



INSURANCE LAW

Something Old and Something New

September 29, 2017 • 8:30 am - 4:30 pm • Wu Conference Centre, Fredericton

CO-CHAIRS: **CHRISTA BOURQUE, Q.C.**, McInnes Cooper, Moncton
MATTHEW T. HAYES, McInnes Cooper, Saint John
GEORGE A. MCALLISTER, Q.C., George A. McAllister, P.C., Fredericton

MCPD credits
+6.5



Program

- 8:30 am** **What Constitutes an Accident?**
Katherine Toner, Stewart McKelvey, Fredericton
- Within the Context of the Standard Automobile Insurance Policy
 - Within the Context of a Life Insurance Policy
 - Within the Context of a Commercial General Liability Insurance Policy
- 8:45 am** **Mixed Defence Costs v. Uncovered Defence Costs**
Charles A. LeBlond, Q.C., Stewart McKelvey, Moncton
- Does the Insurer Fully Pay Without Reallocation at the Conclusion of Trial Regardless of the Outcome?
 - Does the Insurer Fully Pay Subject to Reallocation After the Trial?
 - Do Both Parties Share a Portion of the Costs Subject to Reallocation After Trial?
 - Should an Insurer be Punished for a Wrongful Coverage Denial?
- 9:00 am** **Great, Yet Reasonable, Expectations: *Ledcor Construction Ltd. v. Northbridge Indemnity Insurance Co.*, 2016 SCC 37**
Nadia M. MacPhee, Brenton Kean, Saint John
- The Standard of Review and Standard Form Contracts
 - The Reasonable Expectations of the Parties
 - The Faulty Workmanship Exclusion
 - The Application of *Ledcor*
- 9:15 am** **ASO-S: Safely Navigating Administrative Services Only Agreements**
Justin J. Robichaud, Fidelis Law Droit, Moncton
- Basic Training
 - Be Aware of Your Surroundings (The Labyrinthine Provisions)
 - Should You Grieve a "Loss"
- 9:30 am** **Section B, Accident and Sickness, & LTD Coverage - Who Pays First?**
Patrick J. O. Dunn, Cox & Palmer, Saint John
- Double or Multiple Insurance: Principles for Deciding Who Pays First
 - Section B: Statutory and Policy Provisions Dealing with Multiple Insurance
 - Accident and Sickness & Disability Insurance: "Other Insurance" Clauses
 - Putting it All Together: Examples
- 9:45 am** **A Refresher and Update - All You Need to Know About Offsets!**
Chantal A. Thibodeau, Stewart McKelvey, Moncton
- Section B Benefits
 - LTD Benefits and Sick Leave Plans
 - CPP Benefits
 - Other Miscellaneous Benefits (WCB, E.I. Social Assistance, etc.)

- 10:15 am** **Break**
- 10:30 am** **“Life in the Fast Lane” - Autonomous Vehicle Claims**
Bruce D. Grant, Cauty Lutz Delaquis Grant, Saint John
 • Challenges for Plaintiffs Counsel
 • Implications for Insurers and Defence Counsel
- 10:45 am** **Common Conflict of Laws Questions and Issues in Personal Injury**
Brian Perry, McInnes Cooper, Fredericton
 • Whose Law is it Anyway? • Legislative and Contractual Limitation Periods
 • To Prove or Not to Prove Foreign Law?
- 11:00 am** **Don't Get Burned On a SEF 44 Action Concerning An Accident in The Sunny South**
Michael B. Murphy, Q.C., Forté Law Droit, Moncton
 • Policy Limits in the Tort Jurisdiction and How to Acquire Them
 • Bringing An Action in New Brunswick Against the SEF 44 for the Excess
 • Applicable Deductions Under the SEF 44
 • Tricks, Odds and Ends, and Notes on Dealing with Such a File
- 11:15 am** **All Lies Are Not Equal – When Should an Insured's Dishonesty Result in Forfeiture of Indemnity?**
Lucie LaBoissonnière, McInnes Cooper, Moncton
 • Recent English Case (Versloot) About an Insured's Lie to the Insurer When Reporting a Loss
 • How Versloot Compares with Canadian Authorities on Dishonesty and Coverage
 • The Types of Lies That Will Relieve the Insurer From Its Obligation to Pay for the Loss
- 11:30 am** **Deductibility of CPP Benefits – Sabean and Tibbetts**
Tessa C. Belliveau, Stewart McKelvey, Moncton
 • The Main Distinction Between the Sabean and Tibbetts Decisions; The Legislative Schemes Relating to the Deductibility of Benefits Under an SEF 44 Policy and Nova Scotia's Standard Automobile Policy
 • The Distinction Between the Two Legislative Schemes
 • The Impact of the Distinctions on the Outcomes in These Cases
- 11:40 am** **Use and Operation of a Motor Vehicle Under the Standard Automobile Police – How Far Does It Go?**
Ronald J. Savoy, Bingham Law, Moncton
 • Clarification From The Court and the Amos test • The Amos Test Applied
 • Additional Clarification from the Court • Recent Trends in Coverage
- 12:00 pm** **Lunch**
- 1:00 pm** **Medical Malpractice Update – The Highlights**
Nathalie L. Godbout, Q.C., Godbout Fawcett, Saint John
 • The New Supervised Community Care Plan Under the Mental Health Act: Early Charter Implications or Good Medicine?
 • Paur v Providence Health Care: A Suicide on a Psych Unit Continues the Debate - Standard of Care or Perfection?
 • Shannon v. CMPA: A Patient Who Was Sexually Assaulted Cannot Recover from the Physician's Malpractice Liability Protection
- 1:15 pm** **When the Grass is No Longer Green(er)**
Michael E. Bowlin, Q.C., Cox & Palmer, Fredericton
 • Property – Torts and Transactions • What Can Go Wrong?
 • How to Protect your Client
- 1:30 pm** **Damages Under the Fatal Accidents Act**
Jessica Melanson, Melanson Law, Fredericton
 • Who Has a Right of Action Under the Act? • Heads of Damages Under the Act
 • Statutory Schemes for Fatal Accidents in Other Jurisdictions
- 1:45 pm** **A New Realm: Cyberspace, Cyber-Liability and Cyber Liability Insurance**
Ryan Burgoyne, Cox & Palmer, Fredericton
 • The Growing Relevance of Cyber Liability Insurance
 • Data Loss, Cyber Attacks, Viruses and Other Cyber Threats
 • Cyber Liability in the Courtroom

- 2:00 pm** **To Disclose or Not to Disclose: Developments in Section B Action Disclosure Requirements - A Discussion of Wade v. Wawanesa & Parlee v. Aviva**
Lauren A. Cicin, McInnes Cooper, Saint John
- What These Cases Mean for Plaintiffs
 - Questions That Remain Unanswered
 - What These Cases Mean for Insurers
 - Potential Broader Implications
- 2:10 pm** **Developments at WorkSafeNB: How to Best Advise Clients Involved in Workplace Accidents**
Sonia S. Lanteigne, Worksafe NB, Saint John
- Tort Law vs. Workers' Compensation Benefits; What Should Your Client Elect?
 - Who is covered by the Workers' Compensation Act? What Happens When Employers Don't Pay their Assessments.
 - Applying for Benefits; It's All About Section 7(1)
 - Commuting to Work and the Application of VSL Canada Ltd. V. Workplace Health Safety and Compensation Commission and Duguay et al., 2011 NBCA 76
 - New WCAT, New Landscape
 - Overview of Recent WorkSafeNB Policy Changes Resulting from WCAT Decisions (Appearances, Standards of Weighing Evidence, Retroactivity, PPI Assessments, PTSD, Marijuana)
- 2:25 pm** **Taxability of Long-Term Disability Benefits: Crucial Considerations for the Litigator**
Renée M. Fontaine, Stewart McKelvey, Moncton
- The Basics – When are Disability Benefits Taxable, and in Whose Hands?
 - Litigating a LTD Claim – Advising Your Client on Tax Implications from the Outset
 - Lumping It? – Tax Ramifications on Settlement
- 2:40 pm** **Bruff-Murphy v. Gunawardena 2017 ONCA 502**
Thou Shall Not Enter : Dealing with the Judiciary's Role as Keeper of the Expert Evidence Gate
Jean-Pierre G. LeBlanc, Bossé Viola LeBlanc, Moncton
- First Things First: Cross-Examination at Qualification Stage
 - Assessing the Expert's Testimony
 - Advocacy vs Impartiality
- 2:50 pm** **Break**
- 3:05 pm** **The Exclusion for Intentional or Criminal Acts**
Deirdre L. Wade, Q.C., Cox & Palmer, Saint John
- Distinguishing Intentional Acts and Derivative Negligence Claims
 - The Intention to Commit an Act Versus the Intention to Cause Harm
 - Recent Caselaw Applying the Intentional Acts Exclusion
 - Availability of Coverage for Innocent Co-Insureds
- 3:20 pm** **A Review of Saadti v. Moorhead, 2017 SCC 28**
Kevin C. Toner, E.J. Mockler, Professional Corporation, Fredericton
- Mental Versus Physical Injury
 - More than the Ordinary Annoyances, Anxieties and Fears
 - Hey Look...Indivisibility!
 - Back to Donoghue v. Stevenson
 - Don't Fall Short in Proving, or Rebutting, Mental Injury
- 3:30 pm** **22 + 59 = ??? : The New Math - Recent Developments Concerning Summary Judgment and Costs**
Richard J. Scott, Q.C., McInnes Cooper, Fredericton
- The New Rule 22
 - Costs Awards Against Lawyers Personally: R v Jodoin in the SCC
 - A Costs Update From the NBCA
- 3:45 pm** **Selecting Your Expert: Choosing, Retaining, and Instructing Technical and Engineering Experts**
Matthew T. Hayes, McInnes Cooper, Saint John
- Why Finding the Right Technical Expert is Critical to Success at Trial
 - When and How to Retain the Expert
 - Deciding on the Mandate to Give Your Expert
- 4:00 pm** **New Brunswick's Minor Personal Injury "Caps"**
Stéphane F. Viola, Bossé Viola LeBlanc, Moncton
- Distinguishing Between the 2003 and 2013 Injury Cap
 - Pitfalls to Avoid in Negotiating Cap Settlements
 - How to Best Approach the Evidentiary Requirements to Surpass the Cap

Registration Form

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Registration begins at 8 am

	Registration Fees <i><u>with a binder of materials</u></i>	<u>Save \$75.00</u> and get the materials in ELECTRONIC FORMAT Registration Fees	TOTAL
CBA Member	\$300.00 + HST = \$345.00	\$225.00 + HST = \$258.75	
Non-Member	\$412.50 + HST = \$474.38	\$337.50 + HST = \$388.13	
Articling Student	\$187.50 + HST = \$215.63	\$112.50 + HST = \$129.38	
Law School Student	\$131.25 + HST = \$150.94	\$56.25 + HST = \$64.69	

Registration must be prepaid / Votre inscription doit être payée à l'avance TVH/HST # 12479 5915 RT.

Nom/Name: _____ Cabinet/Firm: _____

Adresse/Address: _____

Tél/Phone: _____ Téléc/Fax: _____

Courriel/Email: _____

Dietary Restrictions: _____

Form of Payment

Cheque (payable to the Canadian Bar Association)

Visa Master Card American Express

Card Number: _____

Expiry Date: _____ Security code (3#): _____

Signature: _____

Registration Fee Refund: There will be a 20% administration charge on any cancellations received in writing by the CBA Branch office up to three (3) business days before the program. No refunds after that, although materials, if any, will be forwarded. Registration substitution is permitted. ABC-NB-CBA reserves the right to cancel sessions due to low registration.

422, York St., Fredericton, NB E3B 3P7

Tel./télé.: 506-452-7818 Fax./Télé.: 506-459-7959 Email/Courriel: cle@cbanb.com www.cba.org/nb

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