

1996 BILL 44

Fourth Session, 23rd Legislature, 45 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 44

**MOTOR VEHICLE ACCIDENT CLAIMS
AMENDMENT ACT, 1996**

THE MINISTER OF JUSTICE
AND ATTORNEY GENERAL

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 44

BILL 44

1996

MOTOR VEHICLE ACCIDENT CLAIMS AMENDMENT ACT, 1996

(Assented to , 1996)

HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

Amends RSA
1980 cM-21

1 The Motor Vehicle Accident Claims Act is amended by this Act.

2 Section 5 is repealed.

Explanatory Notes

1 Amends chapter M-21 of the Revised Statutes of Alberta 1980.

2 Section 5 presently reads:

5(1) When a person has a cause of action against the owner or operator of an uninsured motor vehicle for damages for

(a) bodily injury to or the death of a person, or

(b) loss of or damage to property in an amount exceeding \$250,

arising out of the use or operation within Alberta of the motor vehicle, that person may apply to the Administrator, in the prescribed form, for payment in respect of the bodily injury or death, or loss of or damage to property.

(2) On receipt of an application under subsection (1) the Administrator shall, by registered mail, send notice of the application to the owner and the operator of the uninsured motor vehicle to their last addresses as recorded with the Registrar.

(3) Subject to sections 11 to 19 and to the regulations,

(a) if a consent to the amount to be paid to the applicant under this section and an agreement, in the prescribed form, to pay back that amount to the Minister is executed

(i) by the owner and the operator,

(ii) by the operator only, when the Minister is satisfied that the owner would not be liable, or

3 *Section 6(1) and (2) are repealed and the following is substituted:*

Notice to
Administrator
of undefended
action

6(1) When, in an action for damages for bodily injury to or the death of a person arising out of the use or operation within Alberta of a motor vehicle, a plaintiff notes a defendant in default, the plaintiff shall forthwith serve on the Administrator a notice in writing informing the Administrator of the facts, and the plaintiff shall not take the

(iii) *by either the owner or the operator, when the other has not replied to the notice or disputes his liability to the applicant,*

and

(b) *if the applicant executes an assignment to the Administrator of all claims against the persons liable for the injury, death, loss or damage in respect of which the application is made,*

the Minister may authorize payment from the General Revenue Fund to the applicant of an amount that he considers in all the circumstances to be proper compensation.

(4) *When an amount is paid pursuant to subsection (3), the Administrator is subrogated to the rights of the person to whom the amount was paid and the Administrator may maintain an action in the name of that person or in the name of the Administrator against all or any persons liable for the injury, death, loss or damage in respect of which the payment was made.*

(5) *The Minister shall suspend*

(a) *the operator's licence of every person in the case of an operator of a motor vehicle other than an off-highway vehicle as defined in the Off-highway Vehicle Act, and*

(b) *the registration of every motor vehicle registered in the name of every person,*

who executes an agreement pursuant to subsection (3) until the full amount owing on the undertaking has been paid or the person commences payment under an agreement made pursuant to subsection (6).

(6) *The Administrator may enter into an agreement with a person who executes an agreement pursuant to subsection (3) to accept payment by instalments of the amount owing on the undertaking.*

(7) *When a person who has commenced payment of the amount owing on the agreement is in default in any payment for a period of 30 days, the Minister may suspend the operator's licence of that person and the registration of every motor vehicle registered in the name of that person.:*

3 Section 6(1) and (2) presently read:

6(1) *When in an action for damages for*

(a) *bodily injury to or the death of a person, or*

(b) *loss of or damage to property in an amount exceeding \$250,*

arising out of the use or operation within Alberta of a motor vehicle, a plaintiff notes a defendant in default, the plaintiff shall forthwith

next step in the action until 30 days after the service of the notice.

(2) When, in an action for damages for bodily injury to or the death of a person arising out of the use or operation within Alberta of a motor vehicle,

- (a) a defendant's statement of defence is struck out,
- (b) a defendant fails to appear by counsel at the trial, or
- (c) a plaintiff receives notice that a defendant's solicitor has ceased to act,

the plaintiff may serve on the Administrator a notice in writing informing the Administrator of the facts, and the plaintiff shall not take the next step in the action until 30 days after the service of the notice.

4 *Section 7(1) is repealed and the following is substituted:*

Claim after
judgment

7(1) When a person recovers in a court in Alberta a judgment for damages for bodily injury to or the death of a person arising out of the use or operation within Alberta of a motor vehicle, the person may, on the determination of all proceedings, including appeals, apply to the Administrator in the prescribed form for payment under this section of the amount of the judgment or of the amount of the unsatisfied portion of it.

5 *Section 8(3)(b) is amended by striking out "section 12, 14 or 15" and substituting "section 12 or 14".*

6 *Section 9 is amended*

serve on the Administrator a notice in writing advising him of the facts and the plaintiff shall not take the next step in the action until 30 days after the service of the notice.

(2) When in an action for damages for

(a) bodily injury to or the death of a person, or

(b) loss of or damage to property in an amount exceeding \$250,

arising out of the use or operation within Alberta of a motor vehicle,

(c) a defendant's statement of defence is struck out,

(d) a defendant fails to appear by counsel at the trial, or

(e) a plaintiff receives notice that a defendant's solicitor has ceased to act,

the plaintiff may serve on the Administrator a notice in writing advising him of the facts and the plaintiff shall not take the next step in the action until 30 days after the service of the notice.

4 Section 7(1) presently reads:

7(1) When a person recovers in a court in Alberta a judgment for damages for

(a) bodily injury to or the death of a person, or

(b) loss of or damage to property in an amount exceeding \$250,

arising out of the use or operation within Alberta of a motor vehicle, he may, on the determination of all proceedings, including appeals, apply to the Administrator, in the prescribed form, for payment under this section of the amount of the judgment or of the amount of the unsatisfied portion of it.

5 Section 8(3) presently reads:

(3) On hearing the application, the court may, if it is satisfied that

(a) the application is a proper one under this Act, and

(b) the application for payment is not prohibited by section 12, 14 or 15,

make any order it considers just, including an order setting aside the judgment.

6 Section 9(1), (4), (8) and (9) presently read:

Claim
involving
unknown
owner or
operator

(a) by repealing subsection (1) and substituting the following:

9(1) If bodily injury to or the death of a person arises out of the use or operation within Alberta of a motor vehicle and

(a) the names of the owner and operator of the motor vehicle are unknown and unascertainable, or

(b) the name of the operator is unknown and unascertainable and the owner may not be liable to an action for damages for injury or death,

a person who has a cause of action against the unknown owner or operator in respect of that bodily injury or death may bring an action against the Administrator as nominal defendant, either alone or as a co-defendant with others alleged to be responsible for the injury or death.

(b) by repealing subsection (4);

(c) in subsection (8) by striking out “bodily injury, death or property damage” and substituting “bodily injury or death”;

(d) by repealing subsection (9).

7 Section 10(1) and (2) are amended by striking out “or property damage”.

9(1) *If bodily injury to or the death of a person or damage to property in an amount exceeding \$250 arises out of the use or operation within Alberta of a motor vehicle, and*

(a) the name of neither the owner nor the operator of the motor vehicle is known or ascertainable, or

(b) the name of the operator is not known or ascertainable and the owner may not be liable to an action for damages for injury or death or property damage,

a person who has a cause of action against the unknown owner or operator in respect of that bodily injury or death or property damage may bring an action against the Administrator as nominal defendant, either alone or as a co-defendant with others alleged to be responsible for the injury or death or property damage.

(4) When, after an action has been commenced in respect of bodily injury to or the death of a person or damage to property arising out of the use or operation within Alberta of a motor vehicle, it is alleged that the injury or death or property damage was caused or contributed to by another motor vehicle, but

(a) the name of neither the owner nor the operator of the motor vehicle is known or ascertainable, or

(b) the name of the operator is not known or ascertainable and the owner may not be liable to an action for damages for injury or death or property damage,

the Administrator may be added as a nominal defendant on the application of any party and shall be added as a nominal defendant on his own application.

(8) When judgment is obtained against the Administrator as nominal defendant and on the determination of all proceedings, including appeals, the Minister, subject to sections 11 to 19, shall authorize payment out of the General Revenue Fund to the judgment creditor of the amount of the judgment with respect to the bodily injury, death or property damage.

(9) Notwithstanding anything in this section, when there is a claim for \$5000 or less, the Administrator may permit a claim to be made without a judgment, in accordance with those provisions of section 5 that are applicable to it.

7 Section 10(1) and (2) presently read:

10(1) When judgment has been obtained under section 9 against the Administrator as nominal defendant, the Administrator may at any time thereafter, by originating notice, apply to the court where judgment was obtained for an order declaring that a person was at the time of the accident the owner or operator of the motor vehicle that caused the bodily injury or death or property damage in respect of which the judgment was obtained.

8 *Section 11 is amended*

(a) *by adding the following after subsection (1):*

(1.1) No payment may be made out of the General Revenue Fund for an amount for loss of or damage to property.

(b) *by repealing subsections (2) and (3) and substituting the following:*

(2) When all claims arising out of one accident have been jointly or severally satisfied to the extent of the amount prescribed by the regulations, no payment may be made out of the General Revenue Fund with respect to claims arising out of that accident.

(c) *by repealing subsections (4) and (5) and substituting the following:*

(4) No payment may be made out of the General Revenue Fund with respect to all claims arising out of one accident that is greater than the amount prescribed by the regulations.

(d) *by repealing subsection (6)(b) and substituting the following:*

(b) the total of their damages exceeds the amount referred to in subsection (4),

(e) *in subsection (7)*

(i) *by striking out “subsections (3) to (6)” and substituting “this section”;*

(ii) *by repealing clause (a.1);*

(iii) *by striking out the words following clause (d).*

(2) If the court is satisfied on the evidence that the person named in the application was, at the time of the accident that caused the bodily injury or death or property damage giving rise to the action in which the judgment was recovered, the owner or operator, or both, of the motor vehicle involved in that accident, the court may make the order applied for, unless it is satisfied that the person would not have been liable for any damages if he had appeared and defended the action, or it may direct the trial of an issue.

8 Section 11 presently reads in part:

(3) No payment may be made out of the General Revenue Fund of

(b) any amount for loss of use or depreciation of property lost or damaged,

and any such amount shall be deducted from the applicant's claim before the amount payable to him pursuant to this section is calculated.

(4) The maximum amount, exclusive of costs, that may be paid out of the General Revenue Fund with respect to all claims arising out of one accident is

(a) \$35 000 when the accident occurred before January 1, 1974,

(b) \$50 000 when the accident occurred on or after January 1, 1974,

(c) \$100 000 when the accident occurred on or after July 1, 1978 but before January 1, 1986, or

(d) \$200 000 when the accident occurred on or after January 1, 1986.

(5) When in one accident claims result from bodily injury to or death of one or more persons and loss of or damage to property,

(a) claims arising out of bodily injury or death have priority over claims arising out of loss or damage to property to the amount of

(i) \$30 000 when the accident occurred before January 1, 1974,

(ii) \$45 000 when the accident occurred on or after January 1, 1974,

(iii) \$95 000 when the accident occurred on or after July 1, 1978 but before January 1, 1986. or

(iv) \$190 000 when the accident occurred on or after January 1, 1986,

and

9 *Section 12(e) and (f) are repealed and the following is substituted:*

- (f) in respect of bodily injury to or the death of a person occurring while the person is in or is entering into or descending from a bus or other public transportation vehicle owned and operated by a municipality unless a judgment is obtained against a person other than the municipality, or

(b) claims arising out of loss of or damage to property have priority over claims arising out of bodily injury or death to the amount of \$5000 in the case of an accident occurring before January 1, 1986 or \$10 000 in the case of one occurring on or after January 1, 1986.

(6) When

(a) 2 or more persons have claims arising out of one accident, and

(b) the total of their damages exceeds the limits fixed by subsection (4) or (5),

the amount to be paid to each person shall bear as nearly as possible the same proportion to the total amount payable as the damages of that person bear to the total amount of their damages.

(7) From the amount payable to a person as calculated in accordance with subsections (3) to (6) there shall be deducted

(a) any amount the applicant has recovered or can recover from the debtor,

(a.1) \$250, in the case of a claim arising out of loss or damage to property,

(b) any amount paid out of the General Revenue Fund pursuant to section 20 to the applicant or on his behalf,

(c) any amount paid or payable for and on behalf of the applicant under the Hospitals Act, and

(d) any amount that the applicant has recovered or can recover by reason of the existence of any prepaid medical, dental or hospital services or a contract of insurance, other than a contract of life insurance,

and the amount so determined is the amount payable out of the General Revenue Fund by the Provincial Treasurer.

9 Section 12(e) and (f) presently read:

12 When application is made for payment out of the General Revenue Fund no payment shall be made

(e) to indemnify the owner of a motor vehicle for loss of or damage to property of the owner arising out of the use or operation of that motor vehicle and for which the operator is responsible,

(f) in respect of

(i) bodily injury to or the death of a person, or

(ii) loss of or damage to property of a person.

10 Sections 13, 15 and 21 are repealed.

11 Section 31(2) is amended

(a) by repealing clause (d);

(b) in clause (e) by striking out “clauses (b) to (d)” and substituting “clause (b) or (c)”;

(c) by adding the following after clause (e):

(e.1) prescribing amounts for the purposes of section 11(2) and (4);

(d) by repealing clause (j).

occurring while the person is in or is entering into or descending from a bus or other public transportation vehicle owned and operated by a municipality unless a judgment is obtained against a person other than the municipality, or

10 Sections 13, 15 and 21 presently read:

13 Notwithstanding anything in this Act, no payment shall be made under this Act to a corporation that has complied with section 67 of the Motor Vehicle Administration Act with respect to any damage to property of the corporation arising out of the use or operation of a motor vehicle.

15 No payment shall be made under this Act for damage

- (a) to an aircraft,*
- (b) to any pipe, pole, line or equipment forming part of the distribution system of a public utility, or*
- (c) to a railway train or to a railway track or any barrier or operation equipment along the track.*

21 When a person has died as a result of injuries arising out of the use or operation of a motor vehicle, if the deceased has been the sole or main support of a family prior to the accident in which the injuries were incurred, the Minister may pay out of the General Revenue Fund a sum, not exceeding \$300 in respect of any one person, that he considers necessary to assist a member of the immediate family of the deceased to obtain training that will enable him to earn a livelihood.

11 Section 31(2) presently reads in part:

(2) The Lieutenant Governor in Council may make regulations for the purpose of carrying out this Act according to its intent and of supplying any deficiency in this Act, and without limiting the generality of the foregoing may make regulations

- (d) prescribing in respect of an application under section 5, the rules to be applied by the Administrator in evaluating the bodily injury, death, loss or damage and the extent to which different persons are liable therefor;*
- (e) authorizing the Minister or the Administrator, in his discretion or in specified circumstances, to waive compliance, in whole or in part, with any regulation made under clauses (b) to (d);*
- (j) prescribing the rates at which fees and costs may be paid to registered members, registered practitioners and professional corporations under the Chiropractic Profession Act for services rendered under this Act;*

12 The following is added after section 31:

Transitional

32 *The Motor Vehicle Accident Claims Act and the regulations under it as they read immediately before this section comes into force continue to apply to claims relating to property damage in respect of motor vehicle accidents that occur before this section comes into force.*

13 This Act comes into force on Proclamation.

12 Transitional.

13 Coming into force.