

Impact of Marijuana Legalization on Insurance

Jennifer D. Pereira, Q.C.

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The logo of the Law Society of Saskatchewan, featuring a stylized tree with a white trunk and branches, and a gold and white leaf-like shape at the base.

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Introduction



Automobile
Insurance



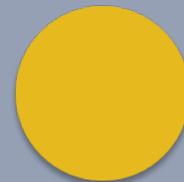
Residential
Tenancies



Accident
Benefits



Life Insurance



Homeowner's
Insurance



Future
Challenges

Automobile Insurance



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Automobile Accident Insurance Act

Prohibited use by insured

2(1) The insured must not drive or operate the automobile:

(a) while under the influence of intoxicating liquor or drugs to such an extent as to be for the time being incapable of the proper control of the automobile;

....

(2) The insured must not permit or allow the use of the automobile:

(a) by any person while the person is under the influence of intoxicating liquor or drugs to such an extent as to be for the time being incapable of the proper control of the vehicle

Venkataya v Insurance Corp of British Columbia, 2015 BCSC 1583



The insurer must prove
the incapacity on a
balance of probabilities

Automobile Accident Insurance Act

66(1) For the purposes of this Act, a person is conclusively deemed to be under the influence of alcohol or drugs to the extent the person was incapable for the time being of having proper control of a motor vehicle if the person is convicted of an offence pursuant to:

- (a) paragraph 320.14(a), (b), (c) or (d), subsection 320.14(2), (3) or (4) or subsection 320.15(1), (2) or (3) of the *Criminal Code*;
- (b) a law of a state of the United States of America that is substantially similar to an offence mentioned in clause (a).



Accident Benefits

Section 62 of the Automobile Accident Insurance Regulations:

SGI may reimburse an individual for expenses incurred to purchase medication, dressings and other medical supplies.

PA v TD General Insurance Company, 2020 ONLAT

Burden of proof rests with the applicant to demonstrate entitlement to medical cannabis on the basis of reasonableness and necessity



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Accident Benefits



WCB Statement 5 of Policy 10/2011 reads as follows:

The WCB will not reimburse the costs of obtaining, growing, or using medical marijuana (i.e., the smoked form).

Homeowner Insurance



Stewart v. TD General Insurance Co., 2014 ONSC 854



“We insure the contents of your dwelling and other personal property you own, wear or use while on your premises which is usual to the ownership or maintenance of a dwelling.”

Homeowner Insurance



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Homeowner Insurance



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Bahniwal v. Mutual Fire Insurance Co. of British Columbia, 2016 BCSC 433

Misrepresentation

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

...

Material Change

4. Any change material to the risk and within the control and knowledge of the insured avoids the contract as to the part affected by the change, unless the change is promptly notified in writing to the insurer or its local agent;

Carteri v. Saskatchewan Mutual Insurance Co., 2018 SKQB 150



“The purpose of s.126, is to ensure, as best as possible, that the insured and the insurer are *ad idem* as to the terms of the insurance policy, and that an insured is not forced to accept terms that differ from the coverage sought in the application. Where the insurer issues a policy but includes a term that differs from that set out in the insured’s application, s.126 obliges the insurer to point out the particulars of the differences.”

Carteri v. Saskatchewan Mutual Insurance Co., 2018 SKQB 150

“...with respect to the hardship that the drug exclusion may present for landlords, Ducharme J. concisely and fairly responded to the criticism at para. 108 of the Pietrangelo trial decision. I agree and adopt his response. In my view, this underscores the point that landlords are not forced to remain in the business of renting our residential property. If they are not able or willing to bear the risk, they may need to reconsider their investment.”

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Schellenberg v Wawanesa Mutual Insurance Company, 2019 BCSC 196



4. (1) The insured must promptly give notice in writing to the insurer or its agent of a change that is:

(a) material to the risk, and

(b) within the control and knowledge of the insured.

(2) If an insurer or its agent is not promptly notified of a change under subparagraph (1) of this condition, the contract is void as to the part affected by the change.

Lafferty v Co-Operators General Insurance Co., 2019 ABQB 515





Insurance Act

Recovery by innocent persons

8-29(1) If a contract of insurance contains a term or condition excluding coverage for loss or damage to property caused by a criminal or intentional act or omission of an insured or any other person, the exclusion applies only to the claim of a person:

- (a) whose act or omission caused the loss or damage;
- (b) who abetted or colluded in the act or omission;
- (c) who:
 - (i) consented to the act or omission; and
 - (ii) knew or ought to have known that the act or omission would cause the loss or damage; or
- (d) who is a member of a prescribed class.

(2) Nothing in subsection (1) allows a person whose property is insured under the contract of insurance to recover more than the person's proportionate interest in the lost or damaged property.

Life Insurance

Disclosure of material facts

8-113(1) An applicant for insurance ...shall each disclose to the insurer in the application...every fact within the applicant's or person's knowledge that is material to the insurance ...



Batanova v London Life Insurance Company, 2019 BCSC 1147



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Thank you!

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