

# WHAT YOU SHOULD KNOW

WHEN YOU HAVE BEEN INJURED IN A MOTOR VEHICLE ACCIDENT

This brochure provides current information about obtaining assistance to meet your needs through insurance benefits and other compensation following a motor vehicle accident in Ontario.



For free consultations about your legal rights or about information contained in this brochure, contact the trauma lawyers at **Thomson Rogers** toll-free at **1-855-529-4577** or **help@trlaw.com**

(This brochure is current as of October 2023)

## Key Steps to Take After a Motor Vehicle Accident

1. Ensure that the police have been informed about the accident;
2. Notify your employer or school;
3. Notify the Accident Benefits insurance company within 7 days (see page 3 for more information);
4. Check for access to other insurance coverage (i.e. through work, school, private plans, etc.);
5. Keep receipts, dates and records of all related expenses for both you and your family members (i.e. parking, hotel costs, days off work, time spent caring for the injured person, etc.);
6. Inform your family doctor of the accident and your injury;
7. Record the names and addresses of the other motorists involved in the accident along with the names and addresses of any witnesses; and,
8. Arrange a free no obligation consultation with an experienced personal injury lawyer to better understand your rights.

## Hiring a Trauma Lawyer

Accessing the benefits that you are entitled to and protecting your rights against an at-fault party can be very complicated. You and your family may want to ask a personal injury lawyer for assistance. Most lawyers who specialize in traumatic injury claims will meet with you, free of charge and without obligation.

Before hiring a trauma lawyer you may wish to check online to see if their expertise has been independently validated by any or all of the following: Certification by the Law Society of Ontario as a Specialist in Civil Litigation, recognized in Lexpert as a plaintiff personal injury lawyer, listed in The Best Lawyers in Canada, and affiliated with a Top Personal Injury Boutique as ranked by Canadian Lawyer.

Additional information to assist you in selecting a qualified lawyer is also available at [www.traumaresourcedirectory.com/lawyers](http://www.traumaresourcedirectory.com/lawyers).

## Am I Entitled to Accident Benefits?

**YES** - Anyone injured in a motor vehicle accident is automatically entitled to “Accident Benefits”. Accident Benefits (see chart on page 5) are available whether you were driving, were a passenger or were a pedestrian hit by a motor vehicle (and are available even if the accident was your fault).

Making an Accident Benefits claim does not affect your insurance rates.

## Why are Accident Benefits Important?

Accident Benefits can assist you financially with your therapy costs, can provide income replacement benefits and can help with the cost of caring for you in hospital and at home.

## When and How Do I Obtain Accident Benefits?

**Within 7 days of the motor vehicle accident**, you **must** call the appropriate motor vehicle insurer (see pages that follow about who to call) stating that you want to apply for Accident Benefits. The sooner you call, the better. You may need therapy, equipment, assistive devices, attendant care or other medical services upon discharge from hospital. If you call the insurer early, benefits can be coordinated so that you will have what you need when you get home.

If you do not call the insurer within 7 days, you *may* not get your benefits immediately.

An application for Accident Benefits will need to be completed. The application form can be obtained from your social worker at the hospital, from the insurance company or from a personal injury lawyer.

To obtain compensation for time spent by your family caring for you, an Occupational Therapist or Registered Nurse will need to complete a specific form called a Form 1. However, to qualify for this benefit, the expenses must meet the specific definition of being an “incurred” expense. There are other forms which will likely need to be completed to obtain some of the other Accident Benefits.

## Which Insurer Should I Call for Accident Benefits?

To claim Accident Benefits, you should call the first insurer that applies to you, from the list below:

- the insurer of your motor vehicle (since they are automatically your accident benefit insurer if you have your own car insurance)
- the insurer of the motor vehicle in which you were a passenger
- the insurer of the at-fault driver or owner
- the insurer of any other motor vehicle involved in the accident
- the Motor Vehicle Accident Claims Fund (call 1-800-268-7188)

When you call the insurer, tell them that you want to start an Accident Benefits claim.

### Key Accident Benefits Available to Anyone Injured in a Motor Vehicle Accident:

- **Medical and Rehabilitation Benefits** - to pay for your medical treatment, therapy, medication and required equipment, housing alternatives and transportation
- **Attendant Care Benefits** - to compensate those, including family members\*, for providing care to you while injured
- **Income Replacement Benefits** - to compensate you for some of the income you have lost as a result of your inability to return to work due to your injuries (to a maximum of \$400 per week)
- **Visitation Expenses** - to reimburse immediate family members for visitation expenses including travel, parking, meals and accommodations
- **Services of a Case Manager** - to pay for a rehabilitation coordinator to immediately assist with your recovery (this benefit is only available in "catastrophic impairment" cases, see next page)

There are also additional benefits that may be available including: lost education expenses, housekeeping and home maintenance benefits, non-earner benefits, caregiver benefits and damage to clothing expenses. In cases of death, death and funeral benefits are available.

Note: The availability of the above benefits will vary based on the severity of your injury and whether optional insurance benefits are available to you. Also, in some cases, driving charges (such as driving without insurance, drinking and driving, etc.) may serve to restrict or eliminate the benefits that are normally available.

\* Due to recent changes, proof of an "economic loss" and the extent of such losses suffered by a family member is required to successfully claim payment for attendant care services provided.

## Catastrophic vs Non-Catastrophic Impairments

There are monetary limits on the amount of Accident Benefits that are available depending on the severity of your injury. The maximums that are available increase significantly in cases of “catastrophic impairment”. Cases of “catastrophic impairment” generally involve serious head injuries, paralysis, loss of use of a limb, complete loss of vision and certain other serious injuries. A trauma lawyer will be able to explain this definition and advise you whether you have sustained a “catastrophic impairment” (as well as explain how pre-existing factors may impact your entitlement).

The chart below outlines the basic benefit limits applicable to Catastrophic and Non-Catastrophic Impairment claims.

BENEFIT	CATASTROPHIC IMPAIRMENT	NON-CATASTROPHIC IMPAIRMENT
<b>NEW</b> - Combined Limit for Medical/Rehabilitation Benefits and Attendant Care Benefits	<b>\$1,000,000 combined</b> lifetime limit  (with a \$6,000 per month attendant care maximum)	<b>\$65,000 combined</b> limit available over a 5 year period or until age 28 for minors  (with a \$3,000 per month attendant care maximum)
Case Manager	Available	Not Available
Housekeeping and Home Maintenance	Available (max \$100/week)	Not Available
Caregiver	Available	Not Available

Note: Speak with an experienced trauma lawyer about whether optional benefits may be available to you as these may increase your benefit limits.

## The NEW “Catastrophic Impairment” Definition

As set out above, the Accident Benefits available increase substantially if your injuries qualify within the legal definition of a “catastrophic impairment”.

For accidents that occur on or after June 1, 2016 the definition of a “catastrophic impairment” has been drastically changed. The new definition of “catastrophic impairment” will, in most cases, result in a wait-and-see approach, meaning that most people will not know when they are discharged from hospital whether their injuries will qualify within the definition of “catastrophic impairment”, causing uncertainty about the extent of benefits that may be available. Do not rely on information you read online that may relate to the old “catastrophic impairment” definition (for example, the Glasgow Coma Scale test is no longer part of the new legislation). You may choose to speak with an experienced personal injury lawyer about your claim and the benefits that may be available.

## Warning When Speaking to The Insurer

Be careful: something you may mention to an insurance representative may have a negative impact on your rights. Most personal injury lawyers recommend that you do not go into great detail when initially speaking with the insurance representative.

## After You Have Spoken to the Insurer

Once you have talked with the insurer, if you have not yet received one, the insurer will send you an application for Accident Benefits. An adjuster will be assigned to your file. The adjuster will be your main contact at the insurance company and will provide you with a claim number for your file.

**Within 30 days of receiving an application for Accident Benefits, you must** send the completed application to the accident benefit insurer. If the form is not filled out and sent in, you will not get any compensation.

The application for Accident Benefits will include a Disability Certificate. Where possible, a completed Accident Benefit application and a completed Disability Certificate should be sent to the accident benefit insurer as soon as possible in order to ensure that benefits are paid in a timely manner.

## Are Accident Benefits Available if I Have a Private Health Plan?

Accident Benefits are available regardless of whether you have a health plan that may cover some of your medical expenses and/or income loss. Private health plans are often more limited than Accident Benefits in the types of coverage and amounts available to be paid.

If you are eligible for medical or disability benefits through a private or work-related health plan, that health plan will be the first insurance company in line to pay for certain expenses, before the accident benefit insurer. However, it is prudent to apply to both insurance companies to access coverage for all of your needs.

## Keep All Receipts Related to Treatment

Because receipts help to prove to the insurance company what accident-related expenses you or your family have paid for, you should keep all receipts.

You may begin to submit those receipts seeking reimbursement from your insurance once a claim has been properly initiated.

## Right to Obtain Compensation From At-Fault Persons

You and your family may have the right to obtain compensation from anyone potentially responsible for the accident. These claims are over and above any Accident Benefits you may be entitled to receive.

Injuries must be considered 'permanent' and 'serious' before you can be compensated in a motor vehicle accident claim for your pain and suffering. In addition, compensation for pain and suffering for 2023 accidents is subject to a deductible of \$44,367.24, unless the award exceeds \$147,889.59.

Other family members may obtain compensation for their loss of care, guidance and companionship, but for 2023 accidents these claims are subject to a deductible of \$22,183.63, unless the award exceeds \$73,944.18. In cases of fatality, no deductible applies.

In a claim, family members may, among other things, recover income they have lost while caring for you, as well as other out-of-pocket expenses that have not otherwise been reimbursed.

In some cases, claims against at-fault persons will include claims for:

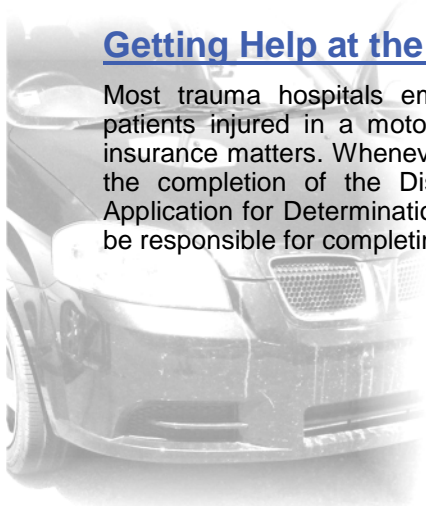
- Future income loss/loss of opportunity that you suffer as a result of your injuries;
- Future medical and rehabilitation expenses; and,
- Future attendant care services.

## Limitation Periods

In almost all cases you only have two years from the date of a motor vehicle accident to start a lawsuit against the at-fault party, otherwise you may be prevented from starting a lawsuit.

## Getting Help at the Hospital

Most trauma hospitals employ social workers who are trained to help patients injured in a motor vehicle accident and their families with basic insurance matters. Whenever possible the social worker will help coordinate the completion of the Disability Certificate and, where appropriate the Application for Determination of Catastrophic Impairment. However, you will be responsible for completing the actual application for Accident Benefits.



# Key Facts

Background	
Date of Accident:	
Injured Person's Full Name:	
Injured Person's Date of Birth:	
Your Accident Benefit Insurance Information	
Insurance Company:	
Tel. No. for Insurance Company:	(      )
Insurance Policy No.:	
Accident Benefit Claim No.:	
Name of Accident Benefit Adjuster:	
Contact Information for Accident Benefit Adjuster:	Tel: (      ) Fax: (      ) Email:
Accident Investigation Details	
Location of Accident:	
Investigating Police Officer (Name, Badge No. and Telephone No.):	
Other Driver's Information (Name, Insurance Company, Policy No.)	
Personal Injury Lawyer Information	
Law Firm's Name:	
Lawyer's Name:	
Lawyer's Telephone No.:	(      )
Lawyer's Email:	









