



Amendments to the *Insurance Act*

Submission to the Financial and Consumer Services Commission

The New Brunswick Women's Council supports New Brunswick's Financial and Consumer Services Commission's recommendation to make amendments to the *Insurance Act* in relation to innocent co-insureds and exclusionary clauses in home insurance policies.

The proposed amendments seek to address exclusionary clauses within home insurance policies that prevent payment if the loss or damage to property is caused by any intentional or criminal act by any person insured under the policy. For innocent co-insureds – that is, individuals who are covered under the policy but who are not responsible for the intentional damage to property – exclusionary clauses can mean they are denied compensation under the policy.

The implications of these exclusionary clauses have been highlighted recently for their consequences to innocent co-insureds in the contexts of divorce, separation, and domestic violence. When a spouse or cohabitant intentionally damages the property (i.e. by setting it on fire) as an abuse tactic, these exclusionary clauses render the victim ineligible for compensation. Abusers may use the destruction of property as a means of ongoing control and violence, particularly if they believe the victim will not be able to recover anything under their insurance policy.

The physical and mental health impacts associated with domestic violence are widely recognized, yet the associated economic impacts are less discussed despite often being equally severe. The economic impacts of violence are frequently a result of damage to or loss of property. Such impacts can increase the vulnerability of the victim and increase the potential for further violence.

The potentially devastating consequences of such situations have been demonstrated in two recent cases in Ontario in which the innocent co-insureds were unable to receive compensation after their partners set fire to their homes.¹ Since these cases, Ontario has introduced legislation to address innocent co-insureds and exclusionary clauses in its *Insurance Act (Bill 125, Innocent Persons Insurance Recovery Act, 2017)*.² British Columbia, Alberta, Manitoba, Saskatchewan, and Quebec have already similarly amended their respective insurance acts.

The Insurance Board of Canada has also recently recommended its members voluntarily modify their policies to protect innocent co-insureds.³

Because the majority of victims of domestic violence are women, the proposed amendments to New Brunswick's *Insurance Act* are a matter of gender-based equality. By providing a safeguard for innocent

¹ <http://www.nationalpost.com/abusive+husband+their+house+fire+wife+denied+insurance+payout+ontario+court/13340183/story.html>;
<http://www.cbc.ca/news/canada/toronto/insurance-claim-arson-allstate-1.4061091>

² http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&Intranet=&BillID=4775

³ <http://www.insurancebusinessmag.com/ca/news/breaking-news/ibc-tells-members-to-protect-innocentcoinsureds-67852.aspx>

co-insureds, this amendment may ultimately have important social, economic, and health impacts for women and children in New Brunswick.

Should the *act* be amended, there will also be a need for oversight and support to ensure the tenants of the amendments work in practice. As legal scholar Adjin-Tettey (2013) observes, innocent co-insureds are required to participate in an investigative process in order to determine their lack of awareness or collusion in the property damage.⁴ Such investigations must be conducted in ways that recognize the unique dynamics of domestic violence and the complexities around coercion, safety, etc., as well as the effects of trauma. This may involve additional education or training for insurance providers, as well as access to necessary free or affordable legal representation to innocent co-insureds to provide guidance in this process.

⁴ Adjin-Tettey, E. (2013). Personal responsibility for intentional conduct: Protecting the interests of innocent co-insureds under insurance contracts. *Alberta Law Review* 50(3), 615-630.