Insurance Legal Ledger

Case Summaries

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The broker, the bot, and the blame: Untangling liability in AI-driven insurance

Artificial intelligence (AI) is rapidly transforming the insurance industry, prompting Canadian insurance brokers to evaluate the legal challenges associated with its adoption and ongoing use.

AI vendors: The need for thorough due diligence

Many insurance brokerages depend on third-party AI platforms rather than developing their own systems, making the due diligence process essential before entering into vendor agreements. Brokerages should verify that the vendor's AI employs unbiased data, adheres to ethical standards, and manages client information securely. Evaluations should also include the vendor's data protection practices, record of cyberattack incidents, and the transparency of the AI's decision-making process.

AI use policy: The importance of maintaining human oversight

Brokerages should also establish an internal governance framework, including revising existing policies to address AI-specific risks. An effective AI use policy should clarify roles and responsibilities, detail implementation and oversight procedures, enforce consequences for non-compliance, and, most importantly, require that professionals review all AI outputs before sharing with clients, thereby ensuring a "human-in-the-loop" approach.

Brokers or vendors: Who is responsible for biased outcomes?

Responsibility for biased or erroneous AI-driven outcomes remains unsettled in Canadian law, requiring a case-by-case analysis. Current guidance suggests, however, that brokers remain ultimately accountable for reviewing and overseeing AI outputs, while vendors may bear liability if they fail to meet their contractual obligations to brokerages.

Regardless of how AI is employed, it ultimately cannot replace a broker's professional judgment or conduct. Regulators will continue to hold licensees to the same standards. For example, RIBO's guidance on the use of AI reminds broker licensees that they must uphold standards outlined in the Fair Treatment of Customers and the Code of Conduct Handbook when using AI.

Such principles include requirements to:

(1) Be competent;
(2) Act with integrity and in the client's best interests;
(3) Disclose any conflicts of interest;
(4) Protect privacy and consumer data; and
(5) Maintain client confidentiality.

Transparency and accountability: Practical strategies for reducing liability

To minimize liability when deploying AI tools, brokers should clearly inform clients about how AI is involved in the decision-making process and provide them the option to interact with a human advisor if they wish. It is essential for brokers to accept responsibility for outcomes generated by AI, as legal accountability cannot simply be shifted onto the technology itself.

Education and training: An ongoing commitment

Brokers should invest in ongoing education and training to recognize AI's influence on outcomes and associated risks. Understanding privacy implications, especially when using generative tools like ChatGPT, is vital to avoid unintended breaches and departures from the standard of care.

Privacy law: Staying compliant in an evolving landscape

With no single Canadian AI law, brokers must follow federal and provincial privacy statutes. Under federal law, brokerages remain responsible for client data, even when processed by third parties, and must uphold key privacy principles such as accountability, consent, and data protection.

Leading the way: Brokers shaping the future of AI

Similar to other professionals, brokers will benefit from proactively incorporating AI into their practices, positioning themselves as leaders, while ensuring their expertise remains central to client interactions and decision-making. Note that AI governance remains a key aspect of BLG's Artificial Intelligence practice.

By: Rick Da Costa, Erin VanderVeer, Abby Shine

Québec Superior Court clarifies the classification of extended protection plans as insurance products, and highlights the regulatory and tax implications: *Normandin v. La Source (Bell) Électronique inc.*, 2025 QCCS 2970

Background

In *Normandin v. La Source (Bell) Électronique inc.*, 2025 QCCS 2970, the Superior Court of Québec addressed a critical question for the insurance industry: **how should extended protection plans be legally classified?** The plaintiff alleged that these plans, sold by retailers such as La Source and underwritten by Continental Casualty Company (CNA), were billed with the Goods and Services Tax (GST) and Québec Sales Tax (QST). However, if these plans qualify as insurance products, only the tax on insurance premiums (TPA) applies.

This distinction matters. Classifying a plan as an insurance product triggers the application of the *Act respecting the distribution of financial products and services* (LDPSF) and the *Regulation respecting Alternative Distribution Methods* (RMAD). These laws impose strict obligations, including providing a product summary, an information sheet, a cancellation notice, and disclosing commissions exceeding 30 per cent. The plaintiff claimed these requirements were not met and sought a reduction of his contractual obligation, reimbursement of overcharged taxes, and punitive damages.

Analysis

The Court authorized the class action, but only on a narrow issue: the incorrect application of GST and QST instead of the TPA on extended protection plans sold by La Source between Aug. 10, 2022, and Oct. 31, 2024. **The Court concluded that these plans should be treated as insurance products, making the tax error actionable.**

However, all other claims were dismissed. Punitive damages were denied due to the absence of bad faith or gross negligence. Claims against other distributors and insurers were rejected because there was no evidence of systemic practices or actual harm.

The takeaway is clear: the classification of extended protection plans as insurance products is not theoretical. It carries immediate regulatory and fiscal consequences, and misclassification can lead to costly litigation.

Key takeaways

Distributors must ensure that extended protection plans are correctly classified and that the applicable tax regime is followed. **Insurers must implement robust oversight mechanisms to guarantee compliance with the LDPSF and RMAD.** The Autorité des marchés financiers (AMF) plays a decisive role in product qualification, and its determinations can significantly influence legal risk. Finally, tax compliance is now a strategic priority: a single error in tax application can trigger a class action.

By: Marc-André McCann, Adelina Bocanegra

Manitoba court dismisses title insurance policy clause as commercially unreasonable: *Abiusi et al. v. Lawyers' Professional Indemnity Company*, 2025 MBKB 131

Background

On March 1, 2021, Giacomo "Jack" and Maria Abiusi (plaintiffs) obtained a title insurance policy from Lawyer's Professional Indemnity Company (defendant) in connection with the purchase of their home (Policy). Shortly after applying for building permits for their home, the plaintiffs' contractor discovered several deficiencies, including mould in the floors and the walls.

The plaintiffs contacted the City of Winnipeg for advice on non-permitted construction and requested an inspection of their home. Following the inspection, the plaintiffs received a by-law violation notice (Notice) informing them the city inspector had found two prior construction projects had been completed without the required permits, including: i) the conversion of the detached garage into an attached garage; and ii) an addition to the home, which included a bedroom, bathroom, and sunroom.

The plaintiffs made a claim under the Policy, which was accepted, but a dispute arose over the scope of indemnity. The parties disagreed as to whether the defendant was obligated to: i) indemnify the plaintiffs for the cost to repair the non-compliant work (which would involve major demolition and reconstruction); or ii) simply remove the non-compliant portions of the home and indemnify the plaintiffs for the diminution in the property's value (the latter option would result in substantially less compensation awarded to the plaintiffs).

Analysis and conclusions

The defendant argued that the Policy permitted the defendant the discretion to determine how to remedy the deficiencies, relying on the following clause:

> After we receive your claim notice or otherwise become aware of a matter for which we are liable, we can in our discretion do one or more of the following:
>
> ...
>
> b) Repair, replace or relocate any building, structure or improvement on the LAND;
>
> c) Remove any building, structure or improvement from the LAND altogether and pay you any resulting diminution in value to the LAND;
>
> [*Emphasis Added*]

Conversely, the plaintiff argued that, if the defendant's proposal were followed, the home would be rendered unlivable, leaving the plaintiffs with the burden of making it livable again – this solution would not align with the reasonable expectations of the parties when they entered into the Policy.

The Court agreed with the plaintiffs and directed the insurer to indemnify the plaintiffs for the full cost of repairing the non-compliant work, up to Policy limits. In reaching this decision, the Court noted the governing principles on the interpretation of insurance contracts, including title insurance policies, as including (amongst others): i) a review of the entire contract to determine the true intent and reasonable expectations of the parties at the time of entry into the contract; and ii) the promotion of a reasonable commercial result. Despite the clear terms of the Policy affording the insurer the right to simply remove the nonpermitted improvements, this would not lead to a "reasonable commercial result" and therefore was to be avoided.

Key takeaway

This decision serves as a reminder to insurers that Canadian courts may dismiss a clear Policy clause, which would result in a commercially unreasonable outcome for the insured, in favour of a contextual review of the entire Policy which gives effect to the reasonable expectations of the parties.

By: Raphael Jacob, Brianne Wheat

Nova Scotia Court confirms accessible parking spaces do not attract a higher standard of care: *Kennedy v. Crombie Developments Limited*, 2025 NSSC 359

Background

On the day of the incident, the plaintiff, Mr. Kennedy, visited an A&W restaurant and parked his car in one of the accessible parking spots close to the entrance. While seated, Mr. Kennedy noticed that flurries had started to fall. Walking back to his car, he stepped down from the sidewalk onto a small area of slush, and he immediately slipped and fell. He brought an action against the landowner and the leaseholder who operated the A&W restaurant. Notably, the parking lot was inspected and salted *after* Mr. Kennedy's fall.

Analysis

In Nova Scotia, section 4(1) of the *Occupier's Liability Act* addresses the duty of care owed by occupiers to users of their premises, providing:

> An occupier of premises owes a duty to take such care as in all the circumstances of the case is reasonable to see that each person entering on the premises and the property brought on the premises by that person are reasonably safe while on the premises.

In cases of slip-and-falls, the Court must assess whether the owner or occupier met the standards reasonably expected to be in place with respect to the maintenance of the area in question. In other words, Mr. Kennedy was required to demonstrate a *prima facie* case of negligence, and the defendants would then be required to demonstrate a reasonable regime of inspection and maintenance. Under the *Occupier's Liability Act*, occupiers have a duty to take reasonable care for the safety of all persons on the premises. However, this does not require constant surveillance nor immediate response to remove every possibility of danger.

Notably, the Court held there is no legal validity to the proposition that accessible spots in a parking lot require a higher standard of snow and ice removal in comparison to the rest of the parking lot. There is one standard under the *Occupier's Liability Act*, and that standard is reasonableness.

Ultimately, the Court dismissed the action, finding that to hold the defendants liable for Mr. Kennedy's fall would be to impose a standard of perfection, rather than reasonableness, and the defendants had met the reasonableness standard.

Key takeaway

Icy walking surfaces are unavoidable in Canadian winters. Occupiers need only take reasonable steps to protect visitors from harm. This extends to even accessible parking spots: the standard remains reasonableness.

By: Matthew Sherman, Bethany Keeshan

How we can help

BLG commands Canada's largest and most experienced business insurance law practice. Working with multi-disciplinary teams, our insurance lawyers serve as strategic advisors to a variety of clients that include many of the largest national and global insurers, reinsurers, reciprocals, brokerage firms, captives, financial institutions, and regulatory bodies. We resolve every category of insurance claim, from complex class actions to high-volume subrogation, and spanning all major liability areas. We are proven leaders in negotiation, mediation, and arbitration, with a record of success at all trial and appellate courts, including the Supreme Court of Canada. BLG's insurance law practitioners are routinely recognized by *Chambers*, *Benchmark*, *Lexpert*, and *The Best Lawyers in Canada*.

Insurance Firm of the Year

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