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A Layman's Guide to ICBC Part 7 Benefits

Prepared for MADD

Revised March 2018

This guide was initially prepared in February, 2005 at the request of MADD to provide a layman's guide to ICBC no-fault/Part 7 benefits; it was updated in March 2018. The information contained in this guide will outline the process to apply for these benefits and the type and amount of benefits available to an injured person and/or to the family of an accident victim

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History of No-Fault / Part 7 Benefits

When ICBC was created in the early 1970's by the then NDP government, the basic ICBC insurance coverage, which had to be purchased by every motorist in B. C., included coverage for medical, rehabilitation, death and wage loss benefits.

The amount of this coverage was far greater than what had been available under the previous private insurance scheme.

These benefits were available regardless of whose fault an accident was – hence the label **No-Fault Benefits**.

The actual coverage for these benefits is set out in Part 7 of the Regulations to the *Insurance (Motor Vehicle) Act*, hence the label **Part 7 Benefits**. A copy of the current (February, 2005) Regulations dealing with Part 7 coverage is contained at Tab A.

Since the inception of ICBC, the amount of the Part 7 coverage has been increased and currently is set at a maximum of \$150,000; for a passenger in a taxi or in a commercial bus, the limit is higher.

As will be described later in this guide, the amount of the total coverage can actually exceed \$150,000. This \$150,000 is in addition to the coverage provided by the BC Hospital Plan for hospital treatment and in addition to the coverage provided by the Medical Services Plan for medical treatment.

The Provincial Government will be introducing new legislation (April 1, 2019) that will provide a significant increase to the rehabilitation benefit from \$150,000 to a proposed \$300,000; these amounts do not include the wage loss benefits. The government has said the wage loss benefit will increase from the current maximum of \$300.00 per week to \$740.00 per week. Increases are also expected home making benefit, death benefits as well as an expansion on the types of treatment covered. The changes are expected to be retroactive to include injuries resulting from an accident on or after January 1, 2018. Until the new legislation is available, we cannot be more specific.

Who is Entitled to No-Fault / Part 7 Benefits?

Generally, anyone injured or killed in a motor vehicle accident in British Columbia, or any B.C. resident injured or killed in a motor vehicle accident in North America is entitled to Part 7 benefits either from ICBC or from another insurer involved in the accident. Regulation 96 sets out the various situations where no Part 7 coverage is provided.

The Regulations describe who is entitled to Part 7 benefits by defining an “insured” in Regulation 78; being an insured makes that person entitled to this coverage.

For an out-of-province insurer, the law in B.C. requires that insurer to provide the B.C. level of no-fault coverage when the out-of-province vehicle enters B.C..

In a few provinces, such as Ontario and Quebec, the amount of no-fault coverage is greater than that provided by ICBC. If the accident occurred in Ontario or Quebec, or occurred in B.C. but involved a vehicle insured in Ontario or Quebec, there is a good chance that greater no-fault benefits would be available.

What Things Are Covered or Provided Under Part 7?

Generally, in the event of an injury, Part 7 provides:

- payment of medical expenses
- payment of rehabilitation expenses
- payment of wage benefits
- payment of home making benefits

In the event of a death, Part 7 provides:

- payment of funeral expenses
- payment of loss of support benefits

However, like any insurance policy or coverage, the benefits are often limited and there is an abundance of “small print” which restricts or even precludes coverage. In many instances, ICBC sets a policy which further restricts what will be paid under Part 7.

(Later on in this guide, I will describe in more detail the specific coverage available in the event of an injury or death.)

How to Apply for Part 7 Benefits

There is a significant difference between what the law requires be done to apply for Part 7 benefits and what most ICBC adjusters want to see happen.

The law requires that ICBC be given notice of the claim for benefits promptly after an accident. Regulation 97 requires that, within 30 days of the accident, written notice be given providing “particulars” of the accident circumstances and the “consequences” (the injuries or death) of the accident. If the notice is given later than 30 days, there is usually no problem unless the delay has harmed ICBC in some way. Usually ICBC is notified of an accident immediately by one of the motorists involved.

ICBC has developed a form called “Accident Benefits Application Form” which is generally used to provide the required information of the accident and of the injury

or death. A current copy of this form is contained at Tab B. The required notice does not have to be given by the injured person.

What ICBC generally requires, but what is NOT REQUIRED to be provided is:

- a signed statement covering all of the accident circumstances
- signed authorizations to obtain medical and wage loss information

Copies of the current authorizations used for this by ICBC are contained at Tab C.

The signed statement is intended almost totally to assist ICBC in defending a personal injury or death claim; it is not needed or intended to determine whether a person is entitled to Part 7 benefits. For example, it does not matter in a Part 7 claim if a person was or was not wearing a seatbelt because Part 7 is paid regardless of fault - but that is almost always canvassed in the signed statement. Similarly, other matters that deal solely with fault are canvassed in this signed statement.

It is neither necessary nor a good idea to provide ICBC with a signed statement to obtain Part 7 Benefits.

The medical authorizations and the wage/employment authorizations are again intended more for use by ICBC in defending an injury or death claim that in determining if a person is entitled to Part 7 benefits.

While ICBC is entitled to information on the injuries suffered and the income lost, it is neither necessary nor a good idea to sign the medical and wage/employment authorizations.

Usually, a brief report is required from one of the treating doctors to confirm that a person is unable to work. The injured person is always entitled to a copy of this form from ICBC or their doctor.

Part 7 Benefits – Injury

As stated above, when a person is injured, he or she is generally entitled to:

- medical benefits
- rehabilitation benefits
- wage loss benefits
- homemaker disability benefits

i. Medical Benefits: Under Regulation 88 (1), ICBC is **required to pay** for all “reasonable” and “necessary” expenses for medical expenses, various therapy

expenses and for any needed prosthesis or orthosis. The key here is what is “reasonable” and what is “necessary” – which is often a source of dispute with ICBC.

Unfortunately, ICBC has instituted rules or guidelines for its adjusters which limit payment for medical or therapy expenses. For example, most adjusters currently will not pay for physio or massage unless these therapies are taken shortly after an accident, and then will only pay for a limited number of treatments. Such rules are not set out in the Regulations (essentially the insurance policy), but are followed by most adjusters.

In addition, while ICBC is required to pay for physio and massage, it will not pay the user fees charged by most therapists.

Part 7 provides for up to \$150,000 to pay for medical and rehabilitation expenses. While this amount is more than enough for most claims, when an individual suffers very severe injuries, the Part 7 fund may not be enough. When that is the case, it is very important to ensure that no Part 7 funds are used to repay the Medical Service Plan (MSP) for treatment from doctors or therapists. While the regulations specifically say that Part 7 cannot be used when the MSP is available to pay, ICBC routinely pays MSP out of the part 7 fund. If or when this occurs, ICBC, if asked, will credit the Part 7 fund for those MSP payments - which brings the Part 7 fund back up to where it should have been.

- ii. **Rehabilitation Benefits:** Under Regulation 88 (2), ICBC **may pay** for a variety of treatments or items if they “are likely to promote the rehabilitation” of the injured person. ICBC has much more discretion with rehab expenses than for the medical expenses described above which can make it far more difficult to obtain coverage. The rehabilitation services and items include the one-time purchase of a motor vehicle (usually in the case of someone who is left unable to use public transport), one-time alterations to a home (again for someone who cannot get in and around a normal home), attendant care at home, wheelchairs and various other equipment. While the items which might be covered under Regulation 88 (2) are unlimited, this section is usually interpreted narrowly by the ICBC adjuster.

For medical, rehab and wage benefits, ICBC is entitled to require a person to rely on any other similar coverage before being entitled to Part 7 coverage. If an individual has a group health plan or a private health plan, those plans must be used first before ICBC can be asked to pay.

- iii. **Wage Benefits:** Regulation 80 provides for payment of wage benefits if an accident and injury prevents a person from working. These benefits are called Total Disability Benefits or TTDs. To qualify for TTDs, a person must have either been employed at the time of the accident or have worked at least 50% of the year before the accident.

There is a 7 day waiting period for these benefits, and this waiting period is further extended where a person is entitled to EI sick benefits. Unfortunately, EI benefits are never paid promptly – which creates a long wait for ICBC TTDs. It is a good idea to apply for EI sick benefits immediately after an accident, even if such an application will confirm that the person is not entitled to EI.

The amount of TTDs are capped at a maximum of \$300/week (unless the injured person was fortunate enough to have bought the optional Part 7 coverage), and is calculated at 75% of their average weekly earnings in the 52 weeks before the accident. The average gross weekly earnings will be based on the actual number of weeks within which it took to earn the gross amount. For a student or someone who has not worked full-time in the year before the accident, this formula can result either in not being entitled to TTDs or only being entitled to very modest TTDs.

If the injured person has other wage disability coverage, TTDs can still be obtained, provided the total received is not greater than 75% of the average weekly earnings in the year before the accident. If the private plan provided payment of 2/3 of the lost income, TTDs could be used to top up the total benefits received to 75%.

It may be that an injured person attempts unsuccessfully to stay at or to return to work. The fact that they may have been able to survive in their job for a brief time does not prevent them from being entitled to TTDs. A TTD qualification to be aware of in Section 80 is that a disabling injury must result in an absence from work within 20 days of the accident. Should time loss from work occur after 20 days from the accident securing TTD benefits will become much more challenging and protracted.

Total Disability is a confusing term - and does not mean that the injured person is unable to do each and every part of their job. In the 1993 case of **Kenni v. ICBC**, the British Columbia Supreme Court held that a person is entitled to TTD benefits if he or she “cannot perform any substantial requirement” of his or her ordinary job.

If an injured person cannot do their own job, they are entitled to receive TTDs for a period of 2 years after the accident. Beyond 2 years, they are entitled to continue TTDs only if they cannot do any job that they would be suited for based on their age, education, and experience. These TTDs beyond 2 years are only payable up to the age of 65.

With TTD benefits beyond 2 years, ICBC can require the injured person to apply for CPP disability benefits and, if CPP is received, the amount of the TTDs is reduced by the amount of CPP being received.

The amount of wage/TTD benefits paid by ICBC does not come out of the \$150,000 Part 7 coverage. TTDs are paid in addition to the \$150,000.

- iv. Homemaker Disability Benefits:** Regulation 84 provides benefits to a homemaker whose injuries prevent him or her from “regularly performing most of the...household tasks”. This coverage will pay for the cost of hiring someone, other than a family member, to come in and do the work. The maximum coverage available is \$145/week.

While Regulation 2 (84) specifically says that payments will not be made to cover the services of a family member, the British Columbia Supreme Court in a 1992 case called *Watson v. ICBC* ruled that, if the family member did not reside with the injured person before the accident and comes in specifically to help after the accident, then ICBC must pay.

Part 7 and WCB Coverage

Regulation 82 states that ICBC is not liable to pay any Part 7 benefits if the injured person, or the family of someone killed in an accident, is entitled to WCB coverage – even if the person or family elects not to claim WCB. The one exception to this rule is if the Part 7 coverage would supplement WCB by paying for things that WCB will not, which is possible but uncommon.

For example, if an individual is left unable to take public transport, ICBC usually provides funds for the purchase of a motor vehicle. If WCB does not provide funds for this, then the Part 7 coverage should be available, as well.

Additionally, the British Columbia Supreme Court in a 1993 case called *Collins v. ICBC* held that where WCB has terminated a claim (that is, refused to pay further benefits), the injured person can then turn to his or her ICBC Part 7 coverage and ICBC is obliged to pay. In other words, the injured worker is not required to appeal a WCB ruling before being entitled to claim Part 7 benefits.

Part 7 Benefits – Death

In the event of a death resulting from an accident, even a death which occurs sometime after an accident, Part 7 provides for payment of benefits.

Regulation 91 provides for the payment of funeral expenses up to a maximum of \$2,500 where a death occurs as a result of an accident.

Regulations 92-95 provide additional death benefits to the surviving family members where a parent is killed. The amount of these benefits depends on whether the person killed was the “head of household” or the “spouse in household” as defined in

Regulation 92. There are also modest benefits payable to the surviving parent for the death of a child.

For example, if the head of the household dies leaving a spouse and 2 young children, the spouse would receive a lump sum of \$5,000 plus \$145/week for 104 weeks for a total of \$15,080. Each of the children would receive a lump sum of \$1,000 plus \$35/week for 104 weeks for a total of \$4,640 each. Any money payable to a child is paid to the Public Guardian and Trustee. It is common for ICBC to pay out the weekly payment rather than pay them over the 104 weeks.

In the event of a death, the family is usually entitled to CPP death benefits; a copy of the current CPP death benefit application form is set out at Tab D.

Does ICBC Get Credit for Part 7 Benefits Paid?

The simple answer to this question is usually yes. When ICBC is faced with having to pay an injury claim or a death claim, it is entitled to seek a credit for those amounts which have already been paid in the form of Part 7 benefits to the injured person or to the family.

For example, if an injured person has \$5,000 in income loss but ICBC has already paid \$1,200 in TTDs, the injured person is only entitled to recover \$3,800 in a claim against the driver at fault.

If ICBC Refused to Pay Part 7 Benefits, What Can I Do?

ICBC can be sued for the payment of Part 7 benefits, but the lawsuit must be started within 2 years of the date of the accident or within 2 years of the date of the last Part 7 payment, whichever is later. If the only issue is whether a medical or rehab expense is “reasonable”, then that question must be decided by arbitration.

Who at ICBC Handles My Part 7 Claim?

In most cases, the Part 7 claim is dealt with by the same adjuster in the ICBC claims centre who is dealing with the injury claim. The problem with this system is that the adjuster who is providing Part 7 coverage may feel that providing payments for medical and rehabilitation expenses will make the injury claim larger or better.

While there is an obvious conflict in one adjuster handling both a Part 7 and an injury claim for the same person, ICBC refuses to acknowledge this conflict. When a claimant is discharged from hospital and requires assistance re-establishing themselves in their community ICBC’s Hospital Discharge Program should work with hospital staff to confirm funding for early care and equipment needs. In the event the injuries are significant with an extended recovery period, a Recovery Benefits

Coordinator may be assigned to manage the Part 7 portion of your claim. This is less common today than it was when ICBC had a Rehabilitation Department but in some instances claimants see their Part 7 claim managed through Recovery Services

Can ICBC Insist That I See a Doctor of Their Choice?

The basic answer to this question is yes. ICBC is entitled to have a claimant seen by a doctor of its choice to determine if the person is entitled to Part 7 benefits. This right is sometimes misused by ICBC as the prime purpose of the assessment is to assist with the injury or death claim, not to determine whether Part 7 benefits should be paid. Unfortunately, it is difficult to get ICBC to disclose this report, unless the adjuster agrees to do so. If there is a lawsuit over the Part 7 benefits, then the report will have to be disclosed.

Can the ICBC Adjuster Insist That I Take Certain Treatments?

Provided that your own doctor thinks the treatment is likely to help you and ICBC offers to pay for the treatment, Regulation 90 allows ICBC to insist that you undergo this treatment and allows ICBC to cut off benefits if you refuse to undergo this treatment.

Further Questions?

If you have any questions about Part 7 coverage, I invite you to call one of the lawyers at Murphy Battista LLP at 604-683-9621 or 1-888-683-9621 for a free consultation.

Appendix

Tab A *Insurance Motor Vehicle Act Regulations Part 7 – Accident Benefits*

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Schedule 3 – Limits of Coverage

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Tab B CL – 22 Insurance Claim Application

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Tab C CL – 237A Authorization to Provide Medical Information /
CL – 237 Authorization to Furnish Information Respecting Salary
Wages, Earnings or Profits and Lost Time from Employment

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Tab D Canada Pension Plan Death Benefit Application

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