

ICBC Basics

Understanding the basic procedures, rights and obligations when dealing with ICBC

SURVIVORS

GUIDE TO

ICBC

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This Guide is meant to provide general information and to serve as a starting point in your understanding of the consequences of being involved in a motor vehicle accident in British Columbia. It is not meant to serve as or replace the necessity for legal advice regarding your specific circumstances.

History of ICBC

“Building trust, driving confidence” ICBC’s motto

In March 1974 the Province of British Columbia enacted legislation which resulted in a universal, compulsory automobile insurance scheme. This insurance scheme was and is administered by the Insurance Corporation of British Columbia (“ICBC”). Until June 1, 2007 ICBC was governed by the *Insurance (Motor Vehicle) Act*. On June 1, 2007 the Act was renamed the *Insurance (Vehicle) Act* (the “Act”). Under the terms of the Act, every motorist in British Columbia is required to purchase basic autoplan insurance from ICBC. The original intent of developing ICBC was to prevent private insurers from offering automobile insurance. However in 1976 the legislation was changed to allow private insurers to compete with ICBC to provide coverage beyond the basic coverage that all motorists are required to purchase. We now have a system in British Columbia where all motorists purchase their basic autoplan insurance from ICBC and then have an option of purchasing extended coverage through ICBC or the myriad of private insurers who offer the coverage.

The vision of mandatory Basic Autoplan insurance coverage through ICBC is to ensure that all British Columbians who own and drive a motor vehicle in BC are protected with a basic level of insurance coverage. The above quotation is ICBC’s logo. Unfortunately over the years the corporation has grown into a vast and multi layered corporation and the experience of many has not been in line with that motto. The reality is that the administration of insurance coverage is a business, regardless of whether it is a universal system or not. That fact makes it an adversarial situation and accessing benefits is often difficult for individuals. The existence of a compulsory, universal system of Basic Autoplan insurance does provide protections for members of our province, however it also creates unique challenges due to the lack of competition in the provision of this service.

Structure of ICBC

ICBC has a complex organization structure that has as many as seven layers of management between the CEO and frontline workers. ICBC's 2014 Strategy

ICBC's has a Board of Directors that is appointed by and accountable to the province. The Board provides guidance and oversight to ICBC's operations. ICBC's management reports to the Board and the Board provides approval on all major strategies and policies. The senior management team of ICBC has an executive committee which consists of the President and 10 senior executives and 13 Vice Presidents. ICBC is organized into ten divisions. Each division is led by one of the senior executives who reports directly to the President and Chief Executive Officer.

ICBC claims are categorized in two ways, Material Damage (non-injury) and Injury claims. The Injury Claims are handled by risk and complexity.

ICBC recently released its 2014 Strategy. In describing why a new Strategy for delivery of auto insurance was necessary the Strategy document notes the following:

Customers don't believe they're getting good value for their money, and better drivers want rates that reflect their safe driving; higher risk drivers currently don't pay enough.

Customers don't trust us; many see us as distant and bureaucratic.

We treat all customers the same because information isn't available to help us understand their personal expectations and preferences.

Customers have limited options for interacting with ICBC.

In the past ICBC has set up policies and procedures that primarily benefit the company, but not our customers.

Many of our practices and services are seen by customers as unfriendly and not meeting their needs.

Consumers in general are getting more and more assertive about their service expectations; if we don't change, we won't be successful in the future.

This quotation from the 2014 Strategy tells you a lot about the structure and organization of ICBC. Although they are striving to change, they are a complex bureaucratic organization, driven by policies and procedures which are geared towards protection of the corporation, not of the individuals who are seeking the protection and compensation of the insurance that they have purchased. Any involvement with ICBC is one in which arbitrarily applied policies and principles will govern, with no consideration of an individual's needs or the individuality of those who have to access available insurance.

The Strategy recognizes that ICBC is the sole provider of Basic auto insurance and driver-related services on behalf of the province and also competes in the optional insurance market. The strategy describes how ICBC is envisioned in the next 10 – 15 years and the steps that will be taken to transition ICBC from its current to the envisioned future state.

The above describes the bureaucratic organization of ICBC. From an individual's perspective, the more important organizational aspect is the experience that the individual will have in dealing with ICBC in a claims situation. The initial contact that any individual will have with ICBC is through calling a claims centre to report a motor vehicle accident. Typically then you will be seen by an adjuster and likely an estimator will assess the damage to your vehicle. The manner in which the ICBC adjuster handles your claim will be restricted by internal policies and procedures. Most all decisions at ICBC currently are handled in a committee format, where a committee of adjusters and a manager will look at the claim, make decisions regarding what will happen with the claim and make decisions on the limits that are payable to the claimant, absent legal action. These limits may bear no resemblance to what a court would do with the case.

Once you hire a lawyer to represent you in your ICBC claim, the claim will typically be transferred to a more senior adjuster at a litigation claim centre. From my perspective this is a good thing as the more senior adjusters do have a better sense of the proper way of dealing with a claim as well as the quantum of the claim. The claim is paid from the policy of the at fault motorist, therefore the adjuster is representing that individual, not the person who is making the claim. The adjuster that is responsible for your claim is not there to ensure that you are fully compensated rather they are there to represent and protect the insured, the person responsible for the accident that you are claiming damages from. The role of the adjuster is to ensure that as little as possible is paid for a claim. Their role is to protect the interests of the other involved motorist and the corporation, ICBC.

Once litigation is started, ICBC will hire a lawyer to represent the insured motorist that was responsible for the accident. A part of any insurance with ICBC carries with it ICBC's duty to defend claims. The lawyer is provided to the at fault motorist at no cost to that motorist. The relationship between the at fault motorist and the lawyer representing him or her is very different from the typical lawyer/client relationship and generally the lawyer will have almost no contact at all with the at fault motorist, rather all contact and instructions on how to deal with the claim will come from the adjuster responsible for the file.

ICBC hires specific lawyers to handle the defense of personal injury and other claims concerning their insured's. They do not however do so on an ad hoc basis. They require counsel who are performing their defense work to enter into a *Strategic Alliance Agreement* (the "SAR"). The SAR has a number of requirements including that the lawyer and the law firm that he or she works with must not bring actions against ICBC that include allegations of bad faith or claims for punitive, aggravated or exemplary damages. ICBC also requires that firms acting for ICBC in the prosecution of actions alleging fraud must not act against the Corporation in defending any such actions.

Because of the nature of the SAR, the Law Society of British Columbia, which governs the conduct of lawyers practicing law in British Columbia requires lawyers that are members of firms that have entered into the SAR to notify potential plaintiff clients of the potential restrictions in their representation that they will face as a result of being a party to the SAR. If a law firm in British Columbia is doing defense work, they are a party to the SAR. If the law firm is doing ICBC defense work, when they act for plaintiff's the lawyer who is a member of a firm that has signed an SAR will not be able to sue ICBC for bad faith or to seek punitive, aggravated or exemplary damages against ICBC. The SAR states specifically that:

"ICBC may impose penalties against the firm....(where) the firm, or any member of the legal team, in the performance of the legal services, fails to act in the best interests of ICBC or ICBC's insured's..."

The SAR also states that *"members of the legal firm's team will not directly or indirectly: commence or participate in claims or actions, or counsel or assist others in bringing claims or actions against ICBC which include allegations of bad faith, or claims for punitive, aggravated or exemplary damages."*

It is these two clauses that have led to the Law Society mandating that although it is OK for a lawyer to act both for ICBC and for clients who are bringing claims for damages arising from motor vehicle accidents, the lawyer must advise the client that they are a signatory to the SAR. Being a signatory to the SAR will result in limits to the representation that the lawyer is able to provide.

Although the lawyer hired by ICBC will provide advice to the adjuster on how to proceed and likely outcome at trial, it is the adjuster that will make all of the decisions in terms of what happens on the case. The adjuster maintains control of the case and often any discussions that our office has regarding settlement of the claim will be directly with the adjuster rather than through the lawyer. The manner in which ICBC has been structured results in the adjuster responsible for a claim being the party that will give all of the instructions to the lawyer on how to proceed with the claim. That adjuster's ability to provide instructions will be limited by ICBC internal policies and procedures and by the mandate provided to him or her by the various committees within ICBC internally.

Primer on the Legislation Governing ICBC

“Insurance” means the undertaking by one person to indemnify another person against loss or liability for loss in respect of a certain risk or peril to which the object of the insurance may be exposed, or to pay a sum of money or other thing of value on the happening of a certain event”
Definition of “insurance” found in the *Insurance (Vehicle) Act*.

A. Insurance (Vehicle) Act

On June 1, 2007 the *Insurance (Vehicle) Act* came into force. From the inception of the universal provincial auto insurance scheme, the legislation governing ICBC had been the *Insurance (Motor Vehicle) Act*. This Act was renamed and modified on Jun 1, 2007 and the *Insurance (Vehicle) Act* now governs the policy of insurance that is obtained in British Columbia and the rights and obligations that flow from that policy. The Act governs all auto policies issued in British Columbia.

The Act is divided into 6 parts, 2 of which have been repealed. The parts that are in effect include:

- Part 1 – Universal Compulsory Vehicle Insurance – this is the terms and conditions associated with the Mandatory Basic Autoplan Insurance
- Part 4 – Optional Insurance Contracts – this covers the insurance over and above the Mandatory Basic Autoplan Insurance which can be purchased through ICBC or through private insurance providers
- Part 5 – General provisions – these are terms that apply to both the Mandatory Basic Autoplan Insurance and the excess insurance, regardless of provider
- Part 6 – Vehicle Actions – this section provides basic limitation and rights when an individual is involved in a motor vehicle accident in British Columbia.

The Act defines “accident” in Part 6, section 95 as follows:

“Accident” means an unintentional mishap occurring in British Columbia as a result of which a person suffers bodily injury, death or loss of or damage to property that arises out of the use or operation of a vehicle.

B. Insurance (Vehicle) Regulation

In addition to the Act, the *Insurance (Vehicle) Regulation* (the “Regulations”) set out the administrative and coverage details. The Regulations are divided into 15 parts, one of which has been repealed, which clearly show the scope of the application of the *Regulations*. The Parts are as follows:

Part 1 – Interpretation

Part 2 – Owner’s Certificate

Part 3 – Premiums for Universal Compulsory Vehicle Insurance

Part 4 – Driver’s Certificates

Part 5 – Conditions of Certificate

Part 6 – Third Party Liability Insurance Coverage

Part 7 - Accident Benefits

Part 8 – Third Party Rights Occasioned by Uninsured or Unidentified Motorists

Part 10 – First Party Coverage

Part 11 – Special Coverage Certificates

Part 12 – Fleet plan

Part 13 – Optional Insurance Contracts

Part 14 – Vehicle Actions

Part 15 – Lessor Liability

C. Motor Vehicle Act

The *Motor Vehicle Act* is also legislation which is relevant to motor vehicle accidents occurring in British Columbia. This act deals with the registration and licensing of motor vehicles, the licensing of drivers and traffic control.

Section 86 of the *Motor Vehicle Act* provides for the vicarious liability of an owner of a motor vehicle for the negligent driving of his or her family members or others driving his vehicle with his consent.

D. Worker’s Compensation Act

An analysis of the legislation which governs ICBC or impacts an ICBC claim would not be complete without an explanation of the role that the *Workers Compensation Act* has on ICBC claims. Under the British Columbia *Worker’s Compensation Act* a worker and his or her dependents forfeit any rights that they may have against any “employer” or “worker” for damages for personal injury, disability or death sustained “on the job”. An individual may still pursue a claim for damages in a motor vehicle accident if the following apply:

- 1) The potential Plaintiff was not a “worker” as defined in the *Workers Compensation Act* at the time of the accident;

- 2) The potential Plaintiff was not acting within the scope of his or her employment at the time of the accident;
- 3) The potential Defendant was not an “employer” or “worker” (as defined in the *Workers Compensation Act*) at the time of the accident, or
- 4) The potential Defendant is the registered owner of a motor vehicle involved in the accident and is neither a “worker” nor an “employer” (even though the driver may have been a “worker” in the course of employment).

Where the Plaintiff’s injury is caused partly by a worker and partly by a non-worker the Plaintiff can only recover the proportion of damages attributable to the non-worker.

Under the *Workers Compensation Board* legislation the Plaintiff must make an election to either claim compensation under that Act or to bring a court action against the persons responsible for his injuries. If the Plaintiff intends to claim compensation within the scheme of the *Workers Compensation Act* they must make the election within three months of the injury.

E. Family Compensation Act

This Act applies to fatal claims. The *Family Compensation Act* enables claims to be brought in fatal accident cases for the benefit of the surviving spouse, parent, grandparent or child. The Act limits the types of claims that can be brought in these actions to claims for loss of financial support, loss of household assistance, loss of guidance and companionship, and loss or acceleration of inheritance. The Act and the compensation available under it requires an assessment of the net income that the deceased would have had throughout his lifetime with a deduction for personal consumption and other contingencies. There are no damages for grief.

Steps you must take when involved in a Motor Vehicle Accident in British Columbia

“Justice is the insurance which we have on our lives and property. Obedience is the premium we pay for it.” William Penn

A. At the scene of the accident

When you are involved in a motor vehicle accident it can be quite shocking. You will likely feel out of sorts, you will be anxious and worried about loved ones who were with you in the accident and you may be suffering from injury. Despite all of this, there are many things that if you do them at the scene of the accident will help you out. If possible, you will want to do all of the following at the accident scene:

1. If anyone is injured call 911. Move the vehicles off the road if possible and out of the way of traffic.
2. Obtain the name and contact information of all other motorists involved in the accident. If possible get the following information from all other motorists:
 - a. Driver’s name, driver’s license number, province/state and contact information;
 - b. License plate number and year, make and model of the vehicle;
 - c. If the vehicle is not from BC insurance details including the name of the insurance company and contact information;
3. Note the names and contact information of any witnesses at the scene of the accident, including those that may not be supportive of your view of how the accident happened;
4. Take photos of the resting place of the vehicles involved in the accident;
5. Take photos of any skid marks or debris;
6. Write down a brief description of how the accident happened, including creating a diagram if necessary. Some of the factors to consider include:
 - a. The time and date that the accident occurred and the weather conditions at the time;
 - b. The specific location of the accident including distance from intersection, lane of travel or location within the intersection;
 - c. The direction that both vehicles were travelling;
 - d. The resting location of the vehicles.

B. Reporting the accident to ICBC

When you are involved in a motor vehicle accident in British Columbia regardless of whether the accident is your fault or not, you must report the accident to ICBC. You can do so by calling Dial-a-

Claim. You can call 24 hours a day, 7 days a week. The number to call in the Lower Mainland is **604-520-8222**. If you are calling from anywhere other than the Lower Mainland in BC including elsewhere in Canada or in the US, the toll free number is **1-800-910-4222**. You must report the claim by calling Dial-a-Claim if your claim involves a vehicle glass damage only claim, an injury claim, a hit and run claim or a crash which has occurred outside of the lower mainland.

If the claim involves a collision without injury, vandalism or theft you can report the claim online. The online reporting claim can be accessed on ICBC's website at www.icbc.com. After you report online you will be provided with a confirmation number. Within 24 hours of your submission an ICBC adjuster will post your online claim notice. The Online Claim Notice will provide you with your claim instructions and if a personal appointment has been considered necessary the appointment information will also be included in the Online Claim Notice. You then use the provided confirmation number to access the Online Claim Notice with your claim instructions and appointment information.

When you call ICBC or report the claim online, you will want to have the following information:

- Where and when the motor vehicle accident occurred
- License plate number of each of the vehicles involved in the motor vehicle accident
- Driver's license number of each of the drivers involved in the motor vehicle accident
- Insurance information for any of the vehicles that do not have British Columbia insurance plates
- Your preferred auto body shop
- The police file number if available

C. Getting your car fixed

If you have Collision coverage as a part of the insurance for your vehicle, or if the accident is the other driver's fault, most of the repair costs are covered.

The first step in getting your car fixed following an accident is to have an estimator at ICBC estimate the amount that it will cost to repair the vehicle damage. Estimates can be done at either an ICBC accredited repair facility or at a claims centre. When you report the claim to ICBC they will tell you where to go to get the estimate done. If your vehicle has been towed following the accident it will be kept in storage until an ICBC estimator can estimate the cost of repairing the damage. If the estimated cost of repairing the damage to your car is greater than the value of the car, the vehicle will be written off and you will be provided with funds to cover the value of the vehicle rather than the repair of the vehicle.

Once the vehicle has been estimated you can take it to a repair shop to have it repaired. Not all repair shops are ICBC accredited. You do not have to go to an ICBC accredited repair shop although ICBC encourages you to do so. There are more than 400 body shops in British Columbia that are ICBC accredited. If you have your vehicle repaired at a body shop that does not accept

ICBC estimates you will have to pay the full cost of the repairs and then apply to ICBC to be reimbursed for the costs that you paid.

After your vehicle has been repaired and you pick it up, depending on the circumstances there may be certain costs that you have to pay to the repair shop including:

- The insurance deductible – this will depend in part on whether you are at fault for the accident. If a determination with respect to fault has not yet been made you will be required to pay the deductible but this is a cost that may be returned to you after a fault determination is made if you are found not to be at fault for the accident
- If your vehicle had previous damage that was repaired during the repairs from the accident you may be required to pay for a portion of the cost of depreciation
- If you are a GST registrant you will be required to pay for the GST applicable to the repairs.

D. Fault for an accident and how this effects the cost of your insurance

The adjuster responsible for your file will make the initial fault determination. They do this after they have collected the information about how the accident happened including by taking a statement from you, the other driver and any witnesses or passengers. The adjuster may also take into consideration the police report and information received from the estimator. The adjuster will also take into consideration the *Motor Vehicle Act* which has provisions which govern the rules of the road.

If you are found to be at fault for the accident your third party liability insurance will cover the damages to the other involved motorists. If you have collision coverage this will pay for the cost of repairs to your vehicle. You will also be entitled to basic medical and rehabilitation benefits regardless of fault.

If you are more than 25 percent at fault for an accident the cost of your insurance will go up unless you have a long claims free record. ICBC provides a discount on the cost of insurance depending on the number of years of claims free driving. The discount maxes out at 43% and is applicable if you have had approximately 9 years of claims free driving. Each claim can affect the amount of discount or surcharge that is applied to the cost of your insurance. ICBC customer service or an autoplan broker can explain in detail to you the discount or surcharge that is applicable to you and how a motor vehicle accident affects the cost of your insurance.

E. Perfecting the claim for Part 7 benefits

Part 7 benefits are the benefits that every motorist has entitlement to following a motor vehicle accident, regardless of fault. They are also referred to as “no fault” benefits. Generally anyone who is injured or killed in a motor vehicle accident in British Columbia, or any B.C. resident who is injured or killed in a motor vehicle accident in North America is entitled to no fault benefits, either from ICBC or from another insurer involved in the accident. To be entitled to Part 7 benefits you have to “perfect” your claim for the benefits or take the steps that are required by ICBC to apply for

the benefits. Those steps are defined in s. 97 of the Regulations to the *Insurance Motor Vehicle Act*. The Regulations provide that you must within 30 days of the accident provide written notice of the accident circumstances and the consequences of the accident. If the notice is given later than 30 days after the accident ICBC will usually still accept the claim unless the delay has harmed them in some way.

Although all the Regulations require is that written notice be given, typically adjuster's will ask that the following be provided to complete your claim for Part 7 benefits:

- Provide a signed statement covering all of the accident circumstances; and
- Provide signed authorizations enabling ICBC to obtain medical and wage loss information.

These two things are not required under the Regulations to complete your Part 7 claim and you are not required to provide them. The purpose for ICBC obtaining a signed statement and the signed authorizations is to assist them in defending a claim for personal injury, it is not needed to determine whether you are entitled to Part 7 benefits.

What to do when you don't agree with the adjuster's assessment of fault

“Responsibility” the state or fact of being responsible, answerable, or accountable for something within one’s power, control or management. Dictionary.com

Generally an adjuster should advise you within 30 days of the accident of their decision regarding fault. The adjuster’s decision regarding fault is not final however. The courts ultimately have the final say with respect to who is at fault you can however also appeal the adjuster’s assessment of fault internally at ICBC. The first step in the ICBC internal review process is for you to ask to speak to the adjuster’s manager who will then review the case and may make a change in the assessment of fault.

If you still don’t agree with the assessment you can proceed to a Claims Assessment Review. This process is only available if you are not making an injury claim. In a Claims Assessment Review an independent decision maker who is not a part of ICBC makes a decision about fault. The decision will be based on a review of written submissions by you regarding fault, as well as the material and statements that have been gathered by ICBC. The decision that is made under a Claims Assessment Review is binding on ICBC, but it is not binding on you so if you still disagree with the finding of fault you can still proceed to the court for a determination of fault. You cannot apply for a Claims Assessment Review until the initial adjuster has made their decision and you have had the adjuster’s manager review the decision. To start the Claims Assessment Review process you have to submit a written application and this must be received within 60 days of you receiving the letter about the fault assessment. You will have to submit a \$50 fee for the Claims Assessment Review. This fee will be reimbursed to you if the Claims Assessment Review decides fault in your favour.

If you do not agree with the Claims Assessment Review you can proceed to court to have a judge decide fault. This is also the only avenue available to you if you have an injury claim. Following a court decision, ICBC will change their fault decision to reflect that which was found by a court.

Insurance Policy Basics

Insurance is the equitable transfer of the risk of a loss, from one entity to another in exchange for payment. It is a form of risk management primarily used to hedge against the risk of a contingent, uncertain loss. Wikipedia

There are two types of insurance in the British Columbia auto insurance market. The first is the mandatory insurance which is also referred to as Basic Insurance. This must be purchased from ICBC. The second is Optional insurance which may be purchased from ICBC or one of the private insurance companies that offer this type of insurance. The available insurance provides protection for the individual insured against damages to property as well as claims arising from injury to third parties from motor vehicle accidents.

Basic insurance is the compulsory insurance that all vehicle registered in British Columbia must obtain. This insurance is predominantly for the at fault driver for damages claimed by other parties. The terms of that insurance are governed by the *Insurance (Vehicle) Act and Regulations*. That insurance includes the following:

- Coverage for third party liability up to \$200,000
- Accident benefits (medical expense and rehabilitation up to \$150,000 and some wage loss)
- Uninsured motorist protection
- Underinsured motorist protection.

Optional insurance includes extended third party liability coverage over and above the \$200,000 obtained in the Basic Coverage, comprehensive and collision coverage.

An injured individual in a motor vehicle accident will seek their compensation from ICBC. The injured individual may have insurance through ICBC but the damages that are being paid are charged to the policy of the person who is at fault for the accident. In a claim against ICBC it is the person who is at fault that ICBC is representing.

When you are at fault for a motor vehicle accident in British Columbia, ICBC will appoint counsel to represent you and will defend and negotiate the claim that arises as a result of your negligent actions. The insurance policy that you have will cover damages up to the limits of the insurance in addition to covering the costs of defending the claim. If the claim exceeds the policy limits you will be responsible personally for the excess amounts. It is always advisable to obtain third party liability insurance over the \$200,000 limit provided under the Basic Autoplan Coverage.

No Fault Benefits

“No fault insurance really means that if you are injured or your car is damaged in an accident, you deal with your own insurance company, regardless of who is at fault. You don’t have to go after the at fault driver for vehicle damage reports and for the health care and income replacement benefits to which you are entitled” Insurance Bureau of Canada

No Fault benefits are payable under Part 7 of the Insurance (Vehicle) Regulation (the “Regulation”).

There are three types of Part 7 benefits available:

1. Total disability benefits for income earnings and benefits for homemakers who are “substantially and continuously” disabled;
2. Medical and Rehabilitation expenses; and
3. Death benefits.

If an insured is entitled to benefits under the Worker’s Compensation Act or the Employment Insurance Act, or under any private plan, the amount of benefits received or receivable will be deducted from any benefits payable under Part 7 by ICBC.

A. Total Disability Benefits

To be entitled to disability benefits for income earners, the insured must either be employed at the time of the motor vehicle accident or for any six months of the twelve months preceding the motor vehicle accident. The amount payable is the lesser of \$300 per week or 75% of the insured’s average gross weekly earnings in the 12 months preceding the accident. The benefit is payable for the duration of the period of total disability or for 2 years, whichever is shorter. If the insured remains disabled after the expiry of the 2 years, then disability benefits continue to be payable throughout the period of disability. The amounts payable will be reduced by any amounts received under the Canada Pension Plan, old age pension plan or other forms of benefits. If the insured does return to work but due to the injuries suffered in the motor vehicle accident is incapable of earning as much as he was entitled to as a total disability benefit, the insured will be entitled to recover the difference under Part 7.

Payment of disability benefits can be terminated on the advice of ICBC’s medical advisor or if the insured refuses to undergo treatment or training, where such treatment or training is in the opinion of ICBC’s medical advisor likely to in whole or in part relieve the disability or assist with the insured’s rehabilitation.

Homemakers who are substantially and continuously disabled following a motor vehicle accident are entitled to recover reasonable expenses up to a maximum of \$145 per week to hire a person to perform household tasks on the insured’s behalf. The benefits are not payable to cover expenses paid to family members.

B. Medical and Rehabilitation Benefits

Medical and rehabilitation benefits are either mandatory or permissive. The total amount claimable with respect to medical and rehabilitation benefits is \$150,000.

Mandatory benefits include all reasonable expenses incurred as a result of the injury for necessary medical, surgical, dental, hospital, ambulance, professional nursing services, physiotherapy, chiropractic treatment, occupational therapy, speech therapy and prosthesis. Liability to pay for physiotherapy treatments is limited to 12 unless a medical practitioner certifies in writing that further treatment is necessary. There is no coverage for amounts that would be payable under another available plan of insurance and the maximum that is payable with respect to any treatment is that which would be payable under the tariff by the Medical Services Commission.

Permissive benefits are payable where in the opinion of ICBC's medical advisors the provision of the benefit is likely to promote the rehabilitation of the insured. Examples of permissive benefits include funds to purchase a vehicle equipped as necessary, funds to alter a residence, reimbursement of costs associated with attendant care, reimbursement for wheelchairs, medical prescribed beds and funds to undergo vocational training.

C. Death Benefits

Death benefits available under Part 7 include funeral expenses up to a maximum of \$2,500, lump sum payments and certain supplemental survival benefits. Lump sum payments are made based on a tariff to a maximum of \$5,000. Supplemental survivor benefits are payable where the insured is survived by a spouse or by more than one dependent in which case an additional lump sum payment of \$1,000 is payable to each survivor. Additional weekly benefits are payable for two years at \$145 per week to the first survivor and \$35 per week for each additional survivor, for a period of two years.

The “tort” Claim

“Tort” – Law, a civil wrong arising from an act or failure to act, independently of any contract, for which an action for personal injury or property damages may be brought.

Collins English Dictionary

When you are injured in a motor vehicle accident that is due to the fault of another, either in part or in whole, you are entitled to monetary damages. The purpose of the damages are to put you in the position that you would have been in if you had not been the victim of the other party’s negligence. You are entitled to compensation that will return you to damages that but for the motor vehicle accident would not have occurred. An assessment of damages requires an understanding of your position prior to the accident and how that position has been changed due to the accident. Damages are assessed in a number of different categories. Those categories are as follows:

1. Non Pecuniary damages

Non pecuniary or non-quantifiable damages are meant to compensate you for the pain, suffering and loss of enjoyment of life that you endure, both in the past and in the future, as a result of the injuries that you suffered in the motor vehicle accident. The British Columbia Court of Appeal in a case called *Stapley v. Hejlslet*, 2006 BCCA 34, identified the following as factors to consider when assessing non-pecuniary damages:

- a. Age of the plaintiff;
- b. Nature of the injury;
- c. Severity and duration of pain;
- d. Disability;
- e. Emotional suffering;
- f. Loss or impairment of life;
- g. Impairment of family, marital and social relationships;
- h. Impairment of physical and mental abilities;
- i. Loss of lifestyle; and
- j. The plaintiff’s stoicism (as a factor that should not, generally speaking, penalize the plaintiff).

Our Courts have also recognized the importance of work on the emotional wellbeing of an individual and the inability to work may be taken into consideration not only in terms of wage loss but also as an aspect of non-pecuniary damages.

2. Wage loss

An award for wage loss is made to compensate you for earnings that but for the motor vehicle accident you would have had. This involves an assessment of earnings that you would have had if you had not been injured in the accident versus what you have earned since the motor vehicle

accident. This also involves an assessment of causation for the loss of earnings. The difference in earnings must have been caused or related to the injuries suffered in the accident and must have been unavoidable.

3. Loss of earning capacity

If an injury is permanent or if there are ongoing implications from an injury subsequent to settlement or trial, an assessment of whether the ongoing symptoms have the substantial possibility of impacting future earnings will be made. If there is a substantial possibility of a loss of earnings in the future occurring due to the motor vehicle accident related injuries, an assessment of the value of this loss will be made. The assessment will take into consideration the risk of this occurring plus the potential quantum of loss that may result and an assessment of the value of the loss of earning capacity is then made.

4. Special damages

Special damages are the out of pocket expenses that you have incurred due to the motor vehicle accident injuries. Typically special damages will include the cost of care such as physiotherapy, massage therapy, acupuncture, chiropractic treatment, kinesiology, occupational therapy, medications and personal trainers. Special damages may also include such things as mileage and parking to enable you to access care, household assistance, revisions to your home or work place and modalities to enable you to adapt to your injuries.

5. Future care

An award for future care involves an assessment of your need for ongoing care in the future and the costs attributable to that care, including any necessary tax gross up and consideration of inflation.

When assessing the value of a claim or the amount that a claim should be settled for, we take into consideration what a court would likely award if the case were to proceed to trial. This is often much different than the way that ICBC assesses a claim, particularly when the injured person does not have a lawyer. You must either have settled your tort claim with ICBC within two years of the motor vehicle accident or have started a court action for damages. Starting a court action preserves your right to compensation. Starting a court action does not mean that a trial will be necessary for you to obtain fair compensation for your injuries, in fact more than 97% of claims are resolved without a trial.

What to Expect when you are making a tort claim

Claims adjusting is the process of determining coverage, legal liability and settling a claim. The claim function exists to fulfill the insurer's promises to its policyholders. Claim adjusting is integral to establishing an insurer's relationship to its policyholders. The reputation of the insurer in settling claims directly impacts the marketing and retention of policy holders insurance. Claims Procedures and the Claim Adjustment Process

The time period following injury in a motor vehicle accident can be extremely stressful. Hopefully an individual only goes through this once in a lifetime at most and as a result the entire experience will be unfamiliar with a steep learning curve. Understanding the steps and process involved can help ease some of the anxiety associated with putting forward a claim.

Generally in all but the most straightforward of cases, legal counsel should be retained to assist you in putting forward your tort claim. The unique situation in British Columbia with mandatory Basic Auto Insurance means that ICBC is not motivated in the way that any other insurer is. As the quote above indicates, ICBC does not have to worry about ensuring that it is settling claims fairly and quickly to ensure that it retains policy holders. Motorists in British Columbia have no choice, they must buy their Basic Autoplan Insurance from ICBC. As well, when you make a tort claim that claim is being paid from the policy of the at fault motorist. The ICBC adjuster that you are dealing with is there to protect the interests of that motorist, not you. Without legal counsel you have no one advocating on your behalf.

Once legal counsel is retained ICBC deals only with legal counsel. They will no longer communicate directly with you. As your legal counsel our role is to prepare the case for quantification. We gather all the evidence possible to support all aspects of your claim. We hire independent medical experts to assess you where necessary with the focus being on garnering evidence to support our claims regarding the nature and extent of injury that you suffered and the consequent losses. This is entirely different from the focus of ICBC's involvement, which involves primarily testing the veracity of your complaints and the claims that you make.

Your personal injury case must be resolved within two years of the date of injury, or legal action must be started. Legal action is started by filing a Notice of Civil Claim with the Court. As your legal counsel we take care of this for you, ensuring that your right to compensation is preserved. As well, although statistically 97% of personal injury cases resolve without the necessity of a trial, we schedule a trial date in your case to ensure that if necessary you have access to the courts to achieve a fair and equitable resolution to your case.

In general, the following are the steps that you can anticipate your case going through once you retain us as your legal counsel:

1. General investigation stage during which we discuss in detail with you the circumstances of your accident, the injuries that you sustained and how they impacted you. We will identify all potential sources of witnesses, treating practitioners, documentary evidence and primary sources of medical opinions. All investigations regarding the circumstances of the accident including taking statements from witnesses and personally observing the scene of the accident if necessary occurs at this stage. We also obtain from ICBC all copies of any documents that they have gathered;
2. Document collection – during this phase we obtain copies of all treatment records from all of your treating practitioners. These records are then summarized into a concise chronology and any issues or problems in the documentary evidence are identified and communicated to you. We also collect all documents necessary to establish the loss of earnings relating to the accident and the special damages incurred;
3. Commencement of litigation and scheduling of trial and discovery dates. This is done to preserve your rights and also to ensure that you have timely access to the courts if this eventuality is necessary;
4. Garnering of opinion evidence regarding the nature and extent of injury, the prognosis for resolution, impact on your ability to earn an income and the future care requirements;
5. Recommendations are made to you with respect to quantum of the case and your instructions are obtained to commence settlement discussions with ICBC. You are involved at each stage of the negotiation process. Our job is to provide you with advice regarding a likely outcome at trial. Your role is to provide us with your instructions on how you would like to proceed.

Most cases are resolved by following the above steps. If resolution is not possible access to the courts through a trial is facilitated. The trial process can be intimidating for clients and our office takes steps to ensure that you are fully prepared and familiar with what to expect in advance of the trial to ease the anxiety associated with this.

Tips to Help you thrive and survive your ICBC claim

I'm a survivor

I'm not gon' give up

I'm not gon' stop

I'm gon' work harder

I'm a survivor

I'm gonna make it

I will survive

Keep on survivin'

Lyrics to Survivor, Destiny's Child

Being involved in an ICBC claim is almost without exception difficult for people. You are being thrust into an unfamiliar, adversarial situation where your every action is being judged. All of this at a time when you are attempting to recover from injury and loss. There are certain steps that you can take that will help you weather the storm that is an ICBC claim, and help your legal counsel achieve the best possible result for you. The following are some actions that you can take to help assure the best possible resolution:

1. At the scene of the accident take photos of the resting position of the vehicles and any debris on the road;
2. Get the names and contact information of any witnesses to the circumstances of the accident;
3. Obtain regular medical follow up and follow the advice that is given for treatment. Regular contact with a physician will ensure that you are receiving the best possible medical care and will also help to document your recovery;
4. Keep track of all incurred expenses and receipts for expenses incurred due to the injuries;
5. Follow your doctor's advice regarding returning to work or remaining off work;
6. Access all possible sources of funding for treatment expenses including extended benefits plans;

7. Take care of yourself. Do what is necessary to recover;
8. Communicate openly and honestly with your legal counsel. This is the only way that your legal counsel can fully portray the impact of the motor vehicle accident upon you;
9. Make sure that you understand fully all aspects of the claim that is being presented on your behalf and the likely outcome at trial if the case were to be pursued through to trial. Your case is worth what a judge or jury would award you at trial. To be able to make knowledgeable decisions in the negotiation process you must have a full understanding of what the potential outcome at trial would be.

It is a difficult experience pursuing an ICBC claim. The alternative though is to suffer the many losses that are experienced following injury in a motor vehicle accident without compensation. You do not have to pursue the claim on your own. Experienced compassionate legal assistance can help you not just survive but thrive while pursuing your ICBC case.

