

CHAPTER ONE – THE POLITICIANS WADE IN

26 January 1965 excerpt from the record of the Throne Speech debate¹:

MLA member from the Social Credit party Cyril Shelford proposed that a special committee should be formed to investigate the jump in auto insurance rates. He was loudly applauded on all sides of the house.

"It is our duty to investigate any case when there is an increase of 20 percent over a year. We owe it to the people, who are being asked to pour \$1 million more [\$900 million in 2023 dollars] into the insurance industry".

He said for lower income groups more money spent on premium means less money for food and clothing for thousands of children. He noticed the accident rate was still rising and future premium boosts could be in the offing.



Cyril Shelford (image source Google)

Shelford's plain statement of the moral obligations of the Members of the Legislative Assembly can be seen as one of the first harbingers of the birth of ICBC. It's interesting to look beyond relevant legislation and public perception, past and present, to see what the politicians of the time were thinking, and the public response they were reacting to. But first, some context.

WAY BACK WHEN

In the early days of British Columbia as an official Province of Canada, politics seemed less polarized than it does today. For the first 32 years leading up to the turn of the 20th century, the governments were listed as 'non-partisan'. One Premier was named Amor de Cosmos which literally translates as 'lover of the universe'. Governing seemed to be the purview of a relatively few white, male landowners who were unified in their shared interests during a very nascent period of British Columbia's written history².



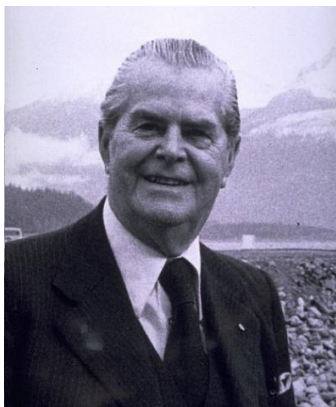
Amor de Cosmos (image source Google)

With the exception of Robert McPherson, sole Member of the Legislative Assembly with progressive leanings and elected under the Nationalist Party banner in 1894³, Conservatives and Liberals dominated for the next half century.



Robert McPherson (MacPherson) (Image source Google)

Then in 1952, W.A.C. Bennett⁴ began a twenty-year reign as Leader of the Social Credit party (the Socreds) and Premier of the Province. Far from socialists, the Socreds were a right-wing coalition designed to 'keep the socialist hordes from the gates'⁵. The man commonly referred to as 'Wacky Bennett' retained power for longer than any other Premier, before, or since. The automobile insurance issue, however, would prove to be fatal to his political career.



W.A.C. Bennett (Image source Google)

On the heels of considerable Government dithering and even more considerable public anger, Dave Barrett led the NDP Party into power in 1972 on a platform of social reform. While this included significant changes to labour law, the workings of the Legislature, and the initiation of the Agricultural Land Reserve, the bread and butter issue that sparked the electoral win was public auto insurance⁶.



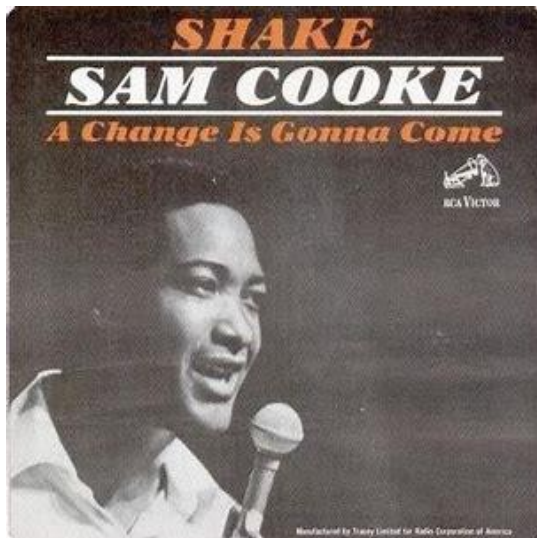
(Image source Google)

To put politics to the music of the time, while motorists were singing along with the Stones' number one hit that year, *(I Can't Get No) Satisfaction*, the Bennett government together with the private sector could have been humming *We Can Work It Out*



(Image source Google)

by the Beatles. It was the NDP however that sang a song more predictive of the future, Sam Cooke's *A Change Is Gonna Come*.



(Image source Google)

In the Summer of '65, the BC Hospital Insurance Program was only 17 years old. The Medical Services Plan that today pays for most doctor appointments and various forms of treatment for all of us had just come into effect but covered only about 20% of the population⁷. Seat belts were not required by

law. ABS brakes hadn't been invented. There were no vehicle testing stations. The law prohibiting driving with over .08 blood-alcohol reading did not yet exist.

There were just over 786,000 vehicles registered in 1965⁸ as compared to more than 3,500,000 today⁹. The best-selling car of that year was a Chev Impala. This top of the Chevy line sold for less than \$4,000.00¹⁰ then which is the equivalent of about \$38,000 in 2023 dollars. A comparable vehicle starts at about \$55,000 today.



(Image source Google)

When you hit 50 miles per hour in that Chevy you knew it. Today's cars zip silently and effortlessly up to 80 kilometers per hour in a heartbeat; and today's drivers are belted in, surrounded by padded dashes, airbags in every corner of the car, and a false sense of both the speed they travel at and their vulnerability to injury.

1965 - THE BEGINNING OF THE DIVIDE

On the heels of Shelford's remark, Robert Strachan, then NDP Leader of the Official Opposition added a more partisan statement of the situation:

"I suggest it is time the automobile owner in BC was given a little relief from this continual gouging that has been his lot in increasing amount in recent years." ¹¹

Dave Barrett, who would succeed Strachan as Leader of the NDP going into the election of 1972, noted that all of Canada except Saskatchewan where there was a government insurance scheme experienced increases in rates and that therefore the solution in BC would be government owned insurance.

NDP MLA W.L. Hartley suggested government car insurance to combat rising rates. He said he polled people and 100 percent of them responded that it is not only worthwhile but also long overdue.

NDP MLA Leo Nimsick said a government automobile insurance agency would eliminate the overhead costs of some 200 private companies in the field and ensure that all British Columbians are covered. He spoke in the Legislature of one case where a youth was charged \$600 [\$5,532 in 2023 dollars] for car insurance.

"A wealthy person could afford that high premium but not an ordinary citizen and this monetary distinction should be eliminated."

NDP MLA John Squire accused auto insurance companies of being arrogant when they cancelled policies without giving reasons. He said he is ready to start naming them in the legislature. He said if the companies' business suffers, it will be their own fault.

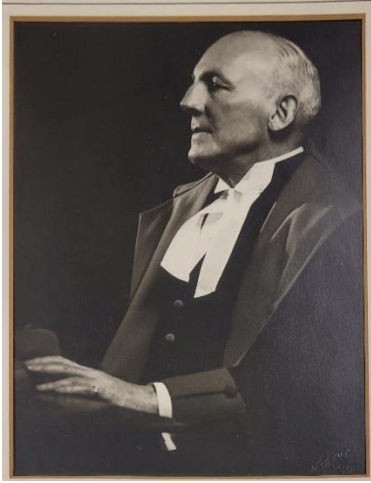
Attorney-General Bonner said official correspondence with the company has been started by the Superintendent of Insurance. NDP MLA Alex MacDonald's retort was that Attorney General Bonner should have intervened with the industry before auto insurance rates went up yet again.

MacDonald put some numbers to the situation. The most recent rate increase he said was 28% in Greater Victoria and 22% in the Lower Mainland. The last annual report of the Superintendent of Insurance showed that losses amounted to 70% of the premiums paid. The 30% that remained for overhead, and profit was extremely high, reflecting an inefficient yet profitable industry.

Bonner, forced into an apologist position, replied that the Superintendent of Insurance had informed him that the industry made out the case that they had been actually falling behind for a five-year period, and that the raise would bring them into a position where they might be within reasonable reach of breaking even.

AND ON IT WENT

In the Throne Speech of 26 January 1966 it was announced that "*the Honorable Mr. Justice Robert Alexander Burnie Wootton, Dr. Peter Alfred Lusztig, and Charles Edward Stuart Walls, Esq., have been appointed as a Commission of Inquiry under the Public Inquiries Act to examine all aspects of automobile insurance and related considerations as they may affect the people of British Columbia...*"



Wootton (Image source Google)

Also featured in the throne speech was an announcement of a road suspension program to disqualify on the spot any drivers suspected of having been drinking, and a program of compulsory vehicle testing.

Socred MLA Donald Robinson raised an interesting international angle to the issue. Noting that accident litigation in the US had made \$100,000 [\$922,000 in 2023 dollars] damage awards common and these must be paid by insurance companies which are international companies whose operations extended all over this continent, he wondered if BC drivers were paying for these awards¹²

NDP MLA Rae Eddie said traffic accident victims should be compensated from a government-administered fund in the same manner as workmen are now. He proposed that all vehicle owners should pay a special assessment for their licence plates which would go into the fund and accident victims would be compensated regardless of fault. Eddie said vehicle owners could buy collision and other auto insurance policies for coverage over and above the basic policy if

they wished. This system had worked well in Saskatchewan where it was introduced 20 years ago, and BC should consider a government run auto insurance plan modelled after the one in Saskatchewan¹³.

Justin Harbord, president of the *Insurance Agents' Association*, wrote in the Association's periodical, *The BC Agent*, that "*the greatest single reason for increase in car insurance rates is the unreasonable and sometimes exorbitant demands of big labor [sic labour]. We should place the blame [for higher insurance rates] where it belongs, on irresponsible motorists and big labor.*"¹⁴;

NDP MLA William Hartley, who was a general insurance agent himself, said he was "ashamed" of statements [such as Harbord's] made by his industry. - "It is a typical fifth-column Quisling tactic and has no place in a democratic society". Hartley pointed to three auto rate hikes in about 12 months, the last one in January. Speaking of his own car insurance, he said that meant a one-third increase in premium even though the car had never been in an accident.

Hartley also outlined a plan to reduce accident rates and to reduce insurance premiums through government ownership. He recommended three steps: a compulsory program of driver training in secondary schools; the demerit system of dealing with traffic infractions; using part of fuel tax revenue in a government-owned insurance fund.¹⁵

Debate on the issue continued subsequent to the January 1968 Throne Speech:

Liberal MLA Garde Gardom said insurance cost should be lower for good drivers. He urged to increase licence cost - perhaps \$50 [\$461 in 2023 dollars] - to drivers without liability insurance, and he argued for reduced cost of licencing for the good driver and higher cost for drivers with bad records through a system of classifying licenses.

Gardom held that it was essential to begin systemic training of new drivers and proposed that the government should institute a 12-hour driver theory course as a compulsory part of the high school curriculum that fall. Practical instruction could be added as an elective.¹⁶

While the Legislature waited upon the Royal Commission Report soon to be delivered by Justice Wootton, Shelford's universally supported statement in the Legislature of the moral obligation to BC motorists quickly devolved into partisan bickering over what the problem was exactly and what form the solution should take.

CHAPTER TWO – THE WOOTTON REPORT

A DEEP DIVE PRODUCES A LASTING EFFECT

Messrs. Wootton, Lusztig and Walls took their work seriously and on 30 July 1968 the Royal Commission on Automobile Insurance delivered its Report.

It comprised of two volumes totalling 828 pages, spanning 18 months, and costing over three million 2023 equivalent dollars. Four public meetings were held. In addition to extensive correspondence received and over sixty publications reviewed, sixty-six witnesses assisted by over a dozen lawyers attended in person to provide sworn testimony. This testimony was subject to cross-examination by the Commission's legal counsel.

During the course of its investigation, the Commission heard various schemes and commentary advanced by multiple parties. From the Insurance Bureau of Canada to the BC Federation of Labour to the Superintendents of both Insurance and of Motor Vehicles, everyone had something to say. Even The Coleman Creek Farmers' Institute saw fit to make its views known to the Commission.

The full wording of the mandate including a detailed elaboration on subpoints can be read verbatim in the endnotes¹⁷. Briefly it is:

How bad is the problem, what's causing it and how do we fix it?

In the exemplary fulfillment of the Commission's mandate, the Report's effect was to move the conversation from political bickering to a logical set of proposals founded on a comprehensive and disciplined gathering of relevant information. In addition to revealing the underpinnings of the automobile insurance market disfunction, the Commission laid out a detailed set of solutions. Its proposals were thought of as radical at the time, however the Report has had an enduring effect. While there still is no consensus, its recommendations continue to be relevant even now in the post-tort era.

STATING THE OBVIOUS

The first stated conclusion of the Report reads as follows:

"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."

IN MY WORDS ...

Car insurance premiums rise in direct proportion to the frequency and severity of motor vehicle collisions. Safe driving is key to affordable insurance

As I reflect on the many discussions, private and public, that I have had over the years, it never ceases to amaze me of how easily we all lose sight of this basic fact. The immediacy of the annual expense combined with the it'll-never-happen-to-me human thinking easily eclipses why we need to collect the money in the first place. As a result, to this day, we are constantly applying bandages to the societal wound when we should be spending more time and energy on a cure. The Wootton Commission does not fall into this trap.

NOTHING IS SACRED

With respect to who should administer the scheme and how, the Commission damned the torpedoes and met the question of private vs public insurance head on.

While they were at it, they also waded into the issue of tort vs no fault.

On the money front, it's helpful to keep in mind that usually seventy to eighty-five percent of premiums collected at any given time and under any given system go to paying actual losses. Therefore, the effect of any administrative changes operates only on fifteen to thirty percent of the money collected. The Commission's proposed non-discriminatory approach to both premium collection and claims payment held the promise of huge administrative efficiencies. This together with its recommendations on accident reduction and the elimination of the tort system implied an affordable and responsive system of automobile insurance. It also indirectly raised the interesting issue of insurer as moral arbiter. More about that later.

GOVERNMENT FRONT AND CENTRE

While I'm sure the Commission wasn't naïve enough to think all accidents could be eliminated, they did see vast room for improvement. The Report noted that, after cancer and cardiovascular disease, traffic accidents were the leading cause of death in the Province. While getting the family car legally on the road was seen as a significant strain on many household budgets, it paled in comparison to an empty chair at the dinner table. From a human as well as a financial perspective then, the Commissioners saw this as a society-wide problem that warranted significant Government intervention - intervention that would be independent of the question of private sector vs government owned and operated schemes.

IN THEIR WORDS

“... this Commission has concluded that the Government of British Columbia cannot fail to recognize the need for its assuming the responsibility in this Province for extensive research into the causes of automobile accidents, and the like responsibility to instigate and coordinate programs that will help remove these causes. Nor can the motorists in this Province fail to accept the fact that they should contribute to the financing of such an agency to make possible greater road safety for themselves and their families.”

Beyond just legislative changes then, they postulated that a whole new department dedicated to promoting and coordinating public safety measures needed to be formed and financed by the Government. The “*Safety Research Laboratory*” was to coordinate closely with traffic safety related education initiatives already being promoted by existing government departments and not-for-profit organizations.

Here are a few things they thought should be on an ideal agenda for this new department.

Noting that in 1966 there were 1,263 accidents involving road defects, obstructions and repairs resulting in ten fatalities among other losses, the Commissioners recommended the Department of Motor Vehicles coordinate in real time with the Department of Highways so as to take immediate remedial action after each event.

In urban environments where congestion precludes following at a safe distance there was a need for increased study of the use of “*frictional properties for the corrective treatment of surfaces of roads.*”



(Image source Google)

Additional research was also recommended into the subject of pedestrian crosswalk design. Noting a higher frequency of accidents during afternoon rush hour they stated that attention should be focussed on “*driver temperament*”. In today’s less polite world we call it road rage and its little buddy, aggressive driving.

The Commissioners noted that more information needed to be made available to the public that would connect alcohol consumption to driver impairment. Existing pamphlets should be supplemented by spot broadcasts on TV. Posters should be located in cocktail lounges and beer parlors. Warning labels should be required on all containers of alcoholic beverages.

They suggested that guidelines should be developed by the British Columbia Medical Association with respect to the extent to which doctors “*could be expected to advise the Superintendent of Motor Vehicles of people who, in their opinion, for medical reasons and in the interests of public safety, should not be permitted to drive.*”

Provincial representatives should coordinate with Federal representatives to put pressure on automobile manufacturers regarding the minimum safety requirements allowable in new cars for sale in Canada.

Provincial legislation should be brought in to require sellers of used vehicles to make statutory declarations with respect to safety-critical components of the vehicles they are selling.

They recommended that the driving age should be raised from 16 to 18.

The demerit point system informally in use at the time to advise judges when sentencing traffic-related offenders should be formalized and more aggressively utilized. Instead of a confidential memo to the Courts, demerit accumulation and its connection to suspension of driving privileges should be put out for public consumption. The demerit status of each driver should be evidenced through colour coded driver's licenses. White licenses signify no demerit points. Red would be the last colour before suspension. Imagine the embarrassment of showing your red driver's license as you board the plane on the family vacation! While that approach may not go down well in today's world, we all suffer from the missed opportunity to annually connect individual driving records directly to premium increases.

The sum total of all these recommendations, if fully supported and pursued by the Government, could potentially lead to a change in the public mindset about road safety. Sadly, fifty years later, while much has been accomplished, a great deal more still needs to be done.

PRIVATE VS PUBLIC INSURANCE

While brave and innovative, the Commission was also capable of bias.

The Commissioners conceded that while the BC Workmen's Compensation Board [as it was known then], a Provincial government monopoly insurance system operating in their own jurisdiction since 1917, had worked well, they were concerned that ...

“... under an exclusive governmental fund there would likely be rigidities and more limited innovation that would more than offset reductions in the percentage of the premium dollar siphoned away in expenses.”¹⁸

Also,

“... the 1946 social and economic environment of Saskatchewan which was significant in the introduction of the very workable government plan of automobile insurance is quite different from that which exists in British Columbia today.”¹⁹

'Today' was 1968 and forty-two years after its 1946 inception, the Saskatchewan Government Insurance Office (SGIO) was apparently still working well enough to send several of their executives to testify before the Inquiry. One of them, Norman Bortnick would be ICBC's first CEO.



Norman Bortnick (Image source Google)

In their view it came down to this:

“The studies of the Commission have not shown guilt or improper conduct which would warrant government taking over a business which was initially pioneered at considerable risk.”²⁰

Notwithstanding the bias however, for the private sector automobile insurers there was an iron fist inside the Commission’s velvet glove. Further on the same page was the recommendation of a Government owned and operated “*Insurance Board*” that would:

“stay continually apprised of the structural characteristics, conduct and performance of the automobile insurance industry in the Province.”²¹

Making the point even clearer,

“Should there continue to be discriminatory pricing and the lack of proportionality between prices and marginal costs or other evidence of less than effective competition, or should British Columbians again be subject to a ‘tight market’ for automobile insurance for whatever cause, the Commissioners would recommend the immediate establishment of a Government Insurance Office.”²²



Sword of Damocles (Image source Google)

And so appear, albeit vaguely, the first portents of the Civil Resolution Tribunal and the Public Utilities Commission’s supposed modern day oversight of automobile insurance rates, and indeed, support for the NDP’s version of a solution began to materialize - insurance, of the people, by the people and for the people.



(Image source Google)

FAULT VS NO FAULT

The private sector insurers were strongly represented during the Inquiry, and strongly against No Fault. In addition to lawyers retained specifically to promote the private sector viewpoint, various Claims Managers, and representatives from the All Canada Insurance Federation²³ with its attendant experts, all advocated for maintaining the

tort system in the settlement of personal injury claims.

This excerpt from page 560 of Volume 2 of the Commission Report succinctly summed up the history of tort law as it relates to motor vehicle accidents. It also provides insight into why the private sector insurers at the time were so enamoured with what they saw as their primary defense against unsustainable payment obligations.

“In the early days of the motor car, the courts treated them like wild beasts for a time, imposing strict liability in favour of those injured in collisions. In one Ontario case, the owner of a shining red roadster with brass fittings was held civilly liable for an accident that occurred when a horse took fright at the mere sight of his vehicle parked at the roadside. Chief Justice Meredith dissented. He felt that motor cars were “modern means of conveyance” that were used, not only “for pleasure”, but for “business purposes” all over the country and that they should be entitled to the “same freedom as a wagon, carriage, cart or less modern vehicle”. Another Canadian judge felt it necessary to proclaim that “the motor vehicle is not an outlaw”. Gradually as automobile ownership spread, these views won the day and motor vehicle liability became a branch of the expanding field of negligence law. Consequently, a person injured on the highway was required to establish that the defendant negligently caused his loss in order to recover from him in tort.”²⁴



(Image source Google)

In an attempt to reframe the insurance industry interests as congruent with those of potential claimants, the insurers provided the Commission²⁵ with the 14 August 1961 submission by the All Canada Insurance Federation to the Select Committee of the Ontario Legislature. The excerpt in support of this perspective, quoted by the Commissioners, reads as follows:

“... it would deprive pedestrians and motorists alike of the advantages of the fear of the consequences of negligent driving which operates to instill a sense of responsibility in drivers ...

Further in the same section ...

“We can just as readily be killed through slipping on a banana peel as in an automobile accident. There is no reason whatsoever why victims of automobile accidents, their own fault or not, should be segregated for special treatment under the law.”



(Image source Google)

An additional point advanced for consideration by this group of advocates was that this removal of the liability defense would lead to higher settlement demands pursuant to new contractual rights. Tort litigation would simply be replaced by contract litigation.

After due consideration to witness presentations on both sides of the issue, the Commissioners, perhaps as justification for their recommendation, chose to quote in their Report some strongly worded opinion on the tort system from one of the many supplementary works reviewed and considered:

“This, in capsule is the way the present automobile claim system looks when we stand back and view its performance in gross. It provides too little, too late, unfairly allocated, at wasteful cost, and through means that promote dishonesty and disrespect for the law.”²⁶

The Commission’s actual recommendation:

“... the fault system cannot adequately protect the general public in so far as the automobile accident is concerned. We are firmly convinced that by a system of no fault cover aided by other factors, the motorist and the general public will be better served.”

OTHER CONSIDERATIONS

I am sure that they took comfort in this recommendation, safe in the knowledge that the proposed *Automobile Insurance Board*

would oversee the conduct of private sector administration of the system. However, the *Automobile Insurance Board’s* days would be numbered. Subsequent political events would yield public insurance and consequently the elimination of the *Board* along with private sector administration. The guard rails then became the tort system and political oversight. How that turns out over time is an integral part of ICBC’s past, present, and future.

Beyond oversight however, part of the reluctance to act on what appears on the surface to be the common-sense recommendation to eliminate the tort system can be seen in a consideration of the intrinsic value of precedent based civil litigation. Such litigation has always been an eloquent, progressive, and principled discussion, available for all to see, on how we as a society treat each other in the course of our day to day lives. Quite literally it is a ‘civil’ discourse. Given the preponderance of liability insurance cases on the court docket, personal injury litigation is therefore the primary financier of the drive toward a more progressive evolution of our social milieu. This sort of litigation, at least for the next few years, will continue to power the lion’s share of that discourse. After that, the intensity of that enlightened discussion will surely dim.

And there is yet another consideration. I call it the square-peg-in-the-round-hole problem. The prerequisite determination of negligence goes to the heart of a widely, even if not universally, held moral value - that people who break the law, or are otherwise irresponsible, should not be able to access compensation - as if substituting money for the loss of physical and/or psychological

function was some kind of reward. The idea is baked into the very nature of tort law - only the victim is entitled to compensation and then only to the extent that they are not a party to the wrongdoing. This puts liability insurers in the position of having to pass judgement on the rightness or wrongness of a person's actions. This structural consideration then diverts the insurer's role away from its compensatory function to that of an arbiter of social morals.

Is a quadriplegic not still a quadriplegic, whether he hit a telephone pole or got mowed down in a crosswalk? Even with respect to so called 'no fault benefits', would having a driver's license at the time of loss allow him to walk again? Breathe on his own? Allow him to live a normal life span?

The Commissioners' thinking, on the other hand, was more in line with the teachings of the Sufi mystic, Rumi, who anticipated the problem long before the invention of the automobile:

"Out beyond ideas of wrongdoing and right-doing there is a field. I'll meet you there."



(Image source Nick de Domenico)

THE PLAN

Each driver, therefore, should be insured and that insurance should provide for the compensation of those injured upon a no fault basis ..."

It was to be "a *universal and compulsory plan of automobile insurance*", focussed on the act of driving and not the fact of vehicle ownership.

It would be administered by the private sector which would be supervised by a new Government Agency, *The Automobile Insurance Board*.

A second Government Agency, *The Safety Research Laboratory* would work on accident prevention, going beyond research to coordination of all Governmental and private, safety related organizations.

SAVE MONEY. SAVE LIVES.

This is the first instance that I've come across in my research of the term "*universal and compulsory plan*". It's commonplace today. It meant the same thing then as it does now.

Everyone is entitled to compensation. Everyone is required to contribute to the funding.

No insurance, no driver's license. The licensing of drivers not the registration of vehicles would precipitate insurance coverage. Driver's licenses would be renewed each year on the insured's birthdate. The cost of renewal would be paid a year in advance, non-refundable and non-

cancellable by either the insured or the insurer, even in the event of suspension. The cost of renewal would be dependent on driving history, each year, at the time of renewal.

Demerit points, and therefore the cost of insurance, could be accumulated beyond just convictions of the Motor Vehicle Act or Criminal Code. Again, excerpting from the Report:

“... a driver involved in one accident (irrespective of cause) should not be penalized by the demerit system, but that he should be penalized if by repeated accidents, accident proneness is indicated. ...

The Commissioners decision in this regard stems from a concern to identify people who for a variety of reasons [such as ‘belligerency’] drive within the law but have a tendency to be involved in accidents.”

Given that family members are dependent on the insured’s coverage, denial of coverage would be precluded in the event of driver impairment or other breaking of the law. Anyone with an injury, drunk or not, would be compensated. Within prescribed limits, the only measure of coverage would be the measure of loss.

The need for insurers to pass judgement through enforcement of the usual policy conditions such as state of impairment, etc., would be the exclusive domain of the Courts. Insurance compensation would be determined by need not acts of moral turpitude.

In addition to a continuation of the usual physical damages coverages that are already available on an optional basis, mandatory coverage for death and disability benefits would be *immediately* available to all insured persons on a first party contractual basis. Again, as with the position on impaired driving, compensation would come without judgement of the injured person. It would come at the time it is needed, as per an existing and specific contractual obligation, not later when determined by a third party body such as a Court. Timeliness would be monitored and enforced by the *Automobile Insurance Board*.

Earlier in their Report we noted that the Commissioners had endorsed a system of demerit points. One can see how combining the implementation of this sort of driver history tracking system with the requirement to insure the driver rather than the vehicle would streamline the underwriting process.

It would also enhance fairness in the collection of premiums. They pointed out that in their view, the insuring of the vehicle rather than the driver means “*the whole family pays for the carelessness of one member of the family who is a bad driver.*”²⁷

For victims of uninsured motorists, the Commission recommended replacing a major part of the Traffic Victims Indemnity Fund (TVIF) with first party Uninsured Motorist Protection coverage. It would be made compulsory on all automobile insurers to provide and all drivers to purchase. It would extend benefits to household members in all roles, that is as drivers, as occupants of vehicles, as pedestrians and as cyclists. The TVIF would remain in existence to cover any

cyclists or pedestrians to which an Uninsured Motorist Protection policy did not apply. Presumably this would cover the situation where the only driver in the household was under suspension, or where there was no licensed driver in the injured person's household. They envisioned the TVIF funding coming from a gasoline tax.

The Commissioners recommended removal of subrogation rights between auto insurers and BCHIS, various medical expense insurers and 'workmen's' compensation. No time and expense would therefore be involved in deciding who ultimately bears any particular loss, it would be mandated by first party, private or public contractual obligations.

The suggested weekly indemnity amount was to be fixed, regardless of occupational position, at \$50 per week [\$421.85 in 2023 dollars]. Not always fair but definitely efficient. It seems they left it to political decision making as to when to change the rate of compensation. Too bad we still don't have a contractual provision indexed to the cost of living to ensure contemporary buying power. Limits of coverage since the introduction of public auto insurance have been dependent on the whim of politicians rather than the twin realities of cost of treatment and efficacy of wage replacement plans.

The Commission anticipated that all British Columbians would soon be covered for medical expenses for treatment through either public or private plans and so made no provision for same in their recommendations for automobile insurance.

Working in conjunction with the recommendation that the tort system was to be abolished at the time of implementation, third party liability coverage would be available on a voluntary basis, on an annual or per trip basis, for occasions when a British Columbia resident anticipates driving outside the Province.

Territory and the use of the vehicle would be taken out of play. The Commissioners's plan incorporated a single maximum rate, Province-wide. They anticipated that private sector insurers would then compete for market share on the basis of discounting this rate for selected groups of low risk drivers. It would have eliminated a huge swath of coverage investigation which currently delays indemnification and adds to the cost of administration. Most importantly, it takes the focus off the vehicle and its use and places it firmly on the conduct of the driver.

The only concern would be whether a person was injured and if so, what terms of loss quantification would apply. The result would be timely compensation without the need for the insurer to step into the world of judgement, legal or moral.

The Commissioners went into a complicated discussion on how to arrive at the 'maximum premiums' each year but suffice to say, it boiled down to taking the projected total of each year's losses in terms of dollars and cents and dividing it by the number of drivers, and then adding back something for profit and overhead.

This entire system then would be augmented, from a safety point of view, by active, focussed, Province-wide, Government

participation in education, enforcement, and research. Non-profits also focussed on road safety would work in concert with the *Safety Research Laboratory* and other related Government entities.

I can just see underwriters and adjusters transforming into driver training instructors and examiners, traffic police, safety related researchers, educators, and coordinators. World peace on the roads of British Columbia!

THE TURNING POINT

The Commission used their full legal powers to accumulate an impressive body of fact, laid out in a balanced and relentlessly logical manner. They had the courage to carefully construct a set of radical for the times recommendations that were intended to create the fair collection of premiums and the efficient disbursement of compensation. Beyond that they aggressively addressed preventative measures. In short, they turned the inconclusive, partisan, public debate of politicians, and the accelerating carnage on the roads, into a promise for systemic fairness and efficiency, and a clear focus on solving the underlying cause of the problem. Subsequent to delivery of the Report, some words were turned into action, but not enough to save the Socreds from political defeat.

CHAPTER THREE – CLOSING ARGUMENTS

BLOOD IN THE WATER

Back in the days when penguins and polar bears roamed the earth and the term ‘catastrophe’ was associated with ‘nuclear’ rather than ‘climate’, the re-election of the Socred Government had become routine. They had won easily in 1960, and again in 1963 and yet again in 1966.

In 1968 the perpetual Government Opposition however saw Bennett as an old man who had lost touch with the times. Recent Government action had alienated large blocks of the voting public. The NDP sensed blood in the water and in the lead up to the anticipated election of 1969 they pressed home on every available issue. That included the hot topic of dysfunction in the automobile insurance market.

The Royal Commission Report on Automobile Insurance was delivered that Summer. The Socreds routine referral of the Report to a Legislative Committee for study was framed by the Opposition as a Government delaying tactic meant to protect their friends in the private sector.

In the Spring of '69 the Legislative Committee, of which Socreds were in the majority, went along with most of the Wootton Commission recommendations. Primarily they recommended continued private sector administration of compulsory accident benefits and third party liability coverages. They demurred on no fault. The NDP spun these recommendations as forcing

motorists to buy even more expensive insurance from the Socreds’ private sector pals.

To press the attack home, two hours after the Socreds delivered its Majority Report, the NDP’s Alex MacDonald presented a surprise NDP Minority Report. Its recommendations were for public rather than private administration of a total rather than partial no-fault system, at an affordable price, operated in the sole interests of the public.

In addition to the all-out assault on issues, the NDP elected a new leader. The internal party contest was bitter, but Thomas Berger was victorious over Dave Barrett. Berger was seen by just over 50% of the party faithful as a young and competent leader ready to take over the reins of power and lead BC into a new, socialist era. The campaign slogan was “Ready to Govern”.



Thomas Berger (Image source Google)

Bennett may have been old, but he was still a political master. Before the NDP could recover from its divisive leadership battle Bennett called an election. He cast Berger as a presumptuous young man whose ‘Marxist-Communist’ ideas would spell the end of the

long run of Provincial prosperity that was the hallmark of the Bennett years. “Strike pay with Berger or take home pay with Bennett” was his response.

The business community coalesced around Bennett as did the voting public. The blood in the water would be Berger’s. Not only did Bennett increase his majority from 33 to 38 seats in a 55 seat Legislature, but Berger went down to defeat in his own riding. Bennett’s iron grip remained firmly in place on said reins of power.

Down but not out, the NDP set their sights on the next electoral opportunity. In the lead up to the anticipated 1972 election call the tall, good looking but apparently arrogant Thomas Berger was replaced by Dave Barrett, a paunchy family man with a quick wit and a pugnacious approach to politics. The issues-based assault continued with a renewed vehemence.



Dave Barrett (Image source Google)

IT GETS COMPLICATED

In Legislative sessions following the 1969 election the Bennett Government began to

turn the Legislative Committee majority recommendations into law.

Effective 1 January 1970 the private sector would continue to administer policies but now with mandatory liability and accident benefits coverages set out in the Standard Policy Form wordings.

Keeping the multiple insurers in the private sector involved administratively was complicated and expensive. Anyone not deemed a ‘good risk’ by insurers was tossed around like a hot potato.

A prospective risk first applied to an independent insurance agent. If the agency couldn’t place the risk, it was passed on to *The Facility*. More forms, higher rate bracket.



(Image source Google)

The Facility was an intra-company agreement with an administrative arm run by private sector insurers. A member insurer could pick up one of these risks on the condition that they could reinsure a portion of the risk thus limiting their individual liability.

If *The Facility* application failed, the risk was passed on to *The Exchange*. Even more forms, delay and expense. *The Exchange* was a Government run bureaucracy with the

power to finally bind an insurer to the risk, presumably at yet a higher level of premium.

The Government initially promised to create a *Board of Appeal* to preside over the conflicting interests of the public as insureds and claimants, and the private sector as providers of coverage and payers of claims. However, it took the Government an additional year to introduce the amendments needed for its creation. When it finally arrived, judging by the comments made in the Legislature, *the Board* was overwhelmed. A lot of public concerns seemed to fall through the cracks.

A POLITICAL ERROR

As for the Socreds decision to preserve the tort system, the Legislative record is replete with NDP accusations of its continuing failure. They told tales of widows and orphans, little old ladies, and catastrophically injured claimants - the more dramatic the victim circumstance the better. According to the NDP, legions were left either not being compensated adequately, or in a timely manner, or at all.

COMMON GROUND

Notwithstanding the acrimony on the preceding issues, both factions seemed to have some common ground on the acceptance of the Wootton Commission recommendations around traffic safety. Without the drama, the good the Government did here cut a lower profile.

The first of what would be several Motor Vehicle Testing Stations would open in Victoria in 1971.

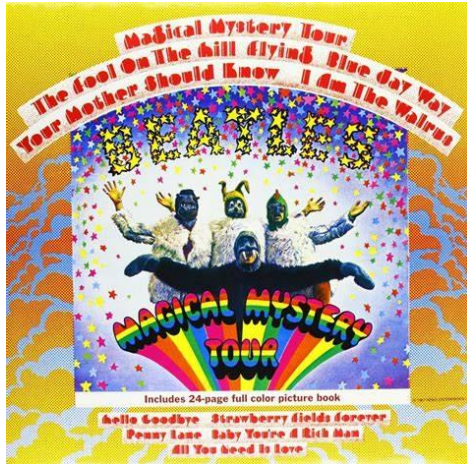
The Government strengthened the police hand on interaction with impaired drivers which dovetailed into changes in Federal law made that same year. This was the first time the Criminal Code of Canada included a provision making driving with a blood alcohol reading in excess of .08 illegal.

The *Automobile Insurance Board*, among all else it had to deal with, and late on arrival in the first place, was supposed to administer a fund to promote driver education and vehicle and road safety initiatives. However, the frequency and severity of motor vehicle accidents continued its upward trend in '71 and '72.²⁸

The Government formalized the demerit points system as a way of cracking down on bad drivers. The NDP said these changes gave the insurers a handy way to raise rates and predicted insurers would expand the definition of bad driver so as to reap a further premium windfall.

POLITICAL BICKERING HITS THE ROAD

Bennett took his entire cabinet on the road in a campaign style tour of the Province in 1971. Bennett travelled in his black, government owned Cadillac with his Ministers trundling along behind in their own cars. It was promptly dubbed by the press as the Magical Mystery Tour.



(Image source Google)

It didn't help that, in times of exponential increases in the frequency and severity of motor vehicle accidents, and ever increasing premium rates, 'Flying Phil Gaglardi', the Minister of Highways no less, was pulled over for speeding. The news story quoted an unnamed RCMP officer as saying Gaglardi "drove like a bloody maniac."

Legislative debate around the points of difference was followed closely by the press. The Government was made to look like what they routinely painted the 'socialists' as, - creators of a large, expensive, and ineffective bureaucracy.

Overall, while the public didn't show up for the Royal Commission, and there's not much in the way of letters to the editor around auto insurance, the election of '72 would show they had been listening closely.

THE BIG BANG

The post-war economic boom put a chicken in every pot and a car in every driveway. It combined with the Bennett government's penchant for building roads and the nascent

state of auto manufacturing safety considerations to produce a whirlwind of ever-increasing death and destruction on the highways of British Columbia. It overwhelmed a tort system the mandate of which was always to set rules of conduct and never to be a surrogate for an insurance system; and it blew away the loose network of multiple private sector insurers. Headquartered in Toronto and New York, their attempt to impose a rating system on the drivers of BC, derived from and designed for the Ontario market, made no sense locally.

The debate began to coalesce in '72 in the bitter space between battle lines drawn by left and right wing political factions. Premium rates exceeded the public's tolerance. Compensation was generally deemed as too little too late. These shortfalls on affordability and indemnity affected every household.

This wedge issue sunk deep into the growing fissures within West Coast society. In the election of '72 the Socred regime toppled into the gap and landed hard. Bursting through the cloud of impact dust boiled up a Government the likes of which the Province had never seen. The NDP party brought to the Halls of Power an urgency borne of 20 years of frustration. They were there to get things done! Yesterday! And one of the first things they would get done was the birth of ICBC.

THE ROAD AHEAD

Out of a totally dysfunctional landscape, what was to become the largest automobile insurance company in North America was created almost literally overnight. It was

expected to build an affordable system of premium dollar collection from which it was then to deliver fair and timely compensation. At the same time, it was tasked with an equally pressing priority - reigning in the sometimes reckless attitudes of a motoring public - a public experimenting with the cars and trucks linking suburbs and cities, across a vast terrain of mountains and prairies, from northern latitudes to the 49th parallel. Seat belts had not yet been embedded in either cars or culture and so the first employees of ICBC would have to fly by the collective seats of their pants.

ENDNOTES

¹ British Columbia, Legislative Assembly, *British Columbia Legislative Assembly Sessional Clipping Book (1965-01)* (Victoria, BC: University of Victoria Libraries Vault Digital Collections) at page 11, 34, 61 & 91 <https://vault.library.uvic.ca/concern/gen_eric_works/ad68ae9e-6d51-40e3-9c34-31b4f6ec4d43?locale=en> accessed July 23, 2023

² See the following excerpt from KnowBC, “History of BC- BC joins Canada”. In *Encyclopedia of British Columbia* <<https://www.knowbc.com/books/Encyclopedia-of-BC/H/History-of-BC>> accessed on July 23, 2023:

Shortly after entry into Confederation, elections were held for members of Parliament and for the 25 members of the new provincial legislature. The Canadian gov gen, acting on behalf of the British Crown, appointed a LT GOV for BC. It was his obligation to request one of the elected MLAs to form a government and so become PREMIER. The concept of responsible government was formally acknowledged when the first premier, John Foster McCREIGHT, resigned after losing a non-confidence vote in the legislature. McCreight was replaced by Amor de Cosmos, a long-time political

activist, and then by a sequence of men selected not as leaders of parties, which did not yet exist in BC, but as heads of loose, shifting coalitions of like-minded persons.

³ See the following excerpt from KnowBC, “Nationalist Party”. In *Encyclopedia of British Columbia* <<https://www.knowbc.com.eu1.proxy.openathens.net/books/Encyclopedia-of-BC/N/Nationalist-Party>> accessed on July 23, 2023:

NATIONALIST PARTY, BC's first labour political party, was organized early in 1894 to prepare for the forthcoming provincial election. Its platform called for WOMEN'S SUFFRAGE, an end to property qualifications for candidates, a system of RECALL, the 8-hour workday, a single tax on land values and public ownership of transport, utilities and banks. The party's candidate, Robert Macpherson, a carpenter by trade, won election to the legislature in 1894 and again in 1898, though he turned out to be a lukewarm defender of the party platform.

⁴ For a brief introduction to W.A.C. Bennett, see the following excerpt from KnowBC, “Bennett, William Andrew Cecil ‘W.A.C.’” In *Encyclopedia of British Columbia* <<https://www.knowbc.com.eu1.proxy.openathens.net/books/Encyclopedia-of-BC/B/Bennett-William-Andrew-Cecil-W.A.C.>> accessed on July 23, 2023:

BENNETT, William Andrew Cecil "W.A.C.", merchant, politician, premier 1 Aug 1952–15 Sept 1972 (b 6 Sept 1900, Hastings, NB; d 23 Feb 1979, Kelowna). Born on a small farm in New Brunswick, he emerged from poverty to become a successful hardware merchant. He moved in 1919 to Alberta and in 1930 to BC, where he bought a hardware business in Kelowna During the Depression he was active in the provincial Conservative Party and won election to the legislature in 1941... In 1950 Bennett failed in his second attempt to win the Conservative leadership. He crossed the floor to sit as an independent early in 1951 ... later that year he joined the Social Credit Party, and when the Socreds won a surprise victory in the 1952 election they chose him leader of their minority government ... He won re-election 6 times, but finally lost to his NDP arch-foes, led by Dave Barrett in 1972.

⁵ For a more detailed coverage on BC's 1972 general election, see the following excerpt from Borders, William. "Aging Premier in British Columbia Facing Youthful Opponents." *The New York Times*, August 28, 1972, page 10:

VANCOUVER, British Columbia— This huge, rugged province is in the midst of an exuberant election campaign that is testing an old style of politics as well as the appeal of one of Canada's

most durable leaders. Premier W.A.C. Bennett, as fiery at the age of 71 as he was when he took office 20 years ago, is running for another term, against three aggressive challengers, each at least 30 years younger than he. Like the three opposition candidates here, the Premiers of Canada's nine other provinces are all now in their thirties or forties, and most of them came to office by defeating older incumbents during the last three years. But British Columbia, which views the rest of the country from the far side of the Rocky Mountains, has always done things differently, and its Premier is widely expected to win an eighth term next Wednesday, insuring another period of his special brand of government.

'Socialist Hordes'

"The socialist hordes are at the gates of British Columbia," Premier Bennett thundered at a party rally the other night, drawing the cheers of an enthusiastic crowd that included pensioners clutching colorful banners and wizened old women with provincial flags stuck in their hairnets.

⁶ For a brief introduction to David Barrett, see the following excerpt from KnowBC, "Barrett, David" In *Encyclopedia of British Columbia* <https://www-knowbc-com.eu1.proxy.openathens.net/books/Encyclopedia-of-BC/B/Barrett-David> >accessed on July 23, 2023:

David, social worker, politician, premier 15 Sept 1972–22 Dec 1975 (b 2 Oct 1930, Vancouver; d 2 Feb 2017, Victoria). He grew up in an East Vancouver Jewish working-class home; both parents were politically active leftists. ... he was elected to the legislature in 1960 and held his seat through 4 subsequent elections ... In 1969 he ran for the provincial NDP leadership, but lost to Tom Berger. Later that year Berger lost his seat in an election and Barrett became leader early in 1970. Taking advantage of public disenchantment with the aging Social Credit government of W.A.C. Bennett, Barrett led the provincial NDP to its first election victory in Aug 1972. ... Determined to be an activist Premier while he had the chance, he introduced a spate of legislation, including an increase to the minimum wage, new labour laws, a freeze on development of agricultural land, the creation of BC Petroleum and the Insurance Corporation of BC and a controversial royalty on mineral production.

⁷ Fritz, Brad. 2015. "The Origins of Publicly Funded Medical Care in BC and the BCMA's Contributions." *BC Medical Journal*, vol. 57, No. 7, page 295<<https://bcmj.org/special-feature/origins-publicly-funded-medical-care-bc-and-bcma's-contributions#:~:text=British%20Columbia%20entered%20the%20federal%20medicare%>

[20program%20on%201%20July%201968](#) > accessed on July 23, 2023

⁸ Canada, Ministry of Trade and Commerce, *The Motor Vehicle 1965 Part III Registrations*, page 13 <https://publications.gc.ca/collections/collection_2016/statcan/53-219/CS53-219-1965-eng.pdf> accessed on July 23, 2023.

⁹ Latest data is for year 2021. See Statistics Canada. [Table 23-10-0308-01 Vehicle registrations, by type of vehicle and fuel type.](#)

¹⁰ Pending fact check

¹¹ British Columbia, Legislative Assembly, *British Columbia Legislative Assembly Sessional Clipping Book (1965-01)* (Victoria, BC: University of Victoria Libraries Vault Digital Collections) at page 57<https://vault.library.uvic.ca/concern/eric_works/ad68ae9e-6d51-40e3-9c34-31b4f6ec4d43?locale=en> accessed July 23, 2023

¹² British Columbia, Legislative Assembly, *British Columbia Legislative Assembly Sessional Clipping Book (1966-02)* (Victoria, BC: University of Victoria Libraries Vault Digital Collections) at page 127 & 216<https://vault.library.uvic.ca/concern/eric_works/9d67e90f-0202-44a9-a1b2-bb1f67b6e079?locale=en> accessed July 23, 2023

¹³ British Columbia, Legislative Assembly, *British Columbia Legislative Assembly Sessional Clipping Book (1966-02)* (Victoria, BC: University of Victoria Libraries Vault Digital Collections) at page 175 & 253<<https://vault.library.uvic.ca/concern/ge>

[neric_works/9d67e90f-0202-44a9-a1b2-bb1f67b6e079?locale=en](https://vault.library.uvic.ca/concern/generic_works/9d67e90f-0202-44a9-a1b2-bb1f67b6e079?locale=en) >accessed July 23, 2023

¹⁴ British Columbia, Legislative Assembly, *British Columbia Legislative Assembly Sessional Clipping Book (1966-02)* (Victoria, BC: University of Victoria Libraries Vault Digital Collections) at page 77, 186, 264 & 365 <https://vault.library.uvic.ca/concern/generic_works/9d67e90f-0202-44a9-a1b2-bb1f67b6e079?locale=en >accessed July 23, 2023

¹⁵ British Columbia, Legislative Assembly, *British Columbia Legislative Assembly Sessional Clipping Book (1966-02)* (Victoria, BC: University of Victoria Libraries Vault Digital Collections) at page 77, 186, 264 & 365 <https://vault.library.uvic.ca/concern/generic_works/9d67e90f-0202-44a9-a1b2-bb1f67b6e079?locale=en >accessed July 23, 2023

¹⁶ British Columbia, Legislative Assembly, *British Columbia Legislative Assembly Sessional Clipping Book (1968-02)* (Victoria, BC: University of Victoria Libraries Vault Digital Collections) at page 337 & 395 <https://vault.library.uvic.ca/concern/generic_works/eaf6f516-0511-4e74-a71f-68abee2cefbb?locale=en >accessed July 23, 2023

¹⁷ "... commissioners to make inquiry into and concerning monetary losses and expense resulting from motor vehicle accidents involving persons adverse in interest an into feasible and sound proposals for moderation thereof, and in so doing to inquire particularly into

- (a) *The cost 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 arrangement with the 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 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.”

¹⁸ Page 729 Volume 2 of the Wootton Inquiry Report

¹⁹ Page 729 Volume 2 of the Wootton Inquiry Report

²⁰ Page 728 Volume 2 of the Wootton Inquiry Report

²¹ Page 728 Volume 2 of the Wootton Inquiry Report

²² Page 728 Volume 2 of the Wootton Inquiry Report

²³ Page 201 of Volume 1 of the Wootton Inquiry Report defines the All Canada Insurance Federation as an unincorporated association of most of the insurance

companies doing business in Canada. Its preliminary brief to the 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.

²⁴ the Canadian bar review, Vol. XLV, December 1967, p.864

²⁵ page 498 of Volume 2

²⁶ Robert E Keeton and Jeffrey O'Connell, Basic Protection For The Traffic Victim, Little, Brown And Company, Toronto, 1965, pages 1 to 3

²⁷ Mr. John Diemand, Chairman Of The Board Of The Insurance Company of North America in his 1966 address to a convention of independent insurers

²⁸ excerpt from the 1971 annual report of the Superintendent of Motor Vehicles “ Traffic fatalities totaled 636 in 1971, an increase of 12% over the 1970 total of 559 period”.

Excerpt from the 1972 annual report of the Superintendent of Motor Vehicles “while the number of accidents was only slightly higher in 1972 than in 1971, the level of severity of accidents was very considerably more, resulting in the 12% increase in fatalities. The increase in the number of persons injured in 1972 increased by 4% from the previous year's total of 23,316. This report notes there was an 8% increase in property damage loss in 1972.”