

**Court of Appeal Declines to Stay Decision Rendering Cap Unconstitutional**

In a decision released June 27, 2008, the Alberta Court of Appeal followed the precedent set in the Court of Queen's Bench and declined to grant a stay of the decision that struck down the minor injury cap pending its appeal (*Morrow v. Insurance Bureau of Canada*, 2008 ABCA 248). Justice Rowbotham applied the same test previously applied by Justice Wittman in the Court of Queen's Bench. She found the appeal raised a serious issue but did not think there would be irreparable harm if the stay was not granted. She also did not find the balance of convenience to be in favour of the granting of a stay. Justice Rowbotham noted that insurers cannot be compelled to settle for more than the minor injury cap amount and therefore the irreparable harm they claimed would be suffered was artificial. It was also noted that the appeal is to be heard on September 12, 2008 and the fact the appeal would be heard so soon clearly impacted her decision.

We will be watching the proceedings in the Court of Appeal with most interest and will keep the website updated as developments occur.