

CHAPTER 11

An Act to Amend the Insurance Act

[Assented to 2nd April, 1969.]

R.S.B.C.
1960, c. 197;
1961, cc. 29, 59;
1962, c. 29;
1963, c. 19;
1964, c. 24;
1965, c. 19;
1966, c. 45.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:—

Amends s. 2.

1. Section 2 of the *Insurance Act*, being chapter 197 of the *Revised Statutes of British Columbia, 1960*, as amended by chapter 29 of the *Statutes of British Columbia, 1961*, and by chapter 19 of the *Statutes of British Columbia, 1965*, is further amended

(a) by inserting, after the definition "accidental death insurance", the following definition:—

"actuary" means a Fellow of the Canadian Institute of Actuaries;

(b) by striking out the definition "automobile" and substituting the following definition:—

"automobile" includes a trolley bus and a self-propelled vehicle, and the trailers, accessories, and equipment of automobiles, but does not include railway rolling-stock that runs on rails, watercraft, or aircraft;

(c) by striking out the definition "automobile insurance" and substituting the following definition:—

"automobile insurance" means insurance

(a) against liability arising out of

(i) bodily injury to or the death of a person; or

(ii) loss of or damage to property

caused by an automobile or the use or operation thereof; or

(b) against loss of or damage to an automobile and the loss of use thereof,

and includes insurance otherwise coming within the class of accident insurance where the accident is caused by an automobile or the use or operation thereof, whether liability exists or not, if the contract also includes insurance described in clause (a);

(d) by repealing the definition of "beneficiary";

(e) by inserting, after the definition "mortgage insurance", the following definition:—

"motor-vehicle liability policy" means a policy or part of a policy evidencing a contract insuring

(a) the owner or driver of an automobile; or

(b) a person who is not the owner or driver thereof where the automobile is being used or operated by his employee or agent or any other person on his behalf

against liability arising out of bodily injury to or the death of a person or loss or damage to property caused by an automobile or the use or operation thereof;

(f) by inserting, after the definition "mutual company", the following definition:—

"non-owner's policy" means a motor-vehicle liability policy insuring a person solely in respect of the use or operation by him or on his behalf of an automobile that is not owned by him;

(g) by inserting, after the definition "officer", the following definition:—

"owner's policy" means a motor-vehicle liability policy insuring a person in respect of the ownership, use, or operation of an automobile owned by him and within the description or definition thereof in the policy and, if the contract so provides, in respect of the use or operation of any other automobile.

Re-enacts s. 12. 2. Section 12 of the Act is repealed and the following is substituted:—

Contents of policy.

12. (1) Every policy shall contain the name of the insurer, the name of the insured, the name of the person or persons to whom the insurance money is payable, the amount, or the method of determining the amount, of the premium for the insurance, the subject-matter of the insurance, the indemnity for which the insurer may become liable, the event of the happening of which the liability is to accrue, the date upon which the insurance takes effect and the date it terminates, or the method by which the latter is fixed or to be fixed.

Application of section.

(2) This section does not apply to contracts of guarantee insurance.

Enacts ss. 12A, 12B, and 12C.

3. The Act is further amended by adding, after section 12, as enacted by this Act, the following as sections 12A, 12B, and 12C:—

Application.

12A. (1) This section applies to a contract containing a condition, statutory or otherwise, providing for an appraisal to determine specified matters in the event of a disagreement between the insured and the insurer.

Appraisals.

(2) The insured and the insurer shall each appoint an appraiser, and the two appraisers so appointed shall appoint an umpire.

Appraisers.

(3) The appraisers shall determine the matters in disagreement and, if they fail to agree, they shall submit their differences to the umpire, and the finding in writing of any two determines the matters.

Costs.

(4) Each party to the appraisal shall pay the appraiser appointed by him and shall bear equally the expense of the appraisal and the umpire.

Appointment by Judge.

(5) Where

(a) a party fails to appoint an appraiser within seven clear days after being served with written notice to do so; or

(b) the appraisers fail to agree upon an umpire within fifteen days after their appointment; or

(c) an appraiser or umpire refuses to act or is incapable of acting or dies,

a Judge of the County or District Court of the county or district in which the appraisal is to be made may appoint an appraiser or umpire, as the case may be, upon the application of the insured or of the insurer.

Court may
relieve against
forfeiture.

12B. Where there has been imperfect compliance with a statutory condition as to the proof of loss to be given by the insured or other matter or thing required to be done or omitted by the insured with respect to the loss, and a consequent forfeiture or avoidance of the insurance in whole or in part, or where there has been a termination of the policy by a notice that was not received by the insured owing to his absence from the address to which the notice was addressed, and the Court deems it inequitable that the insurance should be forfeited or avoided on that ground or terminated, the Court may, on such terms as it may deem just, relieve against the forfeiture or avoidance or, if the application for relief is made within ninety days of the date of the mailing of the notice of termination, against the termination.

Waiver of
term or
condition.

12c. (1) No term or condition of a contract shall be deemed to be waived by the insurer in whole or in part unless the waiver is stated in writing and signed by a person authorized for that purpose by the insurer.

Idem.

(2) Neither the insurer nor the insured shall be deemed to have waived any term or condition of a contract by any act relating to the appraisal of the amount of loss or to the delivery and completion of proofs or to the investigation or adjustment of any claim under the contract.

Amends s. 18. 4. Subsection (1) of section 18 of the Act is repealed and the following is substituted:—

Effect of
unpaid cheque
or note for
premium.

18. (1) Where a cheque, bill of exchange, or promissory note is given, whether originally or by way of renewal, for the whole or part of any premium, and the cheque, bill of exchange, or promissory note is not honoured according to its tenor, the insurer may terminate the contract forthwith by giving written notice by registered mail.

Amends s. 26. 5. Section 26 of the Act is amended
(a) by renumbering the present section as subsection (1); and
(b) by adding, after subsection (1) as amended by this Act, the following as subsections (2) and (3):—

(2) The insurer, by furnishing forms to make proof of loss, shall not be taken to have admitted that a valid contract is in force or that the loss in question falls within the insurance provided by the contract.

(3) An insurer who neglects or refuses to comply with subsection (1) is guilty of an offence.

Amends s. 31. 6. Subsection (3) of section 31 of the Act, as amended by chapter 19 of the Statutes of British Columbia, 1963, is further amended by adding, after the word "than" in the fifth line, the word "personal".

Amends s. 31. 7. Subsection (5) of section 31 of the Act is repealed and the following is substituted as subsections (5), (6), and (7):—

Conditions of
automobile
insurance
licence.

(5) A licence to carry on automobile insurance in the Province is subject to the following conditions:—

(a) In any action in the Province against the licensed insurer or its insured arising out of an automobile accident in the Province, the insurer shall appear and shall not set up any defence to a claim under a contract made outside the Province, including any defence as to the limit or limits of liability under the contract, that might not be set up if the contract were evidenced by a motor-vehicle liability policy issued in the Province:

(b) In any action in another Province or Territory of Canada against the licensed insurer, or its insured, arising out of an automobile accident in that Province or Territory, the insurer shall appear and shall not set up any defence to a claim under a contract evidenced by a motor-vehicle liability policy issued in the Province, including any defence as to the limit or limits of liability under the contract, that might not be set up if the contract were evidenced by a motor-vehicle liability policy issued in the other Province or Territory.

(6) A licence may be revoked by the Minister when the holder commits a breach of conditions as set out in subsection (5).

(7) Subsections (2) to (4) of section 41 apply, mutatis mutandis, to a revocation of a licence under this section.

Repeals s. 35. 7A. Section 35 of the Act is repealed.

Enacts s. 42A. 8. The Act is further amended by inserting, after section 42, the following section as section 42A:—

42A. Where under an agreement between an insurer, in this section called the "continuing insurer," and another insurer, in this section called the "retiring insurer," providing for a retiring insurer ceasing to do business in the Province and the continuing insurer assuming liability under contracts of insurance issued by the retiring insurer specified in the agreement, and the retiring insurer ceases to carry on business in the Province, an insured or other person entitled to rights under those contracts may enforce the rights against the continuing insurer as though those contracts had been issued by the continuing insurer.

Amends s. 94. 9. Section 94 of the Act, as amended by chapter 19 of the Statutes of British Columbia, 1963, is further amended

(a) by repealing clause (b) of subsection (2) and substituting the following:—

(b) show a liability

(i) in the case of an insurer undertaking life insurance, the amount of the valuation of its outstanding contracts of life insurance prescribed by section 98; and

(ii) in the case of non-cancellable accident and sickness insurance, an amount computed on such bases and in accordance with such methods as will place an adequate value on the liabilities thereunder; but in no case shall the value placed

upon the benefits under any policy be less than the value placed upon the future premiums; and

(iii) in the case of all other classes of insurance, an amount equal to eighty per cent of the actual portions of unearned premiums under all contracts in force on the thirty-first day of December then last past, or to eighty per cent of fifty per cent of the premiums under contracts for a period of one year or less, and of a larger or smaller percentage of the premiums under contracts for a longer period computed pro rata according to the unexpired period of the contract;

(b) by inserting, at the end of subsection (2), as amended by this Act, the following as subsection (3):—

(3) Every licensed insurer may, in its annual report filed pursuant to this section, value all its securities having a fixed term and rate and not in default as to principal or interest according to the following rules:—

- (a) If purchased at par, at the par value; or
- (b) If purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity, and so as to yield meantime, the effective rate of interest at which the purchase was made; but the purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase;

and the Superintendent has full discretion in determining the method of calculating values according to the foregoing rules; and

(c) by renumbering the present subsection (3) as subsection (4).

Amends s. 107. 10. Subsection (5) of section 107 of the Act is repealed and the following is substituted:—

(5) Where a separate and distinct fund with separate assets is maintained pursuant to subsection (4),

- (a) the assets of the fund shall be used only to meet the liabilities arising under policies in respect of which that fund is maintained and are not liable for the payment of claims arising from any other policies;
- (b) an amount may be transferred
 - (i) to the fund from another fund; or
 - (ii) from the fund to another fund,
 either pursuant to a policy or with the consent of the Superintendent;
- (c) any assets remaining in the fund after meeting
 - (i) all liabilities of the fund arising under policies in respect of which the fund is maintained; and
 - (ii) all liabilities of the fund arising out of transfers pursuant to paragraph (i) of clause (b)
 may be transferred to such other fund as the directors may determine; and

(d) the percentage limits specified in subsections (7) and (8) of section 109 do not apply to the investments and loans constituting the assets of the fund, and in the application of those limits to the company as a whole the assets of the fund shall not be taken into account.

Amends s. 109. 11. Subsection (1) of section 109 of the Act, as enacted by chapter 19 of the Statutes of British Columbia, 1963, and amended by chapter 45 of the Statutes of British Columbia, 1966, is further amended

Bonds secured by Provincial subsidy.

(a) by repealing clause (d) and substituting the following:—

(d) the bonds or debentures issued by a charitable, educational, or philanthropic corporation that are secured by the payment, assignment, or transfer to a trust corporation in Canada of subsidies, payable by or under the authority of the government of a Province of Canada, sufficient to meet the interest as it falls due on the bonds or debentures and the principal amount of the bonds or debentures on maturity;

(b) by repealing paragraph (i) of clause (h) and substituting the following:—

(i) Real estate or leaseholds;

(c) by striking out paragraph (i) of clause (j) and substituting the following:—

(i) of a corporation if, at the date of investment, the preferred shares or the common shares of the corporation are authorized as investments under clause (l) or (m); or;

(d) by repealing clause (k) and substituting the following:—

Guaranteed investment certificates.

(k) guaranteed investment certificates issued by a trust company incorporated in Canada if, at the date of the investment, the preferred shares or the common shares of the trust company are authorized as investments under clause (l) or (m);

(e) by repealing clause (l) and substituting the following:—

Preferred shares.

(l) the preferred shares of a corporation if

(i) the corporation has paid a dividend in each of the five years immediately preceding the date of investment at least equal to the specified annual rate upon all of its preferred shares; or

(ii) the common shares of the corporation are, at the date of investment, authorized as investments under clause (m);

(f) by striking out clause (m) and substituting the following:—

Common shares.

(m) the fully paid common shares of a corporation that, during a period of five years that ended less than one year before the date of investment, has either

(i) paid a dividend in each such year upon its common shares; or

(ii) had earnings in each such year available for the payment of a dividend upon its common shares of at least

four per cent of the average value at which the shares were carried in the capital stock account of the corporation during the year in which the dividend was paid or in which the corporation had earnings available for the payment of dividends, as the case may be, but,

(iii) except as provided in section 109A, a company shall not purchase more than thirty per cent of the common shares of any corporation;

(iv) a company shall not purchase its own shares; and

(v) a company licensed to transact the business of life insurance shall not purchase the shares of a company transacting the business of life insurance;

(g) by striking out the words "real estate" in the first, fifth, and seventh lines of clause (n) and substituting in each case the words "real estate or leaseholds";

(h) by repealing clause (p) and substituting the following:—

Real estate
for income.

(p) real estate or leaseholds for the production of income in Canada or in any country in which the company is carrying on business, either alone or jointly with any other insurance company transacting the business of insurance in Canada or with any loan company or trust company incorporated in Canada, if

(i) a lease of the real estate or leasehold is made to, or guaranteed by,

(A) the government, or an agency of the government, of the country in which the real estate or leasehold is situated or of a province, state, or municipality of that country, or

(B) a corporation, the preferred shares or common shares of which are, at the date of investment, authorized as investments under clause (l) or (m);

(ii) the lease provides for a net revenue sufficient to yield a reasonable interest return during the period of the lease and to repay at least eighty-five per cent of the amount invested in the real estate or leasehold within the period of the lease but not exceeding thirty years from the date of investment; and

(iii) the total investment of a company in any one parcel of real estate or in any one leasehold does not exceed two per cent of the book value of the total assets of the company;

and the company may hold, maintain, improve, lease, sell, or otherwise deal with or dispose of the real estate or leasehold; or

(i) by adding after clause (p), as amended by this Act, the following as clause (q):—

Idem.

- (q) real estate or leaseholds for the production of income in Canada or in any country in which the company is carrying on business, either alone or jointly with any other insurance company transacting the business of insurance in Canada or with any loan company or trust company incorporated in Canada, if
 - (i) the real estate or leasehold has produced, in each of the three years immediately preceding the date of investment, net revenue in an amount that, if continued in future years, would be sufficient to yield a reasonable interest return on the amount invested in the real estate or leasehold and to repay at least eighty-five per cent of that amount within the remaining economic lifetime of the improvements to the real estate or leasehold but not exceeding forty years from the date of investment; and
 - (ii) the total investment of a company in any one parcel of real estate or in any one leasehold does not exceed two per cent of the book value of the total assets of the company; and the company may hold, maintain, improve, lease, sell, or otherwise deal with or dispose of the real estate or leasehold.

Amends s. 109 (2).

12. Subsection (2) of section 109 of the Act, as enacted by chapter 19 of the Statutes of British Columbia, 1963, and amended by chapter 45 of the Statutes of British Columbia, 1966, is further amended by striking out the word "company" in the first line and substituting the words "Provincial company".

Amends s. 109 (3).

13. Subsection (3) of section 109 of the Act is repealed and the following is substituted:—

Securities received on reorganization or amalgamation.

(3) Where a Provincial company owns securities of a corporation and as a result of a bona fide arrangement for the reorganization or liquidation of the corporation or for the amalgamation of the corporation with another corporation such securities are to be exchanged for bonds, debentures, or other evidences of indebtedness or shares not eligible as investments under the foregoing provisions of this section, the company may accept such bonds, debentures, or other evidences of indebtedness or shares, and they shall be allowed as assets of the company in the annual report prepared by the Superintendent.

Amends s. 109 (4).

14. Subsection (4) of section 109 of the Act is repealed and the following is substituted:—

Investments in other assets.

(4) A Provincial company may make investments or loans not herebefore authorized by this section, including investments in real estate or leaseholds, subject to the following provisions:—

- (a) Investments in real estate or leaseholds pursuant to this subsection shall be made only for the production of income, and may be made by the company in Canada or in any country in

which the company is carrying on business, either alone or jointly with any other insurance company transacting the business of insurance in Canada, and the company may hold, maintain, improve, develop, repair, lease, sell, or otherwise deal with or dispose of such real estate or leaseholds, but the total investment of a company pursuant to this subsection in any one parcel of real estate or in any one leasehold shall not exceed one per cent of the book value of the total assets of the company;

- (b) This subsection shall be deemed not to enlarge the authority conferred by subsections (1) and (2) to invest in mortgages or hypothecs and to lend on the security of real estate or leaseholds, and not to affect the operation of paragraphs (iii), (iv), and (v) of clause (m) of subsection (1); and
- (c) The total book value of the investments and loans made under this subsection and held by the company, excluding those that are or at any time since the acquisition have been eligible apart from this subsection, shall not exceed seven per cent of the book value of the total assets of the company.

Amends s.
109 (5).

15. Subsection (5) of section 109 of the Act is repealed and the following is substituted:—

Life insurance
policies.

(5) A Provincial company licensed to transact the business of life insurance may invest or lend its life insurance funds or any portion thereof in the purchase of, or on the security of, policies of life insurance issued by the company or by any other company licensed or registered to transact the business of life insurance in Canada.

Amends s.
109 (6).

16. Subsection (6) of section 109 of the Act, as enacted by chapter 19 of the Statutes of British Columbia, 1963, is amended by striking out the word "company" in the first and second lines and substituting the words "Provincial company".

Amends s.
109 (7).

17. Subsection (7) of section 109 of the Act is repealed and the following is substituted:—

Limitation in
investment in
common
shares.

(7) The total book value of the investments of a Provincial company in common shares pursuant to this section and section 109A shall not exceed twenty-five per cent of the book value of the total assets of the company.

Amends s.
109 (8).

18. Subsection (8) of section 109 of the Act is repealed and the following is substituted:—

Limitation in
investment in
real estate.

(8) The total book value of the investments of a Provincial company in real estate or leaseholds for the production of income pursuant to clause (q) of subsection (1) and to subsection (4) shall not exceed ten per cent of the book value of the total assets of the company.

Amends s.
109 (9).

19. Subsection (9) of section 109 of the Act, as enacted by chapter 19 of the Statutes of British Columbia, 1963, is amended

- (a) by striking out the word "company" in the first line and substituting the words "Provincial company";
- (b) by striking out the words "company registered" in the third line and substituting the words "Provincial company licensed"; and
- (c) by striking out the word "company" in the fifth line and substituting the words "Provincial company".

Amends s.
109 (10).

20. Subsection (10) of section 109 of the Act, as enacted by chapter 19 of the Statutes of British Columbia, 1963, is amended by striking out the word "company" in the first line and substituting the words "Provincial company".

Amends s.
109A.

21. Subsection (1) of section 109A of the Act, as enacted by chapter 19 of the Statutes of British Columbia, 1963, is amended by striking out the words "a company, other than a company registered" in the second line and substituting the words "a Provincial company, other than a company licensed".

Amends s.
109B.

22. Section 109B of the Act, as enacted by chapter 19 of the Statutes of British Columbia, 1963, is amended by striking out the words "Any company" in the first line and substituting the words "Any Provincial company".

Amends s.
109C.

23. Section 109C of the Act, as enacted by chapter 19 of the Statutes of British Columbia, 1963, is amended

- (a) by striking out the word "company" in the first and second lines of subsection (1) and substituting the words "Provincial company";
- (b) by striking out the word "company" in the first line of subsection (2) and substituting the words "Provincial company";
- (c) by striking out the word "the" in the third and fifth lines of subsection (2) and substituting the word "such"; and
- (d) by striking out the word "the" in the last line and substituting the word "those".

Amends s.
109D.

24. Section 109D of the Act, as enacted by chapter 19 of the Statutes of British Columbia, 1963, is amended

- (a) by striking out the word "company" in the second line of subsection (1) and substituting the words "Provincial company";
- (b) by adding, after clause (e) of subsection (1), the word "or";
- (c) by adding, after clause (e) of subsection (1) as amended by this Act, the following as clause (f):—

- (f) in connection with the relocation by the company of the place of employment of an employee, where the real estate serves as the residence of the employee immediately after the relocation or served as the residence of the employee immediately before the relocation, but no such real estate shall be allowed as an asset by the Superintendent in his annual report under this Act if held more than two years following its acquisition; and
- (d) by repealing subsection (2).

Amends s.
109F.

25. Section 109F of the Act, as enacted by chapter 19 of the Statutes of British Columbia, 1963, is amended

(a) by adding, after the word "Act" at the end of subsection (2), the words "or as were authorized by law at the time of their acquisition"; and

(b) by repealing subsections (3) and (4) and substituting the following as subsections (3), (4), (5), and (6):—

(3) If it appears to the Superintendent, or if he has any reason to believe, from the annual statements prepared and delivered to him by all insurers, that the value placed by any insurer, incorporated and licensed in the Province, upon the real estate owned by it or any parcel thereof is too great, he may either require such insurer to secure an appraisal of the real estate by one or more competent valuers or may himself procure an appraisal at the expense of the insurer, and the appraised value, if it varies materially from the statement made by the insurer, may be substituted in the annual report of the Superintendent.

(4) If it appears to the Superintendent, or if he has any reason to believe, that the amount secured by mortgage or hypothec upon any parcel of real estate, together with the interest due and accrued thereon, is greater than the value of the parcel, or that the parcel is not adequate security for the loan and interest, he may procure an appraisal thereof; and if from the appraised value it appears that the parcel is not adequate security for the loan and interest, he may write off the loan and interest a sum sufficient to reduce the loan to such an amount as may fairly be realizable from the security, in no case to exceed the appraised value, and he may insert the reduced amount in his annual report.

(5) If it appears to the Superintendent, or if he has any reason to believe, that the value of any other investment of the funds of the insurer is less than the amount of the value of the investments shown in the books of the insurer, he may make, or cause to be made, an appraisal of the security; and if from the appraised value it appears that the value of the security as shown on the books of the insurer is greater than its true value as shown by the appraisal, he may reduce the book value of the security to such amount as may fairly be realizable from the security, in no case to exceed the appraised value, and he may insert the reduced amount in his annual report.

(6) Where the Superintendent makes a requirement under subsection (1), or disallows an asset under subsection (2), or pursuant to any of

subsections (3), (4), and (5) shows in his annual report as the amount of an asset an amount less than that shown by the company for the same asset in its annual report filed pursuant to section 94, the company may, within fifteen days after the requirement or disallowance or reduction, as the case may be, is communicated to it, appeal therefrom to the Lieutenant-Governor in Council.

Re-enacts
s. 110.

26. Section 110 of the Act is repealed and the following is substituted:—

Certain loans
by Provincial
company
prohibited.

110. (1) No Provincial company shall directly or indirectly loan any funds to an officer of the company, except in the case of a company undertaking life insurance on the security of a policy of life insurance issued by it to such officer, nor shall a company loan any funds to a corporation if more than one-half of the shares of the capital stock of the corporation are owned by a director or officer of the company or the wife or a child of a director or officer, or by any combination of such persons.

(2) No Provincial company shall make any loan or advance without adequate security to any person soliciting insurance on its behalf, except an advance for travelling expenses or against commissions or other compensation to be earned, but no such advance shall be allowed as an asset by the Superintendent in his annual report under this Act.

Amends s.
114 (g1).

27. Clause (g1) of section 114 of the Act, as enacted by chapter 29 of the Statutes of British Columbia, 1962, is amended by striking out the word "accident" in the third line and substituting the words "personal accident".

Amends s. 125.

28. Subsection (3) of section 125 of the Act, as enacted by chapter 29 of the Statutes of British Columbia, 1962, is amended by striking out the words "current year's premium" in the seventh line and substituting the words "of the premium for the current policy year".

Amends s. 134.

29. Subsection (1) of section 134 of the Act, as enacted by chapter 29 of the Statutes of British Columbia, 1962, is amended by striking out the word "file" in the second line and substituting the word "filed".

Re-enacts
Part V.

30. Part V of the Act, being sections 176 to 200, is repealed and the following is substituted as Part V, being sections 176 to 200L:—

PART V

ACCIDENT AND SICKNESS INSURANCE

Interpretation.

176. In this Part,

(a) "application" means a written application for insurance or for the reinstatement of insurance;

- (b) "beneficiary" means a person designated or appointed in a contract or by a declaration, other than the insured or his personal representative, to whom or for whose benefit insurance money payable in the event of death by accident is to be paid;
- (c) "blanket insurance" means that class of group insurance which covers loss arising from specific hazards incident to or defined by reference to a particular activity or activities;
- (d) "contract" means a contract of insurance;
- (e) "creditor's group insurance" means insurance effected by a creditor whereby the lives or well-being, or the lives and well-being, of a number of his debtors are insured severally under a single contract;
- (f) "declaration" means an instrument signed by the insured,
 - (i) with respect to which an endorsement is made on the policy; or
 - (ii) that identifies the contract; or
 - (iii) that describes the insurance or insurance fund or a part thereof,in which he designates or alters or revokes the designation of his personal representative or a beneficiary as one to whom or for whose benefit shall be paid the insurance money which is payable in the event of death by accident;
- (g) "family insurance" means insurance whereby the lives or well-being, or the lives and well-being, of the insured and one or more persons related to him by blood, marriage, or adoption are insured under a single contract between an insurer and the insured;
- (h) "group insurance" means insurance other than creditor's group insurance and family insurance whereby the lives or well-being, or the lives and well-being, of a number of persons are insured severally under a single contract between an insurer and an employer or other person;
- (i) "group person insured" means a person who is insured under a contract of group insurance and upon whom a right is conferred by the contract, but does not include a person who is insured thereunder as a person dependent upon or related to him;
- (j) "instrument" includes a will;
- (k) "insurance" means personal accident insurance, sickness insurance, or personal accident insurance and sickness insurance;
- (l) "insured,"
 - (i) in the case of group insurance means, in the provisions of this Part relating to the designation of beneficiaries or of personal representatives as recipients of insurance money and their rights and status, the group person insured; and

(ii) in all other cases means the person who makes a contract with an insurer;

(m) "person insured" means a person in respect of an accident to whom, or in respect of whose sickness, insurance money is payable under a contract, but does not include a group person insured;

(n) "will" includes a codicil.

Application of Part.

177. (1) Notwithstanding any agreement, condition, or stipulation to the contrary, this Part applies to a contract made in the Province on and after the day on which this section comes into force, and sections 176 to 179, 186, 189 to 191, 195, and 197 to 200L apply also to a contract made in the Province before that day.

Application of sections of prior Act.

(2) Sections 179 to 182, 184, 191, and 194 of Part V of the Act in force immediately prior to the day on which this section comes into force apply to a contract made in the Province before that day.

Exceptions.

(3) This Part does not apply to

- (a) accidental death insurance; or
- (b) creditor's group insurance; or
- (c) disability insurance; or
- (d) insurance provided by a contract of automobile insurance under section 246, 247, or 248.

Group insurance.

178. In the case of a contract of group insurance made with an insurer authorized to transact insurance in the Province at the time the contract was made, this Part applies in determining

- (a) the rights and status of beneficiaries and personal representatives as recipients of insurance money, if the group person insured was resident in the Province at the time he became insured; and
- (b) the rights and obligations of the group person insured if he was resident in the Province at the time he became insured.

Issue of policy.

179. An insurer entering into a contract shall issue a policy.

Exceptions.

180. (1) This section does not apply to

- (a) a contract of group insurance; or
- (b) a contract made by a fraternal society.

Contents of policy.

(2) An insurer shall set forth the following particulars in the policy:—

- (a) The name or a sufficient description of the insured and of the person insured;
- (b) The amount or the method of determining the amount of the insurance money payable and the conditions under which it becomes payable;
- (c) The amount or the method of determining the amount of the premium and the period of grace, if any, within which it may be paid;
- (d) The conditions upon which the contract may be reinstated if it lapses:

- (e) The term of the insurance or the method of determining the day upon which the insurance commences and terminates.
- Contents of group policy.** **181.** In the case of a contract of group insurance, an insurer shall set forth the following particulars in the policy:—
- (a) The name or a sufficient description of the insured:
 - (b) The method of determining the group persons insured and persons insured:
 - (c) The amount or the method of determining the amount of the insurance money payable and the conditions under which it becomes payable:
 - (d) The period of grace, if any, within which the premium may be paid:
 - (e) The term of the insurance or the method of determining the day upon which the insurance commences and terminates.
- Contents of group certificate.** **182.** (1) Except as provided in subsection (2), in the case of a contract of group insurance an insurer shall issue for delivery by the insured to each group person insured a certificate or other document in which are set forth the following particulars:—
- (a) The name of the insurer and a sufficient identification of the contract:
 - (b) The amount or the method of determining the amount of insurance on the group person insured and on any person insured:
 - (c) The circumstances under which the insurance terminates, and the rights, if any, upon such termination of the group person insured and of any person insured.
- Exception.** (2) This section does not apply to a contract of blanket insurance or to a contract of group insurance of a non-renewable type issued for a term of six months or less.
- Exceptions or reductions.** **183.** (1) Subject to section 184 and except as otherwise provided in this section, the insurer shall set forth in the policy every exception or reduction affecting the amount payable under the contract, either in the provision affected by the exception or reduction, or under a heading such as "Exceptions" or "Reductions."
- (2) Where the exception or reduction affects only one provision in the policy, it shall be set forth in that provision.
 - (3) Where the exception or reduction is contained in an endorsement, insertion, or rider, the endorsement, insertion, or rider shall, unless it affects all amounts payable under the contract, make reference to the provisions in the policy affected by the exception or reduction.
 - (4) The exception or reduction mentioned in section 196 need not be set forth in the policy.
 - (5) This section does not apply to a contract made by a fraternal society.
- Statutory conditions.** **184.** Subject to section 185 the conditions set forth in this section shall be deemed to be part of every contract other than a contract of group insurance, and shall be printed on or attached to the policy forming part of such contract with the heading "Statutory Conditions."

STATUTORY CONDITIONS

The Contract 1. (1) The application, this policy, any document attached to this policy when issued, and any amendment to the contract agreed upon in writing after the policy is issued constitute the entire contract, and no agent has authority to change the contract or waive any of its provisions.

WAIVER (2) The insurer shall be deemed not to have waived any condition of this contract, either in whole or in part, unless the waiver is clearly expressed in writing signed by the insurer.

COPY OF APPLICATION (3) The insurer shall, upon request, furnish to the insured or to a claimant under the contract a copy of the application.

Material Facts 2. No statement made by the insured or person insured at the time of application for this contract shall be used in defence of a claim under or to avoid this contract unless it is contained in the application or any other written statements or answers furnished as evidence of insurability.

Changes in Occupation 3. (1) If after the contract is issued the person insured engages for compensation in an occupation that is classified by the insurer as more hazardous than that stated in this contract, the liability under this contract is limited to the amount that the premium paid would have purchased for the more hazardous occupation according to the limits, classification of risks, and premium rates in use by the insurer at the time the person insured engaged in the more hazardous occupation.

(2) If the person insured changes his occupation from that stated in this contract to an occupation classified by the insurer as less hazardous and the insurer is so advised in writing, the insurer shall either

(a) reduce the premium rate; or

(b) issue a policy for the unexpired term of this contract at the lower rate of premium applicable to the less hazardous occupation,

according to the limits, classification of risks, and premium rates used by the insurer at the date of receipt of advice of the change in occupation, and shall refund to the insured the amount by which the unearned premium on this contract exceeds the premium at the lower rate for the unexpired term.

Relation of Earnings to Insurance 4. Where the benefits for loss of time payable hereunder, either alone or together with benefits for loss of time under another contract, including a contract of group accident insurance or group sickness insurance, or of both, and a life insurance contract providing disability insurance, exceed the money value of the time of the person insured, the insurer is liable only for that proportion of the benefits for loss of time stated in this policy that the money value of the time of the person insured bears to the aggregate of the benefits for loss of time payable under all such contracts, and the excess premium, if any, paid by the insured shall be returned to him by the insurer.

Termination by Insured 5. The insured may terminate this contract at any time by giving written notice of termination to the insurer by registered mail to its head office or chief agency in the Province, or by delivery thereof to an authorized agent of the insurer in the Province, and the insurer shall upon surrender of this policy refund the amount of premium paid in excess of the short rate premium calculated to the date of receipt of such notice according to the table in use by the insurer at the time of termination.

Termination by Insurer 6. (1) The insurer may terminate this contract at any time by giving written notice of termination to the insured and by refunding concurrently with the giving of notice the amount of premium paid in excess of the pro rata premium for the expired time.

(2) The notice of termination may be delivered to the insured, or it may be sent by registered mail to the latest address of the insured on the records of the insurer.

(3) Where the notice of termination is delivered to the insured, five days' notice of termination shall be given; where it is mailed to the insured, ten days' notice of termination shall be given, and the ten days shall begin on the day following the date of mailing of notice.

Notice and Proof of Claim 7. (1) The insured or a person insured, or a beneficiary entitled to make a claim, or the agent of any of them, shall

(a) give written notice of claim to the insurer

(i) by delivery thereof, or by sending it by registered mail to the head office or chief agency of the insurer in the Province; or

(ii) by delivery thereof to an authorized agent of the insurer in the Province,

not later than thirty days from the date a claim arises under the contract on account of an accident, sickness, or disability;

(b) within ninety days from the date a claim arises under the contract on account of an accident, sickness, or disability, furnish to the insurer such proof as is reasonably possible in the circumstances of the happening of the accident or the commencement of the sickness or disability, and the loss occasioned thereby, the right of the claimant to receive payment, his age, and the age of the beneficiary if relevant; and

(c) if so required by the insurer, furnish a satisfactory certificate as to the cause or nature of the accident, sickness, or disability for which claim may be made under the contract and as to the duration of such disability.

FAILURE TO GIVE NOTICE OR PROOF (2) Failure to give notice of claim or furnish proof of claim within the time prescribed by this statutory condition does not invalidate the claim if the notice or proof is given or furnished as soon as reasonably possible, and in no event later than one year from the date of the accident or the date a claim arises under the contract on account of sickness or disability if it is shown that it was not reasonably possible to give notice or furnish proof within the time so prescribed.

Insurer to Furnish Forms for Proof of Claim 8. The insurer shall furnish forms for proof of claim within fifteen days after receiving notice of claim, but where the claimant has not received the forms within that time he may submit his proof of claim in the form of a written statement of the cause or nature of the accident, sickness, or disability giving rise to the claim and of the extent of the loss.

Rights of Examination 9. As a condition precedent to recovery of insurance moneys under this contract,

(a) the claimant shall afford to the insurer an opportunity to examine the person of the person insured when and so often as it reasonably requires while the claim hereunder is pending; and

(b) in the case of death of the person insured, the insurer may require an autopsy subject to any law of the applicable jurisdiction relating to autopsies.

When Moneys Payable Other than for Loss of Time **10.** All moneys payable under this contract, other than benefits for loss of time, shall be paid by the insurer within sixty days after it has received proof of claim.

When Loss of Time Benefits Payable **11.** The initial benefits for loss of time shall be paid by the insurer within thirty days after it has received proof of claim, and payment shall be made thereafter in accordance with the terms of the contract but not less frequently than once in each succeeding sixty days while the insurer remains liable for the payments if the person insured when required to do so furnishes before payment proof of continuing disability.

Limitation of Actions **12.** An action or proceeding against the insurer for the recovery of a claim under this contract shall not be commenced more than one year after the date the insurance money became payable or would have become payable if it had been a valid claim.

Omission or variation of conditions.

185. (1) Where a statutory condition is not applicable to the benefits provided by the contract, it may be omitted from the policy or varied so that it will be applicable.

(2) Statutory conditions 3, 4, and 9 may be omitted from the policy if the contract does not contain any provisions respecting the matters dealt with therein.

(3) Statutory conditions 5 and 6 shall be omitted from the policy if the contract does not provide that it may be terminated by the insurer prior to the expiry of any period for which a premium has been accepted.

(4) Statutory conditions 3, 4, 5, 6, and 9, and, subject to the restriction in subsection (5), statutory condition 7 may be varied; but if by reason of the variation the contract is less favourable to the insured, a person insured, or a beneficiary than it would be if the condition had not been varied, the condition shall be deemed to be included in the policy in the form in which it appears in section 184.

(5) Clauses (a) and (b) of paragraph (1) of statutory condition 7 may not be varied in policies providing benefits for loss of time.

(6) Statutory conditions 10 and 11 may be varied by shortening the periods of time prescribed therein, and statutory condition 12 may be varied by lengthening the period of time prescribed therein.

(7) The title of a statutory condition shall be reproduced in the policy along with the statutory condition, but the number of a statutory condition may be omitted.

(8) In the case of a contract made by a fraternal society,

(a) the following provision shall be printed on every policy in substitution for paragraph (1) of statutory condition 1:—

The Contract **1.** (1) This policy, the Act or instrument of incorporation of the society, its constitution, by-laws, and rules, and the amendments made from time to time to any of them, the application for the contract and the medical statement of the applicant, constitute the entire contract, and no agent has authority to change the contract or waive any of its provisions; and

(b) statutory condition 5 shall not be printed on the policy.

Notice of
statutory
conditions.

186. In the case of a policy of accident insurance of a non-renewable type issued for a term of six months or less or in relation to a ticket of travel, the statutory conditions need not be printed on or attached to the policy if the policy contains the following notice printed in conspicuous type: "Notwithstanding any other provision herein contained, this contract is subject to the statutory conditions in the *Insurance Act* respecting contracts of accident insurance."

187. (1) Where a policy evidencing a contract or a certificate evidencing the renewal of a contract is delivered to the insured and the initial premium or, in the case of a renewal certificate, the renewal premium therefor has not been fully paid,

- (a) the contract or the renewal thereof evidenced by the certificate is as binding on the insurer as if such premium had been paid although delivered by an officer or an agent of the insurer who did not have authority to deliver it; and
- (b) the contract may be terminated for the non-payment of the premium by the insurer upon ten days' notice of termination given in writing to the insured and mailed postage prepaid and registered to the latest address of the insured on the records of the insurer, and the ten days shall begin on the day following the date of mailing such notice.

(2) This section does not apply to a contract of group insurance or to a contract made by a fraternal society.

Right where
premium
unpaid.

188. (1) An insurer may

- (a) deduct unpaid premiums from an amount which it is liable to pay under a contract; or
- (b) sue the insured for unpaid premiums.

Where cheque
or note for
premium not
paid.

(2) Where a cheque or other bill of exchange or a promissory note or other written promise to pay is given for the whole or part of a premium and payment is not made according to its tenor, the premium or part thereof shall be deemed never to have been paid.

Exception.

(3) Clause (a) of subsection (1) does not apply to a contract of group insurance.

Idem.

(4) This section does not apply to a contract made by a fraternal society.

Insurable
interest.

189. Without restricting the meaning of the expression "insurable interest," a person has an insurable interest in his own life and well-being and in the life and well-being of

- (a) his child or grandchild;
- (b) his spouse;
- (c) any person upon whom he is wholly or in part dependent for, or from whom he is receiving, support or education;
- (d) his officer or employee; and
- (e) any person in whom he has a pecuniary interest.

Lack of insurable interest.

190. (1) Subject to subsection (2), where at the time a contract would otherwise take effect, the insured has no insurable interest, the contract is void.

Exceptions.

- (2) A contract is not void for lack of insurable interest
 (a) if it is a contract of group insurance; or
 (b) if the person insured has consented in writing to the insurance.

Consent of minors.

(3) Where the person insured is under the age of sixteen years, consent to the insurance may be given by one of his parents or by a person standing in loco parentis to him.

Policies on Lives of Minors

Capacity of minors.

191. (1) Except in respect of his rights as beneficiary, a minor who has attained the age of sixteen years has the capacity of a person of the age of twenty-one years

- (a) to make an enforceable contract; and
 (b) in respect of a contract.

Capacity of minor beneficiary.

(2) A beneficiary who has attained the age of eighteen years has the capacity of a person of the age of twenty-one years to receive insurance money payable to him and to give a valid discharge therefor.

Misrepresentation and Non-disclosure

Duty to disclose.

192. (1) An applicant for insurance on his own behalf and on behalf of each person to be insured, and each person to be insured, shall disclose to the insurer in any application, on a medical examination, if any, and in any written statements or answers furnished as evidence of insurability, every fact within his knowledge that is material to the insurance and is not so disclosed by the other.

Failure to disclose.

(2) Subject to sections 193 and 196, a failure to disclose, or a misrepresentation of, such a fact renders a contract voidable by the insurer.

Group insurance failure to disclose

(3) In the case of a contract of group insurance, a failure to disclose or a misrepresentation of such a fact with respect to a group person insured or a person insured under the contract does not render the contract voidable; but if evidence of insurability is specifically requested by the insurer, the insurance in respect of such a person is, subject to section 193, voidable by the insurer.

Incontestability.

193. (1) Subject to section 196 and except as provided in subsection (2),

- (a) where a contract, including renewals thereof, except a contract of group insurance, has been in effect continuously for two years with respect to a person insured, a failure to disclose or a misrepresentation of a fact with respect to that person required by section 192 to be disclosed does not, except in the case of fraud, render the contract voidable;
 (b) where a contract of group insurance, including renewals thereof, has been in effect continuously for two years with respect to a group person insured or a person insured, a failure to dis-

Incontestability in group insurance.

close or a misrepresentation of a fact with respect to that group person insured or person insured required by section 192 to be disclosed does not, except in the case of fraud, render the contract voidable with respect to that group person insured or person insured.

Exception

(2) Where a claim arises from a loss incurred or a disability beginning before a contract, including renewals thereof, has been in force for two years with respect to the person in respect of whom the claim is made, subsection (1) does not apply to that claim.

Application of incontestability to reinstatement.

194. Sections 192 and 193 apply, mutatis mutandis, to a failure at the time of reinstatement of a contract to disclose or a misrepresentation at that time, and the period of two years to which reference is made in section 193 commences to run in respect of a reinstatement from the date of reinstatement.

Pre-existing conditions.

195. Where a contract contains a general exception or reduction with respect to pre-existing disease or physical conditions and the person insured or group person insured suffers or has suffered from a disease or physical condition that existed before the date the contract came into force with respect to that person and the disease or physical condition is not by name or specific description excluded from the insurance respecting that person,

- (a) the prior existence of the disease or physical condition is not, except in the case of fraud, available as a defence against liability in whole or in part for a loss incurred or a disability beginning after the contract, including renewals thereof, has been in force continuously for two years immediately prior to the date of loss incurred or commencement of disability with respect to that person; and
- (b) the existence of the disease or physical condition is not, except in the case of fraud, available as a defence against liability in whole or in part if the disease or physical condition was disclosed in the application for the contract.

Misstatement of age

196. (1) Subject to subsections (2) and (3), if the age of the person insured has been misstated to the insurer, then, at the option of the insurer, either

- (a) the benefits payable under the contract shall be increased or decreased to the amount that would have been provided for the same premium at the correct age; or
- (b) the premium may be adjusted in accordance with the correct age as of the date the person insured became insured.

Misstatement of age in group insurance.

(2) In the case of a contract of group insurance, if there is a misstatement to the insurer of the age of a group person insured or person insured, the provisions, if any, of the contract with respect to age or misstatement of age shall apply.

True age governs

(3) Where the age of a person affects the commencement or termination of the insurance, the true age governs.

Beneficiaries

- Designation of beneficiary.** **197.** (1) Unless otherwise provided in the policy, an insured may in a contract or by a declaration designate his personal representative or a beneficiary to receive insurance money payable in the event of death by accident, and may from time to time alter or revoke the designation by declaration.
- Designation in invalid will.** (2) A designation in an instrument purporting to be a will is not ineffective by reason only of the fact that the instrument is invalid as a will or that the designation is invalid as a bequest under the will.
- Priorities.** (3) A designation in a will is of no effect against a designation made later than the making of the will.
- Revocation.** (4) If a designation is contained in a will and subsequently the will is revoked by operation of law or otherwise, the designation is thereby revoked.
- Idem.** (5) If a designation is contained in an instrument that purports to be a will and subsequently the instrument, if it had been valid as a will, would have been revoked by operation of law or otherwise, the designation is thereby revoked.
- Meaning of "heirs," etc.** **198.** (1) A designation in favour of the "heirs," "next of kin," or "estate," or the use of words of like import in a designation, shall be deemed to be a designation of the personal representative.
- Death of beneficiary.** (2) Where a beneficiary predeceases the person insured or group person insured, as the case may be, and no disposition of the share of the deceased beneficiary in the insurance money is provided in the contract or by declaration, the share is payable
- (a) to the surviving beneficiary; or
 - (b) if there is more than one surviving beneficiary, to the surviving beneficiaries in equal shares; or
 - (c) if there is no surviving beneficiary, to the insured or group person insured, as the case may be, or his personal representative.
- Right to sue.** (3) A beneficiary designated under section 197 may, upon the death by accident of the person insured or group person insured, enforce for his own benefit, and a trustee appointed pursuant to section 199 may enforce as trustee, the payment of insurance money payable to him, and the payment to the beneficiary or trustee discharges the insurer to the extent of the amount paid, but the insurer may set up any defence that it could have set up against the insured or his personal representative.
- Trustee for beneficiary.** **199.** An insured may in a contract or by a declaration appoint a trustee for a beneficiary, and may alter or revoke the appointment by a declaration.
- Documents affecting title.** **200.** (1) Until an insurer receives at its head or principal office in Canada an instrument or an order of a Court affecting the right to receive insurance money, or a notarial copy or a copy verified by statutory declaration of any such instrument or order, it may make payment of

the insurance money and shall be as fully discharged to the extent of the amount paid as if there were no such instrument or order.

Saving. (2) Subsection (1) does not affect the rights or interests of any person other than the insurer.

Interest of assignee. (3) Where an assignee of a contract gives notice in writing of the assignment to the insurer at its head or principal office in Canada, he has priority of interest as against

(a) any assignee other than one who gave notice earlier in like manner; and

(b) a beneficiary.

Assignee deemed to be insured. (4) Where a contract is assigned unconditionally and otherwise than as security, the assignee has all the rights and interests given by the contract and by this Part to the insured, and shall be deemed to be the insured.

Prohibition against assignment. (5) A provision in a contract to the effect that the rights or interests of the insured, or in the case of a contract of group insurance the group person insured, are not assignable is valid.

Insurance money free from creditors. **200A.** (1) Where a beneficiary is designated, any insurance money payable to him is not, from the time of the happening of the event upon which it becomes payable, part of the estate of the insured, and is not subject to the claims of the creditors of the insured.

Contract exempt from seizure. (2) While there is in effect a designation of beneficiary in favour of any one or more of a spouse, child, grandchild, or parent of the person insured or group person insured, the rights and interests of the insured in the insurance money and in the contract so far as either relate to accidental death benefits are exempt from execution or seizure.

Group person insured enforcing rights. **200B.** A group person insured may, in his own name, enforce a right given by a contract to him, or to a person insured thereunder as a person dependent upon or related to him, subject to any defence available to the insurer against him or such person insured or against the insured.

Simultaneous deaths. **200C.** Unless a contract or a declaration otherwise provides, where a person insured or group person insured and a beneficiary die at the same time or in circumstances rendering it uncertain which of them survived the other, the insurance money is payable in accordance with subsection (2) of section 198 as if the beneficiary had predeceased the person insured or group person insured.

Payment into Court. **200D.** (1) Where the insurer admits liability for the insurance money or any part thereof, and it appears to the insurer that

(a) there are adverse claimants; or

(b) the whereabouts of the person entitled is unknown; or

(c) there is no person capable of giving or authorized to give a valid discharge therefor who is willing to do so,

the insurer may apply ex parte to the Court for an order for payment of money into Court, and the Court may upon such notice, if any, as it deems necessary, make an order accordingly.

Costs of proceedings. (2) The Court may fix without taxation the costs incurred upon or in connection with any application or order made under subsection (1),

and may order the costs to be paid out of the insurance money or by the insurer, or otherwise as it deems just.

Discharge of insurer.

(3) A payment made pursuant to an order under subsection (1) discharges the insurer to the extent of the payment.

Where beneficiary a minor.

200E. (1) Where an insurer admits liability for insurance money payable to a minor and there is no person capable of giving and authorized to give a valid discharge therefor who is willing to do so, the insurer may, at any time after thirty days from the date of the happening of the event upon which the insurance money becomes payable, pay the money less the applicable costs mentioned in subsection (2) into Court to the credit of the minor.

Costs.

(2) The insurer may retain out of the insurance money for costs incurred upon payment into Court under subsection (1) the sum of ten dollars where the amount does not exceed one thousand dollars, and the sum of fifteen dollars in other cases, and payment of the remainder of the money into Court discharges the insurer.

Procedure.

(3) No order is necessary for payment into Court under subsection (1), but the accountant or other proper officer shall receive the money upon the insurer filing with him an affidavit showing the amount payable and the name, date of birth, and residence of the minor, and upon such payment being made the insurer shall forthwith notify the Public Trustee and deliver to him a copy of the affidavit.

Beneficiary under disability.

200F. Where it appears that a representative of a beneficiary who is under disability may, under the law of the domicile of the beneficiary, accept payments on behalf of the beneficiary, the insurer may make payment to the representative, and any such payment discharges the insurer to the extent of the amount paid.

Payments not exceeding \$2,000.

200G. Notwithstanding that insurance money is payable to a person, the insurer may, if the contract so provides, but subject always to the rights of an assignee, pay an amount not exceeding two thousand dollars to

- (a) a relative by blood or connection by marriage of a person insured or the group person insured; or
- (b) any person appearing to the insurer to be equitably entitled thereto by reason of having incurred expense for the maintenance, medical attendance, or burial of a person insured or the group person insured, or to have a claim against the estate of a person insured or the group person insured in relation thereto,

and any such payment discharges the insurer to the extent of the amount paid.

Place of payment.

200H. (1) Subject to subsection (2), insurance money is payable in the Province.

Exception for group insurance.

(2) In the case of a contract of group insurance, insurance money is payable in the Province or Territory of Canada in which the group person insured was resident at the time he became insured.

Dollars.

(3) Unless a contract otherwise provides, a reference therein to dollars means Canadian dollars whether the contract by its terms provides for payment in Canada or elsewhere.

Payment outside Province

(4) Where a person entitled to receive insurance money is not domiciled in the Province, the insurer may pay the insurance money to that person or to any person who is entitled to receive it on his behalf by the law of the domicile of the payee, and any such payment discharges the insurer to the extent of the amount paid.

Payment to personal representative.

(5) Where insurance money is by the contract or a declaration payable to a person who has died or to his personal representative and such deceased person was not at the date of his death domiciled in the Province, the insurer may pay the insurance money to the personal representative of such person appointed under the law of his domicile, and any such payment discharges the insurer to the extent of the amount paid.

Action in Province.

200I. Regardless of the place where a contract was made, a claimant who is a resident of the Province may bring an action in the Province if the insurer was authorized to transact insurance in the Province at the time the contract was made or at the time the action is brought.

Insurer giving information.

200J. An insurer does not incur any liability for any default, error, or omission in giving or withholding information as to any notice or instrument that it has received and that affects the insurance money.

Undue prominence

200K. The insurer shall not in the policy give undue prominence to any provision or statutory condition as compared to other provisions or statutory conditions, unless the effect of that provision or statutory condition is to increase the premium or decrease the benefits otherwise provided for in the policy.

Presumption against agency.

200L. No officer, agent, employee, or servant of the insurer, and no person soliciting insurance, whether or not he is an agent of the insurer, shall, to the prejudice of the insured, person insured, or group person insured, be deemed to be the agent of the insured or of the person insured or group person insured in respect of any question arising out of the contract.

Re-enacts statutory condition 5 of s 208 (2).

31. Statutory condition 5 of subsection (2) of section 208 of the Act is repealed and the following is substituted:—

- Termination of Insurance** **5.** (1) This contract may be terminated
- (a) by the insurer giving to the insured fifteen days' notice of termination by registered mail, or five days' written notice of termination personally delivered; or
 - (b) by the insured at any time on request.
- (2) Where this contract is terminated by the insurer,
- (a) the insurer shall refund the excess of premium actually paid by the insured over the pro rata premium for the expired time, but, in no event, shall the pro rata premium for the expired time be deemed to be less than any minimum retained premium specified; and

(b) the refund shall accompany the notice unless the premium is subject to adjustment or determination as to amount, in which case the refund shall be made as soon as practicable.

(3) Where this contract is terminated by the insured, the insurer shall refund as soon as practicable the excess of premium actually paid by the insured over the short rate premium for the expired time, but, in no event, shall the short rate premium for the expired time be deemed to be less than any minimum retained premium specified.

(4) The refund may be made by money, postal or express company money order, or by cheque payable at par.

(5) The fifteen days mentioned in clause (a) of subcondition (1) commences to run on the day following the receipt of the registered letter at the post office to which it is addressed.

Re-enacts statutory condition 11 of s. 208 (2).

32. Statutory condition 11 of subsection (2) of section 208 of the Act is repealed and the following is substituted:—

Appraisal 11. In the event of disagreement as to the value of the property insured, the property saved, or the amount of the loss, those questions shall be determined by appraisal as provided under the *Insurance Act* before there can be any recovery under this contract, whether the right to recover on the contract is disputed or not, and independently of all other questions; but there shall be no right to an appraisal until a specific demand therefor is made in writing and until after proof of loss has been delivered.

Re-enacts statutory condition 15 of s. 208 (2).

33. Statutory condition 15 of subsection (2) of section 208 of the Act is repealed and the following is substituted:—

Notice 15. (1) Any written notice to the insurer may be delivered at, or sent by registered mail to, the chief agency or head office of the insurer in the Province.

(2) Written notice may be given to the insured named in this contract by letter personally delivered to him or by registered mail addressed to him at his latest post office address as notified to the insurer, and in this condition the expression "registered" means registered in or outside Canada.

Repeals s. 209.

34. Section 209 of the Act is repealed.

Repeals s. 215.

35. Sections 213 and 215 of the Act are repealed.

Re-enacts Part VII.

36. Part VII of the Act, being sections 217 to 250, is repealed and the following is substituted as sections 217 to 250Q:—

PART VII

SPECIAL PROVISIONS RELATING TO AUTOMOBILE INSURANCE

Interpretation.

217. (1) In this Part, unless the context otherwise requires,

- (a) "assigned risk plan" means the British Columbia Assigned Risk Plan as presently constituted and operated by insurers licensed to issue motor-vehicle liability policies;
- (b) "contract" means a contract of automobile insurance;
- (c) "insured" means a person insured by a contract, whether named or not.

(2) Part VII of the *Insurance Act* as it was in force immediately before the day on which this section comes into force applies to contracts of automobile insurance made before the day on which this section comes into force until the contract expires or is cancelled or renewed.

Application
of Part.

218. (1) This Part applies to contracts providing automobile insurance made or renewed in the Province on or after the first day of January, 1970, or such earlier date as may be fixed by the Lieutenant-Governor in Council.

Exception.

(2) This Part does not apply to contracts insuring only against

- (a) loss of or damage to an automobile while in or on described premises;
- (b) loss of or damage to property carried in or upon an automobile;
- or
- (c) liability for loss of or damage to property carried in or upon an automobile.

(3) This Part does not apply to a contract providing insurance in respect of an automobile chiefly used or operated off highways unless it is insured under a contract evidenced by a form of policy approved under this Part.

(4) This Part does not apply to a contract insuring solely the interest of a person who has a lien upon, or has as security legal title to, an automobile and who does not have possession of the automobile.

(5) Every insurer from time to time licensed to issue motor-vehicle liability policies shall subscribe to the assigned risk plan and shall be bound by any and all provisions governing subscribers.

(6) The assigned risk plan shall file with the Superintendent a copy of its constitution, by-laws, rules, and regulations, and any amendments thereto, not later than the first day of June, 1970, or within ten days after the same are made.

Approval of
forms by
Superinten-
dent.

219. (1) No insurer shall use a form of application, policy, endorsement, or renewal or continuation certificate in respect of automobile insurance other than a form approved by the Superintendent.

Insurer
requiring
additional
information.

(2) An insurer may require additional information in an approved application form. but such additional information does not constitute part of the application for the purposes of section 222.

Approval of
policies in
special cases.

(3) Where, in the opinion of the Superintendent, any provision of this Part, including any statutory condition, is wholly or partly inappropriate to the requirements of a contract or is inapplicable by reason of the requirements of any Act, he may approve a form of policy, or part thereof, or endorsement evidencing a contract sufficient or appropriate to insure the risks required or proposed to be insured, and the contract evidenced by the policy or endorsement in the form so approved is effective and binding according to its terms notwithstanding that those terms are inconsistent with, vary, omit, or add to any provision or condition of this Part.

Approval of
extensions.

(4) Except as to matters referred to in section 231, the Superintendent may, if he considers it to be in the public interest, approve a form of

motor-vehicle liability policy or endorsement thereto that extends the insurance beyond that prescribed in this Part.

Condition of approval of extensions.

(5) The Superintendent, in granting an approval under subsection (4), may require the insurer to charge an additional premium for the extension and to state that fact in the policy or in any endorsement.

Revocation of approval.

(6) The Superintendent may revoke an approval given under this section, and, upon notification of the revocation in writing, no insurer shall thereafter use or deliver a form that contravenes the notification.

Reason for decision.

(7) The Superintendent shall, on request of any interested insurer, specify in writing his reasons for granting, refusing, or revoking an approval of a form.

Insurance card.

(8) **An insurer that issues or delivers a motor-vehicle liability policy in the Province, or any renewal thereof, or any evidence of the continuation of the contract, shall issue to the insured a card evidencing the insurance, and the card shall be in a form approved by the Superintendent.**

(9) An insurer that issues a motor-vehicle liability policy outside the Province shall file with the Superintendent, in a form prescribed by him,

- (a) a power of attorney authorizing the Superintendent of Insurance to accept service of notice or process for itself in any action or proceeding against it arising out of a motor-vehicle accident in British Columbia; and
- (b) an undertaking

(i) to appear in any action or proceeding against it or its insured arising out of a motor-vehicle accident in British Columbia, and of which it has knowledge;

(ii) that upon receipt from the Superintendent of Insurance of any notice or process served upon him in respect of its insured, or in respect of its insured and another or others, and sent by the Superintendent of Insurance to it as hereinafter provided, it will forthwith cause the notice or process to be personally served upon its insured; and

(iii) not to set up any defence to any claim, action, or proceeding, under a motor-vehicle liability policy issued by it, that might not be set up if such policy has been issued in British Columbia in accordance with the law of British Columbia relating to motor-vehicle liability policies, and to satisfy up to the limits of liability stated in the policy, and in any event to an amount not less than the limits of liability fixed in section 93 of the *Motor-vehicle Act* any judgment rendered against it or its insured by a Court in British Columbia in any such action or proceeding;

(10) The Superintendent may prescribe the minimum limits of accident insurance benefits that shall be provided in every contract evidenced by a motor-vehicle liability policy.

Application and Policy

Persons forbidden to act as agent.

220. No person carrying on the business of financing the sale or purchase of automobiles and no automobile dealer, insurance agent or broker, and no officer or employee of such a person, dealer, agent, or broker, shall act as the agent of an applicant for the purpose of signing an application for automobile insurance.

Copy of application in policy.

221. (1) A copy of the written application, signed by the insured or his agent, or, if no signed application is made, a copy of the purported application, or a copy of such part of the application or purported application as is material to the contract, shall be embodied in, endorsed upon, or attached to the policy when issued by the insurer.

Policy issued where no signed application.

(2) If no signed written application is received by the insurer prior to the issue of the policy, the insurer shall deliver or mail to the insured named in the policy, or to the agent for delivery or mailing to the insured, a form of application to be completed and signed by the insured and returned to the insurer.

Insured entitled to copy.

(3) The insurer shall deliver or mail to the insured named in the policy, or to the agent for delivery or mailing to the insured, the policy or a true copy thereof and every endorsement or other amendment to the contract.

Form of policy.

(4) Where a written application signed by the insured or his agent is made for a contract, the policy evidencing the contract shall be deemed to be in accordance with the application unless the insurer points out in writing to the insured named in the policy in what respect the policy differs from the application, and in that event the insured shall be deemed to have accepted the policy unless within one week from the receipt of the notification he informs the insurer in writing that he rejects the policy.

Endorsement on forms.

(5) Upon every application form and policy there shall be printed or stamped in conspicuous type a copy of subsection (1) of section 222.

Misrepresentation or violation of conditions renders certain claims invalid.

222. (1) Where

(a) an applicant for a contract

(i) gives false particulars of the described automobile to be insured to the prejudice of the insurer; or

(ii) knowingly misrepresents or fails to disclose in the application any fact required to be stated therein; or

(b) the insured contravenes a term of the contract or commits a fraud; or

(c) the insured wilfully makes a false statement in respect of a claim under the contract,

a claim by the insured is invalid and the right of the insured to recover indemnity is forfeited.

Use of application as defence.

(2) No statement of the applicant shall be used in defence of a claim under the contract unless it is contained in the signed written application therefor or, where no signed written application is made in the purported application, or part thereof, that is embodied in, endorsed upon, or attached to the policy.

Idem. (3) No statement contained in a purported copy of the application, or part thereof, other than a statement describing the risk and the extent of the insurance, shall be used in defence of a claim under the contract unless the insurer proves that the applicant made the statement attributed to him in the purported application, or part thereof.

Statutory conditions. **223.** (1) Subject to subsection (3) of section 219, sections 224, 243, and 244,

(a) the conditions set forth in this section are statutory conditions and shall be deemed to be part of every contract and shall be printed in every policy with the heading "Statutory Conditions"; and

(b) no variation or omission of or addition to a statutory condition is binding on the insured.

Interpretation. (2) In this section, "policy" does not include an interim receipt or binder.

STATUTORY CONDITIONS

In these statutory conditions, unless the context otherwise requires, the word "insured" means a person insured by this contract whether named or not.

Material Change in Risk 1. (1) The insured named in this contract shall promptly notify the insurer or its local agent in writing of any change in the risk material to the contract and within his knowledge.

(2) Without restricting the generality of the foregoing, the words "change in the risk material to the contract" include

(a) any change in the insurable interest of the insured named in this contract in the automobile by sale, assignment, or otherwise, except through change of title by succession, death, or proceedings under the *Bankruptcy Act* (Canada);

and in respect of insurance against loss of or damage to the automobile,

(b) any mortgage, lien, or encumbrance affecting the automobile after the application for this contract;

(c) any other insurance of the same interest, whether valid or not, covering loss or damage insured by this contract or any portion thereof.

Prohibited Use by Insured 2. (1) The insured shall not drive or operate the automobile

(a) while under the influence of intoxicating liquor or drugs to such an extent as to be for the time being incapable of the proper control of the automobile; or

(b) unless he is for the time being either authorized by law or qualified to drive or operate the automobile; or

(c) while he is under the age of sixteen years or under such other age as is prescribed by the law of the Province in which he resides at the time this contract is made as being the minimum age at which a licence or permit to drive an automobile may be issued to him; or

(d) for any illicit or prohibited trade or transportation; or

(e) in any race or speed test.

PROHIBITED USE BY OTHERS (2) The insured shall not permit, suffer, allow, or connive at the use of the automobile

(a) by any person under the influence of intoxicating liquor or drugs to such an extent as to be for the time being incapable of the proper control of the automobile; or

(b) by any person,

(i) unless that person is for the time being either authorized by law or qualified to drive or operate the automobile; or

- (ii) while that person is under the age of sixteen years or under such other age as is prescribed by the law of the Province in which he resides at the time this contract is made as being the minimum age at which a licence or permit to drive an automobile may be issued to him; or
- (c) for any illicit or prohibited trade or transportation; or
- (d) in any race or speed test.

**Requirements
Where Loss or
Damage to Per-
sons or Property**

3. (1) The insured shall
- (a) promptly give to the insurer written notice, with all available particulars, of any accident involving loss or damage to persons or property and of any claim made on account of the accident;
 - (b) verify by statutory declaration, if required by the insurer, that the claim arose out of the use or operation of the automobile and that the person operating or responsible for the operation of the automobile at the time of the accident is a person insured under this contract; and
 - (c) forward immediately to the insurer every letter, document, advice, or writ received by him from or on behalf of the claimant.
- (2) The insured shall not
- (a) voluntarily assume any liability or settle any claim except at his own cost; or
 - (b) interfere in any negotiations for settlement or in any legal proceeding.
- (3) The insured shall, whenever requested by the insurer, aid in securing information and evidence and the attendance of any witness and shall co-operate with the insurer, except in a pecuniary way, in the defence of any action or proceeding or in the prosecution of any appeal.

**Requirements
Where Loss
or Damage to
Automobile**

4. (1) Where loss of or damage to the automobile occurs, the insured shall, if the loss or damage is covered by this contract,
- (a) promptly give notice thereof in writing to the insurer with the fullest information obtainable at the time;
 - (b) at the expense of the insurer, and as far as reasonably possible, protect the automobile from further loss or damage; and
 - (c) deliver to the insurer within ninety days after the date of the loss or damage a statutory declaration stating, to the best of his knowledge and belief, the place, time, cause, and amount of the loss or damage, the interest of the insured and of all others therein, the encumbrances thereon, all other insurance, whether valid or not, covering the automobile and that the loss or damage did not occur through any wilful act or neglect, procurement, means, or connivance of the insured.
- (2) Any further loss or damage accruing to the automobile directly or indirectly from a failure to protect it as required under subcondition (1) of this condition is not recoverable under this contract.
- (3) No repairs, other than those that are immediately necessary for the protection of the automobile from further loss or damage, shall be undertaken and no physical evidence of the loss or damage shall be removed.
- (a) without the written consent of the insurer; or
 - (b) until the insurer has had a reasonable time to make the examination for which provision is made in statutory condition 5.

**EXAMINATION
OF INSURED**

- (4) The insured shall submit to examination under oath, and shall produce for examination at such reasonable place and time as is designated by the insurer or its representative, all documents in his possession or control that relate to the matters in question, and he shall permit extracts and copies thereof to be made.

INSURER LIABLE FOR CASH VALUE OF AUTOMOBILE (5) The insurer shall not be liable for more than the actual cash value of the automobile at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated according to that actual cash value with proper deduction for depreciation, however caused, and shall not exceed the amount that it would cost to repair or replace the automobile, or any part thereof, with material of like kind and quality, but, if any part of the automobile is obsolete and out of stock, the liability of the insurer in respect thereof shall be limited to the value of that part at the time of loss or damage, not exceeding the maker's latest list price.

REPAIR OR REPLACEMENT (6) Except where an appraisal has been made, the insurer, instead of making payment, may, within a reasonable time, repair, rebuild, or replace the property damaged or lost with other of like kind and quality if, within seven days after the receipt of the proof of loss, it gives written notice of its intention to do so.

NO ABANDONMENT; SALVAGE (7) There shall be no abandonment of the automobile to the insurer without the insurer's consent. If the insurer exercises the option to replace the automobile or pays the actual cash value of the automobile, the salvage, if any, shall vest in the insurer.

IN CASE OF DISAGREEMENT (8) In the event of disagreement as to the nature and extent of the repairs and replacements required, or as to their adequacy, if effected, or as to the amount payable in respect of any loss or damage, those questions shall be determined by appraisal as provided under the *Insurance Act* before there can be recovery under this contract, whether the right to recover on the contract is disputed or not, and independently of all other questions. There shall be no right to an appraisal until a specific demand therefor is made in writing and until after proof of loss has been delivered.

Inspection of Automobile 5. The insured shall permit the insurer at all reasonable times to inspect the automobile and its equipment.

Time and Manner of Payment of Insurance Money 6. (1) The insurer shall pay the insurance money for which it is liable under this contract within sixty days after the proof of loss has been received by it or, where an appraisal is made under subcondition (8) of statutory condition 4, within fifteen days after the award is rendered by the appraisers.

WHEN ACTION MAY BE BROUGHT (2) The insured shall not bring an action to recover the amount of a claim under this contract unless the requirements of statutory conditions 3 and 4 are complied with or until the amount of the loss has been ascertained as therein provided or by a judgment against the insured after trial of the issue or by agreement between the parties with the written consent of the insurer.

LIMITATION OF ACTIONS (3) Every action or proceeding against the insurer under this contract in respect of loss or damage to the automobile shall be commenced within one year next after the happening of the loss and not afterwards, and in respect of loss or damage to persons or property shall be commenced within one year next after the cause of action arose and not afterwards.

Who May Give Notice and Proofs of Claim 7. Notice of claim may be given and proofs of claim may be made by the agent of the insured named in this contract in case of absence or inability of the insured to give the notice or make the proof, such absence or inability being satisfactorily accounted for or, in the like case or if the insured refuses to do so, by a person to whom any part of the insurance money is payable.

Termination**8.** (1) This contract may be terminated

(a) by the insurer giving to the insured fifteen days' notice of termination by registered mail or five days' written notice of termination personally delivered;

(b) by the insured at any time on request.

(2) Where this contract is terminated by the insurer,

(a) the insurer shall refund the excess of premium actually paid by the insured over the pro rata premium for the expired time, but in no event shall the pro rata premium for the expired time be deemed to be less than any minimum retained premium specified; and

(b) the refund shall accompany the notice unless the premium is subject to adjustment or determination as to the amount, in which case the refund shall be made as soon as practicable.

(3) Where this contract is terminated by the insured, the insurer shall refund as soon as practicable the excess of premium actually paid by the insured over the short rate premium for the expired time, but in no event shall the short rate premium for the expired time be deemed to be less than any minimum retained premium specified.

(4) The refund may be made by money, postal or express company money order, or cheque payable at par.

(5) The fifteen days mentioned in clause (a) of subcondition (1) of this condition commences to run on the day following the receipt of the registered letter at the post office to which it is addressed.

Notice

9. Any written notice to the insurer may be delivered at, or sent by registered mail to, the chief agency or head office of the insurer in the Province. Written notice may be given to the insured named in this contract by letter personally delivered to him or by registered mail addressed to him at his latest post office address as notified to the insurer. In this condition, the expression "registered" means registered in or outside Canada.

Exceptions
respecting
statutory
conditions.

224. (1) Except as otherwise provided in the contract, the statutory conditions set forth in section 223 do not apply to insurance coming within section 246, 247, or 248.

Idem.

(2) Where a contract does not insure against liability for loss or damage to persons and property, statutory condition 3 in section 223 is not a part of the policy and may be omitted from the printing of the conditions in the policy.

Idem.

(3) Where a contract does not insure against loss of or damage to the automobile, statutory condition 4 in section 223 is not a part of the policy and may be omitted from the printing of the conditions in the policy.

Motor-vehicle Liability Policies

Coverage
of owner's
policy,
specific
automobile.

225. (1) Every contract evidenced by an owner's policy insures the person named therein and every other person who with his consent personally drives an automobile owned by the insured named in the contract and within the description or definition thereof in the contract against liability imposed by law upon the insured named in the contract or that other person for loss or damage

(a) arising from the ownership, use, or operation of any such automobile; and

(b) resulting from bodily injury to or the death of any person, and damage to property.

Idem, other automobiles.

(2) Where the contract evidenced by an owner's policy also provides insurance against liability in respect of an automobile not owned by the insured named in the contract, an insurer may stipulate in the contract that the insurance is restricted to such persons as are specified in the contract.

Death of person named in owner's policy.

(3) Where the insured named in an owner's policy dies, the following persons shall be deemed to be the insured under the policy:—

(a) The spouse of the deceased insured if residing in the same dwelling premises at the time of his death:

(b) In respect of the described automobile, a newly acquired automobile that was acquired by the deceased insured prior to his death and a temporary substitute automobile, all as defined by the policy,

(i) any person having proper temporary custody thereof until grant of probate or administration to the personal representative of the deceased insured;

(ii) the personal representative of the deceased insured.

Coverage of non-owner's policy.

226. Every contract evidenced by a non-owner's policy insures the person named therein and such other person, if any, as is specified in the policy against liability imposed by law upon the insured named in the contract or that other person for loss or damage

(a) arising from the use or operation of an automobile within the definition thereof in the policy, other than an automobile owned by him or registered in his name; and

(b) resulting from bodily injury to or the death of any person, and damage to property.

Persons deemed not owners

227. For the purposes of this Part, a person shall not be deemed to be the owner of an automobile for the reason only that he has a lien on the automobile or has legal title to the automobile as security.

Territorial limits

228. Insurance under sections 225 and 226 applies to the ownership, use, or operation of the insured automobile within Canada and the United States of America and upon a vessel plying between ports of those countries.

Rights of unnamed insured

229. Any person insured by but not named in a contract to which section 225 or 226 applies may recover indemnity in the same manner and to the same extent as if named therein as the insured, and for that purpose shall be deemed to be a party to the contract and to have given consideration therefor.

Additional agreements

230. Every contract evidenced by a motor-vehicle liability policy shall provide that where a person insured by the contract is involved in an accident resulting from the ownership, use, or operation of an automobile in respect of which insurance is provided under the contract and resulting in loss or damage to persons or property, the insurer shall,

- (a) upon receipt of notice of loss or damage caused to persons or property, make such investigations, conduct such negotiations with the claimant, and effect such settlement of any resulting claims as are deemed expedient by the insurer;
- (b) defend in the name and on behalf of the insured and at the cost of the insurer any civil action that is at any time brought against the insured on account of loss or damage to persons or property;
- (c) pay all costs taxed against the insured in any civil action defended by the insurer and any interest accruing after entry of judgment upon that part of the judgment that is within the limits of the insurer's liability; and
- (d) where the injury is to a person, reimburse the insured for outlay for such medical aid as is immediately necessary at the time.

Exceptions
from liability.

231. The insurer is not liable under a contract evidenced by a motor-vehicle liability policy for any liability

- (a) imposed by any workmen's compensation law upon any person insured by the contract;
- (b) resulting from bodily injury to or the death of
 - (i) the daughter, son, wife, or husband of any person insured by the contract while being carried in or upon or entering or getting on to or alighting from the automobile; or
 - (ii) any person insured by the contract; or
- (c) resulting from bodily injury to or the death of any employee of any person insured by the contract while engaged in the operation or repair of the automobile.

Idem.

232. The insurer may provide under a contract evidenced by a motor-vehicle liability policy, in either or both of the following cases, that it shall not be liable

- (a) to indemnify any person engaged in the business of selling, repairing, maintaining, servicing, storing, or parking automobiles for any loss or damage sustained while engaged in the use or operation of or while working upon the automobile in the course of that business unless the person is the owner of the automobile or is his employee; or
- (b) for loss of or damage to property carried in or upon the automobile or to any property owned or rented by or in the care, custody, or control of the insured.

Idem.

233. Subject to the limitations and exclusions of the endorsement, the insurer may provide by endorsement to a contract evidenced by a motor-vehicle liability policy, in either or both of the following cases, that it shall not be liable for loss or damage

- (a) resulting from bodily injury to or the death of any person being carried in or upon or entering or getting on to or alighting from the automobile;

- (b) resulting from the ownership, use, or operation of any machinery or apparatus, including its equipment, mounted on or attached to the automobile while such automobile is at the site of the use or operation of that machinery or apparatus.

Idem.

234. (1) The insurer may provide under a contract evidenced by a motor-vehicle liability policy, in one or more of the following cases, that it shall not be liable while

- (a) the automobile is rented or leased to another person;
- (b) the automobile is used to carry explosives or to carry radioactive material for research, education, development, or industrial purposes or for purposes incidental thereto;
- (c) the automobile is used as a taxicab, public omnibus, livery, jitney, or sightseeing conveyance or for carrying passengers for compensation or hire;
- (d) where the insured vehicle is an automobile, other than a trailer, it is used for towing a trailer owned by the insured unless like indemnity is also provided by the insurer in respect of the trailer;
- (e) where the insured vehicle is a trailer, it is towed by an automobile owned by the insured unless like indemnity is also provided by the insurer in respect of the automobile.

Interpretation.

- (2) In clause (b) of subsection (1), "radioactive material" means
 - (a) spent nuclear fuel rods that have been exposed to radiation in a nuclear reactor;
 - (b) radioactive waste material;
 - (c) unused enriched nuclear fuel rods; or
 - (d) any other radioactive material of such quantity and quality as to be harmful to persons or property if its container is destroyed or damaged.

Exception.

(3) Clause (a) of subsection (1) does not include the use by an employee of his automobile on the business of his employer and for which he is paid.

Certain rules excepted.

- (4) Clause (c) of subsection (1) does not include
 - (a) the use by a person of his automobile for the carriage of another person in return for the former's carriage in the automobile of the latter;
 - (b) the occasional and infrequent use by a person of his automobile for the carriage of another person who shares the cost of the trip;
 - (c) the use by a person of his automobile for the carriage of a temporary or permanent domestic servant of the insured or his spouse; or
 - (d) the use by a person of his automobile for the carriage of a client or customer or a prospective client or customer.

Contents of policy.

235. (1) Every contract evidenced by a motor-vehicle liability policy insures, in respect of any one accident, to the limit of at least fifty

thousand dollars, exclusive of interest and costs, against liability resulting from bodily injury to or the death of one or more persons.

(2) Every contract evidenced by a motor-vehicle liability policy insures, in respect of any one accident to the limit of at least fifty thousand dollars, exclusive of interest and costs, against liability resulting from loss or damage to property of non-residents occurring inside or outside the Province.

Priorities.

(3) The contract shall be interpreted to mean that where, by reason of any one accident, liability results from bodily injury or death and from loss of or damage to property,

- (a) claims against the insured arising out of bodily injury or death have priority to the extent of forty-five thousand dollars over claims arising out of loss of or damage to property; and
- (b) claims against the insured arising out of loss of or damage to property have priority to the extent of five thousand dollars over claims arising out of bodily injury or death.

Minimum limits where separate limits designated.

(4) The insurer may, instead of specifying a limit in the policy for an inclusive amount, specify a limit of liability of at least fifty thousand dollars, exclusive of interest and costs, against liability resulting from bodily injury to or the death of one or more persons and a limit of liability of at least fifty thousand dollars, exclusive of interest and costs, against liability resulting from loss of or damage to property.

Variation of limits.

(5) Nothing in this Part precludes an insurer, with respect to a limit or limits in excess of those specified in subsection (1) or (4), from increasing or reducing the limit or limits specified in the contract with respect to the use or operation of the automobile by a named person, but no reduction is effective for a limit less than that required under subsection (1) or (4).

Idem.

235A. Every contract evidenced by a motor-vehicle liability policy shall provide the accident insurance benefits to at least the limits set out in the Second Schedule, or as extended by the Superintendent pursuant to section 219, to those persons referred to in section 248.

Stipulation in motor-vehicle liability policy.

236. (1) Every motor-vehicle liability policy issued in the Province shall provide that, in the case of liability arising out of the ownership, use, or operation of the automobile in any Province or Territory of Canada,

- (a) the insurer shall be liable up to the minimum limits prescribed for that Province or Territory if those limits are higher than the limits prescribed by the policy;
- (b) the insurer shall not set up any defence to a claim that might not be set up if the policy were a motor-vehicle liability policy issued in that Province or Territory; and
- (c) the insured, by acceptance of the policy, constitutes and appoints the insurer his irrevocable attorney to appear and defend in any Province or Territory of Canada in which an action is brought against the insured arising out of the ownership, use, or operation of the automobile.

Power of attorney binding.

(2) A provision in a motor-vehicle liability policy in accordance with clause (c) of subsection (1) is binding on the insured.

Excess insurance.

237. (1) Nothing in this Part precludes an insurer from providing insurance under a contract evidenced by a motor-vehicle liability policy restricted to a limit in excess of that provided by another designated contract evidenced by a motor-vehicle liability policy, whether the designated contract is a first loss insurance or an excess insurance.

Termination of excess insurance.

(2) Where the contract designated in the excess contract terminates or is terminated, the excess contract is also automatically terminated.

Agreement for partial payment of claim by insured.

238. Nothing in this Part precludes an insurer from entering into an agreement with its insured under a contract evidenced by a motor-vehicle liability policy providing that the insured will reimburse the insurer in an agreed amount in respect of any claim by or judgment in favour of a third party against the insured, and the agreement may be enforced against the insured according to its tenor.

Interpretation.

239. (1) In this section, " nuclear-energy hazard " means the radioactive, toxic, explosive, or other hazardous properties of prescribed substances under the *Atomic Energy Control Act* (Canada).

Liability when nuclear-energy contract also in force.

(2) Where an insured is covered, whether named therein or not, under a contract evidenced by a motor-vehicle liability policy for loss or damage resulting from bodily injury to or the death of any person or damage to property arising directly or indirectly out of a nuclear-energy hazard and is also covered, whether named therein or not, against such loss or damage under a contract evidenced by a policy of nuclear-energy hazard liability insurance issued by a group of insurers and in force at the time of the event giving rise to the loss or damage,

(a) the motor-vehicle liability insurance is excess to the nuclear-energy hazard liability insurance, and the insurer under the contract of motor-vehicle liability insurance is not liable to pay beyond the minimum limits prescribed by section 235; and

(b) the unnamed insured under the contract of nuclear-energy liability insurance may, in respect of such loss or damage, recover indemnity under that contract in the same manner and to the same extent as if named therein as the insured, and for that purpose he shall be deemed to be a party to the contract and to have given consideration therefor.

When contract deemed in force.

(3) For the purpose of this section, a contract of nuclear-energy hazard liability insurance shall be deemed to be in force at the time of the event giving rise to the loss or damage, notwithstanding that the limits of liability thereunder have been exhausted.

Defence where more than one contract.

240. (1) Where a person is insured under more than one contract, evidenced by a motor-vehicle liability policy, whether the insurance is first loss insurance or excess, and a question arises under clause (b) of section 230 between an insurer and the insured or between the insurers as to which insurer shall undertake the obligation to defend in the name and on behalf of the insured, whether or not any insurer denies

liability under its contract, the insured or any insurer may apply to the Court, and the Court shall give such directions as may appear proper with respect to the performance of the obligation.

Hearing.

(2) On an application under subsection (1), the only parties entitled to notice thereof and to be heard thereon are the insured and his insurers, and no material or evidence used or taken upon such an application is admissible upon the trial of an action brought against the insured for loss or damage to persons or property arising out of the use or operation of the automobile in respect of which the insurance is provided.

Order.

(3) An order under subsection (1) does not affect the rights and obligations of the insurers in respect of payment of any indemnity under their respective policies.

Contribution.

(4) Where indemnity is provided to the insured under two or more contracts and one or more of them are excess insurance, the insurers shall, as between themselves, contribute to the payment of expenses, costs, and reimbursement for which provision is made in section 230 in accordance with their respective liabilities for damages awarded against the insured.

Application of insurance money under motor-vehicle liability policy.

241. (1) Any person who has a claim against an insured for which indemnity is provided by a contract evidenced by a motor-vehicle liability policy, notwithstanding that such person is not a party to the contract, may, upon recovering a judgment therefor in any Province or Territory of Canada against the insured, have the insurance money payable under the contract applied in or towards satisfaction of his judgment and of any other judgments or claims against the insured covered by the contract and may, on behalf of himself and all persons having such judgments or claims, maintain an action against the insurer to have the insurance money so applied.

Limitation.

(2) No action shall be brought against an insurer under subsection (1) after the expiration of one year from the final determination of the action against the insured, including appeals, if any.

Other creditors excluded.

(3) A creditor of the insured is not entitled to share in the insurance money payable under any contract unless his claim is one for which indemnity is provided for by that contract.

Insurer absolutely liable.

(4) The right of a person who is entitled under subsection (1) to have insurance money applied upon his judgment or claim is not prejudiced by

- (a) an assignment, waiver, surrender, cancellation, or discharge of the contract, or of any interest therein or of the proceeds thereof, made by the insured after the happening of the event giving rise to a claim under the contract;
- (b) any act or default of the insured before or after that event in contravention of this Part or of the terms of the contract, or
- (c) any contravention of the Criminal Code (Canada) or a Statute of any Province or Territory of Canada or of any State or the

1953-54,
c. 51 (Can.).

District of Columbia of the United States of America by the owner or driver of the automobile, and nothing mentioned in clause (a), (b), or (c) is available to the insurer as a defence in an action brought under subsection (1).

Section applicable to purported policy.

(5) It is not a defence to an action under this section that an instrument issued as a motor-vehicle liability policy by a person engaged in the business of an insurer and alleged by a party to the action to be such a policy is not a motor-vehicle liability policy, and this section applies, mutatis mutandis, to the instrument.

Contribution among insurers.

(6) The insurer may require any other insurers liable to indemnify the insured in whole or in part in respect of judgments or claims to which reference is made in subsection (1) to be made parties to the action and contribute according to their respective liabilities, whether the contribution is rateably or by way of first loss or excess insurance, as the case may be, and the insured shall on demand furnish the insurer with particulars of all other insurance covering the subject-matter of the contract.

Payment into Court.

(7) Where any person has recovered a judgment against the insured and is entitled to bring action under subsection (1), and the insurer admits liability to pay the insurance money under the contract and the insurer considers that

- (a) there are or may be other claimants; or
- (b) there is no person capable of giving and authorized to give a valid discharge for payment who is willing to do so,

the insurer may apply to the Court ex parte for an order for payment of the money into Court, and the Court may, upon such notice, if any, as it thinks necessary, make an order accordingly.

Effect of order.

(8) The receipt of the proper officer of the Court is sufficient discharge to the insurer for the insurance money paid into Court under subsection (7), and the insurance money shall be dealt with as the Court may order upon application of any person interested therein.

Defence to passenger claim and re excess limits relating to s. 234 coverage.

(9) Notwithstanding anything contained therein to the contrary, every contract evidenced by a motor-vehicle liability policy shall, for the purposes of this section, be deemed to provide all the types of coverage mentioned in section 234, but the insurer is not liable to a claimant.

- (a) where the claim results from bodily injury to or the death of any person being carried in or upon or entering or getting on to or alighting from the automobile; or
- (b) with respect to such coverage in excess of the limits mentioned in section 235.

Defence where coverage under ss. 232, 233.

(10) Where one or more contracts provide for coverage of a type referred to in section 232 or 233, except as provided in subsection (12), the insurer may,

- (a) with respect to that type of coverage; and
- (b) as against a claimant,

avail itself of any defence that it is entitled to set up against the insured, notwithstanding subsection (4).

Defence
where excess
limits.

(11) Where one or more contracts provide for coverage in excess of the limits referred to in section 235, except as provided in subsection (12), the insurer may,

(a) with respect to the coverage in excess of those limits; and

(b) as against a claimant,

avail itself of any defence that it is entitled to set up against the insured, notwithstanding subsection (4).

Defence
where vehicle
used in busi-
ness of
carrying
passengers.

(12) Where a contract provides coverage of the type referred to in clause (a) of section 233 in respect of an automobile operated in the business of carrying passengers for compensation or hire and insured for that purpose, the insurer may,

(a) with respect to that type of coverage; and

(b) as against a claimant,

only avail itself of a defence that it is entitled to set up against the insured in respect of that part of the coverage, if any, that exceeds

(c) the limits referred to in section 235; or

(d) the minimum limits required for that type of coverage by or under any other Act,

whichever is the greater.

Insured's
liability to
reimburse
insurer.

(13) The insured shall reimburse the insurer upon demand in the amount that the insurer has paid by reason of this section and that it would not otherwise be liable to pay.

Insurer may
be made
third party.

(14) Where an insurer denies liability under a contract evidenced by a motor-vehicle liability policy, it shall, upon application to the Court, be made a third party in any action to which the insured is a party and in which a claim is made against the insured by any party to the action in which it is or might be asserted that indemnity is provided by the contract, whether or not the insured enters an appearance or defence in the action.

Rights of
insurer.

(15) Upon being made a third party, the insurer may

(a) contest the liability of the insured to any party claiming against the insured;

(b) contest the amount of any claim made against the insured;

(c) deliver any pleadings in respect of the claim of any party claiming against the insured;

(d) have production and discovery from any party adverse in interest; and

(e) examine and cross-examine witnesses at the trial,

to the same extent as if it were a defendant in the action.

Idem.

(16) An insurer may avail itself of subsection (15) notwithstanding that another insurer is defending in the name and on behalf of the insured an action to which its insured is a party.

Excess
coverage.

(17) For the purpose of determining the liability of an insurer under the provisions of subsection (9), excess coverage shall be deemed to be,

(a) in respect of policies issued or renewed before the first day of July, 1958, coverage in excess of five thousand dollars, exclu-

sive of interest and costs, for loss or damage resulting from bodily injury to or the death of any one person, and, subject to such limit for any one person so injured or killed, of at least ten thousand dollars, exclusive of interest and costs, for loss or damage resulting from bodily injury to or the death of two or more persons in any one accident, or, in the case of property damage, to the limit of one thousand dollars, exclusive of interest and costs, for damage to property resulting from any one accident;

- (b) in respect of policies issued or renewed between the first day of July, 1958, and the thirty-first day of May, 1961, inclusive, coverage in excess of ten thousand dollars, exclusive of interest and costs, against loss or damage resulting from bodily injury to or the death of any one person, and, subject to such limit for any one person so injured or killed, of at least twenty thousand dollars, exclusive of interest and costs, against loss or damage resulting from bodily injury to or death of two or more persons in any one accident, or, in case of property damage, to the limit of at least two thousand dollars, exclusive of interest and costs, for damage to property resulting from any one accident; and
- (c) in respect of policies issued or renewed between the first day of June, 1961, and the thirty-first day of May, 1962, inclusive, coverage in excess of twenty-five thousand dollars, exclusive of interest and costs, against loss or damage resulting from bodily injury to or the death of one or more persons and loss of or damage to property; and
- (d) in respect of policies issued or renewed between the first day of June, 1962, and the thirtieth day of June, 1965, inclusive, coverage in excess of thirty-five thousand dollars, exclusive of interest and costs, against loss or damage resulting from bodily injury to or the death of one or more persons and loss of or damage to property; and
- (e) in respect of policies issued or renewed after the thirtieth day of June, 1965, coverage in excess of the limits mentioned in section 235.

Insured to give notice of action.

242. (1) Every insured against whom an action is commenced for damages occasioned by an automobile shall give notice thereof in writing to the insurer within five days after service of every notice or process in the action.

Insured to disclose insurance.

(2) Every insured against whom an action is commenced for damages occasioned by an automobile shall, upon recovery of a judgment against the insured, disclose to a judgment creditor entitled to the benefit of any motor-vehicle liability policy particulars of such contract within ten days after written demand therefor.

Physical Damage Cover

Stipulations
in physical
damage
cover.

243. Subject to subsection (1) of section 219, the insurer may provide in a contract such exclusions and limitations, in respect of loss of or damage to or the loss of use of the automobile, as it considers necessary.

Partial pay-
ment of loss
clause.

244. (1) A contract or part of a contract providing insurance against loss of or damage to an automobile and the loss of use thereof may contain a clause to the effect that, in the event of loss, the insurer shall pay only

- (a) an agreed portion of any loss that may be sustained; or
- (b) the amount of the loss after deduction of a sum specified in the policy,

and in either case not exceeding the amount of the insurance.

Stamping
required.

(2) Where a clause is inserted in accordance with subsection (1), there shall be printed or stamped upon the face of the policy in conspicuous type the words "This policy contains a partial payment of loss clause."

Claims to be
adjusted with
insured.

245. (1) Where a claim is made under any contract other than a contract evidenced by a motor-vehicle liability policy, the insurer shall, notwithstanding any agreement, adjust the amount of the claim with the insured named in the contract as well as with any person having an interest indicated in the contract.

Exception.

(2) Where notice is given or proof of loss is made by a person other than the insured, because the insured cannot be located or neglects or refuses or is unable to give notice and make claim under statutory conditions 4 and 7 in section 223, the insurer may, notwithstanding subsection (1) but in any event not earlier than sixty days from delivery of the proof required under clause (c) of subcondition (1) of said statutory condition 4 adjust and pay the claim to the other person having an interest indicated in the contract.

Limited Accident Insurances

Uninsured
motorist
cover.

246. (1) Where an insurer provides in a contract insurance against loss resulting from bodily injury to or the death of a person insured arising out of an accident involving an automobile where

- (a) there is legal liability of another person for the injury or death; and
- (b) the other person has no insurance against his liability therefor or that person cannot be identified,

that insurance applies only in respect of

- (c) any person who sustains bodily injury or death while driving, being carried in or upon, or entering or getting on to or alighting from the described automobile in respect of which insurance of the class referred to in clause (a) of the definition "automobile insurance" in section 2 is provided under the contract; and

(d) the insured named in the contract and his or her spouse and any dependent relative residing in the same dwelling premises as the insured named in the contract who sustains bodily injury or death while driving, being carried in or upon, or entering or getting on to or alighting from or as a result of being struck by any other automobile that is defined in the contract for the purposes of that insurance.

Limited application.

(2) The insurance mentioned in subsection (1) does not apply in respect of a person specified therein who has a right of recovery under the *Traffic Victims Indemnity Fund Act, 1961*, or similar legislation of any other Province or Territory of Canada or of any State or the District of Columbia of the United States of America.

Medical expense coverage.

247. (1) Where in a contract an insurer provides insurance against expenses for medical, surgical, dental, ambulance, hospital, professional nursing, or funeral services, the insurance applies only in respect of reasonable expenses

(a) of or incurred for any person who sustains bodily injury or death while driving or being carried in or upon or entering or getting on to or alighting from or, if not the occupant of another automobile, as a result of being struck by an automobile owned by the insured named in the contract in respect of which insurance of the class mentioned in clause (a) of the definition of "automobile insurance" in section 2 is provided under the contract; and

(b) of the insured named in the contract and his or her spouse and any dependent relative residing in the same dwelling premises as the insured named in the contract who sustains bodily injury or death while driving or being carried in or upon or entering or getting on to or alighting from or as a result of being struck by any other automobile that is defined in the contract for the purposes of that insurance.

Release by claimant.

(2) Where an insurer makes a payment under a contract of insurance referred to in subsection (1), the payment constitutes, to the extent of such payment, a release by the insured person or his personal representatives of any claim that the insured person or his personal representatives or any person claiming through or under him or by virtue of the *Families' Compensation Act* may have against the insurer and any other person who may be liable to the insured person or his personal representatives if that other person is insured under a contract referred to in subsection (1), but nothing in this subsection precludes an insurer from demanding, as a condition precedent to payment, a release to the extent of the payment from the person insured or his personal representatives or any other person.

First loss and excess insurance.

(3) The insurance mentioned in clause (a) of subsection (1) is a first loss insurance, and any other automobile insurance of the same type available to the injured person or in respect of a deceased person is excess insurance only.

Excess insurance.

(4) The insurance mentioned in clause (a) of subsection (1) is excess insurance to any other insurance not being automobile insurance of the same type indemnifying the injured person or in respect of a deceased person for the expenses.

Idem.

(5) The insurance mentioned in clause (b) of subsection (1) is excess insurance to any other insurance indemnifying the injured person or in respect of a deceased person for the expenses.

Recipients of accident benefits.

248. (1) In every contract providing accident insurance benefits in respect of the death of or injury to an insured person arising out of an accident involving an automobile, the insurance applies in respect of

(a) any person who sustains bodily injury or death while driving or being carried in or upon or entering or getting on to or alighting from or, if not the occupant of another automobile, as a result of being struck by an automobile owned by the insured named in the contract in respect of which insurance of the class mentioned in clause (a) of the definition "automobile insurance" in section 2 is provided under the contract; and

(b) the insured named in the contract and his or her spouse and any dependent relative residing in the same dwelling premises as the named insured who sustains bodily injury or death while driving or being carried in or upon or entering or getting on to or alighting from or as a result of being struck by any other automobile that is defined in the policy for the purposes of the insurance.

Release by claimant.

(2) Where an insurer makes a payment under a contract of insurance to which subsection (1) refers, the payment constitutes, to the extent of such payment, a release by the insured person or his personal representatives of any claim that the insured person or his personal representatives or any person claiming through or under him or by virtue of the *Families' Compensation Act* may have against the insurer and any other person who may be liable to the insured person or his personal representatives if that other person is insured under a contract of the same type as is specified in subsection (1), but nothing in this subsection precludes an insurer from demanding, as a condition precedent to payment, a release to the extent of the payment from the person insured or his personal representatives or any other person.

First loss and excess insurance.

(3) Subject to subsection (5), the insurance referred to in clause (a) of subsection (1) is a first loss insurance, and any other automobile insurance of the same type available to the injured person or in respect of a deceased person is excess insurance only.

Excess insurance.

(4) Subject to subsection (5), the insurance referred to in clause (b) of subsection (1) is excess insurance over any other automobile insurance of the same type available to the injured person or in respect of a deceased person.

Limit of benefit payable.

(5) Where a person is entitled to benefits under more than one contract providing insurance of the type referred to in this section, he or his

personal representative or any person claiming through or under him or by virtue of the *Families' Compensation Act* may recover only an amount equal to

- (a) one benefit, if the benefits under the contracts are of the same limit; or
- (b) the highest benefit, if the benefits under the contracts are not of the same limit.

Demand for particulars of insurance.

249. (1) Where a person is injured or killed in an accident in the Province involving an automobile, that person or his personal representative may serve

- (a) a demand by registered mail on the owner of the automobile; or
- (b) a demand by registered mail on the insurer of the owner of the automobile,

requiring the owner or insurer, as the case may be, to state in writing to the person making the demand whether or not that owner has insurance of the type referred to in section 247 or 248, or either of them, and, where the demand is made under clause (a), requiring the owner, if he has such insurance, to state the name of the insurer.

Offence.

(2) An owner or insurer who does not, within ten days after receiving a demand made under subsection (1), comply with the demand is guilty of an offence.

Rights of unnamed insured.

250. Any person insured by but not named in a contract to which section 247 or 248 applies may recover under the contract in the same manner and to the same extent as if named therein as the insured, and for that purpose shall be deemed to be a party to the contract and to have given consideration therefor.

Payment into Court.

250A. (1) Where an insurer admits liability for insurance money payable under section 246, 247, or 248, and it appears that

- (a) there are adverse claimants;
- (b) the whereabouts of an insured person entitled is unknown; or
- (c) there is no person capable of giving and authorized to give a valid discharge therefor who is willing to do so,

the insurer may, at any time after thirty days after the date upon which the insurance money becomes payable, apply to the Court *ex parte* for an order for payment of the money into Court, and the Court may upon such notice, if any, as it thinks necessary make an order accordingly.

Discharge of insurer.

(2) The receipt of the proper officer of the Court is sufficient discharge to the insurer for the insurance money paid into Court, and the insurance money shall be dealt with as the Court orders.

Limitation of action.

250B. Every action or proceeding against an insurer under a contract in respect of insurance to which section 246, 247, or 248 applies shall be commenced within the limitation period specified in the contract, but in no event shall the limitation period be less than one year after the happening of the accident.

Demand on claimant.

250c. Where any person makes a claim for damages in respect of bodily injury or death sustained by the person or any other person while driving or being carried in or upon or entering or getting on to or alighting from or as a result of being struck by an automobile, he shall, if required by the person against whom the claim is made or by someone acting on his behalf, furnish to or for that person full particulars of all insurance available to the claimant under contracts to which section 247 or 248 applies, and of any payments of insurance money made or to be made thereunder.

Terms of certain insurances.

250d. Subject to subsection (1) of section 219 and to the approval of the Superintendent, an insurer may in a policy

- (a) provide insurance that is less extensive in scope than the insurance referred to in section 246, 247, or 248; and
- (b) provide the terms of the contract that relate to the insurance referred to in section 246, 247, or 248.

Other Insurance

Other insurance.

250E. (1) Subject to section 239, insurance under a contract evidenced by a valid owner's policy of the kind referred to in section 2 is, in respect of liability arising from or occurring in connection with the ownership, use, or operation of an automobile owned by the insured named in the contract and within the description or definition thereof in the policy, a first loss insurance, and insurance attaching under any other valid motor-vehicle liability policy is excess insurance only.

Idem.

(2) Subject to sections 239, 247, and 248 and to subsection (1) of this section, if the insured named in a contract has or places any other valid insurance, whether against liability for the ownership, use, or operation of or against loss of or damage to an automobile or otherwise, of his interest in the subject-matter of the contract or any part thereof, the insurer is liable only for its rateable proportion of any liability, expense, loss, or damage.

(3) "Rateable proportion" referred to in subsection (2) means

- (a) if there are two insurers liable and each has the same policy limits, each of the insurers shall be liable to share equally in any liability, expense, loss, or damage; or
- (b) if there are two insurers liable with different policy limits, the insurers shall be liable to share equally up to the limit of the smaller policy limit; or
- (c) if there are more than two insurers liable, clauses (a) and (b) shall apply with the necessary changes and so far as is applicable.

Subrogation

Subrogation.

250F. (1) An insurer who makes any payment or assumes liability therefor under a contract is subrogated to all rights of recovery of the insured against any person and may bring action in the name of the insured to enforce those rights.

Pro-rating recovery.

(2) Where the net amount recovered whether by action or on settlement is, after deduction of the costs of the recovery, not sufficient to provide complete indemnity for the loss or damage suffered, the amount remaining shall be divided between the insurer and the insured in the proportion in which the loss or damage has been borne by them.

Action when s. 244 applies.

(3) Where the interest of an insured in any recovery is limited to the amount provided under a clause in the contract to which sections 243 and 244 apply, the insurer shall have control of the action.

Application to Court.

(4) Where the interest of an insured in any recovery exceeds that referred to in subsection (2), and the insured and the insurer cannot agree as to

- (a) the solicitors to be instructed to bring the action in the name of the insured; or
- (b) the conduct and carriage of the action or any matters pertaining thereto; or
- (c) any offer of settlement or the apportionment thereof, whether action has been commenced or not; or
- (d) the acceptance of any money paid into Court or the apportionment thereof; or
- (e) the apportionment of costs; or
- (f) the launching or prosecution of an appeal.

either party may apply to the Court for the determination of the matters in question, and the Court shall make such order as it considers reasonable having regard to the interests of the insured and the insurer in any recovery in the action or proposed action or in any offer of settlement.

Idem.

(5) On an application under subsection (4), the only parties entitled to notice and to be heard thereon are the insured and the insurer, and no material or evidence used or taken upon the application is admissible upon the trial of an action brought by or against the insured or the insurer.

Concurrence in settlement or release.

(6) A settlement or release given before or after an action is brought does not bar the rights of the insured or the insurer, as the case may be, unless they have concurred therein.

Discriminative Rates

Discriminative rates prohibited.

250G. (1) In this section and in sections 250H to 250Q, the expression "rating bureau" means any association or body, whether incorporated or not, which fixes or promulgates or assumes to fix or promulgate rates of premium to be charged for contracts of insurance made by insurers which are members of the association or body; and the expression "automobile board" means the British Columbia Automobile Insurance Board referred to in section 250M.

(2) No rating bureau and no insurer or other person shall fix or make for, or offer or charge to, any person by reason of his being one of a group engaged in the same trade, calling, profession, or occupation, or of his membership in any club, society, union, guild, or other association, or of common employment, or of common occupancy of the same building

or group of buildings, or for any other reason, a lower rate of premium under a contract of automobile insurance than such person would pay under such contract if the reasons aforesaid did not exist; and every rating bureau, insurer, and person who violates any provision of this section is guilty of an offence against this Act.

Where special rate permitted.

(3) Nothing in this Act prohibits the fixing or charging of a special rate for the insurance of two or more vehicles owned by and registered in the name of the same person, except where the owner is engaged in the business of leasing the vehicles and the vehicles are the subject of a leasing agreement for a period in excess of thirty days.

Idem.

(4) Nothing in this section prohibits the fixing or charging of a special rate for the insurance of two or more vehicles of a lessor that are rented to the same lessee.

Filing of constitution, by-laws, etc.

250H. (1) A rating bureau shall, forthwith after adoption, file in the office of the Superintendent or the automobile board duly certified copies of its constitution, articles of association, and by-laws, and a list of its members and their addresses, and thereafter shall file in the office of the Superintendent or the automobile board every amendment, revision, or consolidation of its constitution, articles of association, and by-laws, and notice of the admission of new members and the withdrawal of former members, within thirty days after the passing or adoption of such amendment, revision, or consolidation, or after the admission or withdrawal of such members.

Return of rates.

(2) A rating bureau and a licensed insurer shall make a return under oath to the Superintendent or the automobile board in such form and at such times as is required, showing every schedule of rates fixed, made, or charged by them, together with such further or other information concerning such rates as he requires.

Changes in rates.

(3) A rating bureau and a licensed insurer shall give to the Superintendent or the automobile board at least ten days' notice of any change in the schedules of rates or rules applicable thereto filed with the Superintendent or the automobile board under subsection (2), and shall file with the Superintendent or the automobile board amended schedules duly verified under oath showing particulars of all such changes before their effective date.

Offence for deviation from filed rate.

(4) A rating bureau or licensed insurer that, having filed its schedules of rates under this section, fixes, makes, or charges a rate or accepts a premium that deviates from the schedules of rates fixed and filed with the Superintendent or the automobile board for, and the rules applicable to, any risk or class of risks is guilty of an offence, unless

- (a) such deviation shall have been agreed by the insured in writing; or
- (b) such deviation shall be justified to the satisfaction of the Superintendent or the automobile board; or
- (c) the insured is insuring a fleet of vehicles under common ownership numbering not less than five.

(5) No insurer or insurance agent shall deviate from the schedule of rates filed by way of refund of any part of the premium payable in respect of a policy of automobile insurance other than in accordance with the provisions of this Part or any other Act relating to insurance.

Authority to require information to be filed.

250i. (1) The Superintendent or the automobile board may, on written complaint by an insurer or an insured that discrimination exists or upon such information filed with the Superintendent or the automobile board deemed sufficient to justify an investigation, give notice in writing to a rating bureau or insurer, requiring such rating bureau or insurer to file with the Superintendent or the automobile board any schedules of rates or particulars showing how any specific rate is made up and any other information that is required.

Time limit for filing information.

(2) Such rating bureau or insurer shall, within five days after the receipt of the notice, file with the Superintendent or the automobile board the schedules, particulars, and other information required.

Issue of order prohibiting rate.

(3) The Superintendent or the automobile board may, within thirty days after the receipt of the information required, make an order prohibiting any rate that, in his or its opinion, is discriminatory and directing that the discrimination be removed.

Notice of order.

(4) The Superintendent or the automobile board shall forthwith deliver to the rating bureau or insurer a copy of such order and reasons therefor, and shall cause notice thereof to be published forthwith in the Gazette.

Rating bureau not to increase rates.

(5) No rating bureau or insurer shall remove such discrimination by increasing the rates on any risk or class of risks affected by such order unless it be made to appear to the satisfaction of the Superintendent or the automobile board that such increase is justifiable.

Offence.

(6) A rating bureau, insurer, or other person failing to comply with such order is guilty of an offence.

Superintendent empowered to order rate adjustment.

250j. (1) It is the duty of the Superintendent or the automobile board, after due notice and a hearing before him or it, to order an adjustment of the rates for automobile insurance whenever it is found by him or the automobile board that any such rates are excessive, inadequate, unfairly discriminatory, or otherwise unreasonable.

Offence.

(2) A rating bureau, insurer, or other person failing to comply with such order is guilty of an offence.

(3) A rate charged by an insurer in any area for any classification of risk shall not be presumed to be excessive for the sole reason that a lower rate is charged by a competing insurer in the same area and for a similar classification of risk.

(4) No order made shall take effect for a period of ten days after its date.

Superintendent to have access to books.

250k. The Superintendent or any person authorized under his hand and seal of office, or any member of the automobile board or any person authorized by it for the purpose, shall at all times have access to all such books, securities, or documents of a rating bureau or insurer as are re-

lated to the schedules of rates of the rating bureau or insurer, and any officer or person in charge, possession, custody, or control of such books, securities, or documents who refuses or neglects to afford such access is guilty of an offence.

Inquiry.

250L. (1) The Superintendent or the automobile board may inquire into any question that an insurer, insured, or a rating bureau may bring before him or it with regard to insurance rates fixed by a rating bureau or charged by an insurer and also with regard to any other question arising out of the relationship or proposed relationship of the parties with reference to the insurance in question.

Report.

(2) The Superintendent or the automobile board shall not make an order pursuant to an inquiry under this section, but the result of the inquiry shall be reported in his or its annual report.

Automobile
Insurance
Board.

250M. (1) The Lieutenant-Governor in Council may establish a board to be known as the "British Columbia Automobile Insurance Board," consisting of a chairman and such number of other members as the Lieutenant-Governor in Council may appoint.

(2) The Lieutenant-Governor in Council shall appoint one of the members of the board as chairman of the board and another member as vice-chairman of the board to act in the absence or incapability of the chairman.

(3) A member of the board shall hold office for such term as may be fixed by the Lieutenant-Governor in Council or until his appointment is sooner revoked, or he sooner resigns or dies.

(4) A member of the board who is not a Civil Servant within the meaning of the *Civil Service Act* may be paid such remuneration for his services as a member of the board as the Lieutenant-Governor in Council may determine, and all the members of the board may be reimbursed for any out-of-pocket expenses incurred by them in the performance of their duties as members of the board in such amounts as may be approved by the Comptroller-General.

Procedure
of Board.

250N. (1) Subject to the approval of the Lieutenant-Governor in Council, the board may make rules governing its own procedure.

(2) A majority of the members of the board is a quorum.

(3) The board and each member of the board has the powers of a commissioner under the *Public Inquiries Act*.

Duties and
powers.

250O. (1) The board shall have the duties, functions, and powers as may be imposed on or granted to it under this Act or under any other Act of the Legislature.

(2) Without limiting the generality of subsection (1), the board may

(a) investigate all matters respecting automobile insurance in the Province, including rates, coverage, cost, and benefits provided, and make recommendations to the Minister;

(b) correlate statistical data to establish in each year the maximum premium chargeable by insurers for insurance required under this Part;

- (c) administer moneys paid to the board under any other Act for the purpose of
 - (i) automobile-driver education and training; or
 - (ii) research respecting automobile and highway safety;
 and
- (d) make recommendations to the Minister respecting the provision of automobile insurance by the Government of the Province in the event of failure or refusal by insurers to provide adequately for automobile insurance for the persons entitled to such insurance.

Establishment of automobile insurance fund.

250P. (1) The Lieutenant-Governor in Council may establish a fund to be named the "**British Columbia Automobile Insurance Fund**" (referred to as the "automobile insurance fund").

(2) The purpose of the automobile insurance fund is to provide all or part of the motor-vehicle liability insurance prescribed under Part VII of this Act to every person entitled thereto in the event that the insurance so prescribed is not otherwise obtainable at a cost that is, in the opinion of the Lieutenant-Governor in Council, commensurate with the risk.

(3) The Lieutenant-Governor in Council may make regulations, not inconsistent with this section,

- (a) prescribing the rates and charges payable by persons applying for automobile insurance required under this Act;
- (b) respecting the administration of the automobile insurance fund and the investment of any of its moneys not immediately required for the purposes of this section;
- (c) respecting the assessment of injuries and damage, and the payment of claims against the fund for death, injury, or damages to property, of any person caused by the operation or use of a motor-vehicle;
- (d) respecting any other matter required to carry out the purpose of the automobile insurance fund.

(4) The Lieutenant-Governor in Council may designate a department of Government, or an agency or emanation of the Crown, to hold and administer the automobile insurance fund established under this section.

Agents

Provisions for protection of insurance agents in respect of their commissions

250Q. (1) In this section, the expression "agent" means an insurance agent licensed under this Act and authorized by a licensed insurer on its behalf to solicit and receive applications for insurance, to collect premiums, and to sign or countersign policies, and whose compensation or profit therefor consists wholly of a commission on premiums derived from such business.

(2) Except in the case of a policy signed, countersigned, or issued at its head office in the Province, no licensed insurer shall issue any

policy unless the policy is signed or countersigned by an agent, but no agent shall sign a policy in blank or in otherwise incomplete condition.

(3) The commission on any policy signed, countersigned, or issued at the head office of an insurer in the Province shall be paid to an agent, and there shall be written on the policy the words "Issued on behalf of _____, resident authorized agent at _____", with the name of the agent and of the place where he carries on business.

(4) The person in charge of the head office of an insurer in the Province shall forthwith, upon the signing, countersigning, or issue of a policy at such head office, notify the agent of the date of the policy, the name of the insured, and the property insured.

Amends s.
256 (2) and
(4).

37. Section 256 of the Act, as amended by chapter 29 of the Statutes of British Columbia, 1962, is further amended

- (a) by striking out the number "95" in the second line of subsection (2) and substituting the number "94"; and
- (b) by repealing subsection (4).

Amends s.
259 (1).

38. Subsection (1) of section 259 is amended by striking out, in the sixth, seventh, and eighth lines, the words "except in the case of a society that was in existence on the first day of January, 1926, and that is required to be licensed under this Act,".

Amends s.
261.

39. Section 261 of the Act is amended by adding, after subsection (2), the following as subsection (3):—

(3) The society shall file with the Superintendent, not later than the first day of March in each year, an annual report of the conditions and affairs of the society for the year ending on the thirty-first of December last preceding,

- (a) in such form and containing such information as the Superintendent may prescribe;
- (b) verified by such person or persons having knowledge of the facts and in such manner as the Superintendent may prescribe; and,
- (c) if the Superintendent so requires, including the certificate of an actuary that
 - (i) the society's plan of insurance is sound; and
 - (ii) the Advance Assessment Fund has been established and maintained as required by subsection (1).

Amends s.
319.

40. Section 319 of the Act is amended

(a) by inserting after subsection (1) the following as subsection (2):—

(2) In his annual report the Superintendent shall make all necessary corrections in the annual statements made by all licensed insurers as provided in this Act, and he is at liberty to increase or diminish the liabilities of such insurers to the true and correct amounts thereof as ascertained

by him in the examination of their affairs at the head office thereof in the Province, or otherwise.

(b) and by renumbering the present subsection (2) as subsection (3).

Re-enacts
s. 325.

41. Section 325 of the Act is repealed and the following is substituted:—

Regulations.

325. (1) For the purpose of carrying out the provisions of this Act according to their intent, the Lieutenant-Governor in Council may make such regulations and orders as are ancillary thereto and are not inconsistent therewith, and without restricting the generality of the foregoing the Lieutenant-Governor in Council may make such regulations and orders

- (a) extending the provisions of this Act or any of them to a system or class of insurance not particularly mentioned in this Act;
- (b) providing for the making of reciprocal or other arrangements with any government in Canada in connection with the licensing, regulation, and inspection of insurers;
- (c) defining, for the purpose of the regulations, any words or expressions not defined in this Act;
- (d) prescribing increased benefits or additional beneficiaries required to be included in a contract of insurance;
- (e) amending, altering, adding to, or removing any special provisions, definitions, and exclusions prescribed in the contract of insurance;
- (f) extending the insurance beyond that prescribed in this Act; and
- (g) generally to make such other regulations as may be necessary or advisable to carry out the intent and purpose of the Act.

(2) The Lieutenant-Governor in Council may make provision for the establishment of a board, the members of which shall be representative of insurance, insurance agents, and adjusters, for the purpose of assisting the Superintendent in the determination, under this Act and regulations, of the qualification and suitability of applicants for licences as insurance agents and insurance salesmen and insurance adjusters, including the determination of matters arising in respect of the issuance, suspension, and cancellation of such licences, and may prescribe the functions and duties of the board so established and the maximum fees that may be charged by the board.

Re-enacts
s. 326.

42. Section 326 of the Act is repealed and the following is substituted:—

Forms.

326. The Lieutenant-Governor in Council may alter, add to, or remove all or part of the forms in the Schedules to this Act to carry out the intent and purpose of this Act and the regulations.

Schedules.

43. The Act is further amended

(a) by striking out the title "Schedule" in the Schedule to the Act and substituting the title "First Schedule", and

(b) by adding, after the First Schedule to the Act, as a Second Schedule, the Schedule to this Act.

Amends
s. 2 (2) of
Succession
Duty Act.

44. Clause (g) of subsection (2) of section 2 of the *Succession Duty Act*, being chapter 372 of the *Revised Statutes of British Columbia, 1960*, as enacted by chapter 51 of the Statutes of British Columbia, 1967, is amended by adding, after the word "insurance" in the fourth line, the words "other than a motor-vehicle liability policy as defined in the *Insurance Act*".

Commence-
ment.

45. (1) The provisions of this Act, excepting this section, come into force on a day to be fixed by the Lieutenant-Governor in Council by his Proclamation, and he may fix different dates for the coming into force of the different provisions.

(2) This section comes into force on Royal assent.

SCHEDULE

SECOND SCHEDULE

SECTION B.—ACCIDENT BENEFITS

The Insurer agrees to pay to or with respect to each insured person as defined in this section who sustains bodily injury or death directly and independently of all other causes by an accident arising out of the use or operation of an automobile.

SUBSECTION 1.—MEDICAL AND REHABILITATION BENEFITS

1. All reasonable expenses to the limit(s) stated in Section A of item 4 of the application incurred as a result of such injury for necessary medical, surgical, dental, hospital, professional nursing, and ambulance services and in addition for such other services and supplies which are, in the opinion of the insured person's attending physician and that of the Insurer's medical adviser, essential for the treatment or rehabilitation of the said insured person.

2. Funeral services up to the amount of \$500 in respect to the death of any one person.

THE INSURER SHALL NOT BE LIABLE UNDER THIS SUBSECTION for those portions of such expenses payable or recoverable under any medical, surgical, dental, or hospitalization plan or law or, except for similar insurance provided under another automobile insurance contract, under any other insurance contract or certificate issued to, or for the benefit of, any insured person.

SUBSECTION 2.—DEATH AND TOTAL DISABILITY

Part I.—Death Benefits

A. Subject to the provisions of this Part I, for death which ensues within 180 days of the accident, a payment—based on the age and status at the date of the accident of the deceased in a household where spouse or dependents survive—of the following amount:—

Age of Deceased at Date of Accident	Status of Deceased		
	Head of Household	Spouse in Two parent Households	Dependent Children
Up to age 4 years			\$500
5 to 9 years			1,000
10 to 17 years	\$5,000	\$2,500	1,500
18 to 64 years	5,000	2,500	1,000
65 to 69 years	3,000	1,500	1,000
70 years and over	2,000	1,600	500

In addition, with respect to death of head of household,

- (a) where there are two or more survivors—spouse or dependents—the principal sum payable is increased \$1,000 for each survivor other than the first,
- (b) where there are one or more survivors, \$50 per week plus \$10 per dependent other than the first payable each week for a period of 104 weeks. Any weekly benefit shall terminate upon death of all survivors

B 1 or the purposes of this Part I,

- (1) The spouse of head of household shall be deemed to be the spouse with the lesser income in the year preceding the date of death,
- (2) a deceased person whose only surviving dependents are parents of such a person shall be deemed a head of household if such parents, at the date of accident, were residing in the same dwelling premises as the deceased person and were principally dependent upon him for financial support,
- (3) the words "dependent child" as used herein shall mean a child
 - (a) under the age of 18 years for whose support the head of household is legally liable and who is dependent upon the head of household for financial support, or
 - (b) 18 years of age or over and residing in the same dwelling premises as the head of household who, because of mental or physical infirmity, is wholly dependent upon the head of household for financial support,
- (4) the total sum payable shall be paid with respect to death of head of household or spouse to the surviving spouse. If there is no surviving spouse in the household, no amount shall be payable unless there are surviving dependent children or dependent parents, as defined in (2) and (3) above, and in that event the total sum payable shall be divided equally among the surviving dependents in the household,
- (5) the total amount payable with respect to death due to a common disaster of head of household and spouse shall be paid equally to surviving dependent children or dependent parents,
- (6) the sum payable with respect to the death of a dependent child shall be divided equally between the surviving parents, if no parent survives, no amount shall be payable,
- (7) amounts payable under this Part I shall be paid only to a person who is alive 60 days after the death of the insured person,
- (8) the amount payable hereunder for the death of any person shall be reduced by the amount of any payments made to or for such person with respect to the same accident under Part II, Total Disability

Part II.—Total Disability

A weekly benefit for the period during which the injury shall wholly and continuously disable such insured person; provided

- (a) such person was employed at the date of the accident;
- (b) within 20 days from the date of the accident such injury prevents him from performing any and every duty pertaining to his occupation or employment;
- (c) no benefit shall be payable for the first seven days of such disability or for any period in excess of 104 weeks.

If at the end of such 104 weeks it has been established that such injury has permanently and totally disabled such insured person from engaging in any occupation or employment for which he is reasonably suited by education, training, or experience, the Insurer agrees to pay such weekly benefit for the duration of the disability or until the insured person reaches the age of 65 years. Thereafter, the indemnity, reduced by the amount of Old Age Pension and benefits under the *Canada Pensions Act*, shall continue for the lifetime of the insured person.

Amount of Weekly Benefit.—If the average gross weekly earnings exceed \$50, the weekly benefit payable shall be 80 per cent of the said gross weekly earnings, subject to a maximum of \$50 per week.

If the gross weekly earnings are \$50 or less, the weekly benefit payable shall be \$40, unless the insured is a dependent child as defined in Subsection 2, Part I, B. clause (3), in which event the amount payable shall not exceed the average gross weekly earnings.

The above benefits shall be subject to the terms of clause (3) below.

For the purposes of this Part II,

- (1) a wife residing in the same dwelling premises as her husband and not otherwise engaged in occupation or employment for wages or profit, if injured, shall be deemed disabled only if completely incapacitated and unable to perform any of her household duties, and while so incapacitated shall receive \$50 per week for not more than 26 weeks;
- (2) a person shall be deemed to be employed
 - (a) if actively engaged in occupation or employment for wages or profit at the date of the accident; or
 - (b) if 21 years of age or over and under the age of 65 years, so engaged for any six months out of the preceding 12 months;
- (3) where the benefits for loss of time payable hereunder, together with benefits for loss of time under another contract, including a contract of group accident insurance and a life insurance contract providing disability insurance, exceed the money value of the time of the insured person, the Insurer is liable only for that proportion of the benefits for loss of time stated in this policy that the money value of the time of the person insured bears to the aggregate of the benefits for loss of time payable under all such contracts;
- (4) the disability of the insured person shall be certified by the insured person's attending physician.

SPECIAL PROVISIONS, DEFINITIONS, AND EXCLUSIONS OF SECTION B

1. "Insured Person" Defined.—In this section, the words "insured person" mean

- (a) any person while an occupant of the described automobile or of a newly acquired or temporary substitute automobile as defined in this policy;
- (b) the insured and, if residing in the same dwelling premises as the insured, his or her spouse and any dependent relative of either while an occupant of any other automobile; provided that

- (i) the insured is an individual or are husband and wife;
 - (ii) such person is not engaged in the business of selling, repairing, maintaining, servicing, storing, or parking automobiles at the time of the accident;
 - (iii) such other automobile is not owned or regularly or frequently used by the insured or by any person or persons residing in the same dwelling premises as the insured;
 - (iv) such other automobile is not owned, hired, or leased by an employer of the insured or by an employer of any person or persons residing in the same dwelling premises as the insured;
 - (v) such other automobile is not used for carrying passengers for compensation or hire or for commercial delivery;
- (c) in Subsections 1 and 2 of Section B only, any person, not the occupant of an automobile or of railway rolling-stock that runs on rails, who is struck, in Canada, by the described automobile or a newly acquired or temporary substitute automobile as defined in the policy;
- (d) in Subsections 1 and 2 of Section B only, the named insured, if an individual and his or her spouse and any dependent relative residing in the same dwelling premises as the named insured, not the occupant of an automobile or of railway rolling-stock that runs on rails, who is struck by any other automobile; provided that
- (i) such person is not engaged in the business of selling, repairing, maintaining, servicing, storing, or parking automobiles at the time of the accident;
 - (ii) that automobile is not owned or regularly or frequently used by the insured or by any person or persons residing in the same dwelling premises as the named insured;
 - (iii) that automobile is not owned, hired, or leased by an employer of the insured or by an employer of any person or persons residing in the same dwelling premises as the named insured;
 - (iv) that automobile is not used for carrying passengers for compensation or hire or for commercial delivery.
2. *Exclusions.*—(a) The Insurer shall not be liable under this section for bodily injury to or death of any person
- (i) resulting from the suicide of such person or attempt thereat, whether sane or insane; or
 - (ii) who is entitled to receive the benefits of any workmen's compensation law or plan; or
 - (iii) caused directly or indirectly by radioactive material; or
 - (iv) occurring while the automobile is being used in any race or speed test; or
 - (v) caused directly or indirectly by sickness or disease, unless the claimant establishes that such sickness or disease was contracted as a direct result of an accident covered by this policy; or
 - (vi) who is an occupant of the automobile while the automobile is being used for any illicit or prohibited trade or transportation.
- (b) The Insurer shall not be liable under Subsection 1 or Part II of Subsection 2 of this Section B for bodily injury or death
- (i) sustained by any person who is convicted of drunken or impaired driving or of driving while under the influence of drugs at the time of the accident; or
 - (ii) sustained by any person driving the automobile who is under the age prescribed by the law of the jurisdiction in which the accident occurs as being the minimum age at which a licence or permit to drive the automobile may be issued to him; or

(iii) sustained by any person driving the automobile who is not for the time being either authorized by law or qualified to drive the automobile.

3. *Notice and Proof of Claim.*—The insured person or his agent, or the person otherwise entitled to make claim or his agent, shall

- (a) give written notice of claim to the Insurer by delivery thereof or by sending it by registered mail to the chief agency or head office of the Insurer in the Province, not later than 30 days from the date of the accident;
- (b) within 90 days from the date of the accident for which the claim is made, furnish to the Insurer such proof of claim as is reasonably possible in the circumstances of the happening of the accident and the loss occasioned thereby;
- (c) if so required by the Insurer, furnish a certificate as to the cause and nature of the accident for which the claim is made and as to the duration of the disability caused thereby from a medical practitioner legally qualified to practise.

4. *Medical Reports.*—The Insurer has the right and the claimant shall afford to the Insurer an opportunity to examine the person of the insured person when and as often as it reasonably requires while the claim is pending, and also, in the case of the death of the insured person, to make an autopsy subject to the law relating to autopsies.

5. *"Attending Physician" Defined.*—"Attending physician" shall mean a person who legally engages in the practice of medicine or surgery, or both.

6. *Release.*—Notwithstanding any release provided for under the relevant sections of the *Insurance Act*, the Insurer may demand, as a condition precedent to payment of any amount under this section of the policy, a release in favour of the insured and the Insurer from liability to the extent of such payment from the insured person or his personal representative or any other person.

7. *When Moneys Payable.*—(a) All amounts payable under this section other than benefits under Part II of Subsection 2 hereof shall be paid by the Insurer within 60 days after it has received proof of claim. The initial benefits for loss of time under Part II of Subsection 2 hereof shall be paid within 30 days after it has received proof of claim, and payments shall be made thereafter within each 30-day period while the Insurer remains liable for payments if the insured person, whenever required to do so, furnishes prior to payment proof of continuing disability.

(b) No person shall bring an action to recover the amount of a claim under this section unless the requirements of provisions 3 and 4 hereof are complied with, nor until the amount of the loss has been ascertained as provided in this section.

(c) Every action or proceeding against the Insurer for the recovery of a claim under this section shall be commenced within one year from the date on which the cause of action arose and not afterwards.