

# North America's Most Ambitious No-Fault Law: Quebec's Auto Insurance Act

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## INTRODUCTION

For all the attention given the variety of no-fault automobile insurance laws in the United States,<sup>1</sup> most Americans are unaware that the most extensive no-fault automobile law exists to the north of us. In light of that unawareness, the modest purpose of this Article is to describe — rather than to analyze — the Automobile Insurance Act of Quebec<sup>2</sup> (the Quebec Act or the Act), which took effect in 1978,<sup>3</sup> having been enacted by the newly elected separatist *Parti Quebecois*.<sup>4</sup> The Act provides for prompt and relatively unlimited<sup>5</sup>

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1. For a discussion of the various no-fault insurance laws in the United States, see U.S. DEP'T OF TRANSP., COMPENSATING AUTO ACCIDENT VICTIMS: A FOLLOW-UP REPORT ON NO-FAULT AUTO INSURANCE EXPERIENCES (1985) [hereinafter U.S. DEP'T OF TRANSP.]; O'Connell, *Operation of No-Fault Auto Laws: A Survey of the Surveys*, 56 NEB. L. REV. 23 (1977) [hereinafter O'Connell, *Survey*]; O'Connell & Beck, *An Update of the Surveys on the Operation of No-Fault Auto Laws*, 129 INS. L. J. (1979). See generally AM. ENTER. INST. FOR PUB. POL'Y RESEARCH, LEGISLATIVE ANALYSES, FEDERAL NO-FAULT INSURANCE LEGISLATION (1978); A. WIDISS, R. BOVBERG, D. CAVERS, J. LITTLE, R. CLARK, G. WATERSON & T. JONES, NO-FAULT AUTOMOBILE INSURANCE IN ACTION: THE EXPERIENCES IN MASSACHUSETTS, FLORIDA, DELAWARE AND MICHIGAN (1977).

2. Automobile Insurance Act, QUE. REV. STAT. ch. A-25 (1977), amended by ch. 38, 1980 Que. Stat. 383, ch. 25, 1981 Que. Stat. 425, ch. 52, 1982 Que. Stat. 1033, ch. 59, 1982 Que. Stat. 1173 [hereinafter the Act].

3. *Id.* § 245.

4. The *Parti Quebecois*, at one time committed to the eventual separation of Quebec from Canada, won a majority in the Provincial Assembly in 1976 and again in 1981.

compensation of automobile accident victims on a no-fault basis and a correspondingly sweeping abolition of tort claims. While no-fault automobile laws exist in many of the United States and in the other Canadian provinces,<sup>6</sup> none of the laws is as ambitious as the Quebec law. All of the United States' no-fault automobile laws are categorized either as add-on plans, modified no-fault plans, or plans approaching pure no-fault.<sup>7</sup>

Typically, add-on plans give modest no-fault benefits to an automobile accident victim without impairing his right to sue in tort. Modified no-fault plans provide higher no-fault benefits than add-on laws, while restricting the victim's right to sue in tort in situations where his injuries exceed a relatively modest level. Plans approaching pure no-fault provide even higher benefits (but still limited — especially for wage loss) and go even further than modified no-fault laws in restricting the victim's right to sue in tort.<sup>8</sup> Michigan's no-fault law<sup>9</sup> is the most ambitious in the United States. It provides for unlimited medical expenses<sup>10</sup> and, as of September, 1985, \$2347 per month for wage loss for three years, for a total wage loss payment of \$84,492.<sup>11</sup>

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In September of 1985, however, Pierre Marc Johnson replaced Rene Levesque as the party's leader and premier of Quebec, signaling the party's transition to "a more traditional political party conforming to the constraints of Canadian federalism." Johnson would seek independence for Quebec only as a last resort. N.Y. Times, Sept. 30, 1985, § 1, at 6, col. 1.

5. The Act does not provide for property damage compensation on a no-fault basis. The victim of property damage is compensated "in accordance with the ordinary rules of law." QUE. REV. STAT. ch. A-25, § 115. For a description of the special arrangements for expeditious handling of property damage claims, see Boyer & Dionne, *Description and Analysis of the Quebec Automobile Insurance Plan*, forthcoming in CAN. PUB. POL'Y. For a description of other limits on no-fault compensation under the Act, see *infra* text accompanying notes 62-68.

6. The first no-fault auto insurance law in Canada was enacted in Saskatchewan in 1946. Automobile Accident Insurance Act, 1946, 10 Geo. 6, ch. 11 (codified at SASK. REV. STAT. ch. A-35 (1978)). Before the enactment of the Quebec no-fault law, the Canadian no-fault laws allowed the victim to sue in tort to recover for damages not compensated by no-fault benefits, including pain and suffering. In other words, they were — and are (except for Quebec) — add-on laws. See generally Brainard, *Variplan versus S.354: A Comparison of Major No-Fault Reform Programs in Canada and the United States*, 1975 INS. L. J. 27; Matheson, *No-Fault Auto Insurance in Canada*, 1972 J. RISK INS. 27.

7. See O'Connell, *Survey*, *supra* note 1, at 26-27. As to Canada, see *supra* note 6.

8. *Id.* For a more detailed description of the three basic types of no-fault automobile insurance laws, see J. O'CONNELL & R. HENDERSON, *TORT LAW, NO-FAULT AND BEYOND: TEACHING MATERIALS ON COMPENSATION FOR ACCIDENTS AND AILMENTS IN MODERN SOCIETY* 279-84 (1975).

9. MICH. COMP. LAWS ANN. §§ 500.3101-3179 (West 1983 & Supp. 1986).

10. *Id.* § 500.3107(a).

11. *Id.* § 500.3107(b). The monthly wage loss figure of \$2347 was applicable through Sept. 30, 1985. *Id.* § 500.3107(b) (West Supp. 1985). Administrative regulations require the Commissioner of Insurance to adjust the monthly figure annually to reflect annual increases or decreases in the national consumer price index. MICH. ADMIN. CODE r. 500.811 (1979). Of course, the three year total wage loss figure of \$84,492 will

## COMPENSATION UNDER THE QUEBEC PLAN

The Quebec Act achieves a pure no-fault scheme. The law gives the duty of compensating automobile accident victims to an administrative agency called the "*Regie de l'assurance automobile du Quebec*" (the *Regie*).<sup>12</sup> The Quebec Act provides that the "victim of bodily injury caused by an automobile shall be compensated by the *Regie* in accordance with this title, regardless of who is at fault."<sup>13</sup> The victim's right to compensation under the Act is inalienable<sup>14</sup> and unassignable.<sup>15</sup> At the same time, the indemnities provided by the Act are in lieu of recourse to "any court of justice."<sup>16</sup> As a pure no-fault scheme, the law eliminates the victim's right to sue in tort for bodily injury. In place of this lost right, the Quebec Act establishes a flexible and relatively complete system of no-fault compensation for the victim of an automobile accident. The *Regie* provides periodic payments for medical and rehabilitation expenses,<sup>17</sup> lost wages<sup>18</sup> and lump sum awards for some pain and suffering.<sup>19</sup>

*Medical and Rehabilitation Expenses*

The Quebec Act provides for reimbursement of reasonable medical and paramedical care expenses, transportation by ambulance to receive such care, prosthetic or orthopedic devices, and clothing replacement. The *Regie*, in its discretion, may authorize reimburse-

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be changed slightly by annual adjustments of the monthly figure. For a decision undermining the integrity of Michigan's tort exemption (see *supra* note 8 and accompanying text), see DiFranco v. Pickard, 427 Mich. 32, 398 N.W. 2d 896 (1986).

12. Translated, "*Regie de l'assurance automobile du Quebec*" means "Quebec Automobile Insurance Administration." "*Regie*" is roughly equivalent to "administration." See 2 HARRAP'S STANDARD FRENCH AND ENGLISH DICTIONARY R-31 (rev. ed. 1972). The English version of the Quebec Automobile Insurance Act, however, retains "*Regie*" instead of translating it. This article does the same.

13. QUE. REV. STAT. ch. A-25, § 3.

14. *Id.* § 14.

15. *Id.* § 15.

16. *Id.* § 4. The Act, however, does not limit the victim's rights under a private insurance contract. *Id.* Where a victim is entitled to compensation under the Act and the Workmen's Compensation Act, ch. A-3, the victim's benefits under the Automobile Insurance Act are reduced by the amount of benefits due under the Workmen's Compensation Act. *Id.* § 18, amended by ch. 59, § 6, 1982 Que. Stat. 1173, 1174. Where a victim is entitled to compensation under the Act and the Crime Victims Compensation Act, ch. I-6, the victim can choose compensation under either Act, thereby losing his rights under the other Act. *Id.*

17. See *infra* text accompanying notes 20-23.

18. See *infra* text accompanying notes 31-49.

19. See *infra* text accompanying notes 24-30.

ment for other similar expenditures.<sup>20</sup> In addition, such reimbursement will be provided without limit as to time and amount.<sup>21</sup> Reimbursement by the *Regie* will be limited only to the extent that compensation already is provided by another government compensation program.<sup>22</sup> The Act also provides for the payment of rehabilitation expenses by the *Regie*. The purpose of such payments is to help the victim "return to normal life" and participate in society and the work force.<sup>23</sup>

### *Pain and Suffering*

Before turning to the Quebec Act's extensive treatment of no-fault wage loss benefits, mention should be made of the statute's provision respecting noneconomic losses. No-fault benefits in the United States do not provide compensation for pain and suffering, leaving such compensation to the judicial system, where tort actions are preserved.<sup>24</sup> Under the Quebec Act, however, the *Regie* pays the victim who sustains "a loss of physical integrity or disfigurement" a lump sum indemnity for the resulting "suffering or loss of enjoyment of life."<sup>25</sup> The *Regie* determines the amount of the indemnity, subject to statutorily prescribed maximums.<sup>26</sup> The indemnity maximums decrease as the age of the victim increases, from \$40,000 for an infant victim to \$29,400 for a victim forty six years of age or older.<sup>27</sup> The Act provides for annual recalculation of the maximums according to changes in the cost of living.<sup>28</sup> Although the "suffering and loss of enjoyment of life" compensable under the Act do not embody all the elements of common law pain and suffering,<sup>29</sup> no-fault payments in the United States do not recognize as compensable *any* of the ele-

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20. QUE. REV. STAT. ch. A-25, § 45, amended by ch. 59, § 23, 1982 Que. Stat. 1173, 1180-81.

21. *Id.* For a description of the rare situations where reimbursement is limited, see *infra* text accompanying notes 79-81.

22. QUE. REV. STAT. ch. A-25, § 45, amended by ch. 59, § 23, 1982 Que. Stat. 1173, 1180-81.

23. *Id.* § 46.

24. See generally O'Connell, *Survey*, *supra* note 1.

25. QUE. REV. STAT. ch. A-25, § 44, amended by ch. 59, § 22, 1982 Que. Stat. 1173, 1180.

26. *Id.*

27. *Id.* § 204, sched. A, amended by ch. 59, § 37, 1982 Que. Stat. 1173, 1184.

28. *Id.* § 49, amended by ch. 59, § 25, 1982 Que. Stat. 1173, 1181.

29. See generally *United States Steel Corp. v. Lamp*, 436 F.2d 1256, 1265-67 (6th Cir. 1970) (distinguishing between pain and suffering and loss of enjoyment of life); *Traylor v. United States*, 396 F.2d 837, 839-40 (6th Cir. 1968) (distinguishing between pain and suffering and permanent injury). See also J. O'CONNELL & R. SIMON, PAYMENT FOR PAIN AND SUFFERING: WHO WANTS WHAT, WHEN & WHY? 1-3 (1972). See also O'Connell, *A Proposal to Abolish Defendant's Payment for Pain and Suffering in Return for Payment of Claimants' Attorneys' Fees*, 1981 U. ILL. L. REV. 333, 348-49 [hereinafter O'Connell, *Proposal*] for an attempt at a comprehensive description of all elements of noneconomic loss recoverable at common law.

ments of common law pain and suffering. Given all the difficulties — both theoretical and practical<sup>30</sup> — with insurance payments for pain and suffering and for similar noneconomic losses, this feature of the Quebec Act arguably presents a vulnerable aspect.

### *Wage Loss*

The Quebec Act contains thorough, detailed provisions dealing with the replacement of a victim's income lost as a result of an automobile accident. An income replacement indemnity is payable in the form of a biweekly pension beginning seven days after the accident and continuing for the whole period of the victim's disability.<sup>31</sup> Calculation of the amount of the indemnity is based on the pre-accident, gross income of the victim up to an annual maximum of \$34,500, excluding any income not derived from employment.<sup>32</sup> Net income is established by subtracting applicable taxes from gross income.<sup>33</sup> The income replacement indemnity equals ninety percent of the victim's net income.<sup>34</sup> In no case, however, will the indemnity be less than \$151.12 per week plus \$18.90 per week for each dependent up to six dependents.<sup>35</sup> Net income is recalculated annually to take into ac-

30. See J. O'CONNELL, *THE INJURY INDUSTRY* 28-36, 104-05 (1971); Jaffe, *Damages for Personal Injury: The Impact of Insurance*, 18 *LAW & CONTEMP. PROBS.* 219 (1953); O'Connell, *Proposal*, *supra* note 29, at 333-48; Peck, *Compensation for Pain: A Reappraisal in Light of New Medical Evidence*, 72 *MICH. L. REV.* 1355 (1974); Plant, *Damages for Pain and Suffering*, 19 *OHIO ST. L.J.* 200 (1958).

31. QUE. REV. STAT. ch. A-25, § 35.

32. *Id.* § 27, amended by ch. 59, § 12, 1982 Que. Stat. 1173, 1176. A \$26,000 maximum figure applied as of the 1982 amendment; however, the gross income maximum is recalculated annually to equal 150% of average, nationwide earnings for the previous year as established by Statistics Canada. *Id.* § 50, amended by ch. 59, § 26, 1982 Que. Stat. 1173, 1181.

Statistics Canada is a national statistics bureau designed to "collect, compile, analyze, abstract and publish statistical information relating to the commercial, industrial, financial, social, economic and general activities and condition of the people" and to "promote and develop integrated social and economic statistics pertaining to the whole of Canada and to each of the provinces thereof." Statistics Act, ch. 15, § 3, 1970-1972 Can. Stat. 437, 438. The \$34,500 amount applies to the 1986 calendar year. Updated amounts for 1986 are printed in a Compensation Table published by the *Régie* [hereinafter Compensation Table].

33. QUE. REV. STAT. ch. A-25, § 27, amended by ch. 59, § 12, 1982 Que. Stat. 1173, 1176.

34. *Id.* § 26.

35. *Id.*, amended by ch. 59, § 10, 1982 Que. Stat. 1173, 1176. These figures are updated. See Compensation Table, *supra* note 32. While the victim remains disabled, the minimum indemnity is readjusted as the number of dependents varies, and in some cases, a person can become a dependent of the victim after the accident. Ch. 59, § 11, 1982 Que. Stat. 1173, 1176 adding § 26.1 to the original Act.

count changes in the cost of living.<sup>36</sup>

As mentioned above, the indemnity is determined according to the victim's pre-accident, gross income as determined according to the pre-accident situation of the victim. For example, the gross income of a victim who held regular, full-time employment before the accident equals the income he actually was earning in his job.<sup>37</sup> In "exceptional circumstances," the victim will be credited with a higher gross income if he can show (to the satisfaction of the *Regie*) that normally he would have been able to earn more than he was earning in fact.<sup>38</sup> The victim who was unemployed or only casually employed at the time of the accident becomes entitled to an indemnity based on the gross income from full-time employment which he *could have had*. The *Regie* determines the victim's potential employment according to "the experience and the physical and intellectual capacities of the victim." The *Regie* then calculates the victim's presumptive gross income based on the proportion of previous periods the victim was unemployed.<sup>39</sup> The victim casually employed in the home who becomes unable to perform household chores as a result of an accident is entitled to choose between an indemnity based on his presumptive gross income or reimbursement for expenditures for household help.<sup>40</sup>

The Quebec Act places student victims in a separate class. The victim who, at the time of the accident, was at least sixteen years old and a full-time student at a secondary or post-secondary level educational institution is entitled to an income replacement indemnity.<sup>41</sup> The student who was employed, or was guaranteed employment by contract at the time of the accident and cannot hold the employment as a result of the accident, receives an indemnity calculated on the basis of the gross income from the employment he had or could have had.<sup>42</sup> If a student had neither employment nor a guarantee of employment but cannot pursue his studies as a result of the accident, he is entitled to the minimum income replacement indemnity.<sup>43</sup> The student victim who is delayed in entering the work force, or who finishes his studies but remains unable to work, receives an indemnity based on the average annual, nationwide, employment income as determined by the national statistics bureau.<sup>44</sup> The indemnity is re-

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36. QUE. REV. STAT. ch. A-25, §§ 48-49, § 49 amended by ch. 59, § 25, 1982 Que. Stat. 1173, 1181.

37. *Id.* § 19.

38. *Id.*

39. *Id.* § 20, amended by ch. 59, § 7, 1982 Que. Stat. 1173, 1174.

40. *Id.* § 23.

41. *Id.* § 21, amended by ch. 59, § 8, 1982 Que. Stat. 1173, 1174.

42. *Id.*

43. *Id.*

44. *Id.* The bureau is called Statistics Canada. See *supra* note 32.

duced by twenty-five percent for a student who has not attained the level of post-secondary education.<sup>45</sup>

The Quebec Act also makes distinctions based upon the age of the victim. The victim under sixteen years of age who becomes unable to engage in the "ordinary occupations of his age group" is entitled to the minimum indemnity until he reaches the age of majority. If he then remains unable to work as an adult, he receives an indemnity based on average, nationwide employment income.<sup>46</sup> The victim over sixty-five but under seventy years of age receives an indemnity for five years. The victim between the ages of seventy and seventy-five years of age receives an indemnity for one year or until age seventy-five, whichever is longer. The victim over seventy-five receives an indemnity for one year. If the victim still cannot work at the end of the prescribed periods, he receives the minimum indemnity.<sup>47</sup>

If and when the victim returns to work after an accident, the indemnity stops if he earns as much as or more than he earned before the accident.<sup>48</sup> If the victim earns less in his new job than he earned before the accident, the indemnity is reduced by an amount equal to fifty percent of the first \$5000 of earned income plus seventy-five percent of the earned income in excess of \$5000.<sup>49</sup> Thus this system attempts to preserve some incentive for the victim to return to work after an accident.

### *Death Benefits*

In addition to income replacement, the Quebec Act provides for benefits in the event of the death of an automobile accident victim. The victim's death entitles the surviving spouse to receive an indemnity for life.<sup>50</sup> If the victim had no spouse at the time of the accident, the victim's dependents are entitled to equal shares of the indemnity until the time they no longer would have been dependents had the victim lived.<sup>51</sup> The amount of the spouse's or dependant's indemnity

45. QUE. REV. STAT. ch. A-25, § 21, amended by ch. 59, § 8, 1982 Que. Stat. 1173, 1174.

46. *Id.* § 22, amended by ch. 59, § 9, 1982 Que. Stat. 1173, 1176.

47. *Id.* § 25.

48. *Id.* § 31, amended by ch. 59, § 14, 1982 Que. Stat. 1173, 1177.

49. *Id.* Only the part of gross income over \$1000 is included in the calculation. The provisions dealing with the minimum indemnity do not apply to this section.

50. *Id.* § 37, amended by ch. 59, § 18, 1982 Que. Stat. 1173, 1178. The indemnity will be reduced by any amount received by the surviving spouse or dependents from the Quebec Pension Plan or an equivalent plan in another jurisdiction. *Id.* § 41, amended by ch. 59, § 21, 1982 Que. Stat. 1173, 1180.

51. *Id.* § 37, amended by ch. 59, § 18, 1982 Que. Stat. 1173, 1178.

equals a percentage of the indemnity the victim would have been entitled to receive had he lived and been unable to work.<sup>52</sup> The percentage is fifty-five percent for one dependent, sixty-five percent for two dependents, and sixty-five percent plus five percent for each additional dependent up to a maximum of ninety percent.<sup>53</sup> Once again, a minimum indemnity applies to survivors' benefits. The indemnity will not be less than the sum of \$151.12 per week for one dependent plus \$18.90 per week for each additional dependent up to six dependents.<sup>54</sup> Although the Act generally entitles a surviving spouse to receive an indemnity for life, the Act shortens the duration of the indemnity for a spouse under thirty-five years of age who has no children and is not disabled. Such a spouse can receive an indemnity for only five years<sup>55</sup> — a time limit designed to encourage a young spouse to find alternative means to compensate for the loss of the deceased spouse's income.

The Quebec Act contains a special provision for the victim who had no spouse and no dependents. As originally enacted, it provided only for a lump sum award for the victim's parents or his estate if he had no parents.<sup>56</sup> A 1982 amendment, however, added a provision for an indemnity for the owners of a family business.<sup>57</sup> If the victim worked in a capacity that "ensured the viability of a family enterprise," the victim's death entitles the owners of the business to receive a share, proportional to their ownership interest in the business, of \$151.12 for a five year period.<sup>58</sup> Where the victim had no spouse and no dependents, and the family enterprise provision does not apply, the victim's death entitles the parents to receive a \$7730 lump sum award.<sup>59</sup> A victim with no parents has his estate receive a lump sum award of \$3865.<sup>60</sup> In keeping with the Act's policy of complete compensation, the person who pays the victim's funeral expenses is authorized to claim up to \$2577 for reimbursement.<sup>61</sup>

#### EXCEPTIONS

Despite the Quebec Act's broad mandate to the *Regie* to compensate victims of bodily injury caused by automobile accidents on a no-

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52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.* See Compensation Table, *supra* note 32.

56. QUE. REV. STAT. ch. A-25, § 38.

57. Act of Dec. 16, 1982, ch. 59, § 19, 1982 Que. Stat. 1173, 1179.

58. *Id.* See Compensation Table, *supra* note 32.

59. QUE. REV. STAT. ch. A-25, § 39, amended by ch. 59, § 20, 1982 Que. Stat. 1173, 1180. See Compensation Table, *supra* note 32.

60. *Id.* See Compensation Table *supra* note 32.

61. QUE. REV. STAT. ch. A-25, § 47, amended by ch. 59, § 24, 1982 Que. Stat. 1173, 1181. See Compensation Table, *supra* note 32.

fault basis, the Act establishes three general, although narrow, exceptions to the rule requiring compensation. The first exception concerns the residence of the victim. Residents of Quebec will be compensated by the *Regie* regardless of whether the accident occurred inside or outside of Quebec.<sup>62</sup> If the accident occurred outside Quebec, the victim retains any right of action in the jurisdiction where the accident occurred. To the extent the *Regie* pays the victim, it is subrogated to the victim's rights.<sup>63</sup> If the accident occurred in Quebec in an automobile registered in Quebec, the Act deems the car owner, passenger, and driver to be Quebec residents and affords them the protection of Quebec residents even if such persons in fact are not residents.<sup>64</sup> A nonresident not deemed a resident by the above provision can recover from the *Regie* for bodily injuries only if he was not at fault in the accident. A court is the final arbiter of such fault.<sup>65</sup>

The second exception concerns the time limitation imposed on compensation claims. The victim who seeks compensation for bodily injury must apply for benefits within three years from the time of the accident or the manifestation of injuries. Anyone seeking death benefits must apply for the benefits within three years from the victim's death. The *Regie* may extend the limitation period where the applicant was delayed past three years by "extraordinary circumstances."<sup>66</sup>

The final exception concerns the type of accident. Compensation will not be provided where the accident occurred off the public highway and was caused by a vehicle, such as a farm tractor or snowmobile, intended for use off the public highway. The exception does not apply, however, if a regular automobile also was involved in the accident.<sup>67</sup> Finally, the *Regie* will not compensate victims of accidents

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62. QUE. REV. STAT. ch. A-25, § 6. The language of the Quebec Act does not make explicit whether its geographic coverage extends beyond Canada. However, Jean Renaud, an attorney for the *Regie*, has told us in a letter dated March 20, 1986, that the language has been interpreted to extend coverage throughout the entire world. State no-fault statutes in the United States typically extend coverage throughout the United States and sometimes throughout Canada. 1 NO-FAULT AND UNINSURED MOTORIST AUTOMOBILE INSURANCE (MB) § 6.40 (1985). The National Conference of Commissioners on Uniform State Laws has recommended world-wide coverage for no-fault benefits. Uniform Motor Vehicle Accident Reparations Act, 14 U.L.A. 64 (1980) (section 2 and comment).

63. QUE. REV. STAT. ch. A-25, L 7.

64. *Id.* § 6.

65. *Id.* § 8.

66. *Id.* § 16, amended by ch. 59, § 4, 1982 Que. Stat. 1173, 1173-1174.

67. *Id.* § 17, amended by ch. 59, § 5, 1982 Que. Stat. 1173, 1174.

occurring in automobile racing contests or race tracks closed to other traffic.<sup>68</sup> As pointed out, all the exceptions are narrow and do not alter the general, broad scope of the Act.

#### ADMINISTRATION

The Quebec Act confers extensive discretionary powers upon the *Regie*, an administrative body composed of government-appointed officials.<sup>69</sup> The Act authorizes the *Regie* to make various regulations which substantially can affect the scope of the Act. For example, the *Regie* can make regulations to define the meaning of "a loss of physical integrity or disfigurement" for the purpose of awarding a lump sum for resulting "suffering or loss of enjoyment of life."<sup>70</sup> In addition, the Act provides that "the *Regie* has exclusive jurisdiction to inquire into, hear, and decide any matter relating to the compensation of bodily injury" caused by an automobile accident.<sup>71</sup> The only right of appeal of a *Regie* decision is to another administrative body, the *Commission des affaires sociales*, whose decision is final.<sup>72</sup> Although the Act has been criticized for conferring so much power upon an administrative body without providing more legislative guidelines or an express mechanism for judicial control,<sup>73</sup> one of the legislature's obvious purposes in passing the Act was to eliminate courtroom litigation for bodily injuries sustained in automobile accidents.<sup>74</sup>

To obtain compensation under the Quebec Act, an automobile accident victim simply files with the *Regie* the proper application for compensation.<sup>75</sup> If the *Regie* determines that an application appears

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68. *Id.* Section 17 also provides that the victim is not entitled to compensation for injuries received in an automobile not in motion on a public highway where the injuries were caused by a device that could be operated independently of the automobile but was incorporated in the auto. *Id.* A Canadian commentator has suggested this exception existed in the law before the Quebec Act merely as a theoretical or scholastic hypothetical. The commentator said "one must ask whether the legislature would not have done better to remove this restriction." Baudoin, *La Nouvelle Legislation Quebecoise sur les Accidents de la Circulation*, 31 REVUE INTERNATIONALE DE DROIT COMPARE 381, 386 (1978) (translated, as are other references to Baudoin in this article).

69. See Baudoin, *supra* note 68, at 389-90 (calling the "wide scope" of discretionary powers "striking").

70. QUE. REV. STAT. ch. A-25, § 195, amended by ch. 59, § 36, 1982 Que. Stat. 1173, 1184.

71. *Id.* § 52.

72. *Id.* § 56.

73. One commentator said "one recognizes the appalling tendency of the Quebec legislature to ignore the real democratic tradition by conferring on the regulatory domain questions which ought properly to be dealt with by the legislature itself." Baudoin, *supra* note 68, at 390.

74. "The scope of these powers are justified, without doubt in the minds of the legislature, by the desire to see an efficient system with little place for the malingeringer or the perpetually unemployed." *Id.*

75. QUE. REV. STAT. ch. A-25, § 53.

well-founded, it may begin compensation payments immediately, even before rendering its decision as to the right to the payment,<sup>76</sup> thereby arguably avoiding some of the delays common in tort litigation. After payment of compensation begins, the *Regie*, as often as it considers necessary, may require the claimant to submit to a medical examination.<sup>77</sup> The examining physician must prepare a report evaluating the claimant's condition and his ability or inability to work.<sup>78</sup> The *Regie* may suspend payment of compensation to a claimant who refuses to be examined.<sup>79</sup> The *Regie* also may suspend or reduce payments if the claimant persists in activities that hinder his cure<sup>80</sup> or if the claimant refuses available employment.<sup>81</sup>

### CONCLUSION

Five main features stand out in the Automobile Insurance Act of Quebec. First, the Quebec Act compensates victims for personal injuries sustained in automobile accidents on a no-fault basis. Victims no longer have to prove someone else was at fault in order to receive compensation. Second, courts no longer have to adjudicate fault in the context of personal injury received in automobile accidents. Third, compensation usually is paid periodically rather than in lump sum. This enables the *Regie* to monitor claimants and relieves the courts of the necessity of predicting the future and then reducing that future to a present monetary value. Fourth, compensation is prompt. Victims no longer have to wait for tort claims to work their way through the court system. Finally, the Quebec Act has resulted in relatively low automobile insurance rates. All of the personal injury benefits provided by the Quebec Act cost the average car owner in Quebec in 1986 only about \$145.<sup>82</sup>

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76. *Id.* § 54.

77. *Id.* § 60-61.

78. *Id.* § 63.

79. *Id.* § 65.

80. *Id.* § 66.

81. *Id.* § 69.

82. Letter from Jean Renaud (Mar. 20, 1986). The cost in 1983 was \$95 (plus \$21 from the gasoline tax). P. WEILER, PROTECTING THE WORKER FROM DISABILITY: CHALLENGES FOR THE EIGHTIES 72 (1983) (Report submitted to the Ontario Minister of Labour). For some comparable figures from the United States, in 1983, no-fault insurance with limits of \$50,000 for medical expense and wage loss in New York state cost an annual premium of \$46 with tort liability for death and serious injuries costing an additional amount of \$118. In Maine (with no no-fault coverage) the average personal injury tort liability cost was \$178.59. U.S. DEP'T OF TRANSP., *supra* note 1, at 37, 55. (Under the exchange rate in 1983, the Canadian dollar was worth about \$.81; in 1986, about \$.71.)

Although as indicated at the outset, this article is obviously meant to be largely descriptive, not analytical, mention should be made of a recent study purporting to deal with the costs of the Quebec Act and especially their effects on deterrence of accidents. Professor Marc Gaudry of the University of Montreal has conducted an ambitious and detailed multivariate analysis of both injury and fatality rates in Quebec before and after passage of the Act. According to Gaudry, such an analysis of the data indicates that the Quebec Act was followed by increases in injuries of thirty-one percent and deaths of six percent. But an effect on increases in injuries and deaths from no-fault "due to the fact that the notion of fault was removed for bodily [injury] . . . is very small, if it exists at all." Rather, the increase in injuries and deaths primarily was due to (i) the moral hazard effect of more people being insured — thereby supposedly decreasing driving care — because of the compulsory feature of the Act, and (ii) the adverse selection effect of flat-premium pricing that greatly reduces auto insurance costs for high risk drivers (*e.g.* young males) — thereby encouraging them to drive, whereas previously they had been priced off the road.<sup>83</sup>

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83. M. GAUDRY, RESPONSIBILITY FOR ACCIDENTS: RELEVANT RESULTS SELECTED FROM THE DRAG MODEL (Publication No. 544, Centre de Recherche Sur Les Transports, Universite de Montreal, 1987). See also M. GAUDRY, DRAG, UN MODELE DE LA DEMANDE ROUTIERE DES ACCIDENT AND DE LEUR GRAVITE APPLIQUE AU QUEBEC DE 1956 A 1982 (Publication No. 359, Centre de Recherche Sur Les Transports, Universite de Montreal, 1985); Boyer & Dionne, *supra* note 5. For more on the possible effects (or lack of effects) of no-fault insurance on deterrence of auto accidents, see U.S. DEP'T OF TRANSP., *supra* note 1, at 141-43, 159-66; Rea, *Economic Analysis of Fault and No-Fault Liability Systems*, 12 CAN. BUS. L.J. 444, 462-64, 466-68 (1986-87).