No-fault Accident Compensation Schemes

NO-FAULT ACCIDENT COMPENSATION SCHEMES — THE CANADIAN EXPERIENCE

A memorandum prepared by the Government of Canada

SUMMARY

This paper presents an overview of the various no-fault accident compensation schemes in place in Canada and highlights the advantages of such schemes over fault-based tort recovery systems.

2. Although the tort system plays a central role in the compensation of accident victims, it represents only one component of a multi-faceted system of injury reparation. In Canada, a very wide array of no-fault benefits are available under social welfare schemes operated by the federal and provincial governments. Government-sponsored and supported hospital and medical insurance plans cover virtually all Canadian citizens. Benefits are also available under government operated workers' compensation insurance plans, veterans' allowance programmes, unemployment insurance, government pension plans and other general welfare schemes. Disability benefits are also available to many Canadians under private insurance plans.

3. These sources of compensation play a very significant role in indemnifying accident victims and have helped to fill some of the gaps left by the unsatisfactory operation of tort law. It has been estimated that over five billion dollars is paid yearly under these various plans to accident victims in Canada.

4. Notwithstanding the importance of these collateral government-funded benefits, however, this Paper will focus on no-fault benefits from another important source - automobile accident insurance. Every year thousands of Canadians die and hundreds of thousands are injured in motor vehicle accidents. The tort system and no-fault insurance schemes work together in most provinces of Canada to relieve the economic dislocation resulting from automobile accidents.

5. As a federal system in which jurisdiction over most aspects of the insurance industry lies within the legislative competence of the provinces, Canada provides a most interesting subject for a study of no-fault accident compensation schemes. Each of Canada's ten provinces and two territories has an automobile accident compensation scheme. In some provinces, no-fault coverage is compulsory while in some it is optional. In several provinces, the no-fault schemes are government operated whereas in others they are administered by private insurers. In spite of the variations in amounts payable and differences in operational characteristics, the plans in all of the provinces except Quebec have one thing in common - peaceful coexistence of tort and non-tort compensation. In other words, the compensation schemes in most Canadian provinces promptly compensate everyone to some degree without regard to fault but, at the same time, preserve an individual's right to seek additional reparation in tort. The Province of Quebec is the exception to the rule. That province has introduced a pure no-fault scheme under which all accident victims are entitled to compensation for bodily injury but all rights to sue in tort for accidentally caused personal injuries are extinguished. Quebec also has a system of partial no-fault insurance for property damage. The driver who is not at fault receives compensation for his damage from his own insurer. Fault is assessed by reference to a schedule of typical accident situations.

6. The advantages of the no-fault schemes in operation in the various provinces are highlighted in the second part of this paper. Generally speaking, the Canadian experience has shown that no-fault compensation plans offer four distinct advantages over fault-based tort scheme. First, the victim does not have to wait as long to receive compensation. Second, the amount of compensation awarded is more certain and tends to be more generous, particularly in the case of serious injuries, under no-fault schemes. Third, no-fault schemes operate more equitably from the perspective of both the victim and the "wrongdoer". Fourth, in economic terms no-fault schemes operate far more efficiently than their tort-based counterparts.

No-fault Accident Compensation Schemes: The Canadian Experience

INTRODUCTION

7. The advantages and disadvantages of the tort system of accident compensation have been the subject of debate among lawyers, judges and scholars for decades. The purpose of this paper is to highlight some of the deficiencies of the operation of tort systems from a Canadian perspective and to offer comparative illustrations of how the no-fault schemes in various Canadian provinces are fairer, more efficient and more economical than their fault-based counterparts.

Timeliness of Compensation

8. One of the greatest shortcomings of fault-based tort recovery systems is the problem of delay. Although in most provinces an accident victim will receive prompt medical attention and some degree of income support under hospital insurance plans and other state-run social assistance programs, a victim must usually wait a long time for fuller compensation. The tort system moves very slowly and, unlike no-fault schemes, compensation is awarded only after a finding of liability has -been made, not immediately after an accident when it is needed most. It has been estimated that in a major metropolitan centre, it takes at least two years from the date of the accident for most cases to get to trial.[1] More recent statistics indicate that it not unusual for some cases to take from two to thirteen years to "drag through" the court system.[2] Available data indicates that delay in receiving compensation in non-fatal accident cases increases dramatically as the severity of the victim's injuries and the amount of the loss increase.[3]

9. Delays are built into the tort system. Since the quantum of an award is usually crucial to the victim's future financial security and damages are assessed on a "once-and-for-all" lump sum basis, it is normal to wait until the victim's condition has stabilized and a medical prognosis can be made so that losses can be assessed as completely and accurately as possible.

10. Delay is inherent in the pleading process and is often used for tactical reasons by both sides in the adversarial process. Even if a litigant is successful in getting the claim settled or resolved at trial, further delays are often encountered in the scheduling of payments after an award is made. In a recent and much publicized Ontario decision, a youngster rendered a quadraplegic in a biking accident was awarded $6.3 million.[4] If the liability of the defendant municipality is upheld on appeal it has been estimated that it will be a further three or four years until the compensation is paid.

11. Delay imposes hardships on many victims. The uncertainty about whether the defendant will be found liable and the quantum of damages that will be awarded, if any,

coupled with the inconvenience and possible financial strain in the interval before a claim is resolved cause undue anxiety and may adversely affect a victim's recovery. Delay may also prejudice a deserving victim's ability to prove his case. As time passes, witnesses move away, their memories fade and it becomes increasingly difficult for a plaintiff to discharge the burden of proving that his loss was due to another's negligence.

12. Recent statistics on the operation of no-fault compensation schemes in Canada vividly illustrate how no-fault schemes minimize delay. Prior to the introduction of the government administered no-fault accident insurance scheme in the province of Quebec, sixty-five percent of victims remained uncompensated six months after the date of the accident. Under the new plan, only four percent of victims are not compensated within this period. To express this figure in positive terms, ninety-six percent of accident victims in Quebec receive compensation before the expiry of a six month period following their accident.[5]

Fairness

13. Notwithstanding that the notion of "fairness" is inherently difficult to quantify or assess, there are indications that no-fault accident compensation schemes in Canada operate more equitably from several perspectives than their tort-based counterparts.

14. One yardstick by which fairness may be measured is the percentage of accident victims who actually receive compensation. It has been estimated that under fault-based tort recovery systems as many as one-half of all victims go uncompensated.[6] This is due partly to the fact that many victims choose not to sue. They may feel that they will be unable to prove fault or may be unwilling to bear the expense and anxiety of a lawsuit. What is "fair" about a system which compels those who do choose to vindicate their interests in the courts to gamble a sizeable initial investment in the form of legal fees and related costs against the odds of being able to prove another's fault and establish the nature and extent of the injury suffered in the hope that, in the end, the "faulty" party will have sufficient assets or insurance coverage to compensate for the loss? In many cases, the fault of another cannot be established and seriously injured victims must themselves bear the loss.

15. By way of contrast, recent statistics from Quebec reveal that under that province's no-fault accident benefits scheme, almost all victims who sustained serious injury have been compensated. A comparison between the situation before and after the introduction of the pure no-fault plan reveals that the proportion of traffic accident victims actually receiving compensation increased by approximately twenty percent.[7]

16. The tort system has also been described as "unfair" from the point of view of the "wrongdoer". Negligence takes many forms and the label describes a broad spectrum of conduct ranging from momentary inattention or an error in judgment to reprehensible disregard for life and safety. The tort system does not discriminate between these qualitative degrees of negligence in evaluating fault - the driver who skids on ice and "rear-ends" the driver ahead of him is considered to be just as culpable as a drunk driver. Not only are "wrongdoers" penalized by increased insurance premiums but a "wrongdoer" who is himself injured in an accident may be ineligible for compensation beyond limited no-fault benefits. Denial of adequate compensation may have serious financial repercussions for the injured party and his or her family. No-fault compensation systems operate more equitably since all persons who are injured in accidents are compensated regardless of who is at fault.

17, Besides leaving some victims uncompensated, the operation of the tort system also results in some plaintiffs receiving double compensation by permitting the accident victim to receive collateral benefits from public welfare schemes in addition to full tort compensation. The rule which disallows a wrongdoer from benefitting from the collateral benefits paid to the victim in some cases results in a wasteful duplication of compensation.

18. The tort system has also been labelled "unfair" in the sense that it operates somewhat like a lottery - the amount of compensation awarded depends on a large number of variables such as the extent of the wrongdoer insurance coverage, the relative skill or ingenuity of the lawyers involved and the disposition of judges and juries. The interaction of these factors produce significant disparities between awards for similar injuries. No-fault schemes, on the other hand, quantify compensation on a much more consistent and uniform basis - a predetermined amount is paid to all victims with comparable losses. In Ontario, for example, no-fault dismemberment benefits are assessed on the basis of a fixed schedule under which all disabilities are assessed in terms of a set percentage of a total disability.

Adequacy of Compensation

19. Studies carried out in various Canadian jurisdictions reveal that accident victims commonly recover only one-third of total pecuniary losses under fault-based tort compensation schemes.[8] In Ontario, for example, data indicates that, on the average, only thirty-seven percent of victim's economic losses were reimbursed.[9] In British Columbia the comparable figure has been estimated at thirty-three percent.[10] More significantly, it is apparent that recovery percentages decrease as the extent of the injury and resulting loss increase. Studies have shown that, generally speaking, the tort system compensates minor injuries more generously than serious ones.[11]

20. This may be attributable to several factors. First, where injuries are relatively minor and losses are small, claims are often paid rather than disputed. Second, in the case of minor injuries, the major portion of the loss is represented by medical expenses for which most people are covered under hospital insurance plans. Where more serious injuries are involved, a larger proportion of the economic loss is comprised of loss of income which is less seldom covered by insurance.

21. While the financial strain upon an accident victim is often alleviated to some extent by collateral sources of compensation such as health insurance and various social welfare programmes, it is clear that the tort system falls short of its goal of adequately compensating accident victims for their losses. There is not a great deal of statistical information on the comparative performance of no-fault insurance schemes in other canadian jurisdictions but a recent study conducted in the province of Quebec indicates that the average level of indemnity per compensated victim rose by fourteen percent since the introduction of the no-fault scheme[12] and that almost all victims who sustained serious injury have been compensated.[13] These figures represent a start contrast to the findings of a study conducted in the same jurisdiction five years before the formation of the Regie which concluded that under the tort/fault regime which existed at the time twenty-eight percent of victims who suffered economic losses were not compensated and fault-free victims recovered a maximum of sixty-percent of their total economic losses.[14]

Economic Efficiency

22. Tort-based compensation schemes have been criticized as being very costly and inefficient methods of providing compensation to victims.

23. The Canadian experience has shown that no-fault accident compensation schemes permit a significantly more efficient use of resources than tort recovery systems.

(i) Legal Costs

Besides being time consuming, the tort litigation process is very expensive because it requires an appraisal of the relative negligence of the alleged wrongdoer and the victim. An investigation of fault and assessment of tort damages is much more costly than a simple determination as to whether an injury occurred. The resolution of tort suits also imposes a heavy burden on the court system. It has been estimated that in the province of Ontario the trial of motor vehicle negligence cases consumes approximately forty-percent of the civil trial time of the Supreme and County courts.[15]

In addition to the costs expended in terms of the administration of justice, fees paid to lawyers substantially reduce compensation awarded in the tort system. In Ontario, figures reveal that legal fees consume between ten and fifteen cents of each dollar paid in insurance premiums.[16] A study conducted in the province of British Columbia concluded that claimants' solicitors received, on the average, almost sixteen percent of the "total payout". In litigated cases, this figure rose to twenty-two percent.[17] The proportion of an award which is subtracted for legal fees may be considerably higher in provinces where lawyers are permitted to operate on a contingency fee basis. Reports indicate that most lawyers charge a contingency fee ranging from twenty to thirty-five percent but some charge as much as forty-five percent.[18]

In a no-fault system, legal fees do not deplete awards made and more money reaches the hands of the injured party. The reduction of the pressure on the court system may also be substantial.

(ii) Administrative Costs

The cost of administering tort-compensation schemes is inordinately high. Statistics from British Columbia pre-dating the introduction of limited no-fault system approximately $1.60 in insurance premiums is required to yield $1 in compensation to a victim and that thirty-four percent of gross premiums were spent on administration.[19] This is considerably higher than the ten percent spent on administration of no-fault worker's compensation schemes[20] and the eleven to sixteen percent spent under the Saskatchewan no-fault insurance plan.[21] A recent study of the publicly administered Quebec scheme reveals that the ratio of expenses to net compensation in the context of personal injuries dropped thirty-six percent since the introduction of the pure no-fault reparation system in 1978. The relative cost of insurance (including administrative costs) per dollar of compensation has also significantly decreased and the relative price of insurance has dropped by a proportionate amount.[22] In terms of return to the insured, the ratio of net compensation to premiums paid[23] in Quebec has risen by nine percent in Quebec since 1978 and the inverse ratio of premium paid per dollar of net compensation fell by almost fifteen percent over the same period.

APPENDIX

Overview of Provincial No-Fault Automobile Accident Compensation Schemes

BRITISH COLUMBIA

In the province of British Columbia, the automobile accident compensation scheme has been administered by the publicly held Insurance Corporation of British Columbia since 1974. This compulsory government insurance covers all motorists, their families, their passengers and people struck by them. Compensation is denied, however, where the victim is covered by Workmens' Compensation, is engaged in a race or illicit trade or is injured while attempting to commit suicide. Disability benefits will not be paid to those who sustain injury by reason of driving while impaired, while under age or while unauthorized or disqualified from operating a motor vehicle.

Disability Income Benefits[24]

Disability income benefits are payable to wage earners in the amount of seventy-five percent of gross weekly wages to a maximum of $100 weekly. Housewives receive $100 per week. Benefits are payable for the duration of the disability where the victim is totally disabled. Where the disability is only partial, the insured is entitled to receive benefits for a maximum of 104 weeks.

Death Benefits

The death of the head of the household is compensated by a lump sum payment of $5,000 plus $100 a week for 104 weeks. Where the deceased leaves two or more surviving dependants, each one after the first is entitled to $1,000 plus a weekly allowance of $25 for 104 weeks. A lump sum of $2,500 is payable upon the death of the breadwinner's spouse and, in the case of dependant children, payments are assessed on a sliding scale to a maximum of $1,500.

Medical Payments

Medical payments are very generous. The plan covers all reasonable medical and rehabilitation expenses not covered by government schemes. The upper limit, to be stipulated in the policy, cannot exceed the third party liability coverage carried by the insured.

Dismemberment/Impairment of Bodily Function Benefits

No benefits.

Funeral Expenses

Funeral expenses up to $1,000 are recoverable.

Minimum Third Party Liability Coverage

Coverage to the extent of $200,000 is compulsory.

Tort Remedies Extinguished?

No

ALBERTA AND UKON TERRITORY

The compensation schemes in Alberta and the Yukon Territory are virtually identical and, for present purposes, may be discussed together. Both are administered by private insurance companies and, like the other provinces except Quebec, are characterized by a mixture of fault and no-fault benefits.

Disability Income Benefits

Partially disabled wage earners receive eighty-percent of their gross wages to a maximum of $150 per week for 104 weeks. Where the worker is totally disabled, benefits are payable for the duration of the disability. In the Yukon Territory, a minimum of $40 is payable weekly. In both Alberta and the Yukon, disabled housewives receive $75 weekly for a maximum of twenty-six weeks.

Death Benefits

Upon the death of the head of the household or his or her spouse, a sum of $5,000 is payable to the primary dependant. Where the head of the household has died leaving two or more dependants, each secondary dependant is entitled to $1,000 plus a weekly allowance equal to one percent of the total principal sum for 104 weeks. The amount payable upon the death of a dependant child is determined according to a sliding scale to a maximum of $1,500.

Medical Payments

Accident victims are entitled to recover up to $5,000 in medical and rehabilitation expenses not covered by state hospital or medical plans.

Dismemberment/Impairment of Bodily Function Benefits

No benefits.

Funeral Expenses

The plans cover funeral expenses up to a maximum of $1,000.

Minimum Third Party Liability Coverage

Motorists are required to carry a minimum of $200,000 in liability coverage.

Tort Remedies Extinguished?

No

SASKATCHEWAN

The province of Saskatchewan is the pioneer of no-fault automobile accident insurance in Canada. In 1946, the recommendations of a special committee prompted the passage of statute which established a publicly-owned corporation to administer a no-fault insurance scheme. The government administered plan if financed from the sale of operator's licenses and premiums imposed on vehicle owners are calculated according to an elaborate schedule. Under the Saskatchewan plan, no-fault benefits are payable to everyone insured against loss resulting from bodily injuries sustained by accidental means as a result of driving, riding in or on, or operating a motor vehicle. Victims whose injuries are the result of a collision with a moving vehicle or who are struck or run over by a vehicle are also eligible for benefits. Protection of the plan is lost, however, if the injured person is under the influence of alcohol, is driving without a license or is engaged in a race or speed test.

Disability Income Benefits

A weekly indemnity of $150 is payable to those whose injuries render them unable to work after an accident. In cases where the victim is totally diisabled, the indemnity is paid for the duration of his lifetime. Where the disability is only partial, a sum of $75 per week is paid for a maximum of 104 weeks. Homemakers are entitled to receive the same amounts but for a maximum of 104 weeks.

Death Benefits

If the insured dies within two years of the date of the accident and is the head of the household, $7,500 will be paid to the primary dependant and $1,500 will be paid to each secondary dependant (to a maximum of $15,000). Where the victim is the breadwinner's spouse, the amount of the benefit is $3,000. This payment is to be divided equally among the surviving dependants. In the case of the death of a dependant child, compensation is assessed on a sliding scale to a maximum of $1,000.

Medical Payments

Up to $14,000 in the form of a supplementary allowance is available to cover medical expenses not covered by government health plans.

Dismemberment/Impairment of Bodily Function Benefits

Lump sum payments assessed by reference to a complex schedule are available where the victim has been dismemberment or has suffered an impairment of bodily functions. The maximum award which may be made under this heading is $10,000 and is payable for the loss of both arms or loss of sight in both eyes.

Minimum Third Party Liability Coverage

Motorists are required to carry a minimum of $200,000 in third party liability coverage.

Funeral Expenses

Funeral expenses to a maximum of $300 are recoverable.

Tort Remedies Extinguished?

No.

MANITOBA

The automobile insurance plan in Manitoba is administered by the government-run Manitoba Public Insurance Corporation. Modelled on the Saskatchewan scheme, Manitoba's "Autopac" plan provides compulsory insurance for all motor vehicles in the province, though private insurers are permitted to offer supplemental coverage. The government plan is financed by a complex premium structure which imposes licensing fees corresponding to the driver's age and sex. Additional premiums are assessed according to the number of demerit points a driver has accumulated. Additional surcharges are imposed on certain drivers who have been involved in two or more accidents during a specified period. The plan is also supported by fees paid for vehicles owner permits.

The protection of the "Autopac" plan is denied to unlicensed drivers and impaired drivers though the families of such drivers are entitled to receive death benefits and to recover funeral expenses. Compensation is also denied if the vehicle was engaged in a race or speed test or was involved in some form of illicit trade or transportation.

Disability Income Benefits

A victim who has been totally disabled is entitled to receive a weekly indemnity of $150 or, in the case of employed persons, seventy-percent of wages to a maximum of $300 weekly. A partially disabled victim will receive $60 per week for a maximum of 104 weeks. A totally disabled housewife is entitled to $150 per week for the duration of the disability. In the case of a partial disability, a weekly sum of $60 is payable for a maximum of twenty weeks.

Death Benefits

Where the head of a household dies anytime after an accident from injuries sustained in that accident, $10,000 is payable to the primary dependant and secondary dependants are paid $2,000 each to a maximum of $10,000. A sum of $10,000 is also payable where the victim is the breadwinner's spouse. There is a $2,000 limit on the benefits payable for the death of a dependant child.

Medical Payments

Medical and rehabilitation expenses are covered to a limit of $20,000 beyond the amounts paid by any compulsory health insurance scheme.

Dismemberment/Impairment of Bodily Function Benefits

Benefits for dismemberment or impairment of bodily function are assessed according a schedule. The maximum benefit is $20,000 payable in the event of a total disability. Less serious disabilities are compensated by payment of a fixed percentage of the maximum award. Loss of a hand, for example, entitles the victim to forty-percent of the maximum figure.

Funeral Expenses

Funeral expenses to a maximum of $1,500 are recoverable.

Minimum Third Party Liability Insurance

Liability coverage of $200,000 is compulsory.

Tort Remedies Extinguished?

No

ONTARIO

Under the Ontario insurance plan, which is run by private insurers, the no-fault provisions cover each insured person who sustains bodily injury or death by an accident arising out of the use or operation of an automobile. In 1978 the amounts payable as benefits under the scheme were increased and the coverage of liability insurance was made compulsory. Like the other provinces except Quebec, the no-fault plan exists as a supplement to the tort system. Very recently, however, the Ontario Task Force on Insurance completed a study of the insurance industry in the province and recommended, among other things, that the government consider eliminating resort to the tort litigation system with respect to compensation for personal injury arising from automobile accidents and, in the long term, work towards a universal no-tort disability compensation plan.

Disability Income Benefits

Substantial inability to perform essential job duties entitles an individual to receive weekly disability benefits equal to eighty percent of gross weekly earnings to a maximum of $140. To qualify for compensation, the victim must have been employed at the date of the accident and the disability must have manifested itself within twenty days of the accident. The payments will be discontinued after 104 weeks unless it can be shown that the victim's injury prevents him from engaging in any employment for which he is reasonably suited. In the case of an incapacitated housewife, the amount of the payment is $70 per week for a maximum of twelve weeks.

Death Benefits

Where the death occurs within two years of the accident, death benefits in the amount of $10,000 are payable in the case of a head of household or spouse and $2,000 in the case of a dependant child under 21 years of age. If the head of the household dies leaving two or more survivors, the amount of the benefit payable is increased by $1,000 for each survivor other than the first.

Medical Payments

All reasonable medical expenses incurred within four years of the date of the accident are recoverable up to a maximum of $25,000. Sums covered by other insurance plans, government hospitalization or paid under workers' compensation legislation are excluded.

Dismemberment/Impairment of Bodily Function Benefits

There are no special benefits paid for these types of injuries.

Funeral Expenses

Funeral expenses are reimbursed to a maximum of $1,000.

Minimum Third Party Liability Insurance

Motorists are required to carry a minimum of $200,000 in third party liability insurance.

Tort Remedies Extinguished?

No.

QUEBEC

The accident compensation scheme established in 1978 by the government of the province of Quebec is a dramatic and bold innovation - a pure no-fault scheme under which all automobile accident victims receive compensation and all rights to sue in tort for bodily injury or death are extinguished. In place of the tort system, a comprehensive compensation scheme was introduced which pays generous medical, disability and death benefits. Amounts payable under the plan are adjusted annually to take account of inflation. The basic personal injury coverage is compulsory and is publicly administered by an agency called La Regie de l'assurance automobile du Quebec. A claimant who disagrees with the decision of an officer of La Regie may apply to have the decision reviewed. There is also a final right of appeal to the Commission des affaires sociales. The fund of of which compensation is paid is financed by contributions from automobile owners and drivers, interest from the investment of accumulated funds and a portion of fuel taxes collected.

Private sector insurance is available as a supplement to the coverage provided by La Regie. In addition, since the government-run insurance scheme does not extend to property damage individuals are required to purchase separate property coverage from a consortium of private insurers.

Where an accident occurs outside Quebec, the owner, driver and passengers of cars registered in Quebec are fully covered. Where a car registered in a province outside Quebec is involved in an accident in Quebec, the scheme permits non-residents to receive some compensation but not the full extent of benefits payable to Quebec residents. Alberta, Ontario and Manitoba have taken steps to ensure that their residents who are involved in accidents in Quebec receive benefits from their own insurer equal to those paid by La Regie. La Regie is also empowered to take legal action to recover benefits paid out as a result of the "fault" of a non-resident.

Disability Income Benefits

Income replacement indemnities are paid in the form of indexed annuities. The amount of the indemnity varies according to the victim's employment status. Most workers are entitled to receive ninety percent of their net income to a maximum of $33,000 per year. The minimum weekly payment is $145.31 plus $18.17 per dependant to a limit of $254.33. Homemakers receive a weekly indemnity of $272.45. Other benefits are paid to students and senior citizens.

Death Benefits

Death benefits in the form of a pension are payable to surviving dependants and are assessed by reference to the income replacement indemnity to which the deceased would have been entitled had he or she lived. Where the victim dies leaving one dependant, the payment is valued at fifty-five percent of the income benefit which the deceased would have received. The minimum payable is $145.31 per week. The percentage of the total indemnity payable increases with the number of surviving dependants. Where the deceased has no dependants, a lump sum of $7,432.26 is paid to his or her parents or $3,716.13 is paid to the deceased's estate.

Medical Payments

All medical and rehabilitation expenses incurred as a result of the accident are paid by the plan.

Dismemberment/Impairment of Bodily Function Benefits

A lump sum payment assessed on the basis of a schedule to a maximum of $36,327.06 is payable for dismemberment, disfigurement or loss of enjoyment of life.

Funeral Expenses

Up to $2,447.42 is payable towards funeral expenses.

Minimum Third Party Liability Insurance

A *minimum* of $50,000 in third party liability for property damage must be carried. There is no third party liability for death or bodily injury.

Tort Remedies Extinguished?

Yes (for death and bodily injury)

NOVA SCOTIA, NEW BRUNSWICK and PRINCE EDWARD ISLAND

The no-fault benefits payable under the accident compensation schemes in operation in the three Maritime provinces of Nova Scotia, New Brunswick and Prince Edward Island are virtually identical. The plans in all three provinces are furnished and administered by private insurance companies.

Disability Income Benefits

Wage earners who are unable to work because of injuries sustained in automobile accidents receive eighty-percent of their wages to a maximum of $140 per week. Where the victim is totally disabled, the benefits continue for the duration of the disability. In the case of a partial disability, benefits are paid for a maximum of 104 weeks. A homemaker is entitled to $70 per week for up to twelve weeks.

Death Benefits

Death benefits are payable where the death occurs within two years of the accident. A fixed lump sum of $10,000 is paid where the victim is the head of the household or spouse. In addition, $1,000 is paid to each secondary dependant. The death benefit payable where the victim is a dependant child is $2,000.

Dismemberment/Impairment of Bodily Function Benefits

No benefits.

Funeral Expenses

The plans cover funeral expenses up to a maximum of $1,000.

Minimum Third Party Liability Coverage

A minimum of $200,000 third party liability coverage is required.

Tort Remedies Extinguished?

No

NEWFOUNDLAND

The province of Newfoundland is the only Canadian jurisdiction in which no-fault accident benefits coverage is not compulsory. The scheme is administered by private insurance companies.

Disability Income Benefits

The benefits payable under the Newfoundland scheme are considerably lower than those payable in the other provinces. Income benefits for a partial disability are limited to $35 per week for a maximum of 104 weeks. The term is extended to 208 weeks where the victim is totally disabled. In the case of a housewife, the indemnity is $12.50 per week for up to twelve weeks.

Death Benefits

Death benefits are payable if the victim dies within three months after the date of the accident. The amount payable is calculated on a sliding scale and decreases in inverse proportion to the victim's age. Where the victim is a married male under 59 years of age, an indemnity in the amount of $5,000 will be paid. The amount decreases to $2,000 in the case of a married male over 70. A lump sum of $1,000 is paid to each dependant child. Indemnities payable where the victim is a married female are calculated on the same sliding scale but are valued at 50% of the amount payable in the case of their male counterparts. A maximum of $2,500 is paid upon the death of a dependant child.

Medical Payments

Medical expenses incurred within two years of the date of the accident which are not covered by government hospital or medical plans are reimbursed to a maximum of $2,000.

Dismemberment/Impairment of Bodily Function Benefits

Benefits are assessed by reference to a schedule.

Funeral Expenses

Funeral expenses are recoverable to a maximum of $500.

Minimum Third Party Liability Coverage

Motorists are required to carry a minimum of $200,000 of third party liability insurance.

Tort Remedies Extinguished?

No

NORTH WEST TERRITORIES

The automobile accident compensation scheme in the North West Territories is administered by private insurers.

Disability Income Benefits

Employed persons who are unable to work as a result of injuries sustained are entitled to receive eighty percent of their gross wages to a maximum of $50 weekly. The minimum payable under the scheme is $40 per week. Benefits are payable for the duration of the disability if the victim is totally disabled. In the case of partial disability, benefits are paid for 104 weeks. Homemakers are entitled to $50 per week for a maximum of twenty-six weeks.

Death Benefits

Death benefits are assessed on a sliding scale. The scheme pays $5,000 where the victim is under 64 years of age and is the head of the household. For victims between 65 and 69, a sum of $3,000 is paid. Where the victim is over 70, the amount of the indemnity is $2,000. In addition, twenty percent of the principal sum is paid to each secondary dependant. The death of the breadwinner's spouse is compensated by an amount calculated on the basis of fifty-percent of the amount payable on the breadwinner's scale. Where the victim is a dependant child, the maximum sum payable is $1,500 depending upon the child's age.

Dismemberment/Impairment of Bodily Function Benefits

No benefits.

Funeral Expenses

Funeral expenses are recoverable to a maximum of $500.

Minimum Third Party Liability Insurance

Motorists must carry a minimum of $50,000 third party liability coverage.

Tort Remedies Extinguished?

No.

ENDNOTES

1. Linden, Canadian Tort Law (3rd ed., 1982), at p.626, citing Report of Osgoode Hall Study on Compensation for Victims of Automobile Accidents (1965), Chapter V, p.20.

2. Report on the Ontario Task Force Insurance (1986), vol.I, at p.99.

3. Ontario Law Reform Commission, Report on Motor Vehicle Accident Compensation (1973), at pp.14, 59; Linden, supra note 2, at p.626. See also Report of Osgoode Hall Study, supra note 2.

4. McErlean v Sarel et al. (1985), 32 CCLT 199 (Ont. HC).

5. Report of the Ontario Task Force on Insurance, supra note 3, vol. II, App.13, at p.17.

6. Ibid., vol.I, at p.99.

7. Ibid., vol.II, App.13, at p.17.

8. Ontario Law Reform Commission, Report on Motor Vehicle Accident Compensation, supra note 4, at pp.48-49.

9. Report of Osgoode Hall Study, supra note 2, chapter 11, at p.1.

10. Report of the British Columbia Royal Commission on Automobile Insurance (1968), at p.404.

11. See e.g., Ontario Law Reform Commission, Report on Motor Vehicle Accident Compensation, supra note 4, at pp.48-56.

12. Report of Ontario Task Force on Insurance, supra note 3, vol.II, App.13, at p.17.

13. Ibid.

14. Province of Quebec, Report of the Committee of Inquiry on Automobile Insurance (1974), at p.200.

15. Ontario Law Reform Commission, Report on Motor Vehicle Accident Compensation, supra note 4, at p.72.

16. Ibid., at p.15.

17. Report of British Columbia Royal Commission on Automobile Insurance, supra note 11, at p.52.

18. Province of British Columbia, Report by the Automobile Accident Compensation Committee (1983), at p.90.

19. Report of British Columbia Royal Commission on Automobile Insurance, supra note 11, at p.119.

20. Linden, Canadian Negligence Law, supra note 2, at p.627.

21. Ibid.

22. Report of Ontario Task Force on Insurance, supra note 3, vol.II, App.13, at pp.11-12.

23. Ibid.

24. The information on the benefits payable under the automobile accident insurance plans of the various provinces was provided by the Insurance Bureau of Canada and is current to January, 1986.