

May 9, 2008 (updated to October 21, 2008)



BRITISH COLUMBIA MOVES TO RECOVER HEALTH CARE COSTS IN PERSONAL INJURY LITIGATION



HEALTH CARE COSTS RECOVERY ACT – BILL 22

On May 29, 2008, the *Health Care Costs Recovery Act* (Bill 22) was passed into law. It will take effect when supporting regulations are prepared, possibly in early 2009, and will have a major impact on personal injury litigation in British Columbia. The *Act* grants the Minister of Health an independent cause of action against third party tortfeasors to recover the cost of past and future health services provided by the Ministry to injured plaintiffs. Most parts of the *Act* will apply to all legal proceedings commenced before it comes into force, though several important provisions – such as requiring plaintiffs to claim for the costs of health services or seek government approval before settling – will only apply to subsequent proceedings.

WHAT HEALTH CARE COSTS ARE RECOVERABLE?

Health care services includes hospital benefits, medical benefits, payments made under the *Continuing Care Act*, emergency health expenses and “any other act or thing, including, without limitation, the provision of any health care treatment, aid, assistance or service or any drug, device or similar matter associated with personal injury” for which an expense is paid by the Ministry or as prescribed.

Where a plaintiff has commenced an action for personal injury or death, the plaintiff must include a claim for health care services. The plaintiff must notify the Minister, in prescribed form, of the legal proceeding within 21 days of commencement of the proceeding. The *Act* also provides that the Minister may intervene in or assume the conduct of the health care portion of a proceeding, or even commence its own action in respect of the recovery of its costs.

PRACTICAL IMPACT TO THE INSURANCE INDUSTRY

The *Act* is similar to, but broader in effect, than cost recovery statutes in other jurisdictions. For example, it provides that an insurer who knows an insured has or may have caused or contributed to the personal injury or death of another person *must* within 60 days after learning of the matter notify the Minister, in a form to be prescribed. The Minister may request specified documents from the insurer. The *Act* also requires plaintiffs and defendants to notify the Minister of potential settlements of their disputes, and prohibits the settlement or release of claims without the written

consent of the Minister.

As passed, the *Act* will not apply to personal injury or death arising out of:

- a) a wrongdoer's use or operation of a motor vehicle if the wrongdoer has, when the injury is caused, coverage under a plan of insurance defined in the *Insurance (Vehicle) Act* of British Columbia (namely an ICBC insured);
- b) a tobacco related wrong as defined in the *Tobacco Damages and Health Care Costs Recovery Act*; or
- c) the course of employment if compensation is paid or payable by WCB out of the accident fund under the *Workers Compensation Act*.

Under this new *Act*, insurers will be required to assess claims for costs associated with attendances at practitioners' offices among other aspects of plaintiffs' medical costs. Insurers will also have to develop systems to notify the Minister of potential claims for cost recovery. One has to wonder whether we will soon be utilizing the amount of medical expenses paid as a means of assessing pain and suffering awards as is done in many United States jurisdictions.

To read the *Act* as passed, please see http://www.leg.bc.ca/38th4th/3rd_read/gov22-3.htm.

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