

Auto Tort Reform: A Newfoundland and Labrador Victory for the Injured

Lawyers are governed by a code of professional conduct and by rules of court which require that fees shall be fair and reasonable. But the business world operates under no comparable restraint. There are no excessive profits, and corporate profits are never high enough. So it is with the insurance world.

In the insurance world, the drive for unlimited profit expresses itself through the ideology that claims are out of control.

Not only has the public grown more “claims conscious”, but juries have been affected by the virus, with the result that judgments are being rendered for larger and larger amounts. The number of awards in automobile accident cases, personal accident actions and public liability cases has also steadily increased.

This familiar refrain has a contemporary ring, but it comes from the cover of Canadian Insurance, February 28, 1939!

Not so long ago, tort law (the law of compensation for injuries) suffered many infirmities. In a speech reprinted in the November 2003 edition of the Newsletter of the Atlantic Provinces Trial Lawyers Association, the Honourable R. Roy McMurtry, Chief Justice of Ontario, recalled that when he was called to the bar:

...tort law was in bad shape. There were many rules and economic factors that made it very difficult for injured people to succeed in litigation. Tort law also often favored defendants. For example, there was a guest passenger law

that denied all recovery to gratuitous passengers against their drivers. There was no compulsory auto insurance law. Damage awards were generally puny and there were many immunities. It was very difficult to get expert witnesses in medical malpractice cases and harder to succeed. Limitation periods were short and strictly enforced.

In the last quarter of the twentieth century, a tort renewal occurred, and this renewal duly provoked a strong backlash from the insurance industry and a legislative attack on claimants' rights. In Atlantic Canada, the attack peaked in 2004.

Many tort lawyers in other Atlantic Provinces look enviously at the comparatively modest infringements of auto injury claimant rights imposed by the Newfoundland legislature in 2004. The chief of these restrictions are a \$2,500 deductible on all pain and suffering claims, lost wages recovered 100% of net, collateral source compensation deducted from the recovery, and minimum reduction of damages by 25% for failure to wear a seatbelt.

Beginning in 2001, the insurance industry launched three successive campaigns for auto tort rights restriction in Newfoundland. The first two campaigns gained proponents among politicians, but failed for lack of public support. The third campaign resulted in the restrictions above. The reason for these insurance industry failures in Newfoundland was not that Newfoundland politicians were more receptive to rights-based arguments or backroom lobbying than politicians elsewhere. The reason was that an effective coalition against auto no-fault, composed of numerous organizations including APTLA, waged successful campaigns for public support to preserve tort rights, and the politicians smelled which way the votes lay. The

coalition's success in defending the civil justice system by shaping public opinion is illustrated in the conclusion of an editorial from the St. John's Telegram, Saturday, April 10, 2004:

The only real way to cut insurance costs is to reduce accidents. And we forget that at our peril.

For the insurance industry, all awards are too high, and all access to justice is too much. Canadian constitutionalism may yet provide protection against these ambitions by invalidating some legislative assaults on civil justice. This has already happened in Alberta (<http://www.chescrosbie.com/blog/alberta-court-overtuns-nofault-auto.cfm>). Similar challenges are proceeding to court in Nova Scotia and New Brunswick. But where the winds of public opinion blow, politicians will follow. As Thomas Payne once said, no man's life or property is safe when the legislature is in session. Civil justice is about truth, and organized voters armed with the truth about civil justice are the surest bulwark against oppression.