





SECTION 270 OF *THE HIGHWAY TRAFFIC ACT*

March 1997

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Executive Director:

Jeffrey A. Schnoor, Q.C.

Legal Counsel:

Iris Allen
Harold Dick
Avi Gesser
Debra Hathaway

Administrator:

Suzanne Pelletier

The Commission offices are located at:

1210 Woodsworth Building
405 Broadway
Winnipeg, Manitoba R3C 3L6
Canada

TEL.: (204) 945-2896; FAX: (204) 948-2184; E-MAIL: lawreform@jus.mb.ca



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CHAPTER 1

INTRODUCTION

The issue addressed by this Report was suggested to the Commission by a local lawyer whose client was refused a Manitoba driver's licence. The licence was refused because of an outstanding uninsured court judgment in Ontario (arising out of a motor vehicle accident in that province) which had caused the client to declare bankruptcy. The client, who was now on social assistance in Winnipeg, said she needed a driver's licence in order to obtain work. Due to the existence of the unpaid judgment, her application for a licence was refused pursuant to section 270 of *The Highway Traffic Act*.¹

Section 270's mandatory suspension of a driver's licence and motor vehicle registrations where an unpaid motor vehicle accident judgment exists (whether or not the judgment has been extinguished in bankruptcy) has been a feature of Manitoba law for over 65 years. This Report examines whether there is a continuing policy justification for such suspensions and, if not, how this aspect of the law should be changed to reflect a modern society.

Chapter 2 outlines the current law, similarities and differences in equivalent legislation in other provinces, and some constitutional issues in this area. In Chapter 3, the historical origin and purpose of section 270 are explored to understand how and why this power arose, in order to assess its continuing purpose and justification. Chapter 4 examines whether reform is needed. A list of the recommendations made in this Report is contained in Chapter 5.

In preparing this Report, we consulted with a number of individuals, both in Manitoba and in other provinces and territories. We thank the following people for their helpful information and generous assistance:

Brock MacMartin, Director of Highway Safety/Deputy Registrar, Driver and Vehicle Licencing Division, Manitoba Department of Highways and Transportation;

John MacDonald, Registrar of Motor Vehicles, Highway Safety Division, Prince Edward Island Department of Transportation and Public Works;

Vicki Farrally, Assistant Deputy Minister, British Columbia Ministry of Transportation and Highways;

Bill Brewster, Minister of Yukon Department of Community and Transportation Services;

Richard C. MacDonald, Director, Motor Vehicles Division, Northwest Territories Department of Transportation.

¹*The Highway Traffic Act*, C.C.S.M. c. H60.

Discussions were also held with members of the legal staff of the Manitoba Public Insurance Corporation and we thank them for generously giving us the benefit of their time, experience and opinions.

CHAPTER 2

THE CURRENT LAW

A. THE LAW IN MANITOBA

Subsection 270(1) of *The Highway Traffic Act*¹ requires the provincial Registrar of Motor Vehicles to suspend the licence and all vehicle registrations within the province of anyone who fails within 30 days to satisfy a judgment rendered by a court in Canada or the United States in any motor vehicle case involving death or personal injuries or property damage above \$1,000. Subsection 270(2) provides that this suspension need not occur where the judgment debtor is insured and the insurer is obligated to pay the judgment in due course. Therefore, a suspension under subsection 270(1) really occurs only where the judgment debtor never had insurance, was underinsured or where the insurance company denies coverage due to some breach of the policy conditions.

Subsection 270(5) provides that such suspension remains in effect until the judgment "is discharged (other than by a discharge in bankruptcy)"² or until satisfied "to the extent of \$180,000. in the case of a judgment arising from bodily injury or death and at least \$20,000. in the case of a judgment arising from damage to property and in any event, to the extent of at least \$200,000.; . . ."³ While the suspension endures, no former licence may be renewed, no new licence may be issued and no registration of the same or any other vehicle can occur.

Where the outstanding judgment was awarded by a Manitoba court, the suspended judgment debtor may apply for a court order allowing payment of the judgment in instalments, in which case the licence and vehicle registration may be restored subject to prompt payment of each instalment. Under this scheme, the licence and vehicle registration may be suspended and restored as many times as necessary, depending on the occurrence of default in payment.⁴

Generally speaking, when a judgment debtor declares bankruptcy, the legal effect of bankruptcy is to extinguish the judgment debt, rendering it no longer enforceable. The judgment creditor may perhaps recover some money during the bankruptcy proceedings, but once bankruptcy has extinguished the debt, the judgment creditor cannot use any further legal remedy to collect the judgment. It is a unique feature of this highway traffic legislation that bankruptcy has no effect on an existing suspension or on the ability to suspend thereafter. The statute

¹*The Highway Traffic Act*, C.C.S.M. c. H60.

²*The Highway Traffic Act*, C.C.S.M. c. H60, s. 270(5)(a)(iii).

³*The Highway Traffic Act*, C.C.S.M. c. H60, s. 270(5)(a)(iv). These figures correspond to the minimum amount of universal compulsory motor vehicle liability insurance which one must carry in Manitoba: *The Insurance Act*, C.C.S.M. c. 140, s. 249(1); *Automobile Insurance Certificate and Rates Regulation*, Man. Reg. 289/88R, s. 2.

⁴*The Highway Traffic Act*, C.C.S.M. c. H60, ss. 270(6)-(7). Presumably subsection 270(6) would also allow instalment payments to be ordered in regard to a judgment awarded by a foreign court, where that foreign judgment is registered in Manitoba by the judgment creditor and becomes of the same force and effect as if it were a Manitoba judgment: *The Reciprocal Enforcement of Judgments Act*, C.C.S.M. c. J20, ss. 3(1) and 7.

provides that, for licensing purposes, bankruptcy does not amount to a discharge of the judgment and is, therefore, an irrelevant consideration.

The mandatory suspension power under section 270 can be a powerful incentive to satisfy an uninsured judgment, even if it is otherwise extinguished by bankruptcy. In denying a licence unless payment occurs, the province essentially acts as a coercive agent for a judgment creditor who may be:

- from another jurisdiction;
- unable to enforce the judgment otherwise because the judgment debtor has declared bankruptcy;
- the accident victim personally;
- a private or public insurance company which has paid uninsured- or underinsured-motorist benefits to the victim and then subrogated to the victim's rights, or an insurance company which has paid no-fault benefits to the victim and then subrogated to the victim's rights. However, it should be noted that two trial court decisions in New Brunswick have held that, where the judgment creditor is a subrogated insurer, the statutory suspension power cannot be used to suspend the judgment debtor's licence, since the original legislative purpose of the provision "was never intended to provide a method of collecting subrogation collision damage judgments against a driver."⁵ This issue has seemingly never arisen for judicial consideration in Manitoba or other Canadian jurisdictions, where reported cases in this area commonly involve subrogated insurers.

Section 270 governs the suspension of licences and registrations of automobile accident judgment debtors who are Manitoba residents. Where a judgment debtor in similar circumstances is not a resident, subsection 166(1) -- a parallel provision of the statute -- suspends "the privilege of driving a motor vehicle in the province (other than to remove it therefrom) and the privilege of using, or having in the province, a motor vehicle registered in any province, state, or country in the name of that person".⁶ This suspension of privilege remains until the debtor has discharged or satisfied the judgment to the extent required by subsection 270(5) and given proof of financial responsibility.⁷

The operation of section 270 and subsection 166(1) in situations where the unpaid judgment originates in a foreign jurisdiction (another Canadian province or territory or American state) creates a significant element of reciprocity in this legislative scheme. In addition, *The Highway Traffic Act* creates in section 167 a general reciprocity on Manitoba's part concerning suspension and cancellation of licences and registrations in other Canadian and American jurisdictions. To the extent that the foreign disqualification is based on a provision of that other jurisdiction's law "that the registrar determines to be analogous to a provision of this Act or the regulations",⁸ then the disqualification shall be honoured and enforced in Manitoba for an equivalent length of time.

⁵*Mitchell v. Licence Suspension Appeal Board* (1985), 39 M.V.R. 151 at 152 (N.B.Q.B.). See also *C.J. Clarke Siding Ltd. v. New Brunswick (Registrar of Motor Vehicles)* (1991), 30 M.V.R. (2d) 190 (N.B.Q.B.).

⁶*The Highway Traffic Act*, C.C.S.M. c. H60, s. 166(1).

⁷This means to provide proof of ability to meet claims arising from any future accident and would commonly be evidenced by carrying motor vehicle liability insurance.

⁸*The Highway Traffic Act*, C.C.S.M. c. H60, s. 167.

B. THE LAW IN OTHER CANADIAN JURISDICTIONS

Every provincial and territorial jurisdiction in Canada has a statutory provision allowing or mandating suspension for non-payment of motor vehicle accident-related foreign or domestic judgments. (These provisions are also standard throughout the United States, as will be discussed in Chapter 3.) However, these provisions in Canada are not uniform in all particulars, as illustrated by the following three examples.

1. Mandatory or Discretionary Suspension

In Manitoba, as already stated, suspension is mandatory upon non-payment of the judgment.⁹ Six other provinces also dictate mandatory suspension: Saskatchewan,¹⁰ Ontario,¹¹ Québec,¹² New Brunswick,¹³ Nova Scotia,¹⁴ and Newfoundland.¹⁵

In five Canadian jurisdictions, suspension is discretionary: Northwest Territories,¹⁶ British Columbia,¹⁷ Alberta,¹⁸ Prince Edward Island¹⁹ and the Yukon.²⁰ These statutes provide no guidance as to how this discretion is to be exercised, apart from specifying by whom it is exercised (usually the Registrar of Motor Vehicles or the Minister). It appears, however, that in practice this discretion may be somewhat illusory, as administrative policies often provide virtually no circumstances in which discretion would not be exercised to suspend.²¹ There is more substance to the discretion in British Columbia, where policy provides that suspension will not occur if the judgment is more than ten years old or if the judgment debtor was not the operator of the motor vehicle involved in the accident (and therefore presumably liable simply by virtue of being the motor vehicle's owner).²²

⁹*The Highway Traffic Act*, C.C.S.M. c. H60, s. 270(1).

¹⁰*The Vehicle Administration Act*, R.S.S. 1978, c. V-2.1, s. 58(1).

¹¹*Highway Traffic Act*, R.S.O. 1990, c. H.8, s. 198(1).

¹²*Highway Safety Code*, R.S.Q. 1977, c. C-24.2, s. 200.

¹³*Motor Vehicle Act*, R.S.N.B. 1973, c. M-17, s. 276(1).

¹⁴*Motor Vehicle Act*, R.S.N.S. 1989, c. 293, s. 227(1).

¹⁵*Highway Traffic Act*, R.S.N. 1990, c. H-3, s. 81(1).

¹⁶*Motor Vehicles Act*, R.S.N.W.T. 1988, c. M-16, subsection 101(1) specifies that suspension of a driver's licence is discretionary where there is an unpaid judgment, but clause 13(1)(d) provides that suspension of a motor vehicle registration is mandatory in those circumstances.

¹⁷*Motor Vehicle Act*, R.S.B.C. 1979, c. 288, s. 84.

¹⁸*Motor Vehicle Administration Act*, R.S.A. 1980, c. M-22, s. 62(1).

¹⁹*Highway Traffic Act*, R.S.P.E.I. 1988, c. H-5, s. 277(1).

²⁰*Motor Vehicles Act*, R.S.Y. 1986, c. 118, s. 69(1).

²¹Letter from Richard C. MacDonald, Director, Motor Vehicles Division, Northwest Territories Department of Transportation (September 19, 1996); letter from Bill Brewster, Minister of Yukon Department of Community and Transportation Services (September 27, 1996); letter from John MacDonald, Registrar of Motor Vehicles, Highway Safety Division, Prince Edward Island Department of Transportation and Public Works (September 27, 1996).

²²Letter from Vicki Farrally, Assistant Deputy Minister, British Columbia Ministry of Transportation and Highways (October 23, 1996).

2. Role of Reciprocity

In Manitoba, the suspension occurs for non-payment of a judgment rendered "by any court in Canada or the United States",²³ whether or not that foreign territory would similarly suspend someone's licence within its jurisdiction for non-payment of a Manitoba judgment.²⁴ In other words, there need not be actual reciprocity of treatment before Manitoba will recognize the foreign judgment as justification for licence suspension.²⁵ This approach is also taken by British Columbia.²⁶ In the Northwest Territories,²⁷ suspension can occur for non-payment of a judgment from "any jurisdiction" (presumably from anywhere in the world) regardless of reciprocation.

Two jurisdictions (Yukon²⁸ and Alberta²⁹) do not require reciprocation from other Canadian provinces, but do require it from an American state before suspending a licence for non-payment of a judgment from that state. Saskatchewan does not require reciprocation from Canadian provinces, but does require it where the judgment is from "another jurisdiction" (although this could extend to foreign jurisdictions beyond the United States).³⁰ Similarly, New Brunswick does not require reciprocation from another Canadian jurisdiction, but does require it concerning judgments from another "state" (which is likely broader than an American state).³¹ Québec³² and Prince Edward Island³³ also do not require reciprocation from other Canadian provinces, but these statutes do not extend to non-payment of American or other foreign judgments at all.

Ontario requires reciprocation both from other Canadian provinces and from American states.³⁴ Although the legislation is ambiguous, Nova Scotia³⁵ and Newfoundland³⁶ appear to do this as well. Newfoundland's statute extends to any reciprocal jurisdiction outside the province, not just American states.

Where reciprocation is required, usually the provincial cabinet or a minister must be satisfied that the foreign jurisdiction has legislation "similar in effect" to their own that applies to any foreign resident who does not pay a judgment owed to a judgment creditor from their

²³*The Highway Traffic Act*, C.C.S.M. c. H60, s. 270(1).

²⁴This follows from the specific wording of section 270 itself. The general reciprocity created by section 167 of *The Highway Traffic Act* in regard to the unspecified suspension and cancellation of licences and registrations does require as a prerequisite the presence of an analogous foreign provision.

²⁵This is in contrast to the approach taken under *The Reciprocal Enforcement of Judgments Act*, C.C.S.M. c. J10 and under *The Payment of Wages Act*, C.C.S.M. c. P31, s. 17.1 as amended by *The Payment of Wages Amendment Act*, S.M. 1996, c. 24. In these schemes, reciprocity of enforceability is required before Manitoba will enforce a foreign judgment.

²⁶*Motor Vehicle Act*, R.S.B.C. 1979, c. 288, s. 84.

²⁷*Motor Vehicles Act*, R.S.N.W.T. 1988, c. M-16, s. 101.

²⁸*Motor Vehicles Act*, R.S.Y. 1986, c. 118, ss. 69(1) and (3).

²⁹*Motor Vehicle Administration Act*, R.S.A. 1980, c. M-22, ss. 62(1) and (3).

³⁰*The Vehicle Administration Act*, R.S.S. 1978, c. V-2.1, ss. 58(1) and (4).

³¹*Motor Vehicle Act*, R.S.N.B. 1973, c. M-17, ss. 276(1)-(2).

³²*Highway Safety Code*, R.S.Q. 1977, c. C-24.2, s. 200.

³³*Highway Traffic Act*, R.S.P.E.I. 1988, c. H-5, s. 277.

³⁴*Highway Traffic Act*, R.S.O. 1990, c. H.8, ss. 198(1) and (4).

³⁵*Motor Vehicle Act*, R.S.N.S. 1989, c. 293, ss. 227 (1)-(2).

³⁶*Highway Traffic Act*, R.S.N. 1990, c. H-3, ss. 81(1) and (3).

province. The foreign jurisdiction is then "recognized" as a reciprocating jurisdiction by order, proclamation, regulation or declaration, as the case may be.

3. Bankruptcy as Discharge of the Judgment

Eight jurisdictions (including Manitoba) explicitly state that bankruptcy is not a discharge of the judgment. Four jurisdictions are silent on this point, speaking only of the discharge of a judgment (Northwest Territories,³⁷ British Columbia,³⁸ Québec³⁹ and Prince Edward Island).⁴⁰ Of those four jurisdictions, two previously had the same wording and bankruptcy provision as Manitoba, but amended their statutes to remove it (British Columbia in 1970⁴¹ and Prince Edward Island in 1983⁴²).

In those jurisdictions whose statutes are silent on the effect of bankruptcy, it is presumably arguable that bankruptcy would be held to discharge the debt within the meaning of the motor vehicle statute, thus clearing the way for a reinstatement of the suspended licence and registration. However, in the one case which has been reported from such a jurisdiction, the British Columbia Supreme Court nevertheless held that, while bankruptcy may extinguish a debt as against creditors, it does not extinguish the discretion of the superintendent of motor vehicles to take the unpaid debt into consideration when deciding whether to suspend a licence.

For the purposes of the [*Motor Vehicle Act*]. . . it would be perverse to suggest that because the bankrupt is relieved from paying back his creditors, the superintendent is now also obliged to disregard the debt for purposes of considering whether driving privileges should be granted.⁴³

If this case is upheld on appeal, then the effect of bankruptcy will be the same whether the motor vehicle legislation explicitly states that bankruptcy will not discharge a judgment or whether it is silent on this point.

C. CONSTITUTIONALITY OF SECTION 270

The constitutionality of this type of provision has come under two kinds of attack in Canada: (1) does it offend the constitutional division of powers by intruding into federal jurisdiction over bankruptcy? and (2) does it offend the *Canadian Charter of Rights and Freedoms*⁴⁴ (either sections 7 or 15)? To date, these arguments have largely come before trial courts and have virtually never been successful.

³⁷*Motor Vehicles Act*, R.S.N.W.T. 1988, c. M-16, s. 101.

³⁸*Motor Vehicle Act*, R.S.B.C. 1979, c. 288, s. 84.

³⁹*Highway Safety Code*, R.S.Q. 1977, c. C-24.2, ss. 200-202.

⁴⁰*Highway Traffic Act*, R.S.P.E.I. 1988, c. H-5, s. 277.

⁴¹*Motor-Vehicle (Amendment) Act*, S.B.C. 1970, c. 28, s. 15.

⁴²*Highway Traffic Act*, S.P.E.I. 1983, c. 19.

⁴³*Insurance Corp. of British Columbia v. Howard* (1995), 9 B.C.L.R. (3d) 387 at 393 (S.C.). This case is currently under appeal and is expected to be heard in autumn of 1997: telephone conversation with Daniel Le Dressay, lawyer for the defendant (March 11, 1997).

⁴⁴*Canadian Charter of Rights and Freedoms*, being Part I of the *Constitution Act, 1982*, being Schedule B of the *Canada Act 1982* (U.K.), 1982, c. 11.

1. Conflict with Federal Jurisdiction over Bankruptcy?

Canadian trial courts have consistently held that these provisions are within the provinces' power over licensing and their right to prescribe the conditions under which licences are granted, forfeited or suspended. If a prerequisite licensing condition concerns a federal matter (such as the fact of a criminal conviction, for example), this does not render the licensing provision legislation in relation to that federal matter.⁴⁵ Thus it has been held that these provisions which do not acknowledge bankruptcy as a discharge of the judgment do not attempt to invade the federal field of bankruptcy but are merely ancillary to the control of licensing.⁴⁶

The Saskatchewan Court of Appeal (the highest court to have considered this issue) summarily dismissed this constitutional challenge by saying:

We are of the opinion that the impugned law is not in pith and substance in relation to bankruptcy and insolvency but is rather in relation to property and civil rights. The [Saskatchewan *Vehicles Administration Act*] . . . does not provide for or establish a scheme for the administration of the estate of an insolvent person, nor provide a scheme for the orderly payment of debts. It deals only with certain restrictions and obligations and how they must be met before driving privileges are reinstated, which is a matter of property and civil rights.⁴⁷

Nor has there been found to be a conflict between the federal bankruptcy law and the provincial licence suspension provision. Provincial legislation will not be deemed inoperative unless there is an explicit contradiction between the federal and provincial legislation in the sense that both cannot operate at the same time without a necessary clash -- "the conflict must be such as to practically make it impossible for the two subsections to co-exist."⁴⁸

The Ontario County Court in *Caligiuri v. Co-operators Insurance Association* did not find such a conflict. It is true that the federal statute provides that bankruptcy releases the bankrupt from all other claims provable in bankruptcy, while the provincial law states that licences will be suspended unless certain judgments are paid, despite any bankruptcy. Yet the Court held that this does not create a conflict, because

the licensing provisions . . . clearly do not purport to reinstate a debt which may have been extinguished as a result of the operation of the Bankruptcy Act, and that in fact, all that is being done . . . is to impose a prerequisite prior to any licence being given, and that that is a matter that the provincial authorities have every right to do. . . . The Crown is in no position to demand payment of this particular judgment because of the operation of the Bankruptcy Act, but it is in a position to say that unless some arrangements are made, satisfactory to the Court, no licence shall be granted.⁴⁹

The indirectness of these provisions is what circumvents a conflict. The provincial law does not vest the creditor with a direct method of executing a now-extinguished debt. It creates indirect coercion to which the debtor's response is technically voluntary. As stated in *obiter* by Morse J. of the Manitoba Queen's Bench:

the provincial legislation does not require the debtor to satisfy the judgment. He may, of course, do so in order to obtain a driver's licence. But he may choose not to do so. In my opinion, it is not correct to regard the result created by the provincial legislation as constituting the exercise by a

⁴⁵*Provincial Secretary of P.E.I. v. Egan*, [1941] S.C.R. 396 (province may validly suspend the licence of a person convicted of the Criminal Code offence of driving while intoxicated).

⁴⁶*Zahara v. Minister of Highways for Alberta* (1965), 51 W.W.R. 289 (Alta. S.C.).

⁴⁷*Ginther v. Saskatchewan Government Insurance* (1988), 6 M.V.R. (2d) 273 at 275 (Sask. C.A.).

⁴⁸*Caligiuri v. Co-operators Insurance Association* (1984), 29 M.V.R. 291 at 295 (Ont. Co. Ct.).

⁴⁹*Id.*

creditor of a remedy against a bankrupt or his property in contravention of the provisions of ... the *Bankruptcy Act*.⁵⁰

At one time, the American legal approach to this constitutional issue mirrored the current Canadian position.⁵¹ Then in 1971, the United States Supreme Court overruled this approach in the case of *Perez v. Campbell*⁵² and struck down a state provision allowing licence suspension despite bankruptcy because it violates the supremacy clause of the U.S. constitution (which provides that a state may not enact a law which frustrates the full effectiveness of federal law).⁵³ The Court held that the prior approach wrongly focussed on the purpose of the impugned provision rather than on its effect. The effect of a state being able to suspend a licence because of an unpaid judgment discharged in bankruptcy is, in fact, to frustrate the "fresh start" policy which forms the fundamental basis of the federal bankruptcy law.

The *Perez* court held that the Bankruptcy Act was intended to give discharged debtors a new start unhampered by pressures of pre-existing debts, and the state legislation frustrates the effectiveness of the federal law

The *Perez* court seemed to agree that the purpose of the financial responsibility acts is to promote the public policy of the state, but its effect is to give the creditor additional leverage for recovering his judgment.⁵⁴

The *Perez* decision has now been codified in the U.S. *Bankruptcy Code* so as to nullify generally any state law which discriminates against bankrupts solely on the basis of nonpayment of a debt discharged in bankruptcy.⁵⁵ Thus, in the United States (unlike Canada), bankruptcy will be held to discharge an unpaid judgment for the purposes of licence suspension.

None of the reported Canadian case law on this issue refers to or discusses the American legal approach.

2. Charter Breach?

(a) Section 7

Canadian courts have no trouble rejecting the argument that this type of licence suspension infringes a person's right to "life, liberty and security of the person" under section 7 of the *Canadian Charter of Rights and Freedoms*. There are several reasons. One view holds that any right to circulate in a motor vehicle on a public highway is not a fundamental liberty like the right of free movement, but is simply a licensed activity subject to regulation and control for the protection of life and property.⁵⁶ Another consideration is that "liberty" in section 7 is concerned only with the physical liberty of the person, not liberty of action generally.⁵⁷

⁵⁰*Re Giberson* (1982), 19 Man. R. (2d) 407 at 411 (Q.B.).

⁵¹*Reitz v. Mealey*, 314 U.S. 33 (1941); *Kesler v. Department of Public Safety of Utah*, 369 U.S. 153 (1962).

⁵²*Perez v. Campbell*, 402 U.S. 637 (1971).

⁵³M.E. Splees, "Bankruptcy: Suspension of Driving Privileges After Bankruptcy Discharge for Failure to File Proof of Future Financial Responsibility Pursuant to the Ohio Financial Responsibility Act Not Discriminatory under 11 U.S.C. §525(a) of the Bankruptcy Code -- *Duffey v. Dollison*, 734 F.2d 265 (6th Cir. 1984)" (1984-85), 10 U. of Dayton L. Rev. 379 at 390-391.

⁵⁴M.G. Woodroof III, J.R. Fonseca and A.M. Squillante, *Automobile Insurance and No-fault Law* (1974) 89.

⁵⁵*Bankruptcy Code*, 11 U.S.C. §525(a).

⁵⁶*Ginther v. Saskatchewan Government Insurance*, *supra* n. 47, at 276, citing a non-Charter case, *Dedman v. R.*, [1985] 2 S.C.R. 2.

⁵⁷*Barker v. Registrar of Motor Vehicles* (1987), 12 M.V.R. (2d) 91 at 105 (Man. Q.B.).

However, even assuming that a person's ability to hold a driver's licence is a right and not simply a privilege and, moreover, is a right that would be protected under section 7, the Manitoba Court of Queen's Bench has held that this licence suspension scheme does not infringe section 7 because it is not procedurally arbitrary but operates in accordance with the principles of fundamental justice as required by that section. The suspended driver can at any time arrange periodic payments or obtain a court order for payment of the judgment in instalments and can have a driver's licence restored so long as payments are honoured.⁵⁸ Kroft J., as he then was, went so far as to state that: "I am satisfied that the legislative scheme can be characterized as not only being free of arbitrariness or irrationality, but also as being marked by flexibility, fairness and sensitivity to individual difficulties."⁵⁹

(b) Section 15

In *Barker v. Registrar of Motor Vehicles*, it was argued that the continued refusal to issue a licence to a welfare applicant by reason of an outstanding judgment amounts to discrimination between rich and poor people, contrary to the equal treatment guaranteed by section 15 of the *Canadian Charter of Rights and Freedoms*. (The judgment arose out of property damage committed by the applicant while driving stolen cars.) The Manitoba Court of Queen's Bench noted that the *Charter's* preoccupation is with individual, political and democratic rights, not economic or property rights. For example, cases of discrimination under section 15 usually concern discrimination based on human qualities.

However, this licensing scheme does not (in any event) concern discrimination between the financially advantaged and the financially disadvantaged, the Court said. Debtors do not become subject to the legislative scheme by their ability or non-ability to pay. They become subject to the scheme by choosing to be uninsured and to incur liability by reason of their own improper action. No one distinguishable group of uninsured drivers will suffer more adversely from these provisions than another, according to the Court.

It is true that one's level of income will affect his capacity to discharge a liability. Quite obviously however, the size of the debt will be just as important. A relatively affluent person faced with a large judgment could well be in a more "disadvantaged" position than the supposedly "poor" person with a small debt. The so called rich versus poor distinction means little.

In a case of this kind, and when deciding whether so called economic discrimination could possibly be read into the ambit of s. 15(1), it is well to keep in mind that almost any law dealing with sales or income taxes, licence fees, tariffs or social benefits will have a different and more adverse impact on some groups of persons than others.⁶⁰

⁵⁸*Id.*, at 106-107.

⁵⁹*Id.*, at 107.

⁶⁰*Id.*, at 102.

CHAPTER 3

THE ORIGIN AND PURPOSE OF SECTION 270

In order to assess the continuing justification for section 270 of *The Highway Traffic Act*, we must understand the historical origin and purpose of this type of provision, as well as its relationship and interaction with other statutory solutions which address the same social and legal problem.

A. THE PROBLEM

As motor vehicles became more prevalent in North America in the early decades of this century, a major problem soon became apparent: the "financially irresponsible" motorist who was uninsured and judgment-proof (or who was able to avoid the execution of a judgment). At a time when motor vehicle liability insurance was not compulsory by law, this problem created an intolerable situation where significant numbers of innocent victims were unable to secure compensation from negligent drivers and had to bear their own losses.

"The problem of financial irresponsibility dates from the advent of the mass-produced automobile"¹ although "it became especially serious after the conclusion of World War II as the number of automobiles rapidly expanded with a concomitant increase in the incidence of accidents."²

Beginning in the mid-1920s and continuing thereafter, American and Canadian jurisdictions passed several varieties of legislative provisions designed to alleviate, or at least to control, this problem. In an era when compulsory insurance was seen as ideologically unacceptable state interference with an individual's freedom to contract, the challenge was to find an effective way to induce all motorists to insure voluntarily, ideally in advance of a first accident. Historically, there is a progression of types of legislation which, as each type fails to solve the problem fully, inexorably moves towards the more comprehensive (but still not absolute) solutions of compulsory insurance and no-fault coverage.

Sometimes two or more of these approaches are simultaneously used by a jurisdiction; the options are usually not mutually exclusive.

B. THE VARIOUS SOLUTIONS

1. "Future Proof" Laws

In 1925, Connecticut enacted the first "financial responsibility law" to attempt to solve this problem. Its approach (with some fine-tuning) became known as the "future proof" model. A

¹A.I. Widiss, *A Guide to Uninsured Motorist Coverage* (1969) 4.

²*Id.*, at 3.

motorist was free not to carry insurance, but if the motorist failed to pay a judgment arising out of a motor vehicle accident, his or her driver's licence and vehicle registration would be suspended.³ To end the suspension, the driver would have to provide proof of financial responsibility in case of a future accident.⁴ This "future proof" was usually demonstrated by taking out an insurance policy.

There were two fundamental problems with the "future proof" model. First, the law would only operate if the victim obtained a judgment which was then unsatisfied. In cases where the tortfeasor was uninsured and insolvent, there was no incentive for the victim to do this. "In addition, settlement would preclude the victim from invoking the act, and *any* settlement talk from an uninsured motorist was bound to be eagerly heard."⁵ Thus, a driver's very financial irresponsibility would often, in practice, serve to protect him or her from the application of this statute.

Secondly, these laws were often called (with good reason) "'first-bite' statutes"⁶ because drivers were essentially allowed to have one accident before their financial responsibility was questioned. Moreover,

[t]he victim of any motorist's "first accident" was particularly left unaided. It was, after all, thin comfort for him to know that the drunken driver who had maimed him would have to insure for the protection of future victims or have his driver's license revoked.⁷

However, "[d]espite the manifest inadequacies of the financial responsibility laws, they swiftly spread"⁸ throughout the United States, vigorously backed by the insurance industry which viewed the option of compulsory liability insurance as anathema.⁹

2. "Security-proof" Laws

A major reform of the "future proof" model of financial responsibility laws removed the "first free accident". This "security-proof" model requires proof of financial responsibility not only for future accidents but also for the first accident from which the claim or unpaid judgment arises. Thus, in order to remove licence and registration suspensions, a motorist must satisfy the original unpaid judgment up to statutorily-set limits (or, in some jurisdictions, post security in advance of any judgment to meet claims arising from the first accident), plus prove ability to meet any claims from future accidents.¹⁰

The most practical way for motorists to be prepared to prove immediate financial responsibility is to acquire insurance coverage in advance of any accident.¹¹ While "security-

³Widiss, *supra* n. 1, at 5.

⁴Widiss, *supra* n. 1, at 6-7.

⁵R.E. Keeton and J. O'Connell, *Basic Protection for the Traffic Victim: A Blueprint for Reforming Automobile Insurance* (1965) 105 [emphasis in original].

⁶M.G. Woodroof III, J.R. Fonseca and A.M. Squillante, *Automobile Insurance and No-fault Law* (1974) 76.

⁷Keeton and O'Connell, *supra* n. 5, at 104.

⁸Keeton and O'Connell, *supra* n. 5, at 105.

⁹Keeton and O'Connell, *supra* n. 5, at 102.

¹⁰Woodroof, Fonseca and Squillante, *supra* n. 6, at 81-82; Widiss, *supra* n. 1, at 8.

¹¹If a motorist were wealthy, he or she could instead post a bond or security out of which the first accident claim could be met, rather than insuring in advance.

proof" laws technically continue to leave each motorist free to drive without liability insurance, such laws in fact serve to induce motorists to obtain liability insurance coverage voluntarily (in at least the minimum amounts specified in the financial responsibility laws) by making it in their own self-interest to do so, rather than by making such insurance compulsory. However, even if this type of law induces most motorists to insure voluntarily, such financial responsibility laws must still be "vigorously enforced"¹² if this method is to work effectively.

While the "security-proof" model is an improvement over the "future proof" model, it still does not guarantee that some accident victims would not have to bear their own losses. Even with "security-proof" laws,

a basic weakness of the old financial responsibility laws remains. The victim of the "first bite" of the uninsured and insolvent motorist may fare no better under the revised laws than under the old.

Whether the insolvent motorist is deprived of his license upon his inability to deposit security, or upon his inability to satisfy a final judgment is a matter of little concern to the hapless victim who cannot recover in either case.

It is true, however, that the revised laws, by requiring a deposit of security for past accidents under penalty of losing one's driver's license, might give a victim greater leverage to force the tortfeasor to scrape up some payment so he can keep on driving.¹³

Other enforcement problems with financial responsibility laws included drivers who failed to surrender their licence and vehicle plates, continuing to drive in violation of their suspensions, and drivers who did not own vehicles and therefore had no vehicle to insure while nevertheless driving the vehicles of others.¹⁴ Even if motorists were induced to obtain insurance coverage, the possibility of policy cancellation or lapse presented a serious problem. Adequate enforcement of the system required close and ongoing monitoring by the motor vehicle bureaucracy.¹⁵

When financial responsibility laws were first enacted, it was commonly asserted that, in addition to ensuring compensation for victims, these laws would as well constitute safety measures to promote accident prevention. Over the course of time, however, such claims have been abandoned.

. . . [I]nsofar as the acts were designed to promote safety they were apparently a complete failure, since there was no indication of a decrease in accidents when they were enacted or of any relationship at all between the number of accidents and the number of license revocations or suspensions. This probably should not surprise us when we consider that the argument for financial responsibility laws as accident prevention devices was that they would bar a number of bad drivers from the road. One of the difficulties with this argument is that

if a driver threatened with suspension or revocation can furnish proof or pay previous damage or both, in most cases he is still permitted to drive. In other words, to the very extent that the law is effective in obtaining proof or payment it fails to remove bad drivers from the road and thus fails to prevent accidents.¹⁶

The "security-proof" model became the standard model of financial responsibility laws in the United States¹⁷ and in Canada.

¹²Widiss, *supra* n. 1, at 8.

¹³Keeton and O'Connell, *supra* n. 5, at 107-108.

¹⁴Keeton and O'Connell, *supra* n. 5, at 103.

¹⁵Keeton and O'Connell, *supra* n. 5, at 105.

¹⁶Keeton and O'Connell, *supra* n. 5, at 104.

¹⁷Woodroof, Fonseca and Squillante, *supra* n. 6, at 77.

3. Unsatisfied Judgment Funds

An alternative approach to the problem of uninsured, insolvent motorists "was pioneered in the Canadian province of Manitoba, which created a state-sponsored fund to indemnify traffic accident victims injured by financially irresponsible motorists."¹⁸ Used in many Canadian provinces and in some American jurisdictions, this approach was focussed on compensating the victim rather than on controlling the tortfeasor. Unlike the financial responsibility laws, it was not designed to induce motorists to insure voluntarily and, unlike compulsory insurance schemes, it did not force anyone to carry coverage. It simply worked to spread the economic costs of these uninsured injuries to the entire community of motorists, rather than focussing solely on trying to force the individual wrongdoer to be responsible.¹⁹

Basically, these [Unsatisfied Judgment Fund] acts, with considerable variation in detail, provide for accumulation of a state fund partly from motor vehicle registration fees. Under most of them the fund is also partly derived from assessments against insurers writing automobile liability coverage in the state. A person with an unsatisfied judgment from an automobile accident in excess of a minimum figure . . . can apply to the court for an order directing payment out of the fund up to the statutory limits These statutes also provide benefits to victims of hit-and-run accidents.²⁰

Generally, in the Canadian schemes, the applicant judgment creditor had to exhaust all proper means to obtain payment from the judgment debtor before applying to the Fund.²¹ The application had to list all the attempts to execute on the judgment, all attempts to ascertain whether insurance exists, that the debtor was examined as to his or her assets, and so on.²² Upon receiving compensation from the Fund, the judgment creditor had to assign the judgment to the Minister of Highways or other designated minister.²³ Once the government obtained the assignment of the judgment, the "licence of the defendant is then suspended until he has either paid the amount back to the Fund or until certain other arrangements have been made."²⁴

When Manitoba repealed its *Unsatisfied Judgment Fund Act* in 1987, section 270 of *The Highway Traffic Act* was amended so that its suspension power would also be used in regard to remaining unpaid judgments that had been assigned to the Minister of Finance under the former unsatisfied judgment fund system.²⁵

4. Uninsured Motorist Coverage

This coverage in private insurance policies was created in the United States by the insurance industry as an alternative to compulsory insurance.

¹⁸Widiss, *supra* n. 1, at 8.

¹⁹Widiss, *supra* n. 1, at 10.

²⁰Keeton and O'Connell, *supra* n. 5, at 110.

²¹C.C. Savage, *Manual of Motor Vehicle Law: Civil and Criminal* (1948) 253.

²²C.C. Savage, *First Supplement to Manual of Motor Vehicle Law* (1951) A87-A89.

²³*Id.*, at A90-A91.

²⁴A.M. Linden, *The Report of the Osgoode Hall Study on Compensation for Victims of Automobile Accidents* (1965) Chapter 4 at 12.

²⁵*An Act to Amend The Limitation of Actions Act and The Highway Traffic Act and to Repeal The Unsatisfied Judgment Fund Act*, S.M. 1987-88, c. 19, s. 2-3.

In the event of an accident caused by the negligence of an uninsured driver, this endorsement would protect the purchaser (and other insureds as defined by the policy) by placing any insured person in the position he would have been in had the other motorist carried the minimum coverage required by the state financial responsibility laws.²⁶

Often the determination of whether the insured can recover is decided by arbitration and proof that the uninsured motorist caused the injuries, not on securing a prior judgment against the uninsured motorist and proving he or she cannot pay it.²⁷

In most states, uninsured motorist coverage is compulsory and insurance companies are required to include it in motor vehicle insurance policies.²⁸ However,

for the most part (with some notable exceptions) such statutes are no more than statements that the companies shall include an uninsured motorist endorsement in all automobile liability policies issued or delivered in that state [T]he failure of either the industry to issue or the states to require coverage which provides a full range of protection against the hazard of being injured by a motorist who is unable to respond to damage claims has led to a continuous flow of litigation by claimants attempting to secure indemnification in instances where an endorsement purports either to limit or to preclude recovery.²⁹

While the company must offer the coverage, the policyholder has the right to reject it, although the rejection rate is low. Some states make this coverage a mandatory part of every policy regardless of the policyholder's choice.³⁰ Some states have also enacted legislation to require insurers to offer uninsured motorist coverage in limits up to the insured's regular coverage, instead of limited to the minimum levels under the financial responsibility laws.³¹

One drawback to the solution offered by uninsured motorist coverage is that it is the victim who pays for this coverage through an additional premium³² and some question whether it is "proper to force the policyholder himself to pick up the tab for the damages caused by those who refuse to insure".³³ Others object to an inherent conflict of interest which arises when a policyholder seeks to collect damages caused by the uninsured at the expense of the policyholder's own company:

If the uninsured claims against the policyholder, it is to the company's financial interest to establish the innocence of its policyholder. But in the claim made by the policyholder against the uninsured, the financial interest of the company encourages an effort to establish that it was the policyholder himself who was at fault.

In Manitoba, underinsured motorist coverage (for bodily injury or death only)³⁴ was also a standard part of compulsory motor vehicle liability insurance for accidents occurring before March 1, 1994, the date on which our system was converted to a total no-fault scheme. The

²⁶Widiss, *supra* n. 1, at 12.

²⁷Widiss, *supra* n. 1, at 12.

²⁸Widiss, *supra* n. 1, at 15.

²⁹Widiss, *supra* n. 1, at 16.

³⁰American Bar Association, *Report of the Special Committee on Automobile Accident Reparations* (1971) 122.

³¹A.I. Widiss, *A Guide to Uninsured Motorist Coverage* (1976 Supplement) 1.

³²Widiss, *supra* n. 1, at 13.

³³American Bar Association, *supra* n. 30, at 123.

³⁴*Automobile Insurance Coverage Regulation*, Man. Reg. 290/88R, s. 141.

coverage is no longer necessary for accidents under the no-fault system and so has been discontinued.³⁵

5. Compulsory Insurance

As social values changed, compulsory insurance became a standard and acceptable method of ensuring that, to the greatest extent possible, motorists who are legally responsible for accidents will be financially responsible as well. Compulsory insurance schemes require vehicle owners to offer proof of insurance as a prerequisite to registration of their motor vehicles. An owner must purchase (from a private insurance company or, as in Manitoba, from a public insurance corporation) insurance up to statutorily required minimum limits of liability (although higher amounts may also be purchased). In Manitoba, every driver's licence also carries a mandatory certificate of insurance.³⁶

However, even when insurance is compulsory, a few coverage gaps will still occur where insurance coverage will not be available to compensate accident victims: "accidents with non-residents from nonreciprocating states, hit-and-run cases, stolen car cases, cases involving unregistered cars, cases involving vehicles operating after insurance has been cancelled but before revocation of registration has occurred, etc."³⁷ Some of these gaps (such as the hit-and-run situation) would be addressed if the jurisdiction has an Unsatisfied Judgment Fund. Most of these gaps would be addressed if the jurisdiction has some form of a no-fault motor vehicle insurance system.

C. FINANCIAL RESPONSIBILITY LAWS IN MANITOBA

In Manitoba, section 270's predecessor was originally enacted in 1930 and created for our province a classic "security-proof" model of financial responsibility law.³⁸ It was part of a new statute called *The Highway Traffic Act*.

In moving second reading, Hon. W.J. Major, K.C., attorney general, declared that intensive work had been carried on by the Canadian Bar association [sic] in an endeavor to procure a uniform act for the Dominion. In Manitoba the association had appointed a committee of 15 men to produce an act here satisfactory to all, particularly in connection with safety measures.

He paid tribute to all members of the committee, especially to E.K. Williams, K.C., the chairman, for his splendid services. This, incidently would be the first time the Bar Association act would appear before a legislative body, as Manitoba, with the rapid development in its highways and motor traffic, felt the necessity of speeding up action.³⁹

At first, the section extended only to unpaid judgments from Canadian jurisdictions, but by 1954 it extended to unpaid judgments from the United States as well.⁴⁰

³⁵*Automobile Insurance Coverage Regulation, amendment*, Man. Reg. 43/94, ss. 8-9.

³⁶*The Highway Traffic Act*, C.C.S.M. c. H60, s. 24(1).

³⁷American Bar Association, *supra* n. 30, at 125. This organization also stated an opinion that "[o]nce compulsory insurance has been effective, the aggregate size of the remaining gaps becomes small and the cost of filling them so nominal as to make unnecessary any great concern about where the cost falls or about possible conflicts of interest": *Id.*

³⁸*The Highway Traffic Act*, S.M. 1930, c. 19, s. 88(1). Previous Manitoba statutes regulating motor vehicle use contained no such provision: *The Motor Vehicle Act*, C.A.S.M. 1924, c. 131; *The Municipal Act*, R.S.M. 1913, c. 133.

³⁹"Drastic Punishments Are Provided Under Highway Legislation", *Manitoba Free Press*, February 6, 1930, 1.

⁴⁰*The Highway Traffic Act*, R.S.M. 1954, c. 112, s. 131(1).

Apart from increasing the statutory monetary satisfaction levels necessary to discharge a judgment,⁴¹ the provision's wording has remained quite constant over the years. The section has always provided that bankruptcy will not discharge an unpaid judgment for the purposes of restoring a suspended licence or registration. The current section 270(2), which prevents suspension where the unpaid judgment will be paid by insurance, was added in 1966.⁴² Section 270 no longer specifies that the suspended motorist must provide proof of future financial responsibility in addition to discharging the unpaid judgment;⁴³ this effect is now produced automatically by the necessity of carrying compulsory motor vehicle liability insurance in order to drive.

In Manitoba, as throughout North America, the historical origin and purpose of financial responsibility laws such as section 270 of *The Highway Traffic Act* were to induce motorists to insure voluntarily at a time when compulsory insurance did not exist.⁴⁴ The threat of licence and registration suspension due to an unpaid judgment was one inducement, or coercion, used to persuade motorists that it would be in their own self-interest to insure.⁴⁵ As we have seen, financial responsibility laws are not unique to Manitoba, but were prevalent across Canada and the United States for the same reason.

Much of the purpose served by financial responsibility laws has now been superseded by the law's mandating of compulsory motor vehicle liability insurance. However, the quaint conceptual framework of the old financial responsibility laws still continues to underpin the statutory licensing provisions of *The Highway Traffic Act* of Manitoba, even though legal reality is now in fact governed by the newer concepts of compulsory insurance and no-fault compensation. (It is a situation reminiscent of real property law, where modern needs are addressed through the idiom of medieval concepts of feudal relationship and obligation.) If *The Highway Traffic Act* were created and drafted today for the first time, its framework would be predicated and built on the language and concepts of compulsory, no-fault insurance, not on past legal solutions to historical problems.

To the extent that section 270 may still address situations when insurance coverage fails or is denied, it continues to serve its original function. It would appear, however, that section 270's role in licence and registration suspension accounts for only a small minority of all suspensions in Manitoba. In a one year period from September 1, 1995 to August 31, 1996, there were 17,827 licence suspensions imposed by the Registrar of Motor Vehicles. Of this number, 311 suspensions were due to unpaid judgments. During that same period, licence reinstatements occurred for 157 suspensions due to unpaid judgments (although those suspensions might

⁴¹The current satisfaction levels of \$180,000 for a judgment arising out of personal injury or death and \$20,000 for a judgment arising out of property damage were set by *An Act to Amend The Limitation of Actions Act and The Highway Traffic Act and to Repeal The Unsatisfied Judgment Fund Act*, S.M. 1987-88, c. 19, s. 2.

⁴²*The Highway Traffic Act*, S.M. 1966, c. 29, s. 240(2).

⁴³*An Act to Amend The Highway Traffic Act*, S.M. 1982, c. 30, s. 27.

⁴⁴Another device (now obsolete) that was developed in Canada to induce motorists to insure voluntarily was the passage of "impounding acts" to authorize police to seize uninsured cars at the scene of an accident. The vehicle was then held as security for payment of judgments although it would not be worth enough to satisfy a claim for severe injury: Keeton and O'Connell, *supra* n. 5, at 118.

⁴⁵Section 270 is not alone in creating the classic system of financial responsibility laws which exists in Manitoba. *The Highway Traffic Act*, C.C.S.M. c. H60, has a number of sections in this area. For example, section 271 provides for licence and registration suspension immediately following a motor vehicle accident unless proof of insurance can be shown. In an age of compulsory insurance, this section must be largely anachronistic. Sections 160-164 provide the mechanics of how proof of financial responsibility is to be given, set minimum standards of insurance to be proved, specify how to provide security for damages when required and set minimum levels for same.

originally date from any time, not just from the previous year). It is unknown how many of those reinstatements represent payment of the judgment in full or by instalment only.⁴⁶

Recent automobile insurance reform will reduce the role and effect of section 270 even further, at least in regard to motor vehicle accidents that occur within the province involving Manitobans. The pure no-fault personal injury system now conceptually focusses on "first party coverage" rather than on "third party liability"; in other words, personal injury benefits will accrue without any regard to ultimate cause or fault. Thus, the Manitoba Public Insurance Corporation (MPIC) no longer has any statutory subrogation rights to recoup the cost of personal injury benefits from liable motorists whose insurance coverage never existed, lapsed or has been denied.⁴⁷ Without subrogation rights, there will be no unpaid personal injury judgments in domestic accidents to trigger the operation of section 270 as before.

However, MPIC continues to have subrogation rights in regard to property damage sustained in motor vehicle accidents, so this may be a continuing source of unpaid judgments for the operation of section 270.⁴⁸ Since property damage judgments would typically be much smaller than most personal injury judgments, it might result in more suspended motorists attempting to pay off the judgment in instalments, since there is a more realistic chance of doing so than when a huge personal injury judgment is involved.

⁴⁶Letter from Brock MacMartin, Director of Highway Safety/Deputy Registrar, Driver and Vehicle Licencing Division, Manitoba Department of Highways and Transportation (December 2, 1996).

⁴⁷*The Manitoba Public Insurance Corporation Act*, C.C.S.M. c. P215, s. 80. MPIC continues to have subrogation rights where the accident occurs outside Manitoba or where a non-Manitoban is responsible for an accident in Manitoba: *The Manitoba Public Insurance Corporation Act*, C.C.S.M. c. P215, ss. 76-77.

⁴⁸*The Manitoba Public Insurance Corporation Act*, C.C.S.M. c. P215, ss. 26 and 39.

CHAPTER 4

FRAMEWORK FOR REFORM

A. INTRODUCTION

As we have seen, the original purpose of financial responsibility laws like section 270 of *The Highway Traffic Act* was to induce motorists to insure voluntarily at a time when there was no universal compulsory motor vehicle insurance. The social importance of this purpose warranted the use of strong measures like licence and registration suspensions to coerce compliance, because non-compliance meant that victims would often go uncompensated and the loss caused by the motor vehicle accident would therefore fall on the victim personally, on their families and on society's institutions and organizations which might have to step in to support an injured person.

However, Manitoba society has changed dramatically since section 270 was enacted. We now have a universal, compulsory, no-fault motor vehicle insurance system. For accidents occurring in Manitoba involving Manitobans, coverage gaps have been minimized and even when a motorist drives without insurance, lets coverage lapse or has coverage denied, the victim is compensated. MPIC can no longer even subrogate to recoup the costs of personal injury claims, only the costs of property damage. As shown in Chapter 3, section 270 suspensions are a tiny portion of total suspensions in this province. Its role may decrease further as MPIC's restricted subrogation rights limit unpaid domestic auto accident judgments to property damage claims.

It is time to examine whether the coercive system created by section 270 continues to serve a sufficiently justifiable social purpose or whether such sanctions may now be counterproductive or unfair. We will first consider this issue in regard to "domestic accidents" -- motor vehicle accidents which occur in Manitoba and involve Manitobans -- and then in regard to "foreign accidents".¹

B. DOMESTIC ACCIDENTS AND SECTION 270

What is the social purpose served by section 270 today? In regard to domestic accidents, it appears to us to function simply to enhance the ability of a public insurance company as a subrogated judgment creditor to recoup property damage costs (and any outstanding personal injury costs from judgments awarded before the current no-fault system was adopted). However, it is fair to inquire whether one type of judgment creditor should receive special legal treatment not available to other judgment creditors. While it may be perfectly legal and constitutional under section 270 to suspend a licence or motor vehicle registration for non-payment of a judgment (even if the debt has otherwise been extinguished by bankruptcy), one may legitimately ask: what justifies the maintenance of a special remedy to induce payment (even despite bankruptcy) of a judgment arising out of a motor vehicle accident, when other judgments

¹"Foreign" refers here to a jurisdiction other than Manitoba.

must rely on standard execution methods (which, moreover, end upon bankruptcy)? This issue may be illustrated by considering the following two fact situations.

(1) A Manitoba teen steals a car and causes an automobile accident in Winnipeg, injuring another driver. The teen has no licence. The victim will be as fully compensated by MPIC as the law allows for both personal injuries and property damage to the vehicle, including payment of the deductible. It is MPIC (not the victim) which will absorb a financial loss because it cannot subrogate to the victim's rights against the teen to recoup the cost of personal injury benefits, although it can subrogate in regard to the cost of the property damage and deductible. So MPIC obtains a judgment against the teen for that amount.

The teen is currently judgment proof but never declares bankruptcy. In due course, the teen becomes a productive citizen with a great future, but needs a vehicle for work. The Registrar of Motor Vehicles will not issue a driver's license due to the unpaid judgment, unless it is paid off in instalments.

(2) Another Manitoba teen gets drunk and severely beats someone in a fight. Since no automobiles are involved, the victim has no recourse to no-fault benefits from MPIC.² The victim goes to court and obtains a judgment against the teen for personal injury damages, but the teen is uninsured and judgment proof. The victim will have to rely on standard execution techniques (like garnishment of wages, writ of execution against goods, and so on) to try to get some payment on the judgment. This teen has no trouble obtaining a driver's licence, despite the unpaid judgment.

When comparing these two scenarios, one must admit that the driver was irresponsible in stealing a car and not being insured. However, the fighter was just as irresponsible. Why is the victim/judgment creditor of one type of tort empowered with a special remedy to coerce payment when the other is not?

The government has provided for only one other type of judgment creditor who has access to the enforcement mechanism of driver's licence and registration suspensions. Commencing January 1, 1996, defaulting on payment of court-ordered maintenance can result in summary cancellation or suspension of the defaulter's driver's licence and vehicle registration(s) until the arrears are paid.³ The Registrar of Motor Vehicles has no discretion in this matter and there is no appeal to the Licence Suspension Appeal Board.⁴

While drivers' licences, vehicle registrations and judgments arising out of traffic accidents are at least conceptually connected through a common relationship to motor vehicles and driving, the same cannot be said for driver's licences and maintenance arrears. The new remedy is an admitted effort simply to coerce compliance with maintenance orders by threatening removal of important privileges essential to work and leisure. Here the social policy of forcing family support obligations to be honoured is seen as so important and serious that an extra-ordinary coercive remedy is justified, even if it is conceptually unrelated to the breach.

Although it is possible to advance the argument that perhaps all judgment creditors should be given access to this enforcement mechanism no matter the source of their judgment, what the state in fact says right now is that the weight of the law in this area will be brought to bear only against deadbeat parents and deadbeat uninsured drivers, not against deadbeat fist fighters,

²The victim may be able to apply for some limited compensation under *The Criminal Injuries Compensation Act*, C.C.S.M. c. C305.

³*The Family Maintenance Act*, C.C.S.M. c. F20, s. 59.1.

⁴*The Highway Traffic Act*, C.C.S.M. c. H60, ss. 273.1 and 279(1.3).

deadbeat people who do not honour their commercial contracts or any other kind of defaulting judgment debtor.

Extending the special coercive mechanism of licence and registration suspension to cases of unpaid maintenance orders is based on a strong, current social consensus that makes such enforcement a priority both for government and society. While this demonstrates that sometimes special remedies are appropriate for certain types of situations, it obviously does not answer whether that special remedy continues to be justified for judgments (extinguished or otherwise) arising out of motor vehicle accidents. Can it really be said that, today, section 270 continues to serve a current and equally compelling social need? Or is its situation now more closely akin to other types of unpaid judgments which the law has never seen fit to empower with that particular special enforcement mechanism?

Nor can it really be said that section 270 serves as much of a deterrent, in the Commission's opinion. It is questionable whether the average driver is even aware of the possibility of licence and vehicle registration suspensions for an unpaid motor vehicle accident judgment. Without widespread knowledge of the sanction, deterrent effect becomes academic. Furthermore, it seems unlikely that people who are willing to engage in the sort of conduct that brings section 270 into play (such as unlicensed drivers, car thieves and so on) would be deterred in any event by the prospect of these sanctions.

Section 270 is not the only remedy that could be relied upon by the Manitoba Public Insurance Corporation to recoup its costs for property damage. Like any other judgment creditor, MPIC can garnish wages and execute against property. (Of course, such remedies end upon the judgment debtor's bankruptcy, unlike the coercion provided by section 270.)

A motorist who is at fault in an accident often faces other sanctions and consequences as well, like insurance premium surcharges and criminal charges (for which his or her licence can also be suspended).⁵ Such sanctions suffice to penalize the motorist for hazardous driving and can be relied upon to suspend the licence and vehicle registrations of the dangerous or the anti-social.

Another dramatic social development since the original enactment of section 270 is the changed significance and centrality of driving in our society. Driving is no longer a minority pastime or leisure activity for those who can afford to maintain a motor vehicle, as it once was. Today it is a mass activity that is a critical part of any person's ability to function in society, employment and life, especially in rural areas where alternative transport is not as readily available. Even in urban areas, buses and taxis cannot always adequately take the place of driving one's own motor vehicle. Driving may indeed be a privilege and not a right -- but it is nonetheless essential for most people.

In a society where mobility is critical to work and life, licence and vehicle registration suspension is an increasingly heavy sanction to impose and its consequences are farther-reaching than in earlier times. Ironically, the negative practical consequences of a section 270 suspension have increased due to social change at the same time as the historical purpose behind section 270 has decreased and been largely superseded by other social change.

⁵*The Highway Traffic Act*, C.C.S.M. c. H60, s. 264. This section provides for automatic suspension of a driver's licence upon being convicted of certain *Criminal Code* offences, committed by means of or in relation to a motor vehicle, as the case may be. The suspension lasts for one year in the case of a first conviction, and for five years in the case of a second or subsequent conviction. The offences which trigger such suspension include driving offences like causing death by criminal negligence, dangerous driving, leaving the scene of an accident, impaired driving, refusing a breathalyzer test, driving while disqualified, as well as offences against property such as car theft, mischief and possession of property obtained by crime.

Indeed, it is arguable that the sanction imposed by section 270 is not only unfair in today's world, but actually counterproductive. To the extent that suspended drivers will nevertheless simply drive without a licence, they will constitute an ongoing uninsured hazard on the road.

In the absence of a compelling social policy reason, one type of judgment creditor should not be given a collection advantage over other types of judgment creditors. We recognize that, sometimes when the government is itself a creditor, it will confer a statutory priority or other advantage on itself to ensure that its claim will receive preferential treatment -- for example, the priority which the government has legislated for itself against other creditors of a merchant for payment of provincial sales tax collected by that merchant.⁶ However, while the Manitoba Public Insurance Corporation is a Crown corporation and thus connected to government,⁷ its essence is fundamentally that of a commercial enterprise established for the purpose of acting as insurer to provincial motorists. In our view, this does not justify according special collection privileges. MPIC should collect its judgment debts (whether subrogated or not) in the same manner as any other commercial enterprise.

Finally, we note with concern section 270's operation despite bankruptcy, in contradiction of the "fresh start" purpose of federal bankruptcy law (which in our view has correctly been recognized and dealt with in American law although not in Canadian law).

The Commission is of the opinion that, in regard to domestic accidents, section 270 no longer serves a sufficiently justifiable social purpose to warrant continued suspension of driver's licences and vehicle registrations due to an unpaid motor vehicle judgment. Although we recognize why section 270 was originally enacted, our society has now changed in two fundamentally important ways, as discussed above: the advent of universal, compulsory, no-fault motor vehicle insurance and the central importance of driving to citizens of a modern, mobile society.

These changes necessitate a consideration of what legitimately should be the legal consequences to that small class of uninsured Manitobans who cause motor vehicle accidents in Manitoba and against whom MPIC obtains a judgment for the cost of property damage (the only civil legal action to which such tortfeasors can now be liable in our province). In our opinion, the legal consequences should be:

- the judgment debtor should pay the judgment (as expected of every judgment debtor) and, in default of payment, should be subject to standard execution procedures, like everyone else, that would cease upon bankruptcy;
- the person should be held to account under a provincial offence or a *Criminal Code* offence for whatever wrongdoing has taken place in the accident, including licence and registration suspension for serious offences;
- a driver who is responsible for an accident should pay whatever surcharge, additional premium or other charge that MPIC is statutorily empowered to impose. Payment of such surcharges should be (as now) enforced by the potential sanction of licence and registration suspension.⁸

⁶*The Retail Sales Tax Act*, C.C.S.M. c. R130, s. 10.

⁷The government may, for temporary purposes, advance money to MPIC from the Consolidated Fund (for example, to cover unexpected losses until they can be recouped by subsequent premium increases). The government may also guarantee loans made to MPIC. However, there are severe restrictions on the extent to which the government may take, use or appropriate any of MPIC's property or profits: *The Manitoba Public Insurance Corporation Act*, C.C.S.M. c. P215, ss. 8, 11 and 14.

⁸*The Highway Traffic Act*, C.C.S.M. c. H60, s. 269(2)(b).

However, the Commission sees no continued justifiable reason to penalize these judgment debtors in a way that other judgment debtors are not. Nor is there a justifiable reason to empower a certain kind of judgment creditor in a way that virtually no other judgment creditor enjoys. We recognize that section 270 is a helpful collection tool for MPIC, but that corporation has or could have access to other, more appropriate ways to achieve the same result.

C. FOREIGN ACCIDENTS AND SECTION 270

This issue must next be considered in regard to "foreign accidents", which involve unpaid judgments resulting from three basic possible fact scenarios: (1) a motor vehicle accident in a foreign jurisdiction involving foreign parties, one of whom then moves to Manitoba and wants to get a driver's licence or register a vehicle here; (2) a motor vehicle accident in Manitoba involving a Manitoban and a non-resident; (3) a motor vehicle accident in a foreign jurisdiction involving a foreigner and a Manitoban to whom MPIC coverage is denied or otherwise not available.

In our opinion, the lack of continued justification for section 270 actually gets stronger, not weaker, when considering scenarios involving non-Manitobans. For example, in the first scenario where a foreign judgment debtor moves to Manitoba and is prevented from obtaining a licence here because of the outstanding judgment elsewhere, what possible interest does the state -- the province of Manitoba -- have in preventing this person from obtaining a licence here? Neither the state nor a resident insurer has anything financial at stake. The social justification behind section 270 has already been examined and found wanting. The only possible reason why Manitoba would want to enforce section 270 in this situation is considerations of comity and reciprocity.

Comity means that

one sovereignty . . . [extends recognition] within its territory to the legislative, executive, or judicial act of another sovereignty, having due regard to rights of its own citizens. . . . In general, [the] principle of "comity" is that courts of one state or jurisdiction will give effect to laws and judicial decisions of another state or jurisdiction, not as a matter of obligation but out of deference and mutual respect.⁹

However, in the absence of any other obligation or reason to recognize a purely foreign suspension having no connection to Manitoba state interests, the Commission is of the opinion that comity is simply an insufficient reason to deny a driver's licence to a new Manitoba resident.

If there is a reason to impose section 270 suspensions in regard to foreign judgments, it must be found in the need for reciprocity -- "the relation existing between two states when each of them gives the subjects of the other certain privileges, on condition that its own subjects shall enjoy similar privileges at the hands of the latter state."¹⁰

Some provinces or states might not continue to suspend the licences and registrations of their citizens who owe unpaid judgments to a Manitoban victim or insurer if the province of Manitoba does not reciprocally coerce our own judgment debtors who owe judgments to victims or insurers in the foreign jurisdiction. However, what impact would this really have? We will examine this issue in the context of the three basic fact situations in this area.

⁹*Black's Law Dictionary* (6th ed., 1990) 267.

¹⁰*Id.* at 1270.

(1) Following repeal of our section 270, a Manitoban with an unpaid judgment moves to Ontario. Due to our non-reciprocal status, Ontario does not deny that person a licence, thus ending the Manitoban judgment creditor's ability to coerce payment through licence suspension.

However, if our section 270 is repealed, Manitoba itself would not suspend the licence or registrations of a resident judgment debtor in similar circumstances, so why should the province care if Ontario would not suspend a judgment debtor who moves there? Ontario's lack of action does not affect any Manitoban state interest. Moreover, even if Ontario or another foreign jurisdiction does continue (out of a sense of comity) to suspend a Manitoba judgment debtor who moves there, it is equally of no concern to our state interests how that state deals with its new residents.

(2) Following repeal of our section 270, an uninsured non-resident causes an accident (in Manitoba or elsewhere) which injures a Manitoban and results in an unpaid judgment. Due to our non-reciprocal status, the judgment debtor's home state will not reciprocate and suspend his or her licence and registration, again ending the Manitoba judgment creditor's ability to coerce payment through licence suspension.

Again, this situation does not affect any state interest of Manitoba. However, it would have a negative impact on the financial interests of MPIC which would have to rely on conventional means to execute on its subrogated judgment for property damage and personal injury benefits (still available in these circumstances) which it has paid to the Manitoban victim. On the other hand, if section 270 were repealed, MPIC would not have access to this remedy in a domestic situation either, so why should it have such a remedy simply because the judgment debtor is a foreigner?

(3) Following repeal of our section 270, an uninsured Manitoban causes a motor vehicle accident in another province or state and injures a foreign victim. If the lack of insurance coverage stems from some breach or forfeiture on the part of the Manitoban driver (for example, knowingly misrepresenting a material fact when applying for insurance,¹¹ fraud¹² or nonpayment of any additional premium assessed by MPIC),¹³ the driver's own claim for property damage will be denied as a consequence by MPIC, but not his or her claim for personal injuries.¹⁴ However, any denial of coverage to the driver would not affect the victim's right to be fully compensated by MPIC.¹⁵ In these circumstances, the absence of section 270 would be irrelevant to the victim.

However, more rarely, an accident may be caused in a foreign jurisdiction by a Manitoban driver who is absolutely uninsured -- for example, a Manitoban without a driver's licence who steals a car in Manitoba, drives it to a foreign jurisdiction and causes an accident there. If the foreign victim does not carry uninsured motorist coverage or does not live in a jurisdiction with a no-fault auto insurance system, the victim will personally have to bear any loss which results from an unpaid judgment for personal injury and property damage. If the victim carries uninsured motorist coverage or lives in a jurisdiction with no-fault auto coverage, the subrogated insurer will bear the loss. In the absence of section 270, this victim or subrogated insurer, as the case may be, will not be able to rely on reciprocal licence and registration suspension in Manitoba to coerce payment from the Manitoban judgment debtor.

¹¹*The Manitoba Public Insurance Corporation Act*, C.C.S.M. c. P215, s. 37(b).

¹²*The Manitoba Public Insurance Corporation Act*, C.C.S.M. c. P215, s. 37(d).

¹³*The Manitoba Public Insurance Corporation Act*, C.C.S.M. c. P215, ss. 55 and 57.

¹⁴*The Manitoba Public Insurance Corporation Act*, C.C.S.M. c. P215, ss. 37 and 80(i).

¹⁵*The Manitoba Public Insurance Corporation Act*, C.C.S.M. c. P215, s. 40.

This is the most difficult scenario, especially where the victim will potentially bear the loss personally. However, one must keep three things in mind: (1) conventional enforcement techniques are available to enforce a foreign civil judgment against a Manitoban if the judgment is registered under *The Reciprocal Enforcement of Judgments Act*,¹⁶ (2) uninsured motorist coverage is very common, if not mandatory, in most jurisdictions that do not have no-fault schemes, and (3) the victim is in the same situation as if a Manitoban had come to his or her jurisdiction and assaulted the victim or committed some other tort. In that scenario, the victim would also be restricted to enforcing any resulting judgment by conventional means only.

Having considered the various foreign accident scenarios, the Commission is of the opinion that nothing about these factors would compel retention of section 270. Admittedly, in certain situations some reciprocity-related consequences may affect the financial interests of MPIC since it may be more difficult to collect subrogated judgments from non-residents, but these consequences are similar to those which MPIC will also face regarding domestic judgments. Moreover, the same arguments concerning why special remedies should not be given to certain judgment creditors and not others apply with equal force to the collection of foreign judgments.

D. RECOMMENDED REFORM

For the foregoing reasons, the Manitoba Law Reform Commission recommends that the province of Manitoba should no longer suspend, revoke or deny a Manitoba resident's driver's licence or vehicle registration by reason only of an unpaid motor vehicle accident judgment owed in this jurisdiction or elsewhere.

RECOMMENDATION 1

Section 270 of The Highway Traffic Act should be repealed. The province of Manitoba should not suspend, revoke or deny a Manitoba resident's driver's licence and vehicle registration by reason only of an unpaid motor vehicle accident judgment owed in this jurisdiction or elsewhere.

Upon repeal of section 270, there are two possible transitional provisions that could be created, each of which carries certain disadvantageous consequences.

The first possible transitional provision would be to discontinue the penalty of licence and registration suspensions only in regard to unpaid motor vehicle accident judgments awarded after the effective date of the repeal. In other words, judgments awarded before the repeal of section 270 would continue to be enforced by suspensions for non-payment. People making instalment payments on these pre-repeal judgments (whether extinguished in bankruptcy or not) would have to continue making the payments until the statutory satisfaction level is met.

The problem with this scenario is that it is glaringly arbitrary. If section 270 should be repealed because it operates unfairly and without its original social justification, it must be acknowledged that this state of affairs has existed for several decades (essentially since the advent of compulsory universal motor vehicle insurance in Manitoba). To deny the benefits of the new regime to those already suspended will result in the government enforcing a system based on outdated unfairness at the same time as it implements a system based on rectification of that acknowledged unfairness. This result will seem contradictory and arbitrary.

The second possible transitional provision would be to make the new system applicable to all Manitobans. In other words, since the legislation would no longer require satisfaction of an

¹⁶*The Reciprocal Enforcement of Judgments Act*, C.C.S.M. c. J20.

unpaid judgment as a prerequisite to licensing and vehicle registration, even drivers who are already suspended due to unpaid judgments incurred before the repeal could apply for licences and vehicle registration. While this result seems more even-handed as a response to the pre-existing and current unfairness of section 270, it has the unfortunate result of encouraging those suspended drivers who are making instalment payments under court orders to default and then simply apply for a licence under the new regime. Yet instalment payers alone cannot be singled out for continuance of their suspensions, because that would penalize the very drivers who "played by the rules" and arranged to make payments, while suspended judgment debtors who could not or would not make instalment arrangements under the old regime could apply under the new system for a licence without obstruction.

While both transitional scenarios involve some negative consequences, the Commission believes that (on the whole) it would be better that, upon repeal of section 270, any driver who has not satisfied a motor vehicle accident judgment (regardless of whether it was awarded before or after repeal) will nevertheless be able to be licensed and to register a vehicle under *The Highway Traffic Act*.

RECOMMENDATION 2

The legal effect of repealing section 270 should be the same for all judgment debtors regardless of the date those judgments were awarded.

In a parallel manner to the repeal of section 270, subsection 166(1) of *The Highway Traffic Act* should also be repealed since it acts similarly to suspend for the same reasons a non-resident's "privilege" to drive or have a motor vehicle within Manitoba.

RECOMMENDATION 3

Subsection 166(1) of The Highway Traffic Act should be repealed. The province of Manitoba should not suspend a non-resident's privilege of driving, using or having a motor vehicle in Manitoba by reason only of an unpaid motor vehicle accident judgment owed in this jurisdiction or elsewhere.

Although repeal of section 270 will end the reciprocal system created by that section concerning unpaid motor vehicle accidents, the potential for reciprocal treatment will continue to exist by virtue of the general reciprocity provision contained in section 167 of *The Highway Traffic Act*. Therefore, the Commission recommends that section 167 be amended to clarify that it does not apply in the case of a suspension, revocation or disqualification based on the existence of an unpaid motor vehicle accident judgment in any jurisdiction.

RECOMMENDATION 4

Section 167 of The Highway Traffic Act should be amended to clarify that the general reciprocity it creates does not apply in the case of a suspension, revocation or disqualification based on the existence of an unpaid motor vehicle accident judgment in any jurisdiction.

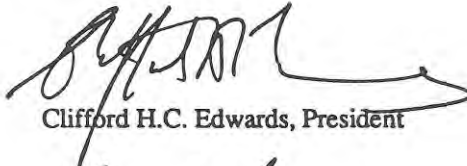
CHAPTER 5

LIST OF RECOMMENDATIONS

The following is a list of the recommendations in this Report:

1. Section 270 of *The Highway Traffic Act* should be repealed. The province of Manitoba should not suspend, revoke or deny a Manitoba resident's driver's licence and vehicle registration by reason only of an unpaid motor vehicle accident judgment owed in this jurisdiction or elsewhere. (p. 25)
2. The legal effect of repealing section 270 should be the same for all judgment debtors regardless of the date those judgments were awarded. (p. 26)
3. Subsection 166(1) of *The Highway Traffic Act* should be repealed. The province of Manitoba should not suspend a non-resident's privilege of driving, using or having a motor vehicle in Manitoba by reason only of an unpaid motor vehicle accident judgment owed in this jurisdiction or elsewhere. (p. 26)
4. Section 167 of *The Highway Traffic Act* should be amended to clarify that the general reciprocity it creates does not apply in the case of a suspension, revocation or disqualification based on the existence of an unpaid motor vehicle accident judgment in any jurisdiction. (p. 26)


This is a Report pursuant to section 15 of *The Law Reform Commission Act*, C.C.S.M. c. L95, signed this 24th day of March 1997.



Clifford H.C. Edwards, President



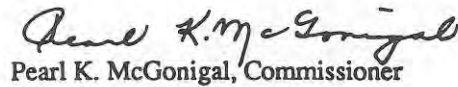
John C. Irvine, Commissioner



Gerald O. Jewers, Commissioner



Eleanor R. Dawson, Commissioner



Pearl K. McGonigal, Commissioner

REPORT ON SECTION 270 OF *THE HIGHWAY TRAFFIC ACT*

EXECUTIVE SUMMARY

EXECUTIVE SUMMARY

INTRODUCTION

Section 270 of *The Highway Traffic Act* of Manitoba causes the automatic suspension of the driver's licence and vehicle registrations of any uninsured person who fails within 30 days to satisfy a judgment rendered by a court in Canada or the United States in any motor vehicle case involving death, personal injuries or property damage above \$1,000. This section also provides that the suspension is not affected if the judgment debtor declares bankruptcy (which otherwise legally extinguishes the judgment debt).

The suspension remains in effect until the debtor pays a statutorily-set minimum amount of the judgment. A suspended debtor who obtains a court order allowing payment of the judgment by instalments may have his or her licence and registration restored pending prompt payment of each instalment.

The Manitoba Law Reform Commission's Report on *Section 270 of The Highway Traffic Act* examines the historical origin and purpose of section 270 to assess its continuing purpose and justification. The Commission concludes that section 270 no longer serves a sufficiently justifiable social purpose and recommends that it be repealed.

THE ORIGIN AND PURPOSE OF SECTION 270

Provisions similar to section 270 are common across Canada and the United States and were enacted earlier this century as "financial responsibility laws". Their original purpose was to induce motorists to insure voluntarily at a time when there was no compulsory motor vehicle insurance. The social importance of achieving this purpose warranted the use of strong measures like licence and registration suspensions to coerce compliance, because non-compliance meant that the victims of uninsured motorists would often go uncompensated. The loss caused by the motor vehicle accident would therefore fall on the victim personally, on their families and on society's institutions and organizations which might have to help support an injured person.

THE NEED FOR REFORM

Manitoba society has, however, changed dramatically since section 270 was enacted. We now have a universal, compulsory, no-fault motor vehicle insurance system which minimizes coverage gaps. This being the case, section 270 is no longer needed to serve the purpose for which it was originally enacted and is, in that regard, essentially obsolete.

Another dramatic change in our society concerns the significance and social centrality of driving. Driving is no longer a minority pastime or leisure activity, as it once was. In a society where mobility is critical to work, employment and life, licence and vehicle registration suspension is an increasingly heavy sanction to impose and its consequences are farther-reaching than in earlier times. Ironically, the negative practical consequences of a section 270 suspension have increased due to social change at the same time as the historical purpose behind section 270 has decreased and been largely superseded by other social change.

Although section 270 no longer serves the purpose for which it was enacted, it continues to function in a way unforeseen by its original legislators. In regard to today's domestic accidents, section 270 acts essentially as a special collection tool for the universal motor vehicle insurer in this province, the Manitoba Public Insurance Corporation (MPIC). As subrogated judgment creditor, MPIC uses section 270 to recoup the cost of property damage claims it has paid out and

the cost of any outstanding personal injury claims from judgments awarded before the current no-fault system was adopted (which has removed MPIC's subrogation rights in regard to the costs of domestic personal injury claims).

All judgment creditors, including MPIC, have a range of collection tools, including garnishment of wages, attachment of debts, and seizure of goods and land, which may be used to enforce the payment of judgments. However, the Commission questions why one type of judgment creditor should be favoured with a special and powerful collection tool unavailable to virtually all other judgment creditors -- a collection tool that is an especially coercive measure since it imposes a heavy sanction in a modern society and (unlike other collection tools) survives the bankruptcy of the debtor. Section 270 no longer operates to protect the victim of a motor vehicle accident (who is now assured of compensation due to our universal compulsory no-fault automobile insurance system), but simply to favour the subrogated insurer.

Nor are there any compelling reasons why section 270 need be retained in order to enforce foreign unpaid motor vehicle judgments. In certain situations, of course, some reciprocity-related consequences may affect the financial interests of MPIC since it may be more difficult to collect subrogated judgments from non-residents, but these consequences are similar to those which MPIC will also face regarding domestic judgments. Moreover, the same arguments concerning why special remedies should not be given to certain judgment creditors and not others apply with equal force to the collection of foreign judgments.

RECOMMENDATION FOR REFORM

The main recommendation for reform made in this Report by the Manitoba Law Reform Commission is that section 270 of *The Highway Traffic Act* of Manitoba should be repealed. The province of Manitoba should not suspend, revoke or deny a Manitoba resident's driver's licence and vehicle registrations by reason only of an unpaid motor vehicle accident judgment owed in this jurisdiction or elsewhere.

SOMMAIRE DU RAPPORT SUR L'ARTICLE 270 DU *CODE DE LA ROUTE*

SOMMAIRE

INTRODUCTION

L'article 270 du Code de la route du Manitoba prévoit la suspension automatique du permis de conduire et de l'immatriculation de chaque véhicule automobile de toute personne non assurée qui n'exécute pas dans les 30 jours un jugement rendu par un tribunal du Canada ou des États-Unis à l'issue d'une action en dommages-intérêts intentée par suite de blessure corporelle, de décès ou de dégâts matériels d'une valeur supérieure à 1 000 \$. Cet article précise également que si le débiteur judiciaire déclare faillite, cela n'a aucun effet sur la suspension (ce qui habituellement annule légalement la créance constatée par jugement).

La suspension demeure en vigueur jusqu'à ce que le débiteur judiciaire paie un montant minimal du jugement prévu par la loi. Un débiteur judiciaire frappé d'une suspension qui obtient une ordonnance de la cour autorisant le paiement du jugement par versements peut voir la suspension annulée si le paiement de chaque versement est effectué promptement.

Le rapport de la Commission de réforme du droit du Manitoba portant sur l'article 270 du Code de la route examine l'origine et l'objectif de l'article 270 pour évaluer sa raison d'être de nos jours. La Commission conclue que l'article 270 ne répond plus à un objectif qui soit suffisamment justifiable pour la société et recommande qu'il soit abrogé.

ORIGINE ET OBJECTIF DE L'ARTICLE 270

Les dispositions similaires à l'article 270 sont répandues au Canada et aux États-Unis; elles ont été adoptées plus tôt au cours du siècle comme "lois de solvabilité". Au départ, leur objectif était d'encourager les automobilistes à s'assurer volontairement à une époque où l'assurance automobile n'était pas obligatoire. L'importance pour la société d'atteindre ce but justifiait l'utilisation de mesures strictes comme la suspension du permis de conduire et de l'immatriculation afin d'encourager les gens à s'assurer, parce que lorsqu'ils ne l'étaient pas, leurs victimes ne recevaient souvent aucune compensation. La perte causée par l'accident automobile était souvent assumée par la victime elle-même, par sa famille, ainsi que par les établissements et les organisations de la société qui pouvaient devoir aider financièrement la personne blessée.

NÉCESSITÉ DE LA RÉFORME

La société manitobaine a cependant changé de façon importante depuis l'adoption de l'article 270. Nous disposons maintenant d'un système universel et obligatoire d'assurance automobile sans égard à la faute qui atténue les conséquences d'une absence de couverture. Par conséquent, l'article 270 n'a plus la raison d'être pour laquelle il avait été adopté et est donc, à cet égard, essentiellement désuet.

L'importance, notamment sur le plan social, de la conduite automobile constitue un autre changement de taille dans notre société. La conduite automobile n'est plus le passe-temps d'une minorité ou une activité récréative comme autrefois. Dans une société où la mobilité est essentielle pour le travail, l'emploi et la vie, la suspension du permis de conduire et de l'immatriculation est une peine de plus en plus lourde à imposer, et ses conséquences ont beaucoup plus d'effet qu'autrefois. Ironiquement, d'un point de vue pratique, les conséquences négatives d'une suspension en vertu de l'article 270 ont augmenté en raison de changements sociaux tandis que l'objectif original de l'article n'est plus aussi pertinent puisque d'autres changements sociaux apportent de nouvelles solutions.

Quoique que l'article 270 ne serve désormais plus l'objectif pour lequel il avait été adopté, il continue d'avoir des répercussions non prévues par les législateurs de l'époque. En ce qui a trait aux accidents qui surviennent dans la province aujourd'hui, l'article 270 sert essentiellement d'outil de recouvrement spécial pour l'assureur universel de véhicules automobiles dans cette province, la Société d'assurance publique du Manitoba (SAPM). Comme créancier judiciaire subrogé, la SAPM utilise l'article 270 pour se faire rembourser le coût des actions en dommages-intérêts intentées par suite de dégâts matériels qu'elle a payé et le coût de toute action existante intentée par suite de blessure corporelle en vertu de jugements accordés avant l'adoption du système actuel d'assurance automobile sans égard à la faute (qui a entraîné l'abolition du droit de subrogation de la SAPM en ce qui a trait aux coûts d'actions en dommages-intérêts pour des blessures corporelles subies au cours d'un accident survenu dans la province).

Tous les créanciers judiciaires, y compris la SAPM, disposent d'un éventail d'outils de recouvrement dont la saisie-arrêt de salaire, la saisie-arrêt de créance et la saisie de biens personnels et de bien-fonds, qui peuvent être utilisés pour exécuter le paiement des jugements. Cependant, la Commission remet en question le fait qu'un type de créancier judiciaire soit favorisé par un outil de recouvrement, spécial et puissant, inaccessible à presque tous les autres créanciers judiciaires -- un outil de recouvrement qui est une mesure particulièrement coercitive étant donné qu'il impose une peine sévère dans une société moderne et qu'il demeure après la faillite du débiteur judiciaire (contrairement aux autres outils de recouvrement). L'article 270 ne sert désormais plus à protéger la victime d'un accident automobile (qui est maintenant assurée de recevoir une compensation grâce à notre système universel et obligatoire d'assurance automobile sans égard à la faute), mais favorise simplement l'assureur subrogé.

Il n'y a pas non plus de raisons importantes de conserver l'article 270 afin d'exécuter les jugements impayés d'accidents automobiles survenus à l'extérieur de la province. Dans certaines situations, bien sûr, des conséquences liées à la réciprocité peuvent avoir un effet sur les intérêts financiers de la SAPM puisqu'il peut être plus difficile de recouvrer des jugements subrogés de non-résidents, mais ces conséquences sont similaires à celles auxquelles la SAPM fait face pour les jugements à la suite d'accidents survenus dans la province. De plus, les mêmes arguments contre l'octroi de recours spéciaux à certains créanciers judiciaires plutôt qu'à d'autres s'appliquent avec une force égale au recouvrement de jugements découlant d'accidents survenus à l'extérieur de la province.

RECOMMANDATIONS DE RÉFORME

La recommandation principale de réforme contenue dans ce rapport de la Commission de réforme du droit du Manitoba est d'abroger l'article 270 du Code de la route du Manitoba. La Province du Manitoba ne devrait pas suspendre, révoquer ni refuser un permis de conduire ou l'immatriculation d'un véhicule uniquement à cause d'un jugement rendu à la suite d'un accident automobile et qui demeure impayé dans cette province ou ailleurs.