Province of British Columbia

Royal Commission on Automobile Insurance

Report of the Commissioners

July 30, 1968

VOLUME I

Introduction

Chapters 1 to 12

Pages 1 to 406

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ADDRESS ALL CORRESPONDENCE TO THE SECRETARY

THE HON. MR. JUSTICE R. A. B. WOOTTON, CHAIRMAN
DR. P. A. LUSZTIG, COMMISSIONER
C. E. S. WALLS, ESQ., COMMISSIONER

PHONE 388-5461

**ROYAL COMMISSION
ON AUTOMOBILE INSURANCE**

FIFTH FLOOR, WEILER BUILDING
609 BROUGHTON STREET, VICTORIA, B.C.

July 30, 1968

LETTER OF TRANSMITTAL

TO: His Honour the Lieutenant-Governor of British Columbia.

May it please Your Honour:

Pursuant to the powers contained in the Public Inquiries Act, chapter 315 of the Revised Statutes of British Columbia, 1960, and by Order in Council 239, approved on the 25th day of January, A.D. 1966, the undersigned were appointed under The Great Seal as Commissioners to inquire into and report upon those certain matters set out in the said Order in Council.

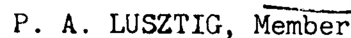
The duties assigned to us have been completed, and we now submit our Report for Your Honour's consideration.

We have the honour to be,

Sir,

Your obedient servants,

R. A. B. WOOTTON, Chairman



P. A. LUSZTIG, Member

C. E. S. WALLS, Member

Lieutenant-Governor.

Canada

Province of British Columbia

ELIZABETH THE SECOND, by the Grace of God, of the United Kingdom, Canada and Her other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith.

In the matter of the Public Inquiries Act

To Mr. Justice Robert Alexander Burnie Wootton,
Dr. Peter Alfred Lusztig,
Charles Edward Stuart Walls.

ATTORNEY-GENERAL

WHEREAS the Public Inquiries Act empowers the Lieutenant-Governor in Council to cause inquiry to be made into and concerning any matter connected with the good government of the Province:

AND WHEREAS His Honour the Lieutenant-Governor by and with the advice of his Executive Council, has deemed it expedient to appoint Commissioners to make inquiry into and concerning monetary losses and expense resulting from motor-vehicle accidents involving persons adverse in interest and into feasible and sound proposals for moderation thereof, and in so doing to inquire particularly into

(a) the costs and delay involved in the determination and recovery of compensation by victims of motor-vehicle accidents,

(b) the portion of total damages that are recovered by victims of motor-vehicle accidents by court proceedings and by settlement and whether adequate compensation is obtainable by such victims under present procedures,

(c) the cost to insurers, to persons who pay insurance premiums, and to the public generally of providing present forms of automobile insurance determined on the basis of past and current experience and whether the cost is in proper relationship to the effective protection obtained,

(d) the operation of the arrangements with Traffic Victims Indemnity Fund,

(e) the changes in the need for insurance resulting from the availability of hospital insurance, prepaid medical services plans, and compensation under the Workmen's Compensation Act,

(f) the justification for recent variations in automobile insurance premium rates,

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

(h) whether such a variation or a plan for compensation or such a combination, if recommended, should be administered privately or by or through a governmental department or a governmental agency or a combination thereof, and

(i) the method and procedures that would be most effective in the introduction of change if recommended,

and report their findings and recommendations to the Lieutenant-Governor in Council in accordance with the Act:

NOW KNOW YE THEREFORE, that reposing every trust and confidence in your loyalty, integrity and ability, We do by these presents under and by virtue of the powers contained in the Public Inquiries Act, and in accordance with an Order of the Lieutenant-Governor in Council dated the 25th day of January, 1966, appoint you

Mr. Justice Robert Alexander Burnie Wootton,
Dr. Peter Alfred Lusztig,
Charles Edward Stuart Walls,

Commissioners to inquire into the matters aforesaid, and to report your findings and to make recommendations to the Lieutenant-Governor in Council.

IN TESTIMONY WHEREOF We have caused these Our Letters to be made Patent, and the Great Seal of Our Province to be hereunto affixed.

WITNESS, Major-General the Honourable GEORGE RANDOLPH PEARKES, V.C., P.C., C.B., D.S.O., M.C., Lieutenant-Governor of Our Province of British Columbia, in Our City of Victoria, in Our Province, this twenty-fifth day of January, in the year of Our Lord one thousand nine hundred and sixty-six, and in the fourteenth year of Our Reign.

BY COMMAND

PROVINCIAL SECRETARY.

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....+....

INTRODUCTION

The following symbols and abbreviations are used in tables and figures in this Report

+	added to	×	multiplied by
−	subtracted	÷	divided by
%	per centum	Σ	the sum of

Where names are abbreviated to initials, the full name is quoted earlier in the same chapter

Exhibits filed before the Commissioners are listed fully at Appendix 'I', at p. 765

INTRODUCTION

Order in Council 239

Letter of Commission

A copy of the Order in Council establishing this Commission of Inquiry is to be found at Appendix A hereto.

A copy of the Letters of Commission precedes this Introduction at page 3.

Terms of Reference

It is well that the directives thereof be quoted here:

> To make inquiry into and concerning monetary losses and expense resulting from motor-vehicle accidents involving persons adverse in interest and into feasible and sound proposals for moderation thereof, and in so doing to inquire particularly into:
>
> (a) the costs and delay involved in the determination and recovery of compensation by victims of motor-vehicle accidents,
>
> (b) the portion of total damages that are recovered by victims of motor-vehicle accidents by court proceedings and by settlement and whether adequate compensation is obtainable by such victims under present procedures,
>
> (c) the cost to insurers, to persons who pay insurance premiums, and to the public generally of providing present forms of automobile insurance determined on the basis of past and current experience and whether the cost is in proper relationship to the effective protection obtained,
>
> (d) the operation of the arrangements with Traffic Victims Indemnity Fund,
>
> (e) the changes in the need for insurance resulting from the availability of hospital insurance, prepaid medical services plans, and compensation under the Workmen's Compensation Act,
>
> (f) the justification for recent variations in automobile insurance premium rates,
>
> (g) whether the public of this Province will be better served by the continuation of present procedures for the recovery of damages arising out of motor-vehicle accidents and by the preservation of present forms of insurance coverage or by some variation or varia-

tions thereof, or by a plan whereby compensation for damage arising from motor-vehicle accidents may be paid without determination and attribution of responsibility therefor, or by a combination thereof,

(h) whether such a variation or a plan for compensation or such a combination, if recommended, should be administered privately or by or through a governmental department or a government agency or a combination thereof, and

(i) the method and procedures that would be most effective in the introduction of change if recommended.

Oaths

Following their appointment the Commissioners made their oaths as required by law. They are to be found recorded as Exhibits 2a, 2b, and 2c to the proceedings. Likewise all members of the staff and all employees of the Commission were sworn before entering upon their duties. A list of the staff and the employees of the Commission is at Appendix B.

Procedure

The procedure adopted with regard to public meetings of the Commission was to have all witnesses before the Commission sworn. They were then examined and cross-examined. The submitters of briefs were sworn as witnesses before their briefs were read. After the reading of their briefs they were cross-examined and, where proper, re-examination of the submitter followed. The procedure gave assurance to the Commissioners and an opportunity to assess information and the sources of it.

Advertising

As it was anticipated that there could be a fairly large number of persons, firms and corporations generally distributed about the Province desirous of making submissions to the Commission, care was taken to advertise all public

meetings of the Commission extensively.

Advertisement was made in the B. C. Gazette and generally throughout the Province as required by law. Particulars appear in Appendix C-1 hereto.

A plan indicating the locations of the foregoing places throughout the Province is to be found in Appendix C-2.

Public Meetings were held as follows:

Victoria, B. C. : - May 2, 1966 to May 5, 1966.

Vancouver, B. C. : - September 19, 1966 to December 15, 1966.

Victoria, B. C. : - January 5, 1967 to May 4, 1967.

Victoria, B. C. (for Argument): - July 4, 1967 to July 11, 1967.

These meetings were all properly advertised.

Response

The response by the public at large, that is to say by individual citizens, was limited to a very few briefs although a significant number of letters was received. This was a different experience than that had by the Royal Commission inquiring into Workmen's Compensation and as indicated by the Commissioner in his report at page 22 thereof.

A list of the persons, firms and organizations that submitted briefs is to be found at Appendix D. A list of persons and organizations from which correspondence was received, but which did not submit briefs, is recorded at Appendix E.

Popular opinion that there was general dissatisfaction with the Automobile In-

surance on the part of the public at large, was indicated to the Commissioners but was not made apparent by submissions by the individual. Briefs submitted by Labour Unions and by Her Majesty's Loyal Opposition in the Provincial Legislature, referred to such dissatisfaction. The Commissioners have endeavoured to assess the situation in the light of the foregoing because they were concerned to know the state of the public mind.

Further, the fact that there was little response from individuals is not to be taken as conclusive evidence that the public is satisfied with the present condition of things. All submissions were required to be in the form of a written brief and the briefs of necessity covered the extremely involved areas surrounding automobile insurance. It is to be assumed that the average citizen has felt himself to be unequipped in such a complicated matter to prepare and submit an intelligent brief and to be subjected to cross-examination thereon. This comment is entirely without any reflection upon the citizen of course. However, the Commissioners have not concluded the matter by assumptions, but they have assessed the situation after an extended exploration thereof.

Safe Driving

The Commissioners have concluded that a great problem of the state is the conduct of motor vehicle drivers which reflects itself in insurance rates and expenses. If the disease to be cured is to be identified, then it is to be identified as the conduct of drivers of motor vehicles. The cure, therefore, must be the elimination of bad conduct by drivers and the improvement of their skill and responsibility while in charge of motor vehicles.

The Ubiquitous Motor Vehicle

Before advancing further it should be said, as is quite apparent, that automobiles have become a great problem to all communities having them. With that we have the problems of the safety of the citizen, his healing and recovery when he is injured, his rehabilitation, and his compensation, and the compensation of his dependents if he be slain upon the highway. The automobile (or, rather, the motor vehicle) has become ubiquitous. There is much contemporary writing upon the area of research directed by the Letters of Commission. Descriptive of the situation here was the brief of the British Columbia Federation of Labour. The following assertions (uncontradicted) were made therein:

> THE ACCIDENT EXPLOSION
>
> In 1964, 4,655 Canadians were killed in automobile accidents. One hundred forty thousand were injured. It is estimated that the total economic cost of accidents in Canada in 1964 was four billion dollars. This far exceeds the total farm production of all of Canada in the same year.
>
> In British Columbia (1965), 500 people were killed in automobile accidents, 17,574 were injured and accidents reported totalled 40,262. The B. C. Safety Council estimates that if this trend continues, 800 people will die in auto accidents in 1966.
>
> Net automobile insurance premiums written in British Columbia totalled over $46 million in 1964. In the five-year period, 1960-64, claims jumped by 61%. They jumped 28% in 1964 alone. In the words of a B. C. Government Study of Automobile Insurance Rates, total cost of automobile accidents has been rising at a 'fantastic pace'.[1]

The 27th Parliament of the Legislative Assembly of the Province of British Columbia passed the following resolution:

---

1. 2/109.

References to the Transcript of Evidence at the Public Hearings is indicated throughout this Report by figures representing the Volume number and the page. Thus a reference to Volume 2, page 109, is indicated by: 2/109.

Be it Resolved, That this Legislative Assembly ask the Government to study automobile insurance rates and gather comparative data with a view to possible examination of this material by a House Committee at the next sitting of the Legislature.

Pursuant to that resolution the Superintendent of Insurance for British Columbia produced A Study of Automobile Insurance Rates of the Province of British Columbia, 1966 which was submitted to the Honourable R. W. Bonner, Q.C., Attorney General, December 26th., 1965.

The following is part of that study:

B. THE ACCIDENT COST EXPLOSION

In recent years the total cost of automobile accidents has been going up at a fantastic pace. Three reasons are apparent:

(1) The number of automobiles has been increasing drastically. In British Columbia for instance, registrations rose 26 per cent from 1960 to 1964. If the total cost of accidents went up in direct proportion to the total number of vehicles, then the cost per car of accidents would remain the same and, therefore, there would be no need for any changes in insurance rates. Unfortunately, this situation does not apply because of reasons (2) and (3) below.

(2) As traffic density increases the percentage of automobiles in accidents as related to the total number of automobiles has been increasing. In British Columbia the number of insurance claims per 100 insured vehicles increased from 7.3 in 1960 to 9.9 in 1964 -- some 25 per cent.

(3) As automobiles become more sophisticated, with more and more electrical and mechanical equipment, the average cost per accident has been increasing. In British Columbia, this average cost per accident, as far as insured accidents companies are concerned, has risen from $379 to $421 in the 1960-64 period.

This applies not only to British Columbia, or even to Canada. It is true in the United States, in Europe, in Australia -- in short, wherever the automobile has become an increasingly important factor in daily living.

In Canada, in the last five years alone, the number of vehicles on our roads has increased 33 per cent, but the total cost of accidents has increased by more than 100 per cent. One-third more vehicles must collectively share a total accident cost which is more than 100 per cent higher than it was in 1960. It follows that the share which each individual automobile must bear of this total cost is sharply higher in dollars than it was in 1960.

> The great bulk of these accident costs are paid for by insurance. In 1960 there were 5,250,000 vehicles in Canada, and insurance payments because of the accidents in which they were involved totalled $194,000,000. In 1965 the total vehicle population had gone up to 7,000,000, but the insurance claims paid on behalf of these cars exceeded $400,000,000.[2]

By reason of their own findings, the Commissioners have not been able to reconcile as completely correct the facts set forth in the foregoing.

The Motor Vehicle

It is quite obvious to anyone that a motor vehicle is itself of little danger to the community. When it is not in motion, viz. when it is stopped and the motor is not running, the vehicle is of little or no potential danger; but as soon as the driver has started the movement of the vehicle, whether with engine running or not, immediately there is potential danger. Further, with the proliferation of the motor vehicle upon the highway, when it is in motion either upon or off the highway, the danger of accident is immediate. Indeed, it is not going too far to say that this is true in congested traffic, whether or not due care and attention is paid by drivers. There is progressively a greater number of deaths or accidents reported annually. The highways themselves, being of limited area, the number of vehicles upon them from time to time increasing, lead inevitably to dangers and to increases in the number of accidents and fatalities. So much danger is there, that the legislature has already been forced to give attention to the question of the appropriateness of the laws of negligence. Already it has been realized that there may be a division of fault and responsibility for accidents in British Columbia. The Contributory Negligence Act, now

2. Ex. 28, p. 9.

R.S.B.C. 1960, C. 74, and since amended, was first passed in the year 1925 as S.B.C., C. 8. A copy of the Act and its amendments appears at Appendix F hereto.

It is recognized by that Act that the original application of the law of negligence in motor vehicle cases was unjust and that justice required recognition by the law that both or all parties to an accident might be the cause of it, in a greater or lesser degree. This then was a step forward towards the recognition of the motor vehicle collision as an accident which may be caused by the fault of more than one person.

Exhibit 41, in the proceedings of this Commission, being excerpts from what is known as the Columbia Report -- the Report of a Sub-Committee of the American Bar Association, says in part:

> In motor vehicle accident cases, the principle of negligence is peculiarly difficult to apply. In most automobile accidents, a car collides with another car or with a pedestrian. All the action occurs within a few seconds. It is almost impossible for witnesses, even though they have not been participants in the accident, to remember and to reproduce exactly to the jury swiftly succeeding events which they have been neither trained nor prepared to observe. Litigation in such cases results in jury trials which are largely contests of skill and chance.
>
> It is fair to conclude that in a great many motor vehicle accident cases it is impossible to fix the blame according to the facts, and that in personal injury cases it is almost always impossible to fix the damages accurately. The result of a jury trial in the ordinary automobile accident cases is largely a matter of chance.
>
> Fraud: In motor vehicle accident litigation the temptations to fraud are great. If there is no disinterested witness to contradict the testimony of a litigant, a story can easily be prepared which will satisfy a jury. If a witness has been well coached by the attorney or by the medical specialist, a slight injury can be magnified until it appears a source of permanent disability, or a serious injury can be made to appear trivial.[3]

3. Ex. 41, pp. 66-7.

The same theory is recognized in the Report of the Select Committee of the Ontario Legislature, March 1961, which says:

> Ignoring all the complexities involved in the concept of negligence, it can be said that in general when injury or property damage results from a two-car accident in Ontario (and in most jurisdictions), only the party who is not at fault receives any indemnification and it is paid by or on behalf of the party who is at fault. There is no recovery for the injury or property damage suffered by the negligent party. It must be conceded that the determination of negligence is becoming an increasingly difficult problem in this age of speed and traffic congestion. The Committee feels that the principle of liability for fault deserves a searching assessment in view of the growing problems associated with its application. Another problem arising out of the existing law in Ontario is the fact that no gratuitous passenger in the vehicle of the negligent party is entitled to any recovery. The Committee believes it important to consider the desirability of giving a right of recovery to gratuitous passengers upon a finding of gross negligence or wanton and wilful misconduct on the part of a driver.[4]

The Commissioners have considered the foregoing observations. There is a mutuality of opinion in them and that opinion has been carefully assessed by the Commissioners.

Abandonment of Fault Rule

At this stage of the report it is sufficient to say that the Commissioners have considered the opinion that if all drivers are made responsible to take care of themselves, members of their immediate families, and those who travel with them, abandoning the fault rule inherent in the law of negligence, then no responsible person would go without recovery in the event of accident. This opinion is specifically dealt with elsewhere in this Report.

Financial Responsibility

They have also considered the opinion that no driver should be licensed to drive

---

4. Ex. 135A, p. 5.

without first establishing financial responsibility towards himself and others, and other matters of relative importance.

In this connection they have considered if it be just that one moment of inattention upon the part of a driver of a motor vehicle may deprive him and those who drive with him of any chance of recovery of damages or any portion thereof arising out of a motor vehicle accident.

It can be seen then that the inquiry, of necessity, has been divided into three parts: one of safety upon the highway inherent in the whole problem before the Commissioners; one of fault or no-fault in relation to accident; and, thirdly, an inquiry into the practices of Insurance Companies and Agents.

Other Jurisdictions

The problem before the Commissioners being such a universal one, inquiries were made abroad through diplomatic channels for particulars of the laws of the countries approached. The correspondence indicates a diversity of answers to the problems involved. The countries approached, in addition to the United States, include the following:[5]

Australia	France	Netherlands
Belgium	Germany	Norway
Britain	Ireland	Sweden
Denmark	Italy	Switzerland
	Mexico	

It is to be noted that the laws of all countries, including the laws of the Provinces of Canada, differ from each other, and there is constant change therein.

5. A listing in detail of all such addressees is to be found at Appendix G.

Cut Off Date

The Commissioners have concluded that there will be at no time a cessation of change and amendment. Consequently they must deal in a final manner with the situation as it exists at the date of the completion and delivery of their report, so far as they are able to conclude their findings.

Principles and Practice

They have had to consider and comprehend principles as well as practices for the purposes of this report. The details of rates and rate-making, for instance, have no significance in an inquiry of this kind unless it be shown that upon principle they are found to be fair or, on the other hand, excessive or unjust. The Commissioners have concluded that if principles are capable of change to the advantage of the public at large, then the most careful attention must be given to the review of principles.

The principles of earlier laws of negligence have already shown themselves to be inadequate as indicated by the passage of the Contributory Negligence Act. (Supra, p.12)

Industry Cooperation

The Commissioners have felt that they have had considerable cooperation from the Industry. They were supplied by the Industry with data and explanations very generously, and, whenever information was required, it was supplied readily. Of necessity, research into financial procedures and in particular rate-making, involved a careful study of procedures adopted by the Industry, and has proved a lengthy and intricate matter.

Performance of the Industry

The performance of the industry in carrying on business has given the Commissioners great concern. In his able argument Mr. C. C. I. Merritt, Q. C., Counsel for Canadian Underwriters' Association, contended firmly at Page 2 of his brief:

> The cost to persons who pay Automobile Insurance Premiums is presently "in proper relationship to the effective protection obtained" (vide Head (c) of Order-in-Council dated 25 January, 1966) - but in the period 1 January 1962 - 31 December 1965, the Members of C. U. A. collectively did not charge high enough premiums - in the light of "Loss Ratios" actually experienced - to avert actual losses on policies written in this period.[6]

Counsel referred to the Report of the Superintendent of Insurance for Canada of 1965, pages 31 (A) to 32 (A), and other sources, and then went on to say "the acid test of this specific proposition must in the end come down to the single question of "profit or loss" upon policies written in each or over a series of years".[7]

The Commissioners are of the view that the above argument is not absolutely convincing on the point in question. They considered that they must be convinced that the conduct of the Industry during the period of time covered must have been reasonably satisfactory in the light of all circumstances. They were greatly concerned with the statement appearing in the brief of Canadian Underwriters' Association, Page 18 "as substituted" where it said:

> For British Columbia Territory 1, Vancouver Rating District, Private Passenger Automobile Third Party Liability rates were increased 29% on January 1st, 1965, an additional 5% on July 1st, 1965, and an additional 11% on January 1st, 1966, for the major class of drivers, Class B3 who were purchasing $100,000 inclusive limits coverage. For the second largest class of drivers, Class A3, the increases were 17%, 4% and 10%

6. 93/10,201.

7. 93/10,203.

> respectively for those purchasing minimum limits coverage of $50,000. For all classes of drivers and all limits combined the average increases were 21%, 5% and 11%.[8]

It could only conduce to public dismay that the first set of recent rate fluctuations could occur so repeatedly in such a short period of time. The justification of the changes may be found statistically correct, but to the general public the performance of the companies could only give grave concern. That situation, therefore, created a considerable field for study and appraisal. The argument of the Canadian Underwriters' Association continues in the same vein at Page 3 of the Argument:

> But it is here significant to observe broadly that - despite ample opportunity over a period of more than a year and despite very substantial increases in premiums between 1 January 1965, 1 July 1965, and 1 January 1966 - there has been no evidence or informed Public Complaint laid before the Commission. Such evidence of complaint which appears from the submissions of Mr. Bevis (Ex. 7 and Vol. 1); B. C. Federation of Labour (Ex. 13 and 13A and Vol. 2); The Official Opposition (Ex. 35 and Vol. 4) has been shown to be uninformed.[9]

Philosophy of Automobile Insurance

The Commissioners have given careful study to the whole philosophy of insurance with particular regard to the motor vehicle. They have had the benefit of the voluntary presence of Mr. J. O. Dutton of the Saskatchewan Government Insurance Office and those attending with him; namely, Mr. N. Bortnick, Mr. John Green, Q. C., Mr. L. W. Devine and Mr. W. G. McInnis. This was with the kind cooperation of the Government of the Province of Saskatchewan. An ample explanatory brief was read and the aforementioned witnesses testified before the Commission. In this regard, it is correct to say that the witnesses were closely cross-

---

8. 25/2908.

9. 93/10,203.

examined by counsel for the Industry. The conduct of Mr. Dutton and the others attending with him made a good impression upon the Commissioners. They are grateful for the attendance enabling them to learn at first hand about the scheme of automobile insurances presently existing in the Province of Saskatchewan. It was an act of great public service on the part of the Government of Saskatchewan to send the panel to the meetings. The Commissioners have been able, therefore, to comprehend the comparison between the experiences of a Government Scheme, which has survived its difficult early days, and those of private Companies, and they are able to make a proper assessment in their Report with relation to British Columbia. This is more emphatically and effectually possible because of the fact that in automobile insurance in British Columbia, the Industry has indicated very clearly that its members are unalterably opposed to the Government entering into the Industry in any part. History proves, and it is shown in the transcript, that the Industry itself has laid down the whole scheme or schemes of automobile insurance in the Province of British Columbia, and the conditions thereof in the way of Assigned Risk Plans and Traffic Victims Indemnity Fund and more recently the Facility. The results of studies of the Assigned Risk Plan and Traffic Victims Indemnity Fund will appear in the course of this Report.

Superintendent of Insurance for British Columbia

The status and function of the Superintendent of Insurance for British Columbia and an explanation of his power and duties will be commented upon in this Report.

Cost of Insurance To Public

It is a glib thing to say, without knowledge of the facts, that insurance and particularly automobile insurance is expensive. The charges made by critics of

the Industry, and particularly by the strongly worded brief of Her Majesty's Loyal Opposition through their representative Mr. Alex Macdonald, M. L. A., was read before the Commission. In view of its dramatic nature it received most careful consideration. It is well to illustrate here the criticism made by Mr. Macdonald for the Official Opposition, during his reading of the brief. He said in part:

> I might say that I would like to comment favourably on the point made in the B. C. Federation of Labour brief that a very considerable extent of our insurance industry is owned outside of the country. While in many fields that kind of foreign ownership is desirable, the free movement of capital and competition and the development of the country, I suggest this is really a public utilities field and not one where Canada should not be able to look after itself and reduce its foreign exchange outflow by providing its own protection in the auto insurance field.
>
> The figures in the Report of the Superintendent of Insurance for the last five years show that for every 67¢ of the premium dollar paid out in claims, 33¢ was retained for earnings and costs by the companies. No doubt the companies earned additionally interest on pre-paid premiums. These figures are for a five-year period from 1960 to 1964 inclusive, <u>before</u> the recent increase of 20% and more in premium rates.
>
> I believe the figures for the previous period before 1960 showed a greater percentage going towards costs than the 33¢, but I have not put them into my brief.[10]
>
> The Saskatchewan plan costs 18¢ of the premium dollar to administer, and interest on prepaid premiums is returned to the insurance fund. It stands to reason that basic protection sold with the vehicle licence is bound to mean lower administration costs. A 67-33 split is in itself evidence that this is not an efficient, streamlined industry. Such costs in a medicare plan would be unthinkable.
>
> The Provincial Government itself has shown that it regards this industry as costly and inefficient by running its own insurance system for government vehicles for many years.
>
> The report of the Insurance and Safety Officer responsible for this (P. 58, Report of the Department of Highways 1964/65) shows the following results for the year 1964/65:

---

10. Note: The cost factor previously was 37¢ and earlier still was 45¢, as has been noted by the Commissioners.

Total PL & PD claims paid by Government	$ 91,677.84
Damage costs to Government vehicles	134,283.00
	$225,960.84

Number of vehicles operated by Government	4,875
Number of accidents	754

Total cost of claims distributed over all vehicles works out at an average cost of $46.35 per vehicle - this includes the vehicles ploughing snow at night.

Today the automobile is for many a necessity, as the horse never was. Accident coverage is in essence a 'public utility' and as such should be non-profit and administered by a public agency at the lowest possible cost to the consumer.[11]

The conclusions reached by Mr. Macdonald in his presentation that the Industry, because of its system, is bound to be inefficient and costly may not necessarily follow. The Commissioners have made their own assessment, after considering all relative evidence. As to the 18¢ referred to by Mr. Macdonald, they comment here that the Saskatchewan Government Insurance Office gave a figure of 11.87% for the year ended April 30, 1967.

Hodgins' Report

The exploration made by the Commissioners has found anchorage in some degree in the Report of the Honourable Mr. Justice F. E. Hodgins, then one of the Justices of the Appellant Division of the Supreme Court of Ontario and dated at Osgoode Hall, December 20th, 1930. References were frequently made to that Report during the meetings of this Commission. The Terms of Reference of that Commission were somewhat more restricted than those laid down for this Commission,

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11. 4/313-4.

but particular areas of that inquiry then delineated several topics which are relevant to the inquiry now made. That Commission made forthright findings, and it was critical of the Industry as the Report shows. Although it was urged upon the Commissioners that the Industry had heeded that Report and had rectified matters on the recommendations of the Commission, all these matters have been reviewed by the Commissioners to ascertain the present conduct and practices of the insurance industry with reference to automobile insurance. In particular they have reviewed the evidences of experience of the industry following the suggestions and recommendations of the Hodgins' Report and particularly the following items taken from the Interim Report made on March 3rd, 1930.

> I may explain that, at the outset of my inquiry into the reasonableness of the 1929 automobile insurance premium rates in Ontario, I was confronted with the major difficulty that the majority of the insurance companies transacting, in the three or four years immediately prior to April, 1928, upwards of sixty per cent of the business in the Province, had failed to establish any real system of cost accounting in their offices, and were thus quite unable to produce before me any reliable statistical records showing the cost of automobile insurance in Ontario.
>
> Many of the insurance company managers seem to fail to appreciate the importance of accurate statistical data as a basis for rate-making, and the necessity of keeping such data accordingly to a uniform statistical plan. It is time that the companies realized that their right to combine to make rates should be conditioned upon an undertaking to keep such statistical records of their loss and expense costs as are necessary to make and judge the reasonableness, or discriminatory character, of the rates they promulgate and charge.[12]

It is noted that in spite of more than thirty-seven years having passed by since the Hodgins' Report was made, the industry has not developed a system whereby the expenses with reference to automobile insurance can be readily ascertained. There has been a mingling of funds and accounts. Consequently the Commissioners

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12. Royal Commission on Automobile Insurance Premium Rates, Mr. Justice F. E. Hodgins, King's Printer, Ontario, 1930. pp. 27-8.

had difficulty in ascertaining expense costs. For example, the Table provided by Insurance Bureau of Canada with the assistance of the well known consultants, Kates, Peat, Marwick and Co., and Price Waterhouse and Co. is as follows:

TABLE

INSURANCE BUREAU OF CANADA

1965 AUTOMOBILE EXPENSES EXPRESSED IN RATING FORMULA FORMAT

AS % OF PREMIUMS - TOTAL OF ALL PARTICIPATING COMPANIES

	Premium Bases			
	Gross		Net	
	Written	Earned	Written	Earned
PREMIUM:	100%	100%	100%	100%
EXPENSES:				
Premium and other taxes	2.05	2.19	2.09	2.26
Commission to agents	14.84	15.88	14.96	16.19
Association fees	0.56	0.61	0.57	0.63
Unallocated claims expense	2.25	2.41	2.29	2.47
Administration expense	9.47	10.12	9.64	10.42
SUB-TOTAL (%)	29.17	31.21	29.56	31.97
Provision for underwriting profit at 2.5% before income tax	2.50	2.50	2.50	2.50
TOTAL (%)	31.67	33.71	32.06	34.47

Source: I.B.C. Joint Study of Automobile Insurance Expense Allocation May, 1967, p. 27 (facing).

The evidence shows that the two items: 'Unallocated claims expense' and 'Administration expense' are not taken from accounts entirely devoted to the automobile insurance, but they are proportions of an overall figure of a general business of insurance. The study made by the Consultants abovementioned,

was a very careful study of a small selected (non-random) sample of insurers and a Report in keeping with the reputation of the two firms was produced by them, but they were forced to qualify their Report. A portion of the Report has illustrated this:

> Expense Allocation
>
> All of the companies surveyed record their written premiums by line of business. Commissions and premium taxes are generally recorded by major class of business and in some cases by line of business. Beyond this segregation, some of the companies do not allocate expenses, and of the companies that do, the systems of expense allocation used are for the most part rudimentary. The predominant method of allocating expenses, including salaries, is on the basis of premiums. (emphasis added)
>
> Several companies studied have initiated improved systems of expense allocation, commencing in the year 1966.[13]
>
> Functional Approach To Expense Allocation
>
> The problem of relating all corporate expenses to particular classes of business may be extremely complex. This problem arises because certain expenses not directly assignable to a particular class of business are nevertheless essential to the successful functioning of the overall operations of the business.
>
> Because of the complexity of attempting to relate these expenses to a particular class of business, it was determined that the first logical step would be to relate them to a function (e.g. production). Although the operating methods and organizations of the insurance industry differ from group to group, the major functions, and in most cases the sub-functions (e.g. accounting), are similar within the twelve groups of companies surveyed. To attempt to determine how each expense account in a company's general ledger should be apportioned to the major classes of insurance business (automobile, property, casualty and other) would represent a monumental task. However, as all expense accounts can be distributed to functions and sub-functions, by appropriate analysis, and as all functions and sub-functions can be prorated logically to the major classes of business, by application of appropriate allocation standards, this is the general approach which has been followed in this study. It should be understood that, where specific expense items were clearly attributable to a particular class of business, they were accordingly directly assessed. In other words, such expenses were ident-

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13. I.B.C. Joint Study of Automobile Insurance Expense Allocation, May, 1967, p. 5.

> ified in their respective sub-functions as direct charges, leaving only indirect expenses for sub-functional allocation to classes of business.
>
> The broad functions of production, underwriting, claims and administration are sub-divided as illustrated in Exhibit A. Generally speaking, these major functions can also be considered as broad areas of responsibility and expenses could be budgeted and reported in this fourfold breakdown. The insurance industry utilizes a 'responsibility accounting' approach to a certain degree in its operation of branches, but, apart from salaries, little effort is made to relate expenses to major functions which would be a logical step in implementing a responsibility accounting and reporting system.[14] (emphasis added)

The Commissioners are unable to conclude from the foregoing Report that expenses are in fact correctly allocated. Therefore, they are unable to find that such expenses are either reasonable or unreasonable. They note that a percentage either way would have important consequences in the final result. On account of the foregoing, they have recommendations to make regarding accounting by the industry.

Nova Scotia Royal Commission 1957

The Commissioners have also considered the Report of the Commissioners on the Automobile Insurance of Nova Scotia dated September 30th, 1957.

The circumstances under which that Report was made have been carefully assessed, and the report received such consideration as was warranted.

Partnership with Government

It should be noted here that the All Canada Insurance Federation in its Brief said, 34/3885:

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14. *Ibid.*, pp. 6-7.

PART III - AN HISTORICAL PARTNERSHIP BETWEEN GOVERNMENT AND THE INSURANCE INDUSTRY.

> There has been a well documented partnership between the Government of British Columbia and the insurance industry existing since 1948. Duties imposed by these arrangements have not been perfunctory. The documentation supporting these arrangements may be found in the separate briefs filed by the Traffic Victims Indemnity Fund and by the Assigned Risk Plan. Another important aspect of industry -- government cooperation in this field arises under Section 96 (1) of the Insurance Act as a result of which there has been designated by the Superintendent of Insurance a statistical agency. These arrangements have now been explained by the Canadian Underwriters' Association. There exists also a very close liaison between automobile insurance companies in British Columbia and the Motor Vehicle Branch.

If the foregoing words are intended to mean that the industry has complied with the laws and requirements of the Province, they are of no significance whatever. Every citizen is bound by law and must observe the law. If, on the other hand, the words are to be taken in their natural meaning, viz., that a partnership of sorts has existed, then the Commissioners deplore the suggestion that the Government of British Columbia and the insurance industry could have a relationship resembling partnership. The duties of government are the protection of the people, amongst other things, and the business of requiring the industry to give satisfactory and honest service could only be embarrassed by a partnership between government and the industry. However, the Commission cannot say it found evidence of partnership and deplores that such a suggestion was made. The Commissioners felt that this part of the submissions made should not be overlooked and accordingly have commented upon it.

Traffic Safety

The problems of traffic safety are of such magnitude, and have impinged on so much of the matter to which the Commissioners have given their attention, that they feel it necessary to devote a special and separate chapter to consideration of this important subject.

Saskatchewan Plan

As the Saskatchewan Plan will be referred to frequently in the Report, a summary of it is made in an appendix to this Introduction, as follows.

APPENDIX I:A

THE SASKATCHEWAN APPROACH TO AUTOMOBILE INSURANCE

The following provides a brief, general description of Saskatchewan's approach to automobile insurance. Greater detail is to be found in the transcript of the Commission hearings.[15] Elsewhere in the Report, the Commission has considered criticisms of the scheme and no reiteration will be attempted here.

> Saskatchewan's Automobile Accident Insurance Act, introduced in 1946 and administered by the Saskatchewan Government Insurance Office, is an automatic accident compensation scheme designed to provide a reasonable minimum of compensation for losses arising from motor-vehicle accidents REGARDLESS OF FAULT.[16]

Although compensation for personal injury without regard to fault was the sole coverage provided by the Automobile Accident Insurance Act when it first went into effect on April 1, 1946, the Act has subsequently been expanded to include other coverages. A detailing of the changes over time is provided in Table I:A:2.

The Automobile Accident Insurance Act is administered by the Saskatchewan Government Insurance Office in its capacity of 'insurer'. The Act is in six parts:

I. Application for Insurance and Certificates.
II. Accident Insurance and Benefits.
III. Comprehensive Insurance and Insurance Money.
IV. Bodily Injury Liability and Property Damage Liability.
V. Jurisdiction of Court.
VI. Miscellaneous.

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15. Evidence at Public Hearings, Volumes 79 to 86 inclusive.

16. Ex. 287-H, which is a pamphlet issued by the S. G. I. O. entitled, Saskatchewan's Automobile Accident Insurance Act Explained. Revised 1965.

Part I. Application for Insurance and Certificates.

Compulsory automobile insurance in Saskatchewan is ensured by the provisions that no certificate of registration or a permit for a vehicle, and no licence to drive, may be issued to a person who has not duly applied for a certificate of insurance under the Act and paid the required premiums. The A. A. I. A. provides for the issuance of a certificate of insurance for operators of vehicles and separate certificates of insurance for the owners of licensed vehicles. The certificates of insurance are coterminous with the certificate of registration of the vehicle and with the driver's licence. Thus the driver's licence and the certificate of registration constitute the certificates of insurance. The suspension, cancellation, or revocation of the certificate of registration or of the driver's licence automatically revokes, suspends or cancels, as the circumstances dictate, the corresponding certificate of insurance. An insurance premium is paid in full by each owner at the time he registers his motor vehicle and by each applicant for an operator's or chauffeur's licence at the time of application for his licence.

Part II. Accident and Insurance Benefits.

This part of the Act provides for compensation to injured persons or to the dependents of persons suffering loss of life in motor vehicle accidents, regardless of fault, i.e. it is two party accident insurance. The coverage applies to persons involved in motor vehicle accidents in Saskatchewan, and to residents of the Province involved in accidents outside the Province (but within North America) while riding in a Saskatchewan licensed vehicle on a public highway.

Coverage is prohibited in certain situations, among which are the following:

1. To residents of another province or country, while riding in Saskatchewan

in or on vehicles not registered with The Saskatchewan Highway Traffic Board.[17]

2. To persons entitled to workmen's compensation benefits arising from the accident. A principle sum is payable, however, in the event of loss of life.[18]

3. Federal Government employees while operating vehicles owned by that government.[19]

4. To persons using or operating motor vehicles while under the influence of drugs or intoxicants, death benefits excepted.[20]

5. To persons riding in any street car, trolley bus, railway train, fire department apparatus, airplane, road or construction apparatus.[21]

6. To spectators and drivers attending or taking part in races or speed tests.[22]

Death Benefits.

Where death caused by a motor vehicle accident occurs within 90 days of the accident or within 104 weeks of total and continuous disability following the accident, death benefits up to a total of $10,000 for one death may be paid. The primary dependent[23] receives $5,000 and secondary dependents receive $1,000 each,

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17. The Automobile Accident Insurance Act, Section 31 (1)(a).
18. Ibid., Section 31 (2).
19. Ibid., Section 31 (1)(d).
20. Ibid., Section 32 (1)(e).
21. Ibid., Section 31 (1)(b).
22. Ibid., Section 31 (1)(c).
23. The primary dependent is defined by the Act as:
    (i) the wife of an insured unless, at the time of the death of the insured, she was living apart from him under circumstances disentitling her to alimony;
    (ii) the dependent husband of an insured unless, at the time of death of the insured, he was living in adultery apart from her;
    (iii) the dependent child or children of an insured, if the wife or dependent husband predeceases the insured or is otherwise prevented from qualifying as a primary dependent by reason of subclause (i) or (ii);
    (iv) the dependent parent or dependent parents of an insured if the insured is not survived by any of the persons qualifying as primary dependents under subclause (i), (ii) or (iii).

up to the $10,000 limit. If there is more than one primary dependent, only one can be so classed. The others are considered secondary dependents in the calculation of the benefit payable. Each primary dependent receives an equal share of the total benefit when payment is made.

When a child under 18 years of age is fatally injured in a motor vehicle accident, payments are made to the parent or parents with whom the child usually lived, on a scale commencing at $100 for a child 6 years or under and increasing to $1,000 for a child 15 to 18 years of age. When an unmarried person aged 18 years or over is killed, and no benefits are otherwise payable, the parents are paid $1,000. In addition to the death benefits there is a payment of $300 for funeral expenses.

Permanent Disability Benefits

Lump sum payments are made for a wide range of permanent disabilities, e.g. dismemberment or permanent damage to eyesight. Payments are made according to a fixed schedule and the maximum amount payable is $4,000.

Weekly Indemnity Benefit

In instances where a person suffers loss of income as a result of a motor vehicle accident, a weekly indemnity may be paid to alleviate financial hardship. No indemnity is payable for the first 7 days following the accident. The amount of weekly indemnity is $12.50 or $25.00, depending on whether the disability is partial or total, and is payable for a period not in excess of 104 consecutive weeks. Weekly indemnity benefits may be paid in addition to any permanent disability and supplementary allowance benefits.

Supplementary Allowance Benefits

Amounts up to $2,000 are payable on a discretionary basis to compensate an injured person for out-of-pocket expenses not otherwise reimbursed. Certain hospital and medical care expenses which are not recovered under other provincial legislation may be recovered as a supplementary allowance benefit.

Part III. Comprehensive Insurance and Insurance Money.

This two party compulsory coverage payable regardless of fault, offers protection against direct and accidental loss of, or damage to, insured vehicles and their equipment. Comprehensive coverage for private passenger cars and farm trucks is subject to a $200 deductible; for other vehicles the deductible varies according to the class of vehicle.

The comprehensive coverage is not all inclusive and does not apply to loss or damage to the contents of trailers, to radios designed for both transmitting or receiving, or to tires, unless the loss or damage is coincident with other loss or damage insured against under Part III of the Act.[24]

In addition, the following invalidating circumstances suspend the coverage.[25] Where the owner or anyone with his permission:

1. drives while not qualified;
2. drives without a licence;
3. engages in an illicit or prohibited trade or transportation;
4. drives in any race;

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24. Ibid., Section 35 (3).

25. Ibid., Section 36 (2) and (3).

5. drives while impaired or intoxicated;

6. pulls a trailer which, being required to be licensed, is not licensed;

7. violates gross weight limits; drives on a prohibited day or at a prohibited hour; drives off the route or outside the area permitted by the licence; carries more passengers than permitted by his taxi-cab or bus licence; charges a fare for passengers when not licensed as a taxi-cab or bus; carries goods of a kind for which the vehicle is not licensed; leases out a car unless this intention was disclosed in the application for the licence.

Part IV. Bodily Injury Liability and Property Damage Liability.

Additional compensation to that provided under parts II and III of the Act (which are regardless of fault) may be obtained where the claimant has a right of action for negligence. Where claims are made in negligence, any amount received under parts II and III of the Act is deducted from any damages recovered. Under part IV of the Act a Saskatchewan motorist is protected against loss arising out of his liability to pay damages for bodily injury to, or death of others, and for damage to property of others up to a limit of $35,000, regardless of the number of claims arising from any one accident. Bodily injury claims have priority to the extent of $30,000 and property damage claims to the extent of $5,000.

Coverage under part IV of the Act, however, is not applicable in certain situations and, for example, does not extend to:[26]

1. any liability imposed by any workmen's compensation law upon the insured;

2. a person, not the owner of the insured vehicle, who at the material time is engaged in the business of selling, repairing, servicing, storing, or parking cars;

3. injuries to any person being carried in or upon, getting on to or alighting from the vehicle of the insured;

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26. _Ibid_., Section 39 (1).

4. injuries to any employee of the insured while such employee is engaged in the operation or repair of the insured's vehicle;

In the case of death or bodily injury, but not property damage, caused by a hit-and-run driver, where identity cannot be ascertained, action may be taken against the S. G. I. O. as nominal defendant. The S. G. I. O. pays to a limit of $35,000.

Part IV of the Act also includes coverage which offers compensation up to $35,000 for victims who have a cause of action against an uninsured motorist in Saskatchewan. The uninsured motorist on whose behalf a claim is paid is liable to reimburse the S. G. I. O. or lose his operator's licence or registration certificate.

Parts V - Jurisdiction of Court and VI - Miscellaneous.
A detailing of these parts of the Act will not be given here. Part VI deals with matters such as the reporting of accidents, giving of notice, and the writing off of third party liability claims to the extent of any payments made by the insurer under accident insurance or comprehensive insurance claims.

Relation of A. A. I. A. Coverage to Hospital and Medical Care Expenses.
The A. A. I. A. does not duplicate the compulsory coverage afforded under the Saskatchewan Hospitalization Act[27] and the Medical Care Insurance Act.[28] Nevertheless certain hospital and medical expenses not within the scope of either of

27. R. S. S. 1965, C. 253.

28. R. S. S. 1965, C. 255.

these two Acts may be paid under the supplementary allowance available to a claimant under Part II of the A. A. I. A. Where payments have been made under the Hospitalization and Medical Care Insurance Acts and the tortfeasor is insured under Part IV of the A. A. I. A., the S. G. I. O. is obligated to make restitution for such expenditures.

Other Coverage

In addition to the compulsory coverage afforded under parts II, III and IV of the Act, other coverage purchased on a voluntary basis is available from the S. G. I. O. The 'package' policy may extend bodily injury, property damage and passenger hazard liability coverage up to limits of $500,000. Moreover, the 'package' policy permits the removal of the $200 deductible on all comprehensive coverage except collision, upset, and plate glass. These last three comprehensive coverages carry deductibles of $25, $50 or $100 under the automobile package policy. A 'combination policy' from the S. G. I. O. is also available to meet the specialized needs of some vehicle owners. Further, supplementary coverage for personal injury compensation, without regard to fault, may be obtained to a limit of $10,000. The automobile 'package' policy issued by the S. G. I. O. is offered in competition with the 'extension' policies offered by private insurers in the province. Commission paid to agents by the S. G. I. O. on this business is 20% which is more than the commission paid to agents by private insurers. Rough indications are that 50% of Saskatchewan motorists purchase package or extension policies and, of those who do, slightly less than 50% purchase them from private insurers.[29]

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29. 86/9521.

Rate Differentiation

Premium rates charged in the procurement of a driver's licence and concurrent coverage under part II of the Act, are dependent upon the record of the insured for driving offences. There are three general conviction categories, and the driver is issued a licence coloured either white, blue or red, according to his category. Substantial differences exist in the premiums as between these classes of driver although in absolute dollars the premium differentials are not inordinately substantial. Premium differentiation is also based on type of licence such as a chauffeur's as opposed to a learner's permit. A further basis for rate differentiation for part II coverage under the Act is a segregation of drivers into two general age groups -- under and over 25 years of age. Those drivers under 25 years of age are charged a higher premium.

A further modification was introduced in 1967. A surcharge on the normally applicable premium is now imposed upon any driver who has been more than 50% at fault in an incident resulting in a payment of $50.00 or more under the A.A.I.A.

Under Section 6 of the Act an additional premium may be assessed against any person who as the owner or driver of a motor vehicle is considered to be disproportionately hazardous to himself or to the public. Drivers who are more than 50% at fault in two or more accidents in any one year in respect of which payments of $50.00 or more are made, may be assessed as special risks under Section 6 of the Act.

Other bases for rate differentiation in respect of premiums charged for comprehensive coverage are the age and wheel base of the vehicle. No territorial differentiation exists in formulating rates for the compulsory coverage under

the A. A. I. A., although an urban-rural classification is used in the determination of rates on the package policy.

Claim Record

An indication of claims incurred under coverage afforded by the Act and the effects of changes in coverage and deductibles are given in Table I:A:1.

TABLE I:A:1

NET CLAIMS INCURRED UNDER SASKATCHEWAN'S AUTOMOBILE ACCIDENT INSURANCE ACT

Type of Claim	1953-4	1954-5	1958-9	1959-60	1965-6
Collision and Comprehensive	$3,036,811	$1,315,923	$2,249,881	$2,667,737	$ 5,850,287
Property Damage	190,182	175,855	269,723	1,552,738	3,533,037
Accident Benefits	746,079	540,293	938,437	1,108,285	1,309,281
Fire and Theft	282,046	176,806	185,840	242,411	560,261
Public Liability	392,480	441,003	503,972	713,664	2,645,750
Total Net Claims Incurred	$4,647,598	$2,649,880	$4,147,853	$6,284,835	$13,898,616

Source: Ex. 288, Appendix 2.

Organization

The organization of the S. G. I. O. is very similar to that of a large general insurance corporation. The Board of Directors, however, is appointed by the Lieutenant-Governor-in-Council and the Chairman of the Board of Directors is a Cabinet Minister. The General Manager, appointed by the Board of Directors, is responsible for hiring underwriters, adjusters and supporting staff. These people are independent of the civil service and are not employed under the

Public Service Act.

Operations in the field of automobile insurance are not the only function of the S. G. I. O. Although the S. G. I. O.'s major line is automobile insurance it operates as a general insurer and writes business in other lines as well, such as fire, livestock and inland marine insurance. Figure I:A:1 indicates the organizational character of the S. G. I. O. Following Figure I:A:1 is Table I:A:2 which sets out the changes in coverage provided under Saskatchewan's A. A. I. A. as they have developed from 1946 to 1967.

Addendum

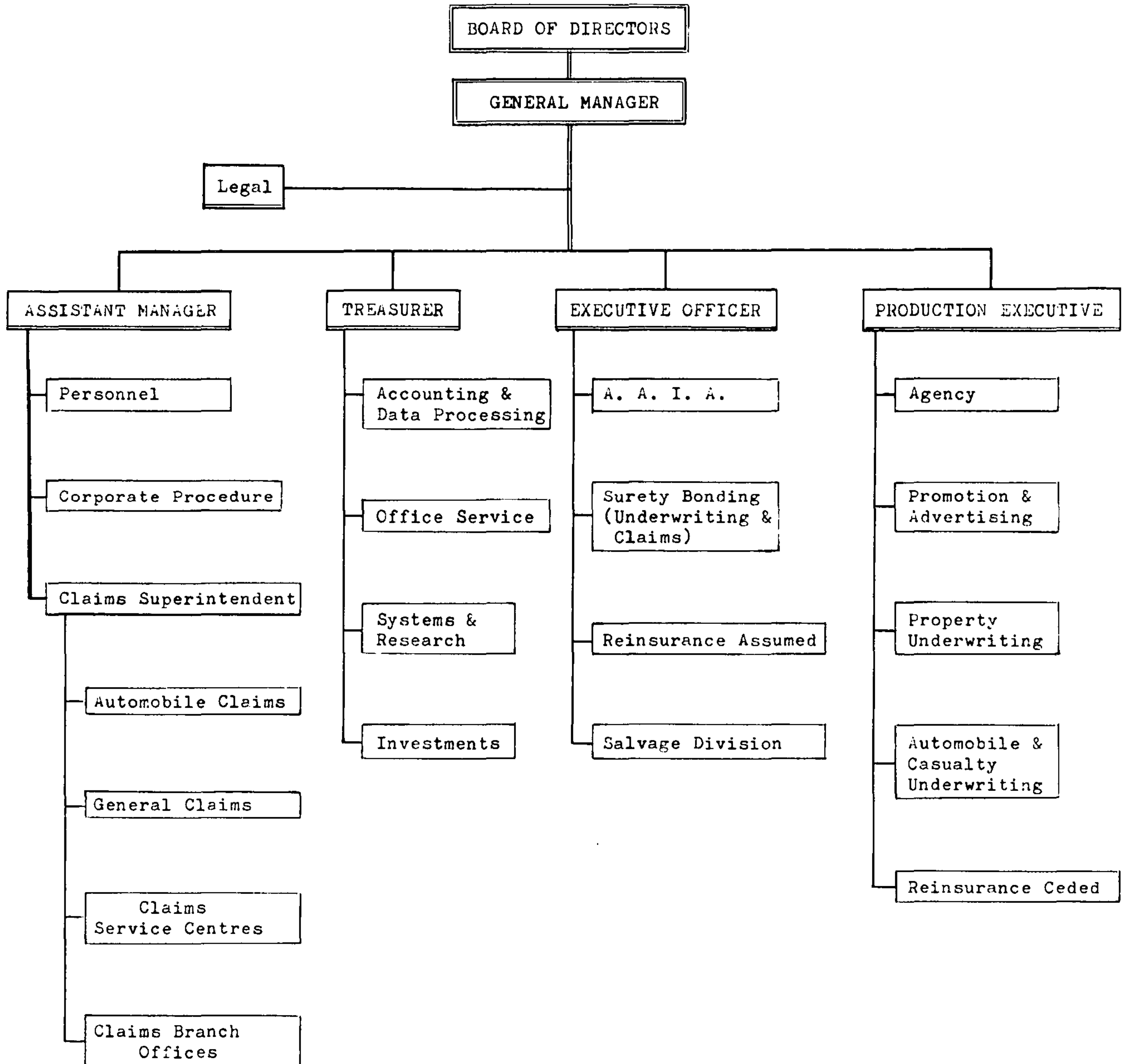
Following the completion of this part of the Report the Commissioners received from the General Manager of the Saskatchewan Government Insurance Office correspondence and a tabulation covering the results of the A. A. I. A. for the licence year ended April 30, 1968, and comparing these with the data from all preceding years since inception of the Plan.

The Commissioners are pleased to attach copies of these documents as Figure I:A:2 and Table I:A:3.

APPENDIX I:A

FIGURE I:A:1

ORGANIZATION OF S.G.I.C.



Source: Correspondence from S. G. I. C. Received July 24, 1967.

TABLE I:A:2

CHANGES IN COVERAGE PROVIDED UNDER SASKATCHEWAN'S AUTOMOBILE ACCIDENT INSURANCE ACT

YEAR	PART II				PART III			PART IV	
	Death Benefits	Permanent Disability Benefits	Weekly Indemnity	Supplementary Allowance	Collision	Fire and Theft	Comprehensive	Bodily Injury	Property Damage
	up to	up to	up to	up to	up to	up to	up to	up to	up to
1946-47	$ 5,000	$2,000	$3,000	$ 225					
1947-48	10,000	2,000	2,400	225	A.C.V.*				
1948-49	10,000	2,000	2,400	225	A.C.V.*			$ 5/10,000	$1,000*
1949-50	10,000	2,000	2,400	225	A.C.V.*	A.C.V.*		5/10,000	1,000*
1950-51	10,000	2,000	2,400	225	A.C.V.*	A.C.V.*		5/10,000	1,000*
1951-52	10,000	2,000	2,400	225	Replaced by Comprehensive		A.C.V.*	5/10,000	1,000*
1952-53	10,000	2,000	2,400	225			A.C.V.*	5/10,000	1,000*
1953-54	10,000	4,000	3,000	600			A.C.V.*	10/20,000	2,000*
1954-55	10,000	4,000	3,000	600			A.C.V.**	10/20,000	2,000**
1955-56	10,000	4,000	3,000	600			A.C.V.**	10/20,000	2,000**
1956-57	10,000	4,000	3,000	600			A.C.V.**	10/20,000	2,000**
1957-58	10,000	4,000	3,000	600			A.C.V.**	10/20,000	5,000**
1958-59	10,000	4,000	2,600	1,000			A.C.V.**	10/20,000	5,000**
1959-60	10,000	4,000	2,600	1,000			A.C.V.**	10/20,000	5,000
1960-61	10,000	4,000	2,600	2,000			A.C.V.**	10/20,000	5,000
1961-62	10,000	4,000	2,600	2,000			A.C.V.**	10/20,000	5,000
1962-63	10,000	4,000	2,600	2,000			A.C.V.**	10/20,000	5,000
1963-64	10,000	4,000	2,600	2,000			A.C.V.**	35,000 inclusive limit	
1964-65	10,000	4,000	2,600	2,000			A.C.V.**	35,000 inclusive limit	
1965-66	10,000	4,000	2,600	2,000			A.C.V.**	35,000 inclusive limit	
1966-67	10,000	4,000	2,600	2,000			A.C.V.**	35,000 inclusive limit	

A.C.V. -- Actual Cash Value (less whichever deductible applies)

* $100 deductible

** $200 deductible (on private passenger cars and farm trucks)

Source: Ex. 287-H, pages 21, 22 and 23.

THE SASKATCHEWAN GOVERNMENT INSURANCE OFFICE

From the Office of
THE GENERAL MANAGER

REGINA, SASKATCHEWAN

Mr. H.S.C. Archbold, Secretary
Royal Commission on Automobile Insurance,
Fifth Floor, Weiler Building,
609 Broughton Street,
VICTORIA, B.C.

21 May, 1968

Dear Mr. Archbold:

The results of The Automobile Accident Insurance Act for the license year ended April 30, 1968, have now been compiled. I am enclosing ten copies for your records.

As you know, these results are not normally released until audited and submitted to the provincial Legislature. My Minister, however, has kindly consented, in this instance, to waive the normal procedure and permit the use of this statement by the Commission as it sees fit.

It is interesting to note that the net surplus for the 1967-1968 license year was $ 1.7 million with a claims ratio to total income of 79.03 %, and an expense ratio to total income of 13.16 %. Please note that a 1% Driver Training Premium Tax was effective on April 1, 1967, and this tax is included with the expenses of the Fund.

I also wish to bring to your attention that we were able to appropriate $ 2 million from the surplus of the Fund, as a Premium Equalization Reserve. This reserve will reduce the fluctuation in premium rates in time of excessive claims. After provision for this reserve, the Fund has an unappropriated surplus of just over $ 600,000.

My Board of Directors and I are very pleased with these results and I continue to believe that this Plan provides the solution to the Automobile Insurance problem in Saskatchewan.

Yours very truly,

J. O. Dutton

JOD*HR
Enc: 10

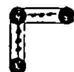
RESULTS OF THE AUTOMOBILE ACCIDENT INSURANCE ACT BY LICENSE YEAR

For the Period April 1, 1946 to April 30, 1968

TABLE I:A:3

	1946-61 License Year	1961-62 License Year	1962-63 License Year	1963-64 License Year	1964-65 License Year	1965-66 License Year	1966-67 License Year	1967-68 License Year	Total
INCOME									
Net Premiums Written	$ 62,096,691	$ 8,062,058	$ 8,714,922	$ 10,621,146	$ 12,003,049	$ 14,553,223	$ 17,905,123	$ 21,554,800	$ 155,511,012
Interest Earned	2,145,490	360,925	389,504	447,195	529,965	695,634	862,411	1,114,478	6,545,602
Sundry	18,455	6,302	-	-	-	-	63,363	923	89,043
Total Income	64,260,636	8,429,285	9,104,426	11,068,341	12,533,014	15,248,857	18,830,897	22,670,201	162,145,657
CLAIMS INCURRED									
Accident	9,136,560	1,223,884	1,271,610	1,070,043	1,198,484	1,309,281	1,614,586	1,627,642	18,452,090
Public Liability	5,214,093	1,016,631	1,355,095	1,812,394	1,581,815	2,645,750	3,433,599	3,975,005	21,034,382
Property Damage	4,822,335	1,685,505	1,920,390	2,484,473	2,890,524	3,533,037	4,199,561	4,079,110	25,614,935
Collision	26,990,313	3,000,195	3,405,676	4,091,734	4,832,561	5,850,287	6,790,493	7,665,948	62,627,207
Fire and Theft	2,141,770	272,137	331,212	287,244	453,333	560,261	467,965	567,730	5,081,652
Total Claims	48,305,071	7,198,352	8,283,983	9,745,888	10,956,717	13,898,616	16,506,204	17,915,435	132,810,266
% of Net Premiums Written	77.79 %	89.29 %	95.06 %	91.76 %	91.28 %	95.50 %	92.18 %	83.11 %	85.40 %
% of Total Income	75.17	85.39	90.99	88.05	87.42	91.14	87.65	79.03	81.91
EXPENSES INCURRED	10,789,768	1,549,268	1,728,132	1,938,381	2,041,880	2,226,189	2,234,518	2,984,087	25,492,223
% of Net Premiums Written	17.37 %	19.22 %	19.83 %	18.25 %	17.01 %	15.30 %	12.48 %	13.84 %	16.39 %
% of Total Income	16.79	18.38	18.98	17.51	16.29	14.60	11.87	13.16	15.72
OTHER									
Provision for Contingency and Catastrophe Reserves	526,325	-	-	-	-	3,675	-	-	530,000
Driver Education and Training	162,135	64,630	85,480	136,890	108,035	111,650	35,795	632	705,247
Total Other	688,460	64,630	85,480	136,890	108,035	115,325	35,795	632	1,235,247
SURPLUS OR (DEFICIT)	$ 4,477,337	$ (382,965)	$ (993,169)	$ (752,818)	$ (573,618)	$ (991,273)	$ 54,380	$ 1,770,047	$ 2,607,921
Less Provision for Premium Equalization established December 31, 1967									2,000,000
UNAPPROPRIATED BALANCE OF FUND, APRIL 30, 1968									$ 607,921

Note: The 1967-68 expenses include a 1% Driver Training Premium Tax which was levied on gross premiums written effective April 1, 1967.



CHAPTER

I

THE COSTS AND DELAY INVOLVED IN THE DETERMINATION AND RECOVERY OF COMPENSATION BY VICTIMS OF MOTOR VEHICLE ACCIDENTS

CHAPTER 1

Term of Reference (a):

THE COSTS AND DELAY INVOLVED IN THE DETERMINATION AND RECOVERY OF COMPENSATION BY VICTIMS OF MOTOR VEHICLE ACCIDENTS.

Scope

The scope of the inquiry by the Commissioners into the matters covered by the above Term of Reference is limited by the phrase: "in the determination and recovery of compensation."

The two particular items of costs and delay are separated in many respects and require separate and individual investigation. For that reason the Commissioners will report on their inquiries, their findings and their recommendations under the separate headings of: I. COSTS, and II. DELAYS.

I. C O S T S

In the opinion of the Commissioners the expression "costs" is deemed to embrace, but not be limited to, what are generally known as legal costs. Legal costs are limited in scope and are only one of the components of costs involved in the determination, etc. Legal costs will be dealt with first and then other attendant usual costs which the Commissioners have considered to be involved in the area of costs as comprehended by the Term of Reference (a).

Procedure Following Automobile Accident

A brief description of the steps which the Commissioners have found follow upon an accident will be timely here. This will enable the reason for costs being incurred, before or during recovery of compensation, to become apparent.

The first requirement of the citizen involved in a motor collision is that he make to the police a report upon the prescribed form, provided that the physical damage caused exceeds $100.00 or there has been bodily injury or death involved.[1]

A report is made also to the Insurance Company, and the Adjuster usually makes his investigation and endeavours to arrange a settlement. The claimant and the owner or driver may have retained a solicitor to act for him or them at the outset. Medical investigations may be made if there are physical injuries. Negotiations for settlement usually follow and, if an agreement can be reached, the claim is disposed of. Settlement may be reached at an early date or it may take many months in attainment. If there is difficulty, and if infants or incompetent persons are involved, proceedings may be commenced in the Court. The action may be pursued to trial and judgment obtained. In many of these steps a claimant may find the services of a solicitor useful.

"Costs" may have several meanings. These may be:

(a) the costs commonly known as legal costs,

(b) fees of adjusters, or

(c) the costs of time engaged upon the investigation of a claim. It is difficult to separate costs for time engaged from costs of time which is the subject of delay, but the explanation of the difference will be made apparent.

Legal Costs

In British Columbia, legal costs are recognized by Statute and are defined by Rules of Court, having the force of Statute. They are in fact remuneration of a

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1. Motor Vehicle Act, R.S.B.C. 1960, c. 253 as amended, S. 54.

solicitor of the Supreme Court of British Columbia and are gauged by a tariff of costs, which tariff has been approved from time to time by the Judges of the Supreme Court. Such a tariff embraces costs for work done in all Courts of the Province wherever and whenever costs are chargeable. The schedules of costs enforceable in British Columbia are set forth as part of the Rules of Court. Such costs are comprehensive of two ideas:

1. The whole costs which a client may be charged by his solicitor for services rendered called solicitor and client costs.
2. 'Party and Party' costs are such as are recoverable by a successful litigant against his unsuccessful opponent, in the usual result of the case.

Both 1 and 2 comprehend profit costs as distinguished from disbursements. That is to say, they both comprehend the remuneration of the solicitor and counsel. However, 2 comprehends only items arising directly out of the litigation. Disbursements are items of cash paid out by the solicitor for Court fees and witnesses and other cash outlays on behalf of the client and necessary to the business in hand for the client. The foregoing costs, though upon varying scales, are recognized for work done in all Courts of the Province. In relation to the Supreme Court of Canada there is a similar scale for costs incurred in the litigation which arises out of business brought before that Court. It should be mentioned here that costs before a Magistrate in civil matters brought before him pursuant to the Small Debts Court Act, R.S.B.C. 1960, Cap. 359, are not profit costs, but comprehend disbursements only. In the result before a Small Debts Court the litigant, even if successful, recovers no profit costs, consequently his solicitor, if he employs one for litigation in the Small Debts Court, must look to his client for payment of his account for services.

Additional Fees

The solicitor may look to his client for fees over and above those allowed him in a bill of 'party and party' costs. Such additional fees are not chargeable to the opponent unless 'solicitor and client' costs are awarded.

As to the reasonableness of the tariffs, the answer is a simple one for these, having been approved according to law, must be deemed to be reasonable and proper for the services involved. Reasonableness is the gauge by which the tariffs are to be employed and the maximum tariff charge may not be recovered by the solicitor in all cases.

Review of Bills of Costs

An outline of the procedure of review available to the client will be of use here. If a client employs a solicitor to act for him in business then the fees of the solicitor are capable of precise calculation. Firstly, the solicitor and client may fix and agree on the charge for services rendered and that agreement will settle the matter upon payment of the Bill. If a client desires to do so he may object to a bill as presented to him and require that it be taxed before the Registrar of the Court. The procedure follows of presenting the bill before the Registrar and the client may then, before the Registrar upon the "taxation" of the bill, attack the allowance of any or all the items set forth in the bill as presented. When the Registrar has determined the reasonableness of the bill his decision may be reviewed by a Judge of the Supreme Court whose decision is generally final.

Taxation may be had of both 'solicitor and client' and 'party and party' costs. The procedure is similar in all Courts where profit costs are recoverable, that

is to say, the Supreme Court of Canada, and the Provincial Courts as follows: the Court of Appeal, the Supreme Court and County Courts. A solicitor may present to his client a lump sum bill, which is a bill without tariff items, but simply indicating an amount of money for all fees for work done. Such a bill is taxable under similar procedure to that already described.

It is provided by the Legal Professions Act, R.S.B.C. 1961 C. 214. S. 108 (1), that a solicitor may contract with his client for a share of the proceeds of litigation, and such an agreement may be sustained if the terms are considered reasonable. A review may be had at the instance of the client (Sec. 108 (2)).

From the foregoing it is readily seen that the costs in the legal sense have been established by statutory enactment and the paying party has a right to have such costs reviewed in case of dissatisfaction. It has become a principle of law that where costs are payable by an infant, or out of a fund, they must be taxed in every case before payment.

The general principle in the Courts is that the winner of a trial or issue recovers his costs from the loser. If certain of the recommendations of the Commission are accepted and implemented, most of present day costs will not be incurred in the future.

Mr. H. C. Waldock, a solicitor, in his Brief said as to costs:

> It is submitted that the whole system of the schedule of costs and the rules for payment in should be changed. Appendix N should be changed so that in a personal injury action the costs awarded between the defendant and the plaintiff, the Party and Party Costs, should be 10% of the whole amount involved if the case is settled before action.

> Party and Party Costs should be 20% of the amount involved if the case is settled at any time before six weeks before trial, and the Party and Party Costs should be 30% of the amount involved if the case is settled at any time after six weeks before trial.
>
> Now there are three steps in that suggestion. The work in the preparation of a claim is done in three pieces. First of all, in getting the claim together, you have to interview the witnesses, you have to interview the doctors and get reports from them, get all the evidence together, that is to say, the receipts, take a statement from the claimant and check out every aspect of it and analyze it and get it ready in order to present it to an adjuster. That work has to be done whether the case - whether the writ is issued or whether the case is settled before the writ is issued.[2]

The Commissioners are unable to agree with the suggestions made by Mr. Waldock as quoted supra from his presentation. More particularly they are opposed to a bonus of costs for failure to settle before trial. A bonus in favour of the claimant by reason of delay would be more acceptable. It is quite easily seen that mere delays could not require more fees to be paid to the solicitor. He can be paid for work done in his professional capacity. Mere waiting could not be deemed to be work.

The foregoing description of legal costs has been made in some detail in order to explain that the policy of the Law of British Columbia is that legal costs should be reasonable in relation to the work done and that there is procedure available by which such reasonableness may be determined.

Costs as a Percentage of Recovery

It is of use to consider costs as a percentage of the recovery. In this fashion the item of costs becomes more meaningful, particularly in the field of comparison.

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2. 64/7398.

The All Canada Insurance Federation, as part of its brief, discussed the question of costs. Its witness D. B. McNeil testified regarding a study of costs made by him:

BROWN: Now, will you read the revised page 5, and I would ask the members of the Commission to strike out the existing page 5.

A. The revised results are:
As of September 16, solicitors who had correctly answered the questionnaire reported in respect of 126 claims generating awards or settlements in the sum of $602,965.00. The total fees charged by the solicitors on these claims amounts to $85,359.00. If one adds the disbursements which total $16,380.00, actual amounts paid out by claimants including such disbursements to their solicitors amounted to $101,739.00. Costs in the total sum of $50,631.00 were either taxed or agreed to in 114 of these 126 cases. When these costs that were taxed or agreed to came into the solicitors' hands two different practices were followed. In some cases the taxed or agreed costs totalling $22,637.00 were returned to the client and this became available to him for him to apply on his solicitor's fees when the bill was received. The other practice followed related to the remaining $27,994.00 which were retained by the solicitor and were credited by him on the total fees charged. This latter sum would be included, therefore, in fourth column of the questionnaire of total fees charged. The former method was followed in 72 instances and the latter in 42 instances. In view of the fact that the client got the benefit of such taxed or agreed costs whether returned or retained and thus the said sum of $50,631.00 should be deducted from the total fees charged to yield the sum of $51,108.00 in order to ascertain the net cost to the group. The result is that in considering the adequacy of compensation to claimants the total recovery of $602,965.00 costs these claimants the sum of $51,108.00. If expressed as a percentage this amounts to 8.5%.

Q. Now, Mr. McNeil you have mentioned the total awards exceeding $600,000.00. What was the size of awards making up that sum?

A. The awards varied from less than $100.00 to $45,000.00.

Q. And what was the most common or mode range of awards included in the survey.

A. The most common award was in the range between $1,001.00 and $2,000.00, and I should explain or define mode. Mode is a measure of central tendency that describes an amount or a range of amounts which was most common or fashionable in the survey.

Q. Now you have stated most common mode was $1,000 to $2,000.00. Can you give the costs paid by the claimants for these awards? By costs I mean the fees of the solicitors plus disbursements less the contribution made by the other party by way of either taxed costs or an agreed amount of costs?

A. Yes. For claimants who received awards between $1,000 and $2,000. their costs when expressed as a percentage of the award ranged between zero % and 28% of their award. The total cost for this range of awards was 6.7% of the total awards in the range.

Q. Are these costs to the claimant percentages typical of your findings throughout the other range of awards?

A. Yes, they are, and I think that this is understandable that when I reveal that costs to the claimant in over 80% of the awards was below $5000.00.
Q. Now, will you tell the Commission the cities from which answers were received by - from solicitors living in those cities?
A. Yes. Replies were received from solicitors in Prince George, Vancouver, Victoria, Kamloops and Nanaimo. Just coming back again to a typified finding or conclusion, I would say that all things considered, my conclusion is that on average cost will run at 5 to 10% of the award. This is my -
Q. Now, Mr. McNeil, have you prepared an exhibit which consists of simply the highlights of this statistical information which you have given?
A. Yes. I have.
BROWN: It might be convenient to have one of these.
SECRETARY: That will be Exhibit 186.[3]

The Exhibit aforementioned is as follows:

HIGHLIGHTS OF MCNEIL EVIDENCE	EXHIBIT 186
1. Number of awards in survey	126
2. Total value of awards in survey	$602,965
3. Awards in survey ranged between	Less than $100 to $45,000
4. Most common (mode) range of award	Between $1,000 and $2,000
5. Costs to claimant who received award in mode range, i.e. between $1,000 and 2,000	Cost was between 0% and 28% of award. Average cost for this range of awards was 6.7%
6. Cost to claimant in over 80% of awards was	Less than $500
7. Typical average cost to claimant for awards in lower ranges, i.e. awards up to $5,000	Average cost was 6.7% to 12% of award
Typical cost to claimant for awards in higher ranges, i.e. awards $20,000 and greater	Cost was less than 10%

Mr. McNeil's computations involved the deduction of whatever party and party costs were recovered in the litigation from fees, plus disbursements to produce what he calculated would yield legal costs. Using the working papers of

3. 58/6354-7.

the McNeil evidence in a different fashion, and more meaningfully, it appears that the total payout was $654,697.00 and the total legal expenses $103,960.00 or about 15.9% of the payout. Thus the solicitor of the claimant receives on the average 15.9% of the total payout of the insurer. In cases settled out of Court the claimant's lawyer receives 11.6% of the total award paid by the insurer while in litigated cases the average legal fees rise to 22.0% of the award. Legal costs in litigated cases are greater than in settled cases in every award range up to $17,000.00. The foregoing calculations have been made by the research department of the Commission and are detailed in Chapter 11, under term of reference (c).

In addition to the foregoing calculations by the industry witness McNeil, the research caused to be made by the Commissioners has established that the following are the approximate amounts of costs paid in litigated cases (cases with legal expenses and gross tort settlement). In these, legal expenses were shown to average $530.00 for serious injury cases in non-fatal accidents, $140.00 for minor injuries in non-fatal accidents and $380.00 for fatality cases.

These figures are shown in the following Table 1:1

TABLE 1:1

Number of Cases and Average Legal Expenses by Type of Accident and Injury (cases with legal expenses and gross tort settlement)

Type of Accident and Injury	Number of Cases	Average Legal Expenses
— Non-Fatal Accidents		
Serious Injuries	43	$530
Minor Injuries	66	140
— Fatal Accidents		
Fatalities	20	380
Serious Injuries	4	820
Minor Injuries	6	660

By reflecting median values of legal expenses as a percentage of gross tort settlement it was discovered that these would average 17% for serious injury cases in non-fatal accidents, and 16% for minor injury cases in non-fatal accidents, and 14% for fatality cases. These percentages are reflected in the following Table 1:2.

With reference to the following Table 1:2, it must be commented that the number of cases is too small to provide reliable estimates for injuries in fatal accident cases, although there is an indication that median legal expenses as a percentage of gross tort settlement vary little by type of accident and injury. However, there is wider distribution of this variable for both minor injury and fatality cases than for serious injury cases.

Comparisons

It is advisable that a comparison should be made because in North America it is the over-all experience with reference to automobile insurance that is affecting the public mind. It is quite certain that much of the attitude in the United States is carried forward into Canada and a very careful view should be taken in this connection.

The Commissioners, therefore, have considered the costs to be had in British Columbia in comparison with other systems and Court practices. It should be noted here that the principle of the charging and recovering of the costs by a party litigant is recognized in each Province upon a tariff system, generally speaking, somewhat comparable to the experience and practice in British Columbia. The practice of contingent fees has not been found generally acceptable in Canada.

TABLE 1:2

Number and Percent of Cases with Legal Expenses by Percent of Gross Tort Settlement, Type of Accident, and Injury (cases with legal expenses and gross tort settlement)

(Figures rounded)

Percent of Gross Tort Settlement	Non-Fatal Accidents				Fatal Accidents					
	Serious Injuries		Minor Injuries		Fatalities		Serious Injuries		Minor Injuries	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
1% to 10%	9	21%	24	36%	9	45%	2	50%	2	33%
11 to 20	20	47	20	30	4	20	2	50	1	17
21 to 30	9	21	7	11	3	15	--	--	--	--
31 to 40	3	7	4	6	1	5	--	--	1	17
41 to 50	1	2	1	2	--	--	--	--	1	17
51 to 60	--	--	4	6	1	5	--	--	--	--
61 to 70	--	--	1	2	1	5	--	--	--	--
71 to 100	--	--	2	3	--	--	--	--	1	17
100 or more	1	2	3	5	1	5	--	--	--	--
Total	43	100	66	100	20	100	4	100	6	100
Medians		17%		16%		14%		11%		21%

Briefly, it may be said that a contingent fee is the fee charged by an attorney for services performed on behalf of a client when the attorney is successful in obtaining some recovery. When he is unsuccessful he receives no fee. It is usually a previously agreed upon percentage of the recovery.

Contingent fees may be charged in the Province of Manitoba, but there are strict rules regarding the practice with regard thereto. In British Columbia as explained above, there may be an arrangement made for the charging of a percentage of the recovery. But generally speaking, the practice in British Columbia is along the lines of the recognition of the tariff of costs and the theory that all costs must be "reasonable". In the United States of America, generally speaking, litigants do not recover costs as they do in British Columbia against the loser in the litigation. The only costs recoverable there are official costs, that is to say, Court fees, etc..

Professor A. M. Linden explained the situation with regard to such official costs when he said:

> ...The plaintiff gets costs but costs are a very different thing. The costs the plaintiff gets there are just the expenditures to issue the various pleadings and to get discoveries. It is just actual expenses incurred and no provision there for a counsel fee to be acquired, so when the party recovers a thousand dollars plus costs, maybe he gets $1,000 plus $30 or $40, but his lawyer takes his third out of the thousand dollars, which we don't have in this country. In fact, it is a crime, I think.[4]

With reference to the expression "but his lawyer takes his third out of the $1,000.00", it is to be understood that generally the practice as to attorney's

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4. 40/4692-3.

costs in the United States of America is for the attorney to recover a percentage of the recovery for his costs. This is, of course, experience of contingent fees as a recognized basis for the charges of lawyers.

Professor Linden, in elaborating upon the information above, explained that attorneys in the United States charged about 33 1/3% of the recovery in settled cases, and about 40% of the recovery when the case is tried.

> BROWN: Insofar as it may be useful, are you familiar with charges made by attorneys in the United States in plaintiff's cases?
> A. Yes. Well, the Americans generally charge for these on a contingent fee basis. In other words, they take a certain percentage of the award and the normal percentage they take is one-third or 33 1/3%. This of course, is the settled cases. If the case must be tried, they normally charge about 40% of the recovery inclusive of costs, and in a few very complicated cases they might take as much as one-half of the award.
> Q. Have you any figures on the average legal expense incurred in any particular state?
> A. Well, there have been studies of two States -- Michigan and New York -- of the actual average legal expenses and in Michigan the figure came out to 32% of the amounts recovered went to lawyers and in New York City it was a little higher, 36% of the recoveries went to the lawyers.
> Q. I believe that in the study that will be read here, if one were to express the fee charged as a percentage in British Columbia to the extent that this study may be useful, it came to 10.19%?
> A. Yes.[5]

A recent Michigan Study showed that "collection expenses" which would include all legal fees, could range up to 60% of the settlement.[6]

The Commissioners have concluded that it is fair to assume that an average

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5. 40/4651.

6. Keeton and O'Connell, <u>Basic Protection for the Traffic Victim</u>, Little, Brown and Co., Toronto, 1965, p. 33.

recovery in the United States of America bears with it the likelihood of the attorney receiving one-third thereof for his fees.

It is perhaps logical that the charging of such high fees under a contingency can be justified in the fact that the lawyer has risked his time and effort against the possibility of receiving no compensation should he be unsuccessful in obtaining a recovery. However, Mr. Justice Botein of the Appellate Division, First Department of New York, states:

> But let us not lose sight of the undeniable fact that there is very little that is contingent about the contingent fee. Recoveries are obtained, mostly through the medium of settlements, in over 90 per cent of the claims handled by lawyers, so that the dread contingency of no recovery and therefore no fee is pretty remote . . . .[7]

Generally an Attorney will get a larger percentage of the recovery if he files a suit or as is said in Canada, his action is commenced in Court, than if he can obtain a settlement beforehand. The Defence Research Study mentioned above goes on to state:

> The most commonly approved practice seems to be to charge 25% of the amount recovered if the case is settled before an action is commenced; 33 1/3% if settled after suit is filed; and 50% upon appeal.[8]

That study also observes that where there is no direct supervision by the Courts there could exist a small percentage of lawyers who would immediately file suit without trying to settle, thus guaranteeing themselves a larger percentage of the recovery. It is upon record in the evidence taken before the Commissioners that awards in the United States are generally higher than

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7. A Study of Contingent Fees in the Prosecution of Personal Injury Claims, Defence Research Institute, Inc., Milwaukee, Wis., 1966, p. 7.

8. Ibid., p. 9.

they are in Canada. Reasons can be suggested for this. It could be that the more specialized and more aggressive plaintiff's Bar in the United States is better able to obtain larger awards than are obtained in Canada.[9] Commission Counsel questioned Professor Linden if a reason could be associated with the fact that the contingency fee exists in the United States as a general practice:

> RAE: Is it not also correct, however, in America, that juries in considering an award, or the Judge, certainly in some States, may take into consideration what you mentioned, namely that a very considerable percentage of the award would be taken by the attorney as costs?
> A. I think so.
> Q. Isn't that correct?
> A. Sure.
> Q. So that effectively they have an award of party and party costs but through a back door route?
> A. Well, you first said they may take this into account, and that may be the case.
> Q. They are permitted to under the law is what I mean?
> A. Yes. I think they are permitted to, but they don't necessarily take it into account.
> Q. But in the average case they are apprised of this when they are making their awards?
> A. Yes, I think that's right.[10]

It is quite obvious that if a jury is to be informed and if Judges are to take into consideration legal costs payable by a plaintiff in an action in making an award for damages that the judge and jury will have in mind an amount which may be allowed for the costs. That would be the one-third or better arrangement as indicated above. Consequently the jury may deliberately make a larger award in order to encompass the fees of the attorney. Thus we would appear to have in Canada a more economical experience with regard to costs of recovery so far as solicitors' costs are concerned.

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9. Keeton & O'Connell, op. cit., p. 152.

10. 40/4757.

It may be said in passing that the experience in British Columbia, as elsewhere in Canada and the United States of America, is that the engagement of a solicitor or attorney results generally speaking in a larger settlement or award of damages being made. This appears from the words quoted above and the research made on behalf of the Commission.

Other Items of Costs

Involved in the question of costs in relation to the determination and recovery of compensation are other items of expense chiefly:

1. Fees of adjusters, and claims costs
2. Delays

1. Adjusters' Fees and Claims Costs

As to item 1 supra adjusters may be, as they often are, upon a staff of an insurance company, or they may be independently employed and engaged by any and all insurance companies and interests requiring their services. The remuneration of adjusters is either through fees charged by them if they are engaged independently, or by salary if they are on the insurer's staff. It is a curious fact that no brief was presented before the Commissioners, by or on behalf of adjusters.

The Commissioners have concluded that the adjuster, whether he be engaged privately or permanently on the staff of a company, is a necessary person in the matter of claims under insurance policies. It is noted, in connection with the government insurance scheme of the Government of Saskatchewan, that the adjuster is necessary.

The fees of the adjuster do not appear, as do legal costs, as something the

claimant or his opponent must pay, but are absorbed as part of the claims costs of the insurer.

In relation to the over-all costs of establishing a claim the Commissioners took evidence and a typical sample of the information given is that provided by Mr. A. M. Harper, Q.C., on behalf of Wawanesa Mutual Insurance Company. The information given for the calendar year 1966, and limited to British Columbia only, is as follows:

Claims	Amount paid less recoveries	Claim cost	Average claim	Average claim cost
2505	$520,115.00	$63,942.86	$207.63	$25.52

The amount of $25.00 would appear from other corroborating evidence to be an approximate amount of the cost of establishing and settling a claim.

RAE: Now dealing with the matter of small claims, could you tell me whether there is a point in the adjustment of claims at which you reach an irreducible minimum adjustment cost?
MAKIN: I think so. I don't think it costs very much more in the handling of the claim, in the handling of a $2,500 claim or a $50.00 claim -- in that area.
Q. There must be an irreducible minimum in adjusting even a small claim, the simplest claim. You would put that figure in the area of what?
MCINTOSH: The cost? This would be just a personal opinion -- around $15.00.
Q. Is that the lowest? Do any care to disagree?
PARKIN: This would be hard to answer. It depends on the type of claims handling you have, whether you use your own adjuster or whether you hire an independent. While we have our own adjusting staff we don't handle all our own claims. Our average cost of handling claims, if my memory is correct, is somewhere in the neighborhood of $25.00, but this is a combination. The independent adjusting services would cost more than our salary of an employee.
Q. Would you agree, gentlemen, that there is no direct relationship between the amount of the claim and the adjusting cost?
MAKIN: On the very small claim?
Q. On any. I am not talking of legal costs, but adjusting.
PARKIN: I don't subscribe to that.
Q. Do they go up in the same ratio?
MAKIN: The majority would, generally speaking, yes.
Q. Is a $10,000 claim and the cost twice as much as a five, you don't

mean that?
MAKIN: No, but the greater the amount of the claim -- or rather the relationship bears to the amount of the adjustment in handling the claim.
Q. Is it not true to say on the basis of economics you can afford to spend only so much time in adjusting relatively small claims?
PARKIN: That is true.[11]

It would appear, therefore, that the average cost of processing a claim is in the neighbourhood of $25.00 inclusive of all the administration expenses of the company, adjusters' fees and other usual items of expense of establishing and paying a claim.

Comparision

The Saskatchewan Government figure given for similar expense is $18.00. The particulars furnished by the Saskatchewan Government Insurance Office are quoted as follows:

DEVINE: They are simple. We did some checking on this particular feature and we have established that the actual cost of adjusting a claim through our Drive-in-Claims Service procedure is $18.71 per claim. I should mention that we cannot break this as between general business and A.A.I.A. The Claims Department handle all types of claims and they are integrated and we cannot break it further from there.

I also ran a cost sheet on the use of independent adjusters, and this is taken from a fairly substantial sample of paid claims, 1966, and the average adjusting fee in Saskatchewan with the use of independent adjusters is $31.52, average fee outside of Saskatchewan is $81.26, and the overall average fee for independent adjusters on a sampling of just under 2,000 claims came to $50.35.
RAE: Auto claims --
A. In the second case primarily -- no, outside of the province would be automobile and inside the province -- no, these are all automobile, I am sorry.
WALLS: The last figure was --
A. $50.35.
CHAIRMAN: Yes, thank you.
DEVINE: Outside Saskatchewan, Mr. Brown, was $81.26.

CROSS-EXAMINATION (CONTINUED) BY MR. BROWN:

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11. 52/6124.

Q. Mr. Devine, you gave us some figures late yesterday on the cost per claim at claim centres?

DEVINE: Yes, Mr. Brown.

Q. And as I took you down you have a cost of $18.71 per claim in claims centres, and then you stated that the average cost for out-of-Saskatchewan claims is $81.26?

A. I was referring there, Mr. Brown, to claims that were handled by independent adjusters outside Saskatchewan.

Q. Yes, but these would be claims in respect of Saskatchewan vehicles that had been in accidents outside of Saskatchewan?

A. Yes, that is correct.

Q. Yes. Now, those figures are somewhat intriguing, and it is difficult to believe that some other explanation must go along with it.

A. Yes. Time did not permit last night, Mr. Brown, to qualify these figures to some extent. Dealing firstly with the independent adjusting fees, these figures were extracted from paid claims.

Q. How many claims?

RAE: Paid claims.

A. Paid claims.

BROWN: Oh, paid claims.

Q. Yes?

A. I am sorry. A total of 1,952 was our sample. This represents their actual fee and expense.

Q. That is 1,952 claims?

A. Yes.

Q. And the $81.26 would be the average cost?

A. I am sorry, I should give you the breakdown on that. Out of the 1,952 claims, 739 were out-of-province claims; 1,213 were claims that were handled by independent adjusters for us in Saskatchewan.

Q. Oh, I see.

A. The $81.26 then was the average fee on the 739 claims that were handled for us, and the average fee on the 1,213 claims handled for us in Saskatchewan was $31.52.

Q. Now, I would like to go into the $18.71 figure with you a little bit?

A. Yes.

Q. Is that figure derived from taking the cost of operation of all the claims centres and then dividing by some divisor?

A. Yes. I should explain, Mr. Brown, that we do not - I believe it has been disclosed in our report we do not employ a cost accounting system as such. It is therefore not possible for us to establish the exact cost which should be apportioned to the claims operation or the claims administration. I have, however, worked with our chief accountant to apportion the various overall claims to our various claims operations, and from the figures that we came up with we feel that the $18.71 per claim represents the true picture insofar as we are able to calculate.

Q. Is this the first time you have ever extracted that figure.

A. This is the first time I have done so, yes.

Q. Well, to your knowledge has it ever been extracted before?

A. Yes. The last figures that I had an opportunity to examine were for 1964.

Q. So it is not done on an annual basis?

A. I will say - it was missed - omitted in 1965. It has been done anually prior to that.

Q. Now, do you have any working papers that show how you arrive at that?
A. Yes.
Q. Would you have any objection if they were tabled? I don't want -
A. I believe Mr. Bortnick would want to explain a portion of this. Is that correct, Mr. Bortnick?
BORTNICK: Well, I think, as Mr. Devine said, we do not have a costs accounting system in our -- a lot of our expenses which are called indirect expenses are distributed on a certain formula that we have, and Mr. Devine, as claims superintendent, and his predecessor - Mr. Devine said he missed a year.
DEVINE: That is correct.[12]

The Commissioners have obtained an explanation regarding the $18.71 referred to (by correspondence with S.G.I.O.) and this figure they have determined is incorrect and should be taken as $18.80.

The difference in the cost $25.52 and $18.80 has been considered by the Commissioners and they have concluded that the expenses of the S.G.I.O. are not exactly comparable to the $25.52 of the Wawanesa. However, the difference of $7.00 is to be noted. From this the Commissioners conclude that claims costs of the industry could be considerably lower.

Cost Generally

In the wider field of cost, the popular idea may be determined to be "What do I get out of the dollar I have paid for my premium?" That is a study of another character and is to be found reported and explained under letter (c) of the Terms of Reference in Chapter 10. Reference will be made there to the components of the 33% factor used by the Industry for its cost factor (not claims costs). The item of 33% must include all costs of administration, for most companies unallocated adjustment costs and in a small part legal costs.

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12. 80/8896 - 81/8899.

Those legal costs are not such as are involved in legal proceedings but are simply those the company or insurer is chargeable with as part of its own normal operating expenses.

Term of Reference (a):

> The costs and delay involved in the determination and recovery of compensation by victims of motor-vehicle accidents.

II. D E L A Y S

DELAYS IN MAKING COMPENSATION

Delay is, of course, a relative term. To the sufferer from an accident, time holds a very different meaning than it does to those who patiently process his claim.

Therefore time consumed may not be classed in all cases as delay.

A system of law, because of its very nature, may be time-consuming in its operations.

Hence this Report will deal with delay under two headings which appear to be applicable to the study of delays in the processing of automobile accident claims. Accordingly, the Commissioners will divide the subject as follows:

(A) Delay attendant upon the system of fault or tort law, and

(B) Delay which may occur under the no-fault plan recommended by the Commissioners.

A. Delay Under the Fault or Tort System

The system of fault lends itself to delays. After an accident, where fault must be established before a claim may be settled, there is inevitably the question of who was at fault. The determination of that very important question may often take a very great deal of time. This will always be so unless

the facts of the accident are such as to enable a speedy conclusion to be made of the issue of fault. The Commissioners have concluded this after a careful comparison of performance between the procedure following the making of a claim under the fault system such as experienced in British Columbia and the procedure following the making of a claim under a no-fault system such as practised in the Province of Saskatchewan. Whatever may be the reason for it, if money is to be paid from one person to another and there is delay in making payment, such delay inevitably causes economic loss to the ultimate recipient.

The All Canada Insurance Federation with its brief submitted a Table showing the length of time taken in processing claims. This table is accepted by the Commissioners as one useful in their appreciation of the delays which follow upon a motor vehicle accident, in the ordinary way and indeed in the light of reasonably prompt action of the industry in clearing claims under the fault or tort system. Given the problem of the system of tort law, a record of performance is shown in Table 1:3 which is Table II of Section III A.C.I.F. Brief.[13] From this table it is seen that a total of 6066 claims was noted. That is a good sample to indicate experience, because it is large enough in its scope. It is seen that of the 6066 claims filed, 35.9% were settled within 15 days of the insurer being notified of the claim. Consequently, 64.1% of the claims shown in that table took various periods of time greater than 15 days before being concluded. On the far end of the time factor, 5% of the claims took 6 months to settle and .06% took from 1 to 2 years. It is to be noted that settlement in relation to Table 1:3 means settlement as the result of suit as well as negotiated settlement.

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13. Ex. 124.

Another table, Table 1:4 hereof, is based upon the 6066 claims exhibited as Table IV of Section III of the A.C.I.F. Brief and indicates the length of time taken to appoint an adjuster of the claims by type of claim. This table shows that in 89.1% of cases where adjusters were necessary, they were appointed within 15 days of insurers being notified of the claim. Such appointments were part of the cause of delay reported in Table 1:3.

In the process of settlement there were, of course, some claims which were litigated. No note has been given of the number of the 6066 sample of claims which were litigated. But a table was given of a sample of cases litigated in order to establish the length of time taken to complete litigation if an action had been commenced. This sample is set forth in Table 1:5 which is Table VI of Section III of A.C.I.F. Brief. Some modification was made of the original of that table to comprehend certain items, raising the sample from 30 cases to 52 cases. This sample is a small one and, while the data shown must therefore be accepted with reservations, the table does indicate that time is taken to litigate claims, many of which are settled before trial.

Table III of Section III of the A.C.I.F. Brief is Table 1:6 hereof. It is useful in indicating the causes of delay although the table was produced to show the reasons why claims were not paid. The text of the table indicates reasons which inevitably must have caused delays before the settlement of a claim could be said to be determined, whether or not any settlement in money was in fact made.

The actual breakdown of the larger sample of 6066 claims, into those settled and those still in litigation, appears in Table I of Section III of A.C.I.F.

TABLE 1:3

Time Taken To Settle Claims
(By Type of Claim)

Length of Time	Insured's Own Damage		Property Damage		Bodily Injury		Passenger Hazard		Medical Payments		Other		All Claims	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
7 days or less	866	37.4	269	14.7	16	8.0	4	4.1	9	16.4	6	50.0	1170	25.9
8-15 days	266	11.5	196	10.7	12	6.0	2	2.0	2	3.6	1	8.3	479	10.6
16-30 days	466	20.1	370	20.2	23	11.6	6	6.1	6	10.9	1	8.3	872	19.3
31-60 days	328	14.1	380	20.8	32	16.1	19	19.4	6	10.9	1	8.3	766	17.0
61-90 days	131	5.7	180	9.8	27	13.6	14	14.4	4	7.2	0	0.0	356	8.0
3-6 months	101	4.4	208	11.4	35	17.6	25	25.5	16	29.1	1	8.3	386	8.6
6 mo. - yr.	41	1.7	117	6.4	42	21.1	20	20.4	6	10.9	0	0.0	226	5.0
1-2 years	2	0.1	12	0.7	4	2.0	6	6.1	3	5.5	2	16.8	29	0.6
Unknown	116	5.0	96	5.3	8	4.0	2	2.0	3	5.5	0	0.0	225	5.0
Rejects	550		748		120		62		68		9		1557	
Totals	2867	100	2576	100	319	100	160	100	123	100	21	100	6066	100

Source: Ex. 124, A.C.I.F. brief, Sec. III, table II.

TABLE 1:4

Length of Time to Appoint Adjuster
(By Type of Claim)

Time	Insured's Own Damage		Property Damage		Bodily Injury		Passenger Hazard		Medical Payments		Other		All Claims	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Same Day	1863	65.0	1638	63.6	225	70.5	89	55.6	84	68.4	12	57.1	3911	64.5
1-7 days	599	20.9	651	25.3	78	24.5	56	35.0	34	27.7	5	23.8	1423	23.4
8-15 days	32	1.2	38	1.5	2	.6	1	.6	1	0.5	0	0.0	74	1.2
16-30 days	6	.2	13	.5	1	.3	1	.6	0	0.0	1	4.8	22	.4
31-60 days	4	.1	8	.3	0	0.0	3	1.9	0	0.0	1	4.8	16	.3
61-90 days	1	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	0.0
Over 3 months	1	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	0.0
Unknown	361	12.6	228	8.8	13	4.1	10	6.3	4	3.4	2	9.5	618	10.2
Totals	2867	100	2576	100	319	100	160	100	123	100	21	100	6066	100

Source: Ex. 124, A.C.I.F. brief, Sec. III, table IV.

TABLE 1:5

Length of Time to Complete Litigation
(By Result of Litigation)

Time	Settlement		Judgment for Plaintiff		Case Dismissed		Case Dropped		All Results	
	No.	%	No.	%	No.	%	No.	%	No.	%
Under 3 months	2	8.4	1	16.7	0	0.0	0	0.0	3	10.0
3-6 months	1	4.2	1	16.7	0	0.0	0	0.0	2	6.6
6 mo. - 1 yr.	7	29.1	4	66.6	0	0.0	0	0.0	11	36.7
1-2 years	14	58.3	0	0.0	0	0.0	0	0.0	14	46.7
Totals	24	100	6	100	0	0	0	0	30	100

Note: This table was amended when it was explained by the witness, McGill (36/4250-1) to make a total sample of 52 cases. The additions were: claims where no time was given, 7, 14 were classed as "other", and one as "reject" making 52 cases in all.

Source: Ex. 124, A.C.I.F. brief, Section III, Table VI.

Brief and it is made Table 1:7 hereof. From this it is seen that 4840 or 79.8% of such total 6066 were settled, 728 or 12% were dropped by the claimant after liability was denied and 39 or .6% of the claims were in litigation without counsel, and 44 or .7% were in litigation with counsel. A total of 415 or 6.9% of the claims were listed as "other". It must be stressed that no breakdown was made available to the Commission of the sample of 6066 claims into dollar value of claims settled. This was asked for by the Commissioners but was not forthcoming. However, two volumes of copies of claim forms aggregating some 730 bodily injury claims were filed with the Commission, and these reflected a very large majority of small claims.[14] Had dollar value claims been available, the Commissioners consider that the performance of industry in the sample would have been much more meaningful, for it is a fact that smaller claims, including those concerned with vehicle damage are most numerous, and most rapidly settled.

TABLE 1:6

Reasons Why Claims Not Paid		
Not covered by Policy	143	17.9%
Insured not at fault	543	67.9
Claimant not ready to settle for medical reasons	26	3.2
Disagreement on liability	45	5.6
Disagreement on quantum	22	2.9
Disagreement on liability and quantum	20	2.5
Total	799	100.0

Note: This table cannot be reconciled specifically with Tables 1:3, 1:4 and 1:7, but it represents 799 of the cases included in the gross total of 6066 of each of those tables. However a reconciliation is found in Ex. 132 in a general sense.

Source: Ex. 124, A.C.I.F. brief, Sec. III, Table III.

14. Ex. 124A and 124B.

TABLE 1:7

Disposition of Claims
(By Type of Claim)

Disposition	Insured's Own Damage		Property Damage		Bodily Injury		Passenger Hazard		Medical Payments		Other		All Claims	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Paid	2601	90.7	1855	72.1	200	62.7	97	60.6	74	59.9[a]	13	61.9	4840	79.8
Liability Denied and Claim Dropped	130	4.6	492	19.1	55	17.3	22	13.7	27	21.9	2	9.5	728	12.0
In Litigation: Negotiating Without Counsel	1	0.0	14	.5	8	2.5	15	9.4	1	.8	0	0.0	39	.6
In Litigation: Defence Counsel Retained	1	0.0	19	.7	16	5.0	7	4.4	1	.8	0	0.0	44	.7
Other	134	4.7	196	7.6	40	12.5	19	11.9	20	16.2[b]	6	28.6	415	6.9
Total	2867	100	2576	100	319	100	160	100	123	100	21	100	6066	100

Source: Ex. 124, A.C.I.F. brief, Sec. III, Table 1.

Notes: (a), serial 1, medical payments, %, more precisely 60.2
(b), " 5, " " " " " 16.3

Research by the Commission

Research by the Commission reflects the matter of delays. These findings relate to a sample. The sampling techniques used are described in Chapter 2 of this Report.

British Columbia Survey

(i) Of all cases in which a lawyer is seen, 59% of the claimants do so within 7 days of the accident, while 24% take from 7 days to 1 month, 13% from 1 to 6 months, and 4% take over 6 months.

TABLE 1:8

Time Between Accident and Seeing Lawyer
(cases in which lawyer seen)

Time	Number	Percent
under 7 days	151	59%
7 days to 1 month	60	24
1 to 6 months	34	13
over 6 months	10	4
TOTAL	255	100%

Source: Table 1:9

Table 1:9 shows that 32% of the serious injury cases in non-fatal accidents take a month or more to contact their lawyers.

(ii) The time from accident to final compensation is greatest in serious injury cases.

Table 1:10 shows the median time from accident to final compensation is 9 months for serious injuries in non-fatal and fatal accidents respectively, as compared with 3 to 5 months in other cases.

(iii) <u>The time from accident to final compensation tends to be greater the greater the compensation</u>.

This is most clearly shown by Table 1:10 for serious injuries in non-fatal accidents where the median time varies from 3 months for compensation in the $1 to $499 range up to more than 2 years for compensation in the $5000 and over range.

(iv) <u>The time taken for compensation creates serious financial problems most frequently in serious injury cases</u>.

Table 1:11 shows that the time lag from accident to final compensation creates serious financial problems in 37% of the serious injury cases in non-fatal accidents, and in 40% of the serious injury cases in fatal accidents. This contrasts with serious financial problems in 23% of fatality cases (the reduced figure no doubt a function of life insurance), in 16% of minor injuries in fatal accidents, and in 3% of minor injuries in non-fatal accidents.

(v) <u>The time to compensation creates serious financial problems more frequently the larger the amount of compensation</u>.

Table 1:11 shows that with serious injuries in non-fatal accidents, the per cent of serious delay cases increases from 17% to 45% as the amount of compensation increases. The comparable range for minor injuries in non-fatal accidents is 2% to 7%, and for fatality cases 15% to 33%.

(vi) <u>Cases involving suit experience much longer delays to compensation than those which do not involve suit</u>.

With serious injuries, the median time to compensation for cases involving suit is 21 months (Table 1:12), which compares to 9 months for all serious injury cases (Table 1:10). Similarly, for fatality cases involving suit, the

TABLE 1:9

Time Between Accident and Seeing Lawyer by Type of Accident and Injuries
(cases in which a lawyer was seen)
(figures rounded)

Time	Non-Fatal Accidents				Fatal Accidents					
	Serious Injuries		Minor Injuries		Fatalities		Serious Injuries		Minor Injuries	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
under 7 days	21	40%	77	59%	30	71%	6	86%	17	74%
7 days to 1 month	15	28	29	22	10	24	1	14	5	22
1 to 6 months	14	26	17	13	2	5	-	-	1	4
over 6 months	3	6	7	5	-	-	-	-	-	-
Total	53	100	130	100	42	100	7	100	23	100

TABLE 1:10

Total Number of Cases, and Median Time from Accident to Final Compensation, by Amount of Net Positive Compensation, Type of Accident and Injuries, (all cases in which compensation received and economic loss sustained).

Amount of Compensation	Non-Fatal Accidents				Fatal Accidents					
	Serious Injuries		Minor Injuries		Fatalities		Serious Injuries		Minor Injuries	
	Number	Median (mos.)	Number	Median (mos.)	Number	Median (mos.)	Number	Median (mos.)	Number	Median (mos.)
$ 1 - 499	13	3	515	3	16	4				
500 - 999	11	6	119	4	10	12				
1000 - 4999	44	13	42	5	14	6				
5000 & over	11	24+	-	-	12	6				
Total	79	9	676	4	52	5	10	9	25	4

TABLE 1:11

Total Number of Cases, and Percent in which Delay is Serious, by Amount of Compensation, Type of Accident, and Injury, (all cases in which compensation received and economic loss sustained).

Amount of Compensation	Non-Fatal Accidents: Serious Injuries		Non-Fatal Accidents: Minor Injuries		Fatal Accidents: Fatalities		Fatal Accidents: Serious Injuries		Fatal Accidents: Minor Injuries	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
$ 1 - 499			515	2%						
	24	17%			26	15%				
500 - 999			119	7						
1000 - 4999	44	45	42	7	14	29				
5000 & over	11	45			12	33				
Total	79	37	676	3	52	23	10	40%	25	16%

median time is 19 months (Table 1:12) rather than 5 months (Table 1:10), and for minor injuries in non-fatal accidents, 16 months (Table 1:12) rather than 4 months (Table 1:10).

TABLE 1:12

Serious delay suit cases in which compensation was obtained and economic loss sustained. Showing median time from Accident to Final Compensation by Type of Accident and Injury.

Serious Delay Suit Cases

Type of Accident and Injury	Number	Percent of Total Suit Cases	Median Time (months)
Non-Fatal Accidents:			
Serious Injuries	34	41%	21
Minor Injuries	28	4	16
Fatal Accidents:			
Fatalities	11	55	19
Serious Injuries	3		21
Minor Injuries	1		

(vii) The delays to compensation are more frequently serious in suit than in non-suit cases.

With serious injuries in non-fatal accidents, cases involving suit experience serious delay 41% of the time (Table 1:12), as compared to 37% for all cases (Table 1:11). The difference is greater in fatality cases with serious delay occurring in 23% of all cases involving suit.

(viii) Trial also increases the percentage of serious delay cases.

Although the numbers of cases is small, Table 1:13 shows the percentage involving serious delay is much larger for cases involving trial than for those which do not, in both serious injuries (non-fatal accidents) and fatalities cases.

TABLE 1:13

Effect of Trial on Delay in Compensation, by Type of Accident, and Injury (with cases in which tort settlement obtained and economic loss sustained)

Type of Accident and Injury	No Trial		Trial	
	Number	Percent Delay Serious	Number	Percent Delay Serious
Non-Fatal Accidents				
Serious Injuries	29	38%	5	60%
Minor Injuries	24	4	4	0
Fatal Accidents				
Fatalities	5	20	6	83
Serious Injuries	3	0		
Minor Injuries	1	0		

(ix) With suit cases, neither the time to compensation nor the percentage involving serious delay appears to depend on the amount of economic loss. (Table 1:14)

Attitude of Industry

It was, of course, the contention of the industry that under the tort system which the industry largely urged should be continued, there was satisfactory and speedy performance in the settling of claims made whether settled by negotiation or suit in the Courts. That may well be. Indeed the Commissioners are of the view that the performance was reasonably expeditious considering all the factors attendant upon the fault system. But they are of the view, nevertheless, that the fault system occasions much delay and economic loss when compared with other systems.

TABLE 1:14

Serious Delay Suit Cases in which Compensation was obtained and Economic Loss Sustained, showing Median Time from Accident to Final Compensation and Type of Injury by Amount of Economic Loss Sustained (at 7.5% discount)

Amount of Economic Loss	Non-Fatal Accidents					
	Serious Injuries			Minor Injuries		
	Number	Percent Delay Serious	Median (mths)	Number	Percent Delay Serious	Median (mths)
$1 to $499	9 ($1 to $999)	0%	23	15	7%	13
$500 to $999				13 ($500 to 2999)	0	20
1000 to 2999	10	60	22			
3000 and over	15	53	20			

Claims Performance - Saskatchewan

As to experience in the Province of Saskatchewan under the Saskatchewan A.A.I.A., the Commissioners have had evidence as to the length of time required for the processing of claims in that Province. A statistical estimate of delays in Saskatchewan is referred to in the work of Professors Keeton and O'Connell:

> Red tape and delays are said to be practically non-existent, with death claims settled generally within six weeks to two months after claim. With minor injuries, claims have been settled in less than two weeks. As a result, lawyers have been employed by claimants in only a very small percentage of cases, except those involving death claims where bringing the claim has been considered a part of settling the decedent's estate.[15]

Although those words were written seventeen years ago, the Commissioners, in the light of the evidence before them, see no reason why they should not assume

15. Keeton and O'Connell, op. cit., p. 145.

that they apply with equal force today.

The S.G.I.O. Brief, in describing its operation, shows how they are able to give fairly rapid service:

> A rather extensive claims organization has been developed with a view to furnishing to claimants under the Act, prompt and efficient service. In the larger centres -- Regina, Saskatoon, Moose Jaw and Prince Albert -- drive-in Claims Service Centres are established. A vehicle that has been involved in an accident anywhere in the surrounding district may be brought to a Claims Service Centre to be examined by an estimator. The estimator is first and foremost, a person who is experienced in the automotive repair business. At the Service Centres also are claims personnel whose function is to interview the insured, check coverage and ascertain other relevant facts. Claims arising out of personal injuries or death are also processed at Claims Service Centres by staff who largely specialize in this kind of claim. In the smaller cities of the province, there are no Claims Service Centres but in four of them there are Claims Branch Offices without drive-in facilities. From the Claims Service Centres and from the Claims Branch Office, adjusters travel to all parts of the province on a regular basis, furnishing information to, and assisting with, the claims of persons who find it impractical or inconvenient to attend at a Service Centre or Claims Branch.[16]

In Saskatchewan, a claimant has a short time period in which he must give his Notice of Claim under Part II:

> Notice of Claim must be given within fifteen days but if that is not practicable under the circumstances,notice must be given as soon as it is practicable.[17]

That, of course, must depend upon the circumstances of each case. On page 41, of the Brief it is stated that:

> Action or proceedings against the insurer in respect of loss or damage to the insured automobile, must be commenced within six months next after the happening of the loss or damage.

This compares with the one year allowed to have a writ issued in British Col-

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16. Ex. 288, p. 34.

17. Ibid., p. 35.

umbia. The brief of the Law Society of British Columbia supported the suggestion that an even longer period should be allowed for the commencement of proceedings. The Commissioners cannot agree with that suggestion but recommend that the period for any proceedings which may arise out of a motor vehicle accident should be shortened to a period of six months instead of one year unless the claimant can establish by adequate material before the Court that there should be a further time granted him in which to commence his proceedings. The plan of the Commissioners, of course, eliminates tort law and litigation generally. The Saskatchewan plan retains tort law for the additional insurance. The Saskatchewan Government Insurance Office in its brief on page 36 states the length of time that it takes a claimant to receive benefits after his claim has been approved.

> Benefits, except weekly indemnity, are payable within sixty days after Proof of Claim and weekly indemnity is payable within thirty days after proof. Every effort is made to ensure that weekly indemnity is paid at least once a month.

Although the brief of the Saskatchewan Government Insurance Office did not furnish any statistical record of delays or of time factors involved, it appears that compensation in that province must be paid rapidly. However that may be, the intent of the Saskatchewan Statute is to this effect. The brief says in that connection that the time for preliminaries

> . . . . may range from fifteen minutes to one hour or more, depending upon the volume of (office) traffic then being experienced and the complexity of the claim.[18]

In relation to the compulsory coverage in which the no-fault system is experienced, adjusters do not have to spend time in endeavouring to ascertain where

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18. <u>Ibid</u>., p. 40

the fault lies. Again, with compulsory insurance, delays involved over the uninsured motorist are, in theory at least, removed.

It appears in relation to the necessity for litigation that there is as much litigation in the Province of Saskatchewan as there is in the Province of British Columbia. At page 19 it appears that for the years 1965 to 1966 there were 48,900 claims filed. On page 37 of the brief of the Saskatchewan Government Insurance Office and relating to Part IV in particular it is said:

> . . . .Approximately 87% of claims for damages for personal injury or death are settled before action is started. Of the claims in which an action is started, approximately 90% are settled before trial which includes abandoned claims.

Delays in General

The Commissioners again refer to Professors Keeton and O'Connell for the assessment of experience in other jurisdictions and also to Professor Linden's observations with reference to the time factor. Professors Keeton and O'Connell say that there is

> . . . . no serious problem of court congestion and delay in litigation in England; small claims are tried within three to six months, and in the larger cases tried in the High Court, the lapse of time "between accident and trial is more likely to be a year"19

Delays in Australia, in contrast, are often as long as in the United States. Finally with regard to Ontario, Professor Linden says that it is generally faster to get a case to trial in B.C. than it is in Ontario.[20]

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19. Basic Protection for the Traffic Victim, p. 196.

20. 40/4650.

Professor Linden has said that in the Province of Ontario 13.4% of automobile injury cases have a Writ of Summons issued but in 1.2% of such cases a trial of issues is actually held. He observed that British Columbia experience shows roughly the same results. The experience in the Province of Saskatchewan very closely matches the foregoing computation.[21]

Professors Keeton and O'Connell, in advocating compulsory insurance without fault, state in their usual crisp manner the following:[22]

> Perhaps a special situation calling for special solution is presented when we are faced with a huge class of cases intractable to the fault criterion. Indeed, even if we should concede that the fault issue is a manageable one in traffic cases viewed one by one, their inordinate number (which will continue to mushroom, given more cars, more young people, and less space) might justify simplifying the issues for traffic cases alone in order to relieve the log jam. There comes a point at which we simply cannot afford the luxury of dissecting each traffic accident to see who is at fault for the purpose of deciding what compensation shall be paid. We end up spending more on the process than we do on compensation, and as the Michigan Study findings show -- far from satisfying people's sense of justice -- end up outraging them by the delay and anxiety involved in the process.

The Commissioners subscribe to the foregoing.

By simplification of the fault principle or by deciding fault early, or even by the elimination of fault altogether, as recommended by the Commissioners, time factors involved in making and receiving compensation may be reduced.

The brief of the Trial Lawyers Association, an informal group of lawyers interested in motor vehicle cases, stated in part:

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21. "Automobile Cases in British Columbia Courts", University of British Columbia Law Review, Volume 3, March, 1967.

22. Basic Protection for the Traffic Victim, p. 230.

1. <u>The matter of interim compensation</u>:

> Under the present system there are many cases where liability is not really in issue and where it is simply a matter of waiting for the necessary medical evidence to be available so that the Courts can have the necessary information before them in order to make a decision on the question of quantum of damages.
>
> In many of these cases where delay is occasioned by having to wait for medical reports on progress of the victims of the injuries before an assessment can be made as to quantum, the victims find that they are suffering by reason of the medical expenses, hospitalization expenses and drug expenses, to say nothing also of the loss of wages.
>
> Under the present system it is in practice almost invariably the case that the special damages, including such items as car repair bills, do not get paid until such time as the question of the general damages has been assessed.
>
> There might, perhaps, be some merit in consideration being given as to whether or not it would be practical to consider a system under which, in appropriate cases, a Court would have the authority to give an Order providing for interim compensation for special damages, to wit, medical, hospitalization and drug expenses, and car repair bills, where appropriate, and also where claims for loss of wages could be considered on an interim basis pending final assessment by the Courts.[23]

Evidence was given before the Commission that two companies had already adopted, on a very limited basis, the practice of early payment, namely: Allstate Insurance Company and Northwestern Mutual Insurance Company. However, Mr. G. W. McGill of All Canada Insurance Federation made the point that when liability is not completely determined, the making of interim payments may impair the defendent's case, should the case go to trial. That is to say, it can be construed as an admission of guilt. McGill's argument, however, is valid only when liability is in doubt. Professor Linden gave some evidence as to reasons why there has been some hesitancy in making interim payments:

> RAE: What, in your view, is standing in the way of this being done.
> LINDEN: Well, it is being done by some insurance companies I know, and

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23. 7/828-29.

the proposal in this brief recommends something like that. The proposal in Ontario recommended something there and there the Government stood in the way of it, and the law stands in the way of it. In British Columbia the problem is that the insurance company might not be obligated to pay anything and it is the determination of fault and non-fault that makes this a difficult question. When it is a clear liability case the insurance company could pay some payments in the meantime, and some do.

Q. You tell us of some that do, where it is a clear liability case, without the ultimate being determined?

A. I know the North-Western Mutual Insurance Company does.

Q. They told us they were planning on this, I think, that this was a new concept.

A. I think they do. I know the Allstate Insurance Company does it and I have heard of other companies doing that. You see, there are also problems of admission of liability and the securing of releases, and you can get into some problems with that. It is kind of a dangerous thing for an insurance company to do because they may make some payments and then find out the law does not require them to pay at all. Then they may have some difficulty in getting their money back.

Q. So that fundamentally it is this matter of fault and liability in its various aspects that is, if one can call it that, the difficulty?

A. It is fault and also it is the problem of releases and admission of liability, that sort of thing.[24]

Allstate Insurance Company has inaugurated a new program which they call "Payment in Advance". In their Brief, read by R. E. Bethell, they say:

> Under this system and in cases where our insured is wholly responsible, payments are made immediately after the accident and during the injured person's recovery period. The claimant is not forced to carry the financial burden for out-of-pocket expenses resulting from an accident he didn't cause.... We stand ready to immediately reimburse him for expenses.... When recovery of the injured party or parties is finally complete we then finalize the claim by payment of additional amounts for: (1) Inconvenience, paid and suffering. (2) Any unpaid special or liquidated items as agreed upon between the claimant and the insurers.[25]

If the Fault System is to be continued, then the only set of circumstances that could warrant any statutory requirement that interim payments be made in relation to the damages suffered by the victim of a motor vehicle accident

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24. 41/4789-90.

25. 20/2298-9. Its limited use to date is indicated at 22/2608-9.

would be where liability has been admitted. If, on the other hand, the scheme should be one of no-fault and in fact an accident scheme whereby the motorist has insurance for the protection of himself and those who drive with him against accidents generally, then, of course, when an accident has occurred there is no question over recovery of damages. In such circumstance it would be eminently feasible that, where necessary, there should be interim payments until the final assessment has thereafter been made. There could be little embarrassment to the victim then, and not as at present where there is sometimes very considerable embarrassment arising from delays.

B. Delay Under the No-Fault Plan Proposed by the Commissioners

The plan proposed by the Commissioners will result in claims being paid promptly. There will be no longer disputes over the delaying question of fault. The claimant having established his involvement in an accident, and his injury and damage, will file his claim and may be in receipt of some payment of money within the space of one week of the filing of his claim. Therefore, instead of as shown by Table 1:3, 36.5% of claims being settled within 15 days of the filing of the claim, there should be a majority settled to the point of the payments provided by the policy of insurance being made, or commenced to be paid where payable by instalments, within the 15 day period. All systems cannot be perfect and there will doubtless happen some longer delays than fifteen days, but there will be few claims where payment will not be commenced a very short time after the claim has been filed. It must be appreciated that the claimant need establish only the fact of appropriate insurance, an accident involving a motor vehicle, and injury or damage but not the cause or fault thereof. This is the important change which will follow the recognition of the fact that what occurs upon the highway is accident and not something the proof of the blame for which must inevitably call for decisions which take

considerable time to be made.

In this regard also, the economics of the elimination of the factor of delay by the plan must not be overlooked. They are of great significance.

Tables have been prepared by the research staff of the Commission and reflect estimates of economic savings to follow settlement under the plan proposed by this report.

Economic Cost of Delay in Compensating

Where the victim of a motor vehicle accident experiences delay in receiving compensation, the delay causes him to suffer an economic loss. The cost to the victim is an opportunity cost; he loses that amount he could have earned on the lump sum settlement had payment been made promptly. If interest is paid on any portion of a final judgment, then the victim's economic loss due to delay is, of course, reduced by the amount of such interest received.

The Commission estimated this loss suffered by victims of accidents in 1963 using interest rates of 5.0% and 6.0%, compounded quarterly.

The Data

The data relating to delays, presented in Appendix 1:A to this chapter, were taken from research studies made by the Commission relating to accidents in British Columbia in 1963, and include only those cases in which victims

received compensation.[26]

The Commission's statistical samples included 1192 injury victims[27] and 61 fatalities. Since the total injured in British Columbia in 1963 was 14,585, and the number killed was 360,[28] the numbers of injury victims and fatality victims receiving compensation were increased by factors of 12.2357 and 5.9016 respectively. (See Appendix 1:A, Table 1:A:1). This procedure produces estimates of the total number of 1963 accident victims receiving compensation.

e.g., First Category: Compensation range $1 - $499
Delay range: less than 6 months
Sample size: 493

Injuries :	480 x 12.2357	=	5,873
Fatalities:	13 x 5.9016	=	77
Estimate of total for all of B.C. in 1963		:	5,950
Average cost per claim[29]			$250.00

Estimate of total compensation in first category: $1,487,500.00

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26. Sources of Compensation include Insurance (Automobile, Life, Medical, Hospital, and Accident) as well as amounts received from the other person or persons responsible, or from such sources as the Workmens' Compensation Board, the Traffic Victims Indemnity Fund, employers (sick leave), welfare payments, and future sums expected from Pension Funds.

27. Of the 1192 injury victims in the sample, 58 were injured in fatal accidents. Because of the larger sampling fraction for the fatal than for the non-fatal accidents, "pooling" the two groups together will produce an estimate of the total which is slightly biased towards victims injured in fatal accidents. This bias should not significantly affect the results of this study, however.

28. Source: Motor Vehicle Branch Annual Report, 1963, p. G26.

29. It was assumed that the compensation amounts would be evenly distributed within each of the indicated ranges, up to $50,000. The average compensation amount per claim was therefore taken to be the mid-point of the range. The last range, however, was 'compensation over $50,000.' The average compensation amount per claim was therefore taken to be $50,000, which is necessarily an underestimate.

(footnote continued on next page)

Results

Estimates were made of the total economic benefits which would accrue to all victims if all delays in compensation were reduced to 2 weeks. It was noted that of the estimated total of 9,979 victims receiving compensation, 7,830 or over 78% suffered delays in compensation of less than 6 months. A second estimate was therefore made excluding these cases, and assuming that all delays were reduced to an average of 3 months, rather than two weeks. The results of the calculations are presented in detail in Appendix 1:A, Table 1:A:2. The total economic cost of delays over two weeks was found to be $525,794, while delays over 3 months suggest a cost of $395,791. Using a 5% interest rate these figures would be reduced to $435,626 and $327,937 respectively. Because of the overly conservative nature of the assumptions used, the figures presented can at best be considered rough approximations. The distribution of the economic cost among the various delay categories is presented graphically in figures 1:1 and 1:2, which follow.

It is interesting to note that although less than 22% of accident victims suffer delays of over 6 months, they suffer over 88% of the economic cost of delays over 2 weeks. Similarly, although less than 15% suffer losses in excess of $1,000, they suffer over 87% of the economic cost of delays over 2 weeks.

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29. (continued from previous page)

Similarly the average delay time was taken to be the mid-point of each of the indicated ranges, except for 'delays over 2 years'. In this case the average delay was assumed to be 24 months.

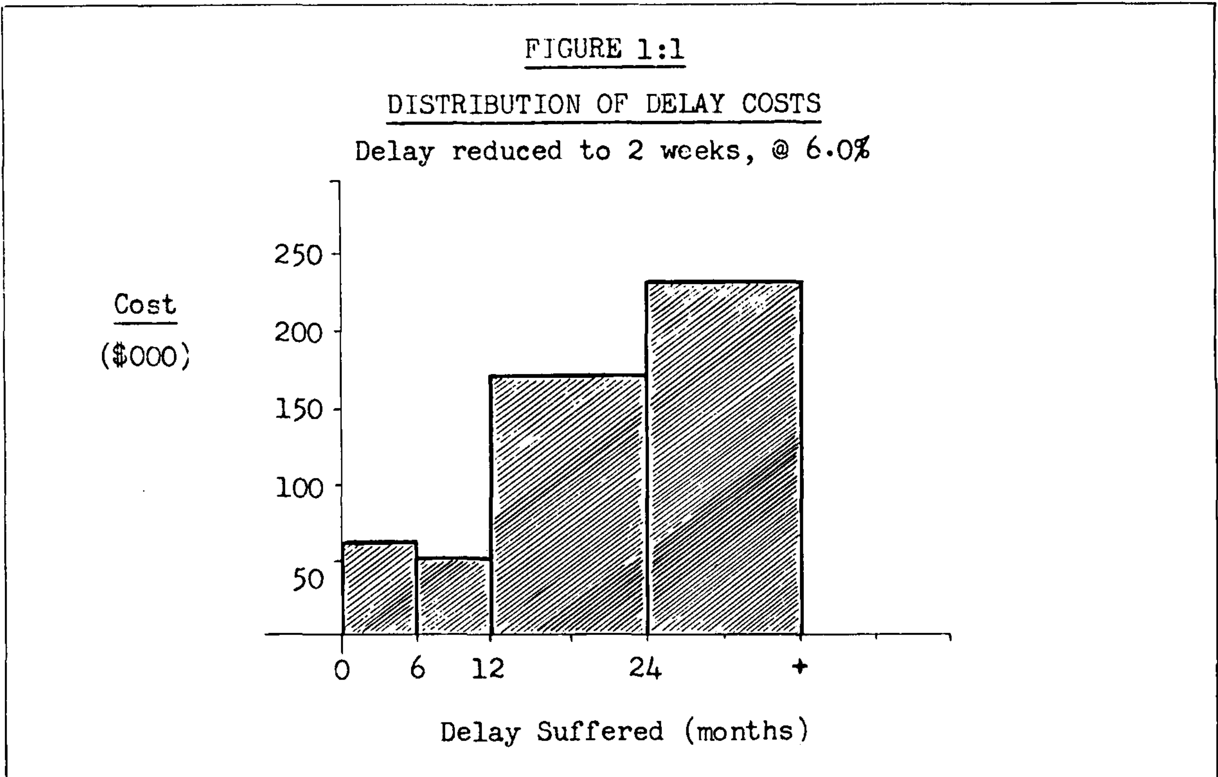


FIGURE 1:1
DISTRIBUTION OF DELAY COSTS
Delay reduced to 2 weeks, @ 6·0%
Cost
($000)
250
200
150
100
50
0
6
12
24
+
Delay Suffered (months)

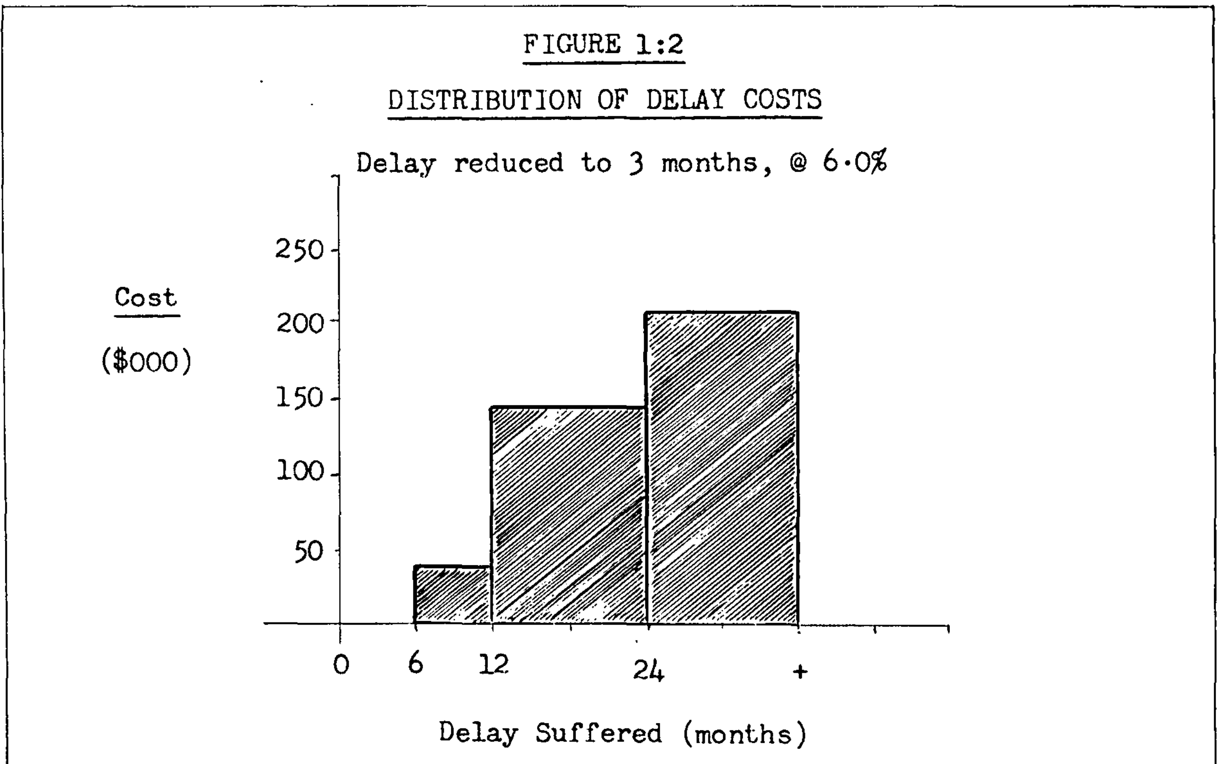


FIGURE 1:2
DISTRIBUTION OF DELAY COSTS
Delay reduced to 3 months, @ 6·0%
Cost
($000)
250
200
150
100
50
0
6
12
24
+
Delay Suffered (months)

APPENDIX
TO
CHAPTER
1

1:A:1 Claims Compensated by Amount Received and Delay in Receipt.

1:A:2 Estimated Costs of Delay.

7.

APPENDIX 1:A

TABLE 1:A:1

Number of claims compensated, by amount of compensation received and delay in receipt. (The figures have been expanded from the statistical sample to represent estimates of B.C. totals).

Delay

Average Delay	3 months	9 months	18 months	24 months	Totals
Amount of Compensation	0-6 months	6-12 months	12-24 months	over 24 months	
$1 - $499	77 5,873 5,950	6 563 569	6 159 165	6 73 79	95 6,668 6,763
500 - 999	24 1,211 1,235	6 220 226	24 147 171	6 61 67	60 1,639 1,699
1000 - 2999	41 526 567	12 159 171	18 220 238	6 135 141	77 1,040 1,117
3000 - 4999	6 12 18	0 24 24	0 61 61	6 49 55	12 146 158
5000 - 9999	6 24 30	6 12 18	6 12 18	0 49 49	18 97 115
10000 - 24999	18 0 18	6 0 6	0 37 37	6 24 30	30 61 91
25000 - 49000	0 0 0	0 0 0	6 0 6	0 12 12	6 12 18
50000 +	12 0 12	6 0 6	0 0 0	0 0 0	18 0 18
Totals	184 7,646 7,830	42 978 1,020	60 636 696	30 403 433	316 9,663 9,979

The three figures in each category represent:

No. of fatalities compensated
No. of injuries compensated
Total Compensated

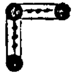
TABLE 1:A:2

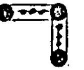
Distribution of Estimates of Costs of Delays Over Two Weeks, and Over Three Months, at 6% Interest

(Plus estimates for totals @ 5%)

DELAYS

Amount of Compensation	0-6 months	6-12 months	12-24 months	24+ months	Totals	Delay
1 - 499	$ 0	$ 4,300	$ 3,188	$ 2,169	$ 9,657	3 months @ 6%
	18,876	6,159	3,752	2,445	31,232	2 weeks @ 6%
500 - 999	0	5,123	9,911	5,517	20,551	3 months @ 6%
	11,754	7,339	11,664	6,221	36,978	2 weeks @ 6%
1,000 - 2,999	0	10,337	36,784	30,964	78,085	3 months @ 6%
	14,391	14,809	43,292	34,912	107,404	2 weeks @ 6%
3,000 - 4,999	0	2,902	18,856	24,156	45,914	3 months @ 6%
	914	4,157	22,192	27,236	54,499	2 weeks @ 6%
5,000 - 9,999	0	4,080	10,432	40,351	54,863	3 months @ 6%
	2,855	5,846	12,278	45,496	66,475	2 weeks @ 6%
10,000 - 24,999	0	3,174	50,037	57,645	110,856	3 months @ 6%
	3,997	4,546	58,890	64,995	132,428	2 weeks @ 6%
25,000 - 49,999	0	0	17,388	49,410	66,798	3 months @ 6%
	0	0	20,464	55,710	76,174	2 weeks @ 6%
50,000 +	0	9,067	0	0	9,067	3 months @ 6%
	7,614	12,990	0	0	20,604	2 weeks @ 6%
Totals @ 6%	$ 0	$ 38,983	$146,596	$210,212	$395,791	3 months
	60,401	55,846	172,532	237,015	525,794	2 weeks
Totals @ 5%	$ 0	$ 32,445	$121,560	$173,932	$327,937	3 months
	50,344	46,431	142,844	196,007	435,626	2 weeks

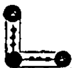




CHAPTER

2

RECOVERY, AND ADEQUATE COMPENSATION



CHAPTER 2

RECOVERY, AND ADEQUATE COMPENSATION

The Commissioners' Report upon the inquiry into:

Term of Reference (b):

> The portion of total damages that are recovered by victims of motor vehicle accidents by court proceedings and by settlement and whether adequate compensation is obtainable by such victims under present procedures.

Introduction

There is a certain amount of psychology to be considered and understood in this connection.

It is natural that under a combative or tort system of recovery the claimant should almost inevitably lead off with a large amount for his claim, he having suffered at the hands of another, and the desire for retribution being frequently a characteristic attitude in such circumstances. Were he to be charging himself, he would be conservative to the extreme in assessing his damages. If he insures himself, and his own conduct becomes the gauge of his recovery and with it the gauge of attendant rates of premium, then he will likely be more modest and moderate in his outlook. If he fails to insure, it is a natural penalty and result that he should recover nothing. There must be firmness to the law somewhere in this gruesome business of mayhem-upon-wheels.

Responsibility

It is not a wrong concept, the Commissioners conclude, that those who drive should be responsible for their own safety physically and practically. As to the latter, this should be by the holding of assets sufficient to enable payment to be made for damages suffered, and, in the absence of such assets, insurance

by the individual driver against his own loss. In such an atmosphere the motorist will be more careful in his conduct than under the tort system sensing that he may then help more deliberately in the reduction of his claims and consequently of his premiums, and in the reduction of accidents upon the highways out of which claims arise.

Courts and Judicial Determinations

In our system of the rule of law it must be recognized that the award of the Court, or other authority charged with the duty, is a final and ultimate determination of the matter litigated. It is assumed when a judgment has been pronounced that the litigant can have no greater right and no greater award of damages than those ordered or awarded in the judgment. The award of damages is ascertained in legal proceedings by the Judge; or the proceedings are assisted by the verdict of a jury if the case be tried by a Judge sitting with a jury. Therefore the Judgment concludes the issue as to whether or not the full amount of damages or compensation recoverable has, in fact, been determined. This statement, of course, imports the rider that all appeals which may be lawfully had, have been had and concluded.

While the statement just made is a truism, it is not necessarily to be regarded as precluding exploration by the Commissioners, and argument on the question of quantum of damages recoverable, or which should be recovered, by reason of the economic condition of things or the nature and extent of the injuries sustained.

The Courts may proceed upon recognized principles and establish an award which may not meet with popular approval. The popularity of the award, however, is not the measure, for the measure must be the product of lawful procedure. Again, some awards for similar wounds and injuries may differ -- and even great-

ly differ -- in different Courts,but the result of the final adjudication must be taken as the just determination of the matter. If an award is in essence inadequate or unjust in the light of all the circumstances, such must be taken to be the occasional casualty of the system under which these things are done, and not as evidence of failure of the system.

EXTENT OF USE OF COURTS

The courts are used in only a fraction of the claims presently arising out of motor vehicle accidents. The submission of All Canada Insurance Federation indicated the result of a survey made of claims. Of some 6066 claims made, 79.8% or 4840 were paid without litigation; 728 were dropped; 39 were in litigation without counsel; and 44 were in litigation with defence counsel retained, and 415 were disposed of otherwise. Of 1392 writs issued in automobile cases out of the Vancouver Registry of the Supreme Court of British Columbia, only 88 cases went to trial, or 6.3% of actions commenced. Similarly, the research by the Commission shows that only 1% of non-accident cases and only 5% of fatal cases, get to trial. Those percentages were ascertained from a sample of 1134 non-fatal and 119 fatal cases as appearing in Table 2:1. But it must not be lost sight of that the result of litigation in the Courts sets the gauge for the assessment of damages that must be recognized as the ultimate that may be recovered. Consequently, the decisions of the Courts must be a guide to those who settle claims as well as to the Judges in cases tried before them.

COMPENSATION

In the area of compensation, a survey directed by the Commissioners has been made,and its results will be discussed hereafter. The popular view of compensation in the aspect of the motor vehicle is the award of a court of law, as indicated above, known as "damages". This view will be dealt with and explained.

TABLE 2:1

Percentage and Number of Persons Receiving Net Tort Settlement at Successive Stages of Claim and Litigation by Type of Accident

Stage of Claim and Litigation	Non-Fatal Accidents		Fatal Accidents	
	Number	Percent	Number	Percent
No Net Tort Settlement:				
No lawyer	559	49%	41	34%
Lawyer hired, no suit filed	18	2	12	10
Lawyer hired, suit filed, no trial	0	0	0	0
Lawyer hired, suit filed, trial	0	0	0	0
Sub-Total	577	51	53	45
Net Tort Settlement Received:				
No lawyer	392	35	6	5
Lawyer hired, no suit filed	102	9	44	37
Lawyer hired, suit filed, no trial	53	5	10	8
Lawyer hired, suit filed, trial	10	1	6	5
Sub-Total	557	49	66	55
TOTAL	1134	100	119	100

However, it is elementary to this report to say that "compensation" is a much broader term than an award of damages by the Court. "Damages" as compared to compensation may be defined strictly as the amount in cash, according to the opinion of the Court, required to restore the injured person to his former condition. The latter result is often quite impossible. However, it is the theory of an award of damages that in principle it accomplishes, and is in fact, Restitutio in Integrum: i.e., restoration of the injured to his former condition or standing. An acceptable discourse upon the law relating to damages recoverable was included in the brief presented by All Canada Insurance Federation, Section 6, and is quoted now:[1]

1. Ex. 124, All Canada Insurance Federation, Brief, Section VI: "Tort System -- A Discussion of the Adequacy of Compensation", Vancouver, 1966, pp. 1-7.

SECTION VI: TORT SYSTEM -- A DISCUSSION OF THE ADEQUACY OF COMPENSATION

. . . Personal injuries interfere with human happiness and the individual prefers to have his injury evaluated on an individual basis for each case depends upon its own peculiar facts and experience shows that the facts can vary infinitely. Lord Wright in Davies v. Powell Duffryn stated:

> "There is generally so much room for individual choice so that the assessment of damages is more like the exercise of discretion than an ordinary act of decision."

Under the Tort system the dominant rule is that expressed by Lord Wright in Liesbosch, Dredger v. Edison (Owners) (1933) A.C. 449 when he stated:

> ". . . the dominant rule of law is the principle of restitutio in integrum and subsidiary rules can only be justified if they give effect to that rule."

It is obvious that in a personal injury case it is impossible to apply this principle in a literal manner as can be done in the case of a chattel where the chattel can be physically repaired or replaced with the identical article on the open market. The most recent authoritative statement on this subject is that of the House of Lords in H. West & Son Ltd. v. Shephard (1963) 2 All England Reports Page 625 at Page 631 where Lord Morris stated:

> "My Lords, the damages which are to be awarded for a tort are those which 'so far as money can compensate, will give the injured party reparation for the wrongful act and for all the natural and direct consequences of the wrongful act'. (Admiralty Commissioners v. Susquehanna (Owners) The Susquehanna). The words 'so far as money can compensate' point to the impossibility of equating money with human suffering or personal deprivations. A money award can be calculated so as to make good a financial loss ... But money cannot renew a physical frame that has been battered and shattered. All that judges and courts can do is to award sums which must be regarded as giving reasonable compensation. In the process there must be the endeavour to secure some uniformity in the general method of approach. By common assent awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that so far as possible comparable injuries should be compensated by comparable awards."

The courts have drawn back from attempting to give a perfect compensation in the sense of a sum of money that is equivalent to the injury. Lord Devlin in his dissenting speech endeavoured to find a practical measure for assessing the subjective element of damages in these words:

> "What is meant by compensation that is fair and yet not full? I think it means this. What would a fair minded man, not a millionaire, but one with a sufficiency of means to discharge all his moral obligations, feel called on to do for a plaintiff whom by his careless act he had reduced to so pitiable a condition? Let me assume for this purpose that there is normal consciousness and all the mental suffering that would go with it. It will not be a sum to

> plumb the depths of his contrition, but one that will enable him to say that he has done whatever money can do. He has ex hypothesi already provided for all the expenses to which the plaintiff has been put and he has replaced all the income which he has lost. What more should he do so that he can hold up his head among his neighbours and say with their approval that he has done the fair thing?"

The foregoing quotation indicates the practical approach made by judges. Lord Morris in the same case stated at page 633:

> "My Lords, in reference to a judicial process which must so often be undertaken such as that as the assessment of damages for personal injuries I would favour simplicity of expression and an absence to the greatest extent possible of any elaborate or complex formula. I consider that it is sufficient to say that a money award is given by way of compensation and that it must take into account the actual consequences which have resulted from the tort."

In considering what are the actual consequences the judges use the convenient expression "heads of damage". These include:

(a) expenses incurred;
(b) pecuniary loss suffered;
(c) the bodily injury sustained;
(d) pain undergone;
(e) the effect on the health of the sufferer;
(f) loss of enjoyment of life;
(g) loss of expectation of life.

The most difficult to evaluate are (c), (d), (e) and (f), all of which contribute to a lessened degree of happiness. Lord Morris stated:

> "The difficult task of awarding money compensation in a case of this kind is essentially a matter of opinion of judgment and of experience in a sphere in which no one can predicate with complete assurance that the award made by another is wrong the best that can be done is to pay regard to <u>the range and limits of current thought</u>."

One detects in this language a resort to sociological factors. Lord Justice Diplock added a philosophical factor in <u>Wise v. Kaye</u> (1962) <u>1 All England Reports, Page 257 at Page 274</u> when he stated:

> "But even today we are sufficiently aristotelian to believe that wealth beyond a moderate share is not usually conducive to happiness, and that to increase an award of damages beyond that moderate share could, whatever use be made of it, ensure no additional happiness to a normal human being to compensate him for that of which he has been deprived by his personal injuries. What sum constitutes the golden mean of wealth will vary with current social conditions, and, in particular, the general standard of living. To avoid misunderstanding, I would stress that these two empirical considerations which take into account the social environment and characteristics of what I may call the average plaintiff and the average defendant are directed solely to arriving at the yardstick to be used where loss of happiness is to be measured, as it must

> be by the Court, in money ... Money is all that the Court can award and equivalent losses of happiness, whoever the plaintiffs or defendants may be, should result in the award of equivalent sums. It would thus be wrong to award an individual plaintiff a greater or lesser sum according to whether or not the defendant was rich or poor, insured or uninsured. So, too, the fact that the individual plaintiff, as in this case, cannot use, or in the case of a very rich or ascetic patient does not need, the money damages is not a relevant factor."

In both the West case and the Wise case the Plaintiffs were young women who had been so seriously injured that they were hardly aware of the fact that they had been injured. Their condition, of course, was pitiable but the application of the principles above referred to resulted in the award being related to the loss of happiness actually suffered and not the loss of happiness of which the sufferer by reason of her injuries was unaware. A study of the two cases above-mentioned is rewarding and I hope that the Commissioners will be able to find time to study them. The lesson to be derived from these and other cases is that the judges have conscientiously applied their minds to the tragedies that pass before them and it is submitted that before there is substituted some other system, one would have to be very certain that the substituted method of performing an admittedly difficult task, brought to it an equal amount of well-formed opinion and of judgment and of experience.

The question is asked whether we should burden the judges with the task of assessing damages in personal injury cases. The studies that will be found elsewhere in this brief show the very minute percentage of personal injury cases that ever reach the courts. The important factor, however, is that in every case where a settlement is reached it is the principles laid down by the judges in the cases that do go to court that will govern the amount of the settlements. The judge-made standards are sensitive to changing conditions and in Canada it has been established that awards should be suited to the conditions existing in the particular Province.

In the recent case of Gorman v. Hertz Drive Yourself Stations (1966) 54 D.L.R. 2nd 133 at p.138, Mr. Justice Spence quoted with approval a previous decision of the Supreme Court of Canada as follows:

> ". . . the same principle is applicable and that is, particularly in Canada where estimates of damages may differ in the various provinces, that this court will not, except in very exceptional circumstances, interfere with the amounts fixed by the Court of Appeal where they differ from the damages assessed by the Trial Judge."

Court Awards vs. Economic Loss

There is no doubt that there is a difference in the approach made by the Court

and the economist. As an example of this, some economists calculate rather mechanically, by mathematical process, the present value of lost prospective income. They calculate the period of time for which the victim of an accident might yet be employed, until age sixty-five, at steady employment, and bring from that a present value. The Court, on the other hand, takes into consideration in its calculation all the uncertainties and vicissitudes of life, and finds generally a much smaller amount for future income loss. The economist, also, is prepared to allow as an economic loss the loss to society upon the death of a single person with no dependents. The law of British Columbia does not recognize any such loss when damages are to be assessed.

In view of the material submitted before the Commissioners, they are not prepared to accept the theory of economists as a just conclusion of the matter. They are of the opinion, on the other hand, that there must be a reasonable award made to the injured party comprehending all necessary and pertinent information. In this regard it would appear to the Commissioners that the evidence of an economist would be of great value to the Court in determining the facts it should take into consideration in making its award of damages. There cannot be two authorities of assessment of compensation. The Commissioners are of the view that the Court, with its powers, should be the forum in which compensation is finally determined, but they are appreciative of the fact that the economist, as a witness in the proceedings, may be of great assistance to the Court. Apart from some differences, however, there appears a large area of general agreement between the theories of the Court and the theories of the economists. Quite obviously the economist takes into consideration the over-all economic loss to the country, as well as to the individual, in computing the loss which has occurred from a given occasion such as a motor collision. The Courts can only,

and do only, comprehend the extent of the loss sustained by the litigant appearing before them. Finally, while economists ignore pain and suffering and the like, the Court does not.

Assessment of Claims

The Commissioners had evidence before them of insurance companies settling out of Court. In this regard it appears that with the smaller claims there may often be a more generous settlement than with larger claims.

RAE: This has a tendency therefore to overcompensate on the small claims, in other words, get rid of it --

PARKIN: I don't think it flows automatically, Mr. Rae. The smaller the claim the easier it is to ascertain the damages. You have a basic accident report and you run a small claim and probably have no witnesses which you would want to interview. The damage can be easily ascertained and I don't think it flows automatically that we would tend to overpay a small claim, although there may be some cases where we do.

Q. Now, the Columbia Study indicated it was so, and Professor Linden indicated the tendency was to overpay the small claim. This is speaking relatively. Assuming it to be so, how do you account for it if it is not a matter of economics in not being able to adjust further?

A. I think in the smaller claim -- if we establish damage -- and I think I said this once before -- you have a smaller claim and you cannot reach a meeting of the minds, you won't spend unnecessary time in discussing a five-dollar difference and you are not going to incur legal costs to go to court and prove who was right and who was wrong; so to that extent you would get overpayment in certain cases of a smaller claim, and it is a question of economics when it occurs.

DAMOV: May I make an observation, to give you or the Commission my understanding of the Linden finding, which is at variance with the statements made?

RAE: Perhaps I didn't state it properly.

DAMOV: This is why I stress I am only giving my understanding. The Linden Report,[2] as I made reference to it in my direct testimony, deals with the proportion of the claim recovered, it does not attempt to identify all the payments relating to size of the claim as such, and it does not suggest that small claims are unduly liberally paid and large claims are underpaid. But it was a question of the availability of sources of recovery, and the way the Linden study had been conducted it appeared from tort and non-tort sources combined, small claims -- and a good number of serious claims -- were paid in total and, in a

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2. A. M. Linden, The Report of the Osgoode Hall Study on Compensation for Victims of Automobile Accidents, Toronto: Ryerson Press, 1965.

good number of cases, in excess of 100% of the amount stated to be lost. While the large claims were to that extent fully compensated. Now it does not logically follow from this that small claims are overpaid and large claims underpaid. This is the point I want to make.

RAE: I appreciate your distinction, Mr. Damov.

Well, is it -- taking your concept, and you may be right, that there is a tendency for small claims to be paid at a higher percentage level than larger ones?

DAMOV: This may happen in a good number of cases; where it does happen the situation may be such that a small claim almost in all cases -- or in most cases -- would be something where objective evaluation is possible of the amount of damage to the car, the amount of medical expenses incurred or the amount of wages lost. While a large claim is likely to have a higher proportion of general damages, and it is the valuation of pain and suffering which leads frequently to disputes -- where perhaps settlements are ultimately below the initially-claimed amount.[3]

This practice may be efficient in the saving of time, and so expense, but the Commissioners conclude it has the concomitant that, as small claims are very much in the majority so far as the policyholder is concerned, any generosity of a general nature has the inevitable effect of increasing substantially total loss costs. That would appear to be an argument for a deductible rather than over-payment as a nuisance of a claim of small amount.

In the field of compensation recoverable the Commissioners are of the opinion that the public should be informed of the tragic and terrible loss to the community and country at large as accounted for by the economist. But the public must at the same time comprehend the very certain fact that such amounts, staggering in the gross, could never be paid in practice.

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3. 52/6126-7.

COMMISSION RESEARCH

Methodology

(i) Introduction

One of the purposes of the Commission's research into the adequacy of compensation was to measure the effectiveness with which the present system affords protection to the residents of British Columbia and compensates those who are the victims of traffic accidents. The research provided a pool of data on the losses of the injured, the sources and levels of relief available to them, with some insight into the attitudes of the victims. Such information was not otherwise available. The efficiency and benefit of the system were then weighed against an aggregate of the several costs indicated and discussed in later sections. Conclusions were reached on the basis of the above analysis.

As opportunities for improvement were identified the study took on a second purpose. Findings provided a useful base from which to develop the alternate approach set out in the Commission's recommendations.

The study, undertaken with the support and co-operation of the British Columbia Medical Association, essentially followed the design and guidelines laid down in the "Michigan Study".[4] Some use was also made of the experience of Ontario's Osgoode Hall Study.[5] Careful attention and full consideration were given to the subsequent criticisms of the latter study by the Automobile Research Committee of the Insurance Bureau of Canada.[6]

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4. A.F. Conard et. al., Automobile Accident Costs and Payments: Studies in the Economics of Injury Reparation Ann Arbour: University of Michigan Press, 1964.
5. A.M. Linden, op. cit.
6. Ex. 140.

(ii) The Sample

The population, or universe, from which the sample for this study was drawn, included all residents of British Columbia involved in traffic accidents in the province during 1963. Selection of a more recent year would not have allowed time for the settlement of either the cases litigated or those involving more serious injuries. Involvement of persons was defined to include all injury cases and all owners of damaged vehicles.

The sampling procedure began with the selection of representative cities, municipalities, villages and R.C.M.P. detachments throughout the province, and the drawing of a simple random sample of accident reports from each such locality included. The overall size of the sample was designed to cover 2.5% of all non-injury cases, 10% of all non-fatal injury cases and 100% of the fatality cases.

Altogether, the sample included 124 accidents involving fatalities, 1,019 involving non-fatal injuries and 529 involving property damage only. The total number of accidents in the sample was 1,672.[7] The unit of analysis in the study was, however, the individual and not the accident. 2,765 individuals were involved in the sample of accidents, and every reasonable effort was expended in order to locate individuals involved.

(iii) The Procedure

Fatality cases excepted, a mail questionnaire was sent initially to each indiv-

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7. Details of the sample are set out in Appendix 2:A to this Chapter.

8

idual in the sample.[8] Two follow-up questionnaires were then sent to non-respondents. Through the questionnaire, information was sought respecting property damage, medical, hospital and other expenses, and income loss, as well as the compensation received respecting each category. Information was also elicited on legal proceedings, attitudes, and other matters of significance.

Returns were classified according to whether the injuries were serious or minor. Serious injuries were defined as those involving any one or more of the following three characteristics resulting from injuries received in the accident:

1. medical expenses of $500 or more,
2. three or more weeks off work,
3. permanent physical impairment affecting ability to work.

Injury cases excluded from both the serious and fatalities categories were defined as minor injury cases.

Personal interviews were subsequently conducted with serious injury cases and survivors of the fatalities to complete questionnaires and to collect more detailed information. The personal interviews were followed by a survey of physicians and hospitals involved to verify and augment the information previously obtained. Additional information was also obtained from such sources as the British Columbia Hospital Insurance Service, the Workmen's Compensation Board, the Traffic Victims Indemnity Fund and social welfare agencies. Cases involving inadequate information were classified as incomplete and excluded from the analysis.

About 45% of the 2,765 individuals surveyed provided complete information. 29%

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8. A copy of the questionnaire and accompanying and follow-up documents is to be found in Appendix 2:B to this Chapter.

did not return the questionnaires or refused interviews. 10% attempted but were unable to provide complete information, and 15% had unknown addresses, or had died from causes other than the accident. A flow diagram of the survey procedure (Figure 2:1) provides a summation of the process.

The Measurement of Economic Loss

So as to provide a benchmark against which the adequacy of compensation could be evaluated it was necessary to devise some measure of the loss experience by accident victims. In this context, recognition should have been given to total loss experienced -- a composite of dollar or economic losses and psychic losses arising from an accident. However while psychic losses, the consequence of mental anguish, physical pain and the like are very real, they defy measure and were excluded from the study.

Measurement of economic loss was deliberately subjected to a downward bias to render resulting estimates conservative. Such loss was defined to include property damage, medical, hospital and other related expenses, and income loss resulting from the accident. Consideration of expected future expenses arising from the accident was limited to medical costs and only in those instances where it appeared certain that they would be incurred.

The largest portion of the economic loss of persons seriously injured or killed in automobile accidents is income loss. Such loss may accrue in part or in toto to the injured party, to his family or to society. Income loss arising out of an automobile accident is difficult to measure accurately, because it involves predictions concerning future occupation, education level, rate of pay, employment status, maintenance costs, working life, and the choice of an appropriate

FIGURE 2:1

FLOW DIAGRAM OF SURVEY PROCEDURE

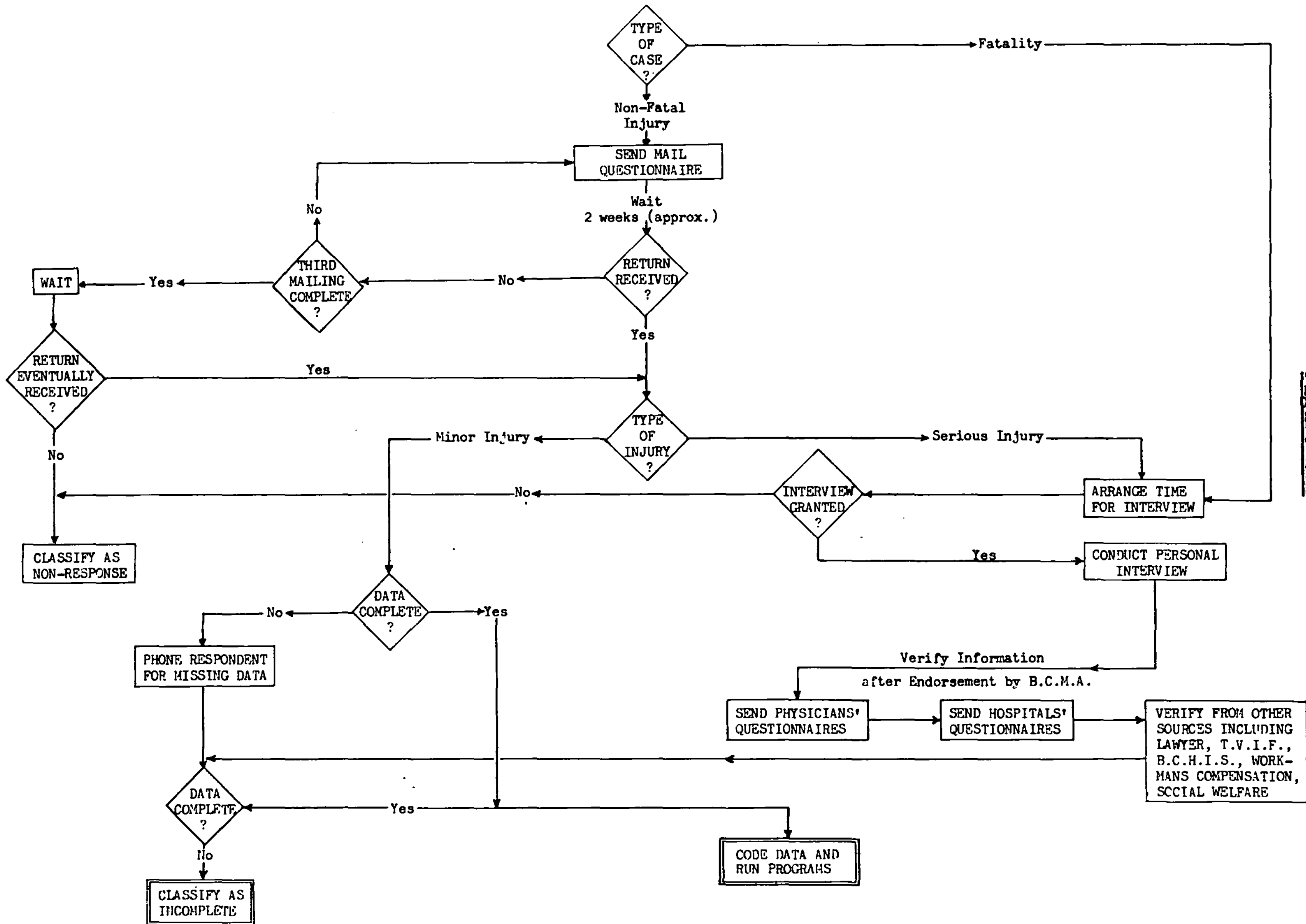

Figure 2:1

interest rate at which to discount future incomes. The Commission's handling of these variables is detailed below.

(i) Occupation and Education Level

Prospects for improvements in occupational and educational attainment were not allowed for. Thus the levels achieved to the date of accident were considered terminal regardless of the lost potential, and nothing more was attributed in determining the loss. Estimates of income from the time of accident were made on the basis of D.B.S. statistical data concerning the rate of income change by age with a given education level. The annual services of a housewife were valued at $1,700 in the absence of children and at $3,500 while she had one or more children under 12 years of age.

(ii) Employment Status

The employment status (employed or unemployed) of an individual at the time of the accident was assumed to remain unchanged. An exception was made, however, for those individuals experiencing seasonal unemployment. In their cases it was assumed that the individual would, in the future, experience as much unemployment per year as was the case during the twelve months preceding the accident.

(iii) Maintenance Costs

In fatality cases, $75.00 per month, representing subsistence costs, was deducted from income in determining income loss.

(iv) Working Life

Estimates of working life of males for various ages were obtained from the

Department of Labour. As similar data were not available for females in Canada, United States estimates were used. For housewives, working life was equated with life expectancy.

(v) Rates of Pay and Discount Rates

Annual wage increases were limited to 2%. In discounting future income losses a rate of 7.5% was employed.[9]

The Measurement of Compensation

(i) amounts received as a result of the victim's own insurance (automobile, life, sickness and accident),
(ii) amounts received from another person or persons responsible, or their insurers, and
(iii) from such sources as the Workmen's Compensation Board, the T. V. I. F., employers, or welfare payments. Expected future compensation from such sources as pension funds was also included.

Compensation was taken net of the claimant's legal costs.

Findings of the Study

It is apparent from the analysis that overall compensation received by the victims of automobile accidents falls far short of their economic loss. Specifically, for the 1,253 cases surveyed, such losses totalled $2.7 million while compensation amounted to under $900,000.

Of perhaps greater import is the evidence that the present system discriminates against personal injury cases and that the bias is greatest when losses are more serious and the circumstances tragic. Thus, the ratios of average compen-

9. This is in contrast to the 5% used in the Ontario Study. The conservatism inherent in the higher figure can be illustrated by obtaining the present value of $1.00 per year for 30 years discounted at 5 and 7½%. The values are $15.37 and $11.81 respectively.

sation to average economic loss for minor injury, serious injury, and fatality cases are .85, .44 and .20 respectively. When there is added the finding that 97% of losses in fatality cases are income losses and two-thirds are income losses in serious injury cases, whereas 85% of the losses of minor cases are automobile damage, the inference that the present compensation system discriminates between automobile damage, on the one hand, and personal injuries resulting in income loss, on the other, seems obvious. The conclusion that this discrimination is undesirable hinges only on the belief that individuals deserve treatment at least the equal of that accorded bent fenders -- a belief few people care to quarrel with.[10]

Table 2:2 reflects the magnitude of economic loss (discounted at 7.5%) sustained by individuals in the sample. It also categorizes such losses by type. The impact of automobile property damage on the number of smaller losses stands clearly revealed.

TABLE 2:2

Individuals Sustaining Economic Loss by Size and Type*

Economic Loss Sustained	No. of People	Loss by Type: Property Damage: Automobile	Loss by Type: Property Damage: Other	Loss by Type: Income Loss	Loss by Type: Medical Expenses	Loss by Type: Expected Future Medical Expenses
$ 1 - 499	752	538	88	179	428	12
500 - 999	158	133	1	18	39	3
1,000 - 2999	85	71		19	30	3
3,000 - 4999	16			10	4	1
5,000 - 9999	13			9	3	2
10,000 - 24999	23			19	1	1
25,000 - 49999	5			4		1
50,000 and over	19			18		
TOTAL	1,071	742	89	276	505	23

* Note: people may fall into more than one type of loss category.

10. Counsel for the All Canada Insurance Federation, both in his cross-examination of, and his exchanges with, the S.G.I.O. panel, drew attention to, and appeared critical of, the Saskatchewan scheme's alleged emphasis on bent fenders at the expense of those seriously injured. 80/8834-8872.

Table 2:3 indicates the recovery ratio by the size of economic loss sustained. The emphasis inherent in the present approaches to compensation is quite clearly revealed. What for practical purposes can be considered almost full recovery is provided in smaller loss cases. It is in the treatment of the more serious cases, situations where injuries to individuals are involved and the victim experiences more difficulty in helping himself, that the present system is defective. The outcome is, in part at least, a function of the present system's overriding concern with punishment of the guilty, and deterrence of negligence. Whether either the punishment objective of tort claims, or the deterrence of negligence by tort law have been deadened through the availability of liability insurance, and whether the concept of fault in the field of automobile accidents is valid today are dealt with in later sections of this report.

TABLE 2:3

Recovery Ratios by Size of Economic Loss

Economic Loss Sustained	Aggregate Amount of Economic Loss	Aggregate Amount of Net Compensation	Recovery Ratio
$ 1 - 499	$ 126,000	$105,000	83.3
500 - 999	109,000	96,000	88.1
1,000 - 2,999	139,000	124,000	89.2
3,000 - 4,999	59,000	39,000	66.1
5,000 - 9,999	94,000	34,000	36.2
10,000 - 24,999	385,000	84,000	21.8
25,000 - 49,999	157,000	43,000	27.4
50,000 and over	1,648,000	353,000	21.4
TOTAL	2,717,000	878,000	32.3

Findings on the size of economic losses suffered by those killed or seriously injured were of considerable interest to the Commission and are presented in Table 2:4. The sources and the amounts of compensation received by either the victims or their beneficiaries are detailed in Table 2:5.

TABLE 2:4

Numbers of Persons Sustaining Economic Loss and the Aggregates of Such Losses Classified by Amount: Fatalities and Serious Injuries Only

Amount of Economic Loss	Fatalities		Serious Injuries	
	Number	Aggregate Econ. Loss	Number	Aggregate Econ. Loss
$ 1 - 499	5	$ 1,962	9	$ 2,941
500 - 999	7	4,716	17	12,572
1,000 - 2,999	8	12,100	29	54,519
3,000 - 4,999	5	18,965	11	39,209
5,000 - 9,999	5	34,530	8	59,440
10,000 - 24,999	12	197,548	11	186,263
25,000 - 49,999	2	71,152	3	85,394
50,000 and over	17	1,443,451	2	205,494
TOTAL	61	$1,784,424	90	$645,832

TABLE 2:5

Aggregate Compensation Received from Various Sources: Fatalities and Serious Injuries Only

Source of Reparation	Fatalities		Serious Injuries	
	Aggregate Amount	Percent	Aggregate Amount	Percent
Tort Liability Settlements:	$ 59,690	16.88	$ 135,133	47.20
Injured Parties Own Insurance:				
Automobile Insurance	6,402	1.81	18,149	6.34
Medical Insurance	1,245	0.35	6,915	2.41
Life and Accident Insurance	93,804	26.53	920	.32
Hospital Insurance	2,744	0.78	48,172	16.83
Other	7,370	2.08	120	.04
Miscellaneous:				
Employer (sick leave)	15,460	4.37	4,411	1.54
Workmen's Compensation	8,280	2.34	3,483	1.22
Pension Plan	12,629	3.57		
T. V. I. F.	30,075	8.51	26,297	9.19
Other	6,637	1.88	18,426	6.44
Expected Future Compensation:*	109,251	30.90	24,243	8.47
TOTAL	$ 353,587	100.00	$ 286,269	100.00
Aggregate as % of Economic Loss	19.82		44.33	

* Expected future compensation may arise from various sources anticipated by the claimant. For example, of the $109,251 expected future compensation for fatalities, approximately $69,000 was expected from the Workmen's Compensation Board, $37,000 from pension plans, and $3,000 from welfare payments.

Inability to shift any significant part of the dollar loss posed serious problems for many of the injured and their families. The situations appeared to be aggravated by extended lags between the accident date and final compensation. Focusing on only those 141 among the beneficiaries and seriously injured who did obtain some compensation, it was noted that 31 were subjected to waits of from one to two years and 24 to waits of over two years. Instances involving suit were more prone to delays. Of 48 cases reviewed, 26 waited between one and two years while 16 waited over two years.

Quite apart from the parallel evidence received at public hearings, the Commissioners were able to conclude that the amount and adequacy of compensation received was frequently dependent on the ability of the victim to withstand delay.

Conclusions

It is very clear to this Commission that the present system of reparation, a patchwork combining accident insurance and liability coverage, has failed to provide British Columbia with optimal protection per dollar of premiums paid. Put succinctly, the present approach is marred by a combination of excessive operating expenses (distinct from the costs detailed in the previous chapter), discriminatory allocation of moneys available for reparation, and delays which impede rehabilitation. Most of these failings stem from determined, if incomprehensible, attempts to preserve the tort reparation system in the area of automobile injuries on grounds that, besides distributing money, it serves as a negligence deterrent and that it punishes the guilty.

With the widespread purchase of liability insurance, any vestige of punishment potential in today's tort system is confined to instances involving defendants

with personal resources but inadequate or no insurance. While the levying of higher rates and surcharges against those insureds making claims under their policies or those with convictions deserves mention, these are watered-down penalties at best. Furthermore, such applications are not the eminent domain of the tort system.

Given that most individuals are today unwilling to connect the role of punishment with approaches to protection, proponents of the tort system are more prone to stress its contribution in the deterring of negligence. Some appear willing to go so far as to speak of its ability to induce safety. In this context, the views of Professor A. Linden, an expert appearing for the All Canada Insurance Federation, are of interest. Responding to a question by counsel for All Canada, he stated:

> Well, the other aspect of it is that tort law tries to provide a deterrent against careless driving. It says to people, "If you drive carefully you will not have to pay. If you drive negligently, however, and you injure somebody you will have to pay", so the theory is that people will drive more carefully in order to avoid having to pay damages to somebody whom he injures.[11]

A further illustration is provided by the All Canada submission of August, 1961 to the Select Committee of the Ontario Legislature. There appears therein the passage that:

> It would also deprive pedestrians and motorists alike of the advantage of the fear of the consequences of negligent driving which operates to instill a sense of responsibility in drivers. If it makes no difference whose fault it is then what difference does it make if careful driving is exercised?[12]

Arguments supportive of the deterrent effects of the tort system are unacceptable

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11. 40/4682.

12. Ex. 136B, p. 12.

for at least three reasons. To begin with, consequences of increasing traffic densities include increases in both inevitable accidents and accidents attributable to straight errors of judgment. Attempts to fit these to a negligence standard have resulted in mislabellings where conduct was neither avoidable nor morally culpable. Further, almost all findings are made by insurers through adjusters in their employ -- not by the courts. Thus, whatever psychological impact such findings of negligence once had, these are today almost totally ineffective. Secondly, the availability of higher limits of cover in liability contracts at very low cost[13] effectively removes any fear of ruinous liability.[14] Finally, the dominant position of non-tort sources of reparation, including direct-loss insurance, set out in Table 2:5, eliminates such concern as may once have existed (prior to hospital insurance and prepaid medical plans) about being unable to claim compensation if found responsible for the accident.

In light of these observations the Commission determined that the present approach to compensation must be evaluated entirely on the basis of its effectiveness as a reparations system. The results of the Commission's research, already summarized, portrayed an unfortunate picture -- one combining hardship and waste.[15] Not only is there a significant maladjustment of compensation but it is achieved at a relatively high overhead cost.

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13. An insured rated 03-3 and resident in Vancouver would pay $86.00 for third party limits of $50,000, $96.00 for $200,000 and $99.00 for $300,000. In Victoria, just $7.00 would increase the coverage from $50,000 to $300,000.

14. At the time of its introduction, liability insurance was attacked as dangerous and immoral for just this reason.

15. The intervening years do not appear to have dated the findings of the so-called Columbia Study. See, Columbia University Council for Research in the Social Sciences. Report of the Committee to Study Compensation for Automobile Accidents, Philadelphia: International Printing Co., 1932.

Looking at the operating expense and costs of the present system, it is evident that through their insurance premiums, automobile owners are paying aggregate amounts roughly 1.6 times the total of settlements paid by automobile insurers. These figures do not, of course, reflect all the monetary costs such as, for example, the occasional out-of-pocket legal expenses of claimants.

While every reparation system has costs, two party or loss insurance is considerably cheaper to administer.[16] This fact was brought out in public hearings on more than one occasion. It is well presented in the following exchange between Commission Counsel and Mr. G. McGill, the claims manager for Canada of the Northwestern Mutual Insurance Company, appearing as a witness for the All Canada Insurance Federation:

> McGILL: ... home damage and medical payment claims are a matter of contract between the parties, and what has to be determined there, in essence, is whether or not, under the circumstances, the claim is one covered under the contract, and normally this can be done fairly rapidly. For example, let us talk about a simple collision claim. All a Claims Department, in a situation of this kind, has to basically determine is, (a) there was an accident, and (b) there was a collision; and under circumstances where the insured was not in breach of any of the conditions. Then it becomes a matter of amount; but this can be done very rapidly, whereas, with third party claims, you are talking about the question of fault and investigation of the circumstances becomes a very important aspect -- the interviewing of witnesses, the obtaining of police information, perhaps occasionally going to the scene, taking photographs, all of the factual information that is important and relevant to the determination of liability . . . .
>
> RAE: I see. Well then, would it be fair to infer from this that the

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16. The Firemen's Fund Insurance Company, according to its 1965 Annual Report, shows an expense ratio for disability insurance to be 55% of the expense ratio for automobile insurance. This relates to the Company's United States experience where costing disclosure by line of insurance is required. At page 91 of <u>British Columbia Royal Commission on Workmen's Compensation</u>, administration expense ratios for the Workmen's Compensation Fund are given as being under 10% throughout the period 1950-1963. Appendix 2 to Exhibit 288, portrays expense ratios, under the <u>Saskatchewan Automobile Accident Insurance Act</u>, as varying between 16.3 and 11.3% for the years 1964, 1965 and 1966.

average liability claim, whether property damage or bodily injury, causes the insurer more concern, takes more of his staff's time, costs him more money, than the collision type claim?

A. In terms of expense, yes.[17]

Mr. McGill's views have been widely corroborated. One example is the study of Mr. Frank Harwayne, a respected actuary and a director of the American Academy of Actuaries. Mr. Harwayne estimated that introduction of the widely publicized Keeton - O'Connell plan[18] in New York would reduce the cost of bodily injury coverages by between 11 and 24%.[19] Another example is provided by the evidence of Mr. M.C. Holden, president of the Wawanesa Mutual Insurance Company, in referring to the lower expenses of the basic policy in Saskatchewan.[20]

In support of the conclusion that the present compensation system creates relatively high overhead costs, the Commission has reviewed earlier in Chapter 1 the present situation respecting legal costs, in Chapter 14 the burden of the T.V.I.F., and in Chapter 15 company variability in handling contractual liability obligations. These factors need not be repeated in detail here, although they further support conclusions as to the cost burden of the present compensation system.

In concluding on the efficiency with which the present system functions in distributing available moneys as compensation, careful attention was given to:

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17. 37/4367-4368.

18. R. Keeton and J. O'Connell, Basic Protection for the Traffic Victim, Boston: Little, Brown and Company, 1965.

19. J.S. Kemper, The Keeton-O'Connell Plan: Reform or Regression? Chicago: Kemper Insurance Reports, 1967, p. 6.

20. 61/7198.

(i) the role of other than tort liability settlements,
(ii) the disparity between losses and compensation, and
(iii) the lag before final payment.

The importance of non-tort sources in serious injury and fatality cases was set out in Table 2:5. The data are revealing and place the balance of this section in perspective. For the survivors of fatality victims, the sizeable roles of life and accident insurance, and benefits arising from the victim's employment[21] completely overshadow that of tort liability settlements. In the absence of the former two sources, aggregate compensation as a percentage of economic loss would have amounted to less than 7% even though 34 of the 61 victims in the sample received tort settlements.

In cases involving serious injuries, tort settlements were the largest single source of reparation. In combination with amounts paid by the T. V. I. F.,[22] it accounted for 56% of aggregate compensation. If one deletes the variety of protection unrelated to automobile insurance, aggregate compensation as a percentage of economic loss would have totalled 31% with 64 out of the 90 seriously injured sampled receiving tort settlements.

The disparity between losses and compensation has already been touched on. It is useful, however, to reiterate that, as indicated by the recovery ratios in

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21. Expected future compensation shown in Table 2:5 arises almost entirely from such sources as workmen's compensation and pension plans.

22. It is interesting to note that in both fatality and serious injury cases the T.V.I.F. provided a surprisingly high 9% of total compensation. When contrasted with tort settlements which provided 17% and 47% in fatality and serious injury cases respectively, the figure is startling and tends to support the Commission's findings and concern about the numbers of uninsured motorists in British Columbia.

Table 2:3, reasonable if not generous awards[23] are being made in minor cases. The greatest burdens, sizeable ones in fact, are being borne by those who have been the most seriously afflicted. Such victims are unable to shift other than a fraction of the total economic loss. Yet, it is a recognized fact that frequent and certain small losses (i.e. premium payments) are preferable to uncertain, if infrequent, large losses.

The basic issue of whether the cost of such larger losses should be on the motoring public or redistributed across society as a whole is dealt with by the Commission in its recommendations.

The hardships spotlighted here are in large measure appreciated by the automobile insurance industry both in Canada and in the United States. Some suggestions of the awareness of U.S. insurers about the problem are to be found in the studies of several states.[24] Evidence of a shift in outlook, possibly in face of the forthcoming Congressional investigations, was provided in a recent issue of Fortune magazine. To quote:

> Less non-committal comments on the non-fault proposition are expressed by some executives of leading agency companies in Hartford. Says Senior Vice-President Seymour E. Smith of Travelers: "It's coming sure as shooting. And a good thing, I think. But it's a dramatic change, and it will take quite some time to adjust to it." Over at Aetna Casualty, Senior Vice-President Guy Mann observes: "Much of the current criticism of the auto-insurance industry is misdirected. It should be directed toward the legal system -- this is what needs change. The third-party system ought to be modified to get out all that peripheral expense."

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23. The use of deductibles with many coverages rules out any higher recovery ratios in the lower loss categories where damage to the automobile itself accounts for most of the economic loss.

24. See for example Florida Action Committee for Traffic Studies, Florida Automobile Liability Insurance Study and Conclusions and Highway Accident Prevention Study and Recommendations, 1966, p. 35.

> Fred H. Merrill, president of the Fireman's Fund American Companies, of San Francisco, forthrightly advocates some large changes. "Auto insurance", he says, "has to be in the public interest, not in the interest of insurance companies . . . . we must have a system that works in the public interest. . . . "
>
> Finally, over the signature of chairman Bradford Smith Jr., the Insurance Co. of North America recently urged in newspaper ads that "a plan for compensating all innocent victims be adopted -- perhaps along the lines of the one advocated by Professors Keeton and O'Connell."[25]

A copy of such an advertisement by the Insurance Company of North America as it appeared in Newsweek, October 30, 1967, is reproduced on a following page.

Several hundred pages of evidence taken before this Commission dealt with an All Canada Insurance Federation proposal to introduce a mandatory but limited two party accident insurance cover in British Columbia.[26] The proposal is identical to one presented to the Ontario Select Committee on Automobile Insurance in 1962. Unfortunately, the benefits proposed were both primitive and inadequate, comprising essentially schedules of token payments. The proposal would in fact contribute little if anything to improving the lot of those more seriously injured and hardest hit by the inadequacies inherent in the present approaches to compensation.

While prompt hospital care and medical attention are available to accident victims in British Columbia, a very real barrier to rehabilitation is the stress created by controversy, bargaining, extended litigation and the substantial delays which result. Delays have given rise to charges that some insurers, while

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25. R. Sheehan, "A New Road for Auto Insurance" Fortune, November, 1967, p.222.

26. For cross-examination on the proposals see Volumes 48-53 of Evidence at Public Hearings.

9

Auto Insurance: Is It a Product or Your Birthright?

A Statement of Policy—and a Call to Action—by Insurance Company of North America

For the past several years it has become clear that the present automobile insurance system in America is not working to the satisfaction of anyone: neither the consumer, the insurance companies, nor the state and federal governments.

The consumer complains of frequent rate hikes, sudden, sometimes inexplicable cancellations, and interminable delays in settling his claims.

Most companies, faced with increased claims costs on the one hand, and still inadequate rates on the other, are caught in an intolerable two-way squeeze. In the ten-year period from 1956 to 1965, for example, insurance company losses from automobile bodily injury insurance alone came to almost $1.25 billion *more* than they had earned in premiums.

Surveying this dilemma, state and federal governments face a flood of proposals that range from the sound and reasonable to those that are wholly impractical and even dangerous to your own interests.

Where did auto insurance go wrong?

It didn't. It still offers complete protection against a motorist's legal liability under the law. It operates today under the same classic principles of insurance that work—and work well—for your Homeowners policy, your disability insurance, and many other standard and well-accepted forms of liability coverage.

What happened was that the law and auto insurance stood still, while the auto itself and its place in American life changed radically. And so has the concept of modern social justice, with its increased emphasis on financial security for all.

The problem then is that the classic principles of the law as applied to the operation of automobiles, in general, and of liability insurance, in particular, no longer offer a satisfactory solution to a growing social problem.

What is needed is an entirely new approach to the problem presented by the victims of auto accidents—an approach that would harmonize with the thinking and the needs of our modern automobile-oriented society.

Is auto insurance your birthright?

For the vast majority of Americans, INA—Insurance Company of North America—firmly believes the answer is *yes*. It is more than your birthright; it is your duty. It is your responsibility to your own family and every other family in America.

Does that mean INA supports a public requirement of auto insurance for all licensed drivers? Again, yes. Though many insurance companies in the past have opposed the principle for valid reasons which appeared to outweigh any possible good that would result, INA believes that requiring all licensed drivers to be financially responsible for the damage they may do to others is a reasonable and sound objective, and one that the insurance industry should unanimously support.

To be perfectly realistic, however, it is clear that for the insurance industry to support such a law to accomplish this, state governments would have to take measures to improve and vigorously enforce licensing, traffic laws, vehicle and highway safety. Last year, for example, 53,000 Americans were killed on the highways and 1,800,000 were injured in 10,000,000 different accidents. Is auto insurance *everyone's* birthright? Only if state licensing and enforcement agencies can sharply reduce the epidemic-like proportions in which drivers are killing and injuring themselves and others on the nation's highways.

INA believes all licensed drivers must be financially responsible, but we do not believe the insurance industry or, for that matter, the nation itself, can indefinitely afford the financial and human losses that careless drivers cost us all every year.

Is there a better way of dealing with auto liability claims?

At INA we believe there is. Under the present system an insurance company assumes your liability for damages you caused as the result of a negligent or careless action, thus relieving you of the financial consequences of such action. But today the circumstances involved in most auto accidents usually make it difficult if not impossible to determine who was negligent. Hence the present system is hopelessly outmoded; it delays justice, frustrates the claimant, and costs insurance companies far more than they earn in premiums.

In its place INA strongly recommends that a plan for compensating all innocent victims be adopted—perhaps along the lines of the one advocated by Professors Keeton and O'Connell. Under such a plan, victims of automobile accidents would be compensated for medical and out-of-pocket expenses, such as lost wages, up to, say, $10,000 regardless of liability. If injuries are permanent and serious and the resulting damages greater than $10,000, the matter could be taken to court for determination of liability in excess of $10,000, or some other reasonable amount.

But for the vast number of claims, a fair settlement would be made out of court and in just a matter of days, relieving the paralyzing backlog in the courts, and in the long run even lowering your auto insurance costs.

As strong supporters of the free enterprise system since our founding in 1792, Insurance Company of North America is deeply concerned with the need to satisfy the public interest by finding an insurance solution to these problems. That interest now calls for changes, even radical changes, in the law and in the present American system of automobile insurance. INA, with 175 years of insurance leadership, stands ready to work with the insurance industry and government officials to accomplish that change.

That is why INA is publishing this statement throughout the country. Copies will be sent to Governors, Insurance Commissioners, Federal and State Legislators, and other interested persons. It is time to act.

Bradford Smith, Jr., Chairman

Insurance Company of North America
Parkway at 16th, Philadelphia

Source: Newsweek, Oct. 30, 1967

meeting all small claims, thereby avoiding the expense of defence, tend to drag out larger claims in order to take advantage of the financial pressures already on the injured claimant and achieve the smallest possible settlements. While the Commission received no concrete evidence of this, one witness, Mr. Waldock, did touch on it indirectly when he stated that:

> . . . negotiation is out of the control . . . of the plaintiff's solicitors who have no means of compelling the defendant to negotiate until the eve of trial.
>
> Now that is our experience. We find it is no good negotiating with the solicitors for the insurance company until the last minute, and the reason is that there is no financial penalty on the insurance company for failing to negotiate. . .[27]

To counter such charges and to reduce the number and cost of litigated claims, at least one insurance company, Allstate, has taken steps to introduce a so-called "advance payments plan" on a very limited scale.[28] In the opinion of this Commission the solution is not to be found in such compromises.

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27. 64/7402.

28. 22/2624-8.

APPENDIX TO CHAPTER 2

2:A:1	Number of Accidents by Type of Injury, Location, etc.
2:A:2	Report of Motor Vehicle Accident Form.
2:B	Copies of letters and questionnaires as used in the Commission's Study of Economic Loss and Compensation for Victims of Automobile Accidents.

APPENDIX 2:A:1

NUMBER OF ACCIDENTS BY TYPE OF ACCIDENT INJURY, REGION, CITY, MUNICIPALITY, AND R.C.M.P. DETACHMENT

REGION	LOCATION & AREA NUMBER	Number of Accidents in Sample		
		FATAL	NON INJURED	INJURED
CODE	Cities			
I A	(206) Vancouver	37	147	431
B	(128) New Westminster	1	17	46
C	(131) North Vancouver	4	7	15
D	(148) Port Coquitlam		3	6
E	(150) Port Moody		1	5
F	(235) White Rock	1	1	3
	Municipalities:			
G	(18) Burnaby	11	42	71
H	(40) Coquitlam	3	16	21
I	(52) Delta	3	3	6
J	(132) North Vancouver	2	8	15
K	(167) Richmond	7	14	21
L	(195) Surrey	12	23	42
M	(212) West Vancouver	2	11	17
	R.C.M.P. detachments:			
N	(39) Coquitlam			1
O	(189) Squamish	3	4	6
	Total:	86	297	706
II	Cities:			
A	(211) Victoria	8	33	62
B	(121) Nanaimo	2	8	16
C	(53) Duncan		2	12
	Municipalities:			
D	(57) Esquimalt		3	4
E	(170) Saanich	4	13	22
	Villages:			
F	(98) Ladysmith		3	2
G	(100) Lake Cowichan		2	2
	R.C.M.P. detachments:			
H	(54) Duncan	3	18	28
I	(99) Ladysmith		6	8
	Total:	17	88	156

CODE				
III	Cities:			
A	(86) Kamloops	5	36	22
B	(209) Vernon	1	26	14
C	(165) Revelstoke		7	10
	Municipalities:			
D	(31) Chilliwack	3	11	19
E	(158) Princeton	2		
	Villages:			
F	(130) North Kamloops	1	6	8
	R.C.M.P. detachments:			
G	(87) Kamloops	7	17	30
		2	13	21
	Total:	21	116	124
IV	Cities:			
A	(153) Prince George	2	12	17
	Municipalities:			
B	(223) Powell River		6	6
	Villages:			
C	(207) Vanderhoof		1	1
D	(161) Quesnel		9	9
	Total:	2	28	33

R.C.M.P. DETACHMENT

................................, B.C.
Organized. ☐ Unorganized. ☐
FOR R.C.M.P. USE ONLY

PROVINCE OF BRITISH COLUMBIA

REPORT OF MOTOR-VEHICLE ACCIDENT

This report shall be without prejudice, shall be for the information of the Superintendent of Motor-vehicles, and of police forces in this Province, and shall not be open for public inspection.

ACC. REPORT No.

FOR DEPARTMENTAL USE ONLY

1 TIME and LOCATION of ACCIDENT

Date of accident..................., 19.....
Day of week.................. Time.......... ☐ a.m. ☐ p.m. ☐ Daylight ☐ Dark ...., B.C. (City or town.)
On.................................. Street at.................................
(Name.) (Block number or other street.)

If Accident Occurred in the Country

On.................. road or highway .... miles.................. of.................., B.C.
(Name.) (North, south, east, west.) (City or town.)

2 Accident INVOLVED (Mark which.)

☐ Another motor-vehicle. ☐ Pedestrian. ☐ Overturned. ☐ Animal.
☐ Non-collision. ☐ Bicycle. ☐ Motor-cycle. ☐ Train.
☐ Fixed object.................. (Describe.) ☐ Other object.................. (Describe.)

FOR DEPARTMENTAL USE ONLY

3 1st VEHICLE

Driven by me .... (Print full name.)
.... Driver's Licence No..................
(Address.) (City or town.)
Age.......... (Years.) ☐ Male. ☐ Female. Chauffeur's Licence No.................. Phone No..................
Driving experience .... (Years.) Estimated damage $.................. (Vehicle No. 1.) $.................. (Other vehicle(s).) $.................. (Other property.)
Motor-vehicle Licence No.................. Province or State.................. Type.................. (Passenger, bus, truck, motor-cycle, etc.)
Owned by .... (Print full name.)
.... (Address.) (City or town.)
SEAT BELTS: INSTALLED Yes. ☐ No. ☐ IN USE Driver: Yes. ☐ No. ☐ Passenger: Yes. ☐ No. ☐
Number of passengers in this vehicle (without driver).................. Total number of vehicles in this accident..................

INSURANCE

STATE CARD COLOUR: ☐ Pink. ☐ Yellow. ☐ Green.
☐ If white, give number..................
Name of insurance company..................
Policy No.................. Name of agent..................
Date policy expires.................. (Day, month, year.) Address of agent..................

4 2nd VEHICLE

Motor-vehicle Licence No..................
Driven by .... (Print full name.)
.... Driver's Licence No..................
(Address.) (City or town.)

6 CHECK WITH X EACH ITEM DESCRIBING THIS ACCIDENT

Condition of Vehicles (Vehicle 1 2 3)
☐ ☐ ☐ 1. Apparently good.
☐ ☐ ☐ 2. No chains (slippery road).
☐ ☐ ☐ 3. Brakes defective.
☐ ☐ ☐ 4. Steering mechanism defective.
☐ ☐ ☐ 5. Head-lights dim.
☐ ☐ ☐ 6. Puncture or blowout.
☐ ☐ ☐ 7. Head-lights out (both lights).
☐ ☐ ☐ 8. Tail-light out or obscured.
☐ ☐ ☐ 9. Glaring head-lights.
☐ ☐ ☐ 10. Head-lights out (one light).
☐ ☐ ☐ 11. Other defects.

Direction of Travel (Vehicle 1 2 3)
☐ ☐ ☐ 1. Going straight.
☐ ☐ ☐ 2. Turning left.
☐ ☐ ☐ 3. Turning right.
☐ ☐ ☐ 4. Slowing down or stopping.
☐ ☐ ☐ 5. Backing (not to or from curb).
☐ ☐ ☐ 6. Skidding.
☐ ☐ ☐ 7. Leaving curb (including backing).
☐ ☐ ☐ 8. Making U-turn.
☐ ☐ ☐ 9. Overtaking.
☐ ☐ ☐ 10. Stopping (not at curb or off paved strip).
☐ ☐ ☐ 11. Overtaking on right side.
☐ ☐ ☐ 12. Overtaking on left side.
☐ ☐ ☐ 13. Avoiding object or pedestrian.

Manner of Collision
☐ 1. Angle collision.
☐ 2. Head-on collision or head-on side-swipe.
☐ 3. Rear-end collision.
☐ 4. Backed into other vehicle.
☐ 5. Side-swiped other vehicle going same direction.

What Drivers Were Doing (Vehicle 1 2 3)
☐ ☐ ☐ 1. No improper driving.
☐ ☐ ☐ 2. Drove off roadway.
☐ ☐ ☐ 3. Did not have right of way.
☐ ☐ ☐ 4. Car standing in roadway (not parked).
☐ ☐ ☐ 5. Following too close.
☐ ☐ ☐ 6. On wrong side of road.
☐ ☐ ☐ 7. Failed to signal.
☐ ☐ ☐ 8. Through street—did not stop.
☐ ☐ ☐ 9. Passing at intersection.
☐ ☐ ☐ 10. Exceeding speed limit.
☐ ☐ ☐ 11. Careless driving.
☐ ☐ ☐ 12. Cutting in.
☐ ☐ ☐ 13. Car ran away.
☐ ☐ ☐ 14. Passing on curve or hill.
☐ ☐ ☐ 15. Passing on wrong side.
☐ ☐ ☐ 16. Hit and run.
☐ ☐ ☐ 17. Railroad—failed to stop.
☐ ☐ ☐ 18. Cutting left corner.
☐ ☐ ☐ 19. Parked legally.
☐ ☐ ☐ 20. Drove through school zone.
☐ ☐ ☐ 21. Drove through safety zone.

Weather Conditions
☐ 1. Clear. ☐ 4. Fog or mist.
☐ 2. Rain. ☐ 5. Snow.
☐ 3. Cloudy. ☐ 6. Smoke or dust.

Traffic Control (Funct. / Not Funct.)
☐ 1. No control present.
☐ ☐ 2. Police officer.
☐ ☐ 3. Automatic traffic signal.
☐ ☐ 4. Stop signs.
☐ ☐ 5. Warning signs, slow signs, etc.

Condition of Driver and Pedestrian (Veh. 1 2 3, Ped.)
☐ ☐ ☐ ☐ 1. Apparently normal.
☐ ☐ ☐ ☐ 2. Extreme fatigue.
☐ ☐ ☐ ☐ 3. Had physical defect.
☐ ☐ ☐ ☐ 4. Confused by traffic.
☐ ☐ ☐ ☐ 5. Ability impaired.
☐ ☐ ☐ ☐ 6. Not known.

Road Condition
☐ 1. Normal.
☐ 2. Defect in roadway.
☐ 3. Obstruction in road.
☐ 4. Road under repair.
☐ 5. Obstruction not marked or lighted.
☐ 6. Other.

Type of Road
☐ 1. Asphalt.
☐ 2. Gravel.
☐ 3. Concrete.
☐ 4. Earth.
☐ 5. Brick or cobble.
☐ 6. Other.

Road Surface
☐ 1. Dry surface.
☐ 2. Wet surface.
☐ 3. Icy surface.
☐ 4. Loose sand or gravel.
☐ 5. Snowy surface.
☐ 6. Muddy surface.

Light Conditions
☐ 1. Daylight.
☐ 2. Darkness.
☐ 3. Artificial light—good.
☐ 4. Dusk or semi-darkness.
☐ 5. Artificial light—poor.

What Pedestrian Was Doing
☐ 1. Not known.
☐ 2. Crossing at intersection—no signal.
☐ 3. In street, not at intersection.
☐ 4. Coming from behind parked or moving car.
☐ 5. Crossing at intersection with signal.
☐ 6. Crossing street diagonally, not at intersection.
☐ 7. Walking on or along highway.
☐ 8. Playing in street.
☐ 9. Crossing at intersection against signal.
☐ 10. Not on roadway.
☐ 11. Getting on or off another vehicle.
☐ 12. Riding or hitching on vehicle.
☐ 13. Working on car or roadway.
☐ 14. Crossing intersection diagonally.
☐ 15. In pedestrian cross-walk.
☐ 16. Standing in safety-isle.

Railroad Crossing
☐ 1. Unguarded crossing.
☐ 2. Automatic signal.
☐ 3. Guarded crossing, man on duty.
☐ 4. Gates not down.
☐ 5. Driver disregarded signal.
☐ 6. Signal not given.

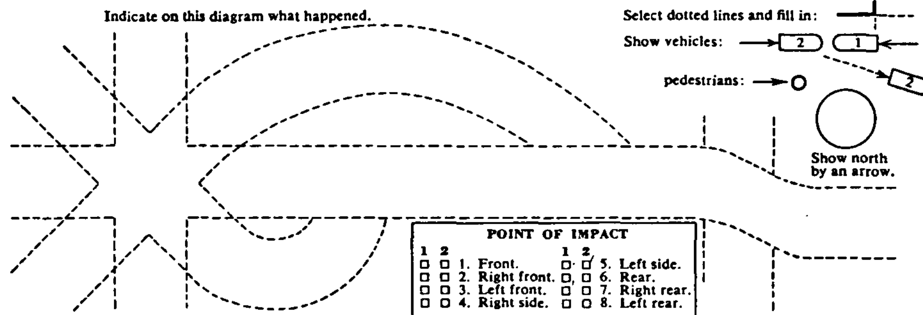
5 3rd VEHICLE

Motor-vehicle Licence No..................
Driven by .... (Print full name.)
.... Driver's Licence No..................
(Address.) (City or town.)

REVERSE SIDE MUST ALSO BE COMPLETED AND SIGNED.

7 **IMPORTANT**

Select sketch that resembles most closely the section of road or street where accident occurred. Indicate with lines or arrows the paths of vehicles or persons, also the direction and distance to the nearest town or intersection.



8 **NAMES AND ADDRESSES OF KILLED AND (OR) INJURED AND WITNESSES**

	Age	Male	Female	Killed	Injured	Taken to Hospital	Driver	Passenger	Pedestrian	Cyclist	Witness	DESCRIBE NATURE OF INJURIES
1. .... (Name.) (Address.)												
2. .... (Name.) (Address.)												
3. .... (Name.) (Address.)												
4. .... (Name.) (Address.)												
5. .... (Name.) (Address.)												
6. .... (Name.) (Address.)												

9 **MAKE BRIEF STATEMENT OF PARTICULARS OF ACCIDENT**..

....

....

....

....

....

Dated at ...., B.C., this ....day of.., 19........ *(Signature)*..

ORIGINAL: To be forwarded to police authority of area in which accident occurred for notation and transmittal to Superintendent of Motor-vehicles, Victoria, B.C.

10 **TO BE COMPLETED BY POLICE AUTHORITY** (State if investigation of accident made, and, if so, what action taken and any recommendations.)

Was insurance card produced? ☐ Yes. ☐ No. Make and year of vehicle.. Speed zone..........................

....

....

....

....

Date and time report received: *(Signature)* .... Rank..................

.... a.m. p.m. ...., 19 Police Department ....

M.V. 104—100M (50)

APPENDIX 2:B

ADDRESS ALL CORRESPONDENCE TO THE SECRETARY

THE HON. MR. JUSTICE R. A. B. WOOTTON, CHAIRMAN
DR. P. A. LUSZTIG, COMMISSIONER
C. E. S. WALLS, ESQ., COMMISSIONER

G. GORDON S. RAE, ESQ., Q.C., COUNSEL

PHONE 388-5461

THE GOVERNMENT OF
THE PROVINCE OF BRITISH COLUMBIA

ROYAL COMMISSION
ON AUTOMOBILE INSURANCE

FIFTH FLOOR, WEILER BUILDING
609 BROUGHTON STREET, VICTORIA, B.C.
P.O. BOX 1388

Dear

As you may have noticed in the newspaper, the Government of British Columbia has appointed a Royal Commission to investigate automobile insurance. The Commission is now at work. Part of its task is to determine the adequacy of compensation received by residents of British Columbia who have had automobile accidents in this Province.

You are among the several hundred people who have been selected at random from those affected by accidents in 1963 to give a representative cross-section of the individuals affected. The enclosed questionnaire contains some questions about the effect of a particular accident on you, and your family. The accuracy of our findings will depend upon the response of yourself and the other people selected. It is important to us to hear from you, whether the effects of your accident were serious or slight. Your co-operation will be greatly appreciated.

The information which you provide will be combined with the answers of others to obtain an overall picture of the effects of automobile accidents. Neither your name nor your individual answers will be disclosed.

If you have any questions regarding this questionnaire, please contact Professor R.A. Holmes who is conducting this study. His complete address is:

Department of Economics
The University of British Columbia
Vancouver 8, B.C. Telephone No. 228-3227

Would you please complete the questionnaire and return it in the enclosed stamped and self-addressed envelope. Your co-operation is vital to the success of this study.

Please let us hear from you.

Yours very truly,

Chairman

1966 CENTENARY OF THE UNION OF THE COLONIES OF VANCOUVER ISLAND AND BRITISH COLUMBIA UNDER THE NAME BRITISH COLUMBIA.
1967 CENTENARY OF THE CONFEDERATION OF CANADA.

BRITISH COLUMBIA ROYAL COMMISSION ON AUTOMOBILE INSURANCE

Study of Economic Loss and Compensation for Victims of Automobile Accidents

Mail Questionnaire No. ....

SECTION A *Accident Information*

1. Date of accident ....
2. Place of accident ....
   ....
3. Driver of vehicle ....
   ....
4. Victim's name ....
   ....
5. Age of victim (at time of accident) .... years
6. Automobile insurance company ....
   ....
7. Other party's automobile insurance company.....
   ....
   ....

SECTION B *Property Damage*

1. (DO *NOT* ANSWER THIS QUESTION UNLESS YOU ARE THE *OWNER* OF A VEHICLE INVOLVED IN THIS ACCIDENT)

   What was the cost of damage to your vehicle (regardless of who paid for it) on account of this accident?

   (a) Actual repair cost $ ....

   (b) Estimated cost of damage left unrepaired $ ....

   (c) Towing or storage costs $ ....

   (d) Temporary substitute transportation $ ....

   (e) Total $ ....

2. (a) Did you suffer any additional property damage as a result of this accident? yes ☐ no ☐

   (b) *(If yes)* How much? $ ....

3. What is the amount of gross compensation which you have received for the property damage which you suffered in this accident? (Do not include loans which must be repaid. Do not deduct legal expenses)

   (a) Own automobile insurance $ ....

   (b) Other person's automobile insurance $ ....

   (c) Other person or persons responsible $ ....

   (d) Other *(please specify)*

   .... $ ....

   .... $ ....

   .... $ ....

4. (a) Do you expect to receive any future compensation for damage to your property in this accident? yes ☐ no ☐

   (b) *(If yes)* How much? $ ....

5. (a) Did you obtain, or attempt to obtain, money from your insurance company for damage to your property in this accident? yes ☐ no ☐

   (b) *(If yes)* Everything considered, how would you describe the way you were treated by your insurance company as far as damage to your property in this accident is concerned?

   ☐ no opinion ☐ very good ☐ good ☐ fair ☐ poor

SECTION C *Medical and Hospital Expenses*

1. (a) Were you admitted to a hospital as a result of this accident? yes ☐ no ☐

   (b) *(If yes)* How many months, weeks, or days did you stay in the hospital?

   number of .... months .... weeks .... days

   (c) (i) Have you received treatment from a medical doctor for injuries suffered in this accident? yes ☐ no ☐

(ii) *(If yes)* How would you describe the treatment provided by your doctor?

☐ no opinion ☐ very good ☐ good ☐ fair ☐ poor

2. What is the amount of your medical and hospital expense (regardless of who paid, or will pay, for it) up to this time?

(a) Hospital bill $ ....

(b) Doctor's bill $ ....

(c) Ambulance $ ....

(d) Drugs $ ....

(e) Other *(please specify)*

.... $ ....

.... $ ....

.... $ ....

.... $ ....

3. If you have received any money for the purpose of paying your medical, dental, or hospital bills resulting from this accident, or if any such money has been paid on your behalf, please show the gross amounts below. (Do not deduct legal expenses. Do not include compensation shown previously for property damage)

(a) Own automobile insurance

Name: ....

$ ....

(b) Own medical insurance

Name: ....

$ ....

(c) B.C. Hospital, Blue Shield, or other hospital insurance $ ....

(d) Own accident insurance $ ....

(e) Other person's automobile insurance $ ....

(f) Other person or persons responsible $ ....

(g) Other *(please specify)*

.... $ ....

.... $ ....

4. (a) Do you expect any future medical, dental, or hospital expenses as a result of this accident? yes ☐ no ☐

(b) *(If yes)* How much? $ ....

SECTION D *Other Expense*

1. If you had any additional out-of-pocket expense (such as for extra household help) caused by the accident, what have these amounted to? *(Please specify the kind of expense as well as the amount)*

.... $ ....

.... $ ....

Kind of expense Amount

2. (a) What amount of gross compensation have you received for these additional out-of-pocket expenses? (Do not deduct legal expenses. Do not include compensation shown previously for property damage or medical expenses)

(b) From what source? $ ....

....

SECTION E *Income Loss and Other Compensation*

1. (a) Did you lose any time from work on account of the accident? yes ☐ no ☐

(b) *(If yes)* (i) How many months, weeks, or days did you lose? (Include time spent on trial, if any)

number of months .... weeks .... days ....

(ii) Did you have a full-time or part-time job when the accident occured? yes ☐ no ☐

(iii) *(If yes)* What were your gross earnings (before taxes and deductions) per month at the time of the accident? (Estimate, as accurately as possible, your gross earnings from full-time and part-time employment during the month preceding the accident) $ ....

2. (a) Have you suffered any permanent impairment as a result of your injury? yes ☐ no ☐

(b) *(If yes)* Does this impairment affect your work? yes ☐ no ☐

3. (a) Do you expect any future losses in gross earnings because of the accident? yes ☐ no ☐

(b) *(If yes)* How much? $ ....

4. How much gross compensation have you received for your income losses and other losses (such as from pain and suffering) resulting from this accident? (Do not deduct legal expenses. Do not include compensation shown previously for property damage, medical, or other expenses)

(a) Pension plan (disability payments) $ ....

(over)

(b) Life insurance (disability payments) $ ....

(c) Other person's automobile insurance $ ....

(d) Other person or persons responsible $ ....

(e) Workmen's Compensation $ ....

(f) Welfare $ ....

(g) Traffic Victims Indemnity Fund $ ....

(h) Employer (including sick leave) $ ....

(i) Other *(please specify)*

.... $ ....

.... $ ....

5. (a) Did you obtain, or attempt to obtain money from the other person's insurance company for your property damage, medical expense, or income loss resulting from this accident?
yes ☐ no ☐

(b) *(If yes)* Everything considered, how would you describe the way you were treated by the other person's, insurance company?

☐ no opinion ☐ very good ☐ good ☐ fair ☐ poor

SECTION F *Legal Proceedings*

1. (a) Did you see a lawyer after the accident?
yes ☐ no ☐

(b) *(If yes)* (i) Everything considered, how would you describe the way you were treated by your lawyer?

☐ no opinion ☐ very good ☐ good ☐ fair ☐ poor

(ii) How much were your legal costs?
$ ....

(iii) How long after the accident did you first see a lawyer about it?

under 7 days ☐
7 days to 1 month ☐
1 to 6 months ☐
6 months to 1 year ☐
1 to 2 years ☐
over 2 years ☐

2. (a) Did you hire a lawyer to handle your case?
yes ☐ no ☐

(b) *(If yes)* (i) Did you or your lawyer ever actually file a suit for damages?
yes ☐ no ☐

(ii) *(If yes)* Did your case come to trial?
yes ☐ no ☐

(iii) *(If yes)* Did you miss any work because of time spent on the trial?
yes ☐ no ☐

(iv) *(If yes)*

(a) How much time did you lose? ....
number of days

(b) If you lost income because of time spent on trial, how much income did you lose? $ ....

3. Do you think an insurance company will usually offer a larger settlement if you have a lawyer than if you don't.
yes ☐ no ☐

SECTION G *Other Matters*

1. How many months, weeks, or days, was it from the time of the accident before you received final compensation?

☐ not yet settled .... number of months .... number of weeks .... number of days

2. Did the time taken to provide compensation create serious financial problems for you or your family?
yes ☐ no ☐

3. Can you think of anything that should be done to make things easier for people who have automobile accidents? *(Please attach statement if insufficient space on this and the following blank page)*

ADDRESS ALL CORRESPONDENCE TO THE SECRETARY

THE HON. MR. JUSTICE R. A. B. WOOTTON, CHAIRMAN
DR. P. A. LUSZTIG, COMMISSIONER
C. E. S. WALLS, ESQ., COMMISSIONER

G. GORDON S. RAE, ESQ., Q.C., COUNSEL

PHONE 388-5461

THE GOVERNMENT OF
THE PROVINCE OF BRITISH COLUMBIA

**ROYAL COMMISSION
ON AUTOMOBILE INSURANCE**

FIFTH FLOOR, WEILER BUILDING
609 BROUGHTON STREET, VICTORIA, B.C.
P.O. BOX 1388

Dear

If you have recently returned the questionnaire which we sent to you, please disregard this letter. If you have not yet returned the questionnaire, we are enclosing another copy with a stamped and self-addressed envelope for your convenience.

The success of this study depends on the co-operation of you and the other people included in the survey. Any information which you provide will be treated as confidential. Neither your name nor your individual answers will be disclosed.

Please let us hear from you.

Yours very truly,

Chairman

1966 CENTENARY OF THE UNION OF THE COLONIES OF VANCOUVER ISLAND AND BRITISH COLUMBIA UNDER THE NAME BRITISH COLUMBIA.
1967 CENTENARY OF THE CONFEDERATION OF CANADA.

BRITISH COLUMBIA ROYAL COMMISSION ON AUTOMOBILE INSURANCE

STUDY OF ECONOMIC LOSS AND COMPENSATION FOR

VICTIMS OF AUTOMOBILE ACCIDENTS

INJURED PERSONS' QUESTIONNAIRE

Questionnaire No. ______________

A. Explain briefly the purpose of the interview. (As you know, the purpose of this work is to determine the adequacy of the compensation received by victims of automobile accidents. We are particularly concerned about serious injuries such as yours. We would like therefore to ask you a few questions in addition to those on the mail questionnaire).

B. Property Damage (Complete mail questionnaire)

C. Medical Care (Complete information on mail questionnaire)

1. (i) First of all what sort of injuries did you have?

   ____

   (ii) As a result of the accident, were you treated by a doctor . . . either right after the accident or later on?

   ____

   (iii) What is the doctor's name and address?

   Name ______________________________

   Address ______________________________

   (iv) (If admitted to hospital) I see from your mail questionnaire that you were admitted to the hospital as a result of this accident for

   ______ months ______ weeks ______ days

   What is the name and address of the hospital?

   Name ______________________________

   Address ______________________________

2. According to our records your total medical and hospital expenses resulting from this accident have amounted to $________

(i) Does this include all of the expenses paid by you and for you by insurance companies or others? (If no) What are the additional amounts paid and by whom?

Source ________________________________ $________

(ii) Is there, <u>in addition</u>, any medical, hospital or dental bills resulting from this accident which have not yet been paid? (If yes) What do these amount to? $________

3. According to our records your total compensation for medical and hospital expenses has amounted to $________

(i) Does this include the sums paid on your behalf but not paid directly to you? (If no) How much should be added? $________

(ii) a. All of your additional medical expenses resulting from this accident you have had to pay yourself. Is that right?

b. (If no) What other help did you receive and from whom?

________________________________ $________

c. Did you or will you have to pay any of this money back?

d. (If yes) How much will you have to pay back and to whom?

________________________________ $________

4. (i) How about the future; do you think you will need any medical, dental or hospital care in the future to help you recover from this accident?

(ii) (If yes) What will this be for?

____

(iii) Has a doctor or dentist recommended that this be done?

_____ Yes _____ No

(iv) Do you expect to have this done? _____ Yes _____ No

(v) (If yes) How much (would) (will) this cost you altogether, do you think? $__________

(vi) (Would) (Will) you have to pay all of this out of your own pocket?

_____ Yes _____ No

(vii) (If no) How much (would) (will) you receive from these sources?

(a) Own Automobile Insurance $__________

(b) Own Medical Insurance $__________

(c) B.C. Hospital, Blue Shield or other Hospital Insurance $__________

(d) Own Accident Insurance $__________

(e) Other Person's Automobile Insurance $__________

(f) Other Person or Persons Responsible $__________

(g) Other (please specify)

____ $__________

(h) Total $__________

5. We may have to consult the hospital to complete our statistical records. Is that all right

_____ Yes _____ No

6. We may have to consult your doctor to complete our statistical records. Is that all right?

_____ Yes _____ No

D. <u>Other Expense</u> (Complete mail questionnaire)

1. According to our records you had $__________ out-of-pocket expenses other than those for property damage and medical treatment because of this accident. Is there anything else that should be added for extra household help, interest on loans, or things like that? (Check for property loss (other than vehicle) with non-owners of vehicle 1.)

(If yes) How much? $__________

2. (If information on mail questionnaire is incomplete) Could you tell me the amount of compensation you received for these other expenses from each source?

   ______________________________ $________

3. Do you expect any future compensation for these "other expenses"? (If yes) How much and from whom?

   ______________________________ $________

E. <u>Income Loss and Other Compensation</u> (Complete mail questionnaire)

7. (If not full-time or part-time job at the time of the accident)

   (i) At the time of the accident was your regular line of work seasonal (like fishing or logging for example)?

   (ii) (If yes)

   a. What was your regular line of work at the time of the accident?

   ____

   b.(1) Did the accident occur in your off season?

   (2) (If yes) (i) What were your gross earnings per month (before taxes and deductions) from your regular line of work at the time of the accident? $________ Amount per month

   (ii) How many months per year do your ordinarily spend at your regular line of work? ________ Months per year

   (iii) What were your gross earnings per month in your off-season? (Do not include unemployment insurance nor other receipts which are not income from employment.)

   $________

   (iv) Were you earning any additional money from other employment at the time of the accident? (If yes) How much per month? $________

(iii) (1) Were you, at the time of the accident

(a) A student? _____ Yes _____ No

(b) (1) A housewife _____ Yes _____ No

(2) (If yes) (i) Did you have children at the time of the accident? _____ Yes _____ No

(ii) (If yes) What was the age of your youngest child at the time of the accident? _______ Years

(c) (1) A woman employed outside the home? _____ Yes _____ No

(2) (If yes) Single? _____ Yes _____ No

Divorced, widowed, or separated? _____ Yes _____ No

Married, living with husband? _____ Yes _____ No

8. (If employed at the time of the accident) (i) What was your occupation at the time of the accident?

____

(ii) (If future losses in gross earnings expected)

a. How long and by how much do you expect your gross earnings to be reduced because of this accident?

__________ indefinitely ____________ number of years $__________ amount per year

b. Do you expect to receive any compensation for your future loss of earnings? (If yes) How much future compensation do you expect to receive and for how long?

		Amount per Year	Number of years
(1)	Pension Plan (disability payments)	$________	________
(2)	Own Life Insurance (disability payments)	$________	________
(3)	Other Person's Automobile Insurance	$________	________
(4)	Other Person or Persons Responsible	$________	________
(5)	Workmens' Compensation	$________	________
(6)	Welfare	$________	________
(7)	Traffic Victims' Indemnity Fund	$________	________
(8)	Other (please specify)		
	________________________	$________	________

9. (If employed or if seasonably unemployed at the time of the accident).

(i) a. In your formal education, had you, at the time of the accident completed all or part of elementary school?

____ Yes ____ No

b. (If yes) Had you completed all or part of high school?

____ Yes ____ No

c. (If yes) Had you completed all or part of a university programme?

____ Yes ____ No

d. (If yes) In what field was your university work?

____

(ii) What is your present age? ____ years ________ date of birth

(iii) Sex? ____ male ____ female

F. <u>Legal Proceedings</u> (complete mail questionnaire)

1. (c) (If respondent did not see lawyer) Why did you not see a lawyer

about the accident?

(i) Settlement Unlikely.

a. Nobody else at fault; couldn't find the person at fault; injured person's own fault or fault of member of family ___________

b. Person at fault had no insurance or assets ___________

c. No definite reason but thought a settlement unlikely ___________

(ii) Unwilling to Litigate

a. Injury didn't amount to much ___________

b. Person at fault was a friend or relative ___________

c. Couldn't afford a lawyer ___________

(iii) Other reasons

a. Claim was handled by own insurance company ___________

b. Intend to see a lawyer in future ___________

(d) (If no tort settlement received) Why do you think you did not receive a settlement from any of the other persons involved nor from any of their insurance companies?

(i) Improbability of Getting a Settlement

a. Nobody to collect from; nobody else at fault; the person at fault unknown or address unknown; injured person at or member of family at fault ___________

b. Person at fault had no insurance of assets ___________

(ii) Unwilling to Litigate

a. Person at fault a relative or friend ___________

b. Too expensive to try to collect; couldn't afford a lawyer ___________

(iii) Other reasons

a. Our insurance company took care of it ________

b. Still trying to collect ________

1. (e) (i) (If a lawyer was seen) What is the name and address of the lawyer who handles your case?

Name ________________

Address ________________

(ii) We may have to consult your lawyer to complete our statistical records. Is that all right? ____ Yes ____ No

4. Did the other person in the accident, or his insurance company, or his lawyer make any offers to you to settle the case? (If yes) What was their first offer? $________

G. General Opinions (Complete questionnaire)

H. Authorization

As I mentioned earlier, we may want to contact your doctor, lawyer, and hospital. If you agree with this, would you mind signing these authorization slips so that they will know it is all right?

BRITISH COLUMBIA ROYAL COMMISSION ON AUTOMOBILE INSURANCE

STUDY OF ECONOMIC LOSS AND COMPENSATION FOR VICTIMS OF AUTOMOBILE ACCIDENTS

FATALITIES' QUESTIONNAIRE

Questionnaire No. ____________

Explain briefly the purpose of the interview. (As you know, the purpose of this interview is to appraise the adequacy of the compensation received by the survivors of persons killed in automobile accidents in this province.)

A. Accident Information

1. Date of accident ______________________________
2. Place of accident ______________________________
3. Driver of vehicle ______________________________
4. Victim's name ______________________________
5. Age of victim (at time of accident) ______________
6. Automobile insurance company ______________
7. Other party's insurance company ______________
8. Respondent's name ______________________________
9. Relationship of respondent to victim ______________

B. Property Damage

1. (Ask this question only if victim was owner of vehicle 1.)

   What was the cost of damage to the late ____________'s vehicle (regardless of who paid for it) on account of this accident?

   (a) Actual repair cost $____________

   (b) Estimated cost of repairs not made $____________

   (c) Towing or storage costs $____________

   (d) Temporary substitute transportation $____________

   (e) Total $____________

2. (a) Did the late ________________ suffer any property damage in addition to vehicle damage in this accident?

   __________ yes __________ no

   (b) (If yes) How much? $____________

3. How much gross compensation did the late ________________________ or the family receive for the property damage suffered in this accident? (Do not include any loans which must be repaid. Do not deduct legal expenses.)

   (a) Own automobile insurance $____________

   (b) Other person's automobile insurance $____________

   (c) Other person or persons responsible $____________

   (d) Other (please specify)

   ________________________ $____________

   (e) Total $____________

4. (a) Do you expect to receive any further compensation for property damage suffered in this accident? (If yes) How much? (Do not include loans which must be repaid.)

   Own automobile insurance $____________

   Other person's automobile insurance $____________

   Other person or persons responsible $____________

   Other (please specify)

   __________________________ $____________

   (b) Total $____________

5. (a) Did the family obtain, or attempt to obtain, money from the late ________________'s insurance company for property damage in this accident?

(b) (If yes) Everything considered, how do you feel about the way the family was treated by the late ________________'s automobile insurance company as far as property damage in this accident is concerned?

________	________	________	________	________
no opinion	very good	good	fair	poor

C. Medical Hospital and Burial

1. (a) Was the late ______________________ admitted to a hospital as a result of this accident?

   (b) (If yes) What is the name and address of the hospital?

   Name ____

   Address ______________________________________

   (c) (i) Who was the doctor who attended the late ________________ after the accident?

   (ii) How would you describe this doctor's treatment of the late ________________?

________	________	________	________	________
no opinion	very good	good	fair	poor

2. What was the total amount of the late ______________'s medical, hospital, and burial expenses resulting from the accident? Include outstanding bills as well as those that have been paid. Include expenses paid by insurance companies or others on behalf of the family.)

   (a) Hospital bill $________________

   (b) Doctor's bill $________________

   (c) Ambulance $________________

   (d) Drugs $________________

   (e) (Other medical, $________________
   (Funeral and burial $________________

(f) Total $________________

3. Was any money received or paid on the late ______________'s behalf for the purpose of meeting these medical, hospital, or burial costs? (If yes) How much was received from the following sources: (Do not include compensation shown previously for property damage.)

(h) Own life insurance $________________

(a) Own automobile insurance $________________

(b) Own medical insurance $________________

(c) B. C. Hospital, Blue Shield or other hospital insurance $________________

(d) Own accident insurance $________________

(e) Other person's automobile insurance $________________

(f) Other person or persons responsible $________________

(g) Other (please specify) $________________

(i) Did or will any of this money have to be paid back? __________

(ii) (If yes) How much and to whom?

____________________________ $__________

4. (a) Do you expect to receive any further compensation for the late ________________'s medical, hospital and burial expenses resulting from this accident?

(b) (If yes) How much do you expect to receive from the following sources:

(i) Own life insurance $__________

(ii) Own automobile insurance $__________

(iii) Own medical insurance $__________

(iv) B.C. Hospital, Blue Shield or other hospital insurance $________

(v) Other person's automobile insurance $________

(vi) Other person or persons responsible $________

(vii) Other (please specify) $________

________________ $________

(viii) Total $________

5. We may have to consult the hospital to complete our statistical records. Is that all right? _____ yes _____ no

6. We may have to consult the doctor to complete our statistical records. Is that all right? _____ yes _____ no

D. <u>Other Expenses</u> (estimate the appropriate proportion if more than one member of the same family involved in accident.)

1. Were there any additional out-of-pocket expenses (other than those for medical care and property damage) resulting from the late ______________'s accident (such as for extra household help) (If yes) What have these amounted to? (Please specify the kind of expense as well as the amount)

________________ Kind of expense $________ Amount

2. Have you received any compensation for those other out-of-pocket expenses? (If yes) How much and from whom? (Do not deduct legal expenses. Do not include compensation shown previously for property damage or medical expense)

   (a) Amount $________

   (b) Source ________________

3. Do you expect any further compensation for these "other expenses"?

(If yes) How much and from whom? (Do not deduct legal expenses. Do not include compensation shown previously)

(a) Amount $____________

(b) Source _______________________

E. <u>Income Loss and other Compensation</u>

3. (a) Did the late _________________________ have a full-time or part-time job when the accident occurred? _____ yes _____ no

(b) (If yes) What were his (her) gross earnings (before taxes and deductions) per month at the time of the accident? (Estimate, as accurately as possible gross earnings from full-time and part-time employment in the month preceding the accident) $_______

7. (If no full-time or part-time job at the time of the accident)

(i) At the time of the accident was the late ___________________'s regular line of work seasonal (like fishing or logging for example)?

(ii) (If yes) (a) What was his (her) regular line of work at the time of the accident? ________________________________

(b) (1) Did the accident occur in his (her) off season?

(2) (If yes) (i) What were the late __________________'s gross earnings per month before taxes and deductions) from his (her) regular line or work at the time of the accident?

$__________

(ii) How many months per year did he (she) ordinarily spend at his (her) regular line of work?

____
Months per year

(iii) What were the late _________________________'s gross earnings per month in his (her) off-season? (Do not

unemployment insurance nor other receipts which are not income from employment).

$______________
Amount per month

(iv) Was he (she earning any additional money from other employment at the time of the accident? (If yes) About how much per month?

$______________

5. How much gross compensation has the family received for the late ______________'s income and other losses resulting from this accident? (Do not deduct legal expenses. Do not include compensation shown previously for property damage, medical or other expenses)

(a) Pension Plan $__________

(b) Life Insurance $__________

(c) Other person's automobile insurance $__________

(d) Other person or persons responsible $__________

(e) Workmen's Compensation $__________

(f) Welfare $__________

(g) Traffic Victim's Indemnity Fund $__________

(h) Employer (including sick leave) $__________

(i) Other (please specify)

______________________ $__________

6. (a) Did the family obtain, or attempt to obtain money from ther other person's insurance company for the property damage, medical expense, income or other losses resulting from this accident?

(b) (If yes) Everything considered, how would you describe the way the family was treated by other person's insurance company?

________	________	________	________	________
no opinion	very good	good	fair	poor

8. (b) Do you expect any further compensation for ________________'s loss of gross earnings? (If yes) How much and for how long?

		Amount per year	Number of years
(1)	Pension plan	$____________	$____________
(2)	Life insurance	$____________	$____________
(3)	Other person's automobile insurance	$____________	$____________
(4)	Other person or persons responsible	$____________	$____________
(5)	Workmen's Compensation	$____________	$____________
(6)	Welfare	$____________	$____________
(7)	Traffic Victims' Indemnity Fund	$____________	$____________
(8)	Other (please specify) ____________________	$____________	$____________

9. (If victim employed or if seasonally unemployed at the time of the accident)

(i) (a) In his (her) formal education, had the late __________ at the time of the accident completed all or part of elementary school

_______ Yes _______ No

(b) (If yes) Had he (she) completed all or part of high school?

_______ Yes _______ No

(c) (If yes) Had he (she) completed all or part of university programme?

_______ Yes _______ No

(d) (If yes) In what field was his (her) university work?

____

(ii) Victim's date of birth ______________________________

(iii) Victim's sex ______ Male ______ Female

F. Legal Procedings

1. (a) (Did the family see a lawyer after the accident? ______ Yes

______ No

(b) (If yes) (i) Everything considered, how would you describe the way the family was treated by their lawyer?

______	______	______	______	______
no opinion	very good	good	fair	poor

(ii) How much were the family's legal costs? $______

(iii) How long after the accident did the family first see a lawyer about it?

Under 7 days ______

7 days to 1 month ______

1 under 6 months ______

6 months under 1 year ______

1 under 2 years ______

over 2 years ______

(c) (If no lawyer seen) Why did the family not see a lawyer?

(i) Settlement Unlikely

a. Nobody else at fault; couldn't find the person at fault; victim's own fault or fault of member of the family ______

b. Person at fault had no insurance or assets ______

c. No definite reason but thought a settlement unlikely ______

(ii) Unwilling to Litigate

b. Person at fault was friend or relative ______

c. Couldn't afford a lawyer __________

(iii) Other reasons

a. Claim was handled by own insurance company __________

b. Intend to see a lawyer in future __________

d. (If no recovery from other party or his insurer) Why did the family receive no settlement from any of the other persons involved nor from their insurance companies?

(i) Improbability of getting a settlement

a. Nobody to collect from; nobody else at fault; the person at fault unknown; victim at fault, or member of family at fault __________

b. Person at fault had no insurance or assets __________

(ii) Unwilling to Litigate

a. Person at fault a relative or friend________

b. Too expensive to try to collect; couldn't afford a lawyer __________

(iii) Other Reasons

a. Our insurance company took care of it ____

b. Still trying to collect __________

e. (If a lawyer was seen)

(i) What is the name and the address of the lawyer seen?

Name ____________________

Address ____________________

(ii) We may have to consult the lawyer to complete our statistical records. Is that all right?

______ Yes ______ No

2. (a) Did the family hire a lawyer to handle the case?

______ Yes ______ No

(b) (i) Did the family or their lawyer ever file a suit for damages?

______ Yes ______ No

(ii) (If yes) Did the case come to trial? ______ Yes ______ No

(iii) (If yes) Did any member of the family miss any work because of the time spent on the trial? ______ Yes ______ No

(iv) (a) (If yes) How much time was lost? ______ days

(b) If income was lost because of time spent on the trial, how much income was lost? $______

(v) (If trial) How long was it from the time suit was filed until the case came to trial? ______ months ______ weeks

3. Do you think an insurance company will usually offer a larger settlement if you have a lawyer than if you don't ______ yes ______ no

4. Did the other person in the accident, or his insurance company make offers to settle this case? (If yes) What was their first offer?

____

G. <u>Related Matters</u>

1. How long (from the time of the accident) did it take to settle this case? ______ not yet settled ______ months ______ weeks ______ days

2. Did the time it took to settle this case create serious financial problems for the family? ________ yes ________ no

3. Can you think of anything that should be done to make things easier for people who have automobile accidents?

I. Authorization

As I mentioned earlier, we may want to contact your doctor, lawyer, and hospital. If you agree with this, would you mind signing these authorization slips so that they will know it is all right.

**ROYAL COMMISSION
ON AUTOMOBILE INSURANCE**

FIFTH FLOOR, WEILER BUILDING
609 BROUGHTON STREET, VICTORIA, B.C.
P.O. BOX 1388

AUTHORIZATION

______________, 1966.

To: ______________________________

____

I hereby authorize you to give to the British Columbia Royal Commission on Automobile Insurance the information which they request.

____

ADDRESS ALL CORRESPONDENCE TO THE SECRETARY

THE HON. MR. JUSTICE R. A. B. WOOTTON, CHAIRMAN
DR. P. A. LUSZTIG, COMMISSIONER
C. E. S. WALLS, ESQ., COMMISSIONER

G. GORDON S. RAE, ESQ., Q.C., COUNSEL

THE GOVERNMENT OF
THE PROVINCE OF BRITISH COLUMBIA

PHONE 388-5461

ROYAL COMMISSION
ON AUTOMOBILE INSURANCE

FIFTH FLOOR, WEILER BUILDING
609 BROUGHTON STREET, VICTORIA, B.C.
P.O. BOX 1388

September 13, 1966

Dear Dr.

As you probably know, the British Columbia Royal Commission on Automobile Insurance is now at work.

Part of the research of this Commission is a study of cost and compensation for persons involved in traffic accidents in British Columbia in 1963. One of the persons our staff has interviewed was a patient of your following his or her 1963 traffic accident. We identify this person on the enclosed questionnaire, and we should like to obtain information on the medical costs and compensation for his or her 1963 traffic accident. This information will be treated as confidential. No data on individual cases will be released by this Royal Commission.

Would you therefore assist this Royal Commission by completing and returning the enclosed questionnaire? We also enclose an authorization, signed by your patient, for the release of this information, and a stamped envelope for the return of the questionnaire.

Your very truly,

Chairman

P.S. Our study is endorsed by the B.C. Medical Association in the <u>British Columbia Medical Journal</u>, September 1966, p. 392.

1966 CENTENARY OF THE UNION OF THE COLONIES OF VANCOUVER ISLAND AND BRITISH COLUMBIA UNDER THE NAME BRITISH COLUMBIA.
1967 CENTENARY OF THE CONFEDERATION OF CANADA.

PHYSICIANS QUESTIONNAIRE

Name of Patient ______________________________

Address of Patient ______________________________

Date of Accident ______________________________

Place of Accident ______________________________

1. What was the total value of the treatment which you provided to this patient on account of this accident? (Include outstanding bills as well as those that have been paid. Include expenses paid by others on behalf of this patient. Do not include hospital expenses.)

   $__________

2. How much of these medical expenses were met by the following:

   (a) patient himself (or herself) $__________

   (b) patient's medical insurance $__________

   (c) other (please specify) $__________

   ______________________ $__________

3. (a) Will this patient need any future medical or hospital care to recover from this accident?

   __________ Yes __________ No

   (b) (If yes) (i) What would you estimate the cost of this future medical or hospital care to be?

   $__________

   (ii) How much of these future medical or hospital expenses would you estimate will be paid by the following:

   (a) patient himself (or herself) $__________

   (b) B.C. Hospital, Blue Shield, or other hospital insurance $__________

   (c) patient's medical insurance $__________

   (d) other (please specify) $__________

   ______________________ $__________

HOSPITAL QUESTIONNAIRE

Name of Patient ______________________________

Address of Patient ______________________________

Date of Accident ______________________________

Place of Accident ______________________________

1. What was the total amount of this patient's hospital expenses (including the cost of drugs, X-rays, anaesthetics, etc.) resulting from this accident. (Include outstanding bills as well as those that have been paid. Include expenses paid by others on behalf of this patient.)

   $______________________

2. How much of these hospital expenses were met by the following:

   (a) patient himself (or herself) $______________________

   (b) B.C. Hospital, Blue Shield or other hospital insurance $______________________

   (c) other (please specify)

   ______________________ $______________________

INTRODUCTION
TO
CHAPTERS 3 ~ 12

CHAPTERS 3 - 12

Term of Reference (c):

> The cost to insurers, to persons who pay insurance premiums, and to the public generally of providing present forms of automobile insurance determined on the basis of past and current experience and whether the cost is in proper relationship to the effective protecion obtained.

The Commissioners made full inquiry into the matter of Costs pertaining to each of the several particulars set out in Term of Reference (c). They arrived at certain findings and are able to make recommendations pertinent to these.

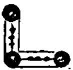
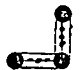
This Term of Reference covers a broad field of inquiry and the Commissioners feel that, in the matter of reporting upon their findings, the interests of all concerned will be served best by dealing separately with each item in the particulars and then summing up with a statement of conclusions and recommendations. To that end, this part of the Report is divided into ten chapters, as follows:

Chapter 3: Automobile Insurance - The Product.
" 4: The Automobile Insurance Industry as it pertains to British Columbia.
" 5: The Central Statistical Agency.
" 6: Rate-making and the Statistical Exhibit (The "Green Book").
" 7: Insurance Company Finance.
" 8: Competition.
" 9: The Cost to Insurers of providing present forms of Automobile Insurance determined on the Basis of past and current Experience.
" 10: The Cost to Persons who pay Insurance Premiums of providing present forms of Automobile Insurance determined on the Basis of past and current Experience.
" 11: The Cost to the Public generally of providing present forms of Automobile Insurance determined on the Basis of past and current Experience.
" 12: Conclusions as to whether the previously mentioned Costs are in proper Relation to the effective Protection obtained.

CHAPTER

3

AUTOMOBILE INSURANCE - THE PRODUCT

CHAPTER 3

AUTOMOBILE INSURANCE - THE PRODUCT

Despite its common usage no definition of the term "insurance" has found universal acceptance. The following quotation may serve to indicate its nature:

> Insurance itself may be defined as a social device 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 both that uncertainty is reduced and that losses are shared. These are the important essentials of insurance.
>
> From the point of view of the individual insured, insurance is a device that makes it possible for him to substitute a small, definite cost (the premium) for a large but uncertain loss (up to the amount of the insurance) under an arrangement whereby the fortunate many who escape loss will help to compensate the unfortunate few who suffer loss.[1]

The foregoing indicates that the insurance device is to enable the losses of the few to be shared by the many. However, it is important to realize that it does not follow from this that the better risks must necessarily share the losses of the poorer risks. The following quotation from the same source conveys this thought:

> . . . the success of any co-operative plan like insurance requires an effort to approach as equitable a distribution of costs and benefits among participants as possible. Maintaining a semblance of equity among policyholders is the job of the underwriter, who must classify and rate each loss exposure.[2]

Under Section 2 of the Insurance Act of British Columbia 'insurance' is defined:

> The undertaking by one person to indemnify another person against loss or liability for loss in respect of a certain risk or peril to which the object of insurance may be exposed, or to pay a sum of money or other thing of value upon the happening of a certain event.

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1. R. I. Mehr and E. Cammack. Principles of Insurance, Richard D. Irwin, Inc., Homewood, Illinois, 1966, pp. 34-35.

2. Ibid. p. 6.

Under the same section 'automobile insurance' is defined:

> . . . insurance against liability for loss or damage to persons or property caused by an automobile or the use or operation thereof and against loss of or damage to an automobile.[3]

The automobile insurance contract is essentially multiple line in nature with protection falling into three major classifications: (1) liability coverage which encompasses bodily injury and property damage liability (2) physical damage insurance protecting against loss or damage to the automobile itself, and (3) medical payments cover.

Whether the automobile insurer is attempting to reach the entire family automobile market, members of automobile clubs, farmers or commercial risks, a variety of approaches to distribution can be considered. Marketing may be through independent insurance agents, brokers, company employees, automobile dealers, exclusive agents, or mail order catalogues. All named methods of marketing are in use in British Columbia.

"The Total Product" Concept Applied to Automobile Insurance[4]

The automobile insurance industry is a service industry, so-called because its physical product is itself, intangible -- a contract of insurance. As such, it is almost doubly intangible since the contract is an executory and conditional one whereby the insurer promises to do certain things only if certain events materialize.

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3. R.S.B.C., 1960, C. 197, as amended.

4. "Total Product" embraces not just the physical product itself, but the diverse elements of a package which include dependability, service, availability, and credit facilities.

Primarily, perhaps, the consumer of automobile insurance is buying peace of mind. He probably hopes he is going to receive nothing else out of the transaction. If involved in an accident he anticipates that damage to his own vehicle will be taken care of by the insurer under his physical damage cover to the extent that the loss is beyond whatever deductible there may be in that cover (two party insurance). If he is unfortunate enough to have a claim made upon him on the basis of negligence (i.e. under his third party cover) he expects that his insurer will attend to the handling of the claim, defend him against any suit proceedings which might be taken, and make any necessary payment or payments either to effect settlement or to satisfy any adverse judgment, as the case may be.

The contract may, of course, not be worth too much. In the absence of a variety of statutes regulating insurers, a valid policy of insurance could be written by anyone with capacity to contract; but if the insurer lacked the financial capacity to meet his contractual obligations, the policy would be worthless. Canadian insurance legislation was prompted by the apparent need to license insurance companies to see to it that they were able to meet their obligations and this remains the primary concern of the Federal Department of Insurance and with respect to provincially licensed companies, of Provincial Departments as well.

The consumer, however, expects far more than mere solvency on the part of the insurer. He may want to have his premium financed, to be advised on changing coverages available, to have his claims handled quickly with a minimum of personal inconvenience, and to be certain of policy renewals. He may want some, all, or possibly even more of such services. Some are immediate, while others

constitute a package of contingent future services obviously more difficult to value. Whether the insured is in fact able to make a reliable appraisal of potential future treatment by an insurer is of course doubtful.

The total package of services is provided partly by the agent selling the policy, partly by the insurer writing it and partly by the adjuster if and when a claim develops. Occasionally all such services may be provided by the insurer through its employees but, even when they are not, an adequate definition of the product must embrace all such services.

The Physical Product

While the typical insured pays a single premium for coverage, the product is actually a packet of several separate contracts which may be combined in various ways to meet buyer needs. Each of the coverages provides for protection against particularized contingencies and may be purchased in varying amounts. A concise description of the coverages includes:

(1) Bodily injury and property damage, which promises to pay on behalf of the insured money he becomes legally obligated to pay as damages to a third party claimant by reason of negligence (fault) related to the ownership maintenance or use of the insured automobile which occasions the bodily injury or property damage. The policy forms in use in British Columbia provide for minimum limits of $50,000 inclusive for any one occurrence.[5] The other Canadian provinces have a limit of $35,000.

However, recognizing that the standard limits provide the absolute minimum of coverage, it is common for vehicle owners in this Province to insure to far higher limits.

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5. Claims arising out of bodily injury or death have priority to the extent of $45,000 and claims arising out of the loss or damage to property, priority to the extent of $5,000.

(2) Collision and Upset, a form of property insurance, provides for the repair or replacement of the insured's vehicle in event of accident. Most contracts contain a deductible clause, leaving the insured responsible for the first $25, $50, $100 or $250 of the loss in any single occurrence. Variations such as a disappearing deductible are available on occasion.

(3) Specified Perils, also a form of property insurance, pays for loss or damage to the vehicle caused by fire, lightning, theft, or attempt thereat, windstorm, earthquake, hail, explosion, riot or civil commotion, falling or forced landing of aircraft or parts thereof, rising water, or the stranding, sinking, burning, derailment or collision of any conveyance in or upon which the vehicle is being transported. The coverage may be written subject to a deductible which then applies to all perils except theft of the entire automobile and fire. Where the car is stolen, reimbursement for the expense of alternative modes of transportation of up to $8.00 per day to a total of the lesser of $240 or the value of the vehicle is provided 72 hours after the loss is reported.

(4) Comprehensive, which is similar to specified perils but offers much broader protection on an almost 'all-risks' basis.[6]

(5) All Perils, which essentially combines collision and upset with the comprehensive protection and incorporates a common deductible. This is a fairly recent innovation, first sold in British Columbia in 1962.

(6) Medical Payments, a restricted form of accident insurance, provides for medical, surgical, dental, ambulance, hospital, nursing and funeral services up to a specified limit. Payment is made regardless of whether the driver was negligent.

The foregoing six types of coverage may be further categorized as belonging to either accident insurance with its two party claims procedure, i.e. the insured and insurer, each a party to the contract, or to tort liability insurance with its three party claims procedure, i.e. the insured and insurer, each a party to the contract and the third party claiming in tort against the insured. There is perhaps a third category not related to tort, where the recipient of the payment is a beneficiary under a two party contract to which he is not a contracting party. Medical payment coverage may, depending upon the contractual

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6. 'All Risks' contracts usually contain exclusions which the insurer does not wish to cover.

terms, fall into this category. Tort liability insurance is applicable to Bodily Injury and Property Damage coverage, and accident insurance is applicable to the remaining five coverages. Under accident insurance the injured insured party receives compensation regardless of fault. However, under tort liability insurance the injured party may receive compensation only if it can be demonstrated that some other party to the accident has a legal obligation to compensate the injured party. A legal obligation in tort liability insurance can only arise from the proof or admission of fault. Thus, the injured party does not automatically receive benefits because the other party to the accident was covered by insurance. This fact has no significance to the injured party unless he can demonstrate fault and, therefore, a legal liability on the part of the insured.

A second and important difference between the two types of automobile insurance is that under accident insurance the injured insured party recovers from his own insurance company, whereas under tort liability insurance the injured ordinarily recovers from an insurance company other than his own which makes the payment on behalf of its insured who has been found to be negligent in some degree. Company treatment of the third party (as a product characteristic) is not of particular relevance to the buyer of liability coverage. Disagreements more frequently arise, however, under third party liability insurance where there is no contractual relationship between the insurer and the person receiving payment than is the case under two party insurance (e.g. collision). The Commission's research on the adequacy of compensation indicated that compensation difficulties arising under tort liability insurance often lead to adverse public opinion of insurance companies. This last will be referred to in more detail at another place in this report.

The enumerated coverages are available to private passenger vehicles and with limitations or modifications to other ratings such as, for example, commercial, trucks, farmers, public carriers and garages.

The contractual terms for each of the coverages are essentially standardized. In the insurance industry generally, standardization evolved as underwriters sought to adopt and preserve wording with judicially defined meanings or at least meanings sanctioned by long trade usage. The growth of trade associations and bureaus which enforced uniform policy terms on their membership added impetus to the movement for standardization. The most recent stage featured largely successful attempts at achieving uniformity through the legislative efforts of provincial superintendents of insurance, encouraged by the industry trade associations. Such statutory standardization encompassed automobile insurance.

In the Insurance Act of British Columbia, the principal types of insurance, notably life, accident and sickness, fire and automobile are each covered in a separate Part of the Act. Each Part is to a considerable extent an irrelative code, with Part VII of the Act setting out the special provisions relating to automobile insurance. A number of Sections all point to the concept that coverage under an automobile insurance policy, notwithstanding a measure of discretion given to the Superintendent of Insurance, is to be standardized and essentially restricted to the definition in the Act, except where an extension of coverage is specifically permitted.

Whenever an extension of cover of any consequence is to be permitted it seems

to have been considered necessary to provide for the extension in the Act itself.[7]

At the present time, while a few companies are writing what is commonly called "uninsured motorist" cover, there is no specific provision for it in Part VII of the Insurance Act, and it is therefore written as a separate accident insurance policy.[8] The All Canada Insurance Federation in dealing with its proposal for "Limited Automobile Accident Benefits" (a form of accident insurance) recognized the need for amending the Act to enable such protection to be sold as part of a policy of automobile insurance. To quote from their main brief,

> . . . with these developments the industry undertook a study of the possible revision of the Automobile Part of the Insurance Act of the several provinces. As a consequence of this study the insurance industry submitted to the Association of Superintendents of Insurance for the Provinces of Canada its proposed wording for the revision of the Automobile Part to permit accident insurance to be supplied as part of an automobile insurance contract. These representations were fruitful as the Report of the Standing Committee on Automobile Insurance Legislation and Standard Forms for the year 1962 approved the extending of automobile insurance to include a form of basic accident compensation.[9]

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7. An example is to be found in Section 239 authorizing medical payments coverage -- a form of accident insurance. It is clear that without such an amendment such extension of coverage was not permissible except under a separate policy.

8. Uninsured motorist coverage is a form of accident insurance that allows recovery by an insured directly from his own insurer for damages caused by the negligence of an uninsured motorist. This coverage differs from that which is provided by the Traffic Victims Indemnity Fund in that the insured may purchase coverage in excess of the $50,000 T.V.I.F. limit. Moreover, uninsured motorist cover extends to motorists while driving in out-of-province areas. By section 106A (1)(a) of the Motor-Vehicle Act when uninsured motorist coverage exists, resort cannot be had to T.V.I.F.

9. 46/5442.

The Superintendent of Insurance for British Columbia has a limited discretion with respect to coverage under Section 238 (4) of the Insurance Act which reads:

> The insurer may, in the case of an owner's policy or a driver's policy, extend the coverage to such other matters as the Superintendent may approve.

If one has regard to the definition of 'automobile insurance' as it appears in Section 2 of the Act as quoted (supra), to the general tenor and the fairly rigid codification of the Parts of the Act dealing with the various types of insurance, it becomes clear why it has been necessary, when any change of consequence has heretofore been made in coverage permitted under an automobile insurance policy, that such change has been provided for by amendment to the Act. The discretion of the Superintendent under the sub-section quoted above is very limited.

Evidence before the Commission indicated that the Superintendents of Insurance act in the capacity of uniformity commissioners in matters of insurance. The proceedings of the annual meetings of the Superintendents indicate that whenever a change of any consequence is to be made it has frequently come to the Superintendents from the Industry for consideration and emerged from the deliberations of the Superintendents as their recommendation.

Clearly there is a multiplicity of physical products available from the automobile insurance industry in that, apart from the minimum limits required by law, an insured has certain specific choices, e.g. collision, all perils, comprehensive and other types of insurance cover, and in each of these has some considerable choice as to the amount of cover. Nevertheless, once he has made his choice the policy (product) in all other respects is standardized and practi-

cally identical irrespective of the insurer.

Some Other Dimensions of the Product

There are notable variations in the channels through which business is conducted. Most insurance companies writing automobile insurance in British Columbia conduct their business through independent agents. Although such agents do not take title to the policies, they may be likened to typical retailers in that as between themselves and the insurer, for example, they have a proprietary interest in the renewals. The view of the Insurance Agents Association of British Columbia on the agent's position is that:

> (19) His true role is now generally considered to be of inter-dependence rather than independence; his contractual arrangements tie him to companies represented, though through legal ownership of his business including all records, expiry lists, etc. he can and does switch portfolios of business from one company to another.[10]

In this role the independent agent is thus available to provide some services to the buyer.

Recognizing automobile insurance as a virtual necessity on which most people do not have to be sold, a few companies, loosely labeled as direct-writers, have decided to deal directly with the consumer without any middle man. Company employees work through branch offices, over the counter in retail outlets, or on a mail order basis. Lower premiums may emerge where resultant savings are passed along to customers. Where there is a price differential, the buyer must then decide whether or not the product he is buying should include the services of an intermediary.

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10. 5/484.

Another difference in product arises from the manner in which an insurer interprets its contractual obligation and handles its claims. Only a very small fraction of total claims is settled by the courts, and it is in only a fraction of claims that the amount involved is large enough to result in the claimant engaging the services of a solicitor. Thus, in the vast majority of cases, interpretation of the insurer's obligation under the policy and in settlement of the claim rests with the insurer. Evidence before the Commission suggests that some companies are generous in paying small claims but interpret their obligations more strictly when larger amounts are involved. This would tend to build a reputation for open-handedness with the vast majority of claimants (those whose claims are small) and, if it offends at all, offend only the relative few. Other companies appear reasonably generous to claimants regardless of the sums involved. These differentials in claims payments are dealt with in more detail later in this report.

A third variable in the product is the nature of the continuing relationship between the company and the insured. There are two aspects of this. One is the relationship between the driving record of the insured and the company's rate structure and the manner in which it is applied. The other is the propensity of the company to cancel coverage. Thus, for example, a company may base its appeal on price, charging lower rates for clear risks in certain preferred classifications. Once the insured's record is marred by a claim, however, he is dropped into a lower category and charged a rate at least as high as that charged by most other companies. Most companies will change their rating after a claim is paid under the policy, but the resultant premium change will be more moderate. Some companies will go so far as not to alter the insured's rating category unless a claim is in excess of a certain amount. This

policy is obviously more conducive to the maintenance of good customer-company relationships.

In order to avoid a change in rating category many insureds make payment of smaller claims themselves rather than claim on their policy. They thus maintain a 'clear record' with the insurer.[11] The fact that insureds adopt this practice appears to be well known to insurers. The insured is not regarded as presenting an increased hazard if he has had an accident, or apparently if he has had an accident in which he was at fault and on which he himself has paid the claim, but only if he has had an accident on which the insurer has paid a claim or (depending on that insurer's practice) a claim in excess of a certain amount.

Company policy with respect to cancellation of a contract during its term, or refusal to renew on expiry also appears to differ. Hard facts are difficult to come by, and with cancellations occurring during the first 60 days of a policy not reported, appropriate data were not available to the Commission.[12]

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11. To the extent that the practice is adopted by the insured with respect to third party claims for bodily injury or property damage, its effect is to inject into the bodily injury or property damage coverage a deductible feature similar to that with collision insurance, although the policy is written without a deductible.

12. The reporting procedure was first established at the 1961 conference of the Provincial Superintendents of Insurance. By it all companies were required to furnish the superintendent of each province with information as to the automobile policies cancelled by the companies in his province in mid-term for reasons other than non-payment of premiums. Subsequently, the All Canada Insurance Federation relieved the superintendents of the function and the sixty day lag was allowed for. To quote Mr. E.H.S. Piper, Q.C., Manager and General Counsel of the Federation:

(footnote continued on next page)

Although the differences cited do exist, the only factor about which the average consumer is able to form some judgment prior to purchase is the service provided by the agent. Of course, even there he can only make proper comparisons if he deals with more than one agent and with a direct writer writing through an employee on its payroll. In other respects it is only the very few who have experienced personally the claims procedure of a reasonably large variety of companies who can formulate an objective judgment. Such claimants are rare indeed. Thus, to the limited extent that the differences cited are considered by the consumer, the consumer must be basing his judgment on generalizations and hearsay.

Sales of the Product in British Columbia

The importance of automobile insurance to consumers, agents, and insurers is reflected in data on total sales over the past decade. Table 3:1 provides information on net premiums written for a decade. The 1966 volume of $74 million represents premium payments of about $177 by each household owning one or more automobiles (recognizing, however, that the premium volume includes insurance of commercial vehicles).

Table 3:2 provides information on the relative importance of different lines of insurance in British Columbia. This Table includes all types of insurance, with the exception of life insurance, sold in British Columbia. The importance of automobile insurance is obvious.

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12. (continued from previous page)

> As a matter of history, Mr. Chairman, the Superintendent first required all companies to file with them. They found they got all kinds of varying reports and asked us to consolidate it and thereafter the request was made to the companies to report to All Canada and All Canada was asked to file these figures. . . . 52/6091.

Table 3:1

Net Premiums Written in the British Columbia Automobile Insurance Industry

Year	Amount
1957	$ 28,870,532
1958	34,010,247
1959	35,341,825
1960	35,246,969
1961	35,192,550
1962	37,132,795
1963	39,819,818
1964	46,624,785
1965	60,952,746
1966	73,885,472
TOTAL	$427,077,739

Source: Superintendent of Insurance for British Columbia Annual Report, years 1958 through 1966, and Automobile Insurance Premiums and Losses for 1966, March 1967. (Ex. 16G)

Table 3:2

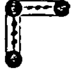
Premium Volume by Line of Insurance in British Columbia, 1966

(in Thousands of Dollars)

Line	Net Premiums Written	% of Total
Automobile	$ 73,885.5	48.55
Fire	24,676.9	16.22
Personal Accident & Sickness	21,226.1	13.95
Personal Property	9,175.5	6.03
Real Property	4,223.6	2.78
Public Liability	5,301.0	3.48
All Others*	13,678.9	8.99
	$152,168.5	100.00

* The All Others category includes the premium volume of Reciprocal Exchanges which is applicable to several of the lines of insurance listed. However, the premium volume of the Reciprocal Exchanges is extremely small in relation to the total premium volume -- i.e. 2/3 of 1% of the total premium volume.

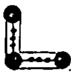
Source: Preliminary data to the Superintendent of Insurance for British Columbia, Annual Report, 1967.



CHAPTER

4

THE AUTOMOBILE INSURANCE INDUSTRY AS IT PERTAINS
TO BRITISH COLUMBIA



CHAPTER 4

THE AUTOMOBILE INSURANCE INDUSTRY AS IT PERTAINS TO BRITISH COLUMBIA

The most recent report of the Superintendent of Insurance for British Columbia, showed 175 companies in receipt of automobile insurance premiums during 1966.[1] These insurers wrote a total net premium income of $73,885,472. A few others were licensed to do business in the Province but either received no premiums or showed negative premiums, presumably because they ceded their remaining provincial liabilities to reinsurers prior to withdrawal from the market.[2]

At the present time, almost all of the automobile insurance sold in British Columbia is provided by three major types of insurance organizations, namely, stock companies, mutual companies and Lloyds of London.[3] Although it is clear that in terms of conduct, traditional distinctions between stock companies and mutuals are largely illusory, some interest attaches to their relative shares of the Province's automobile insurance market. The information is summarized in Table 4:1.

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1. Superintendent of Insurance for British Columbia, Automobile Insurance Premiums and Losses for 1966, March, 1967. (Ex. 16G)

2. The number of legal entities active in the market is likely underestimated as a few reciprocals are omitted and the underwriters at Lloyds are shown as a single firm. On the other hand, it should be noted that some of the firms listed are reinsurers only and do not participate in the retail insurance market.

3. The few reciprocal exchanges, also operative, account for less than 1% of the auto insurance market in British Columbia.

Table 4:1

Shares of B.C. Automobile Insurance Market by
Different Types of Insurers, 1959, 1964 and 1966

(in millions of dollars)

	1959		1964		1966	
	Net Premiums Earned	% of Total	Net Premiums Earned	% of Total	Net Premiums Earned	% of Total
Stock Companies*	28.87	82.9	34.81	79.5	52.13	77.4
Mutual	5.41	15.5	8.81	20.1	14.75	21.9
Lloyds	.54	1.6	.15	.4	.47	.7
	34.82	100.0	43.77	100.0	67.35	100.0

* Including Co-operative Fire and Casualty Co. which was incorporated in 1951 with a Head Office in Regina. It was first a mutual but changed to a stock company in 1964 (apparently, in part at least, to increase its underwriting capacity)[4].

Source: Compiled from data in the Annual Reports of the British Columbia Superintendent of Insurance 1960, 1965 and from the Superintendent of Insurance for British Columbia, Automobile Insurance Premiums and Losses for 1966, March, 1967. (Ex. 16G)

Though there are in the neighbourhood of two hundred legal entities licensed to provide automobile insurance in the market, a substantial number of these sources operates as members of groups under either common ownership or common management or both. Both the existence and the composition of these groups is well publicized.[5] They appear designed to overcome a variety of possible operational difficulties including those associated with the agency force,

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4. 15/1805-7.

5. e.g. Stone and Cox, General Insurance Year Book Canada, 1966-7, Stone and Cox Ltd., Toronto.

limited underwriting capacity and restricted charters or licences. There is no suggestion of an active desire for market control being a factor leading to the formation of groups.

Given that the members of a group are subject to common direction and control, the appropriate unit to identify as the firm for purposes of economic analysis would be the group itself rather than the individual legal entities which comprise it. Market shares of the leading firms for the years 1959, 1964 and 1966 are shown in Tables 4:2, 4:3 and 4:4.

Table 4:2

Market Shares of Leading Fifteen Insurers
in the B.C. Automobile Insurance Market, 1959.

(in thousands of dollars)

Rank		Net Premiums Earned	% of Market	Cumulative %
1.	Allstate Ins. Co.	2,764.7	7.9	7.9
2.	Guardian Union Group	2,168.2	6.2	14.1
3.	Continental Ins. Cos. Group	1,942.4	5.6	19.7
4.	Wawanesa Mutual Ins. Co.	1,811.4	5.2	24.9
5.	Royal London/Lancashire Group	1,420.3	4.1	29.0
6.	General of America Group	1,351.3	3.9	32.9
7.	Zurich Ins. Co.	1,022.8	2.9	35.8
8.	Western-British America Group	1,019.6	2.9	38.7
9.	Motor Ins. Corp	867.8	2.5	41.2
10.	Commercial Union Group	770.9	2.2	43.4
11.	Northwestern Mutual Ins. Co.	770.0	2.2	45.6
12.	Employer's Mutual Casualty Co.	754.3	2.2	47.8
13.	Gore Mutual Ins. Co.	675.8	1.9	49.7
14.	Northern & Employers Group	633.1	1.8	51.5
15.	Royal Exchange-Atlas Group	592.0	1.7	53.2

INDUSTRY NET PREMIUMS $34,820.2

Source: Compiled from data in the 1960 Annual Report of the British Columbia Superintendent of Insurance.

Table 4:3

Market Shares of Leading Fifteen Insurers in the B.C. Automobile Insurance Market, 1964

(in thousands of dollars)

Rank	Net Premiums Earned	% of Market	Cumulative %
1. Continental Ins. Cos. Group*	2,786.6	6.4	6.4
2. Allstate Ins. Co.	2,522.3	5.8	12.2
3. Guardian-Union Group	2,468.4	5.6	17.8
4. General of America Group	2,360.2	5.4	23.2
5. Wawanesa Mutual Ins. Co.	2,340.0	5.3	28.5
6. Royal London/Lancashire Group	1,569.4	3.6	32.1
7. Zurich Ins. Co.	1,489.8	3.4	35.5
8. Northwestern Mutual Ins. Co.	1,427.4	3.3	38.8
9. Co-operative Fire & Casualty Co.	1,323.9	3.0	41.8
10. Employer's Mutual Casualty Co.	1,243.7	2.8	44.6
11. Western-British America Group	1,189.4	2.7	47.3
12. Canadian Indemnity Co.	961.8	2.2	49.5
13. Northern & Employers Group	808.9	1.8	51.3
14. Gore Mutual Ins. Co.	757.8	1.7	53.0
15. Commercial Union Group	712.1	1.6	54.6

INDUSTRY NET PREMIUMS $43,768.0

* Including Dominion Royal General Group; Excluding Phoenix of London Group (see footnote to Table 4:4)

Source: Compiled from data in the 1965 Annual Report of the British Columbia Superintendent of Insurance.

It must be recognized however that a large number of firms, as defined, has in effect delegated the authority over pricing decisions to organizations known as rating bureaus. Rating bureaus are found in the property and casualty insurance business in many countries. The presence of rating bureaus in Continental Europe, where even highly organized cartels are a well established feature of the industrial scene, would be understandable. Their existence in the United Kingdom, the United States and Canada, where public policy has a well established tradition of hostility to restraints of trade is more remarkable.

Table 4:4

Market Shares of Leading Fifteen Insurers in the
B.C. Automobile Insurance Market, 1966

(in thousands of dollars)

	Rank	Net Premiums Earned	% of Market	Cumulative %
1.	Continental Ins. Cos. Group*	4,531.8	6.7	6.7
2.	Royal Ins. Group	4,082.0	6.1	12.8
3.	Allstate Ins. Co.	3,734.1	5.5	18.3
4.	Guardian-Union Group	3,535.1	5.2	23.5
5.	Employers Mutual Casualty Co.	2,886.7	4.3	27.8
6.	Wawanesa Mutual Ins. Co.	2,857.6	4.2	32.0
7.	Northwestern Mutual Ins. Co.	2,831.8	4.2	36.2
8.	Zurich Ins. Co.	2,700.3	4.0	40.2
9.	Safeco Ins. Group	2,227.8	3.3	43.5
10.	Co-operative Fire & Casualty Co.	2,045.0	3.0	46.5
11.	Canadian Indemnity Co.	1,799.8	2.7	49.2
12.	Travelers Indemnity Co.	1,356.0	2.0	51.2
13.	Gore Mutual Ins. Co.	1,306.1	1.9	53.1
14.	State Farm Mutual Auto Ins. Co.	1,234.7	1.8	54.9
15.	Northern & Employers Group	1,184.8	1.8	56.7

INDUSTRY NET PREMIUMS EARNED $67,367.7

* Since 1963, Phoenix of London Group has been partially owned by Continental. Common control does not appear to have been extended to the operating level in Canada as yet. Phoenix of London Group has been excluded from the Continental Group to avoid possible bias.

Source: Superintendent of Insurance for B.C., Automobile Insurance Premiums and Losses for 1966, March, 1967. (Ex. 16G)

Since 1883 when Canada's first rating bureau, the Canadian Fire Underwriters' Association, was formed, a variety of bureaus have traversed the scene. Some were tightly organized groups of insurers which set rates for their memberhip and enforced their application. Others simply functioned to gather statistics

or to offer advice to their membership.[6]

At the present time, all three rating bureaus active in British Columbia have their headquarters in either Ontario or Quebec and operate across Canada. The Canadian Underwriters' Association was formed in 1935 to amalgamate the Canadian Fire Underwriters' Association, the Canadian Casualty Underwriters' Association, and the Canadian Automobile Underwriters' Association. Incorporated in 1937, with head offices in Montreal, membership in 1966 consisted of forty-seven groups comprising 106 companies. The object clauses, as contained in the C.U.A.'s Letters Patent as amended by Supplementary Letters Patent, state among other things that the Canadian Underwriters' Association is:

> To procure the establishment and maintenance of equitable premium rates commensurate with the hazard, to supervise and effectuate policy wordings, compensation for business and agency appointments, the prevention of rebating and the collection of data; and to do such other work as may be decided upon from time to time tending to reduce expense to members and the cost of insurance to the public.[7]

The Canadian Underwriters' Association, with its membership restricted to stock companies operating on the Independent Agency System, stipulates maximum commissions and minimum premium rates for its members. In addition, it performs (1967) the statistical function of gathering loss experience on automobile insurance not only for its membership, but for the entire industry. In the interest of broadly based loss statistics, its activities in this latter regard are given official status by virtue of its being designated, by the Superintendent

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6. See Canada, Combines Investigation Act, Director of Investigations and Research, Statement in the Matter of an Inquiry under S.42 of the Combines Investigation Act into the Business of Automobile Insurance, 1957. (Ex.108 pp. 84 and 122).

7. Ex. 101, Brief of Canadian Underwriters' Association, App. A, p.2, para.(e).

of Insurance, as the statistical agency, pursuant to Section 96 of the Insurance Act.[8] The Statistical Agency is dealt with elsewhere in this Report. Similar designations have been made by other provinces.

The Independent Insurance Conference, a relative newcomer, was established in 1964 through amalgamation of the Independent Fire Insurance Conference, the Independent Automobile and Casualty Insurance Conference, the Central Fire Insurance Conference, the Western Canada Automobile Insurance Conference, the Independent Fire Insurance Conference of British Columbia and the Independent Automobile Insurance Conference of British Columbia. The new body thus formed assumed jurisdiction in Quebec, Ontario, Manitoba, Saskatchewan, Alberta and British Columbia over property and casualty insurance, including automobile, from its several predecessors. It is an unincorporated association.

With head offices in Toronto, its present membership consists of thirteen groups made up of thirty-two companies. It includes a number of mutuals -- insurers barred from the C.U.A. -- together with other companies which had managed to become established despite the C.U.A.'s earlier "non-intercourse" and "separation" rules.[9] Again, however, membership is open only to companies operating on the independent agency system.

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8. R.S.B.C., 1960, C. 197, as amended.

9. The "non-intercourse" rule prohibited members from transacting business with a non-member company; the "separation" rule prohibited the agent of a member from acting as agent for a non-member. These rules were dropped in British Columbia by the early 1950's. Similar restrictions forbidding members from assigning reinsurance to non-members, without first offering it to all members, and forbidding them from assuming reinsurance of non-members, still appear as Rule 6 in the C.U.A.'s Rules and Regulations (part of Ex. 103). However, Mr. D. B. Martin, C.U.A. President in 1965 to 1966, testi-

(footnote continued on next page)

The I.I.C. has among its object clauses the following:

(c) To study and promote simplification and accuracy of rating methods and rate presentations;

(e) To secure the adoption by members of suitable and uniform policy forms and clauses;

(h) To regulate acquisition expenses (including contingent commissions) and all other methods of remuneration to agents and brokers;[10]

It has established maximum commissions which are slightly higher than those set by the C.U.A. Minimum premium rates are also set, fleets excepted, with the 1966 and 1967 levels identical to those of the C.U.A.

The Insurance Bureau of Canada is the third and most recently formed of the bureaus. It also is an unincorporated association. Established in 1964, it has the C.U.A. and the I.I.C. as so-called corporate members together with twenty-seven independent companies. Though required to register as a rating bureau in Ontario, along with the C.U.A. and I.I.C., the I.B.C. professes not to be one, but rather to be an association organized in response to expressions of concern emanating from the Federal Superintendent of Insurance over the underwriting losses of fire and casualty companies.[11]

In his 1964 Annual Report, the Federal Superintendent stated, inter alia that:

> The competitive and other pressures now existing within the industry . . . indicate that there is a strong reluctance to make premium

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9. (continued from previous page)
fied before the Commission (29/3450) that it is relatively unusual to find the type of reinsurance described in Rule 6, in automobile insurance.

10. Ex. 118, p.3.

11. The Insurance Act, R.S.O., 1960, C.190, as amended, Section 334.

. . . adjustments necessary on the basis of any realistic appraisal of claim costs and expenses likely to be experienced. Individual companies . . . hesitate to make the necessary adjustments since they fear a sharp drop in volume of business with little likelihood of regaining it later . . .

In our report of last year the hope was expressed that the industry would take early steps in the direction of producing broadly based statistical data and subjecting it to adequate analysis as a background and guide to the establishment of fair and adequate premium rates. Early in 1964 the Insurance Bureau of Canada was formed and now represents a membership . . . having about 70% of the premium volume in Canada. One of the major objectives . . . is to collect statistical data from its members and subject these data to statistical and actuarial analysis so that the results as published may be used as a guide for the calculation of premium rates.

. . . The formation of the Insurance Bureau of Canada is a welcome and forward-looking move.

. . . The Department considers that if the publications of the Bureau are broadly based and adequately analyzed, they should be used as a guide by member companies and others in the determination of premium rates for business in Canada. This is not to say that all companies should necessarily charge the same premium rates. It does suggest, however, that all companies should base their premium rates, so far as their loss costs are concerned, on the statistics produced by the Bureau unless a company has good reason to expect a pattern of loss costs that are different from the average. A company that has a large volume of business and the staff and facilities for analyzing its own experience may well be able to rely on its own experience rather than on the average for the industry. Most companies, however, do not have enough experience of their own to serve as a reliable guide for premium calculations.

Even where rates are based on the average loss experience for the industry as a whole, they may vary somewhat from company to company by reason of different estimates of administrative expense and different commission rates . . . it would seem that their premium rates would have to be substantially the same if they are based upon the average expectation of losses.

The Department is particularly concerned about the adequacy of premiums by reason of the effect on policy reserves and so on the solvency of companies.

. . . In carrying out its responsibilities . . . the Department may request any company that is using premiums less than those derived from published loss experience representing all or a major part of the industry, and is estimating its liabilities on the basis of the unearned portion of such premiums, to show reason why it expects to experience loss

costs at a lower level than those shown by the published experience.[12]

As the result of the first of the I.B.C. studies of automobile statistics, Bulletin No. 65-11 was issued in October 1965. The Bureau was careful to point out, in its presentation to the Commission, what it submits its position to be in relation to the question of premium rates:

> The Bureau by these reports is not in any way involved in the promulgating of rates as such but simply indicates the percentage changes upward, downward or nil as the case may be based on an analysis of the statistics collected from which the individual organizations and companies can establish their own rates. There is no prior agreement by the members of the Bureau that they will accept and act upon the reports issued by the Bureau. The two corporate members will independently consider such reports as will the independent companies who are members of the Bureau and they will all come to their individual decisions as to what the reports mean to them in the way of change in the rate structure or otherwise.[13]

A short statement of some of the events preceding the adoption of the Constitu-

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12. (pp. xxxvii - xxxviii) — quoted by the I.B.C. in its brief, pp. 99-101.

13. Ex. 237, Insurance Bureau of Canada Brief, p. 3.

    In response to Commission advertising inviting the submission of briefs the Insurance Bureau of Canada filed its initial brief (Ex. 237 dated April 18th, 1966) with the Commission on June 10th, 1966. That brief was short and consisted in large part of an attribution of the existence of the Bureau to certain portions of the Report of the Federal Superintendent of Insurance for the year ending December 31st, 1963, accompanied by a fairly extensive quotation from that Report. In addition, as an Appendix to such brief there was set out an extensive quotation from the 1964 Annual Report of the Federal Superintendent, a good portion of which quotation appears in this Report.

    At the time of the hearings on the brief of the Canadian Underwriters' Association in the early part of November, 1966, one of the members of the panel making the presentation on behalf of such Association referred to the fact that the Insurance Bureau of Canada, which had been fairly recently formed, had an observer sitting in as a member of the Automobile Insurance Statistical Committee (sometimes called 'The Superintendents' Statistical Committee'). It was learned in cross-examination

    (footnote continued on next page)

tion of the I.B.C. will assist in understanding the submission of the Bureau to this Commission.[14]

In March, 1964 Counsel and other representatives of the Bureau had conferences with Mr. K. R. MacGregor, the then Federal Superintendent of Insurance, and with Mr. Henry, the Director of Investigation and Research under the Combines Investigation Act, at which time copies of the proposed Constitution of the I.B.C. were produced. (As has been noted, although the I.B.C. has a Constitution it is not incorporated and therefore is not a legal entity separate and apart from its members.)

On April 2, 1964 a meeting was held with representatives of the Federal Department of Insurance and of the Combines Branch, particulars of which were related in evidence by Mr. W. F. Spry, a member of the panel of witnesses appearing for the I.B.C., in answer to questions from Mr. Roland F. Wilson, Q.C., its

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13. (continued from previous page)

that this panel member of the C.U.A. had been closely associated at all times with the setting up of the Insurance Bureau of Canada. There was at that time (November, 1966) fairly extensive cross-examination of such panel member on the circumstances surrounding the formation of the Bureau and the reasons for such, although the presentation being then made was the brief of the C.U.A. Considerable information was obtained at this time as to the make-up and purposes of the Bureau and with respect to discussions had with representatives of the Combines Branch and of the Federal Department of Insurance at the time of its formation (26/3065 et. seq.) But it was apparent that a detailed examination of the facts would be required when the Bureau's representatives appeared at a later date.

When the Bureau came to make the presentation of its brief referred to above, commencing on February 21, 1967 and continuing at that time for four days, it then filed an extensive document brief covering such matters

(footnote continued on next page)

14. A fuller account appears in 66/7530 et seq., in the cross-examination thereon and in the exhibits filed by the I.B.C., particularly Ex. 239.

Counsel. Mr. Spry appeared as Chairman of the Insurance Bureau of Canada. His evidence reads in part:[15]

WILSON: Yes, follow chronologically.
SPRY: On April the 2nd there was a meeting with the Combines Branch and the Insurance Department and present were Messrs. Henry and Powell of the Combines Branch and MacGregor and Humphrys, who was then Deputy Superintendent of Insurance.
Q. He is now the Federal Superintendent?
A. Yes, he is now the Federal Superintendent of Insurance. Also Messrs. Martin, Burns and Wilson.
Q. Now that is the first time we have heard of -- I think that the Commission are familiar with Mr. Martin because of his being a witness, but who is Mr. Burns?
A. He is the President of the General Accident Assurance Company of Canada and is designated as an Independent and was at that time a Director of the Insurance Bureau of Canada; he was one of the original directors.
Q. What was canvassed at this meeting on April 2nd, 1964?
A. Well, there were three proposals made. The first was that the consent of the Federal Superintendent of Insurance be obtained as a condition precedent to an inquiry by the Combines Branch. This was not acceptable.

The second was that the Director of Combines obtain a report from the Federal Superintendent of Insurance before embarking upon an inquiry. This was not acceptable.

The third was amend Section 32 to recognize procedures of collection, collation and interpretation of statistical data. It was the opinion that such an amendment was not necessary.

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13. (continued from previous page)

as its directors, constitution, minutes of inaugural meetings, directors' minutes, certain of its bulletins to members, correspondence and miscellaneous material (Ex. 239), a supplementary brief regarding investment income from prepaid automobile premiums (Ex. 242), a research study of various concepts for analysis of investment income (Ex. 243), and a study on the rates of return on invested capital of Canadian general insurance companies (Ex. 247).

The presentation on behalf of the Bureau was by a panel of witnesses consisting of four executives from the insurance industry, two representatives from Kates, Peat, Marwick & Co., Management Consulting Division, and one from the Management Consulting Service Division of Price Waterhouse & Co., the latter two being the firms which had done a number of the financial studies on behalf of the Bureau.

(footnote continued on next page)

15. 66/7531-2

And on cross-examination of the same witness by Commission Counsel:

RAE: Now you say it was first proposed at this meeting that the consent of the Federal Superintendent should be obtained as a condition precedent to inquiry by the Combines Branch. Do I interpret this to mean this, that you wanted some form of undertaking from the Combines Branch that they would not undertake an inquiry into the activities of the I.B.C. without the prior consent of the Federal Superintendent of Insurance?
SPRY: Yes.
Q. Is that correct interpretation?
A. Yes. Yes.
Q. All right. Now, you say this was not acceptable.
A. That is right.
Q. To whom?
A. To the Combines Branch.
Q. I see. Was it acceptable to the Superintendent of Insurance?
A. I can't say as to that.
Q. Then the second suggestion was that the Director of Combines obtain a report from the Superintendent of Insurance before entering upon an inquiry, and that was not acceptable?
A. That is correct.
Q. To Mr. Henry?
A. That is right.
Q. Did he give any reasons for either or both of these?
A. Not to my knowledge.[16]

Further on in the evidence:

RAE: A third proposal was that Section 32, put to Mr. Henry should be amended. Now you say there that this would be for the purpose indicated, collection, collation and interpretation of statistical data, specifically to permit that -- it was the opinion that such an amendment was not necessary.
Whose opinion was that?
SPRY: That was the opinion of Mr. Henry and I believe of his legal counsel.
Q. It was not --

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13. (continued from previous page)

Due to the extensive volume of material presented to the Commission for the first time, as above, it was necessary to defer cross-examination to enable the Commissioners and Commission staff to give consideration to it. The presentation was continued later from March 20th to 24th, 1967. In the result, the Bureau made a lengthy presentation on which there was extensive cross-examination which proved to be of great value, particularly in determining the place of this comparatively new organization in the insurance industry.

16. 68/7773-4.

A. In other words, we didn't need any change, that we could go ahead, and do those things.
Q. Now over further you spoke on page 8 of Exhibit 239, and I think you have indicated that Mr. MacGreogor okayed the Constitution but Mr. Henry was not satisfied with it?
A. Yes, that is when the discussions have some recommendations --
Q. Yes.
A. Yes, that is right.
Q. Now, the recommendation part of it was what was objectionable to Mr. Henry.
A. Yes, sir.[17]

At this time the proposed Constitution of the I.B.C. contained the following as the statement of its objects:

ARTICLE I.

"Objects"

> It shall be the objective of the Bureau to provide a forum for the discussion of all matters of common interest to Members and to make recommendations through whatever seem to be the appropriate channels on such matters of common interest as, but not limited to, forms, statistics, loss and expense factors in rates. (emphasis added)

and also contained the following:-

ARTICLE XI.

"General Provisions"

> A. Re Statistical Functions.
>
> The Board may call upon the Members to submit for consideration, statistics, in the form required to enable the Board itself or a committee or committees appointed by the Board, to ascertain the experience and other information of interest to the Members and upon which information the Board may be enabled to make recommendations.[18] (emphasis added)

On April 8, 1964 the inaugural meeting of the I.B.C. was held in Toronto. There were 74 Companies or 'Groups' represented of which 18 were Independents, 21 were

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17. 68/7779-80.

18. Ex. 239, 'Constitution', pp. 8, 11.

members of the I.I.C. and 34 of the C.U.A. In addition the I.I.C. and C.U.A. were each represented as entities by separate representation. All companies represented operate under the Agency system i.e. no 'direct writers' were represented.

The Chairman of the Inaugural Committee of the Bureau was Mr. Spry, referred to above. The minutes of this inaugural meeting indicated that the Bureau was then intended to act "in a solely recommendatory capacity and the true executive power resides with the Members themselves, viz the I.I.C., the C.U.A. and the individual Insurers subscribing to the Bureau".[19]

The draft Constitution was adopted in substantially its original form at this inaugural meeting.[20]

On April 16, 1964, Mr. Henry, the Director of Investigation and Research, Combines Investigation Act, wrote to Counsel to the I.B.C. in part:

> . . . I fear that so long as plans for the proposed Bureau include a proposition that recommendations as to rates will be made there is a serious risk that in operation the Bureau would offend against the Combines Investigation Act in at least some of the segments of the insurance market in some areas of Canada.

He then went on to say:

> . . . concerning the proposals for the collection and analysis of statistics that I can see no reason why such activities would cause a problem under the Combines Investigation Act so long as they are not associated with an arrangement that involves agreement on rates by a segment of the industry that controls the market in some significant area of Canada or in some significant kind of insurance.[21]

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19. Ex. 239, p. 4.

20. 66/7533.

21. Ex. 239, pp. 82-83. (Reproduced in full as Appendix 4:A hereto).

On June 9, 1964 the Directors of the I.B.C. resolved to amend the Constitution.

The Minutes of their meeting read in part:

> 64-38. Constitution - Articles I and XI - Objects Clause and General Provisions:
> (Original & Last Reference: Item 64-22, Minutes of the April 30th, 1964 Meeting.)
>
> After considerable discussion of the wording of these Articles it was duly MOVED, SECONDED and UNANIMOUSLY CARRIED:
>
> THAT the Board of Directors intends to give notice to Membership of proposed amendments to Articles I and XI of the Constitution as follows:
>
> (i) Article I will be deleted in its entirety and replaced by the following:
>
> ARTICLE I
>
> "Objects"
>
> It shall be the objective of the Bureau to provide a forum for discussion of all matters of common interest to Members and (a) to collect, collate and disseminate statistical information in fields of insurance of interest to the Members, (b) to make surveys and reports on any matter of interest to the Members, and (c) to make representations on behalf of the Members through whatever seem to be the appropriate channels on all matters in which the Members have a common interest.
>
> (ii) The concluding words in Article XI "upon which information the Board may be enabled to make recommendations" will be deleted.[22]

The Constitution was in due course amended accordingly.

The need for caution was further underscored by the November 10, 1965 letter of Mr. R. Humphrys to Mr. W. F. Spry, Chairman of the Board of I.B.C. Commenting on Bulletin No. 65-15 dated November 4, 1965, which related to habitational lines, the letter reads:

> . . . You will recall the discussions that have taken place in the past on the point of whether the Bureau should actually publish illustrative premium rates or not. My own view was that there would be no

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22. Ex. 239, pp. 13 and 14.

> serious objection to the publication of illustrative premium rates so long as it was made clear what assumptions the bureau itself used in moving from the analysis of the claim experience to the finished premium rates. Thus, in publishing illustrative rates it seems to me of some importance to indicate the loading that has been included for commissions and other expenses . . .
>
> Unless the member companies are in a position to compare the expense assumptions with their own expectation, and indeed the expected loss experience with their own expectation, it is difficult to see how they will be in a position to judge whether the illustrative rates are appropriate in their circumstances or not. I think, therefore, that the position of the Bureau would be weakened insofar as contending that its actions are not in effect fixing premium rates.[23]

The panel of the I.B.C. was examined by Commission Counsel with respect to this letter. The examination reads in part as follows:

> RAE: It is fair to interpret this letter to this effect: That if a company's own experience on the expense side is better than the expense experience which you are to communicate to them, as stated here, and they do not compete downward in their rates, then it is expected by this letter that they should?
> BAINES: No. I don't think so, unless the Federal Superintendent has decided he will actually control the rate himself.
> Q. Would you not say it is fair to read into this letter that he is telling you to give these people sufficient information so that they can be knowledgeable and competitive in their rates?
> SPRY: I agree with that, providing the loss experience of that company plus their reduced expense ratio is under one hundred. Yes, he is saying he expects people to do that.
> Q. If they do not, are we to infer it is because their experience does not differ?
> SPRY: Not necessarily. They may not prefer to.[24]

The Bureau's analyses of premium rates have had an immediate and observable impact on automobile insurance rates.[25] While the 1966 minimum rates set by the I.I.C. were identical with those of the C.U.A., in previous years minor

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23. *Ibid.*, p. 89.

24. 77/8686-7.

25. It is interesting to note that the analyses published by the Bureau are (footnote continued on next page)

deviations downward were the pattern. Almost all independents belonging to the I.B.C. also adopted the C.U.A. rates, whereas formerly they set rates independently.[26]

As an indication of the concern caused by these Canada-wide organizations at the Provincial level the 1966 Report of the Alberta Legislative Committee appointed to examine into matters relating to automobile insurance is of interest. That Committee requested the Attorney General of Alberta to report the Canadian Underwriters' Association to the Director of the Combines Act for apparent price fixing, and restriction of free competition. It noted that wide use of the C.U.A. Rate Manual by the Independent Conference (both corporate members of the I.B.C.) and by many independent companies tended to further eliminate competition in the matter of automobile insurance rates. Considerable material was submitted by that Committee to Mr. D. H. W. Henry, Director of Investigations who wrote to Counsel for the I.B.C. on July 4, 1966. The final paragraph of the letter reads:

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25. (continued from previous page)

regarded by at least one Company as "rate-making recommendations". Ex. 279 is a copy of a letter of March 10, 1967 of the Home Insurance Company to one of the members of the panel of witnesses appearing for the Insurance Bureau of Canada, who produced such letter in response to enquiries of Commission Counsel as to whether there were any independent companies which deviated in their rates from the C.U.A. and I.I.C. This letter reads in part as follows: "In following the various bulletins on the subject of the B.C. Commission, I sensed that the Counsel for the Commission seemed to be heading towards the contention that all Companies adhere strictly to

(footnote continued on next page)

26. During 1966 the C.U.A. and the I.I.C. accounted for 36.5% and 17.8% of the automobile premium earned volume in B.C. respectively. The 36.5% C.U.A. figure includes Dominion Insurance Corp. and Royal General of Canada, who, although in the I.I.C., are effectively controlled by the Continental Group and have thus been included in the C.U.A. Members of the I.B.C. represented 70.3% of the 1966 total.

> In our discussions concerning the organization of the Insurance Bureau of Canada it has been my understanding that the Independent Conference establishes recommended rates for its members independently of other organizations or companies. In the light of the above information, however, it seems to me that the present situation immediately raises the question of whether there is in fact agreement between the members of the C.U.A. and of the Independent Conference on premium rates. Bearing in mind that the members of these two organizations account for approximately two-thirds of the automobile insurance business written in Canada, such a situation may well require institution of a formal inquiry pursuant to section 8 of the Act. Before reaching a final decision in this respect, however, in view of our discussions concerning the operations of the members of the Bureau, I shall be glad to receive any comments you wish to make.[27]

On August 12, 1966 Mr. Henry replied to the request from Alberta noting that he did not believe he had cause for inquiry into the situation at that time.

As has been indicated, considerable evidence was led by the I.B.C. as to the correspondence and interviews had with representatives of the Federal Department of Insurance, with the office of the Director of Investigation and Research

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25. (continued from previous page)

    the rate-making recommendations of the I.B.C." And then after quoting certain of that company's premiums: "I will leave it to you to judge how closely the foregoing track with the I.B.C. recommended rates for 1967." (emphasis added)

    As a further indication of how those connected with the Industry regard the purposes of the Bureau the following extract from a speech of the Superintendent of Insurance for Ontario (the then President of the Association of Superintendents of Insurance of the Provinces of Canada) to the 49th Annual Conference of such Superintendents at Victoria, British Columbia, in September, 1966, is of interest. The speech was presented to this Commission by the Insurance Bureau of Canada as part of its document brief, (Ex. 239, p. 105, et. seq.):

    (footnote continued on next page)

27. Ex. 278. The exhibit also includes a memorandum from the Insurance Bureau of Canada to Mr. Henry covering the share of the market in 1965 in Alberta, the establishment of the 1965 rates by the Independent Conference, the mid-year 1965 increases in rates by the Conference, and establishment of 1966 rates by the Conference.

under the Combines Investigation Act and with others, both before and after the formation of the I.B.C.

In the course of argument before this Commission, Counsel for the I.B.C. presented written argument which was read into the record, and which reads in part:

> Following its formation the Bureau quite properly laid before the Federal Superintendent and the Director of the Combines Branch a copy of its Constitution and its representatives had many discussions with these officials as evidenced by the memoranda of these meetings prepared by its Counsel and filed as Ex. 251D.
>
> The Combines Director took the position in his letter of April 16, 1964, (Ex. 239, p. 82) that "so long as plans for the proposed Bureau include a proposition that specific recommendations as to "rates" will be made there is a serious risk that in operation the Bureau would offend against the Combines Investigation Act in at least some of the segments of the insurance market in some areas in Canada." In view of the opinion of the Director of the Combines Branch the Directors of the Bureau decided to eliminate this recommendatory feature from the Bureau's Constitution so that the object clause as amended now reads, - "It shall be the objective of the Bureau to provide a forum for discussion of all matters of common interest to Members and (a) to collect, collate and disseminate statistical information in fields of insurance of interest to the Members, (b) to make surveys and reports on any matter of interest to the Members, and (c) to make representations on behalf of the Members through whatever seem to be the appropriate channels on all matters in which the Members have a common interest." (Ex. 239, p. 15) A copy of the

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25. (continued from previous page)

> "The insurance industry is, in fact, a public utility, as vital to the country as telephones or hydro, and its services must be available to everyone at a reasonable price. No one would expect the phone or hydro services to be supplied at less than cost. The plain fact is that the insuring public cannot be adequately served by an industry that is losing money or not making over the long term, an adequate return on invested capital.
>
> In this situation the Other Than Life industry has not been entirely idle. The recent formation of the Insurance Bureau of Canada has brought together most segments of the industry to prepare and study statistics in the property and automobile insurance fields. This bureau, while it must always keep a careful watch on the provisions of The Combines Act, would in its recommendations to the industry as a whole, provide guide lines that will prevent the industry cutting its own throat by excessive competition and thus injuring the insuring public." (emphasis added)

> amended Constitution was delivered to the Federal Superintendent and the Director of the Combines Branch on August 25, 1964.
>
> There still remained for settlement the question as to whether or not an amendment would be necessary to the Combines Investigation Act to ensure that the Bureau's operation would not constitute a breach of the Combines Investigation Act. To this end further conferences were held with federal officials and also with the Minister of Finance, the Minister responsible for the Federal Department of Insurance, and the Minister of Justice, the Minister responsible for the Combines Branch. The conclusion reached was that it was unnecessary to have an amendment to the Combines Investigation Act in order to achieve the objectives of the Bureau and the form in which the illustrative indications on rate levels were to be prepared and disseminated to the Members was approved by both the Federal Superintendent and the Director of the Combines Branch and has been followed in practice since that time.[28]

This Commission regarded this as a reasonable summary of that part of the evidence referred to as given before it by the I.B.C. witnesses. That being so a copy of such written argument was forwarded to the Director of the Combines Branch, Department of Justice, Ottawa, Ontario. His attention was directed to pages 5 and 6 thereof and his comments were invited.

His reply of July 31, 1967 is as follows:

> Mr. H. S. C. Archbold,
> Secretary,
> Royal Commission on Automobile Insurance,
> Fifth Floor, Weiler Building,
> 609 Broughton Street,
> Victoria, British Columbia.
>
> Dear Mr. Archbold:
>
> Re: Insurance Bureau of Canada
>
> I wish to acknowledge your letter of July 14, 1967, with enclosed Argument on behalf of the Insurance Bureau of Canada, which I have now had an opportunity of reading, with particular reference to pages 5 and 6. I have no comment regarding page 5 but have the following comments on the first paragraph contained on page 6.
>
> So far as I am aware, no decision was reached at meetings with Ministers

28. 94/10,287-9.

as to the necessity or otherwise of amendment of the Combines Investigation Act. Rather, industry representatives made certain submissions and the matter was left that future discussions could be held if necessary. To date, discussions with Ministers have not been renewed. Further discussions were, however, held with officials in order that the industry might be able to determine whether its operations could be carried on within the framework of the existing law. In this connection I am enclosing, for such use as the Commission may wish to make of it, a statement setting out my position with respect to the operations of the Insurance Bureau in relation to the Combines Investigation Act.

Regarding the reference to approval of a particular course of action by me, I might point out that the powers conferred on the Director by the Act are purely investigatory and he has no authority to regulate particular business practices. Thus, it has not been my practice to "approve" or "disapprove" of a particular course of action. However, in accordance with our program of compliance, I am prepared to meet with businessmen and their counsel and discuss any problems relating to the Act which they may wish to place before me. During such discussions I would normally advise whether a particular course of action would or would not be such as to require me to commence an inquiry should it come to my attention that it had been adopted. My discussions with the representatives of the Insurance Bureau on this matter were of this nature. As it may be of interest to the members of the Royal Commission, I am enclosing a copy of my Annual Report for the year ended March 31, 1966, which sets out our program of compliance at pages 15-16.

As requested, I am returning the above Argument which was enclosed with your letter.

Yours very truly,

"D. H. W. Henry, Director"

The enclosure first referred to in the above letter, relating to the Insurance Bureau, appears in the Report of the Director of Investigation and Research for the year ended March 31, 1967 at pp. 19 et seq. Thus, whatever the legal situation involving the Combines Investigation Act, it is clear that the impact of the formation of the I.B.C. has produced identical rate structures over a very wide segment of the automobile insurance industry.

The written argument of the I.B.C., referred to above, reads in part:

Up to 1963 the most important stabilizing factor in the general insurance business in Canada was the C.U.A. It provided the only major

> rating and loss prevention service organization in Canada carrying on the essential functions of such an organization. It became clear by 1963 with the introduction of new factors into the market that the C.U.A. no longer had sufficient influence in the industry to bring about a measure of stability in periods of crisis . . . .
>
> It is also clear on the evidence here that the I.I.C. and a number of independent companies were not satisfied to have to look to the C.U.A. for guide lines upon which to formulate their rating programmes.
>
> The rating procedure of the I.I.C. and a great number of the independents prior to the formation of the Bureau was to wait until the C.U.A. rate levels were known and then use these rates as a basis for producing their own rating programmes, generally at a level somewhat lower than the C.U.A. levels. This unsatisfactory situation resulted from the fact that the great majority of the companies who were not members of the C.U.A. did not have the ability or financial resources to make an actuarial assessment of the factors involved in rate making.
>
> The competition in the years immediately prior to 1964 was characterized by reckless price competition based on inadequate knowledge of costs and trends which threatened the solvency of the industry . . .[29]

Whatever the basis of the competition or whether or not it "threatened the solvency of the industry" it would appear from the foregoing that the I.B.C. itself views at least one of its purposes to be to eliminate what it regarded as "reckless price competition".

The nature and the extent of the competition so referred to and the extent to which it might threaten solvency should appear from this and other portions of this Report.

Of the companies doing business in British Columbia in 1966 and having at least 1% of the British Columbia automobile insurance market there were only 4 which had rates in Vancouver for $100,000. inclusive 3rd party limits (private passenger) which were $1.00 or more lower than the rates of the C.U.A. and the

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29. 94/10,285-6.

I.I.C. (the 2 corporate members of the I.B.C.). Particulars are set out in Table 4:5.

Table 4:5

All Insurers with 1.0 percent or more of the B. C. Automobile Market and Quoting rates for Third Party Liability Coverage more than $1 Below C.U.A. - I.I.C. Rate in 1966

	Member of IBC	1966 Share of Market based on Net Premiums Written
Allstate Insurance Companies	No	5.8%
Employers Mutual Casualty Co.	No	4.6
State Farm Mutual Automobile Ins. Co.	No	1.9
Liberty Mutual Insurance Co.	No	1.4
TOTAL:		13.7%

Source: Compiled from rate manuals and Superintendent of Insurance for British Columbia, Automobile Insurance Premiums and Losses for 1966, March, 1967 (Ex. 16G)

To complete the review of the industry in British Columbia, mention must be made of the Assigned Risk Plan and the Traffic Victims Indemnity Fund, both operated by the All Canada Insurance Federation on behalf of the industry. The Federation itself is an unincorporated association of most of the insurance companies doing business in Canada. Its preliminary brief to this Commission indicated that since its inception in 1909, its primary role has been to present the views of the industry in any matter relating to insurance legislation and taxation of insurers.[30] It is also concerned with highway safety and does public relations work for its members.

30. The brief presented by All Canada Insurance Federation consisted of a preliminary brief and a later principal brief in 5 volumes as follows: (footnote continued on next page)

The Assigned Risk Plan, and the Traffic Victims Indemnity Fund and its predecessors, were offered by the insurance industry as logical adjuncts to the so-called financial responsibility and safety responsibility legislation.[31] In existence since 1944, the 1967 version of the Assigned Risk Plan is designed to provide liability insurance for those (i) licensed to drive (ii) able to secure a licence if given insurance coverage or (iii) who are registered owners of a motor vehicle and who are unable to obtain a policy through the regular automobile underwriting market.

The plan was designed originally to handle risks who would otherwise be uninsurable. Such applicants for insurance are provided with minimum limits of third party motor vehicle liability cover at C.U.A. rates unless they are considered surchargeable. Higher premiums result from the application of cumulative surcharges based on either poor driving record or convictions. One of the illustrations drawn to the attention of the Commission was that of a 30 year

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30. (continued from previous page)

(a) Volume 1 which was in 10 sections covering the following:
- Section I: Accident Prevention.
- Section II: Statistical Data Including Some Cost Level Comparisons - Graphs "A" to "J" inclusive.
- Section III: Tort System - A Study of Insurance Claims Files.
- Section IV: Tort System - A Study of Court Files in the Vancouver and Kamloops Registries.
- Section V: Tort System - Adequacy of Compensation - A Study of Lawyers Fees.

(footnote continued on next page)

31. It would appear from the testimony of Mr. R. Parkin, chairman of the governing committee of the Automobile Assigned Risk Plan of Canada, that the Plan was not established in response to any demand from government for such an undertaking. See 18/2147-8.

It would appear too that the first Assigned Risk Plan was voluntary and all members of All Canada Insurance Federation joined. At that time others were invited to come in. They were ultimately 'coerced'. See 17/2123.

old found liable for two accidents during 1965.[32] Within the pertinent period of time he had three convictions under the Motor-Vehicle Act and two under the Criminal Code.

He was rated as AO under the Canadian Underwriters' Association rating which was the basis used for the Assigned Risk Plan. (For details of the classifications and what the symbols mean see Chapter 6. The 'O' indicates he had had an accident in the past year). On his driving record he was surcharged a total of 440% of the Canadian Underwriters' Association standard premium rate for AO drivers as follows:

		add %
(a)	two accidents	50
(b)	three motor vehicle convictions	40
(c)	failure to disclose motor vehicle convictions	50
(d)	two Criminal Code convictions	200
(e)	falling by virtue of a second conviction under Part VI Section B of plan	100
		440%

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30. (continued from previous page)

Section VI: Tort System - A Discussion of the Adequacy of Compensation.
Section VII: A Discussion of Compulsory Automobile Insurance.
Section VIII: Non-Tort System - A Study of Social Programmes Contributing to Payments or the Equivalent to Accident Victims.
Section IX: A Proposal for Limited Automobile Accident Benefits.
Section X: Other Recommendations.

(b) Volumes II and III which consisted of two studies related to the adequacy of compensation.

(footnote continued on next page)

32. 17/2048-9.

A short explanation of the premium structure of the Assigned Risk Plan is in order. An application comes in as either an 'A' risk, or a 'B' risk. (These are not the same as the Classes A & B under the C.U.A. classification notwithstanding the same use of letter. The 'A' & 'B' risks are sometimes called 'clear risk' and 'black risks'.) An 'A' risk, shortly stated, is one who has not such a driving record as would be surchargeable under the Plan and he is charged the standard C.U.A. premium according to the C.U.A. classification. If he has such a driving record as to be considered a 'B' risk he then has one or more surcharges added to his premium. These surcharges are operated on a percentage basis, the percentages being additions to the basic appropriate C.U.A. premium. They are in some measure graded according to the seriousness with which accidents and/or convictions are regarded by those setting up the Plan. The industry acknowledges that the surcharges are quite arbitrary and are not statistically based. This means, of course, that the premiums do not purport to be mathematically appropriate to the hazard which each driver presents. So that an individual premium might be adequate, more than adequate or less than adequate. No one can say. What is known, however, is that overall the premiums in the Assigned Risk Plan were inadequate in terms of the losses being incurred and paid under it.

Notwithstanding this there were two other cases drawn to the attention of the

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30. (continued from previous page)

    (c) Volume IV which was the brief of the Traffic Victims Indemnity Fund.
    (d) Volume V which was the brief of the Assigned Risk Plan.

    Each of the sections in Volume 1 could reasonably be considered to be a brief in itself.

    The presentation of such briefs and extensive cross-examination thereon occupied approximately 30 volumes of transcript, at the rate of one per day or part thereof out of 89 volumes (not including the Transcript of Argument).

Commission which attracted exceptionally high premiums.[33] One of these had a basic C.U.A. premium of $299. His total premium with surcharges added was $1,714.00. The second case attracted the same premium.

Responsibility for the Plan is shared by all Licensed insurers writing third party automobile insurance in the Province on the basis of premiums written in each calendar year. Such participation has been compulsory since 1961.[34]

During 1965 and part of 1964, the tight automobile insurance market in British Columbia had the Plan serving as a safety-valve with resultant over-utilization in respect of some non-surchargeable and clear risks. Clear risks are drivers with no accident or conviction record. In 1965, 27,740 new applicants and 14,388 renewals were insured by subscribers to the Plan. Comparable figures for 1963 were 12,682 and 9,869 respectively.

Public concern was reflected in at least one resolution emanating from the 1965 Annual Meeting of the Association of Superintendents of Insurance of the Provinces of Canada. This was to the effect that the Standing Committee on the Automobile Insurance Assigned Risk Plan should express to the industry the Association's concern about the over-utilization of the Assigned Risk Plan. On November 8, 1965, Mr. E. T. Cantell, Superintendent of Insurance for British Columbia issued a memorandum to other-than-life insurance agents which stated in part:

> Agents are hereby notified that the Assigned Risk Plan Office will in future accept only applications for risks which are defined as sur-

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33. 17/2054-6.

34. The <u>Insurance Act</u>, R.S.B.C., 1960, C. 197, as amended, Section 218 (4).

chargeable by the Plan.

This means that agents must not attempt to place non-surchargeable risks with the Plan but should look to their companies to provide cover for all non-surchargeable risks. The Companies have agreed to assume their share of these risks in de-populating the Assigned Risk Plan. Agents will be paid standard commission rates.[35]

The situation did show improvement during 1966 despite some remarkable reaction to the instructions of Mr. Cantell. The examination of Mr. Parkin by Commission Counsel is a reflection of this reaction.[36]

RAE: I am sure you would agree that these A risks do not belong in the plan at all, if one accepts the directive of the Superintendent of Insurance, Exhibit 23, as properly based.
PARKIN: Well, this is something that -- I do not think the Superintendent really intended to put the edict the way he did do it, and I don't think that the Superintendent should consider such an edict.
Q. And we have had it suggested by some that they do not consider that he has the power.
A. That, I would not know. If he does have the power, I do not think he should have.
Q. When you were asked about this letter yesterday, this memorandum, Exhibit 23, you said, in partial answer to it, that, after all, this was not directed to the industry but was directed to the agents, do you recall that?
A. Correct.
Q. As I understood you, you gave this as a reason why the industry should not necessarily follow the requirement laid down in it.
A. That, plus the fact that the industry had already sent a letter out on November 3 to the companies on the same subject recommending what should be done to depopulate the plans.
Q. That is the bulletin?
A. Yes, that is the bulletin number 110.
Q. Prior to Mr. Cantell sending out Exhibit 23, would you agree that he must have had consultation with the industry with respect to it?
A. Yes, I believe there were quite a number of discussions.
Q. Was the industry aware that it was going out?
A. Not to my knowledge.
Q. Was the industry generally aware that it was out after it was out, even though it was directed simply to agents?

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35. Ex. 23.

36. 18/2138-40.

A. Yes, we were.
Q. Was the industry, then, not prepared to accept the terms of the directive even though it had been directed to the industry?
BROWN: The agents, you mean?
RAE: No -- if it had been directed to the industry, it still would not have been prepared to accept it.
PARKIN: If it had been directed to the industry, it would be my opinion that we would have approached Mr. Cantell requesting him to withdraw the letter.

Both the All Canada Insurance Federation and the Insurance Bureau of Canada are still seeking to inject stability and develop alternative approaches to handle the problem. It was evident from the evidence at the hearings that the operations of the Assigned Risk Plan had not been satisfactory and that the Industry was aware of it. It was also evident that the Industry had, through Mr. Parkin and others, endeavoured to develop a plan which would be more acceptable. Several alternatives had been explored but none had apparently received sufficient support. The Industry apparently recently concluded that something would have to be done and done quickly. The Commission notes that since the conclusion of the hearings an alternative approach to the problem has been developed by the Industry in Ontario and in British Columbia as of January 1, 1968. The Assigned Risk Plan as it has been known will disappear. Under the new device the risks theretofore assigned will be handled by individual insurers who in turn will be able to transfer such risks in whole or in part to a new facility to be set up. This new facility involves a basic pooling concept which is well known in insurance and was well known prior to the setting up of this Commission.

The absence of urgency heretofore can perhaps be ascribed in part to the limited authority of the Provincial Superintendent of Insurance.

The Traffic Victims Indemnity Fund was established in 1961 as the successor to

the Unsatisfied Judgment Fund. Its major function is to provide compensation to victims of negligent motorists who are either uninsured or otherwise judgment proof, and to victims of hit-and-run drivers. A complete discussion of the Fund is found in chapter 14 of this Report.

To conclude this section attention should focus on the dependence on foreign insurers in the British Columbia automobile insurance market. Broadly speaking, Canadian companies provided for only 26% of the market. In detail, the complete picture is presented in Table 4:6.

Table 4:6

Classifications of Companies, According to Nationality and Control in the B.C. Automobile Insurance Market, 1966

(in thousands of dollars)

Classification of Companies	# of Cos.	% of Cos.	Net Premiums Earned	% of Market
Canadian	34	19.4	17,510.3	26.0
British (including Canadian & Foreign Cos. owned or controlled by Brit. Companies)	71	40.6	18,475.1	27.4
United States (including Canadian & Foreign Cos. owned or controlled by U.S. Companies)	54	30.9	27,229.5	40.4
Other Foreign (including Can., Brit., & U.S. Cos. owned or controlled by other Foreign Companies)	16	9.1	4,152.8	6.2
TOTALS	175	100.0	67,367.7	100.0

Source: (1) Superintendent of Insurance for B.C., Automobile Insurance Premiums and Losses for 1966, March, 1967.
(2) Report of the Superintendent of Insurance for Canada, Vol. 1 and 2, 1965.
(3) Stone & Cox, General Insurance Year Book Canada, 1966-67 Edition, Stone & Cox Ltd., Toronto.
(4) Best's Digest of Insurance Stocks, A.M. Best Co., New York, 1964.

APPENDIX TO CHAPTER 4

4:A Letter from the Director of Investigation and Research, Combines Investigation Act, to Counsel for the Insurance Bureau of Canada, dated April 16th, 1964.

APPENDIX 4:A

LETTER FROM THE DIRECTOR OF INVESTIGATION AND RESEARCH, COMBINES INVESTIGATION ACT, TO COUNSEL FOR THE INSURANCE BUREAU OF CANADA, DATED APRIL 16, 1964

Director of Investigation and Research
Combines Investigation Act

File No. 2118

Ottawa 4

Room 746, Justice Building
April 16, 1964

R. F. Wilson, Esq., Q.C.,
Day, Wilson, Campbell & Martin,
250 University Ave.,
Toronto, Ontario.

Re: The Proposed Insurance Bureau of Canada

Dear Mr. Wilson:

I have been thinking about the various subjects that were discussed during the meeting in my office on April 2 and have decided to write to you concerning certain of them so that there may be no misunderstanding about my position.

As I understand the situation, it is proposed to set up a Bureau to which all insurance companies in the general insurance field (that is, other than life) operating under the "North American Agency System" will be eligible for membership. The basic function of the Bureau will be to collect, collate and disseminate statistical information in fields of insurance of interest to the members and from this information promulgate rates which it recommends be charged on the basis of such information.

It seems to me that this may well raise problems in relation to the Combines Investigation Act as follows:

1. The recommendations will be made by a group composed of representatives of the two principal classes of member.

2. The recommendations will involve suggestions as to specific rates that should be charged by members of the Bureau or by firms that are grouped together as a member of the Bureau.

3. The recommendations will be made to a group of members who have undertaken to supply data and that data will presumably include information on rates actually charged.

4. With knowledge within the Bureau as to rates charged by individual firms and as to financial and underwriting results it is likely that pressure will develop for firms that have not adopted the recommendations or a relevant recommendation to do so without delay.

5. In segments of the industry in which practical control of the market rests with the member firms the effect of operation of the Bureau in a manner satisfactory and acceptable to its members insofar as recommendations concerning rates is involved will be to bring about a uniformity in rates charged by member companies operating under the "North American Agency System".

6. The kind of result envisaged in paragraph 5 is one that would raise a question under the Combines Investigation Act.

We have in our discussions mentioned the definition of the word "arrangement" given by Diplock, L. J., in British Basic Slag Ltd. v. Registrar of Restrictive Trading Agreements 1963 L.R. 4 R.P. 116 (Court of Appeal). The enclosed excerpt from that judgment covers that definition and in it you will see a good exposition of a situation that seems analogous to the one that would almost inevitably arise should the Bureau go into operation and adopt the proposals concerning "recommendations" that you have described to me.

Thus I fear that so long as plans for the proposed Bureau include a proposition that recommendations as to rates will be made there is a serious risk that in operation the Bureau would offend against the Combines Investigation Act in at least some of the segments of the insurance market in some areas of Canada.

It is difficult for me to be firmly specific in giving an opinion on what is as yet a hypothetical question. A further difficulty about giving an advance opinion on the operation of any group plan is that as a plan is operated changing circumstances force changing practices and it is, of course, impossible for me to know in advance as to what form such changes might take. I think, however, I have put my position on this phase of the question as clearly as may be possible in present circumstances.

I would like to say, concerning the proposals for the collection and analysis of statistics that I can see no reason why such activities would cause a problem under the Combines Investigation Act so long as they are not associated with an arrangement that involves agreement on rates by a segment of the industry that controls the market in some significant area of Canada or in some significant kind of insurance.

Concerning the question of "control of the market" I should be agreeable to discussing any figures you might have or get to show what the situation is or might be in the various parts of the country or segments of the industry.

I should also be prepared to discuss the whole matter again with you should you so desire.

Yours very truly,

"D.H.W. Henry"
Director.[37]

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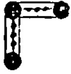
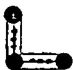
37. Ex. 239, pp. 82-3.



CHAPTER 5

THE CENTRAL STATISTICAL AGENCY



CHAPTER 5

THE CENTRAL STATISTICAL AGENCY

It is vital for insurance companies wishing to plan for the financial consequences of uncertain losses, and therefore the premiums to be charged, to evaluate accurately the degree of risk assumed. Probability theory provides an approach to making mathematical statements about risk. Where an event is certain to happen, the probability of occurrence is expressed as 1.0, and where it is impossible for an event to occur, the probability is held to be 0. Where probability estimates are based on a very limited number of observations or experiences, serious errors can result. To avoid such difficulties insurers attempt to make use of the law of large numbers. For all practical purposes this law holds that the greater the number of exposures the more nearly will the actual results obtained approach the true probability which would be expected from an infinite number of exposures.[1]

The necessity of providing for a large number of observations in the area of automobile insurance was recognized by Mr. Justice F. E. Hodgins in the late 1920's and reflected in both his 1930 Interim Report on Compulsory Insurance and Safety Responsibility Laws and his Report on Automobile Insurance Premium Rates. To quote from his Royal Commission's interim release:

> I have also recommended another amendment to the Insurance Act, concerning which a few words of explanation in this Interim Report seems desirable. I have suggested that a new Section be added as 69-A, requiring all insurance companies transacting automobile insurance in Ontario, to keep such records of their automobile premiums, loss and

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1. A more complete discussion is found in J. Magee and O. Serbein, Property and Liability Insurance. Homewood: Richard D. Irwin, 1967. pp. 8 - 11.

15

> expense costs, as the Superintendent of Insurance may require, and to have them compiled and combined for the information of the Department of Insurance in such form and manner as may be prescribed....I may explain that, at the outset of my inquiry into the reasonableness of the 1929 automobile insurance premium rates in Ontario, I was confronted with the major difficulty that the majority of the insurance companies transacting, in the three or four years immediately prior to April, 1928, upwards of sixty percent of the business in the Province, had failed to establish any real system of cost accounting in their offices, and were thus quite unable to produce before me any reliable statistical records showing the cost of automobile insurance in Ontario.[2]

Recommendation number five in the report on rates again calls for development of the statistical plan,[3] while the section dealing with the necessity for acquiring further data, repeatedly stresses the need for an undertaking to record expense costs.[4]

It should be noted that the general period under review was one of excessive competition for the Automobile Insurance industry. From 1923 until 1927 inclusive, costs of providing coverage were increasing but premium rates were continually being decreased. As a consequence, many insurers abandoned membership in the Canadian Automobile Underwriters' Association to accept automobile insurance at lower rates than those permitted by the association. Membership in that association dropped from 71 out of 103 companies writing 77.1% of the 1923 premium volume in Ontario to 64 of 126 writing 37.9% in 1927. By 1928 the Bureau had consolidated its position and its membership accounted for 79.9%

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2. Ontario, Interim Report on Compulsory Insurance and Safety Responsibility Laws. Toronto: The Printer to the King's Most Excellent Majesty, 1930. pp. 27-28.

3. Ontario, Report on Automobile Insurance Premium Rates, Toronto: The Printer to the King's Most Excellent Majesty, 1930. p. 78.

4. *Ibid.*, pp. 11-12.

of premiums written.[5] This strength was immediately followed by increases in rate levels which Mr. Justice Hodgins found quite unacceptable. In his report he stated:

> That is one illustration of how little the interests of the public insured are considered when, in the first place, a rate war occurs, then an effort to consolidate the Bureau's position, a present continuance of lowered rates, or some other concession, as an inducement to others to come in, and then a sudden jump of rates as soon as they are safely within the membership of the Bureau.[6]

Included in his findings were the following:

> ...that the automobile insurance premium rates fixed by the ..."Bureau", effective February 1st, 1929, were unreasonably high and were not properly deduced from the experience which the Companies then had, and are not justified by the later and detailed experiences of the years 1927, 1928 and 1929 submitted to me since this Enquiry began....that the method of increasing the rates in 1929 was unusual, unreasonable, and unfair, in that they were founded on rates which had not been fixed on a scientific or statistical basis, as was contended before me, and by the further fact that the provision for expenses was increased by 50% on two coverages, and 25% on one coverage, without any increase in the expenses of the company.[7]

The Hodgins Commission's recommendation on the setting up of a central statistical agency was adopted. However, it was clear to the Superintendent of Insurance for Ontario that the only organization geared to deal with the volume of data involved was the statistical department of the Canadian Automobile Underwriters' Association. As a consequence, by 1931 the CAUA had become the designated agency for Ontario. Gradually the statistical department of what is now the Canadian Underwriters' Association received on either a voluntary or on a compulsory basis data on the automobile experience for each of the provinces, with certain limitations in the case of Saskatchewan.[8]

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5. Ibid., p. 15.

6. Ibid., p. 17.

7. Ibid., p. 73.

8. See Appendix 5:A.

In British Columbia, by virtue of Section 96 (1) of the Insurance Act, and designation of the Agency by the Superintendent, all licensed insurers must submit their experience to what is known today as the Central Statistical Agency. Specifically, the Act requires that:

> Every licensed insurer which carries on in the Province the business of automobile insurance shall prepare and file, when required, with the Superintendent, or with such statistical agency as he may designate, a record of its automobile insurance premiums and of its loss and expense costs in the Province, in such form and manner and according to such system of classification as he may approve.[9]

The necessary standard reporting forms are sent out from the central agency. According to the testimony of Mr. E. T. Cantell, Superintendent of Insurance for B. C., these forms are created by a joint committee of industry and the Association of Provincial Superintendents of Insurance statistical committee. This Automobile Insurance Statistical Committee has the Ontario Superintendent of Insurance, Mr. C. Richards, as chairman, and its membership as of February, 1966, included the Quebec Superintendent Mr. Camaraîre, Mr. C. L. Wilcken, actuary of the C.U.A. and of the Central Statistical Agency, and 13 industry members. In addition there was an observer from the Insurance Bureau of Canada.[10]

The above Committee seems to be considered as an industry committee by the Superintendent of Insurance for Ontario. A letter from Mr. Richards, the Ontario Superintendent, to the Chairman of this Commission dated 31 January, 1967, in which he outlines briefly his powers as Superintendent for Ontario, reads in part as follows:

> That statistical agency acts independently from the C.U.A. in the compilation of automobile insurance experience in the Green Book. The

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9. R.S.B.C. 1960, C 197, as amended.

10. See Ex. 30 and Ex. 30A.

> form of compilation and classification used is established from time to time by the Automobile Insurance Statistical Committee which is an advisory committee consisting of members of the Industry making recommendations to the Superintendents. (emphasis added)

Despite the very strong concern expressed by Mr. Justice Hodgins almost 40 years ago, the recommendations in the 1957 Report of the Nova Scotia Royal Commission,[11] the views of the Director of Investigation and Research under the Combines Investigation Act, and of the Federal Superintendent of Insurance appearing in correspondence cited earlier, and despite the enabling statutory provisions under the Insurance Act of this Province, no expense data is gathered by the Automobile Insurance Statistical Committee. A revealing picture of the role of provincial superintendents generally, in relation to this Statistical Committee, on occasion loosely termed the "Superintendents" Statistical Committee, emerged from the examination of the Superintendent of Insurance for British Columbia by Commission Counsel:

> RAE: But the official men have been regularly from Ontario and Quebec for quite a number of years back?
> CANTELL: Quite a number of years back.
> Q. Mr. Cantell, can you tell us who elects or appoints, or in what manner this committee is set up. The remaining members seem to be representatives of the insurance industry?
> A. Yes, they are members of the insurance industry. They represent the companies which submit their statistics to the statistical committee in order to compile this book of automobile experience.
> Q. Well, now, what specific function has that committee which we have just filed in this exhibit?
> A. It analyses the experience in this book.
> Q. In the green book?
> A. In the green book.

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11. Nova Scotia, Royal Commission on Automobile Insurance Vol. 1 (1957), p.84.

    Recommendation number one reads: That suitable steps be taken to ensure that insurers, individually file their expense experience in accordance with standard instructions that will enable some designated official or agency to produce periodically the countrywide expense experience on a basis which will enable testing of the reasonableness of the ratio of losses and expenses to premiums.

Q. What does it do with it after it is analysed?
A. Well, the Superintendents are on the committee to make certain that the statistics are reported in accordance with the required reporting program.
Q. But they, as governmental representatives, have they any statistical advisers available to them to check the material in the green book or in any way to develop conclusions from it as statisticians?
A. Not presently. Up until a year or two ago the Ontario department had a casualty actuary on his staff who did the work.
Q. An actuary,
A. A casualty actuary?
Q. Not a statistician?
A. No.
Q. And you, of course, have no statistical services available to you as Superintendent?
A. No.
Q. It is fair to say that the green book material is produced by and at the cost of the industry?
A. Yes.
Q. For the government.
A. For government.
Q. And that government does not in any way contribute to the cost of preparing this?
A. No.
Q. And, as you have stated, have no means within their power of checking it?
A. That's right.[12]

And at another point in the evidence: -

RAE: Mr. Cantell, you are familiar with the provisions of Section 96 of the Act which requires automobile insurers to file a record of their experience with the Central Statistical Agency?
CANTELL: Yes.
Q. And the Central Statistical Agency is that specified by all the superintendents in Canada, and we have had considerable evidence on the matter?
A. Yes.
Q. Now the evidence, to put it very shortly, has been to the effect that there is a Superintendents' Statistical Committee ... and that committee appears to be composed of the Superintendent of Insurance for Ontario, the Superintendent of Quebec, and quite a number of representatives of various insurers. How long have you been superintendent?
A. Since 1959.
Q. And in that period of time so far as you know what provinces have been represented on that statistical committee?
A. So far as I am aware, it has always been Ontario and Quebec.
Q. Do you have any personal knowledge of the activities of that committee?
A. No.
Q. Have you ever had anything to do with making suggestions or devising or passing upon any system of classification?

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12. 3/263-4.

A. No.
Q. Well, perhaps you have in a formal manner in that 96 (1) says "A record of its automobile insurance premium and of its loss and expense costs in such form and manner according to such system of classification as he may approve." Does this mean that the Statistical Committee approves, and when it does so it is approving for all superintendents, including you, without your having actual knowledge of the change?
A. That's right.
Q. Now I notice that Section 96 (1) refers not only to loss costs but expense costs .... According to the evidence we received insurers have never been required to file expense costs.
A. That's my understanding, yes.
Q. Have you ever had occasion to consider whether or not they should be required to file expense costs?
A. No, I haven't.
Q. So far as you know, has this statistical committee which purports to act for all superintendents considered the question of filing expense costs?
A. I have no personal knowledge of that fact. I would be guided by their recommendations, however.
Q. The panel from the All Canada Insurance Federation was questioned with respect to the filing of expense costs and that evidence appears in Volume 56...and the general purport of it is that the industry would have no objection to the filing of expenses. Are you aware of this or not?
A. No, I was not here when that evidence was given.
Q. Were you aware that the Nova Scotia Report of 1957 and specifically at page 53 -- that is the Royal Commission, Nova Scotia -- had stated that it would be advisable to have expense costs filed by auto insurers?
A. I may have been aware of it at one time but I have not looked at that report for a good many years.
Q. Do you know whether or not this recommendation was ever considered by the Central Statistical Committee.
A. No, I don't.[13]

Some further evidence of the role the industry plays through the Statistical Committee was received by the Commission through the Insurance Bureau of Canada Document Brief.[14] Given the impact of rising premium rates, Bulletin No. 65-3 of the I. B. C. dated April 29, 1965 recognized the need for scaling down the expense portion[15] of each premium dollar from the prevailing 37%. The extent

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13. 89/9754-6.

14. Ex. 239.

15. See 'Rate-making and the Statistical Exhibit', Chapter 6 which follows, for detail.

of the reduction seems effectively to have been determined by a Committee on Automobile Claims and Expense Factors of the Insurance Bureau of Canada. The above Bulletin (directed to the C.U.A., the I.I.C. and the Managers for Canada of the independent members of the Bureau) refers to the need for revision and indicates that the matter is being referred to the above Committee of the Bureau and that thereafter a request will be made for an appropriate revision of the Green Book. Approximately four months later Counsel for the Bureau wrote to the Ontario Superintendent to the effect that he was informed that the Superintendent intended to give written instructions to Mr. Wilcken, the actuary of the Central Statistical Agency, to have the forthcoming Green Book issued in accordance with the suggested revision and requesting a copy of the directive to Mr. Wilcken for the Bureau's records. The reply thereto from Mr. Richards, the Superintendent, pointed to the Minutes of Meeting of the Automobile Insurance Statistical Committee of August 26th, 1965 and forwarded a copy thereof. The formal directive to Mr. Wilcken had been given at this meeting at which he was present. The revision consisted of decreasing the expense factor from 37% to 33%.[16]

Once the statistical department of the C. U. A. receives the reporting forms providing data on the automobile loss experience of insurers, the information is compiled and then returned to the Superintendents in a published form referred to above as the Automobile Statistical Exhibit or "green book". It is published annually, usually towards the end of September. The process has been

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16. Ex. 239, pp. 46i and 86 _et seq_.

referred to by the Superintendent of Insurance for British Columbia, Mr. E. T. Cantell, as the "Governmental function" of the C.U.A.'s Statistical Department.[17]

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17. British Columbia, A Study of Automobile Insurance Rates Victoria: Queen's Printer, 1966. p. 38.

    This report is Exhibit 28 in the proceedings before this Commission. The Superintendent of Insurance had considerable assistance from the insurance industry in the preparation of it. (Transcript 3/282 *et seq.*) As appears from Ex. 28, at page 37 the lengthy explanation of the rate-making process appearing therein from pages 37 to 75 was borrowed from a 1965 Report of the Board of Commissioners of Public Utilities of the Province of Nova Scotia. It is Ex. 105 in these proceedings, and, as appears from the evidence of Mr. Cantell, had appropriate changes made in it with the assistance of the C.U.A. in order to relate it to British Columbia. In turn it appears that the delineation of the rate-making process as set forth in Ex. 105 came in large measure from evidence given by representatives of the C.U.A. before the Nova Scotia Commissioners. (27/3448 *et seq.*)

APPENDIX TO CHAPTER 5

5:A Letter from the Ontario Superintendent of Insurance to Insurers, dated January 1, 1967.

APPENDIX 5:A

LETTER FROM THE ONTARIO SUPERINTENDENT OF INSURANCE TO INSURERS, DATED JANUARY 1, 1967 [18]

DEPARTMENT OF INSURANCE

CECIL RICHARDS, F.C.A.

SUPERINTENDENT OF INSURANCE
REGISTRAR OF LOAN CORPORATIONS

To: All Insurers Licensed to Transact Automobile Insurance in Ontario, Manitoba, Saskatchewan, Alberta, British Columbia, Prince Edward Island, New Brunswick, Nova Scotia, Newfoundland and Quebec.

FROM: The Superintendent of Insurance

RE — AUTOMOBILE LOSS COST EXPERIENCE DATA — ALBERTA, BRITISH COLUMBIA, MANITOBA, NEW BRUNSWICK, NEWFOUNDLAND, NOVA SCOTIA, ONTARIO, PRINCE EDWARD ISLAND, QUEBEC AND SASKATCHEWAN.

On December 4th, 1930, the "1931 Automobile Statistical Plan" was formally prescribed pursuant to Section 75 of the Ontario Insurance Act for the filing of the automobile insurance experience of Companies licensed to transact this form of insurance in the Province of Ontario. Subsequently, the plan was also formally prescribed pursuant to Section 65 of the Manitoba Insurance Act, S.M.1932, Chap. 20, by Section 92 (a) of the Amendments to the Saskatchewan Insurance Act, 1933, by Section 83 "7", "8", "9" of the Amendment to the Alberta Insurance Act, Chap. 31, Statutes of Alberta, 1926, by Section 65 of the Prince Edward Island Insurance Act, by Section 59A of the British Columbia Insurance Act, by Section 65 of the New Brunswick Insurance Act, by Section 34 of the Nova Scotia Automobile Insurance Act, by Section 5A of the Newfoundland Accident Companies (Licensing) Act and by the Quebec Highway Victims Indemnity Act, as applying to the filing of experience for these provinces.

Since the Plan came into force changes have been made, new pages added and old pages reprinted and in accordance with previous agreement the changes made have applied to all the Provinces mentioned above.

The Plan is now being revised to take into account amendments made effective January 1st, 1967.

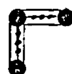
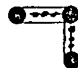
The Statistical Division of the Canadian Underwriters' Association has been appointed the Statistical Agency for receiving the information prescribed by the plan from the companies and all correspondence and matters pertaining to the Plan, should be directed to C. L. Wilcken Actuary, 31 Prince Andrew Place, Don Mills, Ontario.

Cecil Richards,

Superintendent of Insurance

January 1st, 1967.

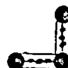
18. Ex.102, p.3

CHAPTER

6

RATE-MAKING AND THE STATISTICAL EXHIBIT (The 'Green Book')



CHAPTER 6

RATE-MAKING AND THE STATISTICAL EXHIBIT (The 'Green Book')

In line with instructions detailed in the General Instructions manual of the Statistical Plan, each insurer submits to the Statistical Division of the C.U.A. particulars on its automobile insurance business.[1] Data is reported monthly on either standardized punched cards or magnetic tape. Detailed codes are spelled out covering rating territories, automobile classifications, coverages, types of losses and other similar detail.

The Statistical Exhibit (or 'Green Book', as it is called) reflects the automobile loss experience, across nine provinces, of all automobile insurance companies. The Saskatchewan experience is published separately.[2] Most pages of the Statistical Exhibit or 'Green Book' contain nine columns, with eight of them numbered. Because of the technical terminology used, these columns require some explanation. Page 55 Revised of the Statistical Exhibit as of June 30, 1967, is illustrated on the following page.

The first unnumbered column simply indicates the coverages on which past industry experience is to be reported. Column (1) indicates the policy years to be reported on. It is current practice to show five policy years but to give information for three years only in numbered columns (2) through (5). The significance of using policy rather than calendar years must be noted. Losses on policies written during the 1966 calendar year may be incurred during any month from January of 1966 to December of 1967. In other words, losses under policies

1. Ex. 102.

2. Ex. 111.

PRIVATE PASSENGER AUTOMOBILE EXPERIENCE - EXCLUDING FARMERS

BRITISH COLUMBIA PROVINCE

Coverage:	Policy Year (1)	Cars Insured (2)	Premium Earned at Jan. 1, 1967 Board Rate Level (3)	Number of Claims Incurred (4)	Ratio: Claims & Expense Inc. to Premium Earned (5)	Indicated % Change in Rate Level (6)	Claim Freq. (7)	Avge. Cost of Claim (8)
Bodily Injury and Property Damage	'62					-28	7.4	474
	63					-19	8.2	478
	64	472,602	34,190,270	37,988	91	-13	8.0	526
	65	504,279	36,467,921	37,263	94	- 9	7.4	600
	66	460,610	33,315,698	32,135	98	- 3	7.0	670
All Perils	'62					-37		
	63					-27		
	64	37,839	2,327,448	5,269	82	-27		
	65	33,533	2,053,129	4,288	78	-33		
	66	26,235	1,591,082	3,173	79	-31		
Collision	'62					-33		
	63					-25		
	64	278,911	12,766,115	17,061	87	-19		
	65	301,924	13,778,256	17,383	87	-19		
	66	313,400	14,241,691	17,379	89	-16		
Comprehensive ($25 Deductible)	'62					-19	6.5	98
	63					-12	6.3	109
	64	262,140	3,047,482	17,118	93	-10	6.5	107
	65	292,347	3,404,195	18,376	90	-15	6.3	105
	66	289,187	3,365,597	17,331	87	-19	6.0	104
Specified Perils ($25 Deductible)	'62					-34	1.2	143
	63					-22	1.2	169
	64	113,005	438,123	1,090	81	-28	1.0	192
	65	110,875	430,994	1,018	84	-24	.9	217
	66	100,467	392,508	850	72	-42	.8	181
TOTAL	'62					-28		
	63					-21		
	64		52,769,438		90	-15		
	65		56,134,495		92	-12		
	66		52,906,576		94	- 9		

PRIVATE PASSENGER AUTOMOBILES - EXCLUDING FARMERS

BRITISH COLUMBIA PROVINCE

issued during 1966 may occur over a full 24 months period.[3] Policy year 1966 would span these 24 months. This is not to suggest that all losses during the 24 months are chargeable to the 1966 policy year. Thus, the Statistical Exhibit released in the Fall of 1967 shows incomplete 18 months experience for the policy year 1966 while the experience of earlier years is developed for 24 months. 24 months figures are obviously firmer than 18 months figures because almost all claims have been reported as of 24 months, though the amounts may be subject to some revision, whereas 18 months figures must incorporate an estimate of claims arising during the final six months of the policy year.

The factor used to estimate the 24 months claims from the known 18 months claims is called the "Loss Development Factor". Such estimates have been proven to be very accurate.

Column (2) is headed "cars insured". The numbers shown reflect risk exposure in terms of car years. Thus, if 3 vehicles were covered under three different policies and each policy was in force for only 4 months the exhibit would record only one "car insured". The 1966 exposure is reduced to reflect the fact that one has only 18 months of the 1966 policy year.

Column (3) is headed "premium earned" and shows figures based on the assumption that C.U.A. premium rates for the latest policy year were actually collected during earlier years. The 1966 figure is subject to the same further qualifications as the 1966 exposure figure noted above, and for the same reasons.

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3. To illustrate, a policy sold on the 31st of December 1966 will cover an accident occurring on the 30th of December 1967, or roughly 24 months after the first 1966 policies issued.

The purpose here is to endeavour to estimate the adequacy and propriety of the premium rates last in force (i.e. the latest policy year) in relation to the losses being estimated for the next year (i.e. from the past experience including the 18 months period referred to).

Column (4) labelled "number of claims incurred", represents the actual number of claims incurred. The 1966 figure represents the actual claims incurred against 1966 policies in the 18 month period.

Column (5) titled "Ratio: Claims & Expense Inc. to Premium Earned" shows the relation of claims including allocated claim expense plus so-called "expenses incurred" to the hypothetical premium figure in column (3).[4] Actual claims are not reported as such in the "green book" but may be found by multiplying the number of claims incurred found in the previous column by the average cost per claim shown in column (8). To this actual loss figure is added an agreed upon expense portion of 33% of column (3). The sum is then expressed as a percentage of column (3).

Column (6) headed "Indicated % Change in Rate Level" shows the indicated changes from 1966 rates which would have just paid claims in the previous policy year shown while producing the desired loss ratio of 67%.

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4. The term "allocated claims expense" requires some explanation. When a claim is made on a policy and paid, the payment of course forms part of the 67 cent portion of the premium dollar. In settling or adjusting the claim (i.e., ascertaining whether there is liability and if so the amount to be paid) there is cost involved. If such cost can be identified as attributable to a claim it is charged to the 67 cent side of the dollar. An example would be adjusters' costs.

Column (7) labelled "Claim Freq." simply expresses the number of claims per 100 cars insured and is found by dividing column (4) by column (2). No information is provided for either 'All Perils' or 'Collision' cover since differing territorial distributions of the various deductibles would make comparisons of claim frequencies misleading.

Column (8) titled "Avge. Cost of Claim" is self explanatory.

Additional considerations in rate-making based on the Statistical Exhibit

On release of the Statistical Exhibit, the automobile committee of the I. B. C. conducts an analysis of the Exhibit and submits its report to the Board of Directors. Following a review by the Board it is then released to the membership including the Independent Insurance Conference and the Canadian Underwriters' Association.[5] The analysis by the I. B. C. Automobile Committee is accomplished, in large measure, by the C. U. A.'s actuary who heads the C. U. A. Statistical Department and is also actuary for the governmental Central Statistical Agency.

In the analysis by the Automobile Committee the (indicated % change in 'rate level') column referred to earlier is not used without modifications. Current procedure in assessing the adequacy of rate levels and arriving at illustrative rates includes, first of all, use of a weighting of the last two policy years' indicated change. 60% of the latest year's indication is combined with 40% of the previous year's pattern. The basis for the weighting is somewhat obscure.

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5. e.g., I. B. C. Bulletin No. 66-22 dated September 30, 1966 in Ex. 239, pp. 66-77.

In most instances, given the volume of experience in Canada, full credibility can be assigned to the latest year's indication. The current scheme, however, giving only partial weight to the latest year's experience indication and the balance of weighting to the status quo, i.e., 'no change', appears almost illogical.[6]

To illustrate the arithmetic involved, assume that the Statistical Exhibit for a particular type of coverage in a particular territory shows an indicated change of -18% for the policy year 1965 and -16% for 1964. The 60-40 weighting would result in an overall figure of -17.2. By adding 100 to this figure, the required rate expressed as a percentage of 1966 rates is derived -- a figure of 82.8%. This percentage does not have direct application, but merely reflects the adequacy of 1966 rates as related to the experience of the past two policy years. In working towards illustrative rates for 1967 the derived percentage is subject to further modification.

If it could be assumed that the size and frequency of 1967 claims per car insured would approximate those of 1965, no further computations would be required. In actual fact however, while claims frequency has been rather erratic, the severity or average cost per claim has risen steadily. These two variables, when taken together, have produced significant increases in the average loss cost per insured vehicle over the past decade, necessitating an allowance for the trend of such loss costs.

During 1966, trend was established by using a statistical technique termed the

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6. See Ex. 106, a paper by E. Stern titled Ratemaking Procedures for Automobile Liability Insurance, Casualty Actuarial Association, Boston, November 13, 1965, pp. 33-34.

least squares method. Regional data were used with British Columbia as one of the regions.[7] Given a series of figures, the method involves the computation of a trend line equation. From the equation it is then possible to draw on a graph a straight line which illustrates the trend of a series of figures. By extending the line into a future period, an estimate of expected figures may be determined. Applying this method to loss cost figures for past years, it is possible to estimate loss costs a year into the future. An example of the application of least squares is set out graphically in Figure 6:1 on the following page.

Time is measured along the horizontal axis and loss costs along the vertical axis. The fitted straight line, derived by the least squares method, indicates the trend of the loss costs over time.[8]

By the least squares method the fitted straight line is derived so that the sum of the squares of all the vertical deviations of the observed values from the fitted straight line is less than the sum of the squared vertical deviations from any other straight line. Thus, for example, the vertical distance between point A and the line, when squared and added to the squared vertical distances between point B and the line and point C and the line, will be at a minimum. A fuller and more complete discussion of the least squares method and its application is to be found in Appendix 6:A.

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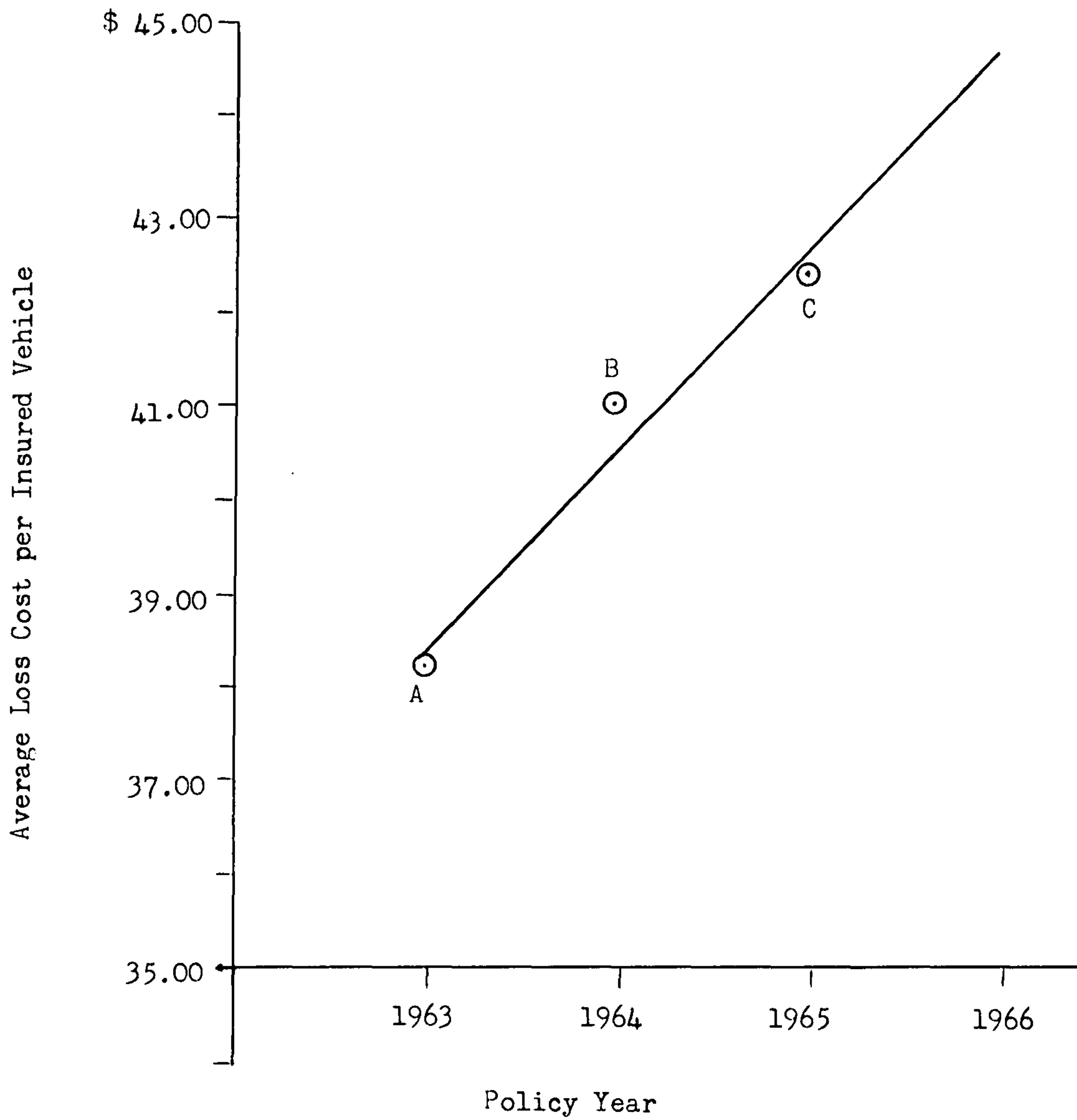
7. Other regions are Alberta and Manitoba combined, Ontario, Quebec and the Atlantic Provinces.

8. The illustration assumes actual loss costs per insured vehicle of $37.97, $40.92 and $42.12 for policy years 1963, 1964 and 1965, the equation of the trend line then becomes $L = 36.19 + 2.075t$ where L is the loss cost and t a measure of time with 1963 = 1, 1964 = 2 and so on. With $t = 4$, the projected loss cost became $44.49 an indicated increment of $2.075 over a fitted 1965 value of $42.415.

Figure 6:1

Trend of Average Loss Cost Per Insured Vehicle



The next step in the rate-making process, once trend has been established, is to determine the percentage increase in loss costs as given by the trend line. Thus, if the projected loss cost for 1966 was $44.49 and the fitted 1965 loss cost was $42.415, the percentage increase is 4.89. This percentage increase must then be multiplied by 2.4 which represents the time lag between the mean date of the loss experience data and the mean date for which rates were to be applied.[9] When 100 is added to the above product, the indicated trend factor becomes 112. The indicated trend factor, when combined with the percentage figure or required rate reviewed earlier, provides the measure of indicated change. Through multiplication, the trend factor was combined with the previously derived 82.8% producing an indicated change in the rate level factor of .927 or 92.7%. Thus, if the 1966 Manual Rate was $54 the indicated 1967 rate became $50.00. Actual rates may differ from those indicated by the arithmetical exercise due to the use of underwriting judgment to modify rates generated by application of the formula. The Commission heard considerable evidence on recent difficulties experienced by the industry, traceable to the introduction of faulty judgment.[10] As one of its several recent changes the Industry has reverted to using more than 3 years experience as it once did; it is presently using 4 years experience.

The implications of the shortcomings of the method hereinbefore described are dealt with in a later part of this report (term of reference (f)).

The preceding steps are followed by the I. B. C.'s Automobile Committee, in

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9. See Appendix 6:B hereto for a depiction of this in graph form.

10. 31/3524-3526.

initiating illustrative rates for the basic or B-3 category of insured driver. Indicated rates for other age-use categories are first established as percentages of the B-3 rate by a procedure to be outlined, (See post "The Differential Complex -- Private Passenger Vehicles"). The differentials thus calculated are then multiplied by the B-3 rate to give illustrations for each of the other classes. As already indicated, the Statistical Agency and its Exhibit use C.U.A. classifications. Seven separate groupings were identified in 1966. These classifications were the subject of extensive examination during the early part of this Inquiry. As of 1967 the industry had increased the classifications to 10. Specifically, Class H: single male applicant or principal operator under 25 years of age was dropped and classes J through M inclusive substituted. Four categories for driving record are in use. The details on each age-use and driving record classification are as follows:

Class A

(a) Pleasure.

(b) Applicant principal operator 25 years of age or over.

(c) No male driver under 25 years of age.

(d) Not more than two drivers per automobile in the household.

(e) Automobile not used for driving to and from work.

(f) Average and anticipated mileage not exceeding 10,000 miles per annum.

Class B

(a) Pleasure.

(b) Applicant and principal operator 25 years of age or over.

(c) No male driver under 25 years of age.

(d) Not more than two drivers per automobile in the household.

(e) Automobile not used for driving to or from work more than 10 road miles one way.

Class C

(a) Pleasure.

(b) Applicant and principal operator 25 years of age or over.

(c) No male driver under 25 years of age.

Class D

(a) Business or business and pleasure.

(b) Applicant and principal operator 25 years of age or over.

(c) No male driver or operator under 25 years of age.

Class E

(a) Pleasure or business and pleasure.

(b) Applicant and principal operator 25 years of age or over.

Class G

(a) Married male applicant or principal operator under 25 years of age, residing with his spouse, or

(b) Female applicant or principal operator under 25 years of age.

Class J

(a) Single male applicant or principal operator 16, 17 or 18 years of age.

Class K

(a) Single male applicant or principal operator 19, or 20 years of age.

Class L

(a) Single male applicant or principal operator 21 or 22 years of age.

Class M

(a) Single male applicant or principal operator 23 or 24 years of age.

As of January, 1968 the Insurance Bureau of Canada, which has seemingly taken over recommending of classifications, has altered the designations and added

additional classifications.[11]

Driving Record

3 Clear record[12] for the three years immediately prior to the effective date of the policy or any renewal thereof.

2 Clear record for the two years immediately prior to the effective date of the policy or any renewal thereof.

1 Clear record for the one year immediately prior to the effective date of the policy or any renewal thereof.

0 Risks not qualifying for 3, 2 or 1.

(For example, an insured designated as A0 is an insured coming within Class A who has involved his insurer in a claim within the past year. Similarly, the rating G3 would be an insured within Class G who has not involved his insurer in a claim within the past 3 years).

Rating groups for different makes and models of automobiles are also used for purposes of collision, all perils, comprehensive or specified perils coverages.

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11. At the presentation of the brief of the C.U.A. October 31 - November 4, 1966 there was extensive cross-examination on rating classifications and possible refinements thereof, more particularly as to age and sex differentials. It appeared that there had been no significant changes related to age since 1952 and that, generally speaking, any changes of consequence followed by a number of years similar changes in the U. S. Some extracts from the evidence and comments on 1968 classifications are in Appendix 6:C hereto.

12. "Clear Record" means that the insured has not involved his insurer in payment of a third party or collision claim. Some insurers record all such claims for this purpose, others disregard those below a certain nominal sum. These last and "accidents" not involving a claim, although they may well indicate a greater hazard in the driver by reason of their occurrence, are nevertheless disregarded for the purposes here referred to.

The pattern for the Oldsmobile provides a useful example:

Make and Model	RATING GROUP 1967	1966	1965	1964	1963	1962	1961 & Earlier
OLDSMOBILE F85 & Cutlass	5	5	4	4	3	3	1
88 Series & Jetstar	6	6	5	5	4	4	3
98 Series, Jetstar I	7	7	6	6	5	5	4
Toronado	8	8					
Vista Cruiser (F85)	6	6	5				

(e.g. The 1967 Oldsmobile 88 with a 6 rating would be at a higher premium than would be the Oldsmobile Cutlass at the figure 5).

Finally, there are 9 rating territories for British Columbia, numbered 1 through 8, including 3 and 3A which have rating differentials dependent on the claims experience of the vehicles garaged in each territory.[13]

All the possible factors to be considered in setting rates for various types of coverages are readily summarized. Obviously, hundreds of possible combinations or sub-groupings are reflected in the following:

(a) Bodily injury and property damage:

(1) Geographical territory.

(2) Age and use category.

(3) Driving record.

(4) Limits.

---

13. Changed to 7 rating territories for British Columbia as of January 1, 1968.

(b) Collision and all perils coverage:

(1) Geographical territory.

(2) Age and use category.

(3) Driving record.

(4) Automobile rating group.

(5) Deductible.

(c) Comprehensive and specified perils coverage:

(1) Geographical territory.

(2) Automobile rating group.

(3) Deductible.

(d) Medical payments:

(1) Geographical territory.

(2) Age and use category.

The extent to which the foregoing classification structure accurately reflects expected losses remains uncertain. In principle, there would appear to be a case for as many classes as can effectively be distinguished as warranting different rates. This would be the closest approximation to the ideal of a separate rate for every insured, reflecting the expected losses under his policy. In practice, however, this has to be modified by a number of considerations, including the following:

(1) Administration costs. More classes generate bulkier rate manuals, and more clerical work in establishing rates and maintaining statistical records.

(2) The need for credible statistics. As the number of classes increases, fewer individuals appear in each class and statistical data are less reliable.

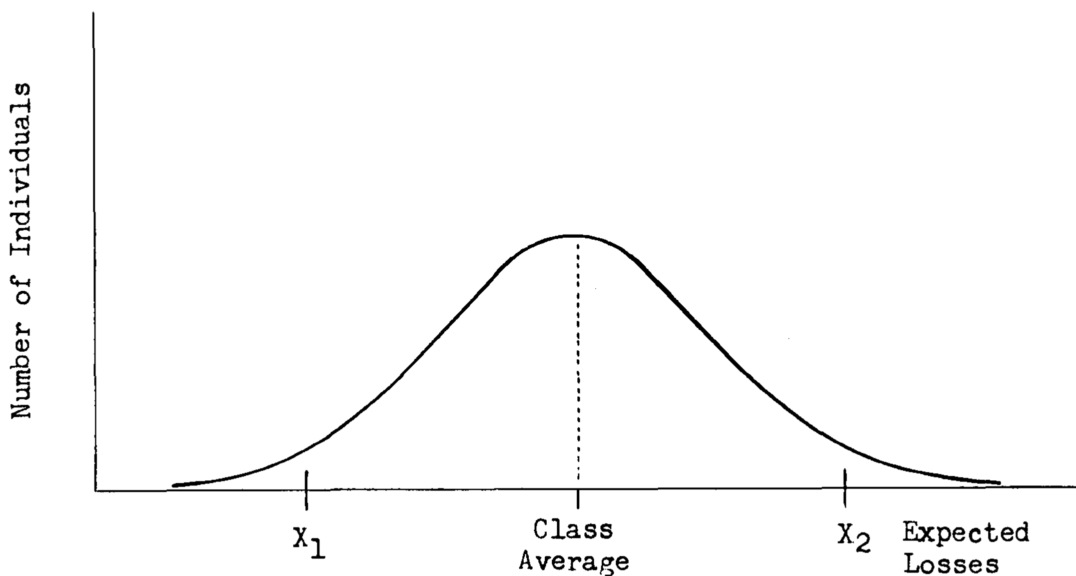
(3) Public opinion. Certain bases of classification, such as economic status, which might be statistically justified, are not likely to be tolerated.

(4) Administrative feasibility. Any basis of classification chosen should be easily verifiable, and without an undue increase in cost.

No classification scheme measures probabilities of loss directly but uses the bases of classification to infer probabilities. Within any class to which the rating scheme assigns an average probable loss there will be a range of probable losses, for the different individuals in the class whose true individual probable losses differ. Most insureds will tend to cluster at or near the class average. Others will be at greater distances from it. Figure 6:2 illustrates a possible distribution for a particular class. X_1 and X_2 represent the true expected losses of two individuals within the class (those to the left of centre being lower than average risks, those to the right, higher).

FIGURE 6:2

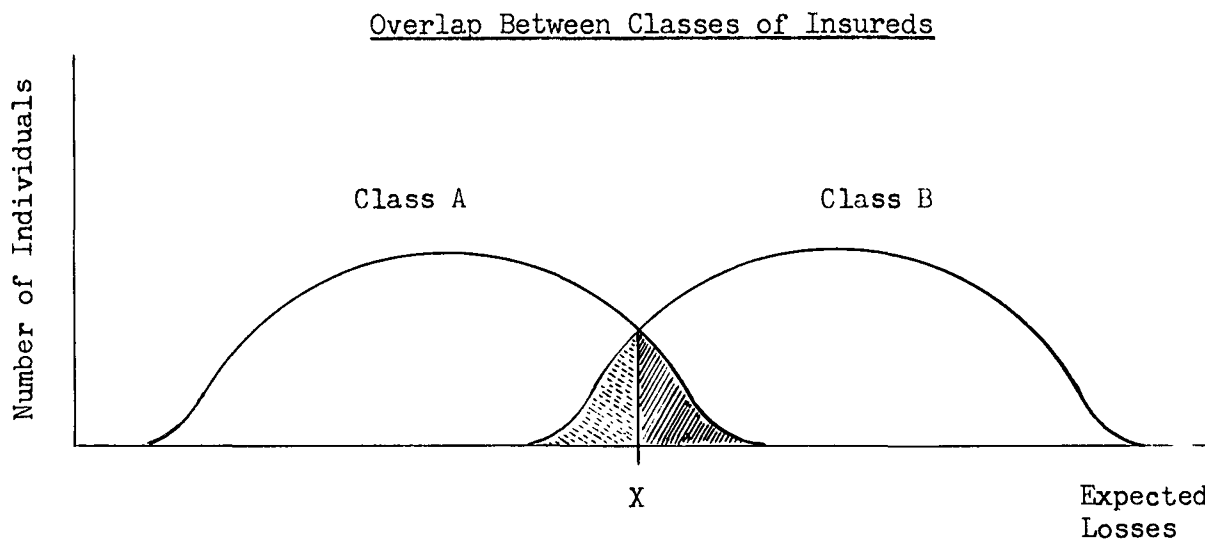
Probability Distribution for a Class of Insureds



Normally there will be some overlapping between classes. Figure 6:3 serves to illustrate.

FIGURE 6:3

Overlap Between Classes of Insureds



Persons in Class B are charged a higher premium than those in Class A. However, persons in Class B whose true expected losses are less than X, shown by the shaded area (Figure 6:3) have true expected losses less than individuals in Class A whose true expected losses exceed X, shown by the cross hatched area. Although some discrimination is inevitable in any class rating system, two approaches to the problem of discrimination because of class overlap are evident. Firstly, an attempt may be made to formulate the system on bases of classification which minimize the amount of overlap between classes. Secondly, the relative amount of overlap may be reduced also by having a smaller number of classes. However, a second type of discrimination arises when there is a smaller number of classes and consequent larger class sizes. For example, in Figure 6:2, the individual whose true expected loss is X_1 is being discriminated against in comparison to the individual whose true expected loss is X_2, if they are both being charged the same rate. The larger the class size, arising from a smaller

number of classes, the greater such discrimination. Discrimination, both within classes and due to class overlap, is an important consideration to the insurer and the insured.

It is the existence of persons presenting varying degrees of expected loss within a class (see Figure 6:2) which permits some insurers to be selective within a class. Thus, a given insurer, if he can identify them, can select those to the left of center in Figure 6:2 (expected losses below average) and write them at the class premium or (if he wishes to be competitive) at a lesser premium. He may also reject those to the right of center or accept them at an increased premium. Such practices are referred to by some who find them of concern as "creaming". These practices are made possible by insufficient refinement of classes. There are, however, degrees of refinement and anything short of individual rating will probably permit some measure of such selection.[14]

The Differential Complex — Private Passenger Vehicles

As previously indicated, in the course of the cross-examination on the brief of the Canadian Underwriters' Association (and particularly the examination of Mr. Wilcken, the Actuary), and arising out of that brief, there was considerable discussion on the question of age-use differentials and driving record differentials. As background to the conclusions in another part of this report with respect to the two-stage method by which the differentials are calculated in Canada, and the effect thereof, it is necessary to explain the concept underlying the use of differentials in rate-making and to give computations in some detail.

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14. See Appendix 6:D hereto for evidence on possibilities of refinement within a class. Sometimes the competition so presented leads others to desirable refinement of classes, see 28/3283 quoted in Appendix 6:C.

The concept underlying the use of differentials was clearly detailed by the Nova Scotia Public Utilities Commissioners. To quote from their Report,

> ...let us assume that the Actuary, following a method of statistical analysis which will be discussed in detail at a later point, examines the experience of all B drivers in a certain geographical territory and decides that the appropriate Class B premium is $60.00 for bodily injury and property damage coverage. Having determined, by observation of the countrywide experience, that Class A drivers are entitled to a 25% discount, he need not then go through the laborious process of analyzing the Class A experience in each territory. He has only to apply the relativity factor of 75 per cent, in order to produce the Class A premium of $45.00.[15]

The differentials are based on country-wide classification experience, and are identical for all provinces and territories except that class A and B rates in rural territories are based on a different differential than those in territories labelled as urban. Rating differentials are established on this basis for age-use classifications, for driving record classifications, for differing deductibles, for third-party liability coverages in excess of standard minimum limits and for the various limits under medical payments cover. In the case of youthful drivers, their greater susceptibility to collision damage than to third party claims makes it necessary to provide ratings for B.I. and P.D. distinct from collision ratings.[16]

The major rating differential not based on experience is that for vehicle rating groups. This differential is based instead on the list price of automobiles,

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15. Ex. 105, Nova Scotia Board of Commissioners of Public Utilities, In the Matter of an Inquiry into Automobile Insurance Rates, July 1965, p. 46.

16. Classes G and H covered the young drivers during 1966. The appropriate 1967 classifications are G, J, K, L, and M. Bulletin number 66-23 of the I.B.C. dated September 30, 1966, details the change designed to provide a more realistic approach to the proper rating of a large segment of the market.

f.o.b. Toronto, with some modification through the exercise of underwriting judgment. Older models are shifted down in the classification tables on the basis of age.

Descriptions of the procedures followed for establishing differentials will focus on third party liability. Essentially, the same procedure is used in setting all other differentials except for the vehicle rating groups already referred to.

In the preparation of a relativity table on age-use categories, the B-3 urban group is used as the standard and taken as 100. Loss ratios for each of the classes A3, B3, C3 and so on, are calculated from data in the Statistical Exhibit for B.I. and P.D. and $100 deductible collision coverages taken separately. These are then multiplied by the differential effectively applied to estimate what the loss ratio would have been had B-3 rates been utilized throughout. The resulting loss ratios are then divided by the B-3 loss ratio to obtain an indicated differential.[17] With stability in the differential complex a sought after characteristic, judgment is used extensively to temper adjustments indicated through application of the outlined test. Table 6:1 mirrors the extent to which stability is obtained at the expense of appropriateness, assuming for the moment that the differential complex is capable of producing appropriate rates. Judgment may vary the differentials either above or below indicated figures, although in the following Table, indicated figures are below actual differentials.

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17. See Ex. 113 C.

TABLE 6:1

Selected Age-Use Differentials, 1964-6

Class	1964	1965	1966	1966 Indicated*
A3 Urban	80	75	75	75 - 77
A3 Rural	96	90	90	
B3 Urban	100	100	100	100
D3	153	140	140	123 - 125
G3 B.I. and P.D.	165	155	155	141
G3 Collision	195	195	195	173

* Where 2 figures are shown, the first results from tests of B.I. and P.D. differentials, the second from that of collision differentials.

To expand on the significance of this Table, during 1966 a G-3 driver was charged 55% more for B.I. and P.D. cover than a B-3 risk. Tests done by this Commission indicated 41% more to be appropriate. If B-3 were charged $50 for the insurance, G-3 would pay approximately $78, though in the absence of underwriting judgment $71 would have been appropriate.

Unlike the age-use differentials, which are based on data for a single claim-free class, the driving record differentials are based on statistics for all age-use categories combined. While separate calculations are made for each age-use class, the differential used is essentially a composite reflecting all classes, and is applicable to all classes.[18] Again, underwriting judgment seems to be utilized. Table 6:2 shows the differentials used for 1964, 1965 and 1966, along with the indicated 1966 differentials based on test data produced by Mr. Wilcken, Actuary for the Central Statistical Agency, as Ex. 113 B titled "Test of 1965 Claim-Free Year Differentials."

18. Ex. 113 B.

TABLE 6:2

Driving Record Differentials,* 1964-6

Private Passenger, B.I. and P.D. (Excluding Farmers)				
Claim Free Years (Driving Record Category)	1964	1965	1966	1966 Indicated
3	100	100	100	100
2	116	116	116	125
1	131	131	131	133
0	155	155	155	163

* All Age-Use Classes Combined

As a follow up, the Commission ran tests of the driving record differential, using data from the 1966 Statistical Exhibit. A sampling of the results is summarized in Table 6:3. Differentials indicated for 1967 correspond more closely with those indicated for 1966 than with those actually settled on for 1966, which suggests that changes were in order.

TABLE 6:3

Sample Results of Tests of Driving Record Differentials, based on Data in the 1966 Statistical Exhibit

Private Passenger, B.I. & P.D. (Excluding Farmers)				
Age-Use Classification	Claim Free Years (Driving Record Category)	1966 Differential		1967 Indicated Differential
		Indicated	Used	
Class A	3	100	100	100
	2	139	116	142
	1	152	131	153
	0	194	155	185
All Classes Combined	3	100	100	100
	2	125	116	128
	1	133	131	139
	0	163	155	163

Let us illustrate how the 1967 indicated differentials have been computed by use of an example (the figures used, except where otherwise noted, are found in Tables 6:2 and 6:3).

(a) The actual loss ratio for Category A1 (Class A drivers with only 1 claim-free year to their credit) was 64 (1966 'Green Book').

(b) The actual loss ratio for Category A3 (Class A drivers with 3 claim-free years) was 55 (1966 "Green Book"). Class A3 is taken as the base of 100 in the calculations.

(c) The differential for A1 used in 1966 was 131 (as indeed it was also in 1964 and 1965). That is to say, in terms of risk, A1 was considered to be a 31% greater risk on the basis of driving record, according to this figure.

(d) The 1966 differential for A1 of 131 (or expressed as a multiplier, 1.31) multiplied by the actual loss ratio for Category A1, i.e. 64 gives 84.

(e) Since Category A3 is taken as the base category of 100, the product 84 is divided by the actual loss ratio for Category A3, i.e., 55, in order to express the A1 indicated differential as a percentage of the A3 indicated differential of 100. The resulting A1 indicated differential for 1967 is 153. $\left(\frac{84}{55} \times 100 = 153 \right)$

I. B. C. Bulletin No. 65-11 dated October 14, 1965, in reference to private passenger class and driving record differentials, held that existing differentials should be retained for 1966, there being no positive indication for a change.[19] Bulletin No. 66-22 dated September 30, 1966 recognized the need for change. In September, the I.B.C. suggested differentials for 1967 of 100, 125

19. Ex. 239, p. 55.

142, and 167 for claim-free years 3, 2, 1 and 0 respectively and these are now in use.[20]

Other differentials are computed in a similar manner and all appear to contain substantial elements of underwriting judgment rather than a firm basis in the statistical indications from the 'Green Book'.

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20. *Ibid*., p. 71.

APPENDIX TO CHAPTER 6

6:A Discussion of the Least Squares Method and Its Application.

6:B Illustration of Time-Lag Multiplication Factor.

6:C Extracts from Evidence on Age-Use Classifications.

6:D Extracts from Evidence on Possibilities of Refinement Within a Class.

APPENDIX 6:A

DISCUSSION OF THE LEAST SQUARES METHOD AND ITS APPLICATION

The least squares method is a valid statistical technique used for estimating the constants in an equation relating a dependent variable to one or more independent variables. It possesses desired statistical properties producing efficient, consistent, unbiased and maximum likelihood estimates of the true values of constants when certain requirements are met.

One of these requirements is that the independent variables be measured without error. Where time is used as the independent variable, this condition is met. Another is that the equation be correctly specified and that there be no mutual causation relationships between the independent and dependent variables. While the latter appears to be met, in practice, use of time as an independent variable usually reflects a lack of knowledge of the underlying causal relationships. Time is used in such cases as a substitute for the true explanatory variables which are either unknown or not specified. Its use under these conditions means that the equation is incorrectly specified, that there may be mutual causation and that the true independent variables for which time is a substitute are not measurable without error. This in turn generally means that time trends fitted by least squares provide neither maximum likelihood nor unbiased estimates of the constants or parameters they purport to measure. The estimates may well be efficient and consistent but these are less important properties.

Efficiency implies that the estimation technique produces estimates whose sampling distribution has minimum variance for a given sample size. Use of the least squares method when based on either three or four observations, while an interesting exercise, is of limited value. The most elementary statistics

texts stress that the size of the standard error of estimate, given limited observations, is likely to be so large that a very wide interval or range must be placed around any projected value rendering it relatively useless for purposes of prediction. Thus estimates would be subject to substantial error even if the conditions specified above were met.

Fitting of time trends can usually be justified only on the empirical grounds that such trends produce as good or perhaps better forecasts than any rule of thumb. Such trends have no formal statistical justification whatever to warrant their selection in lieu of trends fitted by ruler on graph paper, calculated by taking ratios of previous successive years' values, or simply calculating the average increase over a period and projecting the same increase.

Fitting a least squares trend involves solving so-called "normal equations" as follows:

$$\Sigma Y = an + b\Sigma X \qquad (1)$$

$$\Sigma XY = a\Sigma X + b\Sigma X^2 \qquad (2)$$

where

ΣY = the sum of the values of the dependent variable

ΣX = the sum of the values of the independent variable

ΣXY = the sum of the cross products obtained by multiplying the dependent variable by the independent variable

ΣX^2 = the sum of the squared values of the independent variable

n = the number of observations

(1) and (2) are solved as simultaneous equations by any one of several techniques including those used in high school algebra.

In fitting time trend, "time" is the independent variable, and a date somewhere in the middle of the observations is usually given an arbitrary value of "0", later observations being given positive values +1, +2, etc. and earlier observations negative values -1, -2, etc.

Where trend is fitted to 3 observations it is convenient to assign values of -1, 0 and 1 to the three observations of the independent variable. Denoting the three successive observations of the dependent Y_1, Y_2, and Y_3 respectively, the following are the sums required to solve the normal equations:

$$\Sigma Y = Y_1 + Y_2 + Y_3$$

$$\Sigma X = 0$$

$$\Sigma XY = Y_3 - Y_1$$

$$\Sigma X^2 = 2$$

$$n = 3$$

In this three observation case, the normal equations are:

$$Y_1 + Y_2 + Y_3 = 3a + 0$$

$$Y_3 - Y_1 = 0 + 2b$$

It is immediately clear that the value for a, the constant term or the fitted value of Y when t = 0 is simply the arithmetic mean of the observed values of Y or:

$$\frac{Y_1 + Y_2 + Y_3}{3}$$

It is equally obvious that b, the slope coefficient which measures the annual increase in the dependent variable to which the trend is being fitted, is simply the difference between the first and third observations divided by 2, the time elapsed between them, or

$$\frac{Y_3 - Y_1}{2}$$

The application of least squares, for all its apparent sophistication, is mathematically equivalent to the "schoolboy" alternative of determining an average value of the three observations as a constant term, and determining slopes as the average annual increase:

$$\frac{(Y_3 - Y_2) + (Y_2 - Y_1)}{2}$$

In particular it is not coincidental that the slope coefficient is equal to the average annual increase as is implied by the following testimony of the Canadian Underwriters' Association (at 29/3411):

> I think you are placing too much weight on coincidence, Mr. Rae. It was completely coincidental that the average figure, as you say, was the same on the fitted curve as on the actual curve but there are other curves where it is not the same.

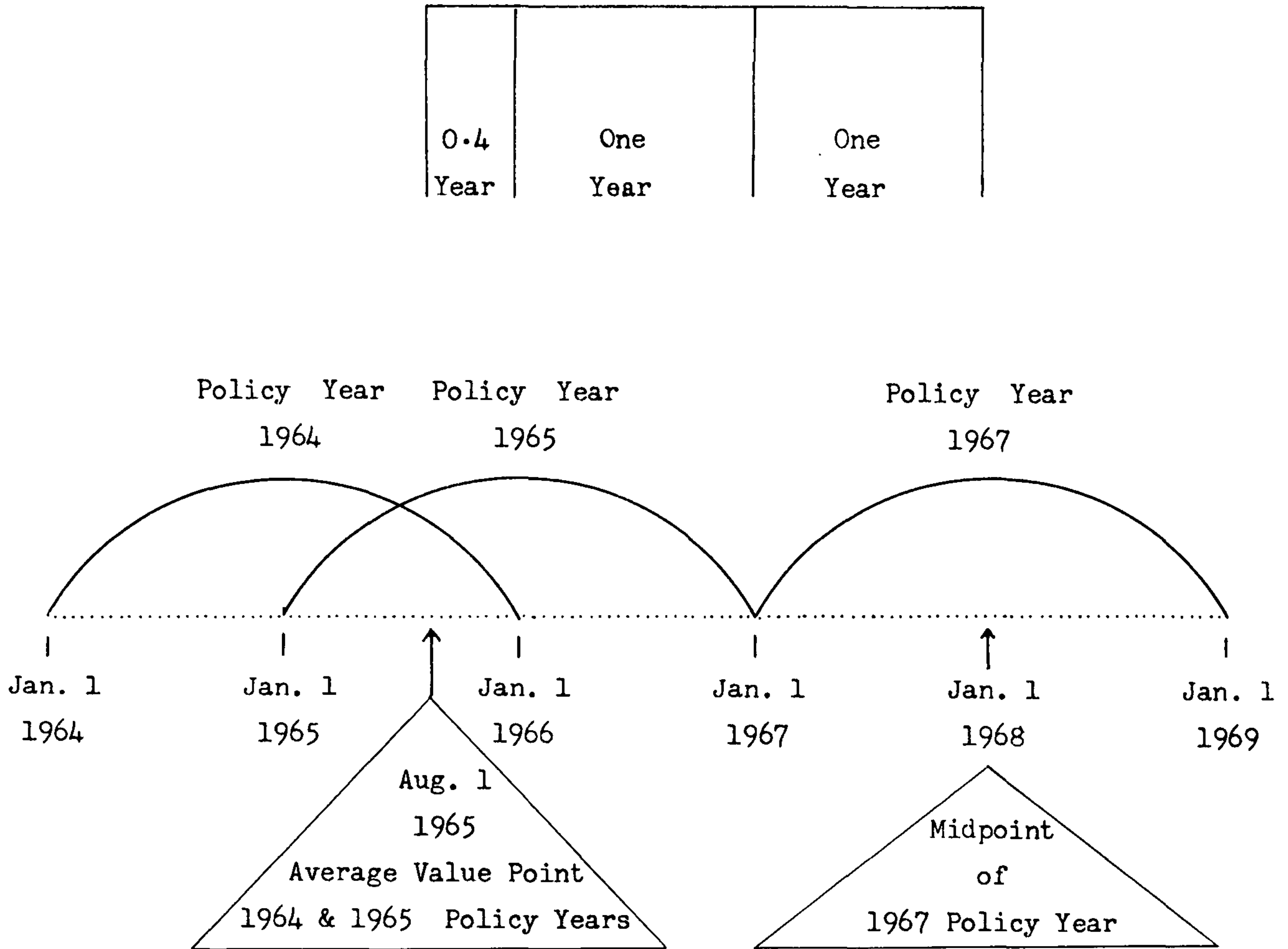
Mr. Martin's comment would be valid if, and only if, more than three observations were used.

A measure of the variability of the estimate of the predictions yielded by the model from their true values is given by the standard error of estimate. The formula is complicated and need not be repeated here. It should be noted however, that computation involves dividing a sum by the number of degrees of freedom which is a number equal to the number of observations minus 2. Hence for 3 observations there is 1 degree of freedom, while for 4 observations there are 2. It is obvious that where the number of observations is low, variability may be sharply reduced by increase in sample size.

Since, however, the estimates are subject to unknown bias and are not maximum likelihood estimates, it is not clear what meanings if any, may be attributed to the standard error of estimate. Moreover, it is incorrect to infer, as did Mr. Martin at 29/3415, that the predicted value is the "most probable" value, in the absence of maximum likelihood and unbiased properties in the estimate.

APPENDIX 6:B

ILLUSTRATION OF TIME-LAG MULTIPLICATION FACTOR



The above figure illustrates the reasoning behind the use of a 2.4 multiplication factor. More specifically, following the example of setting a 1967 rate, 1964 policy year experience was given a 40% weight and projected three years to 1967 levels. 1965 policy year experience was given a 60% weight and projected two years to 1967 levels. The weighted average span of projection for the two years combined is 2.4 years.

APPENDIX 6:C

EXTRACTS FROM THE EVIDENCE AT PUBLIC HEARINGS ON AGE-USE CLASSIFICATIONS[21]

RAE: When you set up the class of under 25 males, briefly what was done in the way of developing statistics from which to develop a premium? Did you count the number of under 25 males; did you count the number of car years being done by under 25 males, or what?
MARTIN: I think, Mr. Rae, that you may be under the impression that we had to have statistics before we made that change. Unfortunately we hadn't got the statistics and there was no way of getting the statistics before we made the change. We had to introduce the new class on a judgment basis as to the differential in rate to be introduced and then we were able to obtain the statistics which justified us, on a subsequent justification basis, if you like.
Q. So you made the change first and then having made the change you then keep a record of that class of driver and see whether the change was justified?
A. That's right.
Q. And that's what you did with the under 25 male in Canada?
SMART: Yes.
MARTIN: Yes.
Q. And when did you first do it?

MARTIN: Classes 1, 2 and 3 were established in 1951. Classes 1 and 2 are private passenger automobiles used chiefly for pleasure and in the case of class 1, with no male operator under 25 years and in the case of class 2, with a male operator under 25 years. So we established those classes in 1951.
Q. And that is the first time you made the under 25 male differential?
A. I believe so, yes.
WILCKEN: I believe you should note that class 4 was developed in 1952 and class 4 is the private passenger automobile owned or principally operated by a person under 25. I think this is the one that you are comparing it with - -
Q. And this is the first time you developed that, was it?
A. The footnote says class 4 in 1952.

And dealing with American classifications and studies:

RAE: If they were before you would have American statistics which you could look at before making the move, would you not, Mr. Martin?
MARTIN: Not necessarily statistics which would be reliable in Canada. What would perhaps be more important; we would have some knowledge of what differential in premium had been adopted in the United States.
Q. Mr. Wilcken, you would have data from the proceedings of the Casualty Actuarial Society studies in places like New York, wouldn't you?
WILCKEN: I would.
Q. Coming to the female -- you see the female is mentioned in four. What

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21. 28/3264-3283.

is the present situation in your rating with the females under 25. Is there any differentiation made at all?

SMART: Not as a -- unless she is the principal operator of the car and then she is put into another class, otherwise she is rated in the class that her father and mother are in. If she becomes a third driver, I think I should add, then there is a class change, but that isn't because of the female, that is because there is an extra driver to the car.

Q. So it is still the same, if I understand four correctly "owned or principally operated by a female under 25", then she comes into a special category?

A. That's right, and with the "owned or principally operated by a female under 25" there is also a group, the married male under 25.

Q. I would take it from this, that we rate the married male as about the same hazard as the female under 25 whether she is married or not?

SMART: That is right.

Q. Did you develop statistics to do this or again did we just use judgment and then develop the statistics after?

A. I don't think there was any statistics but we did have available to us the opinions of some of our colleagues in the United States that according to studies that they were doing they felt that the female operator under 25 was not quite as good as an older person, therefore it required a degree of special rating, yet she was not anywhere near as bad as the young man -- single man under 25. It was more generalized information than that where we got that.

Q. I understand that. And do you know whether they have developed more age categories, for insurance purposes, as a consequence?

A. I don't know if Massachusetts has followed the latest National Bureau breakdown by age or not.

Q. What is the latest National Bureau breakdown by age, in the United States?

A. For the unmarried male and female it's a different classification for each age, let's say from 16, if that is the earliest one can drive, through 24. For the unmarried male it continues to be a separate rate for 25 through to age of 29.

Q. Yes?

A. The single female is segregated. Beyond that I don't recall what the changes have been.

Q. Now, would it be reasonable to suggest that there is some room for this in Canada?

A. I would think so, in my judgment.

Further on in the Evidence:

. . . -- is it not reasonable to suggest that it is time that some move was made in Canada to more refined classes according to age groupings?

A. This was published in 1947 --

Q. 1949 I think. I think it was 1949.

A. I would simply state that it took about 20 more years for the United States to act on their own experience. Relative to that I think -- these are not Canadian statistics and one really can't say whether at this point in time we should jump ahead and go into the same detailed class

system as the United States has now gone into. As an individual I do feel we should refine some of the classes.

Q. What ones would you refine, Mr. Wilcken?

A. The under age specifically.

Q. Were you brought to this way of thinking as an actuary or in part by reason of some others having already done it in Canada?

A. As an actuary and as a private individual.

Q. Have you communicated this view to the C.U.A.?

A. I think I have at rating committees, yes.

Q. How long ago?

A. I can't recall when I first might have suggested that, sir.

Q. It would be some years?

A. No, I would say within the last two years.

Q. Has any action been taken?

MARTIN: I think, Mr. Rae, I mentioned to you a little earlier that in fact action was being taken on this subject.

Q. What sort of action?

A. Sub-dividing the under 25 age group.

Q. Are you developing data?

A. No, we shall have to do it on a judgment basis and get the statistics to support our judgment later.

Q. Why?

A. It will take two, three or four years for credible statistics to emerge. I think that perhaps it would be unwise for us to wait that long.

Commissioner LUSZTIG: Mr. Wilcken, the loss cards that are filed in the statistical agency, do they indicate age?

WILCKEN: They do not. They indicate only what is required in the statistical plan.

Q. And you do not require age in the statistical plan?

A. No, we require just the detail of the classification definitions.

And again, referring to development of data for refinement of classifications:

. . . I simply want to suggest to you though, that you are the actuaries; you are the people developing the classifications which seem to be fairly standard in Canada, and that it is open to you to develop data like this to see whether you couldn't refine more. Are you doing it?

A. I think I would say, Mr. Rae, that we do it whenever we feel it is necessary.

Q. And what makes you feel it is necessary until you have done it?

A. One of the factors, and quite an important factor, is the emergence of specialized competition in the market. If, for instance, we found that a particular insurer was taking the age group 21 to 24 to the exclusion of the age group 16 to 20, we would feel that perhaps there was a case for further investigation.

It will be noted that the classifications for 1967 (classes 'J' to 'M') break down the under 25 year single male group. (These classes were contemplated in an I.B.C. Bulletin of September 30, 1966). The Commission notes too, that

for 1968 the classes have been designated by numbers 1 to 19 (numbers 14 to 17 being reserved for future use). The major changes for 1968 are:

(a) provision for a special rating in the event of an occasional female operator under 25.

(b) a new class for principal male operators age 25 to 29.

(c) provision for the gathering of certain statistical data in advance of the possible refinement in classes.

(d) a breakdown of under age 25 married males into age groups similar to classes 'J' to 'M' for 1967 in the case of the single male.

(e) a further refinement in age groupings with the single female under age 25.

APPENDIX 6:D

EXTRACTS OF EVIDENCE AT PUBLIC HEARINGS ON POSSIBILITIES OF REFINEMENT[22] WITHIN A CLASS

RAE: I just wish to lead up to another piece of material here, Mr. Bethell, and I will lay the foundations for it first. Some of it may be somewhat of a review of questions you have already answered.
"All members of a class are charged a rate to cover the losses of the few of that class who suffer an accident."
I am sure you would agree that that is so?

BETHELL: Plus an allowance for expenses.

Q. Pardon?

A. Plus an allowance for expenses.

Q. I am thinking more particularly of pure premium at the moment.

A. I see.

Q. And you would agree, would you, that this could not work if each member were charged a rate based only on his own experience? Because obviously the good or the lucky, depending on how you want to describe them, would pay little or nothing toward the group losses, and the bad or the unlucky would be assessed a major part.

A. Well, of course, what you would have done then is create a class plan for every individual.

Q. And that is not possible?

A. No.

Q. And if loss lies where it falls, then the purpose of insurance is defeated?

A. Yes.

Q. Now is this a fair description of a class: A class is a homogeneous exposure unit?

A. Yes.

Q. That is, a group with, broadly speaking, the same hazards?

A. Yes.

Q. There are limits on the degree to which you can refine classifications, because you must have sufficiently large numbers from whom to develop credible experience so as to gauge your expected losses?

A. Yes. You also have to have easily defineable criteria.

Q. Yes. And once you gauge your losses, thence you gauge your premiums. Is that right?

A. Yes.

Q. Now is this correct -- that probably within each of these groups each risk would differ to some extent from the others?

A. Not as far as the criteria of the classification is concerned. But as to other humanistic characteristics, yes, they would.

Q. Yes. And for true equity he should have his rate modified in accordance with this own peculiar attribute --

A. Well, of course, if you did this you would be back to individual rating for every person.

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22. 23/2724-41.

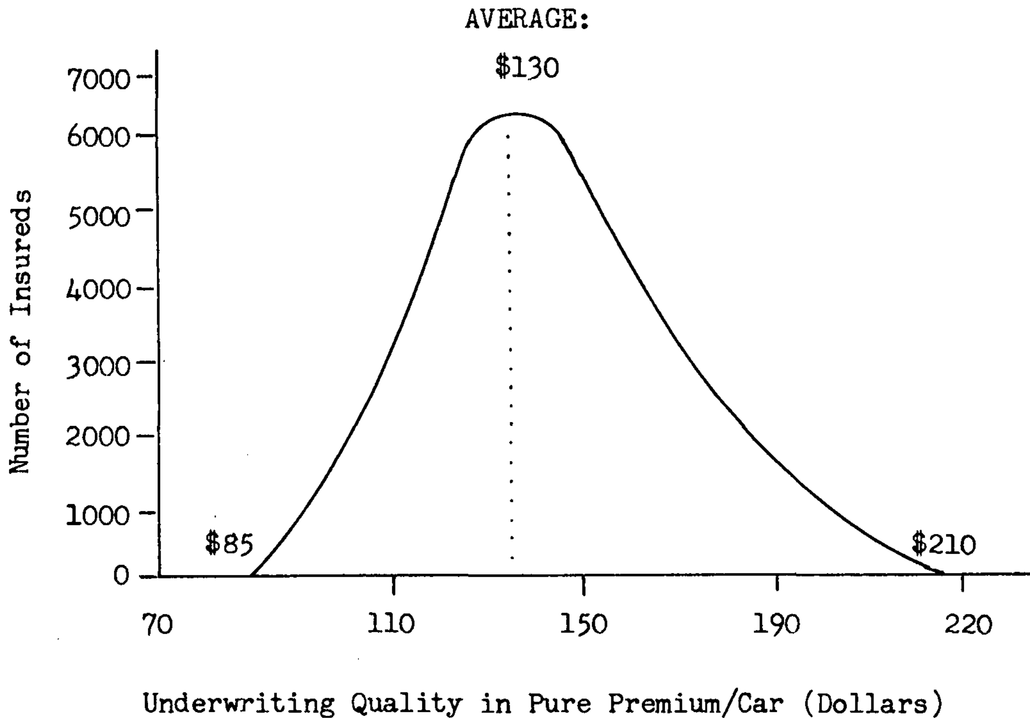
Q. Wait a minute -- but, if that is attempted, it must rest largely on judgment?
A. Then you would have a single premium for every individual in the world.
Q. Just a minute. Just a minute now. If you attempt to do it -- this is what I have just stated -- you have not a class, so it must rest on judgment?
A. No. You would have a class for every individual in the world. Every individual in the world would have his own class.
Q. All right. But if it does rest on judgment, that may or may not achieve equity?
A. I don't understand the point you are trying to make.
Q. You understand the question? You don't, eh?
A. I understand, I think, what you are saying. But certainly it doesn't make a lot of sense to me.
Q. All right. It could be the fault of either one of us, Mr. Bethell, and I am not prepared to suggest which.
A. I was not suggesting which, Mr. Rae.
MILLER: That was not meant with any disrespect, Mr. Rae.
RAE: I didn't think so.
THE WITNESS: I didn't mean any disrespect to Mr. Rae.
RAE: No.
Q. Now I hand you this document. I'm afraid I'm a little short on numbers of these, Mr. Chairman. Looking at this Figure 10, Mr. Bethell, which I have just shown to you, by way of explanation I would say this to you: Assume a class of 30,000 insureds. You have got two axes; the numbers of insureds are on the left, the vertical. The pure premium is $130.00. Of the 30,000, some are better and some are poorer in underwriting qualities than the average. That is true of any class?
A. Yes.
Q. For such reasons as intelligence, vision, hearing, skill, reflexes, training, occupation, personal habits. So that you have deviations either side of the average in differing degrees, as indicated on the figure. You follow?
A. Yes.
Q. And the poorer contribute more to the total loss in that class than the better. Is that right?
A. Yes.
Q. If you could isolate them, their individual contributions to the loss for the purposes of this graph would run from $85.00 to $210.00, and, if you could isolate them, this would be the range of the pure premium. Do you follow?
A. Yes, except that I don't --
Q. This is the assumption made.
A. Well, quite obviously he has only broken it down to the $85.00 level. There would be some people in the class that would have no accidents and they would go down to zero.
Q. They are eliminated on the left side. And some would go over $210.00, and these are eliminated on the right.

If you plotted these people of whom I have spoken on the coordinates you would get something like 10. Now, the skewness on the right -- I understand that statisticians call it "positive skewness" -- indicates the probability that the instances of relatively poor drivers exceed

APPENDIX 6:D

Figure 6:D:1 (referred to, supra, as Figure 10)

Frequency Curve Fitted To Hypothetical Data Of Number Of Insureds At Different Levels Of Underwriting Quality



Underwriting Quality in Pure Premium/Car (Dollars)

Source: Ex. 95-A.

Note: The Commissioners recognize that since the above distribution exhibits positive skewness, the average would be somewhat to the right of the mode, i.e. the average would be larger than $130. This oversight, however, in no way alters the logic of any of the arguments.

those of good, so that the frequency of distribution on your horizontal axis are spread over a greater range on the right than on the left; that's why you get that shape of the curve. Assume this to be so. Now I have stated to you that you have cancelled out those beyond $210.00 on the right, and no driver is perfect and we are all subject to chance, and you can't go below $85.00 on the left. Now, if the whole group were insured in two halves with two companies -- you would agree? -- At this rate of $130.00 if one of those halves produced an indicated rate of $110.00 and the other half produced an indicated rate of $150.00, the average in the class is still $130.00. But that is not the experience of either company. Do you agree?

A. Yes.

Q. Would you agree to this -- that the object of an individual insurer in that class would be to get such a distribution of risks from the class that the indicated rate in its particular distribution would not exceed the $130.00.

A. This would be his basic purpose, yes.

Q. To put it in another way: The sample of each company endeavouring to insure in that class should be representative of the universe from which it is drawn?

A. Yes.

RAE: Perhaps we could give that a number, Mr. Secretary, please?

SECRETARY: Exhibit 95.

RAE: If we could call that Exhibit 95-A, the next could be 95-B. Is that satisfactory?

CHAIRMAN: Yes.

(EXHIBIT 95-A: Figure 10 Curve)

RAE: I now show you what will be Exhibit 95 (B) Mr. Bethell. Exhibit 95-B is headed, "Figure Eleven." Will you look first at page 1?

BROWN: I wonder if we could know where these tables come from, Mr. Chairman? What is the source material? What book?

RAE: Well, I don't particularly mind. Is that significant?

BROWN: Yes. I think it would be.

RAE: You will find it in Brainard, "Automobile Insurance".

Q. Looking at this graph which is Exhibit 95 (B), and looking at Curve 1, that company has written ten percent of the 30,000 in the previous class, namely, 3,000, and they have written it with the distribution of which I was speaking a moment ago. In other words, they have achieved the average pure premium of $130.00. That's number one at the bottom, or in the centre. Do you follow me, Mr. Bethell?

A. Yes.

Q. The second one is self-explanatory, which you will see is company Y. That company has drawn a sample with a higher proportion of the good, or alternatively a lower proportion of the bad, and it has established an experience average of its own of $110.00. And, finally, company Z, in Curve 3, has done the reverse. Now, if you get the result in Curve 2 by purposely stringent underwriting, then you would probably expect the number of your insureds to be less than the average number of 3,000 just mentioned. Is that a fair statement?

A. You said, "thirty thousand", did you not?

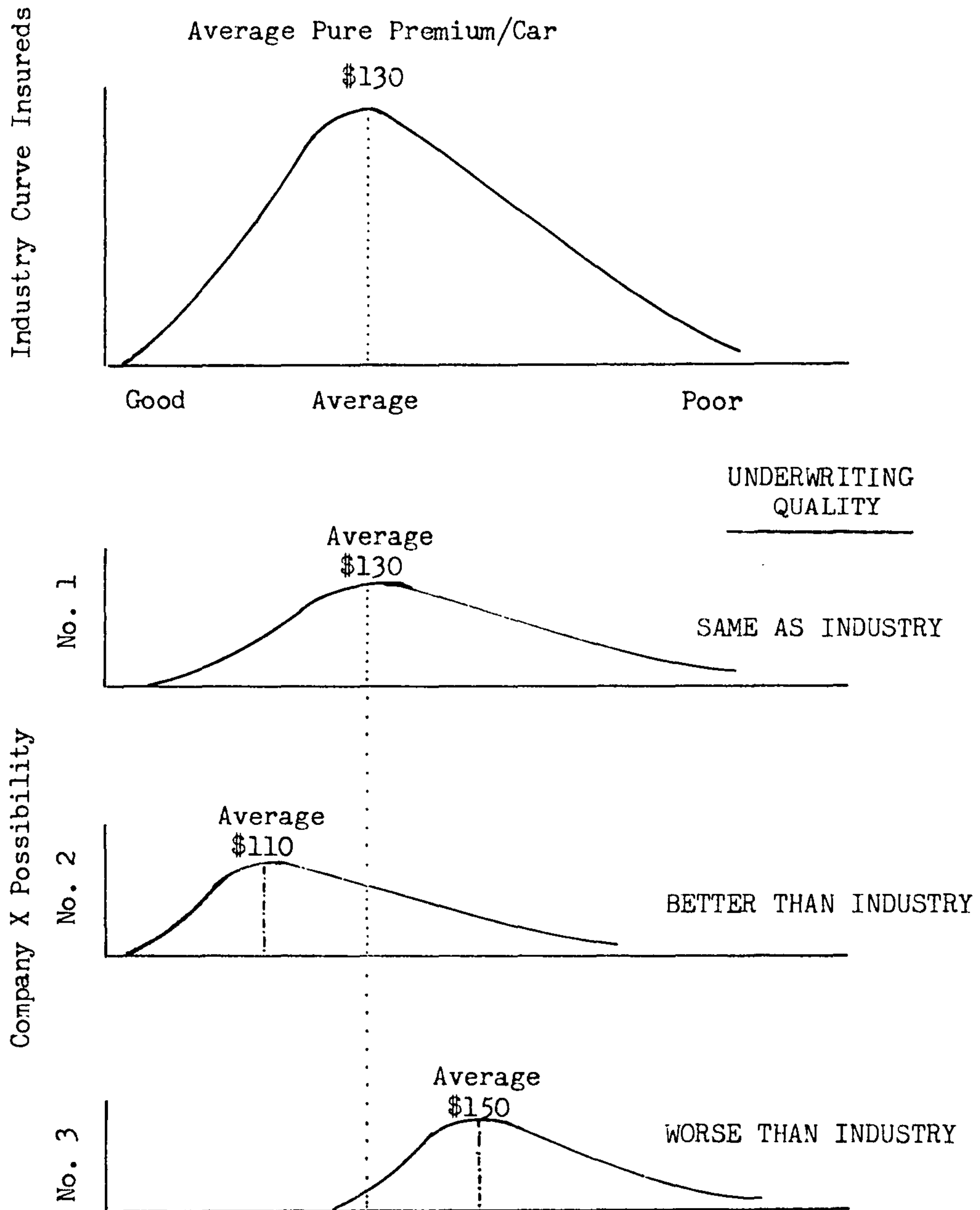
Q. Three thousand, though, was the one-tenth.

A. Yes. I think you probably would have done.

Q. In the first instance you would probably get down to round about 2,500 if you achieved your curve in Curve 2?

APPENDIX 6:D

Figure 6:D:2 (referred to, supra, as Figure 11)
Company X Compared with Industry as to Underwriting
Quality of Insureds: Three Possibilities



Source: Ex. 95-B.

A. It's a possibility. This is hypothetical.
Q. It seems probable, doesn't it?
A. Probable, yes.
Q. Now, would you agree that that number will vary up or down with the stringency or the leniency that you apply in the first instance to the selection?
A. Yes. It would have quite a bearing on it.
Q. So that if you are on that Curve 2, with an experience of $110.00 and a premium of $130.00 you are making a profit on the loss ratio side. Is that correct?
A. That is correct.
Q. Apart from any profit there may be on the expense side of the premium?
A. That is correct.
Q. Now, as a consequence of that you can reduce your premium if you wish to?
A. This is a possibility, yes.
Q. Would you agree with this -- that if you can make the necessary determinations and arithmetic computations, and depending on the amount that you choose to reduce your premiums vis-a-vis those other relatively better risks still not under your umbrella -- are you following me?
A. I think I am, yes.
Q. -- still not in your class, you can attract more into your class?
A. Well, I think you are advancing a somewhat hypothetical argument here.
Q. I am not advancing an argument. I am asking you questions. If you can't answer them, you are --
A. Well, I can answer the question. But it is a supposition which is rather difficult to answer. In order to create a class you have to have defineable characteristics.
Q. Yes.
A. If you have created that No. 2 curve on judgment characteristics you could not be classified.
Q. Yes.
A. So this would --
Q. I see. Well, all right. Let's assume that you have created No. 2 curve, for the moment, on a class, as a class.
A. In other words we can define within the first graph that we have a separation of possibilities.
Q. Yes.
A. We could do this, yes.
Q. And then you could reduce the premium?
A. This could be done, yes.
Q. And, as a consequence of the reduction of the premium, you can attract more insureds?
A. This is a possibility. There is an equal possibility, too, Mr. Rae, that perhaps should be advanced: That if --
Q. But if you can --
BROWN: Let him finish.
RAE: I'm sorry.
A. There is an equal possibility that perhaps should be advanced. Looking at your graph No. 2, and speaking as an underwriter, --
Q. Now, that is Exhibit 95 (B), Curve 2?
A. Curve 2, yes.
Q. Yes?
A. If you have produced this you have probably not done the marketing job that you should have done. In other words, you have been too selective

within this class. In other words, to put it as simply as I can: It may be better to make a one percent profit from one million dollars than it is to make ten percent profit from one hundred thousand dollars. With No. 2 graph you may be in this second position. So you may not have attracted or written the volume of business in the marketplace that you should have done. You have been too selective.

Q. But if you reduce your premium and make a smaller profit on a larger number, you have just stated that you would be better off perhaps?

A. No. I just said this would be a possibility.

Q. A possibility. All right. And even though what you have just suggested might attract more relatively poorer risks than what you had in the first instance, you still make more profit on the loss portion in dollars because of the volume?

A. Well, this would not necessarily --

Q. You can do?

A. It would not necessarily follow that this is what would happen.

Q. But you could achieve that?

A. It is a possibility, yes.

Q. And if you did what I have just described, your frequency distribution curve would still have the same general characteristics as Curve No. 2?

A. Assuming that everything else remained constant.

Q. Yes?

A. Yes, it would.

Q. Well, now, has your company done this within some broader classification - achieved this that is illustrated in this 95 (B)?

A. I don't know whether we have done this. But we have refined the class plan in certain areas, yes.

Q. Now, is this fair to say -- that you have achieved this, ultimately, in one of two ways. If, looking at Curve No. 2, you have created a sub-class, then the remainder you have either put into another sub-classification at a higher premium or you have selected them out.

A. Yes.

Q. On an underwriting basis?

A. Yes. This naturally follows.

Q. Now, when you create --

A. Excuse me. If I might say: When you create a sub-classification you don't do anything as far as correcting that underwriting is concerned. You break off a class.

Q. Yes.

A. And those people that get into that class get the benefit of the rate, and those that don't remain on the other rate.

Q. Yes.

A. So it would not require any selection process at this point.

Q. All right. Now, suppose you achieve this Curve 2, not be creating a sub-class, but by what has been called selective underwriting.

A. Then you would have made a bitter mistake and you would not obtain the full market advantage.

Q. I see. But suppose you had done that.

A. I think, if I may suggest it, that if I had done this I would get fired.

Q. Well, maybe there are people who have done this, Mr. Bethell.

A. I realize there are, Mr. Rae, and I am not trying to --

Q. I am trying to go down the middle here and to put both sides.

A. We are trying to suggest that we don't do this.

Q. But suppose that a company has achieved this Curve 2 by selective underwriting. Then would you agree that poses a problem for the other companies who have to handle the remainder of that class?
A. I would suggest it poses an even worse problem for him because if he continues to do it eventually he won't have any business at all.
Q. Well, now, if this is done would you agree that the other companies are forced to accept poor distribution, which would bring them closer to Curve 3?
A. No. I don't think it would make very much difference to the other companies because their class plan is set on a basis of an actuarially defined rate, and all that would happen would be that the people who don't move into that specific class -- with company Y as you put it -- would simply be in a different class in another company. It wouldn't make any difference to them, really. They could still write that business, and as long as the rates are scientifically prepared they would still make a profit from that.
Q. What you are saying is that they could re-classify these people and create a different class for them with a more realistic rate?
A. They wouldn't have to re-classify them. It would just continue as is.
Q. I see. But wouldn't the inevitable result of one company achieving Curve 2 be that the remainder of the industry on the average would achieve something approaching Curve 3?
A. No, it would not.
COMMISSIONER LUSZTIG: I'm sorry. I can't follow that.
RAE: I can't either.
COMMISSIONER LUSZTIG: Following Mr. Rae -- and I might have lost Mr. Rae; I don't know -- we have attracted 3,000 out of our original sample --
A. Well, if I can perhaps put it in these terms: There are two companies, X and Y, and one of them has a $100.00 rate and the other company has a $100.00 rate also, and the classification is exactly the same. In the second company the classification is that they do not drive any more than 10,000 miles to and from work. As long as these rates are scientifically prepared, if company A now decides that they will have a rate, based on nothing other than judgment, of 5,000 miles to and from work and they attract some business it would not make any difference to this company as long as they have their rates scientifically prepared on the basis of giving them a profit.
Q. But if both are charging $130.00 and through some innovation one company is able to draw out of that 30,000 universe a sample of, say, 3,000, who now deserve a rate of less than $130.00, -- which, as I understand the diagram is what is going to happen.
A. Yes.
Q. -- the remainder, the 27,000 who stay in the universe, and are what have been called the good drivers who, experience suggests, merit a rate of $110.00, then somebody has found something which has enabled him to identify these drivers.
A. Well, I might have misunderstood Mr. Rae. I thought the second example he raised was on the hypothesis of pure judgment. In other words, we selected this business out.
Q. Yes.
A. And created Graph 2.
Q. That's right.
A. But if we had created a rate class based on criteria which are defineable,

then we would have a separate classification and this would withdraw from the rest of the market certain classes of business.

Q. Yes.

A. But this is not defineable at this point, and there is no sort of underwriting process involved in this.

Q. Well, this is the third step, if I follow you.

RAE: Well, will you accept what I have said?

A. No.

Q. Well, I think this has gone far enough, perhaps, on that.

Now, will you accept the premise for the moment that in the case of those who are left, having selected out as in Curve 2, their experience and pure premium must be something higher than $130.00?

A. When you say "selected out" do you mean from an underwriting?

Q. You have selected out by selective underwriting and taken out the better risks.

A. Well, or course, this is where I am losing this argument, because your selective underwriting, apparently, in Graph 2 has taken out a lot of the market that could be written at the $130.00 rate, and I don't think that this would be a worth-while attitude for the underwriter to adopt.

Q. I didn't ask you whether it would be a worthwhile attitude for the underwriter. I am asking you to make the assumption that you have selected out the better risks who had an average pure premium of $130.00.

A. Yes.

Q. And you have selected out a group whose experience will be such that it is expressed in a pure premium of $110.00.

A. Yes.

Q. Then it follows from that, does it not, that those left of that class-the 27,000 or 27,500 to whom Dr. Lusztig referred -- would have an experience and hence a pure premium above $130.00?

A. That is, based on this graph here, yes, it would.

BROWN: Are they a new class, the remainder?

RAE: No. They are the remainder of this class from which we made the selection.

Q. Now, if we accept that base, does this not pose problems for the people who wish to insure the remainder of that group? They must do either of these: Accept poorer distribution and thus get ever closer to Curve 3 in their own experience with their sample -- that is one thing that could happen. Right?

A. Yes.

Q. Yes. Or they could refuse the risks?

A. Yes.

Q. Or they could increase rates?

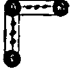
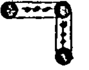
A. Yes.

Q. And if they increased rates it simply enables the first company to do an even better job of selection?

A. I don't think it would make for an easier job of selection. I think you are referring to the fact that the class plan would automatically make the selection for the company.

Q. All right. Then it enables the first company, if what I have stated is accepted, to do even better -- it can increase its profits or it can make further premium reductions in dollars and enlarge its selection schedule. Is that correct?

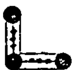
A. This is a possibility, yes.
Q. Yes. So possibly the other companies can ask to have rates fixed with a floor?
A. Ask whom?
Q. The Government. To fix rates with a floor.
A. This could be done.
Q. This is open to them?
A. Yes.
Q. Then I have finished that exercise, Mr. Bethell.
A. Can I keep these (indicating copies of Exhibits 95-A and 95-B)?
Q. Yes. Thank you.
CHAIRMAN: Mr. Secretary, Figure 10 is 95-A. And Figure 11 is now 95-B.

CHAPTER

7

INSURANCE COMPANY FINANCE



CHAPTER 7

INSURANCE COMPANY FINANCE

Under an insurance contract, the insurer agrees to indemnify or make payments on behalf of the insured where loss results from an incident covered under the policy. Since such commitments may have to be met sometime in the future, the insurer must maintain a financial position solid enough to assure its ability to meet such commitments.

To insure solvency and protect creditors, including policyholders and claimants, it is necessary that assets exceed liabilities by an adequate margin. It is also necessary that the assets be correctly valued and that the liabilities not be understated.

The excess of assets over liabilities represents funds that have been supplied in the case of stock companies by shareholders, either through purchase of shares or the ploughback of earnings. In the case of mutuals, the margin is provided by surpluses either paid in by initial policyholders or generated out of underwriting profits and investment income not distributed to policyholders.

It is the net worth thus provided which determines the capacity of a company to expand its premium volume and assume the liabilities resulting from such an increase. The relationship between equity and capacity is not rigidly fixed but is flexible. An upper limit for companies incorporated under the Canadian and British Insurance Companies Act is provided by the requirements of Section 103 (1).[1] The Act requires assets to be at least 15% in excess of liabilities.

1. R. S. C., 1952, c. 31, and amendments.

Theoretically, this would allow a company to support $115 in assets and assume $100 in liabilities on an equity base of $15. In practice, few insurers go that far, since a company reaching the position would be forced to suspend writing new business until liabilities had declined. Most firms whether Canadian, British or Foreign, retain a substantially larger excess of assets over liabilities. Foreign companies are required by the Foreign Insurance Companies Act[2] to have assets in Canada at least equal to liabilities.[3] No excess of assets over liabilities is required but in practice one is retained. It should be recognized that the Treasury Board is empowered under the Act to require any Company to increase its assets in Canada.[4]

Not only is it evident from Table 7:1 that Canadian, British and Foreign companies retain larger excesses of assets over liabilities in Canada than the law requires, but that British insurers carry the largest excess of assets over liabilities, at least on their operations in Canada.

Table 7:1

Net Worth as a Percentage of Assets for Federally Registered Fire & Casualty Insurance Companies, 1960, 1965 and 1966

Type of Company	Net Worth as % of Assets		
	1960	1965	1966
Canadian	32	30	29
British	37	32	31
Foreign	36	28	29

Source: Derived from various tables in the Report of the Superintendent of Insurance for Canada, Vol.I, 1961, 1965 and 1966.

2. R.S.C. 1952, c. 125, and amendments.

3. Section 14(1).

4. Section 54.

It is noteworthy that, since 1960, companies operating in Canada have increased liabilities relative to equity, i.e., they have increased the extent to which they traded on equity.[5]

To the extent that Canadian operations are carried out by branches of foreign companies, an examination of their Canadian assets and liabilities alone may understate the capital and surplus effectively available to Canadian policy holders and claimants, since assets held abroad are also available to meet Canadian liabilities. Managements of international insurance companies decide where to hold their assets. Legislation and prudence demand that Canadian assets be held in an amount at least equal to Canadian liabilities, but the decision about where to hold the remaining assets is open. The determination may depend on evaluations of the relative attractiveness of investments in individual countries, anticipations regarding exchange rates, corporate responsibility regulations imposed on a foreign company by governments and like considerations. The last mentioned influence exposes insurance capacity in Canada to vicissitudes of actions taken by other countries to protect their balance of payments, introducing an undesirable element of instability into the industry. The Commission heard evidence on the very recent problems this has posed.[6]

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5. When a corporation raises money by borrowing or by issuing additional securities, including preferred shares, on the strength of moneys paid in by the common shareholders, or on the strength of retained earnings, it is said to be trading on equity. It may thus substitute relatively low cost fixed charge securities for the equity of common shareholders.

6. 53/6283-4.

One major method by which the solvency of insurance companies is safeguarded is through the regulation of reserves. In the balance sheet of any general insurance company, two types of reserves may appear, namely statutory and voluntary. Statutory reserves are those required by law and include unearned premium reserves, provision for unpaid claims and reserves for reinsurance ceded to unregistered companies. Voluntary reserves, often set up by well managed insurers, make provision for special situations and unforeseen contingencies. In a strict sense they constitute a part of the surplus or shareholders' equity ear-marked for contingencies. Examples of voluntary reserves include investment reserves, reserves for taxes, catastrophe reserves and general reserves.

To expand on the two more important statutory reserves, the Canadian and British Insurance Companies Act requires at least 80% of unearned premiums to be included in the liability section of the balance sheet as a reserve. Premiums, including those on automobile insurance, are generally paid in advance, and as time passes, an insurer earns portions of the premiums it has received. At any point in time, the unearned premium is the balance of the gross premiums in excess of the premiums which have been earned. Table 7:2 shows the computation of unearned premiums on a monthly basis for a one year automobile policy, assuming a premium of $240 collected on the first of January.

With reference to Table 7:2, in Case Two where unearned premiums are reserved at 80%, the remaining 20% unreserved are taken into current revenue. In effect, the distinction between Case One and Case Two, i.e. 100% or 80% as reserve for unearned premiums, creates a difference in the time shape of the premium revenue stream. Case One recognizes revenue evenly over the year, whereas Case

Table 7:2

Proportion of Premium Earned on a Monthly Basis

	J	F	M	A	M	J	J	A	S	O	N	D
Case 1.(Assuming Unearned Premium Reserve at 100%)												
Dollars Earned -- Monthly	20	20	20	20	20	20	20	20	20	20	20	20
-- Cumulative	20	40	60	80	100	120	140	160	180	200	220	240
Unearned Premium Reserve	220	200	180	160	140	120	100	80	60	40	20	0
Case 2.(Assuming Unearned Premium Reserve at 80%)												
Dollars Earned -- Monthly	20	20	20	20	20	20	20	20	20	20	20	20
Plus 20% of Unearned Premiums minus Unearned Premiums not reserved previously taken into revenue	44	(40) (-44)	(36) (-40)	(32) (-36)	(28) (-32)	(24) (-28)	(20) (-24)	(16) (-20)	(12) (-16)	(8) (-12)	(4) (-8)	(0) (-4)
Total Earned -- Monthly	64	16	16	16	16	16	16	16	16	16	16	16
-- Cumulative	64	80	96	112	128	144	160	176	192	208	224	240
Unearned Premium Reserve	176	160	144	128	112	96	80	64	48	32	16	0

Two recognizes a higher proportion in the first month and less in the remaining months.

When an insurer writes a constant volume of business each month, its unearned premiums remain constant. If it reserves at 80% over the period the reserve will also hold level. Should the company increase the 80%, the unearned premium reserve will grow larger and the insurer may have to reduce its surplus account, i.e. if the additional reserves thus required are not available out of current underwriting account the surplus account must be reduced.

To the extent that a company reinsures with a foreign insurer not registered in Canada it increases its liabilities which in turn results in an understatement of its surplus position (including retained earnings). The reason for this is that though it has reinsured and thus paid over to the foreign company part of its premiums received, it must nevertheless set up unearned premium reserves in Canada on the basis of the premiums received, since the reinsurer is not setting up a reserve in Canada on the portion of the premium ceded to it. Thus, the liabilities of the Canadian company are increased. This is illustrated by the following extract from the financial statement of a company which has ceded reinsurance to unregistered companies. It is taken from the 1965 Report of the Superintendent of Insurance for Canada, Volume II, page 415A, and is reproduced on the next page.

The provision for unpaid claims including unreported claims is somewhat more straightforward. This is a most significant liability and a sizeable one in the case of automobile insurance because at any point in time there is a large number of unpaid losses outstanding that will have to be paid in the future.

FINANCIAL STATEMENT

LIABILITIES, CAPITAL AND SURPLUS

	In Canada $	Out of Canada $
Reserve for special pensions	62,345	
Investment reserve	3,500,000	
Contingency and general reserves	1,000,000	
Total liabilities	44,101,630	
Surplus	10,371,223	
	54,472,853	

UNDERWRITING ACCOUNT

	In Canada $	Out of Canada $
Unearned premiums included in liabilities at beginning of year	16,389,528	
Additional policy reserves at beginning of year	2,014	
Net premiums written	28,868,526	
Service charges on instalment premiums	257,096	
Less: Unearned premiums included in liabilities at end of year	16,815,132	
Additional policy reserves at end of year	3,360	
Underwriting income earned	28,698,672	
Net claims incurred	21,086,881	
Net adjustment expenses incurred	602,130	
Net commissions incurred	3,180,028	
Net profit commissions incurred	94,990	
Taxes incurred (other than on income, profit and real estate)	683,178	
General expenses incurred	4,175,625	
Bad debts written off or recovered (-)	58	
Total disbursements	29,822,890	
Underwriting gain or loss (-) carried to Surplus Account	-1,124,218	

INVESTMENT ACCOUNT

	Losses $	Gains $
Investment income earned		1,980,350
Gain or loss from sale or maturity of investments		232,380
Depreciation on real estate	110,211	
Direct investment expenses	14,250	
Exchange	666	
Adjustment of depreciation on real estate		3,032
	125,127	2,215,762
Net total carried to Surplus Account	2,090,635	

SURPLUS ACCOUNT

	Decreases $	Increases $
Underwriting gain or loss	1,124,218	
Investment gain or loss		2,090,635
Change in reserve for reinsurance ceded to unregistered companies	126,780	
Change in assets not admitted		45,478
Change in reserve for special pensions	3,205	
Total	1,254,203	2,136,113
Net increase or decrease (-) in surplus	881,910	
Surplus at beginning of year	9,489,313	
Surplus at end of year	10,371,223	

Source: Report, Superintendent of Insurance for Canada, 1965, Vol.II, p.415A.

Those relating to property will usually be paid shortly after the accident. In instances of dispute or where bodily injury is involved, a provision may even have to be maintained for a number of years. The setting up of the provision is an important management function. It is also possible to conceal difficulties through inadequate reserving; thus an important feature of the examination of an insurer by a Provincial Superintendent or by the Federal Department of Insurance is a determination of the adequacy of the claims provision.

The moneys held by insurers as the offset to these and other reserves are invested by the companies to add to any underwriting income generated. Investments are regulated by statute as to type, but the limitations imposed do not in any way appear to place binding constraints on the insurers. Although the handling of investments should be a vital function of insurance management, it appears that general insurers operating in Canada have not properly stressed this function. The top personnel in a company's hierarchy apparently concentrate on the sales function, while more junior personnel are often given the responsibility of investment management. In many instances, however, investments are a greater source of income. Investments will be commented on more fully in another section.

Table 7:3 traces in some detail certain sources of the increased assets of Federally registered general insurance companies in Canada over the period 1961 - 1966.

Table 7:3

Annual Sources of Funds for Fire & Casualty Companies 1961 - 66

(in millions of dollars)

	1961	1962	1963	1964	1965	1966
Application of Funds to Increase in Assets						
British Companies	10.7	11.2	1.4	15.5	17.1	9.7
Foreign Companies	31.2	6.9	25.3	7.4	52.0	62.5
Canadian Companies	36.7	21.2	31.7	88.1	90.5	87.3
TOTALS	78.6	39.3	58.4	111.0	159.6	159.5
Source						
Increases in Reserves for Unearned Premiums, Unregistered Reinsurance & Provision for Unpaid Claims						
British Companies	(3.4)	10.3	14.4	15.0	11.2	13.2
Foreign Companies	7.0	11.4	27.6	16.6	49.3	29.5
Canadian Companies	12.8	21.7	30.5	59.6	56.9	64.5
Totals	16.4	43.4	72.5	91.2	117.4	107.2
Increases in Other Liabilities Including Voluntary Reserves						
British Companies	(.7)	(.3)	2.2	4.8	(1.8)	(1.6)
Foreign Companies	.6	(.1)	.9	4.0	6.3	10.8
Canadian Companies	7.5	(7.2)	6.0	11.9	10.0	5.5
Totals	7.4	(7.6)	9.1	20.7	14.5	14.7
Increases in Equity						
British Companies	14.8	1.2	(15.2)	(4.3)	7.7	(1.9)
Foreign Companies	23.6	(4.4)	(3.2)	(13.2)	(3.6)	22.2
Canadian Companies-Surplus	15.3	4.5	(6.0)	12.2	21.9	16.6
Capital Stock-	1.1	2.2	1.2	4.4	1.7	.7
Totals	54.8	3.5	(23.2)	(.9)	27.7	37.6
TOTAL OF ALL SOURCES:	78.6	39.3	58.4	111.0	159.6	159.5

Source: Reports of the Superintendent for Canada, Vol. 1, years 1961, 1962 1963, 1964, 1965, 1966.

The net changes in the equity account shown in Table 7:3 are the result of increases attributable to net earnings from underwriting and investments and from injection of new capital, less decreases by way of dividends or remittances to shareholders and withdrawals of capital. As appears from the same Table from 1962 to 1965 inclusive, the utilization of equity as a source of funds has been more significant for Canadian companies than for British and foreign companies. Increases in other liabilities including voluntary reserves do not appear as important as the other sources.

The importance of unearned premium reserves and provisions for unpaid claims on the automobile side of the business deserves mention. There is little doubt that these reserves make available to the insurer a substantial portion of its pool of funds available for investment. Consider the position of one large mutual company as at the end of 1965. For that year, automobile contracts accounted for 82% of total net premiums written in all lines. Admitted assets totalled $54.5 million of which $10.4 million were reflected in surplus and another $4.5 million came from voluntary reserves. Of the remaining $39.6 million, the unearned premium reserves for automobile insurance totalled $11.9 million, and the provision for unpaid claims amounted to $19.6 million, leaving $8.1 million traceable to reserves on other lines of insurance.

The following extracts from the evidence of Dr. H. L. Purdy, a witness called on behalf of the All Canada Insurance Federation, indicates how consideration of profit from investments may affect company policy.

> RAE: Well, now, there is another possibility of maximizing profit in an industry like the insurance industry, is there not, and that is if you regard it as -- for the moment an investment trust -- that your sale of insurance can be a means of generating maximum funds to enable you to carry a maximum investment portfolio, can it not?

PURDY: Yes. Your insurance funds will constitute an investment portfolio.

Q. So that one insurer may have -- I should not put it this way -- might deliberately write for maximum premium volume rather than maximum underwriting profit for the reason I have just stated?

A. It would be one influence affecting his profits.

. . .

Q. Dr. Purdy, there is just one further part of Brainard that I wanted to bring to your attention, I am sure you wouldn't disagree with it. It is item 4 on page 473 in which he makes this short statement, the heading is:

"4. Expense Ratios and Investment Results. An insurer's overall results do not depend on its loss ratio alone. The expense ratio and the net gains from the investment of unearned premium reserves may individually or together be even more decisive of underwriting strategy. If an insurer has an unusually low expense ratio or an unusually good investment return, it may wish to write a larger premium volume than that dictated by considerations of maximum pure premium profits."

And that is what we were talking about just before lunch?

A. Yes, I would agree.[7]

Some Notes on Accounting and on Underwriting 'Profits' & 'Losses'

Under present insurance accounting practices and in line with Department of Insurance regulations, costs applicable to a policy are fully written off in the year in which they are incurred. Premium income, however, is deferred to the extent of the unexpired portion of the premium at year-end. Reserves for unearned premiums may range from 80% to 100% of the unearned premium figure. In the case of 100%, and to some extent in the case of 80%, the accounting principle of matching revenue and expense over time is not strictly adhered to.

If the sales volume, reserve requirements, and the mix of business of a fire and casualty insurer hold constant, and if premiums are sufficient to meet losses and expenses, then the volume of written premiums going into the unearned premium reserve in any one year will equal premiums being earned and

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7. 57/6716-7; 6721.

thus withdrawn from the reserve over that same period. The earned premiums released from the reserve plus the percentage of unearned premiums not reserved (say 20%) will cover costs of new business, plus losses, other expenses and profits. The surplus or retained earnings account will not be drawn upon. If, however, unearned premiums are reserved at 100% then when the dollar volume of sales is increasing, underwriting losses will result, and the surplus decline. For the same effect to occur when unearned premiums are reserved at 80%, the magnitude of the increase in volume of sales must be greater.

The situation can best be illustrated by a simplified numerical example. It will be assumed that the insurer is reserving unearned premiums at 100%. Year 1 is to be the first year of operation. Three possibilities are presented pertaining to the second year of operation. Year 2 is to reflect an absence of any further writings, Year 2A writings identical in volume to Year 1, and Year 2B is to reflect a 20% increase in net premiums written.

TABLE 7:4

Underwriting Profits and Losses (simple example)

	YEAR			
	1	2	2A	2B
Net Premiums Written	100	0	100	120
Reserve for Unearned Premiums	50	0	50	60
Premiums Earned	50	50	100	110
Acquisition & Other Expenses incurred @ 30% of written	30	0	30	36
Losses at 68% of earned	34	34	68	74.80
Underwriting Profit or (Loss)	(14)	16	2	(0.80)

Since corporate income taxes are levied on the aggregate of underwriting and investment profits, in periods of rising volume, taxation is to some extent deferred and vice versa. Further, the picture presented is hardly that of the true operating results of the insurer since the equity in the unearned premium reserve is being overlooked. This latter conclusion is confirmed by Kates, Peat, Marwick and Price Waterhouse in their study titled Research Study on Various Concepts For Analysis of Investment Income, If Any, Arising From Prepaid Premiums of Canadian Policyholders submitted in evidence by the I.B.C.[8]

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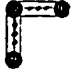
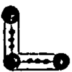
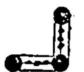
8. Ex. 243, pp. 5-8 and Ex. B, thereto particularly p. 7.



CHAPTER
8

COMPETITION

CHAPTER 8

COMPETITION

Introduction[1]

The conduct of business enterprise can have an impact on entire communities and is therefore a matter of public concern. A single corporation may enlist the savings of many individuals, employ still others and serve the needs of an even larger group -- the consumer.

Private enterprise is justified by the opportunities it affords for investment and employment and by the service it renders to its customers. While profit motivated, to obtain such profits it must, in the long run, satisfy consumers. Competition leaves no other avenue open. It is not always wise, however, to leave business to its own devices. Experience has shown that freedoms are sometimes exploited at great cost to consumers and the public at large. On occasion, therefore, the imposition of controls or regulation is clearly required to facilitate the operation of competitive markets and to protect them against abuse. Because of limitations placed upon them by legislators and because of public apathy and susceptibility to private pressures, regulatory bodies should be looked upon as adjuncts to, and not substitutes for, the discipline of competition. In situations where competition is thwarted or monopoly inevitable, and regulation is ineffective (it may even shelter and encourage the very practices it seeks to deter) the alternative of public enterprise should be considered as preferable. In this last connection the following evidence of Dr. Purdy, a witness already referred to, is pertinent.

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1. A detailing of the Commission's views given in this introduction are found in C. Wilcox, Public Policies Toward Business, Homewood: Richard D. Irwin, 1960.

RAE: So if you were going to regulate profit in the profit-on-investment sense you would have to have variables in the sale price if they were all to achieve the same profit on investment?

PURDY: Yes, that is true, but the circumstances we observed across the industry as a whole is that namely competition has imposed a standard price across the firms in the industry for a particular product, and some companies make a good return at that price and some don't.
Q. You are speaking of return on investment?
A. Yes.
Q. So that perhaps the man who does not -- if you are regulating price you must raise his premiums for him?
A. Well, that is really one of the reasons that we find so little public regulation applied to the multiple firm industry, and where it is applied it is a mess.
Q. Because what is adequate for one may be inadequate for another?
A. That's right.[2]

And further on in the evidence:

RAE: Would you agree with this statement in Lindahl and Carter -- and this is under the heading Measures to Strengthen Competition. This is at page 654. It is under the subheading of Public Investigation: "Where the nature and characteristics of industries are such that they fall clearly into the category of 'businesses affected with a public interest' we should be willing to so declare them and subject them to public regulation under private ownership as we now do for a broad range of public utilities."
PURDY: But you are reading that in the context where there has already been a finding that competitive regulation of the industry is absent. Then you go on to the finding of the public interest and the public regulation.
Q. It is predicated upon your dealing with a business affected with the public interest too?
A. But it is predicated on the absence of competition in the industry.
Q. Yes. Would you agree with the next sentence: "And where public regulation gives strong evidence of failure, we should be prepared to accept public ownership."
A. No, I think this is an impractical statement. I am afraid Lindahl and Carter have slipped a bit there since I was a colleague of theirs. I don't see any situation where regulation cannot do a better job than public ownership.
Q. So you would not agree with this?
A. No, I would not. And disagreement with my good friends Lindahl and Carter does not disturb me in the least.
Q. Well now, let us suppose, Doctor, we are persuaded that the second step there is not practical -- public regulation -- then would you agree, assuming you otherwise follow the statement, you simply skip that step and you move from the business affected with the public interest into

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2. 57/6716.

public ownership. If you are convinced ahead of time that your regulation will not work?

A. If I am working on the assumption that competition is absent in the industry and the industry is one with peculiar importance to the public, and the public regulation will not work, the only thing left is public ownership and operation.[3]

Competition and the Insurance Industry

Unless it can be shown that there are strong indications of substantial economies of scale in the insurance industry, it must be judged against the standard of workable competition. There is evidence that some such economies exist but it is clear that they are quite limited, and do not warrant treating the industry as what the economists term a 'natural monopoly'.[4] Application of competitive yardsticks have been advocated by most industry spokesmen, although practices of segments of the industry seem strange when judged by such yardsticks.

Opinions have been expressed from time to time that the insurance industry has peculiar characteristics which render vigorous competition unsuitable as a device for regulating prices within the industry. Concern that "excessive" competition could threaten solvency was also expressed by a number of industry witnesses appearing before the Commission as well as by the Federal Superintendent of Insurance, quoted in another part of this Report.[5]

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3. 58/6819-21.

4. It must not be assumed from this that it may not develop monopolistic tendencies for reasons other than those contemplated by the term "natural monopoly".

5. 50/5869, 5902 and 54/6297-8.

There is no disputing the fact that there were rate wars in fire insurance almost ninety years ago in both Canada and the United States, nor that there were a number of insolvencies at the time. Formation of rating bureaus within the industry was one response to this situation; another was the imposition of governmental regulation designed to protect the public against insolvencies. Initially these controls provided for examination of companies' accounts, regulation of their investments, verification of their assets and the posting of deposits with government representatives to reduce the risk of insolvency and to detect incipient insolvencies in time to prevent losses to the public. Such requirements still constitute the backbone of insurance regulations in Canada, but regulation in the United States has gone further and assumed direct control over rates.[6]

Statements that rate regulation is required to protect the public against insolvency have been repeated so often as to be accepted by some as indisputable. Rate regulation is extensively used in the United States in part, at least, for the purpose of protecting against insolvency. It is no answer to observe that Canadian experience with insolvencies of general insurance companies has been no worse than that of the United States despite an absence of rate-regulation, because rate-fixing by private agencies rather than government has been a characteristic feature of the Canadian insurance scene since 1883.

Pronouncements revolve around the following points:

(i) Insurance is peculiar in that costs are not known at the time of sale

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6. On the U.S. situation see R. J. Hensley, Competition, Regulation and the Public Interest in Nonlife Insurance, Berkeley: University of California Press, 1962, pp. 70-101.

and, because of this, companies may cut rates below costs.

(ii) Insolvencies may result from poor pricing in relation to risks accepted.

(iii) Public interest in preventing insolvencies is so great as to override its interest in competitive rates.

It is fact that the cost of insurance is not known at the time of sale. The situation is not, however, unique to the insurance industry. Mining companies are unlikely to know the exact cost of a ton of ore until the mine has been depleted while automobile manufacturers learn the cost of a car when the model year is over and the cost of tooling for a particular model is allocated over the number of cars sold. Management in arriving at pricing or production decisions must attempt to determine probable costs per unit on the basis of explicit or implicit probability calculations.[7] If the automobile insurance industry is unique today, it is unique in the volume of statistical data and relatively sophisticated actuarial procedures it can bring to bear on problems of this nature. Actually, whether costs are known well or only imperfectly has little bearing on the propensity of individual companies to price below costs. No company in business for a profit, or otherwise intent on solvency would deliberately issue contracts at premiums lower than the actuarially expected loss costs plus expenses. Where its actuarial estimates are of dubious value it is more likely to raise rates and hedge against an incorrect estimate. There seems to be no incentive for a rational, solvent company to engage in price cutting below expected costs, and no reason for it to follow competitors' actions in this respect.

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7. See for example, D. B. Hertz, "Risk Analysis in Capital Investment", Harvard Business Review, Jan. - Feb. 1964, pp. 95-106.

A policy of cutthroat pricing may, however, hold considerable appeal for the already insolvent insurer counting on cash inflows from newly issued policies to meet outstanding claims while hoping that its luck will turn. If other companies follow blindly, a price war may well develop. It is, however, inappropriate to infer that, because price wars and insolvencies occur at the same time, price wars are the cause. The direction of causation may well run the other way.

The only price war of note in the automobile insurance industry in Canada occurred during the 1920's in circumstances unlikely to be repeated, because of increased knowledge available to the industry today as herein referred to.

The Commission feels that under present day conditions there is neither reason for the inevitable consequence of competition to be price wars, nor for vigorous price competition to lead to insolvencies. Even if such a link could be demonstrated, it would not necessarily follow that price competition should be restricted in the interests of preventing insolvencies. A premium on automobile insurance excessive by 1% over one or two years would likely cost insureds more than all failures of general insurance companies in Canada since 1945.

It would seem reasonable to suggest that insolvency as a consequence of inadequate pricing might not be as serious a possibility as the word 'insolvency' superficially conveys. If a close check were kept on assets reflected in reserves for unpaid claims, which is the situation now, then one is assured of funds sufficient to take care of claims. That leaves the possibility of inadequacies in unearned premium reserves. This would seem to be the only inadequacy, so far as the public interest is concerned, which could reasonably

be related to inadequate pricing. Put at its worst, therefore, the maximum average loss of each policyholder, even if insolvency occurred, would be one-half of one year's premium in the case of an annual automobile premium. The average policyholder in all companies (as against the potentially insolvent ones) could readily and unknowingly suffer a greater loss than this, through lack of competition, of which he was not even aware. The views of Mr. Damov, a witness for the All Canada Insurance Federation, and more recently president of the C.U.A., when questioned by Commission Counsel are of interest.

> RAE: ....may I put this suggestion to you, and it is not original with me, that if you can assure .... the insured with this company whose insolvency we are concerned about the claims will be paid either through a form of -- another form of insurance, solvency insurance or whatever you might call it, then perhaps not to have price competition constitutes too high a price to pay for insurance solvency?
> DAMOV: Oh, quite so, sir, and we are not suggesting that price competition should not exist, we would just manage the degree.
> Q. Would you agree that if solvency can be insured in some other way without reference to rate structure that there should be free and open price competition?
> A. Quite, yes.
> Q. And I have even seen it suggested that the odd insolvency now and again might not be too bad a thing to keep the industry on its toes. I am serious about this.
> A. It does have a salubrious effect.[8]

With the various considerations reviewed above in mind, the Commission does not see any valid reason for the abandonment of competition as a norm against which to judge the performance of the automobile insurance industry.

The Concept of Effective Competition

Completely efficient resource allocation in an economy can be shown to be consistent with only one type of market, which must be present throughout the

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8. 54/6297-8.

economy. Identified as "perfect competition" it lies at the extreme end of the scale of the types of competition analyzed by economists and is almost universally recognized as unattainable in the real world. It has value as an ideal model, however, and therefore merits examination.

Requisites for perfect competition are considered to include the following:

(i) Each buyer or seller in the economy be so small in relation to the entire market that he cannot influence price.

(ii) A perfectly standardized commodity and the absence of any other reason for the preference of one seller or buyer over another.

(iii) Perfect knowledge and foresight, and the absence of uncertainty.

(iv) Freedom of entry into the industry and exit therefrom, with perfect mobility of all factors of production.

(v) Cost relationship consistent with the continued existence of many sellers.

These conditions, taken together, would produce an instantaneous mutual adjustment of supply and demand, resulting in an efficient use of resources at all times.

The foregoing requisites may be found in substance in any standard text book on economics and were covered, at least in part, in the evidence of Dr. Purdy, a witness previously referred to.[9]

At the other end of the scale there is monopoly. There is a well-established tradition of hostility to monopoly in the common law which has been fortified by statute. The basic criticism of monopoly is that it leads to a higher price for the monopolized article.

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9. See 46/5328 *et seq.*, 58/6793 *et seq.*

The approach of the economist to restraint on competition understandably differs from that of the criminal law as it deals with monopoly or quasi-monopoly. The latter is concerned with conduct which in principle and in degree is such that it is deserving of punishment as a crime. The law, therefore, requires a more glaring standard of conduct, and a stricter degree of proof, than an economist would demand to be satisfied that there was an undesirable restriction of competition.

Therefore, it does not follow from the fact that there is absence of conduct which would be within the provisions of say, the Combines Investigation Act as a punishable offence, that competition is therefore adequate from the economist's point of view. The economist is concerned with the attainment of the maximum competition reasonably obtainable and, therefore, with an examination of the market structure to see what is being achieved and what improvement may reasonably be expected and achieved.

There is some historical evidence that most monopolistic situations in the 18th and early 19th centuries arose out of conspiracies and deliberate restraints and these are what Adam Smith seems to have been concerned with in his well known passage:

> People of the same trade seldom meet together even for merriment and diversion, but the conversation ends in a conspiracy against the public, or on some contrivance to raise prices.[10]

Studies by later economists have shown a number of ways, other than conspiracy, in which unsatisfactory monopolistic markets could arise. To some extent these

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10. Adam Smith, An Inquiry into the Nature and Causes of the Wealth of Nations, Edinburgh: Adam and Charles Black, 1863, p. 59.

are reflected in the broader statutory prohibitions found in Canada in the Combines Investigation Act and in the Sherman and Clayton Acts in the U.S. Nevertheless it remains true that the case with which the criminal law is principally concerned is one in which there is clear evidence of a conspiracy to fix prices. As a consequence, there is a rich body of jurisprudence dealing with conspiracy situations, but a relative dearth with respect to other monopolistic elements.

Economists have been more concerned with consequences than with specific acts; while a successful price-fixing conspiracy is usually a sufficient condition to produce the undesirable consequences of monopoly, it is not a necessary condition, and may be overshadowed in importance by other conditions capable of producing the same result.

With "perfect competition" unattainable, economists have attempted to develop the standard of "workable" competition. In so doing they have attempted to account for legal and political considerations as well as the economic. It should be emphasized, however, that some disagreement remains among economists on just what constitutes "workability". There is much more agreement respecting factors to be examined and considered than with respect to how they should be weighted or which should be decisive if, as frequently happens, two factors give contrary indications. The factors usually taken into account are the structural characteristics of the industry, the way in which competition is conducted and the performance which results from the interaction of the structural and conduct factors.

Structural factors may help determine whether individual firms possess market power or are not likely to in the absence of collusion. While they can indi-

cate the likelihood that market power exists, they cannot indicate its absence or whether it is exercised. Analysts who feel the possession of market power is as serious as its exercise are apt to place great weight on structural factors, while those who regard performance and results as the only valid object of concern are apt to regard structural facts as only one of a set of facts to be considered.

The examination of behaviour may reinforce structural findings, if firms which appear on structural grounds to have market power conduct themselves accordingly. It may lead to revised conclusions about structure as when firms or groups appear to be able to exercise market power despite ambiguity in the structural evidence.

In the literature on competition, more emphasis has been placed on structure and behaviour than on performance as such. This reflects a number of factors, including the difficulty of measuring performance and the concern of many analysts with possession as opposed to the exercise of market power.

Competitive Implications of Market Structure

Structural factors commonly considered include the number of sellers in the market, their size relative to one another, and their ability to compete. For competition to be effective, the number of firms must be large enough to provide customers with alternative sources of supply.[11] Ideally the number

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11. The listing follows that presented in the Report of the Attorney General's National Committee to Study the Antitrust Laws, Washington: Government Printing Office, 1956, though the ordering differs.

should be large enough so that no firm or group of firms attempting to act in concert, is able to exercise monopoly power for very long. In general, the more firms the better. Great disparity of relative sizes may mean that the larger firms are able to dominate the market and that the smaller ones are ineffective rivals. Extreme concentration, in which a large fraction of the market is supplied by a few firms or groups acting in concert, is probably necessary for the exercise of monopoly power, but high levels of concentration may be quite compatible with effective competition if other factors are favourable.

Conditions in the market must also be such that new firms are free to enter and compete with existing firms on a profitable basis. Entry may be frustrated by the existence of substantial economies of scale which make it impossible for a new small firm to compete with existing larger ones. It may also be discouraged by the large or exclusive resources of the existing concerns which pose a potential threat even in the absence of behaviour calculated to exclude new rivals. Legal constraints on entry such as the existence of patents, licensing requirements or the need for deposits of moneys may be a factor. It is potential entry, not actual entry, which is important.

A final structural condition is that there must be an incentive for the firms to undertake competitive moves. Whether these are price cuts, product improvements, or innovations in the production or marketing processes, none is likely to take place unless the response of competitors is sufficiently slow to make it profitable. Such incentives may be weakened in a number of other ways. They are apt to be weak to begin with in an industry with a small number of sellers where the action of each is immediately felt by the competitors. They may be further weakened by price reporting systems such as those operated by a

number of trade associations, by excessively strict disclosure requirements imposed by stock exchanges or by public regulatory systems. This last, i.e. public regulation, would appear in many instances simply to fortify the price supporting system operation by the industry involved.

Conduct Requirements for Workable Competition

Conduct requirements spell out the type of behaviour by firms necessary for competition to be workable. The first requirement is that firms in the industry behave independently, each seeking to increase its own profits. While it is obviously desirable that all firms behave in this manner, it is not necessary. A number of firms may act in concert, but not controlling enough of industry capacity, will be unable to impose a price significantly different from that which would prevail in the absence of collaboration. If the non-collaborating or independent firms in the industry are sufficiently large, numerous and aggressive, competition may be effective despite partial cartelling.

The collaboration between firms which is destructive of workable competition need not be the result of formal price fixing agreements, but, in markets where there is a small number of competitors, may be the result of rational independent action in a situation where the interdependence of the firms is mutually recognized.

A second requirement is that there be an absence of actions deliberately aimed at excluding present or potential competitors or at restricting their ability to compete. Exclusive dealing arrangements, and predatory pricing are illustrative of such actions.

A third requirement is that there be evidence of active price competition in the market. Price need not be the only competitive weapon used, but suspicions grow when it is the only one not used. Some participants may initiate price changes, others may merely meet them. The phenomenon of "price leadership" in which one firm virtually always changes price first while others follow may be evidence of the absence of price competition. Thus, a single seller, because of size, may take the initiative in pricing and smaller firms follow the announced changes. They may sell at the promulgated price or at a constant discount necessitated by consumer attitude. Not only is the leader followed down, as competition would have it, but the smaller concerns will follow up as well. Followers do so because of convenience, the opportunity for larger profits under the price umbrella held over the trade, or simply from fear of what open competition could do to them. A similar umbrella may be afforded, perhaps unwittingly, by a government authority professing to regulate prices in the interests of the consumer. The dominant seller, in control of a significant part of total output will price to optimize net returns. When other firms fall in step, the consumer is provided no real alternative, and both leader and follower alike exact monopoly prices. Such prices need not, of course, produce high monopoly profits, for straight inefficiency may be the result.

A final dimension of business conduct which is important in assessing the workability of competition in an industry is the nature and extent of product differentiation. Complete homogeneity of product, in which the consumer is unable to distinguish the output of one producer from that of another, is a requirement for perfect competition. It is also an attribute of complete monopoly. It is present in some markets, notably graded products such as No. 1 Northern Wheat. The consumer neither knows who the producer is nor does he care as the

product is standardized. In many markets however, offerings of one producer differ from those of another in varying degrees. Where this occurs, product is held to be differentiated, giving each producer a temporary element of monopoly power lasting until another competitor offers the consumer a more appealing alternative. It can be argued that a driving force behind improved products and economic progress generally is the search for temporary monopoly through product differentiation, and in this context, product differentiation may be beneficial. It is where differentiation gives one seller a dominant position from which it is enabled to destroy all competition and prevent change that a serious problem exists.

Generally speaking, where product differentiation is entirely subjective, where it has given one firm a dominant market position and enabled it to discourage innovation, it is held to detract from workable competition. Where it is based on real differences in product quality, where the relative market positions of competitors are flexible in response to a high rate of innovation, it will be found to contribute to the effectiveness of workable competition.

Market Performance

Conditions of supply are determined by the effectiveness of competition and are a relevant factor in performance. Where the performance record, in response to growing demand, is one of raising prices rather than increasing output the effectiveness of competition is suspect, unless natural resource limitations prevent an increase in output. Where the record is one of introducing cost-reducing innovations permitting the cutting of prices and growing with the market, it is much more impressive. The significance of the growth of the market factor as it pertains to automobile insurance in British Columbia is essentially

dealt with as a non-monetary cost, in another part of this Report, under 'The Cost to Persons Who Pay Insurance Premiums' (Chapter 10).

Certain types of price performance are regarded as incompatible with effective competition. These include the truly administered price, where price is set and is totally unresponsive to supply and demand changes for years at a time. Few markets of this type really exist; and where list prices are of this type, they will frequently be a starting point for bargaining on a transaction-by-transaction basis.

Another type of price phenomenon usually regarded as incompatible with effective competition is the existence of unfair price discrimination. This can mean charging different prices for an identical product under identical conditions of sale, or possibly charging the same price for an identical product under differing conditions of sale (e.g. charging the same price for two identical policies of insurance where the hazard can reasonably be identified as different).

It arises because producers are able to exploit differences in individual buyers' demand curves for the product. In the presence of strong competition it could not prevail, because competitors, vying for the business of a potential customer, would bid the price down to the market level. The existence of discriminatory pricing on a continuous and regularized basis can therefore be regarded as *prima facie* evidence of the existence and exercise of monopoly power. Where it is not systematic it may, however, be evidence of competition.

Whatever the competitive merits of sporadic discrimination, unfair price dis-

crimination is widely regarded as an improper trade practice forbidden by statute in both Canada and the United States. The attention of the law has been focussed on price differences; discrimination has been held to occur when these differences could not be justified. Price equality in the face of different costs is equally discriminatory in the economist's eyes, but has been treated much more lightly by the law.

An absence of discrimination in a competitive context implies that prices for the various products of an industry will be proportional to marginal costs. The existence or non-existence of discrimination, and by implication competition, can therefore be inferred from an analysis of an industry's price and cost structures. The Commission's views regarding this factor as it applies to automobile insurance in British Columbia, are to be found in the section of Chapter 10 concerning The Costs to Persons Who Pay Insurance Premiums under Monetary Costs, Parts (ii) and (iii).

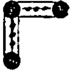
The competitive model also predicts that prices will be equal to marginal costs. An allowance for a normal return on capital is, of course, included in the measure of costs. An absence of monopoly profits is a necessary but insufficient condition for the existence of effective competition. This can also be assessed from an analysis of cost data if such are available. Treatment of this aspect of the effectiveness of competition is primarily to be found in the section of Chapter 10 dealing with The Costs to Persons Who Pay Insurance Premiums under Monetary Costs, Part (vi).

Fulfillment of the requirement that profits be at normal levels is inadequate proof of the existence of effective competition, because monopoly profits may

in fact be turned into wage payments, given a strong union, or may be frittered away in inefficient operations and excessive expenses.

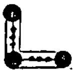
The existence of substantial productivity growth is an indication that managements are striving to promote efficiency and are meeting with some success. Inter-company cost differences are in such situations likely to be temporary as competition will force adoption of improved techniques as the price for survival. An absence of productivity increases is, however, a danger signal and may imply a state of competition too comfortable to be effective.

In assessing the effectiveness of competition, the Commission examined the industry in the light of structure, conduct and performance criteria. Although Chapters 9, 10 and 11 refer in varying proportions to the effectiveness of competition, the Commission's views respecting market structure and conduct are primarily summarized in Part (ii) of the section in Chapter 11 dealing with The Cost to The Public Generally.



CHAPTER 9

THE COST TO INSURERS OF PROVIDING PRESENT FORMS OF AUTOMOBILE INSURANCE DETERMINED ON THE BASIS OF PAST AND CURRENT EXPERIENCE



CHAPTER 9

THE COST TO INSURERS OF PROVIDING PRESENT FORMS OF AUTOMOBILE INSURANCE DETERMINED ON THE BASIS OF PAST AND CURRENT EXPERIENCE

In the interest of totality, the costs reviewed under this section include not just those expenses of insurers requiring dollar outlays, but certain other costs borne by insurance companies writing automobile coverages which are non-monetary. Costs in the latter category, less readily shifted, may prove the greater burden.

Any review of the monetary costs to insurers of the present system of insurance must focus on two major components of such costs, namely:

(i) expense items normally included in the agreed upon expense factor, and

(ii) allocated claims expenses included under claims costs.

Monetary Costs -- Items in the Automobile Insurance Expense Factor

Expense loading is a crucial factor in determining the absolute level of automobile insurance rates, being applied on a uniform percentage basis to all rates.[1] The expense loading, including a 2.5% factor for profit is expressed as a percentage of the premium and subtracted from 100 to obtain the desired loss ratio. The use of the loss ratio in establishing rates has already been described.

While the industry, through the Central Statistical Agency and the Statistical Exhibit devotes substantial effort to analysis of loss costs, no comparable re-

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1. The Commissioners' concern about the conversion of loss differentials into expense differentials is registered in the review of costs to persons who pay insurance premiums. (Chapter 10).

view is made of expense loadings.[2] The situation as it exists today is succinctly spelled out in the Kates, Peat, Marwick and Price Waterhouse, Joint Study on Automobile Insurance Expense Allocation dated May 26, 1967 as commissioned by the directors of the Insurance Bureau of Canada. To quote from the study, limited to 39 companies writing 26% of Canadian automobile business,

> All of the companies surveyed record their written premiums by line of business. Commissions and premium taxes are generally recorded by major class of business and in some cases by line of business. Beyond this segregation, some of the companies do not allocate expenses, and of the companies that do, the systems of expense allocation used are for the most part rudimentary. The predominant method of allocating expenses, including salaries is on the basis of premiums.
>
> Several companies studied have initiated improved systems of expense allocation, commencing in the year 1966.[3]

Expense factors in use have changed infrequently. Following the Hodgins Commission, a 45% loading was used until imposition of the 2% tax on insurance premiums, at which time it was raised to 47%. In 1953, the loading was reduced to 37%, concomitant with a reduction of 5% in agents' commissions. A further

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2. As indicated in Chapter 5 of this Report ('The Central Statistical Agency'), Section 96 (1) of the Insurance Act provides for the filing of loss and expense costs of automobile insurers. Nevertheless expense costs have never been required to be filed in the Central Statistical Agency notwithstanding the recommendations of two Royal Commissions, one in Ontario and one in Nova Scotia, that this should be done.

   The Commission notes that by S.B.C. 1964 c. 24 s. 2 (assented to 20 March 1964 but not yet proclaimed in force) Section 96 was amended to provide, inter alia, that instead of an insurer possibly being required to file "... a record of its automobile insurance premiums and of its loss and expense costs ..." it might be required to file "... such statistical return of the experience of the business as the Superintendent requires ...". By the same statute the classes of insurance subject to the section were extended beyond automobile insurance to include fire, sprinkler leakage and property damage.

   (footnote continued on next page)

3. Ex. 329, p. 5.

reduction to 33%, coupled with a cut in commissions was introduced with the 1965 Statistical Exhibit and applied to 1966 rates.

A breakdown of the present assumed 33% expense factor into components appears as follows:

Profit & Contingencies	2.5% of premium
Premium Tax	2.0
Commission	12.5 - 15.0
Other Expenses	16.0 - 13.5

The ranges are the result of higher commissions being paid by members of the Independent Insurance Conference. The only "firm" expense in this breakdown is the 2% premium tax, which is set by statute.

Expense loadings were examined by the Nova Scotia Royal Commission of 1957 which concluded that they appeared not unreasonable but lacked statistical justification.[4] The basis of this determination was quite weak and no doubt prompted the following comments:

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2. (continued from previous page)

   Also, in Ontario, (S.O. 1964 c. 47 s.6) the comparable section (s. 75) to section 96 in British Columbia was similarly amended (assented to May 8, 1964 but not yet proclaimed in force.)

   In the light of the recommendations as to the filing of expense costs, referred to above, it is difficult to understand why specific reference to the filing of expense costs should have been eliminated from the section, unless it was to remove the possibility of such being required in the case of the other forms of insurance to which the section was being extended.

   Frequently amendments of the nature referred to are brought forward through, if not by, the Association of the Superintendents of Insurance. A search of the Minutes of Proceedings of their Annual Conferences from 1960 to 1964, both inclusive, does not indicate the origin of the amendments, but it would appear from the 1964 Minutes that:
   (a) The amendments referred to were reported to the Conference as hav-
   (footnote continued on next page)

4. Nova Scotia, Royal Commission on Automobile Insurance, Vol. I, Halifax: Queen's Printer, 1957. p. 51.

> ... the Commission believes that duty compels it to express its dissatisfaction owing to the inadequacy of the material presented to it by the insurers and available to it from them and other sources relevant to the expense portion of the premium ....
>
> ... In spite of the attempt of the Commission to test the reasonableness of the 37 per cent expense factor, for Nova Scotia, it remains largely a hypothetical figure lacking justification by expense records kept by the insurers in a manner that accurately supports it.[5]

Annual statements filed with the Federal Superintendent of Insurance contain fairly detailed information on expenses. These are published in the Superintendents' annual reports. For purposes of this Commission, it was however, impossible to glean much from such data. Unlike practice across the United States, reported expenses relate to an insurer's total business and are not reported separately by line of business. Since automobile insurance is held to be a relatively low-cost line, loading in excess of the expense ratio based on all lines could be deemed unreasonable but the automobile expense factor of 33 was found to be less than the average factor for all lines.[6]

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2. (continued from previous page)

ing been made, and similar amendments were reported as made in Newfoundland and Prince Edward Island.

(b) The Chairman (the Superintendent for Ontario) reported that the gathering of fire statistics similar to those required for automobile (which of course do not presently include expense costs) was under consideration and that there had been some consultation with the I.B.C. which was working on the matter of such statistics for the purpose of arriving at proper fire rates.

It is noted too, as set out more fully elsewhere in this Report ('The Automobile Insurance Industry as it pertains to British Columbia') that the I.B.C., when it amended its 'objects' clause in June 1964 from what it was

(footnote continued on next page)

5. Ibid., pp. 51-53.

6. Mr. Martin of the C.U.A. held it to have the very lowest expense ratio. (29/3025)

Both because of incompatibility caused by using differing approaches in the allocation of indirect expenses to the various lines of insurance and, on occasion, the absence of any costing, it was felt that no useful purpose would be served by obtaining additional data directly from insurers.[7] Apart from the expense involved, it would likely produce results inferior to those obtained by an alternate technique involving use of readily available information from standardized annual statements.

Where there are companies carrying on similar activities but in different proportions, it is possible to use statistical procedures to estimate marginal joint costs attributable to the different activities. Although the statistical technique is well known, its application in this context is relatively new. One of the most successful published applications has been an analysis of the marginal costs of carrying various categories of freight by rail in the United

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2. (continued from previous page)

as originally drafted, not only removed reference to the making of 'recommendations' but also removed a specific reference to 'loss and expense factors'.

If the intent of the statutory amendments is to eliminate the possibility (or even to lessen the probability) of the filing of expense costs, then whatever may be the situation with other forms of insurance (as to which this Commission expresses no opinion) such would be a retrograde step in respect of automobile insurance. Recommendations with respect to filing expense costs, more particularly in the interests of each insurer knowing its costs and thus being capable of knowledgeable rate competition, are dealt with elsewhere in this Report.

7. There are many arbitrary yet equally plausible bases of allocation used in costing. Which one is chosen may make a substantial difference in resultant expense ratios for the various lines of insurance. See for example, C. T. Horngren, Cost Accounting, A Managerial Emphasis, Englewood Cliffs: Prentice-Hall, 1964, Ch. X.

States.[8] The technique requires that there be data from a large number of companies, employing uniform accounting standards, for the periods under review. Data fitting these requirements are available only for a minority of industries. Fortunately, insurance is one of those industries with data available on a uniform annual statement basis in the Reports of the Federal Superintendent.

The statistical technique used is called multiple regression analysis and is an expression of the least squares procedure. Using multiple regression analysis it is possible to divide a particular category of expense into that portion which is constant and that portion which is variable. Moreover, the technique can allocate the variable cost among the several variables which give rise to its fluctuation. The technique assumes that the dependent variable (Y_i), in this case expenditures in a specific category, say general expenses, for a given insurer (i) can be explained by an equation of the form:[9]

$$Y_i = a_o + a_1X_{1i} + a_2X_{2i} + a_3X_{3i} + \ldots a_nXni + u_i$$

where,

X_{1i}, X_{2i}, X_{3i}, $\ldots X_{ni}$ are values of the explanatory variable for company (i) or premiums written in each line of insurance.

a_o, a_1, a_2, a_3, $\ldots a_n$ are constants which apply to all companies, or the marginal cost in each line of insurance -- with the exception of a_o which represents fixed costs.

u_i is a term representing the residual error, the extent to which the observed value of Y_i differs from the average value, for a company having the given values of X_{1i}, X_{2i}, to X_{ni}, predicted by the equation.

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8. J.R. Meyer, M.J. Peck, J. Stenason and C. Zwick, Economics of Competition in the Transportation Industries, Cambridge: Harvard University Press, 1959. The technique was also used in studies prepared for the Royal Commission on Transportation Volume III, Ottawa, Queen's Printer, 1962. e.g. study on 'The Problem of Grain Costing' at p. 195.

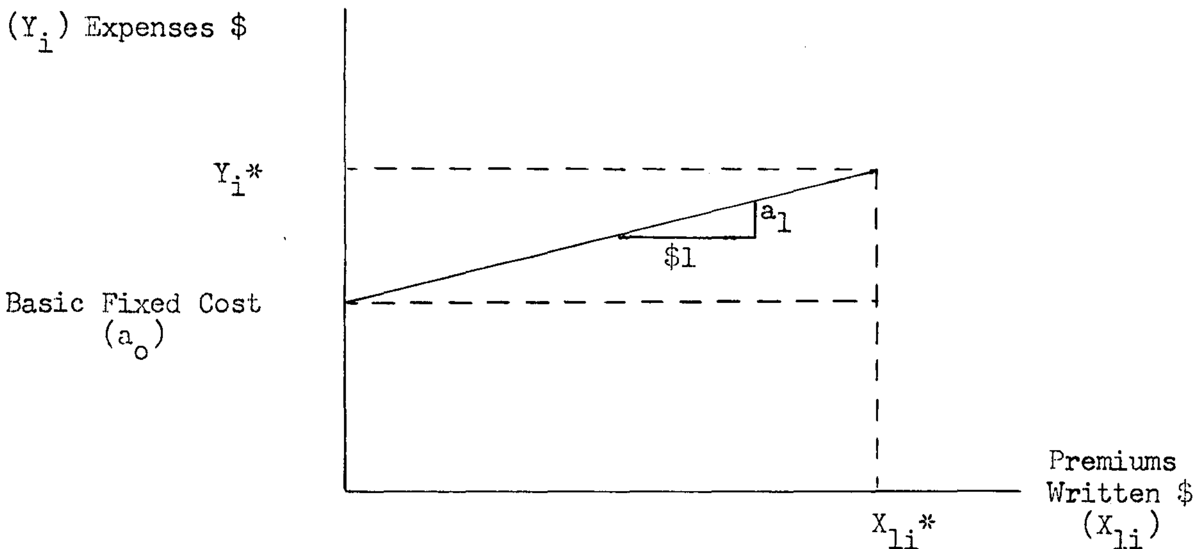
9. The linear relationship used is an assumption, and not an inference from the data. Any substantial curvature in the total cost function can be detected by examination of the constant term a_o. Values of a_o close to zero suggest an absence of major curvatures and provide empirical justification for the choice of a linear form for the equation.

This equation simply states that ignoring the error term, the particular expense item under consideration includes a basic constant amount a_o which is incurred by virtue of being in the insurance business, plus amounts that are proportional to premiums written in the various lines of insurance written and which can be computed as a percentage of the value of premium written in each line. Effectively, the technique allocates all of the expenses within the category to individual lines, with the exception of the constant amount a_o which remains as unallocated overhead. In fitting the equation, the values of a_o, a_1, a_2 through to a_n are chosen in such a way that the sum of the squares of the residual error for the companies in the sample is minimized.

If a company writes only a single line of insurance, say automobile coverages, the cost relationship is readily depicted graphically.

FIGURE 9:1

EXPENSE RELATIONSHIP OF A SINGLE LINE COMPANY (i)



Thus, a_0 is the fixed cost incurred irrespective of the volume of buiness done, while a_1 is the variable cost per dollar of premium written by the company. Expenses of a particular type incurred in writing $\$X_{1i^*}$ of automobile insurance premiums can be read off the graph as $\$Y_{i^*}$.

If a company (k) with three or more lines of business is considered, a geometric representation of the expense relationship becomes impossible. The technique still holds, however, and as before fixed costs are given by a_0. Variable costs per dollar of premiums in say the automobile, fire and inland marine lines are given by a_1, a_2, and a_3 while premium volumes in those lines are presented by X_{1k}, X_{2k} and X_{3k}. Y_k is the expense figure for the specific cost under consideration.

Basic data for the study were derived from statements found in Volume II of the Annual Report of the Federal Superintendent of Insurance. These statements report net total expenditures in Canada by insurers for adjustment expense, commissions, taxes other than income and real estate taxes, bad debts and general expense. The last of these items, general expense, is broken down into various expenditures including salaries, postage, rents and the like. None of these expenditures is allocated to lines of insurance for annual statement purposes, though substantial fractions relate directly to particular lines and could be allocated in this manner. The statements also show net premiums written and earned, and net claims incurred in Canada, by line of insurance, which we have used as explanatory variables in our analysis.

Expenses thus reported and allocated could not be used directly to test the 33% expense ratio implicit in the 67-33 rate-making formula. Not only does the

latter include an allowance for underwriting profit, but treatments of certain expense and loss items for the Statistical Exhibit and rate-making purposes differ from those used for purposes of the annual statements. The more important differences arise out of the handling of adjustment expenses, and the handling of British Columbia's T.V.I.F. and similar industry financed funds in other Provinces. Adjustments were made for both these factors.

In analyzing the data, attempts were made to fit the equation using premiums written, premiums earned, or losses incurred for every line of insurance as separate explanatory variables. This approach proved infeasible because certain groups of explanatory variables proved highly intercorrelated giving rise to a statistical phenomenon known as multicollinearity, which makes it impossible to separate the effects of highly related explanatory variables. To get around the problem, lines of insurance were grouped into fewer classes which were not highly correlated. Unfortunately, in the process, all automobile lines had to be grouped, so that it is impossible to distinguish expenses for liability as opposed to other coverages. Twelve classes emerged and were assigned explanatory variables X_1 through X_{12} inclusive. Dependent variables examined included:

Y_1 Net Adjustment Expense

Y_2 Commission Expense

Y_3 Net Profit Commissions Incurred

Y_4 Premium and Other Taxes

Y_5 General Expenses

The numbers of companies included in the analysis for the years1961 and 1965 were 282 and 255. Direct writing companies were excluded from the analysis, as

reported here, as these companies report expenses differently and do not adhere to the rate-making formula. Detailed results of the multiple regression analysis, respecting the automobile insurance lines, as well as the calculations utilized in determining the maximum permissible loss ratios for the two years, are to be found in Appendix 9:A. In none of the regression equations was the constant term a_0 found to be significantly different from zero. indicating therefore, that significant economies of scale do not exist in operating expenses. Final results of the Commission's analysis are that the maximum permissible loss ratios for the years 1961 and 1965 were 67.5 and 69.5 respectively.[10]

Bearing in mind that even 1% of premium volume represents a sizeable return on equity[11] the Commission therefore concludes that the 63-37 rating formula, insofar as it was used in the latter years of the period between 1953 and 1965 provided excessive allowances for expense and was therefore inappropriate.[12] Moreover, in looking ahead, the Commissioners state that they view with disfavour any rate-making formula, illustrative or otherwise, which implicitly assumes that all expense items are a constant percentage of total premium no matter how much the total premium increases and without any lag. Certain expenses vary

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10. The maximum permissible loss ratios incorporated actual commission rates, as determined by the multiple regression analysis. However, the maximum permissible loss ratios, assuming a 15% commission rate, for the two years are 64.2 and 65.3. Assuming a 12.5% commission rate, the maximum permissible loss ratio in 1965 becomes 67.8.

11. See Monetary Costs -- Insurance Company Profits, Ch. 10, (Post).

12. Ex. 329, the expense study commissioned by the I.B.C. concerned itself with 1965 data, and on p. 2 of the study reported the equivalent of permissible loss ratios varying between 68.33 and 65.33.

directly with premium volume; others do not. The very recent views of at least one prominent firm of consulting actuaries support the Commission's position.[13]

Monetary Costs -- Allocated Claims Expenses Included Under Claims Costs

In order to determine the magnitude of claims expenses allocated to and included under claims costs, an analysis was made of claim cards submitted to the Central Statistical Agency relating to insurance policies written in British Columbia in May of 1964. Use of more recent data was precluded as the adjusting of claims estimates would likely prove incomplete.

As a consequence of rejections in the sorting of cards, the sample size was reduced by about one-half to 3,703 claims.[14] Claims expenses as a percentage of claims paid were found to be 6.7%. It should be recognized that in many cases where salaried adjusters were used, no expense was allocated, and the cost was reflected under general expenses.

Where claims expenses were shown as allocated, an analysis was prepared to

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13. Woodward and Fondiller, Commonwealth of Virginia, Report of Actuaries, no publisher, August 1966, p. 51-52. However, in its judgment the Virginia Corporation Commission (Case 17680, Opinion, 15 May 1967, p. 14) declined to require an adjustment to be made for this factor, noting that the amount involved is well within the probable margin of error in forecasting losses. While this is true, failure to make the adjustment in a period of rising prices introduces an element of bias into the resulting premiums which must, in the absence of offsetting factors, render them excessive.

14. The cards were sorted by identity number. The rejections occurred either because cards lacked a punch in one or more columns or the identity numbers contained alphabetic punches. In any event the reduced sample remains an unbiased one.

relate such costs to the size of payments made to claimants. The findings are summarized in Table 9:1.

TABLE 9:1

CLAIMS EXPENSES BY SIZE OF CLAIMS PAID

Size of Payments In Dollars	B. I.	P. D.	Coll.	All
	As Percentage of Payment Made			
No payment	-	-	-	(23.3% of claims expenses)
$ 1 to 24.99	370.5	835.2	890.4	409.9
25 to 49.99	139.3	113.1	72.8	76.9
50 to 99	125.0	34.5	29.7	28.8
100 to 199	50.4	26.0	18.2	22.2
200 to 499	31.8	14.7	13.4	14.7
500 to 999	15.4	10.5	10.5	10.8
1,000 to 1,999	10.8	12.1	10.1	11.0
2,000 to 4,999	6.6	5.6	10.1	6.9
5,000 to 9,999	5.4	-	-	5.4
Over 10,000 (n=2)	0.9	-	-	0.9
Aggregate	8.5	24.1	17.3	15.0

The Commission finds that the portion of the premium dollar available for the payment of claims, given by the loss-expense ratio, is further decreased by 4.2 cents, which represents allocated claims expenses appearing under claims costs.

It would be desirable if a new approach to protection could be developed whereby a larger share of the premium dollar could be released for the payment of claims. The Commission notes with interest operations under the Saskatchewan

Automobile Accident Insurance Act where expenses have absorbed less than 20% of the premium dollar for a number of years, and less than 15% in licence year 1966-67, leaving the balance available for the payment of claims. While the Saskatchewan scheme has frequently incurred deficits on annual operations (as have many private companies) it has not done so overall nor in the past year.[15] In this respect our findings concur with those of the State of California's 1967 Saskatchewan Jurisdiction Report.[16] It is recognized that a large part of the difference in expense ratios is due to differences in acquisition costs, principally premium tax and agent's commission. The former, while a cost to insurers and insureds, is not a cost to society, since the revenue would presumably have to be raised in some other way. The virtual elimination of commission under Saskatchewan's A. A. I. A. is made possible by its compulsory and completely standardized coverage. There is a trade-off between the extent of standardization in coverage and marketing costs. Whether the added variety of coverages

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15. Ex. 288, Appendix 2, J. O. Dutton, Letter July 27, 1967 (with 1966-67 results).

    The Commission invited the Saskatchewan Government Insurance Office to send certain of its officials to appear before it. The invitation was accepted and the Commission was therefore privileged to receive a full report at first hand explaining the Automobile Insurance Act of Saskatchewan and its operation and administration.

    This report was presented to the Commission by a panel of witnesses consisting of Mr. J. O. Dutton, General Manager of the S.G.I.O., accompanied by John Green, Q.C., General Counsel, Norman Bortnick, C.A., Treasurer, H. W. Devine, Claims Superintendent and W. G. McInnis, Chief Automobile Underwriter. The panel was subjected to extensive cross-examination by various Counsel to the Insurance Industry and by Commission Counsel on all facets of the presentation, including in particular accounts and accounting methods. The cross-examination took seven days. The Commissioners were fully satisfied as to the propriety of the accounting methods and the validity of the very full accounts presented to it.

16. Ex. 289. California, Department of Motor Vehicles, Financial Responsibility Study Committee, Report to the Legislature, Saskatchewan Jurisdiction Report, Sacramento, 1967, pp. 43-46.

available in British Columbia justifies their marketing cost, and whether these costs should be charged to all buyers through a flat commission rate, or should be charged only against those seeking additional coverages, as they are in effect in Saskatchewan "extension" policies, are matters of serious concern.

Non-Monetary Costs

The dissatisfaction of tort claimants resulting from having to deal with another person's insurer came to light in the Commission's own research. There is very little doubt but that three party liability insurance is responsible for much of the antagonism directed at automobile insurance companies. This antagonism is the major non-monetary cost, to insurers, of the present system or approach to the problem of protection.

It is quite understandable that people would find dealing with insurers of their own choice, or that of a relative or host driver preferable to negotiating completely at arms length. The extent of the aversion to another party's insurer was, however, surprising. A suggestion of this initially came to light in an extensive Michigan Study published in 1964.[17] Research by the Commission in British Columbia confirmed that the present system does adversely affect the public image of automobile insurance companies. Thus, while opinions of the treatment received from medical doctors or from their own insurers were complimentary, attitudes towards the insurers of other persons were critical especially where more serious losses were involved. Table 9:2 summarizes the two extremes of opinion.

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17. Conrad, Morgan, Pratt, Voltz and Bombaugh, Automobile Accident Costs and Payments -- Studies in the Economics of Injury Reparation. University of Michigan Press, 1964. pp. 279-280.

TABLE 9:2

Opinions of Respondents in Instances Relating Specifically to Either a Fatality or to Serious Injury*

	Very Good or Good Opinion	Poor Opinion
Doctor	82%	4%
Own Insurance Co.	61%	22%
Other Insurance Co.	15%	35%

* Serious Injury is defined as Economic Loss sustained greater than $3,000 discounted at 7½%.

The specific attitudes expressed must be interpreted with care, bearing in mind that a fairly recent and undoubtedly unsettling experience was the subject under review. It may be suggested that to demonstrate a certain amount of hostility towards what (in a third party claim situation) is one's adversary, is understandable. The point is, however, that whether understandable or not such hostility represents a real 'cost' to insurers. The differences in outlook towards the respective groups should not be ignored.

APPENDIX TO CHAPTER 9

9:A Results of the Commission's Mutiple Regression Expense Analysis.

APPENDIX 9:A

CALCULATIONS AND DETAILED RESULTS OF THE COMMISSION'S MULTIPLE REGRESSION EXPENSE ANALYSIS

Specific results of the multiple regression analysis, respecting the automobile insurance line, excluding direct writers, for the years 1961 and 1965 are as follows:

A. Taxes, other than Income and Real Estate.

(i) For both years the constant term a_o was not significantly different from 0, a result to be expected since taxes are proportional to premiums.

(ii) For both years, on major lines, including automobile, regression coefficients were significant at the one per cent level.

(iii) The coefficient of determination indicated that, for the two years, 96 and 98 per cent of the variation in taxes paid between the companies in the sample were explained by the equation.

(iv) For both years, the marginal costs of premium taxes per dollar of net automobile premiums written were found to be $.0199, and $.0241. The timing of payment of these taxes and of reporting the taxes to the Federal Superintendent of Insurance probably accounts for any small difference between the reported marginal costs and actual tax figures. The standard errors of estimate were $.0007 and $.0005 respectively.

B. Net Profit Commissions.

(i) For both years, a_o was not significantly different from 0.

(ii) For both years, on automobile as well as fire, regression coefficients were significant at the one per cent level.

(iii) Low coefficients of determination, $R^2 = .58$, and .62, may be explained by the fact that this approach to compensation was used only by a fraction of companies. The explanatory variables used in this case were net premiums earned.

(iv) The marginal costs of net profit commissions per dollar of net automobile premiums earned were only $.0051 and $.0016 in the two years surveyed. The standard errors of estimate were $.0007, and $.0006 respectively.

C. General Expenses.[1]

(i) For both years, a_o was not significantly different from 0.

(ii) For both years, on major lines regression coefficients were significant at the one per cent level.

(iii) R^2 was found to be fairly high for both years, .87 and .94 respectively.

(iv) The automobile coefficient a_{10} suggested general expenses per dollar of net auto premiums earned of \$.1472 and \$.1430. The standard errors of estimate were \$.0094 and \$.0069.

D. Net Adjustment Expense[2]

(i) For both years, a_o was not significantly different from 0.

(ii) For both years, on major lines, regression coefficients were significant at the one per cent level.

(iii) R^2 was found to be fairly high for both years, .81 and .92. The unexplained variations reflect such factors as the use of salaried rather than independent adjusters, which has not been incorporated into this analysis.

(iv) The regression coefficients for automobile lines suggest marginal costs of adjusting claims, expressed on an annual statement basis to be \$.0433 and \$.0314 per dollar of losses incurred during 1961 and 1965 respectively. Standard errors of estimate were compiled as \$.0027 and \$.0016.

E. Commissions.

(i) For both years, a_o was not significantly different from 0.

(ii) For both years, on major lines, regression coefficients were significant at the one per cent level.

(iii) R^2 was found to be fairly high for both years, .91 and .95 respectively.

(iv) For both years, the marginal costs of commissions per dollar of net automobile premiums written were found to be .1169 and .1082. The standard errors of estimate were .0080 and .0072 respectively.

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1. After analysis of the data, it was concluded that net premiums earned should be used as the explanatory variable for general expenses.

2. As taken from the Annual Reports of the Federal Superintendent, this variable includes unallocated claims expense and allocated claims expense on all but third party liability. The resulting marginal cost estimates therefore require adjustment. The explanatory variables used were net losses incurred.

The foregoing commission figures represent the insurer's total business including renewals, commercial and fleet vehicle cover as well as private passenger business. Actual commissions indicated by the analysis are lower than the C.U.A. company rate of 15% on private passenger prior to the end of 1966 and the 12½% on private passenger applicable in 1967.

Although the foregoing results exclude direct writers, the Commission's analysis found that, when included, there was still no evidence of significant economies of scale.

The marginal costs of adjusting claims requires adjustment to render it comparable with the basis used in the Statistical Exhibit or "Green Book". Adjustment expenses may be divided into "allocated claims expenses", directly associated with a particular claim and "unallocated claims expenses", which include, for example, the indirect costs of running a claims department. For "Green Book" purposes, all allocated claims expenses are treated as losses, while unallocated claims expenses are treated (implicitly, since expenses are not reported) as expenses. However, for Annual Statement purposes, allocated claim expense for automobile third party liability claims is treated as part of losses, but allocated claim expense for other coverages is included in adjustment expenses, along with unallocated claim expense. In consequence, average automobile claims on an Annual Statement basis, is understated relative to average claims on a Green Book basis. The method used to compensate for this difficulty is illustrated in Table 9:A:1. The method assumes that allocated claim adjustment expense for other than liability coverage is 9.5% of average claims, other than liability. This assumption is validated by the Commission's study of a sample of 1964 claims. Direct writing companies are excluded.

TABLE 9:A:1

Calculation of Loss Adjustment Expense on a Green Book — Rating Formula Basis

	1961	1965
(1) Average Auto Claims per Company (annual statement basis)	$514,677	$1,045,730
(2) Adjustment expense factor	.0433	.0314
(3) Estimated portion of adjustment expense attributable to auto claims (1) x (2)	$ 22,286	$ 32,836
(4) Average claims, other than liability, per company	144,624	293,394
(5) Allocated claim adjustment expense on other than liability .095 x (4)	13,739	27,872
(6) Portion of adjustment expense not allocated (3) - (5)	8,547	4,964
(7) Claims plus allocated claims adjustment expense — Green Book basis (1) + (5)	528,416	1,073,602
(8) Unallocated claims adjustment expense as a percentage of claims plus allocated claims adjustment expense (6) ÷ (7)	1.617%	.4624%

The appropriate marginal cost figures, expressed as a fraction of one dollar in claims, for net adjustment expense are, therefore, $.0162 and $.0046.

In the interpretation of results, recognition was given to the fact that one expense item was expressed as a proportion of claims while others were measured against premiums. To determine insurer costs and to test the validity of the 63-37 and the current year's 67-33 loss-expense division used in the rating formula, it was necessary to compute the maximum loss ratio that would permit the average company to earn the 2.5% underwriting margin. The significance and appropriateness of this margin is examined when dealing with costs to insured.

The maximum permissible loss ratio may be determined by finding the level of

premiums needed to support one dollar of loss. To this hypothetical dollar of loss must first be added the expense factor calculated on a per claims dollar basis, for the two years, namely unallocated adjustment expenses of $.0162 and $.0046. To meet $1.0162 and $1.0046 in claims plus adjustment expenses, there must be provided amounts which, after deducting commissions, premium taxes, general expenses and the underwriting profit allowance, all expressed as a fraction of the premium, just leave the above two amounts.

Expenses expressed as a fraction of premiums for each of the years 1961 and 1965 appeared as follows:

TABLE 9:A:2

	1961	1965
Commissions	.1169	.1082
Premium Taxes	.0199	.0241
Net Profit Commissions	.0051	.0016
Underwriting Profit	.0250	.0250
General Expenses	.1472	.1430
TOTAL	.3141	.3019

Deducting these expenses from premiums, .6859 and .6981 respectively of the premium dollar are available to meet losses and the expenses calculated earlier. In order to pay the previously determined amounts for claims and unallocated loss adjustment expenses, total premiums collected had to be $1.4816 and $1.4390. The maximum permissible loss ratios which will provide one dollar out of these two premiums are 67.5 and 69.5.

CHAPTER 10

THE COST TO PERSONS WHO PAY INSURANCE PREMIUMS OF PROVIDING PRESENT FORMS OF AUTOMOBILE INSURANCE DETERMINED ON THE BASIS OF PAST AND CURRENT EXPERIENCE

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The costs considered here will also include some that are non-monetary. Review of the monetary costs to insureds would normally include some commentary on the price of subrogation and the burden of the Traffic Victims Indemnity Fund. With these items detailed elsewhere in this Report, two brief observations suffice here. Where the Provincial hospital or medical services are subrogated to the rights of the beneficiary under an insurance policy, then, based on the rate-making formula for each 62.8 cents collected by such services the insured automobile owner has, in addition, paid 33 cents in 'expenses' and 4.2 cents 'allocated claims expense' (for a total of $1.00).

In the case of T.V.I.F., the significant cost of maintaining the Fund is borne entirely by the more responsible motorists of the Province. The Commissioners note that, in large measure, such insureds (as a group) are paying the price of having compulsory automobile insurance in British Columbia limited essentially to minors.[1]

Other monetary costs to be considered include:

(i) insurance company expenses
(ii) those arising from the application of differentials in the setting of rates
(iii) those arising from weaknesses in the classification structure
(iv) repair costs
(v) premium financing
(vi) insurance company profits

Non-monetary costs facing the consumer, and to be appraised, include those arising from:

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1. Motor-Vehicle Act, Section 18 (7) (a).

(i) frequent and inaccurate rate revisions
(ii) the lack of market, and
(iii) the Assigned Risk Plan

Each of the itemized costs will be analyzed in some detail. While not an exhaustive list, it embraces those costs which are paramount and are borne by insured persons.

Monetary Costs -- Insurance Company Expenses

The Commission is unimpressed by the system of allocating expenses between risks based solely on the expectation of loss or pure premium. To illustrate the consequence to consumers, a 22 year old male insured in Vancouver who drives for pleasure and has driven for several years without any claim against his insurance could pay $184 for minimum limits on third party liability.[2] Collision cover with a $100 deductible on a 1967 Ford Custom 500 would require a further $212 for a total of $396. A 26 year old insured in Victoria, with the same driving record, could pay $43 plus $41 ($84) for identical protection. The former contributes about $121 towards expenses, the latter $26 (30.5 of the 33% expense ratio). The agent's commission on the former at 12½% is almost $50 while in the latter case under $11. Ignoring the difference in age in the above example, the total premium, for a 22 year old insured in Victoria, would be $258 and the agent's commission $32 as against the $50 commission in Vancouver. The consumers are given no choice here. They are presently required to accept and pay the "going price" for the services of an agent (with the exception of the direct writing company). Nevertheless, even with direct writing companies, the point that all expenses are wrongly considered to vary directly with premium amount is still valid. Logic dictates an approach which would charge premiums calculated

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2. Based on 1967 rates.

as though expenses were more nearly equal, thereby reducing the unequal loading imposed by present practice on those groups of insureds whose pure premiums are already high. The Report of an Australian Royal Commission is in agreement with this conclusion.[3] It is not necessary that all expenses, including commissions, be considered as variable with premium amount. In several jurisdictions of the United States lower commissions are already paid on certain risk classes, while proposals have been advanced for replacing percentage loadings for premium taxes, and like items, by a flat dollar charge per policy to yield like total revenues.[4]

While change along these lines involves a minimum of inconveniences in rate-making it could provide significant relief to groups where the need for it is greatest, that is, where pure premiums are of themselves already quite a burden. The Commission is of the opinion that this change or one of a similar nature should be incorporated as part of any overall revision.

Monetary Costs -- Those Arising from the Differential Complex

The Commissioners have concluded that the present two-stage method of arriving at the differential complex is likely to result in unfair discrimination for reasons hereinafter set out. It is common knowledge that accident frequencies are higher in larger urban centres than in rural areas and that seventeen year olds are a greater risk to insurers than thirty year olds. Insurance companies in distributing their costs as fairly as possible among the insured motorists must, of necessity, discriminate between the several classes of insured. This

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3. State of Victoria, Commonwealth of Australia, Report of the Royal Commission on Third Party Compulsory Insurance, 1959, p. 18.

4. See for example, H.W. Snider, Readings in Property and Casualty Insurance, Homewood, Richard D. Irwin, 1959, p. 273.

Commission is therefore concerned only with unfair discrimination, and the resultant burden to various groups of insureds arising through the application of differentials.

The procedure used in constructing the differential complex has already been described. The technique can, under certain conditions, lead to incorrect differentials. Such errors are best depicted numerically. One may consider the simplified case where there are assumed two age-use classes designated A and B and two accident record classes, designated 0 and 1. As in actual practice, the probability of a claim is affected by both the age-use class and driving record, but the ratio of the probabilities for class 1 to class 0 is not independent of the age-use class. Loss cost per claim is assumed to be $500. The assumed probabilities of loss, the resulting pure premiums and the appropriate differentials are set out in Table 10:1.

Table 10:1

LOSS PROBABILITIES, PURE PREMIUMS & DIFFERENTIALS
(All data are assumed and for purposes of illustration only)

	A0	A1	B0	B1
Probability of Loss	.05	.10	.08	.12
Pure Premium	$25	$50	$40	$60
True Differentials	100	200	160	240

It is further assumed that there are 50,000 insureds in class A0, 10,000 in A1, 30,000 in B0 and 100,000 in B1 and that the initial premiums are $100 per car irrespective of class, so that the amounts collected are as follows:

A0 $5 million
A1 $1 million
B0 $3 million
B1 $10 million

Based on probabilities set out in Table 10:1, at the end of the first year,

the loss costs are $1,250,000, $500,000, $1,200,000 and $6,000,000 for AO, A1 BO and B1 respectively. Present practice is to calculate age-use differentials first, using a basic driving record category in each age-use class. The computations are outlined in Table 10:2.

Table 10:2

Calculation of Age-Use Differentials

Class	Premiums Earned ($000)	Losses Incurred ($000)	Loss Ratio	Differential Used	Differential Indicated
A - 0	5,000	1,250	.25	100	100
B - 0	3,000	1,200	.40	100	160

Driving record differentials are then calculated by grouping all "0" drivers in one class, all "1" drivers in another, as shown in Table 10:3.

Table 10:3

Calculation of Driving Record Differentials

Class	Premiums Earned ($000)	Losses Incurred ($000)	Loss Ratio	Differential Used	Differential Indicated
0	8,000	2,450	.306	100	100
1	11,000	6,500	.591	100	193

Multiplication of these two sets of indicated differentials produces the following calculated differentials and new premiums:

	Calculated Differential	True Differential	Premiums [5]
A - 0	100	100	$37.50
A - 1	193	200	72.00
B - 0	160	160	60.00
B - 1	308	240	115.00

5. The loss incurred by the A-0 group of $1,250,000 is spread over 50,000 (footnote continued on next page).

If losses by classes are held to continue unchanged, computations based on experience of the following year and at the new rates yield the following calculated differentials to be contrasted with the true differentials:

	Calculated Differentials	True Differentials
A - 0	100	100
A - 1	153	200
B - 0	160	160
B - 1	245	240

While the A - 0 and B - 0 differentials are correct, the A - 1 differential is substantially understated, and that for B - 1 is overstated. Unlike procedures used in many areas of the United States the two stage method of calculating differentials used in Canada is incapable of producing more than a single driving record differential to be applied uniformly across classes, whether it fits the facts or not.[6]

Theoretical illustrations aside, the extent to which use of an across-the-board driving record differential, insensitive to relationships between age-use and driving record differentials, actually affects rate relativities depends on the extent to which differentials as presently derived differ from those calculated more accurately. Insureds in classes where the differential is too high are overcharged relative to drivers subjected to one that is too low. To focus on such discrimination, Table 10:4 was prepared.

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5. (continued from previous page)

   insureds yielding a pure premium of $25 for the A - 0 insured. Assuming a loss ratio of .667 yields a premium of $37.50, the calculated differentials are then applied to the other classes.

6. A single differential with a separate category for each combination of variables is used in the U.S.A.

Table 10:4

Sampling of Apparent Over or Under Estimation of Premiums due to Use of Flat Driving Record Differentials 1966 B.I. and P.D.

Class	Age-Use Differential Used	Driving Record Differential Used	Calculated Driving Record Differential	Used as % of Calculated
A 3	75	100	100	100
2	75	116	140	83
1	75	131	175	75
0	75	155	193	80
B 3	100	100	100	100
2	100	116	133	87
1	100	131	145	90
0	100	155	173	90
E 3	185	100	100	100
2	185	116	120	97
1	185	131	107	122
0	185	155	132	117
G 3	155	100	100	100
2	155	116	122	95
1	155	131	110	119
0	155	155	135	115

Differentials actually used are expressed as a percentage of those calculated.[7] An absence of discrimination would require that the underlying age-use differentials be correct and that the percentage in the last column of Table 10:4 approximate 100. To the extent that these are over 100, the relevant class is being overcharged, and to the extent that they are below 100, the class is being undercharged.

Some slight deviations from 100 are to be expected and are tolerable in practice. It is clear, however, that deviations indicated are not minor and repre-

7. See Appendix 10:A for a detailing of the calculation.

sent a serious departure from the ideal of non-discrimination. It would appear that class AO insureds are being undercharged by 20% while EO drivers are overcharged by 17%. Relative to the AO driver, costs to the EO driver reflect an overcharge of 46%. The possibility of offsetting errors, while recognized, cannot be accepted as a basis by which the public interest in non-discrimination may be protected.

The observed range of percentages in the final column contradicts the hypothesis that there is a vigorous competition producing identical prices within a class.[8] The range does, however, indicate that competition is not strong enough to produce proportionality between costs and premiums across the rate structure.

There is of course, some limited competitive pressure on prices within the industry. A contrasting of 1966 I.B.C. rates for several classes with those of the Allstate Insurance Company, a leading deviator, revealed this. Allstate's classification scheme differed slightly, principally in being more finely divided. In the comparison, use was made only of those Allstate classes which were most nearly the equivalent of classifications recognized by the I.B.C. Where Allstate had more restrictive classes with lower rates, these were not used. Comparisons were limited to Territory 1, which includes for example, the Cities of Vancouver and New Westminster.

Analysis revealed that where I.B.C. rates were, by the Commission's calculations, apparently excessive, they tend to be higher than the corresponding

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8. The hypothesis was put forth in the testimony of Dr. H. L. Purdy, witness for the All Canada Insurance Federation, 46/5333.

Allstate rate and that where they appear inadequate, they tend to be lower than the corresponding Allstate rate. This is not to imply that Allstate rates are necessarily correct. It does imply that they are sufficiently lower on the relatively over-priced business, and sufficiently higher on the under-priced business to shift a disproportionate share of under-priced business to companies using I. B. C. "illustrative" rates, thus producing a better loss ratio on the share that is retained. As would be expected, Allstate is a profitable operation.[9] Such competitive pressure, but on a very much broader scale, could operate to produce premiums proportional to costs, thereby eliminating unfair price discrimination and opportunities for deviations of the type discussed.

The interaction between driving record and age-use differentials is the only one investigated in any depth by the Commission. A similar interaction may well exist between age-use and territorial differentials, or elsewhere. It is the Commissioners' view that all undesirable instances of price discrimination may be eliminated in several ways, but notably through the prodding of meaningful competition.

Monetary Costs - Those Arising from Weaknesses in the Classification Structure

It is quite evident that any choice of classification systems for rating purposes must be pragmatically-based compromises which attempt to resolve conflicting objectives. In the interest of equity, the classification of vehicles is nevertheless one area in need of improvement.

The categorization of automobiles, already described, is a significant factor

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9. Ex. 338.

in the determination of collision and other physical damage premiums, but is not used for third party liability rating purposes. The case for such classification rests on the premise that it is more costly to repair a Cadillac than a Volkswagen. Vehicles are assigned to classes on the basis of their original list price and age. This approach would certainly be reasonable if repair costs were proportional to list price, and if accident frequency were identical for all vehicles otherwise similarly classified. Although the cost of the parts component of repair costs is likely to be proportional to list price, the same cannot be said precisely for the labour cost component. There is fragmentary evidence available suggesting that some vehicles are more expensive to repair than others in the same price class because of design features. Further, there appears to be abundant evidence that some vehicles are harder to control than others and thus are more likely to become involved in collisions or single-car accidents.[10]

Not only is the assignment of vehicles to classes arbitrary, in that it ignores these factors, but the premium differentials between classes are likewise arbitrary in that they are based on average list prices, rather than on experience statistics. There is an obvious problem here in that new models would have to be classified on a fairly arbitrary basis in the absence of experience. This difficulty is easily overstated since the majority of cars on the road is other than the current year's models, and a gain in the relevance of classification of cars over a year old would seem to be worth achieving. Further, since many annual model changes involve little more than a redesigning of the grill

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10. R. Nader, Unsafe at Any Speed, New York, Parkel Books, 1966, Ch. 1; and J. O'Connell, "Taming the Automobile" North Western University Law Review Vol. 58 (July-August 1963) pp. 299-399.

and the relocation of chrome, experience statistics would be of value in categorizing new models. Rates would then be more relevant, and the gathering and publication of loss data would put pressure on manufacturers to avoid styling which leads to disproportionate repair costs. Changes in design which lead to increases in accident frequency and severity would also be avoided. At the moment, such styling simply leads to across-the-board premium increases.

Consideration of the problems of vehicle classification raises the question of whether vehicle class should have been considered in setting third party liability rates. If certain vehicles are more likely to go out of control than others, or cause more damage to others when involved in accidents, this is likely to affect not only the level of resulting collision claims but the level of third party claims as well. Similarily, there is evidence that passengers in certain types of vehicles are more likely to be severely injured or killed than passengers in other types, a factor which must affect the size of passenger hazard claims.[11] A third party rate structure which took appropriate account of vehicle type would have permitted such risks to be written at appropriate rates and ended the subsidization of owners of dangerous vehicles by other insureds implicit in the present rate structure.[12] A system of assessing such costs against the owners would have tended to discourage ownership and elicited the desired response from manufacturers.

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11. J.K. Kihlberg, E.A. Narragan, B.J. Campbell, Automotive Crash Injury in Relation to Car Size, Ithaca: Cornell University, 1964.

12. Some reference to the industry's awareness of the problem and its approach to sports cars was made by Mr. Parkin of the All Canada Insurance Federation Panel. 56/6643-5.

It is the Commissioners' view that once statistics have been gathered rating classifications must, in any future approach to protection, reflect not merely the severity of physical damage to the vehicle itself but also the frequency of such, together with the severity and frequency of bodily injury occasioned by the vehicle.

An example of inequities which may arise otherwise, follows:
Suppose an insured switches from a sedate family sedan to an elaborate convertible. The potential cost of any accident involving him is increased. A portion of the increase, reflecting the probability that it will be his fault, or possibly be assessed against his physical damage coverages, is borne by the insured. The balance of the cost is passed on to the rest of the insured community who have no control over the decision. The insured with the new expensive car is, in effect, not paying the full social cost associated with his change of car. Were he required to do so he might not make the switch. If the full insured costs were being borne under a two party contract (with none being passed on, to be borne as a loss under a third party liability contract, and thus paid for by another group of insureds) the insurer would be more alert to see that the premium paid by its immediate insured reflected the additional hazard created by his decisions of the type referred to.

Imperfections inherent in the use of nine rating territories within the province should be commented on, in that this too gives rise to inequities.[13] It may be appropriate to question whether certain of the districts might not conveniently be merged in view of minimal differences indicated in statistics and

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13. Reduced to 7 in 1968.

rates, but the problem is more basic than this. Territorial classification is based on where the car is generally kept, rather than where it is driven. As a consequence, unfair discrimination between residents of relatively low-rated suburbs, who do or do not commute daily into higher-rated urban areas to work, is inevitable. Further, as residents of the province continue to expand their driving and travel, damage and costs attributable to unsafe roads and driving conditions (such as traffic density) of one locality settle increasingly on insureds housing the cars involved in the accident (in other territories). Moreover, as territories are rated as to accident-prone experience, it might well be assumed that an accident-free driver in a territory with high accident experience is a better driver, on average, than an accident-free driver in a territory with low accident experience. Yet the accident-free driver in the high accident experience territory will be charged the higher premium.

While use of where the vehicle is driven as the indicator of exposure would be preferable, administrative difficulties are obvious. In the interest of fairness it is therefore the view of this Commission that territorial classifications in British Columbia should be as broad as possible. Under the new approach to protection being recommended at another place in this Report a single classification, in addition to reducing costs, would eliminate more inequities than it creates.

Driving record differentials are used in an effort to arrive at an "experience rating" of the individual. Notwithstanding that, as hereinafter referred to, it consists of a system of demerits based on driving records, it is commonly referred to as "merit rating" and is so referred to in this chapter. 'Merit rating' has given rise to considerable controversy, particularly in the United

States. The I.B.C. approach, with its four categories, has been described. A more complex scheme having seven categories which depend on the length of time a licence has been held, and on the number of claims within a five year period, is used by at least one insurer. Other variations are also to be found.

The Commissioners see, as one defect of the present system, the treatment of insureds who have only limited driving experience. A newly licensed driver today is rated on the same basis as an insured who has been responsible during the year before for an accident involving payments under the policy. There is no evidence before the Commission validating such severe rating and it should not continue.

It is noted also that insurers fail to take account fully of convictions, except through the Assigned Risk Plan. This neglect, also, should be corrected.

Looking at merit rating more closely, on a one year basis, both merit rating and failure to merit rate are discriminatory. The former is discriminatory because it may charge different premiums to persons whose true pure premiums are identical, notwithstanding that in that one year their experiences may be markedly different. The latter is so because it charges identical premiums to persons whose true pure premiums differ. Over longer periods, merit rating appears as a device making average premiums approximate true loss costs more closely. Consider an individual in an age-use classification where the basic class 3 premium is $100. On the basis of the 1967 relativity table an accident will cost him $134 by way of total increase in premiums over the next 3 years.[14]

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14. Similarly in 1966 the total increase in the 3 years would be only $102, the change in differentials which caused such being one of the several changes instituted by the industry during the course of this Inquiry.

Over a 20 year period the insured would pay a total basic premium of $2,000 (20 x $100) plus $134 for each accident in which he is involved, on the assumption that there is no overlapping of penalty periods. His expected premiums may be related to his accident probability (as shown in Table 10:5) and, as indicated, the merit rating plan does introduce a positive association between claim relativity and premium relativity.

Table 10:5

Effect of Merit Rating Plan on Expected 20-year Premiums of Drivers with Different Probabilities of Loss

Claim Relativity	Probability of Claim in one year	Expected Claims 20 years	Penalties	Basic Premium	Total Premium	Premium Relativity
100	0.05	1.0	134	2000	2134	100
120	0.06	1.2	161	2000	2161	101
140	0.07	1.4	188	2000	2188	103
160	0.08	1.6	214	2000	2214	104
180	0.09	1.8	241	2000	2241	105
200	0.10	2.0	268	2000	2268	106
300	0.15	3.0	402	2000	2402	113
400	0.20	4.0	536	2000	2536	119

The relationship is attenuated, however, in that a quadrupling of claim relativity leads to a maximum 19% increase in premiums paid. To the extent that much of claim relativity is accounted for by age-use classes, merit rating as such must under-account for it if premiums for ultimate rating classes are not to vary excessively. What is, of course, more to the point is whether merit rating is worth bothering with if it can produce no more than a nominal differential over twenty years between two individuals whose true claim relativities differ by a factor of four. It is the Commission's view that merit rating, as the only aspect of classification that treats the insured on his own individual merits, has considerable psychological value for that reason, and therefore

should be retained. However, no significant increase in the number of classes is warranted.

For reasons set out in Appendix 10:B, it is clear that more precise prediction of accident rates, and therefore more accurate establishment of premiums, would be possible, at least in theory, by using both previous accidents and previous convictions in the predicting formula or in the rate-making structure. More elaborate models taking account of numbers of accidents and of convictions would appear to be better still, for similar reasons. There are limits to such elaboration imposed by the need to preserve credible samples within individual rating classes. However, it would be highly desirable to distinguish for rate-making purposes individuals with two or more accidents or two or more convictions from those who have erred only once.

One final weakness in classifications that may give rise to inequitable costs to insureds requires comment. As of 1967, the Insurance Bureau of Canada took the somewhat belated step of subdividing the old classification for single male insureds under twenty-five into four new classes, J, K, L, and M. Rates for these new classes have been made on a judgment basis supplemented by statistics from the United States, Saskatchewan and elsewhere.[15] The Commission is concerned that insureds aged 31 or over may well be incurring costs through inordinate subsidization of those between the ages of 25 and 30. Information provided to the Commissioners by the Saskatchewan Government Insurance Office and by the Office of the Superintendent of Motor Vehicles in British Columbia revealed accident frequencies of different age groupings as follow:

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15. 52/6076.

Table 10:6

Accident Frequencies (per thousand) by different age groupings
Saskatchewan & British Columbia

Age	Saskatchewan Per Thousand	B.C. Per Thousand
16-20	155*	151*
21-24	169	142
25-30	119	98
31-35	90	86
36-40	81	81
41-45	71	79
46-50	66	77
51-55	58	77
56-60	54	71
61-65	53	66
66-69	52	56
70-75	46	49
76+	43	51

* Inasmuch as the population of sixteen year olds is increasing, the accident frequency for these new drivers is understated. In addition, care must be exercised in interpreting figures for age groups over 65 because these populations increasingly include people who may have died during the year.

Monetary Costs -- Repair Costs

Motor vehicle repair costs initially paid for by insurance companies, and subsequently passed on to the insured in the form of premiums charged, reflect at least three components, namely:

(i) the hours of labour estimated to be involved
(ii) the costs of parts to be replaced
(iii) the chargeout costs per hour of labour involved

During 1966, the dollars expended by insurers in British Columbia on the repair of vehicles was the considerable portion of between 35% and 40% of the $74 millions of premiums written.[16]

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16. This is conservatively stated. Assuming 67% of the premiums is devoted to claims it represents at least 50-60% of the moneys paid out in respect of claims.

It is the Commission's view that insurers have been conscientious in controlling the hours of labour estimated for various repair jobs, and in this regard insureds are being well represented by insurers, with the premiums turned over being conserved.

Vehicle classification has been commented on and the Commission is satisfied that when automobiles are no longer categorized, for collision and other physical damage coverages, on the basis of their original list price, but rather on a basis which emphasizes the costs of repairing various car models, manufacturers and importers will give greater attention to the cost of parts.

The situation with respect to the hourly costs charged by repair shops is however an unfortunate one. With millions of dollars involved, the failure of insurance companies in Canada to examine carefully such chargeout costs is inexplicable. It appears that the costs, being fairly uniform to all insurers, are simply passed on to insureds in the form of higher premiums. Table 10:7 traces apparent relationships between union wages of body shop mechanics (exclusive of fringe benefits) and the hourly charge-out rate in Vancouver.

Table 10:7

Body Shop Mechanics Hourly Wage and Approximate Charge-out Rates in Vancouver

	Hourly Wage (exclusive of fringe benefits)	Charge Out Rate	
April 1960	$ 2.45	1960	$5.50
April 1961	2.45	1961	5.50
April 1962	2.50	1962	5.50
April 1963	2.55	July 1963	6.00
July 1964	2.70	Aug. 1964	6.50
April 1965	2.82	July 1965	7.00
Dec. 1965	2.91	Dec. 1965	7.00
Aug. 1966	3.00	1966	7.50-8.00
April 1967	3.25	1967	8.00-9.00

Evidence at the hearings suggested that, when fringe benefits and other overhead are included, a markup of at least 100% is applied to arrive at the charge-out rate.[17] In considering the data it must be borne in mind that the repair shop business is labour rather than capital intensive.

Concern here is not necessarily with the impropriety of charge-outs, and the Commission did not attempt to draw any conclusions in this regard. There was not sufficient evidence before the Commission on which to reach a firm conclusion as to whether the charge-out rates were either excessive or inadequate. What is veaxatious, however, is that the insurance industry, despite available evidence from abroad of insurer initiative and success in reversing the unfavourable trend in automobile repair costs has apparently, in British Columbia at least, taken no steps to accomplish this. Witness the following evidence:

> PEAKE: We have made a study to some extent in relation to what the various garages charge, and while the average is double what they pay their repair men, some garages charge a little more. The price varies from seven to eight dollars an hour. I think the going rate was -- the final rate for the repairman was $3.50 an hour.
> Commisioner LUSZTIG: Have you undertaken any analysis as an insurer, a major insurer in this province, as to the basis of that markup or increment?
> A. No, we haven't.[18]

An outstanding example of insurance company initiative and the use of countervailing power to minimize repair costs was provided by Mr. Dag Wedmalm, Vice-President of the Folksam Group of Sweden. The Commission is grateful for the co-operation it received from Mr. Wedmalm and notes that the British Insurance Association recently had representatives in Sweden studying Folksam's activities in the automobile repair field.

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17. 9/1055 and 10/1156.

18. 62/7308-7309.

Working from the premise that, unlike most other endeavours, the automobile repair business had not offset cost increases with greater efficiencies, competing Swedish insurers set about co-operating in the interest of reducing repair costs. Insurance companies recognized that failure to do so could result in premiums so high that consumers would feel they could no longer afford collision cover. The German experience, where only 10% of the drivers have collision cover, was indicative of this.

On January 1, 1964, Folksam bought a garage to develop modern automobile repair methods. Exactly one year later, the automobile repair committee of the Swedish Insurance Companies was formed at the instigation of Folksam. By October 1965 the Folksam garage had lowered its price of automobile body spray painting by up to 40%. The Motor Traders' Central Organization promptly matched the reductions despite earlier announcements that reductions were impossible. The result was a substantial saving to insureds.

The industry next turned its attention to the cost of spare parts and discussions were held with general agents and manufacturers. As a consequence of the industry's efforts, price reductions on spare parts ranging up to 28% were negotiated in addition to which the possibility of producing adequate parts at a lesser cost was enhanced. Although these examples refer only to price reductions on certain spare parts they are indicative of what initiative on the part of the insurance industry can bring about.

In England, the National Board for Prices and Incomes, Report #37, August, 1967, entitled Costs and Charges in the Motor Repairing and Servicing Industry included the following commentary on page 37 in the Report's summary and recommendations:

129. The insurance companies, because of the very large number of dealings that they have with the garage trade, are in a much stronger position than the ordinary car owner to select and deal with those garages that charge reasonable prices and provide the best quality of service. Insurance companies generally made losses on their motor business in 1966, the main reason being the rising cost of repairs: they are now talking of increasing their premia to cover these losses. Before taking such action they ought to be required to demonstrate that they are prepared to use their considerable weight with the garage trade in ensuring that repairs are carried out with the maximum efficiency and economy.

131(2) . . . The Board of Trade should require insurers to demonstrate, before any increase is made in the premia for motor insurance, that they are prepared to play their part in ensuring that repairs are carried out with maximum efficiency by:-
(a) giving prompt consideration to the selection of garages, and of entering into contracts with those so selected, for carrying out the more common repair jobs;
(b) collaborating with the trade in setting up one or more workshops for developing, and making more widely known, advanced techniques of repair.

In the United States some companies have established their own repair depots, and drive-in appraisal centres are to be found in Saskatchewan. One company operates drive-in appraisal centres in Quebec. In France it is worth noting that in his 1965 Annual Report on Insurance Companies, the Minister of Finance cautioned that only a reduction in the frequency of accidents and a limit on their cost obtained by effective control of the fair price of repairs to damaged vehicles can have a decisive influence on the price of automobile insurance.[19]

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19. Rapport du Ministre de L'Économie et des Finances au Président de la République, Activité des Sociétés D'Assurances et de Capitalisation, 1965, p. 27.
The text reads in part:
. . . Il se confirme que seule une diminution de la fréquence des accidents et une limitation de leur coût obtenue par un contrôle efficace du prix reél des réparations des voitures accidentées pourrait avoir une influence decisive sur le prix de l'assurance automobile.

The following excerpts from mimeographed material provided by the Committee of the Swedish Motor Insurance Companies provides an apt summation:

> . . .One consequence of the activities on the part of insurance companies in bringing down damage repair costs is that we sometimes find ourselves in opposition to the motor trade, which sell the majority of our car insurance policies. In such cases it is important to remember that our real objective is to negotiate on behalf of our policy holders -- the car-owners -- and an interest in sales should therefore not present an obstacle to measures aimed at reducing costs. We are purchasers of services and therefore we must make sure that we select the best and the cheapest source of supply as representatives of our policy holders it is quite obvious that we must act in this way.
>
> Problems in the field of car insurance are not confined to Sweden alone. In the majority of countries car insurance companies operate under unfavourable economic conditions. Certainly it is always possible to raise premiums but this will not solve our problems in the long run. Instead we must ensure that costs are not permitted to be unreasonably high.[20]

<u>Monetary Costs -- Premium Financing</u>

The total cost to persons who pay insurance premiums may include financing charges. There are several methods of financing premiums. In some instances, individual insurance companies will have their own premium finance plans. The primary function of these plans is to support the marketing programmes and the customer service objectives of the parent insurance company. Agents may also offer their own finance plans to customers wishing this service. Financing by agents is made possible, to a significant extent, by the provision that agents have 60 days in which to remit the premium to the company. A third alternative is CAFO Ltd., a company specializing in the financing of insurance premiums. Finally, consumers may of course finance premiums through a bank or finance company.

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20. A copy of the complete memorandum relating to experiences of the Committee of the Swedish Motor Insurance Companies was filed by the Co-operative Fire and Casualty Co. as Ex. 146K.

Given the variety of financing methods available, the extent to which people do finance their automobile insurance is unknown. The Assigned Risk Plan aside, the Commissioners, conclude from the evidence that premium financing charges are reasonable.

The focus of attention under this section is directed at premium financing for those insured under the Assigned Risk Plan. At the 1963 annual meeting of the Assigned Risk Plan, subscribers passed the following resolution:

> BE IT RESOLVED that the governing committee of the Assigned Risk Plan be authorized and empowered to do all acts and things necessary to provide and implement a method for the instalment payment of premiums and to act on behalf of subscribers in respect thereto.[21]

The only company in 1963 apparently willing to finance premiums for A.R.P. insureds was CAFO, a company controlled by the Continental Insurance Company.[22] Consequently, the Plan Committee on March 8, 1963 adopted the following resolution:

> WHEREAS, Subscribers consider it desirable to provide a method for the instalment payment of premiums, be it RESOLVED THAT:
>
> 1. CAFO Limited, hereinafter called CAFO, be and hereby is appointed and designated by the British Columbia Automobile Assigned Risk Plan to provide such facilities.[23]

The Assigned Risk Plan Premium Instalment Contract specifically mentions CAFO as assignee, thus substantially capturing applicants as customers of CAFO. During 1965 approximately 26% of the business written through the Assigned Risk

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21. Ex. 83, p. 8.

22. 18/2151-2.

23. Letter from CAFO to the Commission dated November 25, 1966.

Plan was done on an instalment premium contract basis. The average A.R.P. premium financed in 1965 was approximately $199, whereas the average premium on the total plan was only approximately $113.[24] Table 10:8 presents a detailing of the CAFO-A.R.P. finance charges for premiums between $100 - $300. For premium amounts in excess of $999 finance charges are determined after reference has been made to the Assigned Risk Plan office. The CAFO-A.R.P. instalment payment schedule requires a down-payment of approximately 30% and repayment on a monthly instalment basis. A seven monthly instalment basis is the only available basis under the CAFO-A.R.P. plan. Other plans, such as the CAFO plan available to other than A.R.P. insureds, permit a greater degree of flexibility in adjustment of the number of monthly payments to meet the insured's particular needs.

Under the Small Loans Act,[25] the maximum allowable charge for loans under one year is 2% per month on the unpaid principal balance not exceeding $300. It is the Commissioners' view that no possible justification is to be found for the excessive finance charges by CAFO on A.R.P. business. The financing of automobile insurance premiums is a somewhat unique venture in that the creditor is able to protect himself against loss. In the case of A.R.P. business the monthly repayment schedule, quite apart from the down-payment used, is so set that the creditor receives payments before such sums are actually earned by the insurance company. Thus, in the event of default by an insured, the creditor, to secure his own position, need simply initiate cancellation procedures to avoid most of the costs other lenders face when there is default.

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24. 18/2158.

25. R.S.C. 1952, C. 251, as amended, Section 3(2). Section 3 of the Act is reproduced in Appendix 10:C.

Table 10:8

Charges and Percentage of Applications by Premium Range
Assigned Risk Plan Instalment Financing - 1965

Premium Over-Through	Principal Balance	Service Charge	Balance Due	Charge Range (%)	% of Applications
Under 100	-	8	-	78.2-41.2	11
100 - 105	70.10	9	79.10	44.0-25.1	51
105 - 110	73.60	9	82.60		
110 - 115	77.10	9	86.10		
115 - 120	80.60	9	89.60		
120 - 125	84.10	9	92.10		
125 - 130	87.60	9	96.60		
130 - 135	91.10	9	100.10		
135 - 140	94.60	9	103.60		
140 - 145	98.10	9	107.10		
145 - 150	101.60	9	110.60		
150 - 155	105.15	10	115.15		
155 - 160	108.65	10	118.65		
160 - 165	112.15	10	122.15		
165 - 170	115.65	10	125.65		
170 - 175	119.15	10	129.15		
175 - 180	122.65	10	132.65		
180 - 185	126.15	10	136.15		
185 - 190	129.65	10	139.65		
190 - 195	133.15	10	143.15		
195 - 200	136.65	10	146.65		
200 - 205	140.15	10	150.15	24.5-16.6	29
205 - 210	143.65	10	153.65		
210 - 215	147.15	10	157.15		
215 - 220	150.65	10	160.65		
220 - 225	154.15	10	164.15		
225 - 230	157.65	10	167.65		
230 - 235	161.15	10	171.15		
235 - 240	164.65	10	174.65		
240 - 245	168.15	10	178.15		
245 - 250	171.65	10	181.65		
250 - 255	175.15	10	185.15		
255 - 260	178.65	10	188.65		
260 - 265	182.15	10	192.15		
265 - 270	185.65	10	195.65		
270 - 275	189.15	10	199.15		
275 - 280	192.65	10	202.65		
280 - 285	196.15	10	206.15		
285 - 290	199.65	10	209.65		
290 - 295	203.15	10	213.15		
295 - 300	206.65	10	216.65		
300 - 400	-	11	-	17.9-13.8	5
400 - 500	-	12	-	14.7-12.0	3
500 - 999	-	12.45-27.70	-	12.2-13.7	1

Source: Assigned Risk Plan Brief, Ex. 83, Appendices XII - I and XVIII - 10.

Monetary Costs -- Insurance Company Profits

An assessment of the reasonableness of insurance company profits generated from their automobile coverages is necessary to complete the review of monetary costs. Either excessive or inadequate profits would, of course, indicate that persons paying insurance premiums are not being properly charged.

There is evidence that, in large measure, the underwriting losses experienced in 1963-64 were the result of a decision by the industry not to follow the indicated trend. It is therefore likely that, whatever the validity of a 2.5% underwriting profit allowance, more satisfactory trend forecasts would permit it to be earned, on average, in future years.

While a number of possible standards for judging the appropriateness of profit allowances are available, most are quite unsuitable.

One possible basis for evaluating the allowance is by comparison with a variety of allowances permitted by State Insurance Departments in the United States. As there are valid reasons why underwriting profits should be lower in Canada, such a comparison is hardly fruitful. Indeed, the United States expense allowances appear to be as arbitrary in their origin as the Canadian, being in many cases little more than a compendium of previous rating bureau practices which State Commissions have been persuaded to continue. This Commission has also reviewed an N.A.I.C. report[26] on the subject of underwriting profits and the

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26. United States, National Association of Insurance Commissions, Casualty and Surety Committee, Report of the Sub-Committee on Cost and Profit Factor Study of Casualty Lines, Chicago, April 17, 1952.

reply submitted by the National Bureau of Casualty Underwriters.[27] Their content provided little to justify acceptance as standards.

It is a known fact that profits, as a percentage of sales, are extremely variable as between industries. Thus, it is impossible to determine whether insurers' theoretical underwriting profit should be compared with the 10.1% earned by iron and steel companies or the 1.3% earned by car dealers.[28] It is also well known that profit margins tend to vary inversely with capital turnover ratios, being high in capital-intensive industries and low in industries with high turnover. The steel industry turns over its shareholder's equity 1.3 times annually, while car dealers turn theirs 11.8 times.

Turnover and profit margins are related by the formula:

Profit Margin x Turnover = Return on Equity

The steel industry turning its equity over 1.3 times with a profit margin of 10.1% achieves a rate of return on equity of 13.4%, while food wholesalers obtain exactly the same return on their shareholders' equity by turning it over 10.5 times, picking up a profit margin of 1.3% each time. Rates of return for these and other industries are found in Table 10:9.

Return on shareholders equity is somewhat more variable than return on total investment because of the differences between firms and industries in their

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27. Memorandum to The National Association of Insurance Commissioners in support of the Uniform Provision of 5% for Underwriting Profit, June 11, 1952.

28. All data are based on information in the Department of National Revenue's Taxation Statistics, 1965, Ottawa: Queen's Printer, 1966.

reliance on senior securities including borrowed funds. Use of borrowed funds typically increases both returns and the degree of risk to the shareholders. In the absence of such abnormal conditions as a monopoly position or locked-in capital, rates of return on shareholders' equity will reflect differences in risk arising out of operations compounded by trading on equity. As long as appropriate account is taken of these differences in risk, it is as reasonable to compare rates of return on shareholders' equity as it is to compare those on total investment.[29]

Table 10:9

Before Tax Returns on Shareholders' Equity
Selected Industries, 1963*

Industry	% Rate of Return
Meat Packing	13.3
Bakery Products	12.0
Breweries	17.1
Men's & Women's Clothing	13.8
Sawmills	15.6
Furniture	10.1
Iron & Steel	13.4
Building Construction	6.0
Food Wholesalers	13.4
Food Retailers	16.4
Auto Dealers	14.3
Shoe Stores	12.8

* Source: Taxation Statistics, 1965

To establish what 1% of underwriting profit implies in terms of a return on shareholder's equity one may consider a hypothetical company -- one writing

29. The Commissioners, recognizing that selection of the appropriate measure for rate of return is of key importance, centred attention on the totality of returns to shareholders' equity (that which the owners of the business have invested) as being more useful for their purposes. Return on total investable funds is rejected.

annual premiums of $100.[30] Extending unearned premiums at 80% provides an unearned premium reserve of $40.00. Losses incurred would average $67.00 and on the basis of past experience would yield a reserve for unpaid claims of 85% of the amount incurred, or $56.95. Total liabilities generated by writing $100 are the sum of these two reserves, or $96.95. Solvency requirements include a minimum of 15% excess of assets over liabilities. Such minimum equity of 15% is $14.55. A $100 premium volume could theoretically, therefore, be sustained on $14.55 equity and a turnover rate of 6.78 achieved. With a profit margin of 1%, underwriting profit on shareholders' equity could be 6.87%.

To avoid both capacity problems and possible confrontations with the Superintendent of Insurance, companies do not, in fact, use leverage to the limit permitted by Statute. Examinations of shareholders' accounts, on a company-by-company basis, revealed a wide range of practice with some having shareholders equity in excess of liabilities. High capital and surplus to liability ratios may indicate solvency but are no guarantee of it. North American General boasted a ratio of 281% less than two years before its failure. A number of insurers, widely regarded as well managed, maintain equity accounts at 23% or 24% of liabilities.[31] With capital and surplus requirements at 23%, a 1% underwriting profit margin would produce almost a 4.5% return on shareholders equity if unearned premiums were reserved at 80%, and almost 4.1% where a conservative 100% was used. Thus, a 2.5% profit margin would produce a return on equity of between 10.2% and 11.2%.

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30. One cannot rely directly on published accounts as all lines of insurance are combined.

31. In 1964 Allstate, Merit and Wawanesa had ratios of .24 or less.

Underwriting profits are, however, only part of the story as assets representing these reserves are invested, producing the more important source of income to most fire and casualty insurance companies. The following results were reported for 1965:

TABLE 10:10

INVESTMENT RESULTS, FIRE AND CASUALTY INSURANCE COMPANIES, 1965

Admitted Assets, Jan. 1	$668.9 million
Dec. 31	759.4 million
Average	714.2 million
Investment Income	$ 27.7
Gain on sale of investments	4.8
Gain in market value of investments	(3.4)
Other Items	(1.0)
Total Investment Income	28.1
As a Percentage of average admitted Assets	3.93

Average investment earnings over the period 1957-1965 were 4.45% of admitted assets. (For notes on the method of computation see Appendix 10:D).

Applying the lower average earnings figure of 4.45% to the hypothetical well-managed and conservative company, reserving at 100% would add $5.85 to its earnings, or a further 23.8% on shareholders' equity.[32] Added to the 10.2% underwriting profit, this provides 34% on shareholders' equity. This is before tax, as are the figures in Table 10:9.

32. Liabilities of $106.95 including a $50 unearned premium reserve and a $56.95 reserve for unpaid claims, plus $24.60 in shareholders' equity, produces admitted assets of $131.55. Earning of 4.45% on these yields $5.85.

Before concluding on the fairness of possible returns of this magnitude, it is necessary to deal with the industry's contentions that no consideration should be given to investment income in establishing rates. Because of the great import of investment income, the Commissioners' views on the industry's arguments are provided in some detail.

Industry's Contention:

1. The insured upon payment of the premium gets what he paid for, an insurance policy and its protection, not a share of the assets of the insuring company. The insured has no more interest in the use that is made by the insurer of the moneys paid by way of premium than a tenant who pays his rent to his landlord or a person who pays the cost under a great variety of service contracts to be performed over a period of time.[33]

It is the Commissioners' view that ownership of assets is irrelevant, and argument for considering investment income is not based on any postulate about ownership. That both insureds and unpaid claimants have, as creditors, an interest in the assets of insurers is beside the point, for, if there is a legitimate public interest in the profits of insurance companies (including their ability to attract and hold investor's capital) it extends to all and total profits, not to only a part of them.

Industry's Contention:

2. There is the difficult and expensive practical problem of determining equitably the amount of income earned on prepaid premiums.[34]

Investment income results from the investment of shareholders' equity, of unearned premium reserves, and of the provisions for unpaid claims. One simple way of allocating it would be on a pro-rata basis. It is, however, the Commission's view that adequate recognition can be given to the investment income factor without making any explicit allocation on a continuous basis. In the United Sates, a Committee of the National Association of Insurance Commission-

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33. Ex. 242, p. 2.

34. Ibid.

ers pointed this out in 1952.[35]

Industry's Contention:

3. If such investment income can be determined and is to be considered in rate-making, the aggregate investment income of all the companies in any rate-making organization would have to be considered just as would their aggregate loss and expense experience.

   Thus the investment experience of a conservative company having a lower investment return would be combined with that of the company that made less conservative investments with a higher return. In the result, the final investment return would be struck somewhere between the higher and lower, thus saddling the more conservative company with an insurance rate for its policies based upon an investment return higher than it earns.

   This would tend to make companies continually strive for a higher return on investments. In the end, this would jeopardize the security of companies and be harmful to the best interest of policyholders.[36]

Profit maximization is the main driving force producing efficient resource allocation in a free enterprise economy. Regulations exist to prevent reckless investments, but within the limits set by the Insurance Acts companies not only have the right but an implicit obligation to shareholders, and policyholders in the case of mutuals, to seek optimal returns on their investment portfolios. They are presumably doing so now, and it is the Commissioners' opinion that this would not be affected by the consideration of investment income in evaluating underwriting profit margins.

Industry's Contention:

4. Under the present rate-making procedure an underwriting loss in any year is not carried forward on the basis of recovering such loss in future rates.

   If, however, such investment income is to be included and in any given

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35. United States, National Association of Insurance Commissioners, Casualty and Surety Committee, op. cit. p. 2.

36. Ex. 242, pp. 2-3.

> year fails to produce the allowance made for it in the rating formula, there would be no logical reason why such deficiency, which forms no part of the ordinary claims experience resulting from the policy issued to the insured, should not be recovered in the following year.
>
> On principle, the same result would follow if the investments from which such income is derived depreciate in value in any given year. If the policyholder is to become a partner with the shareholder in the investment of any funds that are available from unearned premiums, he must be prepared to share the losses as well as the benefits.[37]

The only reason why the present rating formula does not attempt to recoup earlier underwriting losses is that, except in the short run, competition, if it existed, would not permit it, i.e. companies which suffered no losses could outperform the others in rates. Such logic of the market place also applies to investment income. Any reasonable basis of incorporating investment income would use expected investment income in setting rates, just as today's system uses expected losses and expenses. Any gain over predicted levels would increase the companies' profits and *vice versa*.

The Commission accepts the principle that depreciation or appreciation on investments should also be taken into account. It is well known that one may invest for capital appreciation, generally speaking at the cost of a lower rate of income return, as against investing for maximum income return. The view that the rates should reflect losses as well as profits on investments is quite acceptable. To the extent that the present underwriting profit allowance is set at a level which protects shareholders against adverse investment experience, the premium rates are today, in fact, reflecting the losses but not the profits.

Industry's Contention:

5. What happens in the years when automobile underwriting losses are experienced? In such years where the losses exceed the 67% set aside to provide

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37. *Ibid*, p. 3.

> for claims such excess is contributed from the surplus of the companies in which the policyholder has no proprietary interest. If a relationship between such investment income account and the underwriting account were established, it would have to work both ways.[38]

The present arrangement works both ways. If forecasting were accurate, in one year out of two losses would fail to reach the 67% level, and underwriting profit would be added to surplus. There might on average be smaller additions to surplus if investment income were taken into account and premiums reduced as a result, but such surpluses often appear to be redundant in any event.

Industry's Contention:

6. In any event, unless it can be established that the automobile rates being charged are excessive, any discussion of the inclusion of such investment income in the rate-making procedure is academic.[39]

While rates charged in 1963-64 were on the average inadequate, the question is still of relevance in establishing a rate-making formula which will not, on average, place excessive costs on the consumer. Presumably, forecasting errors of the variety experienced earlier are likely to be infrequent if techniques are improved. In support of its position, the industry suggests that both the 1930 Hodgins Commission in Ontario and the 1957 Nova Scotia Commission held that

> . . . there was nothing unsound or unreasonable in a formula which omits explicitly to take such investment income into consideration.[40]

Further support is sought in a 1949 statement of the National Association of Insurance Commissioners which held that:

> It would be impracticable at this time to incorporate a direct recognition of investment income attributable to underwriting in the mechanics of the fire insurance rate-making process.[41]

The Commission notes that the former rejected explicit recognition of invest-

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38. Ibid, pp. 3-4.

39. Ibid, p. 4.

40. Ibid, p. 1.

41. Ibid, p. 2.

ment income, the latter direct recognition of it. The insurance industry position appears to be, however, that it not be considered at all. The Commissioners' view is that investment income must be recognized through an underwriting profit allowance which takes account of typical investment results and produces a level of profits sufficient to encourage the inflow of equity to provide the necessary underwriting capacity. Potential investors in insurance stocks make appraisals based on such factors now, with the assistance of investment analysts. It appears that investment income is taken into account in a number of United States jurisdictions. This Commission is aware that the allowance, as a percentage of premium, commonly made in the United States is 5%, and it has been suggested that because the Canadian allowance is 2.5% it therefore is either too low or, at least, inappropriate. It is not for this Commission to comment on the propriety or validity of what may be allowed in the United States. Nor in the Commissioners' view should the Canadian allowance be arrived at by reference to what is permissible there. The lower Canadian allowance is understandable at least in some measure having regard to the historic long-term interest differential between Canada and the United States in the opposite direction.

Returning to the 34% earned on shareholders' equity before taxes, it must be clear that a well-managed company would produce far better results for, while the earnings on assets over the period 1957-65 was 4.45%, the standard deviation was 2.96%.

The far higher expected returns on equity possible in the automobile insurance industry, relative to those elsewhere in the economy, must arise either because of difference in risk or because of monopolistic influences in price making. A

combination of both is, of course, a possibility. Although the existence and scope of the Insurance Bureau of Canada lends support to the monopoly explanation, close attention must be given to the extent of the impact of risk.

A positive correlation between extent of risk and the investment yield has long been taken for granted in economic theory and more recently efforts have been made to measure risk quantitatively and to determine just how remuneration for risk-taking relates to the level of risk.[42]

Risk for a single firm may be equated with the variability of its profits. In the case of automobile insurance companies there are two sources of this variability, just as there are two sources of profits. Most of the variability comes from underwriting operations and most of the profits are derived from the investment side. For remarks on investment efficiency see Appendix 10:E.

Using a 1960-64 sample of formula, underwriting profits on British Columbia automobile insurance calculated by adding 34.5% of premiums to losses, and subtracting the resulting total from premiums earned, a conservative measure of risk arising out of the underwriting operations of a typical company was obtained. In this case, a standard deviation of 7% of premiums, and a coefficient of variation of 2.79, were found to exist. This must then be combined with investment results on total assets where the standard deviation was 2.96% and the coefficient of variation .675.

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42. A frequently used measure is the coefficient of variation, which is simply the standard deviation of the variable we are interested in, divided by the average value of the variable. The coefficient of variation has the advantage of being a pure number, independent of the units in which the variable is measured.

The standard deviations of expected profits for underwriting and investment operations are expressed in terms of percentage of net premiums and percentage of total admitted assets. They may be translated readily into a common unit as percentages of shareholders' equity. Thus in the case of the 2.5% underwriting profit margin which was expressed as 10.2% of shareholders' equity, the coefficient of variation of 2.79 is indicative of a standard deviation of 28.4%. Investment earnings of 23.8% on equity, with a coefficient of variation of .68 indicates a standard deviation of 16.2%. While expected returns are additive, standard deviations are not, because the random fluctuations in underwriting profits and in investment income are largely unrelated. It was possible to compute, by standard formula, the coefficient of variation of the combined income streams, and then obtain the standard deviation of aggregate returns on shareholders' equity. The results were .96 and 32.6% respectively.

To permit interpretation of results obtained, namely 34% before taxes on equity with a standard deviation of 32.6% in the case of a 23% equity to liability ratio, the Commission resorted to the widely reported and rigorous analysis of Professor W.F. Sharpe which examined the relationship between risk and yield for a sample of investment companies.[43] From an investor's viewpoint, such mutual funds are invested in a broad cross-section of industry and offer a significant alternative to placing or leaving moneys in general insurance companies. Measuring required after-tax yields, Sharpe derived the relationship:

Required yield (R) = 3.81 + .567 x Standard Deviation of R.

Using this relationship, it was possible to estimate the "required" after-tax

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43. W.F. Sharpe, "Risk Aversion in the Stock Market", Journal of Finance, Vol. XX, September 1965, pp. 416-22. A quite similar technique was used by Arthur D. Little, Inc., in the 1967 study commissioned by the American Insurance Association on behalf of their member stock insurance companies and titled Prices and Profits in the Property and Liability Insurance Industry.

rate of return for the degree of risk implicit in insurance company operations. The United States data suggested 15.6% on equity as the appropriate return for companies operating at a 23% equity-liability ratio.

In converting the 34% figure of insurance company returns to an after-tax figure, for purposes of comparison, it is necessary to recognize that while underwriting income is fully taxable, investment income may not be, in that dividends from tax-paying Canadian corporations and capital gains are not subject to tax. Further, for reasons discussed earlier, the taxes on underwriting operations may, to a limited extent, be deferred. A broad estimate would therefore place the after-tax return above 17% and as high as 21% for companies operating at a 23% equity-liability ratio.

While recognizing the possibility that Canadians have a slightly higher risk aversion, and that the "required" 15.6% return on equity suggested by the U.S. data may therefore require some upward adjustment -- nevertheless -- an expected underwriting profit allowance as high as 2.5% of sales is hardly required to attract or hold capital, given the risks already discussed. In fact, such profits certainly would not prevail in the presence of effective competition.

To confirm this analysis as reasonable, the Commission satisfied itself that capital continued to be attracted into the general insurance industry over the period 1956-66, despite apparent overall underwriting losses as shown in Table 10:11. Some rate-deviating companies, however, as shown later in the Report, earned underwriting profits in excess of 2½% over the period.

The industry's response to its underwriting experience of the past decade implies that investors are willing to pay for the funds advanced by way of accept-

FIGURE 10:1

BODILY INJURY AND PROPERTY DAMAGE, COLLISION AND TOTAL PREMIUMS

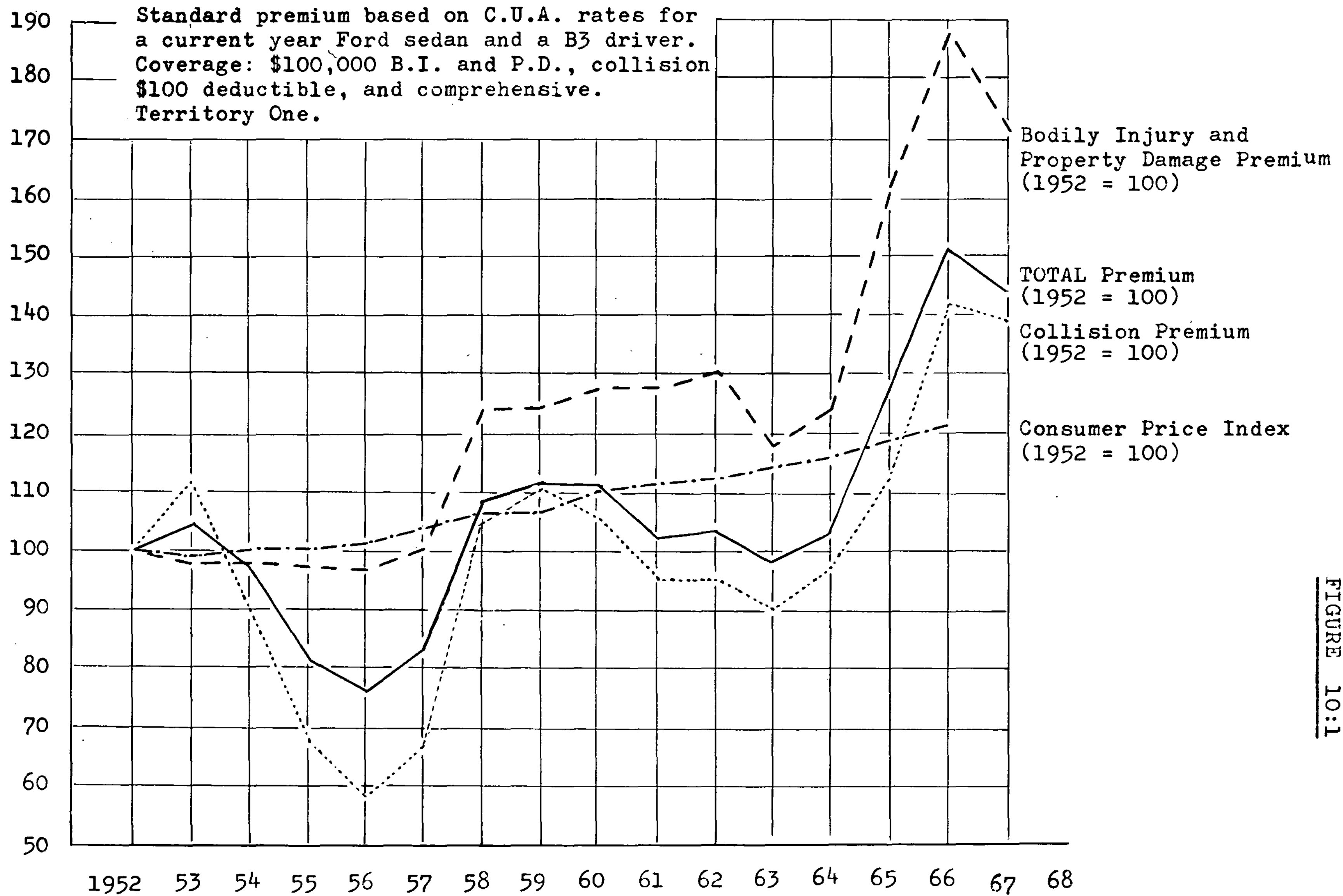

FIGURE 10:1

ing negative underwriting profits. While this is the only interpretation the Commission can place on the evidence of the marketplace, the nature of the approach to calculating required risk premiums, the small sample of data in particular suggests a need for caution. Even a most reserved interpretation by the Commission fails, however, to indicate a need for an underwriting profit margin as high as 2½%.

The Commission recognizes that a number of companies have, of necessity, relied on their investment income to cover underwriting losses (see Table 10:11) thus apparently supplementing premiums they had established at too low a figure for the type of risks they were prepared to accept. This would appear to be a hit-or-miss method of employing investment earnings rather than formally recognizing such earnings in rate making.

Table 10:11

Underwriting Profits of Fire and Casualty Companies in Canada

Year	Underwriting Profit (Loss) $Millions	Percent of Companies Showing Underwriting Loss
1956	(35)	68
1957	(75)	78
1958	(6)	55
1959	13	45
1960	28	39
1961	29	31
1962	(4)	51
1963	(67)	64
1964	(54)	64
1965	(3.4)	51
1966	25.6	38

Source: Report of the Superintendent of Insurance for Canada, 1964, Vol. 1, p. XXXV and 1966 Vol. 1, p. 33A.

Non-monetary Cost -- Frequent and Inaccurate Rate Revisions

It must be clear from the earlier introductions to rate-making that inadequacies in forecasting, including the use of judgment, abound. One of the consequences is the erratic pricing of automobile insurance, as illustrated by Figure 10:1. The resultant hardships on consumers is both undesirable and, in large measure, avoidable. With reference to Figure 10:1, as accident frequency has been a relatively stable factor, rating based on a consumer price index would have reflected the rising costs of accidents. Time and effort equalling that expended on the setting of differentials should result in more satisfactory projections with fewer rate fluctuations, especially if economic indicators were more carefully considered, and if the severity of claims was treated separately from the frequency of claims, and the merits of exponential smoothing were explored. Favourable United States experience in moving away from the 'policy-year' concept to that of 'accident-year' (reported quarterly) for private passenger non-fleet, and commercial classifications should, in the Commissioners' opinion, offer industry in Canada a further avenue worthy of exploration.

Non-monetary Costs -- the Lack of Market

A combination of the less-than-adequate rate-making of the early '60's and England's exchange crisis, which forced curtailment of the activities of British companies, created a tight market for automobile insurance in British Columbia. Certain categories of drivers (including those under 25, recent arrivals, the inexperienced, and those over 65) were greatly inconvenienced in their quest for automobile insurance -- a product which, in our society today, may be considered a virtual necessity.[44] Still others were refused renewals or subjected

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44. See Appendix 10:F hereto for typical restrictive underwriting directions.

to policy cancellations. Far too many consumers were able to purchase only the minimum and inadequate coverage afforded by the Assigned Risk Plan and, rightly or wrongly, felt blemished as a consequence.[45] The Commissioners are of the opinion that during 1964 and 1965 industry failed to provide buyers of insurance with an acceptable level of service. The Commissioners are also of the opinion that, when it comes to providing markets in the future, industry should not be left entirely to its own devices.

Non-monetary Costs — The Assigned Risk Plan

Faced with mounting discontent along lines already discussed, the insurance industry for a number of years has been attempting to implement changes in the Assigned Risk Plans across Canada. The latest of many such proposals is dated August 1, 1967 and emanated from the office of the president of All Canada Insurance Federation. His accompanying letter included a paragraph which reads:

> The present realities of the matter are that failure to initiate substantial reforms immediately will result in the initiative being taken by Governments.

The Commissioners feel they need add nothing to the observations of Mr. J.E. Burns, President of All Canada Insurance Federation, and note the introduction of the Facility in British Columbia as of January 1, 1968. Appendix 10:G provides some useful insights on this new automobile insurance Facility.

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45. Ex. 167 confirms that the Automobile Insurance Committee of the All Canada Insurance Federation was aware of these failings. Attempts to institute change prior to September 1966 were however, abortive.

APPENDIX TO CHAPTER 10

10:A	Determination of Calculated Driving Record Differentials.
10:B	Statistical Considerations re Use of Accident Records and Convictions to Predict Frequency.
10:C	Small Loans Act, Section 3.
10:D	Computation of Investment Earnings.
10:E	Investment Efficiency.
10:F	Example of Restrictive Underwriting Directions.
10:G	An article on the New Automobile Insurance Facility.

APPENDIX 10:A

NOTES ON DETERMINATION OF CALCULATED DRIVING RECORD DIFFERENTIALS

Table 6:3 in the chapter entitled "Rate-making and the Statistical Exhibit" presented a sample of the data on indicated driving record differentials, based on the 1966 Statistical Exhibit. Similar data based on the 1965 Statistical Exhibit was filed by C.U.A. witnesses as Ex. 113B. Comparison of the foregoing data with age-use differentials, as shown for example, in Ex. 113C, reveals a systematic relationship between the size of the age-use differential for a class and the driving record differential for that class. The relationship is not linear but may be approximated by a quadratic. The following are quadratic equations fitted by least squares to the data:

$$D_0 = 3.3349 - 2.2267A + .6169A^2$$

$$D_1 = 3.0192 - 2.1753A + .6064A^2$$

$$D_2 = 1.8152 - .6584A + .1768A^2$$

$$D_3 = 1.000$$

Where:

D_1 = driving record differential for 1 claim free year

A = age-use differential

D_3 is flat, by definition; that is, it shows no curvature. Calculated driving record differentials are determined by applying to the above equations the age-use differentials actually used by the C.U.A.

APPENDIX 10:B

STATISTICAL CONSIDERATIONS REGARDING THE USE OF ACCIDENT RECORDS AND CONVICTIONS TO PREDICT FREQUENCY

The most complete model for predicting accident involvement using only the fact of a previous accident or conviction (and not the number of such previous accidents or convictions) is given by:

$$Y = a + bx_1 + cx_2, \quad (1)$$

where the independent variables are defined as follows:

x_1 = (1 if a previous accident has occurred
(0 otherwise

x_2 = (1 if a previous conviction has occurred
(0 otherwise

so that:

a = the probability of involvement for a driver having neither previous accidents nor convictions

$a + b$ = the probability of involvement for a driver having a previous accident but no convictions.

$a + c$ = the probability of involvement for a driver having a previous conviction but no accidents.

$a + b + c$ = the probability of involvement for a driver having both previous accidents and previous convictions.

A comparable model, using accidents only, is:

$$Y = a + bx_1, \quad (2)$$

where:

a = the probability of involvement with no previous accident,

$a + b$ = the probability of involvement with a previous accident.

and a similar model, using convictions only is:

$$Y = a + cx_2, \quad (3)$$

where:

a = the probability of involvement with no previous conviction,

a + c = the probability of involvement with a previous conviction.

For mathematical reasons, equation (1) will always have superior explanatory power over (2) or (3) providing there is at least some degree of correlation between involvement and the two explanatory variable <u>unless</u> previous involvement and previous convictions are perfectly correlated, i.e. unless every accident results in a conviction and there are no convictions which do not involve accidents. Even in this case, it would make no worse predictions than (2) or (3).

APPENDIX 10:C

SMALL LOANS ACT
Section 3

(1) No money-lender shall, in respect of any loan, directly or indirectly, charge, exact or receive, or stipulate for the payment by the borrower of, a sum of money as a result of the payment of which the cost of the loan exceeds an amount equivalent to the amount or rate prescribed by this section, and any money-lender who enters into a transaction in contravention of the provisions of this section, is guilty of an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding one year or to both fine and imprisonment.

(2) The cost of a loan shall not exceed the aggregate of (a) 2% per month on any part of the unpaid principal balance not exceeding three hundred dollars, (b) 1% per month on any part of the unpaid principal balance exceeding three hundred dollars but not exceeding one thousand dollars, and (c) one-half of 1% per month on any remainder of the unpaid principal balance exceeding one thousand dollars.

APPENDIX 10:D

NOTES ON COMPUTATION OF INVESTMENT EARNINGS

The Commissioners' analysis of investment experience of Canadian companies took account not only of interest, dividends, and of realized gains and losses, but of unrealized gains and losses calculated from a reconciliation of financial statements published in the Federal Superintendent's reports including statements of market values published therein. Investment income so computed differs from that reported in companies' income statements which incorporate unrealized losses but not unrealized gains, and frequently credit realized gains directly to surplus. The Commissioners recognize that in so doing they are departing from standards of accounting conservatism. However, capital gains do increase the wealth of shareholders rather more, if income taxes are taken into account, than earnings, and it is quite possible to convert a substantial part of income into capital gains by investment in growth securities paying no dividends. In short, the dividing line between income and capital, implicit in the present accounting conventions, is an entirely arbitrary one producing estimates of income subject to downward bias. The Commissioners required an unbiased estimate for their purposes and used alternative procedures which are in fact accepted by reputable accounting theorists.[46]

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46. See for example, E.O. Edwards and P. Bell, The Theory and Measurement of Business Income, University of California Press, Berkeley, 1961.

APPENDIX 10:E

NOTES ON INVESTMENT EFFICIENCY

The importance of efficiency in investment management is obvious and cannot be overstated. An efficiently managed portfolio is not necessarily one producing the highest return but rather one which produces the highest return available for a given level of risk.[47] The Commission noted that in contrast to the 1957-1965 performances indicated in Table 10:E:1, the bulk of companies, exposed to risks reflected in standard deviations of portfolio returns of between 3% and 4%, earned between 5.4% and 6.0%. It is also of interest in this respect that the investment experience of the Canada Council Endowment Fund, whose investments are restricted in a manner similar to those of insurance companies, earned an average return of 6.43% over the period, subject to a standard deviation of 3.48%.

Table 10:E:1

1957-65 Average Returns and Risk Reflected in Portfolios

Insurer	Average Return	Standard Deviation
Canadian Mercantile	7.51	3.26
Saskatchewan Mutual	6.99	3.32
Western Assurance	6.81	2.98
Gore Mutual	6.39	3.65

The analysis suggests that there may be room for improvement in the investment performance of many companies, in part at least through greater expenditure of time, effort and moneys than would appear to be expended at the present time.

47. For a discussion of efficiency in portfolio management see H. Markowitz, Portfolio Selection, New York, Wiley, 1959.

APPENDIX 10:F

AN EXAMPLE OF RESTRICTIVE UNDERWRITING DIRECTIONS AS TAKEN FROM INSURER'S RATE MANUAL

Ineligible Risks (Principal Operators)

1. Over 65 years of age.
2. Under 25 years of age if single, or under 21 if married.
3. Physically or mentally impaired.
4. Uses narcotics.
5. Uses intoxicants to excess.
6. Less than 3 years licensed driving experience, in North America or U.K.
7. Responsible for an accident during the three years prior to date of application.
8. Does not possess valid driver's licence.
9. Licence suspended or revoked.
10. Illiterate.
11. Temporary resident of country (less than one year).
12. Transient (including active military personnel and persons who frequently change their place of residence and/or employment).
13. Marital instability (recently divorced or separated).
14. Questionable moral reputation.
15. Living in "slum" or substandard areas.
16. Has been responsible for two or more accidents in the past three years.
17. Has forfeited bail or been convicted of:
    a. Illegal possession or use of narcotics.
    b. Drunk or impaired driving.
    c. Hit-and-run or leaving the scene of an accident.
    d. Speeding or other road violations on more than two occasions in past three years (not parking)

18. Required to make a financial responsibility filing.

19. Cancelled or declined by another carrier.

20. Risks previously cancelled for non-payment of premium.

Ineligible Occupations of Owners or Operators

1. Professional athletes, musicians or entertainers.
2. Boxing or wrestling agents or handlers.
3. Employees of night clubs, dance halls, bars, taverns, beverage rooms, or restaurants serving liquor, except clerical.
4. Persons employed in gambling establishments or race tracks, legal or illegal.
5. Professional gamblers.
6. Longshoremen, Merchant Marine, Commercial Fishermen (except inland waterways) and Loggers.
7. Taxi drivers.
8. Engaged in juke-box or game-machine operations.
9. Bowling alley or billiard parlour operators or employees.
10. Liquor or beer sales representatives.
11. Active military personnel.
12. Employees engaged in the sale or distribution of alcoholic beverages, except office clerical.
13. Used Car Salesman.

APPENDIX 10:G

Some View on the new Automobile Insurance Facility[48]

UNDERSTANDING THE FACILITY

JOINT EFFORTS SPELL SUCCESS

As president of All Canada Insurance Federation, James E. Burns explained to Insurance Institute of Ontario members what is required to make the new auto insurance Facility work. This is an edited version of his speech.

The 'Facility' is the plan developed as an unknown tool to work behind the scenes in automobile insurance, replacing the Assigned Risk Plans and eliminating from the business the scorn previously associated with those plans.

History of ARP's

Let me review for you some of the history of Assigned Risk Plans, the beginning of the problem. Some twenty odd years ago, automobile insurers arrived at a conclusion that is just as valid today as it was then. As an industry they had to devise a method to insure the discard risk, at least insofar as third-party liability coverage was concerned. Where the Provinces were prepared to grant a license to drive, the insurance community must be willing to insure, or risk government entry into the automobile insurance field.

From this premise, the Assigned Risk Plans were fashioned. Each company was apportioned its share of these risks according to the ratio of its third-party premium to total business written in each province. Most of this business generated from agencies which were more often than not strangers to the company. Surcharges were developed to reflect the defect of risk that cast them in this unenviable position.

By this means, companies shared the premium yield, but then it remained a matter of luck as to how the claims would go. In other words, it was a pooling of premiums but not a pooling of losses.

While it had manifest weaknesses, it did have the advantage of uniformity of premium development under a single Plan office and cash-on-the-barrelhead control. Depending on your own perspective — advantage or disadvantage — it also afforded a uniform commission level.

Under the original concept, proof was required that an application had been declined three times before the risk could be put in the ARP, but this was later modified to one declinature, and even this became somewhat perfunctory.

These modifications paralleled a general deterioration in underwriting results. Automobile insurance was operating at a loss through premium inadequacy, and as quickly as rates were raised, claims costs outpaced them. Public reaction tempered any thought of reaching for the full indicated increases. Competition slowed down any move to introduce redundancy of rate because this would involve rates of commission, still an active ingredient of the competitive picture.

An answer was sought in selectivity of underwriting — companies tried to improve their average by a careful program of risk acceptance. Categories of risks turfed out of the normal market began to take on strange new dimensions. One insurer would find an imaginary key to his selectivity by scorning all youthful drivers, another all new drivers, a third by severe age maximum, and yet another by the degree at which an experienced driver lacked knowledge of Canadian driving conditions.

Little wonder then that when a major move was mounted to depopulate Assigned Risk Plans, it was found that 270,000 automobile policies originated through this vehicle, and at statutory third-party limits and no more.

Our Tarnished Image

Little wonder, too, at the hue and cry raised by the public, and through them, by the provincial members of parliament in all parties. Rates can be defended — a profit motive must be defended — but failure to meet in the normal marketplace the needs of more than a quarter million of the driving public is to court disaster. Anyone who has access to the recorded debates in provincial legislatures can confirm the poor image we cast in the conduct of automobile insurance. All kinds of half-truths and complete misrepresentations were stated by our critics, with few protagonists with the temerity to challenge them.

While 70 per cent of the risks in ARP's carried manual rates, the common charge was that the industry preferred to refuse this business on the open market in order to take it on the rebound at significantly higher rates. Interwoven into the distortions was the half-truth about company practices regarding mid-term cancellations.

The facility has been constructed to minimize, if not totally, eliminate, the need for mid-term cancellations other than for non-payment of premium. It should also eliminate the need for refusal of any auto risk, at least for the minimum coverages available through this medium.

Charges that went far beyond even half-truths involved such statements as "deliberate misrepresentation of profitability of the business through the use of reinsurance where the profits of reinsurance are masked from the company's trading result". A second such charge was "the name of the game is really investment return, not trading profit", with the suggestion that undistributed dividends of shareholders representing surplus to policyholders' protection should be used as an investment return credited to the sum total of rate adequacy.

All of these points are problems for defence and informed communication. But first we must remove from the area of argument those things that have become indefensible, and the practices that have been built up around ARP's are just that — INDEFENSIBLE.

How Will The Facility Work?

How can the Facility cure these ills? By providing a method whereby an insurer can write any risk, and in turn, reinsure 85 per cent of its liabilities on terms that are not economically too stringent or too liberal. It should be the means for providing a free market for all automobile offerings in a normal agency/company relationship.

A criterion has been established whereby the Facility will extend 100 per cent reinsurance on particularly bad risks. Where features of the risk are extremely bad but this criterion of past performance has not been met, an appeal for 100 per cent response from the Facility may be made.

Binding has been provided for by an automatic 15-day attaching date. In view of today's fast communications, it is difficult to understand why a company would impose restrictions on agencies more demanding than the freedom they enjoy in the Facility, unless it is with the hope of slowing down the flow of marginal risks. It is my opinion that if binding authority is vested with an agent, then that business flowing into the Facility should enjoy identical binding privileges. This is the spirit if not the exact letter of the Facility.

By the same token, it is hard to understand those few directives

48. Insurance Agent and Broker in Canada, November 1967, pp. 3-4.

from companies to agencies, restating prohibited classifications or restricting coverage substantially below Facility levels. Who is expected to write these prohibited classifications if we presuppose the demise of Assigned Risk Plans?

There are two reservations I consider valid. We should not expect solely personal line writers of private automobile and small commercial lines activity to suddenly emerge as a fronting market for heavy industrial and specialized risks. Their lack of expertise and technical ability is ample reason, notwithstanding the Facility.

Secondly, companies must maintain a fair share of the load and exert a policing effect on agencies who crowd in on them. Perhaps it is in the nature of things that agencies which have attracted assigned risk business out of balance with their total portfolios must go to the wall. But companies should maintain the right to choose their agency sources and to colour that choice by any disproportion of marginal automobile business.

As to agents, the principle underlying the Facility is that the normal company/agency relationship is restored. In my opinion, risks accepted for ultimate sharing should be at standard scale. They should neither command a lower direct commission, nor be insulated from contingent profit agreements. Either they are to be dealt with as normal transactions or not.

This poses a problem for the company manager. If he attempts to cut direct commission cost on Facility business, is he flaunting the spirit of fair share in the hope of directing this business to another market? Conversely, if he excludes the marginal business ceded to the Facility from contingent profit agreements, does he make his market more attractive for such business?

License Review Boards Needed

With the reforms now possible through the Facility, automobile insurers now look to co-operate in the establishment of License Review Boards.

The ceiling on premiums is set at a maximum 100 per cent surcharge for the under-25 age group, and 200 per cent for other risks. This will vary slightly from province to province but top dollar limit for third-party liability to statutory requirement will be about $500 to $600.

Under the ARP's, if a series of surcharges resulted in premiums of $1,700 or more, it was felt this added a dollar sanction to keep such poor drivers off the road. No company could hope to influence its trading result by these outlandish premiums because they occurred infrequently, but they were quoted as yet another incident to prove the virtue of state insurance. It was seldom considered important, however, to recite the convictions and contempt for society and law which formed the basis for the large premiums.

Having removed an economic sanction, it becomes important that automobile insurers and perhaps other interests have access to an impartial board of responsible citizens to sit in judgment of the privilege to hold a driver's license. We don't expect their standards to be pointed at a profit motive for insurance. All we want and expect is the judicial use of a simple criteria to decide whether or not a person is entitled to drive. The fact that denying a license may mean a change in the defendant's livelihood or an economic loss to him should not be a compelling reason for exception. This is minor to the consideration that a driver's license may, in fact, be a license to kill. Decisions of such a board must be binding and free from political duress.

Two corollaries follow the effective operation of a License Review Board. Firstly, the penalties for driving while under license suspension must be strengthened. The contempt of society and law should call for a mandatory jail sentence. Secondly, while the operator is under license suspension, the auto insurance policy must not be permitted to respond to any coverage other than third-party liability. To do otherwise is against the common good. An insured cannot expect recovery under a fire policy if arson is involved, and a suspended driver should not expect to recover own damage or medical pay losses if he voids his insurance contract.

To Improve Our Image

The most important classification of insurance, judged by dollars generated, is automobile with a national premium volume of $600 million, and growing. It is also the most sensitive to the public and in the arena of politics. The industry does most things well, but its appearance often belies its performance.

All Canada Insurance Federation recently completed an attitude study of public and political aggravations, with the help of 150 agents drawn from all provinces. These are grouped, by priority, as follows:

1. Merit system of rating
2. Assigned Risk Plans
3. High rates
4. Claims Handling
5. Young driver market
6. Underwriting by independent reporting sources
7. Wide variance in underwriting practices
8. Cancellations
9. Tight market
10. Poorly trained agents

The Facility can provide dramatic relief to the issues of Assigned Risks, young driver market, variance in underwriting practices, cancellations and tight market. This leaves five issues for serious research.

While Federation makes no pretence of being a rating body, it does not hesitate to recommend to rating bodies the re-examination of practices that result in mounting discontent. We may see a more graduated treatment of first accident offences. While we may defend the practice as "loss of merit discount", the insured sees it only as an accident surcharge.

What Is Needed

To sum up, I quote from an editorial of mine which was printed in our company publication, GENERAL'S REVIEW, under the title: Three Roads:

"An old-fashioned revival terror, inspired by the fear of Hell, without the trappings of a tent or the oratory of a Bible-thumping preacher, resulted in the death knell for the infamous Assigned Risk Plan on August 14th.

"That the tool replacing it fashioned at that historic meeting is an adequate response to the needs cannot be determined until it is put to the test.

"A new responsibility falls squarely across the shoulders of the agent; the equitable distribution of marginal risks among companies in his office detached from any "buy-out" provision in the area commission direct or otherwise.

"A new responsibility falls squarely across the shoulders of insurers; the need for determination to extend the full scope of their own capacities and that of the Facility to all offerings.

"A new responsibility falls squarely on the shoulders of provincial governments: to implement an impartial board of license review and to enact legislation excluding an automobile policy responding to other than third-party coverage where a driver is in contempt of license suspension.

"By their fruits shall each of us know them . . ."

Insurance AGENT & BROKER in Canada

CHAPTER

II

THE COST TO THE PUBLIC GENERALLY OF PROVIDING PRESENT FORMS OF AUTOMOBILE INSURANCE DETERMINED ON THE BASIS OF PAST AND CURRENT EXPERIENCE

CHAPTER 11

THE COST TO THE PUBLIC GENERALLY OF PROVIDING PRESENT FORMS OF AUTOMOBILE INSURANCE DETERMINED ON THE BASIS OF PAST AND CURRENT EXPERIENCE

Since all costs to be considered in this section are, to some extent at least, monetary, no subdivision of costs into the usual monetary and non-monetary categories is attempted here. The costs to be considered include:

(i) those existing, assuming the presence of significant economies of scale.
(ii) those arising in the absence of effective competition.
(iii) those arising from the present situation respecting the pursuing of claims.
(iv) those arising in the absence of compulsory insurance.
(v) those arising because of apparent differences between insurers in the handling of claims and the interpretation of contractual obligations.

Those Existing, Assuming the Presence of Significant Economies of Scale.

With 175 insurers sharing in the almost $74 millions of automobile insurance premiums written in British Columbia during 1966, the Commissioners were concerned about possible diseconomies in having so large a number of smaller sellers, and the resulting burden on the consumer. Further, establishing the existence and magnitude of economies of scale had great significance because it would then lead to considerations along the lines of limiting the number of insurance companies writing automobile coverage, possible to the point of having either a franchised monopoly or an exclusive government operation.

In the course of hearings, industry authorities and expert witnesses appearing for the industry testified in this area. Repeated claims and illustrations of economies of scale were brought to the Commissioners' attention by the witnesses themselves.[1] However, this evidence was neither quantitative nor otherwise documented.

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1. For fairly typical illustrations, see 31/3579 and 58/6788.

The Commissioners, in their own already detailed study of insurer expenses, using multiple regression analysis, found to their satisfaction that, given the present size range of insurers, total costs were proportional to output, with no economies of scale evident in the industry's operating expenses.[2] Specifically, in each of the three years studied, and for each expense variable, the constant term (a_o) representing fixed costs, was found not to be significantly different from zero. Although a given company may increase volume in the short run without a proportionate increase in expenses, the results suggest that any such savings occur only through more effective utilization of temporarily underemployed resources, and that increases in output must, in general, be supported by a proportionate increase in productive resources utilized.

Other analyses by the Commission did, however, indicate that larger insurance companies bear less relative risk than smaller companies, and may, therefore, operate at lower equity-liability ratios than the smaller insurers. Thus, there would appear to be efficiencies in this area. Beyond a certain company size, however, possible savings arising from lower relative risk become trivial.

On the investment side there appear to be advantages in size, but again these taper off, and all but the smallest insurers achieve the benefits.

To conclude, it is quite clear that the industry must not be considered a natural monopoly, and, in terms of total cost, the potential savings attributable to size from all sources are not of sufficient magnitude to warrant further comment.

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2. For another instance of these novel costing techniques used in Canada see Royal Commission on Transportation, Queen's Printer, Ottawa, 1962, Vol. III, pp. 179-335.

Those Arising in the Absence of Effective Competition

The absence of effective competition, in addition to creating a situation which should not be tolerated, is likely to represent a considerable monetary cost to the public generally. In its consideration of structural factors and market power, the Commission noted that during 1966 the price at which automobile insurance was sold was standardized over almost 80% of the market.[3] Uniformity in price appeared very much more pronounced than was the case prior to the formation of the Insurance Bureau of Canada, as many companies which formerly appeared to exercise some independent judgment on rates ceased to do so. This is not to say that the nominal deviation in rates between the I.I.C. and C.U.A., for example, or of larger 'independents', is to be taken as a desirable level of competition. In the opinion of the Commissioners, through creation of the I.B.C. there is, in British Columbia at least, a significant concentration of groups acting in concert. Further, the I.B.C. has, in the short run at least, effectively eliminated price competition over a larger segment of the industry than was the case with any other price-fixing arrangement of the past decade. As a consequence, therefore, the position of the Federal Superintendent of Insurance, respecting both the formation of the I.B.C. and the policing of rates, as set out in another part of this Report, remains an enigma.

The price leadership role inherent in the Insurance Bureau through its Bulletins, illustrating results of its analysis of the Statistical Exhibit, certainly tempers what competition does exist. Thus several deviating companies are allowed particularly favourable claims plus expense ratios and are among the more prof-

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3. While I.B.C. members earned over 70% of the province's automobile insurance premiums during 1966, many non-members did not deviate. Table 4:5 provides some indication of deviations.

itable in the industry. Deviations in their rates could conceivably be increased, and rates cut still further.[4] To do so would, of course, pass more of the economies inherent in their operations on to their customers than is the case at present. There is no particular reason, however, why they should do so except in response to competitive pressures. With such pressures absent, these insurers continue to operate under the price umbrella furnished by the C.U.A.-I.I.C.-I.B.C. companies, shaving rates if and when necessary, while seeking the appropriate share of the market for profit maximization. An absence of effective competition is further supported by the Commissioners' findings earlier in the Report that average company expenses, exclusive of direct writers, are significantly lower than allowed by the current 67-33 loss-expense ratio. Thus many companies which are, at present, not deviating, possess the potential to do so. As expenses are a fundamental basis of competition, it follows directly that the present failure of most companies to allocate their expenses by line of insurance is an indication of ineffective competition. It is clear that, to avoid retaliation by the traditional elements in the industry, care is taken not to drop prices drastically while pushing for larger market shares. The existence of the price umbrella was conceded by the All Canada Insurance Federation panel when examined by Commission Counsel:

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4. Annual ratios of commissions and taxes as a percentage of net premiums written, added to net losses incurred and other expenses as a percentage of net premiums earned, appear as follows: Allstate (from Ex. 338) 1960, 93.6; 1961, 92.0; 1962, 79.8; 1963, 101.8; 1964, 85.9; 1965, 89.7; 1966, 93.6. Employers Mutual Casualty Company (from letter received Sept. 18, 1967), 1963, 95.3; 1964, 97.3; 1965, 91.9; 1966, 96.4.

RAE: Yes. We may have had this from you, Mr. Makin, when you were before us before, and I am sorry I don't recall: At what period in time did the I.I.C. rates go up to the C.U.A.? You used to write a dollar or two below them.

MAKIN: I would think probably in 1964 or 1965, Mr. Rae.

Q. Yes. When was the I.B.C. formed?

A. 1964.

Q. Would it be correct to say, Mr. Makin, that when you price below C.U.A. a dollar or two here and there on a judgment basis that the C.U.A. was effectively by its policies setting up an umbrella such as with no competition within itself, with no rating competition within itself, no classification difference within itself -- was setting up an umbrella which permitted your companies to operate just below it?

A. No, I don't think so, Mr. Rae. I think that they were so keenly aware of the competition that the I.I.C. companies were giving, and the fact also that the independent conference companies as a whole were increasing substantially their percentage of the automobile market, that they had more of a tendency to try to force the rate down in order to make it more difficult for the I.I.C. companies to compete on a rate, or on the other side of the coin to compete on commission. Because prior to the formation of the I.I.C. in 1964 the I.I.C. companies were then only under the independent automobile and casualty companies and were only operating under a gentleman's agreement. And there were many individual companies, members of the I.I.C., who would deviate in various areas -- in other words our rates were essentially recommendatory; but there would be individual companies which had special programmes applicable to special classifications of risk.

Q. Well, whatever may have been the effect of what you did or how you would designate it economically, competition or lack of it or partial competition, would you say that the situation which existed with the C.U.A., as I say, in the form of an umbrella -- you were operating a dollar or two below it on what you call a judgment basis, is precisely -- not precisely but substantially the same situation that you now have with the I.B.C.; except that you are now part of the umbrella along with the C.U.A., and the ones operating under it are the direct writers?

A. Yes, this is substantially correct, I would think.[5]

In the absence of effective rate-regulation, operations under an umbrella may be expected to continue until entry of a new competitive force with aggressive conduct comparable to that displayed by the Allstate Insurance Company around 1958 when it entered and competed for a share of the British Columbia market.

The major restrictions on entry into the automobile insurance market are those

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5. 51/6037-6038.

imposed under the Insurance Acts of the Federal and Provincial Governments, particularly the former as there are few licensed under the latter. A further restraint upon entry appears to be the difficulty insurers may experience in developing retail outlets. The following exchange between a Commissioner and T. O. Makin, a witness called on behalf of the Independent Conference, will serve to illustrate.

> Commissioner LUSZTIG: And still in the area of competition, you made some comments on the first day, I believe, on the eve of entry into the market and you indicated there was -- you didn't use the term "difficulty", but you felt you had to pay a higher commission in order to come into the British Columbia market.
> MAKIN: In terms of thinking of a new company, perhaps starting in business, I think this is historically true, doctor, that most companies entering into the field have either had to have a lower rate structure, or a higher commission structure, or both, in order to literally get their foot inside the door.[6]

The foregoing factors, however, do not appear unduly prohibitive and present entry conditions may be regarded as compatible with effective competition.

The existence of the tight market situation in the British Columbia automobile insurance field in 1964 and 1965, with consequent over-utilization of the Assigned Risk Plan, is evidence of ineffective competition. Although the over-utilization of the Plan has, in large part, been ameliorated, the very existence of the Plan has been taken to be indicative of a failure of competition to function effectively. The following exchange between the Commission Counsel and Dr. H. L. Purdy, a witness called on behalf of the All Canada Insurance Federation, serves to illustrate:-

> RAE: Now, is it not true that the existence of the Assigned Risk Plan is indicative of a failure of competition to function effectively — that is an inability to price commensurate with the hazard?

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6. 33/3846-7.

PURDY: I think that's correct.[7]

Findings on the existence of unfair price discrimination in the rate structure, as already detailed, support conclusions on the weakness of competition. With the exception of Allstate, there is little evidence of the use of rating structures which would tend to force rates into proportionality with marginal costs for individual classes.[8] Further, the examination of the automobile insurance profit allowance revealed competition on rate levels to be no stronger than that on rate structures.

As has already been noted, the basic product of the industry is virtually standardized, and the price at which it is sold is uniform over a large segment of the market. Within the segment in which physical product and price are standardized, competition is not, however, entirely suppressed. It operates on variables other than price, expressing itself in the likes of convenience, service, and underwriting standards. Since it is clear that consumers know little of direct and indirect price deviations in automobile insurance, it is difficult to infer the true value of such intangibles from the number of insureds who elect to pay the higher prices.[9] The Commission must in any event focus on

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7. 57/6770-1.

8. Contrary to suggestions expressed in Ex. 188, (the Brief of the Wawanesa Mutual Insurance Company) as to reasons for identical rates, it is felt that despite unsatisfactory overall underwriting results, the profit potential, given an unfairly discriminatory rate structure, as dealt with in this Report under "The Differential Complex", would have prompted any serious competitors to deviate, thereby taking advantage of the situation.

9. Information on comparative prices was provided initially to the Commission on a confidential basis, (later released) largely on grounds that, for competitive reason, deviators did not want other companies to find out what they were doing. 51/6039 <u>et seq</u>.

the price competition because (i) price differentials do not simply reflect the cost of added services and (ii) as buyers, not all insureds have the same range of alternatives effectively open to them (see Appendix 10:F).

Substantial productivity increases are generally held to be an indication of effective competition. Analysis by the Commission, however, indicates that the industry has not been able to offset rising costs of wages and other inputs by increasing productivity nearly to the extent achieved in other service industries. The cost of the automobile insurance industry's administrative services has risen relative to other costs in the economy during the period, from 1961 to 1965, analysed by the Commission. Although there have been reductions in the expense loading used and in commission rates, total premiums have risen. When these reductions are applied to total premiums, there has been an increase in the administrative cost of providing a given coverage for a given vehicle type, which is greater than that which would be accounted for by changes in the price level. The industry's low rate of productivity increase is an indication of a state of competition too comfortable to be effective.

Those Arising from the Present Situation Respecting the Pursuing of Claims

For many of the victims of automobile accidents -- those with more serious injuries in particular -- the gross tort settlement paid by insurers cannot be taken as a net benefit. Recognition must be given to a variety of "collection expenses". In instances where a lawyer is retained by the claimant, fees for such professional services constitute the significant item of expense. It is a cost borne by the public and necessitated largely by tort law shifting loss on the basis of fault, and a bargaining process including first and subsequent offers, and initial and later demands.

While the fees charged by lawyers appear to be quite reasonable, such moneys are in fact diverted funds which would, under an alternate approach to compensation, be available to traffic victims. On the basis of data extracted from an All Canada Insurance Federation study, this Commission concluded that in instances where a lawyer is consulted, funds diverted are significant enough to warrant attention.[10]

The Commissioners' interpretation of the data differed from that of the All Canada Insurance Federation. The latter presented computations on the following assumptions:

(i) Legal Costs = Fees + Disbursements - Party & Party Costs.
and
(ii) Costs as a Percentage = $\frac{\text{Legal Costs}}{\text{Award}} \times 100$.

The resulting percentage represents the portion of the victim's award which will be diverted. It does not however, indicate the portion of the moneys paid out by an insurer, on a claim, which will repose with other than the claimant. The following example serves to illustrate the All Canada approach:

With Award = $880. Legal Fee = $150. Disbursements = $20.00.
Party and Party Costs = $110.
Legal Costs are held to be $150 + $20.00 - $110 = $60.00
The Costs as a percentage are therefore determined to be $\frac{60}{880} \times 100 = 6.8$

It is apparent that the All Canada Insurance Federation presented a study having greatest bearing on the adequacy of party and party costs awarded.

Using the same data, it was possible to determine the proportion of insurance

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10. Supplementary raw data was provided to the Commission by Mr. D. B. McNeil, C.A., then of Riddell, Stead, Graham and Hutchison, and relates to evidence given by Mr. McNeil on a study of lawyer's fees charged to victims. 58/6848-57.

company payout going to the claimants' lawyers. The amount paid by the insurer was taken to be the award plus party and party costs; the amount paid to the lawyer to be fees plus disbursements. By this method, the arithmetic illustration used above yielded a cost of 17.2%.[11] Costs were calculated for each of the 126 cases in the All Canada sample and the results appear summarized in Table 11.1. The values of the cost percentage figures ranged between 0 and 43.73% with three exceptions.[12]

Table 11:1

Proportions of Insurance Company Payout Going to Claimants' Lawyers

Award Range		Total Payout	Total Legal Costs	Cost %
$1 - $5,000	Litigated	$127,003.05	$31,765.45	25.01
	ex court	95,566.72	13,491.99	14.12
	Aggregate	222,569.77	45,257.44	20.33
$5,001 - $50,000	Litigated	$143,097.26	$27,614.08	19.30
	ex court	289,030.01	31,088.60	10.76
	Aggregate	432,127.27	58,702.68	13.58
$1 - $50,000	Litigated	$270,100.31	$59,379.53	21.98
	ex court	384,596.73	44,580.59	11.59
	Aggregate	654,697.04	103,960.12	15.88

There is no doubt that the costs to those involved are significant enough to be considered in any review of the present system of automobile insurance.

11. $\frac{150 + 20}{880 + 110} \times 100 = 17.2\%$

12. The three exceptions involved the following:

Costs		Awards
61.07%	———	$2,813.78
69.86	———	420.00
88.04	———	2,616.00

Those Arising in the Absence of Compulsory Insurance

Despite almost universal adoption across continental Europe, and its use in Australia, New Zealand, South Africa and the United Kingdom, compulsory insurance has not been widely enacted in North America. Compulsory Insurance is to be found in Saskatchewan (since 1946), Massachusetts (1927), New York (1957) and North Carolina (1958). A larger number of jurisdictions, including British Columbia, make third party liability insurance coverage compulsory for minors. Claims by critics that compulsory insurance leads inevitably to political entanglements and state insurance along with other criticisms based on supposed administrative and technical difficulties, equally lacking in substance, have to date blocked the instigation of compulsory insurance in many jurisdictions.[13]

Before commenting more fully in this area, it would be useful to review present practice and in addition provide some historical perspective.

Financial and "Safety" Responsibility Laws

The first financial responsibility legislation was introduced by the State of Connecticut in 1925 and within very few years it spread to the Canadian Provinces. The significant point under such laws was that motorists who did not satisfy judgments rendered against them -- the direct consequence of death, injury or property damage caused by their driving -- had their driving privi-

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13. Predictions that compulsory insurance must necessarily lead to an exclusive State fund have, over time, certainly proven to be false. As to the other pitfalls, the 1951 study by the State of New York Insurance Department, specifically, G. Kline and C. Pearson, The Problem of the Uninsured Motorist on pp. 53-68 and an article by a recognized writer in the area of insurance, R. Kenny "Great Danger in Those Shotgun Criticisms of Compulsory Insurance", United States Investor, Nov. 10, 1951 effectively confute their significance. The criticism that compulsory insurance leads inevitably to political involvement appears to have been substantiated in Massachusetts only.

leges suspended. Suspension was also likely after conviction of certain driving offences and remained in effect until the penalty was satisfied. Following either a conviction or a judgment, proof of financial responsibility was required for some period into the future. Such proof was met usually through the purchase of liability insurance.

The failings of this approach were quite apparent.[14] For example, the legislation failed to affect those offenders who, being judgment proof, were seldom sued and thereby escaped judgment. Critics of the laws thus were able to speak not only of a free "first bite" but quite properly raised the possibility of several additional free "bites".

When it came to guaranteeing compensation to victims of irresponsible drivers, financial responsibility laws were clearly lacking, with some victims' only comfort being the knowledge that the driver responsible would have to either insure for the protection of future victims, or give up driving.[15] To counter possible enactment of compulsory insurance, the insurance industry, as an alternative approach to narrowing the gap, backed the establishment of unsatisfied judgment funds. Such funds, as adjuncts to any financial responsibility plan, were proferred as solutions to the problem of uncompensated first victims.[16]

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14. See R. Fisher, G. Rutherford, W. Cottingham, G. Cousley, H. Hunter, Report on Indemnity for Motor Vehicle Accidents and Highway Safety, no publisher, Winnipeg, 1944, pp. 26-27. This represents a study by a Committee appointed by the Honourable James McLenaghen, then Attorney General of Manitoba.

15. For an expansion on such arguments see A. Ehrenzweig, Full Aid Insurance for the Traffic Victim, University of California Press, Berkeley, 1954. pp. 13-14 and R. Keeton and J. O'Connell, Basic Protection for the Traffic Victim, Little, Brown and Company, Boston, 1965, pp. 103-105.

16. The first Canadian plan was established in Manitoba in 1945. Interestingly enough, however, its use in conjunction with compulsory insurance was examined in the United Kingdom as far back as 1937.

Because of the shortcomings of financial responsibility laws, revisions appeared, pioneered by New Hampshire in 1937. Such new laws were labelled "security" or "safety responsibility legislation". With no evidence that such laws advance highway safety they are clearly misnamed. In this view the Commission is in agreement with those expressed in the report of the 1957 Nova Scotia Royal Commission.[17]

The contribution of such laws stemmed largely from the added requirement that <u>all</u> parties involved in accidents must show financial responsibility at the time of the accident or have their registrations suspended.[18] In bringing about the improvement it is obvious that even the most reasonable discrimination under a fault rationale was abandoned. It is no longer the safe or innocent driver who is spared the cost of insurance but only those lucky enough to escape involvement in accidents. That such legislation is reasonable clearly hangs on the postulate that maximum numbers of insureds are desirable.

In addition to so-called "safety responsibility legislation," British Columbia, along with some other provinces, has introduced impounding laws.[19] Such provisions provide that uninsured vehicles involved in accidents may be seized and held until the question of fault has been resolved and the settlement of damages provided for. While such laws clearly increase the pressure on motorists to

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17. <u>Report</u>, Vol. 1, p. 126.

18. Under Section 84 (3) of the B.C. <u>Motor-Vehicle Act</u> an owner's suspended registration or licence may be returned if he satisfies judgment to certain limits, gives security to satisfy judgment, or if a court rules that the owner or driver was not liable. The complete provisions for British Columbia are found in Part II of the <u>Act</u> and need not be repeated here, as they are covered in some depth in the section on traffic safety. (Chap. 13).

19. B.C. <u>Motor-Vehicle Act</u>, Sec. 84 (1).

purchase insurance so as to avoid the inconvenience of impoundment, their other contributions are quite limited.

In concluding this review of the situation in British Columbia it is advisable to focus briefly on the actual distinction between the present "voluntary" approach and universal compulsion -- the latter identified in the submission of the All Canada Insurance Federation as a species of so-called social welfare legislation.[20] It appears to this Commission that Professor Brainard's views on the subject are more valid and to the point. In his treatment of compulsion, he reasoned as follows:

> . . . The laws . . . are customarily identified as compulsory insurance laws to distinguish them from legislation under which the purchase of insurance is largely voluntary. This is somewhat misleading. Compulsion is merely a means to an end, which in all legislation of this kind is the same, namely, financial responsibility under common-law negligence. Furthermore, under all laws there is compulsion upon those affected; without a compulsory element none of the financial responsibility laws would be effective. The significant difference between laws is the manner in which the compulsion is imposed . . . arbitrarily . . . on all motor vehicle owners . . . or . . . singling out those to be subjected to compulsion.[21]

Another noted authority on casualty insurance, the late Professor Kulp, wrote that:

> . . . financial-safety responsibility proponents point with pride not to the advantages of minimal interference with voluntary insurance but to the high ratio of insured owners produced by this "strong incentive to insure". Entirely apart from the merits of the law two conclusions are clear: the law is no longer one that affects only the naughty few; by the same token it no longer justifies the title of voluntary.[22]

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20. Ex. 124, Sec. VII, p. 2.

21. C. Brainard, Automobile Insurance, Richard D. Irwin, Homewood, 1961, pp.415-6.

22. C. Kulp, Casualty Insurance, New York: The Ronald Press, 1956, p. 213. In the quotation reference is made to an undated pamphlet produced by the Association of Casualty and Surety Companies around 1950 and titled "Compulsory Automobile Insurance . . . An Old Fashioned Idea Exploded". The pamphlet goes on to state that "...while the law avoids the stigma of compulsion, it induces the great majority of automobile owners and operators to insure."

It is clear that despite both the "inducement" inherent in the present legislation and compulsion respecting drivers under 21, a number of motorists remain uninsured. As detailed elsewhere in this Report the cost of the partial compensation of their victims, achieved through T.V.I.F., is borne by those responsible motorists who do buy insurance. Before concluding on the desirability of universal compulsion the Commission had to determine, through its own research, the size of the uninsured population.

Uninsured Motorists in British Columbia

No direct measure of the percentage of uninsured motor vehicles is available for British Columbia. The simplest way of inferring the proportion insured is by examination of the percentage of drivers reporting accidents who are unable to produce evidence of being insured. During 1965, out of 70,073 vehicles involved in accidents, owners of 2870 were unable to produce evidence of financial responsibility.[23] The resulting estimate that only 4.1% of vehicles in the province were uninsured is almost certainly too low. To begin with, the sample is not a random sample of the population but, because of a higher probability of involvement in accidents, is more heavily weighted with drivers under 21 than the population at large. Given compulsory insurance for minors, the sample is biased. Further, the sample is confined to reported accidents. The proportion of unreported accidents is unknown, but the penalties provided for uninsured drivers under "safety responsibility" legislation provide such drivers with the incentive to avoid reporting.

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23. Motor Vehicle Branch, Annual Report, 1965, pp. M23, M31.

Because these biases prevail, the suggestion made by the All Canada Insurance Federation that the percentage derived from accident reports is a sound estimate of the percentage of uninsured vehicles must be rejected.[24] It is not supported by either the loss experience of the T.V.I.F. or by data collected by the Commission.

One less biased method of estimation is to compare the estimated number of vehicles in the province with the number of insured vehicles calculated from insurance reports.[25] While estimates based solely on raw vehicle registration data would give an excessive estimate of the number of vehicles in use, adjustments are possible. Thus, the number of registrations in any given year is the sum of:

(i) The number of vehicles in the province at the beginning of the year, plus

(ii) New registrations of new vehicles sold, plus old vehicles moved into the province and registered during the year.

This total will always exceed the number of vehicles in the province at the end of the year by:

(iii) The number of vehicles moved out of the province, scrapped or destroyed during the year.

Table 11:2 presents registration statistics for (i) and (ii) as well as an estimate of (iii) based on the difference between total registrations and renewals of the subsequent year. The differences were then used to obtain estimates of the average number of vehicles in the province shown in Table 11:3.

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24. Ex. 124, Sec. VII, pp. 2-4.

25. This procedure was used by F. O. Harwayne in preparing estimates in connection with the Nova Scotia Royal Commission. The technique used here is similar. Harwayne's report is appended to part VII of the All Canada Brief, Ex. 124.

Table 11:2

Passenger Car Registrations in B.C. 1960-1966

Year	New Registrations	Renewals	Total	Apparent Disappearance
1960	45,364	400,686	446,050	27,028
1961	48,348	419,022	467,370	28,884
1962	56,822	438,486	495,308	31,851
1963	67,659	463,457	531,116	35,697
1964	76,388	495,419	571,807	42,255
1965	94,190	529,552	623,742	48,378
1966	89,427	575,364	664,791	

Source: New Registrations, Renewals, Total from Superintendent of Motor Vehicles, Annual Reports 1960-5, and preliminary data to the 1966 Report.

Table 11:3

Estimated Average Numbers of Passenger Cars in Operation

(000)

Year	Beginning of Year	End of Year	Average
1960	400.7	419.0	409.9
1961	419.0	438.5	428.8
1962	438.5	463.5	451.0
1963	463.5	495.4	479.5
1964	495.4	529.6	512.5
1965	529.6	575.4	552.5

The above figures could not, of course, be compared directly with insurance exposure statistics as the latter are reported on a policy year rather than calen-

dar year basis. Calendar year estimates of vehicles covered were computed as the average coverage during the two policy years involved and appear in Table 11:4.

Table 11:4

Estimated Coverage of Private Passenger Vehicles
(000)

Year	Vehicles Insured		Vehicles in Operation	% Covered
	Policy Year	Calendar Year		
1960	347.6 368.5	358.1	409.9	87.4
1961	398.1	383.3	428.8	89.4
1962	415.7	406.9	451.0	90.2
1963	447.9	431.8	479.5	90.1
1964	480.7	464.3	512.5	90.6
1965	505.1	492.9	552.5	89.2

Source: Policy year dates from 'Green Books'. 84% loss development factor applied to 1965 figures. Calendar year estimated as 50% of current policy year.

On the basis of the above technique, the best estimate that this Commission can make is that 90% of the private passenger vehicles in British Columbia are insured. This is of course subject to error and it is suggested that there is a probability of .95 that the true percentage lies between 86 and 94.

Even on the extreme assumption that the uninsured figure is but 6%, this Commission concludes that the patchwork of so-called "voluntary" measures has not approached what is possible under universal compulsion and failed in other res-

pects as well.[26] The existing legislation has placed additional burdens on those who do insure, relied on victims to absorb larger portions of their loss than would be the case when their plight was not caused by uninsureds, and shifted the remaining burden of loss to the public at large. Finally, there is no basis for claims that under present laws, accident prevention and safety are significantly enhanced or that administration is simplified, relative to an alternative system which might be devised.

Those Arising Because of Apparent Differences Between Insurers in the Handling of Claims and the Interpretation of Contractual Obligations

It is readily apparent from the evidence that only a small fraction of claims involve the services of a lawyer and lesser fraction still involve litigation, with a very small number out of those litigated actually going to trial and thus being decided by the Courts. Under the present system of coverage, claimants in most instances appear to rely on the third party insurer to determine its obligation to him on behalf of its insured, without the claimant having the benefit of independent assistance or advice. The process is unfortunately somewhat comparable to a lottery and the outcome leaves much to be desired in terms of equitable treatment as between claimants.

Evidence of differentiation in company treatment of claims is available from a study of individual claims files for six companies submitted to the Commission

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26. From 79/8780, in 1966 only 46 out of 90,000 vehicles owned by Saskatchewan residents involved in claims were uninsured. New York State maintains an insured motorist population of about 98%, according to the Report to the Legislature -- Financial Responsibility Study Committee, State of California, 1967. South Africa maintains an insured motorist population of over 99%, according to a letter received by the Commission on October 11/67 from the Department of Transport, South Africa.

by the All Canada Insurance Federation.[27] Distributions of amounts paid to claimants in each company's sample are shown in Table 11:5.

Table 11:5

Distribution of Bodily Injury Claims by Size for Six Companies

Size of Payment	Number of Claims					
	Zurich Ins. Co.	Allstate	Dominion Ins. Group	North-western Mutual	Wawanesa Mutual	Guardian Group
	A	B	C	D	E	F
$ 0 - 199	88	59	40	42	75	35
200 - 399	13	16	16	9	13	14
400 - 599	5	11	9	10	9	8
600 - 799	10	2	7	10	5	8
800 - 999	3	6	6	8	7	1
1,000 - 1,499	7	3	12	11	7	10
1,500 - 1,999	4	3	8	6	3	2
2,000 - 2,999	3	2	3	3	3	13
3,000 - 4,999	-	1	3	2	-	4
5,000 - 9,999	3	-	1	-	2	2
10,000 and over	-	-	-	-	-	3
Size of Sample	136	103	105	101	124	100
% under $200	64.7	57.3	38.1	41.6	60.5	35.0
% under $600	77.9	83.5	61.9	60.4	78.2	57.0

Although the samples are relatively small, they are random and large enough to permit certain inferences to be made. Thus, companies A, B, and E show a consistently high percentage of claims settled for small amounts, while C, D and F show a consistently low percentage. Standard statistical tests strongly suggest that this is not the result of random differences in losses but rather a difference in claims policy or claims settlement techniques.

Further evidence of company variability in claim treatment is available in the

27. Ex. 124, Vol. II, III.

following exchange between Mr. G. W. McGill, claims manager for Canada of the Northwestern Mutual Insurance Company, a witness who appeared on behalf of the All Canada Insurance Federation, and a Commissioner:

> Commissioner LUSZTIG: . . . I will really be drawing on your experience as a manager and ask you to interpret some data put together out of the 669 cases reported in Volumes II and III. I have two sets of figures drawn from two different companies and they are significantly different. I wonder if you could indicate . . . as claims manager how you would interpret this difference. I am looking at Allstate and Guardian, in other words, companies 1 and 3 . . . taking the number of cases in the sample between $1 and $50 where the insured was liable to the extent of 100% . . . in the case of Allstate there were twenty-seven files filed for the purpose of classification, in the case of Guardian there were three. Now, given the fact that the total sample of these two cases was roughly one hundred, we could interpret these as percentages. At the other end of the scale, looking at the amounts paid in excess of $2,000 in the case of Allstate there were three files, and in the case of Guardian there were twenty-two files, . . . looking at the total numbers in excess of $2,000 in the total sampling there were only forty-eight . . . I was just wondering whether you could as claims manager, shed some light on this difference?
>
> McGILL: Well, with respect to the first question, all I can do is to give you my personal opinion.
>
> Q. Yes.
>
> A. I would think that one of the principal reasons for this is that Allstate has a heavy concentration of business in the Metropolitan area and has a substantial staff of salary claims adjusters, who perhaps have the ability to move out in those cases a little more quickly and take releases for lower amounts perhaps, on the average, in the small or minor type of case where the expense is extremely modest, probably involves one medical visit or two, as the case may be, perhaps no more than a week or two disability at the outside . . . At the other end of the scale, I really couldn't answer that. Certainly if you analyze those cases, I think you would find that in the Guardian cases the injuries were more severe. This probably resulted from a more severe accident and this again goes back perhaps in some way to the question of underwriting. . . [28]

Where larger claims of a third party liability nature are involved, the Commission received evidence that insurers tend to make low initial claim offers. The following exchange between Mr. H. E. Waldock, a member of the British Columbia Bar, and a Commissioner, serves to illustrate.

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28. 38/4485-7.

Commissioner WALLS: What has been your experience of the difference between the initial offers by the insurers and that finally offered on the Court House steps?
WALDOCK: They are considerably different.
Q. Would you have any idea, let us say, of the average that you have experienced?
A. It is pretty hard to state it. It really is.
Q. Let me put it this way, would there be any that would be double what the original was or 50 per cent higher?
A. Oh, yes, certainly.[29]

In dealing with evidence presented by Allstate, a Commissioner obtained further exposition from Mr. R. E. Bethell, then manager of the Allstate Vancouver Regional Office.

Commissioner WALLS: If I may interject here, I totalled these columns and your initial offers totalled $25,944, your final offer was $36,844, which is an increase of 42 per cent, and I have been concerned about the question that Mr. Rae is asking because this morning you indicated that the policy was to make a correct offer and that you did not pay, particularly with small claims, above it. Now I can only interpret from this either that you under-offered in the initial offer, or in the final offer you paid out more than you thought you should.
BETHELL: Well, as I was trying to explain, Mr. Commissioner, when we first make our offer we don't have all the information available to us, and when we make our final offer at that point we have the full divulgence of all the facts, and at this point we are in a position to make a more correct offer to the claimant, so there has to be a difference between the initial and final offer.[30]

In view of the apparent spread between initial and final offers, information obtained from one part of the Commission's own staff studies on the adequacy of compensation was hardly surprising. Data collected suggest that those with lawyers receive much larger settlements. Such data also indicate that the better the case, from a claimant's point of view, the more likely the claimant is to retain a solicitor and conversely, of course, the poorer the case, the less likely he is to retain a solicitor. In the interests of eliminating bias, therefore, cases involving no tort payment were eliminated. When averages were

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29. 64/7472-3.

30. 22/2648-9.

taken over the cases involving some tort settlement the Commission found that tort settlements (net of legal expenses) were still much higher when a solicitor was retained. Unfortunately, many people did not appear to appreciate the importance of such assistance in obtaining tort settlement.

That is to say, a better tort recovery is obtainable given the threat of or the commencement of litigation, and seemingly better still given the willingness and ability (financial and other) to carry the litigation to trial if necessary. This is not to say that the insurer should necessarily be criticized for this situation. Under the tort recovery system (underwritten by insurance) the situation is such that the liability insurer can justify settlement at the lowest figure reasonably possible. It owes no contractual duty directly to the third party claimant. But on the other hand, in the case of a stock company at least, it does owe a duty to its shareholders and its insureds, -- to the former as to profits and to the latter as to lower premiums or at least the avoidance of an increase.

In considering the cost to the public generally, low initial company offers are significant in at least one other respect. The same Commission study found that delays from the time of the accident to final compensation frequently created serious financial problems for the claimant or his family. Consequently, financial circumstances could deter a claimant from waiting until proceedings are to the point where the insurer's offer is approximately a final one. The amount and the adequacy of the compensation received may today therefore depend as much on ability to wait as on the merits of the case. It is this Commission's view that any system of compensation which may lend itself to such hardship and inequities can and must be improved upon. An indication of the time delay,

most frequent in cases involving serious injuries or death, is provided in Table 11:6.[31]

Table 11:6

The Time Delay from Accident to Final Compensation of All Cases Surveyed in which Compensation was Received and Economic Loss Sustained

Accident Category	Time Category (in mos.)				Total
	0-6	6-12	12-24	24-36	
Minor Injuries	587	70	31	13	701
Serious Injuries	39	10	20	20	89
Fatalities	30	7	11	4	52
Total	656	87	62	37	842

31. Here, as in other sections, serious injuries are defined as those involving any one or more of the following characteristics resulting from injuries received in the accident: (i) medical expenses of $500 or more (ii) three or more weeks off work (iii) permanent physical impairment affecting ability to work.

CHAPTER

12

CONCLUSIONS AS TO WHETHER THE PREVIOUSLY MENTIONED COSTS ARE IN PROPER RELATION TO THE EFFECTIVE PROTECTION OBTAINED

CHAPTER 12

CONCLUSIONS AS TO WHETHER THE PREVIOUSLY MENTIONED COSTS ARE IN PROPER RELATION TO THE EFFECTIVE PROTECTION OBTAINED

Information relevant to the determination of the adequacy of the present compensation system was detailed in an earlier section covering term of reference (b). In other chapters relating to term of reference (a) and more particularly (c), the Commissioners focused on the costs of providing the present approach and levels of automobile insurance protection. The purpose of this brief chapter is to summarize and to interrelate the Commissioners' earlier analysis and findings on the appropriateness of present levels of protection in relation to their costs.

The Commissioners' analysis of the adequacy of the present compensation system led to the conclusion that the prevailing approach falls short of achieving an adequate level of compensation. More particularly, it was noted that the present system discriminates against personal injury cases, with the level of bias being greatest when losses are more serious. Thus, the ratios of average compensation to average economic loss for minor injury, serious injury and fatality cases were found to be 0.85, 0.44 and 0.20 respectively. When there was added the finding that, on the one hand, 97% of losses in fatality cases and 67% in serious injury cases were income losses, while on the other hand, 85% of the losses in minor injury cases were automobile damage, the conclusion that the present compensation system discriminates against personal injury cases becomes irrefutable. Clearly, the greatest burdens are being borne by those more seriously afflicted. Such victims are able to shift but a small fraction of their total economic loss.

Analysis of the sources of compensation indicated the importance of non-tort sources, especially for the survivors of fatally injured victims. Although tort settlements were the largest single source of reparation in cases involving serious injuries, for the survivors of fatalities they represented only 17% of aggregate compensation.

In addition to the maladjustments cited, it is significant that the present approach to compensation is achieved at a relatively high overhead cost. Through their insurance premiums, motorists are paying roughly $1.60 for each $1.00 of settlements paid by automobile insurers. Acknowledging the feasibility of a no-fault reparation system, the Commission concludes that the present reparation system is unnecessarily expensive to administer. This conclusion is valid quite apart from consideration of the other costs, both monetary and non-monetary, connected with the present approach to compensation. Such other related cost issues include the significant time lags from date of accident to compensation, and legal costs of the claimants. Both have been extensively dealt with under term of reference (a). It is, however, useful to repeat that a very real barrier to rehabilitation is the stress created by controversy, bargaining, extended litigation and the substantial delays which result.

Other cost factors, analysed extensively in preceding chapters of this Commission's Report (such as the burden of the Traffic Victims Indemnity Fund and the variability among insurers in the handling of their contractual obligations) further support conclusions on the inappropriate relationship of costs to the present form and level of protection.