

2009 Bill 48

Second Session, 27th Legislature, 58 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 48

CROWN'S RIGHT OF RECOVERY ACT

THE MINISTER OF HEALTH AND WELLNESS

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 48

2009

CROWN'S RIGHT OF RECOVERY ACT

(Assented to , 2009)

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

**Part 1
Crown's Right to Recover
Health Costs**

Interpretation

1(1) In this Part,

- (a) "automobile" means an automobile as defined in the *Insurance Act*;
- (b) "automobile insurer" means an insurer under a motor vehicle liability policy;
- (c) "Crown" means Her Majesty in right of Alberta;
- (d) "Crown's cost of health services" means the direct and indirect costs of the Crown for health services or

anticipated health services as determined and calculated in accordance with this Part and the regulations;

- (e) “Crown’s right of recovery” means the Crown’s right under Division 1, 3 or 4, as the case may be, to recover the Crown’s cost of health services;
- (f) “Director” means the Director appointed by the Minister for the purpose of this Part;
- (g) “health services” means the following, whether provided inside or outside Alberta:
 - (i) in-patient and out-patient services provided in a hospital or other facility;
 - (ii) health services as defined in the *Alberta Health Care Insurance Act*;
 - (iii) transportation services, including air and ground ambulance services;
 - (iv) public health services;
 - (v) mental health services;
 - (vi) drug services;
 - (vii) any good or service prescribed to be a health service by the regulations;
- (h) “motor vehicle liability policy” means a motor vehicle liability policy as defined in the *Insurance Act* evidencing a contract of insurance that has been made or renewed in Alberta or that is deemed under the *Insurance Act* to have been made or renewed in Alberta;
- (i) “recipient” means a person who receives health services for personal injuries;
- (j) “settlement” means an agreement to terminate a legal dispute;
- (k) “third party liability insurance” means that portion of an insurance contract evidenced by a motor vehicle liability policy that insures against liability resulting from bodily

injury to or the death of one or more persons and loss of or damage to property;

(1) “wrongdoer” means a person whose wrongful act or omission results in personal injuries to a recipient.

(2) Nothing in section 626.1 of the *Insurance Act* affects the application of this Part.

Division 1 Crown’s Right to Recover

Crown’s right to recover

2(1) If a recipient receives health services for personal injuries suffered as a result of a wrongful act or omission of a wrongdoer, the Crown has the right to recover from the wrongdoer the Crown’s cost of health services

- (a) for health services that the recipient has received for those personal injuries, and
- (b) for health services that the recipient will likely receive in the future for those personal injuries.

(2) If a recipient is contributorily negligent, the Crown is entitled to recover from the wrongdoer 100% of the Crown’s cost of the recipient’s health services less a percentage for the recipient’s contributory negligence as determined under section 3 or 4.

(3) Notwithstanding this Division or Division 4, but subject to the regulations, the Crown does not have a right to recover the Crown’s cost of health services provided to a recipient if

- (a) the recipient’s personal injuries are caused by an act or omission of a wrongdoer in the wrongdoer’s use or operation of an automobile,
- (b) the wrongdoer is, when the injuries are caused, insured under a motor vehicle liability policy for the automobile referred to in clause (a),
- (c) the motor vehicle liability policy referred to in clause (b) applies to and covers the loss in respect of the recipient’s personal injuries, and

- (d) the automobile insurer of the motor vehicle liability policy referred to in clause (b)
 - (i) was licensed in Alberta, and
 - (ii) contributed to the aggregate assessment in accordance with Division 2
- for the calendar year in which the wrongful act or omission occurred.

Determining contributory negligence

3(1) This section applies when a recipient has obtained a judgment against a wrongdoer that is based on a claim that gives rise to the Crown's right of recovery before the Crown has obtained a judgment against or entered into a settlement with the wrongdoer based on the Crown's right of recovery.

(2) This section does not apply when the judgment obtained by the recipient implements or approves a structured settlement.

(3) If a recipient obtains a judgment that indicates that the recipient's claim has been reduced by a specified percentage because of the recipient's contributory negligence, the specified percentage in the judgment is the percentage of contributory negligence to be used to calculate the Crown's entitlement under section 2(2).

Determining contributory negligence

4 Unless section 3 applies, the percentage of contributory negligence to be used to calculate the Crown's entitlement under section 2(2) is,

- (a) if the Crown obtains a judgment against the wrongdoer, the percentage specified in the judgment, or
- (b) if the Crown enters into a settlement with the wrongdoer, the percentage specified in the settlement.

Commencement of Crown's right

5 The Crown's right of recovery arises for all purposes when the recipient receives health services for which there is a cost to the

Crown for personal injuries suffered as a result of a wrongful act or omission of a wrongdoer.

Interest

6(1) When the Crown obtains a judgment based on the Crown's right of recovery, the court shall award interest calculated in accordance with the regulations from the date that the Crown's right of recovery arose to the date of the judgment.

(2) The interest shall be awarded on that part of the judgment that represents the Crown's cost of health services for health services that the recipient has received to the date of the judgment.

(3) The rate of interest to be used to calculate the award of interest is the rate of interest for pecuniary damages that is established for each year under Part 1 of the *Judgment Interest Act*.

(4) For the purposes of enforcing a judgment, interest awarded under this section is included in the judgment.

(5) If a wrongdoer

- (a) pays money into court in satisfaction of the claim of the Crown, or
- (b) makes an offer of judgment specifying the terms on which the wrongdoer is willing to settle the claim of the Crown,

and the Crown does not accept the payment or the offer and obtains a judgment for an amount equal to or less than the amount paid into court or the amount offered, the court shall award interest from the date that the Crown's right of recovery arose only to the day the payment into court was made or the date of service of the offer of judgment, as the case may be.

(6) Except for the rate of interest referred to in subsection (3), Part 1 of the *Judgment Interest Act* does not apply to the Crown's right of recovery.

Limitation period

7(1) The limitation period to commence an action based on the Crown's right of recovery is the period that ends on the earlier of

- (a) 6 months after the expiration of the recipient's limitation period to commence an action against the wrongdoer or 6 months after the Director is provided with information under section 12 or 15, whichever is later, and
- (b) 10 years after the date the Crown's right of recovery arises.

(2) Sections 4, 5 and 5.1 of the *Limitations Act* apply to the limitation period established under subsection (1) as if that limitation period were established under the *Limitations Act*.

Settlement

8(1) The Director may enter into a settlement respecting the Crown's right of recovery.

(2) When the terms of a settlement are met, the Director may release a person from liability to the Crown in respect of the Crown's right of recovery.

(3) If the Director believes that the cost of pursuing the Crown's right of recovery in a particular case will exceed the benefit to the Crown, the Director may release a person from liability to the Crown in respect of that right without receiving any payment.

Director's certificate

9(1) The Director may issue one or more certificates that set out

- (a) the health services that a recipient has received and the health services that a recipient will likely receive in the future for personal injuries suffered as a result of a wrongful act or omission of a wrongdoer for which there is a cost to the Crown, and
- (b) the Crown's cost of those health services.

(2) For the purposes of the Crown's right of recovery, a certificate is proof, in the absence of evidence to the contrary, of the health services referred to in subsection (1)(a).

(3) For the purposes of the Crown's right of recovery, after the health services for which there is a cost to the Crown have been determined, a certificate is conclusive proof of the Crown's cost of those health services.

(4) A certificate is admissible in evidence without proof of the signature, authority or office of the person purporting to have signed the certificate.

Priority of recipient's payments

10(1) Subject to subsection (2) and the regulations, payments to a recipient under a judgment obtained against or a settlement entered into with a wrongdoer that is based on a claim that gives rise to the Crown's right of recovery have priority over payments to the Crown under a judgment obtained against or a settlement entered into with the wrongdoer that is based on the Crown's right of recovery.

(2) Subsection (1) does not apply to a payment received by the Crown under a judgment obtained against or a settlement entered into with a wrongdoer before the recipient has obtained a judgment against or entered into a settlement with the wrongdoer.

(3) When the Crown has received a payment under a judgment obtained against or a settlement entered into with a wrongdoer before the recipient has obtained a judgment against or entered into a settlement with the wrongdoer, the Director may pay to the recipient an amount that does not exceed the payment received by the Crown if

- (a) the recipient subsequently obtains a judgment or enters into a settlement with the wrongdoer, and
- (b) the Director believes that the recipient will not receive the full amount to which the recipient is entitled under the judgment or settlement.

Structured settlements — terms and conditions

11(1) This section applies when

- (a) a recipient has entered into a structured settlement with a wrongdoer or obtained a judgment against a wrongdoer that implements or approves a structured settlement that is based on a claim that gives rise to the Crown's right of recovery, and
- (b) the Crown has obtained a judgment against or entered into a settlement with the wrongdoer that is based on the Crown's right of recovery.

(2) The Director, in accordance with subsection (3), may impose on the structured settlement terms and conditions authorized by the regulations respecting payments to the Crown under the Crown's judgment or settlement.

(3) Terms and conditions may be imposed if

- (a) the recipient dies or requires institutional health care on a permanent basis after the structured settlement is entered into or the judgment that implements or approves the structured settlement is obtained,
- (b) the payments to or on behalf of the recipient under the structured settlement are to continue after the recipient dies or requires institutional health care on a permanent basis, and
- (c) the Director believes that the structured settlement does not adequately provide for payments to the Crown under the Crown's judgment or settlement after the recipient dies or requires institutional health care on a permanent basis.

(4) If the Director imposes terms and conditions under this section,

- (a) the terms and conditions form part of the structured settlement, and
- (b) the Crown is deemed to be a party to the structured settlement for the purpose of enforcing the terms and conditions.

Recipient's duty

12 A recipient who consults a lawyer or has someone consult a lawyer on the recipient's behalf in respect of personal injuries suffered by the recipient as a result of a wrongful act or omission of a wrongdoer shall, as soon as possible after the consultation, provide the Director with the information prescribed by the regulations.

Information from recipient

13(1) The Director may request a recipient to provide information relating to the wrongful act or omission of the wrongdoer, the

personal injuries that the recipient has suffered and the health services that have been received for those injuries.

(2) A recipient who receives a request to provide information under subsection (1) shall, as soon as possible, comply with the request.

Recipient's duty to co-operate

14(1) A recipient shall co-operate fully with the Minister and the Director and their agents and legal counsel in establishing and proving the Crown's right of recovery in respect of the recipient.

(2) If the Crown is unable to recover all or a portion of the Crown's cost of health services under the Crown's right of recovery because the recipient has not complied with subsection (1), the Crown has the right to recover from the recipient the amount of the Crown's cost of health services that the Crown was unable to recover from the wrongdoer.

Insurer's duty

15 An insurer who is notified of circumstances in which the Crown's right of recovery may arise shall, as soon as possible, notify the Director of those circumstances and provide the Director with the information prescribed by the regulations.

Information relating to health services

16(1) The Director or a person authorized by the Director may request any person, including a public body, that has information, including health records, respecting the health services provided to a recipient to provide the Director or a person authorized by the Director with that information.

(2) A person who receives a request to provide information under subsection (1) shall, as soon as possible, comply with the request.

(3) The Director or a person authorized by the Director may disclose information obtained under subsection (1) for the purposes of enforcing the Crown's right of recovery.

(4) The provision of information under this section is subject to any solicitor-client privilege.

(5) If there is a conflict or inconsistency between this section and the *Health Information Act*, this section prevails.

Structured settlements

17 If a recipient enters into a structured settlement with a wrongdoer or obtains a judgment against a wrongdoer that implements or approves a structured settlement that is based on a claim that gives rise to the Crown's right of recovery, the wrongdoer shall, as soon as possible after the structured settlement is entered into or the judgment is obtained, provide the Director with a copy of the structured settlement.

Wrongdoer's insurance

18 If

- (a) a recipient obtains a judgment against a wrongdoer or enters into a settlement with a wrongdoer that is based on a claim that gives rise to the Crown's right of recovery, and
- (b) the wrongdoer has insurance against liability in respect of the personal injuries suffered by the recipient,

the wrongdoer shall, as soon as possible after the judgment has been obtained or the settlement has been entered into, provide the Director with information respecting the insurance as specified by the Director and, if required by the Director, a copy of the insurance policy.

Order for information and documents

19(1) If a wrongdoer, recipient, insurer or other person fails to provide information required by this Act or the regulations, the Director may apply to the Court of Queen's Bench for an order compelling the wrongdoer, recipient, insurer or other person to provide the information or compelling the wrongdoer to provide a copy of the structured settlement or insurance policy.

(2) The Court may, subject to any conditions that it considers appropriate, grant an order compelling the wrongdoer, recipient, insurer or other person to provide the information if it is satisfied that

- (a) the information is in the possession or under the control of the wrongdoer, recipient, insurer or other person, and
- (b) the information is relevant to the Crown's right of recovery.

Offence

20 A wrongdoer, recipient, insurer or other person who fails to comply with an order obtained under section 19 is guilty of an offence and liable to a fine of not more than \$10 000.

Order for medical examination

21(1) The Director may, after an action based on the Crown's right of recovery is commenced against a wrongdoer, apply for an order directing the recipient to submit to an examination by a physician under the *Alberta Rules of Court*.

(2) The Crown is responsible for the reasonable expenses incurred by the recipient as a result of an examination ordered under this section.

**Division 2
Crown's Cost of Health Services —
Automobile Accidents**

Aggregate assessment

22(1) The Minister shall establish, in accordance with the regulations, for each calendar year an aggregate assessment payable by automobile insurers.

(2) The aggregate assessment for a calendar year is the Minister's estimate for that calendar year of the Crown's cost of health services for personal injuries suffered by recipients as a result of the wrongful acts or omissions of wrongdoers in the use or operation of automobiles for which the wrongdoers were insured under motor vehicle liability policies when the injuries were caused.

Procedure for establishing aggregate assessment

23(1) Before establishing the aggregate assessment for a calendar year, the Minister shall

- (a) calculate a proposed aggregate assessment for that calendar year,
- (b) provide a notice of the proposed aggregate assessment and of the right to make representations concerning the assessment to each automobile insurer who is licensed to provide automobile insurance under the *Insurance Act* when the notice is sent out, and
- (c) select a person to hear representations.

(2) If representations are made to the person selected by the Minister, the person shall provide the Minister with a report on them.

(3) The Minister shall, after considering any report under subsection (2), establish, in accordance with the regulations, the aggregate assessment for the calendar year and notify the Minister of Finance and Enterprise and the automobile insurers referred to in subsection (1)(b) of the amount of the aggregate assessment.

Automobile insurer's duty to provide information

24 An automobile insurer that is licensed to provide automobile insurance under the *Insurance Act* for all or a portion of a calendar year shall, at the times specified by the Director, provide the Director with the information prescribed by the regulations.

Assessment factor

25 After the Minister of Finance and Enterprise receives notice of the aggregate assessment for a calendar year, the Minister of Finance and Enterprise shall

- (a) establish, in accordance with the regulations, the assessment factor for that year, and
- (b) provide a notice of the assessment factor to each automobile insurer who is licensed to provide automobile insurance under the *Insurance Act* when the assessment factor is established and to each automobile insurer who becomes so licensed in the calendar year for which the assessment factor is established.

Automobile insurer's duty to pay

26(1) An automobile insurer that is licensed to provide automobile insurance under the *Insurance Act* for all or a portion of a calendar year for which an assessment factor has been established shall pay to the Crown an amount that is the product obtained when the assessment factor for the calendar year is multiplied by the total premiums written by the automobile insurer for third party liability insurance in the calendar year.

(2) The manner of and time for making a payment under subsection (1) are governed by the regulations.

Duty to report premiums

27(1) An automobile insurer that was licensed to provide automobile insurance under the *Insurance Act* for all or a portion of a calendar year for which an assessment factor was established shall, on or before March 15 of the following year, file with the Minister of Finance and Enterprise a report of the premiums for third party liability insurance written in the calendar year for which the assessment factor was established.

(2) An automobile insurer referred to in subsection (1) shall file the report in a manner and form specified by the Minister of Finance and Enterprise.

(3) An automobile insurer that fails to file a report for a calendar year as required by this section shall pay a penalty to the Crown in accordance with the regulations.

Interest

28 If an automobile insurer does not make a payment under section 26 or pay a penalty under section 27 in the manner or at the time specified in the regulations, the insurer shall pay interest to the Crown in accordance with the regulations.

Duty to provide other information

29(1) The Minister of Finance and Enterprise may by notice direct an automobile insurer to provide any information or document that the Minister of Finance and Enterprise requires for the purposes of establishing an assessment factor or determining amounts payable to the Crown under this Division.

(2) An automobile insurer that receives a notice under subsection (1) shall provide the information or document to the Minister of Finance and Enterprise within the time period specified in the notice.

Estimate of amounts payable

30(1) If

- (a) an automobile insurer does not provide a report, information or a document under section 27 or 29 in respect of a calendar year or provides the report, information or document late, or
- (b) the Minister of Finance and Enterprise has reason to believe that the report, information or document provided under section 27 or 29 in respect of a calendar year is not correct,

the Minister of Finance and Enterprise may, using the Minister of Finance and Enterprise's estimate of premiums for third party liability insurance written by the automobile insurer in that calendar year, establish an amount that the automobile insurer is required to pay in respect of that calendar year.

(2) If the Minister of Finance and Enterprise establishes an amount that an automobile insurer is required to pay under subsection (1), the Minister of Finance and Enterprise shall notify the automobile insurer of the amount required to be paid and the basis for determining the amount.

(3) An amount that an automobile insurer is required to pay under this section is deemed to be an amount that is payable under section 26.

Review

31(1) An automobile insurer that receives a notice from the Minister of Finance and Enterprise under section 30 may request a review of the estimate of the premiums for third party liability insurance used to calculate the amount payable specified in the notice.

(2) An automobile insurer that wishes a review shall submit to the Minister of Finance and Enterprise, within 30 days from the notice

under section 30 being sent, a written statement that sets out the reasons on which the request for a review is based.

(3) On receiving a request for a review that meets the requirements of subsection (2), the Minister of Finance and Enterprise shall select an employee of the Government who is under the Minister of Finance and Enterprise's administration to conduct the review.

(4) After considering the representations of the automobile insurer, the person selected to conduct the review shall

- (a) confirm or vary the amount that the automobile insurer is required to pay to the Crown, and
- (b) notify the automobile insurer of the decision.

(5) Interest accrues on an unpaid amount that a person conducting a review decides is required to be paid from the time that the amount should have been paid under section 26.

(6) If the person conducting a review reduces the amount that an automobile insurer is required to pay to the Crown and the automobile insurer has paid the full amount under review, the Minister of Finance and Enterprise shall

- (a) refund the difference with interest at the rate charged on amounts owing by automobile insurers under the regulations, or
- (b) if the automobile insurer is required to pay other amounts to the Crown under this Division, apply the difference and interest referred to in clause (a) to offset payment of those other amounts.

Examination of automobile insurer's books

32(1) In this section, "auditor" means a person authorized by the Minister of Finance and Enterprise to be an auditor.

(2) An auditor may at any reasonable time enter the offices of an automobile insurer who was licensed to provide automobile insurance under the *Insurance Act* for all or a portion of a calendar year for which an assessment factor was established and examine and make copies of the books and records of the insurer for the purposes of determining the amount of premiums written by the insurer for third party liability insurance in the calendar year.

(3) The officers, employees and agents of the automobile insurer shall assist an auditor in conducting an examination under subsection (2) and shall provide the auditor with the books and records that the auditor requires.

Civil action

33(1) An amount that is payable by an automobile insurer to the Crown under this Division may be collected by the Crown by civil action for debt in a court of competent jurisdiction.

(2) A person designated by the Minister of Finance and Enterprise may issue a certificate that sets out the amount that an automobile insurer is required to pay under this Division and, for the purposes of a civil action for debt, the certificate is conclusive proof of the amount that the automobile insurer is required to pay.

(3) A certificate is admissible in evidence without proof of the signature, authority or office of the person purporting to have signed the certificate.

**Division 3
Crown's Cost of Health Services —
Commission of Criminal Offence**

Recovery from convicted person

34 If a person convicted of an offence provided for in the regulations, under legislation specified in the regulations, receives health services for personal injuries suffered in the commission of that offence, the Crown has the right to recover from the convicted person the Crown's costs of health services.

Commencement of Crown's right

35 Notwithstanding section 5, the Crown's right of recovery under this Division arises for all purposes when the person is convicted of the offence.

Limitation period

36 Notwithstanding section 7, the limitation period to commence an action based on the Crown's right of recovery under this Division is 6 months after all appeals in respect of the conviction of the offence have been exhausted or abandoned.

Application of provisions of Division 1

37 Sections 2(1), 6, 9, 16, 19, 20 and 21 apply in respect of the Crown's right of recovery under this Division as if the convicted person were both the wrongdoer and the recipient.

Division 4 General

Subrogated rights

38(1) The recipient has a right of recovery against a wrongdoer in respect of the Crown's cost of health services provided to the recipient, or likely to be provided in the future, for personal injuries suffered as a result of a wrongful act or omission of the wrongdoer, as if the recipient had been required to pay for the Crown's cost of health services, and the Crown is subrogated to the recipient's right of recovery.

(2) The Crown may pursue its right of recovery under subsection (1) or under Division 1, as the case may be.

Certain powers of the Director

39(1) The Director may hire legal counsel for the purpose of recovering the Crown's cost of health services under the Crown's right of recovery.

(2) The Director may establish forms for use under this Part.

(3) The Director may authorize a person to exercise any power or to perform any duty of the Director under this Part or the regulations made under this Part, including any power or duty that requires the Director to form a belief.

Regulations

40(1) The Lieutenant Governor in Council may make regulations

- (a) providing that the Crown's right of recovery does not apply or arise in certain circumstances;
- (b) respecting any additional circumstances in which section 2(3) applies;
- (c) prescribing a good or service to be a health service for the purpose of this Part;

- (d) respecting the calculation of interest for the purposes of section 6;
 - (e) for the purpose of section 10,
 - (i) respecting the conditions and circumstances in which the priority of payment to the recipient operates, including special provisions for structured settlements, and
 - (ii) respecting the determination of amounts that have priority;
 - (f) respecting the terms and conditions that may be imposed on structured settlements under section 11;
 - (g) respecting the payment of legal counsel, physicians and other persons for services provided to the Crown for the purpose of the Crown's right of recovery;
 - (h) respecting offences and legislation for the purpose of section 34;
 - (i) generally for giving effect to any of the purposes or provisions of this Part.
- (2)** The Minister may make regulations
- (a) for the purpose of determining the Crown's cost of health services,
 - (i) respecting what is a cost of the Crown, and
 - (ii) respecting whether something is a capital cost or an operating cost and whether a health service has a capital cost;
 - (b) respecting the calculation of the Crown's cost of health services under the Crown's right of recovery, including
 - (i) the establishment of a capital cost factor to be used to determine capital costs, and
 - (ii) the establishment of discount rates to be used to determine future costs;

- (c) prescribing the information to be provided to the Director under sections 12, 15 and 24.
- (3)** The Minister of Finance and Enterprise may make regulations
 - (a) respecting the establishment of an assessment factor for a calendar year;
 - (b) respecting the manner in which and time at which automobile insurers are required to make payments under Division 2;
 - (c) respecting the penalty referred to in section 27(3), the manner in which the penalty is calculated and the manner in which and time at which automobile insurers are required to pay the penalty;
 - (d) for the purposes of section 28, respecting rates of interest, the manner in which interest is calculated and the manner in which and time at which automobile insurers are required to pay interest.

Part 2 Third-party Liability — Tobacco Products

Interpretation

41(1) In this Part,

- (a) “cost of health services” means the sum of
 - (i) the present value of the total expenditure by the Crown for health services provided for insured persons resulting from tobacco-related disease or the risk of tobacco-related disease, and
 - (ii) the present value of the estimated total expenditure by the Crown for health services that could reasonably be expected will be provided for those insured persons resulting from tobacco-related disease or the risk of tobacco-related disease;
- (b) “Crown” means Her Majesty in right of Alberta;
- (c) “disease” includes general deterioration of health;

- (d) “exposure” means any contact with, or ingestion, inhalation or assimilation of, a tobacco product, including any smoke or other by-product of the use, consumption or combustion of a tobacco product, or as specified by the regulations;
- (e) “health services” means the following, whether provided inside or outside Alberta:
 - (i) in-patient and out-patient services provided in a hospital or other facility;
 - (ii) health services as defined in the *Alberta Health Care Insurance Act*;
 - (iii) transportation services, including air and ground ambulance services;
 - (iv) public health services;
 - (v) mental health services;
 - (vi) drug services;
 - (vii) any good or service prescribed to be a health service by the regulations;
- (f) “insured person” means
 - (i) a person, including a deceased person, for whom health services have been provided, or
 - (ii) a person for whom health services could reasonably be expected will be provided;
- (g) “joint venture” means an association of 2 or more persons, if
 - (i) the relationship among the persons does not constitute a corporation, a partnership or a trust, and
 - (ii) the persons each have an undivided interest in assets of the association;
- (h) “manufacture” includes, for a tobacco product, the production, assembly or packaging of the tobacco product;

- (i) “manufacturer” means a person who manufactures or has manufactured a tobacco product and includes a person who currently or in the past
 - (i) causes, directly or indirectly, through arrangements with contractors, subcontractors, licensees, franchisees or others, the manufacture of a tobacco product,
 - (ii) for any fiscal year of the person, derives at least 10% of revenues, determined on a consolidated basis in accordance with generally accepted accounting principles in Canada, from the manufacture or promotion of tobacco products by that person or by other persons,
 - (iii) engages in, or causes, directly or indirectly, other persons to engage in the promotion of a tobacco product, or
 - (iv) is a trade association primarily engaged in
 - (A) the advancement of the interests of manufacturers,
 - (B) the promotion of a tobacco product, or
 - (C) causing, directly or indirectly, other persons to engage in the promotion of a tobacco product;
- (j) “person” includes a trust, joint venture or trade association;
- (k) “promote” or “promotion” includes, for a tobacco product, the marketing, distribution or sale of the tobacco product and research with respect to the tobacco product;
- (l) “tobacco-related disease” means disease caused or contributed to by exposure to a tobacco product;
- (m) “tobacco-related wrong” means
 - (i) a tort committed in Alberta by a manufacturer that causes or contributes to tobacco-related disease, or
 - (ii) in an action under section 42(1), a breach of a common law, equitable or statutory duty or

obligation owed by a manufacturer to persons in Alberta who have been exposed or might become exposed to a tobacco product;

- (n) “tobacco product” means tobacco and any product that includes tobacco;
- (o) “type of tobacco product” means one or a combination of the following tobacco products:
 - (i) cigarettes;
 - (ii) loose tobacco intended for incorporation into cigarettes;
 - (iii) cigars;
 - (iv) cigarillos;
 - (v) pipe tobacco;
 - (vi) chewing tobacco;
 - (vii) nasal snuff;
 - (viii) oral snuff;
 - (ix) a prescribed form of tobacco.

(2) The definition of “manufacturer” in subsection (1)(i) does not include

- (a) an individual,
- (b) a person who
 - (i) is a manufacturer only because the person is a wholesaler or retailer of a tobacco product, and
 - (ii) is not related to
 - (A) a person who manufactures a tobacco product,
or
 - (B) a person described in subsection (1)(i)(i),

or

- (c) a person who
 - (i) is a manufacturer only because subsection (1)(i)(ii) or (iii) applies to the person, and
 - (ii) is not related to
 - (A) a person who manufactures a tobacco product, or
 - (B) a person described in subsection (1)(i)(i) or (iv).

(3) For the purposes of subsection (2), a person is related to another person if, directly or indirectly, the person is

- (a) an affiliate, as defined in section 1 of the *Business Corporations Act*, of the other person, or
- (b) an affiliate of the other person or an affiliate of an affiliate of the other person.

(4) For the purposes of subsection (3)(b), a person is deemed to be an affiliate of another person if the person

- (a) is a corporation and the other person, or a group of persons not dealing with each other at arm's length of which the other person is a member, owns a beneficial interest in shares of the corporation
 - (i) carrying at least 50% of the votes for the election of directors of the corporation and the votes carried by the shares are sufficient, if exercised, to elect a director of the corporation, or
 - (ii) having a fair market value, including a premium for control if applicable, of at least 50% of the fair market value of all the issued and outstanding shares of the corporation,

or

- (b) is a partnership, trust or joint venture and the other person, or a group of persons not dealing with each other at arm's length of which the other person is a member, has an ownership interest in the assets of that person that entitles the other person or group to receive at least 50% of the profits or at least 50% of the assets on dissolution,

winding-up or termination of the partnership, trust or joint venture.

(5) For the purposes of subsection (3)(b), a person is deemed to be an affiliate of another person if the other person, or a group of persons not dealing with each other at arm's length of which the other person is a member, has any direct or indirect influence that, if exercised, would result in control in fact of that person except if the other person deals at arm's length with that person and derives influence solely as a lender.

(6) For the purposes of determining the market share of a defendant for a type of tobacco product sold in Alberta, the court must calculate the defendant's market share for the type of tobacco product by the following formula:

$$dms = (dm/MM) \times 100\%$$

where

dms = the defendant's market share for the type of tobacco product from the date of the earliest tobacco-related wrong committed by that defendant to the date of trial;

dm = the quantity of the type of tobacco product manufactured or promoted by the defendant that is sold within Alberta from the date of the earliest tobacco-related wrong committed by that defendant to the date of trial;

MM = the quantity of the type of tobacco product manufactured or promoted by all manufacturers that is sold within Alberta from the date of the earliest tobacco-related wrong committed by the defendant to the date of trial.

Action is in Crown's own right

42(1) The Crown has a direct and distinct action against a manufacturer to recover the Crown's cost of health services caused or contributed to by a tobacco-related wrong.

(2) An action under subsection (1) is brought by the Crown in its own right and not on the basis of a subrogated claim.

(3) In an action under subsection (1), the Crown may recover the Crown's cost of health services whether or not there has been any recovery by other persons who have suffered damage caused or contributed to by the tobacco-related wrong committed by the defendant.

(4) In an action under subsection (1), the Crown may recover the Crown's cost of health services

- (a) for particular individual insured persons, or
- (b) on an aggregate basis, for a population of insured persons as a result of exposure to a type of tobacco product.

(5) If the Crown seeks in an action under subsection (1) to recover the Crown's cost of health services on an aggregate basis,

- (a) it is not necessary
 - (i) to identify particular individual insured persons,
 - (ii) to prove the cause of tobacco-related disease in any particular individual insured person, or
 - (iii) to prove the Crown's cost of health services for any particular individual insured person,
- (b) the health care records and documents of particular individual insured persons or the documents relating to the provision of health services for particular individual insured persons are not compellable except as provided under a rule of law, practice or procedure that requires the production of documents relied on by an expert witness,
- (c) a person is not compellable to answer questions with respect to the health of, or the provision of health services for, particular individual insured persons,
- (d) notwithstanding clauses (b) and (c), on application by a defendant, the court may order discovery of a statistically meaningful sample of the documents referred to in clause (b) and the order must include directions concerning the nature, level of detail and type of information to be disclosed, and
- (e) if an order is made under clause (d), the identity of particular individual insured persons must not be

disclosed and all identifiers that disclose or may be used to trace the names or identities of any particular individual insured persons must be deleted from any documents before the documents are disclosed.

Recovery of the Crown's cost of health services on an aggregate basis

43(1) In an action under section 42(1) for the recovery of the Crown's cost of health services on an aggregate basis, subsection (2) applies if the Crown proves, on a balance of probabilities, that, in respect of a type of tobacco product,

- (a) the defendant breached a common law, equitable or statutory duty or obligation owed to persons in Alberta who have been exposed or might become exposed to the type of tobacco product,
- (b) exposure to the type of tobacco product can cause or contribute to disease, and
- (c) during all or part of the period of the breach referred to in clause (a), the type of tobacco product manufactured or promoted by the defendant was offered for sale in Alberta.

(2) Subject to subsections (1) and (4), the court must presume that

- (a) the population of insured persons who were exposed to the type of tobacco product manufactured or promoted by the defendant would not have been exposed to the product but for the breach referred to in subsection (1)(a), and
- (b) the exposure described in clause (a) caused or contributed to disease or the risk of disease in a portion of the population described in clause (a).

(3) If the presumptions under subsection (2)(a) and (b) apply,

- (a) the court must determine on an aggregate basis the Crown's cost of health services provided after the date of the breach referred to in subsection (1)(a) resulting from exposure to the type of tobacco product, and
- (b) each defendant to which the presumptions apply is liable for the proportion of the aggregate cost referred to in

clause (a) equal to its market share in the type of tobacco product.

(4) The amount of a defendant's liability assessed under subsection (3)(b) may be reduced, or the proportions of liability assessed under subsection (3)(b) readjusted among the defendants, to the extent that a defendant proves, on a balance of probabilities, that the breach referred to in subsection (1)(a) did not cause or contribute to the exposure referred to in subsection (2)(a) or to the disease or risk of disease referred to in subsection (2)(b).

Joint and several liability

44(1) Two or more defendants in an action under section 42(1) are jointly and severally liable for the Crown's cost of health services if

- (a) those defendants jointly breached a duty or obligation described in section 41(1)(m), and
- (b) as a consequence of the breach described in clause (a), at least one of those defendants is held liable in the action under section 42(1) for the Crown's cost of those health services.

(2) For the purposes of an action under section 42(1), 2 or more manufacturers, whether or not they are defendants in the action, are deemed to have jointly breached a duty or obligation described in section 41(1)(m) if

- (a) one or more of those manufacturers are held to have breached the duty or obligation, and
- (b) at common law, in equity or under an enactment those manufacturers would be held
 - (i) to have conspired or acted in concert with respect to the breach,
 - (ii) to have acted in a principal and agent relationship with each other with respect to the breach, or
 - (iii) to be jointly or vicariously liable for the breach if damages would have been awarded to a person who suffered as a consequence of the breach.

Population-based evidence

45 Statistical information and information derived from epidemiological, sociological and other relevant studies, including information derived from sampling, is admissible as evidence for the purposes of establishing causation and quantifying damages or the Crown's cost of health services respecting a tobacco-related wrong in an action brought

- (a) by the Crown under section 42(1), or
- (b) by or on behalf of a person in the person's own name or as a member of a class of persons under the *Class Proceedings Act*.

Limitation periods

46(1) In this section, "child" and "parent" have the same meaning as in the *Fatal Accidents Act*.

(2) With respect to a tobacco product, no action commenced within 2 years after this section comes into force, by

- (a) the Crown,
- (b) a person, on his or her own behalf or on behalf of a class of persons,
- (c) a personal representative of the estate of a deceased person for the benefit of the spouse, adult interdependent partner, support recipient, parent, child, brother or sister, or any of them, of the deceased person,
- (d) a person to whom the deceased was, at the time of his or her death, required to pay support pursuant to a valid and subsisting written agreement or court order, or
- (e) a person entitled to bring an action under section 5 of the *Fatal Accidents Act*,

for damages, or the Crown's cost of health services, alleged to have been caused or contributed to by a tobacco-related wrong is barred under the *Limitations Act* or the *Fatal Accidents Act* or by a limitation period under any other Act.

(3) Any action described in subsection (2) for damages alleged to have been caused or contributed to by a tobacco-related wrong is

revived if the action was dismissed before the coming into force of this section merely because it was held by a court to be barred or extinguished by the *Limitations Act* or the *Fatal Accidents Act* or by a limitation period under any other Act.

Liability based on risk contribution

47(1) This section applies to an action for damages, or the Crown's cost of health services, alleged to have been caused or contributed to by a tobacco-related wrong other than an action for the recovery of the Crown's cost of health services on an aggregate basis.

(2) If a plaintiff is unable to establish which defendant caused or contributed to the exposure described in clause (b) and, as a result of a breach of a common law, equitable or statutory duty or obligation,

- (a) one or more defendants caused or contributed to a risk of disease by exposing persons to a type of tobacco product, and
- (b) the plaintiff has been exposed to the type of tobacco product referred to in clause (a) and suffers disease as a result of the exposure,

the court may find each defendant that caused or contributed to the risk of disease liable for a proportion of the damages or of the Crown's cost of health services incurred equal to the proportion of its contribution to that risk of disease.

(3) The court may consider the following in apportioning liability under subsection (2):

- (a) the length of time a defendant engaged in the conduct that caused or contributed to the risk of disease;
- (b) the market share the defendant had in the type of tobacco product that caused or contributed to the risk of disease;
- (c) the degree of toxicity of any toxic substance in the type of tobacco product manufactured or promoted by a defendant;

- (d) the amount spent by a defendant on promoting the type of tobacco product that caused or contributed to the risk of disease;
- (e) the degree to which a defendant collaborated or acted in concert with other manufacturers in any conduct that caused, contributed to or aggravated the risk of disease;
- (f) the extent to which a defendant conducted tests and studies to determine the risk of disease resulting from exposure to the type of tobacco product;
- (g) the extent to which a defendant assumed a leadership role in manufacturing the type of tobacco product;
- (h) the efforts a defendant made to warn the public about the risk of disease resulting from exposure to the type of tobacco product;
- (i) the extent to which a defendant continued manufacture or promotion of the type of tobacco product after it knew or ought to have known of the risk of disease resulting from exposure to the type of tobacco product;
- (j) affirmative steps that a defendant took to reduce the risk of disease to the public;
- (k) other factors considered relevant by the court.

Apportionment of liability in tobacco-related wrongs

48(1) This section does not apply to a defendant in respect of whom the court has made a finding of liability under section 47.

(2) A defendant who is found liable for a tobacco-related wrong may commence, against one or more of the defendants found liable for that wrong in the same action, an action or proceeding for contribution toward payment of the damages or the Crown's cost of health services caused or contributed to by that wrong.

(3) Subsection (2) applies whether or not the defendant commencing an action or proceeding under that subsection has paid all or any of the damages or the Crown's cost of health services caused or contributed to by the tobacco-related wrong.

(4) In an action or proceeding described in subsection (2), the court may apportion liability and order contribution among each of the defendants in accordance with the considerations listed in section 47(3).

Regulations

49 The Lieutenant Governor in Council may make regulations

- (a) prescribing a form of tobacco product for the purposes of section 41(1)(o);
- (b) prescribing a good or service to be a health service for the purpose of this Part;
- (c) providing for administrative and procedural matters for which no express, or only partial, provision has been made in this Part.

Retroactive effect

50 On the coming into force of this section, a provision of this Part has the retroactive effect necessary to give the provision full effect for all purposes, including allowing an action to be brought under section 42(1) arising from a tobacco-related wrong, whenever the tobacco-related wrong occurred.

Part 3 General Matters and Regulations

Crown's right to recover under Part 1 or 2

51 The Crown in right of Alberta may pursue its right to recover the Crown's costs of health services under Part 1 or 2.

Lieutenant Governor in Council regulations

52(1) The Lieutenant Governor in Council may make regulations

- (a) respecting the definition of any terms that are used but not defined in this Act;
- (b) respecting transitional and consequential effects of this Act on other enactments;
- (c) respecting the collection, use, disclosure and confidentiality of information under this Act;

- (d) respecting the application of this Act or the regulations, or any provision of it, in respect of any health services that a person is eligible for and entitled to under any Act of the Parliament of Canada or under the *Workers' Compensation Act* or any law of any jurisdiction outside Alberta relating to workers' compensation;
- (e) respecting any matter that the Lieutenant Governor in Council considers
 - (i) is not provided for or is insufficiently provided for in this Act, or
 - (ii) is necessary or advisable in connection with the implementation of this Act.

(2) A regulation made under subsection (1)(e) is repealed on the earliest of

- (a) the coming into force of an amendment that adds the matter to this Act;
- (b) the coming into force of a regulation that repeals the regulation made under subsection (1)(e);
- (c) 5 years after the regulation comes into force.

(3) The repeal of a regulation under subsection (2)(b) or (c) does not affect anything done, incurred or acquired under the authority of the regulation before the repeal of the regulation.

(4) Subsections (1)(e), (2) and (3) and this subsection are repealed 5 years after this section comes into force, but the repeal does not affect anything done, incurred or acquired under the authority of a regulation made under subsection (1)(e) before the repeal of subsections (1)(e), (2) and (3).

Part 4
**Consequential Amendments,
Repeal and Coming into Force**

Amends RSA 2000 cA-15

53 The *Alberta Corporate Tax Act* is amended in section 77(5)(a)(iv) by striking out “Division 2 of Part 5 of the *Hospitals Act*” and substituting “Part 1, Division 2 of the *Crown’s Right of Recovery Act*”.

Amends RSA 2000 cA-20

54 The *Alberta Health Care Insurance Act* is amended in sections 22(2) and 25 by striking out “Part 5 of the *Hospitals Act*” and substituting “the *Crown’s Right of Recovery Act*”.

Amends SA 2008 cE-6.6

55 The *Emergency Health Services Act* is amended in section 46 by striking out “Part 5 of the *Hospitals Act*” and substituting “the *Crown’s Right of Recovery Act*”.

Amends RSA 2000 cI-3

56 The *Insurance Act* is amended in section 628 by striking out “Part 5, Division 2 of the *Hospitals Act*” and substituting “Part 1, Division 2 of the *Crown’s Right of Recovery Act*”.

Explanatory Notes

53 Amends chapter A-15 of the Revised Statutes of Alberta 2000.
Section 77(5)(a)(iv) presently reads:

(5) Tax information may be communicated as follows:

(a) to a person employed or engaged by the Government of Alberta if the tax information is

(iv) to be used solely for the purposes of administering or enforcing this Act or any other taxation statute of Alberta, the Small Power Research and Development Act or Division 2 of Part 5 of the Hospitals Act;

54 Amends chapter A-20 of the Revised Statutes of Alberta 2000.
Sections 22(2) and 25 presently read:

22(2) The Minister or any person authorized by the Minister may, for the purpose of enforcing the Crown's right of recovery under Part 5 of the Hospitals Act, disclose information acquired under this Act.

25 The Crown in right of Alberta is entitled to recover the Crown's cost of health services under Part 5 of the Hospitals Act.

55 Amends chapter E-6.6 of the Statutes of Alberta, 2008.
Section 46 presently reads:

46 The Crown in right of Alberta is entitled to recover the Crown's cost of emergency health services under Part 5 of the Hospitals Act.

56 Amends chapter I-3 of the Revised Statutes of Alberta 2000.
Section 628 presently reads:

628 No amount that is required to be paid to the Crown under Part 5, Division 2 of the Hospitals Act may be shown as a separate amount on

Amends SA 2008 c19

57 The *Insurance Amendment Act, 2008* is amended

(a) in section 29 in the new section 572(1) by striking out “Part 5, Division 2 of the *Hospitals Act*” and substituting “Part 1, Division 2 of the *Crown’s Right of Recovery Act*”;

(b) by adding the following after section 39:

39.1 The *Crown’s Right of Recovery Act* is amended in section 1(2) by striking out “section 626.1” and substituting “section 570”.

Amends RSA 2000 cM-13

58 The *Mental Health Act* is amended in sections 17(3) and (6) and 50 by striking out “Part 5 of the *Hospitals Act*” and substituting “the *Crown’s Right of Recovery Act*”.

- (a) *an application for automobile insurance,*
- (b) *a motor vehicle liability policy, or*
- (c) *a certificate referred to in section 612(5).*

57 Amends chapter 19 of the Statutes of Alberta, 2008. The new section 572(1) presently reads:

572(1) No amount that is required to be paid to the Crown under Part 5, Division 2 of the Hospitals Act may be shown as a separate amount on

- (a) *an application for automobile insurance,*
- (b) *a motor vehicle liability policy, or*
- (c) *a certificate referred to in section 553(8).*

58 Amends chapter M-13 of the Revised Statutes of Alberta 2000. Sections 17(3) and (6) and 50 presently read:

17(3) For the purpose of assessing the standards of care furnished to persons in a diagnostic and treatment centre or improving mental health care facilities or procedures or enforcing the Crown's right of recovery under Part 5 of the Hospitals Act or for any other purpose considered by the Minister to be in the public interest, the Minister or any person authorized in writing by the Minister may require that all or any of the following be sent to the Minister or any person designated by the Minister:

- (a) *health information and other records in a centre;*
- (b) *extracts from and copies of those records.*

(6) The Minister or any person authorized by the Minister may, for the purpose of enforcing the Crown's right of recovery under Part 5 of the Hospitals Act, disclose information obtained under subsection (3).

50 The Crown in right of Alberta is entitled to recover the Crown's cost of mental health services under Part 5 of the Hospitals Act.

Amends RSA 2000 cP-37

59 The *Public Health Act* is amended in section 67 by striking out “Part 5 of the *Hospitals Act*” and substituting “the *Crown’s Right of Recovery Act*”.

Repeal

60 Part 5 of the *Hospitals Act* is repealed.

Coming into force

61 This Act comes into force on Proclamation.

59 Amends chapter P-37 of the Revised Statutes of Alberta 2000. Section 67 presently reads:

67 The Crown in right of Alberta is entitled to recover the Crown's cost of public health services under Part 5 of the Hospitals Act.

60 Repeals Part 5 of chapter H-12 of the Revised Statutes of Alberta 2000. Part 5 deals with Crown's Right to Recover Health Costs.

61 Coming into force.

