
From: Terry Evenson [terry.evenson@cba-alberta.org]
Sent: Tuesday, October 06, 2009 2:26 PM
To: Insurance
Subject: Insurance Amendment Act Consultation

This has been received from the Administration of Justice Committee and has not been vetted or approved by the Canadian Bar Association Alberta Executive. Please consider this submission from the committee as part of the public consultation process. We realize this is being submitted past the due date and may not be accepted.

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Superintendent of Insurance
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Dear Sir:

Re: *Opinion on Consultation on Proposed Regulation for the Amended Insurance Act*
Government of Alberta.

Introduction

- #1 I am the Chairman of the Administration of Justice Committee for the Canadian Bar Association (Alberta.) I have been asked to comment on the above noted document, and to remit same to yourself.
- #2. I practice exclusively criminal law, with a heavy emphasis on Impaired Driving. The majority of this document is outside my expertise. As such, you may wish to give my opinion less weight

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than that of my betters in the civil bar.

#3. To this end, I have taken the following steps:

- a. I have reviewed this document,
- b. On **September 18, 2009** I wrote a draft of this letter and circulated it to other members of the committee for comment,
- c. Where any member of the committee has expressed an opinion drastically different from that expressed in this letter, I have either:
 - i. Modified my own opinion, in deference to their expertise, or
 - ii. Included their opinion as an attachment to this letter, or
 - iii. Modified the letter to include both opinions.

Opinion

In my opinion, the majority of this document deals with proposed amendments to the Alberta *Insurance Act* which are, for the most part in the public interest. There are a total of 15 points, which I will discuss below. My opinion is stated in **bold**, under the point.

1. Insurance companies must notify policyholders of various limitation periods,

This is not controversial. We should support it.

2. There will be unspecified transitional provisions,

This is not controversial. We should support it.

3. Insurance companies must participate in a consumer complaint "Ombudsman" program.

This is not controversial. We should support it.

4. Most documents would be able to be done by electronic transactions, except for notices, changing the beneficiary, or changing the ownership of the insurance policy.

This seems to be a reasonable accommodation to meet the changing needs of modern business. The exceptions are all things that one would normally think of as requiring a "live" signature. I would suggest we support this.

5. Classes of insurance will be brought into line with the current federal system.

I do not know enough about this issue to offer an opinion. Instinctively, I would support simplifying government systems wherever possible.

6. Disclosure to the consumer where the insurer of the group insurance policy pays compensation

to the insured (which can raise possible conflict of interest issues.)

This is not controversial. We should support it.

7. Insurance companies will not be able to use a group policy holder to negotiate and settle claims on behalf of the insurance company.

This is not controversial. We should support it.

8. There will be a "cooling off period" for accident and sickness policies.

This is not controversial. We should support it.

9. There will be a list of the contractual rights of the insured under certain types of contracts.

This is not controversial. We should support it.

10. There will be a list of what type of information is confidential between the insurer and the group policy holder.

Initially, I felt that this was not a controversial section. However, I am indebted to Katherine E. Bilson for her insightful analysis on this topic. She has correctly pointed out that, as this section deals with confidential information, it would likely be prudent to have "confidential information" defined in the regulations to be consistent with the definition in PIPA, as well as to include a flexible list of other possible types of confidential information. She expressed concern that while the overall proposal is good, it may be too vague in the form indicated.

11. There will be a new section dealing with "innocent co-insured" parties, which will basically state that they have the right to claim their portion of a loss where the loss is caused by the intentional or criminal act of one of the other co-owners.

This is not controversial. We should support it.

12. To get the benefit of point "11," the co-insured must cooperate with the insurance company.

In my opinion, this seems to be a reasonable request. For example, if the co-insured was somehow participating in the criminal act in question, but there was not a strong enough case to lay charges, then without this provision they might be able to claim the loss. It is safe to assume that if the person has been participating in the criminal act, they will not wish to discuss this with the insurance adjuster. The main scenario I'm thinking of here is when the accused is running a grow-up, which (from a fire-safety perspective) is very dangerous.

Katherine E. Bilson also commented on this section. She states that while the proposed regulation references the provision of "all relevant information and any documents," it is not clear who makes the determination of relevancy. She points out that the co-insured may not necessarily understand that particular information could be relevant to a claim.

13. There insurance companies will be allowed to exclude coverage from fire loss where the

property is vacant for a period of more than 30 days.

I may be misinterpreting this section, so advice from someone more familiar with civil litigation would likely be a great benefit. As a layperson, I can think of no good reason for this provision. Many law-abiding people leave their homes for periods longer than 30 days (i.e. "snowbirds.") If "vacant" applies to this scenario, I would be against this amendment.

Katherine E. Bilson shared my concern on this issue. She also pointed out that, in addition to my "snow-bird" example, there must be numerous people with recreational properties in Alberta who would be affected by such a regulation. She agrees that this is not in the best public interest nor Alberta's economic interest.

14. There will be a disclosure of the dispute resolution process.

Initially, I felt that this was not a controversial section. However, Katherine E. Bilson fairly points out that it might be helpful to include some points in the educational materials about the nature of the DRP and the fact that the policyholder should understand that he/she is an active participant in the process, one whose concerns and questions should be addressed in equal measure to the insurer's.

15. The statutory conditions of section 540 of the *Insurance Amendment Act, 2008* will not apply to certain listed contracts.

The brief indicates that this rule would apply only to causes of action that are "not as complicated." I do not know enough about civil litigation to offer an opinion on this issue.

If the "statutory conditions" generally benefit the consumer, I would be in favour of retaining them.

I trust that you find this to be in good order.

Alan Pearse
Barrister & Solicitor