

THE ALBERTA MOTOR VEHICLE ACCIDENT CLAIMS PROGRAM



• Information Resource •

Your guide to claiming for personal injury
damages through the Motor Vehicle
Accident Claims Program of Alberta



The Alberta Motor Vehicle Accident Claims Program



The Alberta Motor Vehicle Accident Claims Program

WHAT'S IN THIS INFORMATION PACKAGE

This brochure explains the kinds of claims eligible under Alberta's Motor Vehicle Accident Claims Program and how to make a claim.

OVERVIEW OF THE PROGRAM

Motor vehicle accidents occur in Alberta every day and often they involve personal injuries. Under Alberta law, a fault-based system is used to determine which driver(s) contributed to the accident. When someone contributed to the accident (wholly or in part), they are said to be "at fault" for the accident and for any injuries, death or property damage that resulted. If a driver is at-fault for the accident he or she may have to pay the victim or their survivors for the injuries, deaths or property damage that were caused. This is referred to as liability. If the driver was not the owner of the vehicle, this liability may also extend to the owner if the driver was driving the vehicle with the owner's consent.

Because the monetary value of the damages arising from a motor vehicle accident can be large, all vehicle owners and drivers in Alberta are required to have valid liability insurance. There are a few who do not, and they usually don't have the money to pay for the personal injuries or death that they have caused. Sometimes the at-fault driver flees the scene of the accident, and the injured victim doesn't know who to sue.



The Motor Vehicle Accident Claims Program, created in 1947 by the *Motor Vehicle Accident Claims Act*, protects those victims by ensuring they have recourse to claim against uninsured and unidentified motorists for their personal injuries.

After reading this brochure, you may wish to seek legal advice as, except in limited circumstances, a lawsuit must be commenced in order to obtain payment of damages under this program. If you wish, you may also begin your own lawsuit without a lawyer. To learn more about this, check the Alberta Justice and Solicitor General website under Civil Claims (<https://albertacourts.ca/provincial-court>) for information on how to commence a civil claim.



HOW TO CONTACT US

For the latest information regarding updates to the Alberta Motor Vehicle Accident Claims Program, please refer to our website at www.justice.gov.ab.ca/mvac/default.aspx.

If you have additional questions, or if you wish to make a comment about this brochure, please call Motor Vehicle Accident Claims (MVAC) at 780-427-8255. If you prefer, you can call toll-free from anywhere in the province by dialing the RITE system at 310-0000. You can also write us at:

**Motor Vehicle Accident Claims Program
Suite #600, 6th Floor, 10123 – 99 Street
Edmonton AB T5J 3H1**

You can email a question to us by going to the Government of Alberta website (www.gov.ab.ca/contact.cfm). Please be sure to direct your question to “the Motor Vehicle Accident Claims Program.”

A Note About Property Damage: As of June 1, 1997, the Motor Vehicle Accident Claims Program no longer compensates victims for damage to their vehicle or contents, for deductibles on insurance policies, or for loss of use. Owners are expected to carry optional coverage on their vehicles to cover these types of losses.

KEY POINTS ABOUT THE ALBERTA MOTOR VEHICLE ACCIDENT CLAIMS PROGRAM

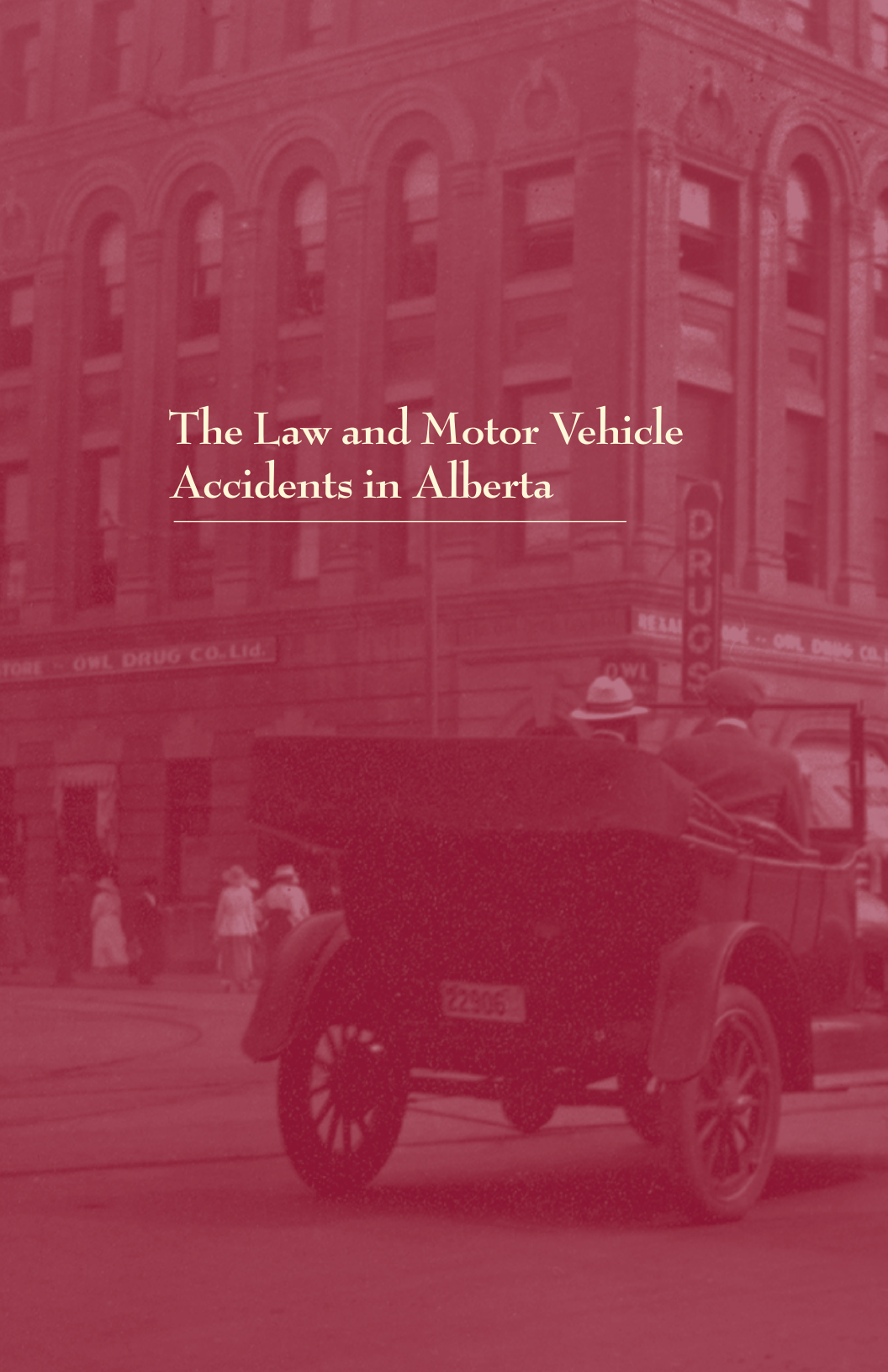
- Your injuries must result from a motor vehicle accident that occurred in Alberta.
- The accident must have been the fault of another person.
- You must have been an Alberta resident at the time of the accident or be from a jurisdiction that has a program similar to the MVAC Program that would provide coverage to Albertans injured in that jurisdiction.
- If the identities of the owner and/or driver of the at-fault vehicle are known, they must have been uninsured at the time of the accident.
- If the identities of the owner and/or driver are not known and cannot be determined (as in the case of a “hit and run” accident), you must make reasonable efforts to try to identify them and notice of your claim must be provided to MVAC within 90 days of the accident.
- In cases involving uninsured at-fault vehicles, you must commence a lawsuit in an Alberta Court against all persons and corporations that could be liable for the accident.
- In cases involving unknown owners and/or drivers a lawsuit must be commenced against, “The Administrator of the *Motor Vehicle Accident Claims Act*” unless the total value of the claim is \$25,000 or less and your claim can be settled, with the agreement of MVAC, within 2 years of the date of the accident.
- Any claims that are to be paid under the MVAC Program must be reviewed by and approved by MVAC.

Disclaimer: The purpose of this booklet is to provide you with information about the Motor Vehicle Accident Claims Program. It is not intended to cover all possible situations and should not be considered as legal advice.

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The Law and Motor Vehicle Accidents in Alberta





The Law and Motor Vehicle Accidents in Alberta

THE LAW AND MOTOR VEHICLE ACCIDENTS IN ALBERTA

Suing for personal injuries or death can be straightforward or it can be very complicated, depending on the circumstances. Either way, there are many things you should know about the law in order to assess whether you should sue and who you should sue.

The list below is not exhaustive, but is intended to help you understand your legal rights and obligations in Alberta. Once you have read this information, you may wish to consult with a lawyer if you are still unsure about these rights and obligations. At the end of this document there are some helpful links where you may get more advice.

BASIC REQUIREMENTS

Under the *Motor Vehicle Accident Claims Act*, the injuries or death had to have happened in Alberta and it had to be the result of a motor vehicle accident.

In addition, the victim has to be a resident of Alberta or be from a jurisdiction that has a program similar to this one that would cover Albertans. You may claim as a pedestrian if you were hit by a vehicle. If the accident occurred outside Alberta, then you need to investigate how to make a claim in that jurisdiction – the MVAC Program cannot respond to your claim. Also, you must have sustained injuries, not just property damage. As already mentioned, the Motor Vehicle Accident Claims Program does not cover damage to your vehicle or its contents, your insurance deductible, or loss of use. You can still include your property damage losses in your lawsuit in order to get a judgment against the defendant, but MVAC will not consent to the payment of these damages.

To seek compensation under the *Motor Vehicle Accident Claims Act*, you must sue the person(s) who are liable for the accident and your injuries. This could include the drivers and owners of all other vehicles involved in the accident, and possibly the driver of your vehicle if you were a passenger. The list may include corporations if any vehicle was owned by a company or any driver involved in the accident was driving in their capacity as an employee of that company. It also may include licensed drinking establishments or private hosts if the person that caused the accident was intoxicated.

Above all, the accident had to be the fault of an uninsured or an unknown driver (more on that later). If any at-fault person was insured at the time of the accident you must seek compensation from that person and his or her insurance company. You may sue if you were the passenger in a vehicle that was involved in a single-vehicle accident but you do not have a valid lawsuit if you were the sole cause of the accident. The accident must have been someone else's fault in order for you to sue.

HOW DO I START MY LAWSUIT

The first thing to consider is whether to sue in Provincial Court or in the Court of Queen's Bench. The monetary limit in Provincial Court is \$50,000, exclusive of interest and costs.

Provincial Court can often be faster, less expensive, and less legally complicated than the Court of Queen's Bench. Note: as stated on page 4, if the total value of the claim against the MVAC Administrator is less than \$25,000 and if your claim can be settled with the agreement of MVAC within two years of the date of the accident, it may not be necessary to initiate a lawsuit.

To seek compensation under the *Motor Vehicle Accident Claims Act*, you must sue the person(s) who are liable for the accident and your injuries. The accident had to be the fault of an uninsured or an unknown driver. The accident must have been someone else's fault in order for you to sue.



MVAC's maximum combined payment for all victims of an accident is \$200,000. If your injuries are serious enough that your settlement exceeds MVAC's payment limit, you may be able to get additional compensation from your own insurance company through your SEF 44 endorsement.

(Note: the monetary limit of the MVAC Program is \$200,000 for all claims arising out of any one accident. If more than one person is injured in an accident, and the aggregate value of all claims exceeds \$200,000 each claimant will receive a proportional share of the \$200,000 limit.)

If your claim exceeds \$50,000, you will have to sue in the Court of Queen's Bench. The Court of Queen's Bench can be more procedurally complex, but you can seek higher compensation for your damages and it may be a more appropriate legal process if there is a dispute regarding liability, consent or negligence.

Other than the monetary limits, there are some procedural differences between Provincial Court and the Court of Queen's Bench, and some of the terminology is different (e.g.: a Statement of Claim in the Court of Queen's Bench is called a Civil Claim in Provincial Court).

The Alberta Justice website has information to help you to draft your Statement of Claim or Civil Claim, and the same information is available at any Alberta Justice courthouse.

Go to: www.albertacourts.ca for more information.

WHAT IF MY INJURIES EXCEED THE PROGRAM'S PAYMENT LIMIT

As previously mentioned, the monetary limit of the MVAC Program is \$200,000 (plus legal costs) for all claims arising out of any one accident. If your injuries are serious enough that your damages exceed MVAC's payment limit, you may be entitled to additional compensation from your own insurance company.

Many Albertans purchase optional insurance coverage to protect them if they are seriously injured in a motor vehicle accident and the at-fault person didn't carry sufficient liability insurance. This type of optional insurance, called a Family Protection Endorsement or an "SEF 44" endorsement, may provide additional coverage if you are involved in an accident with an uninsured or unknown driver. If you carry this coverage, it will be necessary for you to name your SEF 44 insurance carrier in your lawsuit in order to access these funds.

Immediately after an accident, you should notify your insurance company in order to find out what coverage may be available to you. Many insurance companies also have comprehensive websites that explain the different coverage they offer.

HOW MUCH TIME AFTER THE ACCIDENT DO I HAVE TO FILE MY LAWSUIT?

You normally have two years from the date of your accident to file your lawsuit in an Alberta Court. From the point that you file your lawsuit, you have one year to serve your claim on the defendant(s). After that, you are expected to keep your lawsuit moving forward by taking material steps to get a decision at Court. If you have not taken any such steps in three years, your lawsuit may be struck out by the Courts.

You normally have two years from the date of your accident to file your lawsuit in an Alberta Court.

The *Motor Vehicle Accident Claims Act* establishes an additional time requirement for claims arising as a result of a hit-and-run or any other accidents where the owner and/or driver of the at-fault vehicle is unknown. In such cases notice of the claim must be provided to the Administrator of the *Motor Vehicle Accident Claims Act* within 90 days of the date of the accident. This time limit may be waived by the Administrator or extended by the Court in appropriate circumstances.

IS THIS REALLY A CLAIM AGAINST MVAC?

Sometimes it is obvious that the at-fault person was uninsured (as in the case where the at-fault driver had stolen the vehicle or was convicted of driving without insurance), other times, it is not so obvious (or even who was at fault).

The first principle governing the Motor Vehicle Accident Claims Program is that we are the payor of last resort.

If there is insurance that could cover your claim MVAC should not be involved. If any other driver (including the driver of your vehicle, if you were a passenger) or any other owner was even partially at-fault for the accident and that person is insured, there will be no claim against MVAC. As an example, if a vehicle ahead of you swerved out of control, but it was a vehicle behind you that actually struck your vehicle, the driver of the vehicle that swerved may be partially at-fault for the accident even though he or she did not actually hit your vehicle as that driver may have been traveling at an unreasonable speed given road or traffic conditions or may not have been keeping a proper lookout. In such a case, you must sue not only the owner and driver of the vehicle that struck you but also the owner and operator of the vehicle that swerved. If either one is insured, MVAC will probably not be involved in your lawsuit.



In terms of insurance coverage, there may be circumstances where the at-fault driver appears to be uninsured but actually is insured. It is common for a vehicle owner to deny that the driver had consent to possess or operate the vehicle, but the law does not permit all forms of these defences. For instance, a vehicle owner cannot usually argue that consent was not given if the driver was living with and as a member of their household. You should thoroughly investigate insurance coverage before involving MVAC.

There is another aspect to consider when the accident was caused by a drunk driver. It is important to investigate the circumstances of how that person became intoxicated and if the host (if there was one) fulfilled their obligations to prevent that person from driving. This is particularly critical if the at-fault driver was drinking at a licensed establishment.

Additionally, just because an insurance company denies coverage doesn't mean that there was no insurance. As an example, if you are involved in an accident with an impaired driver his insurer may well deny coverage yet ultimately be required to pay your claim up to certain specified limits.

WHAT IF I DON'T KNOW WHO THE AT-FAULT DRIVER OR OWNER WAS?

The Motor Vehicle Accident Claims Program will normally cover your personal injury damages even if you were unable to identify the at-fault driver and/or owner so long as you can demonstrate that you took reasonable steps to try and identify him or her. This may include taking details at the scene of the accident, cooperating with the police and canvassing for witnesses.

If it can be shown that you had the opportunity to obtain details from the at-fault driver at the time of the accident or from witnesses, but you failed to do so, your claim may be denied or defended on that basis.

Also, because it is important that MVAC be afforded the opportunity to investigate claims as quickly as possible after accidents involving unknown owners and or drivers, you must notify MVAC of your claim within 90 days of the accident. See “How Do I Start My Lawsuit.”

In terms of drafting your lawsuit, any unidentified operators and owners are typically described as “John Doe #1,” John Doe #2,” etc. You may substitute “Jane” for any of these if you have reason to believe that that person was female. Unknown corporate defendants are typically described as “ABC Corporation.” “The Administrator of the *Motor Vehicle Accident Claims Act*” should also be included as a named defendant when the at fault party is not known.

WHAT IF I CONTRIBUTED TO THE ACCIDENT?

In some accidents, fault may be apportioned between multiple parties, including an injured claimant, where it is determined that that person either contributed to the accident (negligent operation of his vehicle) or his injury (failure to wear a seat belt). In such cases the damages that are awarded will be reduced to reflect the amount of the contribution.

WHAT IF I DIDN'T KNOW THE VEHICLE WAS UNINSURED?

Every vehicle in Alberta is required to have third party liability insurance. Driving while uninsured is a serious offence that is punishable by a fine of not less than \$2,500, or, in default of payment, imprisonment for not less than 45 days. As an owner, it is your responsibility to make sure that your vehicle is insured. As a driver, you

should always make sure that any vehicle you drive is insured before you get behind the wheel. This will include rental vehicles – if your name is not listed on the rental agreement as a driver, you may not be insured.

It is your responsibility to ensure that your insurance company has your current contact information, including an up-to-date mailing address. An insurance company is only obligated to send a renewal notice to their insured's last known address by ordinary mail. If mail is returned as undeliverable, an insurance company is not required to take any further steps to locate its insured.

Every vehicle in Alberta is required to have third party liability insurance, and driving while uninsured is a serious offence. As an owner, it is your responsibility to make sure any vehicle you own is insured. As a driver, you should always make sure that any vehicle you agree to drive is insured before you get behind the wheel.

It is your obligation to advise your insurance company when you acquire another vehicle, whether that vehicle is intended to temporarily or permanently replace the vehicle described in an insurance policy. In some circumstances you have a 14-day grace period from the date that you purchase the vehicle to request that the replacement vehicle be covered under your existing policy. However, there are many



exceptions and limitations to this grace period, so you should never assume that you have coverage on a newly purchased vehicle. The best advice is to contact your insurance company before you take possession of a new vehicle to be sure that that vehicle is insured.

If you are paying insurance premiums by installments and you miss a payment or if your cheque is returned for non-sufficient funds (NSF) your insurance company may cancel your insurance policy by providing 15 days written notice to you, mailed to your last known address by registered mail. If that letter is not picked up or if it is sent to an “old

address” your insurance company is under no obligation to make sure you get notice. It will cancel your insurance on the date indicated in the notice after which date you will be driving without insurance, whether you realize it or not.

Having said that, an insurance company is obligated to prove that it took the steps mentioned above. If it failed to send proper notice, failed to update its records when you provided it with a new address, or failed to maintain documented proof that it took the required steps to cancel your policy, it may not be able to successfully deny coverage.

There are some additional things you can do to protect yourself. If you intend allowing someone in your household to let drive your vehicle, inform your insurance company immediately. If you take a vehicle off the road and store it, remove the license plates and advise your insurance company. If you sell a vehicle, even to a scrap yard, make sure to remove the license plate and cancel both your registration and insurance. If you fail to do so, you may still be considered to be the legal owner of that vehicle. Also, don't drive a friend's vehicle if you're not sure it is insured – don't even get in as a passenger. And remember, off-road vehicles also need to be insured especially if they're ever going to be on a public roadway or if you let other people drive them.

**I WAS IN A TAXI,
BUS OR LIMOUSINE.
I THOUGHT THE
DRIVER WOULD
GET THE
INFORMATION I
NEEDED. WHAT DO
I DO NOW?**

Every person who is injured in an accident, or who thinks they may be injured, has an obligation to obtain as much information as they can at the scene of that accident, including the particulars as to the registration and insurance for the vehicles involved. If you don't take reasonable steps to comply with this obligation, MVAC can deny payment of any judgment you may obtain. However, if you were a customer in a vehicle that was operating as a commercial vehicle for hire or a common carrier (a taxi, bus or limousine), the driver and owner of that vehicle may have certain obligations to you to acquire that information on your behalf and to safeguard it in case of a future lawsuit. If the driver did not do this, or if the company that owned the vehicle did not train the driver to do so, they may be liable for your damages even if MVAC denies your claim.

Every person who is injured in an accident, or who thinks they may be injured, has an obligation to get as much information as they can at the scene of that accident. If you do not fulfill this responsibility in a reasonable way, MVAC can deny payment of any judgment you may obtain.

**HOW DO I PAY FOR
MY REHABILITATION?**

Every insured person, including pedestrians, has access to medical payments through their own auto insurance policy (commonly known as “Section B coverage”). If you were not insured you may still be covered by the insurance policy of another member of your household. You should check with your (and their) insurance company for more details.



Effective October 1st, 2004, coverage for medical treatments under your insurance policy has a limit of \$50,000. The benefit only lasts for two years from the date of the accident and there are some restrictions on this coverage.

If you have used up your own medical insurance coverage, and you have commenced a lawsuit, you may be able to apply to the defendant's insurance company for payment of your ongoing expenses. Section 581(4) of the Insurance Act permits the defendant's insurer to pay you for your medical costs on a "without prejudice" basis, meaning their payments to you are not an admission of their client's liability.

If the defendant was uninsured, and you have exhausted all of your own Section B medical coverage, you can apply to the MVAC Program for reimbursement of your interim medical expenses. You still have to sue the defendant to be eligible to claim under this program. Contact us for more details on how to qualify for interim medical benefits, and we will provide you with the appropriate forms for completion, along with a list of documents that we will need in order to consider your application. Please note that any amounts that may be paid to you by MVAC for medical costs will be deducted from any final settlement for your personal injury claim.

Every insured person has access to medical payments through their own auto insurance policy (commonly known as "Section B coverage"). Effective October 1st, 2004, coverage for medical treatments under your insurance policy has a limit of \$50,000.

A vintage ambulance is the background of the page. The ambulance is dark-colored with white text and a cross symbol. The text on the ambulance includes "AMBULANCE" and "PHONE. 31116.". A man in a dark suit and tie stands in front of the ambulance. The ambulance has large spoked wheels and a steering wheel visible through the open driver's side door.

Some Technical Details About the MVAC Act

Suing in Provincial Court and the Court of Queen's Bench

Basic Steps to Getting Paid Once Your Lawsuit is Settled

Judgment Forms

Repaying Your Debt as a Defendant



Some Technical Details About the MVAC Act

SERVING DOCUMENTS ON THE DEFENDANT

In order to claim under the Motor Vehicle Accident Claims Program, you must sue all of the at-fault drivers and owners. Under the Alberta Rules of Court a copy of the Statement of Claim or Civil Claim must be provided to the defendant. This is called “serving” the defendant. Once served, a defendant has the opportunity to defend the lawsuit. Under the Alberta Rules of Court, defendants have a specific number of days to file their defence. Should they fail to do so they may be “noted in default.” In cases involving claims against uninsured defendants MVAC is unable to become involved in a lawsuit until one or more defendants have been noted in default.

In certain cases, where MVAC believes a claimant has failed to commence action against all possible at-fault persons it can elect to be added as a party to the action to advance that position. Additionally, MVAC has the authority to force you to add defendants and, if you fail to do so, to deny payment of your claim.

Sometimes you may know who the defendant is but are unable to locate him or service cannot be affected for some other reason. In such cases the Alberta Rules of Court permit you to apply for an order allowing some form of service other than personal delivery. This is referred to as “substitutional service.”

While the Alberta Rules of Court also permit the court to dispense with service of a Statement of Claim, such orders should not be granted where claims are being advanced against the MVAC Program. Alberta case law does not permit you to dispense with service upon the defendant in a lawsuit involving MVAC. If you cannot personally serve the defendant, you will need to get an order from the Court for substitutional service.

No matter how you proceed with your lawsuit, if Motor Vehicle Accident Claims is going to be involved, we would appreciate it if you would forward us a copy of every legal document at the point where you file it with the Court.

DISCONTINUING YOUR LAWSUIT AGAINST A DEFENDANT

Once you have filed your Statement of Claim and served it on the defendants, you may be asked to “discontinue” your claim against some of them. You should think carefully before you do this for the following reasons:

- (1) The *Motor Vehicle Accident Claims Act* requires you to sue everyone who might reasonably be considered to be at fault for the accident. If you discontinue against one or more of those parties payment of your claim could be denied. As a result, in any case in which MVAC is involved, you must get its consent before the action is discontinued against any other defendant.
- (2) Depending on the circumstances you may require the written consent of all parties (including MVAC) before you consent to any discontinuance.

Do not be intimidated if someone defends your action. A Statement of Defence does not mean they are not at fault or that you should let them out of your lawsuit. A defence is a normal part of the litigation process.

**WHAT HAPPENS
TO ME AS A
DEFENDANT
ONCE I AM
NOTED IN
DEFAULT**

If you are named as a defendant in a lawsuit, it is your right to defend yourself by filing a Statement of Defence or Demand of Notice within the time prescribed by the Alberta Rules of Court. If you fail to do so, you may have given up your right to defend the action. That is where the MVAC Program takes over.

If you are noted in default for failing to file a defence, or if your defence is struck by a Court, the Motor Vehicle Accident Claims Act provides the Administrator with the statutory authority to defend or settle the lawsuit.

Once noted in default you are no longer entitled to receive notice of any steps taken in the lawsuit and you have no standing to appear. The Administrator has authority under law to step in and defend the action in your name and to take whatever steps are deemed appropriate, including settlement of the claim. The Administrator (or the Administrator's Lawyer) does not act for you; they need not consult with you, or obtain your permission to settle the action. Furthermore, you are conclusively deemed to agree with and consent to any steps that the Administrator takes.

The amount of any settlement that is negotiated is finalized by way of a Consent Judgment which, as a condition of payment to the Plaintiff, is assigned to the Administrator. That amount becomes a debt that you owe to the Province and which must be repaid.

If you are served with a Statement of Claim or Civil Claim and believe that you have a defence to the action you should seek legal advice.

**CONSENTING TO
A JUDGMENT**

If defendant personally defends the lawsuit and later decides to settle the claim, the plaintiff and defendant may, on their own, consent to a judgment without participation by MVAC, however, if the settlement is to be funded, in whole or in part under the MVAC Program, MVAC must consent before the judgment is filed. The absence of such consent is grounds for denial of payment.

Suing in Provincial Court and The Court of Queen's Bench

As noted previously, the monetary jurisdiction of the Provincial Court is \$50,000; claims in excess of that amount must be advanced in the Court of Queen's Bench. Whether you choose to pursue your claim in Provincial Court or the Court of Queen's Bench you should be aware of the following procedural requirements:

- If you are suing in Provincial Court, once the defendant is noted in default, DO NOT request an assessment hearing from the Court. Contact MVAC, and provide copies of your legal documentation. Upon receipt of that documentation MVAC will undertake an investigation to determine whether there is insurance available to respond to the claim and whether liability for the accident is in issue. Upon completion of that investigation, if appropriate, MVAC will commence a settlement process. If you wish, you can provide MVAC with written notice of a potential claim even before the defendant is noted in default. This will allow MVAC to begin its investigation early on in the process and can avoid later delays.
- In cases involving known, uninsured driver and/or owner, whether in Provincial Court or the Court of Queen's Bench, you are required to provide MVAC with notice of any noting in default and may not take any further steps in the action for at least 30 days from the date upon which notice is provided.
- Notice must include copies of the Statement of Claim or Civil Claim and all subsequent legal documents that may be filed.
- Written notice of any further legal steps you intend to take after noting a defendant in default must be provided to MVAC in sufficient time to allow MVAC to make arrangements to respond whether that be by appearance in court or otherwise.



- If MVAC is of the opinion that you have not commenced your action against all of the at-fault parties you will be asked to amend your Statement of Claim or Civil Claim. If you fail to do so payment of your claim may be denied.
- If you and the defendant agree to settle “out of court,” you still must get MVAC’s agreement regarding the amount of the settlement and any other terms or conditions if you want MVAC to pay the judgment. Such agreement must be obtained before the judgment is filed.
- If the accident involves an unknown owner and/or driver, notice of your claim must be provided to MVAC within 90 days of the Accident, whether your action is commenced in Provincial Court or the Court of Queen’s Bench.

Steps to Getting Paid Once Your Lawsuit is Settled

Once your claim has been settled it is your responsibility as plaintiff to prepare a consent judgment that documents the settlement. That consent judgment is provided to MVAC for signature/consent. When it is returned to you MVAC will provide you with a package of documents to explain the remaining procedures. That package will include a Statutory Declaration (application for payment) and, in cases involving a known defendant, an Assignment of Judgment. The consent judgment must be filed with the Clerk of the Court of Queen’s



Bench or the Provincial Court, as the case may be and the Assignment served on the defendant. If personal service cannot be effected you will have to apply to the Court to serve the defendant substitutionally or you may obtain an order dispensing with service. If you elect to proceed by way of personal service, there are “process servers” that will do this for you for a fee.

Please note — you cannot provide a final release or discontinuance to a defendant if the claim is to be paid by MVAC as MVAC requires a valid judgment in order to pursue payment from the defendant.

In cases arising from hit and run accidents (where the identities of the owner and driver of the at-fault vehicle are unknown) settlements are effected by way of consent judgment. While the consent judgment must be filed with the Clerk of the Court, and a Statutory Declaration (application for payment) completed, no Assignment is required.

Remember that you can still get a judgment against the defendant for the property damage that was caused to your vehicle or contents, but MVAC will not consent to or pay that portion of your judgment.

Judgment Forms

Once your lawsuit is settled, there are a few forms that you will need to complete and send to MVAC in order to obtain payment of your judgment. These forms are available on request or can be downloaded from the MVAC website. Detailed instructions are available to help you understand the forms and what needs to be done with them.

Repaying Your Debt as a Defendant

If MVAC has been required to pay a claim against you as the owner and/or driver of an uninsured, at-fault vehicle you will be required to repay the amount that was paid out on your behalf. Shortly after the settlement, you will be contacted by MVAC's debt collection unit Motor Vehicle Accident Recoveries and asked to complete some paperwork regarding your monthly household income and expenses. An appropriate repayment plan will be arranged based on your financial circumstances.

In order to ensure that your payments are made under the repayment plan, writs or liens will be registered against your land and property.

Any failure to comply with our repayment arrangement will result in immediate suspension of your driving and vehicle registration privileges together with other enforcement proceedings such as garnishment and seizure. Suspensions are valid throughout Canada and in many other locations throughout North America.

A vintage car, possibly a 1920s or 30s model, is shown from a side profile. The car is dark-colored and has a soft top. Inside, a family of four is visible: a driver, a front passenger, and two children in the back seat. The entire image is overlaid with a semi-transparent red filter. The text is centered over the upper half of the car.

The 2004
Insurance Reforms and
How They Affect You



The 2004 Insurance Reforms and How They Affect You

In 2004, the Government of Alberta introduced several reforms to the automobile insurance system. Some of these took effect on June 21, 2004 and the remainder came into force on October 1, 2004. If your accident happened after either of these dates, the information below will help you understand your claim limits and obligations.

NET INCOME CALCULATIONS

In 2004, new legislation was introduced governing how income losses are to be calculated. Under the new methodology, a claimant must deduct from their claim amounts for income tax, and the premiums for employment insurance and the Canada Pension Plan that would have had to be paid if the person were still gainfully employed. Claimants must also deduct any income replacement payments received from any source.

THE CAP ON MINOR INJURY CLAIMS

Since October 1, 2004, there is a limit on the amount you can claim for pain and suffering (known as “general damages”) resulting from a motor vehicle accident if you suffered only minor injuries. That limit was initially set at \$4,000 and is inflation adjusted yearly by the Superintendent of Insurance. The definition of “minor injury” is any sprain or strain, and type I or type II whiplash.



In order to determine whether your injuries meet the definition of a minor injury, you will need to follow the Diagnostic and Treatment Protocols. You can request information about the Protocols from your insurance company, your physician, a chiropractor or physical therapist that is attending to your injuries.

The limit on pain and suffering does not limit your ability to claim for other economic losses, such as loss of income.

DIAGNOSTIC AND TREATMENT PROTOCOLS

If you are injured as a result of a motor vehicle accident, you are expected to take reasonable steps to lessen the effects of those injuries through various medical treatment options.

The regulation specifies that you are expected to seek an assessment within 10 business days of the accident. Depending on the conclusions reached by that diagnosis, you may be advised to immediately commence regularly scheduled medical treatment. You must follow the full treatment plan as prescribed by the medical practitioner. Failure to do so could substantially reduce your future claim.

There is a more in-depth description of the Diagnostic and Treatment regulations in the next section of this document.

If you are injured as a result of a motor vehicle accident, you are expected to take reasonable steps to lessen the effects of those injuries through various medical treatment options.

MEDICAL COVERAGE ON YOUR INSURANCE POLICY

Every motor vehicle liability insurance policy in Alberta comes with a \$50,000 Section B no-fault medical coverage, also known as accident benefits.

This insurance is intended to cover the driver and any passengers in the vehicle at the time of the accident and does not require there to be any other vehicles involved in the accident.

An injured person has two years from the date of the accident to claim reimbursement for medical expenses under this part of the person's insurance policy. Some limitations apply, and there are pre-approval requirements in many cases, so you should consult your insurance company for more details.



The Diagnostic &
Treatment Protocols
in Detail



The Diagnostic & Treatment Protocols in Detail

A diagnostic and treatment process has been established through your Section B Accident Benefits to promote quick recovery through fast and effective treatment.

People who suffer sprains, strains and minor whiplash injuries can access 12 weeks of therapy. If treatment is required for more than 12 weeks, it would be available.

Patients who are being helped through this treatment process do not need prior approval from insurance companies to begin treatment, and they will not pay out-of-pocket for the treatments. The treatments are pre-approved, and care-providers directly bill the insurance companies.

Patients can choose their preferred medical doctor, chiropractor, or physiotherapist as their primary health care practitioner. The primary practitioner will diagnose the injury according to the diagnostic protocols, instruct the client in the treatment process, and follow the client's therapy.

The primary health care practitioner will also provide the insurer with documentation of the diagnosis, planned treatment, and expected outcomes with the patient's consent.

Forms relating to the diagnostic and treatment process are available online at www.finance.alberta.ca.



INJURY MANAGEMENT CONSULTANT

If recovery is not progressing as quickly as expected, the client would be referred to an **Injury Management Consultant** for further advice and treatment.

Injuries that have not resolved 12 weeks after the accident could also be referred to an Injury Management

Consultant by the patient's health practitioner. An Injury Management Consultant will be specially qualified and identified by the Colleges of Physicians and Surgeons, Chiropractors, and Physical Therapists of Alberta. The consultant would provide an independent evaluation and consult on the original diagnosis, and the treatment and evaluation. The consultant can also recommend further therapy, or further evaluation.

Under these changes, private insurance such as Blue Cross or other plans will no longer be the first payer for minor injury treatment.

Your Section B auto insurance will be the first payer for treatments within the protocols, preserving your private coverage for any future needs.



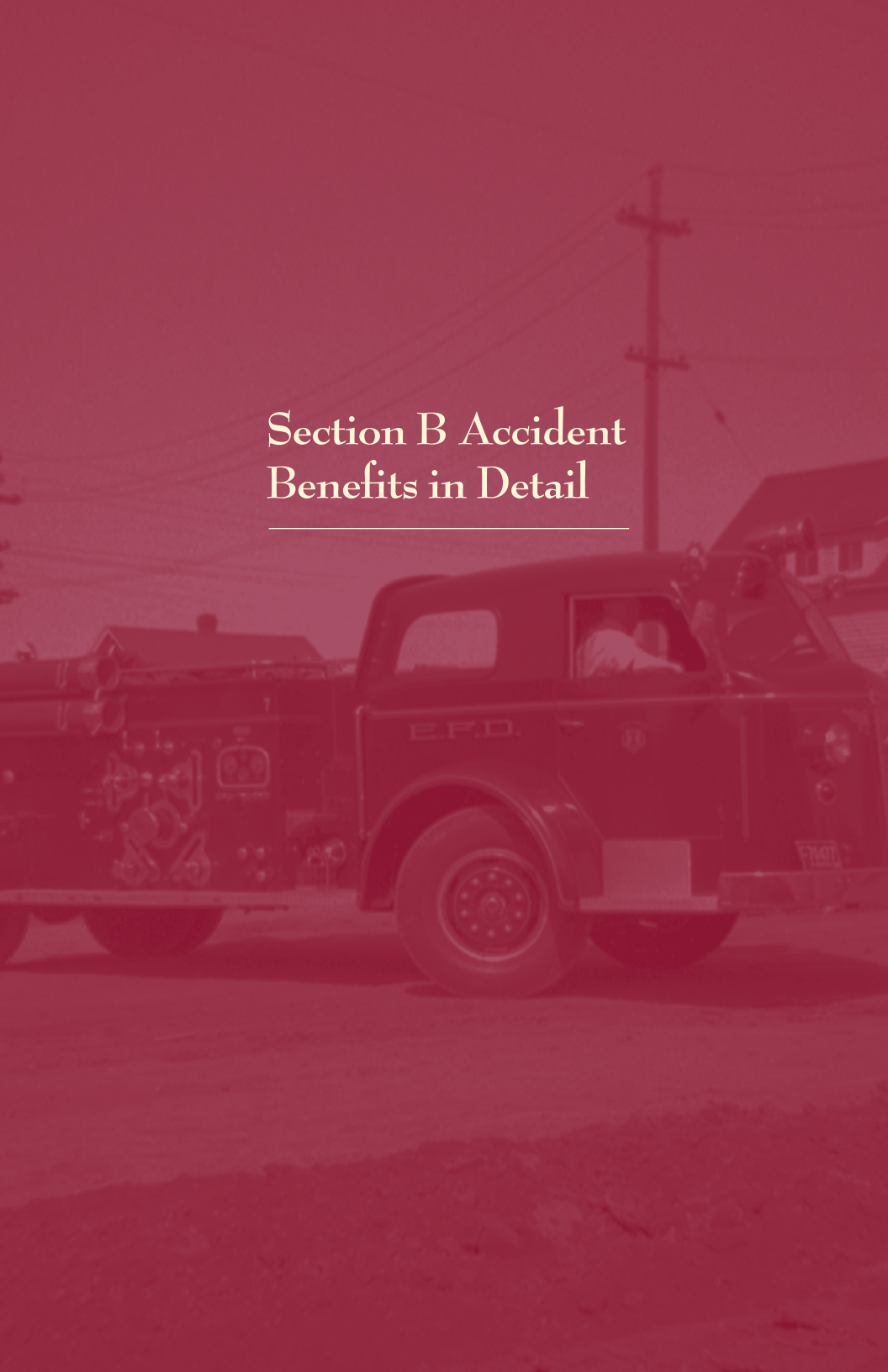
CLIENT EDUCATION

Educating the injured person about how best to speed recovery is an important aspect of the diagnostic and treatment process. Education would include encouraging early return to usual activities and work, explaining the nature and probable length of symptoms, reassuring the client of the injury's nature, and advising how best to care for themselves.

AFTER 12 WEEKS

Following 12 weeks of therapy under the treatment protocols, sprain, strain or minor whiplash injuries that have not resolved would continue to be treated, covered by your extended healthcare plan, Section B benefits or compensation from the wrongdoer.

Section B Accident Benefits in Detail





Section B Accident Benefits in Detail

People who are injured in collisions deserve fast and effective treatment, and this is the focus of the diagnostic and treatment process developed for minor injuries under reforms to Alberta's auto insurance system.

The treatment process for minor injuries has been developed and is pre-approved, meaning that people injured in collisions won't have to pay out-of-pocket for approved treatment. There would be no financial barriers to access to therapy within the process.

Additional Information relating to the diagnostic and treatment process are available online at www.finance.alberta.ca

SECTION B BENEFITS

The current limit of no-fault Section B Accident Benefits is \$50,000.

Several treatment expenses available through these Section B benefits have also been pre-approved for all injuries up to specified amounts, allowing treatment to begin immediately. Treatment that exceeds the maximum value may require assessment by a physician appointed by your insurer to continue.

Section B benefits are available from your own insurer, whether or not you are at fault in the accident up to \$50,000.

Under these changes, you do not need a referral from a doctor or approval from your insurance company to access these benefits if you are seeking treatment related to your collision, up to specified dollar limits:

- chiropractic services (maximum \$750 per person)
- physical therapy (\$600 per person)
- occupational therapy (\$600 per person)
- massage or acupuncture therapy (maximum \$250 each per person)
- grief counselling (\$400 per family)

Victims of collisions can continue to seek settlements from wrongdoers, including through the courts.

COMPENSATION FROM WRONGDOERS

Victims injured in an accident by a wrongdoer can continue to receive compensation for economic losses and pain-and-suffering compensation (General Damages) through the courts.

Victims' injuries that are determined to be minor under the regulations would receive full compensation for economic losses, and up to the legislated amount for injuries in compensation for pain and suffering. The limit has no effect on out of pocket expenses, including for medical equipment, prescriptions, rehabilitation, home care expenses or income, business, or farming loss.

Other considerations:

- Eliminating double-recovery of loss of income compensation an injured person receives from their insurer and from the wrongdoer; this change means that an injured victim could not receive the same compensation from the claimant's insurance company and their disability plan.
- Basing income replacement on net rather than gross income, with reduction for CPP and EI premiums.

If you have any comments or questions about the auto insurance system, please contact the Ministry of Treasury Board and Finance at the address, phone and fax numbers listed below.

By Mail:

Alberta Treasury
Board and Finance
Room 534
Oxbridge Place
9820 – 106 Street
Edmonton, Alberta
T5K 2J6

By Phone:

780-427-3035
To call toll free within
Alberta dial 310-0000
then 780-427-3035.
Or submit comments
or questions by
phone by calling
Alberta Connections
at 310-4455.

By Fax:

780-427-1147
To send a fax toll
free within Alberta
dial 310-0000 then
780-427-1147.

Getting More Advice and Information

The following organizations and websites may be able to provide you with more information or legal assistance to help you with your lawsuit or insurance claim.

- The Motor Vehicle Accident Claims website — www.justice.alberta.ca/programs_services/mvac/pages/default.aspx
- Alberta Courts website, with information specifically regarding civil claims — www.albertacourts.ca
- Alberta Treasury Board and Finance, information for Consumers — www.finance.alberta.ca/publications/insurance/info_consumer_auto.html
- The Law Society of Alberta Lawyer Referral Service — www.lawsociety.ab.ca/public/lawyer_referral.aspx
- Legal Aid Alberta — www.legalaid.ab.ca
- Alberta's Insurance Reform website — www.autoinsurance.gov.ab.ca
- Canadian Bar Association — www.cba-alberta.org
- Provincial Court Website — <http://albertacourts.ca/court-of-queens-bench>
- Court of Queen's Bench — <http://albertacourts.ca/provincial-court>
- Alberta Insurance Council — www.abcouncil.ab.ca
- Alberta's Superintendent of Financial Institutions — www.finance.alberta.ca/business/insurance/index.html
- The Insurance Bureau of Canada — www.ibc.ca

Glossary of Terms

Action	This is a legal term for a lawsuit.
Affidavit	This is a voluntary declaration of written facts that are sworn before a person that is authorized to give an oath. The most common affidavit is an Affidavit of Service swearing that the Statement of Claim was served on the defendant.
Assignment of Judgment	This is a legal process and a document that, upon payment to the victim by MVAC, transfers the judgment to MVAC so it can collect from the defendant.
Certified	An authenticated or verified document, most commonly done for a certified copy of an original document.
Civil Claim	The document that is filed at Provincial Court that describes the plaintiff's claim. Also used to refer generally to any lawsuit relating to civil matters.
Defendant	The person against whom the lawsuit is commenced. This person may also be called the respondent.
Demand of Notice	A document filed with the Court by a defendant asking that notice be given to the defendant of all steps to be taken in Court in a proceeding or action.

Discontinuance of Action

A document filed by a plaintiff ending the Court action or proceeding against a defendant.

Dispensing With Service

This is an order of the Court exempting a person from the requirement to deliver a legal document to another person involved in the lawsuit.

Dispute Note

The term used at Provincial Court for a document that gives the reasons that the plaintiff's claim is disputed. See also Statement of Defence.

Executed

To enforce and collect on a judgment.

Injury Management Consultant

A health care practitioner whose role is to establish or confirm a diagnosis; and/or to provide recommendations on the best treatment options to facilitate recovery

Filed or Filing

Giving a legal document to the Court clerk to have it entered into the Court file.

Judgment

A determination made by a Judge or Court and set out in a document filed with the Court. A Consent Judgment is similar, except that it is agreed to by the parties and then signed by a Judge or the Court and filed with the Court.

Nominal Defendant	A defendant in name only. The MVAC Administrator is considered to be a nominal defendant because the Administrator did not actually cause the accident.
Note In Default	A step taken by the plaintiff when the defendant does not file and serve a Statement of Defence or Dispute Note within the prescribed time limits.
Plaintiff	The person who begins the lawsuit and who is claiming damages.
Represented	To have a person act on your behalf, either a lawyer at Queen's Bench or an agent in Provincial Court.
Service or Served	This is the delivery of a legal document, such as your Statement of Claim, usually to one of the other persons named in your lawsuit.
Statement of Claim	The document that is filed at the Court of Queen's Bench that describes the plaintiff's claim.
Statement of Defence	The term used at Queen's Bench. For a document that gives the reasons that the plaintiff's claim is disputed. See also Dispute Note.
Substitutional Service	An order of the Court permitting an alternate means to deliver a legal document to one of the other persons named in your lawsuit.

For the latest information regarding updates to the Alberta Motor Vehicle Accident Claims Program, please refer to our website at www.justice.gov.ab.ca/mvac/default.aspx.



If you have additional questions, or if you wish to make a comment about this brochure, please call Motor Vehicle Accident Claims (MVAC) at 780-427-8255. If you prefer, you can call toll-free from anywhere in the province by dialing the RITE system at 310-0000. You can also write us at:

Motor Vehicle Accident Claims Program
Suite #600, 6th Floor, 10123 – 99 Street
Edmonton AB T5J 3H1

You can email a question to us by going to the Government of Alberta website (www.gov.ab.ca) and clicking on the “Alberta Connects” icon. Be sure to direct your question to “the Motor Vehicle Accident Claims Program.”