

CALGARY PROF EXPLORING REFORMS TO PRIVACY AND ONLINE ABUSE LAWS

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say what the tort of privacy should look like, but it is another thing for someone to actually have access to justice to resolve this problem. There's a real access to justice issue in this area."

Laidlaw points out that if a privacy issue does not fall under the criminal law, pursuing the matter in the civil courts is simply too expensive for the ordinary person. Therefore, "we are almost regulating through silence," she says.

"What is the function of the law right now?" she asks. "It's not deterring certain behaviours, it's not providing a resolution, it's not doing anything." One object of Laidlaw's project is to speed things up. "There needs to be development in the law, we need to identify what are the rights and responsibilities in this space."



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University of Calgary

Laidlaw hopes research such as hers will help in the development of new law that better defines an individual's legal rights when it comes to privacy. She is planning to release several interim reports during the four-year span of her SSHRC grant in the hope of assisting in that process. And she wants any new laws "to be as technologically neutral as possible so [the law] can survive the development of technology."

When her project is concluded, Laidlaw is hoping to provide "some concrete models for law reform." And Laidlaw has reason to pursue change. Over the desk in her law school office she has snapshots of her young family. She knows that in a very few years, her own children will be swept into the technological cauldron with all its promise, and all its potential for pain.

— Geoff Ellwand

BRITISH COLUMBIA

INSURANCE CAP WILL IMPACT PERSONAL INJURY BUSINESS

With the new Insurance Corporation of B.C. cap limiting pain and suffering claims to \$5,500 taking effect April 1, personal injury legal firms are already seeing stress fractures as focus shifts to larger claims and both junior and senior lawyers are impacted.

"Other lawyers think they won't be impacted," says personal injury lawyer and managing partner Wes Mussio of Mussio Goodman. But, he says, displaced lawyers will enter other fields of practice, increasing competition, and the new caps will hit the junior lawyers working on a contingency fee especially hard. "The younger ones will walk out the door because they can't make a living anymore," he says. His firm in December lost a "very competent" associate who opted for another practice field. Even senior personal injury lawyers aren't immune, Mussio says, as they will see more competition for cases falling outside the cap. Cap cases make up approximately 90 per cent of the ICBC claims.

Mussio, whose firm has offices throughout B.C., says he has had meetings with staff and lawyers about the expected impact. "We have talked about how we will weather the storm," he says, but the reality remains that if the new cap system, which is aimed at reducing claims by \$1 billion, takes effect, it has the potential to wring out \$250 million in legal fees.

He says that much will depend upon how stringent ICBC is regarding injury interpretation, since now only injuries that incapacitate or seriously impair a client fall outside the category of minor injury. If there is a hard-line position, he predicts that personal injury law firms traditionally representing plaintiffs will have to shed staff and close offices.

"For \$5,500 [even at the maximum contingency fee of 33 per cent], lawyers will not run these files," he says.

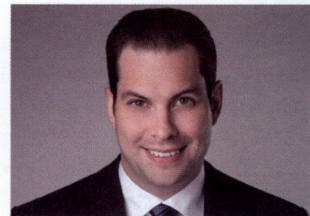
Senior personal injury lawyer Joseph Fearon, a partner with Preszler Law, isn't expecting to see any significant impact on its B.C. staff, mainly because it handles high-end claims. The volume of cases leaves larger firms better able to weather changes to the ICBC reforms, he says.

But Fearon is fielding more calls from personal injury lawyers looking to land with a large firm known for non-capped claims. "I've heard of lay-offs already," he says, and many of those lawyers are moving into other fields such as family law.

Preszler was singled out in a *Vancouver Sun* opinion piece by Attorney General David Eby as one of the legal firms in B.C. responsible for a 21 per cent spike in injury claims, advertising in a system Eby dubbed "uniquely generous to lawyers." Marketing intelligence firm Numerator rates Preszler as the top B.C. advertiser in 2017, spending \$617,000, and from January to September 2018 \$468,000.

Fearon, who works half the time in Ontario where caps are in place, is not fazed by ICBC's reforms. He suspects that they may even result in increased demand for B.C. lawyers because of the reclassification of injuries. "The grey area of caps is enormous," he says, adding that grouping of so many injuries into the minor category has provided no middle ground for injuries.

He says lawyers handling claims from unhappy plaintiffs with injuries deemed minor by ICBC will be attempting to get reclassification by the BC Civil Resolution Tribunal. The BCCRT was given authority last November over ICBC claims up to \$50,000 and has the ability to reclassify injuries (which then allows the claim to go to court).



Nick Peterson of Collins Peterson LLP says that the severe guidelines could drive individuals to the courts.

“We are all going to the tribunal,” he says, predicting that as lawyers wind through new reforms and the BCCRT, it will be overrun with cases.

The Trial Lawyers Association of BC has actively publicized legislative changes with seminars and continued education sessions and materials. Nick Peterson of Collins Peterson LLP Personal Injury Lawyers in Vancouver has been a presenter and authored a paper, “Minor Injury’ Cap Legislation and Regulations — New Changes to Injury Claims,” which sets out some of the profession’s concerns.

“There is no spectrum of injury or consequential impact on a person. The CRT is the deciding tribunal for minor injury determinations, not the courts — subject to an application for judicial review on a pre-defined and highly deferential standard of review, being patent unreasonableness,” he said in his paper.

During an interview, Peterson says he also agrees that rather than reduce claims, the severe guidelines for injuries could have the inverse reaction and drive individuals unhappy with the cap to seek further legal redress.

Injury lawyer Albert Roos of Sugden McFee & Roos LLP in Vancouver has also provided input to the TLABC continued education program with a paper on Bill 20, the Insurance (Vehicle Amendment Act), 2018, entitled “Legal and Medical Implications and Opportunities.”

Roos says the paper discusses the “bread and butter” issues


facing lawyers who now take on these cases, emphasizing that it is important that both lawyers and physicians seeing individuals with vehicle-related injuries understand the implications of these being labelled minor, especially if reclassification is sought.

“Proof may depend upon skilled legal representation which assists the claimant to access comprehensive post-accident health care services, gather persuasive medical evidence, maximize wage loss benefits and make effective submissions to an adjudicator of the Civil Resolution Tribunal,” Roos said in his paper. “Lawyers must consider the steps that they will take to avoid a determination of ‘minor injury,’ and their ability to recover their costs if that effort is not successful.”

Prince George lawyer Garth Wright says he doesn’t expect caps to lessen business at his firm as lost ICBC files can be replaced by other business. Also, northern B.C. and the Yukon suffer from a lawyer shortage. “We are usually beating business away with a stick,” he says. The real loss, Wright says, is to the northern residents who already suffer from a lack of medical specialists and therapists and now are left with less legal support.

Wright says there is a cooperative spirit in northern communities and he is committed to helping where he can but the reforms, if enforced stringently, will affect law firms. He is in a “wait and see” position and has monitored Alberta, which has had caps longer.

— Jean Sorensen



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