

ICBC Personal Injury Article

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Car accidents are never fun. They can be very stressful, and lead to anxiety, depression, and leave you wondering what your legal rights are. It's a minefield. If you have been injured in a car accident, and the accident was not your fault, the Law may allow for you to recover money as compensation. This area of law is governed by what lawyers and judges call, the law of contracts and torts. The Law attempts to compensate you to the status that you enjoyed before the accident occurred. Contact Us Before Seeing your ICBC Adjuster.

There are strict time limitations in which you must bring your claim for compensation or damages. If you don't act before the time limitation, the Law may not allow you to have any recovery, no matter how injured you are.

Pain & Suffering:

This is a common ground of claim, often called "general damages." Here, we try to assess - in a monetary amount - the value of the loss of enjoyment of life. This can be for the discomfort, emotional pain, and depression that results from the motor vehicle accident.

It is important that an injured person communicate with his or her doctor, so that the doctor can evaluate the injuries, and suggest a route to rehabilitation and recovery. Both Courts and ICBC may often rely on these experts and their reports in determining awards.

Wage Loss:

If you cannot work as a result of the car accident, you may be entitled to compensation for the lost wages or income from the date of your wage loss until you are able to return to work, or the settlement of the case.

Lawyers can help you obtain the evidence you need to prove your claim, through the Canada Revenue Agency, financial statements, etc.

In some cases, you can be awarded the gross income without deduction, and not just the net pay. In some cases, there may be permanent loss of future wages. In those types of cases, expert evidence through actuaries and economists can assist in calculating the value of the loss to a "present value."

Physiotherapy and Rehabilitation:

If you are injured in an accident, you may be entitled to "no-fault benefits". If you are considered an insured person, you may be able to recover costs for treatment, such as physiotherapy, or other rehabilitative programmes.

If an insured person dies as a result of the car accident, ICBC may reimburse for burial, or other funeral expenses. Surviving spouses or a dependant child may also receive lump sum payments depending on the circumstances.

Low Velocity Impact Cases:

ICBC may sometimes take the position that you are not entitled to compensation, as your accident was of a minor nature. Often my clients will get a letter that reads in part: *“The information currently available to ICBC, including the minimal nature of the impact forces involved in the collision, as well as your physical condition at the time of the accident, has led us to believe that that the above-noted accident did not result in any compensable injury to you.”*

This does not automatically exclude you from compensation; however you may need to initiate a lawsuit, or present cogent evidence to the contrary of ICBC’s determination.

Breach of Insurance Coverage:

Often we get calls from people who have been denied coverage from ICBC. There is a duty of good-faith between you as the insured and the insurance company, which includes disclosing truthful information of all material facts in the application. In some cases, ICBC may deny coverage if they believe that there has been a violation or breach of this duty of good faith.

Some types of situations where breaches may arise are:

-committing fraud during your claim; intentionally making a false statement about a claim; or misrepresenting or failing to disclose certain facts in the application for insurance.

For example, if the car is insured for pleasure use only (which results in a lower premium to the insured) and it is then driven every day to work, and an accident results, ICBC may deny coverage, because the car was not properly insured. Other examples include improper rate classes, incorrect territory, and improper principal operator.

Another common example that comes into our office is the case where the person is charged with Impaired Driving (drugs or alcohol) or Driving while having a blood alcohol concentration of over .08. In those cases, if the person is convicted, then that can result in an automatic breach of insurance coverage, which can have significant monetary repercussions.

Where to Start a Lawsuit?

In British Columbia, we have two main trial courts for civil actions, including personal injury claims. The Provincial Court (Small Claims) and Supreme Court have different sets of rules and procedure. Provincial Court has a monetary award limit of \$25,000. Many claims for personal injury will fit within that court jurisdiction. However, if the case involves higher levels of damages, then the case can proceed to Supreme Court, where there are options for Fast-Track Litigation, and summary trials. There are pros and

cons for each court, which should be discussed with a lawyer. This includes the losing party in Supreme Court paying costs, which includes a portion of the lawyer's fees.

There are alternatives to trial as well, including settlement conferences, and mediation.

Judgments can also be appealed to a higher level of court, if there is an error in law, or a misapprehension of the case.

Injured at or during Work:

If a worker, as defined a provincial law, is injured, she may have a choice or election to choose ICBC for a tort action or WCB for a compensation action, depending on who else was involved in the claim. In some cases, there is no election, and proceeding with WCB will preclude any action against ICBC. You can discuss the pros and cons and the election process with a lawyer.

Should I get a lawyer?

The choice is ultimately yours. However, a lawyer can assist you in your claim, and help you avoid pitfalls along the way. This includes dealing with things like the limitation dates, gathering employment data, medical records and other evidence of injuries. The lawyer can also access similar cases in the past, through caselaw, which can assist ICBC and ultimately, the courts, in determining what a fair and just award is. They can draft and file your lawsuit, in case you have to sue. They can do witness and case preparation.

ICBC adjusters may try to influence you against obtaining a lawyer. "You're a good person...you don't need a lawyer...I'll work with you and treat you fairly" may be possible responses. You will have to weigh the pros and cons. Lawyers can ensure that your rights are protected, and help you get the compensation that you deserve.

Lawyers will often charge on a contingency fee agreement. In other words, they will charge a percentage of any money recovered for you. The percentages can range between different firms and lawyers, but is typically no more than 33.3 percent in motor vehicle personal injury cases. Just because you hire a lawyer, does not mean that you will have to go through a trial. Most cases will tend to settle before trial.

Conclusion:

The area of contract and tort law is complex, and if you are injured in an accident through no fault of your own, it may be worth your while to contact our offices to obtain legal advice.

- This article is general comment and is not legal advice, and not be relied upon. If you are injured in an accident, consult a lawyer immediately without delay to protect your rights.