

## **BRITISH COLUMBIA CHANGES TO NO-FAULT SYSTEM**

On May 1, 2021, the British Columbia government announced significant ground-breaking changes to the Province's motor vehicle insurance legislation as the Province has moved away from the pseudo-traditional tort system to a new no-fault system. Section 115 of the very recently amended [Insurance \(Vehicle\) Act, RSBC 1996, c. 231](#) deems that people no longer have the right to commence a lawsuit for bodily injury caused by a vehicle arising out of an accident. There are limited exceptions set out in section 116 of the *Insurance Vehicle Act* relating to certain claims, such as claims against vehicle manufacturers and drivers who are convicted of a criminal offense stemming from the accident.

This effectively replaces the tort system for motor vehicle accident personal injury claims with an extended first party insurance model under the [Enhanced Accident Benefits Regulation, B.C. Reg. 59/2021](#). The changes are varied and complex, but the highlights are reviewed in this memo. The changes only concern accidents occurring on or after **May 1, 2021**.

### **Healthcare Benefits**

Some of the increases in first party benefits appear to be quite dramatic at first. For example, medical and rehabilitation benefits have been increased to at least a maximum total payment of **\$7.5 million** from the previous **\$300,000**.

In addition to the treatment benefits described below, there are new additional benefits for ambulance services, prosthesis, medical equipment such as wheelchairs, and benefits for alterations to an insured's motor vehicle and residence as necessary to accommodate their injuries.

### **Pre-Authorized Treatment Amounts**

Pre-authorized treatment amounts are treatments available to insureds under the health care benefits provisions. Additional treatment above the number in column D of the below are available if a health care practitioner confirms the expense is incurred to facilitate the insured's recovery from the bodily injury or to address a decline in the insured's physical or mental function as a result of the bodily injury.

Below are some tables providing for the pre-authorized treatment amounts:

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**Table 1 — Amount and Pre-Authorized Treatments for Health Care Services Provided by Health Care Practitioner**

Item	Column A Health Care Service	Column B Amount for Assessment Visit	Column C Amount for Standard Treatment	Column D Pre- Authorized Treatments
1	Acupuncture	\$107	\$90	12
2	Chiropractic	\$98	\$54	25
3	Kinesiology	\$100	\$80	12
4	Massage therapy	\$109	\$82	12
5	Physiotherapy	\$128	\$81	25

**Table 2 — Amount and Pre-Authorized Treatments for Counselling and Psychology**

Item	Column A Health Care Service	Column B Amount for Assessment Visit and Report	Column C Amount for Standard Treatment	Column D Pre- Authorized Treatments
1	Counselling	\$215	\$123	12
2	Psychology	\$348	\$199	12

**Table 3 — Amount for Health Care Services Provided by Physician**

Item	Column A Health Care Service Provided by Physician	Column B Amount for Health Care Service Provided by Physician
1	Standard assessment and report	\$123
2	Extended assessment and report	\$333
3	Re-assessment and report	\$215

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## **Income Replacement Benefits**

Income replacement benefits are an expanded category of first party coverage provided under the [Income Replacement and Retirement Benefits and Benefits for Students and Minors Regulation, B.V. Reg. 60/2021](#). Generally, full time earners are eligible for up to 90% of their insurable income as income replacement benefits. An insured's insurable gross income is **up to \$100,000**, but high earners may purchase additional coverage. There are further provisions for students, retired individuals, part-time workers and non-earners.

The income replacement benefits are payable until retirement age, or until the insured is able to, or does earn, a greater income than they had at the time of the accident. There are complex provisions to determine when an insured is capable of returning to work that will need to be determined on a case-by-case basis.

Income replacement benefits are reduced by other benefits to which an insured is entitled to, such as through worker's compensation legislation or if an insured is convicted of an offence under the *Criminal Code*, such as impaired driving.

## **Assisted Living Benefits**

Insureds are entitled under the [Enhanced Accident Benefits Regulation](#) to benefits to retain assistance with their activities of daily living. These benefits are **up to \$5,033 per month** for insureds with non-catastrophic injuries, reduced by a percentage depending on the level of impairment.

If before the accident, the insured's main occupation was caring for a child or children under the age of 16 on an unpaid basis or a person who is regularly unable to hold employment, and the insured is no longer able to provide this care, the insured is entitled to caregiver benefits. These benefits are for insureds who wish to retain a full or part time caregiver, depending on the level of impairment.

## **Permanent Impairment and Catastrophic Injury Compensation**

There are additional provisions that apply when an insured has a permanent impairment. "Permanent impairment" and "catastrophic injury" are defined terms as determined under the [Permanent Impairment Regulation, B.C. Reg. 61/2021](#).

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Insureds are entitled to lump sum amounts depending on the nature of the permanent impairment. For catastrophic injuries, such as quadriplegia or severe brain injury, this amount is \$264,430. For non-catastrophic permanent injuries, this amount can range from \$836 to \$167,465. Additionally, insureds with permanent or catastrophic injuries are eligible for recreation benefits of between \$500 and \$4,000 every 2 years.

### **For Example:**

Albert is machine welder on his way home after a long day at work. He makes a left turn against a red light when he did not have the right of way, causing a crash with another car and their driver, Betty. Albert suffers a permanent disc herniation and other soft tissue injuries. Due to his injuries, Albert is now only able to work part-time.

Under the old Part 7 benefit system, Albert would be entitled to a maximum of \$740 a week in income disability benefits if he is totally disabled from his previous employment. Income disability benefits are payable for up to 2 years, after which they are further limited. He would also be entitled to medical rehabilitation benefits, such as physiotherapy. Betty is also entitled to Part 7 benefits, but also has the right to sue Albert for compensatory damages, such as non-pecuniary damages and loss of future earning capacity.

Under the new system, Betty is no longer able to sue Albert for damages. Rather, they are both entitled to first party benefits only. Albert is entitled to up to 90% of his previous net wages and medical rehabilitation benefits. His income replacement benefits are less the income he actually earns while working part-time, and are payable until retirement or until he is able to return to his previous employment. He is also entitled to a lump sum payment for his permanent disc herniation, which is calculated as a percentage of \$167,465. That percentage is determined in accordance with the charts provided in the [Permanent Impairment Regulation](#).

### **Failure to Comply with Insurer**

There are circumstances in which benefits are reduced, suspended, or cancelled. These circumstances include:

- Failure to undergo a medical examination, including comprehensive medical assessments, unless there is a reasonable excuse not to do so;
- Failure to be available for medical treatment, unless there is a reasonable excuse not to do so;

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- Engagement in activities that could prevent or delay recovery;
- Failure to follow or participate in rehabilitation, unless there is a reasonable excuse not to do so; and
- Failure to return to former employment or take on new employment, unless there is a reasonable excuse not to do so.

### **Dispute Resolution**

The limitation period for making a claim is the later of 2 years from the date of the accident or where injury symptoms were not apparent and later observed by an authorized health care provider.

Disputes about an insured's eligibility for benefits must be resolved through the [Civil Resolution Tribunal](#), an online dispute resolution forum in British Columbia. We anticipate there will be a court challenges to the Civil Resolution Tribunal's jurisdiction. However, as of the date of this memo, the Tribunal is the forum for dispute resolution.

### **Impact on Our-of-Province Insurers**

The landscape for motor vehicle accident claims, injuries and benefits has been dramatically altered over the last month. We anticipate that there will be court challenges to various aspects of this new legislation. Moreover, the mechanics of how adjusters and injured parties are to apply these new formulas are still unclear.

Guild Yule looks forward to working with out-of-Province insurers looking for advice on how this new legislative scheme will affect their insured drivers and passengers.



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