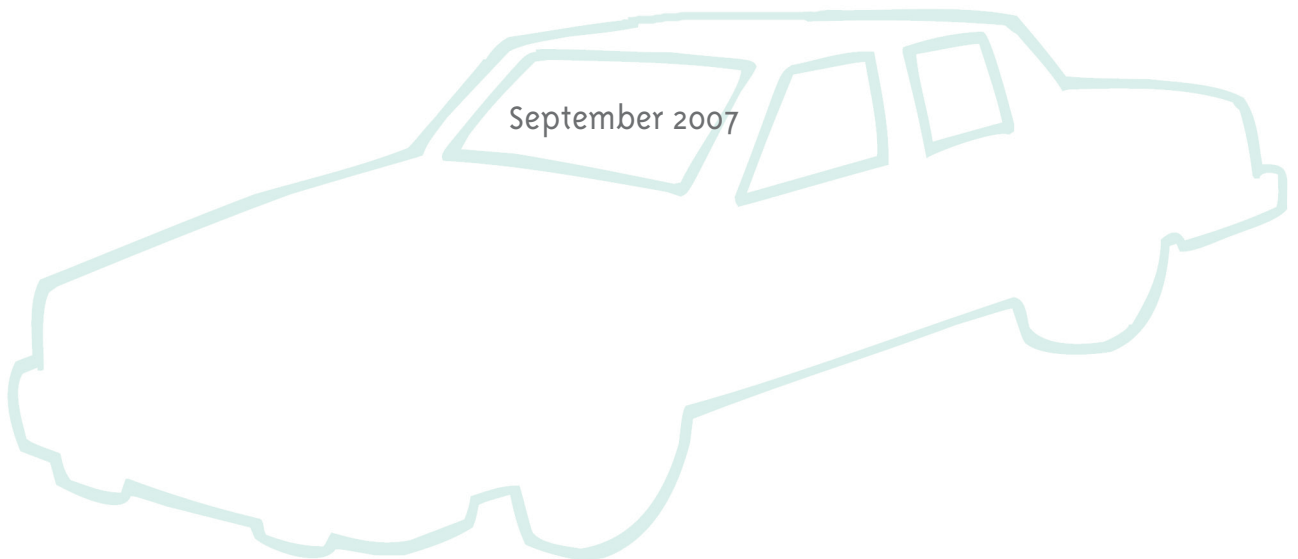


Part **7** Accident Benefits

A TIME FOR CHANGE

BC Coalition of People with Disabilities

prepared by
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The BC Coalition of People with Disabilities (BCCPD) is advocating for long overdue change to the Insurance Corporation of British Columbia’s (ICBC) provision of Part 7 Accident Benefits. The current rates and provisions are out of step with today’s costs, and too often leave accident victims without the services and financial supports they need to recover well and/or live with the effects of disability.

Through consultation with community organizations who represent people who have acquired disabilities in motor vehicle accidents, two essential areas were identified for policy change:

1. Accident Benefits
2. Equipment and Service provision

The purpose of this brief is threefold: to provide a snapshot of BC’s motor vehicle insurance system, to identify and explain the areas in need of change, and to present policy options that will address the needs of people who have acquired a disability through a motor vehicle accident.

WHAT ARE PART 7 ACCIDENT BENEFITS?

All British Columbians injured in a motor vehicle accident can receive rehabilitation and medical services for their injuries from the Insurance Corporation of British Columbia, commonly known as ICBC. A pedestrian or cyclist is also entitled to Accident Benefits if they are named on an Autoplan policy, are a member of a household with an Autoplan policy or are hit by a BC-licensed and insured vehicle in Canada.

Whether or not the injured person is found to be responsible for the accident, under Part 7 of the Insurance Motor Vehicle Act, ICBC will cover up to \$150,000 in rehabilitation services and medical expenses. Part 7 Accident Benefits ensure injured people receive rehabilitation services and provide wage benefits to compensate for wage loss while injured and death benefits to help families cover funeral expenses and compensate for lost income.

ICBC will pay Accident Benefits to most occupants of a BC-licensed and insured vehicle in Canada and the United States. Accidents that occur out-of-province may be subject to the laws of that jurisdiction.

Figure 1: ICBC Part 7 Accident Benefits

Funeral Expenses -----	Up to a \$2,500
Death Benefits -----	Depends on deceased’s financial contribution to family
Wage Loss Benefits -----	Up to \$300 per week for 2 years*
Rehabilitation and Medical expenses -----	Up to \$150,000
Homemaker Benefits -----	Up to \$145 per week for 2 years*

* After two years an individual may still receive wage and homemaker benefits, but these benefits become subject to deduction.

THE CURRENT RATES AND PROVISIONS ARE OUT OF STEP WITH TODAY’S COSTS, AND TOO OFTEN LEAVE ACCIDENT VICTIMS WITHOUT THE SERVICES AND FINANCIAL SUPPORTS THEY NEED TO RECOVER WELL AND/OR LIVE WITH THE EFFECTS OF DISABILITY.

Table 1: ICBC Part 7 Accident Benefits – Definition of Terms

Term	Definition
Part 7 Accident Benefits	Insurance payments to cover lost wages, medical and rehabilitation expenses or compensation to the spouse and dependents of a fatally injured person
Funeral Expenses	If a person is fatally injured, their family may be reimbursed up to \$2,500 for burial and funeral expenses
Death Benefits	<p>Compensation to the spouse and dependents of a fatally injured person. Weekly benefits may last for 104 weeks. The amount depends on the financial contribution of the deceased to the household. For example:</p> <p>Primary earner: a lump sum of \$5,000 and \$145 weekly to the spouse, and a lump sum of \$1,000 and \$35 weekly to each dependent</p> <p>Spouse of primary earner: a lump sum of \$2,500 and \$145 weekly to spouse and a lump sum of \$1,000 and \$35 weekly to each dependent</p> <p>Dependent Mentally or Physically Disabled Adult: a lump sum of \$1,000</p>
Rehabilitation and Medical Expenses	Reimbursement for “reasonable and necessary expenses” up to \$150,000. Such expenses may include: dental, hospital, chiropractic or physiotherapy treatment, medical supplies and equipment, and attendant care.
Wage Loss Benefits	ICBC may provide people who are injured in a motor vehicle accident and unable to work with wage benefits. Wage benefits cover 75% of a person’s weekly income to a maximum of \$300 for 104 weeks. ² After 104 weeks, benefits may continue, but are reduced by the amount received from the Canada Pension Plan or terminated if the person was over 65 at the time of the accident or turned 65 after the accident. To qualify, the injured person must: <ol style="list-style-type: none"> 1. Exhaust any other wage benefits available to them, such as private insurance and employment insurance (EI) sickness benefits. 2. Have either had a job on the day of the accident or had worked 6 out of the previous 12 months.
Homemaker Benefits	If a homemaker is unable to perform their duties then ICBC may provide \$145 per week to hire a person to perform the homemaker’s duties. Benefits are not payable to family members who perform the homemaker’s tasks. Benefits are not payable for the first 7 days of disability and last for 104 weeks. After 104 weeks, benefits are reduced by the amount received from the Canada Pension Plan or terminated if the person was over 65 at the time of the accident or turned 65 after the accident.

ICBC: A TORT INSURANCE SYSTEM

BC has a tort insurance system. A tort claim is a legal claim by a “not at fault” party for expenses not paid by ICBC under Part 7 Accident Benefits, but that arise as a result of injuries sustained in a motor vehicle accident. This may mean loss of wages or loss of opportunity to earn income in the future due to injuries and/or a claim for pain and suffering.³ A tort insurance system is beneficial to British Columbians injured in a motor vehicle accident because it:⁴

- Supports the concept of full and fair compensation for personal injuries
- Protects innocent people from losing their rights and quality of life
- Ensures court access for people injured through the negligence of others
- Preserves the legal principles of accountability and equal protection
- Provides a deterrent for negligent behaviour

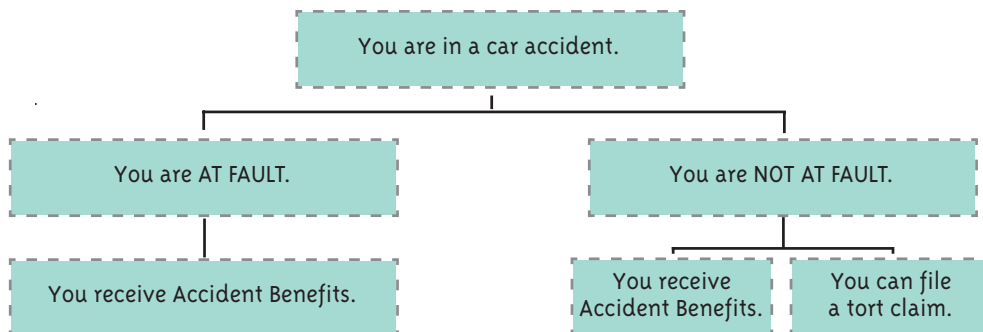
THAT MEANS THAT, IF YOU ARE FOUND RESPONSIBLE FOR AN ACCIDENT IN BRITISH COLUMBIA, YOU CAN ONLY RECEIVE PART 7 ACCIDENT BENEFITS TO PAY FOR YOUR REHABILITATION, MEDICAL SERVICES AND COMPENSATE FOR LOST WAGES DUE TO INJURY OR DEATH.

WHO CAN FILE A TORT CLAIM?

If an injured person is found to be not responsible or “not at fault” in an accident, they have the right to file a tort claim. This means that they can sue the person at fault in the accident for pain and suffering, lost past and future wages, and the cost of care.

A tort claim can be settled outside of court or the defendant can take the matter to trial to seek a judgment. Both a settlement and a judgment consist of monetary compensation. If an injured person is found to be responsible or “at fault” for the accident, they do not have the right to file a tort claim because, of course, a person cannot sue themselves for an accident that was their fault. That means that, if you are found responsible for an accident in British Columbia, you can only receive Part 7 Accident Benefits to pay for your rehabilitation, medical services and compensate for lost wages due to injury or death.

Figure 2: Benefits available according to Fault



SINCE THIS INCREASE, SEVENTEEN YEARS AGO, THE COST OF LIVING WITH A DISABILITY HAS INCREASED DRAMATICALLY AND ICBC'S REHABILITATION BENEFITS HAVE NOT KEPT PACE.

WHEN ARE YOU AT FAULT OR NOT AT FAULT?

People may be deemed to be at fault if they behave negligently; for example, talking on a cell phone while driving, or drinking and driving. However, there may be degrees of fault in an accident — meaning that both drivers in the accident share the responsibility. The degree—or percentage—of fault determined by ICBC is deducted from any compensation received in a tort claim. For example, if Eleanor is found to be 40% responsible and is awarded \$10,000, she receives a total of \$6,000.

If a driver is injured by hitting an animal on the road, such as a deer, they cannot file a tort claim because there is no negligent “person.” The driver can only receive Accident Benefits. Also, a person is deemed not at fault if they are a passenger in any car involved in an accident.

A TIME FOR CHANGE: PART 7 ACCIDENT BENEFITS REHABILITATION BENEFITS

Rehabilitation benefits were last increased in 1990 from a maximum of \$100,000 to a maximum of \$150,000. Since this increase, the cost of living with a disability has increased dramatically and ICBC's rehabilitation benefits have not kept pace. A conservative estimate of the cost of equipment, attendant care and user fees alone for a spinal cord injury in the first year is approximately \$185,000—\$35,000 over the allocated amount for rehabilitation services and care (Table 2, 3 & 4).

In 2005, 19 people became quadriplegic or paraplegic in BC as a result of a motor vehicle accident. There are no statistics on the number of brain injuries resulting from motor vehicle accidents. The difficulty in diagnosing brain injuries contributes to this lack of data. However, it is known that only a small proportion of people receive catastrophic brain injuries that require equipment and services. The cost of equipment and services for a person with a catastrophic brain injury is approximately \$10,000 per month or \$120,000 per year⁶. These amounts do not include any financial support for education or job re-training following injury. Once rehabilitation benefits are exhausted, the individual must support her or himself or apply for provincial Disability Benefits.

Table 2: Estimated Cost of Equipment – Spinal Cord Injury

Equipment	Cost
Wheelchair	\$6500
Power wheelchair	\$20000
Cushion	\$2000
Home modifications	\$35000
Modified van	\$55000
Electric bed	\$5000
Electric table	\$2500

TOTAL: \$126,000

Source: British Columbia Paraplegic Association, 2006

Table 3: Estimated Cost for Attendant Care – Spinal Cord Injury

Rate	Cost
Hourly	\$30
Daily	\$120
Weekly	\$840
Monthly	\$3720
Yearly	\$44,640

Source: British Columbia Paraplegic Association, 2006

Table 4: Estimated Cost for User Fees – Catastrophic Injury

Service	User Fee	Frequency	Sub Total
Shared residence at George Pearson	\$876 per month ⁷	12	\$10,512
Physiotherapy ⁸	\$45 per visit ⁹	45	\$2,025
Massage therapy	\$35 per visit ¹⁰	45	\$1,575
Occupational therapy	Covered under MSP	-	-
TOTAL:			\$14,112

Sources: Vancouver Coastal Health, Physiotherapy Association of BC, Massage Therapists Association of BC

RECOMMENDATIONS

- **Increase rehabilitation benefits to at least \$300,000.**
- **Institute a mandatory review of rehabilitation benefits with disability community groups every 5 years.**

THE DIFFERENCE OF \$352 PER MONTH BETWEEN EI'S SICKNESS BENEFITS AND ICBC'S WAGE BENEFITS MEANS AN INJURED PERSON'S STANDARD OF LIVING DECREASES BY 22% WHEN THEY EXHAUST THEIR SICKNESS BENEFITS AFTER 15 WEEKS.

WAGE BENEFITS

ICBC's wage benefits are meant to compensate a person for lost income due to injuries sustained in a car accident. Wage benefits were last increased on January 1, 1991 from a maximum of \$200 per week or \$867 per month to a maximum of \$300 per week or \$1300 per month.¹¹ Before an injured person is entitled to receive wage benefits from ICBC, they must exhaust their Employment Insurance (EI) "sickness benefits" or any private insurance. The Canadian government's sickness benefits can amount to a maximum of \$413 per week or \$1652 per month for 15 weeks¹². The difference of \$352 per month between EI's sickness benefits and ICBC's wage benefits means an injured person's standard of living decreases by 22% when they exhaust their sickness benefits after 15 weeks. This contributes to the financial hardship many people experience after acquiring a disability in a motor vehicle accident.

RECOMMENDATION

- **Increase wage benefits to 75% of a person's weekly income to a maximum of \$413 per week to reflect the standard of compensation due to injury set by the government of Canada.**

FUNERAL COSTS

ICBC may provide up to \$2,500 to cover funeral costs. Funeral costs can vary widely depending on the family's religion, culture and the personal wishes of the deceased. A basic funeral with cremation, for example, is \$3,900. However, if the deceased is buried, the additional cost is between \$3,000 and \$10,000.

RECOMMENDATION

- **Increase funeral benefits to \$4,000 to cover the basic cost of a funeral in British Columbia.**

HOMEMAKER'S BENEFITS

ICBC's Homemaker's Benefits are not available to family members who perform the homemaker's tasks. ICBC defines "family" as a group of individuals who either live with the insured under the same roof or the insured's immediate family, such as husband, wife, mother, father, sister, brother, son, daughter or their spouses.

Based on this definition, to qualify for benefits a family must hire an outside person to perform the homemaker's duties. This restriction does not allow families any flexibility to make decisions that best suit their needs. After a traumatic injury, and the stress this puts on the family, people may be more comfortable having a caring relative who knows their routine to perform household duties. The added responsibility of hiring a suitable person to substitute for the injured homemaker may add more stress to an already difficult situation.

Currently, ICBC offers \$145 per week in homemaker benefits which is well below the market rate for comparable professional services. Although rates may vary, the

average rate to hire a professional to cook, clean, run errands and grocery shop for a family is, on average, \$21.75 per hour¹³. At 3 hours per day, the cost of replacing a homemaker would be \$63.75 per day or \$446.25 per week.

RECOMMENDATIONS

- **Extend homemaker benefits to family members, regardless of residence, to reflect the common practice of relatives substituting for an injured homemaker.**
- **Increase homemaker benefits to \$225 per week or 50% of the cost of professional care services.**

A TIME FOR CHANGE: EQUIPMENT AND SERVICES PROVISION

MAKING EQUIPMENT AND SERVICES MORE ACCESSIBLE

Through consultations with stakeholders and people with disabilities who have worked with ICBC on Part 7 claims, the BCCPD identified three areas of concern around equipment and services:

I. ICBC ADJUSTORS DO NOT ALWAYS CLEARLY COMMUNICATE THEIR REASONS FOR REFUSING A REQUEST FOR EQUIPMENT OR A SERVICE.

BCCPD interviewed people with disabilities, and their families, who had acquired a disability through a motor vehicle accident. The people we spoke with expressed frustration and confusion as to why their ICBC adjustor refused a service or piece of equipment. They told us that when an adjustor refused their request, he or she did not always give a reason or the reason was not clearly explained.

Some people with disabilities have communication impairments.¹⁴ This can be a result of brain injury, hearing impairment, pain, anxiety, depression, frustration or mental fuzziness due to medication. These impairments can have a dramatic impact on the person's ability to absorb information and ask the right questions. Adjustors should be trained to recognize these types of barriers and make efforts to ensure crucial information is clearly conveyed and understood.

LANA'S STORY

"Lana" hit a moose one evening in 2004 on her way home from a friend's house and became a C1-C3 quadriplegic. After her accident, Lana re-adjusted to life as a quadriplegic: re-learning basic life skills, taking large, daily doses of medication and participating in job re-training. She was a tradesperson before her accident.

While Lana was adjusting to her new life, she resided at the George Pearson Centre for 8 months. She is an independent person and likes to go out by herself to the mall, movies or to get some fresh air. Like most women, she wanted to carry a cell phone for safety reasons. However, her request for a phone was denied by her ICBC adjustor because a phone was deemed unnecessary.

Lana was not discouraged by the refusal and kept trying. Eventually, she convinced her adjustor to cover 20% of the price of the phone—a victory, albeit a small one as the cost of the phone was over \$300. Lana also wanted a Dragon Natural Speaker, a dictation device that transcribes voice to text, to help her use a computer. This request was also denied by her adjustor. Again, Lana continued to advocate for a Dragon Natural Speaker and her request was approved—although, to this day, she is unclear why her initial request was denied.

ICBC adjustors are allowed flexibility in approving equipment and services, but are also under pressure to keep costs down. Lana's success in gaining funding for some "extras" is clearly linked to her strong self-advocacy. However, not every person is this persistent. People are less successful when they are coping with their new disability, intimidated by the bureaucracy of ICBC or unable to advocate for themselves.

RECOMMENDATIONS

- When an ICBC adjustor approves or declines a request for services or equipment, they must provide the person requesting the service with a letter outlining the reasons for the decision.
- ICBC management should consult with disability organizations to better understand the equipment and service needs of people injured through accidents and the positive impacts that provision of these needs will have in clients' lives.

2. ICBC ADJUSTORS DENY REHABILITATION SERVICES WITHOUT THOROUGH CONSULTATION WITH MEDICAL AND REHABILITATION PROFESSIONALS

Through our consultation with stakeholders, we found that community organizations serving people with disabilities are concerned that ICBC adjustors sometimes deny rehabilitation services without a thorough consultation with medical and rehabilitation professionals. Fraudulent injury claims have forced ICBC to adopt some protective policies. However, these policies have had the undesired effect of making it much more difficult for people with harder-to-diagnose disabilities, such as brain injury, to receive much-needed rehabilitation services.

RECOMMENDATIONS

- That ICBC's claimant evaluation team must include medical or rehabilitation professionals.
- That ICBC management partner with disability groups to ensure claimants are properly evaluated and diagnosed.

3. PSYCHOLOGICAL SERVICES ARE NOT COVERED BY ACCIDENT BENEFITS.

Currently, psychological services are not covered by Accident Benefits. An injured person may receive psychological services under section 88 (2F) of the Insurance Motor Vehicle Act, but only at the discretion of the case manager. After a catastrophic physical trauma, it is not uncommon for people to experience psychological effects, such as depression, anxiety and post-traumatic stress. Support for injured people's psychological recovery must be an equal priority with physical recovery.

RECOMMENDATION

- That ICBC add psychological services to the services covered by Accident Benefits.

AFTER A CATASTROPHIC PHYSICAL TRAUMA, IT IS NOT UNCOMMON FOR PEOPLE TO EXPERIENCE PSYCHOLOGICAL EFFECTS, SUCH AS DEPRESSION, ANXIETY AND POST-TRAUMATIC STRESS. SUPPORT FOR INJURED PEOPLE'S PSYCHOLOGICAL RECOVERY MUST BE AN EQUAL PRIORITY WITH PHYSICAL RECOVERY.

SUMMARY OF RECOMMENDATIONS

- Increase rehabilitation benefits to at least \$300,000.
- Institute a mandatory review of rehabilitation benefits with disability community groups every 5 years.
- Increase wage benefits to 75% of a person's weekly income to a maximum of \$413 per week to reflect the standard of compensation due to injury set by the government of Canada.
- Increase funeral benefits to \$4,000 to cover the basic cost of a funeral in British Columbia.
- Extend homemaker benefits to family members, regardless of residence, to reflect the common practice of relatives substituting for an injured homemaker
- Increase homemaker's benefits to \$225 per week or 50% of the cost of professional care services.
- When an ICBC adjustor approves or declines a request for services or equipment, they must provide the person requesting the service with a letter outlining the reasons for the decision.
- ICBC management should consult with disability organizations to better understand the equipment and service needs of people injured through accidents and the positive impacts that provision of these needs will have in clients' lives.
- That ICBC's claimant evaluation team must include medical or rehabilitation professionals.
- That ICBC management partner with disability groups to ensure claimants are properly evaluated and diagnosed.
- That ICBC add psychological services to the services covered by Accident Benefits.

A TIME FOR CHANGE IS NOW

Improvements to ICBC's Part 7 Accident Benefits are long overdue. The current benefits package falls far short of meeting the medical, rehabilitation, monetary and psychological needs of people who acquire sometimes life-long disabilities in motor vehicle accidents. The people we have consulted—disability organizations, and people with disabilities and their families—make convincing and compelling cases for how the current system's shortcomings are compromising their health and security.

Ensuring that benefits, services and equipment meet the needs of people who acquire disability in a motor vehicle accident should be ICBC's primary responsibility. We hope this document can be the start of a meaningful partnership with ICBC to meet this responsibility and improve these crucial supports for people with disabilities.

END NOTES

¹ icbc.com

² An injured person does not have to pay income tax on their wage benefits because ICBC initially deducts 25%. This is why a person receives 75% of their weekly income and not 100%.

³ canadalegal.info

⁴ Coalition Against No Fault Fact Sheet 2002, canf.bc.ca

⁵ BC Paraplegic Association power point presentation to ICBC February 2006.

⁶ Correspondence with John Simpson, Brain Injury Case Manager 2007

⁷ Average cost per month over one year. Daily rate is \$28.80 for people on Accident Benefits (Vancouver Coastal Health Authority, 2006).

⁸ Physiotherapy, Chiropractic and Massage Therapy services are de-listed from the BC Medical Services Plan (MSP). If a person is not on premium assistance they must pay for their physiotherapy on their own, through extended medical or a combination of the two. For people on premium assistance MSP pays \$23 per visit for an annual limit of 10 visits to a chiropractor, for massage therapy, naturopathy, physical therapy and non-surgical podiatry. The patient must cover additional charges.

⁹ The price quoted is the average fee for a subsequent treatment visit as the cost ranges from \$35 - \$55. An initial visit to the physiotherapist costs between \$45 - \$65. This initial cost is not included in the price in Table 4 (Physiotherapy Association of BC, 2007).

¹⁰ The price quoted is the 30 minute subsequent visit for massage therapists. The initial visit is \$45 and subsequent visits, depending on the length of time, can range from \$35 - \$50 (Massage Therapists' Association of BC, 2007).

¹¹ The monthly ICBC wage benefits and EI sickness benefits are the average benefits received over a year.

¹² Service Canada 2007, hrsdc.gc.ca/en/ei/types/special.shtml#Sickness3

¹³ Nurse Next Door, www.nursenextdoor.ca

¹⁴ Health Literacy Network 2005

Part 7 Accident Benefits: A Time for Change

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