



Subrogation

– Paying Back Benefits to Insurers –

This Info Sheet provides basic information on subrogation; it is not meant to be a substitute for legal advice. Seek legal advice if you are unsure of your rights and obligations.

Subrogation

ICBC is a secondary insurer and can require that you seek medical care and income loss benefits from other insurers when you are injured. If you do access such benefits from other insurers and then receive compensation through ICBC because of a Personal Injury Claim, those other insurers can ask you for their money back. This is one form of subrogation.

Subrogation is the legal responsibility to pay back the private insurer for benefits they paid you. This only applies if you are compensated for your injuries by another insurer, for example ICBC, through a Personal Injury Claim. A Personal Injury Claim is made by an innocent victim of a motor vehicle accident, for full compensation.

For more information on making these claims, see our **Info Sheet 1, *Making a Personal Injury Claim – Innocent Victims of Accidents.***

Subrogation Agreement

Usually, before your medical care or income loss insurer makes payments to you, they will require you to sign a subrogation agreement if they are aware your injuries occurred in a motor vehicle accident. Or they may simply rely on a subrogation clause in your policy.

You should be aware of whether or not such a clause or agreement exists.

Subrogation and Deductions

Generally, you can deduct your legal fees, (in connection with compensation from your Personal Injury Claim), before paying back your private insurer. This works to your advantage if you are an employed person.

For example, if over a two year period your gross income loss was \$60,000, you would recover \$45,000 (net of taxes) from ICBC if you had 100% compensation. If during that two year period, your disability insurer paid you 60% of your gross income loss (\$37,500 or \$30,000 net of tax), then the insurer would seek reimbursement for that amount from your Personal Injury Claim.

However, they are only entitled to a smaller amount.

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<p>Subrogation and Deductions, continued</p>	<p>First of all, the \$45,000 would be reduced by approximately \$12,000 for the taxes, HST, and the lawyer's fees you paid in order to get that recovery. For the purposes of a subrogation agreement, you would be considered to have recovered not \$45,000, but rather \$33,000 in your Personal Injury Claim (\$45,000 net wage loss minus taxes and legal fees of \$12,000) from your disability insurer. If your net loss was \$45,000, then there would be an argument that you had recovered \$70,500 (the \$33,000 from the Personal Injury Claim and the \$37,500 from your disability insurer). If we take away the original net loss of \$45,000, you have an over-recovery of \$25,000 (\$70,500 minus \$45,000) and your disability insurer could look to have that money paid back.</p> <p>The end result is that you pay back the disability insurer \$25,000 of the \$37,500 they gave you. Effectively, the disability insurer paid your legal fees on that part of the claim and you have 100% of your net income in your pocket.</p>
<p>Subrogation and Extended Medical Benefits</p>	<p>The same kind of principle applies with respect to extended medical benefits. Essentially, your private/group plan pays those benefits, but looks to you to pay back your recovery on those items, (net of your legal fees and expenses in incurring them).</p> <p>Even if your extended medical benefit insurer does not require that you pay them back, you may want to be aware of the lifetime obligations or liability in your plan.</p> <p>Many people are not aware of this, but it is quite common for plans to have lifetime caps, which means that, for example, you can only have \$20,000 worth of dental care in your life under this plan. If that is the case and your teeth are injured in a car accident, you could use up \$20,000 worth of benefit very quickly. At that point, it could be a very good idea for you to insist on getting repayment of those benefits in your Personal Injury Claim so that you can re-establish your cap, and have access to the full \$20,000 in the future.</p> <p>Whether or not it is a good idea to do this requires a careful consideration of the terms of the plan and the likelihood of you incurring costs to the limit of the cap.</p>
<p>Subrogation and Sick Banks</p>	<p>Sick Banks are another matter.</p> <p>Some company policies require employees to reimburse Sick Banks if they recover the lost wages as part of a Personal Injury Claim.</p> <p>Some do not require this, but permit it, and a careful decision has to be made in each individual case.</p> <p>Generally, reimbursing a Sick Bank is not a good idea if your employer doesn't allow you to accrue Sick-Bank time over the lifetime of the policy.</p> <p>Your Sick-Bank entitlement belongs to you, not to the person who hurt you. The at-fault driver is not entitled to insist that you use up your Sick Bank time to cover a wage loss he owes you.</p> <p>This is a very important concept because ICBC may claim it does not have to compensate you, as you received Sick Bank time. This is just simply not true in 98% of the cases.</p>