

How Much Is My ICBC Claim Worth?

Each ICBC claim is unique. The value of any ICBC claim will depend on a number of factors including who is at fault, the type of injuries and the effect of the injuries on everyday life and employment.

If someone else is at fault for your injuries, you may be entitled to compensation for a variety of losses from the “tort-feasor” (the person or entities responsible for your injuries.)

In addition to the types of compensation discussed in this section, and regardless of liability, you may be entitled to “no-fault” benefits directly from ICBC.

If your injuries are completely resolved or plateaued and your doctor can confirm this, you should be in a position to value your claim. Once you are familiar with all the losses for which you are entitled to be compensated for you can assess the value of your claim by reviewing British Columbia Court Judgments where people were awarded compensation for injuries and losses similar to yours. BC Court Judgments are available to the public and can be viewed at the [Courts of British Columbia web site](#).

If you are unable to establish the relative range of damages that you may be entitled to, or simply want a second opinion, it is a good idea to speak with an experience personal injury lawyer. If you do not have a lawyer you can contact Erik Magraken (250-381-5353) to arrange a free consultation.

1. ICBC Injury Assessment Guidelines
2. Pain, Suffering And Loss Of Enjoyment Of Life
3. Loss Of Past Income
4. Loss Of Future Income / Income Earning Capacity
5. Cost Of Future Care
6. Loss Of Housekeeping Capacity
7. “In Trust” Damages To Compensate Friends And Family Members
8. Special Damages - Out Of Pocket Expenses
9. Other

ICBC Injury Assessment Guidelines

When negotiating with ICBC it is important to know the settlement guidelines used in assessing injuries. Serious injuries are treated on a claim by claim basis based on the medical evidence available. When dealing with certain soft tissue injuries ICBC uses internal “injury settlement guidelines” to limit the amount of compensation they will typically offer for non-pecuniary damages.

ICBC’s soft tissue injury settlement guidelines apply particularly to whiplash injuries and a cap on damages for these injuries ranges from \$6,500 - \$15,000, depending on the severity and duration of the injury. British Columbia Courts are not bound by ICBC’s soft tissue injury settlement guidelines. For this reason it is important to [access reported court judgments](#) to determine the potential value of a claim for non-pecuniary damages. It cannot be overstated that these “guidelines” are internal policies and a court is not bound by them.

In 1995 an entity known as the Quebec Task Force (QTF) published a report grading various types of Whiplash Associated Disorders (WAD). This grading system was adopted by many insurance companies including ICBC. A starting point in knowing whether your soft tissue injury claim falls within ICBC’s “injury settlement guidelines” is to become familiar with the Quebec Task Force Report which sets out the following grades of WAD injury:

1. **Grade 0 WAD:** No complaint about the neck and no physical sign of injury
2. **Grade 1 WAD:** Neck complaint of pain, stiffness or tenderness only and no physical sign of injury
3. **Grade 2 WAD:** Neck complaint and muskuloskeletal sign(s) of injury
4. **Grade 3 WAD:** Neck complaint and neurological sign(s) of injury

5. **Grade 4 WAD:** Neck complaint and a fracture or dislocation

Once you know the Quebec Task Force grading of a Whiplash Associated Disorder you can determine if it falls within ICBC's soft tissue injury cap guidelines which are as follows:

Mild Injury

Includes QTF WAD 1 and mild QTF WAD 2 injuries which substantially recover within 6 months and have no more than 2 months of total disability.

Mild/Moderate Injury

Includes moderate QTF WAD 2 injuries that substantially recover within 12 months and have no more than 4 months of total disability.

Moderate Injury

Includes moderate and severe QTF WAD 2 injuries which substantially recover within 24 months and have no more than 12 months of total disability.

ICBC's internal soft tissue injury settlement guidelines are to value Whiplash Associated Disorder injuries as follows:

- **Mild Injuries:** \$0 - \$6,500 for non-pecuniary damages
- **Mild/Moderate Injuries:** A maximum of \$10,000 for non-pecuniary damages
- **Moderate Injuries:** A maximum of \$15,000 for non-pecuniary damages

Again, it cannot be overstated that ICBC's soft tissue injury settlement guidelines are not the law nor do these guidelines reflect the real value of soft tissue injuries in British Columbia. The true value is set by our courts and a fair measure of the value of an injury can be determined by reviewing recent reported judgements for similar injuries.

There are exceptions and "grey areas" to ICBC's soft tissue injury settlement guidelines however most ICBC adjusters try their best to settle claims within the above caps. It is important to know that the civil litigation process (the court process) is available to provide a true measure of compensation for your injuries if you feel ICBC is not treating you fairly.

Pain, Suffering And Loss Of Enjoyment Of Life (Non-Pecuniary Damages)

If you are injured through the fault of another you are entitled to compensation for your non-pecuniary loss. This basically means compensation for pain and suffering and loss of enjoyment of life. This head of damage is the most common in ICBC injury claims. Anyone injured through the fault of another is entitled to compensation for their non-pecuniary damages. The Supreme Court of Canada summarized this head of damage as follows:

"Money is awarded (for non-pecuniary damages) because it will serve a useful function in making up what has been lost in the only way possible, accepting that what has been lost is incapable of being replaced in any direct way"

The Supreme Court of Canada set a limit for non-pecuniary damages at \$100,000 in 1978. This figure is adjusted for inflation and has a current value of approximately \$300,000. In other words, no matter how serious the injuries are and no matter how significant a toll they have taken on one's life, the compensation for the pain, suffering and loss of enjoyment of life cannot exceed this limit.

The best way to determine the non-pecuniary value of a claim is to wait for injuries to resolve or for their prognosis to be known and to find British Columbia Court Cases in which money was awarded for similar injuries with a similar prognosis. There is no set scientific formula to determine a fair non-pecuniary award; however, by familiarizing yourself with previous judgments, you should be able to find a fair range for the potential value of a claim for non-pecuniary damages.

Loss Of Past Income

A person injured through the fault of another is entitled to recover the past loss of income caused by the injuries. This is to be calculated from the date of injury to the date of trial or settlement.

The total amount of past loss of income, however, is not always recoverable. A claim for past loss of income must be reduced to net income loss due to the operation of the [Insurance \(Vehicle\) Act](#) if injuries were caused by the actions of an “owner, operator or passenger or other individual whose acts or omissions at the scene of the accident are alleged to have resulted in an accident, or each person vicariously liable for such individuals.”

Loss Of Future Income / Earning Capacity

British Columbia courts recognize that a person with lasting injuries and limitations may be less competitively employable than their healthy counterpart. If there is a “real and substantial possibility” that an injured party will suffer loss of income beyond the time of settlement or trial, the injured party is entitled to money to compensate them for this loss and any settlement reached should address this future loss.

The British Columbia Supreme Court has summarized some of the factors that will be considered in determining whether a person has a real and substantial possibility of losing future earnings as follows:

The means by which the value of the lost, or impaired, asset is to be assessed varies from of course from case to case. Some of the considerations to take into account in making that assessment include whether:

1. *The Plaintiff (the person injured through the fault of another) has been rendered less capable overall from earning income from all types of employment;*
2. *The Plaintiff is less marketable or attractive as an employee to potential employers;*
3. *The Plaintiff has lost the ability to take advantage of all job opportunities which might otherwise have been open had the Plaintiff not been injured; and*
4. *The Plaintiff is less valuable to himself as a person capable of earning income in a competitive labour market.*

The above list is not comprehensive or exhaustive but summarizes some of the factors courts will consider valuing future loss of income.

It is vital to know the prognosis for one’s injuries prior to settlement with ICBC to properly assess potential future losses.

Cost Of Future Care

If a person is injured through the fault of another, the injured claimant is entitled to money for future care to provide physical arrangements for assistance, equipment, and facilities and medications directly related to the injuries. This includes costs for home-care services such as cleaning and cooking if the injured person is unable to perform these tasks by themselves due to accident related limitations.

It is vital to know the prognosis for injuries before reaching any settlement with ICBC. In other words, it is important to know the anticipated duration of accident related injuries, the cost of treating these and further the costs associated with compensating for the limitations that such injuries create. The future costs of nursing or home-making services, medications and special equipment are, amongst others, factors which should be known prior to settling a claim for injuries that are on-going.

Loss Of Housekeeping Capacity

When an injured person is less able to perform their usual tasks in and around the home they will often be awarded a higher amount for their **Non-Pecuniary Damages** and this loss can also be accounted for in awards for **Special Damages**, **Cost of Future Care** and **Loss of Future Earning Capacity**. However, British Columbia Courts have sometimes recognized the loss of past housekeeping capacity as a separate head of damage and award extra money for this specific loss.

Regardless of the head of damage that this loss is accounted for, it is important that an ICBC settlement take this loss into account if an injured person is limited in their house-hold abilities due to accident related injuries.

“In Trust” Damages To Compensate Service Providers

When a person is injured in a motor vehicle collision they are often not the only ones that suffer. It is not uncommon that friends, family and household members have to pitch in and help compensate for an injured person's limitations. When people assist an injured party in their house-work or provide nursing and domestic services above and beyond what would be reasonably expected of them, even if provided for no charge, those people are entitled to be compensated for these services if it can be proven that

1. *The people who provided these services experienced direct economic loss due to the time and effort that went into performing those duties; or*
2. *The people's efforts resulted in replacing expenses which would otherwise have been incurred, such as hiring a housekeeper.*

If you are injured through the fault of another, it is important to account for the time spent by others in providing the above-services so you can receive compensation on their behalf when settling your ICBC claim.

Special Damages - Out Of Pocket Expenses

Special damages are basically any reasonable expense incurred as a result of the fault of another. The following is a non-exhaustive list of potential special damages in an ICBC claim:

1. The replacement or repair of damaged or destroyed clothing
2. Hospital fees and costs of medical treatments
3. Car rental expenses and vehicle repair costs
4. Dental expenses
5. Insurance deductibles
6. Home-care and home-making services
7. The costs of medical equipment
8. Costs associated with home and vehicle modifications to assist with disabled living
9. Transportation costs for medical treatment
10. Expenses incurred by family members in caring for the injured person
11. Lost wages of family members in caring for the injured person

Simply because expenses have been incurred does not mean they will be reimbursed. In scrutinizing these expenses, courts will consider whether they are reasonable given the accident and the accident related injuries and, if so, will then order compensation for these expenses. For this reason it is important to work closely with your family doctor in determining an appropriate treatment and rehabilitation plan. If a patient incurs expenses following a physician's reasonable advice it is very likely that these special damages will be reimbursed.

Other

There are various other heads of damage which may be applicable to a claim for compensation for injury such as aggravated and punitive damages, “In-trust” awards and “tax-gross ups”. These heads of damage usually do not apply to most ICBC claims or if they do apply they apply in claims with very serious injuries such that it may be best to obtain legal advice with respect to these heads of damage. If you have any questions about these various heads of damages you can contact Erik Magraken (250-381-5353) to arrange a free ICBC injury claims consultation.