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British Columbia —  
Submitted by Whitelaw Twining

## Insurance

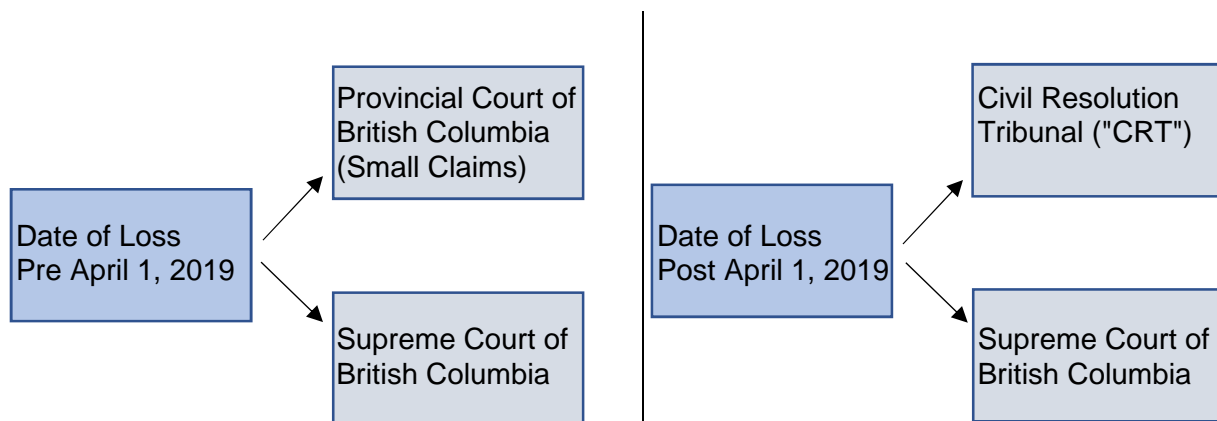
The Insurance Corporation of British Columbia ("ICBC") provides basic autoplan insurance coverage that is mandatory and provides a basic level of coverage for all British Columbians who own and drive a motor vehicle. This includes accident benefits up to \$300,000, no matter who is at fault, and a minimum third party liability coverage of \$200,000. Optional and extended coverage may also be purchased through ICBC or private insurers.

Effective September 1, 2019, ICBC requires that you list all drivers who will drive each of your motor vehicles. If an unlisted driver is involved in an at fault collision, the registered owner of the vehicle could face a one-time financial consequence unless they have Unlisted Driver Protection. As such it is now important and encouraged that all household members, employees or lessees are listed as drivers on a motor vehicle to avoid financial consequences.

## Bodily Injury Claims and Jurisdiction

Effective April 1, 2019, significant changes were made to the way claims arising from a motor vehicle accidents are commenced in British Columbia including additions to accident benefits, presumption of 'minor injury' as defined in the *Insurance (Vehicle) Act* and the *Minor Injury Regulation* with burden of proof on the party claiming injury to prove otherwise; and a Cap on non-pecuniary damages (pain and suffering) for minor injury claims.

Accidents occurring prior to April 1, 2019 continue to proceed through either the Provincial Court or Supreme Court of British Columbia. Accidents occurring after April 1, 2019 now proceed through the Civil Resolution Tribunal or Supreme Court of British Columbia.



### ***Motor Vehicle Accident claims pre-April 1, 2019***

Proceedings in the Provincial Court of British Columbia (Small Claims)

- for claims with monetary limit to damages between \$5,000 - \$35,000;
- suitable for self-represented litigants;
- litigation PROCESS may be more cost effective and expeditious;
- mandatory settlement conferences;
- fewer investigative pre-trial measures available;
- no costs for successful party; and
- no jury trials.

## Proceedings in the Supreme Court of British Columbia

- no monetary limit to damages;
- not suitable for self-represented litigants;
- various pre-trial and case management measures available to counsel: examinations for discovery, document disclosures rules, interrogatories, notices to admit, mediation, chambers, case planning conferences, fast track, independent medical examinations etc.;
- taxable costs and disbursements recoverable by successful litigant; and
- jury trials optional.

### ***Motor Vehicle Accident claims post-April 1, 2019***

#### Proceedings in the Civil Resolution Tribunal

- online tribunal consisting of two phases, the case management phase and the tribunal hearing phase;
- right to legal representation without obtaining special permission only for motor vehicle accident claims;
- CRT now has exclusive jurisdiction over classification of an injury as 'minor' injury, entitlement to receive accident benefits and decisions regarding liability and quantum for all motor vehicle injury claims up to \$50,000;
- monetary limit to damages includes a cap of \$5,500 on non-pecuniary damages (pain and suffering) for all 'minor injuries';
- claims may be moved from CRT to the Supreme Court of British Columbia:
  - by consent of all parties;
  - if CRT decides injury is classified as incapacitating/seriously impairing rather than minor (based on medical evidence); or
  - if Plaintiff is able to prove, with evidence, that there is a substantial likelihood a claim will exceed the \$50,000 limit.
- limits on allowable expenses for expert evidence; and
- no jurisdiction in relation to claims under the *Family Compensation Act* in respect of death or claims from which the *Arbitration Act* applies

Proceedings in the Supreme Court of British Columbia are the same as pre-April 2019.

## **Commencing an Action**

### ***Limitation Period***

The general limitation period for a motor vehicle personal injury action is two years. In the case of an unidentified driver, written notice must be given to ICBC within six months of the accident.

Most types of actions against municipalities require written notice to be delivered to the municipality within two months from when the damage was sustained, and an action must be commenced against the municipality within six months from when the damage was sustained, failing which an action against the municipality will be barred. [See sections 735 and 736 of the *BC Local Government Act*]

## Types of Damages

### ***Non-Pecuniary General Damages***

The purpose of the non-pecuniary award is to compensate the Plaintiff for their pain and suffering and is intended to be used by the Plaintiff to make their life more bearable and to provide reasonable compensation for their intangible losses.

For accidents occurring on or after April 1, 2019, the CRT may award injured parties who fall under the “minor injury” definition a maximum of \$5,500 for non-pecuniary damages.

For accidents occurring prior to April 1, 2019 and those accidents that occur after that date that fall outside the “minor injury” definition, the Supreme Court of Canada has limited damages for pain and suffering and loss of enjoyment of life to a maximum of \$100,000. Subsequent cases established this “rough upper limit” should be adjusted for inflation and exceptional circumstances and as of January 2020, the upper limit is approximately \$350,000.

### ***Past Income Loss***

This head of damage is to compensate the Plaintiff for loss of income up to the date of trial. The Court will attempt to determine what the Plaintiff would have been able to earn had the Plaintiff not been injured. The recovery of loss of income is not more than the net income loss that the person suffered in the that period as a result of the accident. [Section 98 of *the Insurance (Vehicle) Act*.]

### ***Loss of Capacity to Earn Income***

Damages for loss of capacity to earn income is usually awarded in cases in which the Plaintiff's injuries result in permanent or ongoing disabilities at the time of trial. Damages may be awarded if the Court finds that there is a real or substantial possibility that the Plaintiff will suffer a loss of income-earning capacity in the future as a result of injuries sustained in the accident.

### ***Other Losses/Expenses/Damages***

There are other types of losses that a court may also award damages which include, *inter alia*:

- Loss of capacity to do housework;
- Future care costs;
- Management fees;
- Income tax gross up;
- In trust claims;
- Special damages; and
- Punitive damages.

## Defences

Various defenses are available to insured parties with the most common ones described below:

- seatbelt/headrest/airbag;
- causation;

- intervening cause;
- pre-existing condition(s);
- mitigation;
- subsequent injury;
- worker vs. worker;
- municipality negligence;
- limitation periods;
- parental negligence;
- no negligence/ contributory negligence;
- latent defects; and
- risk/volenti non fit injuria.

## Infant Claims

An infant is any person under the age of majority, which is 19 years old. Infants are entitled to make a claim for injuries. Infant settlements must be approved by either the Public Guardian and Trustee (“PGT”) of British Columbia or the Court, depending on the amount of the settlement:

- settlements of \$50,000.00 or less (exclusive of interest and costs) must be approved by the PGT;
- settlements in excess of \$50,000.00 recommendations are made by the PGT to the Court and the Court then either approves or rejects the recommended settlement; and
- the proceeds of any settlement or judgment are held in trust by the Public Guardian and Trustee until the infant reaches the age of majority(19 years of age).

## No Fault Benefits

Under Part 7 of the *Insurance (Vehicle) Regulations* B.C. Reg 447/83, certain no-fault benefits (“Part 7 Benefits”) are available to individuals involved in a motor vehicle accident regardless of who is liable for the accident.

### ***Entitlement to Part 7 Benefits***

To qualify for Part 7 Benefits, a person must be an “insured” pursuant to the Regulations. An insured is defined as:

- an owner of a vehicle;
- a member of a vehicle owner’s household;
- an occupant of a vehicle licensed in British Columbia, or an occupant of a vehicle not required to be licensed in British Columbia but driven by someone who possesses a valid BC driver’s license;
- a cyclist or pedestrian who collides with a vehicle described in an owner’s certificate;
- a resident of British Columbia who is entitled to bring an action for injury or death pursuant to s. 20 (uninsured motorist) or s. 24 (hit and run) of the *Insurance (Vehicle) Act*;
- the personal representative of a deceased insured; or,
- a resident of British Columbia who holds a valid driver’s license and members of his or her household.

In order to claim Part 7 Benefits, an insured must comply with the following:

- promptly give ICBC notice of the accident;
- provide ICBC with a written report of the accident no later than 30 days from the date of loss; and,
- provide ICBC with a proof of claim on the appropriate form (known as a CL24) within 90 days of the date of loss.

Part 7 Benefits are secondary benefits; therefore, an insured must submit expenses to any extended health plan from which he or she may receive coverage. The balance of any expenses that are not covered by the extended health plan can be submitted to ICBC for reimbursement. For motor vehicle accidents that occurred on or after April 1, 2019, receipts must be submitted to ICBC within 60 days to qualify for reimbursement.

### ***Types of Part 7 Benefits***

In general, there are 3 types of Part 7 Benefits:

- medical and rehabilitative benefits;
- disability (lost earnings) benefits; and
- funeral and death benefits

### **Motor Vehicle Accident Claims Pre-April 1, 2019**

#### **1. Medical and Rehabilitative Benefits**

ICBC is required to pay “all reasonable expenses the insured incurred as a result of the injury for necessary medical, surgical, dental, hospital, ambulance, professional nursing services, physical therapy, chiropractic treatment, occupational therapy, speech therapy, or for prosthesis or orthosis” (s. 88(1) of Part 7 of the *Insurance (Vehicle) Regulations*).

Note, however, that ICBC’s liability with respect to massage therapy and physiotherapy is limited to the following:

- no more than 12 physiotherapy treatments, unless a medical practitioner certifies in writing that more treatment is necessary; and
- no more than 12 massage therapy treatments in the first 8 weeks after the accident.

ICBC’s overall liability for medical and rehabilitative benefits is \$150,000.00 for each person injured in the same accident.

#### **2. Disability (lost earnings) benefits**

##### **A. Employed Persons**

If, within 20 days after an accident, an injury has prevented an employed person from engaging in employment for which he or she is reasonably suited, ICBC will pay the insured the lesser of \$300.00 per week or 75% of the insured’s average gross weekly earnings in the 12 month period immediately preceding the date of loss.

To qualify for disability benefits, an insured must:

- be employed or actively engaged in any occupation for wages or profit at the time of the date of loss; or,
- be employed or actively engaged in any occupation for wages or profit for any 6 months during the 12 month period immediately preceding the date of loss.

An insured must also provide evidence of “total disability”, which has been defined as an inability to perform any substantial requirement of his or her ordinary duty of employment and an inability to do substantially all the material acts in substantially the usual and customary manner.

No benefits are payable for the first 7 days after the date of loss. Further, the benefits will be paid for the duration of the total disability or for 104 weeks, whichever is shorter.

Because Part 7 Benefits are secondary benefits, an insured must apply for employment insurance (i.e. EI Sickness and Disability Benefits) or any short term disability benefits to which he or she has access.

#### **B. Homemakers**

If, within 20 days after an accident, an injury substantially and continuously disables a homemaker from performing most of the household tasks, he or she will be compensated by ICBC for reasonable expenses incurred to hire a person to perform the chores to a maximum of \$145.00 per week. Benefits are not payable when the chores are performed by a member of the insured’s household.

No benefits are payable for the first 7 days after the date of loss. If the insured remains disabled at the end of 104 weeks, the benefits will continue for the duration of the disability or until the insured turns 65, whichever is shorter.

### **3. Funeral and death benefits**

The following death benefits are available:

- burial and funeral expenses up to a maximum of \$2,500.00 per insured;
- lump sum payments to the surviving spouse, dependent child, or dependent parent, based on the age and status of the deceased (ranging from \$500.00 for a deceased dependent child less than 5 years of age to \$5,000.00 for a deceased head of household); and
- supplemental survivor benefits including \$1,000.00 to each survivor (other than the first survivor) and \$145.00 per week to the first survivor and \$35.00 per week to each other survivor, for a period of 104 weeks after the death of the deceased insured.

### **Motor Vehicle Accident claims post-April 1, 2019**

Pursuant to recent amendments to Part 7 of the *Insurance (Vehicle) Regulation* B.C. Reg. 447/83, for motor vehicle accidents that occur on or after April 1, 2019, no-fault benefits have been increased as follows:

- *Medical and rehabilitation benefits* lifetime maximum is increased to \$300,000 from \$150,000 for collisions occurring on or after January 1, 2018. For the first 12 weeks

following a motor vehicle accident, ICBC will approve a certain number of treatments for injured parties from health care professionals (*section 88*):

<u>Type of Practitioner:</u>	<u># of approved treatments</u>
Physiotherapist	25
Chiropractor	25
Registered Massage Therapist	12
Kinesiologist	12
Psychologist	12
Clinical counsellor	12
Acupuncturist	12

- *TTD benefits* are increased to maximum of \$740 per week from \$300 per week, effective April 1, 2019 (*section 80*);
- *Homemaker assistance benefits* are increased from \$145 per week to \$280 per week, effective April 1, 2019 (*section 84*); and
- *Funeral expenses* are increased to \$7,500 and *survivor benefits* up to \$30,000, effective April 1, 2019 (*section 91-92*)



# Whitelaw—Twining

**Whitelaw Twining Law Corporation** **wt.ca**

2400 200 Granville Street      T 604 682 5466  
Vancouver BC V6C 1S4      F 604 682 5217

675 333 7th Avenue SW      T 403 775 2200  
Calgary AB T2P 2Z1      F 403 536 3540