AUTOMOBILE INSURANCE BREAKTHROUGH IN CANADA

By Allen M. Linden*

1. Introduction

The reform of automobile accident insurance is a topic of heated controversy throughout most of the Western World. Dissatisfaction with the delays, ineffectiveness, and high cost of the present system is expressed everywhere, including the United States. For this reason, the Department of Transportation in Washington has recently undertaken a massive review of the present system in America, which could have far-reaching repercussions on the entire automobile insurance industry as well as on the transportation industry. Major change appears imminent. Because of this, the recent Canadian experience in this area may perhaps be of some help to those in the United States charged with the power to decide and to influence the destiny of the present auto accident reparation system.

On January 1, 1969, seven of the ten Canadian provinces introduced a new system of "limited accident benefits" insurance or a plan of "peaceful coexistence", as it has been called.[1] This new scheme is somewhat of a breakthrough. It appears to be supported by governmental officials, the bar, the insurance industry, many from the academic profession and much of the public. Such broad support is understandable because the plan will make available compensation on a non-fault basis to many victims of automobile accidents that were precluded from recovering in the past. The new insurance will be underwritten by the private insurance industry, so that the bogey-man of "socialism" is avoided. No new board is to be established, for the regular court system is left to resolve any disputes that might arise. Moreover, compensation for pain and suffering will survive because the tort suit is not interfered with in the least. This does look like a miracle has transpired. Without doubt, the plan merits much praise, but is far from perfect.

In this paper, I shall first outline the tort system in Canada and

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1. Linden, *Peaceful Coexistence and Automobile Accident Compensation*, 9 Can. Bar. J. 5 (1966).

compare it with the American one. Next I shall tell the story of how this scheme came to be enacted. After that, I shall describe some of the details of the new limited accident benefits plan. Finally, I shall offer some criticisms of the scheme and make some proposals for the future.

2. The Tort System in Canada

In each of the Canadian provinces (except Quebec, where the civil law system is in force) the law regulating motor vehicle accident compensation resembles closely that in existence in the United States.[2] An injured person may recover damages in tort from someone who negligently injures him. As in other common-law jurisdictions, the onus is generally on the plaintiff to show that the defendant in his driving departed from the objective standard of the reasonable man. Assisting in the resolution of the negligence issue are the rules of the road set out in the various highway traffic codes, the breach of which amounts to *prima facie* evidence of negligence. If a pedestrian is injured by an automobile, on the other hand, the onus of proof is shifted by legislation to the defendant, who must then disprove negligence in order to escape responsibility. By statute the owner as well as the driver is civilly responsible to anyone injured by his automobile as long as it was not taken without his consent. A guest passenger labours under a disability in most of the Canadian provinces as he does in most of the American states. In order to recover from his host in tort, a passenger must establish either gross negligence or recklessness or wilful and wanton misconduct on the part of his host. Until recently, there was an absolute bar against guest passenger claims in the province of Ontario, but, happily, this iniquitous provision has now been amended. As in the United States, the Canadian courts have fashioned a number of techniques whereby they could circumvent the harshness of these provisions, and apply the common law standard of negligence.

One way in which Canadian law differs markedly from that in most American states and mirrors the law in other jurisdictions is in its treatment of contributory negligence. By virtue of comparative negligence legislation, a plaintiff guilty of contributory negligence is not barred from recovering in tort; his damages are merely reduced in proportion to the degree that his negligence contributed to the accident. Consequently, if it is found that the plaintiff was fifty per cent to blame for the accident the damages he recovers will be cut in half. If there is

2. For a more detailed description, see Linden, *Automobile Accident Compensation in Ontario—A System in Transition*, 15 Am. J. Comp. L. 301 (1966-67).

evidence that the negligence of both the plaintiff and the defendant contributed to the accident, but the court is unable to decide on the degree of fault, the parties are deemed to be equally at fault. The effect of this is that both parties in a counterclaim situation are usually entitled to recover one-half of their damages from the other's insurer, without any set-off.

The civil jury is often used in Canada, but it is not nearly as all-pervasive as it is in the United States. Only Ontario and British Columbia have a large volume of jury cases, its use being rare in the other provinces. Often the jury is a truncated one with only 6 or 8 members. The special verdict is generally utilized, whereby the jury is asked questions about the negligence of the defendant and the particulars thereof, the contributory negligence of the plaintiff and the extent thereof, and about the assessment of damages. An appeal is possible on a question of law but only rarely is one successful in overturning a jury verdict based on evidence.

Well over 90 per cent of all the motor vehicles in Canada carry liability insurance to minimum limits of $35,000 inclusive; those that are not so covered are backstopped to the same extent by Unsatisfied Judgment Funds, both public and private. In theory, this broad incidence of insurance coverage has been attained without the necessity of enacting compulsory insurance legislation (except in Saskatchewan). The device used is that any person who applies for a motor vehicle license without proof of liability insurance coverage must pay a $20 "uninsured motor vehicle fee" which is credited to the fund. These funds protect the injured third person by satisfying unpaid judgments, but it actually gives nothing to the uninsured individual who pays the fee, since the fund is entitled to claim reimbursement from any uninsured driver for amounts paid to injured third persons as a result of his negligence. The insurance industry has created "the facility" that provides insurance to those individuals who would normally be unable to secure insurance through normal channels.

3. What's Wrong With the Present System

In operation, the Canadian tort system was riddled with inadequacies, but it was not nearly as badly infected as the American one. A study done in Ontario by the Osgoode Hall Law School[3]

3. See the *Report of the Osgoode Hall Study on Compensation for Victims of Automobile Accidents* (1965).

demonstrated that the tort system by itself falls far short of providing full economic reimbursement for all the injury victims. In fact, 57 per cent failed to recover anything via the tort route alone and the situation was worse in more serious cases than in minor ones. In part this poor result was due to the former Ontario guest passenger legislation, as a consequence of which 66 per cent of all passengers recovered nothing. This recovery pattern was, nevertheless, still better than that disclosed in some of the American studies where, for example, 63 per cent of those injured in Michigan were denied tort recovery.[4] It was not as good as the ratio of bodily injury claims paid in British Columbia, where 63 per cent were paid.[5] The pattern of payment in British Columbia is better than Ontario largely because the guest passenger laws in that Province are more civilized than was Ontario's.

The spotty recovery pattern in Canada is in no way due to lack of insurance coverage, for, as pointed out above, if a Canadian is negligently struck by either an uninsured or hit-and-run driver in any of the ten provinces, he is still able to recover from some type of "unsatisfied judgment fund". Manitoba, New Brunswick, Ontario, Saskatchewan and Alberta have government-operated schemes, whereas Newfoundland, Prince Edward Island, Nova Scotia, Quebec and British Columbia adopted systems operated collectively by the private insurance industry.

The brighter situation in Canada is partially due the greater willingness of insurers to offer a fair settlement. While one reason for this may be the less aggressive nature of Canadian and British insurance companies, there are other reasons why this would be so. Comparative negligence legislation makes the ultimate outcome of lawsuits appear more favourable to claimants and less so to insurers. Moreover, the losing party in Canadian litigation must normally pay the "party and party costs" of the winning party. These amounts, unlike in the United States, can be substantial. The device of "payment into court" is often used by insurers to convince a greedy plaintiff to accept a settlement. A defendant may pay into court an amount of money as an offer of settlement. If the plaintiff refuses to accept this amount and later receives a judgment for an amount less than the amount paid in, the plaintiff must pay to the defendant all of his legal costs. This is an effective weapon, one that might well be considered in the United States.

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4. Conard et al, *Automobile Accident Costs and Payments* (1964) at p. 149.
5. Linden, *The Processing of Automobile Claims*, 34 Ins. Couns. J, 50 (1957).

This lack of tort recovery does not pose as great a financial hardship as might appear at first blush since there are in existence certain social welfare schemes which may assist the car crash victim.[6] State-run hospital insurance covers nearly every citizen of Canada. Medical care, both government and private, is now available to around 80 per cent of all Canadians. These programmes, and others like Workmen's Compensation, yield 40 per cent of all the money actually received by those injured in crashes. In fact, 86 per cent of those injured received something from a non-tort source and the losses of 18 per cent of the victims were completely covered by these regimes. The cost of hospital care is almost eliminated as a problem, since 95 per cent of all these costs are recompensed. If one adds tort and the non-tort compensation together, 54 per cent of those suffering economic losses are fully reimbursed and in only seven per cent of the cases do the out-of-pocket losses exceed $500.

Another fault of the fault system in Canada is the problem of delay. Even where a victim of an automobile crash has a meritorious claim, he must wait too long for his award. This is a problem primarily of mass societies and large cities. In the United States there is an average delay of 31 months between the commencement of the action and the trial in the various metropolitan areas. It is even worse in the great cities, for example, the delay is 70 months in Chicago and 51 months in Philadelphia.[7] In Canada the length of time it takes to get a trial is less than in the United States, but it is still too long to wait for more than 2 years in Toronto or for an average of even one year, as is the case in Vancouver, British Columbia.[8] Nor would the addition of more judges and more courtrooms cut the waiting period appreciably. The delay is long when there is injury, and still longer if it is severe, because it is necessary, when a lump sum award is being determined, to have a reliable medical prognosis prior to trial and this is seldom available until after several months. We should not forget, however, that the vast bulk of the claims, most of which are small, of course, are speedily settled without trial. A recent study in British Columbia[9] disclosed that 73 per cent of *all* insurance claims were settled within 60 days of the time the insurer first learned of them. The bodily injury claims took

6. For a detailed description, see the *Report of the Osgoode Hall Study*, *supra*, footnote 3, chapter VI.

7. See Keeton and O'Connell, *Basic Protection for the Traffic Victim*, (1965) at p. 13.

8. Linden, *Automobile Cases in the British Columbia Courts*, 3 U.B.C.L. Rev. 194 (1967).

9. See *The Processing of Automobile Claims*, *supra*, footnote 5.

longer, but even here 55 per cent were cleaned up within 90 days and 73 per cent within 6 months. The Michigan study also showed that 58 per cent of their injury cases were concluded in less than a year.[10] The cases that linger for longer periods of time are the difficult ones that require litigation for resolution, where the evaluation of the injury is uncertain or where liability is in doubt. Fortunately, these cases are in the minority, but there is still too long a waiting period for payment and this period is longest where the need for payment is most pressing.

The cost of administering the tort system is too high. In the United States it takes $2.20 in insurance premiums to put $1.00 into the pocket of an injured person. This is so because American wages (and consequently administration costs) are generally higher. Moreover, there is more inclination to litigate and less incentive to settle in America because virtually no costs are awarded. The contingent fee system, which is outlawed in Canada (except in Manitoba), eats up one-third of the payments to the injured. In Canada, it is calculated that $1.60 in premiums yields $1.00 in claims,[11] a much better figure, although still less than the various welfare plans distribute.

4. How Reform Came to Pass

Criticism of the way in which automobile accident costs were allocated in Canada began decades ago. Naturally, the law professors, notably the late Dean Cecil A. Wright, the Father of Canadian Tort Law, attacked the tort system whenever they could.[12] Judges often bemoaned the fact that their courts were clogged by scraped fender cases. The former Chief Justice of the High Court of Ontario, J.C. McRuer, complained frequently about the unreality and inefficiency of the tort action and urged its replacement by a more rational scheme of loss distribution.[13] The Canadian labour party, the New Democratic Party (formerly the Co-operative Commonwealth Federation), which was formed in the 1930's, eventually adopted as one of its planks, the nationalization of the insurance industry and the establishment of a non-fault plan for auto accident claims. When the C.C.F. succeeded in

10. See Conard, *op. cit. supra,* footnote 4.

11. See the *Report of the British Columbia Royal Commission on Automobile Insurance* (1968), and Bill 74 and 75 1969 enacting a mandatory peaceful coexistence plan.

12. Wright, *The Adequacy of the Law of Torts,* printed in Linden, *Studies in Canadian Tort Law* (1968) at p. 579.

13. McRuer, *The Motor Car and the Law,* 4 Osgoode Hall L.J. 54 (1966), printed in Linden, *Studies, Id.* at p. 303.

being elected in Saskatchewan, it actually instituted a government-operated non-fault plan, although it did not abolish the tort suit altogether. This party became and still is a powerful force in some of the other provinces like Ontario and British Columbia, and the pronouncements of its leaders on automobile insurance received wide publicity. There was some public support for the solution they offered, for very few people were contented with the tort system as it was operating. Although insurance coverage became more common (and more expensive), many were still going uncompensated and under-compensated. The unsatisfied judgment funds made their appearance, but although helpful, they alone could not fill the reparation gap. It gradually became apparent that reform was needed.

On April 5, 1960, the Legislative Assembly of Ontario assembled a Select Committee to "examine, investigate, inquire into, study and report on all matters relating to persons who suffer financial loss of injury as a result of motor vehicle accidents. . . ." The Select Committee was fortunate to have as its chairman the Honourable James N. Allan, a man of wisdom and compassion, and someone who was widely respected. Luckily, perhaps, the committee had only one lawyer on it, Vernon M. Singer, Q.C., an opposition member from the Liberal Party and a former student of Cecil A. Wright. Mr. Singer, was able to supply the committee members with copies of Ehrenzweig's *Full Aid Insurance* and Green's *Traffic Victims*, both of which appear to have had an enormous influence. An excellent group of civil servants, notably Morris Earl, the then Registrar of Motor Vehicles and T.M. Eberlee, who acted as Secretary, assisted the committee in its work.

The Select Committee had the good fortune of receiving two influential briefs during its deliberations, one by a Special Committee of the Law Society of Upper Canada (the governing body of the legal profession in Ontario) and the other by the All Canada Insurance Federation (a Trade Association representing the bulk of the insurance companies in Canada). The Law Society brief of September 1962 was largely the work of Edson L. Haines, Q.C., who is now a judge of the High Court of Ontario. Mr. Haines was at the time one of Canada's foremost civil jury lawyers. A former Dean of the International Academy of Trial Lawyers, Mr. Haines lectured on civil procedure at Dean Cecil A. Wright's law school. A former law partner of Mr. Haines, Leslie Rowntree, was Ontario's Minister of Transport at the time and was responsible for this area. With Mr. Haines on the Law Society Committee were Terence Sheard, Q.C., (chairman), W. S.

Martin, Q.C., (now a County Court Judge), Brendan O'Brien, Q.C., a trial lawyer who later became Treasurer of the Law Society), Ralph Steele, Q.C., and R. F. Wilson, Q.C., a distinguished insurance lawyer, now counsel to the Insurance Bureau of Canada. Although it contained a powerful defence of the tort system, the Law Society brief recognized its shortcomings and urged several reforms, the most important one being the establishment of a non-fault system to supplement the tort system. The solution was admitted to be akin to the Saskatchewan plan, except that it would be privately operated, rather than state-run, and the benefits would be somewhat more generous.

The All Canada Insurance Federation brief also defended the fault system. Nevertheless, led by its General Counsel, E.H.S. Piper, Q.C., it sought permission to include "limited accident benefits" coverage in its automobile policies, something that insurance companies were not permitted to do at that time. All Canada was not prepared to recommend the *mandatory* inclusion of this coverage "which will increase the cost to the public" for that, it suggested, "must come from the committee". It did, however, outline a possible plan and included some cost estimates. There had been several earlier approaches made to the Association of Superintendents of Insurance of the Provinces of Canada seeking this amendment, but they had been unsuccessful.

It is difficult to explain why such an enlightened approach was taken by the bar and the insurance industry. Perhaps, we were fortunate in having some uniquely honest and dedicated men at the helm of these organizations at the time. Perhaps, because of the mutual friendship of some of the key actors in the drama, there was less mistrust than one normally encounters in such situations. Perhaps, there existed a real fear of a socialist takeover of the province and later of the entire insurance industry. Perhaps, we were just lucky in having conditions that were bad (but not too bad) and decent, practical men that were able to arrive at a workable compromise solution.

5. The Select Committee Report and Its Aftermath

The Select Committee was convinced and in March, 1963, it published its final report (it had released 2 interim reports in 1961 that dealt largely with improvements to the unsatisfied judgment fund). The Committee came to the following conclusions:

> "The Committee is, of course, concerned that some form of remedy should be available to all persons injured in automobile

accidents. This, after all, must be the ultimate objective of any automobile insurance system.

The Committee sees wisdom in the views of certain eminent persons who believe that the traditional fault-liability system sometimes falls short of providing justice to those involved in or affected by automobile accidents. To put the problem in its simplest terms, society can no longer be entirely satisfied with the idea that fault in every accident rests with an individual or individuals and the financial consequences, whatever they may be, should therefore rest with an individual or individuals. In this automobile age, society as a whole is perhaps responsible for traffic accidents and their consequences to a greater extent than we have thus far realized or admitted. It may also be, as was suggested in the first interim report, that the task of establishing responsibility amid all the complexities of today is, quite frequently, an almost impossible burden on those who adjudicate cases. It is no longer good enough for us to say that all those who are not entitled to indemnification under the traditional fault-liability system—the surviving dependents of the negligent party, the negligent party himself who may be disabled for life, or the small child who dashes in front of an automobile and is permanently crippled do not deserve a remedy of some kind for damages. The fact of the matter is that they need a remedy."

The remedy recommended by the Select Committee was in accordance with the principle of "peaceful coexistence." It urged the expansion of "accident insurance" or the present "medical payments coverage" so that *all* standard automobile policies sold in the province would include such coverage. The Motor Vehicle Accident Claims Fund (formerly the unsatisfied judgment fund) would provide similar coverage for those injured by uninsured drivers or hit-and-run victims. In other words, the implementation of this recommendation would provide limited accident benefits for bodily injury or death to all occupants of an automobile and to any pedestrian struck by that automobile, regardless of proof of fault. Certain set amounts would be paid to the estates of persons killed and to persons dismembered or who lost the sight of one or both eyes. For example, for the death of a married male between 18 and 59 years $5,000 would be paid plus $1,000 for each additional dependant. The death of a married female of the same age would yield $2,500 plus $1,000 for each additional dependant. Loss of two hands or feet would bring $5,000, loss of sight $5,000, loss of one hand, foot or the entire sight of one eye $2,500.

In addition to these specific sums, indemnity of up to $2,000 would be provided for reasonable expenses incurred for necessary medical, surgical, dental, ambulance and professional nursing expenses. Hospital expenses over and above the coverage of the Ontario Hospital Services Commission would also be reimbursed within the $2,000 composite limit. Funeral expenses of up to $350 for each person would be provided where necessary on top of the $2,000. Weekly benefits of $35 would be paid to an employed person when totally disabled to a limit of 104 weeks, subject to an extension for an additional 104 weeks in the case of total and permanent disability. In the case of a totally disabled housewife $25 weekly would be paid for up to 12 weeks. In neither case would payment be made for the first seven days. Only where a motorist is driving while unlicensed, while intoxicated or while in violation of the Criminal Code would he be precluded from recovery, but if such driver is killed, his family would not be deprived of compensation. There would be no interference with the injured person's right to sue the person who was at fault for his injury, except that any benefits received under the proposed new plan would be offset against any tort recovery. The estimated cost of this coverage would be about 12.6 per cent of the current premium. For the Ontario minimum $35,000 liability insurance policy the base rate in Toronto was at that time $62, which would make the cost of this new coverage something like $7.81 annually. Of course, depending on driving record and geographical location, this figure could range from a low in rural areas of about $2.40 to a high in urban areas of $19.50. One representative of the insurance industry told the committee that for 60 per cent of the drivers in Ontario the cost would be about $4.00.

Following this report the Ontario Department of Transport undertook further studies. A technical committee of civil servants revised the cost estimates of the plan to 20 per cent of the premium or about $10 per vehicle. It financed the Osgoode Hall Study, which in 1965 issued its report indicating that there *were* compensation gaps and substantial delays. Finally on May 31, 1966, the Minister of Transport of Ontario (now Irwin Haskett) announced in the Legislature that the *mandatory* plan would not be implemented at present since, in his view, "the chief areas of need are being met," "the main beneficiaries (of the proposal) would be the insurance companies," and the plan would discriminate against individuals "stricken by illness or disease." He concluded that "the matter will be kept under advisement, of course, but the present trends indicate that the points against the proposal will become still more significant as time goes by." Instead, the Insurance

Act of Ontario was amended to permit limited accident benefits coverage to be written on a *voluntary* basis.[14] It is this legislation and similar enactments in most of the provinces that came into force on January 1, 1969, making possible the breakthrough in the Canadian automobile insurance system.

6. Limited Accident Benefits

The amendments to the Insurance Act of Ontario added several new sections under the title "Limited Accident Benefits". Empowered under similar provisions passed in the other provinces, the Association of Superintendents of Insurance of the Provinces of Canada prepared, in co-operation with representatives of the insurance industry, a new standard automobile policy.

On the new application form, in addition to the usual liability, collision and comprehensive cover, there is space for three types of coverage under Section 3, "Accident Benefits":

1. "Medical Payments,"
2. "Death, Disememberment and Total Disability,"
3. "Uninsured Motorist."

Under Death, Dismemberment and Total Disability, there is space to insert different principal sums and different weekly benefits, which will be sold for different premiums.

The insuring agreement[15] sets out the governing provisions under Section B—"Accident Benefits". Subsection 1 deals with "Medical Payments" and is not dissimilar to the earlier coverage; payment will be made to each insured person "who sustains bodily injury or death directly and independently of all other causes by an accident arising out of the use or operation of an automobile, all reasonable expenses incurred within two years from the date of the accident, as a result of such injury for necessary medical, surgical, dental, ambulance, hospital, professional nursing and funeral services" (up to $500).

Subsection 3 deals with the "Uninsured Motorist Cover" and resembles this type of coverage in the United States. The company agrees to pay "all sums which every insured person shall be entitled to recover as damages for bodily injury, and all sums which any other person shall be legally entitled to recover as damages because of the

14. The Insurance Amendment Act, 1966, Statutes of Ontario, chapter 71, s. 11.

15. See the new approved *Standard Form Policy* of the Association of Superintendents of Insurance.

death of any insured person, from the owner or driver of an uninsured or unidentified automobile . . ." (up to minimum limits).

The most important change is in subsection 2, "Death, Dismemberment and Total Disability". Under Part 1, "Death Benefits", reimbursement is provided for "death which ensues within 90 days of the accident . . . based on the age, sex and marital status of (the) person". For the loss of a married male between 10-60 years, his family gets 100% of the principal sum, but for the loss of a married female only 50% is paid. For younger and older people and unmarried persons, the amounts are reduced and may range as low as 5% of the principal sum.

Under Part II, "Dismemberment or Loss of Sight", various percentages of the principle sum are also payable depending on whether both feet, both hands or the sight of both eyes are lost (100%) or only one such loss is suffered (50%).

Under Part III, "Total Disability", an employed person who, as a result of an injury that "wholly and continuously disable(s) such person", so as to "prevent him from performing any and every duty pertaining to his occupation or employment" is entitled to a weekly benefit. No benefit is payable for the first 7 days or for any period in excess of 104 weeks, unless the injury as "permanently and totally disabled such person from engaging in any occupation or employment for wages or profit", in which case the benefits will be paid for an additional 104 weeks. Married women who do not work are deemed to be employed at $12.50 per week.

This new coverage is being sold for a flat rate of $7.00 per year for a $5,000 principal sum and a $35.00 weekly benefit. A few companies are selling double indemnity, $10,000 and $70 a week for a $14 annual premium.

One of the difficulties with the plan was its voluntary nature. There was a real danger that not enough people would choose to buy this coverage for an extra $7. The ingenuity of the industry was challenged and it is responding. A large-scale advertising campaign was launched to inform the public about the new coverage. Many companies are automatically supplying the new cover to all their clients free of charge as of January 1, 1969 and are billing them for it as their renewals fall due. One clever mailing device that is being used permits an insured to opt out, by giving the company instructions in writing. He will be covered if he does *not* respond; few do. Some companies are less imaginative, notably All-State Insurance Company, which sent out forms to its insureds to the effect that if they agree to pay for the new

coverage on renewal they will be covered forthwith. This is not working well. Nevertheless, it appears that, as a result of this legislation and imaginative merchandising, the substantial majority of car crash victims in Canada will now secure at least some compensation regardless of fault.

7. Conclusion

But Utopia is not yet at hand. There are defects in the new limited accident benefits coverage. First, it is voluntary and not mandatory, as urged by the Ontario Select Committee (and more recently by a Legislative Committee in British Columbia). This means that *some* people will not be covered, no matter how skillfully it is marketed. Moreover, the unsatisfied judgment funds will not provide this coverage for uninsured and hit-and-run drivers, as they would have if the coverage had been made mandatory. Let us hope that, in a few years, as it becomes more widespread, the new coverage will be included on *all* policies.

Not all of the companies are providing compensation on a non-fault basis to pedestrians hit by the insured vehicle; many limit their coverage to occupants of the vehicle and members of the insured's family while pedestrians. All pedestrians must be covered if this plan is to succeed in eradicating the problem of non-compensation.

The benefits are far from generous. It has been demonstrated that the need for reform is most pressing where the economic losses are great. Thus, it would be preferable if the maximum amount of coverage were eliminated or at least raised. By introducing a deductible feature of, say, $100, the high administrative cost of small claims might be reduced and additional funds might be freed to compensate larger losses. Since the average cost of funerals is about double the amount provided, this figure could be increased. One might also question the adequacy of the amount of the weekly benefit, which is lower than the weekly minimum wage required by some provinces and by the federal government. At least $50 per week should be provided. Moreover, the duration of these payments should not be limited to four years, since the need for assistance is greatest in the long-term cases. Nor should payments be limited only to cases of total disability; they should be available on a scaled-down basis for partial disability. Naturally, this would entail additional expense that may be felt unwarranted at present. The details of the dove-tailing with social welfare schemes and the

problems of subrogation remain to be worked out as do many other important items.

In any event, this plan is somewhat of a breakthrough. At last a non-fault plan is in operation, as deficient as it may be. At last it has been recognized that tort law can co-exist with an automobile plan. At last the insurance industry has recognized its obligation to society and has assisted in reforming the system. At last it has been demonstrated that the nationalization of the insurance industry is not necessary in order to reform it. At last a group of lawyers has recognized its responsibility to all automobile injury victims. The Canadian plan is by no means perfect and, undoubtedly, many improvements are needed. But at least we have begun.