



Motor Vehicle Collision Summary Advice Form

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 18th birthday and then starts to run and expires on their 20th 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 work and 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 the full story of your injuries and losses.

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 will 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.

Check if you have coverage under your own or your spouse's disability or health plan, or from Blue Cross, etc., or if you qualify under your parents' plan. If you do, then obtain and complete any required forms and submit them.

If you have a concussion, 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 household 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.

ALBERTA INSURANCE

The Alberta Government Insurance website is <https://www.alberta.ca/insurance.aspx>

COMPENSATION YOU CAN CLAIM NOW

PRIVATE BENEFITS:

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

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

¹ 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. Section B benefits are not available in WCB covered claims.

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.

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 suing² 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.

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 income³, housekeeping costs⁴, funeral expenses, and death benefits. Your lawyer will explain what is available to you based on your circumstances.

If your Section B claims adjuster does not want to pay benefits that you are entitled to, or wrongly cuts you off, then there is a 3-stage process:

1. Speak to the supervising claims manager or the insurance company's Ombudsperson. Email is usually the best way to contact them. Give them 5 days to respond. The name and email person to contact for each insurance company is available through the Superintendent of Insurance at 780-643-2237 or tbf.insurance@gov.ab.ca
2. If this does not result in a satisfactory resolution, contact the Government of Alberta Superintendent of Insurance Compliance Officer, and ask for their assistance. If they agree that the benefits should be paid, then they will contact the insurance company and can issue a fine against them. Their phone number is 780-643-2237 and their email is tbf.insurance@gov.ab.ca. **This is an important contact information to keep handy, as sooner or later you will have questions about your Section B benefits or will need assistance.**
3. If this does not result in a satisfactory resolution, then contact your lawyer to discuss if there is merit in suing the insurer.

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

1. Ambulance and hospital costs.

² Filing a Statement of Claim in court.

³ If you were employed in any 6 of the 12 months before the collision.

⁴ If you do not meet the employment definition.

2. Treatment costs for two years of a nurse, physiotherapist, chiropractor, dentist, psychologist, occupational therapist, massage therapist or acupuncturist.⁵
 - a. 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.
 - b. Physiotherapy is funded more generously than other treatment modalities.
3. Essential home or vehicle modifications.
4. 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.
5. 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.

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).

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.

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:⁷

Pain and Suffering. This award depends on the severity and permanence of your injury and its effect on your function.

- 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.
- If you have "Minor Injury" that is subject to the "Cap" then your pain and suffering amount is the "Cap" amount.⁸

⁵ Subject to specified limits.

⁷ The average case takes about 4 to 6 years to resolve.

⁸ The Cap amounts on pain and suffering are:

- 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.

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.

- Use a journal or calendar to keep track of any days or hours missed from work and any lost income because of your injury or appointments.
- A letter from your employer confirming your net loss of income is worth its weight in gold.

Out of Pocket Expenses. Use a spreadsheet to list your expenses and mileage, then deduct what you have been reimbursed by anyone else, and then track what is outstanding. Give copies of this spreadsheet to your legal assistant from time to time, along with the original receipts in support of the expenses. You will claim the outstanding amount from the Section A insurer when you settle the rest of your claim.

Future Treatment Expenses. Your medical experts will be asked to give an opinion on your future treatment costs.

Loss of Ability to do your house or yardwork. We can provide you with a worksheet to help document this loss at various points in time.

Volunteer Services provided by family or friends (such as nursing services, driving you, or running errands, or doing house or yard work).

- Keep a timesheet with details of who did what, on what days, and for how many hours, and mileage.

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.

Your spouse may have a **Loss of Consortium** claim (loss of care, guidance, companionship, and sex).

Prejudgment Interest. 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 hire a lawyer, then the lawyer will give this notice for you.

Costs and Disbursements.

THIRD PARTY / SECTION A ADJUSTER

<u>Effective Year</u>	<u>Minor Injury Amount</u>
2020	\$5,296.00
2021	\$5,365.00
2022	\$5,488.00

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 or destroy 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 to sue.)

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.

COLLISION DAMAGE

For collisions on or after January 1, 2022:

The Direct Compensation for Property Damage (“**DCPD**”) regulation came into effect on January 1, 2022. The DCPD webpage is at <https://www.alberta.ca/automobile-insurance-reform.aspx#jumplinks-1>

The determination of what vehicle damage your DCPD insurer will pay for depends on who is at fault for the collision. The “fault charts”⁹ are at <https://www.canlii.org/en/ab/laws/regu/alta-reg-132-2021/latest/alta-reg-132-2021.html>

You would claim your vehicle damage from your own automobile insurer under the DCPD policy. Your insurer will pay the percentage of your vehicle’s damage that you are **not** at fault for. For example, if you are 25% at fault for the collision, your DCPD insurer pays you 75% of your vehicle’s damage.

If you are partially at fault for the collision, then your own **Section C Collision coverage** policy (if you have paid for this coverage) pays for the percentage of damage that you **are** at fault. In the example above, your Section C would pay the 25% damage amount.

If you did not pay for Section C coverage, then no one pays for the percentage of damage that you are at fault. For example, if you are 25% at fault and have no Section C coverage, then you do not get paid for 25% of your vehicle damage.

For collisions prior to January 1, 2022:

If your own vehicle has been damaged or destroyed, and you have **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

⁹ Which only apply to vehicle damage.

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 the other driver for your vehicle damage. (Do not sue separately for vehicle damage in Provincial Court to avoid losing your injury claim, but claim the vehicle damage in the same lawsuit as for 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 controls 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 the WCB benefits from the WCB.

The **Advisor Office for Alberta Workers' Compensation** is an independent and free service that does a great job in pursuing the WCB for benefits. Contact them at 1(866) 427-0115 or <https://advisoroffice.alberta.ca/>. You usually must 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.

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 you give anything to anyone, keep a copy for your records.

DIARY/JOURNAL

We recommend that you open a journal that starts with “To My Lawyer”. Before your memory fades write down in precise detail:

1. How the collision occurred, who said what at the scene, and the names and contact information of witnesses;
2. What happened after you went home, the next day, and the first few weeks;
3. What injuries you suffered, when they started and how they progressed;
4. Who you saw for treatment; and,
5. Any time off work.

Thereafter, we suggest that you keep track of any key things that you want to remember.

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__.

(Print Name) Signature