

General Council Meeting on 28th March 2019: Country Reports

- **Canada** (Simon Gibson): the legal protection insurance market is growing in Canada, however, the key challenges are low awareness, hardening insurance market and competition posed by other prevalent non-core insurance products, such as Cyber Liability. The BTE (Before-The-Event) sector is growing at a steady pace through brokerages, often being accompanied as a complement to an existing program and scale is being accomplished by including legal protection insurance as an add-on to an insurer's core policy. However, it is still far from the expectations. ATE (After-the-Event) continues to outpace BTE, facilitating litigation such as personal injury, medical malpractice, commercial, class action and most notably Indigenous Land Claims against the Canadian government (first nation). A regulatory push would be necessary for future developments and particular attention is currently directed to the cyber risks and the LegalTech sectors. Simon Gibson, Head for Legal Expense at Aon Reed Stenhouse Inc, RIAD Member since autumn 2018, is in close contact with the Canadian Bar Association where he speaks on 4 April 2019 on the topic of litigation funding and After-The-Event insurance. See the programme here: https://www.cbapd.org/details_en.aspx?id=ON_19INS0404T

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- **France** (Laurent des Brest, Marlène Hervier, Nicolas Zavalichine): in 2018, premium income in the French LPI market amounted to 1.4 € billion, i.e. a growth of 5% which is the highest growth of all sectors of the insurance market. In France, legal protection insurance growth is due to the ramp-up of independent products at the expense of additional clauses. In France, unlike in other countries, the free choice of lawyer is presently not a key subject in discussions with the Bar Association. The main issue being rather the notion of "conseil" (advice) which determines the nature of the non-litigation benefits that insurers can provide to their insured persons. The FFA (French Insurance Association-Fédération des Assureurs) will propose a new discussion with the Bar Association, more focused on ethics and professional conduct for our sector.

On 23 March 2019 a new law, modifying the justice system, went into force (*LOI no 2019-222 du 23 mars 2019 de programmation 2018-2022 et de réforme pour la justice*) which provides that the referral to a judge must be preceded by an attempt to resolve the dispute amicably (where the claim is less than 5,000 € or relates to a neighbourhood dispute). Legal protection insurers are not expressly envisaged by this kind of out-of-court settlements. Before the law could enter into force, French insurers appealed to the *Conseil Constitutionnel* to amend the law to the effect that legal protection insurers would also be recognized in their role as mediators settling disputes out-of-court before starting litigation. With decision dated 21 March 2019 (*Décision no 2019-778 DC du 21 mars 2019*) the *Conseil Constitutionnel* rejected the appeal and the law entered into force listing only judicial conciliation, mediation and participatory procedures among the amicable ways recognised prior to the referral to a judge. Competition in the French market is rising since LegalTechs are gaining ground and the market of legal professionals is developing strongly. These competitors deliver clean and minimal solutions, i.e. "*litiges à la demande*", and it is necessary to keep a close eye on the ongoing activities.

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- **Germany** (Torsten Schwan, Ole Eilers, Rainer Brune): after some difficult years, in 2018 the legal protection insurance market showed an increase in premium income of 4%, which is due to both, new business and an increase in the portfolio as a result of rising claims cost in the year before. In 2018 claims paid decreased and the combined ratio is now at 97%. Dieselgate is still an issue for the sector. Latest figures published by the German Insurance Association, GDV, show that the impact has been substantial (144,000 insureds have used their legal protection policy so far, 380 € mio have been paid out in claims and 400,000 car owners have subscribed to the *Musterfeststellungsklage*). The discussion on Dieselgate in the media is still ongoing but has also driven business and demand for legal protection insurance by German consumers. German LPI companies are increasingly employing LegalTechs which they integrate in their offers and develop into a new business field. Many companies implement their own service platforms as alternative offers, e.g. ARAG with hello Law (<https://de.hellolaw.com/>) or DEVK with KLUGO (<https://www.klugo.de/>).

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- **Gibraltar** (Alan Strange): the LPI market has discontinued writing business in the EU in advance of Brexit.

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- **Nordic countries** (Henrik Jensen): Due to Brexit and other circumstances, AmTrust Law and DAS have pulled out of the Norwegian market, being replaced by AmTrust@Lloyds in Brussels and ROLAND Rechtsschutz from Germany. Also, other companies are starting to do business in the Nordic countries, but with no significant penetration so far. LegalTech is having a big success due to its privileged position compared to the other services and the fact that consumers mainly obtain information through the internet.

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- **Switzerland** (Daniel Siegrist): the Swiss bar association and the legal protection insurers have formally implemented the recommendations for the cooperation between lawyers and insurers which entered into force on 1st January 2019. The three documents are available in English, French, German, Italian for download: recommendation for lawyers ([EN](#), [FR](#), [DE](#), [IT](#)), recommendation for insurers ([EN](#), [FR](#), [DE](#), [IT](#)), checklist ([EN](#), [FR](#), [DE](#), [IT](#)).

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- **United Kingdom** (Simon Warr): the UK market is busy with the effects of Brexit. Moreover, as in all European countries, class action is gaining momentum in the UK and it seems to develop into the same direction as in Canada and Australia.

Fixed Recoverable Costs (FRC): access to justice is enhanced if claimants are able to contemplate legal proceedings with an informed assessment of the likely costs, rather than to avoid them altogether due to a fear of a high but uncertain liability. Consequently, to make costs proportionate and improving access to justice for many, the Ministry of Justice (MoJ) wants to extent FRC to further categories of claims, including claims of higher value:

1. 'On 28 March 2019 the MoJ laid out its intention to implement Sir Rupert Jackson's blueprint for fixed recoverable costs (*Review of Civil Litigation Costs: Supplemental Report* published in 2017 <https://www.judiciary.uk/wp-content/uploads/2017/07/fixe->

recoverable-costs-supplemental-report-online-2-1.pdf) across the fast-track and in most money cases worth up to £100,000.'

2. 'It will also take forward the Civil Justice Council's plan for FRC in noise-induced hearing loss cases, and introduce costs management in judicial review cases where a party's costs exceed £100,000.'
3. The two other recommendations of the 2017 report – introducing a new procedure and FRC for clinical negligence claims worth up to £25,000 and a capped costs pilot for Business & Property Court cases worth up to £250,000 – have already been taken up.

See for more information: https://www.litigationfutures.com/news/government-to-implement-jacksons-fixed-costs-blueprint?utm_source=iContact+Weekly+Newsletter&utm_medium=email&utm_campaign=litigation-futures&utm_content=

Small Claims Court Limit: The *Small Claims* is actually just a simplified procedure that more simple cases go through. Advantages are that claimants can apply online, it is very informal and parties do not need a lawyer. Therefore, it is an easy access to justice for citizens and some changes are meant to facilitate access even further:

1. Civil Procedure Rules: Raising of the limit for use of the Small Claims Track from £1,000 to £5,000 for drivers and passengers in cars.
2. Civil Liability Act: Introduction of fixed damage tariff for whiplash (otherwise known as 'soft tissue') claims which will be a fraction of awards currently applicable for smaller claims.

Combined, these changes mean that the vast majority of RTA (road traffic accident) personal injury claims will move to the Small Claims Track.

Under the Small Claims Track, claimant legal fees are not recoverable from the losing side. This will mean that the Claims exceeding the Small Claims limit will remain in the Fast Track system, under which claimants' costs will still be recoverable from defendants, but we estimate that this will only represent 5% of personal injury cases. This will drastically reduce the amount of ATE policies but will allow legal protection insurers to increase premiums and the importance of BTE policies for motor legal protection.

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