

*Bill 7*

## **BILL 7**

2006

### **MOTOR VEHICLE ACCIDENT CLAIMS AMENDMENT ACT, 2006**

*(Assented to , 2006)*

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

#### **Amends RSA 2000 cM-22**

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

**2 Section 1 is amended by adding the following after clause (a):**

(a.1) “court” means the Court of Queen’s Bench or the Provincial Court;

**3 Section 4 is amended**

**(a) in subsection (2)**

**(i) in clause (a) by adding “or dispute note, as the case may be,” after “statement of defence”;**

**(ii) in clause (c) by adding “barrister and” before “solicitor”;**

**(b) in subsection (3) by adding “or civil claim, as the case may be,” after “statement of claim”;**

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

**(6)** After making the investigation the Administrator, in the Administrator's discretion, may, on behalf of and in the name of the defendant,

(a) if the action was commenced in the Court of Queen's Bench, file a defence, examine for discovery, make payment into court, appear by counsel for trial, consent to judgment in whatever amount the Administrator considers proper in all the circumstances or take any other action that the defendant could have taken under the *Alberta Rules of Court* or any other action the Administrator considers appropriate;

(b) if the action was commenced in the Provincial Court, file a dispute note, make payment into court, appear by counsel or agent for trial, consent to judgment in whatever amount the Administrator considers proper in all the circumstances or take any other action that the defendant could have taken under the *Provincial Court Act* or any other action the Administrator considers appropriate.

**(d) in subsection (9) by striking out "the solicitor" and substituting "a barrister and solicitor or any person who is";**

**(e) in subsection (10) by striking out "solicitor" and substituting "barrister and solicitor or any person who is";**

**(f) by adding the following after subsection (11):**

**(12)** Subsection (2)(b) and (c) apply only to an action commenced in the Court of Queen's Bench.

**4 Section 5(6) is amended by adding "barrister and" before "solicitor" wherever it occurs.**

**5 Section 6 is amended**

**(a) in subsection (2)**

- (i) by adding** “barrister and” **before** “solicitor”;
- (ii) by adding** “or notice of application, as the case may be,” **after** “notice of motion”;

**(b) in subsection (4) by adding** “or civil claim, as the case may be,” **after** “statement of claim”.

**6 Section 9(1) is amended by adding** “or notice of application, as the case may be” **after** “originating notice”.

**7 Section 11(e) is amended by striking out** “a person other” **and substituting** “a defendant other”.

**8 Section 15 is amended by adding the following after subsection (2):**

- (3) This section applies only when**
  - (a) the applicant is represented by a barrister and solicitor, and
  - (b) a bill of costs is required to be submitted pursuant to the *Alberta Rules of Court*.

**9 Section 16(1)(b) is repealed and the following is substituted:**

- (b) the costs on a party and party basis calculated
  - (i) in the case of a judgment of the Court of Queen’s Bench, under the column of Schedule C to the *Alberta Rules of Court* that is applicable to the amount of the judgment, notwithstanding that the court may have awarded costs in any multiple of or in any way greater than the costs specified in that column;

- (ii) in the case of a judgment of the Provincial Court, under the provisions of the *Provincial Court Fees and Costs Regulation* (AR 18/91) that are applicable to the amount of the judgment, notwithstanding that the court may have awarded costs in any multiple of or in any way greater than the costs specified in that Regulation.

**10 Section 17 is amended**

- (a) in subsection (7) by adding “or civil claim” after “statement of claim”;

- (b) by repealing subsection (8) and substituting the following:

(8) If subsection (7) is not complied with, a statement of claim or civil claim is not invalidated, but the Administrator on application made at any time before judgment or settlement is entitled to have the statement of claim or civil claim amended to include a claim for the special damages required to be claimed by subsection (7).

- (c) by repealing subsection (10) and substituting the following:

(10) When subsection (7) is not complied with and the plaintiff obtains a judgment or settlement that does not include an award of special damages for the hospital, medical and ambulance expenses or rehabilitation costs incurred by the plaintiff, if the judgment is satisfied or the settlement is concluded, the Administrator may claim from the successful plaintiff the amount paid pursuant to this section in respect of the hospital, medical and ambulance expenses or rehabilitation costs of the plaintiff.

**11 Section 18 is repealed and the following is substituted:**

**Court procedures**

- 18** Except as otherwise provided in this Act,

- (a) the *Alberta Rules of Court* apply to applications and actions brought under this Act in the Court of Queen's Bench, and
- (b) the *Provincial Court Act* applies to applications and actions brought under this Act in the Provincial Court.

**12 Section 25(2)(h) is amended by striking out** "to barristers and solicitors".

### **Explanatory Notes**

**1** Amends chapter M-22 of the Revised Statutes of Alberta 2000.

**2** Definition of court.

**3** Section 4 presently reads:

*4(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 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.*

*(3) If a notice is served pursuant to subsection (1) or (2), a copy of the statement of claim and every subsequent pleading in the action shall be served on the Administrator by the party to the action who issues or files it.*

*(4) The Administrator may at any time within the 30 days mentioned in subsection (1) or (2) notify the plaintiff that the Administrator intends to make an investigation, and the plaintiff shall not take the next step in the action until 30 days after being so notified by the Administrator.*

*(5) In an action where it appears that a claim may be made under this Act, the Administrator may on notice to the plaintiff and defendant apply to be added as a party and, on being so added, may take any steps the Administrator considers proper to protect the interests of the General Revenue Fund.*

*(6) After making the investigation the Administrator in the Administrator's discretion may, on behalf of and in the name of the defendant, file a defence, examine for discovery, make payment into court, appear by counsel for trial, consent to judgment in whatever amount the Administrator considers proper in all the circumstances or take any other action that the defendant could have taken under the Alberta Rules of Court or any other action the Administrator considers appropriate.*

*(7) The Administrator may disclose in any pleading by which the Administrator is taking steps under this section that the Administrator is appearing on behalf of and in the name of the defendant pursuant to this section.*

*(8) All acts done by the Administrator in accordance with subsection (6) are deemed to be the acts of the defendant and the Administrator shall not be named*

*as a defendant in the action and no judgment shall be given against the Administrator.*

*(9) The defendant is deemed to consent and agree with any steps or action taken by the Administrator pursuant to this section and performed by the solicitor acting on instructions from the Administrator.*

*(10) Nothing in this section and no action or steps taken under this section shall be construed to the effect that a solicitor acting on the*

*instructions of the Administrator is actually acting on behalf of the defendant.*

*(11) If the defendant is a minor, the Administrator may exercise the rights of and defend the action in the name of the defendant without the appointment of a guardian ad litem and may assert a counterclaim on behalf of the minor without a next friend.*

**4** Section 5(6) presently reads:

*(6) If the judgment debtor is represented by a solicitor, the judgment creditor may serve a copy of the assignment on that solicitor and that service is deemed to be service on the judgment debtor.*

**5** Section 6 presently reads in part:

*(2) If the Minister gives notice pursuant to subsection (1), the applicant may, within 3 months of the time the applicant or the applicant's solicitor of record is notified, apply by notice of motion to the court in which the judgment was obtained for a finding or determination in respect of any matter in connection with the application for payment.*

*(4) When the judgment is set aside the plaintiff shall serve a copy of the statement of claim on the Administrator who, on being served, may dispute the liability of the defendant to the plaintiff as provided in section 4.*

**6** Section 9(1) presently reads:

*9(1) When judgment has been obtained under section 7 against the Administrator as nominal defendant, the Administrator may at any time afterwards, 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 in respect of which the judgment was obtained.*

**7** Section 11(e) presently reads:

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

- (e) 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*

**8** Section 15 presently reads:

*15(1) No money shall be paid under this Act under or in respect of an order or judgment until there is filed with the Administrator the bill or bills of costs on a solicitor and client basis of the barrister and solicitor acting or who acted for the applicant in the application or action that resulted in the order or judgment, either taxed by the clerk of the court or having endorsed on it or annexed to it,*

- (a) a signed certificate of the barrister and solicitor, in the prescribed form, certifying that the barrister and solicitor has explained to the applicant the right to have the bill taxed by the clerk of the court, and*



(b) *a signed acknowledgement of the applicant, in the prescribed form, acknowledging that the right to have the bill taxed by the clerk of the court has been explained to the applicant and is understood by the applicant.*

(2) *No amount shall be charged or received either directly or indirectly for legal services in connection with an application or action referred to in subsection (1), other than the amounts set out in a bill of costs taxed by the clerk of the court or certified and acknowledged as provided in subsection (1).*

**9** Section 16(1)(b) presently reads:

*16(1) When a payment is made out of the General Revenue Fund in respect of a judgment, the Administrator shall authorize payment out of the General Revenue Fund of costs of the action not exceeding*

(b) *the costs on a party and party basis calculated under the column of Schedule C to the Alberta Rules of Court that is applicable to the amount of the judgment, notwithstanding that the court may have awarded costs in any multiple of or in any way greater than the costs specified in that column.*

**10** Section 17 presently reads in part:

(7) *When*

(a) *hospital, medical and ambulance expenses or rehabilitation costs have been paid to or to the order of any person pursuant to this section, and*

(b) *that person begins or joins or is joined as a plaintiff in an action arising out of the use or operation of a motor vehicle through which*

*were sustained the injuries in respect of which those expenses or costs were paid,*

*the statement of claim shall include a claim for special damages for those hospital, medical and ambulance expenses and rehabilitation costs incurred by that person.*

*(8) If subsection (7) is not complied with, a statement of claim is not invalidated, but the Administrator on application made at any time before judgment is entitled to have the statement of claim amended to include a claim for the special damages required to be claimed by subsection (7).*

*(10) When subsection (7) is not complied with and the plaintiff obtains a judgment that does not include an award of special damages for the hospital, medical and ambulance expenses or rehabilitation costs incurred by the plaintiff, if the judgment is satisfied, the Administrator may claim from the successful plaintiff the amount paid pursuant to this section in respect of the hospital, medical and ambulance expenses or rehabilitation costs of the plaintiff.*

**11** Section 18 presently reads:

*18 Except as otherwise provided by this Act, the Alberta Rules of Court apply to applications and actions brought under this Act.*

**12** Section 25(2)(h) presently reads:

*(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*

*(h) prescribing the costs to be paid to barristers and solicitors for services performed in connection with proceedings under this Act*

*subsequent to obtaining judgment and  
providing for the payment of the costs  
including the disbursements out of the  
General Revenue Fund;*