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**AUTOMOBILE INSURANCE:  
A COMPARATIVE CASE STUDY  
ANALYSIS IN CANADA**

by

**Christopher J. Clark**

**A Thesis Submitted to  
the Faculty of Graduate Studies and Research  
Through the Department of Political Science  
in Partial Fulfillment of the Requirements for  
the Degree of Master of Arts in Political Science  
at the University of Windsor**

**Windsor, Ontario, Canada**

**September 25, 1992**

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## **ABSTRACT**

The following is a comparative case study analysis of automobile insurance in Canada. The purpose of this analysis is to construct an appropriate model of automobile insurance for the province of Ontario. The first chapter is a literature review designed to give the reader enough background information to understand to analysis of the study. This is followed by a research design which outlines the units of analysis, the content of the case analyses, the criteria used in the comparative analysis, and the techniques employed throughout the study. The third chapter consists of four case studies: Ontario, Quebec, Manitoba, and Alberta. This chapter is broken into two parts including a historical review, and a current model section. The fourth chapter is a comparative analysis which examines the four jurisdictions according to the criteria given in the research design. This is supplemented by a survey of the literature most relevant to the pre-established criteria. Finally in chapter five, a model of automobile insurance for the province of Ontario is designed, based on the data derived from the case studies and the comparative analysis.

In memory of Marvin Ewing.

## **ACKNOWLEDGEMENTS**

I would like to thank my committee: Dr. S. Brooks, Dr. L. Brown-John, Professor H. Pawley Q.C., P.C., and Dr. D. Hardina, for their advice and input, their time, and their invaluable guidance. As well, numerous individuals from various governmental agencies, political parties, and private sector organizations provided me with a tremendous amount of information. Their efforts have been greatly appreciated. These individuals are listed in the bibliography under the "interviews and presentations/transcripts" heading.

On a more personal note, I thank my family and friends for their support throughout the duration of this endeavour. I, perhaps like many other M.A. students, did not realize the overwhelming commitment required to complete a thesis. It was these individuals that kept me sane throughout the process.



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Vita Auctoris
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## INTRODUCTION

The automobile insurance issue has emerged and re-emerged throughout the political history of the province of Ontario. Numerous provincial commissions, studies, and task forces have examined the issue; some have been followed by concrete policy responses while others have not. Regardless, it has appeared on the public agenda with relative frequency, and it remains to this day, an item of concern for policy-makers and societal interests alike.

Substantial reforms have been implemented in the automobile insurance policy field since the late 1980's. Among these has been the introduction of threshold no-fault, the establishment of regulatory bodies, and the regulation of automobile insurance rates. These reforms have sought to control rising accident compensation costs which have contributed to substantial insurance premium increases in recent years.

With the surprise election of the New Democrats in 1990, most observers expected radical reform in automobile insurance. Among the changes anticipated was a government takeover of the Industry. This has not materialized. Instead, the Rae Government has introduced a less intrusive reform package under Bill 164, which includes changes to the compensation system but does not include the traditional NDP policy of government-run automobile insurance. Dissent within the NDP Caucus, and opposition outside of the party ranks (ie. insurance industry officials and other interest groups), point to what they consider as being serious deficiencies with the Legislation.

Furthermore, delays in the Legislature have hindered the Bill's path to Royal Assent. At present, in September of 1992, the future of automobile insurance in Ontario is uncertain.

The purpose of this study, as mentioned, is to design an appropriate model of automobile insurance for the province of Ontario. The model proposed in this thesis is based on a realistic and objective analysis of the costs and benefits of those models which currently exist in Canada. The basic methodology employed by this study is the comparative case study method.

In conducting the analysis, four representative Canadian jurisdictions were examined separately, and then in a comparative context. In the single jurisdiction case studies, a historical review was conducted. This was followed by a comprehensive examination of the model of automobile insurance currently in place in each of the four jurisdictions. The comparative analysis was guided by five criteria for evaluation and comparison: affordability, efficiency, compensation, management of financial resources, and rate-making methodology. These criteria were derived from numerous studies which have considered the automobile insurance issue in the past.

This study relied on numerous sources of information. Among the sources used were provincial, federal, and corporate documents, academic journals, automobile insurance industry journals and reports, personal interviews with corporate/industry representatives, political and public officials, transcripts, and periodicals.

The comparative case study analysis lead to several key findings which formed the basis of the conclusions, and consequently, the structure of the model proposed by this study. In short, it was discovered that the public ownership model of automobile insurance has demonstrated a greater level of efficiency, and is thus less costly to administer than the private sector model. As well, both the pure and the threshold no-fault models of compensation, were shown to be much more efficient and much less costly than that of tort, or "add-on" no-fault. Being that the difference in savings between threshold and pure no-fault was negligible, the former was deemed to be the most desirable alternative of the two.<sup>1</sup> The primary conclusion of this thesis is that the combination of threshold no-fault and public ownership in the automobile insurance field, would allow for substantial savings which could be reflected in reduced premiums, improved coverage, or both. Consumers of automobile insurance in Ontario would most certainly benefit from these improvements.

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<sup>1</sup> The right to sue is restricted to only the most serious injuries under threshold no-fault, whereas pure no-fault systems completely deny access to the courts for injuries resulting from automobile accidents.

## CHAPTER ONE

### LITERATURE REVIEW- BACKGROUND

#### A) Fundamentals of Insurance

Mehr and Cammack in Principles of Insurance, define insurance as being:

...a social device used for reducing risk by combining a sufficient number of exposure units to make their individual losses collectively predictable. The predictable loss is then shared proportionately by all those in the combination. This definition implies that the uncertainty is reduced and that losses are shared.<sup>2</sup>

The terms of agreement between the insurer and the insured are set out in a legally binding contract. This contract stipulates the specific transfer of risk to the insurer, the "second party", from the insured, the "first party". In exchange for the coverage provided by the insurer, the insured agrees to pay a specific insurance premium. The level of the premium is based on the principle of "risk". In short, the higher the risk of insuring an individual, (the probability that they will collect times the amount of coverage), the higher the insurance premium.

Insurance is made available to the consumer both directly, through agents of the insurance company, and indirectly, through insurance brokers. The former are representatives of the insurer, whereas the latter are

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<sup>2</sup> Mehr and Cammack (1966,34-5)

independent businesspeople who may represent any number of insurance companies. Those companies represented by brokers receive clients on a commission basis.<sup>3</sup>

Although there exists numerous lines of insurance available to the consumer, the focus of this paper is that of automobile insurance. Within this context alone, numerous types of insurance coverage or protection can be purchased. In general, however, automobile insurance coverage can be classified under two broad headings; "first party" and "third party" coverage. The former includes simply, any loss or damage to person or property of the insured. The latter on the other hand, provides protection against any loss or damage to person or property of a "third party" ie. another driver, which results from the fault or negligence of the insured, the first party. Damage to "person" in both instances normally includes medical expenses incurred, lost wages, pain and suffering, and so on. Property damage would include vehicle damage, and other property damaged as a result of an auto accident.

As mentioned previously, insurance premium levels are determined according to the principle of risk. In the auto insurance industry in particular, because of the difficulty of assessing the individual risk of each policy holder, companies must "group", or combine risks when establishing premium rates. The process of grouping those drivers who pose similar risks is done in a systematic fashion. The resulting structure is referred to as the "classification

---

<sup>3</sup> Ontario, Slater (v.1,1986,5)

system".

By allocating insureds to groups with similar risk characteristics, a reasonable price can be established by observing the groups' losses and relating the price to the average experience of the class.<sup>4</sup>

In his report for the government of Ontario, Justice Osborne established a number of efficiency and equity criteria against which classification systems can be measured.<sup>5</sup> The first, "homogeneity", refers to the existence of a relatively similar group of individuals with regards to their degree of risk and expected loss cost, within a given class. The loss cost of an individual is essentially the monetary loss which they impose on the insurer, that is, the amount of claims against the insurance policy. In their piece, Rate Determination, professors Rea and Trebilcock explain that:

The expected loss of each individual group member should ideally fall as close as possible to the mean expected loss of the class as a whole.<sup>6</sup>

If this is achieved, then a desirable level of homogeneity is realized. Of course, absolute homogeneity is unattainable in practice.

The second criterion given by Osborne is referred to as "separation". This implies simply, that just as those within a class should be similar, or homogeneous, those from different classes should be different, or rather separated, by differences in expected losses. "Overlapping" (a situation where

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<sup>4</sup> Ontario, Osborne (1988,190)

<sup>5</sup> Ibid. (1988,197-199)

<sup>6</sup> Ibid (1988,197)



individuals from different classes have similar expected losses or risk), should be avoided.

Probably the most vital criterion from the perspective of the insurer is that of "reliability". If the classification system is not reliable in predicting losses, then rates will either be excessive in relation to actual losses, thereby displeasing consumers, or inadequate, thus resulting in financial losses incurred by the company.

The last two criteria noted by Osborne are "acceptability" and "incentive value". The first maintains that a classification system should be socially acceptable. For example, race and religion are considered by our society to be unacceptable criteria for assessing risk in terms of insurance. The traditional demographic variables of sex, age, and marital status as well have come under increasing attack by the public as they are seen by many as being socially unacceptable measures of risk. This will soon be discussed at greater length. The second, incentive value, refers to the belief that a good classification system will provide adequate incentive to encourage insureds to drive carefully. The practice of "experience rating" (rating according to the driver's record), is said to be the most effective criterion with regards to inducing safe driving habits.

Being that the essential features of a good risk classification system have been discussed, our attention now turns to three basic classification systems

traditionally, and currently used in Canada.<sup>7</sup> The traditional method of rate classification has been one which relies on demographic variables for determining risk; age, sex, and marital status. These variables have commonly been accompanied by territory, type and use of vehicle, and driver experience/history. The logic behind using demographic variables is that statistics have indicated that these variables serve as "crude proxies"<sup>8</sup> for measuring risk. In particular, young, single males (under twenty-five years of age) as a group, have been statistically shown to be a high risk class and are thus classified as such. The problem however, concerns the question of whether or not classifications that just mentioned are discriminatory. Thus the question: are they socially acceptable? How is discrimination on the basis of sex, age, or marital status any different than that based on race or religion? These are the sorts of questions that legislators and insurance companies have had to grapple with. Statistical relevance of the criteria does not in itself ensure social acceptability.<sup>9</sup>

In response to the concern that demographic variables in rate classification systems are discriminatory, several jurisdictions in Canada have eliminated them from the risk rating process. Two basic models have replaced

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<sup>7</sup> other variations can be found, however, these two models cover the basic structures used.

<sup>8</sup> Trebilcock (1989,32)

<sup>9</sup> For a discussion of rate classifications, see Weigers (1989), Trebilcock (1989, 29-35), Ontario, Osborne (v.1,1988,60,190,693,v.2,217), and Devlin (1988).

the traditional model in these systems. Both of these models base insurance premiums solely on vehicle type and use, and territory.<sup>10</sup> The difference between the two however, concerns the manner in which driving records, or "driving histories or experience" are handled. Under one of the models, "driver history" is in no way reflected in the cost of driving. The other however, uses a merit/demerit point system which is tied to licencing rather than insurance.<sup>11</sup> In this way, the amount paid into the system by each driver is representative of the cost personally imposed by that individual. This is in contrast to the traditional system which assesses individual contributions according to a process which is based on the assumption that those who fall within a given demographic category impose a similar degree of risk.

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<sup>10</sup> The province of Quebec is the only Canadian jurisdiction that does not take the driver's record into account when establishing insurance premiums for bodily injury coverage.

<sup>11</sup> In general, the system rewards those with good records, and penalizes those with at-fault accidents and traffic violations.

## **B) Variations/Types of Systems**

In essence there are two primary legal structures available when one considers the provision of auto insurance; the "tort" or "fault", and the "no-fault" approach. Within each there exists several variations.

### **Tort Based Insurance**

Tort based insurance systems are also commonly referred to as "third-party insurance" or "liability insurance" systems because these systems are based on the premise that

...where a person suffers injury or loss in an automobile accident, compensation is recoverable by court proceedings if the person can prove that the fault or negligence of another in the use or operation of a motor vehicle wholly or partly caused the injury or loss.<sup>12</sup>

Negligence or fault is defined as "...a departure from the standard of care that is expected of a "reasonable person".<sup>13</sup>

The tort based system is built on the adversarial relationship between the plaintiff and the defendant. Evidence is presented by both sides, from which the courts must determine whether or not the standard of a "reasonable person" was deviated from, as well as the extent of injury and/or damage

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<sup>12</sup> Alberta, Wachowich (v.1,1991,80)

<sup>13</sup> Rea, (1986-87,447). Note that "reasonable man" has been modified to "reasonable person". For further discussion of this principle, see Manitoba, Kopstein (paper#2,1988,3), Laycraft (1971,23), Alberta, Wachowich (v.1,1991,80-81), (v.2,1991,apdx.6,23), and Ontario, Osborne (1988,298).

inflicted as a result of such negligence.

Tort law seeks to reimburse the accident victims for all of the damages they have suffered. The basic principle for the measure of damages in tort is that the injured person should receive that sum of money which will as nearly as possible restore the victim to the position he or she was in before the accident.<sup>14</sup>

In order to ensure that the victim is completely restored to their pre-accident position, or "made whole",<sup>15</sup> the tort system maintains that victims be compensated for non-pecuniary, or non-monetary losses, ie. "pain and suffering" and "loss of enjoyment of life", in addition to "pecuniary" or direct financial losses, ie. lost wages, medical expenses and the like.<sup>16</sup>

The principle of fault has been modified in many jurisdictions to include the idea of "comparative" or "contributory" negligence. These terms refer to situations where neither party was entirely at fault, so both parties are compensated taking into consideration the degree to which their own negligence contributed to the accident.<sup>17</sup>

The contributory or comparative approach to negligence and the simple rule of negligence contrast a third variation of tort remedy; strict liability. The idea of "strict liability" is based on the premise that "(t)he defendant is held

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<sup>14</sup> Ontario, Osborne (1988,298)

<sup>15</sup> British Columbia, McCarthy (1983,17). Also see: Alberta, Wachowich (v.2,1991,Apdx.6,23).

<sup>16</sup> see Carrol et al., No-Fault Automobile Insurance (1991,2), Ontario, Charlton (Gloss,1991,2), British Columbia, McCarthy (1983,20,118,123), or Ontario, Osborne (1988,299).

<sup>17</sup> See Rea (1986-87,446-447), Laycraft (1971,23-24), and Wachowich (v.1,1991,80-81).

liable for all accidents caused by him(/her) regardless of the defendant's negligence".<sup>18</sup> Epstein in his article, "Automobile No-Fault Plans" notes, strict liability is very narrow in focus. Specifically, he states that "...the only question of relevance on the matter of responsibility of each party is whether (their) conduct conformed to the rules of the road".<sup>19</sup> Strict liability only requires that injury and causation be shown, whereas negligence requires that injury, causation, and carelessness or deviance from the "reasonable person" principle be proven.<sup>20</sup>

Another element of tort is that of deterrence. Deterrence in this context normally refers to the "level of care" which a negligence based system, in theory, encourages. Despite the differences in the "burden of proof" between contributory negligence and strict liability tort as discussed, Epstein notes that both "...rely on some concept of individual responsibility for the consequences of individual actions".<sup>21</sup> In complement to Epstein's belief in individual responsibility, Linden in "Faulty No-Fault" adds that the tort system can be viewed in terms of reward and punishment.

It (the tort system) seeks to reward the "innocent" and punish the "guilty" in the hope that this will encourage people to be more careful in the way in which they conduct themselves. It aims to

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<sup>18</sup> Rea (1986-7,470)

<sup>19</sup> Epstein (1979-80,780). Also see: Ontario, Osborne (1988,302-303).

<sup>20</sup> Canada, Belobaba (v.1,1983,glossary)

<sup>21</sup> Epstein (1979-80,776)

deter negligent conduct, and to reward careful conduct.<sup>22</sup>

Lastly, Rose Ann Devlin in her discussion of tort and no-fault insurance, looks at the deterrence element in terms of financial incentive. "If individuals must pay for damages due to their own negligence, then they are induced to be more careful".<sup>23</sup> In general, these and other authors who speak positively of the deterrence function of tort, believe that if one is held responsible for one's actions financially and socially, then they are more likely to exercise a reasonable level of care in their conduct than had they not been forced to take responsibility for their actions.<sup>24</sup>

In addition to the variations of tort discussed here, some tort-based jurisdictions have adopted limited no-fault benefits to compensate those not covered under the fault system. In general, under this structure, no-fault benefits are deducted from any tort award received. Nonetheless, tort remedy in this context remains the primary source of accident compensation.

### No-Fault Insurance

In contrast to tort based systems which are known as "third-party liability" systems, no-fault insurance systems are commonly referred to as

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<sup>22</sup> Linden (1975,457)

<sup>23</sup> Devlin (1989,2)

<sup>24</sup> For further discussion of the deterrence function of tort based systems, see: Laycraft (1989,40), Klar (1989, 308-311), Ontario, Osborne (1988,303-304), Alberta, Wachowich (v.1,1991,93-95), Rea (1986-7,445-449), Canada, Belobaba (v.1,1983,83-86), and British Columbia, McCarthy (1983,14).

"first-party" insurance systems. Jurisdictions which employ variations of the no-fault model, base compensation on "first-party" grounds and therefore cover the insured "...for bodily injury to himself or herself according to scheduled limited benefits including hospital and medical care, income subsidy and impairment benefits".<sup>25</sup> Non-pecuniary losses may or may not be provided, depending on the jurisdiction. As well, in most of these jurisdictions, compensation for property damage is handled according to similar no-fault principles. Within the broad category of no-fault insurance, three major models can be identified: "pure" no-fault, "modified" no-fault, and "add-on" no-fault.<sup>26</sup> In a "pure" no-fault jurisdiction, "...the personal injury victim is entitled to no-fault benefits exclusively. The right to sue in tort is eliminated".<sup>27</sup> With specific regards to property damage, if the individual is insured, "(t)he payment of losses is made directly by the insurer to its own insured entirely irrespective of fault or innocence".<sup>28</sup>

The second variation of no-fault to be discussed here is the "modified" or "threshold" no-fault model.

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<sup>25</sup> Manitoba, Kopstein (Paper #2, 1988,15)

<sup>26</sup> Combinations and variations of these three models have been examined by some authors, however, these are the primary models of no-fault auto insurance.

<sup>27</sup> Klar (1989,304)

<sup>28</sup> Ontario, Singer and Breithaupt (2nd Rpt., 1988,45) For further discussion of pure no-fault, see: Manitoba, Kopstein (1988,15), Rea (1986-7,466), Ontario, Osborne (1988,452-457), Alberta, Wachowich (v.1,1991,107-111), and Maroney (1984,76).



The principle distinguishing characteristic of a modified no-fault plan is that the right of an injured party to sue another party, who is allegedly at-fault for the accident, is restricted to claims for the more serious of injuries.<sup>29</sup>

The "right to sue" depends on whether or not the seriousness of the injury surpasses a pre-determined verbal or monetary threshold.<sup>30</sup>

The third variation of no-fault is the "add-on", or "expanded first-party benefit" model. These plans "...provide for the payment of first-party benefits regardless of fault, but do not provide an exemption from tort liability".<sup>31</sup> In other words, there is no restriction on the "right to sue" despite the provision of first-party, no-fault benefits.<sup>32</sup> It should be noted that no-fault benefits received are deducted from any tort settlement awarded.

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<sup>29</sup> Manitoba, Kopstein (Paper #2,1988,49). Also see: Klar (1989,304), Ontario, Osborne (1988,464-471), Trebilcock (1989,47-48), and Maroney (1984,76).

<sup>30</sup> For example, some jurisdictions use the verbal threshold; "serious impairment of bodily function", or "serious permanent disfigurement", whereas others have opted for varying monetary thresholds which require that the cost of the accident in financial terms surpass the given monetary threshold. See: Carrol et al., No-Fault Automobile Insurance (1991,6).

<sup>31</sup> Vaughn (1982,417)

<sup>32</sup> Also see: Trebilcock (1989,48-49), Klar (1989,304), and Maroney (1984,76). The level of no-fault benefits under most "add-on" plans is such that victims must still seek tort remedy in order to adequately cover their losses. As such, despite the provision of limited no-fault benefits, compensation under the "add-on" model remains primarily tort-based.

### The Tort/No-Fault Debate

There are numerous areas of debate when considering the options of tort and no-fault insurance. One of the problems in debating the merits and demerits of each however, relates to the fact that there are, as has been discussed, variations of each model. As such, generalization is sometimes difficult, and in some instances, inaccurate. Nonetheless, attempts have been made by numerous authors to credit or discredit one model or the other. The following is a synopsis of the major arguments which have been put forth in this debate.

The most substantial arguments fall within one of three broad categories: deterrence, compensation, and administrative costs. In theory, the tort system is supposed to act as a deterrent against negligent behaviour. However, as many have indicated, there are problems with this theory. Kopstein in his 1988 study, noted that "...as a result of insurance, the negligent driver in most cases will be relieved from the direct burden of compensating the victim".<sup>33</sup> It is believed by those who concur with this view, that the advent of auto insurance has mitigated the deterrent impact of the tort system.

As a result of the introduction of insurance, studies such as those done by Ontario's Justice Osborne, the Task Force on Insurance, and the Select Committee on Company Law as well as that of Devlin, and Boyer and Dionne of Quebec, Kopstein of Manitoba, and Belobaba of the federal government, all

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<sup>33</sup> Manitoba, Kopstein (Paper#2, 1988,7)

claim that the tort system on its own, is simply no longer able to act as an effective deterrent.<sup>34</sup> In short, the Law Reform Commission of Ontario in 1979 concluded that "...tort law is a haphazard and inefficient means of deterrence". This statement has been quoted in several of the pieces listed above.<sup>35</sup>

The majority of the papers mentioned here point to what they claim as being more effective deterrents of negligent behaviour. The combination of considerations such as personal injury and death, increased insurance premiums, and regulatory and criminal sanctions are said to be more effective in deterring negligent behaviour than is the fear of being held liable or responsible for one's actions.<sup>36</sup>

Aside from these alternatives, still some assert the view that the system chosen is in fact irrelevant with regards to deterring negligent behaviour. The point has been made that no one (other than masochists and the suicidal) wants to be injured or killed. Civil liberty and sanctions are unrelated to this natural human fear of injury, pain and suffering, and death. Therefore, to

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<sup>34</sup> See: Ontario, Osborne (1988,319-320), Ontario, Slater (1986,96-8), Ontario, Singer and Breithaupt (1978,57), Devlin (1989,2-3), Boyer and Dionne (1987,183), Manitoba, Kopstein (1988,10), and Canada, Belobaba (1983,90).

<sup>35</sup> See: Friedland, Trebilcock, and Roach (1990,71) for a summary of similar arguments.

<sup>36</sup> These deterrents are applicable to both tort and no-fault schemes. The one exception is in Quebec where insurance premiums for bodily injury coverage do not reflect driving records, yet the other factors still apply. See also: British Columbia, McCarthy (1983,120).

debate over which system (ie. which method of compensation, sanctions, penalties and so on) most effectively deters negligent behaviour would prove futile.<sup>37</sup> As summed by Belobaba in reference to the effectiveness of the tort system as a deterrent, "(i)f the threat of injury or death does not deter, then civil liability for sure will not deter".<sup>38</sup> One would assume that little could deter a driver unafraid of injury or death.

The proponents of the tort-deterrence theory claim, that despite the argument raised with regards to the dampening effect of insurance, the tort systems nonetheless still provide a more effective deterrent than do no-fault systems. Such generalization however, is in the least problematic because of the variations of no-fault. If one believes that access to tort remedy acts as a deterrent, then of course, the "pure" no-fault model would be the least desirable system with regards to deterrence. The "modified" or "threshold" model and the "add-on" model however, do maintain the "right to sue" to varying degrees. This eliminates the luxury of generalizing if one believes in the tort-deterrent correlation. The second major topic of debate is compensation. The tort and no-fault models differ in their basic philosophy regarding the compensation of accident victims. The no-fault schemes

...seek to provide compensation for all victims for some realistic measure of losses arising out of bodily injuries incurred in automobile accidents...regardless of who can be said to be at

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<sup>37</sup> See: Alberta, Wachowich (v.1,1991,apdx.6,32)

<sup>38</sup> Canada, Belobaba (1983,93)

fault.<sup>39</sup>

As mentioned previously, property damage is usually handled according to the same first-party, no-fault principles.

The main philosophical difference with the tort model is that

...the chief priority of the fault liability system of compensation is to protect the innocent victim of negligence by providing a means of recovery of losses from the party at fault in an accident.<sup>40</sup>

The debate nonetheless, focuses not so much on the actual "raison d'être" of each of the two models, but rather on the degree to which adequate compensation is provided and at what cost, as a result of their philosophical differences. Again, generalizations are difficult to make because of the variations of each of the two basic models, although some can effectively be made.

Those supporting no-fault typically point to three major problems in compensation experienced by tort based systems. Numerous authors have noted that many accident victims are left uncompensated under tort. This problem has been cited by numerous authors. It has been estimated that between one third and one half of all accident victims fail to receive even minimal compensation under the tort system.<sup>41</sup>

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<sup>39</sup> Ontario, Singer and Breithaupt (2nd Rpt., 1978, 47)

<sup>40</sup> Ibid

<sup>41</sup> See: Keeton and O'Connell (1965, 1-3), Rea (1986-7, 450), Ontario, Slater (1986, 99), B.C., Woolton, (1968, 506), Alberta, Wachowich (v.2, 1991, apdx. 6, 35), Ontario, Osborne (v.1, 1988, 317), Ontario, Leal (1973, 14), and Canada, Belobaba (1983, 72). Belobaba referred to numerous other sources which also address this problem.

A second problem experienced in "third-party liability" systems is excessive delay resulting from court backlogs, appeals, the gathering of evidence, and the often difficult job of proving fault or negligence. Belobaba in his study noted that

(l)awsuits take time. Not just days or months, but years. It is not at all unusual for an injured plaintiff to find him(/her)self out-of-pocket for seven, eight or nine years before compensation is finally paid.<sup>42</sup>

In contrast, proponents of no-fault often assert the fact that accident victims in no-fault jurisdictions do not experience the excessive delays attributed to the tort-based court system.<sup>43</sup>

A third problem relating to compensation concerns the determination of negligence or fault in the tort system. Many individuals in tort-based systems are not compensated for accidents as a result of a "...moment's hesitation or minor error".<sup>44</sup> Such error constitutes negligence under the tort system. The principle of a "reasonable person" some feel, is too theoretical. In reality, people make mistakes. As put by Trebilcock in his article, "Incentive Issues in the Design of No-Fault Compensation Systems", "(d)river error is simply a

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<sup>42</sup> Canada, Belobaba (1983,76). Also see: Ontario, Leal (1973,13-4).

<sup>43</sup> See: Epstein (1979-80,782), Ontario, Osborne (1988,318), B.C., Wachowich (v.1,1991,98), Keeton and O'Connell (1965,1-3), Canada, Belobaba (1983,76), and Ontario, Slater (1986,99).

<sup>44</sup> Boyer and Dionne (1987,183)

manifestation of inherent human fallibility".<sup>45</sup> In short, the pro-ponents of no-fault maintain that all victims of auto accidents should be compensated.

Supporters of tort argue that benefits received under no-fault systems are inferior to those of the tort system. This argument relates to the fact that individual circumstances are not taken into consideration in no-fault regimes because of the standardization of accident benefits, and in many no-fault jurisdictions, compensation is not available for non-pecuniary losses. As a result of the former, some claim that individual circumstances may warrant a larger award than is provided under the no-fault benefits schedule. Under a tort system, each individual victim is dealt with according to the specific details of their situation.

The latter concerns the traditional belief of tort that the victim must be made "whole" through the compensation of all losses. If victims of accidents are unable to receive compensation for all losses including non-pecuniary losses, then this principle has not been realized. Laycraft in his piece on tort reform, expressed the concern that "...the innocent must suffer in order that the guilty be compensated (under no-fault regimes)".<sup>46</sup> He, like other tort supporters, believes that benefits are reduced for the "innocent" in order to compensate the "guilty" under no-fault.

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<sup>45</sup> Trebilcock (1989,31). Regarding driver errors, also see: Quebec, Gauvin (1974,184-85), British Columbia, Woolton, (1968, p.506-7), Ontario, Osborne (1988, p.320), Alberta, Wachowich (v.2,1991,apdx.6,31), and Kopstein (1988,90).

<sup>46</sup> Laycraft (1968,38)

The response of no-fault proponents regarding that structure's tendency to not provide compensation for non-pecuniary losses is one, non-economic losses cannot be accurately measured in dollar terms, and two, the elimination of non-pecuniary compensation allows for the compensation of a greater number of people (for measurable losses) in the system.<sup>47</sup> The debate over non-pecuniary losses, not unlike other elements of the tort/no-fault debate, relates back to the original principles of the two systems. The argument that would appear most convincing to the reader would depend on the basic philosophy to which that reader adheres to. The question is: does society want basic compensation for all victims of automobile accidents, or the opportunity for innocent victims to seek a maximum level of compensation through the courts? Personal values are no doubt inherent in much of the tort/no-fault debate.

The third major area of debate concerns the costs associated with administering the two systems. For the most part, this is a part of the debate emphasized by no-fault proponents for the simple reason that most, if not all studies, have concluded that tort systems are more costly to administer than are no-fault systems.<sup>48</sup> Belobaba in his discussion of the high cost of the tort

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<sup>47</sup> Ontario, Singer and Breithaupt (2nd Rpt., 1978, 50)

<sup>48</sup> For more on the high cost of the tort system, see: Ontario, Osborne (1988, 319), Boyer and Dionne (1987, 183), Keeton and O'Connell (1965, 1-3), B.C., Woolton (1968, 506), Devlin (1989, 8-9), O'Connell (1972, 94-95), Alberta, Wachowich (v.1, 1991, 98), Ontario, Slater (Rpt. #1, 1986, 100-1).



litigation process, refers to the traditional system as being "cost in-effective" and "horrendously expensive".<sup>49</sup> The net result of the high cost of running this system is that "(m)ore money goes to lawyers and insurance adjusters than to the victims". O'Connell in his discussion of tort insurance, has gone even further to say:

If you sat down to design a system for wasting and dissipating precious medical and insurance resources you could not do any better than what we have now (that of course being the tort system).<sup>50</sup>

#### Government Presence in the Industry

As is the case with most industries, if the private sector has effectively provided a given product, government intervention is normally kept to a minimum. However, in the auto insurance industry, most jurisdictions have experienced some difficulty with either the price, the product, or both. This situation has lead to numerous public inquiries as to how governments can best address the problems experienced in this market. The resulting instruments selected by these governments have been as numerous as the various jurisdictions themselves. Nonetheless, two basic forms of direct government intervention into the auto insurance industry can be identified; regulation, and public ownership.

Government regulation, as noted by the Slater Report of Ontario, can

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<sup>49</sup> Canada, Belobaba (1983,77)

<sup>50</sup> See: Slater (1986,101)

itself be broken into two further categories; financial regulation, and market regulation.

Financial regulation refers to the controls placed on the structure of insurers, the financial aspects of their operations and their accountability for such operations. Market regulation refers to the controls placed on the relationship between insurers and insureds and their respective rights and obligations, including contracts of insurance, policies, rates, premiums and insurance delivery networks.<sup>51</sup>

The degree to which the given jurisdictions have chosen to regulate their own auto insurance industries of course varies as do the more specific instruments (ie. department or agency) chosen to implement and enforce their specific regulatory policies.<sup>52</sup>

The second major form of direct government intervention, as mentioned, is public ownership. Public auto insurance corporations are established for numerous reasons, all of which differ from one government to the next. This topic alone could form the basis of a separate study. Notwithstanding this however, the Ontario Select Committee on Company Law identified two primary motivating factors for government ownership; social principles, and conditions in the auto insurance market.

The Report of the Committee stated:

It is argued that a major principle behind government ownership is the social necessity of compulsory minimum insurance. If

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<sup>51</sup> Ontario, Slater (1986,151)

<sup>52</sup> For a discussion of regulation, see: Ontario, Singer and Breithaupt (2nd Rpt.,1978,480-510), and Ontario, Slater (1986,190-91, and 145-154).

private industry is allowed to market compulsory basic coverage, the motorist is forced to contribute to the profit of private companies.<sup>53</sup>

Part of the philosophy behind this belief is that if the consumer is forced to purchase the insurance product, then the market is no longer a true "free market". In a true free market, the consumer not only has the choice of whom to buy from, but also has the choice of whether or not to buy. If insurance is compulsory, the consumer's ability to make purchasing decisions is limited. As such, the government has an obligation to insure that undue profit is not made at the consumer's expense.

Additional social principles sought through the establishment of a public corporation include: availability of auto insurance, use of profits and/or premium income for investment purposes, and equity and redistribution concerns. With regards to the first point, a public corporation would have the responsibility of ensuring that all drivers have access to adequate insurance coverage in contrast to the private market which may choose not to insure certain individuals.<sup>54</sup>

The second, investment practices, refers to how investments are made. Public corporations are known to invest in institutions in the interest of the public (ie. municipal debentures, hospitals etc.), in addition to funding

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<sup>53</sup> Ontario, Singer and Breithaupt (1978,392)

<sup>54</sup> The private sector has established a residual market or "high risk pool" for those unable to find insurance in the regular market, however rates are often twice (if not more than) that found in the regular market.

programmes in the public interest (ie. driver safety and education).<sup>55</sup> The last social principle concerns equity and redistribution. The public corporation seeks to spread the cost of auto insurance as evenly as possible across the driving public thus making it affordable for as many people as possible. Critics of public ownership claim that this spreading of the burden results in a degree of cross-subsidization between high and low risk drivers.

The second major motivating factor mentioned, conditions in the market, depends on the particular conditions which exist within each given jurisdiction. Furthermore, conditions which one government considers to be ample justification for the establishment of a public auto insurance corporation, may be deemed inadequate by another. Such conditions nonetheless, could include any or all of the following: market instability, high premiums, inadequate coverage, oligopolistic behaviour among firms, inadequate service, and public dissatisfaction.

Now that the reasons for establishing a public auto insurance corporation have been discussed, some attention should be given to the advantages and disadvantages associated with this governing instrument. It should be noted however, that what is considered to be an advantage by some is to the same degree, a disadvantage in the view of others.

The advantage most commonly referred to by pro-ponents of public

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<sup>55</sup> Also see: Pawley (Article B, 1991, 3-4)

ownership is the reduction in administrative costs through increased efficiency.<sup>56</sup> The major advantage of a public corporation with regards to costs of administration, relates to the savings realized by "economies of scale". These savings can be maximized through the standardization of service and product. The Slater Commission of Ontario noted that as a result, "...a larger proportion of the revenue dollar (premiums plus investment income) will find its way into claims paid than in private insurance corporations".<sup>57</sup>

Standardization is a key word when considering administrative costs and "economies of scale". Certainly without any standardization, "economies of scale" could not be achieved. As such, one uniform, or standardized system could potentially be administered at a much lower cost than could a system of numerous separate companies, each with their own policies, procedures, and objectives. All areas of administration could be simplified and standardized. One, the distribution system could simultaneously administer insurance, vehicle registration, and licensing. Two, a single computer and communications network could handle the work of the entire province. Three, in the area of claims adjusting, strategically located centres could be run throughout the province thereby streamlining operations and reducing costs. And four, to advertise for one company would be less costly than to advertise for many

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<sup>56</sup> See: Ontario, Slater, (1st Rpt., 1986, 193), Pawley (Article A, 1991, 3-5), Atkinson and Nigol (1989, 121), and Ontario, Osborne, (v.1, 1988, 676-678).

<sup>57</sup> Ontario, Slater (apdx.19, 1986, 3)

private firms.

The combining of insurance, vehicle registration, and licensing into a single process deserves special attention in that an additional benefit, aside from that of efficiency and cost reduction, can be realized. As was mentioned in the Woolton Commission Report of British Columbia, such coordination ensures that drivers' records will be accurately reflected in the cost of driving:

The suspension, cancellation, or revocation of the certificate of registration or of the driver's licence automatically revokes, suspends, or cancels, as circumstances dictate, the corresponding certificate of insurance.<sup>58</sup>

This is in contrast to the common situation that exists in the private insurance jurisdictions where individuals are able to withhold information regarding their driving records. This is possible because it is too costly for insurance companies to check the driving records of their policy holder's for periodic changes. As a result, some high risk drivers pay insurance premiums which do not accurately reflect their risk.<sup>59</sup>

As was mentioned earlier, one of the motivations of establishing a public insurance corporation is the ability to spend excess funds on programmes such as those related to traffic safety, accident prevention, and driver education in general.<sup>60</sup> The private sector does not normally have a vested interest in

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<sup>58</sup> British Columbia, Woolton (1968,29)

<sup>59</sup> Also see Ontario, Osborne (v.1,1988, 695-6) regarding the issue of compliance.

<sup>60</sup> See Ontario, Osborne (v.1,1988,697), and Quebec, Gauvin (1974,374).

programmes of this nature in that there are no direct financial incentives involved. Private sector profits are more likely to be directed towards investments for example, rather than social goals. The government on the other hand, has if nothing else, the political incentive to initiate such programmes. The possibility that these programmes may have a long term positive impact on driving habits still exists nonetheless. This process of redirecting money back to the public by way of safety programmes and the like, is seen by most as being an advantage of public ownership.<sup>61</sup>

In contrast to those advantages discussed here, several disadvantages of the public ownership option have been identified. Coopers and Lybrand in their 1991 study, and Osborne in his 1988 report, recognize several problems associated with setting up a public auto insurance corporation.

Certainly one of the most commonly asserted fears of public ownership in the Industry is the massive "start-up costs" required to implement a government-run scheme. Coopers and Lybrand state that the burden of these costs will inevitably be:

...borne either by taxpayers (if payments are from general revenues) and/or by insured drivers (if the interest costs on debt are carried by premium income).<sup>62</sup>

These start-up costs, they go on to say, are contingent upon several major factors including:

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<sup>61</sup> See Quebec, Gauvin (1974,374), or Ontario, Osborne (v.1,1988,697).

<sup>62</sup> Coopers and Lybrand (1991,26)

...the choice of ownership model; any realized efficiencies from public ownership; decisions concerning the lease or purchase of new buildings and equipment; the integration with existing operations of government; the extent of geographic relocation involved; the impact on the deficit and on long term financing costs; and, compensation payments to the private sector in settlement of trade remedy or other legal actions.<sup>63</sup>

A government takeover of the automobile portion of the general insurance portfolio could possibly lead to a market withdrawal of those private firms who depend primarily on this line of insurance.

Such a withdrawal would not only have adverse employment effects, but might well create a shortfall of capacity in general insurance lines.<sup>64</sup>

This argument is less convincing when applied to smaller jurisdictions. However, it is a serious consideration of governments from larger jurisdictions such as Ontario, for whom the Osborne and Coopers and Lybrand study was conducted. The elimination of a line of insurance such as that for automobiles from a market the size of Ontario's, could have a tremendous impact on the Industry.

As was briefly eluded to in the previous quote, a government takeover would likely bring with it some adverse effect on employment in the Industry as well.

Undoubtedly a provincial Crown corporation would employ or use the services of a substantial number of those now working in the private sector. Yet some employees would lose their jobs; others

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<sup>63</sup> Ibid (1991,27) Also see: Ontario, Osborne (v.1,1988,672,688-9).

<sup>64</sup> Ontario, Osborne (v.1,1988,674)



to retain theirs would have to face the prospect of relocating themselves and their families...<sup>65</sup>

This fear of the possibility of considerable relocation and job loss is attributed to the likelihood that a Crown corporation would centralize much of its operations in order to achieve a maximum level of efficiency. Two common by-products of corporate centralization are workforce reduction and relocation.<sup>66</sup>

Two final disadvantages regarding public ownership deal not with the initial set-up of the corporation, but instead refer to the system while in operation. The first, the elimination of choice, is a problem commonly cited by public insurance opponents. Being that only one supplier of the basic auto insurance package will exist, the consumer will lose the right to "shop around" for their primary auto insurance needs. "If the consumer is not happy with the public monopoly, the consumer cannot turn to another supplier of automobile insurance."<sup>67</sup>

Still related to the issue of consumer choice, government-run schemes usually standardize the insurance product in order to make the distribution of insurance more efficient. There exists here, a trade-off between consumer choice and cost control. Regardless, it is fair to say that choice under the

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<sup>65</sup> Ontario, Osborne (v.1,1988,673)

<sup>66</sup> Regarding impact on employment, see: Coopers and Lybrand (1991,4,18-20), Praskey (1991,14-5), and Welsh (1991,18). Ironically, workforce reduction and relocation are commonly accepted by-products of increased corporate efficiency and cost reduction in the private sector.

<sup>67</sup> Ontario, Osborne (v.1,1988,692). Also see: Coopers and Lybrand (1991,4,24-5)

standard public auto insurance package is usually limited in relation to that available under the private insurance model.<sup>68</sup>

The last disadvantage of public ownership to be discussed here deals with taxation. In Canada, public corporations do not pay taxes. The impact of replacing tax-paying private firms by a non-tax-paying public corporation would be a shortfall in tax revenues. This shortfall would then have to be compensated for either by higher taxes on other sources, or by a commensurate reduction in public spending.<sup>69</sup>

### C) The Canadian Context

Certainly, as the Select Committee on Company Law in Ontario noted in its report, "(o)ne of the most striking phenomena of the twentieth century is the development and use of the automobile".<sup>70</sup> The advantages of the introduction of the automobile are of course numerous and clearly evident in modern society. However, so too are the disadvantages associated with motor vehicles.

Among these are the enormous losses resulting from the combination of motor vehicle and road that seem inevitably to continue, year by year. These losses are both to person and to property. Those who suffer such losses include the owners and drivers of motor vehicles, passengers and pedestrians, shippers of

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<sup>68</sup> Optional coverage is often made available to the consumer in the public systems, albeit at an additional cost.

<sup>69</sup> Ontario, Osborne (v.1,1988,700)

<sup>70</sup> Ontario, Singer and Breithaupt (1977/8,3)

goods and owners of damaged property.<sup>71</sup>

In order to protect individuals (financially) against such losses, automobile insurance in Canada and abroad, soon followed the introduction of the automobile. The provision of this protection was initially provided entirely by the private sector, the regulation and supervision of which however, was and is, shared between the federal and provincial governments.

Government jurisdiction of all lines of insurance, including auto insurance, falls primarily within the provincial domain. Section 92 of the Constitution Act, 1982 (formerly the British North America Act, 1867) states that:

In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of subject next hereinafter enumerated; that is to say,...

The Incorporation of Companies with Provincial Objects...<sup>72</sup>

Being that neither Section 91, nor Section 92 give specific mention to insurance or contracts of insurance, this clause gives the provincial governments substantial power to legislate in the field of auto insurance.

The federal government on the other hand, has relied on several indirect clauses under the Constitution when involving itself in the Industry. Among these are the "residual powers" given to the federal government in Section 91, which provide the authority to

...make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subject this Act assigned exclusively to the Legislatures of the

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<sup>71</sup> Ibid (1977/8,3)

<sup>72</sup> Ontario, Slater (1986,1)

Province...<sup>73</sup>

In addition, the federal government has been able to assert its presence through its powers relating to criminal law, the regulation of trade and commerce, and the regulation of activities which go beyond the borders of a single province and those which are deemed to be in the general interest of Canada. Again, the authority of each of these areas of jurisdiction is provided by Section 91 of the Constitution Act, 1982.

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<sup>73</sup> Ontario, Slater (1986,1)

## CHAPTER TWO

### RESEARCH DESIGN

#### A) Framework

The basic framework employed by this research undertaking will be the comparative-case study approach. The case study element will comprise two parts: a historical review, and a comprehensive description of the auto insurance model currently in place.<sup>74</sup> This section will form the basis of a comparative analysis which will follow.

In this second part of the study, the data derived from the individual case studies will be supplemented by additional data accumulated for the purpose of a cross-jurisdictional comparison.<sup>75</sup> In this comparative analysis, the data will be presented in a standardized form, conforming to the general methodologies employed by previously commissioned studies.

#### Units of Analysis

The units of analysis for this study are four provincial jurisdictions in Canada: Ontario, Quebec, Manitoba, and Alberta. These four provinces comprise a "judgemental sample",<sup>76</sup> whose selection is justified upon the

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<sup>74</sup> For a discussion of the case study method, see: Campell (1975), Eckstein (1975), George (1979), and Kauffman (1953).

<sup>75</sup> For a discussion of the comparative method, see: Eulau (1962), Haas (1962), Hecksher (1957), Holt and Turner (1970), Lasswell (1968), Lijphart (1971), Sjoberg (1955), Thrupp (1970), and Tuene (1975).

<sup>76</sup> Struening and Guttentag (1975)

simple fact that they are representative of the variations of the systems of auto insurance provision in Canada. The first, Ontario, is an example of a "threshold" or "modified" no-fault, private system of auto insurance. Ontario is in fact, the only "threshold" no-fault (public or private) system in Canada. The second, Quebec, is an example of a pure no-fault system, the responsibility of which is shared by the public and private sector. In this province, no-fault bodily injury coverage is provided by the Quebec Regie de L'Assurance, a provincial crown corporation, in supplement to collision and comprehensive insurance which is made available by the private sector.

An example of the public ownership model in Canada is that used by the province of Manitoba which has a public system of "add-on" no-fault insurance, similar to that of British Columbia, and Saskatchewan. A determining factor in the selection of Manitoba over the other two provinces, is the amount of easily accessible, relatively recent quantitative and qualitative data regarding auto insurance in this province. As well, on most variables, the Manitoba Public Insurance Corporation falls neatly between the other two public corporation with regards to performance and so forth.<sup>77</sup> It should be noted however, for those who normally point to British Columbia as being the most appropriate public jurisdiction for comparison (primarily because of its size), that the quantitative data will be handled in percentage terms so that size will be

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<sup>77</sup> For example: premiums earned, accident frequency, operating costs, and return on investment.

controlled.<sup>78</sup> This pre-cautionary measure should address the concern that differences in size would effectively prohibit meaningful comparisons between the jurisdictions.

The last case to be examined is the private, primarily tort based system of Alberta. In this province, as in other similar jurisdictions in Canada and elsewhere, tort liability is based on negligence, and access to the court for tort remedy is unrestricted. In addition however, as in all other tort based jurisdictions in Canada, some limited accident benefits are provided on a no-fault basis. These no-fault benefits nonetheless, are not meant to act as a mechanism for fully compensating victims of automobile accidents. Rather, the limited accident benefits scheme here serves simply to provide some meagre assistance to those who are either unable to receive compensation under the tort system, or who are waiting for a tort settlement which may be delayed in the courts.

### Case Studies

A historical review of the development of automobile insurance in each of the four jurisdictions will be conducted. This historical section will then be followed by an up-to-date description of the systems currently in place in each of these jurisdictions.

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<sup>78</sup> Note that British Columbia's claims experience is usually much higher than that found in the other jurisdictions examined in the study. This variable, more than size, would tend to skew the results of a comparative analysis.

The data given in the "current model" portion of the case studies will give the reader an adequate understanding of the relevant structures and processes presently in place. The areas covered in this section will be: size and structure of the industry, financial situation, extent of government involvement (ie. regulatory bodies, crown corporations), degree of tort and/or no-fault compensation, coverage and services available, and the rate-making/classification system.

#### **B) Evaluation and Comparison**

A basic model of criteria for evaluation and comparison has been established based primarily upon those criteria used in three major studies conducted in Canada: the Woolton Commission in British Columbia (1968), the Kopstein Report in Manitoba (1988), and the Osborne Report in Ontario (1988). From the criteria used in these and other studies, a framework for comparison has been constructed. Within this framework are five separate criteria commonly used: affordability, compensation, efficiency, management of financial resources, and rate-making methodology. In addition to these criteria, some attention will be given to possible intervening variables. It should be noted here that because of the consensus of the most recent Canadian studies which have overwhelmingly agreed that deterrence is in effect a "non-issue" in the tort/no-fault debate, and certainly the public/private debate, this criterion will receive no further attention.



### Affordability

An examination of the studies which have calculated the relative costs of tort, no-fault, public, and private systems will be conducted. From this analysis, conclusions as to the financial burden imposed by each of these models will be made. Included in this section will be a comparison of the costs of compensation and administration under each system, as well as a review of several attempts made at comparing auto insurance rates between the jurisdictions over the years.

### Efficiency

Three methods of measuring efficiency will be used. The first, a very direct measure often used, is: operating costs relative to total premiums earned. A second, complementary measure of efficiency, is that which calculates the percentage of premiums returned to the consumer by way of claims paid out. Naturally, if the system is costly to administer, less money will be returned to the consumer in the form of claims paid. Finally, the third method of measuring efficiency will be to compare the average time lapse between the occurrence of automobile accidents, and the time when victims receive full compensation. The data for the last two variables will be presented in a more general context (ie. tort versus no-fault or public versus private), because of the difficulty in obtaining data for each of the four jurisdictions specifically.

### Compensation

This category is broken into two main sub-headings: the types and amounts of coverage, and the adequacy of compensation. The first, coverage, can be further subdivided into personal injury, and property damage. Under the former, several separate categories for comparison can be identified: maximum benefits, death benefits, medical expenses, funeral expenses, dismemberment, and loss of income. The second, property damage, consists simply of the level of benefits paid on damage to vehicles and on other property as a result of a motor vehicle accident. Being that many individual factors determine the type and amount of coverage for the latter, only the former, personal injury, will receive attention in this study. The types and amounts of personal injury coverage available will be compared in a cross-jurisdictional comparative analysis.

The adequacy of compensation will be determined by examining the data from the cross-jurisdictional analysis just mentioned, and by conducting a supplementary review of those studies which have addressed the question of adequacy in the past.

### Management of Financial Resources

In considering how financial resources are managed, both quantitative and qualitative data will be analyzed. The qualitative element will look at where investments derived from auto insurance premiums are made. The quantitative

portion of this criterion will consist of two separate foci: one, the return on investment (expressed as a percentage total earned premiums), and two, the amount of deficit or surplus.

With regards to the first quantitative method, all jurisdictions, be they public, private, or a combination of both, have basically the same objective of achieving a maximum return on investment. As such, comparison will be somewhat standardized in that the system which achieves the greatest return on investment would be deemed the most effective in this category.

The second method however, lacks this uniformity of objectives because public corporations do not seek to make a profit as do their private counterparts, but rather are satisfied with "breaking even". Thus, what might be considered to be a good financial "bottom line" in the public sector, may not be considered such in the private sector. To address this discrepancy, this study will focus on whether the public corporations have been able to re-route profits back to the consumer by way of reduced premiums, improved coverage, or by both. In other words, if the public corporation has achieved a balanced budget, the question will be asked: is the balanced budget due to the fact that profits have been returned to the consumer (as its mandate would have it do), or is it because the corporation is not efficient enough to achieve a profit? In this way, the financial success of the public and private models can be measured and compared.

### Rate-making Methodology

"Rate-making methodology" refers simply to the manner or process by which insurance premiums are determined. There has been some debate in recent years, as to which criteria should be used in establishing auto insurance rates. This debate has focused on the three basic models of classification discussed earlier. Inherent in this discussion are two questions: which model most accurately assesses the level risk of drivers, and what variables are deemed as being socially acceptable. In this section, the classification systems in place will be examined and discussed in a comparative setting. In doing so, both the question of fairness and of adequacy will be addressed.

### Intervening Variables

Some attention will be given to the strength and relevance of some possible intervening variables. Three such variables have been identified: the relative size of each jurisdiction, the frequency of claims, and the question of subsidies under the public plans.

## CHAPTER THREE

CASE STUDIES

The following chapter is comprised of four separate case studies, each representing a separate Canadian provincial jurisdiction. The first part of each case study will provide the reader with a historical background of the auto insurance industry within that particular jurisdiction. Following this, the current model of auto insurance in place in each jurisdiction will be described in detail.

Ontario

In the province of Ontario, the primary statute which governs the insurance industry, auto and otherwise, is the Ontario Insurance Act. This act first became included as part of the Revised Statutes of Ontario in 1897, and was updated almost annually until 1979, from which point it has since been revised on a more periodic basis.<sup>79</sup>

In 1914, the Motor Vehicles Act, which regulated the conduct of motor vehicles in the province, was introduced. Also during this year, automobile insurance was added to the Insurance Act (c.183). Included in the 1914 revision was the regulation of agents and underwriting agencies who were previously not regulated (the companies themselves had been regulated since

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<sup>79</sup> For a historical review of auto insurance in Ontario prior to 1980, see: Ontario, Slater (1986,3-8) as well as, Atkinson and Nigol (1989,118-22), who focussed on the mid to late 1980's, and Osborne (v.1,1988,69-87), who examined the major studies of the 1970's and 1980's which preceded that report.

the original Act). The Act was again amended in 1922 with regards to auto insurance, at which point more specific provisions on accident and auto insurance, including statutory provisions, were added (c.61, sec.12,14). As well, a new section on agents, brokers and adjusters was added (sec.16), in addition to one on rates and rating bureaus (sec.17).

In 1923, The Highway Traffic Act, which repealed the Motor Vehicles Act among others not mentioned here, was made law. Included in the provisions of this act were those related to vehicle registration and permits, vehicle speed, vehicle weight and load, the rules of the road, and the like. Of particular importance to auto insurance, was section 43 of the Act which placed the onus of disproving negligence on the driver where injury was caused by a motor vehicle. Section 43 (2) however, repealed this provision in cases involving a collision between two motor vehicles on a highway.

The Act in 1924 was changed to simply The Insurance Act as it is known today. In 1930, following the Hodgins Report on Automobile Insurance Premium Rates,<sup>80</sup> revisions empowered the Superintendent to require auto insurance companies operating in Ontario, to file information regarding premiums, losses, and expenses (c.41, sec.2). Furthermore, the Superintendent was given the authority to intervene and adjust rates in cases of discrimination (sec.12). Also in response to the Hodgins Report, an all-industry, uniform Statistical Plan was set up under the Insurance Act. Several

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<sup>80</sup> Ontario, Royal Commission on Automobile Insurance Premium Rates, Report (Toronto: Queen's Printer, 1930).

other provinces soon followed the Ontario lead and joined the Plan. The Statistical Agency was the responsibility of the Canadian Underwriters Association until 1969 when the Insurance Bureau of Canada took over the functions of the Agency.<sup>81</sup>

In 1947, the "Unsatisfied Judgement Fund" was created under The Highway Traffic Act (c.45, s.16). By requiring each Ontario licensed driver to pay a set fee, the government was able to maintain a fund for those who were unable to collect a judgement through the courts. As well, those who had been involved in an accident caused by an unidentified driver were also eligible for the fund. The payments were subject to pre-established limits. Also in 1947, the Ontario government introduced the Assigned Risk Plan. This plan was designed to accommodate those individuals who had been denied insurance coverage by the regular insurance market. In particular, "(a)pplicants who had been refused coverage by at least two insurers were assigned to licensed insurers on a prorated basis."<sup>82</sup>

Following the report of the Select Committee on Automobile Insurance<sup>83</sup> in 1962, the government created the "Motor Vehicle Accident

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<sup>81</sup> Insurance Bureau of Canada, 1990 Automobile Insurance Experience (1991,2)

<sup>82</sup> Ontario, Osborne (v.1,1988,99)

<sup>83</sup> Ontario. Select Committee on Automobile Insurance: 2nd Interim Report. December, 1961.

Claims Fund" in replacement of the "Unsatisfied Judgement Fund"<sup>84</sup>. In order to be eligible for payment under this fund, the claimant had to prove that the vehicle was insured or that the uninsured vehicle fee had been paid. Also in response to the Select Committee report, the Assigned Risk Plan was replaced by "The Facility". The Facility was a "shared-risk pool" of insurers across Canada, however the residual market activity of each province in the pool was handled separately. This sharing of risk made it possible for the Facility to insure the highest risk drivers, albeit at higher insurance rates.<sup>85</sup>

In 1970, the powers of the Superintendent were expanded to include the authority to seize the assets of an insurer that were not properly accounted for. As well, the establishment of mandatory accident benefits (including medical and rehabilitation) for victims of automobile accidents was included in 1972. These limited first-party no-fault benefits became part of the Standard Automobile Policy.

The Ontario Commission on Law Reform<sup>86</sup> was undertaken in 1973 to examine the tort based system of automobile accident compensation in the province. Impressed by New Zealand's comprehensive no-fault model,<sup>87</sup> the

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<sup>84</sup> pursuant to: An Act respecting Claims for Damages Arising out of Motor Vehicle Accidents, (S.O. 1961-62, c.84).

<sup>85</sup> Ontario, Osborne (v.1,1988,99)

<sup>86</sup> Ontario Law Reform Commission, Report on Motor Vehicle Accident Compensation (1973)

<sup>87</sup> A comprehensive no-fault system is one in which victims of all accidents, ie. work related, automobile, defective product injuries and so on, are all compensated according to a universal



Report recommended the adoption of a no-fault system in Ontario. Court delays and the mitigating impact of liability insurance on the deterrent function of tort were highlighted as being prominent factors in the development of the recommendations. Critics of the study however, have noted that the Commission failed to adequately consult the Industry, and relied on outdated statistics in making its recommendations.<sup>88</sup> Nonetheless, perhaps as a result of such criticisms, the government chose not to act on the recommendations.

A few years later, beginning in 1977 and ending in 1979, the Select Committee on Company Law was established to again examine automobile insurance among other things. The Committee's report was thorough and led to some changes in automobile accident compensation. Among those changes was an increase in the levels of compensation provided under the compulsory accident benefit package. The Committee also recommended that vehicle damage be handled on a no-fault basis. However, in making this recommendation, the Committee made clear that if a full no-fault plan similar to the "Variplan" endorsed by the Insurance Bureau of Canada in the 1970's, were to be considered, the most seriously injured should maintain access to tort remedy through the courts.<sup>89</sup> The government nonetheless, chose not to adopt a full no-fault scheme at that time, and therefore the fears regarding

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first party, no-fault schedule of benefits.

<sup>88</sup> See: Ontario, Osborne (v.1,1988,72), and Linden (1975,452)

<sup>89</sup> In other words, "threshold" no-fault.

access to the courts were calmed.

In 1980, auto insurance in the province of Ontario was made compulsory.<sup>90</sup> Further to this, the Standard Automobile Policy was expanded to include first-party uninsured motorist coverage, which lessened the need for the Motor Vehicle Accident Claims Fund in this regard. The compulsory insurance bill also included the replacement of "The Facility" with the new "Facility Association" which still to this day, serves as Ontario's residual market. As was its predecessor, the Facility Association was intended to be an "insurer of last resort".<sup>91</sup> To make certain that their rates would remain within "reasonable" limits, the Superintendent of Insurance was given regulatory powers over the Facility Association at this time as well.<sup>92</sup>

In the mid-1980's, much was said about the developing crisis in auto insurance in the province. During this period, "...certain liability risks became uninsurable and other risks were insurable only with dramatically increased premiums".<sup>93</sup> As noted by George Priest in 1987:

Collusion among insurers, cash flow underwriting responsive to high interest rates, and the cyclical nature of the insurance industry, resulting in an inevitable inverse relationship between

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<sup>90</sup> Ontario. Compulsory Automobile Insurance Act. RSO, 1980. At that time, a minimum of \$100,000 third party liability coverage was made mandatory. This amount was increased to its current level of \$200,000 in 1981.

<sup>91</sup> Ontario, Charlton, Road Ahead (1992, Facility Association "Background" sheet)

<sup>92</sup> Atkinson and Nigol (1989,119)

<sup>93</sup> Ontario, Osborne (v.1,1988,80)

investment income and premiums, were three of the prominent explanations for the crisis.<sup>94</sup>

Jim Herries of the Insurance Bureau of Canada, like many others, has pointed to the increased number of third party liability claims in the 1980's which the Industry neglected to match with increased premiums as being yet another factor responsible for the crisis. By 1986, the "lid blew off", and rates skyrocketed in order to cover the Industry's losses.<sup>95</sup>

It was during this same year that the Task Force on Insurance, known as the Slater Report, was established. In its conclusions, the Task Force recommended a pure no-fault system with the ultimate goal of establishing some form of comprehensive or universal accident compensation scheme. However, the Task Force also provided an alternative recommendation, that being the threshold no-fault model similar to what the 1973 Commission had suggested. The recommendations were not followed by legislation but rather by another, more in-depth study of auto insurance specifically a couple of years later.

However, before the commissioning of this further study, due to the perceived urgency of the crisis, the then Liberal government executed several immediate measures in 1987. Among these was the freezing of auto insurance premiums, and the rolling back of premiums for taxis and males under twenty-

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<sup>94</sup> Ontario, Osborne (v.1,1988,81). For a full discussion of the insurance crisis, see: Ontario, Slater (1986).

<sup>95</sup> Herries, Interview (November 15,1991). Also see: Glasbeek (1991,75), and Belton (1988,16).

five. Furthermore, the Government announced that it would soon draft legislation to allow for the regulation of rates.

The resulting legislative response was Bill 2,<sup>96</sup> which created the Ontario Automobile Insurance Board (OAIB), a board charged with the responsibility of rate regulation. Under Bill 2,

(t)he rates are set based on a grid system that combines rating components with each driver classification. The Board thus sets the rate for each component, either as a dollar figure or in a range.<sup>97</sup>

Also included in this bill (under section 33), was the elimination of age, sex, and marital status as rating criteria. This clause was to be the basis of a new "Universal Class Plan" explored by the then Liberal government. However, in response to mounting concerns that such a plan would result in large shifts in financial burden between rating classes, the government scrapped the plan.<sup>98</sup>

In 1988, the Inquiry into Motor Vehicle Accident Compensation in Ontario, known simply as the Osborne Report, was established to look at the option of no-fault insurance, as proposed by the Slater Report two years earlier, as well as that of public insurance which had also become an increasingly questioned alternative. In his study, Justice Osborne rejected the option of government ownership stating that "...Ontario taxpayers and drivers would not

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<sup>96</sup> An Act to Establish the Ontario Insurance Board and to Provide for the Review of Automobile Insurance Rates, 1988.

<sup>97</sup> Atkinson and Nigol (1989,119)

<sup>98</sup> Herries, Interview (1991). Section 33 has not been enforced.

benefit from the conversion to public automobile insurance".<sup>99</sup> With regards to the compensation system, he simply suggested that no-fault benefits be enhanced and that the right to sue be "preserved".<sup>100</sup>

Following the release of the Osborne Report and a series of OAIB Industry hearings (compiled in the "Kruger Report")<sup>101</sup>, the Government produced Bill 68, the Ontario Motorist Protection Plan (OMPP),<sup>102</sup> and Bill 10, An Act to Control Auto Insurance Rates, both in 1989. The former bill put into place the structure of a threshold no-fault accident benefits scheme, the first of its kind in Canada. Prior to this initiative as mentioned, some provision of limited accident benefits were available on a no-fault basis. The philosophy behind the pre-OMPP accident benefit package was to provide some minimal protection for all drivers because many accident victims had gone uncompensated under the previous pure tort system. It was not however, seen as a mechanism to fully compensate victims.<sup>103</sup> The OMPP on the other hand, was adopted to replace the tort system in all instances other than those involving very serious personal injury.

Also included in Bill 68 was the establishment of a new "industry watch

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<sup>99</sup> Ontario, Osborne (v.1,1988,708-9)

<sup>100</sup> Ontario, Osborne (v.1,1988,4)

<sup>101</sup> Ontario, Kruger (1988-9)

<sup>102</sup> Bill 68, An Act to Amend Certain Acts Respecting Insurance, 1989.

<sup>103</sup> Endicott, Interview (July 10, 1992)

dog", the Ontario Insurance Commission (OIC). The Commission was charged with the responsibility of administering the Insurance Act, the Motor Vehicle Accident Claims Act, and the Compulsory Automobile Insurance Act, in addition to other acts not related to automobile insurance.<sup>104</sup> As put by Charles Anderson, the current Director of Rates and Classifications at the OIC, the role of the Commission is to "...protect the consumer and to regulate the insurance industry".<sup>105</sup>

In supplement to the new no-fault scheme established under Bill 68, a second piece of legislation was introduced in 1989. Bill 10 as it was called, ordered that, "...no insurer shall charge any premium for a coverage under a contract of automobile insurance...that exceeds the capped limit (established by the Board)".<sup>106</sup> This bill gave the OAIB a considerable amount of power and discretion. The operations of the Industry were now regulated at an unprecedented level in the province's history.

The election of the New Democrats in 1990 was followed by Industry fears of a government takeover of auto insurance. The NDP made auto insurance a crucial issue in the campaign, and installed the traditional party policy of government-run auto insurance as an election plank. In order to avert any government move towards public ownership, the Insurance Bureau of

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<sup>104</sup> Scott (1991,44)

<sup>105</sup> Anderson, Interview (July 21, 1992)

<sup>106</sup> Ontario, Elston, Bill 10 (1989, sec.2(1))

Canada produced figures of massive job losses and incredible start-up costs of such a plan. In supplement to this, a study was undertaken by Cooper's and Lybrand which showed equally alarming numbers. Finally, even the Government's own study showed similar results. In the end, in light of these costs, the worsening recession in the province, and the expensive political battle that would have to be fought with the Insurance Bureau of Canada and others, the Government announced that their plans for public auto insurance were being abandoned.<sup>107</sup>

With regards to the claim that the recession hampered the government's ability to implement a public programme, former NDP Minister of Financial Institutions, Peter Kormos (Brian Charlton's predecessor), has posited an opposing view.

The over one billion dollars in profits realized by the insurance industry in Ontario since the introduction of the OMPP could be put back into the pockets of the consumers of this province if a public, non-profit insurance corporation was set up. As well, the three to four billion in premium income could be invested strategically in Ontario in contrast to the present practice of private insurers investing their profits abroad. These two changes would certainly stimulate the Ontario economy. The recession is the most naive argument.<sup>108</sup>

Whether the Ontario NDP government chose not to move ahead with public auto insurance (the first provincial NDP government in Canada to do so), because of the recession, the possible start-up costs, or because of, as Kormos

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<sup>107</sup> Charlton, Interview (March 4, 1992)

<sup>108</sup> Kormos, Interview (July 23, 1992)

maintains "the fear of confrontation"<sup>109</sup>, the end result is the same. The Premier was quick to add that even though public ownership would not be pursued, legislation would be introduced which would "...allow accident victims greater access to the courts, improve and index accident benefits, and remove caps on rehabilitation costs".<sup>110</sup> The government changed its focus from both ownership and product reform to simply the latter.

The result has been the introduction of a package which is presently waiting to be passed by the legislature. Bill 164, or The Road Ahead, as it is called, seeks to address five key areas: insurance premiums, compensation, the classification system, availability and consumer service, and road safety.<sup>111</sup> The new package also calls for "...immediate and significant reductions in premiums"<sup>112</sup>. The government claims that this is possible because of the increased profits that followed the introduction of the OMPP.<sup>113</sup>

With regards to compensation, the new plan includes an "enhanced" no-fault benefit package which is indexed to the Consumer Price Index. Furthermore, the new bill opens access to the courts for non-pecuniary losses, subject to an indexed deductible of fifteen thousand dollars.

The Road Ahead also provides for a gradual removal of demographic

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<sup>109</sup> Ibid

<sup>110</sup> Office of the Premier, News Release (Sept.6,1991)

<sup>111</sup> Charlton (December 5,1991,1)

<sup>112</sup> Ontario, Charlton, The Road Ahead (1991,6)

<sup>113</sup> Savage, Interview (July 10, 1992)



variables from the rate classification system in addition to a move towards standardizing the classification system. In addressing the problems related to availability, the plan will direct insurance companies to remove "good drivers" from the Facility Association and put them back into the regular market.

Finally, a new "Road Safety Agency", will be formed under the proposed plan, which will be concerned with "...promoting highway safety, reducing accident costs and providing more efficient service for consumers".<sup>114</sup> Together with the Industry and consumer groups, the Agency will launch safety campaigns aimed at educating the public. Furthermore, with specific regards to consumer service, the new agency will also investigate the possibility of integrating the process of issuing licences, vehicle registrations, and insurance.<sup>115</sup>

Being that the Government's proposed Bill 164 was unsuccessful in receiving "2nd Reading" before the end of the last session of the Legislature in July, it should be emphasized that these initiatives may or may not become law in the near future. Despite the fact that the New Democrats have a majority government, one cannot say what will happen when the House reconvenes on September 28th. The combination of opposition delays, dissent within the NDP Caucus regarding the content of the new bill (lead by Peter Kormos), and the desire of the Rae Government to push through the rest of its agenda including

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<sup>114</sup> Ontario, Charlton, The Road Ahead (1991,7)

<sup>115</sup> Endicott, Interview (July 10,1992)

the highly publicized labour bill, leaves the fate of Bill 164 somewhat dubious. In spite of these delays however, most observers expect that the new insurance bill will become law by the end of 1992.<sup>116</sup>

### The Current Model

Automobile insurance in the province of Ontario is provided by over one hundred and fifty private companies. The consumer, when purchasing insurance, may do so from either direct writers or agents of companies, or brokers who are commissioned by companies to write policies for them.

The total auto insurance industry in Ontario earned \$4,387,821,870 in premiums in 1990. After taking into consideration the \$3,523,423,140 in claims and adjusting expenses, the Industry finished the year with an underwriting profit (before operating expenses) of \$864,398,730 or an "earned loss-ratio" (premiums earned/claims and claims adjusting expenses) of 80%.<sup>117</sup> When return on investment and operating expenses are included,<sup>118</sup> the Industry still finished the year with over \$1/2 billion in profit. The Insurance Bureau of Canada has estimated this total to have risen to

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<sup>116</sup> Savage, Interview (July 28, 1992)

<sup>117</sup> See: Insurance Bureau of Canada, 1990 Automobile Insurance Experience (commonly known as the "Green Book"), (1991,271). Note that all Ontario and total Canadian private Industry statistics noted are taken from this issue of the Green Book.

<sup>118</sup> Return on investment is approximately 14-15%, and operating expenses are about 22%. See: Insurance Bureau of Canada, Ontario Automobile Survey... (June 1992,3).

almost \$3/4 billion in 1991, as a result of a still falling ratio of just under 76% for that year.<sup>119</sup>

This is in sharp contrast to the profits experienced elsewhere in the country. The total earned premiums for all Canadian auto insurance business combined in 1990 was \$7,398,294,637;<sup>120</sup> 60% of which came from Ontario. The earned loss ratio for all private auto insurance business in Canada, including Ontario, was 84% in 1990.<sup>121</sup> When Ontario is omitted from the calculation, the total Canadian private ratio rises to 89.5% in comparison to the 80% in Ontario.<sup>122</sup> This difference in the percentage of claims and adjusting expenses relative to premiums earned, translates into a substantial difference in profit. In fact, business in Ontario accounted for almost 3/4's of the total underwriting profit of the private auto insurance industry in Canada in 1990.<sup>123</sup> As has been demonstrated here, private insurers in Canada

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<sup>119</sup> Insurance Bureau of Canada, 1990 Automobile Insurance Experience... (1991,271). Net profits for 1990 are based on similar investment income and operating expenses as reported in 1991, knowing the 1990 earned loss ratio. Ontario Automobile Survey Results... (1992,3). It should be noted that since the introduction of the OMPP, the Industry is no longer required to pay OHIP the approximately \$45 million/year as it did before 1990. See: Charlton (May 8,1991,6).

<sup>120</sup> Ibid. All total Canadian private Industry statistics are found on page 278.

<sup>121</sup> Ibid

<sup>122</sup> Without either Quebec or Ontario (both of which restrict the right to sue, the former completely, the latter partially) the ratio jumps to 96.8% (see appendix).

<sup>123</sup> Insurance Bureau of Canada, Automobile Insurance Experience (1991,271,278), and Groupement (1992,3).

obviously rely heavily on the profits made in the province of Ontario.<sup>124</sup>

In examining the impact of threshold no-fault introduced to the province in January of 1990, one finds an interesting discovery with regards to Industry profits (see Appendix One). In 1988 and 1989 (the two years prior to the introduction of the OMPP), Ontario insurers experienced earned loss ratios of 101% and 100% respectively. When one compares the 1990 ratio of 80%, and the estimated 76% ratio of 1991 to these pre-OMPP levels, it seems apparent that the introduction of threshold no-fault contributed to a substantial increase in Industry profits. The restriction of the right to sue under the OMPP is certainly one of the factors which most substantially contributed to the over \$1/2 billion net profit in 1990, and the estimated near \$3/4 billion windfall the following year. These figures sharply contrast the \$200 million loss in 1989, the year prior to the introduction of no-fault (see Appendix Two).<sup>125</sup> Obviously in any business, if costs are reduced (ie. restricting the right to sue) without a commensurate reduction in revenues (ie. premiums remain constant or increase), profits will rise as a result.

Since the introduction of the Ontario Motorist Protection Plan under Bill 68 in 1990, the insurance industry in Ontario has been regulated by the Ontario

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<sup>124</sup> Not included in the above calculation is investment income which has been in the 14-15% range (of premiums earned), and operating expenses which are about 21-22% in Ontario. See: Insurance Bureau of Canada, Ontario Automobile Survey Results... (1992,3).

<sup>125</sup> Ontario, Charlton (May 22,1991,9)

Insurance Commission (OIC). The OIC has the authority to:

...order audits of insurers; conduct on-site investigations; require applications and approvals for rate filings for auto insurers; investigate charges of inappropriate market conduct; reprimand companies; suspend, cancel or impose terms on the nature of business registered companies can pursue; schedule compulsory hearings; and issue cease and desist orders to prevent insurers from continuing business.<sup>126</sup>

Also included in Bill 68, was the establishment of the present "threshold" system of no-fault auto insurance. Under this threshold no-fault model the "right to sue" is limited to only the most serious cases of personal injury. The Bill established a verbal threshold (s.231 (a)) of:

...death, permanent serious disfigurement, or permanent serious impairment of an important bodily function caused by a continuing injury which is physical in nature".

In cases where the threshold is met, the victim may sue for both economic and non-economic losses.<sup>127</sup> However, under the government's newly proposed legislation, Bill 164, the right to sue has been modified. The new legislation eliminates the right of the victim to sue for economic losses regardless of the seriousness of injury (s.267.1). Therefore in terms of economic loss, Ontario will in essence move from a "threshold" no-fault to a "pure" no-fault system. Regarding non-economic losses, the new bill expands the "right to sue" to

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<sup>126</sup> Charlton, The Road Ahead (OIC Backgrounder), (1991)

<sup>127</sup> The precedent setting case in Ontario was recently released on July 13, 1992 in which a victim suffering injury which surpassed the threshold set out in Bill 68 was awarded damages. See: Ontario Court of Justice, Meyer vs. Bright, File no. 025. This is the first and only such case at this time.

victims (s.267.2), by eliminating the threshold, but this right is subject to a \$15,000 deductible imposed to deter smaller cases.<sup>128</sup>

The no-fault benefits schedule currently in place is that established under Bill 68. Included in the package is the replacement of 80% of the victim's gross income up to a maximum of \$600/week. Those with no income, working part-time, or over sixty-five years old, receive a minimum of \$185/week. Non wage earners are entitled to an additional \$50 per dependant (up to a maximum of \$200) for child care. For those temporarily disabled, benefits are terminated after three years. Victims who are permanently disabled are entitled to a minimum payment of \$185/week for life. Supplementary medical benefits and rehabilitation have a lifetime cap of \$500,000 and a ten year limit. Long term care on the other hand, has a similar \$500,000 lifetime cap, in addition to a \$3000 monthly cap. Death benefits are also available within two years following the accident. Spouses are entitled to \$25,000, and dependants and those who experience the loss of a dependant, receive \$10,000. Funeral benefits are provided at a maximum of \$3000.<sup>129</sup>

Under the new legislation, Bill 164, the entitlements would be fully indexed according to the Consumer Price Index. A further, very substantial change in compensation under the proposed bill, is the determination of income

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<sup>128</sup> Kormos, Interview (July 23, 1992)

<sup>129</sup> see: Insurance Bureau of Canada, Facts (1991,28), Ontario, Charlton The Road Ahead (1991,16-17), and Alberta, Wachowich (v.1,1991,apdx.).

replacement according to one's net income rather than to their gross income, as is done presently under Bill 68. Former Financial Institutions Minister, Peter Kormos, refers to this change as "deceiving", and considers the claim of the government that no-fault benefits are being "enriched" as being "the most dishonest bit of promotion for a bill" that he has yet seen.<sup>130</sup> The percentage of income is in fact increased from 80% to 90% under the new bill, however, many victims will likely receive less compensation than under the OMPP because this percentage will be based on net instead of gross income.<sup>131</sup>

Also regarding income replacement, the maximum amount available would be increased from \$600 to \$1000/week. Those individuals not earning an income, working part-time, or over the age of sixty-five, would again be eligible for a minimum of \$185/week under the new plan. The difference here of course being the addition of indexing not offered by the OMPP. Under the proposed bill, students would also receive an additional entitlement per semester of school missed up to a maximum of two semesters. Elementary students would receive \$2000 per semester, while secondary and post-secondary students would receive \$4000 per semester. Their \$185/week minimum would increase after six months to 90% of the net average weekly

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<sup>130</sup> Kormos, Interview (July 23, 1992)

<sup>131</sup> Net income is simply one's income after taxes are deducted, whereas gross income represents one's pre-tax level of income. Because some individuals' pay as much as 40-50% of their gross income in taxes, it is likely that the move from 80% of gross to 90% of net income will mean a reduction in the amount of compensation paid to accident victims.

earnings at age 30. Supplementary medical and rehabilitation benefits for all victims, unlike the that provided under the OMPP would have no lifetime cap or time limit. Long-term care would be restricted to a maximum of \$3000/month, but no lifetime cap would be imposed.

The proposed package expands the provision of child care benefits to wage earners. Under the plan, a payment scale based on the number of dependents of the victim, outlines the weekly amounts available ranging from \$75 for one child, to \$150 for four or more children. As well, non earning primary care givers are entitled to \$250/week for the first child, and \$50 for each additional child. Finally, non earning primary care givers who had temporarily left the workforce, would after six months, be eligible for the Income Replacement Benefit, or the Dependant Care benefit, whichever is greater.

Death benefits have been increased substantially under the proposed bill. A spouse, or dependant if there is no spouse, is eligible for a payment of \$50,000 to \$200,000. The entitlement for dependants or loss of dependants is left unchanged in the new package outside of the eventual increase through indexing. Lastly, maximum funeral benefits are doubled to \$6000.<sup>132</sup>

A final aspect of the current insurance system in Ontario that warrants mention here is the rating classification system. The over one hundred and fifty private insurance companies in the Province each have their own rate

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<sup>132</sup> Ontario, Charlton, Bill 164, Ontario, Charlton, The Road Ahead (1991,16-17).



classification systems. As such, the variables, definitions, and rules, vary substantially from one company to the next. This situation leads to inconsistencies within the Industry in this regard. Furthermore,

(t)he use of classification variables relating to age, gender and marital status, variables based on characteristics which are beyond the control of the vehicle owner, creates its own problem. This is inequitable, discriminatory and inappropriate in a modern insurance system.<sup>133</sup>

As mentioned, section 33 of Bill 2 restricted the use of demographic variables, specifically age, sex, and marital status. This clause however, not been enforced. In fact, in the recent Zurich vs. Bates case, in which the classification system was challenged on the grounds that it contravenes sections one through three of the Ontario Human Rights Code<sup>134</sup>, the Supreme Court of Canada upheld the use of these variables in classifying risks. The Court determined that discrimination on these grounds was acceptable by citing section 21 of the Code which states that:

...if it (the discrimination) is based on a sound and accepted insurance practice, and if there is no practical alternative...(such discrimination is deemed acceptable under the Code).

The claim that no "practical alternative" exists is of course debateable in that four jurisdictions in Canada presently ignore age, sex, and marital status when determining insurance rates.

Bill 164 does not explicitly impose a new classification system, although

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<sup>133</sup> Ontario, Charlton, The Road Ahead (1991,7)

<sup>134</sup> Ontario, Ontario Human Rights Code (1981, SO. C.53)

the government package, "The Road Ahead", does state the intention of restricting the use of age, sex, and marital status in the future, in addition to standardizing the classification system over time. The first step would be to standardize the rating variables used, and then, the reduction of the weight and eventual restriction of demographic variables, would be introduced. The reason for this long-term approach is the inevitable shift in burden that these substantial changes would cause. Some individuals would receive sizable decreases in their premiums, while others deemed to be lower risks by the existing criteria, would be inflicted with drastic rates increases. It is hoped that the gradual "phasing in" and reduction of the weight of these variables, will ease the "pain" of such massive change.<sup>135</sup>

Finally, one last major change proposed by Bill 164, is the creation of the "Road Safety Agency". This new agency would:

...assume existing Ministry of Transportation driver and vehicle functions, and (would) enhance these through business partnerships with private sector groups and organizations with a commitment to road safety.<sup>136</sup>

Reporting to the Minister of Transport, the new agency would seek to enhance road safety and reduce the number of motor vehicle accidents in the Province through public education, driver improvement programmes, and the coordination of research. The Agency once set up, would also investigate the possibility of interlinking the process of vehicle registration, licensing, and

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<sup>135</sup> Endicott, Interview (July 10, 1992)

<sup>136</sup> Ontario, Charlton, The Road Ahead (1991, Road Safety Sheet)

insurance as previously mentioned.

### Quebec

In 1904, the province of Quebec adopted its first Act respecting automobiles<sup>137</sup> which at that time governed the actions of drivers of automobiles, and their relationship to the then primary mode of transportation, horses. This act was soon replaced by An Act respecting motor vehicles<sup>138</sup> in 1906, which included the regulation of vehicle registration and licences, in addition to imposing restrictions on traffic conduct and vehicle speed. However, like the first act, no mention was made of motorist's public liability.

Just four years later in 1908, the Quebec Insurance Act was passed. Among the provisions found in the Act were those which concerned the incorporation of insurance companies (s.1), contracts (s.196), and the requirement of insurers to leave a deposit with the Treasury Department (s.92(1)). The Act also established the position of the Inspector of Insurance (s.206-217), and outlined its powers and responsibilities. These provisions required the Inspector to investigate (annually) and report on the state of affairs of companies in the Industry, and to suggest the suspension of a company's licence to Lieutenant-Governor in Council if deemed necessary.

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<sup>137</sup> An Act respecting automobiles, 4 Ed. VII, c.30 (1904). For a historical review up to the early 1970's, see: Quebec, Gauvin (1974, 105-119, 133-171).

<sup>138</sup> An Act respecting motor vehicles, 6 Ed. VII, c.13 (1906)

In 1924, an amendment to the Act respecting motor vehicles entrenched in law, a system of "liability based on the presumption of fault"<sup>139</sup> in the Province. This presumption of liability was extended to the driver for any damage caused by their vehicle. The burden of proof under this system was on the driver of the vehicle:

Whenever loss or damage is sustained by any person by reason of a motor vehicle on a public highway, the burden of proof that such loss or damage did not arise through the negligence or the improper conduct of the owner or driver of such motor vehicle shall be upon such owner or driver.<sup>140</sup>

The intentions of the legislators of this act were primarily to protect pedestrians. This focus led to problems when the Act was interpreted in cases involving two vehicles. Theoretically, both of the drivers involved in the accident would be "victims", and could therefore invoke section 53 (2) against one another. In such cases, the two drivers would "neutralize" or cancel out each other's claim. Therefore, each motorist would have to prove the other's fault in the accident.

In the 1960's, several major changes were introduced. The first was the replacement of the Act respecting motor vehicles with the Act respecting the registration of motor vehicles and the regulation of highway traffic (8-9 Eliz.II, c.67, 1961), also known as the Highway Code. This act simply updated the earlier provisions governing highway traffic in the Province.

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<sup>139</sup> Quebec, Gauvin (1974,107)

<sup>140</sup> An Act respecting motor vehicles, 14 Geo V, c.24, (1924,sec.53(2))

An additional change was the adoption of the Act to ensure the indemnification of victims of automobile accidents (9-10 Eliz. II, c.65, 1961) which included provisions related to civil liability and accident compensation. Under section 3 of the Act, the driver was still liable for all damage caused by their vehicle, as section 53 of the previous Act respecting motor vehicles had stipulated. Furthermore, drivers of motor vehicles were required to show proof of financial responsibility of a \$35,000 minimum under the Act either through proof of insurance or by adequate self insurance (ie. through a bond or deposit).

In complement to these changes, the Indemnity Fund was established under section 47 of the Highway Victims Indemnity Act. The Fund was set up to ensure compensation for those injured by an unidentified or insolvent person. Although supported in direct financial terms by the insurance industry, the policy holders in reality indirectly bore the cost of the Fund.<sup>141</sup>

The Assigned Risk Plan was introduced, based on those models found in other Canadian jurisdictions at the time. Like in Ontario, the Plan accommodated those drivers not able to receive insurance in the general market. Again similar to Ontario, albeit six years later, the province of Quebec replaced the Assigned Risk Plan with the "Facility" in 1968. As mentioned previously, the Facility was a "shared risk pool" of private insurers.

Also during this period, the powers of the Superintendent of Insurance were expanded to include the approval of "...the form and terms of insurance

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<sup>141</sup> See: Boyer and Dionne (1987,183)

policies issued in the province".<sup>142</sup> In addition, insurers within the Province were required to supply the Superintendent with information and statistics regarding the conduct of their business.

In 1970 the province of Quebec adopted an optional, limited accident benefits scheme. By providing some form of no-fault accident benefits, drivers who were at fault in an automobile accident were eligible for partial financial compensation. As well, those waiting to receive payment through their liability insurance could be temporarily "tied over" until the courts had determined an award.

The Province in 1974, commissioned the Committee of Inquiry on Automobile Insurance, also known as the Gauvin Report, to examine the insurance system in Quebec. In reference to the traditional tort-based, accident compensation system which existed in the province at that time, the Committee noted in its report

...that the present system provides better compensation for victims who suffered property damage than for those who were injured, (and) that it favours unduly those who experience small losses at the expense of those who suffer substantial losses...(I)t must be admitted that Quebec, at the present time, is not provided with an insurance system against automobile accidents which covers the population adequately against their economic losses.<sup>143</sup>

The Gauvin Report pointed to a system of "...universal compensation for financial loss due to bodily injuries, regardless of whether or not the victim was

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<sup>142</sup> Quebec, Gauvin (1974,168)

<sup>143</sup> Quebec, Gauvin (1974,200)

at fault..."<sup>144</sup> as being a positive alternative to the then primarily tort-based system. The Committee backed its recommendation for universal, pure no-fault coverage by citing that 28% of those who had suffered bodily injury resulting from an automobile accident, were not compensated under the tort system at that time. Furthermore, those not found liable in an accident, were compensated for no more than 60% of their economic losses.<sup>145</sup>

In response to critics concerned with the elimination of the right to sue under a pure no-fault scheme, the Government of Quebec, in its report on Automobile Insurance Reform stated simply that, "...in a no-fault system, the renunciation is made in exchange for a more basic right, that of compensation".<sup>146</sup> In short, the government chose universal basic coverage for all victims over the traditional right to tort remedy.

In 1978, acting on the reforms suggested by the Gauvin Commission, the newly elected Party Quebecois Government (elected in 1976) introduced a new Automobile Insurance Act. Interestingly, the Government went beyond the basic recommendations of the Committee. In addition to opting for a universal no-fault bodily injury plan as proposed by the Report, the Government decided to establish a government-run corporation to administer the bodily

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<sup>144</sup> Boyer and Dionne (1987,182)

<sup>145</sup> Quebec, Gauvin (1974,200)

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<sup>144</sup> Boyer and Dionne (1987,182)

<sup>145</sup> Quebec, Gauvin (1974,200)

<sup>146</sup> Quebec, Automobile Insurance Reform (1977,23)

injury coverage, leaving the physical damage portion to the private sector.<sup>147</sup>

Rose Ann Devlin, in her cost-benefit analysis of the Quebec plan identified six primary changes imposed by the 1978 amendments to the Insurance Act:

...the switch from private to public provision and a change in the method by which insurance premiums were paid; the move from liability to no-fault insurance administration and coverage; the switch to a periodic payment scheme; and the move to a flat-rate premium structure between individuals over time.<sup>148</sup>

The new government corporation set up to administer the bodily injury coverage was the Regie de l'assurance automobile du Quebec. The Regie provided, as it still does today, a basic compulsory bodily injury package to motorists in the Province. As well, those who feel that this level of coverage is inadequate, have since the inception of the plan, had the option of purchasing additional coverage from the private sector. In fact, by allowing the private sector to provide optional coverage, in addition to compulsory third-party property damage coverage, the Province was able to reduce the negative financial impact on the Industry caused by the government intrusion into the market.

Among the major reforms introduced in the 1978 package were: the consolidation of the separate, privately-run estimation centres, the introduction of the private report ("le constat amiable"), the creation of the "Direct

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<sup>147</sup> Medza, Interview (July 20, 1992)

<sup>148</sup> Devlin (1989,5)

Compensation Agreement", and the adoption of a new statistical plan.<sup>149</sup> In introducing these changes, the government established a new agency under the Act. The "Groupement des assureurs automobiles", as it was called, was given the responsibility of conducting the business of the estimation centres, formulating the new "constat amiable" and administering the Direct Compensation Agreement, and collecting and presenting relevant automobile related statistical data under the new statistical plan. This agency has since its origin in 1978, been in structure, "...a consortium of private insurers established by legislation."<sup>150</sup>

In 1979, the Groupement agreed to set up ten estimation centres across the Province. As noted in the 1979 Report of the Superintendent of Insurance, "...the estimation centres accelerated and simplified the process of handling accidents".<sup>151</sup> This improvement in the process was mainly due to the uniformity of the methodology used by the centres which included the use of standardized manuals used to determine the cost of damage to vehicles. The process used by the centres, has been similar in many respects, to that employed by the Manitoba Public Insurance Corporation which will be described in some detail shortly.

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<sup>149</sup> See: Quebec, rapport du Surintendant des assurances (1979,1), and Boyer and Dionne (1987,184-6).

<sup>150</sup> Ontario, Slater (1986,apdx.12,1). The Groupement was formed under section 156 of the Automobile Insurance Act. Representation in the organization is determined by each company's relative percentage of the total auto insurance business in the province.

<sup>151</sup> (translated from french text) Quebec, rapport... (1979,9).

Also in 1979, the Groupement designed the "Joint Report of Automobile Accident" form, or "constat amiable", which has been used in accident situations not involving bodily injury. The form is filled out by the parties involved in the accident, each of which sends a copy to their own insurer. This reform has resulted in reduced delay and administrative costs involved in settling claims.<sup>152</sup>

The general procedures which have governed the payment of property damage claims since the inception of the Act, are outlined in the Direct Compensation Agreement. The Agreement contains a "Driver Fault Chart" which provides for the determination of fault and responsibility in over twenty possible accident situations. Like the constat amiable, this example of procedural standardization has resulted in a reduction in the time and costs normally associated with the claims payment process.

The statistical plan developed and maintained by the Groupement, has been aided by provisions in the 1978 Act which strengthened the Inspector General's (Superintendent of Insurance) powers related to obtaining data from the private insurers. Under section 177, insurers in the province of Quebec are required to submit statistical data regarding their auto insurance business, including copies of their rate manual. The Inspector General, upon analyzing the rate manual, then reports to the Minister with respect to the degree to which the interests of the consumer are being met by the insurers. The

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<sup>152</sup> See: Boyer and Dionne (1987,185), and Quebec, rapport... (1979,7,9-10).

Groupement compiles the data received from the Industry, and publishes a detailed statistical report made available to the public. This function of the Agency is similar to that served by the Statistical Division of the Insurance Bureau of Canada in the provinces without government-run insurance corporations.<sup>153</sup>

Following the introduction of the Automobile Insurance Act, an average of 96% of all passenger vehicles, up from less than 90% prior to 1978, were insured with third party liability coverage. As well, the percentage of vehicles with collision and comprehensive coverage increased from 52% to 60%, and from 74% to 80% respectively, similarly as a result.<sup>154</sup> In general, more motorists in the province were insured, and were covered more adequately under the new system than under the previous one.

A phenomena which has been the topic of some debate, was the increase in frequency of reported accidents and commensurately, the number of claims in the immediate years following the introduction of the new insurance scheme. Writers such as Gaudry, Boyer and Dionne, and Devlin have attributed this increase to the removal of the determination of fault in auto accidents, and the "flat" premium structure of the pure no-fault scheme.<sup>155</sup>

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<sup>153</sup> see: Boyer and Dionne (1987,185), Quebec, rapport...(1979,7), and IBC, 1990 Automobile Insurance Experience (1991,1-2).

<sup>154</sup> Fluet and Lebreve (1986,6)

<sup>155</sup> Gaudry (1987,24), Boyer and Dionne (1987,186-7), and Devlin (1988,25-6) (1989,13).

Fluet and Lebreve on the other hand, reject the argument of a direct "cause and effect relationship" between the introduction of no-fault, the removal of experience rating, and the rise in accident frequency. Instead, they refer to the increase as "...a result of a normal cycle in the insurance business".<sup>156</sup>

Regardless, the years immediately following the 1978 reform were not good ones for the insurance industry in Quebec. The increase in accident frequency over this period obviously contributed to the Industry's poor financial performance as did the loss of sales resulting from the government's take-over of a third of the auto insurance business. This situation nonetheless improved by the early to mid-1980's when as mentioned previously, the Industry elsewhere in Canada, entered a period of substantial profit decline.

Throughout the mid-1980's, when privately-run, primarily tort-based provinces such as Ontario in particular, were experiencing drastic increases in liability claims costs, the province of Quebec was able to control insurance costs. This was in most part due to the fact that the increase in liability claims costs experienced elsewhere in Canada was related to a rise in the frequency and size of court settlements of third-party liability tort actions. The greatest portion of these claims were related to bodily injury. Being that one, the Regie assumed responsibility for bodily injury coverage, and two, that tort remedy was barred under the Automobile Insurance Act, private insurers in the province of Quebec were in essence, sheltered from the "crisis" experienced elsewhere.

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<sup>156</sup> Fluet and Lebreve (1986, 6)

Therefore, although the original transition to a public no-fault bodily injury benefit package had some negative impact on the Industry in the immediate short-term, it can be said that the private insurers in the Province benefited to some extent (most notably in the early to mid-1980's), from the government assumption of the more costly portion of the insurance product. Still today bodily injury liability accounts for the highest percentage of claims paid to insureds in most jurisdictions.

Efforts have been made throughout the past almost fifteen years to improve the general relationship between the public and private sector in the Industry. An example of such has been a relatively recent innovation aimed at improving the level of communication between the two. In 1991, the government introduced a new centralized accident filing system. It is expected that this centralized information system will effectively link the data held by the private and public sector regarding accidents and drivers' records. In his 1991 report, the Superintendent of Insurance noted that the Industry appears to have made good use of the new system, stating that private insurers have been the principle users of the service.<sup>157</sup>

#### The Current Model

There are presently just over 160 private insurers licensed to sell

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<sup>157</sup> Quebec, rapport... (1991,57)

automobile insurance in the province of Quebec.<sup>158</sup> These insurers provide compulsory and optional property damage coverage,<sup>159</sup> and optional bodily injury coverage to Quebec motorists as previously mentioned. The Régie on the other hand, provides a basic, compulsory bodily injury package. The total earned premiums for the private automobile insurance industry in the Province was \$1,635,806,965 in 1990. The total adjusting and claims expenses reached \$1,363,879,724 leaving the Industry with an earned loss ratio of 83%.<sup>160</sup> The net result was an underwriting profit of \$271,927,241 (before operating costs and investment income) for the year. Adding these two factors would result in a net decrease of about 10-15% in overall profit.<sup>161</sup>

The financial position of the Industry improved quite substantially in 1991 when earned premiums rose to \$1,754,636,457 at the same time that total expenses fell to \$1,319,975,347, which resulted in an earned loss ratio of 75%. This situation led to \$434,661,110 in underwriting profit (before investment income and operating costs); an increase of almost 60% in a single year. In terms of the Industry's earned loss ratio, a decrease of 8% (from 83%

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<sup>158</sup> Quebec, rapport... (1991,6)

<sup>159</sup> The Automobile Insurance Act (s.87), requires a minimum of \$50,000 in property damage coverage. Drivers may also purchase higher levels of coverage.

<sup>160</sup> Groupement, rapport annuel:1991 (1992,3). Note that all figures given for the private industry in Quebec for 1990 and 1991, are those quoted by the Groupement in its 1991 annual report.

<sup>161</sup> This is based on an approximate value of 22-25% for operating costs, and 12-15% for return on investment. Private automobile insurers in Canada generally fall within these ranges.



to 75%) was realized during this period.

The Regie, like the private sector insurers in the Province, experienced a net profit in 1990. The total premiums earned by the Corporation in that year were \$1,637,000,000 against \$1,361,000,000 in claims and claims adjusting expenses, which resulted in a \$276,000,000 (pre-operating cost) underwriting profit, or a 83% earned loss ratio.<sup>162</sup> The addition of operating costs to the total resulted in a \$158,000,000 deficit for the year, which was more than offset by investment income. As did the private sector, the Regie experienced marked financial improvement in 1991. Premiums earned rose to an estimated \$1,780,000,000 while claims and adjusting expenses fell to \$1,334,000,000 leaving the Regie with a 75% earned loss ratio. After operating expenses and investment income, the Corporation posted even higher levels of net profit than in 1990. From these profits, \$700 million was passed on to the provincial treasury for highway improvements, and the remainder was returned directly to the policy holders by way of an 11% decrease in premiums.<sup>163</sup>

Since the inception of the Automobile Insurance Act in 1978, the structure of the Industry has remained basically unchanged. The formal relationship between the Regie, the Groupement, the government of the day, the private insurers, and the motorists, is essentially the same as was

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<sup>162</sup> Quebec, Regie rapport annuel: 1991 (1992). Note that all Regie statistics presented here have been taken from this and the 1990 annual report.

<sup>163</sup> Charlton (May 22, 1991, 12)

established in the 1978 Act.

The partial no-fault property damage coverage, provided by the private sector, is based on a schedule of typical accident situations. Under the Quebec plan:

The driver who is at fault compensates the driver who is not at fault for his vehicular damage. The driver who is at fault is compensated for (their) losses only if (they) purchased voluntary collision coverage. Drivers who are at fault will incur the loss of a deductible if they have collision and will pay the entire cost if they have no coverage...The property damage provisions eliminate third-party compensation for vehicular damage. They provide coverage for one's own damages, depending on a simplified fault determination process.<sup>164</sup>

This system contrasts that of the private tort jurisdictions where the driver would have to bring a claim against the other's insurance company if they were not at fault in an accident. The premiums for property damage in Quebec are based on the traditional criteria used by private insurers which include age, sex, marital status, territory and so on.<sup>165</sup>

The bodily injury coverage provided by the Regie on the other hand is based on a pure no-fault model. Compensation for bodily injury is thus paid to victims regardless of fault according to a benefits schedule.<sup>166</sup> The premium paid by each individual is determined according to the class of the vehicle regardless of the risk imposed by the driver. Experience rating is not part of the

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<sup>164</sup> Ontario, Slater (1986,apdx.12,2)

<sup>165</sup> Ibid

<sup>166</sup> Quebec, Automobile Insurance Act RSQ., January 1992, sec.83.57.

system. The only instrument used to reflect the driver's record in the cost of driving is the merit/demerit point system which is part of the process of issuing licences. The difference in the amount paid by "good" and "bad" drivers is minimal however.<sup>167</sup>

Over the years, the levels of compensation paid under the public plan have been increased to take into account the rising costs of injuries, damage, and the cost of living in general. Throughout this time as well, indemnification amounts have been linked to the Industrial Composite in Quebec to further ensure that compensation adequately reflects the costs incurred by accident victims as inflation rises.

The present no-fault accident benefits scheme includes a range of compensation similar to that offered by the proposed Ontario Road Ahead package. The Quebec model has in fact served as an example upon which the new Ontario no-fault benefits package is based.<sup>168</sup>

A primary pillar of the Quebec no-fault scheme is that victims do not have the right to sue for either economic or non-economic losses related to bodily injuries. Instead, in cases where individuals feel that the standardized chart outlining disability benefits has treated them inadequately, recourse to various levels of appeal through Administrative Tribunals is available. The

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<sup>167</sup> See: Boyer and Dionne (1987,181-182), Ontario, Slater (1986,apdx.12,1), Devlin (1988,2), and Alberta, Wachowich (v.2,1991,apdx.6,211).

<sup>168</sup> Savage Interview (July 10,1992)

"Commission des affaires sociales", which is empowered by the Automobile Insurance Act (s.56) to serve as a avenue of recourse, may change a decision of the Regie. The decision of this body however, is final. The courts may only become involved in cases where errors of law are deemed to have been made. Furthermore, appeals must be made within one year following the accident.<sup>169</sup>

Those injured in an automobile accident receive 90% of their net earnings under the benefit schedule which is subject to a maximum of \$42,000/year, and a minimum based on the current minimum wage in the Province. Indemnity for part-time and unemployed victims is based similarly on the level of pre-accident income, and on employability and the particular qualifications of the individual respectively. For those not employed full-time or unemployed who are responsible for the care of dependants, a schedule ranging from \$250/week for one dependant, to \$340/week for four dependants provides an addition level of compensation. Students in particular receive varying levels of indemnification contingent upon their level of study. Elementary students receive \$3000/year lost, secondary students are entitled to \$5,500/year lost, and post-secondary students are paid \$5,500/semester, up to a maximum of \$11,000/year. If a student is still unable to return to their studies or hold employment after a scheduled period of completion, income is then based on the Industrial Composite which at present is in the \$25,000 per

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<sup>169</sup> See: Canadian Bar Association (1991,apdx.F), and Boyer and Dionne (1987,184).

annum range. For temporary disabilities, benefits cease after three years, whereas those permanently disabled are entitled to compensation for life.

With regards to medical and rehabilitation benefits, no monetary limits are imposed under the Act. Simply, any reimbursement of such expenses incurred must be approved by the Regie, as must the rehabilitation programme itself, if applicable. In addition, a lump sum payment of up to \$100,000 may be awarded for dismemberment.

If death occurs, either as an immediate result of an accident, or at a later time due to injuries sustained in an accident, the victim, or beneficiary, is entitled to compensation. Spouses of the deceased are eligible to receive a payment of over \$40,000 to a maximum of over \$200,000,<sup>170</sup> depending on age and income factors. Furthermore, dependants receive according to their age, a minimum of just under \$20,000 up to a maximum of over \$36,000. Parents of those without dependants receive almost \$16,000 and funeral expenses in general, are set at a maximum of just over \$3000.

With regards to non-economic losses, the current maximum available is \$125,000 which covers pain and suffering, disfigurement, loss of enjoyment of life and so on. The level of this award is determined by the Regie and not by the courts as mentioned. As well it should be noted that, this maximum is

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<sup>170</sup> Indexation accounts for the "almost" and "over" amounts.

linked to the Consumer Price Index and is therefore increased annually.<sup>171</sup>

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<sup>171</sup> For an outline of the compensation package in Quebec, see: Insurance Bureau of Canada, Facts (1991,28), Alberta, Wachowich (1991,apdx.), or Quebec, Automobile Insurance Act RSQ. January 1992.

## Manitoba

In 1930, the Province of Manitoba introduced the Highway Traffic Act. Among the provisions of this legislation were those dealing with vehicle registration and licensing, weight and load regulation, vehicle speed, the rules of the road and so on. Similar to those Highway Traffic Acts found in Ontario and Quebec, the Manitoba legislation placed the onus of proof on the driver in cases of injury caused by a motor vehicle (sec.58). As well, with regards to personal liability, the requirement of proof of financial responsibility (ie. certificate of insurance, bond, or deposit) was set out in this act under section 89.

Two years following the establishment of the Highway Traffic Act, the Province proclaimed its first insurance act. The Manitoba Insurance Act<sup>172</sup> established the position of the Superintendent of Insurance and outlined its powers and responsibilities (sec.3-19). These included: the licensing, investigation, and inspection of insurers and their records, as well as the requirement that an Annual Report of the Superintendent be produced at the end of each year.

Provisions outlining the terms and structure of contracts of insurance were also included in the Act, as was a special section (part VII, sec.165-85) which dealt specifically with automobile insurance. Within the automobile insurance section, specific provisions formalized the relationship between the

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<sup>172</sup> Manitoba, Insurance Act (1932, RSM. c.98, s.1)

insurer and the insured with regards to: liability (ie. of insurer to pay, exceptions from liability and so on), minimum liability coverage,<sup>173</sup> the contents of the policy, the burden of proof of damage, and notice of accident.

Over a decade later in 1945, "Manitoba became the pioneer jurisdiction in Canada to establish a Fund to compensate innocent victims of traffic accidents where the offending driver was financially irresponsible and without insurance".<sup>174</sup> The "Unsatisfied Judgement Fund" as it was called, was supported financially through the payment of a fee, of not more than one dollar, by each owner of a motor vehicle registered under the Highway Traffic Act. In order to receive payment from this fund, the victim had to prove negligence on the part of the driver said to be at fault.

In 1947, compensation from the Fund was expanded to include cases involving unidentified drivers, however this compensation was limited to the personal injury portion of the losses. Then in 1965, the "Unsatisfied Judgement Fund", was separated from the Highway Traffic Act, and an individual act, The Unsatisfied Judgement Act, was set up in its place. No major changes were made to any of the provisions of the Act in the process.

Auto insurance was not an issue again until the 1969 election campaign.

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<sup>173</sup> section 180 required that at least \$5,000 in bodily injury and death coverage be included in the policy. Also, coverage for accidents involving the death or injury of two or more people was set at a minimum of \$10,000. Property damage coverage had a minimum of \$1,000.

<sup>174</sup> Manitoba, Pawley (1970,21)



Former Premier, Howard Pawley, has attributed the public's increased interest in the issue at the time to several problems that existed at the time. Among them were:

...uninsured motor vehicles, delays in resolving claims, excessive penalizing of certain classes of drivers, high administrative costs resulting from a multiplicity of insurance companies, and excessive earnings, not accruing to the benefit of victims of auto accidents.<sup>175</sup>

Acting on an election promise, in 1969 the newly elected New Democratic Government created the Manitoba Automobile Insurance Committee, chaired by then Minister of Municipal Affairs, Howard Pawley. This Committee was mandated to "...investigate the feasibility of instituting a program of public auto insurance...".<sup>176</sup> In its report released in 1970, the Committee came to the conclusion that the then tort-based, private system of motor vehicle accident compensation, was "...inadequate, expensive, and confusing to the public."<sup>177</sup> In light of this conclusion, the Report recommended

a system combining "no-fault" insurance and Tort liability insurance as being the best practical and immediate remedy to overcome the deficiencies of the present system...(and that the government) create a Crown corporation to administer the Insurance Plan.<sup>178</sup>

Also included in the recommendations, was the imposition of an amount

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<sup>175</sup> Pawley, (Article A, 1991, 2)

<sup>176</sup> Bardua (February 24, 1992)

<sup>177</sup> Manitoba, Pawley (1970, 24)

<sup>178</sup> Ibid

of compulsory bodily injury and property damage insurance for all licensed Manitoba drivers. This compulsory basic insurance package, the Committee noted, could be supplemented by additional coverage which the private sector would have the opportunity to provide.

Immediately following the release of the Committee's report, "(i)nsurance agents, companies and the political opposition mounted a relentless campaign to derail the recommendation (of public auto insurance).<sup>179</sup> This campaign included: speeches, letter writing campaigns, pamphlets, meetings, advertising, bumper stickers, door to door canvassing, presentations of briefs to legislative committees and the like. On April 29th, 1970, a rally of about ten thousand people was held on the steps of the Legislature to oppose the move towards public auto insurance. Intense opposition carried on for weeks to the point where uniformed guards were assigned to the committee proceedings, and on occasion to the Minister responsible, and to the Premier.

Finally, after the closing of the committee meetings, in spite of the stiff opposition, the Government introduced Bill 56, The Automobile Insurance Act, which formally established the Manitoba Public Insurance Corporation. The new corporation officially began operating in 1971, making it the second public insurance corporation in Canada, the first being that of Saskatchewan which was set up in 1945.<sup>180</sup>

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<sup>179</sup> Pawley (Article A, 1991,2)

<sup>180</sup> See: Bardua (February 24, 1992)

The only substantial revision to The Automobile Insurance Act since its inception has been the expansion of the MPIC into general lines of insurance in 1975, which was followed by a move into the reinsurance market shortly thereafter. As a result, the Act has since been called The Manitoba Public Insurance Act. As was experienced in the mid-1980's by insurers in the province of Ontario, MPIC investments in general lines and reinsurance abroad resulted in substantial losses. In light of this, the MPIC ceased all reinsurance writing in 1987, however, due to the long-term nature of the claims, some outstanding liabilities are still being paid today.<sup>181</sup>

The insurance crisis in the mid-1980's led to a twenty-three percent increase in premiums in 1988. It became apparent that the government would have to investigate ways of controlling the cost of automobile insurance. The response was the Kopstein Commission<sup>182</sup> of that same year. In essence, the mandate of the Commission was to find ways of reducing the costs of "Autopac" (the automobile insurance division of the MPIC), and to establish means of ensuring that insurance rates in the province were fair and equitable.

The primary recommendation of the Report, was for the MPIC to adopt a pure no-fault system of compensation. As Kopstein noted "...there is a major opportunity to reduce costs and improve benefits, both quite substantially.

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<sup>181</sup> MPIC, Baker, Correspondence (July 24, 1992)

<sup>182</sup> Manitoba, Kopstein, Report of the Autopac Review Commission (1988)

That opportunity lies in the adoption of pure no-fault accident benefits...".<sup>183</sup> However, this major recommendation, like many of the other smaller ones in the Report, were not acted upon by the Conservative government newly elected in 1988.

Although no-fault was not implemented, two relatively substantial procedural changes proposed by Kopstein have since been implemented by the Conservatives. The first was the requirement that rate increases proposed by the MPIC be first approved by the Public Utilities Board. This has been done each fall (since 1989), at which time the MPIC applies for the Board's approval of insurance rates for the upcoming insurance year commencing March 1st. The second major amendment, effective in March of 1994, will be the adoption of a staggered renewal system. Under this system, each motorist will have their own renewal date unlike the current system in which all drivers must renew their insurance before the end of February deadline. In reference to this change, Zdenka Baker of the MPIC notes: "The result is a more even distribution of work for MPIC, as well as for our agents. It will also eliminate the line-ups which are common around the annual renewal deadline."<sup>184</sup>

Another change in the direction of the MPIC, however not related to any suggestion put forth by the Kopstein Report, was the decision of the government in July of 1990, to withdraw from general lines of insurance.

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<sup>183</sup> Manitoba, Kopstein (v.1,1988,2)

<sup>184</sup> Baker, Correspondence (July 24, 1992)

Today, MPIC limits its insurance activities to the automobile portion of the business, leaving general insurance to the private sector.<sup>185</sup>

At present, the issue of increased no-fault is again resurfacing in the Province. The MPIC is currently pushing for a ten percent increase in premiums at a time when inflation is less than two percent. This increase is attributed to the recent rise in bodily injury claims which for the first time in the province's history, have surpassed the amount paid out in property damage claims. In recent years, the number of bodily injury claims in relation to the number of automobile accidents reported has increased from one in seventeen, to one in nine. Claimants have come to realize in the past few years that they can sue for non-pecuniary losses, in particular "whiplash" and "pain and suffering", which have increased in frequency substantially as a result. Proponents of the pure and/or threshold no-fault option as proposed by Kopstein in 1988, claim that the ten percent increase could have been avoided had a pure or threshold model been adopted. Howard Pawley, Premier at the time Justice Kopstein was commissioned to undertake the 1988 study has said simply, "(w)e should have gone to no-fault".<sup>186</sup>

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<sup>185</sup> Baker, Interview (July 28, 1992)

<sup>186</sup> Pawley, Interview (July 21, 1992). Information regarding the ten percent increase, and Public Utilities Board, was also taken from this interview.

### The Current Model

The model of auto insurance currently in place in the province of Manitoba is essentially that which was implemented in 1971. From 1971 to the present, a basic, compulsory, automobile insurance package has been provided by the government-run insurance corporation, the Manitoba Public Insurance Corporation (MPIC). When the MPIC was established in 1971, rather than sell insurance through its own offices, the government decided to maintain the existing brokerage network. Still to this day, insurance can be purchased through one of four hundred private brokers, who work on a commission basis for MPIC. Regarding the relationship between the MPIC and the brokers, one of the current Vice Presidents of the Corporation has noted:

You could probably distribute the (insurance) product much more cheaply if you decided to do so through central government offices however, the brokers offer a more personalized service that customers appreciate. We get pretty good value out of our brokers.<sup>187</sup>

The organizational structure of the MPIC is similar to that of a private corporation and could be classified as "quasi-public"<sup>188</sup> in nature. A Board of Directors, appointed by the government of the day, sets the broad policy direction of the Corporation. Accountability to the government is maintained through a direct reporting relationship of the Chairperson of the Board to the Minister Responsible for the MPIC. The Corporation is described as being

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<sup>187</sup> Newton, Interview (February 24, 1992)

<sup>188</sup> Ibid

"arms length" from direct political control. This is illustrated by the fact that the executive, which is responsible for the daily operation of the Corporation, has no direct reporting relationship with the Minister. Accountability of the executive to the government is maintained indirectly by the power of the Board to appoint and dismiss members of the executive. Finally, the Corporation is regulated by the Public Utilities Board (PUB) with regards to insurance rates. Any proposed rate increase must be approved by the PUB. The government in theory, does have the power to override a decision of the Public Utilities Board, but if it chose to "pull rank" in this manner, it would do so at its "own peril".<sup>189</sup>

In terms of finances, the Corporation in 1990 had earned \$304,624,000 in premiums against \$352,316,000 in total expenses which resulted in an underwriting loss of \$47,692,000. When investment income is included in the calculation however, the Corporation finished the year with a \$9,864,000 surplus. In 1991, total earned revenues, including investment income, rose to \$320,674,000. Total expenses increased by an even greater amount reaching \$372,207,000. As a result, the Corporation was left with a decreased profit of \$8,141,000 at the end of 1991. Being that the mandate of the MPIC, like other government insurance corporations, is to run at a minimal surplus, it can be said that both 1990 and 1991 were relatively good years financially for the Corporation.

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<sup>189</sup> Ibid (February 24, 1992)

When a policy holder is involved in an accident in the province of Manitoba, they deal directly with MPIC. Details of the claim can be reported over the phone, and the claimant can then bring the vehicle into one of nineteen drive-in claims centres where an estimator assesses the damage. In rural areas, travelling adjusters attend to claimants. If the damage is minor, the process normally takes no more than fifteen to twenty minutes. Accidents involving injury or liability claims on the other hand, require that the claimant speak with an adjuster who then records the information regarding the accident. It is the responsibility of the adjuster to process the claim and to make sure that the claimant receives the compensation that they are entitled to.

A very important role of the adjuster is to assess who was at fault in a given accident. The determination of fault is important for three reasons: the at-fault driver must pay a deductible, the driver not at fault may file a claim against the at-fault driver through the courts for damages over and above those offered by the no-fault benefits schedule, and the at-fault driver may be required to pay increased licence levies to reflect their higher level of risk. Victims of automobile accidents receive automatic no-fault benefits under the compulsory plan, in addition to third party liability coverage. The former is comprised of medical expenses, total and partial disability benefits, impairment, death, and funeral expenses. The latter on the other hand, refers to benefits which are available if the insured can prove the negligence of another driver.



These benefits would be sought through the courts, and would be over and above that available in the no-fault accident benefit package.<sup>190</sup>

Under the current plan, medical benefits are limited to \$100,000, excluding the health insurance plan. In cases where the injured is partially disabled, they are entitled to \$75/week. Those injuries resulting in total disability allow the victim to receive a minimum of \$175/week, or 70% of their gross earnings up to a maximum of \$350/week. Minors and homemakers inflicted with partial disability receive their actual earnings or \$75/week. Minors and homemakers who are totally disabled as a result of an automobile accident, are eligible for a payment of their actual earnings up to \$175/week. Finally, those who receive total impairment may be compensated an additional amount limited to \$20,000.

In accidents resulting in death, payment to a primary dependent, or to a self-supporting spouse of a victim is \$10,000. Secondary dependents receive \$2000. The amount given for those who die under the age of eighteen, and those over eighteen years old without spouses or children, is also \$2000. In addition to these indemnities, the amount awarded to cover funeral expenses is \$2500. The maximum payment available to a family under the present accident benefits package has no limit.

Manitoba drivers also receive \$200,000 worth of liability coverage,

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<sup>190</sup> Manitoba, Manitoba Public Insurance Corporation, Annual Report (1991,5), Insurance Bureau of Canada, Facts (1991,29). Manitoba has a tort system of contributory negligence similar to that of Alberta which is explained in the next case study.

\$200,000 worth of uninsured motorist protection, and all-perils coverage which is subject to a \$350 deductible, as part of their basic package. Since access to the courts is in no way restricted, victims also have the option to sue for losses in addition to those compensated under the no-fault package. These losses include both pecuniary (monetary) losses such as lost income, and non-pecuniary (non-monetary) losses like "pain and suffering".

In addition, Manitoba drivers have the option of purchasing additional coverage in supplement to the basic package provided by the MPIC. Optional coverage such as increased liability coverage, or reduced all-perils deductibles, can be purchased from either the MPIC or the private sector. Even though motorists have the option of purchasing from either the private sector or the government corporation, over ninety percent of this business is handled by MPIC.<sup>191</sup>

In determining the rates that drivers will pay for insurance coverage, the Province has imposed a standardized rate classification system. Insurance premiums are based on geographic location, and the use and type of vehicle. As well, in order to ensure that high risk drivers contribute more to the system, "...each driver pays on his/her driving licence, an assessment based upon his/her driving record of violations and history of at-fault accidents".<sup>192</sup> Discriminatory variables such as age, sex, and marital status are not used.

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<sup>191</sup> Bardua (February 24, 1992,10)

<sup>192</sup> Pawley (Article B,1991,4)

### Alberta

Similar to the province of Manitoba, Alberta was somewhat slow in introducing legislation regarding insurance and the use of automobiles. The Alberta Insurance Act<sup>193</sup> was not adopted until 1926. As did the insurance acts found in other Canadian jurisdictions at the time, the Alberta Act in short, regulated the Industry in the province. Provisions under the Act established: the terms of contracts, licensing and the requirement of a deposit by insurance companies, guidelines regarding solvency, and the office and duties of the Superintendent of Insurance. A specific section regarding auto insurance was later added in 1933 (c.57, s.4).

In following the lead set by the province of Ontario and others, Alberta, in response to the 1930 Hodgins Report,<sup>194</sup> required that all insurers provide the Superintendent with "...a record of (their) automobile insurance premiums and of (their) loss and experience costs in the province."<sup>195</sup> The cost of this requirement was to be borne by the insurers, as would the cost of maintaining the Statistical Agency responsible for collating and presenting the data to the Superintendent. The Agency at the time, as previously mentioned, was the Canadian Underwriters Association. Today the Insurance Bureau of Canada handles this responsibility for the Industry.

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<sup>193</sup> Alberta, Alberta Insurance Act (SA.,1926, c.31)

<sup>194</sup> Ontario, Royal Commission on Automobile Insurance Premium Rates (1930).

<sup>195</sup> Alberta, Alberta Insurance Act (RSA.,1970, 98(7))

Years later in 1941, the Province passed the Vehicles and Traffic Act<sup>196</sup>. Among the provisions of this act were those which regulated: vehicle licensing and registration, vehicle speed, the rules of the road, and the rights of pedestrians. In addition, similar to that found in other Canadian jurisdictions at the time, the Act established that the driver of a motor vehicle which caused damage and/or injury had to prove that they were not negligent (94(1)). It too, was a system of guilty until proven innocent. Finally, the Act required that the driver of a motor vehicle provide proof of financial responsibility through either "...a certificate of insurance, a bond, or a deposit of money or securities...".<sup>197</sup>

Little changed in the auto insurance policy field until the 1970's when the Alberta Automobile Insurance Board (AAIB) was set up under the Alberta Insurance Act. Bill 109 of 1971, gave the new Board the power to "...investigate any matter it thinks fit respecting automobile insurance in Alberta, including rates, benefits and the availability of automobile insurance...".<sup>198</sup> Furthermore, under section 321.4 (1), the Bill required every insurer to file their proposed rates with the Board for approval. These powers were expanded in 1972 to include the requirement of insurers to have both their rates and classification systems approved by the Board (s.8). It was not

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<sup>196</sup> Alberta, Vehicles and Traffic Act (SA., 1941, c.5)

<sup>197</sup> Ibid (s. 120)

<sup>198</sup> Alberta, An Act to Amend the Alberta Insurance Act (SA. 1971, s.321.2, (2a))

until 1987, as has been mentioned, that Ontario established a regulatory body with similar powers.

Another major change introduced in the 1971 amendment package was the establishment of limited no-fault first party accident benefits.<sup>199</sup> The compulsory benefit package included limited wage indemnities, disability benefits, and death benefits which have been increased over time. Nonetheless, the philosophy behind the creation of the limited no-fault compensation package has remained the same throughout; the benefits are not aimed at fully compensating accident victims but rather are designed to either "tie over" a victim waiting for a court settlement, or provide some meagre assistance to victims unable to receive compensation under the tort system.

The Province in 1972, made compulsory through an amendment to the Alberta Insurance Act, a minimum of \$35,000 in third party liability auto insurance coverage for all drivers. This minimum was raised to \$50,000 in 1974, to \$100,000 in 1978, and has been at \$200,000 since 1986.<sup>200</sup>

Bill 72, The Alberta Insurance Amendment Act of 1977, added section 525.2 to the Alberta Insurance Act which dealt with unfair insurance practices. This section gave the Superintendent the power to "...suspend or cancel the certificate of authority or licence..." of an insurer which the Superintendent believes to have engaged in an unfair insurance practice, ie. discrimination,

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<sup>199</sup> Ibid (s.300.1)

<sup>200</sup> Insurance Bureau of Canada, 1990 Automobile Insurance Experience... (1991,xvii)

misrepresentation of information or misleading comments, or excessive delay in settling claims. Also included in this bill was the provision of an avenue of appeal for decisions made by the Superintendent regarding licence granting, suspension, and revocation (s.513). This Appeal Board was given the authority to either confirm the decision, order an issuance of the licence, cancel the suspension or revocation, or vary the suspension imposed by the Superintendent (s.513 (6)). The decision of the Appeal Board is subject to further appeal before the courts.<sup>201</sup>

The province of Alberta experienced its most drastic increase in automobile insurance premiums in 1977, when the average rate rose by over 23%. Even after the double digit rate of inflation of the period is controlled for, the increase was still 13%. The rate of increase dropped to just under 16% per annum by 1980, or less than 1% in real dollar terms. Throughout the 1970's and 1980's the Province encountered a pendulum-like swing in rates which has been attributed to the normal peaks and valleys of economic cycle. In general, insurance claims are tied inversely to the economy. In essence, the more money people have, the more they drive, and the more accidents they have. This relationship is common to any jurisdiction although many consider the degree of rate instability experienced in Alberta as being excessive.<sup>202</sup>

As in the province of Ontario, Alberta was forced to cope with a

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<sup>201</sup> See: Alberta, Annual Report of the Superintendent of Insurance (1978,2)

<sup>202</sup> Alberta, Wachowich (apdx.5,1991,2-3)

substantial increase in the number and severity of bodily injury claims in the mid to late 1980's. This increase in the more costly portion of the insurance product resulted in progressively poorer earned loss ratios for the Industry from 1986 to 1990.<sup>203</sup> Recognizing that premiums tend to lag two to three years behind loss costs, it is possible that the losses of this period may lead to further rate increases for Alberta motorists.

A 1988 amendment to the Alberta Automobile Insurance Act<sup>204</sup> created the Alberta Insurance Council (AIC), which since its inception, has been comprised of several other Industry Councils. In essence, the AIC is an Industry self-regulating and co-ordinating body concerned with improving the service of insurance as well as the image of the Industry. Following the 1988 amendment, further provisions were added which empowered the Superintendent to levy penalties against insurers who contravene sections of the Alberta Insurance Act.<sup>205</sup> This authority was created in supplement to those previously granted powers of licence suspension and revocation.

Due to the instability in automobile insurance premiums throughout the 1980's as mentioned, the Alberta Automobile Insurance Board in 1991,

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<sup>203</sup> During the 1980's, the average liability claim size more than doubled. Again see: Alberta, Wachowich (apdx.6,1991,2) and IPC, 1990 Automobile Insurance Experience... (1991,264).

<sup>204</sup> Alberta, Insurance Amendment Act (1988, s.21.2)

<sup>205</sup> Alberta, Insurance Amendment Act (1990, s.517)

undertook a study to investigate the problem.<sup>206</sup> The Wachowich Study, named after Chairperson A.H. Wachowich, conducted a historical analysis of premium levels, loss costs, and insurance coverage in the Province. As well, the Study examined possible options aimed at reducing loss costs, ie. traffic safety, seat belt laws, reducing drinking and driving, sanctions and so on. Finally, a substantial portion of the Report was devoted to conducting a comparative analysis of several compensation models including variations of no-fault insurance. The purpose of this section was to determine the advantages and disadvantages of possible reforms to the compensation system including those related to loss costs as well as other social costs, coverage, efficiency, premiums, and cost internalization.

The 1991 Study made several observations regarding the present compensation system in the province of Alberta:

(1) Claimants with minor injuries are overcompensated on the tort side of the system compared to other accident victims. (2) Claimants with catastrophic injuries who have right of tort action are undercompensated relative to other injured claimants. (3) Provisions under the no-fault benefits of the current system are inadequate. (4) Claimants who are at fault are undercompensated for economic loss compared to those with tort claims. (5) In either instance, payments were subject to delays.<sup>207</sup>

In light of these observations, the Study recommended three options.

The first option suggested only modest tort and no-fault reform. The second

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<sup>206</sup> Alberta, Wachowich A Study of Premium Stability in Compulsory Automobile Insurance (1991). Also see: Miller (1991,28).

<sup>207</sup> Alberta, Alberta Automobile Insurance Board, (1991,6)



called for substantial increases in no-fault benefits, while again maintaining full tort rights. The third option recommended more sweeping reform which included the adoption of a threshold no-fault system similar to that of Ontario; no-fault benefits in this last option simply mirrored those offered in Option 2. The Report concluded that savings would be higher under a pure no-fault scheme like that found in Quebec, however "...the pricing problem in Alberta would be adequately met in the long-term by the implementation of either Option 2 or Option 3."<sup>208</sup>

Both 1991, and 1992 have been poor years for the Industry in Alberta. "There is no doubt that Alberta auto is a market in crisis...both auto and property insurance results are worse than Ontario ever was at the worst of times."<sup>209</sup> In addition to the consistent rise in bodily injury claims costs, floods, tornadoes, and a major hail storm in Calgary in recent years, have all contributed to unusually high losses in the Industry.<sup>210</sup> To worsen the situation, insurers kept rates low because of intense competition despite increasing losses. The end result has been the present need for substantial rate increases to recoup the losses experienced over the past couple of years.

The province of Alberta has kept a close eye on the situation in Ontario, as Susan Steves, the Administrator to the Alberta Automobile Insurance Board,

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<sup>208</sup> Alberta, Wachowich (v.1,1991,11)

<sup>209</sup> Welsh (1992,25)

<sup>210</sup> See: Chalmers (June 15,1992), and Welsh (1992,25).

has noted. She expects that the Province will likely "piggy-back" and follow the lead of Ontario as it has sometimes done in the past.<sup>211</sup> The problems of increasing bodily injury claims, rising loss costs and those problems described in the Wachowich Study, have been controlled under the new threshold no-fault regime in Ontario. Being that Alberta is currently scrambling to address these problems in its own back yard, it has shown some interest in the Ontario model, which incidentally, received the best ranking in the Wachowich Study comparative analysis.

In January of 1992, the Province announced that it would be conducting hearings regarding the conclusions the 1991 Study.<sup>212</sup> However, because of a lack of public support for any major changes at the present time, and the election looming in 1993, the Minister of Consumer and Corporate Affairs, Dennis Anderson, announced that any plans for auto insurance reform were being shelved for the time being.<sup>213</sup> It can therefore be said that the situation will neither change nor improve in the near future.

#### The Current Model

There are approximately 100 private insurers operating in the province of Alberta in the automobile insurance industry. As in Ontario, the consumer

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<sup>211</sup> Steves, Interview (July 29, 1992)

<sup>212</sup> Welsh (1992,25)

<sup>213</sup> Steves, Interview (July 29, 1992)

has the option of buying the insurance product directly from a company through one of its agents, or indirectly through brokers licensed to sell insurance on behalf of a number of different companies. Also as in Ontario, those individuals unable to find insurance in the regular market have the option of purchasing coverage through the Facility Association, the residual market. Insurance rates in both the regular and the residual market are determined according to the traditional classification criteria including territory, driving record, type and use of vehicle, age, sex, and marital status.

The total automobile insurance industry in Alberta earned \$809,208,396 in premiums in 1990 which accounted for approximately 11% of the total private Canadian market. Claims and adjustment expenses offset earned premiums leaving the Industry with a 100% earned loss ratio for the year.<sup>214</sup> When investment income, estimated at about 12% is included, and operating costs, which fall in the 26% range,<sup>215</sup> are subtracted from the total, the Industry finished 1990 "in the red". As mentioned previously, the financial situation of the auto insurance industry in particular, and the total insurance industry in general, did not improve in 1991. The persistent rising number and cost of bodily injury claims, in addition to several extremely costly natural

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<sup>214</sup> Insurance Bureau of Canada, 1990 Automobile Insurance Experience... ("The Green Book"), (1991, 264)

<sup>215</sup> See: Chalmers (June 15, 1992). Note that investment income and operating costs are given as a percentage of earned premiums.

"catastrophes", have contributed greatly to recent Industry financial woes.<sup>216</sup>

Over the past few decades, the Industry has become increasingly regulated. The Office of the Superintendent, since the inception of the Insurance Act in 1926, has had a presence in the auto insurance industry, one that has become progressively intrusive, especially in recent years. Insurers must provide the Superintendent with data regarding premiums, experience, and loss costs among other things, from which the Office compiles and publishes the Annual Report of the Superintendent of Insurance. As well, the Superintendent conducts inspections of the provincial head offices of each insurer on an annual basis. Furthermore, alleged unfair insurance practices are investigated by the Office of the Superintendent, from which the Superintendent has the authority to suspend, or revoke the licence of any given insurer, or impose a penalty if deemed necessary.

Since 1971, the Industry has been further regulated by an additional body, the Alberta Insurance Board. Insurers in the Province must have any proposed alterations regarding their classification systems or increases in their rating structures first approved by the Board. The Board conducts research used for recommendations to the government of the day regarding auto insurance reform, and it receives, investigates, and responds to consumer inquiries and complaints regarding "inequitable rules and practices" within the

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<sup>216</sup> See: Welsh (1992,25), and Chalmers (June 15,1992) .

auto insurance industry.<sup>217</sup>

A relatively recent innovation has been the establishment of the Alberta Insurance Council. Unlike the Office of the Superintendent, and the Automobile Insurance Board, the Council is a private, Industry-run, self-regulating body. The organization is however, entrenched in legislation under section 21.2 of the Insurance Act. This body serves an important co-ordinating function in the Industry. Furthermore, the AIC has taken over the responsibility of issuing licences, or "Certificates of Authority" as they are called. The AIC, like the AAIB, conducts investigations into consumer complaints, for each of which it establishes a file.<sup>218</sup> The Council also has its own mechanism for taking disciplinary action. Any decision made by the Council in this regard can be appealed to the Office of the Superintendent.

In terms of compensation, Michael Trebilcock and Bruce Chapman describe the present system as the following:

In Alberta automobile accidents are governed by the general tort principles of common law with some statutory modifications. In addition to this, there is a scheme of modest no-fault benefits as provided under the Insurance Act. It is this combination to which we refer when we describe the Alberta system for accidents as a maximum tort, minimum no-fault scheme.<sup>219</sup>

Under tort law, the victim of an automobile accident must prove that

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<sup>217</sup> Alberta, Alberta Automobile Insurance Board, (1991,4)

<sup>218</sup> In 1990, thirty new files were opened. See: Alberta, Annual Report 1990 (AIC, 1991,apdx.E)

<sup>219</sup> Alberta, Wachowich (v.2,1991,apdx.6,c.2,23). Maximum tort, minimum no-fault is the same as "add-on" no-fault.

someone else was at fault, or in other words, that someone else's negligence caused the accident which in turn, caused injury and/or damage. The victim is only entitled to compensation to the degree that their own negligence did not contribute to the accident.<sup>220</sup> If either their own negligence caused the accident, or if they are unable to prove that another individual was at fault, then they are not eligible for tort remedy through the courts.

In order to ensure that a victim not at fault receives full compensation, thereby returning them as close as possible to their pre-accident position, both economic and non-economic losses may be sued for.<sup>221</sup> In this way, in theory, the victim can become "whole" again. The current minimum of third party liability coverage that Alberta motorists must purchase is \$200,000.<sup>222</sup> By making this amount compulsory, there is less of a chance that victims will be denied full compensation as a result of accidents involving uninsured or underinsured drivers.

In addition to the right to tort remedy through the courts, victims of automobile accidents, since a 1971 amendment to the Insurance Act, have

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<sup>220</sup> This is known as contributory negligence as explained in Chapter One.

<sup>221</sup> The only limit imposed on the recovery of non-pecuniary losses is that which was established by the "Trilogy of Cases" which were held before the Supreme Court of Canada in 1978. The maximum established at that time was \$100,000, which has now been increased to \$225,000 as a result of indexation.

<sup>222</sup> Both the AIC, and the AAIB have recommended that this minimum be raised to \$300,000. See: Chalmers (June 15, 1992), and Alberta, Wachowich (v.1, 1991, 7).

been eligible for limited first-party, no-fault accident benefits. These benefits, unlike those available through the courts, are outlined in a pre-determined schedule, and are available to all victims of auto accidents, regardless of fault. Benefits received under the no-fault scheme are deducted from any tort award later received by the victim.

Included in the accident benefit package is a disability income replacement of 80% of the victim's gross wages which has a minimum of \$50/week, and is capped at \$150/week maximum (for 104 weeks).<sup>223</sup> Unpaid homemakers are eligible for a \$50/week benefit, again for a 104 week period. As can be seen here, the wage replacement benefits, do not fully compensate the victim. Some form of tort settlement would be necessary for full compensation to be realized.

Several other areas of coverage are provided under the benefit package. Among these is a partial coverage of medical expenses incurred as a result of an auto accident. These benefits are capped at \$5000 which includes any costs related to rehabilitation, but excludes payments received from government medical or hospital plans. Since 1988, victims are also eligible to receive up to \$500 for chiropractic services. In addition, the no-fault plan provides death and funeral benefits. For the death of a primary wage earner, dependents receive \$5000, plus an addition \$1000 for each dependent after

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<sup>223</sup> For a description of the Alberta accident benefit package, see: Canadian Bar Association, (1991,apdx.C), Alberta, Wachowich (v.2,1991,apdx.6,c.2,28-30), and Insurance Bureau of Canada, Facts 1990 (1991,28-9).

the first, plus 1% of the original sum per week for 104 weeks. Funeral expenses are capped at \$1000.



## CHAPTER FOUR

### COMPARATIVE CASE ANALYSIS

As mentioned previously, the framework for comparison employed in this chapter will consist of the following criteria: affordability, efficiency, compensation, rate-making methodology, and management of financial resources. Furthermore, some attention will be given to possible intervening variables which might have some impact on the data presented.

#### Affordability

It can be said with some certainty, that the most salient issue related to automobile insurance for the bulk of motorists, is affordability. When the average motorist thinks of affordability, they do so in "micro" terms, ie. the cost of their own insurance premium. To compare this variable, insurance premiums, across jurisdictions is a very difficult task. Of still greater concern is whether or not this data, if obtainable, can be deemed comparable? There are so many idiosyncrasies which are unique to each jurisdiction, that many view such comparisons as having little or no explanatory value.<sup>224</sup>

The approach of this paper is not one of complete acceptance of the validity of such comparative rate analyses, nor is it one of absolute dismissal of their worth. Some rough generalizations can be made from these comparative studies, however caution must be used.

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<sup>224</sup> Herries, Interview. (August 10, 1992)

A comparative analysis of average rates was conducted by an Ontario Legislative Committee in 1986 which found the Ontario average premium to be 49% higher than that of Manitoba.<sup>225</sup> A 1988 comparison found similar results.<sup>226</sup> In the province of Ontario, the government claimed that without the introduction of threshold no-fault in 1990, rates would have increased by 30-35% to cover Industry losses. Because of the OMPP, rates instead rose between 0 and 8%.<sup>227</sup>

From these comparisons some very general conclusions can be made. In reference to the first of the two, being that Manitoba was and still is a public "add-on" no-fault jurisdiction, and that Ontario was at the time of the 1986 and 1988 studies, a primarily tort-based or "add-on" no-fault, private jurisdiction, the two can be considered somewhat comparable. The type of compensation system, that being primarily tort-based, or "add-on" no-fault, acts as a control variable in the relationship which thus allows for the impact of ownership (public versus private) on insurance rates to be tested. As well, the additional evidence of similar results in two other public jurisdictions, British Columbia and

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<sup>225</sup> See: Gajerski (1991,23). Ontario's average premium was just under 28% higher than British Columbia's, however the claims frequency rate in British Columbia was 22% higher than that of Ontario. It should be noted that in the three western public automobile insurance jurisdictions, drivers with at-fault accidents or moving violations pay additional assessments on their driver's licences rather than pay increased insurance premiums. See: Pawley (Article B,1991,4).

<sup>226</sup> Ibid

<sup>227</sup> Alberta, Wachowich (v.2,1991,193)

Saskatchewan, further strengthen the validity of the comparison. The reliability of the data is backed by the fact that rate levels were reported in the 1986 and 1988 comparisons which were conducted by two different organizations. In the final analysis, it would appear from these results, that public ownership has the ability to offer a substantial reduction in premiums.

The pre/post threshold no-fault comparison in Ontario as well provides some useful data. This analysis showed a 27-35% reduction in premiums as a result of threshold no-fault. Being that this comparison was done within a single jurisdiction, the impact of no-fault could be measured with a fair degree of precision. The 1991 Wachowich Study in Alberta concluded that "(a)ccording to these figures the new threshold system is very much more effective in reducing premium costs (than the primarily tort-based or add-on no-fault system)".<sup>228</sup>

Although the level of premiums may be one indication of how affordable a given system of automobile insurance is, it is certainly not the only one. Premiums, like the level of company profit or loss, are dependent upon the actual cost of maintaining the system. In "macro" terms, if the system is expensive to run then either high premiums, poor corporate bottom lines, or both will reflect this reality. The opposite is of course true of an inexpensive system. The costs of an automobile insurance system can be broken into two main sources: the cost of administering the system, and the cost of

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<sup>228</sup> Alberta, Wachowich (v.2,1991,193)

compensating accident victims. If one wishes to reduce premiums, increase profits, or both, they must decrease the cost of either or both of these (administration and compensation), sources.

In general, studies which have compared the public and private ownership models, have concluded that the public model is less costly to administer. The degree to which savings can be achieved however, has been a topic of some debate. Rose Ann Devlin in her cost-benefit analysis of the Quebec model concluded that the establishment of a public corporation to administer the bodily injury portion of automobile insurance in the Province accounted for a 14% reduction in costs.<sup>229</sup> Fluet and Lebreve in their study of Quebec before and after the introduction of public no-fault, concluded that the relative cost of insurance fell from \$1.63 per dollar of compensation to \$1.13 following the reforms.<sup>230</sup> This decrease is related to the introduction of both the Regie and no-fault, none the less, Fluet and Lebreve's numbers concur roughly with those of Devlin if the impact of no-fault is controlled.

The 1978 Select Committee report in Ontario concluded that the public corporations of Saskatchewan and Manitoba were almost 20% less costly to administer than the Ontario system.<sup>231</sup> In contrast, Justice Osborne in his

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<sup>229</sup> Devlin (1988,257)

<sup>230</sup> Fluet and Lebreve (1986,17)

<sup>231</sup> Ontario, Singer and Breithaupt (1978,94). The spread was said to be smaller between British Columbia and Ontario, however no specific amount was indicated.

1988 study, concluded that the savings of public ownership would be no more than 7%. In making this statement, he pointed also to a submission made by Lawrence Booth to the Inquiry, which quoted an 8% reduction in costs. Not specifying an amount, Harry Glasbeek in his 1991 article stated that "(i)nevitably, at any given level of benefits, public insurance will be less costly than private."<sup>232</sup>

Despite the discrepancies in the literature regarding the amount of savings realized by public ownership, most agree as to the reasons why the public model is less costly to administer. It is often pointed out that the "economies of scale" achieved by a public corporation allow for considerable savings related to the streamlining of processes, and the simplification of information and communication systems. As well, because of the public corporation's monopoly position, it does not have to spend money on costly advertising to improve its market position, although some public relations expenses do exist. And finally, public corporations reroute profits back into the system which further reduces the cost of insurance.<sup>233</sup>

Being that ownership is not related to compensation, the public versus private automobile insurance debate has not included this variable. The

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<sup>232</sup> Glasbeek (1991,75)

<sup>233</sup> See: Woods, Gordon (1978,76), Ontario, Osborne (v,1,1988,677,703), Pawley (Article A,1991,3-5), Ontario, Singer and Breithaupt (1978), Glasbeek (1991,75), and Fluet and Lebreve (1986,18). Also see: Chapter One, "Government Presence in the Industry".

instrument, be it public or private, used to distribute auto insurance is in fact irrelevant when considering the cost of compensation. Rather, it is the system which determines the level of compensation for accident victims that must be examined in this context. The tort/no-fault debate is one which consumes this question of the cost of compensation.

The majority of the literature and commissioned studies which have examined the tort/fault debate, especially in recent years, have agreed that the no-fault model provides substantial savings over the traditional tort system. These savings relate back to the two basic costs in automobile insurance mentioned earlier, the cost of administering the system, and the cost of compensating accident victims.

The high cost of litigation under the tort system has been cited by many as being an inherent deficiency of the system. The Wachowich Study in Alberta found that claimants' legal expenses account for an estimated 10 to 15% of liability premiums in tort-based auto insurance jurisdictions in Canada. The Study also noted that the tort system consumes "...roughly 40% of the civil trial time spent by courts of general jurisdiction, and 17% of civil and criminal judicial resources".<sup>234</sup> Also in 1991, a *Globe and Mail* article estimated that over 30% of bodily injury claims payments went to cover legal costs before the introduction of no-fault in Ontario alone; over \$500 million in 1989. The article further noted that if the right to sue was restored in that

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<sup>234</sup> Alberta, Wachowich (v.2,1991,212). Also see: Ontario, Leal (1973,15).

province, premiums would increase by 15%.<sup>235</sup>

Earlier studies have come to relatively similar conclusions regarding the high cost of the tort litigation process. Devlin, in her 1988 study found that the elimination of the right to sue in Quebec resulted in a 10% savings.<sup>236</sup> Judge Kopstein of Manitoba, also in 1988, pointed to a 17% savings by eliminating the right to sue.<sup>237</sup> The 1986 Slater Report of Ontario claimed that "(m)ore than 50 cents of every premium dollar is absorbed in the administration and legal costs of running the (tort) system".<sup>238</sup> The 1978 Singer and Breithaupt Report in Ontario stated that legal costs generally consume about 15% of the victim's recovery.<sup>239</sup> Finally, several years earlier in 1973, a Royal Commission in British Columbia claimed that \$1.60 is required in order to compensate the victim \$1.00 under the tort system.<sup>240</sup>

With regards to compensation, the tort system is again very expensive.

Despite the 1978 Supreme Court of Canada decision to cap tort settlements at

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<sup>235</sup> Globe and Mail (Feb.21,1991,A16). Gunn (1990,32) claimed that as much as \$720 million (or \$120 per Ontario motorist) went to the legal system in 1989.

<sup>236</sup> Devlin (1988,257)

<sup>237</sup> Cleverley (Feb.24,1992,A7)

<sup>238</sup> Ontario, Slater (1986,100). Also see: Ontario, Leal (1973,15).

<sup>239</sup> Ontario, Singer and Breithaupt (1978,58)

<sup>240</sup> See: Ontario, Osborne (1988,319). The Woolton Commission of 1968 quoted the same statistic, see: British Columbia, Woolton (1968,405).

\$100,000, now at \$225,000<sup>241</sup> as a result of inflation indexing, compensation remains a considerable financial drain on the system. In addition, the relatively recent phenomena of rising bodily injury claims costs has, as discussed earlier, contributed to what has been coined "the insurance crisis".<sup>242</sup> Under the no-fault regimes, this costly portion of insurance claims can be held under control. This can be done either by eliminating third party court actions as in the pure no-fault regime in Quebec since 1978, or by restricting the right to sue to the less numerous, more serious claims, as Ontario's threshold no-fault system has done since its recent inception in 1990. Tort-based jurisdictions such as Alberta and Manitoba however, have placed no restriction on the right to sue, and have as a result, experienced massive increases in claims settlement costs.

The combination of the high cost of litigation and compensation under the tort system has been reflected in recent statistics in Canada. The earned loss ratios of 75-80% in Ontario and Quebec, which both have variations of no-fault, compared to the 100% and above ratios for the primarily tort-based jurisdictions of Alberta and Manitoba, are certainly solid, recent, and relevant evidence of the higher cost of the tort system relative to the no-fault option. Most striking has the tremendous metamorphous which has taken place in Ontario since the introduction of threshold no-fault (see Appendix Three). In

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<sup>241</sup> See: Supreme Court of Canada, "Trilogy of Cases" (1978)

<sup>242</sup> See earlier discussions in the case studies. The major increase in bodily injury claims began in the mid-1980's.



this province, as mentioned earlier, the earned loss ratio fell from 100% to 80%, and to an estimated 76% in a period of only two years. This is perhaps the most convincing example of the potential to reduce costs under the no-fault model.

In contrast to these statistics, and the majority of the literature and commissioned studies which have agreed that the no-fault model is a considerably more affordable option than that of tort-based automobile insurance, Ontario's Justice Osborne in his 1988 report expressed the view that a move to no-fault insurance would result in only a very minimal savings. The report cited a meagre 5% cost reduction, however it should be noted that Justice Osborne neglected to include the cost of legal representation in his calculation. Eric Endicott, a senior policy advisor for the Ontario Automobile Insurance Review has pointed to Osborne's conclusions regarding no-fault as being "...the one area that is very unsatisfactory in the report". Most would agree that lawyers are certainly a cost of the tort system that cannot be ignored in such calculations.<sup>243</sup>

Another relatively recent piece which has contradicted the majority opinion has been the 1989 Atkinson and Nigol article. The authors here concluded that "...no one has so far been able to provide a convincing argument and, as a result, no-fault remains a deficient policy instrument".<sup>244</sup>

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<sup>243</sup> Endicott, Interview. (July 10, 1992).

<sup>244</sup> Atkinson and Nigol (1989, 125)

Atkinson and Nigol appear to have arrived at this conclusion after having consulted only a few sources which have attempted to evaluate the tort and no-fault options in a comparative context. Granted, this is a paper concerned more with political theory than with policy evaluation and comparative analysis, nonetheless the fact remains that their conclusions are based on insufficient evidence.

Notwithstanding the few who dispute the statistics and contradict the consensus found in the majority of the literature, it can be said that the no-fault option has been proven, in theory and in practice, as being a less costly alternative to the traditional tort system. Certainly the long-standing desire of the automobile insurance industry to replace tort with no-fault is in itself testament of this fact. It would be ludicrous to think for a second that insurers would push for a system that would increase rather than decrease their costs. Insurers, like consumers, would benefit from a system that is affordable.

In conclusion, upon analyzing both the quantitative and qualitative data regarding public versus private ownership, and tort versus no-fault compensation in terms of affordability, it is apparent that the cost of administering automobile insurance, and the cost of compensating accident victims, can best be reduced by implementing a system of public no-fault insurance.

### Efficiency

The degree to which an automobile insurance system is affordable is partially contingent upon how efficient that given system is. The existence of inefficiency leads to higher overall administrative costs. Also affected by efficiency is consumer service. If an automobile insurance system is efficient, it will demonstrate the ability to return a maximum amount of the premium dollar to its customers, in addition to the capacity to settle claims in a expeditious manner.

In the previous section, the overall cost of administering the various systems was considered. The total cost of administration in the auto insurance industry includes claims adjusting costs (which under tort regimes would include litigation related expenses) and operating costs.<sup>245</sup> In this section, operating costs (relative to premiums earned), will be examined separately as they are considered by most to be an accurate reflection of efficiency. This criterion will be compared across the four jurisdictions of this comparative analysis.

The second and third measures of efficiency, as mentioned, relate to customer service. The percentage of earned premiums returned to policy holders by way of claims paid out will be compared across jurisdictions, and the average time lapse between the occurrence of an accident, and full compensation, will be examined in a general context according to the data

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<sup>245</sup> The term "total expenses" includes both claims and adjusting expenses and operating costs.

accumulated in previous studies.

A substantial degree of variance between the jurisdictions exists with regards to operating costs (see Appendix Four). Studies conducted by the Insurance Bureau of Canada have shown that the operating costs of Ontario's privately administered, threshold no-fault system to be in the 22% range.<sup>246</sup> In the province of Quebec, the publicly-run Regie has in recent years, posted operating cost rates of about 25%.<sup>247</sup> The Manitoba Public Insurance Corporation in contrast, generally reports operating costs in the 15-16% range.<sup>248</sup> The private insurers of Alberta whom operate under a primarily tort-based system, have shown operating costs of about 26%.<sup>249</sup> Finally, the Canadian average of all private insurers, according to Insurance Bureau of Canada surveys, fluctuated within the 24-26% range between 1986 and 1990.<sup>250</sup>

In light of these numbers some conclusions can be made. Although one might hasten to attribute the difference in operating costs between Ontario and Alberta to no-fault insurance, it should be known that Ontario's rate of 22%

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<sup>246</sup> Insurance Bureau of Canada, Ontario Automobile Survey...1991 (June 1992,2) .

<sup>247</sup> Quebec, Regie rapport annuel:1991 (1992, tableau 3.1). Note: operating cost data was not available for privately owned insurers in Quebec.

<sup>248</sup> Manitoba, MPIC, Annual Report:1991 (February,1992,3)

<sup>249</sup> Chalmers (June 15, 1992)

<sup>250</sup> Insurance Bureau of Canada, 1990 Analysis... (November 8, 1991)

was approximately that before the introduction of no-fault in 1990.<sup>251</sup> In fact, this rate has increased slightly since no-fault, however the difference is almost negligible. As has been mentioned, operating costs are separate from claims and claims related expenses, therefore the system which determines compensation, be it tort-based or no-fault, is for the most part irrelevant when considering operating costs.

The distribution system on the other hand, is of great significance in terms of operating costs. The cost of distributing the insurance product is reflected in the operating costs of the system. Comparisons have consistently shown that the public insurance corporations of the western provinces operate at a lower cost than private sector insurance companies in Canada. The province of Manitoba, which is usually in the middle range between Saskatchewan and British Columbia in terms of costs, revenues and so on, is shown here to be operating at a 7-10% lower rate when compared to Ontario, Alberta, and the Canadian private industry average. The reason for the lower operating costs in Manitoba and the other two western public corporations is the advantage of the "economies of scale" and the streamlining of processes, information, and communication systems under a single corporation as explained earlier.

In sharp contrast to the consistently demonstrated efficiency of western public corporations, the Regie of the province of Quebec, has posted (equally

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<sup>251</sup> Insurance Bureau of Canada, Policy Year Operating Results (1989,5)

consistent), high operating cost levels. On the surface, this contradiction may appear to disrepute any claim that public automobile insurance corporations have lower operating costs than do private sector companies. In defence of the Regie however, the fact that the province of Quebec is a mixed system of public and private ownership would likely have some impact on the cost of running the public corporation. In the western provinces, the government need only conduct its own insurance business; one system means savings. The Quebec model is in essence, two models in one. This mixed ownership model would demand a greater degree of liaising on the part of the public corporation than would be necessary if one public corporation were to provide almost all of the automobile insurance. These additional liaising functions would require greater human and financial resources, both of which increase operating costs. Aside from this explanation, no other seems readily apparent for such a consistently high rate.<sup>252</sup>

From the operating costs given in each of the four jurisdictions, it appears as though publicly owned automobile insurance corporations have the potential to operate at a lower cost (the difference of which is less than 10%) than do their privately owned counterparts. However, this potential is reduced,

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<sup>252</sup> A short term increase in operating costs could perhaps be attributed to poor management or other temporary factors. The long term trend however, is puzzling in that it contradicts the other studies which have compared public and private ownership. If anything, one might conclude that mixed ownership appears to provide no reduction in operating costs over complete private ownership.

and even eliminated when a mixed public/private approach is taken. The question of tort or no-fault compensation on the other hand, is irrelevant when looking at operating costs.

A second measure of efficiency, "premiums returned to the consumer", has received some attention as well. Unlike operating costs, both the public versus private, and the tort/no-fault debate have used this criterion as an instrument for comparison.

With regards to the province of Ontario, although no percentages have been presented in the literature, some conclusions can be made indirectly from other statistics. In light of the 1990 and 1991 net profit levels of over \$1/2 billion, and near \$3/4 billion<sup>253</sup> respectively, in contrast to the 1989 (pre-threshold no-fault) loss of \$200 million,<sup>254</sup> it can be said that the potential certainly exists for some degree of premium return. Despite this potential however, being that the earned loss ratio dropped by 24% (from 100% to 76%) during the period between 1989 and 1991, without a commensurate reduction in premiums, it is obvious that Ontario automobile insurance consumers are paying in much more than they are taking out.<sup>255</sup> Notwithstanding this minimal return to the consumer, these numbers have

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<sup>253</sup> Insurance Bureau of Canada, 1990 Automobile Insurance Experience (1990,271), and Ontario Automobile Survey... (1992,3)

<sup>254</sup> Charlton (May 22,1991,9)

<sup>255</sup> See: Charlton (May 22,1991,9).

shown rather effectively, that threshold no-fault indeed has the potential<sup>256</sup> to return a greater percentage of premiums to the consumer.<sup>257</sup>

In the province of Quebec, the introduction of pure no-fault, and the government take-over of bodily injury coverage brought savings to both the consumer and the Industry alike. In the period immediately following the reforms, the Quebec motorists paid \$1.50 for a \$1.00 in compensation compared to the previous \$1.74 cost.<sup>258</sup>

Contrary to what most would believe, the private industry has also benefited substantially over the years from the 1978 reforms. The reason for this is two-fold; one, the Regie in 1978, took over the more costly portion of automobile insurance leaving the private sector with the less expensive lines, and two, no-fault insurance eliminated the right to sue in the Province which further reduced Industry costs in the long-term. The long-term is emphasized here because in the years immediately preceding the 1978 reforms, the Industry experienced earned loss ratios as low as 59% which actually rose after the introduction of public no-fault. With an earned loss ratio of only 59% nonetheless, it seems obvious that the Industry was not returning enough of

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<sup>256</sup> The potential exists however, it is up to the distributor of the insurance to determine how much of the savings realized under no-fault are returned to the consumer.

<sup>257</sup> The statistics are taken from: Insurance Bureau of Canada, Automobile Insurance Experience... (1991,271), and Insurance Bureau of Canada, Ontario Automobile Survey Results (June 1,1992,3).

<sup>258</sup> Fluet and Lebreve (1986,11)



the insurance premium to the consumer prior to the amendments.

In recent years, the private companies in Quebec have posted earned loss ratios of approximately 75%; still the lowest in the country. Since they, like the private insurers in Ontario, have shown substantial profits as a result of low earned loss ratios, it is not likely that they have chosen to return much to the consumer either. Certainly the claims/claims adjusting levels do not indicate directly the amount of money returned to the consumer. However, unless the private insurers received an abnormally low return on their investments,<sup>259</sup> and experienced extremely high operating costs, the conclusion that not much was returned to the consumer can be made with some certainty.

The Regie on the other hand, having experienced earned loss ratios of 83% and 75% in 1990 and 1991 respectively, returned its net profits to its policy holders. Illustrative of this fact, was the 11% reduction in premiums in 1991 as a result of consistent net profits.<sup>260</sup>

In comparison to the private insurers of Ontario and Quebec, the Manitoba Public Insurance Corporation operates annually at a loss (paying out more in claims than it takes in) before investment income which is then

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<sup>259</sup> Return on investment was reportedly 15% in 1986. See: Fluet and Lebreve (1986,9). However, no new data is readily available.

<sup>260</sup> Charlton (May 22,1991)

funnelled back into the system.<sup>261</sup> Being that operating costs in Manitoba are actually less than investment income, the MPIC is able to pay out more money in claims than it receives in premiums, while still realizing a profit. The Corporation in fact reported that in 1991, Manitoba drivers received 1.02 for every \$1.00 paid in premiums.

The province of Alberta has experienced earned loss ratios of 100% and more in recent years, which would indicate that insurers in that province are returning at least close to a maximum amount allowable under their system. However, inefficiencies such as the higher operating costs of their private distribution system, and the exorbitant costs related to the litigation process there do not allow for the potential for return realized in Ontario, Quebec, and Manitoba.

It is evident from the experience of these jurisdictions in recent years, that the public ownership model has the ability to return a greater percentage of the premium dollar to the consumer than does private model,<sup>262</sup> and that both the threshold and the pure no-fault model<sup>263</sup> as well have shown the

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<sup>261</sup> If not back to the consumer directly, the money may be used to benefit Manitobans indirectly through road safety and education initiatives.

<sup>262</sup> See: Woods, Gordon (1978,77), Glasbeek (1991,75), and Osborne (v.1,1988,703). Osborne admitted that the public model has the potential to return a greater percentage of premiums to the consumer, but claimed that the difference is not very substantial.

<sup>263</sup> See: Ontario, Osborne (v.1,1988,319,456), Canada, Belobaba (1983,77), Ontario, Slater (1986,99), Alberta, Wachowich (1991,46), Glasbeek (1991,74), and British Columbia, McCarthy (1983,79).

potential to do the same. For the latter, whether the savings realized under no-fault are actually passed on to the consumer, as has been mentioned, depends on whether the insurer decides to do so. The alternative, which has been the case in both Ontario and Quebec, is that these savings are simply translated into increased Industry profits.

The third and final measure of efficiency to be used here is the length of time lapse between the occurrence of an automobile accident, and the time when full compensation is received. There apparently exists no mention of the ability of either the public or the private sector's ability to compensate victims in a more or less expeditious manner. The question of ownership in terms of the time required to compensate automobile accident victims seems irrelevant. With regards to tort and no-fault however, there has been considerable attention given to this variable.

Studies have consistently pointed to extreme delay under the tort system with regards to compensation. The Woolton Commission of British Columbia, in commenting on the then private tort system in 1968 stated that:

(T)he present system is cumbersome and slow. Prompt payments of compensation for personal injuries are extraordinary indeed. And delays of several years before final payment, or determination that no payment is due are common, especially in metropolitan areas. The backlog of automobile personal injury cases presents a serious community problem of delay in the courts, affecting other kinds of cases as well. And often justice delayed is justice denied.<sup>264</sup>

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<sup>264</sup> British Columbia, Woolton (1968,506)

Years later in this same province, a second Royal Commission came to similar conclusions regarding delay under the tort system, claiming that for serious injuries, compensation was often delayed three or more years. The Study cited the burden of proving fault as being a primary factor.

Delays are inherent in the fault system because compensation is not provided automatically when it is needed, but only after liability is determined.<sup>265</sup>

Numerous studies and articles make reference to this problem of delay under the tort system. The Slater report of Ontario in 1986 claimed that cases often take from as much as two to thirteen years to settle.<sup>266</sup> Belobaba in his study for the federal government, referred to the delay as "monumental", asserting that lawsuits consume "...not just days or months, but years". He compared this to the experience in New Zealand which operates under a publicly owned, pure no-fault regime where the average time period between the submission of a claim, and compensation paid, is just twelve days.<sup>267</sup>

The Fluet and Lebreve study in Quebec claimed that 65% of claimants under the former tort regime, had not received compensation after six months. This number was reduced to 4% following the introduction of no-fault.<sup>268</sup> The Ontario Select Committee in 1978 contrasted the tort and no-fault system

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<sup>265</sup> British Columbia, McCarthy (1983,71)

<sup>266</sup> Ontario, Slater (1986,99)

<sup>267</sup> Canada, Belobaba (1983,76). The Report noted that seven to nine years for settlement under the tort system is not uncommon.

<sup>268</sup> Fluet and Lebreve (1986,17). Also see: Devlin (1988,74), and Alberta, Wachowich (1991,214).

in terms of time taken to compensate accident victims:

In addition to the uncertainty associated with determining liability is the delay that is involved in a fault system, particularly when claims go to court. In contrast, a no-fault system dispenses with disputes about fault and enables instalment payments to be started promptly, with direct payments made by the insurer to its own policyholder.<sup>269</sup>

The 1991 study in Alberta, chaired by A. Wachowich, found that both "Canadian and U.S. studies disclose considerable delays in the payment of third-party benefits, particularly to claimants with serious injuries and higher pecuniary losses".<sup>270</sup> The Wachowich Report pointed to several dated Canadian studies which estimated the median time lapse for tort compensation paid at three to five months for minor injuries, and nine to eleven months for serious injuries.<sup>271</sup>

The U.S. study most often referred to by the Wachowich Report was a 1985 study conducted by the U.S. Department of Transportation (DOT). The DOT Study reported that approximately 94% of first-party claims are settled after six months in comparison to 62% for liability claims.<sup>272</sup> The study not only concluded that no-fault payments were received more quickly than those under the tort system, but also that no-fault claims for larger losses were

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<sup>269</sup> Ontario, Singer and Breithaupt (1978,54)

<sup>270</sup> Alberta, Wachowich (1991,41)

<sup>271</sup> Ibid

<sup>272</sup> Ibid (1991,164)

settled almost as quickly as the smaller ones.<sup>273</sup>

The extreme delay which has been consistently referred to being a major deficiency of the tort system, produces more than financial hardship. Critics claim that such delay hinders the victim's process of rehabilitation. It is believed that early intervention is imperative for rehabilitation to begin. If the victim is dragged through the litigation process for months or years before receiving compensation, it is obvious that the process of rehabilitation will be adversely affected. The court process forces the victim to ponder upon past tragedy as opposed to future improvement.<sup>274</sup>

From the overwhelming consensus in the literature regarding the delay in compensating accident victims experienced in tort regimes, it is obvious that the no-fault model has been proven to be a much more efficient alternative. Neither the public, nor the private model however, as mentioned, have been shown to be any more or less efficient in this regard. The primary reason for this is simple. In short, the time consumed in determining fault, and the lengthy, overburdened litigation process, are in no way related to the question of ownership.

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<sup>273</sup> Ibid (1991,43)

<sup>274</sup> See: Ontario, Singer and Breithaupt (1978,54), Osborne (1988,322), and British Columbia, McCarthy (1983,71).

### Compensation

This section will compare the types and amounts of compensation provided under the current models of each of the four case study jurisdictions. From this comparative analysis, conclusions as to the relative adequacy of compensation under each model will be possible. In addition, reference will be made to some of the previous studies which have addressed the issue of adequacy of compensation.

Out of the four jurisdictions, only Manitoba and Alberta offer unlimited access to the courts for tort remedy in the case of an automobile accident related injury. Ontario on the other hand, restricts the right to sue to only the most serious of accidents determined according to a verbal threshold. Under the proposed bill in Ontario, the right to sue for economic losses would be eliminated. Tort remedy for non-economic losses however, currently regulated by the threshold, would be allowed subject to a \$15,000 deductible and the threshold would be eliminated. In the province of Quebec, tort remedy is barred in all instances.

Being that one, accident victims can only receive compensation under the tort system if they are able to prove the fault of another party, and two, a considerable amount of time often elapses before compensation is received, all jurisdictions in Canada have adopted some form of no-fault accident benefit scheme.

Since the right to sue is restricted in Ontario, and barred in Quebec, the

no-fault accident benefit schedules in these provinces are more generous overall than those of Manitoba and Alberta. It is expected in the latter two jurisdictions, that innocent victims will seek tort remedy to make up the difference. In Manitoba and Alberta, those at-fault, or unable to prove the fault of another in an automobile accident, must rely solely on the benefits provided under the limited no-fault accident benefit scheme. As well, those waiting for court settlements may also collect no-fault benefits, which are later deducted from any court award received.

There is considerable variation between the four jurisdictions in terms of the amounts of compensation under each of the no-fault accident benefit schedules. The types of benefits however, are similar in many respects. All four provinces provide some form of wage indemnity for victims who are unable to work as a result of an automobile accident. Ontario and Alberta currently provide 80% of gross wages, the former up to a maximum of \$600/week and a minimum of \$185/week, the latter, \$150 and \$50/week respectively. Quebec replaces 90% of net wages up to a maximum of just over \$800/week, and the minimum is tied to the minimum wage. Finally, Manitoba covers 70% of gross wages up to \$350/week.

Upon first glance, it would appear that Quebec's wage replacement benefits are the most generous. This however, is not entirely true. Quebec bases its wage indemnity on net instead of gross wages unlike the others. Depending on the tax bracket of the individual, the net wage could potentially



become a radically diminished version of the more attractive gross wage. Those who pay more taxes would likely receive a larger indemnity under the Ontario model than under the Quebec model, whereas those who either pay less taxes, or who make more than \$600/week would probably benefit more from the Quebec plan.<sup>275</sup> Interestingly, Ontario's new insurance reform package, like the Quebec model, bases wage indemnity on 90% of net wages. The difference is that the maximum wage replacement is \$1,000/week instead of Quebec's \$800/week.

Three out of the four jurisdictions allow for some level of compensation for primary care givers, the unemployed, retirees, and students. Ontario offers part-time, unemployed, students, and retirees a minimum of \$185/week. Non wage earners are entitled to an additional \$50 per dependant (up to a \$200 maximum). Quebec on the other hand, compensates part-time and unemployed victims according to past income, and the particular qualifications (or earning "potential") of the individual. Those not employed full-time who are responsible for the care of dependants are eligible for benefits according to a predetermined schedule which starts at \$250/week for one dependant, and stops at \$340/week for four dependants. Manitoba offers "homemakers" and minors a maximum of \$175/week (based on 100% of their earnings for those who are employed) who experience total disability, and \$75/week for those partially impaired. MPIC also provides an additional maximum of \$20,000 for those

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<sup>275</sup> Individuals who make more than \$600/week in Ontario must purchase additional insurance in order to ensure adequate coverage.

totally impaired as a result of an automobile accident. Alberta, in contrast to the others, provides no specific first-party no-fault benefits for "caregivers", "homemakers" students, or minors.

Quebec provides additional compensation for students depending on the level of education attained. Although Ontario does not currently do so, Bill 168 if passed, would provide benefits similar to those offered by the Quebec plan. Currently in Quebec, elementary students are entitled to \$3,000/year lost, secondary school students receive \$5,500/year, and post-secondary students are paid \$5,500/semester lost, up to a maximum of \$11,000/year.

When considering compensation for those not employed full-time, in general, Quebec provides the most adequate level of compensation in terms of no-fault accident benefits. Quebec, and to a slightly lesser extent, Ontario, gives out substantial indemnities to those not employed full-time, in addition to generous amounts for dependant care. Manitoba pays its victims lower levels of coverage in this regard, but offers an additional \$20,000 for total impairment not offered elsewhere, whereas Alberta leaves compensation for these individuals up to the courts. The additional compensation paid to students under the Quebec plan is at present unmatched. As is the case with several other areas of compensation, the proposed Ontario package in effect mirrors that of Quebec.

Medical benefits are limited to \$5,000 in Ontario<sup>276</sup> and Alberta, to \$1,000 in Manitoba, and are unlimited in Quebec. Alberta provides an additional \$500 for chiropractic services. In the case of medical benefits and rehabilitation, Quebec certainly provides the most adequate coverage of the four jurisdictions. Again, the proposed Ontario bill would partially match that offered under the Quebec plan, the only difference being that long-term care would still be capped at \$3,000/month.

If death results from an automobile accident, the spouse of the victim receives \$25,000 in Ontario, between just over \$40,000 and \$200,000 in Quebec, \$10,000 in Manitoba, and \$5,000 in Alberta. Dependants are entitled to \$10,000 in Ontario<sup>277</sup>, between just under \$20,000 and just over \$36,000 in Quebec,<sup>278</sup> \$2,000 in Manitoba, and \$5,000 for the first, and \$1,000 for each additional dependant, plus 1% of the original sum for a period of 104 weeks in Alberta. Funeral benefits are capped at \$3,000 in Ontario and Quebec, \$2,500 in Manitoba, and \$1,000 in Alberta.

Quebec obviously provides the most generous death benefits of the four, which are also indexed to inflation (which explains the non-exact numbers). The proposed Ontario plan would increase death benefits substantially, and

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<sup>276</sup> Long-term care in Ontario is also subject to a \$3000/month cap, and medical benefits and rehabilitation are limited to ten years.

<sup>277</sup> Those who loose a dependant in Ontario are also eligible for this amount.

<sup>278</sup> Parents of those without dependants are also entitled to \$16,000.

would in fact exceed those offered by Quebec.<sup>279</sup> Funeral benefits on the other hand, are the same for Ontario and Quebec, slightly lower for Manitoba, and are considerably less in Alberta.

In terms of first-party no-fault accident benefits, the province of Quebec currently offers the most generous overall package. The wage replacement for victims previously employed full-time however, is debatably less than is currently offered in Ontario. If the new legislation is implemented in Ontario, the two will have the same percentage of income replacement, but Ontario's maximum will be higher. Since it is not known to what degree victims are compensated under the tort systems of Manitoba and Alberta, it is difficult to draw conclusions as to which jurisdiction most adequately compensates its victims in total.

Throughout the literature which deals with the adequacy of compensation, no mention is made of ownership of the distribution system. The public versus private debate is in no direct way related to compensation. Of course variables such as efficiency, the MPIC being a case in point,<sup>280</sup> may indirectly impact the level of compensation that a given system may be able to offer, yet no direct correlation exists. The tort/no-fault debate conversely,

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<sup>279</sup> The new range would be \$50,000 to \$200,000, indexed to inflation as in Quebec.

<sup>280</sup> Despite the fact that both Manitoba and Alberta have no restriction on the right to sue, the Manitoba Public Insurance Corporation has been able to provide substantially higher benefits than is available in the private auto insurance jurisdiction of Alberta.

has a tremendous amount of literature which addresses the issue of compensation.

Under the tort system, because of the requirement that fault must be proven, not all victims of automobile accidents are compensated. Studies have indicated that only 1/3 to 1/2 of all automobile accident victims are compensated by the tort system.<sup>281</sup> Conversely, in the province of Quebec where tort remedy has been replaced by a pure no-fault regime, over 96% of all accident victims receive compensation.<sup>282</sup> Jeffrey O'Connell in 1979 explained why so few are compensated under the tort system:

The operation of the tort system is akin to a lottery. Most crucial criteria for payment are largely controlled by chance: (1) whether one is "lucky" enough to be injured by someone whose conduct or product can be proved faulty; (2) whether the party's insurance limits or assets are sufficient to promise an award or settlement commensurate with losses and expenses; (3) whether one's own innocence of faulty conduct can be proved; and (4) whether one has the good fortune to retain a lawyer who can exploit all the variables before an impressionable jury, including graphically portraying whatever pain one has suffered. Small wonder that for those significantly injured in traffic accidents, fifty-five percent get absolutely nothing from the tort liability system.<sup>283</sup>

Among those who are lucky enough to receive compensation under the tort system, the award received often does not reflect the loss of the victim.

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<sup>281</sup> See: Ontario, Osborne (1988,317), Ontario, Slater (1986,99), British Columbia, Woolton (1968,506), and Canada, Belobaba (1983,72). Belobaba provides a listing of further articles which also concur with this argument.

<sup>282</sup> Alberta, Wachowich (1991,214)

<sup>283</sup> O'Connell (1979,8)

The seriously injured are frequently undercompensated and those with minor injuries, overcompensated.<sup>284</sup> In some of the most serious cases, injured victims are denied compensation because they are unable to prove fault, whereas less seriously injured victims often receive much more than their losses.

Part of the reason why court settlements are often not reflective of the victim's losses can be attributed to the "lump-sum" payment method used in the tort system.<sup>285</sup> At the time when a given case is heard, the court determines the total value of losses incurred by the victim, both present and future. It is of course difficult to estimate present non-economic losses. Future non-economic losses are even more difficult, if not impossible, to accurately assess. Future economic losses, albeit less arbitrary than non-economic losses, are also difficult to predict.

An injured plaintiff will often claim damages to compensate for prospective income losses as well as future care expenses. This means that the court has to try to forecast long-range interest and inflation rates and then choose the appropriate discount.<sup>286</sup>

Although the tort system could adopt some form of periodic payments in replacement of lump-sum payments, no tort jurisdiction in Canada has yet

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<sup>284</sup> See: British Columbia, Woolton (1968,506), Canada, Belobaba (1983,72), Ontario, Osborne (v.1,1988,322), Manitoba, Kopstein (paper#2,1988,1), British Columbia, McCarthy (1983,39), and Ontario, Slater (1986,99).

<sup>285</sup> See: Canada, Belobaba (1983,74) and Osborne (1988,322).

<sup>286</sup> Canada, Belobaba (1983,74)

chosen to do so. Perhaps the reason is that the courts are overburdened enough without allowing old cases requiring periodic payment adjustments and the like to resurface. A single lump-sum payment remains an attractive option for the courts because it is simple, easy to monitor, and close-ended with no "loose strings".

The no-fault model relies on a periodic payment schedule, which in Quebec, and soon in Ontario, is indexed for inflation. The combination of indexation, and the allowance of adjustments over time, results in a payment which is more reflective of the losses experienced by any given accident victim. Where the no-fault model tends to be deficient with regards to the adequacy of compensation is in terms of indemnity for non-pecuniary losses. Many no-fault jurisdictions provide either inadequate, or no compensation for non-economic losses suffered by accident victims. The degree to which a given no-fault jurisdiction is deficient in this regard, is contingent upon the specific manner with which that jurisdiction handles non-pecuniary losses. General statements are not possible here.

From the comparative case analysis and a supplementary review of the literature on the topic of the adequacy of compensation under tort and no-fault regimes, it can be said that the variations of the no-fault model more adequately compensate victims of automobile accidents than does the tort model. The tremendous consensus found in the literature is especially

convincing of this point.<sup>287</sup> Michael Trebilcock summed up much of the literature when he said "(a)s a system of insurance or compensation, the current tort system is on most criteria, an abject failure."<sup>288</sup>

### Management of Financial Resources

In considering the financial management of the various models, it should be noted that the tort/no-fault debate is only relevant as it relates to the costs imposed by the system. The manner in which funds are dealt with is in no way related to the compensation system. The first variable to be considered in this section will be where investments are made. This discussion will be followed by a cross-jurisdictional comparison of the relative rates of return on investment,<sup>289</sup> and the amount of deficit/surplus of each. The cross-jurisdictional comparisons will be supplemented by a limited review of the literature regarding the management of financial resources.

Private automobile insurance jurisdictions adhere to a basic economic principle which guides the decisions of managers. In short, managers in the private sector theoretically make decisions according to the maximum utility, or maximum benefit derived from each available alternative. Therefore, in

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<sup>287</sup> Belobaba claims that there is virtual "unanimity" on this point. See: Canada, Belobaba (1983,79).

<sup>288</sup> See: Ontario, Slater (1986,101)

<sup>289</sup> As is common practice, return on investment will be expressed as a percentage of premiums earned.



terms of investment, it is only natural that managers of private companies will place there money where a maximum return will be realized.

Public corporation managers on the other hand, have certain social objectives which they must also consider in addition to basic economic principles. As such, management in the public automobile insurance corporations have traditionally placed their investment dollars with government bonds (municipal, provincial, and federal), and financing projects for institutions such as hospitals, schools, and various other non-profit organizations.<sup>290</sup>

Being that public corporations have considerations other than return on investment when placing their funds, one would expect that they would likely receive less of a return than that of the private sector. Interestingly however, a comparative analysis of the four jurisdictions shows the Manitoba Public Insurance Corporation as having the highest rate of return (see Appendix Five). Some caution should be taken in viewing the following percentages however, because several are approximations, and all of them come from different sources, some of which are more recent than others. Regardless, the magnitude of the difference warrants some comment.

According to a recent Insurance Bureau of Canada survey, private insurers in the province of Ontario posted a 14-15% return on their investment

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<sup>290</sup> Pawley (Article B,1991,2), Ontario, Singer and Breithaupt (1978,88), Osborne (1988,219), and Manitoba, MPIC Annual Report (1992,2).

last year.<sup>291</sup> The private insurers in Quebec similarly, have shown returns in the 13-15% range.<sup>292</sup> The Manitoba Public Insurance Corporation surprisingly reported returns in the 18-19% range for both 1990 and 1991.<sup>293</sup> Finally, Alberta private insurers reportedly experienced returns of about 12%, the lowest of the four jurisdictions studied.<sup>294</sup>

The average rate of return for private insurance jurisdictions in Canada is about 11-12%;<sup>295</sup> Ontario is above the average with 14-15%, and Alberta falls within the average range with 12%. The 18-19% range for the MPIC is puzzling however. Because of the substantial variance between MPIC's return, and that of the private insurers, an examination of the return on investment experienced in the other two western public corporations would prove useful. British Columbia's "Autoplan" in 1990 and 1991 showed even higher rates of return than did the MPIC, which reached 23.5% and 20.5% respectively. Saskatchewan's "Auto Fund" on the other hand, posted poorer returns of 14% for both 1990 and 1991. As is the case with most other variables, the MPIC

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<sup>291</sup> Insurance Bureau of Canada, Ontario Automobile Survey Results... (June 1992,3).

<sup>292</sup> Fluet and Lebreve (1986,16,19). Albeit a dated source, its concurrence with the Ontario percentage would lead one to believe that it is close to what today's numbers would be. Also, it should be noted that return on investment figures were not available for the Regie.

<sup>293</sup> Manitoba, MPIC (1991,28)

<sup>294</sup> Chalmers (1991,1)

<sup>295</sup> Insurance Bureau of Canada, 1990 Analysis of Profit and Loss... (1991,apdx.A)

falls neatly in between the Autoplan and the Auto Fund.

A conservative conclusion would be to disrepute the claim that public corporations are not able to achieve as high a rate of return on investment as are private insurers because of the responsibility of the former to adhere to social objectives. As has been demonstrated here, public corporations are able to achieve at least an equal, if not a substantially greater, rate of return on investment than their private counterparts. It is perhaps this social objective that attracts public corporations to seek out investment sources which may not receive attention from private investors, that has lead to a higher rate of return. It is likely from the results shown here, that non-profit institutions seeking investors have offered a highly competitive rate of return. Aside from other financial management practices such as shifting investment portfolios for example, no other explanation for the relatively high rate of return shown by the public insurance corporations seems readily apparent.

The four case studies revealed some highly interesting results with regards to net profit/losses. As has been discussed, the introduction of threshold no-fault in the province of Ontario has brought with it considerable profits. In terms of a pre/post intervention test for threshold model, the experience in Ontario clearly points to the potential for enormous savings which have resulted in considerable net profits. The insurers in the Province as been mentioned, have been the recipients of over \$1/2 billion and almost \$3/4

billion<sup>296</sup> in net profits in 1990 and 1991 respectively, compared to a \$200 million loss in the year prior to no-fault.<sup>297</sup> This massive increase in net profit can be attributed primarily to the reduction of the number of cases before the courts, and the size of claims settlements under the threshold no-fault system.

In comparison with Alberta, a system similar to pre-threshold no-fault Ontario, the contrast is equally striking. This province, like Ontario immediately prior to no-fault, has experienced net losses in the past couple of years. Earned loss ratios have recently been in the 100% range in Alberta in comparison to Ontario's 80% and 76% for 1990 and 1991 respectively. Since insurance is distributed by the private sector in both jurisdictions, the only major structural difference is the compensation system. It is obvious that threshold no-fault insurance has contributed substantially to Industry profits in Ontario of which Alberta insurers have been denied by their more costly tort system.

Earned loss ratios similar to those found in Ontario have been reported in Quebec as well. In 1990, the private automobile insurance industry in this pure no-fault jurisdiction, posted an earned loss ratio of 83%, which fell to 75% in 1991. Theoretically, one would expect pure no-fault, being that it eliminates tort litigation, to offer savings in excess of those realized under threshold no-fault which only restricts access to the courts, however this has

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<sup>296</sup> Insurance Bureau of Canada, 1990 Automobile Insurance Experience (1991,271), and Ontario Automobile Survey... (1992,3)

<sup>297</sup> Charlton (May 22,1992,9)

not been the case in Canada. Ontario's threshold no-fault system has in fact proven to be even less costly than Quebec's pure no-fault. The difference is so minor however, than one could say that the two have shown relatively equal success in reducing costs. This actually is no surprise when one considers the fact that since the introduction of threshold no-fault in Ontario, only one case has been settled where compensation was paid.<sup>298</sup> As demonstrated here, Ontario has been more reflective of a pure no-fault, than a threshold no-fault system in that litigation for automobile accident compensation has all but disappeared. This quite simply, explains the similarity in earned loss ratios between Ontario and Quebec.

The Regie, the public insurance corporation in Quebec, reported a small net profit in 1990, which it surpassed in 1991. Profits were made possible by low earned loss ratio of 83% in 1990, and 75% in 1991. In comparison, the MPIC reported substantially higher earned loss ratios of 88% and 100% in 1990 and 1991 respectively. However, with low operating costs and a strong return on investment, the MPIC also finished 1990 and 1991 with net profits (approximately \$10 and \$8 million respectively). According to its mandate, like that of the Regie, the MPIC either returns such profits to consumers through reduced premiums, or reinvests the money in the Corporation, ie. by funding driver safety and education programmes.<sup>299</sup>

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<sup>298</sup> See: Ontario Court of Justice, *Meyer vs. Bright*, (July 13, 1992).

<sup>299</sup> Manitoba, MPIC Annual Report (1992, 8, 11, 18)

Being that Manitoba has a primarily tort-based system similar to that of Alberta, comparisons can also be drawn between these two jurisdictions. One point that should be made however, is that as shown in the comparative section on compensation, the Manitoba Accident Benefits package includes benefits which are substantially more generous than those of the Alberta package. This would of course mean that the costs of the MPIC with regards to first-party no-fault benefits would be relatively greater than those of the Alberta private insurers. As well, insurance premiums have traditionally been higher in Alberta than those in Manitoba.<sup>300</sup>

As mentioned, in 1990 the MPIC experienced an earned loss ratio of 88%, compared to the 100% ratio of Alberta's private insurers in that same year. The combination of this lower earned loss ratio, a higher return on investment, and a lower level of operating cost explains why the Manitoba Public Insurance Corporation posted a net profit while Alberta's private insurers reported a net loss in 1990. The two jurisdictions reported similar ratios in the 100% range in 1991 however, yet still the MPIC was able to maintain a profit due to its strong return on investment, and its efficient level of operating cost while again Alberta's private insurers posted another net loss.

In concurrence with the literature discussed earlier, the preceding comparative analysis has confirmed the broader argument that the no-fault automobile insurance is less costly than that of tort; lower earned loss ratios

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<sup>300</sup> Alberta, Wachowich (1991,49), and Gajerski (1991,20-23).

and higher net profits achieved under no-fault illustrate this fact. Furthermore, although some debate exists as to the degree to which the public provision of automobile insurance provides savings, the consensus is that the public model is relatively efficient, and therefore less costly to administer than its private counterpart. This too was confirmed by the comparative analysis in that low operating costs shown earlier, combined with surprisingly high returns on investment lead to net profits, despite the costly tort-based system of compensation, and the relatively generous no-fault accident package in Manitoba. The Regie, albeit less efficient than the MPIC, but no less efficient than the private sector,<sup>301</sup> appears to be in good financial shape as well; premium reduction and net profits would suggest this. It has been demonstrated that the public sector certainly has the ability to manage its finances at least as well as, if not better than (as in the case of the MPIC), the private sector in the automobile insurance industry.

### **Rate-making Methodology**

Private insurance companies in Ontario, Quebec, and Alberta (as do all private companies in Canada), determine automobile insurance rates according

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<sup>301</sup> The relative inefficiency of the Regie in comparison to the other public corporations (its operating costs are nonetheless similar to those of private sector's national average) is perhaps the result of increased burden imposed by the hybrid public/private model. The MPIC on the other hand, conducts over 90% of the auto insurance business in Manitoba, and thus concerns itself primarily with its own business.

to the traditional rate classification system. This system assesses the risk of drivers according to territory, driving record, type and use of vehicle, age, sex, and marital status.<sup>302</sup> Insurance premiums are in turn, reflective of the level of risk imposed by the driver based on these criteria. Proponents of this system claim that it most accurately reflects the level of risk imposed by the driver. Statistics have shown that these variables serve as "crude proxies"<sup>303</sup> of risk, however, some feel that the use of demographic variables, ie. age, sex, and marital status, is discriminatory and socially unacceptable.<sup>304</sup>

Examples of the two other rate-making models used Canada are found in Manitoba and Quebec. The former jurisdiction employs the classification system which is used by all three of the western public automobile insurance corporations. This model bases insurance premiums solely on geographic location and the use and type of vehicle; age, sex, and marital status are irrelevant in the determination of insurance rates. In addition, driving records are reflected by the level of the assessment paid on one's driver's licence. The integration of vehicle registration, licensing, and insurance under this model, ensures that penalties for poor driving records cannot be avoided. Proponents of this system claim that it is fairer than the traditional one because all drivers pay reasonable rates, and individuals are not penalized for uncontrollable (or

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<sup>302</sup> See: Alberta and Ontario case studies.

<sup>303</sup> Trebilcock (1989,32). Also see: Devlin (1988,3), and Supreme Court of Canada, "Zurich vs. Bates" (sec.2, June 25, 1992,4).

<sup>304</sup> See: Trebilcock (1989,32), and Wiegers (1989,163).



near uncontrollable in the case of marital status), personal attributes. Critics of the model however, claim that excessive "cross-subsidization" of high risk drivers results from the elimination of age, sex, and marital status as risk rating variables.<sup>305</sup>

The Regie in Quebec, unlike any other jurisdiction in Canada, uses a "flat" rating system in which one's driving record is not reflected by either insurance premiums<sup>306</sup> or licence fees. This system is based on the social principal of "universality". The idea here is to provide affordable automobile insurance coverage for all drivers. The fact remains however, that some drivers cost the system more money than others. This model as a result, is criticized as having the greatest degree of "cross-subsidization" of the three. Furthermore, those drivers who prove themselves to be higher risks by being involved in accidents, are not deterred from such behaviour through increased premiums. This means also that more risky drivers can afford to drive, which in turn increases the number of accidents.<sup>307</sup>

If the reader might recall, Chapter One discussed the criteria for measuring the efficiency and equity of classification systems as outlined by

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<sup>305</sup> See: Osborne (1988,v.1,60,693,v.2,217), and Atkinson and Nigol (1989,124).

<sup>306</sup> Weight and type of vehicle are taken into consideration for "non-pleasure" (commercial) vehicles. See: Boyer and Dionne (1987,185).

<sup>307</sup> See: Devlin (1988), Trebilcock (1989,29-30), Boyer and Dionne (1987,186-191).

Justice Osborne in his 1988 Report.<sup>308</sup> These criteria warrant a second glance. The first, "homogeneity" refers to the degree to which those within in a given classification group pose a similar degree of risk. The second criterion, which is essentially a corollary of the first, is termed "separation". This criterion conversely, maintains that those from different classification groups should pose different levels of risk.

An inherent flaw in the traditional group classification system is its reliance on assumption. Because of the degree of assumption required in any form of group classification system, especially one which involves individual human beings who are by far the most diverse and unpredictable a group of insurable objects, "homogeneity" and "separation" are impossibilities in practice. Granted, statistics have shown that certain groups as a whole are higher risks, but the assumption is that every individual that falls within a given classification group, because of their personal attributes, ie. age, sex, or marital status, posses the same risk as all others within the group. In any other business, this sort of stereotypical business conduct would be labelled as absolutely unacceptable discrimination.

This last statement raises the third criterion given by Osborne; "social acceptability". The point here has been made. Finally, the last criterion is "incentive value" which refers to the degree to which a given classification system encourages insureds to drive carefully. The practice of experience

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<sup>308</sup> Osborne (v.1,1988,197-199)

rating, criminal sanctions, and above all, the fear of bodily injury or death, together address this criterion. These incentives can be achieved without classifying groups according to age, sex, and marital status.

In the recent Supreme Court of Canada case "Zurich vs. Bates"<sup>309</sup>, it was determined that the automobile insurance industry could use age, sex, and marital status when classifying risks. Despite the fact that the use of these variables contravenes sections one, three, and eight of the Ontario Human Rights Code (which was the basis for the case against Zurich Insurance), it was decided that the Industry could continue using them because "no alternative" currently exists.<sup>310</sup> In light of the fact that four jurisdictions in Canada do not use demographic variables when determining automobile insurance rates, the basis for such a statement appears weak at best. Profits have been realized in each of these jurisdictions despite the fact that demographic variables are not used. Certainly the elimination of age, sex, and marital status as rating criteria would not mean the collapse of the industry.

Nonetheless, the political ramifications of the inevitable displacement between rating classes, which would surely follow any decision to eliminate age, sex, and marital status, certainly warrant concern. It is well known that

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<sup>309</sup> Supreme Court of Canada (June 1991)

<sup>310</sup> See: section twenty-one of the Code which allows discrimination according to demographic variables on "reasonable and bona fide grounds". The claim that no alternative presently exists, it is argued, constitutes such "reasonable and bona fide grounds". This was the basis for the judgement.

the greatest shift in financial burden would be from the less politically organized, less wealthy, and less influential group of males under 25, to the older, wealthier, and better politically organized demographic groups. Politicians have long feared the implications of this situation and as a result, have not made any sincere commitment to removing these variables from the rate-making process in any of the private insurance jurisdictions in Canada.<sup>311</sup>

The Industry claim that single males under twenty-five constitute, as a group, the highest risk of all insurable classes is correct. This is not being questioned here. Rather, what is being questioned is: (solely in terms of statistical relevance), does a strong enough causal relationship exist to justify the grouping of all individuals who fall within this demographic group as "high risk" drivers? The recent Wachowich Study in Alberta<sup>312</sup> indicated that in 1989, males between 18-19 years of age were involved in more accidents than any other risk group.<sup>313</sup> Conversely, females over the age of 65, were involved in the least number of accidents. The difference between these two groups in terms of the number of individuals involved in automobile accidents was 26 out of 1000. This number of course decreases when other groups in the middle of the range are compared. Nonetheless, the Industry has

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<sup>311</sup> As mentioned previously, the province of Ontario banned the use of age, sex, and marital status in automobile insurance rate-making under Bill 2 in 1987. However, this provision has not been enforced.

<sup>312</sup> Alberta, Wachowich (v.1,1991,64)

<sup>313</sup> Also see: Ontario, Pouliot, G., ORSA Annual Report (1990,18).

determined that based on a maximum of 26 out of 1000 individual drivers in Alberta for example, a causal relationship exists between age, sex, and the level of risk imposed by drivers. Therefore, because of this maximum of only 2.6% of the total driving public, age and sex are major determinants of automobile insurance rates. As a result, all young male drivers are automatically classified as "high risks", and are charged exorbitantly high rates even before they sit behind the wheel of an automobile.<sup>314</sup>

A problem commonly cited by those who criticize the elimination of demographic variables from rate-making is the fear that undue "cross-subsidization" occurs as a result. It is often said that "low risk" drivers subsidize "high risk" drivers when these variables are eliminated. What constitutes a high or low risk driver? The fact is that many individuals with "clean" driving records in the private insurance jurisdictions are classified as high risks only because of their age, sex, and/or marital status. Conversely, drivers with poorer driving records who belong to one of the "low risk" demographic groups, are rated lower than they should be. The end result is

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<sup>314</sup> For example, in Booth (1988,203) a rate comparison (using the city of Toronto) is made between two male drivers, one being 22 years old, the other 43. Both individuals have the same insurance coverage, and both have similar vehicles for similar usages. Neither have any at-fault accidents in the last six years. The only difference between the two individuals is their age yet the 22 year old, depending on the company, must pay rates which exceed those of the 43 year old, by a minimum of 167% and a maximum of 374%. If by chance, the young driver were to be involved in a single accident, his rates then rise to between 231% and 842% that of the 43 year old with no at-fault accidents. If the older driver were to claim an accident on the other hand, his rates would increase only minimally, if at all, depending on his insurer.

that the former group of individuals are paying higher insurance premiums (usually in the residual market) than they should be, and individuals in the latter group are paying less than their share. Does this not constitute "cross-subsidization"?

An illustration of this problem is the situation in Ontario where so many good drivers have been automatically placed in with the "Facility Association" because they were deemed as being "high risks", that the Association is actually making a profit.<sup>315</sup> The fact that the residual market, one which in theory, consists only of "high risk" drivers, can turn a profit is proof that the traditional classification system has not able to adequately assess risk. The truth of the matter is that the unreasonably high rates paid by good drivers, who are incorrectly classified as "high risks", to the Facility Association, are subsidizing both the bad drivers who are incorrectly classified as "low risks" in the regular market,<sup>316</sup> and those correctly classified as "high risks" in the Facility Association. In short, contrary to what proponents of the traditional

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<sup>315</sup> The Facility Association collected more money in premiums than any other insurer in the province of Ontario in 1990; a total of \$534 million.

<sup>316</sup> Bad drivers can be "underclassified" (assessed at a lower level of risk than they should be), in the private insurance jurisdictions if one, they belong to a "low risk" demographic group, and/or two, if their insurance company is not aware of all of their tickets and/or accidents. This second point relates to the fact that insurance and licencing are not inter-linked in the private insurance jurisdictions, therefore information can be withheld from the insurer. Companies in general, do not have the time nor the reasources to conduct regular "check-ups" on their customers.

classification system have said, truly good drivers are in fact "subsidizing" the truly bad drivers under this system.

In conclusion, several points must be made. One, the Industry has not been able to prove that the use of age, sex, and marital status are criteria which are necessary to the process of determining automobile insurance rates.<sup>317</sup> Two, it has been demonstrated that the grouping of risks according to demographic characteristics is not only discriminatory, but also inaccurate. The following quote from the Board of Inquiry established by the Supreme Court of Canada in hearing the "Zurich vs. Bates" case affirms the last part of this statement:

There has simply been no evidence...offered to support the assertion that it has been scientifically proven that there is a direct, causal relationship between the discriminatory group factors used- age, sex, and marital status and high risk.<sup>318</sup>

The Board further noted that these variables are "only likely proxy factors, and have never been controlled or isolated in statistics to determine whether a causal correlation exists."<sup>319</sup>

Three, the claim that the Industry has no alternative to its present practice of discrimination is absolutely incorrect<sup>320</sup> in that four jurisdictions in Canada

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<sup>317</sup> See: Supreme Court of Canada, "Zurich vs. Bates" (s.2, June 25, 1992, 4)

<sup>318</sup> Ibid

<sup>319</sup> See: Supreme Court of Canada, "Zurich vs. Bates" (s.2, June 25, 1992, 5, 35)

<sup>320</sup> See: Supreme Court of Canada, "Zurich vs. Bates" (sec.2, June 25, 1992, 5, 35)

currently employ alternative rate-making methodologies and none have endured financial hardship as a result. And four, the most accurate measure of the level of risk imposed by any given driver is their "driving history". This is because one's own record is the only criterion which assesses each individual separately; for this reason "driving history" should be reflected in either insurance premiums or licence costs.<sup>321</sup>

In the final analysis, in light of these conclusions, the system which is both adequate in assessing the necessary contribution of each driver to the system, (based on the costs imposed by each individual on the system), and equitable in its treatment of individuals, is one which bases insurance premiums on vehicle use and type, and territory, and which reflects drivers' records in the cost of either insurance or licensing. The system which currently meets all of these criteria is that used by the Manitoba Public Insurance Corporation.

### Intervening Variables

Several steps have been taken to ensure that the criteria examined are in fact comparable. Differences in size have been controlled for through the use of ratios and percentages throughout the comparative analysis. As well, the "number of claims" which could possibly skew the results of some of the data presented and compared has been reviewed. It has been found that none

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<sup>321</sup> Until a driver shows that they are a risk, ie. through at-fault accidents or moving violations, no system can determine the level of risk of that individual. Therefore, each driver should be considered innocent until proven guilty.



of the four jurisdictions examined have reported an abnormally high or low number of claims relative to the others in the study.<sup>322</sup> Finally, it should be mentioned for those who question the impact of "subsidies" under the public systems, present Ontario Minister of Financial Institutions, Brian Charlton, made clear the fact that the private system as well receives numerous subsidies citing Ontario as an example.<sup>323</sup>

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<sup>322</sup> The Manitoba Public Insurance Corporation reported the highest number of claims relative to its size.

<sup>323</sup> Charlton (May 22, 1991, 7-8). The Minister pointed to the previous payment made by the Industry to OHIP for costs resulting from auto accident related injuries which covered only a fraction of the total and which was eliminated under the OMPP, in addition to the "subsidies" received from workers' compensation and employee disability plans. Furthermore, the private insurance corporations in Ontario did not pay premium tax until 1991.

## CHAPTER FIVE

### A MODEL FOR ONTARIO

From the data acquired in the preceding literature review and comparative analysis, an appropriate model of automobile insurance administration and compensation can be constructed for the province of Ontario. Although it is not possible to determine the exact cost of this model within the confines of this paper, it can be said with a great deal of certainty, that it is no less a realistic, and cost-effective policy option. The basis for this statement will be made clear within the description of the model.

#### The Compensation System

In comparing the general no-fault model to the primarily tort-based, or "add-on" no-fault model of compensation, it has been shown that the former is clearly superior. No-fault jurisdictions (both pure and threshold), have demonstrated a level of affordability and efficiency unmatched in the "add-on" jurisdictions. With regards to compensation, studies have consistently pointed to the ability of no-fault to compensate a greater percentage of accident victims in a way that is both timely and adequate. In contrast, the tort system has proven to be both untimely and sporadic<sup>324</sup> in compensating victims. For these reasons, there is no doubt that the basic compensation system in Ontario should remain primarily no-fault in structure.

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<sup>324</sup> Minor injuries are overcompensated, while major injuries are undercompensated.

Whether the current threshold no-fault system in Ontario should be replaced by a pure no-fault regime like that found in Quebec is yet another issue. In theory, one would expect that a pure no-fault system would provide savings in excess of that possible under threshold no-fault. The Canadian experience however, has not been reflective of this. As has been mentioned, the earned loss ratio in Ontario since the introduction of threshold no-fault, was 80% and 76% in 1990 and 1991 respectively. Private insurers in Quebec in comparison, have reported relatively similar ratios of 84% and 76%, while the publicly-run Regie in the Province has correspondingly experienced ratios of 83% and 75% throughout this period. These percentages indicate that the pure no-fault model does not offer any measurable savings over that of threshold no fault. For this reason, there is no apparent justification for replacing the current threshold scheme with a pure no-fault model. Such a move would only result in the elimination of the right to sue for those seriously injured in automobile accidents; to do so at no measurable savings to the overall system would serve no benefit to the motorists of Ontario.<sup>325</sup>

If the reader will recall, Bill 164 (the new insurance bill in Ontario) will nonetheless, eliminate the right to sue for economic, or pecuniary losses; the logic being that these losses are easily assessed and can therefore be

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<sup>325</sup> So few accident victims have met the threshold requirement in Ontario since the introduction of the OMPP, that the financial impact of the right to sue has been negligible. As well, the cap of \$225,000 further ensures that costs will be kept down.

adequately handled by a standardized accident benefits schedule.<sup>326</sup> With regards to non-economic, or non-pecuniary losses on the other hand, victims will be granted the right to sue in all instances (subject to a \$15,000 deductible), as opposed to the present system which in no way compensates for non-economic losses if an accident victim's injuries do not surpass the verbal threshold.

In essence, the new bill is proposing a "half and half" system in substitute of the current threshold no-fault system. In terms of economic losses, Ontario would become a pure no-fault jurisdiction, whereas non-economic losses would be handled by the tort system. The move from threshold to pure no-fault for economic losses, as has been explained, would result in little or no savings. The current threshold already eliminates the majority of tort actions from the litigation process, and tort awards for the few who eligible to seek tort remedy are capped at \$225,000.

The cost of extending the right to sue for non-economic losses to all accident victims (less the \$15,000 deductible) in contrast, will prove much more significant. The greater number of cases, and the considerable amount of human and financial resources required to assess non-economic losses like "pain and suffering" will lead to substantial increases in the cost of administering the system. The decision to move to a "half pure no-fault/half tort system", would in fact constitute a step backwards rather than forwards.

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<sup>326</sup> Savage, Interview (July 10, 1992)

As such, I consider the "Road Ahead" to be a misnomer.

A reasonable compromise between adequate compensation for both economic and non-economic losses, and the controlling of the overall cost of administering the system can be made. In short, maintain the present threshold for economic losses, and introduce scheduled benefits for non-economic losses of those victims whose injuries do not meet the threshold.<sup>327</sup> The first point of course needs no further discussion; the second however, does require an explanation. The scheduled benefits for non-economic losses would be determined according to the severity of the injuries of the victim.<sup>328</sup> In this way, the time lapse between the accident and compensation would be minimized as would the financial burden imposed on the system.

The Ontario government, in its "Road Ahead" package, claimed that non-economic losses "...cannot be easily recognized or compensated through scheduled accident benefits".<sup>329</sup> The Government instead believes that the court system is best able to assess the appropriate value of non-economic loss.

The plain truth of the matter is that really no one can place a dollar figure on

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<sup>327</sup> Those who meet the threshold would be eligible for both economic and non-economic loss, no-fault benefits, while awaiting a court award which would later be deducted from any tort settlement received.

<sup>328</sup> The schedule would be similar to that used in the province of Quebec. As well, an administrative tribunal, again similar to that found in Quebec, would be established to hear appeals regarding the amounts granted for non-economic losses. For a description, see the Quebec case study in Chapter 2.

<sup>329</sup> Ontario, Charlton The Road Ahead (1991,17)

a victim's "pain and suffering", or "loss of enjoyment of life"; not the courts, not the government, and not even the individual victim her/himself. Knowing this, the focus should not be on who can best determine the value of non-economic loss, but rather: which of the two options compensates accident victims most promptly, adequately, and at the least possible cost? There is little doubt that a good scheduled benefits scheme would achieve all three of these objectives more effectively than could the tort system.

With regards to the scheduled benefits scheme for economic losses, the package proposed by the Government's "Road Ahead" initiative appears adequate in all respects, including the indexation element.<sup>330</sup> As was explained in chapters two and three, the shift from "80% of gross" to "90% of net" wages may result in a decrease in wage indemnity coverage. This reduction however, would be more than offset by the introduction of no-fault benefits for non-economic losses (as proposed here), and the extension of the maximum wage indemnity payment from \$600/week to \$1000/week (as proposed by the Government's package). In the end, the amount of compensation would be more reflective of the total losses incurred by accident victims.

In summation, the compensation system of threshold no-fault would remain. First-party no-fault accident benefits for both economic and non-economic losses, would be available to all victims of automobile accidents. For

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<sup>330</sup> See: Ontario, Charlton, The Road Ahead (1991,17)

those victims who incur injuries above the threshold level, the right to seek tort remedy would be restricted only by the \$225,000 limit imposed by the Supreme Court of Canada. Automobile accident compensation in the province of Ontario would as a result, be adequate, timely, and cost-effective.

### Administration

Throughout the literature and the comparative analysis, it was shown that the public model of automobile insurance is less costly to administer. Through demonstrated efficiencies, particularly those realized by the combination of "economies of scale" and the standardization of product and process, publicly-run insurance corporations do in fact offer substantial savings to the consumer. This high level of efficiency, together with the sound management of financial resources (i.e. an excellent return on investment), has meant that the Manitoba Public Insurance Corporation for example, has returned more money to its policy holders than it has been paid in premiums.<sup>331</sup>

Public insurance corporations, in contrast to those in the private sector, return all net profits to the "system". This includes reducing premiums, investing in capital (which often improves the efficiency of operations), highway improvements, and the funding of driver education and safety

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<sup>331</sup> This is in spite of their costly tort-based compensation system. Furthermore, in comparison to Alberta whose private insurers operate in a similar tort-based system, the MPIC's no-fault benefits are much more generous.

programmes. Both the publicly-run Regie in Quebec, and the MPIC have reinvested profits into the "system" in recent years and motorists have benefited as a result. The private insurers on the other hand, most notably in Ontario and Quebec, have earned tremendous profits yet no measurable portion of this money has been returned to the consumer. This has meant that drivers in Ontario, and Quebec (aside from the publicly provided basic package), have paid insurers much more money in premiums than they have received in benefits.

Even if the public model was not shown to be more efficient than that of the private sector, the simple fact that the immense profits earned since threshold no-fault in Ontario would all be returned to the consumer, would in itself, account for considerable savings. However, since the public model has demonstrated a higher level of efficiency than that found anywhere in the private sector, the combined impact of public ownership and threshold no-fault on the cost of providing automobile insurance would no doubt be even greater. Furthermore, a substantial cost which is not normally considered when comparing public versus private ownership, is the cost of regulatory bodies. In the province of Ontario, there are currently three such bodies as mentioned earlier: the Ontario Insurance Commission, the Ontario Automobile Insurance Board, and the Superintendent of Insurance. In addition to these, the proposed Bill 164 would establish a fourth body, the Road Safety Agency. Therefore, the actual cost of maintaining the private system of distribution would include



the 22% operating cost, plus the cost of operating the three or four agencies. This is in contrast to the cost of running a public corporation like the MPIC whose total operating costs fall in the 15-16% range.

Those opposed to the Ontario government creating a public corporation to administer automobile insurance have commonly pointed to one of two concerns: anticipated start-up costs, and job loss and relocation. The 1991 Coopers and Lybrand study on the impact of a government takeover of the Ontario automobile insurance industry reported the start-up costs to be about \$1.6 billion. If by chance, the Ontario government were required to pay compensation to the Industry, this estimate jumps to \$3.6 billion.<sup>332</sup> By combining Coopers and Lybrand's conservative estimate of an 8% savings<sup>333</sup> (of premiums earned), or approximately \$350 million (per year), from reduced operating costs under a public corporation, with the over \$700 million in Industry profits in 1991, it would appear that the start-up costs could be covered within two to five years depending on whether or not compensation to the Industry is due. This would mean that premiums would remain stable during this initial period of two to five years. However, after this time, the potential for considerable premium reduction and/or benefit enhancement would exist.

With regards to job loss and relocation, private brokers would remain as

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<sup>332</sup> Coopers and Lybrand (1991,31)

<sup>333</sup> Coopers and Lybrand do not include the cost of regulatory bodies in their calculation.

the "front-line" providers of automobile insurance product, therefore the only job loss that would occur would be that related to the streamlining of operations. If the government can provide insurance by employing fewer people, then the cost of insurance will be less. "Downsizing" and "workforce reduction" are common phrases used by private corporations in the 1990's, often in the same sentence with phrases like "improved efficiency", and "cost reduction". These are considered to be natural elements of conducting a business. Public corporations in general, are often criticized for being "over-bureaucratic" and inefficient. The use of the argument that a public automobile insurance corporation would reduce the workforce and streamline operations, by opponents of a government takeover of the Industry seems incredibly ironic. On the surface, this argument does render a sufficient degree of "shock value" that would attract media and so forth, yet when the emotion of the issue is stripped away, workforce reduction and improved operational efficiencies form a much more effective argument in favour of public ownership than against it.

The following quote by MPIC Claims Centre Manager, Stan Scobie, illustrates how even those most adamantly opposed to a public takeover of the Industry in Manitoba in 1970, have since realized that the hysteria and emotion stirred up to oppose the creation of a public corporation was shortsighted:

I was one of the "suits" who stood on the steps of the legislature, waving a placard and shouting "socialist bums" and so on. Today I work for the MPIC, I see the increased efficiency and the savings

for the consumer. This is simply a better system.<sup>334</sup>

In terms of the structure which a public automobile insurance corporation in Ontario would adopt, the Manitoba Public Insurance Corporation in fact serves as an especially useful example. As described earlier, the corporation in Manitoba is a "quasi-public" body, which operates at "arms-length" from any direct political control. In taking the example of the MPIC, the Board of Directors would be appointed by the government to set broad policy for the Corporation. The executive on the other hand, would conduct the daily business of the Organization. Any of the current duties of the Ontario Insurance Commission, the Ontario Automobile Insurance Board, and the Office of the Superintendent of Insurance which would still be relevant under a public ownership model, would be assumed by the new corporation. This applies to the proposed Road Safety Agency as well.

The inter-linking of insurance, licensing, and vehicle registration would be possible under a public model. This "one-stop shopping" would benefit consumers directly in terms of convenience, as well as indirectly because of improved corporate efficiency which would lead to reduced premiums. Furthermore, motorists with poor driving records would be unable to "dodge" the system. These individuals would pay additional levies on top of the base cost of their licence, while good drivers would receive rebates. In addition, all drivers would pay insurance premiums based only on their vehicle type and use,

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<sup>334</sup> Scobie, Interview (February 26, 1992)

and their geographic location; age, sex, and marital status would not be used.

Since automobile third party liability insurance is compulsory, the new government corporation would ensure that a basic, affordable, compulsory third party liability package would be made available to all drivers in the Province. In supplement to this, optional coverage including property damage coverage, reduced deductibles and the like, would be provided. Both the compulsory and the optional coverage would be distributed solely by the Corporation. In short, all motorists would have access to basic, but adequate, automobile insurance coverage, while the option to purchase additional coverage to meet one's particular needs would be maintained.

The insurance product would be provided by numerous commissioned brokers working out of their own offices across the Province. As suggested earlier, the retention of the brokerage system would help to minimize job loss and displacement which would follow a government take-over, in addition to ensuring that service would remain personalized. The relationship between the brokers and other the public insurance corporations in Canada has reportedly been very good.<sup>335</sup>

The new corporation would establish claims and adjustment centres like

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<sup>335</sup> MPIC Vice President, Graham Newton, in his interview (February 24, 1992), expressed his content with brokerage system saying that the Corporation gets "good value" from their brokers. Although no similar numbers were available for Manitoba, surveys in British Columbia have indicated that 92% of the brokers in the Province rejected the re-entry of private insurers into the automobile insurance market. See: Charlton (May 22, 1991, 16).

those of the MPIC, across the Province. A central computer, and information and communications system would serve as an integral link between the various offices. Within the centres, the process of claims adjusting would be standardized and streamlined. Individuals would go to the nearest centre to report their claim. Driveable vehicles would be inspected at the centre by an adjuster to assess the extent of vehicle damage. Non-driveable vehicles on the other hand, would be taken to a salvage plant where they would be auctioned off or recycled. The adjuster would have the assistance of a CD-Rom computer programme in assessing the damage, and would rely on province-wide standard practices; less discretion and greater predictability would result. The cost of labour would be negotiated province-wide, so the adjuster would have the ability to determine the total cost of repairs within minutes; the motorist would not have to "shop around" and return with estimates.

### Conclusion

In summation, the adoption of the public ownership model in Ontario would result in both increased operational efficiency and improved customer service. The maintenance of the brokerage system would ensure the continuance of a level of personalized service, while the procedural standardization and computerization of the claims and adjusting process would lead to faster, more convenient service. As has been mentioned, if the savings in operational efficiency realized under the public model were combined with

that of the threshold no-fault system, the potential to reduce the cost of providing automobile insurance in this province would be considerable. The alternative to this of course would be to continue operating the current inefficient and inequitable private automobile insurance system.

The relative inefficiency of the private model of automobile insurance cannot be improved in any substantial way. This is not the fault of the private companies themselves, but rather it is simply an unavoidable characteristic of the system. Notwithstanding this, the private sector has failed to make improvements where it is able. Insurers have had ample opportunity to demonstrate a sincere willingness to pass on the savings of no-fault insurance. They have failed to do so. Furthermore, insurers have refused to recognize the fact that the current classification system is discriminatory. It has been shown that alternatives do exist yet the Industry refuses to implement change. For these reasons the Industry can be criticized.

Being that liability insurance coverage is compulsory, there is no incentive for the Industry to reduce premiums. The compulsory aspect of automobile insurance dictates the level of demand in the market. For this reason, the Industry does not operate in a truly free market. The driving public has only the choice of where to buy auto insurance, but not whether or not to buy insurance in the first place. In other words, premium dollars may shift from one insurer to the next, but as long as the consumer wishes to drive, they must keep their money in the system. Therefore, if all insurers maintain

premiums at current levels they will all prosper. Conversely, if one insurer were to reduce premiums, a price war would follow, leaving all insurers with reduced profits. As a result, the Industry has collectively maintained premiums at levels which do not reflect the reduction in costs experienced since no-fault. It can be expected that this will not change.

The combination of the structural inefficiency of the private model, and the lack of effort on the part of the Industry to move towards a more fair and equitable system, leaves little doubt that a public automobile insurance corporation should be established in Ontario. It is now time for real reform.

## BIBLIOGRAPHY

### Public Documents

Alberta. Alberta Insurance Act. SA. 1926, c.31, s.1. (Auto Insurance added in 1933, c.57, s.4.)

-----. An Act to Amend the Alberta Insurance Act SA. 1971, s.321, (2a).

-----. Alberta Automobile Insurance Board, Annual Report. 1991.

-----. Alberta Insurance Council, Annual Report for 1990. 1991.

-----. Insurance Amendment Act. SA. 1988, s.21.2.

-----. Insurance Amendment Act. SA. 1990, s.517.

-----. Ministry of Consumer and Corporate Affairs, Annual Report of the Superintendent of Insurance. 1976, 1977, 1978, 1979, and 1990.

-----. The Vehicles and Highway Traffic Act. SA. 1941, c.5, s.1.

-----. Wachowich, A. H., A Study of Premium Stability in Compulsory Auto Insurance- Volume One. Alberta Automobile Insurance Board, 1991.

British Columbia. McCarthy, M., Report by the Automobile Accident Committee. Victoria: Queen's Printer, 1983.

-----. Woolton, R.A.B., British Columbia Royal Commission on Automobile Insurance Report - Volumes One and Two. Victoria: Queen's Printer, 1968.

Canada. Belobaba, Product Liability and Personal Injury Compensation In Canada: Towards Integration and Rationalization. Ottawa: Queen's Printer, 1983.

Groupeement des assureurs, rapport annual: 1991, 1992.

Manitoba. Bill 56- The Automobile Insurance Act SM. 1971.

-----. Highway Traffic Act SM. 1930.

-----. Insurance Act RSM. c.98, s.1., 1932.



- . Kopstein, L.R., Report of the Autopac Commission - Volumes One and Two. Winnipeg: Queen's Printer, 1988.
- . The Manitoba Public Insurance Act SM. 1975.
- . Manitoba Public Insurance Corporation, Annual Report 1990: A Part of the Community. Winnipeg: Queen's Printer, March 1991.
- . Manitoba Public Insurance Corporation, Corporate Overview. Winnipeg: Queen's Printer, 1992.
- . The Manitoba Public Insurance Corporation 1991 Annual Report. Winnipeg: Queen's Printer, March 1992.
- . Pawley, H. Manitoba Auto Insurance Committee Report. Winnipeg: Queen's Printer, 1970.
- . The Unsatisfied Judgement Act SM. 1965.
- Office of the Premier, News Release. Ontario, September 6, 1991.
- Ontario. Allan, J., Select Committee on Automobile Insurance: Second Interim Report. Toronto: Queen's Printer, 1961.
- . Allan, J. Select Committee on Automobile Insurance: Final Report. Toronto: Queen's Printer, 1963.
- . An Act respecting Claims for Damages Arising out of Motor Vehicle Accidents. SO. 1961-2, c.84.
- , Insurance Act. RSO. 1980.
- . Charlton, B., Bill 164 -An Act to Amend the Insurance Act and certain other Acts in respect of Automobile Insurance and other Insurance Matters. (Has yet to receive Second Reading as of the end of the 2nd Session, 35th Legislature, Ontario).
- . Charlton, B., and Pouliot, G., The Road Ahead: Ontario's Strategy for Automobile Insurance Reform. Toronto: Queen's Printer, 1991.
- . Compulsory Automobile Insurance Act. RSO., 1980.
- . Elston, M., Proposed Amendments to the Law Related to Insurance: Consultation Draft. Toronto: Queen's Printer, 1989.

- Elston, M., Bill 68 -An Act to Amend Certain Acts Respecting Insurance. 2nd Session, 34th Legislature, Toronto: Queen's Printer, 1989.
- Elston, M., Bill 10 -An Act to Control Auto Insurance Rates. 2nd Session, 34th Legislature, Toronto: Queen's Printer, 1989
- Hodgins, Royal Commission on Automobile Insurance Premium Rates, Report. Toronto: Queen's Printer, 1930.
- Highway Traffic Act. SO. 1923.
- Kruger, J.P., Ontario Insurance Board - Industry Wide Hearing, Parts One through Four. Toronto: Queen's Printer, 1988-89.
- Kruger, J.P., Ontario Automobile Insurance Board - Report to the Lieutenant Governor in Council. Toronto: Queen's Printer, 1989.
- Leal, A., Ontario Law Reform Commission, Report on Motor Vehicle Accident Compensation. Toronto: Queen's Printer, 1973.
- Motor Vehicles Act. SO. 1914.
- Nixon, R., Bill 2 - An Act to Establish the Ontario Insurance Board and to Provide for the Review of Automobile Insurance Rates. 1st Session, 34th Legislature, Toronto: Queen's Printer, 1987.
- Ontario Motorist Protection Plan, The. Toronto: Queen's Printer, 1989.
- Pouliot, G., Ministry of Transport, Ontario Road Safety Annual Report. Toronto: Queen's Printer, 1990.
- Royal Commission on Automobile Insurance Premium Rates, Report. Toronto: Queen's Printer, 1930.
- Singer, V., Breithaupt, J., The Select Committee on Company Law. The Insurance Industry: The Second Report on Automobile Insurance. Toronto: Queen's Printer, 1978.
- Slater, D., Ontario Task Force On Insurance: Final Report. Toronto: Queen's Printer, 1986.
- Slater, D. Ontario Task Force On Insurance: Pre-Publication of the Final Report- Volumes One and Two (Appendicies and Background

Information). Toronto: Queen's Printer, 1986.

Ontario Court of Justice, Meyer vs. Bright, File No.025, Justice E.R. Brown, Released: July 13, 1992. (Precedent threshold no-fault case in Ontario)

Quebec. Gauvin, J.L., Report of the Committee of Inquiry on Automobile Insurance. 1974.

-----. An Act respecting automobiles 4 Ed. VII, c.30, 1904.

-----. An Act respecting motor vehicles 6 Ed. VII, c.13, 1906.

-----. An Act respecting the registration of motor vehicles and the regulation of highway traffic (The Highway Code) 8-9 Eliz. II, c.67, 1961.

-----. An Act to ensure the indemnification of victims of automobile accidents 9-10 Eliz. II, c.65, 1961.

-----. Automobile Insurance Act RSQ. January, 1992.

-----. Automobile Insurance Reform: Government Proposal, April 1977.

-----. Insurance Act SQ. 1908.

-----. la tarification en assurance automobile au Quebec 1979: rapport du Surintendant des assureurs. Ministere des Consommateurs, Cooperatives et Institutions financieres, 1979.

-----. Rapport sur la tarification en assurance automobile 1991. L'Inspecteur general des institutions financieres, 1991.

-----. Direct Compensation Agreement for the Settlement of Automobile Claims. Groupement des assureurs automobiles, 1992.

Supreme Court of Canada, "Trilogy of Cases" Andrews v. Grand & Toy Alta. Ltd., (1978) 2 S.C.R. 229; Thorton v. Board of School Trustees of School District No.57 et al. (1978) 2 S.C.R. 267; and Arnold v. Teno, (1978) 2 S.C.R. 287.

-----, "Zurich vs. Bates", Indexed as: Zurich Insurance Co. v. Ontario Human Rights Commission. File No. 21737., November 5, 1991 to June 25, 1992.

### Books and Articles

Atkins, David, et al., The Impact of a Government Takeover of Automobile Insurance in Ontario. Coopers and Lybrand Consulting Group, Ontario, 1991.

Atkinson, M., and Nigol, R., "Selecting Policy Instruments: Neo-Institutional and Rational Choice Interpretations of Automobile Insurance in Ontario", Canadian Journal of Political Science. Canada, 1989.

Belton, T. "Don't Shoot the Messenger", Canadian Insurance. Stone and Fox Ltd., May 1988.

-----, "Don't Shoot the Messenger- Yet!", Canadian Insurance. Stone and Fox Ltd., October 1988.

Booth, L., "A Comparison of the Car Insurance Industry in Ontario with the Public Monopolies in British Columbia, Manitoba and Saskatchewan", Report of Inquiry into Motor Vehicle Accident Compensation in Ontario. (Volume Two, pgs.114-223), Osborne C., Toronto: Queen's Printer, 1988.

Boyer, M., and Dionne, G., "Description and Analysis of the Quebec Automobile Insurance Plan", Canadian Public Policy. Canada, 1987.

Campell, D., "Degrees of Freedom and the Case Study", Comparative Political Studies., Vol.8, No.2, July 1975, Sage Publications, U.S.A, pgs.178-193.

Canadian Bar Association, Fault/No-Fault Insurance Task Force Report. CBA, Alberta Branch, Alberta, 1991.

Canadian Underwriter, Statistical Issue. Southam Business Communications Inc., June 1991, and 1992.

Carroll, S. et al., No-Fault Approaches to Compensating People Injured in Automobile Accidents. Rand Corporation, USA, 1991.

-----, No-Fault Automobile Insurance: A Policy Perspective. Rand Corporation, USA, 1991.

- Chalmers, R., "Bad weather hits insurers hard", The Edmonton Journal. June 15, 1992.
- Devlin, R. A., A Cost-Benefit Analysis of No-Fault Automobile Insurance. The Laurier Institute for Business and Economic Studies, Waterloo, Ontario, 1989.
- Devlin, R. A., Liability Versus No-Fault Automobile Insurance Regimes: An Analysis of the Experience in Quebec. Wilfred Laurier University, Ontario, 1988.
- Eckstein, H., "Case Study and Theory in Political Science", Greenstein, Fred I., Polsby, Nelson W. Handbook of Political Science. Vol.7, Strategies of Inquiry. Reading, Mass., Addison-Wesley, 1975, pgs.79-137.
- Epstein, R., "Automobile No-Fault Plans: A Second Look at First Principles", Creighton Law Review. (v.13,n.1), USA, 1979-80.
- Eulau, H., "Comparative Political Analysis: A Methodological Note", Mid-West Journal of Political Science. Vol.6, no.4, November, 1962, pgs.396-407.
- Fluet, C., and Lebreve, P., L'Assurance Automobile au Quebec: Bilan d'une Reforme. (Rapport presente a la Regie de l'assurance automobile du Quebec), Universite du Quebec a Montreal, 1986. Also see: Ontario, Slater, (Appdx.13) for English translation.
- Friedland M., Trebilcock M., and Roach K., Regulating Traffic Safety. University of Toronto Press, Ontario, 1990.
- Gajerski, B., "Public vs. Private Auto Insurance", Policy Options. (ppgs.19-23), September 1991.
- Gaudry, M., "The Effects on Road Safety of Compulsory Insurance, Flat Premium Rating, and No-Fault Features", Report of Inquiry in Motor Vehicle Accident Compensation in Ontario. (Volume Two,pgs.1-28), C. Osborne, Toronto: Queen's Printer, 1988.
- George, A. L., "Case Studies and Theory Development: The Method of Structured, Focused Comparison", Gordon, Paul. Diplomacy: New Approaches in History, Theory, and Policy. New York: The Free Press, 1979, pgs.43-68.

- Glasbeek, H., "The Great Car Insurance Crash", This Magazine. January 1991.
- Gunn, R., "Adapting to Change in Ontario Auto Insurance" Canadian Insurance. Stone and Fox Ltd., Toronto, January 1990.
- Haas, M., "Comparative Analysis", Western Political Quarterly. Vol.15, June 1962, pgs.294-303.
- Hecksher, G., The Study of Comparative Government and Politics. Allen and Unwin, London, 1957.
- Holt, R. T., Turner, J. E., The Methodology of Comparative Research. Free Press, New York, 1970.
- Insurance Bureau of Canada, Facts of the General Insurance Industry in Canada. Toronto, 1991.
- , Ontario Automobile Survey Results, Calendar Year, 1991, and Fourth Quarter, 1991. Toronto, June 1992.
- , 1990 Automobile Insurance Experience Calendar/Accident Year "Green Book". Toronto, 1991.
- , 1991-2 Automobile Accident Half Year Statistical Exhibit Ontario. Toronto, May 1992.
- , Policy Year Operating Results. 1989.
- , Quarterly Industry Financial Results, 4th Quarter, 1991 (Ontario). Toronto, March 1992.
- , Statistics Division Report, 1989.
- Kauffman, H., "The Next Step in Case Studies", Public Administration. Spring 1953, pgs. 52-59.
- Keeton, R.E. and O'Connell, J., Basic Protection for Traffic Victims - A Blueprint for Reforming Auto Insurance. Little, Brown, and Company. Toronto, 1965.
- Klar, L., "The Osborne Report: "No" to No-Fault", The Canadian Bar Review, Canada, 1989.

- Lasswell, H.D., "The Future of the Comparative Method", Comparative Politics. (v.1), October 1968, pgs.3-18.
- Laycraft, J.H., "Reforming the Automobile Tort System", Alberta Law Review.(v.9), Canada, 1971.
- Linden, A., "Faulty No-Fault: A Critique of the Ontario Law Reform Commission Report on Motor Vehicle Accident Compensation". Osgoode Hall Law Journal.(v.13), Canada, June, 1975.
- Lijphart, A., "Comparative Politics and the Comparative Method", American Political Science. Rev.65, September 1971, pgs.682-693.
- , "The Comparable-Cases Strategy in Comparative Research", Comparative Political Studies. Vol.8, No.2, July 1975, Sage Publications, pgs.158-177.
- Maroney, P., "No-Fault Automobile Insurance: A Success Or Failure After Eleven Years?", Insurance Counsel Journal. International Association of Insurance Counsel, Illinois, U.S.A., 1984.
- Mehr, R.I. and Cammack, E., Principles of Insurance. Richard D. Irwin Inc., Homewood, Illinois, 1966.
- Miller, S., "Alberta eyes auto insurance reform", Canadian Underwriter. Southam Business Communications Inc., Toronto, January 1991, pgs.28-30.
- O'Connell, J., Lawsuit Lottery: Only Lawyers Win. 1979.
- , "No-Fault Insurance For All Accidents", Osgoode Law Journal. v.13,no.2, Toronto, 1975.
- , "No-fault in the nineties" (Video), Insurance Bureau of Canada, (O'Connell addresses Industry officials).
- , The Injury Industry and the Remedy of No-Fault Insurance. University of Illinois Press, U.S.A., 1972.
- Pawley, H., Article A and B regarding auto insurance, untitled, unpublished, 1990. (Later published in part by the Toronto Star, see: "Public auto plan a road tested winner").
- , "Public auto plan a road tested winner", Toronto Star. April 2, 1991.

Praskey, S., "Ontario Auto: fanning the flames", Canadian Insurance. Stone and Fox Ltd., Toronto, September 1991.

Rea, S., Jr., "Economic Analysis of Fault and No-Fault Liability Systems", The Canadian Business Law Journal. Canada Law Book Inc. Ontario, 1986-87.

Scott, D., "The OIC: the watchdog of the Industry in Ontario", Canadian Insurance. Southam Business Communications, June 1991.

Sjoberg, G., "The Comparative Method in the Social Sciences", Philosophy of Science. Vol.22, April 1955, pgs.106-117.

Struening, Elmer and Guttentag, Marcia. Handbook of Evaluation Research, Sage Publications, USA, 1975.

Thrupp, S. "Diachronic Methods in Comparative Politics", The Methodology of Comparative Research. Holt, R. T., and Turner, J. E., 1970, pgs.343-358.

Tuene, H., "Comparative Research, Experimental Design, and the Comparative Method", Comparative Political Studies. Vol.8, No.2, July 1975, Sage Publications, pgs.195-199.

Trebilcock, M., "Incentive Issues in the Design of No-Fault Compensation Systems", University of Toronto Law Journal, University of Toronto, Ontario, 1989.

Vaughn, E., Fundamentals of Risk and Insurance. (PUBLISHER?), USA, 1982.

Welsh, L., "Alberta Auto Insurance: On the Road Again", Canadian Underwriter. January 1992, pgs.25-6.

-----, "TIC fears squemish times ahead", Canadian Underwriter. April 1991, pgs. 18-20.

Wiegers, W., "The Use of Age, Sex, and Marital Status as Rating Variables in Automobile Insurance", University of Toronto Law Journal. University of Toronto, Canada, 1989.



Interviews and Presentations/Transcripts

Anderson, C., (Ontario Insurance Commission, Director General, Rates and Classifications), Interview. July 21, 1992.

Baker, Z., (Manitoba Public Insurance Corporation, Communications Officer), Correspondence. July 24, 1992.

-----, Interview. July 28, 1992.

Bardua, J.W., (Manitoba Public Insurance Corporation, President and G.M.), Presentation. February 24, 1992.

Charlton, B., (Minister of Financial Institutions, Ontario), Interview. March 4, 1992.

-----, "Notes For Remarks by the Honourable Brian Charlton Minister of Financial Institutions to the Annual Meeting of the Hamilton Insurance Brokers Association", Hamilton, Ontario, October 9, 1991.

-----, "Notes For Remarks by the Honourable Brian Charlton Minister of Financial Institutions", Chatham Kent Insurance Brokers Association, Chatham, Ontario, March 3, 1992.

-----, "Notes For Remarks by the Honourable Brian Charlton Minister of Financial Institutions to the Insurance Brokers of Metropolitan Toronto Monthly Meeting Luncheon", Toronto, Ontario, May 22, 1991.

-----, "Notes For Remarks by the Honourable Brian Charlton Minister of Financial Institutions to the Ontario Insurance Adjuster Association General Meeting Dinner", Toronto, Ontario, May 8, 1991.

-----, (Minister of Financial Institutions), Statement to the Ontario Legislature. December 5, 1991.

Endicott, E., (Ontario Auto Insurance Review, Senior Policy Advisor), Interview. July 10, 1992.

Herries, J., (Insurance Bureau of Canada, Public Relations Manager), Interview., November 15, 1991.

-----, Interview., August 10, 1992.

Kormos, P., (Former Minister of Financial Institutions, Ontario), Interview. July 23, 1992.

Medza, R., (Groupement Des Assures Automobile, Quebec, Director General), Interview. July 20, 1992.

Newton, G., (Vice President, Corporate and Community Relations, Autopac Corporation), Interview. February 24, 1992.

Pawley, H., (Former Premier, Manitoba), Interview. July 22, 1992.

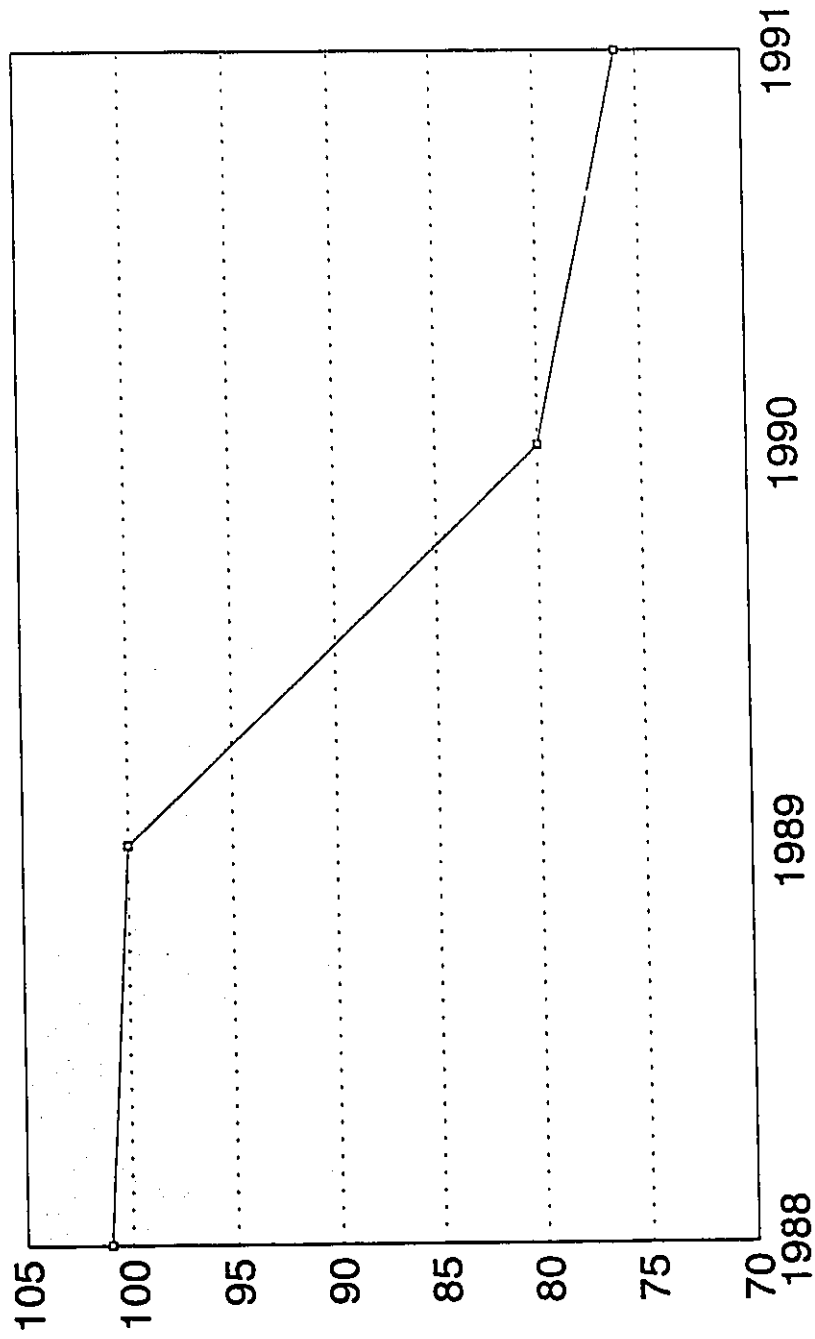
Savage, B., (Ministry of Consumer and Commercial Relations, Policy Advisor), Interview. July 10, 1992.

-----, Interview. July 28, 1992.

Scobie, S., (Manitoba Public Insurance Corporation, Claims Centre Manager) Interview. February 26, 1992.

Steves, S., (Alberta Automobile Insurance Board, Administrator to the Board), Interview. July 29, 1992.

**COST OF THE SYSTEM: ONTARIO BEFORE AND AFTER THRESHOLD NO-FAULT**  
**Earned Loss Ratio (Premiums earned/claims and adjusting expenses)**

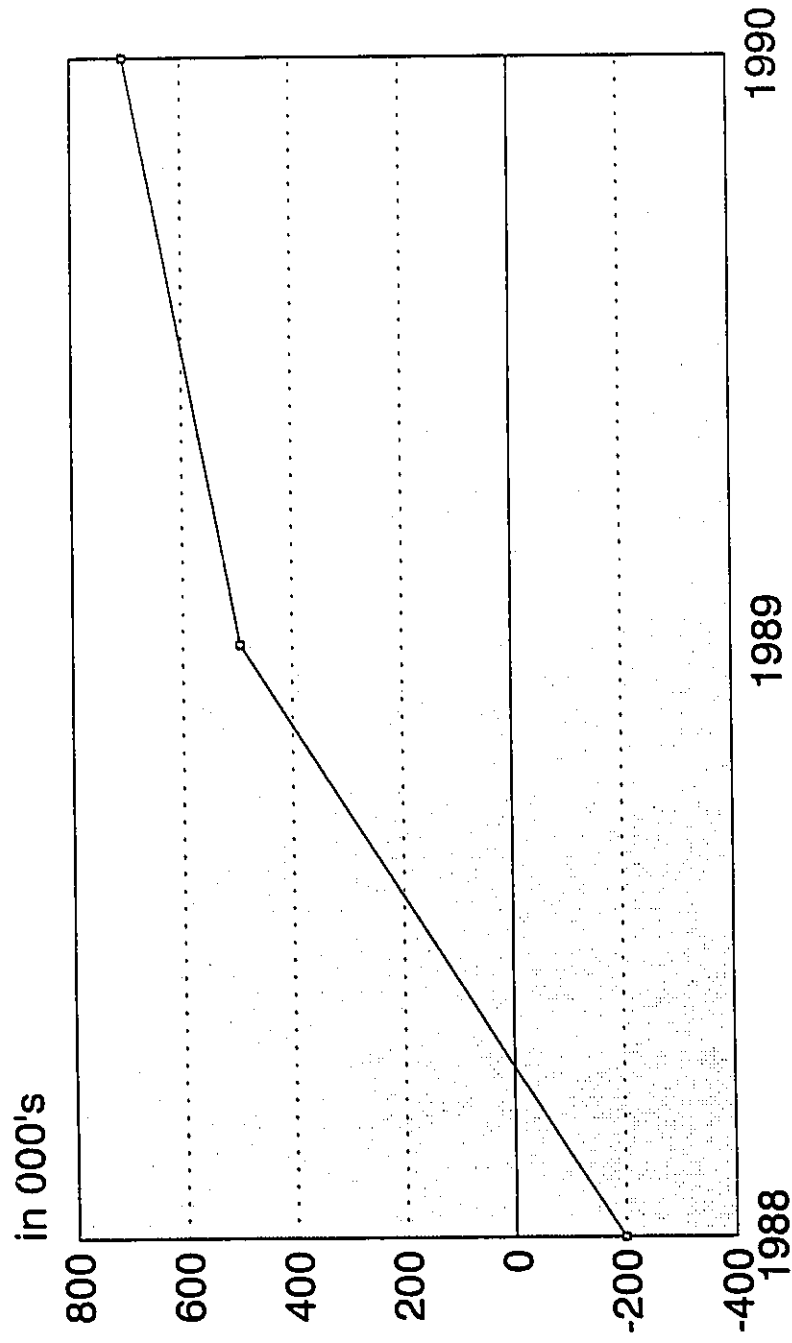


NOTE: Threshold no-fault was introduced in 1990.

SOURCE: Insurance Bureau of Canada

Appendix A

# PROFITS IN ONTARIO: BEFORE AND AFTER THRESHOLD NO-FAULT (Net profits for total automobile insurance)



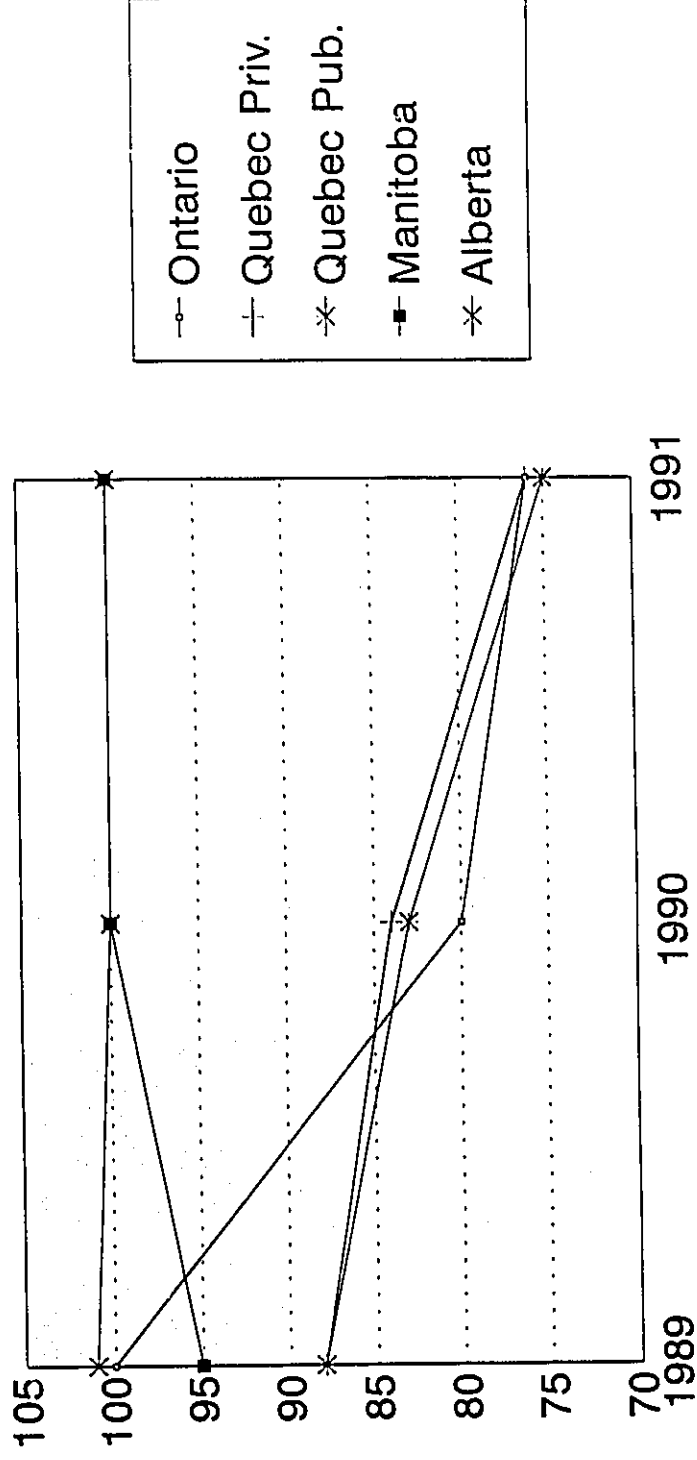
NOTE: Threshold no-fault was introduced in 1990.

SOURCE: Insurance Bureau of Canada

Appendix B

# EARNED LOSS RATIO

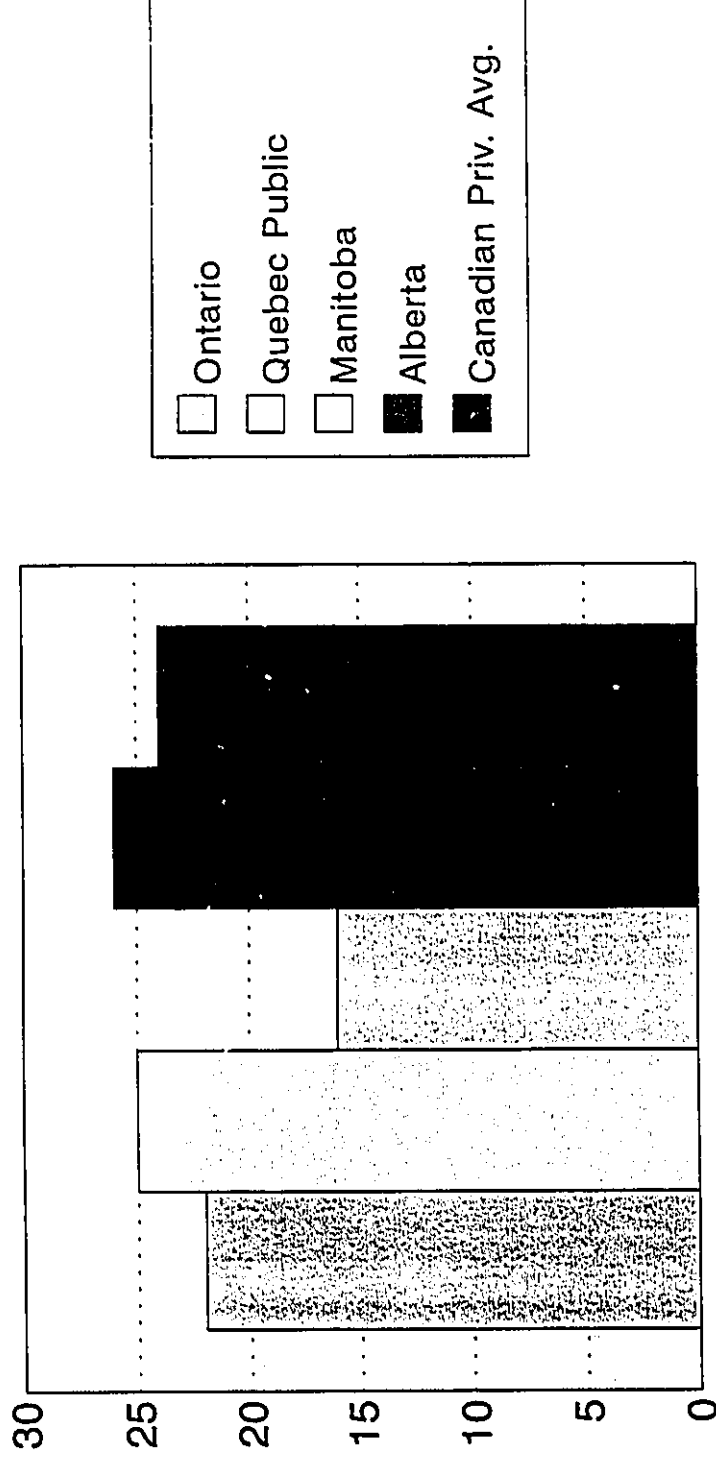
(Premiums earned/claims and adjusting expenses)



NOTE: Alberta's 1991 ratio is an estimate  
SOURCES: IBC, Regie, Groupement, MPIC  
Appendix C

# OPERATING COSTS

(As a percentage of premiums earned)



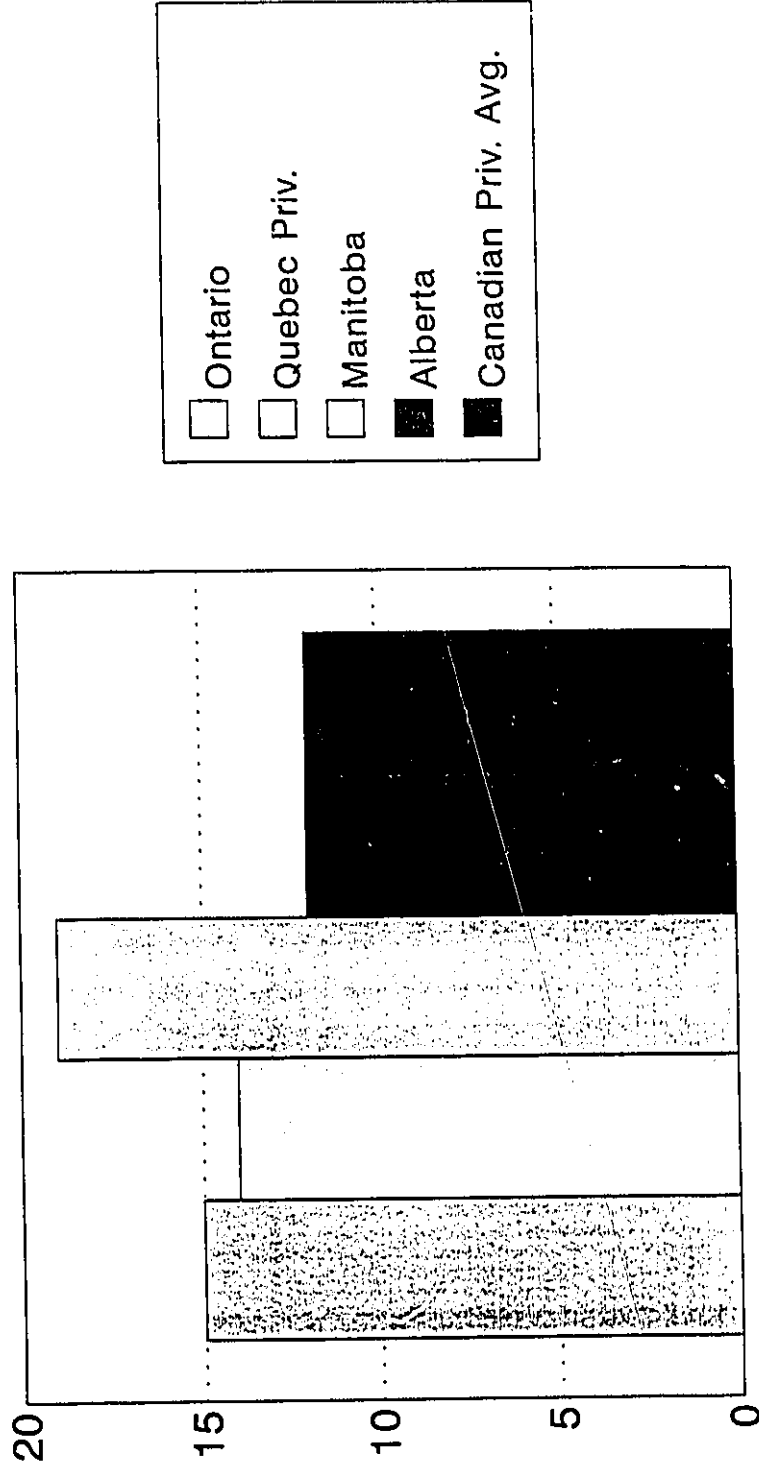
(Average values for 1990 and 1991 combined)

SOURCES: IBC, Regie, MPIC.

Appendix D

# RETURN ON INVESTMENT

(As a percentage of premiums earned)



SOURCES: IBC, Groupement, MPIC.  
Appendix E

### VITA AUCTORIS

NAME: Christopher J. Clark

PLACE OF BIRTH: Sudbury, Ontario

YEAR OF BIRTH: 1969

EDUCATION: St. Anne's High School, Tecumseh, Ontario  
1983-1987

University of Windsor, Windsor, Ontario  
1987-1991, Bachelor of Public Administration

University of Windsor, Windsor, Ontario  
1991-1992, M.A. Political Science

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