

DIGEST OF INSURANCE LAW

PRINCE EDWARD ISLAND

Not Revised for this Edition

CIVIL JUDICIAL SYSTEM

Legislation was enacted in 1987 to create a separate Supreme Court of Prince Edward Island - Trial Division and the Supreme Court of Prince Edward Island - Appeal Division. All necessary powers and jurisdiction pertaining to Court of First Instance are vested in the Supreme Court of Prince Edward Island - Trial Division which is composed of four Judges.

The Supreme Court of Prince Edward Island - Trial Division is divided into four sections, namely: General, Small Claims, Family and Estates. All Judges of Supreme Court - Trial Division have jurisdiction in all sections.

Supreme Court. Supreme Court - Trial Division of this Province is Court of Common Law and has also equitable jurisdiction as defined and limited by the Supreme Court Act and possesses original jurisdiction in civil and criminal cases. Bench of Court is composed of Chief Justice, and, at present, four other Judges. Actions are so far as practicable and convenient, heard and determined and disposed of before single Judge.

All appeals in civil matters are to Supreme Court - Appeal Division and are brought by Notice of Appeal. Unless otherwise ordered by Court, no appeal may be entered for hearing unless case and factum in required format are filed. On appeal, court has full power to hear further evidence and to allow all amendments required to enable full justice to be done. If, on hearing of appeal, it appears that new trial ought to be had, it is lawful for court to order that new trial be had. Appeals lie from Supreme Court - Appeal Division to Supreme Court of Canada.

Small Claims Division of Supreme Court deals with all claims not exceeding sum of \$3,000 save for matters within jurisdiction of Family or Estates Section. Special Rules of Court apply to Small Claims Division, and appeals are permitted only with leave.

LAW

Insurance Act is similar to acts passed in other Provinces where it is intended to make Insurance Law uniform. Act is divided into sixteen parts. Part I deals with Superintendent and his duties.

Part II deals with general provisions applicable to insurers within Province. Part III deals with insurance contracts in Province. Parts IV to IX deals with various classes of insurance, Part X deals with Fraternal Societies, Part XI deals with Mutual Benefit Societies, Part XII deals with Mutual Insurance, Part XIII deals with compensation associations, Part XIV deals with Reciprocal or Inter-Insurance Exchange, Part XV deals with Amalgamation, Transfer and Re-Insurance and Part XVI deals with Agents, Brokers and Adjusters.

Act referred to in this Digest is "Insurance Act" R.S.P.E.I. 1988 Cap. I-4" As amended.

ACCIDENT AND SICKNESS INSURANCE

This class of insurance is dealt with in Part VI of Act.

Definitions. Accident Insurance is defined by Act as insurance by which insurer undertakes, otherwise than incidentally to some other class of insurance defined by or under Act, to pay insurance money in event of accident to person or persons insured, but does not include insurance by which insurer undertakes to pay insurance money both in event of death by accident and in event of death from any other cause.

Sickness Insurance means Insurance by which insurer undertakes to pay insurance money in event of sickness of person or persons insured but does not include disability insurance.

Misrepresentation made by insured or failure to disclose in his application do not, in absence of fraud, render contract voidable.

Persons claiming under Policy must give to insurer notice of such claim within thirty days from date of accident or from date of commencement of sickness, unless it is not reasonably possible to give such notice within such time, and furnish to insurer within ninety days of accident, or in case of sickness, within ninety days after date of commencement of period of disability from sickness, proof of such claim. Any action or proceeding against insurer for recovery of any claim under

Policy must be commenced within one year after cause of action arose.

ADJUSTERS

See "AGENTS, BROKERS AND ADJUSTERS."

ACTION

Any insurer which within Province prosecutes or maintains any action or proceeding in respect of contract of insurance is deemed to be insurer carrying on business in Province within meaning of Insurance Act.

AGE

Age of majority is 18 pursuant to Age of Majority Act R.S.P.E.I.1988, CAP 4-8. Persons entitled to driver's license at age 16.

AGENTS, BROKERS AND ADJUSTERS

Agent. Agent means person who, for compensation, solicits insurance on behalf of any insurer or transmits for person other than himself, application for or policy of insurance to or from such insurer, or offers or acts, or assumes to act in negotiation of such insurance or in negotiating continuance or renewal of other than life insurance contracts, but does not include salaried employee of insurer who does not receive commission or salary in lieu thereof for negotiating such insurance.

Adjuster. Adjuster means person who, for compensation, not being barrister or solicitor acting in usual course of his profession or trustee, or any agent of property insured directly or indirectly solicits right to negotiate settlement of loss under contract of insurance on behalf of insured, or insurer, or holds himself out as adjuster of losses under such contracts.

Broker. Broker means person who, for compensation, acts or aids in any manner in negotiating contracts of insurance or placing risks or effecting insurance or in negotiating continuance or renewal of such contracts for person other than himself.

AUTOMOBILE

Automobile is defined under Insurance Act as including all self-propelled vehicles, their trailers, accessories and equipment but not railway rolling stock, watercraft, or aircraft of any kind.

AUTOMOBILE INSURANCE

Part VII of Insurance Act deals with this class of insurance.

Financial Responsibility. Highway Traffic Act R.S.P.E.I. 1988 H-5 provides that Compulsory Third Party Insurance must be held by owner of motor vehicle. Act states that Registrar of Motor Vehicles shall not register motor vehicle until he is satisfied that it is insured motor vehicle. Minimum liability coverage under motor vehicle policy is \$200,000.

Fraud: Where applicant for contract falsely describes automobile to be insured, to prejudice of insurer, or knowingly misrepresents or fails to disclose in application any fact required to be stated therein or where insured violates term or condition of policy or commits fraud, or makes wilfully false statement with respect to claim under policy, any claim by insured shall be invalid and right of insured to recover indemnity shall be forfeited.

Owner's Policy insures person named in policy and every other person who with his consent personally drives any automobile, specifically described in policy against liability imposed by law upon insured named therein or upon any such other person for loss or damage arising from ownership, use or operation of any such automobile, and resulting from bodily injury to, or death of any person or damage to property, or both.

Non-Owner's Policy insures person named therein against liability imposed by law upon such insured for loss or damage arising from operation or use by him of any automobile, other than automobile owned by or registered in name of such insured and resulting from bodily injury to or death of any person, or damage to property or both.

Under §229 of Insurance Act certain risks are excluded from Owner's Driver's Policy. These excluded risks include any liability imposed by Workers' Compensation law upon insured.

Insurance, under owner's policy, is first loss insurance in connection with any liability arising out of ownership, use or operations of described automobile. Any other insurance attaching under motor vehicle policy is excess insurance only. Insurer which is responsible under policy of excess insurance is liable for only its rateable proportion of any liability, or expense, or loss, or damage.

BROKERS

See "AGENTS, BROKERS AND ADJUSTERS."

CANCELLATION

Accident and Sickness Insurance. This class of Insurance may be terminated by insurer at any time by giving to insured ten days notice of cancellation by regis-

tered mail or five days notice of cancellation personally delivered to insured and refunding in either case excess of paid premium beyond pro rata premium for expired time. And insurance may be terminated by insured at any time by giving written notice of termination to insurer at any time, in which case insurer shall, upon surrender of policy, refund excess of paid premium beyond customary short rate for expired time.

Fire and Automobile Insurance. Provisions for cancellation of automobile insurance are similar to that of Accident and Sickness Insurance except that fifteen days notice by registered mail is required of Insurer.

Life Insurance. Insurance Act makes no provision for cancellation of Life Insurance. Life Insurance Policy may be forfeited for non-payment of premiums or surrendered for cash value.

CHATTEL MORTGAGE

See "FIRE INSURANCE."

DEATH

There is prima facie presumption that where person is absent and unheard of for period of seven years, person is dead. Where order has been made declaring that death is presumed from fact that the person whose life is insured has not been heard of for seven years, action or proceeding shall be commenced within one year from date of order. §155 of Insurance Act provides that subject to subsection (2), any proceeding against insurer for recovery of insurance money shall not be commenced more than one year after furnishing of evidence required by §151, or more than six years after happening of event upon which insurance money becomes payable, whichever period first expires.

Section 155, subsection (2) provides that where declaration as to presumption of death has been made under §157, action or proceeding to which reference is made in subsections (1) shall not be commenced more than one year after date declaration.

EXAMINATION

Automobile Insurance. Insured must file proof of loss and shall submit to examination under oath, and shall whenever requested by insurer, and in securing information and evidence and attendance of any witness, and shall co-operate with insurer, except in pecuniary way, in defense of any action or proceeding or in prosecution of any appeal. Insured shall produce for examination at such reasonable place as is designated by insurer or its representatives, all documents in his possession or control which relate to matter in question, and shall permit extracts and copies thereof to be made.

Fire Insurance. In case of loss, person entitled to claim under fire insurance policy must furnish statutory declaration stating how loss occurred and if caused by fire, or explosion due to ignition, how fire or explosion originated, so far as insured knows or believes, and that loss did not occur through any wilful neglect or act of insured. Insured may also be required to produce books of account and vouchers.

FIRE INSURANCE

Part IV of Insurance Act applies to insurance against loss of or damage to property arising from peril of fire in any contract made in Province except (a) insurance falling within classes of aircraft, automobile, boiler and machinery, inland transportation, marine, plate glass, sprinkler leakage, and theft insurance; (b) where subject-matter of insurance is rents, charges or loss of profits; or (c) where peril of fire is incidental peril to coverage provided; (d) where subject matter of insurance is property that is insured by insurer or group of insurers primarily as nuclear risk under policy covering against loss of or damage to property resulting from nuclear reaction or nuclear radiation and from other perils.

Automobile. Automobiles may be insured against fire and in such cases Part IV of Act would be applicable.

Certificates of authority of agent. See "AGENTS, BROKERS AND ADJUSTERS."

Chattel Mortgage. Unless otherwise stated specifically in Policy, insurer is not liable for loss or damage to property owned by any person other than insured, unless interest of insured therein is stated in policy. Where loss if any, under policy has, with consent of insurer, been made payable to some other person than insured Policy shall not be cancelled or altered by insurer to prejudice of such person without reasonable notice to him.

Coverage. Coverage includes loss of or damage to property in Province or in transit therefrom or thereto caused by fire, lightning or explosion but does not include loss or damage originating, a) in case of goods, their undergoing any process involving application of heat; b) in all cases, by riot, civil commotion, war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, insurrection or military power.

Limitation of liability. Liability of insurer under policy may be limited to specified proportion of loss or specific percentage of value of property at time of loss or if any other insurance covers property to rateable proportion of specified percentage of property value at time of loss or rateable proportion of specified percentage or proportion of loss sustained. In such case contract of

insurance shall have printed or stamped upon its face in red ink words: "This policy contains clause which may limit amount payable."

Misrepresentation. If any person applying for insurance falsely describes property to prejudice of insurer, or misrepresents or fraudulently omits to communicate any circumstance which is material to be made known to insurer in order to enable it to judge of risk to be undertaken, contract shall be void as to property in relation to which misrepresentation or omission is made.

Property. Under fire insurance contract property includes use and occupancy, rents, profits and charges where these are subject matter of insurance.

FORFEITURE

Where there has been imperfect compliance with statutory condition as to proof of loss to be given by insured or other matter or thing required to be done or omitted by insured with respect to the loss insured against, and consequent forfeiture or avoidance of insurance, in whole or in part and court deems it inequitable that insurance be forfeited or avoided on that ground, Court may relieve against forfeiture or avoidance on such terms as it deems just.

FRAUD

Agent. Agent's Certificate of Authority may be revoked or suspended for misrepresentation, fraud, deceit or dishonesty.

Automobile Insurance. See "AUTOMOBILE INSURANCE, Fraud."

Fire Insurance. See "FIRE INSURANCE, Misrepresentation."

INSURABLE INTEREST

Person has insurable interest in his own life and in life of his child or grandchild; his spouse; any person upon whom he is wholly or in part dependent for, or from whom he is receiving support or education; his employees; and any person in duration of whose life he has pecuniary interest. Corporation or person has insurable interest in life of its or his officer or employee.

JOINT TORT-FEASORS

Where damages have been caused by fault of two or more persons, court shall determine degree in which each was at fault, and where two or more persons are found at fault, they shall be jointly and severally liable for fault to person suffering loss or damage, but as between themselves in absence of any contract express or

implied they shall be liable to make contributions to and indemnify each other in degree in which they are respectively found to have been at fault.

Where in any proceeding two or more parties are found liable for same damage, judgment for contribution may be given on motion when judgment in proceeding is given; or subsequently on summary application.

LIFE INSURANCE

Adopted child. Word child includes adopted child.

Age. Section 131 of Act provides that where insurer fails to disclose, or misrepresents fact material to insurance, contract is voidable by insured, but in absence of fraud, contract is not by reason of such failure or misrepresentation voidable after contract has been in effect for two years.

NO-FAULT

Section 246 (1) and 247 (1) of Insurance Act provides that every contract evidenced by motor vehicle liability policy issued or renewed on or after January 1, 1984 shall provide medical and rehabilitation benefits as well as death and loss on income benefits. These benefits are available to owner, passengers and pedestrians involved in motor vehicle accident.

Summary of these no-fault benefits are as follows:
 1) All reasonable medical and rehabilitation expenses incurred within four years from date of accident to maximum of \$25,000 per person; 2) Funeral expenses incurred up to amount of \$1,000 in respect of death of any one person; 3) Death benefits as follows: a) Head of household - \$10,000; b) Spouse of head of household - \$10,000; c) Dependent in meaning of Act - \$2,000; 4) Weekly loss of income payment for period during which insured person suffers substantial inability to perform essential duties of his occupation or employment for period of 104 weeks or thereafter if insurer agrees, provided a) such person is employed at date of accident, and b) within thirty days from date of accident as result of accident insured person suffers substantial inability to perform essential duties of his occupation or employment for a period not less than seven days. Amount of weekly payment shall be lesser of \$140 per week or 80% of insured person's gross weekly income from employment less any payment for loss of income received by or available to such person in accordance with Act.

PROPERTY DAMAGE INSURANCE

Property damage insurance means insurance against loss or damage to property which is not included in or incidental to some other class of insurance defined by or under Insurance Act.

SUBROGATION

Automobile Insurance. Assurer on making any payment or assuming liability therefor, under contract of automobile insurance shall be subrogated to all rights of recovery of insured against any person and may bring action in name of insurer to enforce such rights. (§255).

Fire Insurance. Permitted as in automobile insurance see *supra*. (§118).

UNETHICAL PRACTICES

Any person who, to detriment of insured, induces or attempts to induce, directly or indirectly, insured to rescind or lapse; surrender for cash paid-up or extended insurance, or other valuable consideration; or subject to substantial borrowing, whether in single loan or over period of time, any contract of life insurance for purpose

of effecting another contract of life insurance is guilty of offence.

Person licensed as agent for life insurance under this act who, directly or indirectly, makes false and misleading statement or representation in solicitation or negotiation of life insurance; makes or delivers any incomplete comparison of any policy or contract of insurance with that of same or any other insurer in solicitation or negotiation of life insurance; or coerces or attempts to coerce, directly or indirectly, prospective buyer of life insurance through influence of professional or business relationship or otherwise to give preference that would not otherwise be given on effecting of life insurance contract, is guilty of offence.

WAR CLAUSE

See "FIRE INSURANCE, Coverage."