



## Motor Vehicle Collision Summary Advice Form

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Name: \_\_\_\_\_

Address: \_\_\_\_\_

Cell: \_\_\_\_\_

Home: \_\_\_\_\_

Work: \_\_\_\_\_

Date of Collision: \_\_\_\_\_

This Summary Advice Form provides general information about your rights resulting from a motor vehicle collision injury. Because of its general nature and the fact that the law is constantly changing, it is not intended to provide legal advice. Specific legal advice about your situation should be sought from a lawyer.

**NON-RETAINER** – We are not your lawyers unless a Contingency Fee Agreement is signed by you and us, or we send you a signed Retainer Letter. We will not open a file or do anything to protect your interests in this matter, unless we are first retained in writing.

**TWO YEAR LIMITATION PERIOD** – You must sue before the two-year anniversary of the date of the injury. Make a note of this very important date. You must file a Statement of Claim in court before this date. If you fail to do so, your claim will be statute-barred and you will not receive any money from the person or insurer responsible for the injury. There are a few exceptions to the two-year limitation deadline. For example, the limitation deadline for children is suspended until their 18<sup>th</sup> birthday and then starts to run and expires on their 20<sup>th</sup> birthday. There are also exceptions for sexual assault victims and for a “person under disability” (such as a represented adult).

### **Practical Steps To Take**

Take photographs or a video of the accident scene, all the vehicle damage, and all visible injuries.

See your family doctor **immediately**, and give him or her regular updates every three to six months until you have either healed or your claim has been resolved by settlement or trial.

Focus on function. The best way to avoid the “Minor Injury Cap” on general damages is to advise your medical team of the day-to-day activities that you cannot do, that you avoid doing, or that you have trouble doing. Keep a record of how your injuries impair your ability to work, go to school, or do your normal activities of daily living both inside and outside your home.

Tell your doctor, physiotherapist or chiropractor how your injuries impair your day-to-day life so that when the time comes for them to do a report, they have the information that they need to tell your story.

**Within 10 business days of a car collision**, notify your own car insurance company that you have been in an injury collision and ask for their **Section B** forms to complete. Your physiotherapist or chiropractor can also do this for you. If you are a pedestrian or a bicyclist, then you qualify for Section B benefits from the insurer of the car that hit you.

If applicable, obtain and complete any required forms from your or your spouse's disability or health plan, or from Blue Cross, etc. Check if you have coverage under your spouse's or parent's plan.

If you have impaired memory or concentration, nightmares, anxiety, stress, or avoid driving past the accident scene (PTSD), ask your doctor for a referral to a psychiatrist, psychologist, neuro-psychologist or counsellor for an assessment and treatment of concussion or mental injury.

If you are having problems doing your home chores or work activities, ask for a referral to an occupational therapist who can provide strategies or devices to assist you.

**Do not** provide any statements or authorization forms to the insurance adjuster for the person that caused the collision. (This is the Defendant's insurance company, also known as the **Section A** Insurer).

If you have a brain injury, mental injury, fractures, or other serious injury, or if you have chronic pain for more than 12 months that interferes with your work, education, or activities of normal daily living, then it is likely worthwhile to retain a lawyer. If not, you may be able to settle your claim on your own.

## **Compensation You Can Claim Now**

### **1. PRIVATE BENEFITS:**

First, claim any medical expense or disability income loss benefits available to you through your or your spouse's (or your parent's) work plan, Blue Cross, Workers' Compensation Board, etc.

Second, apply for **Section B** No Fault Benefits (see below) from your own car insurance company.<sup>1</sup>

If you would have qualified for any such benefits, but fail to apply for them, then the Defendant can deduct them from your claim, so it is important to pursue all benefits that you qualify for from other sources up front.

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<sup>1</sup> If you were a pedestrian or a bicyclist, then you can apply for Section B benefits from the insurer of the vehicle that struck you.

It is important that you review your benefits booklet and speak with your benefit provider to obtain, complete, and return the application forms as soon as possible, as there are time deadlines to do so. If the time deadlines are missed, you may lose the right to claim those benefits, and the Defendant's insurer may be able to deny paying for any benefits that you could have received.

Unless you require assistance and a separate retainer arrangement is made, we usually do not become involved in applying for or suing<sup>2</sup> for the payment of private or Section B benefits. We are always happy to answer any questions or to review the forms before you submit them.

## **2. SECTION B NO-FAULT BENEFITS:**

The insurance company of the vehicle that you were in (or the car that struck you if you are a pedestrian or a bicyclist) must provide Section B No-Fault benefits to you for two years to top up any private benefits.

These Section B benefits cover medical expenses, disability income<sup>3</sup>, housekeeping costs<sup>4</sup>, funeral expenses, and death benefits. Your lawyer will explain what is available to you based on your circumstances.

If you have questions about your Section B benefits, or if you have problems obtaining your Section B benefits, then call the **Alberta Government Section B Compliance Officer** at 310-0000, and then (780) 643-2237. The email address is TBF.insurance.gov.ab.ca. It is his or her job to help you in dealing with Section B benefits. This is an important number to keep handy, as sooner or later you will have questions about your Section B benefits.

### **Section B No-Fault benefits include (subject to specified limits):**

- a. Ambulance and hospital costs.
- b. Treatment costs for two years of a nurse, physiotherapist, chiropractor, dentist, psychologist, occupational therapist, massage therapist or acupuncturist.<sup>5</sup>
  - i. There is an overall limit of \$50,000 per person for treatment costs, but there are sub-limits for specified health care providers such as dentists, occupational therapists, psychologists, chiropractors, massage therapists or acupuncturists.
  - ii. Physiotherapy is funded more generously than other treatment modalities.
- c. Essential home or vehicle modifications.
- d. Total disability income loss benefits of \$600 per week for 104 weeks after the first 7 days if you are wholly and continuously disabled from your employment starting within 60 days of the collision, and you had worked for 6 of the prior 12 months.

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<sup>2</sup> Filing a Statement of Claim in court.

<sup>3</sup> If you were employed in any 6 of the 12 months before the collision.

<sup>4</sup> If you do not meet the employment definition.

<sup>5</sup> Subject to specified limits.

- e. If you are 18 years of age or older and were not employed at the time of the collision but are now incapacitated and unable to perform your household duties, you are entitled to \$200 per week for up to 104 weeks. This can be used to hire a housecleaner.

**3. INSURANCE ADVANCE (*Insurance Act s. 581*):**

The Defendant’s Insurer can be asked to voluntarily provide an advance against the value of your claim (for example, for treatment costs or for lost income). This is discretionary.

If you cannot work as a result of your injuries and you are unable to pay for the “necessities of life” or the payment is “otherwise appropriate”, then an application can be made to court under the *Fair Practices Regulation*, and the court can compel the Defendant’s auto insurer to make an “advance payment”.

**4. MOTOR VEHICLE ACCIDENT CLAIMS FUND:**

If there are no private benefits available to you and if the Section B benefits have been exhausted, or more than two years have passed since the collision, then an application can be made to the Motor Vehicle Accident Claims Fund for a loan for treatment costs.

**Compensation You Can Claim When You Settle or After Judgment**

The following amounts can be claimed from the Defendant’s Insurer (“**Section A**”) when your claim settles or after trial:<sup>6</sup>

- 1. **Pain and Suffering.** This award depends on the severity and permanence of your injury and its effect on your function.
  - a. Everything depends on the quality of the medical reports received from your doctor, treatment providers, and medical specialists when it is time to settle your case, so it is crucial that you update your doctor regularly and follow his or her treatment advice.
  - b. If you have “Minor Injury” that is subject to the “Cap” then your pain and suffering amount is the “Cap” amount.<sup>7</sup>

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<sup>6</sup> The average case takes about 4 to 5 years to resolve.

<sup>7</sup> The Cap amounts on pain and suffering are:

<u>Effective Year</u>	<u>Minor Injury Amount</u>
2017	\$5,020.00
2018	\$5,080.00
2019	\$5,202.00
2020	\$5,296.00
2021	\$5,365.00

- c. If your injury is not a “Minor Injury”, then your pain and suffering amount is **not** capped, and your award is set by the case law.
2. **Net Past and Future Loss of Income** after deduction of income tax, CPP, EI contributions, private disability benefits and any Section B disability benefits which were paid or payable, whether or not you claimed them.
  - a. Use a journal or calendar to keep track of any days or hours missed from work and any lost income because of your injury.
3. **Out of pocket expenses and future treatment expenses.** Use a spreadsheet to track your expenses and mileage and note the net amount if a private insurer pays a portion of the expense.
4. **Loss of ability to do your house or yard work.** We will provide you with a worksheet to help capture this loss.
5. **Volunteer Services** provided by family or friends (such as nursing services, driving you, or running errands, or doing house or yard work).
  - a. Keep a timesheet with details of who did what, on what days, and for how many hours, and mileage.
6. **Loss of Opportunity**, such as the loss of an opportunity to pursue a promotion or a better career path. We need documentation of this loss.
7. Your spouse may have a **loss of consortium** claim (loss of care, guidance, companionship, and sex).

## General Advice

### RECORDS

Open a file folder or a computer file for yourself.

Make detailed notes of how the collision occurred and what happened after that. Add any notes to yourself that you want to remember. (Memories fade quickly).

Keep every piece of paper that relates to your injuries or expenses. If possible, create a spreadsheet that tracks your expenses and mileage, and what amounts, if any, you have been reimbursed (and by whom), so that at the end of the file you can provide us with a net out of pocket expense spreadsheet. Give copies of this spreadsheet to your legal assistant from time to time, along with the original receipts in support of the expenses.

Keep a record of your time off work and your lost income. A letter confirming the net loss of income from your employer is worth its weight in gold.

Track the name, date, time spent and what was done for you by family and friends so that you can compensate them in the future.

If you give any documents to anyone, keep a copy for your records.

### **THIRD PARTY / SECTION A ADJUSTER**

**Do not** talk to the Defendant’s insurance company or adjuster (called the “**Section A** or Third Party Adjuster”). **Do not** sign anything. He or she is working for the insurance company of the person that hurt you and will do his or her best to minimize your claim.

If you hire a lawyer, then tell the Defendant’s Section A Adjuster to deal with your lawyer. If you do not hire a lawyer, then do not deal with the Section A Adjuster until you are ready to resolve your claim. (Just remember that there is a two-year limitation period.)

Be aware that Section A Adjusters sometimes hire private investigators to conduct video surveillance of you or to speak with your friends or neighbors. They will check your social media.

You should give immediate written notice to the Defendant’s Section A Insurer of your intention to make a claim for your injury, as your claim for prejudgment interest on your claim starts from the date of this notice. If you have hired a lawyer, then the lawyer will give this notice for you.

### **COLLISION DAMAGE**

If your own vehicle has been damaged or destroyed, and you have collision coverage (called **Section C** coverage), then your insurance company will pay to repair or replace your vehicle. You must file a "Proof of Loss" document with your insurer no later than 60 days after it has been provided to you. Any claim against your own insurer for collision coverage must be settled, or a lawsuit commenced, no later than one year from the date of the collision, failing which your claim will be statute-barred, and you will be unable to recover for your car damage. (In some circumstances this limitation may be two years, but we recommend that you sue within 1 year.)

There is also an “appraisal” remedy available, where each party hires an appraiser, who can hire a third appraiser, to try to resolve the issue of the value of your vehicle.

If you do not have “Section C coverage”, then you must negotiate with the insurer for the other driver or sue for your car damage as part of your injury claim. (Do not sue separately for car damage in Provincial Court to avoid losing your injury claim).

### **UNDERINSURED MOTORIST PROTECTION “SEF 44”**

If you or any immediate family member owns a vehicle, and if it is possible that your claim or the combined claims arising from the collision will exceed \$200,000.00, and if your own insurance coverage exceeds that of the at-fault driver, then your own **SEF 44** Family Protection Endorsement policy will pay the shortfall of your claim.

You should retain a lawyer to advise your own insurance company of the particulars of the collision and of your injuries, and to provide them with any information they require for the SEF 44 claim. Advising your insurance company now will ensure that you preserve any rights that you have, including a right to prejudgment interest. Generally, you will need to sue your own SEF 44 Insurer

within 2 years of the collision, but there is an exception. (Talk to your lawyer for more information.)

### **WORKERS' COMPENSATION BOARD (WCB) BENEFITS**

If you were injured during the course of your employment in a job covered by the WCB, then you are entitled to WCB Benefits. You have a duty to contact the WCB immediately and to advise them of your claim. If you are covered by WCB at the time of your injury, then the WCB “owns” your claim and you need their consent before you can sue anyone. The WCB will not let you sue anyone who is also covered by WCB at the time of the injury. In that case, your only recovery is from the WCB. The **WCB Appeals Advisor** is an independent and free service that does a great job in pursuing the WCB for benefits. Contact them at (403) 517-6220 or [www.appealsadvisor@wcb.ab.ca](http://www.appealsadvisor@wcb.ab.ca). You usually have to appear before the three-person Appeals Commission before you get a true hearing.

### **CANADA PENSION PLAN (C.P.P.) BENEFITS**

If you have been permanently disabled, then you and your dependents may be entitled to Benefits under the Canada Pension Plan. Contact Health and Welfare Canada and determine if you qualify for these Benefits.

<https://www.canada.ca/en/services/benefits/publicpensions/cpp/cpp-disability-benefit/eligibility.html>

You will likely have to appeal your matter to the hearing phase before you get satisfaction. Typically, people are turned down the first time they apply, and it takes persistence to receive CPP benefits.

### **ASSURED INCOME FOR THE SEVERELY HANDICAPPED (AISH)**

If you have a permanent injury that prevents you from working you may qualify for AISH from the Alberta government. Contact AISH to determine if you qualify for these benefits.

<https://www.alberta.ca/aish.aspx>

### **DISABILITY BENEFITS**

If you are covered by a private health or disability plan, you should apply for these benefits immediately. There are lawyers that specifically focus on long-term disability claims if you are denied or are cut off from your long-term disability benefits.

### **DIARY/JOURNAL**

We recommend that you open a journal that starts with “To My Lawyer”. Before your memory fades write down in precise detail how the collision occurred, who said what, what happened after the collision, and the onset and progress of your injuries. Thereafter, we suggest that you keep track of any key things that you have trouble doing, and of any important facts and dates (such as

days missed from work, etc.). The downside of a journal is that it can focus you on your injuries and prolong your recovery, so use it sparingly.

In some cases, this journal may be produced to the other side as your claim progresses. Be professional in your entries. Be accurate and truthful. Do not make unkind comments about other people nor use profanity.

**Conclusion**

If you have any questions, feel free to call us.

We are not retained by you unless you sign a Contingency Fee Agreement or receive a Retainer Letter.

We wish you a speedy recovery, but if you require a lawyer, we would be honoured to work for you.

**KUBITZ LAW**

\_\_\_\_\_ Date

PER: **WALTER W. KUBITZ, Q.C.**

I confirm receipt of a copy of this document on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ .

\_\_\_\_\_  
**(Name)** Signature