



## Seminar notes:

### Canadian Liability Briefing: Dolden Wallace Folick LLP

Tuesday 1 November 2011, 9.30 - 11am

Lloyd's Gallery 11, Presentation Room 3

#### 1. Cyber Liability Law in Canada: Corporate Canada needs the cyber liability policy:

In the past two years Canada has undergone a dramatic transformation in the manner in which privacy is protected and the extent to which new legislation protects electronically stored data from improper disclosure. New Canadian federal and provincial legislation has given rise to:

- An affirmative obligation to take steps upon information or data being improperly disclosed in the business setting;
- A requirement to notify those affected by a breach of their privacy; and
- A right of a person impacted by improper disclosure to claim damages.

This presentation will review the new cases, decided in 2010 and 2011, which have awarded damages. This presentation will also examine the Federal Government's new "Fighting Internet and Spam Act" which became law on December 15, 2010 including the new statutory cause of action for damages (up to \$1.0 m. per day) available to persons whose privacy has been affected.

The presentation will close with an examination of how both the Personal Injury and Advertising Injury coverage in the general liability policy may have to respond and, why, in the long term, Corporate Canada will need to purchase cyber liability coverage.

#### 2. Why are tort and contract damage awards in Canada steadily increasing and what does the future hold for liability insurers when setting reserve recommendations:

Canada has traditionally been viewed as having more modest damage awards as compared to the United States. However, a variety of legislative and judicial developments in the past few years have contributed to an upward spiral in damage awards in all Canadian provinces but particularly in Ontario, Alberta and British Columbia.

This presentation will cover bodily injury, property damage and "pure economic loss" type of cases. This aspect of the seminar will examine which types of claims have experienced the greatest increase, the extent of the growth in damage awards over the past five years, why the Judges are moving in this direction, and then discuss some successful defence strategies that are being used to contain damage awards.

An overview of recent cases will include the following: a) significant head injuries with large accompanying care awards b) moderate injury claims that are approaching the Supreme Court of Canada cap on non-pecuniary damages c) nervous shock cases and d) "getting new for old" - recovery of full loss on property damage claims when insurer only paid ACV.

Finally, we will touch upon the different legislation that has been implemented across Canada allowing the public medical system to claw back paid benefits.