Les Cahiers de droit

No-Fault Automobile Insurance in Manitoba : An Overview

Jeffrey Schnoor

Volume 39, numéro 2-3, 1998

URI : https://id.erudit.org/iderudit/043496ar
DOI : https://doi.org/10.7202/043496ar

Aller au sommaire du numéro

Éditeur(s)

Faculté de droit de l'Université Laval

ISSN

0007-974X (imprimé)
1918-8218 (numérique)

Découvrir la revue

Citer cet article

Schnoor, J. (1998). No-Fault Automobile Insurance in Manitoba : An Overview. *Les Cahiers de droit*, *39*(2-3), 335–370. https://doi.org/10.7202/043496ar

Résumé de l'article

En 1993, le Manitoba a suivi l'exemple du Québec et est devenu le deuxième endroit en Amérique du nord à remplacer le régime de droit commun de la responsabilité civile en matière d'accidents d'automobiles par un système intégral d'indemnisation sans égard à la responsabilité ; le régime est en vigueur depuis 1994. Le présent texte rappelle certains des événements qui ont mené à cette réforme. L'auteur traite ensuite de l'étendue du régime en évoquant une décision de la Cour d'appel du Manitoba sur le sujet et décrit son fonctionnement (indemnités prévues, procédures de révision et d'appel). Dans un addendum, il résume et commente brièvement le contenu d'un rapport ayant pour objet l'examen du nouveau régime d'indemnisation et dont les résultats sont devenus disponibles après la réalisation du présent texte.

No-Fault Automobile Insurance in Manitoba : An Overview

Jeffrey SCHNOOR*

In 1993, Manitoba followed Quebec's lead and became the second jurisdiction in North America to abolish the traditional tort system and adopt a pure no-fault compensation plan for victims of automobile accidents ; the plan has been in operation since 1994. This paper begins with an examination of some of the events which led to this reform. It then reviews the scope of the plan (including consideration of a judgment of the Manitoba Court of Appeal on the subject) and gives an overview of the plan's operation, including the compensation provided by it and the provisions for review and appeal of decisions. At the end of the paper, an addendum summarizes (and briefly comments on) a review of the no-fault plan which was released following the completion of the paper.

En 1993, le Manitoba a suivi l'exemple du Québec et est devenu le deuxième endroit en Amérique du nord à remplacer le régime de droit commun de la responsabilité civile en matière d'accidents d'automobiles par un système intégral d'indemnisation sans égard à la responsabilité ; le régime est en vigueur depuis 1994. Le présent texte rappelle certains des événements qui ont mené à cette réforme. L'auteur traite ensuite de l'étendue du régime en évoquant une décision de la Cour d'appel du Manitoba sur le sujet et décrit son fonctionnement (indemnités prévues, procédures de révision et d'appel). Dans un addendum, il résume et commente

* Director, Criminal Justice Policy Branch, Manitoba Department of Justice. The author was seconded in 1993 to the Office of the Legislative Counsel of Manitoba to develop the legislation and regulations giving effect to no-fault automobile insurance in the province. The views expressed in this paper are those of the author only.

Les Cahiers de Droit, vol. 39, nos 2-3, juin-septembre 1998, pp. 335–370
(1998) 39 *Les Cahiers de Droit* 335

brièvement le contenu d'un rapport ayant pour objet l'examen du nouveau régime d'indemnisation et dont les résultats sont devenus disponibles après la réalisation du présent texte.

On July 27, 1993, Manitoba became the second jurisdiction in North America to adopt a pure no-fault insurance plan for the compensation of personal injuries sustained in automobile accidents. The plan replaced an add-on insurance system in which persons injured in automobile accidents were entitled to receive minimal no-fault benefits in addition to any damages which they were able to obtain under the traditional fault-based tort system. The add-on system was, and the no-fault plan is, administered by the provincial government-owned Manitoba Public Insurance Corporation (variously referred to as « MPI », « MPIC », the « Corporation » or « Autopac »), the exclusive provider of basic automobile insurance in the

province. The no-fault insurance plan, which MPI has named the Personal Injury Protection Plan (« PIPP »), came into force on March 1, 1994.

This paper will examine some of the background to the introduction of no-fault automobile insurance in Manitoba and provide an overview of its scope and operation and the compensation which it provides. The paper will conclude with some brief comments on the plan's future direction.

1. Background to Reform in Manitoba

> I believe that increased benefits, including substantial benefits for non-economic losses such as compensation for pain and suffering, could be offered at lower cost if the tort system were to be eliminated and a pure no-fault system implemented. In my opinion the implementation of a pure no-fault automobile insurance system is the issue which requires most urgent consideration by the government of the province of Manitoba, because that system offers the greatest opportunity to reduce costs and increase benefits[1].

This was the pivotal recommendation of Provincial Court Judge Robert Kopstein in his 1988 *Report of the Autopac Review Commission*. Judge Kopstein was appointed by the Manitoba government « to solicit the views of Manitobans and to carry out research on the most appropriate ways for The Manitoba Public Insurance Corporation (MPIC) to provide low cost, high quality, vehicle insurance on a self-sustaining basis[2] ». After reviewing alternative schemes of providing compensation for bodily injuries sustained in automobile accidents, he concluded that « [t]he tort system has the capacity to be grievously inequitable and does operate to produce harsh inequities[3] ».

> Fault is unsatisfactory as a criterion upon which to base entitlement to adequate compensation for injuries resulting from motor vehicle accidents. It can fail to compensate the innocent, or can fail to compensate the innocent to an acceptable level, and it will fail to compensate normally careful drivers who make a mistake[4].

Judge Kopstein also rejected any deterrent effect propounded for the tort system[5]. In short, he characterized the tort system as « a game of chance, with high stakes[6] ».

---

1. AUTOPAC REVIEW COMMISSION, *Report of the Autopac Review Commission* (1988), vol. 1, Winnipeg, Government of Manitoba, p. 3 [hereinafter: « KOPSTEIN REPORT »].
2. *Id.*, p. 1.
3. *Id.*, p. 28.
4. *Id.*, p. 29.
5. *Ibid.*: « The ability of the tort system to deter negligent driving is not supported by evidence, nor in light of public liability insurance is it supported by common sense. The mere hope that the tort system may deter negligent driving is not by itself sufficient justification for its perpetuation ».
6. KOPSTEIN REPORT, *op. cit.*, note 1, vol. 2, Position Paper No. 2 (Bodily Injury Compensation), p. 90.

These conclusions of Judge Kopstein were an important contribution to the development of automobile injury compensation in Manitoba. However, Judge Kopstein's recommendations for a pure no-fault automobile insurance system were not immediately adopted and it cannot truly be said that the introduction of such a plan in 1993 was a response to his report. It would be fairer to say that the introduction of the no-fault plan flowed out of the events which led to the appointment of Judge Kopstein. In December of 1987, MPI announced rate increases for automobile insurance averaging 24 per cent. This was enormously unpopular and generated intense public reaction :

> [M]ore than 1,000 people showed up in cold weather to protest the increased Autopac rates, 55,000 signed petitions, thousands sent coupons contained in an advertisement by the Manitoba Motor League and hundreds called the minister's office[7].

Amongst the initiatives taken to stem the tide of popular unrest generated by the large rate increases was the appointment of Judge Kopstein. In the end, however, MPIC's hefty increases in auto rates were the straw that broke the back of the former NDP government and brought the Conservatives to power in April [1988][8]. The lessons of 1987 and 1988 — the power of automobile insurance rates to break governments — were not lost on the succeeding Progressive Conservative government. Faced again with rising automobile insurance rates, it announced in 1993 its intention to adopt a no-fault automobile injury compensation plan. In introducing the legislation, the Honourable Glen Cummings, then Minister charged with the administration of *The Manitoba Public Insurance Corporation Act*, set out its four key principles :

> coverage for all Manitobans injured anywhere in Canada or the United States as a result of an automobile accident ; indexing of benefits to ensure compensation is not eroded by inflation ; compensation for actual financial losses, including coverage for medical rehabilitation and other expenses ; guaranteed compensation for all injured people regardless of who was at fault for the accident[9].

However, his comments about rate stability overshadowed his description of the features of the no-fault plan :

> This bill [...] will provide accident victims with fair compensation for their injuries and, at the same time, help stabilize Autopac rates over the long run.
>
> [...]

---

7. A. BILLINKOFF, « Plummeting popularity spurs NDP Autopac cuts » *The Winnipeg Free Press* (February 9, 1988) 7.
8. B. HUCK, « Furor cools after Manitoba election » *The Financial Post* (August 8, 1988) 5.
9. MANITOBA, LEGISLATIVE ASSEMBLY, *Debates and Proceedings (Hansard)*, 3rd Session, 35th Legislature, May 26, 1993, p. 3411.

> The government recognizes that Bill 37 represents a major departure from the status quo, but let me assure everyone in this House that such a dramatic action is what may well be preferable to the alternative, and that alternative may be continuing massive increases in injury-claim costs resulting in a doubling of Autopac premiums by the turn of the century.
>
> [...]
>
> With these changes, very simply, Manitobans will no longer face the unacceptably high premium costs that they experienced last year[10].

In a province where automobile insurance is provided by a government-owned corporation, premiums are closely associated by the public with the government of the day and this has inevitably shaped policy making in Manitoba.

2. Overview of the Legislation

The no-fault plan of compensation for personal injuries incurred in an automobile accident is set out in Part 2 of *The Manitoba Public Insurance Corporation Act*[11]. The Part is aptly entitled « Universal Bodily Injury Compensation », highlighting the fact that the plan is essentially one of social welfare and is not based on insurance principles.

The scope of the plan will be examined in this part, followed by a description of the forms of compensation available to injured persons. This part will then conclude with a discussion of the claims and appeals procedures contemplated by the Act and the Act's interaction with other compensation plans. It will be readily apparent that the legislation closely follows its counterpart in Quebec[12].

---

10. *Ibid.* According to MPI, « PIPP is performing even better than anticipated, resulting in a lower cost per injury claim » : MANITOBA PUBLIC INSURANCE, *Annual Report 1996*, (May 5, 1997) p. 19.
11. *The Manitoba Public Insurance Corporation Act*, R.S.M. 1987, c. P215 as amended by *The Manitoba Public Insurance Corporation Amendment and Consequential Amendments Act*, S.M. 1993, c. 36, s. 5 ; minor amendments have been made to Part 2 since its enactment : *The Highway Traffic Amendment and Consequential Amendments Act*, S.M. 1994, c. 4, s. 37 ; *The Statute Law Amendment Act, 1994*, S.M. 1994, c. 20, s. 16 ; *The Manitoba Public Insurance Corporation Amendment Act*, S.M. 1996, c. 11 ; *The Statute Law Amendment Act, 1996*, S.M. 1996, c. 64, s. 12 ; *The Manitoba Public Insurance Corporation Amendment Act*, S.M. 1997, c. 23 [the Act as amended is hereinafter referred to as *The Manitoba Public Insurance Corporation Act*].
12. This was noted by the Manitoba Court of Appeal. « There can be little doubt that the Manitoba legislation was modelled on the Quebec plan. It is worded similarly, but is not identical to that plan » : *McMillan* v. *Rural Municipality of Thompson*, (1997) 144 D.L.R. (4th) 53, at 64 (Man. C.A.), (Helper J.A.) [hereinafter *McMillan* v. *R.M. of Thompson* (Man. C.A.)].

2.1 Scope of the Plan

2.1.1 No-fault, No-tort

Every resident of Manitoba is entitled to compensation for any bodily injury (including death) caused by an automobile if the accident occurs in Canada or the United States after March 1, 1994[13]. This compensation is based on two central principles. First, compensation is paid without regard to fault[14]. Second, no tort action can be commenced in court in respect of a bodily injury or death to which the compensation plan applies[15]. There is no compensation available from the Corporation or any other person[16] beyond that which is provided by the Act.

2.1.2 Bodily Injury Caused by an Automobile

Compensation under the Act is dependent on there being an accident in which bodily injury is caused by an automobile. The phrase « bodily injury caused by an automobile » is a defined term ; it means « any bodily injury caused by an automobile, by the use of an automobile, or by a load, including bodily injury caused by a trailer used with an automobile[17] ».

This definition formed the basis of the most important legal challenge to date to the scope of Manitoba's no-fault plan, *McMillan* v. *Rural Municipality of Thompson*[18]. That case dealt with two individuals who suffered serious injuries when their automobile plunged into an unmarked gap in a road caused when a bridge was washed out. They sought a determination of a question of law before trial ; they asked whether they could proceed with a tort action against the municipality for its alleged negligence or whether

13. *The Manitoba Public Insurance Corporation Act*, s. 71 (1) and 74 (1). Rules concerning residence in Manitoba are set out in regulation : *Definitions and Interpretation (Universal Bodily Injury Compensation) Regulation*, M.R. 37/94, s. 3.
14. *The Manitoba Public Insurance Corporation Act*, s. 73.
15. *Id.*, s. 72. As a consequence, a lawsuit to recover the cost of medical care required because of an automobile accident cannot be brought against the person responsible for the accident where the victim obtains compensation under the Act : *The Health Services Insurance Act*, R.S.M. 1987, c. H35, s. 97 (2). An exception is made for non-residents of Manitoba ; they may be sued to recover the cost of medical care or compensation paid under *The Workers Compensation Act* or *The Criminal Injuries Compensation Act* to the extent that they are responsible for the accident : *The Manitoba Public Insurance Corporation Act*, s. 78.
16. Manitobans of course remain free to obtain their own first-party life, disability or accident insurance.
17. *The Manitoba Public Insurance Corporation Act.*, s. 70 (1).
18. *McMillan* v. *R. M. of Thompson* (Man. C.A.), *supra*, note 12 ; application for leave to appeal to Supreme Court of Canada dismissed October 16, 1997.

they were precluded from doing so by Part 2 of the Act[19]. The motions court judge, Oliphant A.C.J.Q.B., held that such a tort action could proceed and, thus, that the accident in question did not fall within the no-fault plan :

> I conclude that in order for bodily injuries to be caused by the use of an automobile, there must be a direct or proximate relationship between the use of the automobile and the injuries.
>
> In the case at bar, it is not possible to trace a continuous chain of causation unbroken by the interposition of a new act of negligence.
>
> In my opinion, it was not the use of the automobile that caused the bodily injuries in question ; it was, for the purposes of this motion, the negligence of the defendant. The use of the automobile was merely fortuitous[20].

This conclusion, if sustained, would have had very serious consequences for Manitoba's no-fault plan. As Helper J.A. noted on the appeal of the case, it would have resulted in « a cumbersome two-step system which necessitates a trial on the issue of negligence in all accidents involving an automobile and thus perpetuates the uncertainty of the result for a victim. » It would have also resulted in the legislation providing « different remedies for victims depending upon the proximate cause of an accident. The exact opposite intent is clear from the reading of Part 2 and from an examination of the debates and the [Kopstein] Report[21] ». Helper J.A., writing the lead opinion of a unanimous Court, expressed the view that

> the motions judge placed an unnecessarily restrictive interpretation on the phrase « caused by », an interpretation that is inconsistent with both the ordinary meaning of those words and the spirit of the legislation. A restrictive interpretation is also contrary to current jurisprudence.
>
> [...]
>
> Surely the legislation is to be interpreted in a manner that results in equality and equity. A restrictive interpretation of the words « caused by » would defeat many of the objectives identified by the legislators prior to the introduction of the enactment : the introduction of a simplified insurance scheme, the elimination of litigation for bodily injuries received in the use of an automobile and the desire to ensure that all victims receive timely compensation[22].

Helper J.A. held that it is the cause of the injuries, not of the accident, which is determinative. It is sufficient that the injuries are related in some way to the use of an automobile :

> where the words « caused by » are used, there must be some link between the injuries sustained and the use of the automobile [...]. The legislation does not require more. It does not seek out causation in terms of the accident. It specifically

---

19. This motion was made even though the injured individuals had applied for and received compensation under Part 2 of the Act (universal bodily injury compensation).
20. *McMillan* v. *Rural Municipality of Thompson* (6 May 1996), Nos. CI95-01-87533 and CI95-01-89075, 13-14 (Man. Q.B.).
21. *McMillan* v. *R.M. of Thompson* (Man. C.A.), *supra*, note 12, 67.
22. *Id.*, 66-67.

> eliminates the concept of fault. In light of the elimination of fault, there is no support for the submission that the proximate cause of an automobile accident determines the application of Part 2.
>
> Part 2 applies where there is a direct relationship between the automobile being used and the injuries suffered [...]. While there must be a connection between the automobile and the injuries, judicial cause, or proximate cause is not required by the legislation. The legislation does not address the cause of the accident, only the cause of the injuries.
>
> [...]
>
> The only question which required determination was: Were the respondents' injuries caused by (in the sense of being related to) the use of an automobile? The answer to that question is undoubtedly « yes »[23].

For these reasons, Helper J.A. held that Part 2 of the Act did apply to the accident in question and that the injured individuals could not bring a tort action against the municipality[24].

Although Kroft J.A. concurred in the result, it is interesting to note that he took a somewhat more cautious approach. He did not view the motions court judge's error to have been in taking a restrictive or technical, rather than a liberal, approach to the phrase « caused by ». Rather, it « was in failing to fully appreciate that negligence and its proximate relationship to the event are no longer factors for consideration ». He emphasized the continued importance of cause and effect:

> if a tort action is to be barred, the words « bodily injury [...] caused [...] by the use of an automobile » clearly do require a demonstration of consequential connection between the use of an automobile on the one hand and the bodily injuries suffered by the claimant on the other[25].

Kroft J.A. noted a number of hypothetical situations which might be problematic under the Manitoba legislation: for example,

---

23. *Id.*, 76-77.
24. This gives rise to a question of whether municipalities, freed of the fear of being found liable for substantial monetary damages in a tort suit, will take seriously their obligations under *The Municipal Act* to keep roads in good repair. As Kroft J.A. notes, « [t]he obligation of a municipality to maintain its roads is not in any way limited by Part 2 and the liability to compensate for damages arising from a breach of that duty is not diminished as regards property damage, personal injuries to pedestrians, cyclists or other such users of the road as are exempt by reason of s. 71 (2) of *The M.P.I.C. Act* »: *McMillan* v. *R.M. of Thompson* (Man. C.A.), *supra*, note 12, 84. However, these liabilities are comparatively small. To what extent have municipal governments in fact been motivated by fear of liability as opposed to respect for law and a concern to serve their citizens? Although it is submitted that the Manitoba Court of Appeal was correct in deciding that a tort suit could not be brought against the Rural Municipality of Thompson, the effect, if any, that this will have on the behaviour of municipal governments is unknown and deserves continuing scrutiny.
25. *Id.*, 83.

> if one passenger suffered injuries from an assault inflicted upon him by another passenger while they were being transported in an automobile; or if a driver stopped his motor vehicle for a moment to speak to a friend who was standing at the edge of a road and if a negligent hunter in a nearby field negligently discharged his shotgun thereby wounding both. In the latter example, would we have a situation where the driver was restricted to M.P.I.C. benefits but his friend could sue the hunter[26] ?

He seemed to stop short of the more expansive approach of Helper J.A. and expressly left open the possibility of a future decision that some or all of these situations might fall outside the scope of the legislation. « I am not prepared to say that any injury suffered in or in some remote way involved with an automobile is necessarily caused by it or the use of it[27] ».

2.1.3 Exceptions and exclusions from compensation

The Act contains a number of exceptions and exclusions from the scope of the no-fault plan.

Exceptions are made to the no-fault and no-tort principles in cases where the accident involves a non-resident of the province or occurs outside the province. A non-resident of Manitoba who is injured in an accident in Manitoba is entitled to compensation in accordance with any agreement which the Corporation has made with the government of that person's residence[28]. In the absence of such an agreement, a non-resident who is injured in an accident in Manitoba is entitled to compensation to the extent that the Corporation decides that he or she is not responsible for the accident[29]. The Corporation may sue a non-resident to recover amounts which it pays to a Manitoba resident for an accident in Manitoba where the non-resident is at fault ; the Corporation is entitled to reimbursement to the extent of the non-resident's fault[30]. Where a resident of Manitoba is injured elsewhere in Canada or the United States, the Corporation is subrogated to that person's right of recovery, if any, in that other jurisdiction. The Corporation is entitled to recover the amount of compensation which it must pay to the Manitoban. The Manitoban is entitled to sue for and retain any compensation available under the law of the other jurisdiction which is in excess of the universal bodily injury compensation to which he or she is entitled[31].

---

26. *Id.*, 82.
27. *Id.*, 81.
28. To date, agreements have been entered into with Saskatchewan and Alberta.
29. *The Manitoba Public Insurance Corporation Act*, s. 75 (1). A non-resident who disagrees with that decision may appeal it to the Court of Queen's Bench : *Id.*, s. 75 (2).
30. *Id.*, s. 77.
31. *Id.*, s. 76.

Where a person willfully causes an accident (for example, a suicide attempt), he or she will not be entitled to universal bodily injury compensation and his or her dependants will not be entitled to death benefits[32]. Similarly, if the death of a person is wilfully caused by a dependant, that dependant will not be entitled to death benefits[33]. In either case, anyone else injured in the accident is entitled to compensation in the normal fashion. Where there is a dispute as to whether an accident was wilfully caused, an appeal of the corporation's decision lies to the Court of Queen's Bench[34].

An exception to the no-fault principle is made for victims who are convicted of a serious offence in respect of the accident, such as causing death or bodily harm by criminal negligence or operating a motor vehicle while impaired[35]. These are generally offences which have a causal link with the accident and the legislation penalizes the victim for the default. The Corporation is required to determine the extent to which the victim is responsible for the accident. The victim's entitlement to an income replacement indemnity is then reduced for the first 12 months after the accident by the percentage of responsibility determined by the Corporation[36]. The victim's entitlement to other benefits under the Act, such as compensation for permanent impairment or reimbursement of expenses, is unaffected[37].

---

32. *Id.*, s. 79 (1).
33. *Id.*, s. 79 (2).
34. *Id.*, s. 79 (3).
35. *Id.*, s. 161 (1). The following provisions of the *Criminal Code*, R.S.C. (1985), c. C-46 are listed : section 220 (cause death by criminal negligence) ; section 221 (cause bodily harm by criminal negligence) ; section 236 (manslaughter) ; clause 249 (1) (a) or subsection 249 (2) (dangerous operation of a motor vehicle) ; subsection 249 (3) (dangerous operation causing bodily harm) ; subsection 249 (4) (dangerous operation causing death) ; subsection 252 (1) (failure to stop at the scene of an accident) ; section 253 or subsection 255 (1) (operating a motor vehicle while impaired) ; subsection 255 (2) (impaired driving causing bodily harm) ; subsection 255 (3) (impaired driving causing death) ; and subsection 254 (5) (failure to comply with a demand for breath sample). Offences in the United States which are the same or similar are also included : *The Manitoba Public Insurance Corporation Act*, s. 161 (2).
36. *Id.*, s. 161 (3). A victim may appeal the percentage of responsibility determined by the Corporation to the Court of Queen's Bench : *Id.*, s. 161 (4). If the Corporation has already paid an income replacement indemnity to the victim before his or her conviction, it is entitled to reimbursement from the victim : *Id.*, s. 189.
37. Judge Kopstein's recommendations were somewhat different. He recommended that « in comparison with inadvertent negligence, criminal code driving convictions demonstrate a flagrant disregard for the lives and safety of other people. In my opinion, a person injured in the course of committing a criminal code offence should be barred from receiving disability benefits for one year from the date of an accident, and from entitlement to impairment benefits under a no-fault scheme. This bar should prevail unless, through application to the court, such person can establish that, notwithstanding the criminal conduct which led to the conviction, the accident occurred primarily as a

No income replacement indemnity is payable to a victim while he or she is in jail after being convicted of any offence[38].

The no-fault plan does not apply at all to injuries incurred in a number of listed situations which are outside the realm of « ordinary » highway traffic. These include, for example, injuries which are the result of accidents caused by a farm tractor that occur off a highway and injuries caused as a result of an automobile race on a track closed to other traffic. In those situations, the common law, and the right to sue, are preserved[39].

2.2 Compensation for Injuries

The following forms of compensation are available to victims of automobile accidents : income replacement indemnity, compensation for permanent impairment, reimbursement of expenses, rehabilitation costs and, where the injuries are fatal, death benefits. Each of these forms of compensation will be discussed in turn.

2.2.1 Income Replacement Indemnity

Accident victims are entitled to receive compensation for the income which they lose as a result of the automobile accident or, in some cases, for the loss of their capacity to earn an income. Generally, the income replacement indemnity of a victim is equal to 90 % of his or her net annual income (actual or imputed)[40]. A victim's net income is his or her gross yearly employment income, to a maximum of $55,000[41] (currently $57,500 as a result of indexing required by the Act[42]), less the applicable income

---

result of the negligence or fault of another person, or from a cause unrelated to his or her criminal conduct ». He also recommended that the Corporation should retain a right of subrogation against such persons : KOPSTEIN REPORT, *op. cit.*, note 1, vol. 2, Position Paper No. 2 (Bodily Injury Compensation), p. 96.

38. *The Manitoba Public Insurance Corporation Act*, s. 162 (1). If a victim's conviction is subsequently reversed on appeal, the victim is entitled to the missed income replacement indemnity with interest : *Id.*, s. 162 (2).
39. *Id.*, s. 71 (2).
40. *Id.*, s. 111 (1). Generally speaking, the income replacement indemnity of a full-time earner or of a victim for whom the Corporation has determined an employment cannot be less than one based on a gross income resulting from the minimum wage and standard hours of work set by *The Employment Standards Act*, R.S.M. 1987, c. E110, s. 111 (2).
41. *The Manitoba Public Insurance Corporation Act*, s. 114 (1).
42. The maximum yearly insurable earnings is indexed according to changes in the industrial average wage : *Id.*, s. 114 (2) to (4). Victims are free to obtain private coverage for earnings in excess of the maximum yearly insurable earnings : *Id.*, s. 194. All dollar amounts set out in the Act are subject to indexation (discussed *infra*). In this paper, both the dollar amount set out in the Act and the current indexed amount (for the period March 1, 1997 to March 1, 1998) will be stated.

tax, Canada Pension Plan contributions and employment insurance premiums[43].

No income replacement indemnity is paid in respect of the first seven days after an accident[44].

Entitlement to an income replacement indemnity depends on whether the victim was or was capable of being a member of the work force at the time of the accident. Accordingly, the Act creates a number of categories for the purpose of determining eligibility for an income replacement indemnity : full-time earners, temporary earners, part-time earners, non-earners, students, minors, victims aged 65 or older and persons incapable of employment[45]. Specific rules set out the method of determining the gross income for each of these categories of victims.

2.2.1.1 Persons capable of employment

A full-time earner is entitled to an income replacement indemnity based on any income lost as a result of the accident[46].

A temporary earner, a part-time earner, a non-earner and any earner who is 66 years of age or older at the time of the accident is entitled to an income replacement indemnity in respect of actual income lost during the first 180 days after the accident[47]. Thereafter, they are compensated for the loss of their capacity to earn income. The Corporation must, on the basis of the education, training, work experience and physical and intellectual abilities of the victim immediately before the accident, determine an employment which he or she could have held on a regular and full-time basis. After the first 180 days after the accident, these victims are entitled to an income replacement indemnity based on the gross income that the Corporation

43. *Id.*, s. 112. Rules respecting the determination of a victim's gross yearly employment income and net income are set out in regulation : *Determination of Income and Employment (Universal Bodily Injury Compensation) Regulation*, M.R. 39/94 as amended by M.R. 93/95.
44. *Id.*, s. 152 (2).
45. Further particulars of the meaning of full-time employment, part-time employment and temporary employment are set out in regulation : *Definitions and Interpretation (Universal Bodily Injury Compensation) Regulation*, M.R. 37/94, s. 4, 5 and 6.
46. *The Manitoba Public Insurance Corporation Act*, s. 81.
47. *Id.*, ss. 83, 85 and 102. A non-earner is a victim who, at the time of the accident, is not employed but who is able to work. A non-earner may nonetheless have lost income : for example, employment insurance benefits lost by reason of not being available for work because of the injuries sustained in the accident.

determines the victim could have earned from the determined employment[48].

A further determination of employment may be made in order to evaluate the residual capacity of the victim and ensure that the Corporation compensates only for loss of income attributable to the accident. At any time after the second anniversary of the accident, the Corporation may determine an employment for a victim (including a full-time earner) who is able to work but is unable because of the accident to hold the full-time employment held at the time of the accident or the employment previously determined for him or her by the Corporation[49]. This determination is based on the education, training, work experience and physical and intellectual abilities of the victim at the time of the determination, not at the time of the accident; regard is also had to any knowledge or skill acquired in a rehabilitation program and to the general availability of the determined employment[50]. When such a determination of employment is made, the victim's entitlement to his or her income replacement indemnity ceases one year later[51]; this one year extension of the indemnity is intended to assist the victim while he or she seeks employment. Thereafter, the victim is entitled to an income replacement indemnity equal to the difference between the indemnity the victim was receiving at the time the employment was determined and the net income the victim earns or could earn from the determined employment[52].

---

48. *Id.*, ss. 84, 86 and 103; the employment is determined in accordance with section 106.
49. *Id.*, s. 107. An employment may also be determined for a student or minor at any time after the scheduled end of the victim's current studies: *Id.*, s. 108.
50. *Id.*, s. 109.
51. *Id.*, s. 110 (1) (d).
52. *Id.*, s. 115. The following example is illustrative. As a result of an accident in March 1994, a victim becomes unable to continue his or her employment as a full-time machinist (which had a gross income of $3,000 and a net income of $2,000 per month). As a result of the injuries suffered in the accident, the victim will never be able to return to that employment. At the end of his or her program of rehabilitation in December 1996, the Corporation determines an employment for the victim as a full-time custodian (which can earn the victim a gross income of $2,500 and a net income of $1 600 per month). As a result, the victim continues to receive his or her income replacement indemnity (90 % of $2,000, or $1 800 per month) for one further year until December 1997 and the indemnity then ceases. However, since the victim's gross income from his or her employment as a custodian (or which he or she could earn as a custodian) is less than the gross income which he or she earned as a machinist, the victim is entitled to an indemnity equal to the difference between the income replacement indemnity received before the determination of employment and the net income earned, or which could be earned, as a custodian ($1 800 less $1 600, or $200 per month).

Special additional rules apply to senior citizens. If a victim who is 65 years of age or older on the day of the accident is entitled to an income replacement indemnity, he or she will receive the full amount of the indemnity for one year. Thereafter, it will be reduced by 25 % each year and will cease four years after the accident[53]. A non-earner who, on the day of the accident, is 66 years of age or older is not entitled to an income replacement indemnity[54].

2.2.1.2 Students and minors

« Minors » are victims under the age of 16 at the time of the accident ; « students » are victims 16 years of age or older who are attending school on a full-time basis at the time of the accident[55]. Because students and minors have not typically entered the workforce, a determination of their capacity to earn income over the course of their lives had they not been injured in an automobile accident would be speculative at best. Accordingly, the Act provides a separate set of rules to determine their entitlement to an income replacement indemnity.

A minor is entitled to receive a fixed indemnity if he or she is unable to begin or complete a school year. Thus, for example, a minor who misses a month of school as a result of an accident but is nonetheless able to return to school and successfully complete the year would receive no indemnity for the lost month ; an indemnity would be paid only if the student could not complete the year. The Act provides for an indemnity of $3 400 (currently $3 619 after indexation) for each school year not completed at the elementary level and $6 300 (currently $6 705) for each school year not completed at the secondary level[56]. A minor is also entitled to an income replacement indemnity in respect of lost income from a job (or self-employment) that he or she would have held during the period if the accident had not occurred[57]. If, at the end of the school year in which a minor turns 16, he or she cannot return to school or hold employment, the minor is entitled to an income replacement indemnity based on a gross income equal to the industrial

53. *Id.*, s. 100.
54. *Id.*, s. 101.
55. *Id.*, s. 70 (1). Subsection 87 (2) explains when a student is considered to be attending school on a full-time basis. For example, if a person is accepted for admission by a university in March, he or she is considered to be a student at that point, even though he or she will not begin attending classes until September.
56. *Id.*, s. 94. The elementary level is kindergarten to Grade VIII : *Id.*, s. 93 (b).
57. *Id.*, s. 95 (1).

average wage (which is currently $26 599.04 per year)[58]. Where a minor is able to resume his or her studies after an accident but cannot, because of the accident, hold employment after completing or ending those studies, he or she is entitled to a fixed indemnity for any missed school years and then to an income replacement indemnity based on a gross income equal to the industrial average wage[59].

A student is also entitled to a fixed indemnity if he or she is unable to begin or complete a school year or a term at the post-secondary level. The amount of the indemnity is $6 300 (currently $6 705 after indexation) for each school year not completed at the secondary level and $6 300 (currently $6 705) for each term not completed at the post-secondary level, to a maximum of $12 600 (currently $13 410) per year[60]. A student is also entitled to an income replacement indemnity in respect of lost income from a job (or self-employment) that he or she would have held during the period if the accident had not occurred[61]. After the date scheduled at the time of the accident for the completion of the student's studies, he or she is entitled to received an income replacement indemnity based on a gross income equal to the industrial average wage for so long as he or she is unable to begin or continue the studies or to hold employment[62]. If a student is able to resume his or her studies after an accident but cannot, because of the accident, hold employment after completing or ending those studies, he or she is entitled to a fixed indemnity for any missed school years or terms and, after the scheduled day for completion of the program of studies, to an income replacement indemnity based on a gross income equal to the industrial average wage[63].

2.2.1.3 Persons not capable of employment

No income replacement indemnity is paid to a victim who is regularly incapable before the accident of holding employment[64].

---

58. *Id.*, s. 96. The « industrial average wage » is the industrial aggregate average weekly earnings for all employees for Manitoba as published monthly by Statistics Canada : *Id.*, s. 70 (2).
59. *Id.*, s. 97.
60. *Id.*, s. 88. « Secondary level » means Grades IX to XII : *Id.*, s. 87 (1).
61. *Id.*, s. 89.
62. *Id.*, s. 90.
63. *Id.*, s. 91.
64. *Id.*, s. 105.

2.2.1.4 End of entitlement to income replacement indemnity

When a victim who, at the time of the accident, was less than 65 years of age reaches the age of 66, his or her income replacement indemnity is reduced by 25 % each year until it ceases at the age of 69[65].

An income replacement indemnity ceases of course when the victim is able to hold the employment which he or she held at the time of the accident[66]. However, there will often be cases where the victim has in fact lost that job as a result of the accident and, although capable of returning to work, has no job to which to return. In those cases, the income replacement indemnity is extended for a further period of time, in order to assist the victim while he or she is seeking a new employment. The income replacement indemnity is extended for a period of time which varies according to the period of the victim's incapacity : the indemnity is extended for 30 days if the incapacity lasted 90 to 180 days, for 90 days if the incapacity lasted for 181 days to one year, 180 days if the incapacity lasted for more than one year but not more than 2 years, and one year if the incapacity lasted for more than two years[67].

A victim may also be able to return to work, but only at a lesser rate of remuneration. In that case, the victim is allowed to retain a part of his or her income replacement indemnity. The indemnity is reduced by 75 % of the net income earned from the employment[68]. This provides the victim with an incentive to return to the workforce[69].

If a victim suffers a relapse within two years of the accident or the last period for which the victim received an income replacement indemnity, the

65. *Id.*, s. 104.
66. *Id.*, s. 110 (1) (a).
67. *Id.*, s. 110 (2). This extended income replacement indemnity is available only to full-time and part-time earners.
68. *Id.*, s. 116.
69. The following example is illustrative. A victim is injured in an accident on January 1. Because of the injuries, he or she cannot continue his or her job as a machinist for 6 months. His or her gross income was $3 000 per month and net income was $2 000 per month ; as a result, he or she is entitled to an income replacement indemnity of $1 800 per month (90 % of $2 000). On April 1, the victim obtains a job as a custodian, with a gross income of $2 500 per month and a net income of $1 600 per month. As a result, between April 1 and the victim's return to his or her job as a machinist on July 1, the victim's income replacement indemnity would be reduced by 75 % of $1 600 or $1 200. Thus, the victim would receive an income replacement indemnity of $600 ($1 800 less $1 200). As a result, the victim would be receiving a net income of $1 600 per month from the employment and an income replacement indemnity of $600 per month for a total of $2 200. Working at the less remunerative job until the victim is able to return to the machinist's job on July 1 is more advantageous than staying at home.

victim will be compensated as if there had been no interruption in compensation[70]. However, if at the time of the relapse, the victim was earning a gross income greater than that previously used by the Corporation, the victim is entitled to an indemnity based on the greater amount[71]. If a victim suffers a relapse more than two years later, the relapse is considered to be a new accident and the victim is compensated on the basis of his or her situation at the time of the relapse[72]. However, there is no seven day waiting period for the new income replacement indemnity[73].

Income replacement indemnities cannot be accumulated. A person who is receiving an income replacement indemnity cannot receive another in respect of a new accident or a relapse. In that case, the victim will receive whichever income replacement indemnity is the greater[74].

2.2.2 Compensation for Permanent Impairment

A lump sum indemnity is paid for any permanent physical impairment suffered by an accident victim. The Corporation must evaluate a victim's permanent impairment according to a schedule of impairments set out in regulation and determine the percentage applicable to it[75]. The percentage so determined is then applied to the maximum indemnity and the result is the amount of the compensation payable to the victim[76]. The maximum indemnity payable for a permanent impairment is $100 000 (currently $106 429) and the minimum is $500 (currently $532)[77].

No payment for permanent impairment is made if the victim dies as a result of the accident. In that case, lump sum death benefits, described below, are paid. If a victim dies as a result of a cause unrelated to the accident, the Corporation must estimate the degree of the permanent impairment suffered by the victim in the accident and pay compensation for the impairment accordingly[78].

No compensation is paid in respect of a temporary impairment (except, of course, to the extent that the temporary impairment results in a loss of income, in which case an income replacement indemnity is payable).

---

70. *Id.*, s. 117 (1).
71. *Id.*, s. 117 (2).
72. *Id.*, s. 117 (3).
73. *Id.*, s. 152 (2).
74. *Id.*, s. 118.
75. *Id.*, s. 129; *Permanent Impairments (Universal Bodily Injury Compensation) Regulation*, M.R. 41/94.
76. *Id.*, s. 130.
77. *Id.*, s. 127.
78. *Id.*, s. 128.

2.2.3 Reimbursement of Expenses

Every victim is entitled to reimbursement of all medical costs incurred because of the accident, to the extent that he or she is not entitled to reimbursement under the provincial medicare plan or under any other statute[79]. The Act also identifies a number of other expenses for which reimbursement will be made ; the major categories are described below.

Where, as a result of the accident, a victim is unable to care for himself or herself or to perform the essential activities of everyday life without assistance, the cost of personal home assistance may be reimbursed to a maximum of $3 000 (currently $3 193) per month[80].

Reimbursement is paid for the loss of the contribution of a family member to a family enterprise (such as a business or a farm). Where a victim was working without remuneration in a family enterprise at the time of the accident and, as a result of the accident, is unable to perform his or her regular duties, reimbursement of expenses incurred to have the duties performed during the first 180 days after the accident will be paid up to $500 (currently $532) per week[81]. This recognizes that, in these circumstances, the victim is probably a non-earner (or possibly a student or a minor) and so not entitled to an income replacement indemnity during this period.

A part-time earner or a non-earner whose main occupation at the time of the accident is taking care, without remuneration, of a minor or another person in need of care is entitled to receive a weekly indemnity for as long as he or she is unable to care for that person. The amount of the indemnity is dependent upon the number of persons cared for, ranging from $290 for one person to $380 for four or more persons (the current range is $309 to $404)[82]. As noted earlier, after the first 180 days after the accident, a part-time earner and a non-earner are entitled to receive an income replacement indemnity based on an employment determined by the Corporation. However, if it is to his or her advantage, a part-time earner or a non-earner

79. *Id.*, s. 136. This includes transportation and lodging for the purpose of receiving medical care and the purchase of prostheses or orthopedic devices. Reimbursement is subject to the *Reimbursement of Expenses (Universal Bodily Injury Compensation) Regulation*, M.R. 40/94 as am. by M.R. 92/95 [hereinafter *Reimbursement of Expenses Regulation*]. Reimbursement under the provincial medicare plan is made pursuant to *The Health Services Insurance Act*, R.S.M. 1987, c. H35.

80. *The Manitoba Public Insurance Corporation Act*, s. 131. Subject to the maximum amount, expenses for personal home assistance are reimbursed in accordance with regulation : *Reimbursement of Expenses Regulation, supra*, note 79, s. 2 and Schedule A.

81. *Id.*, s. 135.

82. *Id.*, s. 132.

who is receiving a weekly indemnity for the care of another may elect to continue to receive that indemnity instead of receiving the income replacement indemnity based on the determined employment. The Corporation must provide information to assist the part-time earner or non-earner in making the election[83].

A victim who becomes unable to care for a minor or another person in need of care is entitled to reimbursement of care costs which are incurred by reason of the accident (for example, there would be no reimbursement for day care costs for a child which the victim had been incurring before the accident during his or her working hours ; this would have to be borne from the victim's income replacement indemnity ; however, there would be reimbursement for the cost of caring for the child during evenings and weekends if, for example, the victim were hospitalized and could not provide the care personally). The maximum amount of the reimbursement ranges from $75 per week where one person is cared for to $150 per week where four or more persons are cared for (the current range is $80 to $160). This reimbursement is available only where the victim does not reside with a spouse or, where the victim does reside with a spouse, the spouse is also unable to provide the care because of his or her illness or disability or work or studies outside the residence. This reimbursement is not available to a part-time earner or a non-earner who is receiving the weekly indemnity for the care of another[84].

The Corporation may reimburse the transportation, lodging and other expenses incurred by a person who must accompany a victim to obtain medical care (such as a parent accompanying a young child)[85].

2.2.4 Rehabilitation

Although it is referred to in only one section of the Act, rehabilitation of accident victims is given considerable emphasis by the plan. The Corporation is given broad powers to promote the rehabilitation of victims, « to lessen a disability resulting from bodily injury, and to facilitate the victim's return to a normal life or reintegration into society or the labour market[86] ». For example, the Corporation may provide funds for the adaptation of a motor vehicle to the needs of the victim, the relocation or alteration of the victim's primary residence, the purchase of mobility, communication, learning or homemaking aides and « for occupational, educational or vocational

83. *Id.*, s. 133.
84. *Id.*, s. 134.
85. *Id.*, s. 137.
86. *Id.*, s. 138.

rehabilitation that is consistent with the victim's occupation before the accident and his or her skills and abilities after the accident, and that could return the victim as nearly as practicable to his or her condition before the accident or improve his or her earning capacity and level of independence[87] ».

2.2.5 Death Benefits

Lump sum indemnities are paid to the spouse and dependants of a victim who dies as a result of an automobile accident. « Spouse » means a person who was married to and cohabited with the victim at the time of the accident or a person of the opposite sex who cohabited with the victim in a conjugal relationship continuously for at least five years immediately preceding the accident or, where there is a child of the union, for at least one year immediately preceding the accident. « Dependant » includes a spouse, a person married to but separated from the victim, an ex-spouse entitled to support under a judgment or agreement, minor children and adult children or parents who were substantially dependent on the victim at the time of the accident[88].

The death benefit paid to the spouse of a deceased victim is based on the gross income that would have been used to compute an income replacement indemnity had the victim survived the accident and been unable to hold employment. The death benefit is determined by multiplying that amount by a factor set out in Schedule 1 to the Act[89]. The factor varies according to the age of the victim at the time of the accident; the factor begins at 1.0 for victims aged 25 years or under, rises by 0.2 for each year until it reaches a peak of 5.0 at the age of 45 and then falls again by 0.2 each year until it again reaches 1.0 for victims aged 65 years of older on the day of death[90]. A somewhat more generous scale (Schedule 2 to the Act) is used where the spouse of the deceased victim was disabled at the time of the

87. *Reimbursement of Expenses Regulation, supra*, note 79, s. 10 (1).
88. *The Manitoba Public Insurance Corporation Act*, s. 70 (1). « [A] person who would have been a dependant of the victim if the victim had held employment at the time of the accident is deemed to be a dependant of the victim even if the victim did not hold employment at that time » : *Id.*, s. 119 (2).
89. *Id.*, s. 120 (1).
90. For example : At the time of his or her death at the age of 40 in an accident, a victim had a gross income of $35 000. A surviving spouse is entitled to a death benefit equal to the gross income of $35 000 multiplied by the factor in Schedule 1 (4.0) : $140 000.

accident[91]. That scale begins at a multiplier of 5.0 for victims aged 45 years or under and then falls by 0.2 for each year until it reaches 1.0 for victims aged 65 years or over at the time of the accident. In any case, the minimum death benefit payable to the spouse of a deceased victim is $40 000 (currently $42 572)[92].

A dependant other than the spouse is entitled to a lump sum death benefit based on his or her age on the day of the victim's death. The amount of the benefit begins at $35 000 for dependants less than one year old at the time of the victim's death and decreases by $1 000 per year until it reaches a benefit of $19 000 for dependants aged 16 years of age or more (the amount of the benefit currently runs from $37 250 to $20 221)[93]. A dependant who is disabled receives an additional lump sum indemnity of $17 500 (currently $18 625), irrespective of age[94].

If a deceased victim has no spouse but has dependant children, then the children are entitled to the lump sum death benefit described above and are also entitled to share the lump sum indemnity which a spouse would have received[95].

Where a deceased victim has no dependants, each child and parent of the victim is entitled to a lump sum death benefit of $5 000 (currently $5 321)[96]. Finally, the estate of a deceased victim is entitled to a lump sum amount of $3 500 (currently $3 725) for funeral expenses[97].

All amounts payable in respect of the death of a victim are normally paid by way of a lump sum. However, at the request of a dependant, these amounts can be paid by periodic instalments over a period of up to 20 years[98].

---

91. *The Manitoba Public Insurance Corporation Act*, s. 120 (1). A person is considered to be disabled if he or she is « unable to hold any substantially gainful employment because of a physical or mental disability that is likely to be of indefinite duration or result in death » : *Id.*, s. 119 (1).
92. *Id.*, s. 120 (2). For example : A victim dies in an accident at the age of 60 ; prior to the accident, the victim earned $10 000 per year. Applying the factor in Schedule 1, the surviving spouse would be entitled to a death benefit of $20 000 ($10 000 x 2.0) ; however, the surviving spouse would receive the minimum death benefit, currently $42 572.
93. *Id.*, s. 121 (2) (a) and Schedule 3.
94. *Id.*, s. 121 (2) (b).
95. *Id.*, s. 122.
96. *Id.*, s. 123.
97. *Id.*, s. 124.
98. *Id.*, s. 125.

2.3 Claims for Compensation

A claim for compensation must be made within two years after the day of the accident; where symptoms are not immediately apparent, the two year limitation runs from the day when they are first observed by a medical practitioner. A claim for death benefits must be made within two years after the victim's death. A claim by a minor must be made within two years after his or her 18th birthday. In any case, the Corporation has the discretion to extend a time limit if it is satisfied that the claimant has a reasonable excuse for failing to make the claim in time[99].

A claimant must provide the Corporation with any information needed by it to assess the victim's claim[100]. At the request of the Corporation, a claimant must undergo a medical examination by a medical practitioner chosen by the claimant. The Corporation may also require the claimant to be examined by a practitioner chosen by the Corporation[101]. The Corporation is entitled to a written report of any such medical examination and, at the request of the claimant, it must provide a copy to any practitioner named by the claimant[102]. The Corporation is also entitled to receive reports from other practitioners or hospitals that treat the claimant after the accident[103]. If a claimant chooses to obtain further medical reports to support an application for review or an appeal, the claimant must do so at his or her own expense. However, if the application for review or the appeal is successful, the claimant is entitled to reimbursement to the maximum amount specified in the regulations[104].

An employer or former employer must provide the Corporation with proof of the earnings of a claimant within six days of the Corporation's written request[105].

Claimants must keep the Corporation fully informed of any change in their condition or in their situation which might affect their entitlement to an indemnity[106]. However, the Corporation has a corresponding obligation: it has a duty to ensure that claimants receive all the compensation to which

---

99. *Id.*, s. 141.
100. *Id.*, s. 142.
101. *Id.*, s. 144.
102. *Id.*, s. 146.
103. *Id.*, s. 147.
104. *Id.*, s. 148. The maximum amount is $250 or, where the claimant is jointly examined by more than one practitioner, $250 for each practitioner to a maximum of three practitioners: *Reimbursement of Expenses Regulation, supra*, note 79, s. 43.
105. *Id.*, s. 143.
106. *Id.*, s. 149.

they are entitled[107]. Furthermore, a claimant is entitled to examine and copy any document in the Corporation's possession respecting the claim[108].

A number of other provisions in the Act are aimed at permitting the Corporation to respond quickly and generously to the needs of an accident victim. For example, if an application for compensation appears to be well-founded, the Corporation may begin to pay an indemnity or reimburse an expense even though it has not yet made a final decision respecting the claim; such payments are not recoverable by the Corporation unless they are obtained by fraud[109]. The Corporation has discretion to capitalize an income replacement indemnity and pay it to a victim where the amount to be paid in periodic instalments is very small or where the victim does not reside in Manitoba (recognizing that there may be difficulties in administering such payments)[110]. The reimbursement of expenses may be made in instalments, rather than by lump sum, and may, at the request of the victim, be paid directly to the person to whom it is owed[111]. A victim continues to receive an indemnity even though he or she has applied for a review of the Corporation's decision or has appealed to the Accident Injury Compensation Appeal Commission[112]. The Corporation may make a new decision in respect of a claimant at any time when new information becomes available (for example, a change in the claimant's condition or situation). The Corporation may also reconsider a decision before a claimant applies for a review of a decision or appeals a review decision if the Corporation has made an error[113].

The Corporation may refuse to pay compensation and may reduce, suspend or terminate the compensation in a number of situations. These situations generally involve dishonest or obstructive claimants and include refusing, without valid reason, to return to a former employment, to take a new employment, to take a recommended medical treatment or to participate in a rehabilitation program made available by the Corporation and preventing or delaying recovery by his or her activities[114].

Compensation other than an income replacement indemnity is exempt from garnishment and seizure and may not be assigned to another person. An income replacement indemnity is treated as wages for the purposes of

107. *Id.*, s. 150.
108. *Id.*, s. 151.
109. *Id.*, s. 153.
110. *Id.*, s. 154.
111. *Id.*, s. 155.
112. *Id.*, s. 157.
113. *Id.*, s. 171.
114. *Id.*, s. 160.

garnishment and assignment and is therefore subject to the rules and exemptions set out for wages in *The Garnishment Act* and *The Law of Property Act* of Manitoba[115].

2.4 Indexation for Inflation

As has already been noted at several points in this paper, compensation under the Act is indexed for inflation. The gross annual income upon which an income replacement indemnity is based is indexed each year on the anniversary of the day of the accident (or, in the case of a victim for whom an employment has been determined, on the anniversary of the day the employment was determined). It should be noted that it is not the income replacement indemnity which is indexed, but rather the gross annual income upon which the indemnity is based. This ensures that, although the victim is protected from the effects of inflation, he or she is not insulated from changes in taxation legislation. Thus, an increase in premiums under the Canada Pension Plan would have a negative impact on a victim (by reducing his or her net income and thus his or her income replacement indemnity), just as it would have had if the victim were in the work force. All of the specific dollar amounts which are set out in the Act and in Schedule 3 of the Act (lump sum indemnity to the dependants of deceased victims) are also adjusted on March 1 of each year[116].

Indexation is based on the Consumer Price Index published by Statistics Canada[117]. However, the amount of adjustment for inflation is limited to 6 % per year unless the Corporation, by regulation, sets a higher rate of indexation[118].

The Act provides that the adjustment in the amount of benefits as a result of indexation for inflation is to have no effect on the amount of compensation paid to a victim under a private insurance scheme[119].

2.5 Review and Appeal

All decisions respecting entitlement to universal bodily injury compensation are to be made by the Corporation and these powers may be dele-

115. *Id.*, s. 159. See *The Garnishment Act*, R.S.M. 1987, c. G20 and *The Law of Property Act*, R.S.M. 1987, c. L90, s. 32.
116. *Id.*, s. 165.
117. *Id.*, s. 164 and 166. As noted earlier, the maximum yearly insurable earnings is indexed according to changes in the industrial average wage: *Id.*, s. 114 (2) to (4).
118. *Id.*, s. 167. Inflation to date has of course been well below the 6 % cap.
119. *Id.*, s. 168.

gated to its employees[120]. However, the Act also contains a number of important procedural safeguards to ensure accountability, transparency and fairness.

Decisions made by the Corporation must be given to the claimant in writing and must include reasons for the decision[121]. When giving notice of a decision, the Corporation must also give notice of the right to apply for a review of the decision[122].

A claimant has 60 days in which to apply in writing to the Corporation for an internal review of a decision made by it[123]. On a review, the Corporation has full powers to change a decision and must provide written reasons for its review decision[124]. It also must give notice of the claimant's right to appeal the review decision to the Automobile Injury Compensation Appeal Commission[125].

A claimant has 90 days to appeal a review decision to the Automobile Injury Compensation Appeal Commission[126]. The Commission is a specialist tribunal created by the Act for the purpose of hearing appeals in respect of universal bodily injury compensation[127]. It is comprised of three full-time commissioners and one part-time commissioner, all of whom are appointed by the provincial government[128].

---

120. *Id.*, s. 169. The Corporation and its employees cannot be sued for the performance of their duties under the Act, so long as they have acted in good faith; they cannot be required to testify in a lawsuit in respect of information which they have obtained in the course of their duties (such as information about a claimant's income): *Id.*, s. 199.
121. *Id.*, s. 170 (1).
122. *Id.*, s. 170 (2).
123. *Id.*, s. 172 (1). The Corporation may extend the deadline « if it is satisfied that the claimant has a reasonable excuse for failing to appeal within that time »: *Id.*, s. 172 (2). The procedure to be followed on an application for review is set out in regulation: *Rules of Procedure (Universal Bodily Injury Compensation) Regulation*, M.R. 38/94.
124. *Id.*, s. 173.
125. *Id.*, s. 170 (3).
126. *Id.*, s. 174. The Commission may extend the deadline as it sees fit. « Claimants who have furnished persuasive reasons for missing the 90 day deadline have been granted extensions by the Commission. The Commission will continue to consider reasonable requests. »: MANITOBA, AUTOMOBILE INJURY COMPENSATION APPEAL COMMISSION, *Annual Report for the Fiscal Year 1996/97*, p. 2 [hereinafter: « *Appeal Commission Annual Report* »].
127. *The Manitoba Public Insurance Corporation Act*, s. 175.
128. The Commission also has a director, an appeals officer, a secretary to the chief commissioner and a secretary-receptionist: *Appeal Commission Annual Report, op. cit.*, note 126, p. 1. The chief commissioner is appointed for a term of five to seven years and the other commissioners are appointed for terms of three years; commissioners may not be dismissed except for cause: *The Manitoba Public Insurance Act*, s. 176.

After giving reasonable notice, the Commission must hold a hearing in respect of an appeal. Unless there is a good reason for not doing so, the appeal is open to the public. The parties must be given a full opportunity to present evidence and make submissions. However, the Commission determines its own practice and procedure[129] and is not bound by the rules of evidence[130]. Technical irregularities and lack of formality do not invalidate proceedings before the Commission[131]. The members of the Commission have the powers of commissioners under Part V of *The Manitoba Evidence Act*[132] and so may, for example, subpoena witnesses. The Commission may carry out investigations and obtain expert opinions[133]. Parties to the appeal must have a reasonable opportunity to examine all material filed with the Commission that is relevant to the appeal[134].

The Commission may confirm, vary or rescind a review decision of the Corporation and may substitute its discretion for that of the Corporation. Written notice of the Commission's decision must be given to the parties as soon as reasonably practicable and the parties must be advised of their right to apply to The Court of Appeal for permission to appeal on a question of jurisdiction or law. At the request of one of the parties, the Commission must also give written reasons for its decision[135].

An application for leave to appeal must be made within 30 days after receipt of a copy of the decision of the Commission, unless a judge of The Court of Appeal extends the time limit. An appeal from a decision of the Commission stays that decision, unless a judge of The Court of Appeal orders otherwise. The Court of Appeal may substitute its own decision for that of the Commission or may refer the matter back to the Commission[136]. Although a number of applications for leave to appeal to The Court of Appeal have been made, none has been successful to date[137].

---

129. *Id.*, s. 182. « On occasion, where an appellant lives or works some distance out of Winnipeg, the commissioners have, with the prior approval of the parties, conducted a hearing telephonically, using a 'speaker-phone' in the hearing room to enable complete communication between all interested persons [...] If, in the course of a telephone hearing, it becomes apparent that the Commission needs actually to see one or more witnesses, the matter will be adjourned to the earliest practicable date for that purpose » : *Appeal Commission Annual Report, op. cit.*, note 126, p. 2.
130. *The Manitoba Public Insurance Corporation Act*, s. 183 (2).
131. *Id.*, s. 183 (7).
132. *Id.*, s. 183 (1).
133. *Id.*, s. 183 (4).
134. *Id.*, s. 183 (6).
135. *Id.*, s. 184.
136. *Id.*, s. 187. The Commission may also state a case in writing to The Court of Appeal for an opinion on a question of law or jurisdiction : *Id.*, s. 186.
137. APPEAL COMMISSION ANNUAL REPORT, *op. cit.*, note 126, p. 3.

Where, on a review or an appeal, an indemnity or expense which has already been paid is cancelled or reduced, the Corporation is not permitted to recover any amounts paid before that decision, unless the payment was obtained by fraud[138].

Although the Act appears to grant the Commission considerable discretion, it is significantly circumscribed by the specificity of the Act. Like the Corporation, the Commission may not diverge from the central elements of the universal bodily injury compensation plan mandated by the Act. For example, it may not decide that the circumstances of a particular victim warrant a higher income replacement indemnity than would otherwise be payable ; like the Corporation, the Commission may authorize the payment of no more than is contemplated by the Act. The Commission might feel that the amount permitted by the Act for funeral expenses is inadequate in light of the cultural customs of a particular victim ; nonetheless, the Commission has no power to go beyond the specific amounts permitted by the Act. The Commission may only exercise discretion in the limited areas where the Act allows for discretion. The following two cases reported in the Commission's last annual report are illustrative :

> An appellant sought payment for the cost of a new mattress, box spring and delivery charges plus taxes thereon. The appellant's physician had recommended that he purchase a mattress of the type in question. MPI's position was that beds and mattresses would only be considered in cases where a demonstrated medical or physiological need existed — for example, paraplegia, quadriplegia or a persistent vegetated state. The Commission disagreed with MPI, holding that if, in light of all circumstances, there was a strong likelihood that the items in question would materially improve the victim's chances of recovery and if the item was 'medically required', then it was reasonable for the Corporation's discretion to be exercised in favour of the victim. As a result, MPI was ordered to reimburse the appellant for the cost of the mattress only (the box spring was not found necessary for his rehabilitation) after deducting a percentage, determined by the Commission, for the perceived 'betterment' in the anticipated lifespan of his bedding[139].
>
> An appellant, injured in Manitoba but now resident in Alberta, had been referred by his chiropractor to a registered massage therapist in Alberta. The therapist was highly qualified in her field, being an instructor in advanced techniques in rehabilitative therapy — a course offered for upgrading purposes to physiotherapists, nurses and massage therapists across Canada and in the United States. The therapist was also massage therapist to the members of Swim Canada's National Team for the Pan Pacific, World and Olympic competition. She was not, however, an athletic therapist and the claimant's application for reimbursement for massage therapy expenses were therefore denied by MPI. Because Section 8 of Regulation 40/94 limits payment for massage therapy to that which is « dispensed by a

138. *The Manitoba Public Insurance Corporation Act*, s. 190.
139. *Appeal Commission Annual Report, op. cit.*, note 126, p. 4.

physician, chiropractor, physiotherapist or athletic therapist » the Commission felt obliged to deny the appeal and confirm the decision of MPI[140].

The success rate of appellants is not very high. « Of the 64 appeals heard and decided by the Commission for the [1996/97] fiscal year [...], 24 of them (or 38 %) were successful in whole or in part[141] ». The limited jurisdiction of the Appeal Commission also contributes to the relatively low number of appeals which it hears. In its third year in operation, the Commission received 92 notices of appeal[142] and it anticipates that « in due course, the number of Notices of Appeal filed in any given year will reach a plateau in the region of 200[143] ».

2.6 Compensation under other Acts or plans

The Act recognizes that automobile accident victims may also be entitled to compensation from other sources and provides for its interaction with those other forms of compensation.

An income replacement indemnity is to be reduced by any disability benefit which the victim receives as a result of the accident under the Canada Pension Plan or any similar program in a jurisdiction outside of Manitoba (such as the Quebec Pension Plan) other than the *Unemployment Insurance Act*[144]. However, compensation under the Act does not affect the right to claim compensation under a private insurance scheme[145].

Where, as a result of an accident in the course of employment, a person is entitled to compensation under the Act and to compensation under *The Workers Compensation Act*[146], the person may elect to be compensated under one or the other ; once compensation is elected under one, the entitlement to compensation under the other is extinguished[147]. The Act also recognizes that a person receiving compensation under the Act for an automobile accident may be subsequently injured and become eligible for compensation under *The Workers Compensation Act* ; similarly, a person who was injured in a workplace and is receiving compensation under *The*

140. *Id.*, p. 3.
141. *Id.*, p. 5.
142. *Id.*, p. 1.
143. *Id.*, p. 5.
144. *The Manitoba Public Insurance Corporation Act*, s. 197 as amended by *The Manitoba Public Insurance Corporation Amendment Act*, S.M. 1996, c. 11, s. 3.
145. *The Manitoba Public Insurance Corporation Act*, s. 194.
146. *The Workers Compensation Act*, R.S.M. 1987, c. W200.
147. *The Manitoba Public Insurance Corporation Act*, s. 195. Where the person chooses compensation under *The Workers Compensation Act*, any lawsuits which might be permissible under that Act against a driver at fault are barred.

Workers Compensation Act may subsequently become injured in an automobile accident and become eligible for universal bodily injury compensation. In those cases, the Corporation and the Workers Compensation Board must make a joint decision distinguishing between the bodily injury attributable to the automobile accident and the bodily injury attributable to the workplace accident and pay compensation in that proportion. That joint decision may be appealed by the injured person either under *The Workers Compensation Act* or to the Automobile Injury Compensation Appeal Commission[148].

Conclusion : Mandatory Review of the Legislation

During the Legislative Committee hearings on the proposed legislation to introduce the no-fault automobile injury plan, the following provision was added :

> The minister shall, within three years after the coming into force of this Part, undertake a comprehensive review of the operation of this Part involving public representations and shall, within one year after the review is undertaken or within such further time as the Assembly may allow, submit to the Assembly a report on the operation of the review[149].

In April 1997, the provincial government appointed the Honourable Sam Uskiw, a former provincial cabinet minister, as head of the PIPP Review Commission to carry out this review. According to advertisements placed by the Review Commission, its mandate is « to determine if the Plan is meeting its objectives ». These objectives were stated in terms which reflect the overriding goal of the plan at its inception in 1993, the achievement of rate stability ; these objectives were described in the advertisement as being « to guarantee compensation for all automobile accident victims based on financial loss and injury, stabilizing both claim costs and premiums[150] ». In other words, the Review Commission was not asked to comment on the advisability of a compensation plan based on no-fault principles, but rather on the effectiveness of the operation of such a plan.

The Review Commission held public meetings in 20 centres across the province between June 24 and September 4, 1997. At the end of 1997, Mr. Uskiw's Review Commission had submitted its report to the Minister responsible for *The Manitoba Public Insurance Corporation Act* ; however, the report had not yet been released to the public. The report of the Review

148. *Id.*, s. 196. The appeal must be made within 90 days of receiving notice of the decision « or within such further time as the body to which the appeal is made may allow » : *Id.*, s. 196 (2).

149. *Id.*, s. 203.

150. Advertisement, *The Winnipeg Sun* (June 15, 1997) 13.

Commission, once released, will no doubt foretell the next developments in automobile accident insurance in Manitoba.

Addendum

Subsequent to the completion of this paper, the report of the Personal Injury Protection Plan Review Commission[151] was released to the public. This addendum provides a brief overview of the report.

As stated in the paper, the mandate of the PIPP Review Commission was to determine whether the no-fault plan is meeting its objectives.

> The objectives of PIPP, as provided by the government, are to :
>
> Reduce the level of year-over-year rate increases by stabilizing bodily injury claim costs ;
>
> Increase the amount of money available to compensate seriously injured accident victims for economic loss by eliminating payments for non-economic losses such as pain and suffering, and by reducing legal and other costs associated with tort claims ;
>
> Provide more timely injury claim payments through the elimination of time-consuming litigation over accident responsibility and amount of damages ;
>
> Guarantee that all accident victims receive payments for economic loss by eliminating fault as a criterion for compensation ;
>
> Provide an effective appeal process to ensure all accident victims receive the compensation to which they are entitled under the Plan[152].

The Review Commission also chose to consider two further issues :

> The adequacy of coverage for medical rehabilitation and other expenses ;
>
> Whether the system is humane, fair and equitable[153].

The report of the Review Commission concludes that « the PIPP program has met its mandate by providing insurance coverage for all Manitobans, stabilizing rates and guaranteeing compensation for all injured people[154] ». In particular, it notes that :

> Autopac premiums have continued to rise since the inception of PIPP, primarily due to increased collision claim costs. However the premium increases would have been substantially greater if the bodily injury claim costs had not been reduced through the implementation of PIPP. The estimated increase in premium levels would have been well in excess of 30 per cent since the implementation of PIPP. This translates to an estimated saving of almost $200 per vehicle in 1996[155].

---

151. PERSONAL INJURY PROTECTION PLAN REVIEW COMMISSION, *Report of the Personal Injury Protection Plan Review Commission* (1997), Winnipeg, Government of Manitoba [hereinafter *Uskiw Report*].
152. *Id.*, p. 8.
153. USKIW REPORT, p. 8.
154. USKIW REPORT, p. 6.
155. USKIW REPORT, p. 4.

However, the report also notes « certain weaknesses and inequities in the legislation and administration of PIPP »[156] and makes 54 recommendations for change. The Manitoba government has announced its intention to accept 30 of these recommendations, to give further study to another 19 and to decline 5 of the recommendations[157].

The report recommends (and the government has accepted) that limits on income replacement indemnities for victims over the age of 65 should be removed and that a victim should receive full income replacement indemnity until the age of 69 (the age at which « federal income tax law requires that RRSP accounts be matured and annuitized or transferred to a RRIF[158] »).

> [T]he Corporation [should] undertake a study with a view to establishing a life income entitlement to I.R.I. [income replacement indemnity] for victims whose income and other means do not permit them to provide for their own retirement on attaining 69 years of age[159].

The maximum amount payable for funeral expenses should be increased to $6 000 and the cost of grief counselling should be reimbursed. « The grid schedules that determine the need for personal and home care [should] be reviewed by an independent consultant in order to ensure they are more complete and less subjective[160] ». Furthermore, the report recommends « [t]hat all benefit levels be reviewed by the Corporation to ensure that they are fair and reasonable, taking into account current economic conditions and inflation and that the Corporation report on the review to its Board[161] ».

The bulk of the remaining recommendations made by the report and accepted by the government relate to improving the level of service provided by the Corporation to claimants. According to the report, « [t]he Corporation should direct much more effort in ensuring that all MPI employees serve all Manitobans in a fair and equitable manner[162] ». The report recommends that « a Statement of Claimant's Rights and Benefits be given

156. USKIW REPORT, p. 6.
157. At the same time as the release of the *Uskiw Report*, the Manitoba government also released three informal, unpublished documents entitled « Recommendations Accepted », « Recommendations for Further Consideration » and « Recommendations Declined ». Each consists of a table with three columns : the first summarizes the relevant recommendations, the second summarizes the current law or situation and the third sets out comments.
158. USKIW REPORT, p. 52.
159. USKIW REPORT, p. 73, Recommendation 4.
160. USKIW REPORT, p. 77, Recommendation 28.
161. USKIW REPORT, p. 79, Recommendation 42.
162. USKIW REPORT, p. 70.

to the claimant at his or her first meeting with an adjuster[163] ». Other recommendations relate to increasing the independence of the internal review of claims by the Corporation, increasing consultation with claimants and ensuring that the workloads of case managers allow them « to deal fairly and adequately with each of the claimants[164] ». A number of other, more technical recommendations are also made[165].

The following are the more significant recommendations which were identified by the Manitoba government as requiring further study :

> 7. That in the determination of net income for I.R.I. [income replacement indemnity] purposes, the adjustment for Canada Pension Plan and Employment Insurance contributions be eliminated.
>
> 9. That in determining I.R.I., the income of part-time and seasonal workers not be annualized in calculating taxable income and income tax.
>
> 12. That in calculating I.R.I., the Corporation take into account, the income earning potential of students, those just entering the workforce and those who were temporarily employed on a part-time or casual basis at the time of the injury.
>
> 14. That the Permanent Impairment Schedules be revised to conform with the American Medical Association's *Guides to the Evaluation of Permanent Impairment.*
>
> 15. That fibromyalgia and myofascial pain syndromes be added to the Permanent Impairment Schedule.
>
> 31. That, when the Corporation requires a claimant to be examined by a practitioner, the claimant shall choose from a panel of practitioners submitted by the appropriate governing body of the particular discipline.
>
> 38. That a claimant have the right to be represented at the appeal [before the Automobile Injury Compensation Appeal Commission] by an advocate, paid for by the Corporation.
>
> 41. That a notwithstanding power be granted to the Appeal Commission where the Commission would have within its sole discretion the power to grant compensation to a claimant[166].

---

163. USKIW REPORT, p. 78, Recommendation 33.
164. USKIW REPORT, p. 81, Recommendation 52.
165. For example, recent changes to the *Income Tax Act* respecting alimony and maintenance payments should be recognized (Recommendation 8). The definition of part-time employment should be consistent with that used by Statistics Canada (Recommendation 10). The Corporation should formalize its policies in taking account the business income earned in a business in which the claimant has an equity interest (Recommendation 13). No limit should be placed on the cost of repairing prostheses and orthopedic devices worn before the accident (Recommendation 24). The Corporation should pay expenses incurred by a victim for long distance telephone calls to make appointments to undergo a medical examination (Recommendation 27). The Corporation should have no discretion about reimbursement of expenses in installments when installments are required by the claimant (Recommendation 44).
166. USKIW REPORT, pp. 74-79.

Other recommendations identified by the government as requiring further study generally relate to a reduction in the discretion available to the Corporation or are of a more technical nature[167].

The following recommendations were declined by the provincial government :

> 1. That amendments be introduced to allow certain negligent third parties to be held accountable and bear the costs of their negligence themselves by allowing the victim and/or the Corporation the right to bring tort action for compensation.
>
> 5. That the Income Replacement Indemnity of a victim be equal to 100 % of his or her net income.
>
> 6. That the seven day exclusion period before the Income Replacement Indemnity begins be eliminated.
>
> 20. That the expenses reimbursed by the Corporation which are not covered under the Health Services Insurance Act or any other Act, be extended to include hospital care and qualified massage therapy if prescribed by a physician, chiropractor, physiotherapist or athletic therapist.
>
> 23. That the Corporation pay expenses for dental care, chiropractic treatment and physiotherapy for the victim in such amount as is medically necessary and prescribed by a practitioner.

The timing of the report's release precludes a detailed discussion of its recommendations ; however, it is possible to make a few general comments. First among these would be the observation that the Review Commission's report seems to be long on recommendations and short on reasons. The recommendation that « a notwithstanding power be granted to the Appeal Commission where the Commission would have within its sole discretion the power to grant compensation to a claimant[168] » is an example. This recommendation would seem to allow the Appeal Commission to award compensation other than or in excess of that permitted by the Act itself. Despite the significance of this recommendation, it does not appear in the main body of the report ; it appears only in the chapter summarizing the report's recommendations, without any discussion at all.

The reports's recommendation that the schedule currently used for assessing permanent impairments be replaced with the American Medical

---

167. For example, the Corporation « shall », rather than « may », reimburse those expenses specified under the Act and Regulations (Recommendation 17). The maximum expenses payable for non-discretionary out-of-province care should be such amount as is medically necessary and prescribed by a practitioner (Recommendation 22). The Corporation should reimburse for loss of wages due to time spent attending medical or rehabilitation appointments (Recommendation 19). The Corporation should be allowed to enter into structured settlements for lump sum payments when circumstances warrant (Recommendation 49).

168. USKIW REPORT, p. 79, Recommendation 41.

Association's *Guides to the Evaluation of Permanent Impairment* is a further example. The justification for this recommendation is the bald assertion that

> Experience has indicated an inconsistency in awards with relative overpayment for some impairments and underpayment or no payment for others. There would be higher credibility in adopting an authoritatively created schedule. The American Medical Association's *Guides to the Evaluation of Permanent Impairment* (Guides) is recognized as one of the authorities in the United States[169].

No evidence is given in the Review Commission's report of the negative experience which it says it found[170]. No evidence is given of the authoritativeness of the American Medical Association's Guides other than statements from the Guides itself. Even assuming the high quality of the Guides, there is no discussion of why it is superior to the schedule currently in use by MPI[171]. The report implies that use of the American Medical Association's Guides will result in a more individualized assessment of permanent impairments; as the report notes (in bold print), « [n]o-fault equalizes the value of each person's body parts with no consideration of the victim's profession or lifestyle[172] ». Use of the Guides is apparently proposed as a solution to this problem. However, there is no discussion of the possibility that, by tying compensation for permanent impairment to the « restrictions or limitations imposed on the patient's ability to carry out daily activities, rather than [...] [to] a specific diagnosis[173] », claimants might be encouraged to slow their recovery and be provided with an incentive not to participate meaningfully in rehabilitation.

---

169. USKIW REPORT, p. 55.

170. Appendix D of the report sets out « examples of what the public told the [Review] Commission » (USKIW REPORT, Appendix D, p. 2). Part of the Appendix sets out criticisms respecting compensation for permanent impairment made at the public hearings held by the Review Commission (Appendix D, pp. 6-7). It may be that this is the basis of the negative experience which it reports; however, this is not stated. Furthermore, the report contains no response from the Corporation and no indication that one was sought. If the Review Commission did receive a response from the Corporation, no indication is given of why the position of those who made presentations at the public hearings was preferred to that of the Corporation.

171. The report seems to suggest that, by enabling physicians « to evaluate and report medical impairment in a standardized manner », « concerns expressed by claimants about different diagnoses by their own practitioners and those working on behalf of MPI » would be resolved (USKIW REPORT, p. 56). Yet are practitioners not already using a standardized system, that is, the MPI schedule of permanent impairments ? There is no discussion of why the Guides would succeed as a standardized method of reporting where the MPI schedule has allegedly failed.

172. USKIW REPORT, p. 55.

173. USKIW REPORT, p. 56.

The recommendation that certain negligent third parties be held accountable and bear the costs of their negligence themselves by allowing the victim and/or the Corporation the right to bring tort action for compensation is clearly a response to the *McMillan* case, discussed earlier in the paper. However, once again, little is given as a rationale for the recommendation and the reasons which are given suggest a lack of understanding of the philosophical underpinnings of the no-fault plan. A single reason is given for the recommendation :

> A related but less obvious result of the removal of the right to institute a tort action [...] is that an at-fault party who would otherwise have had to bear the cost of a tort settlement is equally removed from the financial burdens such actions can bring. **The burden of relieving negligent third parties, who do not contribute towards the cost of Autopac, is borne by all policy holders.** In effect, the system allows a negligent third party to pass the tort liability onto the Autopac system as a whole and to those who support it — the general public[174].

In the report's view, negligent « third parties » should not be relieved of their liability ; the following is given as a « minimum » listing of such « third parties » :

> all levels of government and Crown agencies ;
>
> automobile repair and service professionals ;
>
> automobile manufacturers ;
>
> construction companies ;
>
> establishments serving alcoholic beverages ;
>
> owners of farm vehicles operating on highways ; and
>
> owners of automobiles registered outside Manitoba[175].

These persons are apparently « third parties » because they are not policy holders and so are not insured by MPI ; the report reasons that, since they have not paid into the plan, the plan should not pay benefits to them. However, this misconceives the plan. The plan is not in fact based on principles of insurance, as the report supposes. The plan is at its essence one of social welfare that seeks to compensate fairly all persons who are injured in motor vehicle accidents, irrespective of any moral blameworthiness and irrespective of the payment of any premiums. All Manitobans benefit from the plan, not merely registered drivers. Thus, the negligent pedestrian who darts into traffic and causes injury to himself and to drivers on the road is nonetheless compensated. The fact that he has no driver's licence is as irrelevant as his negligence. However, by the rationale of the report, that negligent pedestrian is a « third party » and should not be able to benefit

174. USKIW REPORT, p. 47 [bold print in original].
175. USKIW REPORT, p. 47.

from the no-fault plan ; the injured drivers should be able to sue him and, presumably, he should have to look to his own resources to cover his own losses. By the same logic, not only should establishments serving alcoholic beverages be subject to litigation for automobile accidents which they cause, so too should individual citizens who overserve a guest at a house party. The report makes no mention of the concern of Helper J.A. in the *McMillan* case noted earlier in the paper : the result of the report's recommendation would be « different remedies for victims depending upon the proximate cause of an accident. The exact opposite intent is clear from the reading of Part 2 and from an examination of the [legislative] debates and the [Kopstein] Report[176]. »

The failure of a party to pay premiums to MPI is surely not a rationale for exposing him or her to liability for negligence. If there is a rationale for allowing lawsuits against the parties listed by the report, it must be that doing so will act as a deterrent against their negligent conduct and so promote public safety. Under the no-fault plan, the automobile manufacturer whose negligently manufactured vehicle causes an accident cannot be sued for its negligence. The rural municipality which may have negligently failed to maintain its roads or to warn of hazards, as was alleged in the *McMillan* case, cannot be sued for those failings. However, before the principle of no-fault is compromised to allow lawsuits against such parties, one should be confident that liability for negligence does in fact act as a deterrent against negligent conduct. If it does, is there a basis for a system that allows some to be sued and others not to be, as the report proposes ? What would be the rationale for such distinctions ? And if « third parties » as the report conceives them (automobile manufacturers, rural municipalities and the like) can be sued, why should the beneficiaries of those lawsuits be individuals who have already received the same full compensation as any other Manitoban with like injuries would receive ? These are all fair questions which should be addressed in any consideration of the merits of a no-fault compensation plan. Unfortunately, the report addresses none of them.

176. *McMillan* v. *R.M. of Thompson* (Man. C.A.), *supra*, note 12, 67.