

## La Commission royale d'enquête sur l'assurance automobile en Colombie Britannique

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# La Commission royale d'enquête sur l'assurance automobile en Colombie Britannique

par

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Le volumineux rapport de la Commission est un document intéressant, parce qu'il est rempli de faits, de chiffres et de tableaux.<sup>1</sup> Il nous est bien difficile de le résumer ici. Nous voudrions simplement en extraire les conclusions. Et d'abord, le chapitre du deuxième volume qui précise, dans l'ensemble, les recommandations faites par les membres de la Commission:

## **I — Une nouvelle conception de la garantie :**

*The proposed plan for automobile insurance  
in British Columbia*<sup>2</sup>

### **Term of Reference (g) :**

*... whether the public of this Province will be better served by the continuation of present procedures for the recovery of damages arising out of motor-vehicle accidents and by the preservation of present forms of insurance coverage or by some variation or variations thereof, or by a plan whereby compensation for damage arising from motor-vehicle accidents may be paid without determination and attribution of responsibility thereof, or by a combination thereof, ...*

### **Introduction**

*It is the opinion of the Commissioners that the public of the Province of British Columbia will be better served by the*

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<sup>1</sup> Deux volumes de 828 pages en tout.

<sup>2</sup> Chapitre 20.

*institution of an entirely new method of insurance for compensating victims of motor vehicle accidents than by a continuation of present procedures for recovery of damages arising out of such accidents.*

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*Previous chapters of this Report have dealt in detail with the present procedure under 'Tort Law' of compensating for damage from motor vehicle accidents based on the determination and attribution of fault. These studies emphasized that the present procedure results in unnecessary dissipation of part of the funds which should be received by the victims of accidents as compensation. They showed also that the present procedures are costly in time and money to the insurers, which could result only in increased premium cost to the buyer of motor vehicle insurance.*

*The number of cases taken to Court for determination of who was at fault in causing motor vehicle accidents is relatively small. Nevertheless, these cases contributed to the congestion in the Court calendars which are already full. For both court settlements and settlements out of court, current driving conditions and the growth in traffic density have created an increasing difficulty in determining whose negligence was the cause of the accident.*

*The Commissioners therefore recommend that, in future, insurance covering motor vehicle accidents shall provide compensation for motor vehicle damage, injury, and death 'regardless of fault'.*

*A principal factor contributing towards lowering the premium cost of motor vehicle insurance would be the encouragement of more 'defensive driving'. Such driving would result in fewer highway accidents. To this end there must be greater encouragement of better driving habits. Poor driving habits lead to traffic violations, and, generally speaking, the*

*drivers who disregard traffic laws are more accident-prone than those who observe these laws and the courtesies of the road.*

*The Commissioners are of the opinion therefore, that it is imperative that detailed and up-to-date statistical records be maintained of each driver's traffic violations and accident record. Further, that instead of the present system of rating motor vehicle insurance premiums on driving record based on accident experience alone, such record should, in future, be based on a demerit point system reflecting each driver's record of both accident experience and traffic violations.*

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*The present system of motor vehicle insurance which is primarily third party coverage on the motor vehicle itself, through its owner, does not lend itself to such a method of underwriting, in that, by the 'omnibus clause' in present motor vehicle insurance policies, the one contract covers accidents caused by any and all drivers who (with the owner's permission) drive the insured motor vehicle. Under such coverage the premium neither reflects adequately the expense caused by the bad driver, nor amply rewards by lowering premiums if the vehicle is driven only by good drivers.*

*These points are at best only a brief summation of the greater detail given to this subject in Chapter 19 of this Report. On the basis of these studies, the Commissioners recommend that, in future, insurance coverage should be directly on each licensed driver in the Province of British Columbia, rather than on the motor vehicle.*<sup>3</sup>

*It is in the interest of all British Columbians for drivers to carry at least a certain minimum amount of insurance coverage, thus guaranteeing compensation for injury or death to victims of motor vehicle accidents or their beneficiaries as the*

<sup>3</sup> Ces mots ont été soulignés par nous pour en montrer l'importance. J.H.

case may be. An earlier section of this Report dealt with compulsory insurance and indicated that compulsion was necessary to the basic plan. It would assure not only motor vehicle drivers, but more particularly their passengers, bicyclists, and pedestrians of a certain minimum compensation if they become the victims of a motor vehicle accident.

The Commissioners recommend, therefore, that there should be:

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### Three New Plans of Automobile Insurance

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- A BASIC ACCIDENT policy — compulsory for all drivers.

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- A SUPPLEMENTARY policy — to be available for purchase by all drivers on a voluntary basis with the coverage additional to that of the basic policy.

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- A COLLISION policy — two-party no-fault insurance to be purchased by owners of vehicles on a voluntary basis. This contract may also include 'Specified Perils' or 'Comprehensive', or it may be sold as 'All Perils' coverage.

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#### **The Basic Accident Policy**

*The following are the Commissioners' recommendations with respect to the compulsory basic policy, with benefits payable regardless of fault.*

*The policy is to be mandatory non-cancellable two-party insurance covering the driver and his passengers. This means that each driver shall purchase a compulsory accident policy prior to the annual renewal of his licence to drive. The policy which will be co-terminous with the licence, will compensate driver and passengers, or their beneficiaries, for loss of income, or for death caused by bodily injury while in a motor*

vehicle.<sup>1</sup> Like the Uninsured Motorist's Protection Policy dealt with in an earlier chapter, the basic policy will cover also the named insured and members of his family, resident in his household, if hit by a motor vehicle while either a pedestrian or a bicyclist. Where several valid policies may each provide coverage, the industry will be expected to determine which policy (or policies) will be deemed to have provided the relevant coverage.

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In all cases, irrespective of whether a passenger has his own policy or falls under the policy of a member of his immediate family, compensation will nevertheless be paid out of the policy covering the driver of the car involved in the accident. It must also be understood that the driver's policy, even when a borrowed vehicle is involved in an accident, is the source of compensation to occupants of the borrowed vehicle or their beneficiaries.

### Compensation Under the Basic Policy

#### (i) For Death

The maximum benefit under the basic accident policy shall be \$20,000 for each person, aged 18 and over, killed as a result of a motor vehicle accident. For minors killed in motor vehicle accidents a graduated scale of death benefits, payable to beneficiaries, shall be followed. Specifically:

TABLE 20:1  
Graduated Scale of Death Benefits

AGE	BENEFIT
0- 5 years	\$ 1,000
6- 9 "	3,000
10-11 "	5,000
12-15 "	10,000
16-17 "	15,000

<sup>1</sup> To include getting into and out of a motor vehicle.

## A S S U R A N C E S

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*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.*

### **(ii) For Disability**

28 *The Commissioners are of the opinion that compensation for bodily injury resulting from a motor vehicle accident should contribute to income replacement. They recommend, therefore, that compensation for injury shall be paid neither on a fixed schedule for designated injuries, nor on a lump sum basis, but rather that there shall be an established uniform weekly indemnity for those disabled — whether regularly employed in a gainful occupation, as working housewives, or unemployed or retired. Reduced payments are indicated for those under age 18 (infra).*

*For the purpose of this Basic Policy, and insofar as an employed person is concerned, “Disability” shall be defined as an injury resulting from a motor vehicle accident, which is certified by a qualified physician to be of such a degree that it 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.*

*In the case of a person unemployed at the time of accident disability, weekly benefit shall be paid only provided that he is certified by a qualified physician to be physically incapable of carrying out any gainful occupation for which he is reasonably suited by education, training, or experience.*

*In the case of an injured housewife, disability benefits shall be paid provided it is certified by a qualified physician that she is unable to carry out her normal housekeeping responsibilities. Payment shall be made so long as such duties are required to be done by another person, and the physician*

*so certifies, whether or not the other person receives payment therefor.*

*The payment of disability benefits to a person who is retired, but not yet eligible for the Old Age Pension, shall be subject to the same conditions as those pertaining to an unemployed person."*



En bref, à l'avenir, il y aurait une police d'assurance de base, souscrite par chaque conducteur avant d'obtenir son permis de conduire. Cette police garantirait ce dernier et les personnes transportées dans la voiture jusqu'à concurrence de \$20,000 en cas d'amputation ou de mort, sans qu'il soit nécessaire de démontrer la faute. À cela s'ajouteraient une indemnité hebdomadaire uniforme et ne tenant pas compte du revenu de l'accidenté, ainsi que des frais d'hospitalisation, mais non ceux que prévoit l'assurance dite "medicare", entrée en vigueur en Colombie britannique le 1er juillet 1968.

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En somme, c'est en partie l'application du projet Keeton-O'Connell aux États-Unis et du rapport Tunc en France, c'est-à-dire l'indemnisation de l'accidenté sans qu'intervienne la faute d'un tiers, qui, jusqu'ici, était la condition essentielle tant pour les dommages corporels que matériels.

Cette police de base serait complétée facultativement par une assurance d'excédent souscrite par l'assuré, tant pour les dommages aux tiers que pour les dommages aux autos mêmes.

L'assurance serait donc obligatoire pour les dommages corporels jusqu'à concurrence de \$20,000, facultative pour l'excédent et facultative également, pour les dommages aux autos mêmes, sans invocation de faute dans le premier et le dernier cas. De plus, l'assuré serait tarifé non seulement en fonction des accidents qu'il a eus et ou n'a pas eus, mais aussi en tenant compte des violations des règlements de la



circulation qu'il aurait commises. Ce que l'on prendrait comme base, en effet, ce ne serait pas la voiture mais le conducteur.

**II — L'administration de la nouvelle garantie :**

a) C'est le British Columbia Insurance Board qui fixe la prime de la police de base, chaque année.<sup>1</sup>

30 b) Pourvu que l'initiative privée se prête à l'application satisfaisante de la loi, on doit lui laisser le soin de l'administrer.

Voici en quels termes, les Commissaires s'expriment à ce sujet:

*"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:*

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<sup>1</sup> Page 614. Volume II.

- (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.<sup>1</sup>*

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*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 — La mise à exécution du projet se ferait d'ici le 1er janvier 1970, en procédant ainsi :**

*"One feasible approach, favoured because its simplicity minimizes costs, would entail procedures somewhat as follows:*

- (a) *Assuming that the new form of coverage is to be mandatory as of January 1, 1970, all policies issued during 1969 would expire on December 31, 1969. Such an approach eliminates any need for policy rebates.<sup>2</sup>*

<sup>1</sup> Ces mots ont été soulignés par nous. J.H.

<sup>2</sup> Insurance companies should be encouraged to exercise initiative here. Thus, nothing should be done to preclude insurers from issuing contracts during 1969 combining traditional insurance to the end of 1969 with new coverages to expire on the insured's birth date in 1970.

- (b) *All drivers would be issued two party insurance on January 1, 1970. The term of coverage would vary, expiring on the insured's date of birth during 1970. (It is anticipated, however, that in order to hold down costs, those with birthdays in January would be issued a 12-13 month contract to be renewed in January, 1971.) Thus, a person with a birth date of November 1 would be issued 10 months' coverage, while the driver with a March 1 birth date only two months protection up to his birth date in 1970, when his policy would be renewed up to his birthday in March, 1971.*
- (c) *These initial short-term basic coverages, averaging about seven months duration, would be issued without regard to violation or accident records. Pricing would be based on the expected average pure-premium. It would be unreasonable to do otherwise and expect the Motor Vehicles Branch to process simultaneously the violation and accident records of over 800,000 drivers as at December 31, 1969.*
- (d) *It is anticipated that the Motor Vehicles Branch would be able to issue the appropriate annual renewable coloured drivers' licences in time for the first renewals of the basic contract on the insured's birth date in 1970. The licences issued would be co-terminous with the insurance policy and the latter would be non-cancellable. The amount of initial per capital subsidy to those who, on renewal, receive coloured drivers' licences is expected to be nominal.*
- (e) *During the interim period between December 31, 1969 and the driver's birth date in 1970, it will be necessary for each driver to carry his interim policy certificate along with his existing driver's licence in order to be able to prove insurability. After his 1970 birth date his coloured*

*driver's licence will itself be proof of basic two party coverage.*

- (f) *Mandatory driver training for those applicants for driving permits under 18 years of age may be introduced ahead of time, possibly by July 1, 1969."*

*"While the above details relate essentially to basic coverages, they do set out some of the necessary guideposts for additional insurance. It is felt that, without further detailing by the Commissioners, the industry may be relied upon to introduce and provide the necessary voluntary complements, including collision coverage and supplementary cover, designed as extensions of the basic limits.*

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*"Finally, mention must be made of the need to inform residents and visitors of the new scheme. British Columbia motorists will have to be educated in all the implications of the changes well in advance of implementation. In this regard, a co-operative effort involving government, agents, and the industry is essential."*



Qu'advientra-t-il de ces mesures suggérées par la Commission ? Il semble bien qu'elles seront mises à exécution par la province de Colombie britannique.<sup>1</sup> Si elles apportent du nouveau dans un domaine où on a tendance à s'arc-bouter, on ne peut conclure que ce sera la solution véritable de l'assurance automobile tant que les faits n'en auront pas confirmé ou infirmé le bien-fondé. De toute manière, il y a là deux dispositions intéressantes à suivre dans leurs résultats:

- a) la première est l'assurance obligatoire dans une province isolée, mais malgré tout en contact immédiat avec une

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<sup>1</sup> Le gouvernement a nommé un comité d'étude, qui lui a fait rapport. Par la suite, deux projets de loi ont été présentés à la Chambre pour appliquer les recommandations de la Commission d'enquête, dans l'ensemble.

autre province canadienne et des États voisins où celle-ci n'existe pas.

- 34 b) la seconde est l'application d'une théorie nouvelle: le règlement des dommages corporels sans tenir compte de la faute. Déjà, il y a dans certains domaines une situation semblable, comme pour les accidents du travail. Il y a aussi le cas des frais médicaux déjà réglés dans ce sens par l'avenant des frais médicaux annexé à la police d'assurance automobile.

Au cours des prochaines années, on constatera si l'assurance coûte moins, si les règlements sont accélérés et si l'accidenté est traité plus équitablement. Toutes choses auxquelles tendent les commissaires dont nous venons de résumer le Rapport. Ils apporteront, aux partisans de l'évolution des méthodes de règlement, les données précises d'une expérience.<sup>1</sup> Pour les déclarer valables, il faudra attendre quelques années. Notons immédiatement qu'il y a dans les travaux de la Commission un effort très intéressant, que nous avons voulu noter sans parti pris. Ils ont été faits dans un état d'esprit où se retrouvent la curiosité et le désir de recherches intelligentes et méthodiques que nous avons si souvent préconisées dans notre revue.

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<sup>1</sup> Aux Etats-Unis, l'idée de transformer complètement la notion d'indemnité se répand rapidement. Dans un numéro de *U.S. News and World Report* (26 avril 1969), on mentionnait que les États suivants l'ont mise à l'étude: le Massachusetts, le Rhode Island, le Connecticut, l'Illinois, la Californie et le Michigan. L'évolution est inévitable note William O. Bailey, vice-président de l'Aetna Life and Casualty. Même si on ne partage pas cette opinion, il est intéressant de la noter.