

# THE ALBERTA MOTOR VEHICLE ACCIDENT CLAIMS PROGRAM



## • Information Resource •

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Your guide to claiming for personal injury  
damages through the Motor Vehicle  
Accident Claims Program of Alberta



# The Alberta Motor Vehicle Accident Claims Program

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## The Alberta Motor Vehicle Accident Claims Program

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### WHAT'S IN THIS INFORMATION PACKAGE

In this brochure, you will learn what kinds of claims are eligible under Alberta's Motor Vehicle Accident Claims Program, what you need to do in order to make a claim, and how these claim limits have changed under the revised *Insurance Act* of 2004.

### OVERVIEW OF THE PROGRAM

Motor vehicle accidents occur in Alberta every day and often they involve personal injuries. Under Alberta law, there is a fault-based system that is used to determine which driver(s) contributed to the accident. When someone contributed to the accident (wholly or in part), they are said to be "at fault" for the accident and for any injuries, death or property damage that resulted. If a driver is at-fault for the accident, then he or she may have to pay the victim or their survivors for the injuries, deaths or property damage that were caused. This is referred to as liability. If the driver was not the owner of the vehicle, this liability may also extend to the owner if the driver possessed the vehicle with the owner's consent.

Because liability for a motor vehicle accident can be very expensive, all vehicle owners and drivers in Alberta are required to have valid liability insurance. There are a few who do not, and they usually don't have the money to pay for the personal injuries or death that they have caused. Sometimes the at-fault driver flees the scene of the accident, and the injured victim doesn't know who to sue.



The Motor Vehicle Accident Claims Program, created in 1947 by the establishment of the *Motor Vehicle Accident Claims Act*, protects those victims by ensuring they have recourse to claim against uninsured motorists for their personal injuries.

Once you have read the information in this brochure, you may wish to seek legal advice depending on the complexity of your accident, because a lawsuit is required in all cases involving this Program. A lawyer may be able to assist you in determining whether you can be compensated under the *Motor Vehicle Accident Claims Act*, and can then assist you in fulfilling the necessary legal steps to receive a settlement. If you wish, you may also begin your own lawsuit without a lawyer. To learn more about this, you should look at the Alberta Justice website under Civil Claims ([http://www.justice.gov.ab.ca/civil/claims\\_collecting.aspx](http://www.justice.gov.ab.ca/civil/claims_collecting.aspx)) for information on how to commence a civil claim.



## HOW TO CONTACT US

For the latest information regarding updates to the Alberta Motor Vehicle Accident Claims Program, please refer to our website at <http://www.justice.gov.ab.ca/mvac/default.aspx>.

If you have additional questions, or if you wish to make a comment about this brochure, please call Motor Vehicle Accident Claims (MVAC) at (780) 427-8255. If you prefer, you can call toll-free from anywhere in the province by dialing the RITE system at 310-0000. You can also write us at:

**Motor Vehicle Accident Claims Program  
Suite #600, 6th Floor, 10123 – 99 Street  
Edmonton AB T5J 3H1**

You can email a question to us by going to the Government of Alberta website ([www.gov.ab.ca](http://www.gov.ab.ca)) and clicking on the “Alberta Connects” icon. Be sure to direct your question to “the Motor Vehicle Accident Claims Program.”

**A Note About Property Damage:** As of June 1, 1997, the Motor Vehicle Accident Claims Program no longer compensates victims for damage to their vehicle or contents, or for deductibles on insurance policies, or for loss of use. Owners are expected to carry this optional coverage on their vehicles if they wish to be compensated.

## KEY POINTS ABOUT THE ALBERTA MOTOR VEHICLE ACCIDENT CLAIMS PROGRAM

- Your injuries had to result from a motor vehicle accident caused by another person and the accident had to have taken place in Alberta. There has to be at least one at-fault person that you can sue for your loss.
- The at-fault person had to be uninsured or unknown. If the accident involved an unknown driver, such as a hit-and-run accident, you must take reasonable steps to identify the at-fault person and you must notify us within 90 days of the accident of your intent to sue.
- In order to make a claim, you must have been an Alberta resident at the time of the accident, or be from a jurisdiction that has a similar program that would cover Albertans.
- You have to file a lawsuit in an Alberta Court in all cases where you want MVAC to pay you for your injuries and other losses. That is so we can recover our payment from the at-fault person.
- Our program doesn't cover property damage, insurance deductibles or loss of use. You can include property damage in your lawsuit, but you will have to collect those monies from the defendant separately.
- In your lawsuit, you will have to name as defendants all persons and corporations that could be liable for the accident.
- MVAC has to consent to any settlement in advance if you want us to pay.
- If your injuries meet the definition of a minor injury, you must comply with the Diagnostic and Treatment Protocols pursuant to the Alberta Insurance Act.

**Disclaimer:** The purpose of this booklet is to provide you with information about the Motor Vehicle Accident Claims Program. It is not intended to cover all possible situations and should not be considered as legal advice.

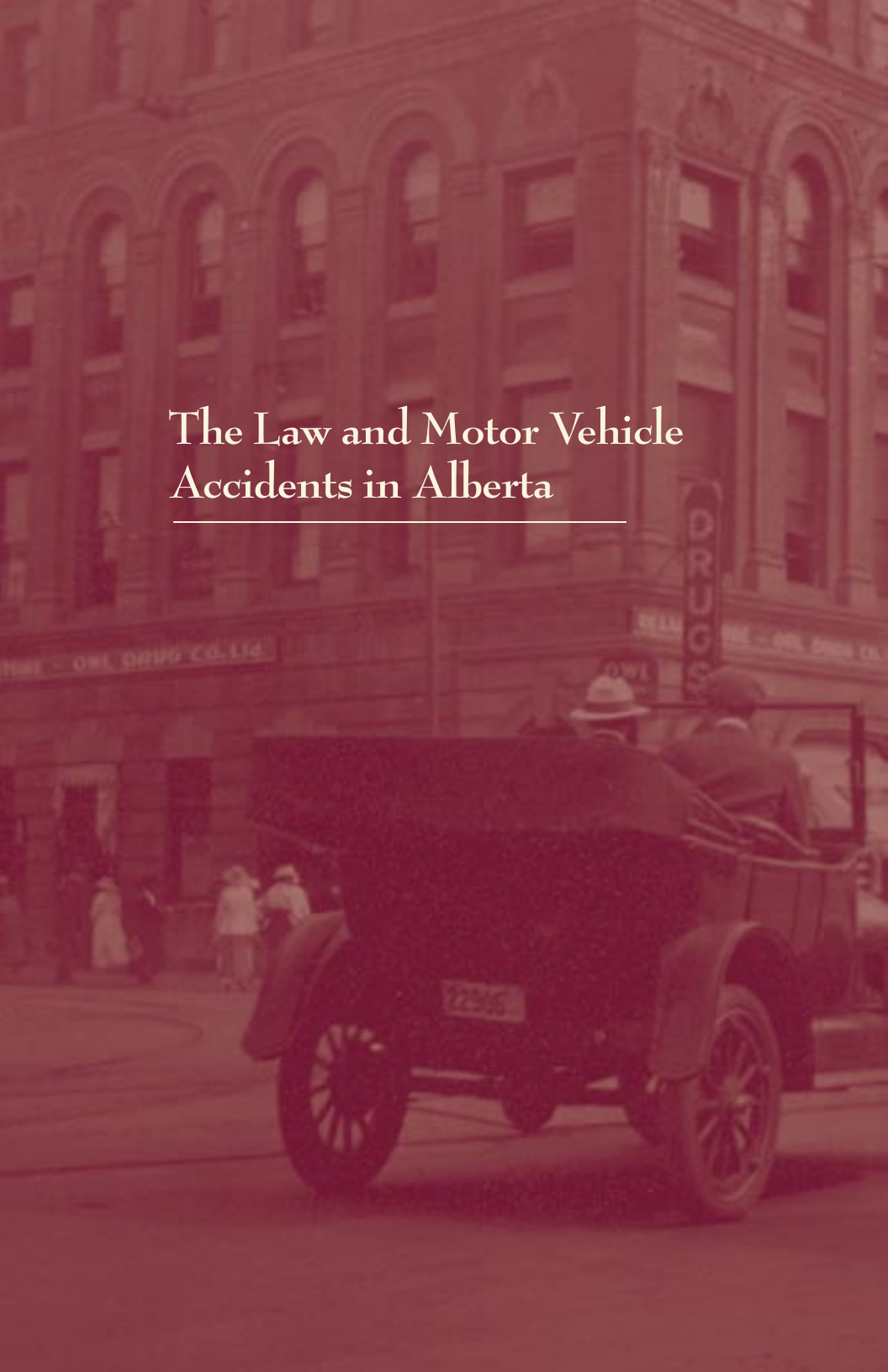
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# The Law and Motor Vehicle Accidents in Alberta

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## The Law and Motor Vehicle Accidents in Alberta

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### THE LAW AND MOTOR VEHICLE ACCIDENTS IN ALBERTA

Suing for personal injuries or death can be straightforward or it can be very complicated, depending on the circumstances. Either way, there are many things you should know about the law in order to assess whether you should sue and who you should sue.

The list below is not exhaustive, but is intended to help you understand your legal rights and obligations in Alberta. Once you have read this information, you may wish to consult with a lawyer if you are still unsure about these rights and obligations. At the end of this document there are some helpful links where you may get more advice.

### BASIC REQUIREMENTS

Under the *Motor Vehicle Accident Claims Act*, the injuries or death had to have happened in Alberta and it had to be the result of a motor vehicle accident. In addition, the victim has to be a resident of Alberta or be from a jurisdiction that has a program similar to this one that would cover Albertans. You may claim as a pedestrian if you were hit by a vehicle. If the accident occurred outside Alberta, then you need to investigate how to sue in that jurisdiction – the MVAC Program cannot respond to your claim. Also, you must have sustained injuries, not just property damage. As already mentioned, the Motor Vehicle Accident Claims Program does not cover damage to your vehicle or its contents, your insurance deductible, or loss of use. You can still include your property damage losses in your lawsuit in order to get a judgment against the defendant, but MVAC will not consent to the payment of these damages.

To seek compensation under the Motor Vehicle Accident Claims Act, you must sue the person(s) who are liable for the accident and your injuries. This could include the drivers and owners of all other vehicles involved in the accident, and possibly the driver of your vehicle if you were a passenger. The list may include corporations, if any vehicle was owned by a company or any driver involved in the accident was driving in their capacity as an employee of that company. It also may include licensed drinking establishments or personal hosts if the person that caused the accident was intoxicated.

Above all, the accident had to be the fault of an uninsured or an unknown driver (more on that later). If any at-fault person has insurance in place to cover your losses, you must seek compensation from that person's insurance company. You may sue if you were the passenger in a single-vehicle accident but you do not have a valid lawsuit if you were the sole cause of the accident. The accident must have been someone else's fault in order for you to sue.

### **HOW DO I START MY LAWSUIT**

The first question you must answer is whether you wish to sue in Provincial Court or in the Court of Queen's Bench. If you sue in Provincial Court, the maximum you can receive is \$25,000, exclusive of interest and costs. However, Provincial Court can often be faster, less expensive, and less legally complicated. On the other hand, depending on the extent of your injuries, the MVAC Program may pay up to a maximum of \$200,000 per accident, plus legal costs, so if you sue in Provincial Court you will have to forego any additional amount you could have received over and above the \$25,000 limit.

**To seek compensation under the *Motor Vehicle Accident Claims Act*, you must sue the person(s) who are liable for the accident and your injuries. The accident had to be the fault of an uninsured or an unknown driver. The accident must have been someone else's fault in order for you to sue.**



MVAC's maximum combined payment for all victims of an accident is \$200,000. If your injuries are serious enough that your settlement exceeds MVAC's payment limit, you may be able to get additional compensation from your own insurance company.

(Note: if there is more than one claimant to an accident, and the total value of all claims exceeds \$200,000, then each claimant will receive a proportional share of the \$200,000 maximum.)



If you are seeking compensation greater than \$25,000, you should consider filing your claim in the Court of Queen's Bench. The Court of Queen's Bench can be more procedurally complex, but you can seek higher compensation for your damages and it may be a more appropriate legal process if there is a dispute regarding liability, consent or negligence.

Other than the dollar limits, there are some procedural difference between Provincial Court and the Court of Queen's Bench, and some of the terminology is different (eg: a Statement of Claim in the Court of Queen's Bench is called a Civil Claim in Provincial Court).

The Alberta Justice website has information to help you to draft your Statement of Claim or Civil Claim, and the same information is available at any Alberta Justice courthouse.

Go to: [http://www.justice.gov.ab.ca/courts/court\\_services.aspx](http://www.justice.gov.ab.ca/courts/court_services.aspx) for more information.

### **WHAT IF MY INJURIES EXCEED THE PROGRAM'S PAYMENT LIMIT**

As mentioned already, MVAC's maximum combined payment for all victims of an accident is \$200,000. If your injuries are serious enough that your settlement exceeds MVAC's payment limit, you may be able to get additional compensation from your own insurance company.

Many Albertans purchase optional insurance coverage to protect them if they are seriously injured in a motor vehicle accident and the at-fault person didn't carry sufficient liability insurance. This type of optional insurance, called a Family Protection Endorsement or an "SEF 44" endorsement, would provide you with additional coverage if you were hit by an uninsured or unknown driver. If you carry this coverage, it will be necessary for you to name your SEF 44 insurance carrier in your lawsuit in order to access these funds.

Immediately after an accident, you should notify your insurance company in order to find out what coverage may be available to you. Many insurance companies also have comprehensive websites that explain the different coverage they offer.

### **HOW MUCH TIME AFTER THE ACCIDENT DO I HAVE TO FILE MY LAWSUIT?**

You normally have two years from the date of your accident to file your lawsuit in an Alberta Court. From the point that you file your lawsuit, you have a further year to serve your claim on the defendant(s). After that, you are expected to keep your lawsuit moving forward by taking material steps to get a decision at Court. If you have not taken any such steps in five years, your lawsuit may be struck out by the Courts.

**You normally have two years from the date of your accident to file your lawsuit in an Alberta Court.**

Within the *Motor Vehicle Accident Claims Act*, there is an additional time limit if you were the victim of a hit-and-run or any accident where the driver and/or owner of the at-fault vehicle is unknown. If this is the case for your accident, you only have 90 days from the date of the accident to inform us of your intent to claim. A Court may extend this time limit.

There could be exceptions to these limits for persons who were minors at the time of the accident.

**IS THIS REALLY A CLAIM AGAINST MVAC?**

Sometimes it is obvious that the at-fault person was uninsured, such as if the driver had stolen the vehicle or was convicted of driving without insurance. At other times, it is not so obvious whether insurance was in place or even who was at fault.

**The first principle governing the Motor Vehicle Accident Claims Program is that we are the payer of last resort.**

If there is any possible policy of insurance that could cover your loss, then MVAC is not involved. Therefore, if any other driver (including the driver of your vehicle if you were a passenger) or any other owner was even partially at-fault for the accident, and that person is insured, then there is no claim against MVAC. For instance, if a vehicle ahead of you swerved out of control, but it was a vehicle behind you that actually struck your vehicle, then it is possible that the vehicle that struck you is at least partially at-fault because that driver may have been following too closely or not keeping a proper lookout, even though they did not begin the chain of events. In that case, you must sue the vehicle that swerved and the vehicle that struck you. If either one is insured, MVAC will probably not be involved in your lawsuit.



In terms of insurance coverage, there may be circumstances where the at-fault driver appears to be uninsured but actually is insured. It is common for a vehicle owner to deny that the driver had consent to possess or operate the vehicle, but the law does not permit all forms of these defences. For instance, a vehicle owner cannot usually argue that consent was not given if the driver was living with and as a member of their household. Also, companies often may not deny insurance coverage to their employees even if they were not using the vehicle in the course of their employment. The point to remember is that you should thoroughly investigate insurance coverage before involving MVAC.

There is another aspect to consider when the accident was caused by a drunk driver. It is important to investigate the circumstances of how that person became intoxicated and if the host (if there was one) fulfilled their obligations to prevent that person from driving. This is particularly critical if the at-fault driver was drinking at a licensed establishment.

**WHAT IF I DON'T  
KNOW WHO THE  
AT-FAULT DRIVER  
OR OWNER WAS?**

The Motor Vehicle Accident Claims Program will normally cover your personal injury damages even if you didn't get the identification of the at-fault driver and/or owner. However, we expect you to take reasonable steps to try to determine who was at-fault for the accident, including getting

details at the scene of the accident, cooperating with the police and canvassing for witnesses.

If it can be shown that you had the opportunity to get details from the at-fault driver at the time of the accident or from witnesses, but you failed to do so, we may deny or defend against your claim on that basis.

Also, because it is important for us to begin our investigation as quickly as possible after an accident involving an unknown owner or driver, you only have 90 days in which to notify us of your intent to sue. See "How Do I Start My Lawsuit."

In terms of drafting your lawsuit, any unidentified operators and owners are typically described as "John Doe #1," John Doe #2," etc. You may substitute "Jane" for any of these if you have reason to believe that the said unknown defendant was female. Unknown corporate defendants are typically described as "ABC Corporation."

**WHAT IF I  
CONTRIBUTED TO  
THE ACCIDENT?**

In some accidents, it is not obvious who was at-fault. In this case, a determination will normally be made as to who was primarily at-fault, but there may then be a reduction applied to the victim for contributing to the cause of the accident. In other words, you can still advance a claim against the other driver and owner if they were the ones

who were primarily at-fault for the accident, but your claim as a victim may be diminished because you were also partially at-fault or did not do enough to avoid the accident.

## **WHAT IF I DIDN'T KNOW THE VEHICLE WAS UNINSURED?**

Every vehicle in Alberta is required to have third party liability insurance, and driving while uninsured is a serious offence. Doing so is a crime punishable by a fine of not less than \$2,500. If you fail to pay your fine on time, the punishment is imprisonment for not less than 45 days. As an owner, it is your responsibility to make

sure any vehicle you own is insured if you intend for it to be operated on a roadway. As a driver, you should always make sure that any vehicle you agree to drive is insured before you get behind the wheel. That includes rental vehicles – if your name is not on the rental agreement as a driver, you may not be insured.

It is your responsibility to ensure that your insurance company always has your current contact information, including an up-to-date mailing address. The insurance company is only obligated to send your insurance renewal notice to your last known address by ordinary mail. If their mail is returned as undeliverable, they are not required to take any further steps to find you.

**Every vehicle in Alberta is required to have third party liability insurance, and driving while uninsured is a serious offence. As an owner, it is your responsibility to make sure any vehicle you own is insured if you intend for it to be operated on a roadway. As a driver, you should always make sure that any vehicle you agree to drive is insured before you get behind the wheel.**

It is your obligation to advise your insurance company when you acquire a replacement vehicle if you intend to have it on the road and therefore need it covered under your policy. Under some circumstances you have a 14-day grace period from the date that you purchase the vehicle to request that the replacement vehicle be covered under your





existing policy. However, there are many exceptions and limitations to this grace period, so you should never assume that you have coverage on a newly purchased vehicle. The best advice is to contact your insurance company before you drive the vehicle to be sure that you are sufficiently covered.

You also have obligations if you miss a payment or if your cheque is returned to you for non-sufficient funds (NSF). If this happens, the insurance company may cancel your insurance policy with 15 days notice to you, mailed to your last known address by registered mail. If that letter is not picked up, they are not

obligated to take any other steps to find you. They will cancel your insurance on the date indicated in their letter, and you will be driving without insurance whether you realize it or not.

On the other hand, the insurance company is obligated to prove that they took the steps mentioned above. If they failed to send proper notice, failed to update their records when you provided them with your new address, or failed to maintain documented proof that they took the required steps to cancel your policy, they may not be able to deny coverage.

There are some additional things you can do to protect yourself. If someone becomes a member of your household and you intend to let them drive your vehicle, inform your insurance company immediately. If you take a vehicle off the road and store it, remove the license plates. If you sell a vehicle, even to a scrap yard, make sure to cancel your registration and remove the license plate. If you don't, you may still be the legal owner of that vehicle. Also, don't drive a friend's vehicle if you're not sure it is insured – don't even get in as a passenger. And remember, off-road vehicles also need to be insured especially if they're ever going to be on a public roadway or if you let other people drive them.

**I WAS IN A TAXI,  
BUS OR LIMOUSINE.  
I THOUGHT THE  
DRIVER WOULD  
GET THE  
INFORMATION I  
NEEDED. WHAT DO  
I DO NOW?**

Every person who is injured in an accident, or who thinks they may be injured, has an obligation to get as much information as they can at the scene of that accident. If you do not fulfill this responsibility in a reasonable way, MVAC can deny payment of any judgment you may obtain. However, if you were a customer in a vehicle that was

operating as a commercial vehicle for hire or a common carrier, the driver and owner of that vehicle may also have certain obligations to you.

Professional drivers have a duty to acquire information on your behalf at the accident scene, and to safeguard that information in case of a future lawsuit. If the driver did not do this, or if the company that owned the vehicle did not train the driver to do so, they may be liable for your damages even if MVAC denies your claim.

Every person who is injured in an accident, or who thinks they may be injured, has an obligation to get as much information as they can at the scene of that accident. If you do not fulfill this responsibility in a reasonable way, MVAC can deny payment of any judgment you may obtain.

**I'VE USED UP MY  
MEDICAL BENEFITS  
UNDER MY  
INSURANCE POLICY.  
HOW DO I CONTINUE  
PAYING FOR MY  
REHABILITATION?**

Every insured person has access to medical payments through their own auto insurance policy (commonly known as “section B coverage”). This includes pedestrians. If you were uninsured in a motor vehicle accident, you may still be covered by the insurance policy of another member of your household. You should check with your (and their) insurance company for more details.



Effective October 1st, 2004, coverage for medical treatments under your insurance policy has a limit of \$50,000. Prior to this, the limit was \$10,000. In both cases, the benefit only lasts for two years from the date of the accident. There are some restrictions on this coverage.

If you have used up your own medical insurance coverage, and you have commenced a lawsuit, you may be able to apply to the defendant's insurance company for payment of your ongoing expenses. Section 636 of the *Insurance Act* permits the defendant's insurer to pay you for your medical costs on a "without prejudice" basis, meaning their payments to you are not an admission of their client's liability.

If the defendant was uninsured, and you have exhausted all of your own section B medical coverage, you can apply to our program for reimbursement of your interim medical expenses. You still have to sue the defendant to be eligible to claim under this program. Write to us for more details on how to qualify for interim medical benefits, and we will provide you with the appropriate forms for completion, along with a list of documents that we will need in order to consider your application. Please note that any amounts we pay to you for medical costs will be deducted from our final settlement with you regarding your personal injury claim.

**Every insured person has access to medical payments through their own auto insurance policy (commonly known as "section B coverage"). Effective October 1st, 2004, coverage for medical treatments under your insurance policy has a limit of \$50,000.**

A vintage car, possibly a 1920s model, is shown in a sepia-toned photograph. A man in a dark suit and tie stands in the foreground next to the car. Another man is visible in the driver's seat. The car has a license plate that reads "PEOPLE 3116".

## Some Technical Details About the MVAC Act

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## Suing in Provincial Court and the Court of Queen's Bench

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## Basic Steps to Getting Paid Once Your Lawsuit is Settled

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## Judgment Forms

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## Repaying Your Debt as a Defendant

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## Some Technical Details About the MVAC Act

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### SERVING DOCUMENTS ON THE DEFENDANT

In order to claim under the Motor Vehicle Accident Claims Program, you have to sue all of the at-fault drivers and owners. The Alberta Rules of Court state that, in order for your lawsuit to be valid, you have to deliver a copy of it to the defendant. This is called “serving” the defendant, and

your lawsuit is not valid until you do so (this requirement also applies to any other “third parties” that are named in your lawsuit). You also then have to give the defendant the opportunity to file a defence. Under the Alberta Rules of Court, defendants have a specific number of days to file their defence, after which you can note them “in default.” Our program cannot normally intervene in your lawsuit unless the defendant has been noted in default, meaning they have failed to file a Defence (or a Demand of Notice) within the prescribed number of days.

An exception where we will intervene is if we feel you have not named all possible at-fault persons in your Statement of Claim. MVAC has the authority to compel you to add defendants and, if you fail to do so, this can be the basis for MVAC denying payment of your settlement.

Sometimes you may know who the defendant is but cannot find his or her current location, or the defendant refuses to be served with your Statement of Claim. If this happens, our Act states that you may not serve the Administrator of our Program in lieu of the defendant. However, you may apply to the Court to have your documents served upon the defendant “substitutionally.”

This means that, if you can prove that you tried to find and/or serve the defendant but failed, the Court may permit you to serve the defendant by other means.

Dispensing with service is something slightly different. Alberta case law does not permit you to dispense with service upon the defendant in a lawsuit involving MVAC. If you cannot personally serve the defendant, you will need to get an order from the Court for substitutional service.

**No matter how you proceed with your lawsuit, if Motor Vehicle Accident Claims is going to be involved, we would appreciate it if you would forward us a copy of every legal document at the point where you file it with the Court.**

### **DISCONTINUING YOUR LAWSUIT AGAINST A DEFENDANT**

Once you have filed your Statement of Claim and served it on the defendants, you may be asked to “discontinue” your claim against some of them. They are basically asking you to let them out of your lawsuit. You should think carefully before you do this.

First of all, the MVAC Act requires you to sue everyone who could reasonably be at fault for the accident. If you let someone out of your lawsuit (ie: discontinue) that we think could have been at fault, we can deny payment to you on that basis. Therefore, in all cases where MVAC is involved, you must get our consent before you discontinue against any other defendant.

Secondly, depending on the circumstances, the other plaintiffs and co-defendants may also have to consent to your discontinuance. You may have to get written permission from all parties (including us) before you consent to any discontinuance.

Keep in mind that, just because someone files a defence, does not mean they are not at fault or that you should let them out of your lawsuit. A defence is a normal part of civil litigation and should not necessarily be equated with innocence until a Court decides so.

**WHAT HAPPENS  
TO ME AS A  
DEFENDANT  
ONCE I AM  
NOTED IN  
DEFAULT**

If you are named as a defendant in a lawsuit, it is your right to defend yourself by filing a Statement of Defence or Demand of Notice within the prescribed deadline. If you fail to do so, you may have given up your right to a defence. That is where our program takes over.

**If you are noted in default for failing to file a defence, or if your defence is struck by a Court, the Motor Vehicle Accident Claims Act then gives us the authority to act on your behalf to either defend or settle the lawsuit.**

Once this occurs, you no longer have any legal standing in the conduct of the lawsuit. The Administrator has full authority under law to do whatever you could have done, including negotiating a settlement with the plaintiff. We do not have to consult with you, nor do we need your permission to take any step to conclude the lawsuit.

Any amount we consent to is a debt that you will then owe to us and must repay. Our maximum payout to victims is \$200,000 per accident, plus legal costs, and that debt will be assigned against you. Therefore, if you believe that you have a strong defence, you may wish to seek legal advice.

**CONSENTING TO  
A JUDGMENT**

If the lawsuit has been defended, the plaintiff and defendant may, on their own, consent to a judgment without participation by MVAC, but if the plaintiff wishes to ask MVAC to pay the judgment, then MVAC must consent before the judgment is filed. If we didn't participate in the discussions and didn't provide our consent, then that may be grounds for us to deny payment.

## Suing in Provincial Court and The Court of Queen's Bench

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Earlier we explained the differences in dollar limits between Provincial Court and Court of Queen's Bench. There are other differences that are specific to the *Motor Vehicle Accident Claims Act* that you need to be aware of in order to ensure that you get paid for your judgment. Here are the most important points to remember:

- If you are suing in Provincial Court, once the defendant is noted in default, do NOT request an assessment hearing from the Court. Get in touch with MVAC, send us copies of your legal documentation and we will commence our settlement process. If you wish, you can provide us with written notice of a potential claim even before the defendant is noted in default.
- For a known, uninsured driver and/or owner, you may not take any further steps for at least 30 days from the date where you first give us notice of your potential claim.
- Once you have provided us with notification of a possible claim, you must provide us with a copy of the Statement of Claim or Civil Claim and with every subsequent legal document that you file with the Court.
- You also need to notify us in advance and in writing of any further legal steps you intend to take after noting the defendant in default, and you need to give us sufficient opportunity to attend at Court or for us to formally object to whatever step you are taking.
- If we feel that you have not named all the at-fault parties in the accident, we can request that you amend your Statement of Claim or Civil Claim. If you fail to comply with our request, we may refuse to authorize payment of your judgment on that basis.





- If you and the defendant agree to settle “out of court,” you still must get MVAC’s concurrence regarding the amount of the settlement and any other terms or conditions if you want MVAC to pay the judgment. You must get our concurrence before the judgment is filed.
- If the accident involves an unknown driver or owner, you only have 90 days in which to inform MVAC of your intent to sue, even if you are suing in Provincial Court.

## Basic Steps to Getting Paid Once Your Lawsuit is Settled

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The first principle is that you have to ask MVAC to consent to your judgment if we were not involved in the negotiations. If you did not ask for our consent, we can deny payment on that basis. It is therefore always best to involve us early on in the process, usually at the point where you know or suspect that the defendant did not have insurance.

Once you have a judgment that we have consented to, we will provide you with a package of documents to explain the remaining procedures. The consent judgment has to be filed at the Court of Queen’s Bench and, in the case of a known defendant, a form has to be completed that assigns the MVAC Administrator as the judgment creditor against that defendant. These documents then have to be served upon the defendant personally or, if this is not possible, you will have to apply to the Court to serve the defendant substitutionally



or you may request an order dispensing with service. You will have to serve each named defendant that has not received a discontinuance or an order dispensing with service. In the case of personal service, there are people called “process servers” that will do this for you for a fee.

You may not provide a final release or a discontinuance to a defendant once MVAC has paid your judgment. That is because we require that the judgment remain in effect in order for us to be able to seek repayment from the defendant.

If the defendant driver and owner were unknown (ie: hit and run), then MVAC will consent to your judgment and there are no assignment papers to serve. However, you still have to file the judgment with the Court of Queen’s Bench, and complete various forms in order to apply for payment.

Remember that you can still get a judgment against the defendant for the property damage that was caused to your vehicle or contents, but MVAC will not consent to or pay that portion of your judgment.

## Judgment Forms

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Once your lawsuit is settled, there are a few forms that you will need to complete and send to us in order for us to pay your judgment. You can either write to us requesting these forms or you can download them from our website. There are also detailed instructions available to help you understand the forms and what needs to be done with them.

### Repaying Your Debt as a Defendant

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If you were the at-fault driver or owner in an accident and we settled the claim on your behalf, you will be required to repay us for this debt. Shortly after the settlement, you will be contacted by MVAC's debt collection unit and asked to complete some paperwork regarding your monthly household income and expenses. We will then set up an appropriate repayment arrangement with you that we consider reasonable given your financial circumstances.

In order to ensure that you maintain your payment schedule, we will place writs or liens on all your land and property, so that you will be unable to sell it or refinance it without our approval. Our judgments also typically survive bankruptcy.

Any failure to comply with our repayment arrangement will result in immediate suspension of your driving and vehicle registration privileges. The suspension is valid throughout Canada and wherever else we have reciprocal enforcement agreements worldwide. We may also take other legal action against you as permitted by law.

If you have the ability to get financing, either through a lending institution or from family members, we may consider a lump sum payment from you that would clear most of the debt.

If there are other debtors, we may then pursue them for the rest. Each situation is different, so lump sum offers should be discussed with your assigned Collections Officer.

A vintage car, possibly a 1920s or 30s model, is shown from a side profile. The car is dark-colored and has a classic design with spoked wheels. Inside the car, a family of four is visible: a man in the driver's seat, a woman in the passenger seat, and two children in the back seat. The entire image is overlaid with a semi-transparent red tint. The text is centered over the upper half of the car.

The 2004  
Insurance Reforms and  
How They Affect You

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## The 2004 Insurance Reforms and How They Affect You

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In 2004, the Government of Alberta introduced several reforms to the automobile insurance system. Some of these took effect on June 21, 2004 and the remainder came into force on October 1, 2004. If your accident happened after either of these dates, the information below will help you understand your claim limits and obligations.

### NET INCOME CALCULATIONS

In 2004, new legislation was introduced governing how income losses are to be calculated. Under the new methodology, a claimant must deduct from their claim amounts for income tax, and the premiums for employment insurance and the Canada Pension Plan that would have had to be paid if the person were still gainfully employed. Claimants must also deduct any income replacement payments received from any source.

### THE CAP ON MINOR INJURY CLAIMS

Beginning on October 1, 2004, there is a limit on the amount you can claim for pain and suffering (known as “general damages”) resulting from a motor vehicle accident if you suffered only minor injuries. That limit is set at \$4,000. The definition of “minor injury” is any sprain or strain, and type I or type II whiplash.



In order to determine whether your injuries meet the definition of a minor injury, you will need to follow the Diagnostic and Treatment Protocols. You can request information about the Protocols from your insurance company, your physician, a chiropractor or physical therapist that is attending to your injuries.

The limit on pain and suffering does not limit your ability to claim for other economic losses, such as loss of income.

There is a more in-depth description of the Minor Injury Regulation in the next section of this document.

### **DIAGNOSTIC AND TREATMENT PROTOCOLS**

If you are injured as a result of a motor vehicle accident, you are expected to take reasonable steps to lessen the effects of those injuries through various medical treatment options.

The new regulation specifies that you are expected to seek an assessment within 10 business days of the accident. Depending on the conclusions reached by that diagnosis, you may be advised to immediately commence regularly scheduled medical treatment. You must follow the full treatment plan as prescribed by the medical practitioner. Failure to do so could substantially reduce your future claim.

There is a more in-depth description of the Diagnostic and Treatment regulations in the next section of this document.

**If you are injured as a result of a motor vehicle accident, you are expected to take reasonable steps to lessen the effects of those injuries through various medical treatment options.**

### **MEDICAL COVERAGE ON YOUR INSURANCE POLICY**

Every motor vehicle liability insurance policy in Alberta comes with a minimum amount of no-fault medical coverage, also known as accident benefits. This insurance is intended to cover the driver and any passengers in the vehicle at the time of the accident and does not require there to be any other vehicles involved in the accident. Before October 1, 2004, the maximum medical coverage was \$10,000 but this has now been increased to \$50,000. An injured person has two years from the date of the accident to claim reimbursement for medical expenses under this part of the person's insurance policy. Some limitations apply, and there are pre-approval requirements in many cases, so you should consult your insurance company for more details.



The Diagnostic &  
Treatment Protocols  
in Detail

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## The Diagnostic & Treatment Protocols in Detail

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A diagnostic and treatment process has been established to promote quick recovery through fast and effective treatment.

People who suffer sprains, strains and minor whiplash injuries can access 12 weeks of therapy. If treatment is required for more than 12 weeks, it would be available. The insurer may request an independent medical assessment.

Patients who are being helped through this treatment process do not need prior approval from insurance companies to begin treatment, and they will not pay out-of-pocket for the treatments. The treatments are pre-approved, and care-providers directly bill the insurance companies.

Patients can choose their preferred medical doctor, chiropractor, or physiotherapist as their primary health care practitioner. The primary practitioner will diagnose the injury according to the diagnostic protocols, instruct the client in the treatment process, and follow the client's therapy.

The primary health care practitioner will also provide the insurer with documentation of the diagnosis, planned treatment, and expected outcomes with the patient's consent.

Forms relating to the diagnostic and treatment process are available online at [www.finance.gov.ab.ca](http://www.finance.gov.ab.ca)



### INJURY MANAGEMENT CONSULTANT

If recovery is not progressing as quickly as expected, the client would be referred to an **Injury Management Consultant** for further advice and treatment.

Injuries that have not resolved 12 weeks after the accident could also be referred to an Injury

Management Consultant by the patient's health practitioner. An Injury Management Consultant will be specially qualified and identified by the Colleges of Physicians and Surgeons, Chiropractors, and Physical Therapists of Alberta. The consultant would provide an independent evaluation and consult on the original diagnosis, and the treatment and evaluation. The consultant can also recommend further therapy, or further evaluation.

Under these changes, private insurance such as Blue Cross or other plans will no longer be the first payer for minor injury treatment.

Your Section B auto insurance will be the first payer for treatments within the protocols, preserving your private coverage for any future needs.



## **CLIENT EDUCATION**

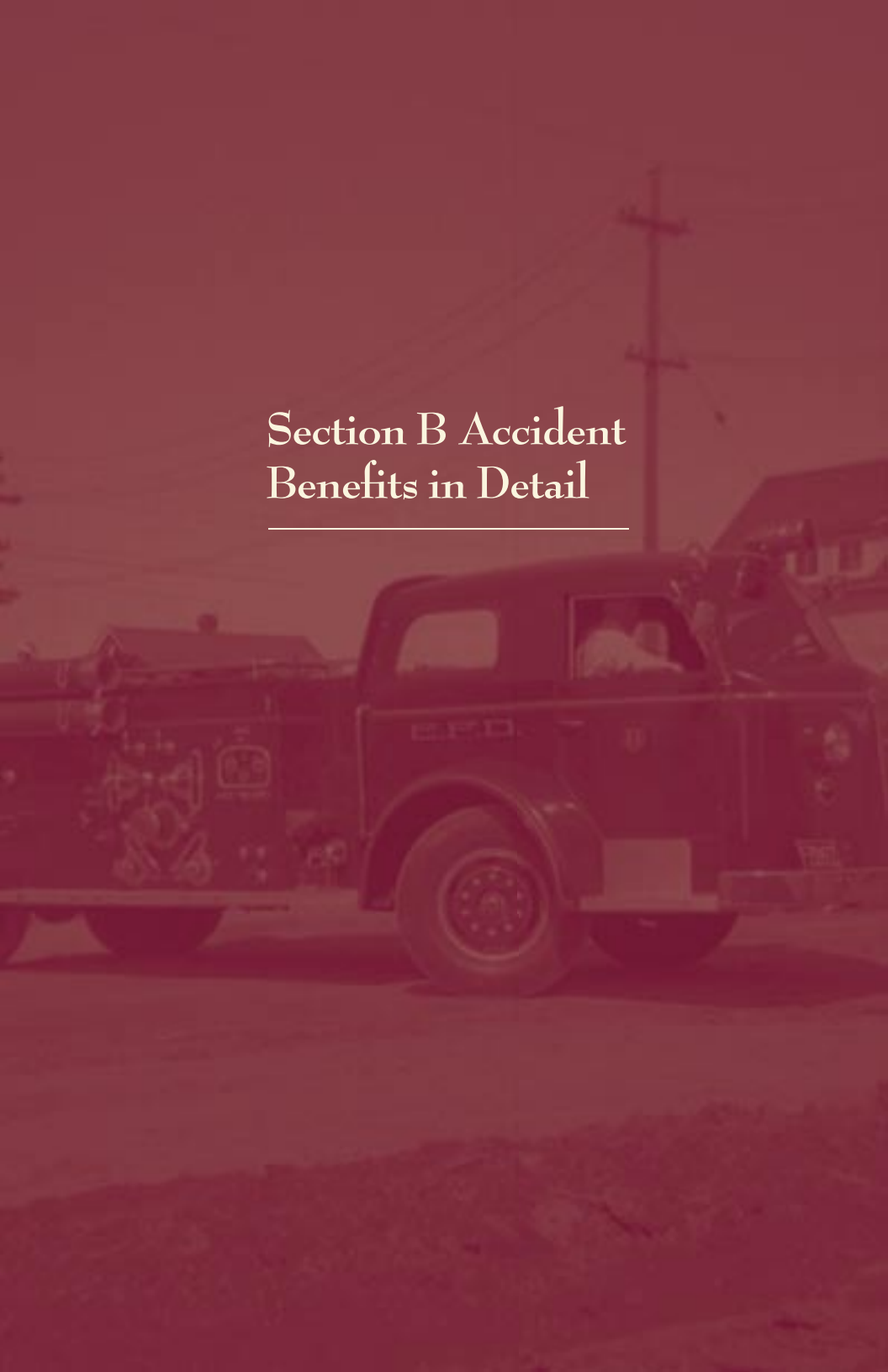
Educating the injured person about how best to speed recovery is an important aspect of the diagnostic and treatment process. Education would include encouraging early return to usual activities and work, explaining the nature and probable length of symptoms, reassuring the client of the injury's nature, and advising how best to care for themselves.

## **AFTER 12 WEEKS**

Following 12 weeks of therapy under the treatment protocols, sprain, strain or minor whiplash injuries that have not resolved would continue to be treated, covered by your extended healthcare plan, Section B benefits or compensation from the wrongdoer.

# Section B Accident Benefits in Detail

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## Section B Accident Benefits in Detail

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People who are injured in collisions deserve fast and effective treatment, and this is the focus of the diagnostic and treatment process developed for minor injuries under reforms to Alberta's auto insurance system.

The treatment process for minor injuries has been developed and is pre-approved, meaning that people injured in collisions won't have to pay out-of-pocket for approved treatment. There would be no financial barriers to access to therapy within the process.

Forms relating to the diagnostic and treatment process are available online at [www.finance.gov.ab.ca](http://www.finance.gov.ab.ca)

### **SECTION B BENEFITS**

The changes also include increased no-fault Section B Accident Benefits coverage for medical and rehabilitation costs. The current limit has increased to \$50,000 from \$10,000.

Several treatment expenses available through these Section B benefits have also been pre-approved for all injuries up to specified amounts, allowing treatment to begin immediately. Treatment that exceeds the maximum value may require assessment by a physician appointed by your insurer to continue.

Under these changes, you do not need a referral from a doctor or approval from your insurance company to access these benefits if you are seeking treatment related to your collision, up to specified dollar limits:

- psychological services (\$600 per person)
- chiropractic services (maximum \$750 per person)
- physical therapy (\$600 per person)
- occupational therapy (\$600 per person)
- massage or acupuncture therapy (maximum \$250 each per person)
- grief counselling (\$400 per family)

Under the old system, a doctor's referral and approval from your insurance company were required for some of these treatments.

Other Section B coverage remains unchanged. Section B benefits are available from your own insurer, whether or not you are at fault in the accident.

Victims of collisions can continue to seek settlements from wrongdoers, including through the courts.

### **COMPENSATION FROM WRONGDOERS**

Victims injured in an accident by a wrongdoer can continue to receive compensation for economic losses and pain-and-suffering compensation (General Damages) through the courts.

Victims' injuries that are determined to be minor under the regulations would receive full compensation for economic losses, and up to \$4,000 in compensation for pain and suffering. The \$4,000 limit has no effect on out of pocket expenses, including for medical equipment, prescriptions, rehabilitation, home care expenses or income, business, or farming loss.

Victims with a sprain, strain or minor whiplash who disagree with the opinion by an insurer that their injury is a minor injury can seek the opinion of an independent certified examiner, agreed to by the client and insurer — or one that is randomly selected if both parties cannot agree.

This certified examiner will consider the original diagnosis, the treatment, whether recovery is proceeding as expected, and the impact of the injury on normal activities of daily living.

The examiner would then provide an opinion on whether the injury should be considered minor under the regulations. People can still go to court without this opinion, as under the current system.

Other changes now in place include:

- eliminating double-recovery of loss of income compensation an injured person receives from their insurer and from the wrongdoer; this change means that an injured victim could not receive the same compensation from the claimant's insurance company and their disability plan.
- basing income replacement on net rather than gross income, with reduction for CPP and EI premiums.

If you have any comments or questions about the government changes to the auto insurance system, please contact the Ministry of Finance at the address, phone and fax numbers listed below.

**By Mail:**

Alberta Finance  
Room 426,  
Terrace Building  
9515 – 107 Street  
Edmonton, Alberta,  
T5K 2C3

**By Phone:**

(780) 427-3035  
To call toll free within  
Alberta dial 310-000  
then 780-427-3035.  
Or submit comments  
or questions by  
phone by calling  
Alberta Connections  
at 310-4455.

**By Fax:**

(780) 427-1147  
To send a fax toll  
free within Alberta  
dial 310-0000 then  
780-427-1147.

## Getting More Advice and Information

The following organizations and websites may be able to provide you with more information or legal assistance to help you with your lawsuit or insurance claim.

- The Motor Vehicle Accident Claims website —  
<http://www.justice.gov.ab.ca/mvac/default.aspx>
- Alberta Justice website, with information specifically regarding civil claims —  
[http://www.justice.gov.ab.ca/civil/claims\\_collecting.aspx](http://www.justice.gov.ab.ca/civil/claims_collecting.aspx)
- The Law Society of Alberta Lawyer Referral Service —  
<http://www.lawsocietyalberta.com/publicservices/lawyerReferralService.cfm>
- The Legal Aid Society of Alberta —  
[http://www.justice.gov.ab.ca/legal/legal\\_aid.aspx](http://www.justice.gov.ab.ca/legal/legal_aid.aspx)
- Alberta's Insurance Reform website —  
<http://www.autoinsurance.gov.ab.ca/>
- The Alberta Branch of the Canadian Bar Association video on small claims —  
[http://media.cba-alberta.org/dl?SmallClaims\\_100.wmv](http://media.cba-alberta.org/dl?SmallClaims_100.wmv)
- Court locations: Provincial Court & Court of Queen's Bench —  
<http://www.albertacourts.ab.ca/calendar/index.htm>
- Alberta Insurance Council —  
<http://www.abcouncil.ab.ca/>
- Alberta's Superintendent of Financial Institutions —  
<http://www.finance.gov.ab.ca/business/insurance/index.html>
- The Insurance Bureau of Canada —  
<http://www.ibc.ca/>



# Glossary of Terms

<b>Action</b>	This is a legal term for a lawsuit.
<b>Affidavit</b>	This is a voluntary declaration of written facts that are sworn before a person that is authorized to give an oath. The most common affidavit is an Affidavit of Service swearing that the Statement of Claim was served on the defendant.
<b>Assignment of Judgment</b>	This is a legal process and a document that, upon payment to the victim by MVAC, transfers the judgment to MVAC so it can collect from the defendant.
<b>Certified</b>	An authenticated or verified document, most commonly done for a certified copy of an original document.
<b>Civil Claim</b>	The document that is filed at Provincial Court that describes the plaintiff's claim. Also used to refer generally to any lawsuit relating to civil matters.
<b>Defendant</b>	The person against whom the lawsuit is commenced. This person may also be called the respondent.
<b>Demand of Notice</b>	A document filed with the Court by a defendant asking that notice be given to the defendant of all steps to be taken in Court in a proceeding or action.

**Discontinuance of Action**

A document filed by a plaintiff ending the Court action or proceeding against a defendant.

**Dispensing with Service**

This is an order of the Court exempting a person from the requirement to deliver a legal document to another person involved in the lawsuit.

**Dispute Note**

The term used at Provincial Court for a document that gives the reasons that the plaintiff's claim is disputed. See also Statement of Defence.

**Executed**

To enforce and collect on a judgment.

**Filed or Filing**

Giving a legal document to the Court clerk to have it entered into the Court file.

**Judgment**

A determination made by a Judge or Court and set out in a document filed with the Court. A Consent Judgment is similar, except that it is agreed to by the parties and then signed by a Judge or the Court and filed with the Court.

**Nominal Defendant**

A defendant in name only. The MVAC Administrator is considered to be a nominal defendant because the Administrator did not actually cause the accident.

<b>Note In Default</b>	A step taken by the plaintiff when the defendant does not file and serve a Statement of Defence or Dispute Note within the prescribed time limits.
<b>Plaintiff</b>	The person who begins the lawsuit and who is claiming damages.
<b>Represented</b>	To have a person act on your behalf, either a lawyer at Queen's Bench or an agent in Provincial Court.
<b>Service or Served</b>	This is the delivery of a legal document, such as your Statement of Claim, usually to one of the other persons named in your lawsuit.
<b>Statement of Claim</b>	The document that is filed at the Court of Queen's Bench that describes the plaintiff's claim.
<b>Statement of Defence</b>	The term used at Queen's Bench for a document that gives the reasons that the plaintiff's claim is disputed. See also Dispute Note.
<b>Substitutional Service</b>	An order of the Court permitting an alternate means to deliver a legal document to one of the other persons named in your lawsuit.

For the latest information regarding updates to the Alberta Motor Vehicle Accident Claims Program, please refer to our website at <http://www.justice.gov.ab.ca/mvac/default.aspx>.



If you have additional questions, or if you wish to make a comment about this brochure, please call Motor Vehicle Accident Claims (MVAC) at (780) 427-8255. If you prefer, you can call toll-free from anywhere in the province by dialing the RITE system at 310-0000. You can also write us at:

**Motor Vehicle Accident Claims Program  
Suite #600, 6th Floor, 10123 – 99 Street  
Edmonton AB T5J 3H1**

You can email a question to us by going to the Government of Alberta website ([www.gov.ab.ca](http://www.gov.ab.ca)) and clicking on the “Alberta Connects” icon. Be sure to direct your question to “the Motor Vehicle Accident Claims Program.”

