

Who's at Fault?

"We consider the circumstances of each case"



- How your adjuster assesses fault
- How fault affects you
- Appeal options



**Manitoba
Public Insurance**

Under Manitoba law, motorists involved in a collision can sue each other for out-of-pocket costs, other than from injuries. A court can then order the at-fault driver to pay the other driver's costs.

Because we know the case could go to court, we try to settle things beforehand so that our customers won't have to go to the trouble. And because we know how courts have decided fault in the past, we know how the courts probably will decide fault in your case. Put simply, we assess fault the way a court would likely assess it.

In the end though, the courts have the final say. So, if you disagree with how your adjuster has assessed fault or even if you've appealed through our internal review process, you can still take the other driver to court for a final decision.

How does my adjuster assess fault?

Before assessing fault, our adjusters gather all the important details. For example, they get statements from drivers, witnesses and in some cases, passengers, and compare vehicle damages to the drivers' descriptions. They may also review police reports and visit the accident scene.

Once adjusters have collected this information, they'll assess fault for the accident, considering past court decisions, the rules of the road, and common sense.

For straightforward collisions, our adjuster may only need the drivers' statements to assess fault. An example would be a driver who rear-ends a car stopped at a red light. Here, a detailed investigation to assess who was at fault probably isn't needed.

A traffic court cleared me of a Highway Traffic Act infraction related to this collision. Why did my adjuster still assess me at fault?

A traffic court has a narrow focus—was the driver guilty, beyond a reasonable doubt, of a specific traffic offence? It does not look at the collision as a whole.

On the other hand, a civil court (like small claims court) looks at the bigger picture to decide who likely caused the collision. That's so the innocent party is not out-of-pocket.

Take the example of a motorist who collides with a parked car. The police charge the driver with careless driving. But a traffic court acquits the driver because there isn't clear-cut proof of "careless" driving. The key here is that the traffic court focuses only on the traffic charge, not on who caused the collision.

In our example, the traffic court acquits the driver of careless driving. But a civil court would still likely hold the driver at fault for colliding with the parked car. That means the owner of the parked car can then get fair compensation for out-of-pocket expenses.

To sum up, a civil court has a much broader focus. It looks at all the circumstances and considers past decisions to decide who likely was at fault.

Are passengers and friends useful as witnesses?

Remember, we try to assess the case the way a court would likely assess it.

Therefore, reports from impartial witnesses (sometimes called independent witnesses) carry the most weight.

Do Autopac adjusters usually assess fault at 50-50?

The reality is that our adjusters don't often assess fault at 50-50.

From time to time, we do assess fault at 50-50. It may be because both drivers contributed equally to the collision. Or, conflicting evidence won't allow us to say conclusively who was at fault. The courts use 50-50 too, under similar circumstances.

While I was turning left, someone tried to pass me on the left and we collided. My adjuster told me I would likely be 75% responsible. Can that be right?

Yes. The courts often place most fault on the left-turning driver in this type of collision. The reason is that anyone turning left has to yield not just to oncoming traffic, but to passing traffic too. The rules of the road, contained in *The Highway Traffic Act*, say that anyone turning from a straight line must do so safely.

If the other driver should have known beforehand that you were turning left, we'll assess that driver some fault for passing at an inappropriate time.

Someone cut me off and I hit a telephone pole. I can't identify the other driver or vehicle and no one else saw it happen. Do you consider me at fault?

Yes. *The Highway Traffic Act* says that when you have a single-vehicle accident, you're automatically at fault unless you can prove you weren't. Without independent witnesses or knowing who cut you off, you likely can't prove you weren't at fault.

The road was icy and I rear-ended a stopped vehicle. Do you still consider me at fault, despite the poor road conditions?

Yes. The reality is that most of these collisions can be avoided by recognizing the poor road conditions and driving with extra caution.

We understand that Manitobans face difficult driving conditions in the winter. But most of us should be familiar with icy roads and rough winter weather. We all have to adjust our driving for the poor conditions we usually face, to avoid collisions. An effective way to avoid rear-ending another vehicle is to slow down and keep a safe following distance.

The Highway Traffic Act says that drivers must expect hazardous conditions and adjust their driving accordingly.

If You're at Fault

Does how much I was at fault affect my claim settlement?

It affects things not covered by your own Autopac insurance, like your deductible and substitute transportation expenses.

How much of these you'll get back depends on how much the other driver was at fault. That's because you have to claim these items against the other driver's Autopac third party liability coverage.

For instance, if the other driver was 100% at fault, you'll get back 100% of your deductible from the other driver's coverage. But if the other driver was only 25% at fault, you'll get back 25% of your deductible from the other driver's coverage.

Remember though, this only applies when we know who the other motorist is and we insure both of you. If the at-fault driver lives outside Manitoba and has insurance with another company, then your out-of-pocket expenses have to come from the other insurer.

How does an at-fault accident affect my vehicle and driver premiums?

Each at-fault accident in the past year will bring you down five levels on the Driver Safety Rating (DSR) scale, resulting in higher premiums. How much higher depends on where you were on the scale before the accident. To find out how your Driver Safety Rating will impact your premiums, go to our online Driver Safety Rating Calculator at www.mpi.mb.ca.

You can appeal additional driver premiums through the Rates Appeal Board at 985-7071. The Rates Appeal Board operates independently from Manitoba Public Insurance.

For more information about the Driver Safety Rating program, please see the *Driver Safety Rating* brochure, available online or at your local Autopac agent or Manitoba Public Insurance Service Centre.

I caused an accident but there was hardly any damage. Is there a way for me to avoid losing my premium discount or paying any additional premiums?

Yes. If you and the other driver can settle with each other outside Autopac, fine. If you do, the collision won't affect your Driver Safety Rating or your premiums.

But even if you and the other motorist have put your claims through us, you can still pay us back for what we had to pay out on your behalf. Then, we'll remove the collision from your driving record so that it won't affect your premiums. We call this "buying back" your claim. Call your adjuster if you want to buy back a claim.

Will I move down the DSR scale if I'm at fault?

Yes. An at-fault accident will move you down the DSR scale five levels.

If you've also been convicted of a common driving infraction, like going through a red light, because of the accident, you can expect to move down the scale another two levels.

I don't think you've assessed fault correctly. What can I do?

You can ask your adjuster's supervisor or manager to review it for you. Or, you can speak with one of our customer relations officers about it.

Two formal appeal options are also available to you. First, for \$25, you can apply for a review by a retired Manitoba judge. This individual will examine all the evidence and either uphold or change your adjuster's assessment. If the judge changes the assessment in your favour, you get your \$25 appeal fee back. Your adjuster can tell you how to apply.

The second option is taking the other driver to small claims court. Because the courts have the final say over fault, we'll accept the court's decision.

You can still go to court after getting the retired judge's assessment. The court's decision overrides that assessment.

Where can I go for more information?

For more information on fault for accidents, ask your adjuster.


Or call the Autopac Line:

985-7000

(In Winnipeg)

1-800-665-2410

(Outside Winnipeg Toll-Free)

985-8832 

(Deaf Access TTY/TDD)



You can also write:

Manitoba Public Insurance

P.O. Box 6300

234 Donald Street

Winnipeg MB

R3C 4A4

Autopac Line hours of operation:

Monday to Friday

7:00 am - 9:00 pm

Saturday

8:30 am - 4:00 pm

Sunday

Closed

This publication is also available in large print, audio tape or Braille on request.

The information contained in this brochure is of a broad, general nature. *The Manitoba Public Insurance Corporation Act, The Highway Traffic Act, The Drivers and Vehicles Act* and their accompanying Regulations should be consulted for interpretation and application of the law.



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