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NO FAULT INSURANCE SCHEMES - CYCLING'S KRYPTONITE

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Canada's insurance industry has long harboured a secret desire to push for no fault insurance. No fault insurance programs presently exist in four Provinces. These programs eliminate a tort liability system and prevent accident victims from suing for pain and suffering and limit recovery for income loss and future care costs. Insurance companies argue this is a good thing. By treating everyone involved in an accident the same way, regardless of fault, insurance companies pitch no fault insurance as a system which produces more predictability and therefore (somehow) equity.

The typical justification for no fault is that insurance rates are skyrocketing as a result of excessive personal injury awards in which opportunistic lawyers are usually involved. The U.S. experience is often cited in support of this concern. However, this concern was addressed in Canada long ago. In fact, in the late 1970s, the Supreme Court of Canada capped damage awards for pain and suffering in catastrophic cases at \$100,000.00. Indexed for inflation, the present value of the maximum award for pain and suffering in this country is \$310,000.00. That is the maximum amount for which an insurance company is liable in respect of pain and suffering for quadriplegia, catastrophic brain injury, and any other nightmare scenario. Hardly unjust enrichment.

In B.C., where drivers have the lowest rates in Canada, the provincial government has not adopted the controversial no fault insurance system. Glen Clarke's NDP government tried it in 1997. However, that government's proposal was widely discredited and eventually abandoned.

If cyclists are super heroes, no fault insurance is their kryptonite. By removing the right of a cyclist to seek recovery from a motorist through the civil justice system for losses occasioned by motorists, no fault insurance robs the cycling community of a vital legal remedy. This means that reckless or negligent drivers are not punished, other than by increased premiums and a higher risk rating. Drivers at the top of the claims rate scale can actually seriously injure or kill a cyclist and still manage to avoid facing a rate increase in certain circumstances.

Legitimate victims of automobile negligence intuitively seek tort compensation. Money is a barren substitute for health and happiness, but studies show that compensation for pain and suffering and loss of



enjoyment of life is psychologically restorative and often necessary to moving on with one's life. One can readily appreciate the solace compensation can provide by considering the flipside; the feeling which would come from laying in a hospital bed next to the negligent driver who caused one's injuries and knowing his or her legal rights are the same as yours.

In relation to the purpose of damages for pain and suffering and loss of enjoyment of life (non pecuniary damages), the Supreme Court of Canada stated as follows:

"Money is awarded because it will serve a useful function in making up what has been lost in the only way possible, accepting that what has been lost is incapable of being replaced in any direct way."

One aspect of theoretical benefit of no fault insurance is that damages for injuries are pursued through one's own insurance company as opposed to waiting for the wrongdoer's insurance company to buck up. As a cyclist you may be asking yourself "Where does that leave me?" My answer is that in a no fault world it leaves you in a very cold and isolated place - perhaps not immediately, but eventually. Your struggle will be more difficult in a no fault world, rest assured.

Cyclists depend on a strong tort system in this province. Unlike fully restrained drivers, cyclists are clearly physically more vulnerable, and in general more likely to suffer crushing and disabling injuries when involved in an accident. One of the greatest losses often suffered by a cyclist involved in accidents with cars is the loss of enjoyment of cycling for some time thereafter. In a no fault system, this loss would go completely uncompensated. This kind of tort "reform" (I use that word loosely) would eliminate the loss of enjoyment of cycling as a compensable loss. In effect, such a system would discriminate against cyclists, at least to this extent. No fault insurance is inconsistent with modern cyclist community values. Cyclists place a great premium on the ability to ride a bicycle and the commensurate gain of health, social, and environmental benefits.

Several U.S. states have had enough of their no fault insurance schemes. Between 1970 and 1975 some 24 states implemented a no fault legal system. Those states have all repealed their no fault laws for reasons ranging from increased costs to increased fraud. The latter is usually associated with bogus medical bills.

The only apparent proven advantage of no fault insurance is it has the potential of putting more profits in the hands of insurance companies. Rather than focus on removing civil rights from cyclists and other benevolent communities, the insurance industry should dedicate itself to the creation of better traffic safety laws, better cycling infrastructure, and accident prevention. Much of this is underway - we don't need another distraction.



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It may be the foregoing is simply an exercise in shadow boxing. There is presently no serious campaign in the Province to marshal a no fault system. But that may change with the political wind, and as a cyclist, it seems to me one must remain vigilant and guard against the possibility of no fault insurance.

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