

# Mouzourakis & Company

## Trial Lawyers

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### ICBC FAQs

Keep This In the Car Glove Compartment ---You Never Know When You Will Need It!

If you have read the newspapers recently, you were certain to find lengthy articles on the alarming increases in car accidents in B.C. Most people are surprised to discover what their accident claim is worth. After you calculate wage loss (both past and future), cost of medical treatments, prescriptions and court costs together with an award for pain and suffering, it is no wonder that a "fender bender" could be harmful to your physical and financial health.

Following the accident, you will find yourself wondering whether you should seek legal advice. Often a victim will contact a lawyer after having become frustrated with the claim process. **The best time to obtain legal advice is before you meet with the claims adjuster.** This is not to say that you are contemplating a lawsuit. Not at all! You are merely acquiring information as to your rights and what you are entitled to by way of benefits and compensation. Would you buy a car or stereo without doing some homework?

#### **Your meeting with a lawyer should cover the following:**

- \* A discussion of the claims process and what you should expect;
- \* Disability (No-Fault) benefits to which you may be entitled such as medical expenses and wage loss payments;
- \* What is involved in hiring a lawyer, what the lawyer can do for you and what you can do for yourself?

#### **For the lawyer to help you obtain the best possible settlement, please remember to do the following when involved in a car accident.**

\* **Obtain all accident particulars** including names and addresses of drivers and all witnesses, date, location (draw a diagram of the scene), name and badge number of attending police officers;

\* **Do not discuss fault with anyone at the accident scene---especially with a member of the new ICBC Roadside Response Team.** If you admit to fault, your statement may be used against you in court. If you are arrested or charged with a traffic offence in connection with the accident consult a lawyer **before** you meet with the adjuster so that you are properly advised as to your rights;

\* **See your family doctor as soon as you are able!** Your doctor will then be able to monitor your condition first hand and his records will play an important role in how your claim is prepared for settlement or trial. Please follow your doctor's advice otherwise the insurance company will use your lack of cooperation with your doctor to reduce your award;

\* **Remember, you may lose your right to sue!** In most cases, you must start your claim within 2 years from the date of the accident or you will lose your right to sue. Please note that written notice must be given to ICBC within six (6) months after a hit and run accident. The victim who is claiming from ICBC must also make all reasonable efforts to identify the owner and driver of the hit and run vehicle. This is a complicated area of law that certainly requires the help of a lawyer.

## **IMPORTANT TIPS TO REMEMBER ABOUT YOUR ICBC CLAIM**

1. **TALK TO NO ONE** - Do not talk to anyone about your accident except your lawyer or the investigators hired by your lawyer. You should always require identification so that you are sure who you are talking to. Don't even talk to your own insurance company or to any lawyers hired by your own insurance company without notifying your lawyer so that he may be present if you desire.
2. **YOUR DOCTOR** - You should return to each of your doctors as often as necessary and should always tell them about all your complaints. If you see any additional doctors, be sure you advise your lawyer immediately of their names and addresses. Also take care in what you say to your doctors for they usually record what you say and your comments may find their way back to the lawyers and adjusters representing the insurance companies.
3. **RECORDS OF COMPLAINTS** - Keep a daily or weekly record of your complaints and progress. This can be very helpful when, a year later, you will be called upon to relate your pain and difficulties.
4. **WAGES AND EARNINGS LOST** - Please keep an accurate record of all days lost from work because of your injuries. If you are self - employed, you must keep proper books of account and related financial information to support any claims that you may have for loss of income, earnings and so forth.
5. **MEDICAL BILLS** - Obtain and keep duplicate copies of all medical, hospital and drug bills. You should periodically send these bills to your lawyer for his files. Also keep records of any other expenses you may have in connection with your accident, such as the hiring of extra help. All your bills should be paid by cheque or you should obtain and keep receipts. You should keep a list of all your medical bills and the costs incurred in going to your doctor.

Medical expenses such as prescriptions, pillows, canes and such related equipment can be submitted to ICBC. by forwarding **original receipts** along with documentation from the treating physician for consideration. In the case of prescriptions, ICBC specifically requires the original Pharmacare prescription receipts and **WILL NOT** accept photocopies or faxed copies.

Also, please note that housekeeping, gardening, baby-sitting and other such expenses will require medical confirmation from your doctor indicating the need for and the extent of these services. ICBC **will only consider payment to accredited firms** as opposed to paying friends, neighbors or relatives.

6. **CAR REPAIR** - Do not have your automobile repaired until you are sure that you have obtained pictures of it. After pictures are taken, please provide copies to your lawyer. Once having done so, you can then have your collision insurance carrier repair your car.
7. **THERAPY AND TREATMENTS** - An important point to remember is that under Section 88(8) of the Regulations, ICBC is only responsible for **12 treatments of therapy in total** without adjuster approval. Recent cuts in health care have resulted in the elimination of subsidized treatments for chiropractic, physiotherapy and other treatments. Confirm what is covered by MSP or ICBC before you proceed. Further treatments can be extended to you, subject to medical documentation prescribing such further treatment. This can be in the form of a medical letter from the treating physicians or an Independent Medical Examiner hired by ICBC as required by law (Sections 98 and 99 of Insurance(Motor Vehicle Act) Regulations)

**Please remember ICBC will not accept *direct billing* from any therapist.** ICBC is limited to pay the rate that is set by the B.C. Medical Plan. If you choose to go to an "opted out" practitioner or one who levies a surcharge over the standard government user fee, you must pay this amount/fee directly. It can then be submitted to B.C. Medical Plan for coverage. The therapist is required to give assistance and all proper documentation to you to enable you to process your claim. Any amount not recovered by B.C. Medical should be submitted as a special damage as part of your claim.

8. **TRAFFIC and CRIMINAL OFFENCES** - If you are arrested in connection with this accident, call a lawyer immediately and have someone represent or advise you. In the event of a coroner's inquest or other type of hearing be sure to notify a lawyer so that he will be able to represent you in connection with this inquest. Some criminal and traffic offences can result in loss of insurance protection exposing you to personal liability for payment of any property and personal injuries that result from the accident.
9. **WITNESSES** - Immediately obtain the correct names, addresses, and telephone numbers of any and all witnesses you may learn of. It is wise to visit the scene of the accident and speak to neighbors, store owners and other potential witnesses to obtain evidence that will assist your claim. You may have advertised in the local newspaper or post signs on telephone poles near the scene to attract the attention of potential witnesses. **Witnesses can "make or break" a case!**
10. **SAVE YOUR CAST** - If your injury requires a cast, brace traction or other such appliance, save it. When the case is set for hearing, you should bring these items with you.
11. **PHOTOGRAPHS** - Keep all negatives and prints of any photographs pertaining to your case which you or any of your friends have taken. Keep a record of who took the photos and when. If you are required to be in the hospital and are receiving any type of treatment like traction or physical therapy, notify your lawyer.
12. **HOSPITAL AND DOCTOR BILLS** - Have your own auto insurance carrier pay as many hospital and doctor bills under the medical payment provisions of your policy as possible. You should also have your hospitalization insurance, such as Blue Cross and M.S.P. pay as much of your bills as possible. You should not expect doctors and hospitals to wait until your case is tried or settled to receive payment. You should, therefore, pay any balance as soon as possible and keep the invoices in a safe place.
13. **WAGE LOSS** - Be sure to keep a record of the time missed from work as ICBC will provide benefits of up to \$300.00 per week depending upon your rate of pay if the company you work for does not have an extended medical plan or if you are not eligible for UIC. If you are eligible for UIC, ICBC will pay for the two-week waiting period. Please also note that disability payments are usually subject to a one week deductible and are presently at a maximum of \$300.00 per week. They are not generally payable in advance. Under Section 101 of the Insurance Motor Vehicle Act Regulations (the Law), ICBC is given discretion to pay within four (4) weeks after ICBC receives the required proof of claim. Once proof has been provided, ICBC can elect (choose) to pay these benefits only once every four(4) weeks thereafter.

Proof Required to Obtain Benefits Described Above:

1. A fully completed CL - 15 forms (that can be obtained from your ICBC adjuster) that must be completed by all of your employers in the previous twelve (12) months prior to the accident. Please note that ICBC will likely contact your employers directly under Section 28 of the above Act to confirm the wage loss information is true and accurate;

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2. To further support your claim for payment of total disability benefits you will likely be required to provide copies of your pay slips for the previous 4 pay periods. If you were working at the time of the accident, ICBC may require you to obtain a letter from the Workers' Compensation Board confirming that you will not be pursuing a claim for compensation through the Board and/or confirming that you are not eligible for compensation.

14. **NEED A LAWYER?** - Remember, the insurance company will assign an adjuster to your claim and try to persuade you to not contact a lawyer. ICBC will press you to give it a chance. There is nothing wrong in dealing with the insurance company directly. However, you must know that under the current law you have the right to be compensated for many things. Some examples are:

1. Non-Pecuniary Damages - Compensation for Pain and Suffering
2. Wage Loss/Loss of Income Earning Capacity/Loss of Opportunity
  - (i) Past Wage Loss
  - (ii) Future Wage Loss/Loss of Opportunity
  - (iii) Loss of Capital Asset
3. Loss of Domestic Capacity - Help with housework and childcare
4. Cost of Future Care - Future surgeries and long term care
5. Special Damages - your out of pocket expenses - prescriptions, user fees
6. Other Damages Specific to Your Claim

15. **T0 SUE OR NOT TO SUE? - That is the Question**

With the help of a lawyer, you will quickly see if your claim is one that requires a lawyer or a lawsuit. All claims fall either within the jurisdiction of Small Claims Court or Supreme Court. Although there are several criteria that help determine which court will handle your claim, the key factor is whether your claim is worth \$10,000.00 or less (Small Claims Court) or if it is worth \$10,000.00 or more (Supreme Court). Once you add up your wage loss, out of pocket expenses and estimate probable compensation for pain and suffering it is not hard to find yourself over the Small Claims Court ceiling of \$10,000.00. A lawyer will be able to analyze all the factors that are important in making your decision to sue or not to sue and help you make the decision that is right for you. A lawyer can help you settle your claim without having to go to trial or show you how to help yourself if the probable benefits do not justify the costs of hiring a lawyer. All it takes is a free consultation to help you find the solution that works for you.

16. **QUESTIONS?** - Remember, unless you have hired a lawyer, you are on your own! If you have any specific questions in regard to these tips or any other concerns regarding your claim, please feel free to call or meet with us in person. **We handle all expenses! No up-front money from you! If we don't win or settle, you pay us nothing. It's that simple! We will be happy to talk to you at no charge!**