

CLIENT UPDATE

December 15, 2009

GENERAL DAMAGE CAP UPHELD BY THE NOVA SCOTIA COURT OF APPEAL

The Nova Scotia Court of Appeal has unanimously upheld the province's legislative limits on general damage recovery for "minor injuries". Today's decision, authored by Chief Justice Michael MacDonald, completely affirms the January 2009 decision of Justice Walter E. Goodfellow of the Supreme Court of Nova Scotia.

Justice Goodfellow had heard a month long constitutional challenge to sections of the Nova Scotia *Insurance Act* and associated Regulations, which limit recovery to \$2,500 for "minor injuries". Justice Goodfellow concluded that the *Insurance Act* and its Regulations do not violate the *Charter of Rights and Freedoms*, because they do not discriminate as alleged on the basis of age, mental disability, gender or physical disability. Justice Goodfellow also rejected arguments that the Regulations limiting general damages for "minor injuries" were outside of the government's authority.

The plaintiffs appealed Justice Goodfellow's decision, and the matter was argued before Chief Justice MacDonald, Justice M. Jill Hamilton and Justice Duncan R. Beveridge in October 2009.

In dismissing the appeal, Chief Justice MacDonald concluded that Justice Goodfellow did not make any errors that would warrant intervention by the provincial high court. The Chief Justice wrote:

I conclude, as did [Justice Goodfellow], that both the enactment and its regulations are valid. In short, the provisions are not discriminatory by the Charter and I am not satisfied that the impugned regulations run afoul of the legislation.

This decision comes on the eve of a related pronouncement from the Supreme Court of Canada. On December 17, Canada's highest court will decide whether to consider an appeal from a decision of the Alberta Court of Appeal that constitutionally upheld similar legislative limits in that province.

Stewart McKelvey partners D. Geoffrey Machum, Q.C. and Christa M. Brothers, assisted by associates Scott R. Campbell and Matthew W. Pierce, were involved on behalf of Aviva in the successful defence of these Nova Scotia challenges.

We encourage you to contact any member of the Insurance Law Group listed on the following pages with questions about the contents of this Client Update and/or any other matters on which they may be of assistance to you.

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