



# ACCESS TO JUSTICE

LEGAL ISSUES FOR THE INJURED AND PEOPLE WITH DISABILITIES

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## UNIDENTIFIED, UNINSURED or UNDERINSURED

### WHERE IS THE MONEY?

**T**he way motor vehicle insurance *should* work is: You're the innocent victim in a motor vehicle accident so you bring a claim against the "at fault" driver, and their insurer pays for your damages.

In reality, the person who caused the accident might be an:

**Unidentified motorist** - You can't identify the driver or owner of the vehicle which caused the accident. Thankfully, ICBC may still cover your damages up to \$200,000.00. The regulations require that the accident have occurred on a "highway." Also that the injured person make a serious attempt to identify the at-fault driver, and must immediately notify ICBC in writing of the potential claim. The notice will allow ICBC to confirm that a motor vehicle accident actually did occur, and to try to help identify the unknown motorist. In these situations, it helps to have also notified the police and/or to have independent witnesses to attest to the fact that you were involved in an accident.

**Uninsured motorist** - You identify the at-fault driver but they have no insurance coverage (e.g. they were driving a stolen vehicle, driving without the owner's permission, or they just let their insurance lapse). Again ICBC may cover your damages up to \$200,000.00. There are certain conditions that must be met: a) the accident occurred on a highway, b) there is no other motorist and no other insurance available, and c) if the claimant was an occupant of the uninsured vehicle, he/she didn't have any reason to know that the vehicle was uninsured. Various deductions (subtracting payments from other sources) must also be made in this setting.

**Underinsured motorist** - You identify the at-fault driver and they have insurance, but it's not enough to cover your damages. The minimum amount of insurance coverage which every driver and car owner in B.C. is legally required to have to pay for accidents they may cause (third party liability coverage) is \$200,000.00. Also, many people increase their third party liability coverage to \$1 million or more. (This is important for anyone with assets not wanting to face a judgment for a substantial claim against them.)

But for a serious car accident, even these significant sums of insurance may not cover a person's damages. Or maybe several people were injured in the accident, in which case several claims have to be paid from a limited insurance fund (insurance coverage is usually based on a set amount being payable per accident).

As additional protection for the innocent accident victim, there is automatically included in the basic insurance coverage that comes with all driver's certificates and owner's certificates an additional layer of first-party insurance coverage called Underinsured Motorist Protection ("**UMP**") coverage of \$1,000,000. This means the innocent accident victim will theoretically always have at least this sum to claim against when they're injured, no matter how many people were involved in the accident or how minimally insured the at-fault driver was.

For the relatively modest cost of \$25, a person can increase their UMP coverage from \$1 million to \$2 million. This can be done at any insurance broker.

### HOW UMP CLAIMS ARE DETERMINED

**U**nder the Regulations, UMP claims must be decided by way of arbitration. The lawyer for the injured person and the lawyer for ICBC must choose an arbitrator whom they both agree on. The arbitrator will have authority to make all decisions concerning what amount will be paid to you under the UMP insurance coverage.

Generally, though the arbitrations are run like mini trials, their decisions are final and there is limited opportunity to have the courts review them. Also, the decisions of arbitrators are not reported or released to the public. The lack of reporting means that while ICBC has access to all decisions to which they were a party (ie. every UMP decision),

*While ICBC has access to all decisions...plaintiffs generally can't know what all other arbitrators have decided in cases like their own.*

### WHAT DOES UMP COVERAGE ACTUALLY COVER?

**T**he UMP regulations under the *Insurance (Motor Vehicle) Act* stipulate that to receive payments under UMP coverage, the insured has to first prove that their losses are greater than the available third party coverage. This is usually done in a trial, although in cases of a catastrophic injury, it may be agreed to by ICBC.

The person must then prove that they're an "insured" and entitled to UMP coverage. This generally means that if the injured person is the owner, or driver, or occupant in a car which is insured for UMP coverage, they're covered. Some examples of exceptions are a person being in breach of their policy (e.g. driving with an expired licence) or using a vehicle commercially as a bus, taxi or limousine.

Once it's clear a person qualifies, the regulations require that you deduct certain payments that you

have received or could receive as a result of being injured. Some of the most common deductions:

- Part 7 benefits ("no fault" benefits which include the \$150,000 available for rehabilitation and insurer-paid disability benefits)
- sums recovered from the at-fault driver;
- whatever you may be entitled to receive under other plans like Workers Compensation, EI, CPP disability, private disability plans, etc.

The intention seems to be to bar double recovery, but the regulations are vague enough that the full scope of what may be deducted is unclear. It could be read, for example, to include government benefits payable through the Ministry of Children and Families and/or the Ministry of Health.

plaintiffs generally can't know what all other arbitrators have decided in cases like their own.

**T**hese insurance coverages help ensure that people who otherwise might be left in the cold are given some degree of protection. However, as shown above, they all involve multiple qualifiers. You must be careful to jump through the proper legal hoops to actually receive compensation.