

CHAPTER TWELVE: AUTOMOBILE INSURANCE (ICBC)

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TABLE OF CONTENTS

CHAPTER TWELVE: AUTOMOBILE INSURANCE (ICBC)	1
PART 1: INTRODUCTION	1
I. INTRODUCTION	1
II. GOVERNING LEGISLATION AND RESOURCES	2
A. BOOKS (RELEVANT TO CLAIMS PRIOR TO MAY 1, 2021)	2
B. LEGISLATION	2
C. FURTHER REGULATION (FOR CLAIMS ON OR AFTER MAY 1, 2021)	2
PART 2: ICBC'S ENHANCED CARE SYSTEM (CURRENT MODEL)	3
III. CLAIMS FOR ACCIDENTS ON OR AFTER MAY 1, 2021	3
A. BASIC COVERAGE	3
B. ENHANCED ACCIDENT BENEFITS	3
1. <i>Entitlement to Enhanced Benefits for BC Residents vs. Non-Residents</i>	3
2. <i>Claim Deadlines and Requirements to Report Promptly</i>	4
3. <i>Other Sources of Compensation</i>	4
a) Accidents at Work	4
4. <i>Exclusions from Enhanced Accident Benefits</i>	5
5. <i>Summary of Enhanced Accident Benefit Types</i>	5
a) Healthcare and Rehabilitation	5
b) Caregiver Benefit	6
c) Income Replacement Benefit	7
d) Death Benefit	9
e) Permanent Impairment	9
C. BASIC VEHICLE DAMAGE COVERAGE	10
D. BASIC THIRD-PARTY LIABILITY	10
E. UNINSURED MOTORISTS	11
F. UNIDENTIFIED MOTORISTS (HIT AND RUN)	11
G. FIRST PARTY COVERAGE UNDER PART 10 OF THE IVR	11
1. <i>Inverse Liability</i>	11
2. <i>Uninsured or Hit and Run Accidents in Nunavut, the Yukon, Northwest Territories or United States of America</i>	12
3. <i>Underinsured Motorists</i>	13
IV. OPTIONAL INSURANCE: PART 4 OF THE IVA, PART 13 OF THE IVR	14
A. EXTENDED THIRD-PARTY LIABILITY	14
B. INCOME TOP UP	14

C.	OWN DAMAGE COVERAGE.....	14
1.	<i>Collision</i>	14
2.	<i>Comprehensive</i>	14
3.	<i>Specified Perils</i>	14
D.	LOSS OF USE COVERAGE.....	15
V.	SEEKING LEGAL COUNSEL.....	16
VI.	DISPUTES WITH ICBC	17
A.	MINOR INJURY DETERMINATION DISPUTES	17
B.	LIABILITY AND DAMAGES DISPUTES	18
C.	DISPUTES ABOUT BASIC VEHICLE DAMAGE COVERAGE.....	19
D.	DISPUTES ABOUT ENHANCED ACCIDENT BENEFITS	19
VII.	WHEN YOU CAN STILL SUE	20
A.	INJURIES FROM AN ACCIDENT.....	20
B.	VEHICLE DAMAGE	21
C.	UNINSURED AND UNIDENTIFIED MOTORISTS CASES.....	21
	PART 3: ICBC'S AUTOPLAN INSURANCE SYSTEM (PRIOR MODEL)	22
	CLAIMS FOR ACCIDENTS ON OR BEFORE APRIL 30, 2021.....	22
VIII.	22	
IX.	INTRODUCTION	22
A.	GENERAL	22
1.	<i>Indemnification</i>	22
2.	<i>Subrogation</i>	23
X.	LIMITATION ON EXPERTS	24
XI.	BASIC COMPULSORY AUTOPLAN COVERAGE.....	25
A.	SCOPE OF COVERAGE.....	25
B.	THIRD PARTY LEGAL LIABILITY: PART 6 OF THE IVR	25
1.	<i>Indemnity</i>	25
2.	<i>Who is Covered</i>	26
3.	<i>Extension of Indemnity</i>	26
4.	<i>Restrictions on Indemnity</i>	27
5.	<i>What is Covered</i>	27
6.	<i>What is Not Covered</i>	28
7.	<i>Duties of the Insured</i>	28
8.	<i>Duties of the Corporation</i>	30
9.	<i>Rights of the Corporation</i>	30
10.	<i>Forfeiture of Claims and Relief from Forfeiture</i>	30
11.	<i>Breach of Conditions and Consequences</i>	31
	UNINSURED OR UNIDENTIFIED MOTORIST (HIT AND RUN) CASES.....	32
C.	32	
1.	<i>Exclusion of ICBC Liability in Uninsured or Unidentified Motorist Cases</i>	32

2.	<i>Forfeiture and Breach of Conditions in Uninsured and Underinsured Motorist Cases</i>	32
D.	FIRST PARTY COVERAGE UNDER PART 10 OF THE IVR.....	32
1.	<i>Inverse Liability and Uninsured or Hit and Run Accidents Outside British Columbia: Part 10, Division 1 of the IVR</i>	32
a)	S. 147 Claims: Inverse Liability	32
	What is Inverse Liability?	32
	Who is Covered?	32
	What is Covered?	32
	Dispute Resolution	33
b)	S. 148: Accidents in Nunavut, Yukon, Northwest Territories, or the U.S.A.	33
	Who is Covered?	33
	How Much is the Coverage?	33
	Exclusion or Limitation of Liability by ICBC	33
	Insured’s Obligations Under Section 148(4) and (5) of the IVR	33
	Dispute Resolution	34
2.	<i>Underinsured Motorist Protection (UMP): Part 10, Division 2 of the IVR</i>	34
a)	What is UMP Coverage?	34
b)	Prerequisites for UMP Coverage	34
c)	Who Is Covered?	35
d)	Who is Not Covered?.....	35
e)	UMP Coverage and Accidents Outside B.C.....	35
f)	Forfeiture and Breach of Conditions.....	35
g)	Dispute Resolution.....	36
XII.	OPTIONAL INSURANCE: PART 4 OF THE IVA, PART 13 OF THE IVR	37
A.	INTRODUCTION TO OICs	37
1.	<i>Limiting and Excluding Coverage Under an OIC</i>	37
B.	TYPES OF OICs	38
1.	<i>Extended Third-Party Legal Liability</i>	38
2.	<i>Own Damage Coverage</i>	38
a)	Types of Own Damage Coverage	38
	Collision	38
	Comprehensive	38
	Specified Perils	38
b)	Limit on Liability	38
c)	Exclusion of Liability.....	39
d)	Coverage Available Through ICBC Policy	39
	Loss of Use Coverage	39
	(1) Limited Depreciation Coverage	39
e)	Forfeiture of Claims and Breach of Conditions	40
f)	Exceptions to Forfeiture	40
g)	Reporting Accidents	41
h)	Limitation.....	41
	PART 4: LSLAP PROGRAM INFORMATION	42

CHAPTER TWELVE: AUTOMOBILE INSURANCE (ICBC)

This Manual is intended for informational purposes only and does not constitute legal advice or an opinion on any issue. Nothing herein creates a solicitor-client relationship. All information in this Manual is of a general and summary nature that is subject to exceptions, different interpretations of the law by courts, and changes to the law from time to time. LSLAP and all persons involved in writing and editing this Manual provide no representations or warranties whatsoever as to the accuracy of, and disclaim all liability and responsibility for, the contents of this Manual. **Persons reading this Manual should always seek independent legal advice particular to their circumstances.**

PART 1: INTRODUCTION

I. INTRODUCTION

As of May 1, 2021, ICBC switched to a primarily no-fault system, known as **Enhanced Care**. This represents one of the biggest changes to the ICBC insurance system since its inception.

Under the former ICBC system, claims were handled through a mix of litigation and no-fault benefits. Although certain benefits were awarded regardless of the fault of the involved parties, in other situations one party could negotiate for compensation related to various claims, like non-pecuniary damages and loss of future income. These claims were awarded based on fault for the Accident and often a party would need to hire a lawyer and commence litigation to receive them.

Under the new system, the vast majority of claims are handled on a no-fault basis, with some limited exceptions. The no-fault system means that insured parties will file a claim directly with ICBC and will be compensated for specific damages (like medical treatment and wage loss) directly by the insurer, regardless of whether or not they were at fault for the accident. They will no longer be compensated for more speculative damages like loss of future income or non-pecuniary damages. ICBC still internally assigns fault to the parties when assessing claims to determine changes to premiums, but fault does not need to be shown to access injury compensation.

All claims for accidents occurring on or after May 1, 2021, are subject to the Enhanced Care system. Parts III - VII of this chapter outlines benefits under this new system. Please be aware that ICBC may make changes and clarifications to the system as it is implemented that are not reflected in this manual.

The new Enhanced Care system does not apply to claims for accidents that occurred on or before April 30, 2021. For claims that occurred before this date, please see Parts VIII onwards of this chapter, which outlines the former system as it existed prior to the introduction of Enhanced Care.

II. GOVERNING LEGISLATION AND RESOURCES

A. **Books (Relevant to Claims Prior to May 1, 2021)**

Gregory, E.A. and Gregory, G.F.T., *The Annotated British Columbia Insurance (Motor Vehicle) Act* (Toronto: Carswell, 1995).

Continuing Legal Education Society of British Columbia, *British Columbia Motor Vehicle Accident Claims Practice Manual* (Vancouver: Continuing Legal Education Society of British Columbia, 2000).

Continuing Legal Education Society of British Columbia, *ICBC Motor Vehicle Accident Claims (November, 1988)* (Vancouver: Continuing Legal Education Society of British Columbia, 1988).

Continuing Legal Education Society of British Columbia, *Vehicle Insurance: British Columbia Legislation and Commentary* (Vancouver: Continuing Legal Education Society of British Columbia, 2007).

B. **Legislation**

[Insurance \(Motor Vehicle\) Act, RSBC 1996, c 231 \[IMVA\].](#)

[Insurance \(Motor Vehicle\) Act - Revised Regulations \(1984\), BC Reg 447/83 \[IMVAR\].](#)

[Insurance \(Vehicle\) Act, RSBC 1996, c 231 \[IVA\].](#)

[Insurance \(Vehicle\) Regulation, BC Reg 447/83 \[IVR\].](#)

[Notice to Mediate Regulations, BC Reg 127/98 \[NMR\].](#)

[Motor Vehicle Act, RSBC 1996, c 318 \[MVA\].](#)

[Motor Vehicle Act Regulations, BC Reg 26/58 \[MVA Regulations\].](#)

[Insurance Corporation Act, RSBC 1996, c 228.](#)

[Limitation Act, SBC 2012, c 13 \[LA\].](#)

NOTE: The *IMVA* and the *IMVA Regulations* were amended and renamed the *Insurance (Vehicle) Act [IVA]* and *Insurance (Vehicle) Regulation [IVR]* respectively. The *IVA* and *IVR* came into force and effect on July 1, 2007. Note that there are transitional provisions governing whether the provisions of the old Act, new Act, or both Acts apply to an individual claim.

C. **Further Regulation (For Claims on or After May 1, 2021)**

[Basic Vehicle Damage Coverage Regulation, BC Reg 4/2021 \[BVDCR\].](#)

[Enhanced Accident Benefits Regulation, BC Reg 59/2021, \[EABR\]](#)

[Minor Injury Regulation, BC Reg 234/2018 \(MIR\)](#)

[Permanent Impairment Regulation, BC Reg 61/2021, \(PIR\)](#)

PART 2: ICBC'S ENHANCED CARE SYSTEM (CURRENT MODEL)

III. CLAIMS FOR ACCIDENTS ON OR AFTER MAY 1, 2021

Please note that the following portion of this chapter is meant to serve as a basic primer covering some of the key principles of the new ICBC system. Given that this no-fault system is new as of May 1, 2021, there are still certain portions of it that may be adapted with implementation.

This section applies to all claims for accidents that occurred on or after May 1, 2021.

A. Basic Coverage

Basic coverage is **mandatory** for all BC vehicles. Driving while uninsured is an offence (*MVA*, s 24(3)(a)) which carries a maximum penalty of a fine of up to \$250 and/or imprisonment of up to three months (*MVA*, s 24(5)(a)). Driving an uninsured vehicle is also an offence (*MVA*, s 24(3)(b)) which carries a fine of at least \$300 and no more than \$2,000 and/or imprisonment for at least seven days and no more than six months (*MVA*, s 24(5)(b)).

The following is included as part of Basic Coverage. Note that this is meant to be a high-level explanation, and insured individuals should refer to their policy for more detail and up-to-date information.

B. Enhanced Accident Benefits

Enhanced Accident Benefits are provided as part of basic coverage and are outlined under Part 10 of the *Insurance (Vehicle) Act [IVA]*. These benefits apply to accidents on or after May 1, 2021, "in which there is bodily injury caused by a vehicle" (*IVA* ss 113 and 114(1)). These benefits are awarded on a no-fault basis, which means that they are paid directly by the insurer to the insured, irrespective of the fault of the insured (*IVA*, s 117). This also means that there is no longer a right of action (an ability to sue the other party for damages) for injury arising from a vehicle accident (*IVA*, s 115). There are limited exceptions to this bar on actions for injury from a vehicle accident, which are outlined in [Section VII: When You Can Still Sue](#).

1. Entitlement to Enhanced Benefits for BC Residents vs. Non-Residents

BC residents are covered by Enhanced Accident Benefits for accidents in BC, and for accidents in other jurisdictions in Canada and the United States (*IVA*, s 118).

For non-residents involved in an accident within BC, or one outside of BC but involving a BC-registered vehicle, particular considerations may apply to determine eligibility. See s 119 of the *IVA* for more detail on entitlement to benefits in these circumstances.

2. Claim Deadlines and Requirements to Report Promptly

As a general rule, the insured has two years from the date of the accident within which to make a claim for Enhanced Accident Benefits (*Enhanced Accident Benefits Regulation*, BC Reg 59/2021, s 55(1), [EABR]). However, there are certain circumstances in which the deadline for making a claim may be measured differently. S 55 (1) of the *Enhanced Accident Benefits Regulation* sets out claim deadlines in specified circumstances. Please do not rely on this manual chapter as an authority for claim deadlines, and be sure to consult the regulation closely or speak with ICBC directly to confirm your deadline by which to make a claim.

Note that to access Enhanced Accident Benefits, the insured also has a duty to, “promptly notify the corporation of the accident” when an accident occurs (EABR, s 56(1)). If an insured fails to do so, “without reasonable excuse and to the prejudice of the corporation”, then benefits may be refused (EABR, s 56(2)). For this reason, it is important to not delay in reporting an accident to ICBC, as this may affect your ability to make a claim later.

Note that there may be other deadlines related to your Enhanced Accident Benefit claim not noted here.

3. Other Sources of Compensation

When awarding Enhanced Accident Benefits, ICBC will not pay a benefit that is available from another source as, “compensation for the same accident” (IVA, s 122(2)), although they may pay the difference between the Enhanced Accident Benefit and the other source. Other sources listed include those such as workers compensation, the Canada or Quebec Pension Plans, an extended healthcare plan through employment, or other insurance (IVR, s 18(2)). Note that the above still applies even if the insured makes the choice not to access these other sources that are available to them.

a) Accidents at Work

All vehicle accidents that occur in the course of employment (i.e. driving a company vehicle as part of a work-related task) must be reported to WorkSafe BC (WSBC) (IVA, s 122(1); IVR, s 82(1)). WSBC is the primary insurer for all workplace injuries, including those involving motor vehicles, and will provide coverage accordingly. Although it is sometimes difficult to determine whether an injury occurred in the “course of employment,” particularly those involving motor vehicles, it is good practice to submit a WSBC claim even if that claim will ultimately not proceed. Not submitting a claim to WSBC could result in an injured party not receiving the full extent of benefits they are entitled to (IVR, s 82(2)). Please see **CHAPTER SEVEN: WORKERS’ COMPENSATION** for more information about workers’ compensation claims.

However, all motor vehicle accidents at work should also be reported to ICBC as soon as possible. ICBC is the secondary insurer in these circumstances and may be able to provide coverage and benefits if a

claimant requires additional treatment that WSBC does not cover (*IVA*, s 122(2); *IVR*, s 82(1)).

4. Exclusions from Enhanced Accident Benefits

Certain types of injuries are not covered by Part 10 (*IVA*). These include injuries caused by (*EAB*, s 11):

- a) Animals being transported
- b) Maintenance, repair, or alteration of the vehicle
- c) Suicide or attempted suicide
- d) Radioactive, toxic, explosive, or other hazardous properties of nuclear substances
- e) War, insurrection, rebellion, or revolution
- f) Illicit or prohibited trade or transport
- g) Equipment attached to a stationary vehicle

5. Summary of Enhanced Accident Benefit Types

The following is a basic explanation of some of the Enhanced Accident Benefits. Insured individuals should refer to their policy for more details and up-to-date information.

a) **Healthcare and Rehabilitation**

These benefits cover healthcare and rehabilitation for those injured in a vehicle accident. These are available on a no-fault basis and are typically paid directly by ICBC to your medical provider (though this is not always the case).

An insured party is entitled to the following treatments, if needed, to treat the injury in the 12 weeks after their accident:

- acupuncture
- chiropractic
- kinesiology
- massage therapy
- physiotherapy
- counselling
- psychology

Note that there are certain prescribed fee and appointment quantity caps for each of these treatments, which vary depending on the treatment type (see *Enhanced Accident Benefits Regulation*, s 19, Tables 1, 2, 3). Once the 12-week post-accident period and/or the number of pre-authorized appointments have elapsed, the insured must show that additional treatment is needed either, “to facilitate the insured’s recovery from the insured’s bodily injury” (*EABR*, s 19(3)(a)) or to “address a decline in the insured’s physical or mental function because of the insured’s bodily injury” (*EABR*, s 19(3)(b)). Lump sum benefits for “unspecified” future treatments will not be provided (*Nawa v Insurance Corporation of British Columbia*, 2023 BCCRT 1094).

Various prosthetics, other medical equipment, and certain prescription and non-prescription medications are also covered by this benefit (*EABR*, s 21(1) and (4), and s 23), as are, “ambulance services from the scene of the accident” in certain prescribed circumstances (*EABR*, s 20).

Rehabilitation benefits are also available, “to contribute to the rehabilitation of an insured and to facilitate the insured's recovery from the insured's bodily injury” (*IVA*, s 124). These may include modifications to the insured’s home or vehicle (*EABR*, s 24 and 25). In certain specified circumstances, compensation is also available to assist with the insured’s, “activities of daily living” (*IVA*, s 125(1)) which they could otherwise carry out before the accident. The amount of this benefit varies depending on the type of activity, age of the insured, and the degree of assistance required (see *EABR*, s 27-31 for detailed calculations).

Certain transportation, lodging, and meal expenses are also covered if required for the insured to receive care. Note that there are relatively strict requirements for reimbursement or coverage of such expenses, which can be reviewed in detail under *EABR* s 32-34.

Finally, in certain instances, reimbursement is also available to cover certain travel, lodging and meal expenses for an individual to travel to assist the insured. This applies in cases where an insured is under 16 years old, is in intensive care, requires “major healthcare” (defined in section 1 of the Health Care (Consent) and Care Facility (Admission) Act), has a “life threatening” bodily injury, or when their life is in, “imminent danger” (*EABR*, s 35(2). As per *EABR* s 35(3), travel must be either:

- a) to authorize treatment for the insured,
- b) to assist the insured to make a decision respecting major health care,
- c) to assist in the treatment of the insured’s bodily injury, or
- d) to assist the insured on other medical or compassionate grounds.

Note that there is a cap on the amount that ICBC will cover, and that they will only cover these expenses for up to two individuals (*IVA* s 125(6) and *EABR* s 35(4)).

For all of the above benefits, **make sure to consult your policy closely to see which benefits require pre-approval from ICBC, and which do not.**

b) Caregiver Benefit

The *IVA* allows for benefits to be paid to an insured who is injured in an accident and, “whose main occupation at the time of the accident is taking care of, without remuneration, one or more persons who are under 16 years of age or who are regularly unable for any reason to hold any employment” and who is, “unable to continue providing that care

because of the insured's bodily injury" (IVA s 152(1)). This benefit is not available to an insured who is, "a full-time earner, temporary earner, student or minor", as these classes of insured persons have access to other benefits (IVA, s 152 (1)).

Once 180 days have passed following the accident, the insured individual receiving the caregiver benefit, who is a part-time earner or non-earner, may choose to transition to the income replacement benefit (IVA s 151(1), s 152(4)). They may also choose to continue receiving the caregiver benefit (IVA s 152(4)). ICBC has a legal duty to give the insured information to help them make this choice (IVA s 152(5)).

c) *Income Replacement Benefit*

Income replacement benefits are available to full-time, part-time and temporary earners in certain prescribed circumstances, as well as to certain non-earners (IVA, s 131-134). The entitlement amount is, "90% of the insured's net income" (*Income Replacement and Retirement Benefits and Benefits for Students and Minors Regulation*, BC Reg 60/2021, s 2(1) [IRR]), as calculated by certain formulas specified in the regulation. This cap will change on a yearly basis beginning on April 1, 2022, in which the amount is obtained by multiplying \$100,000 by the ratio between (a) the sum of the industrial average wage for each of the 12 months before October 1 of the year preceding the year for which the amount of the maximum yearly insurable earnings is calculated, and (b) the same sum for each of the 12 months before October 1, 2020 (IRR, ss 2(2) and (3)).

As set out in the *Income Replacement and Retirement Benefits and Benefits for Students and Minors Regulation*, s 1(1), full-time, part-time and temporary earners are defined as follows:

"full-time basis", in respect of employment, means

- (a) an insured is employed at one employment for not less than 28 hours, not including overtime hours, in each week of the year preceding the date of the accident, or
- (b) an insured is employed at one employment
 - (i) for not less than 28 hours per week, not including overtime hours, and
 - (ii) for not less than 2 years with periods of work not less than 8 months in duration and with gaps between periods of work not more than 4 months;

"part-time basis", in respect of employment, means an insured is employed for less than 28 hours per week, not including overtime hours;

"temporary basis", in respect of an insured who is a temporary earner, means the insured is employed but not on a part-time basis or full-time basis.

For part-time, temporary, and non-earners, after the first 180 days of benefits ICBC will initiate a process called determining employment (see *IRR*, s 13). This involves considering factors like, “education, training, work experience and physical and intellectual abilities of the insured immediately before the accident”, as well as factors like work experience and wages over the five years prior to the crash. If the insured part-time, temporary or non-earner is unable to do the determined employment as a result of the accident, then they continue to receive their benefit, and cannot receive a lower benefit amount than received prior to the determination of employment. For those able to hold their determined employment, the income replacement benefit ends (*IRR*, s 11(1)(b)).

Two years following the accident, if the insured is still unable to hold their pre-accident job but is able to work, ICBC will determine employment for the insured (*IRR*, s 14(1)). This process applies to full-time workers, as well as part-time, temporary and non-earners who have previously had their employment determined under the process above. Once employment is determined under this process, the insured has a year to search for such employment. Following the end of that year, if the insured is able to find work, and that work has a “gross yearly employment income” lower than that used to calculate their prior income benefit, then ICBC will begin to pay the insured, “the lesser of the following”:

- a) the difference between the income replacement benefit the insured was receiving before the employment was determined...and the net income from the determined employment as calculated under this regulation;
- b) the difference between the income replacement benefit the insured was receiving before the employment was determined...and the net income the insured earns from employment.”
 - i. (*IRR*, s 10(1))

Some other circumstances in which income replacement benefits may end include when:

- “The insured is able to hold the employment that the insured held at the time of the accident” (*IVA*, s 146(1)(a))
- “The insured holds other employment from which the insured earns a gross income that is equal to or greater than the gross income that the insured earned from employment held at the time of the accident” (*IVA*, s 146(1)(b))

An insured who recovers from their injury and then suffers a relapse may also be entitled to re-instatement of their income replacement benefit. The calculation for this benefit varies depending on whether it has been less than two years or more than two years since the end of the prior benefit period (or since the accident if no prior income replacement benefits were received) (*IRR*, s 9).

Benefits for Students and Minors:

Certain benefits are also available to students aged 19 and over who are unable to continue their studies for a specified period due to an accident. If a student is eligible for both an income replacement benefit and a student benefit they cannot receive both, but are able to claim the larger benefit (*IRR*, Part 9). Similar benefits are also available for minors under age 19. Similarly, if a minor is eligible for both loss of studies benefit and an income benefit they cannot receive both, but are able to claim the larger benefit (*IRR*, Part 10).

Retirement Benefit:

Retirement income benefits are available to certain insured persons over the age of 65. An insured person receiving income replacement benefits is transitioned to the retirement benefit on whichever of the following two dates is later in time: either when they reach 65 years of age, or five years after becoming entitled to income replacement benefits (*IVA*, s 149). These benefits are calculated at, “70% of the insured’s net income as determined under subsection (2) of this section, less any pension income as determined under subsection (3).” (*IRR*, s 34(1)). The benefit is *not* available to those who are over 65 at the time of their accident and are not employed (*IVA*, s 148).

d) Death Benefit

Enhanced Care also provides for a death benefit, paid in a lump sum, for surviving spouses and dependants of the insured (*IVA*, ss 156-157). Death benefits for spouses are calculated by a formula which uses the deceased insured’s gross income. These spousal death benefits are capped at a maximum of \$500,000 (*EABR*, s 47(2)). Death benefits for dependants are calculated in accordance with the age of the dependant at the time of death, and are capped at a maximum of \$89,306 (*EABR*, s 48(2)).

e) Permanent Impairment

Enhanced Care provides for a lump sum payment to be made in cases of permanent impairment (*IVA*, s 129). This payment is calculated by:

- (a) determining if the insured has sustained a catastrophic injury in accordance with section 2,
 - (b) determining the insured's permanent impairment rating in accordance with section 4, and
 - (c) determining the compensation that corresponds to, as applicable,
 - (i) the catastrophic injury in accordance with section 8 [permanent impairment compensation calculation — catastrophic injury], or
 - (ii) the permanent impairment rating in accordance with section 9 [permanent impairment compensation calculation — non-catastrophic injury].
- (*Permanent Impairment Regulation*, BC Reg 61/2021, s 3 [PIR])

Catastrophic injury is defined in detail in s 2 of the *Permanent Impairment Regulation*. Detailed information on the above calculations can be found in the *Permanent Impairment Regulation*.

The Enhanced Care system also includes a recreation benefit for those who are permanently impaired as a result of their injuries. This benefit provides support for the insured to participate in certain recreational activities following their injury. Note that this benefit is only available to those with a “catastrophic injury” or those, “with a permanent impairment rating of 20% or more as determined in accordance with the Permanent Impairment Regulation” (*EABR*, s 36(2)). The dollar amount awarded for this benefit correlates to the percentage degree to which the insured is deemed to be permanently impaired (*EABR*, s 36(7)).

C. Basic Vehicle Damage Coverage

Basic vehicle damage coverage is also a part of ICBC’s mandatory basic coverage (*IVA*, s 173), and provides indemnification for certain vehicle repairs and other losses resulting from vehicle damage that occur because of an accident in British Columbia involving, “at least two vehicles” (*IVA*, s 174(2)), in specified circumstances.

When indemnification is provided for basic vehicle damage, “[t]he total value of indemnification...must be reduced by the extent to which, expressed as a percentage, (a) the owner and the operator of the insured’s eligible vehicle and a person in a prescribed class of persons is responsible for the accident, and (b) another person whose name is not ascertainable is responsible for the accident” (*IVA*, ss 174(4) and 175(4)).

This means that the insured is only indemnified in accordance with the percentage amount for which they are found to be not responsible for the accident (i.e., if an insured fully responsible for the crash, they are not indemnified under this coverage). If there is another unknown person who is not responsible for the accident, indemnification is also reduced accordingly.

The indemnification provided for damage to, or loss of an eligible vehicle is capped at \$200,000 (*Basic Vehicle Damage Coverage Regulation*, BC Reg 4/2021, s 15(2), [*BVDCR*]). Indemnification is also provided for, “reasonable expenses incurred by the insured for loss of use in relation to the eligible vehicle in respect of the following: (a) hiring passenger directed vehicles; (b) using public transportation; (c) renting a substitute vehicle that is similar to the eligible vehicle, with the corporation’s approval; [and] (d) using other alternative transportation with the corporation’s approval” (*BVDCR*, s 18(2)), though this indemnification for passenger directed vehicles and public transportation does not apply if these expenses, “exceed expenses that would have been indemnified for renting a substitute vehicle that is similar to the eligible vehicle” (*BVDCR*, s 18(3)).

D. Basic Third-Party Liability

The basic principle behind third party liability insurance is that it is meant to indemnify the insured for claims that may be brought against them by someone else. Under the no-fault system, care for injuries is provided directly by the insurer to the injured party, as outlined above. However, there are still certain instances where an insured party may find themselves facing a claim from another party in an accident, such as when the insured causes non-vehicle property damage or is driving outside BC in a jurisdiction where the other party is entitled to sue.

This third-party liability coverage, included as part of basic mandatory vehicle coverage, provides indemnity for this sort of property damage, as well as for injury or death that occurs

in other jurisdictions in Canada or the United States, with certain specified exceptions (*IVR*, s 64). This indemnity for basic third-party liability is capped at \$200,000 for most vehicles, with higher limits for buses, taxis, and limousines (*IVR*, Schedule 3, s 1(1.1)).

E. Uninsured Motorists

This portion of basic coverage covers **non-vehicle property damage** caused to the insured's property by an uninsured (identified) motorist, in British Columbia (*IVA*, s 20). This insurance is capped at \$200,000 (*IVR*, Schedule 3, s 9(1)).

ICBC will not indemnify the claimant for amounts that the claimant can claim through, "any benefit, compensation similar to benefits, right to indemnity or claim to indemnity" that the claimant is entitled to (*IVR*, s 106(1)). This includes benefits such as those available under the *Workers Compensation Act* and the *Employment Insurance Act*.

The process for claiming under this section remains the same as under the old ICBC system and involves the insured claimant applying to ICBC. Once this claim is sent, ICBC has the ability to settle in favour of the claimant or to require the claimant to take legal action (*IVA*, s 20(5)).

F. Unidentified Motorists (Hit and Run)

This portion of basic coverage covers **non-vehicle property damage** caused to the insured's property by an unidentified motorist (i.e., a hit and run case) in British Columbia. This coverage allows the insured party to bring a legal action against ICBC as a nominal defendant to obtain damages (*IVA*, s 24).

This insurance is capped at \$200,000 (*IVR*, Schedule 3, s 9(1)), although a \$750 deductible is subtracted from the total coverage amount paid to the insured (*IVR*, Schedule 3, s 9(1)).

It is critical that, to claim coverage, the insured must have:

- a) Within 48 hours after the discovery of the damage, made a report to the police of the circumstances in which the damage occurred,
- b) Obtained the police case file number for the report, and
- c) On request of the corporation, advised the corporation of the police case file number. (*IVR*, s 107(1))

In addition, for a claimant to make a claim or get a judgment against ICBC in unidentified motorist cases, the court must first be satisfied that all reasonable efforts have been made to ascertain the identity of the owner and/or driver (*IVA*, s 24(5)).

Finally, to proceed with the claim against ICBC as a nominal defendant, the claimant must give written notice to ICBC "as soon as reasonably practicable" and within six months of the accident (*IVA*, s 24(2)).

G. First Party Coverage Under Part 10 of the IVR

1. Inverse Liability

Inverse liability protection provides compensation for vehicle loss or damage in situations where an insured is travelling in another jurisdiction in Canada or the United States whose laws do not otherwise allow the insured to sue for such

compensation. The amount of compensation is, “an amount equal to the amount of damages the insured would have recovered if the insured had had a right of action” (*IVR*, s 147(2)). In practice, this would mean that the amount that can be recovered under inverse liability would be limited if the insured is found to be partially or fully at fault.

Compensation under this section is limited to, “the least of the following: (a) the cost of repairing the vehicle; (b) the declared value of the vehicle; (c) the actual cash value of the vehicle” (*IVR*, s 147(3)).

2. **Uninsured or Hit and Run Accidents in Nunavut, the Yukon, Northwest Territories or United States of America**

Section 148 of the *IVA* specifies coverage in situations where, “death or injury of an insured arises out of the operation on a highway in Nunavut, the Yukon Territory, the Northwest Territories or the United States of America of an unidentified or uninsured vehicle, other than an uninsured vehicle owned by or registered in the name of the insured or a member of the same household as the insured.”

The coverage amount in these cases is capped at \$200,000 (*IVR*, Schedule 3, s 11).

Note that the insured has certain duties that must be fulfilled to access this coverage. The *IVA* specifies that ICBC, “is not liable...unless the insured or a representative of the insured”:

- (a) With respect to an accident with an unidentified vehicle, **reports the accident within 24 hours** after its occurrence to a policeman, peace officer, judicial officer or the administrator of any law respecting motor vehicles,
- (b) Within **28 days after the occurrence, files with the corporation a statement under oath** that the insured has a cause of action arising out of the accident against the owner or driver of an unidentified or uninsured vehicle and setting out the facts in support of that statement, and on the request of the corporation, allows the corporation to inspect the motor vehicle the insured occupied at the time of the occurrence. (*IVR*, s 148(5))

In addition to the above, ICBC will **not** be liable (i.e., ICBC will not compensate the claimant) in the following situations:

- If the insured has a right of recovery under an unsatisfied judgment;
- If the insured was operating a vehicle without the consent of the vehicle’s owner;
- If the insured fails to comply with s 148(4)(b) **to the prejudice of ICBC**.
Under section 148(4)(b) of the *IVR*, the insured:
 - Must file a copy of the originating process with ICBC within 60 days of the action commencing; **and**
 - Must not settle a claim without the written consent of ICBC (*IVR*, s 148(4))

3. Underinsured Motorists

Underinsured motorist protection provides damages for injury or death in circumstances in which the other party to the accident, “is legally liable for the injury or death of an insured but is unable, when the injury or death occurs, to pay the full amount of damages recoverable by the insured or his personal representative in respect of the injury or death” (*IVR*, s 148.1(1)). In such cases, ICBC will, “compensate the insured, or a person who has a claim in respect of the death of the insured, for any amount he is entitled to recover from the underinsured motorist as damages for the injury or death” (*IVR*, s 148.1(2)).

Circumstances in which underinsured motorist protection would apply are uncommon under the no-fault system but could arise in situations where the insured doesn’t have access to compensation for injury under Enhanced Care and the other driver is liable for the accident but is underinsured.

The amount of coverage for underinsured motorist protection is capped at \$1 million (*IVR*, Schedule 3, s 13).

Underinsured motorist coverage applies to accidents in both Canada and the United States (*IVR*, s 148.1(2)(b)). However, underinsured motorist coverage *only* applies in jurisdictions or situations where there is a right of action (an ability to sue) for damages from an accident injury (*IVR*, s 148.2(4)(a)). See [Section VII: When You Can Still Sue](#) for a list of situations in which an insured individual may still be able to sue for injury arising from an accident in BC.

In cases of hit and run accidents involving an underinsured motorist, underinsured motorist protection only applies where:

- (a) the hit and run accident occurs on a highway, and
 - (b) where the hit and run accident occurs in the Yukon, Northwest Territories or United States of America, there is actual physical contact between the insured or the vehicle occupied by the insured and the unidentified vehicle.
- (*IVR*, s 148.1(4))

It is important to note that, in relation to underinsured motorist protection, an insured is not permitted to settle an action without ICBC’s written consent (*IVR*, s 148.2(4)(b)).

IV. OPTIONAL INSURANCE: PART 4 OF THE IVA, PART 13 OF THE IVR

This section applies to all claims for accidents that occurred on or after May 1, 2021.

Optional Insurance Contracts (“OICs”) are additional optional coverage that any person can purchase at their discretion. These typically either extend the limits of existing coverage (under the same terms and conditions as the coverage that is being extended), or provide coverage that is not already provided for (IVA, s 61(1)). OICs can be purchased through private insurers or through ICBC.

The following are **some of the common types** of coverage and what they provide for, over and above the Basic Compulsory Coverage, that are commonly available for discretionary purchase. The below is merely meant to be an outline of common OIC types, and so it is critical to refer to your policy to understand the specifics of what is covered in your OIC.

A. Extended Third-Party Liability

Allows for an extension of third-party liability coverage, on the same terms and conditions as the basic third-party liability coverage.

B. Income Top Up

Extends the upper limit of the coverage available under the income replacement benefit provided as part of basic coverage (i.e., if an insured has a pre-accident net income over \$100,000 this top-up might provide them greater coverage under this benefit).

C. Own Damage Coverage

1. Collision

This insurance covers loss or damage to the insured vehicle resulting from upset or collision with another object, including the ground or highway, or impact with an object on or in the ground. This type of insurance is available with a wide choice of deductibles (IVR, s 150).

2. Comprehensive

This insurance covers loss or damage from any cause other than collision or upset. In addition to the Specified Perils listed below, this includes vandalism, malicious mischief, falling or flying objects, missiles, and impact with an animal. Comprehensive coverage is subject to various deductibles (IVR, s 150).

3. Specified Perils

This insurance is more limited than Comprehensive. It covers only loss or damage caused by fire, lightning, theft or attempted theft, windstorm, earthquake, hail, explosion, riot, or civil commotion, falling or forced landing of an aircraft or part of an aircraft, rising water or the stranding, sinking, burning, derailment or collision of a conveyance in or on which a vehicle is being transported on land or water (IVR, s 150).

D. *Loss of Use Coverage*

Loss of Use coverage can be purchased only in conjunction with Own Damage (collision, comprehensive, or specified perils coverage). It provides reimbursement up to the limits purchased by the insured for expenses incurred for substitute transportation when a valid claim can be made under Own Damage coverage. Subject to the regulations, an insurer may provide for exclusions and limits of loss in an OIC, in respect of loss of use of the vehicle (*IVA*, s 65).

An OIC providing insurance against loss of use of a vehicle may contain a clause to the effect that, in the event of loss, the insurer must pay only an agreed portion of any loss that may be sustained or the amount of the loss after deduction of a sum specified in a policy. For such a clause to have legal effect, it must be printed in a prominent place on the policy and in conspicuous lettering contain the words “this clause contains a partial payment of loss clause” (*IVA*, s 67).

V. SEEKING LEGAL COUNSEL

This section applies to all claims for accidents that occurred on or after May 1, 2021.

The new no-fault system means that most claims will now be adjudicated directly by ICBC instead of going through the court system.

However, there are certain circumstances in which an insured party may still wish to consult with a lawyer. This includes cases that are exceptions to the no-fault system (see [Section VII: When You Can Still Sue](#)). This may also include certain instances in which an insured party chooses to dispute an ICBC decision in court (see [Section VI: Disputes With ICBC](#)).

Parties may also consult legal counsel for general legal advice about their claim.

VI. DISPUTES WITH ICBC

This section applies to all claims for accidents that occurred on or after May 1, 2021.

If you have an issue with the outcome of your claim or with how it was decided, there are processes available to dispute your claim. Different procedures apply to different types of claim disputes. The following outlines the remedies for some common types of disputes that may arise. **This section should be used with caution as certain parts of the ICBC dispute process have been the subject of litigation in BC and may continue to be reviewed.**

A. *Minor Injury Determination Disputes*

Non-pecuniary damages are capped for minor injuries (*IVA*, s 103(2)). Minor injury has a specific legal meaning, and is defined in s 101(1) of the *IVA* as: “a physical or mental injury, whether or not chronic, that

- (a) Subject to subsection (2), does not result in a serious impairment¹ or a permanent serious disfigurement² of the claimant, and
- (b) Is one of the following:
 - (i) An abrasion, a contusion, a laceration, a sprain or a strain;
 - (ii) A pain syndrome;
 - (iii) A psychological or psychiatric condition;
 - (iv) A prescribed injury or an injury in a prescribed type or class of injury;”³

Minor injury classifications may be disputed either internally, by speaking with your claim representative and their manager, or by making an application to the Civil Resolution Tribunal (CRT) to adjudicate on the matter. Note that ICBC does not make further information publicly available about the process or deadlines for disputing a determination internally.

The CRT is an independent administrative tribunal, authorized by the *Civil Resolution Tribunal Act* to adjudicate on minor injury determination, among other matters. The CRT process does not involve legal representation, although certain parties who require assistance can apply to have a helper or advocate to assist them in the tribunal process. For more details on the CRT, see the LSLAP Manual on the CRT and its procedures

Note: As of June 2022, the BC Court of Appeal has upheld the CRT’s authority to adjudicate on minor injury determinations as being constitutional ([Trial Lawyers Association of British Columbia v. British Columbia \(Attorney General\), 2022 BCCA 163 \(CanLII\)](#)). The Supreme Court of Canada denied the application for leave to appeal in [Trial Lawyers Association of British Columbia, et al. v. Attorney General of British Columbia, et al., 2022 CanLII 121522 \(SCC\)](#). Thus, the CRT has jurisdiction on minor injury determinations below \$50,000

¹ “‘serious impairment’, in relation to a claimant, means a physical or mental impairment that (a) is not resolved within 12 months, or another prescribed period, if any, after the date of an accident, and (b) meets prescribed criteria.” (*IVA*, s 101(1)). The prescribed criteria are further defined under s 3 of the [Minor Injury Regulation](#) and [Silver v All-West Heritage Glass Ltd., 2023 BCCRT 407](#) as a “‘substantial inability’ to perform the essential tasks of the applicant’s regular employment or educational program, or their activities of daily living...and [is] not expected to improve substantially.”

² “‘permanent serious disfigurement’, in relation to a claimant, means a permanent disfigurement that, having regard to any prescribed criteria, significantly detracts from the claimant’s physical appearance” (*IVA*, s 101(1))

³ The [Minor Injury Regulation](#) specifies that the following are prescribed injuries: “a concussion that does not result in an incapacity; (b) a TMJ disorder; (c) a WAD injury.” (BC Reg 234/2018, s 1(1))

B. Liability and Damages Disputes

Following an accident claim, ICBC will compile information from various sources to determine liability. Per ICBC's website, this internal process includes gathering information from other drivers, witnesses, or police reports, as well as conducting comparisons with similar accidents, or determining if there are any Motor Vehicle Act violations.

In circumstances where a person is found to be more than 25% responsible for an Accident, it is often worth it to dispute a questionable liability finding, because often times being more than 25% responsible for an accident will result in an increase in insurance premiums.

The first step is for the insured to speak with the claims representative on their file to ensure that no information was missed when the claim was filed or when the assessment was made. The second step is to request a secondary review by emailing responsibility.review@icbc.com (please note that this email address may change; please refer to ICBC's website for an update to date contact). This must be one within 90 days of receiving the initial notification of responsibility. The secondary reviewer will contact the insured to discuss their claim and provide them, in writing, a detailed responsibility assessment.

If an insured is not satisfied with the detailed responsibility assessment, they can then proceed to file a dispute with the CRT. As per the ICBC website, the deadline to file in most cases is 90 days after the date on the insured's detailed responsibility assessment. The CRT has jurisdiction over liability and damages in cases where an accident occurred in BC, and was "caused by a vehicle or the use or operation of a vehicle as a result of which a person suffers bodily injury" (IVA, s 101) and where the total damage amount is less than or equal to \$50,000 (note that this damage cap to fall within CRT jurisdiction is, "including loss or damage to property related to the accident but excluding interest and any expenses referred to under section 49" of the CRT Act) (CRT Act, s 133(1)(c)).

An insured may also elect to dispute a responsibility assessment in Small Claims Court or BC Supreme Court. However, these processes tend to be slower and take longer than the CRT.

NOTE: See previous note about CRT on page 13 [above](#). Disputing Denied Benefits (in relation to Parts 1 AND 10 of the IVA). Disputes in relation to denied accident benefits can be handled by making an application to the CRT to adjudicate the matter (CRT Act, s 132(b)).

NOTE: Unlike minor injury and liability/damages disputes, parties *cannot* choose whether to bring their denied benefits disputes before either a court or the CRT, and must bring these disputes before the CRT ([Trial Lawyers Association of British Columbia v. British Columbia \(Attorney General\), 2022 BCCA 163 \(CanLII\)](#)).

Disputes about denied accident benefits may also be made internally through ICBC's Claims Decision Review process. However, ICBC does not provide public information on the process or deadlines for this. Speak directly to your ICBC representative for more information.

C. Disputes About Basic Vehicle Damage Coverage

Disputes related to Basic Vehicle Damage Coverage (see [Section III.B: Basic Vehicle Damage Coverage](#)) can be resolved either internally between the insured and ICBC, or through arbitration. This applies to disputes about:

- (a) The nature and extent of required repairs or replacement,
- (b) The value of the damage to or loss of the eligible vehicle, or
- (c) The price received, or the estimated price that would have been received, from the sale of the damaged eligible vehicle. (*BVDCR*, s 28)

This arbitration process must follow the *Arbitration Act*, as well as the rules laid out in ss 28-32 of the *Basic Vehicle Damage Coverage Regulation*. There is a two-year limitation date from the date of the accident to submit for arbitration (*BVDCR*, s 29(2)).

D. Disputes about Enhanced Accident Benefits

An insured may dispute ICBC's assessment of whether a benefit applies to their circumstances. These disputes may be resolved internally or through arbitration, consistent with the *Arbitration Act* (*IVR*, s 89). For ICBC to be required to invoke the arbitration process, certain conditions must be met (*Wichert v Insurance Corporation of British Columbia* (1987), 22 CCLI 165 (BCCA)):

- 1) There is a claim involving the payment of an expense
- 2) ICBC decided the payment of that expense as a benefit would be unreasonable
- 3) ICBC communicated this decision to the claimant
- 4) The claimant disputes ICBC's decision

VII. WHEN YOU CAN STILL SUE

This section applies to all claims for accidents that occurred on or after May 1, 2021.

A. Injuries From an Accident

There is no longer a right of action (an ability to bring a lawsuit against someone) in British Columbia for injuries from a motor vehicle accident (*IVA*, s 115).

However, s 116(2) of the *IVA* outlines certain exceptions in which those injured in a motor vehicle accident can sue for certain non-pecuniary and non-compensatory damages (non-pecuniary damages are those that are difficult to assign a number value to, such as pain and suffering damages. Non-compensatory damages are those that are not meant to directly compensate for the injury, such as punitive damages, which are designed to punish the defendant). The exceptions are:

- a) A vehicle manufacturer, respecting its business activities and role as a manufacturer;
- b) A person who is in the business of selling vehicles, respecting the person's business activities and role as a seller;
- c) A maker or supplier of vehicle parts, respecting its business activities and role as a maker or supplier;
- d) A garage service operator, respecting its business activities and role as a garage service operator;
- e) A licensee within the meaning of the *Liquor Control and Licensing Act* whose licence authorizes a patron to consume liquor in the service area under the licence, respecting the licensee's role as a licensee in the sale or service of liquor to a patron;
- f) A person whose use or operation of a vehicle
 - (i) Caused bodily injury, and
 - (ii) Results in the person's conviction of a prescribed *Criminal Code* offence; (**see footnotes**)⁴
- g) A person in a prescribed class of persons. (**see footnotes**)⁵

Note that the government has reserved the right to pass new regulations restricting ss 116(a) - 116(e). They also reserve the right to pass further regulations clarifying exceptions under s 116 (g).

These exceptions also do not apply to voluntary operators and passengers in vehicles that, “knew or ought to have known...[were] being operated without the consent of the owner, the out-of-province owner or, in the case of a leased motor vehicle, the lessee” (*IVA*, s 116(1)).

⁴ Per the *IVR*, s 12, the following are prescribed *Criminal Code* offences: (a) section 220; (b) section 221; (c) section 235; (d) section 236; (e) section 239 (1); (f) section 320.13 (1); (g) section 320.13 (2); (h) section 320.13 (3); (i) section 320.14 (1) (a); (j) section 320.14 (1) (b); (k) section 320.14 (1) (c); (l) section 320.14 (1) (d); (m) section 320.14 (2); (n) section 320.14 (3); (o) section 320.15 (1); (p) section 320.15 (2); (q) section 320.15 (3); (r) section 320.16 (1); (s) section 320.16 (2); (t) section 320.16 (3); (u) section 320.17; (v) section 322 if the property stolen is a motor vehicle; (w) section 333.1 (1); (x) section 334; (y) section 335 (1).

⁵ Per the *IVR*, s 13, the following are part of the “prescribed class of persons”: “(a) persons whose use or operation of a vehicle (i) caused bodily injury, and (ii) results in the persons' conviction under the [Youth Criminal Justice Act \(Canada\)](#) of one of the offences prescribed in section 12 of this regulation; (b) persons whose use or operation of a vehicle (i) caused bodily injury, and (ii) results in the persons' conviction in the United States of America of an offence that is the same as, or similar to, one of the offences prescribed in section 12 of this regulation; (c) persons whose use or operation of a vehicle (i) caused bodily injury, and (ii) results in the persons' conviction in the United States of America of an offence under a law similar to the [Youth Criminal Justice Act \(Canada\)](#) that is the same as, or similar to, one of the offences prescribed in section 12 of this regulation.

This means that voluntary operators and passengers in situations where a vehicle is being operated without the owner or lessee's consent cannot sue under the new system, even if they otherwise fit within the other exceptions outlined in s 116(2).

B. Vehicle Damage

There is no longer a right of action in British Columbia in most circumstances for vehicle damage occurring in accidents involving at least two cars and occurring on- and off-highway (*IVA*, s 172, 173).

However, there are certain prescribed classes of persons who may still have an action brought against them for vehicle damage from on-highway accidents, or who may start an action for vehicle damage from off-highway accidents (*IVA*, s 172 and 173). See the *Basic Vehicle Damage Coverage Regulation* s 6(2) and 8(2) for these exceptions.

C. Uninsured and Unidentified Motorists Cases

As noted in [Part I, Sections III.D and E](#) of this manual, in order to claim damages in uninsured and unidentified motorist cases, a claimant may be required to bring legal action against an uninsured motorist, or (in unidentified motorist cases) against ICBC as a nominal defendant. As noted, the coverage for uninsured and unidentified motorist accidents only applies to non-vehicle property damage caused by such accidents, so the bars on litigation for injuries and vehicle damage discussed above **would not affect** the ability to litigate in these cases.

PART 3: ICBC'S AUTOPLAN INSURANCE SYSTEM (PRIOR MODEL)

VIII. CLAIMS FOR ACCIDENTS ON OR BEFORE APRIL 30, 2021

For accidents that occurred on or before April 30, 2021, the two-year limitation date, within which an action could be started, has now passed. This means that **new claims cannot be started for accidents that occurred after that date**. However, the following information is applicable to ongoing actions for accidents that occurred prior to April 30, 2021.

Please note that the remainder of this chapter was written prior to May 1, 2021. Therefore, though it is written in the present tense, please be advised that it **applies only to claims for accidents that occurred on or before April 30, 2021**.

IX. INTRODUCTION

A. *General*

The automobile insurance system in BC is comprised of “no-fault” benefits and indemnification for claims in tort law.

No-fault benefits are part of the compulsory basic insurance coverage offered exclusively by ICBC and are paid to the insured regardless of fault. Extended coverage may be purchased from either ICBC or a private insurer under an optional insurance contract (“OIC”).

Claims for damages (under tort law) through the court system, however, do require the presence of fault on the part of the defendant to be successful. The victim of the accident (e.g. a personal injury claimant) may sue various parties liable for the injury. There is no legislative limitation on the amount of damages that a court could award; however, case law and statute may limit certain heads of damage. Where the necessary conditions are met, ICBC may indemnify the insured for all or part of the assessed liability. This means that where damages are awarded to a victim in an accident, ICBC will pay those damages instead of the party (i.e., the insured) who is at fault.

Determining whether a case can be commenced in BC and if the law of BC applies is crucial. For cases involving a BC resident who has been involved in an out-of-province accident, private international law rules will govern the action. Generally, for substantive issues, the laws of the jurisdiction where the accident took place apply. For procedural matters, the rules of the trial court apply. See [Section X](#), below for more information.

The *IVA* and the *IVR* form a code governing most aspects of auto insurance in BC. This chapter is not meant to be a comprehensive summary of the *IVA* or *IVR* but rather is a guide to help people locate the relevant sections of the *IVA* and *IVR* that they are likely to encounter. A few preliminary concepts, which will be of use in understanding this chapter, are discussed immediately below.

1. Indemnification

Drivers purchase car insurance to protect themselves in the event that they are found liable for damages. If the necessary preconditions are met, ICBC assumes liability for payment of benefits or damages to the claimant or victim of a car accident. Instead of the insured paying the damages claimed, the insurance company, “indemnifies” the insured.

2. Subrogation

Subrogation is a common feature of insurance contracts. When ICBC assumes liability for payment of benefits or damages of any kind on behalf of the insured, ICBC is 'subrogated' to the right of recovery that the insured had against any other person (*IVA*, s 84), i.e., ICBC has all remedies available to it that the insured person might have exercised by themselves (*IVA*, s 83).

X. LIMITATION ON EXPERTS

This section is only in effect for trials starting **after October 1, 2020, and applying only ongoing claims for to accidents occurring before May 1, 2021.**

Amendments introduced to the *Evidence Act*, RSBC 1996, c.124 [EA] limit the number of experts and expert reports tendered for damages in motor vehicle trials. Counsel wishing to rely on additional reports, must apply to the court for permission. Permission will be granted at the court's discretion.

Changes:

1. For fast-track claims (Rule 15-1 of the Supreme Court Rules), there will be a limit of one expert per party, *EAA 12.1 (2)(b)*.
2. For claims that are not conducted under the fast-track rule, that are not considered to be fast-track claims, there will be a maximum of three experts for each party, *EAA 12.1 (2)(a)*.
3. Parties involved in the claim can agree to use more experts than the limit if every party to the claim agrees, *EAA 12.1 (4)(a)(b)*.
4. *EAA 12.1(5)* provides a court with the discretion to allow for additional experts.
5. A limit is placed on the maximum amount recoverable from an unsuccessful litigant to \$3,000.00 per expert report in motor vehicle personal injury cases, *EAA 12.1 (9)(a)(i)(A)*. The total recoverable disbursements in motor vehicle personal injury cases will also be limited to 5% of the judgment or settlement, *EAA 12.1 (9)(a)(i)(B)*.

Exceptions:

1. The \$3,000.00 limit to recoverable on expert reports and the 5% limits on disbursements do not apply to fees incurred prior to February 6, 2020, or a notice of trial has been filed and served prior to February 6, 2020 (*EAA 12.2 (3)(b)*).

XI. BASIC COMPULSORY AUTOPLAN COVERAGE

This section applies only to ongoing claims for accidents that occurred on or before April 30, 2021.

ICBC is the sole provider of basic insurance for non-exempt vehicles in BC. Exempt vehicles are described in sections 43–44 of the *IVA* and in section 2 of the *IVR*. For most vehicles owned, leased, or operated in BC, third party liability coverage up to \$200,000 is only available from ICBC. Full coverage for exempt vehicles, extended coverage in excess of the basic coverage (third party liability insurance over \$200,000, *IVA*, s 61), and collision (“own damage”) insurance may be purchased from either ICBC or from private insurers. [See XII: Optional Insurance](#), below. Private insurers may have their own requirement for coverage that may be above and beyond the requirements of ICBC

Vehicles licensed in BC must carry basic compulsory coverage, evidenced by a certificate of automobile insurance issued under the *IVA* to someone licensed under the *MVA* (i.e., the “insured”).

NOTE: The definition of “the insured” varies somewhat from section to section in the *IVA* and *IVR*.

Driving while uninsured is an offence (*MVA*, s 24(3)(a)) which carries a maximum penalty of a fine of up to \$250 and/or imprisonment of up to three months (*MVA*, s 24(5)(a)). Driving an uninsured vehicle is also an offence (*MVA*, s 24(3)(b)) which carries a fine of at least \$300 and no more than \$2,000 and/or imprisonment for at least seven days and no more than six months (*MVA*, s 24(5)(b)).

A. Scope of Coverage

Subject to various limitations and exclusions, basic compulsory coverage is set out in the *IVR* and provides the insured with:

- Indemnity for third party legal liability (Part 6);
- Accident benefits; no-fault benefits payable for death or injury (Part 7);
- Coverage for damages caused by uninsured or unidentified motorists (Part 8);
- First party coverage (Part 10). This includes:
 - Inverse liability (Division 1 of Part 10); and,
 - Underinsured motorist protection (UMP) (Division 2 of Part 10).

B. Third Party Legal Liability: Part 6 of the *IVR*

1. Indemnity

This insurance indemnifies the insured against liability for the injury or death of another, and/or loss or damage to another’s property, up to \$200,000 (*IVR*, s 67), to be shared among the victims of a motor vehicle accident (Schedule 3, s 1). The base limit of liability is \$500,000 for buses and \$300,000 for taxis or limousines. Extended Third Party Legal Liability coverage may be purchased. (See [Section XII: Optional Insurance](#), below). **If the insured is found legally liable, and has no extended coverage, they are responsible for payment of any claims in excess of the above limits.**

As of September 16, 2019, ICBC offers a new insurance category (blanket insurance certificate) for transportation network services (TNS) or ride-hailing companies. It provides coverage up to \$1,000,000 third party liability when the vehicle is a) hailed by passengers through the online platform and b) is operated to transport the

passengers (IVR, s 154). This coverage is mandatory of ride-hailing companies, not for individual drivers.

2. Who is Covered

The definitions of “insured” for this part of the *IVR* may be found in *IVR*, s 63. For our purposes, the most relevant definitions of “insured” are:

- a) A person named as an owner in an owner’s certificate,
- b) An individual who, with the consent of the owner or while a member of the owner’s household, uses or operates the vehicle described in the owner’s certificate,
- c) Where the owner is deceased, the personal representative of the owner or a person having, with the consent of the personal representative, custody of the vehicle until the grant of letters probate or of administration to the personal representative, and
- d) Where the owner is not an individual,
 - i. An officer, employee, or partner of the owner for whose regular use the vehicle described in the owner's certificate is provided, or
 - ii. A member of the household of an officer, employee, or partner of the owner, who, with the consent of the owner, uses or operates the vehicle described in the owner's certificate.

3. Extension of Indemnity

According to *IVR*, s 65, indemnity is extended to an insured who operates a motor vehicle not described in an owner’s certificate issued to the insured (i.e., someone else’s car). For the purposes of s 65 only, “insured” includes the following:

- a) A person named as an owner in an owner’s certificate;
- b) A member of the owner’s household;
- c) An employee or partner of the owner for whose regular use the vehicle described in the owner’s certificate is provided; and
- d) The spouse of an employee or partner described in paragraph (c) where the spouse resides with the employee or partner.

As of September 1, 2019, ICBC requires drivers to list out all the household members who may drive their vehicles, regardless of the number of times they may drive it, and non-household members who may drive the insured’s vehicle more than 12 times a year. The additional drivers are factored into the premium calculation.

See: www.icbc.com/insurance/costs/drivers-experience-crash-history/Pages/Default.aspx

If an unlisted driver is in an accident, ICBC can impose a financial penalty on the principal’s policy and a higher premium rate when the principal renews the policy in the future.

4. Restrictions on Indemnity

Section 65(2) of the *IVR* states that if an insured is operating a motor vehicle that is not described in an owner's certificate issued to them, indemnity is **not** extended to the insured if:

- The vehicle is operated in connection with the business of a garage service operator;
- The motor vehicle is owned or regularly operated by the insured;
- The motor vehicle is for commercial use,

For a TNS-only vehicle operated under a transportation network services authorization, the corporation's exemption applies only if injury or death of another, or loss or damage to property of another, arises out of the operation of the TNS-only vehicle when

- a) The vehicle has been hailed by or for passengers using the online platform to which the transportation network services authorization relates, and
- b) the insured is operating the vehicle for the purposes of picking up, transporting or dropping off those passengers.
- c) The motor vehicle is in fact not licensed under the *MVA* (or similar legislation) and the insured does not have reasonable grounds to believe the motor vehicle is licensed; or
- d) The insured is operating the vehicle without the consent of the owner and does not have reasonable grounds to believe that they have the consent of the owner.

Section 77 provides that an owner seeking to rely on the coverage provided for a vehicle not named in the owner's certificate cannot do so if they also own (or leases) the non-described vehicle that has been involved in the accident (i.e., you cannot just insure one vehicle and expect this to cover all of the other vehicles in your fleet).

Garage service operators and their employees are not covered by the owner's certificate issued for customers' vehicles while the vehicle is in the care, custody, or control. "Garage service operator" is defined in Part 1 of the *IVR* as "the operator of a motor vehicle service facility and includes a dealer, service station operator, motor vehicle repairman, auto body shop repairman, wrecker operator, and the operator of a vehicle parking or storage facility" (s 57). To offset the effect of s 57, the garage service operator must obtain special coverage pursuant to s 150.

5. What is Covered

In addition to the legal liability coverage outlined above, *IVR* ss 67 and 69 states that ICBC may also pay for:

- a) Reimbursement for reasonable payments for emergency medical aid necessary to a person injured as the result of an accident for which indemnity is payable under this Part, if reimbursement is not provided to the insured under another Part or by another insurer,
- b) Costs incurred for fire extinguishers, jacks or other necessary emergency equipment or supplies provided to the insured,
- c) Pay that proportion of the costs taxed against an insured in an action respecting a claim under this Part that

1. The amount offered by the corporation as its total liability for indemnity to the insured under this Part in an offer to settle served in accordance with the Supreme Court Civil Rules bears to
 2. The aggregate of all special and general damages awarded in respect of the occurrence for which the claim is made,
- d) Pay
1. prejudgment interest under the *Court Order Interest Act* or similar legislation of another jurisdiction, and
 2. post-judgment interest under the *Interest Act (Canada)* or similar legislation of another jurisdiction
- on that part of the judgment that is within the applicable limit set out in section 1 of Schedule 3, and
- e) If indemnity is provided to the insured under this Part and by one or more optional insurance contracts provided by an insurer other than the corporation, contribute to the payment of expenses, costs and reimbursements for which provision is made under section 172 in accordance with that other insurer's and the corporation's respective liabilities for
- f) If indemnity is provided to the insured under this Part and by one or more optional insurance contracts provided by an insurer other than the corporation, contribute to the payment of expenses, costs and reimbursements for which provision is made under section 172 in accordance with that other insurer's and the corporation's respective liabilities for
1. Damages awarded against the insured, or
 2. The amount payable under a settlement made on behalf of the insured

6. What is Not Covered

ICBC will **not** indemnify an insured for:

- Loss or damage to property carried in or on a vehicle owned, rented or in the care, custody or control of an insured (s 72.1); or
- Liability arising out of the operation of attached equipment (which is not required for the safe operation of that vehicle) at a site where such equipment is operated, unless the equipment is used in accordance with the *IVR* (s 72(2)); or
- Under Part 4, 6, 7, or 10 in respect of injury, death, loss or damage arising, directly or indirectly, out of radioactive, toxic, explosive or other hazardous properties of nuclear substances within the meaning of the *Nuclear Safety and Control Act (Canada)*, s 56(1)(a); or
- Under sections 20 or 24 of the *Act* or section 49.3, Part 7 or Part 10 of the *IVR* in respect of any injury, death, loss or damage arising, directly or indirectly out of a declared or undeclared war or insurrection, rebellion or revolution (*IVR*, s 56(1)(b)); or
- Under *IVA*, ss 20 or s 24, under *IVR*, ss 49 or 49.3(1)(b), Part 6 or Part 10 in respect of punitive or exemplary damages or other similar non-compensatory damages (*IVR*, s 56(1)(c)); or
- Assessments, penalties or premiums, payable under the *Workers' Compensation Act* (British Columbia) or similar Act (*IVR*, s 72.1(1)(a)).

7. Duties of the Insured

An insured has a duty to report to ICBC mid-term changes, as required by s 9 of the *IVR*. These changes may result in an increase or decrease in the premiums paid to

ICBC. The insured named in the owner's certificate is obligated to report to an ICBC agent the following:

- 9
- (1) In this section, "the territory in which the vehicle is primarily located when not in use" means the territory in which the place where the vehicle is kept when not being driven is located.
 - (2) The insured named on an owner's certificate must,
 - (a) within 10 days after
 - (i) the insured's address is changed from the address set out in the certificate, or
 - (ii) the insured acquires a substitute vehicle for the vehicle described in the certificate, or
 - (b) before
 - (i) the use of the vehicle described in the certificate is changed to a use to which a different vehicle rate class applies than the vehicle rate class applicable to the use set out in the certificate, or
 - (ii) a vehicle in respect of which the premium is established on the basis of the territory in which a vehicle of that vehicle rate class is used or principally used, as the case may be, is used or principally used in a different territory than that set out in the certificate, report the change of address, vehicle, use or territory to a person referred to in section 3, and pay or be refunded the resulting difference in premium.
 - (3) If the premium for a vehicle is established on the basis of the territory in which the vehicle is primarily located when not in use and that territory as set out in the owner's certificate is changed, the insured named on the certificate must, unless the vehicle is being used by the insured for vacation purposes, report the change to a person referred to in section 3 within 30 days of the change, and pay or be refunded the resulting difference in premium.

Furthermore, ICBC is not liable to indemnify an insured who, to the prejudice of ICBC, fails to comply with duties outlined in s 73 of the *IVR*:

- 73**
- (1) An insured must
 - (a) promptly give the corporation written notice, with all available particulars, of
 - (i) any accident involving death, injury, damage or loss in which the insured or a vehicle owned or operated by the insured has been involved,
 - (ii) any claim made in respect of the accident, and
 - (iii) any other insurance held by the insured providing coverage for the accident,
 - (b) on receipt of a claim, legal document or correspondence relating to a claim, immediately send the corporation a copy of the claim, document or correspondence,
 - (c) cooperate with the corporation in the investigation, settlement or defence of a claim or action,
 - (d) except at the insured's own cost, assume no liability and settle no claim, and

(e) allow the corporation to inspect an insured vehicle or its equipment or both at any reasonable time.

(2) The corporation is not liable to an insured who, to the prejudice of the corporation, fails to comply with this section.

8. Duties of the Corporation

On receipt of a notice of a claim under Part 6 of the *IVR*, ICBC must, at its expense, assist the insured by investigating and negotiating a settlement where, in their opinion, such assistance is necessary, and defend the insured against any action for damages (s 74).

9. Rights of the Corporation

Upon assuming the defence of an action for damages brought against an insured, ICBC has the right, subject to section 79 of the Act, to the exclusive conduct and control of the defence. This right includes, but is not limited to, the right to appoint and instruct counsel, to admit liability, to negotiate, and/or settle out of court (*IVR*, s 74.1).

10. Forfeiture of Claims and Relief from Forfeiture

Certain conduct by the insured or applicant can result in “forfeiture”, voiding their right to be indemnified by ICBC. A claim may be forfeited under s 75 of the *IVA* if:

- a) An applicant falsely describes the vehicle in respect of which the application is made to the prejudice of the insurer (s 75(a)(i));
- b) An applicant knowingly misrepresents or fails to disclose a fact required to be stated (s 75(a)(ii));
- c) An insured violates a term or condition of or commits a fraud in relation to the plan or the OIC, or makes a “willingly false statement” regarding the claim (s 75(b), (c)); see [Section IX.B.11: Breaches of Conditions and Consequences](#):

NOTE: According to [Brooks v Insurance Corporation of British Columbia, 1994 CanLII 3304 \(BC SC\)](#), the purpose of s 19(1)(e) (now *IVA*, s 75(c)) is to prevent intentionally deceitful misstatements for the purpose of defrauding the insurer. “Exaggerated guesses” by an insured as to the value of a lost motor vehicle, or figures meant to prompt an insurer into action, are insufficient to deny coverage without demonstrated fraudulent purpose.

However, ICBC may relieve the insured from forfeiture under s 75 if it would be “inequitable”. Furthermore, ICBC **must** relieve an insured from forfeiture if: a) it is equitable to do so, and b) the insured dies or suffers a loss of mind or bodily function that renders the insured permanently incapable of engaging in any occupation for wages or profit (*IVA*, s 19(3)).

Due to various definitions of “insured” in the *IMVAR* (and *IVR*), s 19 (the relief of forfeiture provision discussed above) is to be read broadly to include all of the definitions (*Khatkar v Insurance Corporation of British Columbia* (1993), 25 CCLI (2d) 243 (BC Prov. Ct.), per Stansfield Prov. Ct. J).

11. Breach of Conditions and Consequences

Insured persons must abide by the terms and conditions of their plans and OICs. Coverage may be lost if an insured breaches certain conditions, including, but not limited to:

- a) Failing to comply with s 73 of the *IVR*, to the prejudice of ICBC;
- b) Operating a vehicle when not authorized and/or not qualified to do so by law (*IVR*, s 55(3)(a));
- c) Using the vehicle in illicit trades, racing, or to escape or avoid arrest or other similar police action (*IVR*, s 55(3)(b), (c) and (d));
- d) Towing an unregistered and/or unlicensed trailer (*IVR*, s 55(4));
- e) Using the vehicle for a different purpose than the one declared by the insured in their application for insurance, except as “occasionally” permitted (*IVR*, s 55(2(a)); or
- f) Naming in the owner’s certificate someone as the principal operator of the insured vehicle who is not actually the principal operator (*IVR*, s 75).

NOTE: When the court determines who the principal driver is, it will consider the entire period covered by the insurance plan ([Dehm v Insurance Corporation of British Columbia, 1981 CanLII 608 \(BC SC\)](#)).

Despite any breach of condition by an insured, insurance money is still payable to **third parties** by ICBC in cases where the insured was:

- a) Incapable of properly controlling the vehicle because of the influence of alcohol or drugs;
- b) Convicted under any one of the following sections of the *Criminal Code*, RSC 1985, c C-46 (see also *MVA Regulations*, s 28.01 Table 4):
 - s 220 (criminal negligence causing death);
 - s 221 (criminal negligence causing bodily harm);
 - s 236 (manslaughter); s 249 (dangerous operation of a motor vehicle);
 - s 252(1) (failure to stop at an accident),
 - s 253 (driving while impaired or with a blood-alcohol level exceeding 80 milligrams per 100 millilitres);
 - s 254(5) (refusal or failure to give a breath sample);
 - s 255 (impaired driving causing bodily harm or death);
 - s 259 (4): driving while disqualified;
 - a conviction under the *Youth Criminal Justice Act* (Canada) for any of the above offences;
 - “similar result” or conviction of these offences in a jurisdiction in the U.S.; or
 - a conviction under ss 95 or 102 of the *MVA* or similar convictions under another Canadian or American jurisdiction (both concern driving while prohibited); or
- c) permitting another person to use the insured vehicle in a way that results in a conviction for any of the offences outlined above (*IMVA Regulations*, s 55).

C. **Uninsured or Unidentified Motorist (Hit and Run) Cases**

1. **Exclusion of ICBC Liability in Uninsured or Unidentified Motorist Cases**

There are certain situations where ICBC will not be liable to pay a claim made under section 20 and/or section 24 of the *IVA*. ICBC will **not** be liable:

- To a claimant, under s 24 of the *IVA*, who fails to comply with section 107(1) of the *IVA* without reasonable cause;
- To a claimant, under s 20 or 24 of the *IVA*, for loss or damage arising while the vehicle was in the claimant's possession without the owner's consent (i.e., stolen) (*IVR*, s 107(2)(a)).

2. **Forfeiture and Breach of Conditions in Uninsured and Underinsured Motorist Cases**

The same provisions apply as those outlined under [Section XI.B.10: Forfeiture of Claims and Relief from Forfeiture](#) and [Section XI.B.11: Breach of Conditions and Consequences](#), above. These are contained in s 19 of the *IVA* and s 55 of the *IVR*.

3. **Underinsured Motorist Protection (UMP): Part 10, Division 2 of the IVR**

a) **What is UMP Coverage?**

UMP coverage, part of the basic compulsory coverage, provides \$1,000,000 in compensation against bodily injury or death for the victim of an accident caused by a motorist who does not carry sufficient insurance. The maximum coverage under UMP is \$2,000,000 (which an insured must pay an extra premium to purchase) for each insured person (Schedule 3, s 13 of the *IVR*). This limit includes claims for prejudgment and post-judgment interest and costs. See section 148.1(5).

b) **Prerequisites for UMP Coverage**

Generally, UMP coverage is available where an insured's death or injury is caused by the operation of a vehicle operated by an underinsured motorist, and occurs in Canada or the U.S.

If an insured is making a claim for UMP coverage in relation to a **hit and run accident**, there are additional requirements that need to be met (s 148.1(4)):

- The accident must occur on a highway; and
- The accident must have **physical** contact between the insured vehicle and the unidentified vehicle, if it occurred in Nunavut, the Yukon Territory, the Northwest Territories, or the United States.

c) Who Is Covered?

Under section 148.1 *IVR*, “insured” includes, but is not limited to:

- A person named in the owner’s certificate and members of their household;
- Any person who is an occupant of the insured vehicle;
- Any person with a valid BC “driver’s certificate” (i.e., driver’s license) and members of their household; and
- Any person entitled, in the jurisdiction in which the accident occurred, to maintain an action against the underinsured motorist for damages because of the death of one of the insured.

d) Who is Not Covered?

Section 148.1(3) of the *IVR* describes when ICBC will not be liable. Some limitations include:

- The insured’s vehicle was not licensed, and the insured had no reasonable grounds to believe it was; or
- the vehicle’s operator or passenger did not have the owner’s consent to operate or be in the vehicle and ought to have known there was no consent (i.e., the operator or passenger is in a stolen vehicle).

e) UMP Coverage and Accidents Outside B.C.

For accidents occurring outside BC, the **law of the place where the accident occurred determines the legal liability of an underinsured motorist**, whereas the **amount** of the UMP claim is determined by BC law. See section 148.2(6) of the *IVR*.

UMP protection does not apply in a jurisdiction where the right to sue for injuries caused by a vehicle accident is barred by law (*IVR*, s 148.2(4)) or to vehicles used as buses, taxis, or limousines (s 148.4).

f) Forfeiture and Breach of Conditions

Under section 148.2(5) of the *IVR*, the same provisions that apply to those outlined under Third Party Legal Liability also apply here (see [Section XI.B.10: Forfeiture of Claims and Relief from Forfeiture](#) and [Section XI.B.11: Breach of Conditions and Consequences](#), above.). An award otherwise available under UMP will be reduced by any amount forfeited by a breach outlined in s 55.

g) Dispute Resolution

Disputes between claimants and ICBC, and the reasons for the decision must be published (*IVR*, s 148.2(1.1) and ((2.1)).

PART 4: LSLAP Program Information

Through LSLAP, clinicians may assist clients with a variety of legal issues related to ICBC. Clinicians can help clients navigate the claims process and disputes with ICBC. In particular, clinicians can assist in preparing for dispute resolution through the Civil Resolutions Tribunal and Small Claims Court. Please note that lawyers and advocates are not typically present during CRT proceedings, and thus, LSLAP's scope of work does not typically include representation at such hearings. Clinicians may also assist clients with applying for benefits through ICBC's Enhanced Care scheme. Finally, LSLAP can also help with criminal files where the accused is facing an ICBC driving prohibition.

For cases that are beyond the scope of LSLAP's mandate, referrals may be made to more appropriate organizations. The first step with every ICBC claim is to report the accident directly to ICBC and begin the claims process. When additional assistance is required, the following resources may be helpful:

- **Access Pro Bono**
 - 30-minute summary advice
 - Contact:
 - Tel: (604) 878-7400 | 1(877) 762-6664
 - Web: <https://accessprobono.ca/get-legal-help>
- **Dial-A-Law**
 - Basic legal information over the phone (no advice)
 - Contact:
 - Tel: (604) 687-4680 | 1(800) 565-5297
 - Web: <https://dialalaw.peopleslawschool.ca>
- **Everyone Legal Clinic**
 - Fixed-rate services
 - Contact:
 - Tel: (778) 200-4478
 - Web: www.everyonelegal.ca
 - Email: intake@everyonelegal.ca
- **Disability Alliance BC – Advocacy Access program Disability Law Clinic**
 - Assistance with disability benefits (may be applicable after a motor-vehicle accident)
 - Contact:
 - Tel: (604) 872-1278 | 1(800) 663-1278
 - Web: <https://disabilityalliancebc.org/direct-service/apply-for-disability-benefits/>
<https://disabilityalliancebc.org/direct-service/apply-for-disability-benefits/>
- **Worksafe BC (Claims Call Centre)**
 - For motor-vehicle accidents at work
 - Contact:
 - Tel: 1(888) 967-5377 | (604) 231-8888
 - Web: <https://www.worksafebc.com/en>
- **ICBC (Claims)**
 - Contact:
 - Tel: (604) 520-8222 | 1(800) 910-4222
 - Web: <https://www.icbc.com/insurance> | <https://www.icbc.com/claims>