**LAW 435C.001: PERSONAL INJURY ADVOCACY**

**WEEK 11 – Catch Up Week and Part 7 Benefits**

* 1. **Teaching Objectives – Review of outstanding issues from previous classes**
  2. **Part 7 Benefits**
* *Why do we call them Part 7 benefits* – because they are governed by Part 7 of the Insurance (Vehicle) Regulations.
* *Who is entitled to “Accident Benefits”* – Section 79 states that Part 7 Accident Benefits are payable to anyone that injured through the “use or operation of a motor vehicle” and who meets the definition of an “insured” in section 78:

**Coverage and benefits**

79 (1) Subject to subsection (2) and sections 80 to 88, 90, 92, 100, 101 and 104, the corporation shall pay benefits to an insured in respect of death or injury caused by an accident that arises out of the use or operation of a vehicle and that occurs in Canada or the United States of America or on a vessel travelling between Canada and the United States of America.

**Interpretation**

78 In this part "insured" means

(a) a person named as an owner in an owner's certificate,

(c) a member of the household of a person named in an owner's certificate,

(c.1) an insured as defined in section 42 who is not in default of premium payable under section 45 – (note that section 42 lists an “insured” as a resident named on a driver's certificate other than a person driving a vehicle that is exempted under section 43 or 44 of the Ac

(c.2) a member of the household of an insured described in paragraph (c.1),

(d) an occupant of a vehicle that

(i) is licensed in the Province and is not exempted under section 43 or 44 of the Act, or

(ii) is not required to be licensed in the Province, but is operated by a person named in a driver's certificate,

(e) a cyclist or pedestrian who collides with a vehicle described in an owner's certificate, or

(f) a resident of the Province who is entitled to bring an action for injury or death under section 20 or 24 of the Act, and includes the personal representative of a deceased insured;

* Essentially, Part 7 benefits are meant to be expansive and covers almost anyone who is injured in a motor vehicle accident regardless of who caused the accident.
* *Examples of accidents where Part 7 does not apply (most of these involve accidents where there was no motor vehicle involved)* – cyclists crashes on the road and no motor vehicle involved (Benn case); road rage where the assault occurs outside the vehicle;
* *What Accidents Benefits are included in Part 7*? Disability benefits, medical and rehabilitation benefits, funeral and death benefits.
* **Disability benefits for employed persons:**

80 (1) Where, *within 20 days after an accident* for which benefits are provided under this Part, an injury sustained in the accident *totally disables an insured* who is an *employed person* from engaging in employment or an occupation for which the insured is reasonably suited by education, training or experience, the corporation shall, subject to section 85, pay to the insured for the duration of the total disability or 104 weeks, whichever is shorter, the lesser of the amounts determined under paragraphs (a) and (b): Note that ICBC’s maximum payment is $300 per week as defined in section 2 of Schedule 3.

* The amount owing is “calculated by taking 75% of the insured's gross earnings for the 12 month period immediately preceding the accident and dividing by the number of weeks actually worked during that period”. Provided the plaintiff is averaging more than $300 per week then they receive the maximum amount from ICBC.
* **Deduction of other benefits** – Section 81 confirms that Part 7 benefits are secondary and paid only after deducting other benefits payable to the claimant.
* **Payments under Workers Compensation Act**: Section 82 states: Where an insured who is a worker to whom the Workers Compensation Act or a similar law of another jurisdiction applies is injured or killed in the course of his employment, the corporation is not liable to pay benefits under this Part for the injury or death, notwithstanding that the insured, his spouse or personal representative, has elected not to claim or has forfeited the insured's claim under the Workers Compensation Act or other similar law for the injury or death, except to the extent that the amount of any benefit payable under this Part exceeds the amount that would be payable to the insured, his spouse or personal representative under the Workers Compensation Act or other similar law for the same injury or death. *Note that this creates a huge issue for many claimants who are workers at the time of the accident and elect to proceed with the ICBC case instead of through WCB because they may not have disability benefits for the life of the claim.*
* **Disability benefits for homemakers** - 84 (1) Subject to section 85 and subsection (2) of this section, where, within 20 days after an accident for which benefits are provided under this Part, an injury sustained in the accident substantially and continuously disables an insured who is a homemaker from regularly performing most of the insured's household tasks, the corporation shall compensate the insured for the period of the disability or 104 consecutive weeks, whichever is shorter, for reasonable expenses incurred by the insured to hire a person to perform the household tasks on the insured's behalf, subject to a maximum amount per week as set out in section 2 of Schedule 3. (2) No compensation is payable under this section in respect of household tasks performed by a member of the insured's family. *Note that this does not extinguish the plaintiff’s right to pursue an in-trust claim in the tort action.*
* **Waiting period** - 85 (1) No disability benefits are payable under section 80 or 84 unless the insured is disabled for a period of more than 7 days.
* **Disability beyond 104 weeks -** 86 (1) Where an injury for which disability benefits are being paid to an insured under section 80 or 84 continues, at the end of the 104 week period, to disable the insured as described in the applicable section, the corporation shall, subject to subsections (1.1) and (2) and sections 87 to 90, continue to pay the applicable amount of disability benefits to an insured described in section 80 or 84 (a) for the duration of the disability, or(b) until the insured reaches 65 years of age,

whichever is the shorter period. *Note that this becomes a deductible amount under section 52 of the Insurance (Vehicle) Act and also under the UMP provisions.*

* **Review of benefits -** 87 Any benefits payable under section 80, 84 or 86 may be *reviewed every 12 months* and terminated by the corporation *on the advice of the corporation's medical adviser* (Jenny Aberdeen case dealing with TTDs) – *Note that termination requires the advice of a medical expert and is not subject to whim of ICBC.*
* **Medical and rehabilitation benefits** – 88 (1) Where an insured is injured in an accident for which benefits are provided under this Part, the corporation shall, subject to subsections (5) and (6), pay as benefits *all reasonable expenses* incurred by the insured as a result of the injury for *necessary* medical, surgical, dental, hospital, ambulance or professional nursing services, or for necessary physical therapy, chiropractic treatment, occupational therapy or speech therapy or for prosthesis or orthosis. *Note that the test is one of “reasonable expenses” and this has been the subject of much judicial commentary – for example ICBC will routinely cut off chiro, massage or physio despite the fact that there has been an ongoing medical recommendation.*
* **Exceptional rehabilitation expenses – section 88 continued**
  + acquisition by the insured of one motor vehicle equipped as necessary and appropriate to its use or operation by the insured
  + alterations to the insured's residence that are necessary to make the residence accessible to and usable by the insured
  + reimbursement to the insured for the costs of attendant care, other than care provided by a member of the insured's family, where the insured has returned to and is residing in the community but is not capable of performing some or all of the tasks necessary to sustain an independent lifestyle,
  + reimbursement to the insured for costs incurred from time to time by the insured for the purchase and reasonable repair, adjustment or replacement of one or more of the following items: wheelchair, bed, aid for communication, transfer equipment,
* The total amount payable by ICBC for rehabilitation expenses is $150,000
* 88(6) The corporation is not liable for any expenses paid or payable to or recoverable by the insured under a medical, surgical, dental or hospital plan or law, or paid or payable by another insurer. *Note – this section confirms that ICBC is a secondary insurer.*
* **Power to terminate benefits for refusal to undergo treatment or training** - 90 (1) Where, in the opinion of the corporation's medical adviser or vocational adviser and in the opinion of the medical practitioner attending an insured who is receiving benefits under section 80, 84, 86 or 88, (a) any medical, surgical or other similar treatment is likely to relieve in whole or part the disability of the insured, or (b) a retraining or educational program is likely to assist in the rehabilitation of the insured, the corporation may require the insured, at the expense of the corporation, to undergo treatment or complete the program. (2) Subject to subsection (3), where an insured refuses to comply with a requirement under this section, the corporation may, after giving the insured at least 60 days' notice in writing, by registered mail, postage prepaid, addressed to the insured at his last address according to the corporation's records, terminate payment of benefits under section 80, 84, 86 or 88.
* Skip death and funeral benefits
* **Restriction on benefits** - 96 The corporation is not liable to pay benefits under this Part in respect of the injury or death of a person

(a) who is resident outside the Province and, at the time of the accident, is the occupant of a vehicle not described in an owner's certificate,

(c) who commits suicide or attempts to commit suicide, whether he is sane or insane,

(e) who is the occupant of a vehicle that, at the time of the accident, is being used for an illicit or prohibited trade or transport, or

(f) whose injury or death is caused, directly or indirectly, by sickness or disease, unless the sickness or disease was contracted as a direct result of an accident for which benefits are provided under this Part.