
Law Reform Notes

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Law Reform Notes is produced twice yearly in the Legislative Services Branch of the Department of Justice, and is distributed to the legal profession in New Brunswick and the law reform community elsewhere. Its purpose is to provide brief information on some of the law reform projects currently under way in the Branch, and to ask for responses to or information about items that are still in their formative stages.

The Department is grateful to all of those who have commented on items in earlier issues of *Law Reform Notes*; we encourage others to do the same. We also repeat our suggestion that, if any of our readers are involved either professionally or socially with groups who might be interested in items discussed in *Law Reform Notes*, they should let those groups know what the Department is considering and suggest that they give us their comments. We are unable to distribute *Law Reform Notes* to everybody who might have an interest in its contents, for these are too wide-ranging. Nonetheless we would be pleased to receive comments from any source.

A: UPDATE ON ITEMS IN LAW REFORM NOTES #5

1. Damages for personal injuries

In Law Reform Notes #4 and #5 we invited comments on several items related to the calculation of damages in personal injury cases. The government's eventual decision on these items was reflected in An Act to Amend the Insurance Act, c.55 of the Acts of New Brunswick 1996. The principal developments arising from the responses that were received on this topic were (a) that the amendments were limited to the automobile accident context, (b) that changes to the collateral source rule and to the 'gross income' approach to assessment of damages were limited to the pre-judgment period, and (c) that provisions were added to facilitate the recovery of advance payments of special damages. The end result was that the recent amendment to the Insurance Act contained the following five substantive amendments to the calculation of damages arising out of automobile accidents:

- no pre-judgment interest on non-pecuniary damages;
- an award of damages for loss of income in the period before judgment is to be reduced by any payments for loss of income that the plaintiff receives from a collateral source in that period;
- after-tax income, rather than before-tax income, is to be the basis for an award for loss of income in the period before judgment;
- there is to be a rebuttable presumption of 25% contributory negligence for failure to wear a seatbelt;
- a plaintiff may seek an advance payment of special damages even before liability has been admitted or established.

These changes are all subject to proclamation, and only apply to accidents that occur after the amendments come into force. A proclamation date has not yet been fixed. Separate proclamation dates for the different amendments are a possibility.

2. Section B - Benefits

During discussions of the amendments above, both in the Legislature and outside it, the Minister of Justice has indicated the government's intention to increase substantially the benefits payable to accident victims under section B of the standard automobile policy. The figures that have been discussed are:

- Medical and rehabilitation benefit: increase maximum to \$50,000;
- Funeral benefit: increase maximum to \$2,500;
- Death benefit: increase to \$50,000 for principal income earner and \$25,000 for his or her spouse, with smaller amounts for other dependants;
- Weekly income replacement: increase maximum to \$250.00 per week, with increases also to the unpaid housekeeper's benefit.

It is expected that these benefits will be brought into operation at the same time that the Insurance Act amendments are proclaimed, and that they will likewise apply to accidents occurring on or after that date.

3. Extra-provincial judgments

Issue #5 of Law Reform Notes raised a number of matters relating to the enforcement of judgments from outside the Province. The Throne Speech for the 1996 session subsequently announced that, among other legislative initiatives to improve the administration of justice, the government was intending to introduce amendments to the Reciprocal Enforcement of Judgments Act and the Foreign Judgments Act. It is expected that legislation will be introduced in the fall.

4. Accumulations

The 1996 Speech from the Throne also announced the government's intention to introduce amendments to the Property Act.

These amendments will repeal the current accumulations provisions of the Property Act, as we tentatively suggested in Law Reform Notes #5 and subsequently recommended to the government. Again, it is expected that the legislation will be introduced in the fall.

5 Perpetuities

We received little response to our enquiry in Law Reform Notes #5 as to (a) whether the current rule against perpetuities caused significant trouble for practitioners, and (b) if it did, which approach to reform seemed the most promising. We continue to believe that the current law is unsatisfactory, but it seems unlikely at present that reform of the rule against perpetuities will be high on our list of priorities.

6. Administration of Estates

Having considered the comments received on the three items discussed in Issue #5 of these Notes, we have recommended legislation on the first of them (reducing the requirement for bonding of estate administrators), and are continuing to review the practical aspects of the other two (administration without grant of letters and expansion of s.19 of the Devolution of Estates Act).

B. NEW ITEMS

There are no new items that are currently ripe for discussion through Law Reform Notes. The Branch has, however, been developing a paper on privacy legislation; the legislation would be designed to protect the confidentiality of personal information in the possession of the government of New Brunswick. The paper is to be tabled in the Legislative Assembly, where it is to be referred to the Standing Committee on Law Amendments. By unanimous consent of the Legislative Assembly, the Committee is to "examine and inquire into the matter of privacy legislation," to "conduct public hearings into the matter" and to "report back to the House."

Our current expectation is that the paper will be tabled in the summer and that the public hearings will take place in the fall.

Responses to any of the above should be sent to the address at the head of this document, and marked for the attention of Tim Rattenbury. We would like to receive replies no later than August 1st, if possible.