

Report for Mid-Winter Meeting  
February 4, 2010  
Insurance Law Section  
CBA – New Brunswick

Report Date: 25 January 2010

Insurance Act Amendments

The Office of the Superintendent of Insurance initiated a meeting in Fredericton, held September 18, 2009, concerning pending amendments to the Insurance Act. The meeting was attended by Deborah McQuade, the Superintendent of Insurance; David Weir, Deputy Superintendent; Edward Keyes, past president of the New Brunswick Branch of the CBA; David O'Brien, Civil Litigation Section Chair, and the undersigned.

The province has been discussing harmonized insurance legislation with Nova Scotia and Prince Edward Island for a number of years. This would exclude automobile insurance. Whether this project will ever be completed is open to speculation. Independent of that effort, New Brunswick is examining its Insurance Act with a view to making some amendments, including, but not confined to limitation periods. This will follow somewhat the legislative amendments progressing in Alberta and British Columbia. Most significantly for the New Brunswick CBA, is the expressed desire of the government to hear the views of the CBA, prior to the legislation becoming law. The proposed legislation is not expected to be ready for review until at least the spring of 2010. At that time the amendments may only deal with Parts X & XI of the Act (accident, sickness and disability).

Hopefully when the proposed changes to the Insurance Act are made available, they will be widely scrutinized by our membership, for a constructive response.

Insurance Section: National Meeting

The National Meeting of the Insurance Section was held in Banff, on October 24, 2009, in conjunction with a co-sponsored CLE program by the Civil Litigation and Insurance

Law Sections. In addition to representation from New Brunswick, Section Chairs were present from British Columbia, Alberta, Quebec, Nova Scotia and Newfoundland.

Amendments are underway for insurance legislation in British Columbia and Alberta. Ancillary practice and law reform matters were also discussed. Quebec is now experimenting in one jurisdiction with a "single expert" rule, to reduce the cost of all parties having their own expert. There is a better reception from the Bar to the effectiveness of this rule on damages issues, than on liability issues. The number of claims filed in the test jurisdiction is noticeably down from what had been typical. British Columbia is expected to follow suit to consider a one expert rule, and is also expecting simplified rules to address the problems arising from the number of non-represented parties in the system.

Apology legislation has been introduced in Nova Scotia and will be introduced in Newfoundland. Alberta is dealing with the issue of whether to have a nominee present at a psychiatric Independent Medical Examination, which is meeting resistance from the relevant Medical College in Alberta.

### The Cap

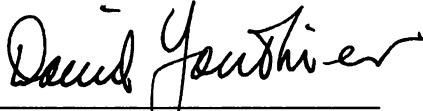
The constitutional challenge to the minor injury cap is proceeding in New Brunswick, expected to arrive at the trial stage in 2011. The Nova Scotia Court of Appeal has of course dismissed the appeal in *Hartling v. Nova Scotia* 2009 CarswellNS 685, on December 15, 2009, and the Supreme Court of Canada refused leave in *Morrow v. Zhang* 2009 CarswellAlta 2096, on December 17, 2009.

The Nova Scotia Superintendent of Insurance released a Discussion Paper during the week of January 18, 2010, inviting input on alternatives to the cap, with responses due by February 15, 2010. Nova Scotia may adopt the deductible method now used in Newfoundland. The Newfoundland Insurance Section Chair participated in a round table of stake holders in that province in the summer of 2009, to consider retrospectively the success of the deductible in that province in the past five years. There was apparently no vehement opposition expressed to the deductible method.

### New Brunswick Insurance Section

The New Brunswick Insurance Section would benefit from broad based participation from Section membership. The positions of Vice-Chair, Secretary, Communications Liaison and Legislative and Law Reform Liaison remain unfilled. The pending amendments to the Insurance Act will hopefully provide an opportunity for a collaborative participation from the Insurance Section.

The Insurance Section will meet at CBA Mid-Winter, Delta Beausejour, Moncton, on Saturday February 6, 2010, at the Sections' Breakfast, scheduled for 7:30 – 8:45 a.m. I look forward to seeing you all there.

A handwritten signature in black ink that reads "David Gauthier". The signature is written in a cursive style with a horizontal line underneath it.

David Gauthier  
Insurance Section Chair  
CBA, New Brunswick