the implementation of a no fault automobile accident insurance scheme." The instructions to the commission went on to deal with a variety of related issues, including the desirability of a threshold no-fault system, new dispute resolution

mechanisms and private versus public delivery of automobile insurance.

Mr. Justice Osborne submitted his report, known as the "Osborne Report," in February 1988.

Amongst the findings published in the Osborne Report were that pure no-fault and threshold no-fault systems provide superior compensation and rehabilitation benefits to the tort system. The commission also found that there would be a small reduction in premiums for a pure no-fault plan, but none for a threshold no-fault plan.

On the other hand, some merit was found in the tort system, both for its fairness and justice and its deterrent effect. Mr. Justice Osborne therefore felt that threshold no fault should be rejected because it is relatively inefficient and unnecessarily arbitrary and pure no fault should be rejected on fairness and deterrence grounds.

His alternative was to increase no-fault benefits to a level which would discourage tort cases, except where injuries are more serious, thus creating an artificial threshold.

Mr. Justice Osborne was particularly scathing about insurers, stating that "it has become apparent to me that legislation is required to control what I view to be demonstrably unacceptable claims and underwriting practices."

Recommendations in this area included short delay periods for the payment of no-fault benefits and substantial penalties for unfair claims practices, along with new dispute resolution procedures.

He also recommended the introduction of rate regulation.

Finally, he recommended that "the government of Ontario should not introduce public automobile insurance."

In the meantime, the government had introduced legislation to create the Ontario Automobile Insurance Board, with the power to set automobile rates and define new rating criteria.

Along with this, a rate increase of 4.5% was allowed, effective the 1st January 1988.

The Ontario Automobile Insurance Board Act, which was tabled in the legislature in November of 1987, created the Ontario

Automobile Insurance Board and required the Board to set rates which are just and reasonable and not excessive or inadequate, using rating classifications which did away with sex, age and marital status as considerations.

The Board determined that insurers should receive rates which would give them a return on equity of 12.5%.

The actuarial report prepared for the Board suggested that increases of up to 35% were necessary and submissions from individual insurance companies proposed rate increases generally ranging between 20% and 30%, although they went from a low of 5% to a high of 53%.

In the meantime, a further interim rate increase of 4.5% was authorized for the 1st August 1988, producing a cumulative increase of 9.2% for the year.

The Board finally approved rates which gave an average increase of 7.6%, but the changes in the classification system resulted in actual rate changes varying between a reduction of 65% and an increase of 85%.

This proved to be politically unacceptable. As a result, on the eve of the new rating system going into effect, the government changed the mandate of the Board, requiring it to review alternatives to the tort system. At the same time, a further rate increase of 7.6% was permitted effective the 1st June 1989.

Ultimately, a threshold no-fault system resulted.

Although Mr. Justice Osborne had rejected threshold no fault, many of his recommendations concerning no-fault benefits and dispute resolution mechanisms have been adopted in the new plan, and the onerous claims settlement requirements on insurers reflect his strong distaste for what he found to be the unreasonable practices of the industry.

The Present Situation

There are some 6,000,000 drivers in Ontario, driving about 4,700,000 vehicles and paying premiums of $3,600,000,000.

There are 200,000 accidents a year, causing injuries to 120,000 people. Statistics show that 70% of those injured were in no way to blame for the accident which resulted in their injuries.

The average annual premium is about $815, excluding insureds referred to the Facility Association, the market for high risk drivers.

The Facility Association expects in normal times to insure about 2% of all insureds in the province. However, in July 1989, it had 3.5% of the insureds and this is expected to have risen to about 5%.

This increase reflects the operating loss which insurers estimate they have had on Ontario automobile business of $142,000,000 in 1987, $408,000,000 in 1988 and $294,000,000 in 1989.

Since Ontario automobile premiums represent more than 25% of all property and casualty business written by private insurers in Canada, the impact of these results is of major importance.

It is into this setting that the Ontario Motorist Protection Plan is being introduced.

The Ontario Motorist Protection Plan

The new plan is a threshold no-fault system, with the threshold bearing a striking similarity to that which existed in Michigan between 1982, following the decision in *Cassidy* v *McGovern*, and 1986, when much of the *Cassidy* decision was reversed in *DiFranco* v *Pickard.*

It is anticipated that this threshold will eliminate about 90% of all tort cases, reducing the amount spent annually on legal fees from $500,000,000 to $300,000,000.

Rates for private passenger vehicles and commercial vehicles other than fleets are set by individual insurance companies, but must be approved by the Ontario Insurance Commission, which will come into being as a result of the merger of the Department of Insurance and the Automobile Insurance Board.

Insurers are permitted to increase their rates by an average of 8% in urban areas, which is basically the area around Toronto from Oshawa to Hamilton and north to Aurora, with no increase in other parts of the province. However, the government is also eliminating

the premium tax of 3% on automobile premiums and waiving the subrogation charge, in return for which the Ontario Hospital Insurance Plan undertakes not to subrogate against automobile insurers.

The net result of these changes is an effective increase for insurers of about 12.5% in urban areas and 4.5% in rural areas.

The existing rate classifications, including sex, age and marital status criteria, are maintained.

186 These increases are not expected to bring insurers up to a 12.5% return on equity, particularly since they are applied equally to all companies, regardless of their current rating levels.

Companies will be permitted to apply for further rate increases, so that over a period of three years or so, it is anticipated that a general averaging of prices will have occurred, giving each company the opportunity to aim for a 12.5% return on equity, presuming this level of return is maintained by the Commission. By the end of that period, it is expected that a new rating classification system will have been mandated, eliminating considerations of sex, age and marital status.

The plan will come into force on the 22nd June 1990 and all policies will automatically be changed on that date.

In addition to introducing the Ontario Motorist Protection Plan, the Ontario government announced a series of measures designed to reduce the number and cost of automobile accidents. These measures were:

- Increased fines for speeding and other traffic offences.
- Enhanced police enforcement on highways.
- Public education programmes to promote seat belts and the daytime use of headlights.
- Driver safety promotion in the workplace.
- New traffic management systems and equipment.

Although the plan is referred to as a "threshold no-fault" plan, it is not fully a no-fault plan. While coverage is available to everyone injured in an accident, regardless of fault, fault remains a

major consideration in rating, so that a significant deterrent effect is maintained.

The new policy provides the same coverage under the same sections as at present, however the nature of each coverage and their relative importance is changed to such an extent that the coverage must be looked at as completely new, rather than simply an adaptation of what has existed until now.

Accident Benefits

The prime source of recovery under the new plan will be the accident benefits section, a first party coverage. Benefits under this section are payable to anyone injured in an automobile accident in Ontario.

"Accident" is broadly defined as an incident in which the use or operation of an automobile causes, directly or indirectly, physical, psychological or mental injury. It also includes damage to such things as dentures or a hearing aid when no injury occurs.

This definition is broad enough to include psychological trauma suffered by a witness to an accident, as well as injuries to those directly involved in the accident itself.

Benefits under the no-fault benefits schedule fall under three headings:

- Funeral expenses and death benefits.
- Supplementary medical, rehabilitation and care benefits.
- Weekly benefits.

Funeral Expenses and Death Benefits

There are various types of death benefits, however the maximum amount payable as a result of the death of one person, including funeral expenses, is $28,000 plus $10,000 for each surviving dependent. Death must occur within 180 days unless there is continuous disability as a result of the accident, in which case the limit is three years.

Supplementary Medical, Rehabilitation and Care Benefits

The supplementary medical and rehabilitation benefits include medical and hospital services, the cost of prostheses, dentures and similar medical or dental devices, rehabilitation and life skills training and home adaptations. Payments made under the Ontario Hospital Insurance Plan are primary.

The period during which benefits are payable is ten years, unless the injured person was under the age of ten at the time of the accident, in which case coverage continues until that person reaches the age of twenty.

The maximum amount payable for these benefits is $500,000 per person, with no aggregate limit.

Care benefits are also limited to $500,000 per person, with no aggregate limit and no time limit.

Care benefits will pay the cost of a professional caregiver or the lost income of another person who provides the care, as well as all reasonable expenses resulting from the accident in caring for the injured person.

The maximum monthly care benefit is $3,000, which would mean that, at the maximum rate, the total of $500,000 would be exhausted in just under fourteen years.

Weekly Benefits

Anyone disabled in an automobile accident in Ontario is entitled to weekly benefits after the first week of disability.

For anyone employed at the time of the accident, weekly benefits will be equal to 80% of the disabled person's gross weekly income, after deduction of collateral source benefits, such as group disability plans, employment sick-leave plans and payments under government plans such as the Canada Pension Plan.

The maximum payment is $600 per week and is not indexed.

This limit provides full indemnity to anyone earning up to $39,000 per year with no other source of income replacement.

For anyone with other forms of income replacement, the automobile plan will top up the income replacement to 80%. For people with higher incomes, this will normally provide more than full indemnity, since their net income, after taxes, would probably have been less than 80% of gross income.

The minimum gross weekly income used in the calculation is $232, or $12,100 per year, which gives a weekly benefit at 80% of $185.

For the first three years, disability is defined as "the inability to perform the essential tasks of his or her occupation." After that period, the definition changes to the inability to engage "in any occupation or employment for which he or she is reasonably suited by education, training or experience."

The weekly benefit to be paid to anyone not qualifying for income replacement, for example minors or homemakers, is $185, less income from other sources, as for those employed. Minors cannot begin collecting, however, until they reach the age of sixteen. The payment to anyone in this category who was the primary caregiver to another person under sixteen or disabled is increased by $50 for each other person, subject to a maximum of $200 in all.

For the first three years, payments are made to claimants in this category if "the insured person suffers substantial inability to perform the essential tasks in which he or she would normally engage." After three years, the definition changes to the inability to engage "in substantially all of the activities in which the person would normally engage."

Mandatory Optional Benefits

The benefits described above are mandatory benefits, which will be the minimum available in all Ontario automobile policies.

Insurers are also obliged to offer "mandatory optional" benefits, which insureds can buy if they wish. These benefits will probably be read into all policies until the 1st August 1990, to give insureds time to decide whether or not they wish to purchase them.

There are three such benefits, which may be purchased individually or in combination.

• *Optional benefit 1* doubles all death benefits and increases the funeral expense benefit from $3,000 to $7,500.

• *Optional benefit 2* increases the maximum weekly benefit from $600 to the insured's choice of $750, $900 or $1,050.

• *Optional benefit 3* increases the additional benefit to a primary caregiver from $50 per week to $100 per week per person in their care. The maximum of four persons remains.

It is not known yet what demand there will be for these additional benefits. Experience in Quebec, where additional personal accident benefits were offered when the government took over all automobile bodily injury insurance on a pure no-fault basis, suggests that the demand will be minimal.

Voluntary Optional Benefits

In addition, insurers may, if they wish, offer "voluntary optional" benefits of their own design.

The only requirements are that they must be approved by the Insurance Commission and the payment terms applying to the mandatory benefits must also apply to them.

To date, there is no indication of what voluntary optional benefits will be available, if any, and it will probably not be until 1991 that any will appear, insurers needing until then to concentrate on the mandatory benefits.

Exclusions

Weekly benefits are not payable to a driver:

(i) convicted of impaired driving or failing to provide a breath sample.

(ii) convicted of driving an uninsured automobile.

(iii) who was not authorized by law to drive the automobile.

(iv) who was excluded under the policy.

(v) who was driving without the consent of the automobile owner.

All other benefits are however available to the driver.

Weekly benefits are not available to passengers who knew or should have known that the driver was driving without the consent of the automobile owner. However all benefits, including weekly payments, are available to passengers in other cases where benefits are not available to the driver.

Payment Conditions

There are strict time limits which the insurance company must meet for paying the no fault benefits, the shortest being for payment of the first weekly benefit, which must be made within ten days of receipt of proof of a claim. Other payments must be made within thirty days of receipt of proof of a claim. Interest on overdue payments is at the rate of 2% per month.

The insurer is also obliged to pay full weekly benefits until the insured begins to receive payments from other sources which would reduce the weekly benefit due under the automobile policy. Any excess payment is recoverable when the payment from the other source is received.

Should there be a dispute as to the entitlement of the insured to no fault benefits, either party may refer the matter to a mediator employed by the Commission.

If mediation fails, the insured, but not the insurer, may start court proceedings or refer the matter to an arbitrator named by the Commission. In the meantime, the insurer must pay benefits at the level of its last offer of settlement in the mediation process.

If the arbitrator finds the insurer has unreasonably withheld or delayed payments, he can award a lump sum to the insured of 50% of the amount which should have been paid, as well as interest at 2% per month from the time benefits first became payable. Since the court is not given the same power, there is a strong incentive for the insurer to opt for arbitration.

Either party to an arbitration may appeal the arbitration award to the Director of arbitrations, whose decision is then final.

In addition, the Director of arbitrations must review all arbitration awards and recommend that the Superintendent of insurance investigate the business practices of an insurer the Director suspects of unfair or deceptive business practices, which could

result in a fine of $100,000 for a first offence and $200,000 for subsequent offences. These fines can be levied against directors and officers of the company and are in addition to compensation or restitution to the victim of the offence.

Subrogation for Bodily Injury

In order to retain the no-fault principle, subrogation rights for accident benefits are greatly restricted.

Subrogation rights are retained in full where the damage is
192 caused by a heavy commercial vehicle, defined as a vehicle with a gross weight exceeding 4,500 kilograms. However, this does not include buses.

On the other hand, only the insurers of motorcycles and snowmobiles have subrogation rights against any other type of vehicle and no one has subrogation rights against a motorcycle or a snowmobile.

Subrogation is not in fact the applicable term now, since the process is a loss transfer from the accident benefits section of the policy of the injured person to the accident benefits section of the policy of the person causing the injury. It is insurer to insurer, with no rights existing against the insured. In addition, it is not subject to the liability limit of the at fault party's policy, nor does it reduce the amount of liability limit available to respond to a tort award.

The entitlement to subrogation, and the percentage, will be determined by fault determination charts to be issued by regulation.

Policy Against Which a Claim Is Made

There is a strict rule of priority to determine against which policy an accident benefits claim can be made, which applies regardless of the circumstances of the accident.

Firstly, the claim is made against the insurer of an automobile under which the injured person is an insured. "Insured" includes the spouse and dependants of the named insured.

If recovery is not available there, then it is made against the insurer of the automobile in which he was riding when suffering the injury, or, in the case of a pedestrian, the vehicle which struck him.

If recovery is not available there, then the claim is made against the insurer of any other automobile involved in the incident.

Finally, if recovery is not available there, the claim is made against the Motor Vehicle Accident Claims Fund.

Thus, most claims will be made against the injured party's own policy, whether, at the time of the accident, he was in his own car, in another car or a pedestrian. Only when someone does not have insurance of his own does he claim against another policy.

Where the injured person has a choice of policies, the choice is at his discretion.

Visitors to Ontario are covered on the same basis, although they would not of course be likely to have equivalent coverage under their own policies.

Ontario Residents Outside Ontario

Ontario residents take their accident benefits coverage with them wherever they go. In addition, an Ontario resident who does not have his own automobile insurance is covered as an occupant of an Ontario registered vehicle wherever that vehicle goes.

However, in the case of an accident in Quebec, the insured has the choice between the Ontario and the Quebec benefits, either of which would be provided by the Ontario insurer.

The Quebec benefits are on a full no-fault basis, with no provision for a tort claim at all. Medical, rehabilitation and care benefits are unlimited. The income replacement benefit is similar to that in Ontario, subject to a slightly lower maximum at the outset, but indexed annually to the cost of living.

All Ontario automobile policies currently provide these benefits for accidents occurring in Quebec, consequently this is not a change in coverage. In fact, the exposure for accidents in Quebec is slightly reduced, since at present the injured party can claim for both the Quebec benefits and the much smaller existing Ontario accident benefits.

Bodily Injury Liability

With accident benefits taking over the major role in claims settlement, the right to sue is reserved only for those suffering serious injuries.

The right to sue in Ontario is therefore removed from anyone suffering bodily injury in an automobile accident in Canada or the United States, unless the injured person has died or sustained:

(a) permanent serious disfigurement, or

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(b) permanent serious impairment of an important bodily function caused by continuing injury which is physical in nature.

Only the owner of the automobile, the occupants of the automobile and others present at the incident are relieved of fault. Others who may have been responsible for the accident, such as a garage having carried out faulty repairs, remain liable in tort as at present.

However, in addition to the introduction of the threshold, two other major changes have been introduced which will significantly reduce the level of bodily injury awards.

Firstly, benefits from other sources, including accident benefits payable under the automobile policy, are deducted from a tort award. This change applies not only to the new plan, but to any accident which occurred after the 23rd October 1989.

Secondly, the Courts of Justice Act is amended to allow the court to award a structured settlement rather than a lump sum payment and to oblige the court to do so if the defendant requests that an award be grossed up for income tax. The change relating to structured settlements applies to all tort cases, not just those resulting from an automobile accident, where the cause of action arose after the 23rd October 1989.

With the liability section now only being called on for non-economic loss and excess economic loss, and structured settlements the norm rather than the exception, bodily injury awards payable under automobile policies will be significantly reduced.

Liability for Property Damage, other than to an Automobile

There are no changes in this coverage.

Liability for Damage to an Automobile and Collision

An insured will now recover for damage to his own automobile caused by another person under the liability section of his own policy and his insurance company will not have subrogation rights against the at-fault party.

Fault will be determined by fault determination charts which will be set out in a regulation.

This change only applies to accidents which occur in Ontario, when the insurers of both vehicles are licensed in Ontario.

As a result of this change, the insurer of a vehicle will pay for all damage to the vehicle.

To the extent that the insured was at fault, recovery will be made under the collision section, if collision coverage were purchased, subject to deduction of the deductible in proportion to the degree of fault.

To the extent that another party was at fault, recovery will be under the liability section, with no deductible.

The recovery applies to damage to the vehicle and its contents, other than contents carried for reward.

This will mean that contents of most trucks would not be covered, since they are carried for reward, however contents which belong to the owner of the truck hauling them will be covered. Subrogation rights for damage to contents are retained for the excess of $20,000.

Reinsurance

The major challenge for reinsurers is the handling of long-term claims, both their administration and their evaluation for determining the ultimate net loss under excess of loss contracts.

While there is an initial preference to calculate the actuarial present value of such claims at the earliest date possible and include

this amount in the ultimate net loss, the nature of the claims themselves may make this difficult. In particular, it may be impossible to produce a reasonable valuation of medical and rehabilitation claims, which are less likely to produce a regular stream of payments.

Similarly, variables under the care benefit may make this evaluation difficult also.

Weekly benefits would appear to offer the best opportunity for a present value calculation, and this is already done with structured
196 settlements. However, actuarial calculations rely on large numbers and it remains to be seen if there will be sufficient reliability in the calculation for excess of loss claims, given the limited number of cases which will affect excess of loss reinsurance.

An additional difficulty which insurers and reinsurers must deal with is the possibility that the Government will increase benefits for those already injured in the future, as they become more and more inadequate because of inflation.

The Commission is required to report on the adequacy of the benefits under the policy at least every two years. This is intended to apply only to the benefits covered under new policies and renewals, not benefits already being paid to injured parties. However, as benefits paid to newly injured victims increase, the inadequacy of the benefits paid to victims of earlier accidents will become more and more apparent and the pressure to increase them greater and greater.

It is difficult to estimate the impact of the new coverage on excess of loss claims. No reliable information is available, since there is usually insufficient information available on existing claims files to reconstitute the claim on the new basis.

It seems probable that the general level of claims will reduce.

Firstly, with each injured person claiming under his own policy, losses from a single incident are more likely to be spread amongst more than one insurer.

Deduction of benefits from other sources will also reduce the amount recovered by each individual. The Osborne report estimates

that at least 30% of victims have collateral source benefits and the old rule resulted in an aggregate overcompensation of 17%.

The elimination of non-economic loss from all but the most serious claims is another important factor in reducing the cost of losses, since pain and suffering is estimated to make up 45% of bodily injury claims under the tort system.

On the other hand, with everyone compensated regardless of fault, the number of claimants will increase.

In addition, certain previously benign risks now present a serious accumulation exposure. The family of five driving to the summer cottage, for example, will all be covered by the same policy, with no liability limit to cut off the claim at a pre-determined level.

Other risks will have a variable exposure based on circumstances which may be difficult to predict.

The clearest example of this is buses.

A school bus in a suburban area probably has a much reduced exposure, since all the children on the bus will be covered by their parents' policy and the passenger hazard will be eliminated. However, when the same bus is chartered out on a week-end, the passenger exposure could be greatly increased. If it is chartered to a retirement home, for example, probably none of the passengers would have their own automobile policy, so they would all be covered by the bus policy.

A suburban commuter bus also probably represents a reduced exposure, since most passengers would have their own insurance. On the other hand, a bus running between Toronto International airport and downtown hotels would have a high percentage of passengers from outside the province and therefore covered by the bus policy, again with no policy limit to cut off the exposure.

Outstanding Questions

Among the first things to be argued in front of the courts will be whether or not the plan is constitutional.

The no-fault concept probably is not in danger, since workers compensation laws, which are also no fault, have been held to be

constitutional. However, the threshold will probably come under attack, particularly the reference to "injury which is physical in nature." This may be held to discriminate against those suffering mental injury as a result of an automobile accident.

The full meaning of the threshold will also certainly be explored in a series of court tests in the first years of the plan.

In addition, the regulatory environment concerning reserving and reinsurance has not yet been adapted to the new plan.

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Reserves for accident and sickness claims can be carried at discounted value, which is not now possible for automobile claims. It would thus be possible for an insurer to have issued both long-term disability and automobile policies to the same individual, who is receiving payments under both as a result of an automobile accident. The reserve for payments under the disability policy would be discounted, while the reserve for payments under the automobile policy, made in identical fashion and arising from identical circumstances, would not be.

It is evident that, if insurers are obliged to carry their reserves at their full dollar value, many will require substantial reinsurance to reduce their liabilities, reinsurance which will in turn strain the capital of reinsurers.

Annuities could be used to settle long-term claims, if the future payments can be sufficiently identified, and this would have the same practical effect as the discounting of reserves. This is similar to the practice in arriving at a structured settlement, however payments under a structured settlement are agreed in advance, while those under accident benefits will not be. It may therefore be necessary in some cases for the insurer to carry a contingency reserve to cover the possibility of the benefits under the annuity being insufficient.

Both these problems could be got around by reinsuring the long-term claims into companies writing accident and sickness business, who would thus be permitted to discount them.

However, a company without an automobile license cannot reinsure an automobile policy. If a company has both an accident and sickness and automobile license, the reinsurance of an automobile policy would have to be carried in its automobile branch,

where discounting is not allowed, not in its accident and sickness branch, where discounting is allowed.

These questions will have to be addressed by both the federal and Ontario regulators, however what the result will be and when it will be arrived at remain to be seen.

Finally, with automobile insurance so firmly entrenched in the political arena in Ontario, politics represent another unpredictable element to be faced. Even once the new plan is in place, automobile insurance will remain a political issue in Ontario for several years to come.

Summary

The Ontario automobile plan falls between the existing full-tort system and the Quebec plan of full no fault provided by a government institution.

The Quebec plan has proven popular since its introduction in 1978 and there is every reason to believe that the Ontario plan will prove equally popular, once consumers become accustomed to it.

The threshold will certainly come under attack and its precise meaning will not be known for several years. But more important will be the ability of insurers to adapt to the new co-operative claims handling system, with its severe penalties for poor work, after so many years of an adversarial approach to claims settlement.

If insurers can meet this challenge, and if reinsurers can provide them with the protection they require, the Ontario Motorist Protection Plan may well usher in an era of relative calm and stability for automobile insurance in the province.