
Issues Update

September 2007

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National Issues

Bank Act Review

The *Bank Act* by law expires every five years, and was up for renewal in spring 2007, after being postponed by Prime Minister Paul Martin's minority government.

The concern for insurance brokers – indeed, their main political-action issue for nearly a century – is whether or not the Canadian government will continue the prohibition on banks selling insurance in their branches.

The government's White Paper on its proposed *Bank Act* changes, released June 14, 2006, maintained the status quo. When Prime Minister Stephen Harper addressed the Insurance Brokers Association of Ontario's annual convention in Niagara Falls Oct. 19, he recommitted to his government's campaign pledge not to give banks the power to sell or provide information about insurance products through their local branches.

"We made a commitment, and we stuck to it. It's as simple as that," he said.

He followed through on this commitment by tabling the revised legislation this spring. Bill C-37 received Royal Assent March 30.

Supreme Court of Canada rules banks subject to provincial insurance legislation

On a related note, the Supreme Court of Canada issued a decision May 31 that federally regulated financial institutions must comply with provincial laws regulating the promotion and sale of insurance. In 1991 changes to the *Bank Act* allowed banks to promote certain types of insurance. In 2000, the province of Alberta changed its *Insurance Act*, requiring banks wishing to promote insurance to obtain a restricted insurance agent's certificate of authority and to comply with other provincial provisions. The banks argued that they were exempt because section of the Bank Act superseded this statute. The Supreme Court rejected the banks' argument. This decision is significant in that it maintains the level playing field between financial institutions and brokerages for the activities related to the promotion and sale that are regulated provincially.

Credit scoring

In the U.S. the practice of credit scoring is stringently regulated, or prohibited, at the state level. B.C. has no legislation that addresses the emerging practice of using credit scores as a tool for rating and risk acceptance.

By combining an individual's credit history with traditional underwriting tools, insurers can determine, first, whether they want that individual as a customer, and then, what products they'll offer and at what price. Some insurers use data collected from third-party providers and are capable of raising premiums or declining the business instantly without disclosing the reason for their decision.

Some insurers consider credit scoring to be a powerful and effective underwriting tool because it identifies the desirable and undesirable market strata; however, it does so according to a purely mathematical formula. Many people don't fit the formula. People with poor, incomplete or erroneous credit history will find themselves unable to obtain coverage or unable to afford the premiums quoted to them. This restriction of access to market most affects disadvantaged sectors such as young, low-income or elderly people, first-nations and immigrant groups, people in the midst of marital distress, and those who simply choose to deal on a cash basis and not rely on credit.

It appears unlikely that the Ministry of Finance will address credit scoring in its rewrite of the *Insurance Act*. Other provinces have addressed it in consumer-rights legislation.

Provincial Issues

Insurance Act

The Ministry of Finance released a discussion paper in March 2007 outline proposed changes to this statute. IBABC viewed the proposals as being generally in the right direction:

1. That the consumer protection provisions of the fire part of the act be extended to cover all basic home insurance policies (multi-peril, all-peril or comprehensive, homeowner, condo, tenants, etc.). This solution to the overlaps and inconsistencies in the current act is positive for consumers.
2. That earthquake not be added to the list of permitted exclusions. Insurance companies maintain that coverage for fire that follows earthquake should be subject to the same deductible as the earthquake policy (e.g., 5% of value of the structure), not the homeowner's policy (e.g., \$500). This proposal will require them to redesign their pricing.
3. That terrorism be added to the list of permitted exclusions, thereby recognizing insurance companies' legitimate underwriting concerns respecting fire following terrorism.
4. That the provisions in the act stating that fire coverage includes fires resulting from any cause be retained and clarified. b) That the meaning of "vacancy" be defined to provide a statutory "grace period" of 30 days during which coverage for fire, and for vandalism resulting in fire loss, would continue. This issue was of great concern to insurance brokers because of the ambiguity of ensuring adequate coverage, and of advising their clients accordingly. This proposed change to the act returns certainty to the long-held tenets that fire is an insured peril, no matter the cause, and that insureds have 30 days to reoccupy a vacant dwelling or amend coverage.
5. That statutory conditions be maintained and updated to protect consumers and enhance contractual standardization.
6. That the act be amended to require insurance contracts to maintain coverage of an innocent co-insured.
7. It is proposed that a) consumers be given a statutory right to obtain, upon request, a copy of a group insurance policy; this brings group P&C insurance in line with other products.
8. That the limitation period in *Insurance Act* be extended to two years, and that a single general provision be adopted for the act, with the trigger being "the date the cause of action arises against the insurer" (the trigger found in vehicle insurance legislation and the current B.C. Limitation Act). Insurers would be required to give notice to the consumer before the expiry of the limitation period. This proposal addresses several points. First, that the existing act contains conflicting limitation periods, which has been the cause of much grief and court time. Next, it aligns B.C.'s *Insurance Act* and *Limitation Act* (which is also currently under review), and potentially these with corresponding acts in other provinces. And finally, it addresses the fact that consumers have been confused, and sometimes unaware of what limitation periods apply in their situations.
9. It is proposed that insurance companies be required to have in place an internal dispute resolution system and to participate in a dispute resolution service that offers mediation of disputes between consumers and insurers. In addition, insurance companies would be required to notify consumers of their right to take a dispute to a dispute resolution service. This proposal is heartily welcomed by IBABC and the Insurance Dispute Resolution Services of B.C.
10. That the act be amended to state that insured parties making claims under insurance policies can be required to submit to an examination under oath and to allow for regulations to prescribe protections for insured parties, including notification of the right to be represented by counsel.

Limitation Act

The Attorney General is in the process of revising the *Limitation Act*. This has two important implications for the insurance industry.

1. The creation of a single basic limitation period of two years, which represents an increase from the current one year in many insurance applications. This is more beneficial to consumers and once the *Insurance Act* aligns with this, it will remove the inconsistencies currently in the *Insurance Act*.
2. The creation of a single ultimate limitation period of 10 years (down from 30 years). This is beneficial to the insurance industry in that many claims that are made well into the current 30-year period are onerous, and inflict an administrative burden that benefits no one. The necessity of documenting all the insurers on the risk going back up to 30 years is sometimes impossible, as records are only required to be maintained seven years after the client ceases to be a client. Often normal wear and tear on the insured entity will bring it to the end of its useful life in much less than 30 years.

Bill 33 directs ICBC to refuse to issue to Family Maintenance debtors

Bill 33 (2007) strengthens the collection measures available to the Family Maintenance Enforcement Program by directing ICBC to refuse to issue (RTI) vehicle licensing. The only insurance options Autoplan brokers will be able to offer drivers with this RTI notice on their file will be a 15-day temporary operating permit (TOP) or a storage policy.

Although IBABC was unsuccessful in influencing this public policy, we hope that with members' support, we may have some influence on its regulations and implementation.

This legislation is part of a larger initiative to reform the family relations system in B.C. While IBABC supports the intent and direction of family-relations reform, we nevertheless wish to mitigate the negative impact this legislation could have at the brokerage counter. Our main concern is that this potentially puts Autoplan brokers in harm's way in potentially dangerous and confrontational situations.

Background:

The FMEP already has powerful enforcement options at its disposal:

- It can attach income, i.e., require anyone who owes the payor money to pay it directly to the FMEP. This power of attachment includes wages, pensions, WCB benefits, bank accounts, rental income, GST refunds and income tax refunds.
- It can register a lien against any personal property including cars, boats, homes and land. It can also seize personal property and arrange for its sale.
- It can report the payor to a credit bureau.
- For arrears over \$3,000 it can direct ICBC to refuse to issue or renew a payor's driver's license until arrears are paid.
- If the payor owns part or all of a corporation, it can make the corporation liable for the arrears.
- It can bring the case to court, and can appeal to the judge to take additional action, including a jail sentence. Last fiscal year, 48 parents were jailed after Court hearings.

The FMEP has the discretion to use any or all of these measures at any time, and it chooses the actions its personnel think will have the best chance of success. B.C. is the only jurisdiction in Canada which contracts out its FMEP tasks. B.C. has renewed its contract to 2008 for about US\$10 million a year to a private company

called Themis. It is owned by Maximus, which provides similar third-party services to governments in the U.S., Canada and Australia.

Our concerns:

1. Insurance brokers are simply not the appropriate people to be the first face-to-face contact with defaulting payors regarding their outstanding child-support. Brokers are not trained or equipped for this type of interaction, and their personal safety would potentially be at risk. Insurance brokerages are not the appropriate venues for this dialogue to take place as it can lead to public humiliation and breaches of privacy for the default payor and safety concerns for other customers.
2. If auto insurance is refused to a payor, the likelihood increases that he or she will continue to drive without insurance, which puts other innocent third parties at risk, including the other injured parties in a crash, and the payor's spouse who is seeking continuing support. The potential for judgments against an uninsured driver following an at-fault crash could further deplete or tie up assets.
3. The Attorney General's office assures that several letters will have been sent to the payor before the refuse-to-issue action is taken. However, experience with non-renewal of driver's licenses has shown that these individuals do not always receive their mail in a timely manner. They may be working in camps or are otherwise transient, and therefore the RTI status will be a complete surprise when they try to renew their insurance.
4. The Attorney General's office maintains that Bill 33 harmonizes with what other provinces are doing. However, other provinces separate vehicle licensing and insurance; government offices handle vehicle licensing and RTI issues relating to delinquent family responsibility issues, whereas in B.C. private insurance brokerages handle vehicle licensing as part of the insurance transaction.
5. The potential RTI requirement goes against years of work by this government since 2001 to put ICBC on a level playing field with private auto-insurance providers.
6. This represents a potential slippery slope in which other jurisdictions are now viewing RTI as an inexpensive means of collecting funds. Please see "UBCM Resolution" section below.

Our recommendations:

IBABC members are encouraging the provincial government to write regulations for Bill 33 that remove insurance brokers entirely from the RTI order. ICBC should:

- A. Send its own correspondence to debtors clearly outlining the impending action that will be taken in relation to their driver's license and vehicle license. This notice will be in addition to the mandatory notices sent from the Family Maintenance Enforcement Program.
- B. Ensure that affected drivers do not receive conflicting notices, for example, a notice of impending license cancellation from the FMEP and a standard Notice to Renew from ICBC.
- C. Establish a 1-800 line with live assistance for debtors about their ICBC options and next steps.
- D. Make it abundantly clear to debtors in all correspondence and from the 1-800 assistance line that the only coverage Autoplan brokers can offer is a 15-day TOP or a storage policy.
- E. Use the services of the Sherriff's office to collect license plates.

UBCM resolution targets RTI:

The City of Vancouver has submitted a resolution to go before the members of the Union of BC Municipalities (UBCM) at its annual meeting Sept 24 to 28. Vancouver wants insurance brokers to collect fines for bylaw violations (primarily disorderly conduct) prior to issuance of auto insurance. In the resolution the City maintains that "the only method currently available to the City for the collection of bylaw fines is a slow, expensive, labour-intensive process."

IBABC members are very concerned about the City of Vancouver's resolution:

1. Bylaw violations have no relation to auto insurance and refusing to issue insurance will create some very strongly negative consumer reactions at the point of sale. Some customers will direct this negativity to brokerage staff members, and these employees and other customers will be at risk for their personal safety. Insurance brokers are not collection officers or enforcement officers. They are professional advisors whose training, licensing requirements and role in the insurance transaction is to put the interests of the customer first. Municipalities have access to third-party collection agencies that are better equipped to perform this function,
2. Downloading a "slow, expensive, labour-intensive process" on to private small-business people (i.e., insurance brokers) severely puts at risk their livelihoods and ability to contribute to the economy,
3. Being refused something as important and essential as insurance because of a bylaw infraction will be extremely unpopular with the public. When the idea was first floated by Councillor Kim Capri in the media, it generated several letters expressing outrage. The Province newspaper published its own opinion against the concept on the basis that it discriminated against motorists. People will be concerned about the potential for this means of collection to become a 'cash cow' in which a ticket for a minor infraction such as riding a bicycle on the sidewalk or having a dog off-leash could jeopardize their ability to get auto insurance,
4. Refusal to issue insurance due to an outstanding bylaw infraction could lead to more uninsured motorists on the road, which creates another social problem that is expensive and labour-intensive to resolve.

We have expressed these concerns to the Resolutions Committee of the UBCM, and hope that delegates will defeat the City of Vancouver's resolution.

Bill 93, Section 69

Bill 93, the *Insurance (Vehicle) Act*, was passed in 2003 to level the playing field between ICBC and private insurers in the provision of optional auto insurance to B.C. drivers. The bill brings the optional coverage provided by ICBC and by the private market under the same legislation and regulations. As a result ICBC's basic and optional policies will be sold separately effective June 1.

As most Autoplan brokers are now aware, ICBC has been tooling up for these changes; broker training sessions were held in March and April.

In what may have been an inadvertent error, Section 69 of Bill 93 prohibits letters of authority. Private companies are also prohibited, but private companies give their brokers binding authority and don't use letters of authority; Autoplan brokers do not have the same binding authority from ICBC. The prohibition of letters of authority will greatly inconvenience fleet operators who filed letters of authority with their brokers so that they did not have to convey coverage amendments in person. IBABC has been working with ICBC for months to find a work-around to this issue, and have so far been unsuccessful. We have asked Minister Responsible for ICBC John Les to repeal Section 69.

BC Building Code

I: Residential code changes

A new B.C. Building Code (BCBC) came into effect Dec. 15, 2006. It's based on the 2005 edition of the National Building Code of Canada (NBCC) and reflects an important change in approach in that it combines performance-based directives and prescriptive requirements. For example, for some elements of a structure the code will outline the job it's supposed to do; the materials used are secondary. So even though the code may not specifically dictate that a lakefront home in the Interior must have a rainscreen system, that dwelling would still be required to perform to the same moisture-repelling requirements as a home on the coast. In other areas of the code, prescriptive requirements such as the materials to be

used and minimum specs are clearly outlined.

Many changes to the code for single-family residential have been adopted from the “big” buildings, i.e., high-rises, commercial and mixed-use. It also recognizes that there is an increased consumer demand for homes with views and other amenities that put the structure at increased risk of damage from severe weather and other forces.

One building inspector estimates the new BCBC will add from \$5,000 to \$10,000 to the cost of a new home. This could, of course, increase for older homes that are rebuilt to the new BCBC. IBABC is urging insurers to provide unlimited blanket bylaws protection.

II: Earthquake load changes

The new BC Building Code (BCBC) includes changes to seismic requirements for commercial and institutional construction, but when it comes to residential buildings, officials are as yet uncertain as to what guidelines apply.

Non-residential buildings and infrastructure that used to have to be able to withstand a one-in-475-year earthquake or major weather event must now be designed to withstand a one-in-2,475-year event. This is a five-fold increase from the requirements of the 1995 code. These new standards originated in the U.S., were adopted by the 2005 National Building Code of Canada, and are part of the 2006 BCBC.

But that doesn't mean that all new construction has to be five times stronger across the board. The national and B.C. codes recognize the effects of the soil substrate – slope stability and liquefaction – on the performance of a structure. The new earthquake load requirements will differ depending on the building's location and “importance” (from barn or warehouse to public building such as a school, to a “post-disaster structure” such as a hospital that must remain operational). The impact of the new standards will be felt throughout the province, not just on the coast.

The 2006 BCBC doesn't impose these 2,475-year earthquake-load standards on residential, but in a round-about way they may end up being applied anyway. B.C.'s Community Charter, which was passed into law in 2003, states (in section 56, “Requirement for geotechnical report”):

“If a building inspector considers that construction would be on land that is subject to or is likely to be subject to flooding, mud flows, debris flows, debris torrents, erosion, land slip, rockfalls, subsidence or avalanche, the building inspector may require the owner of land to provide the building inspector with a report certified by a qualified professional that the land may be used safely for the use intended.”

The “report certified by a qualified professional” could be anything from the application of some rules of thumb to a “dynamic analysis” of the type done for major infrastructure projects, and which are usually cost-prohibitive for a residential lot. The phrase “safe for the use intended” is also open to personal interpretation and fraught with problems, say geotechnical engineers. They'd like some clarification on this point. What is considered safe in one jurisdiction or at one point in time may not be considered so at another. In addition, the term ‘safe’ can imply a total absence of hazard or risk, which is seldom the case. Should they be applying the one-in-2,475-year standards to residential properties? If they do, a worst-case estimate suggests as many as 20,000 homes throughout B.C. would potentially not be allowed to rebuild on the same footprint.

Typically, in order to qualify for guaranteed replacement cost (GRC) coverage in the homeowners' insurance policy, an insured must rebuild on the same location. Provided there is another suitable building location on the same lot insureds may still have GRC coverage. But for some sloping properties, the original building location was chosen because it was the best or only option.

The Association of Professional Engineers and Geoscientists of B.C. is urging the provincial government to define acceptable levels of landslide safety for residential dwellings.

IBABC is recommending that insurers consider removing the same-site requirements under the replacement-cost coverage to permit rebuilding on a different site if repair or reconstruction of the building is not permitted due to enforcement of the Building Code.

Bylaw coverage in homeowner policies

The increased geotechnical requirements in the new BCBC put bylaws coverage into sharper focus. Brokers are concerned that homeowners who have insured their homes for their full replacement cost with GRC, and have purchased additional bylaw coverage, may still be at risk of major financial loss.

Even though brokers' perform valuations in accordance with insurers' criteria, insurance policies exclude any additional costs that may be incurred during reconstruction to comply with bylaws. Bylaw extensions can be purchased, but this additional coverage may not be enough if, in the event of heavy damage, the municipality orders the structure to be demolished rather than repaired.

A typical bylaw will prohibit rebuilding of a damaged structure if the damage is greater than 75% of the assessed value of the improvements (building.) Assessed values are established by B.C. Assessment based on the analysis of property sales in the area. These values vary depending on the level of reported sales activity. Assessed values do not represent reconstruction costs and they can be substantially lower than reconstruction costs.

For example, a house with an assessed value of \$100,000 could cost \$200,000 to reconstruct, but a \$75,000 fire could lead to a demolition order. In this example, the threshold for declaring a constructive total loss could be even lower if the establishment of value is left up to discretion of the building inspector; not all governing bodies follow the same rules, or have the same bylaw wordings or definitions. The homeowner could lose the replacement-cost value of undamaged portions of the building that must be torn down, and could have to pay the cost of the enforced demolition and debris removal of the undamaged portions of the building.

If underwriters take the position that bylaw extensions invalidate the guaranteed replacement cost provisions of the homeowners' policy (as anecdotal examples have suggested), it creates an even larger dilemma for the homeowner in the event of loss.

IBABC's position is that if the insurer offers guaranteed replacement cost and as long as the broker has properly completed a valuation by a product acceptable to the insurer, there should be blanket coverage for the insured dwelling. In the event of a constructive total loss, the blanket bylaws coverage would, in effect, provide indemnity for the value of the undamaged portion as well as protect the insured against cost increases due to the enforcement of building and zoning bylaws.