

## OCCASIONAL PAPER No. 5 – CAPS ON PAIN AND SUFFERING AWARDS

The following provides a source of selected sources for further research on the issue of caps on non-pecuniary (pain and suffering) damage awards for vehicle insurance claims.

### GENERAL OVERVIEW OF VEHICLE INSURANCE FROM WIKIPEDIA

- [https://en.wikipedia.org/wiki/Vehicle\\_insurance](https://en.wikipedia.org/wiki/Vehicle_insurance)

### CANADIAN OVERVIEW (as of 2010)

In September, 2010, the Courthouse Libraries BC prepared a summary of minor injury caps in each province. These are designed to claims of accident victims in less serious collisions.

- [http://www.courthouselibrary.ca/training/stream/10-09-03/Minor\\_Injury\\_Caps.aspx](http://www.courthouselibrary.ca/training/stream/10-09-03/Minor_Injury_Caps.aspx)

### ALBERTA CAP ON MINOR PAIN AND SUFFERING

In 2004, Alberta imposed a cap on minor pain and suffering claims, which would increase each year by the rate of CPI growth; for 2016 the cap is \$4.956. The legality of the cap was confirmed by the Alberta Court of Appeal in 2009, and the Supreme Court of Canada refused to hear an appeal.

- <http://www.thecourt.ca/alberta-courts-uphold-minor-injury-cap-in-morrow-v-zhang/>

two cases in 2012 and 2015 have provided more clarity about the Alberta regulations. A useful summary suggests that some 90% of pain and suffering claims are capped.

- <http://helpandhope.ca/is-your-claim-capped/>

### RECENT CHANGES IN GREAT BRITAIN

In 2014, the British government considered a limit or cap on minor pain and suffering awards, linked to an increase to 5,000 British Pounds (BP) for the monetary limit for small claims actions in the courts.

The Association of British Insurers (ABI) site contains useful information.

- <https://www.abi.org.uk/Insurance-and-savings/Products/Motor-insurance>

From 2012 to 2014 the ABI led a move to restrict awards for minor whiplash (pain and suffering) claims, which were seen as part of the 'compensation culture' of Britain.

- <https://www.abi.org.uk/News/News-releases/2013/04/Brace-Yourself--UK-Is-The-Biggest-Pain-In-The-Neck-In-Europe>
- <https://www.actuaries.org.uk/news-and-insights/media-centre/media-releases-and-statements/data-institute-and-faculty-actuaries-0> accident data from 2006 onward shows a decrease of 20% in the number of injury accidents, but a 40% increase in third party injury claims.

What is driving the growth in claims costs?

- <http://www.financemarkets.co.uk/2012/06/04/whiplash-compensation-driven-by-insurance-companies/> argues it is the process used in Britain.
- <https://www.theguardian.com/money/2015/oct/03/whiplash-epidemic-pain-insurers-necks-motoring> provides useful comparisons.

In the fall of 2015 the government announced that it would ban claims for minor pain and suffering damage, effective in April, 2017. This was expected to save approximately BP 1.0 billion annually in insurance costs.

- <http://www.legalfutures.co.uk/latest-news/autumn-statement-5k-small-claims-limit-and-end-to-general-damages-in-whiplash/print>
- <http://www.telegraph.co.uk/finance/autumn-statement/12017540/Motorists-see-insurance-premiums-slashed-by-50-in-fake-whiplash-claims-crackdown-but-not-until-April-2017.html>

Law firms continue to advertise, with a BP 1,000 limit on minor whiplash claims.

- <http://www.bottonline.co.uk/guides/how-much-compensation-claim-for-car-accident#HOW>

Still determining new upper limit for small claims actions.

- <http://www.lawgazette.co.uk/law/moj-undecided-on-scope-of-small-claims-limit-increase/5052870.fullarticle>

The industry claims the savings from 2013 government changes have lowered the average premium, but personal injury claims are rising.

- <https://www.abi.org.uk/News/News-releases/2015/07/Insurers-passed-1-1billion-savings-motorists-climbing-personal-injury-claims-pushing-premiums-higher>

© Richard C. McCandless July 26, 2016.

The writer is a retired senior BC government public servant who's paper on the 40-year financial history of ICBC was published by *BC Studies* in 2013. The same academic journal will be publishing his paper describing the BC government's manipulation of the finances of BC Hydro from 2008 to 2014 in the fall. He has been an intervener in the BC Utilities Commission's 2014 and 2015 reviews of ICBC's rate requests.

