

Ice, Snow And Your ICBC Personal Injury Claim

Snow in BC has two reliable results 1. Car Accidents, 2. Phone call to BC personal injury lawyers about those car accidents. The second is particularly true for Victoria personal injury and ICBC claims lawyers because of the local populations relative inexperience dealing with winter driving conditions.

In anticipation of the almost certain phone calls I will receive this week as a Victoria ICBC claims lawyer I write this post.

If you are the driver involved in a single vehicle accident in British Columbia, and you lost control due to the weather, all you can likely claim from ICBC are [Part 7 Benefits](#) (also referred to as no fault benefits). There is (except in some unusually peculiar situations such as an ICBC insured driver contributing to the road hazards) in all likelihood no claim from ICBC for pain and suffering (non-pecuniary damages) in these circumstances. A person's right to claim [pain and suffering and other "tort" damages](#) only arises if someone else is at fault for your injuries. In these single vehicle accidents you usually only have yourself or the weather to blame, and last time I checked you can't sue mother nature.

If someone else contributed to the accident (perhaps the road maintenance company for failing to act in a timely fashion or perhaps a mechanic for failing to bring your vehicle up to snuff last time you had it inspected) you will have to make a claim against them. Chances are they are not insured through ICBC for such claims and instead you will have to go against their policy of private insurance.

Now, if you are a passenger in a single vehicle, weather related accident, you may very well have a claim for pain and suffering. This claim would be against your driver (except perhaps in the unusual circumstances mentioned above). If your driver did not operate the vehicle safely in all the circumstances (for example driving too fast for the known or anticipated poor road conditions) and this caused or contributed to the collision then you have a tort claim. Assuming the driver is ICBC insured then you have the right to apply for both no-fault benefits from your own insurance and make a tort claim against the driver that will be covered through his third party liability ICBC insurance.

If you are advancing a tort claim against a driver be weary of the defence of "inevitable accident". ICBC defends claims. One of the best defences to a weather related accident is that it was "inevitable". What this means is that the driver, operating safely, could not have avoided losing control of his vehicle. If this can be proven then the tort claim can be defeated.

People naturally don't want to get those known to them in trouble and it is all too common that when reporting such a claim to ICBC passengers too readily agree to how unexpected the accident was and how the driver was operating the vehicle very carefully. If this is true that's fine. My words of caution are as follows: If the driver was not safe (I'm not talking about driving like a maniac here, I'm talking about driving less than carefully for the winter driving conditions) and you give ICBC the alternate impression with a view towards helping the driver out, the result may be severely damaging your ability to bring a tort claim.

Tell the truth and know what's at stake when doing so. If ICBC gets the false impression that the accident was inevitable you will have a much harder time advancing or settling your ICBC tort claim. The bottom line is this: If an accident truly is inevitable and there is no tort claim so be it, but, don't lead ICBC to this conclusion if it isn't true. Doing so will hurt your claim for pain and suffering.