

CBA-NB: REPORT OF CIVIL LITIGATION SECTION TO COUNCIL
(July 6th, 2007)

Access to Health Records in New Brunswick

The Government of New Brunswick has established a Personal Health Information Task Force to consider the development of legislation regarding access to and protection of personal health information. It appears that the proposed legislation may be developed similar to the *Personal Health Information Protection Act* in the Province of Ontario. The envisioned legislation for New Brunswick may also be similar to the federal privacy statute (PIPEDA), with reference specifically to health information. The Task Force is seeking input with respect to the proposed legislation, which organization/individuals should be governed by it, as well as creation of legislation standards regarding consent, access to information, security of information collected and administration/oversight of the legislation. The Task Force, in May, invited public submissions to be made by a deadline of June 22, 2007. This matter was directed to the Health Law Subsection but may obviously have consequences for practitioners within the Civil Litigation subsection who deal in personal injury and other litigation areas involving health issues. On first becoming apprised of this, the Health Law Chairperson, Cathy Lahey and the undersigned agreed that the extremely short “response” period was completely unrealistic for CBA-NB to put together any sort of meaningful response. Cathy Lahey has contacted the Task Force regarding a possibility of having an extended period of time in which to consider whether CBA-NB wishes to put together a formal submission or not. The deadline has been extended to July 6, but that is not meaningful. By circulation of this report to CBA Council as well as Civil Litigation members, we would request that any members who have an interest in this subject,

or specific concerns should contact either the undersigned or Cathy Lahey of the Health Law Section as soon as possible.

“Minor” Personal Injuries Arising from Motor Vehicle Accidents

The ambit of the *Injury Regulation-Insurance Act* has received some clarification in the recent decisions of *Rossignol v. Rubidge* (TD) and *LeBlanc v. Bulmer* (CA). The Court of Appeal decision noted, however, that in the case which was before it, neither the constitutionality of section 2(2) of the Regulation nor the constitutionality of section 265.21(3) of the *Insurance Act* was at issue. Some uncertainty therefore remains in this area. Developments in New Brunswick continue to be coordinated with similar issues in Ontario and Alberta (where constitutionality issues have been raised in a test case in the Alberta Trial Division where final arguments are expected to be made towards the end of June).

Limitations Law Reform

There have been no further major developments in this area since our last report to Council dated February 8, 2007. An article, however, is being prepared for inclusion in the next edition of the Solicitor’s Journal summarizing the CBA position paper and primary recommendations.

Continuing Legal Education - Provincial

CBA-NB will present a CLE in Fredericton on October 12, 2007 on “Evidence and Experts”. A CLE brochure is being developed for distribution at this time. George McAllister and Mr. Justice Grant are to be thanked for their hard work on this project.

Continuing Legal Education - National

The *Class Actions Act* in New Brunswick was to be proclaimed effective June 30, 2007. At the national level, the CBA Civil Litigation Section and the CBA Health Law Section have submitted a joint proposal to put together a CLE for the Québec City conference in 2008 dealing with class-action lawsuits in the health care area. Further details will be provided when available.

Respectfully submitted,



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