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FAULTY NO-FAULT: A CRITIQUE OF THE ONTARIO LAW REFORM COMMISSION REPORT ON MOTOR VEHICLE ACCIDENT COMPENSATION

By Allen M. Linden

A. INTRODUCTION

It is popular these days to be in favour of no-fault automobile insurance. To oppose no-fault is to be reactionary and inhumane. I, of course, favour no-fault. I have for many years advocated it. Similarly, the Canadian Bar Association is on record since 1969 as favouring no-fault. The trouble is that no-fault means different things to different people. Although everybody may favour some kind of no-fault, they do not all agree on the contours of the plan they support. The fact is that there are a great variety of no-fault schemes. Some are good plans, some are all right and some are not so good. As in so many things, it all depends on the content. Each no-fault plan must be judged on the basis of what it does for the accident victim and what it costs the consumer. It is wrong to think that all no-fault plans are an improvement; some of them are retrogressive. These faulty no-fault plans should be opposed vigorously, for they benefit the wrong people.

Such a faulty no-fault plan was recommended by the Ontario Law Reform Commission in April 1974. The Commission began its work on the field of auto insurance in June of 1967. The Report seems to have been completed in the fall of 1973, but it was not released, however, until April of 1974. Perhaps the Attorney-General of Ontario hesitated to unveil the plan because he realized that it was a faulty no-fault plan. In any event, it is now in the public domain.

The O.L.R.C. plan is no improvement — it is a retrogressive proposal that is not in the best interest of the motoring public or the consumer. Its research base is disappointing. Its values are, in my view, distorted. This report is not up to the high standard usually met by the O.L.R.C. The proposal made by the Insurance Bureau of Canada was certainly a poor one, but this one is even worse. The O.L.R.C. has recommended, to use its own words, "sweeping changes". There is no doubt that the changes to be wrought by this system, if it were adopted, would be cataclysmic, for it aims to abolish totally and completely the right to sue in tort.

I, for one, do not believe that such drastic surgery is required. Of course, we can improve the present system of Canadian auto insurance. The

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present Canadian no-fault schemes, although they are good ones, are by no means perfect. Let us keep bettering them. But let us not undertake a heart transplant, when a hernia operation will do.

B. THE RECOMMENDATIONS OF THE O.L.R.C. REPORT

The Report begins by cataloguing the now-familiar criticisms of the tort system. It complains about the high costs, about the lengthy delays and about the lack of compensation for certain victims of car accidents. It attacks the fault system as an inappropriate measure for determining whether someone should be compensated. It informs us that it is very hard to determine what actually happened during a car accident. Relying on statistics developed in other reports over the last decade, it concludes that the tort system must go and that a no-fault scheme must take its place.

There is a quaint and old-fashioned echo to the rhetoric of the report. It uses the language and arguments of a by-gone era. It is almost as if the 1960's had not come and gone. It is as though the Canadian auto accident claims system had stood still. The authors seem oblivious to the advances made in the last few years in this country.

Let me briefly outline the elements of the O.L.R.C. recommendations. First, compensation should be made without regard to fault for *all pecuniary losses* arising out of personal injury, death, or property damage occasioned by a motor vehicle. Second, this compensation should be paid on a first party, accident insurance basis. Third, insurance should be made compulsory for all motorists in the province. So far so good. It is the fourth point that causes the concern — there should be no compensation for non-pecuniary losses such as damages for pain and suffering, loss of amenities of life, and shortened expectation of life. In other words, the historic right to sue in tort is to be eliminated completely.

The no-fault benefits of this new system are quite generous. They should include pretty well *all* of the financial losses incurred in rehabilitating the victim. With regard to lost income, there would be reimbursement of the net loss after tax to a maximum limit of $1,000 per month on the compulsory scheme, but individuals wishing to have greater coverage than this will be permitted to purchase it. Compensation for lost income would be available not only to working people, but also to the unemployed, the retired, the young and to women who stay at home on the basis of what they would expect to earn if they had a paying job. The death benefits would include funeral expenses up to $1,000, another $1,000 lump sum payment to cover interim emergency expenses, and a monthly allowance to a maximum of $1,000 per month, with extra amounts available on an optional basis.

With regard to property loss, full compensation is also to be supplied on a no-fault basis to insured car-owners and the right to sue is to be abolished. Thus, anyone who chooses to insure his own vehicle will recover his full damages whether his loss results from his own fault or from the fault of someone else. However, if someone chooses not to insure his vehicle, and his vehicle is destroyed through someone else's negligence, he will be denied the right to sue that other person.

The only losses that would be excluded from the new scheme proposed by the O.L.R.C. are (1) loss or damage deliberately inflicted by the claimant on his or her own person or property; and (2) loss or damage suffered by a claimant in the course of committing a criminal offence (other than a driving offence) or in the course of escaping or avoiding lawful arrest. The O.L.R.C. rejects specifically the notion that people under the influence of alcohol or drugs should be denied compensation. It believes that that type of behaviour is best penalized by the criminal process, because the deterrent of deprivation of compensation is "too drastic" a penalty.

The O.L.R.C. advocates the establishment of a Motor Vehicle Accident Compensation Board which will have the authority to resolve disputes concerning the obligation to pay benefits, approve rates, promote competition, recommend changes to the law, hear complaints about the system and other such powers. The O.L.R.C. stops short of recommending a government takeover of the insurance industry, choosing rather to express no views on the matter.

This, then, is what is proposed by the O.L.R.C. — pretty generous reimbursement of economic losses to be made to virtually everyone, but the price paid is the denial of full tort reparation to those who would otherwise be entitled to receive it.

C. WHAT'S WRONG WITH THE O.L.R.C. REPORT

There are several criticisms of the O.L.R.C. Report that can be made.

1. *The O.L.R.C. did not consult adequately.*

In preparing this Report, the O.L.R.C. did not choose to consult in any meaningful way. In the past, the O.L.R.C. has been careful to consult widely with the public of Ontario during the course of fine work in law reform. It usually invited briefs and held public hearings. Oddly, however, in its work on this report, there is only a very short list of people that were consulted, including a professor in France, one in Sweden and one in the U.K. It does not seem as though any contact was made with any members of the judiciary, the legal profession or the insurance industry in this country. There is no indication that there was any consultation with consumer groups, or labour unions, or agricultural people. The O.L.R.C. did not ask for briefs, nor did it hold any public meetings.

I regret this secretive method of proceeding, because I believe that, in order to achieve worthwhile and acceptable reform, there must be open discussion and dialogue with the people affected and with those who know most about the operation of the law being changed. I cannot understand why the O.L.R.C. departed from their usual procedures in their study of this important topic. A great many experienced and knowledgeable people would have much to contribute to the discovery of ways to improve the present system of automobile insurance in this province. The method of procedure adopted by the O.L.R.C. resembles the one employed by the Insurance Bureau of Canada in the development of their faulty no-fault scheme. As a result, they both suffer from similar defects. Hopefully the Government

of Ontario will have the good sense not to proceed with either the O.L.R.C. plan or the I.B.C. proposal before they consult fully and openly with all segments of the community that are interested in this vital question. Law reform that is done in stealth and in haste is unacceptable in a democratic society.

2. *The O.L.R.C. has relied upon stale and inapplicable statistics.*

Surprisingly, the O.L.R.C. did not bother to do any statistical studies of its own prior to making its recommendations. In my view, a thorough, modern, statistical study is absolutely necessary before one tampers with the automobile insurance system in this province. The O.L.R.C. relied upon five studies that were done over the last ten years in Michigan, England, British Columbia, Washington and Ontario. I submit that foreign studies are of little value because conditions vary greatly from place to place. The Ontario study, which the O.L.R.C. relied upon, was the Osgoode Hall Study on Compensation for Victims of Automobile Accidents. Now, I, for one, can hardly complain about the data contained in the Osgoode Hall Study, because I was the principal researcher and the author of the report. However, the Study was published in 1965 — ten years ago — and the figures were taken from accidents that occurred in 1961 — fourteen years ago. Data collected in 1961 should not be relied upon to evaluate the auto insurance system of 1975. There have been so many changes in our legislation and practices in this jurisdiction since that time that the statistics are not of very much value any more. I am disappointed that the O.L.R.C., which potentially has such enormous resources at their disposal, should have chosen not to gather new statistics to show the current situation in Ontario. I urge the Government of Ontario to make a full statistical study in this province before making any further major changes in our auto insurance system.

3. *The O.L.R.C. did not adequately take into account the many changes in the law and practice of distributing auto accident losses in Ontario.*

Over the last ten years, the Ontario system of dealing with car-crash compensation has been greatly improved. In the field of social welfare, we have a new medical care programme, and an improved hospital insurance scheme has been enacted in this jurisdiction. Unemployment Insurance now covers injured and sick people for a period of fifteen weeks. The Canada Pension Plan now pays disability benefits in case of long-term or permanent disability. People on general welfare are treated much more generously as well, so that many of the needs that were present in the early nineteen sixties are no longer present.

Another important reform was the abolition of the guest passenger bar in this province. At the time of the Osgoode Study, guest passengers were prohibited from recovering altogether from their own driver, whereas now they may be compensated if they can prove gross negligence. A much larger number of people, therefore, are entitled to tort recovery to-day than were fourteen years ago. We should measure statistically the impact of this new amendment before making any major alterations. If we do, we might well

decide that we would want to abolish the gross negligence requirement as well and permit guest passengers to sue on the basis of ordinary negligence.

There have been a number of procedural and institutional changes that have reduced the delay inherent in auto accident claims. We have a magnificent new court house. There are more judges. New techniques such as certificates of readiness move litigation to trial at a brisker pace. Trial lawyers are more skilful today than they ever were, due to better legal education and better continuing education in the trial practice area. With the advent of the legal aid plan, ordinary people have better access to legal services. Legal costs in the smaller cases have probably been reduced by the change in the jurisdiction of the County Court to handle claims up to $7,500.

The law of torts has become more humane and readier to grant compensation that is adequate. Canadian judges and legislators are bringing tort law into correspondence with our current notions of justice and compassion. There are fewer uninsured drivers, because even the worst risks can now obtain insurance through The Facility. The Motor Vehicle Accident Claims Fund now underwrites losses of up to $50,000.

All of these changes, and many others, have altered significantly the way in which the present auto insurance system operates. Their impact should be thoroughly studied and assessed before adopting major new reforms.

4. *The O.L.R.C. failed to evaluate adequately the present Ontario no-fault scheme.*

Ontario has had a mandatory no-fault scheme since January 1, 1972. This plan compensates almost all drivers for their out-of-pocket losses resulting from car crashes up to a $5,000 figure. Weekly income benefits of up to $70 a week are also payable. These payments can continue for the life of the victim if necessary.

It took a long time to achieve this reform, which came on a voluntary basis in 1969, after years and years of study and pressure. These very substantial no-fault benefits have been supplied for only $9 per automobile per year. The 1972 Green Book of the insurance industry has indicated that the cost of actually providing these benefits amounted to only $7.94. To break even, the industry calculated that it could pay benefits of $6.60, so that it did not lose very much money on these benefits. An extra $2 per year would cover it, and is now being charged.

As far as I can determine, this present Ontario no-fault system is operating quite well. Almost everyone receives benefits regardless of fault up to a decent level. Most importantly, however, they may, if they choose, proceed to sue the guilty person and recover full tort damages, less the amount paid under no-fault. The members of the bar and the insurance industry seem to be administering the system without much trouble. Very few cases are being litigated. Although some disputes have arisen, they seem to have been resolved. Our system has generated a great deal of interest throughout the world and a number of the American states have actually tried to copy our system.

I find it rather disconcerting that the O.L.R.C. would advocate such a major change without first examining the operation of the present Ontario no-fault system. It has been in operation just a little over three years. I would think that most of the deficiencies disclosed by the Osgoode Hall Study have been eliminated by the no-fault system and the other reforms that I have already enumerated. Before they proceed any further, I urge the Ontario Government to undertake a complete study of the operation of the present no-fault scheme.

5. *The O.L.R.C. has done no costing studies for its proposal.*

We have no idea what the cost of the O.L.R.C. proposal will be. I believe it is wrong for a government body to advocate a reform in this area without making some estimate of the cost of providing the benefits outlined. It is vital to know what a new programme will cost before adopting it. To pay everybody, including those who are injured due to their own drunk driving, their full pecuniary losses, is bound to cost more than merely compensating the innocent people. True, some money can be saved by eliminating compensation for pain and suffering. True also, some of the premium dollar can be salvaged by reducing the administrative cost of handling claims on the basis of fault. I doubt, however, whether sufficient savings can be made to provide all of the benefits proposed by the O.L.R.C. Until we have some idea of what the new scheme will cost, I do not think that we can take the report seriously.

6. *The O.L.R.C. proposal is unfair to the innocent and the poor.*

The O.L.R.C. is unfair to the 'innocent' because it confiscates from them their present right to full tort compensation. What it takes from the innocent, it gives to the 'guilty', who are now denied tort recovery. Take, for example, an accident in which the drunken driver crashes into another vehicle, totally disabling the other innocent driver and himself. Believe it or not, the Ontario Law Reform Commission proposal plans to treat these two people equally. Both would receive all their expenses as well as the same income benefit of up to $1,000 per month. If the drunk driver earns over $12,000 and the innocent driver earns only $6,000, the drunk could receive twice as much per month as the innocent driver! I do not believe that this is fair or just. The 'innocent' victims of automobile accidents ought to be treated more favourably than those who are 'guilty'. This does not mean that the families of the guilty ought to go without any help; I think they *should* be looked after, up to a certain amount, but not on the same basis as the families of the innocent, who should be treated more generously, as tort law does.

Poor people are also discriminated against because of the high level of income benefits to be paid. No one is opposed to people with large incomes insuring themselves and receiving generous income payments if they are injured or ill. However, it is unfair to have lower income people pay the same premium as upper income people if they are to receive smaller weekly sums in the event of incapacity. If everyone pays, say $100 for these no-fault benefits, it is unfair for a $6,000-a-year person to receive $500 per month, while a $12,000-a-year person receives $1,000 per month. This would be

a case of the poor subsidizing the rich. If the insurance companies would be willing to base the premium rates of the new no-fault scheme upon the income of the insured in a fair way, then this would cease being objectionable. If, however, everyone is to pay the same premium under the new plan, as is now the case, the same benefits should be paid to all, both rich and poor alike. In my view, the present income level of $70 a week is probably too low, but $1,000 a month is probably too high for the ordinary motorist. I think we would be wiser to gear the amount of these no-fault income benefits to the unemployment insurance scheme, which is about $113 per week to-day. If people want more than that, they may pay extra for it.

In the area of income benefits, the O.L.R.C. plan contains one very fine feature — it contemplates payments to housewives and to unemployed people on the basis of what they might have earned had they gone to work. Now this will not be an easy figure to arrive at, but the idea of compensating people who are not gainfully employed at the time is certainly an improvement over our present scheme.

7. *The O.L.R.C. disparages the role of lawyers in the resolution of accident claims.*

If the proposal outlined by the O.L.R.C. were adopted, the involvement of lawyers in the process of settling these disputes would be almost eliminated. I oppose this. I believe that injured people need the advice and protection that an independent bar can provide them. It is true that it costs something to supply this legal service, but this is money well spent. Injured people who receive legal advice usually receive all the compensation they are entitled to receive. Those without lawyers often do not. Many insurance companies seem to deal differently with represented claimants than they do with unrepresented ones. The statistics in the studies show that claimants receive more if they have legal advice than if they do not.

I fear that by eliminating the pain and suffering aspect, and by removing all of these cases from the courts, the O.L.R.C. is virtually assuring that most of these claimants will not consult lawyers. True, the O.L.R.C. will not forbid legal advice to claimants, but the economics of the scheme will make it unfeasible for legally-trained personnel to assist.

Of course, it may be said that the new board will look after these people and treat them fairly. But I, for one, just do not trust boards to this extent. The Workers' Compensation Board, which will probably be the model for the new Motor Vehicle Accident Compensation Board, has certainly not distinguished itself for its generosity and humanity. Rather, it has been criticized as heartless and cheap. Recently, we have seen demonstrations by injured workmen against the Board. I do not remember seeing any protests by injured auto accident victims. Indeed, there is a group of law students, The Injured Workers' Consultants, who assist injured workers in presenting their claims before the Workers' Compensation Board, because lawyers cannot be found to do the necessary work.

The present no-fault scheme in Ontario has been administered virtually free of charge by the legal profession in this province. As they prepare the

tort cases on behalf of their clients, they also help them to fill out the various forms needed to secure their no-fault benefits. They see that their clients receive all they are entitled to. The cost of this additional service is just being borne as part of the overall task that the lawyer performs on behalf of his injured client.

I do not believe that members of the bar are concerned exclusively with their own interests when they oppose the O.L.R.C. and other faulty no-fault plans, as is sometimes unfairly charged. Lawyers can make a decent living without this type of work. Rather, the legal profession feels that the present system helps ordinary people to secure fair and just compensation for the losses that they suffer as a result of the negligent conduct of another. They do not want to jettison this system for one that is not as good. That is why they oppose these ill-advised 'reforms'. They feel it is their public duty.

I, therefore, conclude that it is absolutely essential to have lawyers involved in the resolution of these disputes. In order for this to occur, the lawyers have got to be paid for their work on a fair basis. The scheme, as proposed, will not allow for legal fees to be charged to a sufficient degree to make legal advice economically viable. As a result, too many people will still go uncompensated and under-compensated.

8. *The O.L.R.C. has too limited a view of the functions of tort law.*

The O.L.R.C. proposal is founded on the belief that the only job of the tort system is to compensate. If they are right, then it would make sense to abolish tort law. However, they are wrong. Compensation is not the only function of tort law, although it certainly is one of its important aims. Tort law, like all law, is also supposed to regulate human conduct. In particular, tort law seeks to reduce the number of accidents that occur in a community by placing financial responsibility for those accidents upon those who negligently cause them.

But, even in the way tort law performs its compensation function, it is preferable to most non-tort schemes, for it calculates loss on an individual basis. Those who have unique and special losses ought to recover something extra, if these losses are caused by someone who is at fault. If someone incurs pain and suffering, an award ought to include something for that. If there is none, then nothing should be paid. In my view, this is a hallmark of a civilized and humane society. Each human being is different from everyone else. We should try to preserve the individual variations of our people. Tort law helps us to do this by underscoring the uniqueness of each claimant. For myself, I do not favour equal compensation for all people with similar injuries. It should depend on the loss that each person suffers.

This does not mean that I oppose medical and hospital services to every injured or sick individual whatever the cause of the disability. I have advocated such legislation over the years. I also believe that some day everyone ought to receive a certain guaranteed minimum income, regardless of the reason for their inability to earn. These, however, are welfare ideas — not notions of tort law or insurance law. The disparate goals of tort law and

welfare law should not be confused. It is unfair to judge tort law using welfare criteria.

Tort law, however, is concerned with much more than mere compensation. It seeks to reward the 'innocent' and punish the 'guilty' in the hope that this will encourage people to be more careful in the way in which they conduct themselves. It aims to deter negligent conduct and to reward careful conduct. Naturally, as the O.L.R.C. rightly points out, the availability of liability insurance has dulled the impact of this prophylactic function of tort law. But the sting of tort damages has not been altogether eliminated. An individual may not be insured; the loss may exceed the limits of the policy; there may be a deductible provision; a person's insurance may be cancelled; he may have his premium increased; or he may be denied compensation for his own injury on the basis of the contributory negligence rules of tort law. No, I do not think that tort law is totally irrelevant in fighting accidents.

Nor do I think we can leave the complete job of encouraging care to the criminal and administrative laws. True, in many cases, administrative law and criminal law *can* do a better job than tort law, but in many cases next to nothing is *in fact* done. What good is it to fine someone $50 for speeding or for going through a red light when he has killed a pedestrian as a result? The criminal law's sanction may be an affront to thinking people. A tort judgment of several thousand dollars might do a better job of teaching him and others a lesson for the future. Even if the defendant does not have to pay the damages personally, he is still involved in the proceedings, branded as a wrong-doer by the court and declared responsible for the accident. I believe that such a mechanism is necessary in our society. It does not have to be used in every single case; it is enough if it is used only occasionally. But this job of tort law as educator, as reinforcer of values, is extremely important, for it preserves the notion of individual responsibility for one's conduct — something that we still have need of in our society.

Tort law performs certain psychological functions. It should be remembered that the tort suit was invented in order to try to assuage the thirst for vengeance in society by furnishing a peaceful substitute to the blood feud. If the right to sue were eliminated altogether, I would worry about people once again resorting to private vengeance upon those who do them wrong. In my view, it is preferable to pursue a wrong-doer with a writ rather than with a rifle.

There is another role that tort law plays, that of an ombudsman. It is vital for aggrieved individuals to be able to challenge the power centres of society by applying pressure in tort proceedings. When someone sues a manufacturer, or a policeman, for example, society is able to find out what has happened and to assess the conduct involved. The publicity that goes along with such a suit is useful in fostering responsiveness among people who have power in society. Similarly, it is also important to have some automobile crash cases examined in the courts so that society can learn what drivers do wrong and can take remedial steps.

If we were to eliminate the automobile cases from the court, it would make it very difficult for lawyers to make a living doing personal injury litigation ex-

clusively. As a result, they would not be as skilled or as available to launch actions dealing with other kinds of accidents. I believe that our society probably needs more tort actions rather than fewer. The more public scrutiny we shower on the conduct of individuals who harm others, the better off we will be. Thus, even if tort law did not compensate very well, it would still be valuable. Further, even if we had a no-fault scheme which compensated everyone fully, we should still preserve the tort action for these other functions.

9. *The O.L.R.C. wrongly believes that no-fault benefits can be supplied only if tort law is abolished.*

The O.L.R.C. wrongly believes that no-fault benefits can be supplied only if tort law is abolished. They conclude that a peaceful co-existence plan — in which both fault and no-fault co-exist peacefully — is "ideologically inconsistent" and that it can only be justified as a "practical compromise between the strongly-held views of those who regard no-fault as an essential reform and the equally strongly-held views of those who regard the fault system as a fundamental requirement of justice". They are right about the present plan being a compromise. That is exactly what our scheme is. But this makes it unacceptable to the O.L.R.C. To me, that is its great strength. Because it is practicable, because it is accepted by all parties, because it incorporates the strengths of both fault and no-fault, it has been adopted and is working well.

I do not believe that competing ideologies must do battle with one another until one obliterates the other. Rather, to me, the best possible society is one in which conflicting ideologies can co-exist in harmony. In my view, tort law serves valuable functions and, so too, no-fault insurance serves valuable functions. We have a better system if we have both rather than insisting upon adopting one and destroying the other. The present Ontario peaceful co-existence scheme is an example of the unique Canadian capacity for compromise at work. We have the best of both worlds — tort and non-tort. Because of this, it is an outstanding system that has been a model for many jurisdictions throughout the world. I do not wish to abolish it merely to satisfy those who insist that their ideology must predominate over all others.

The O.L.R.C. is not the first to have recommended "pure" no-fault. The Royal Commission on Automobile Insurance in British Columbia suggested the replacement of tort law by no-fault benefits in 1968. Their suggestion was rejected by the British Columbia government, which enacted a peaceful co-existence-type scheme. It should be noted that the N.D.P. government in B.C., even though it took over the insurance industry last year, has not interfered with the peaceful co-existence principle of the B.C. system, which was established prior to their advent. In New York State it was also suggested that tort law be replaced by no-fault benefits, but, there too, the scheme that was enacted retained the right to sue in more serious cases. Other jurisdictions have behaved in a similar way. Pure no-fault has been adopted nowhere. This is so, because it has been recognized everywhere that it is a poor alternative.

10. *The O.L.R.C. has failed to consider fully the inter-relation of auto insurance with other social welfare schemes.*

The O.L.R.C.'s perspective on this compensation question has been very narrow. It has isolated the automobile insurance regime from all other types of injury and sickness compensation that are now available. The O.L.R.C. rightly criticizes the overlapping of these other systems and encourages better co-ordination with them. With this, everyone would agree. However, their new proposal does nothing to eliminate the present patchwork of programmes; instead it adds yet another new source of reparation.

The justification of the O.L.R.C. is that automobile insurance reform should not have to await reform in all other fields and that a 'first step' should be taken. I agree that we have to move step by step to improve whatever we can in our society. It is foolish to argue that either everything has to be done at once or else nothing should be done. We have, however, already taken steps to eliminate the deficiencies of the auto insurance system. We also have in existence different schemes for injured workmen, victims of crime, and veterans. Victims of defective products, slip-and-fall, and medical malpractice are treated differently, having to rely exclusively on the tort claim. People made sick from other causes receive still other treatment. In short, we have a jumble of plans. People are treated differently on the basis of the source of their illness.

Before we proceed to move any further in the automobile field, we ought to step back and look at the whole field of compensation for injured and sick people. I think the time is long overdue for us to compare the way in which we treat workmen, injured victims of crime, veterans, automobile victims, products liability victims and all the rest. It may be that, if we took the time and did a proper and full study of the whole range of regimes available, we could come up with a system that would treat everybody in a consistent and fair way.

It is not in the best interest of the people of Ontario to rush ahead with more automobile insurance reform without considering fully these other regimes. I was one who once argued that we had to "do something" for automobile accident victims first. We have done that something. I am not sure that we have to do "something more" for the car crash victim at the present time, before evaluating the whole picture in a more sustained and coherent fashion. I therefore urge the Government of Ontario to commission a full study of the problem of compensation for personal injury and illness. Such a thorough study is now under way in the United Kingdom under the chairmanship of Lord Pearson. New Zealand and Australia have done complete studies. I do not know what such a study would disclose or what it would propose. I do know, however, that it is time for us in Canada to rationalize all of these various schemes into a coherent and consistent system, rather than to add yet another new regime to the present morass.

D. CONCLUSION

In conclusion, I submit that the O.L.R.C. proposal is misconceived. Although I have supported no-fault legislation for over a decade, I did so

only because I felt that a proper no-fault plan would provide better protection to victims and better value to consumers. The O.L.R.C. plan will not do this. It is not a good no-fault plan. It is a faulty no-fault plan, which is not in the best interest of the people of Ontario. Its adoption should be strenuously resisted.

I certainly do not believe that our present plan is perfect. Improvements can undoubtedly be made. We could enrich the benefits to a more realistic level of weekly payment, say $125-$150; we could remove the maximum on the reimbursement of the expenses incurred; we could allow compensation for partial disability as well as total; the death benefits could be enlarged. In the event that the cost of these additional benefits would increase the cost of insurance too much, we could perhaps consider eliminating the right to sue in the insignificant pain and suffering claims, say, those under $500 or $1000. We should educate the public more about their rights under the present scheme. There are too many car crash victims unaware that they have no-fault privileges and that they are entitled to sue negligent motorists who injure them. We could keep improving tort law and our techniques of assessing damages. We should seriously consider codifying the law of torts to make it simpler and more readily acccessible to ordinary people.

Tort law, however, does not deserve to be extinguished. True, the principles of tort law, based on fault, do conflict with the modern, humane desire to provide compensation for all the injured regardless of fault. Unfortunately, in the past, tort principles meant that too few people were recovering too little and had to wait too long for it. They came under severe attack and their harshness was mollified. When we adopted our new social welfare reforms and present no-fault plan, however, we met this legitimate and humanitarian aim, without destroying tort law, whose historic values once again became acceptable. We, in Ontario, wisely concluded that both fault and no-fault are desirable. Our values told us that all injured people must be looked after, but that 'guilty' people should not be treated as generously as 'innocent' people. We decided to keep branding the careless as "wrongdoers" in order to educate the public that it is better to be careful than careless. This was a wise decision.

There was a time when the O.L.R.C. Report would have been considered progressive and helpful. That time is passed. Before we had proper social welfare laws and before we established the no-fault system, the arguments advanced by the O.L.R.C. were relevant and timely. Now that we have enacted these reforms, they become irrelevant and untimely. I, therefore, urge the Ontario Government not to act on the Report of the Ontario Law Reform Commission on Motor Vehicle Accident Compensation.