

What you need to know about your legal rights

PERSONAL INJURY INFORMATION KIT



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Real life counsel.

PERSONAL INJURY INFORMATION KIT*

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**The information contained in this personal injury kit applies to accidents occurring on or after June 1, 2016.*



INTRODUCTION

What you need to know

Learn about your rights, remedies, and the legal process

If you or a loved one has been injured in an accident, Thomson Rogers LLP will provide you with a free consultation. We will take the time to explain your rights, the legal process, and the role of your lawyer in simple, clear language. We offer this service at no charge. When you or a loved one is injured, we believe it is important to understand your rights and to learn about your options from an experienced and compassionate advocate.

Since 1935, Thomson Rogers LLP has been a leader in personal injury litigation. We are one of the largest and most well-established personal injury law firms in Canada. When you hire Thomson Rogers LLP, you benefit from a team of lawyers with decades of experience and unsurpassed resources.

We represent only people injured in accidents. We do not represent or defend the interests of insurance companies in personal injury claims.

In the last few years, some personal injury firms have engaged in aggressive marketing campaigns. At Thomson Rogers LLP we are proud that our reputation of excellence within the industry has resulted in the majority of our clients being referred to us by other lawyers, healthcare professionals, past clients and other people who understand that our expertise matters.

Thomson Rogers LLP is a team of dedicated lawyers with a proven track record of success. Our lawyers have the experience and resources to go “toe-to-toe” with any large insurance company or defendant.



THIS IS A BASIC GUIDE TO HELP YOU AND YOUR FAMILY

IF YOU OR SOMEONE YOU KNOW HAS BEEN INJURED IN AN ACCIDENT

- Know your rights.
- Access the help that is available.
- Choose the best lawyer for you.



Ten important steps to take when injured

If you or someone you know has suffered a serious personal injury, some very important steps need to be taken within the first few days:

1. Make sure the police have all of the information they need about the accident.
2. Record the names and addresses of involved parties and witnesses to the accident.
3. Keep your family doctor informed of your injury.
4. Notify your insurance company of your car accident as soon as possible.
5. Notify your employer or school.
6. Record the names and contact information of your health care professionals.
7. Record insurance information.
8. Keep receipts for all related expenses. Family members should also record dates and time spent caring for the injured person.
9. Check for other insurance coverage (i.e. through your work, school or private plans).
10. Contact Thomson Rogers LLP and know your rights.



Obtaining compensation for injuries

How do I know if I have a claim?

If you are injured in an accident, you may have the right to make a claim against the person who caused or contributed to your injury. Claims for compensation can be made for injuries suffered in many situations and are often covered by insurance.

What if the accident is my fault?

If you are injured in an automobile, snowmobile, ATV, motorcycle or dirt bike accident, you will generally be entitled to certain accident benefits (usually paid by your own insurance company), even if you are at fault for the accident. Further, depending on the circumstances of the accident, you may also be entitled to benefits from other sources. We can help you identify those potential sources and obtain the benefits to which you are entitled.

Where do I begin?

The first step is to determine if you have a claim. The quickest and surest way to do this is to consult with a lawyer as soon as possible after a serious personal injury, because there are strict time limits and deadlines that must be met in order to avoid delays or disqualification from obtaining compensation.



What if I am injured in an automobile accident?

There is a special system for obtaining compensation related to motor vehicle accidents. Unfortunately, it is complicated. Our experienced professionals can help you obtain full and just compensation.

There are two sources of compensation, both described below:

A claim against your own car insurance company or the car insurance company of another vehicle involved in the accident is called the Accident Benefits Claim; and

A claim against the at-fault driver is called the Tort Claim.

Can I claim for other types of accidents?

Yes. If your injury was caused by the negligence of someone else, you may be able to seek compensation. For accidents that do not involve motorized vehicles, accident benefits are not available. Generally, compensation for your losses will not be paid by the insurance company until the end of your case. However, in certain circumstances, we may be able to persuade the responsible party's insurance company to make an advance payment.



We understand that you may be uncomfortable dealing with a lawyer. Most of the people we represent have never talked to a lawyer before. However, you will find that the assistance of an experienced personal injury lawyer is informative and helpful.

You may also have concerns about the cost of talking to us. At Thomson Rogers LLP we provide free consultations, and in most cases we do not require any payment until you receive compensation. When we meet, we will ensure you are informed about legal fees and costs.

TYPES OF CLAIMS

- Accidents involving cars, motorcycles, planes, boats, trains, snowmobiles, ATVs and other motorized vehicles
- Slips, trips, and falls on public or private property
- Injuries caused by defective products
- Medical negligence
- Assaults
- Disability insurance disputes

BENEFITS

Accident Benefits

Who is my accident benefits insurer?

If you are injured in a car accident, no matter who is at fault, you are entitled to accident benefits. These benefits are available to you from either:

- Your own car insurance company;
- The car insurance company of any other vehicle involved in the accident;
- Another proximate insurance company, if possible; or
- The Motor Vehicle Accident Claims Fund
(1-800-268-7188).

You may qualify for the following accident benefits:

Weekly benefits

- A benefit for lost income from employment, equal to 70% of your gross income, to a maximum of \$400 per week.*
- If you were not employed at the time of the accident, a non-earner benefit of \$185 per week. This benefit is not available until 4 weeks have passed since the date of your accident.
- In certain situations, if you were the primary caregiver for a person in need of care, a caregiver benefit of up to \$250 per week, plus \$50 for each additional person requiring care, may be available based on "incurred"*** expenses.



Medical, Rehabilitation and Attendant Care Benefits

- The accident benefits insurer is required to pay for a wide range of "incurred"*** medical, rehabilitation and attendant care expenses over and above what is paid by OHIP:
 - If you suffer a non-catastrophic injury - up to \$65,000 is available over a 5 year time period*; or,
 - If you suffer a catastrophic injury – up to \$1,000,000 is available over your lifetime.*
 - Most fees and expenses for conducting assessments, examinations and preparing reports are paid out of your medical, rehabilitation and attendant care limits.
- If you suffer a minor injury, only \$3,500 is available, except in certain circumstances.

* See glossary of terms "Optional Benefits"

** See glossary of terms "Incurred" Expense





Death and Funeral Benefits

1. \$25,000 to the victim's spouse.
2. \$10,000 to each former supported spouse.
3. \$10,000 to each of the victim's dependants or more if the victim had no spouse.
4. \$10,000 to the person upon whom the victim was dependant.
5. Up to \$6,000 for funeral expenses.

The Accident Benefits Claim

Time Limits and Forms

The insurance process is very complicated and includes very specific time limits that must be met to avoid delay or denial of your benefits.

During your initial consultation with Thomson Rogers LLP we will help you fill out the accident benefits application, at no charge.

The following is a summary of some of the steps that must be taken to claim accident benefits:

- Determine which insurance company should pay the benefits.
- You must provide "written notice" to the accident benefits insurer within 7 days of the accident.
- Complete an application for accident benefits within 30 days of receiving the forms from your insurance company.
- Your treating health care professional and your employer must complete certain forms.
- If requested, within 10 business days of the request, you must provide your insurance company with information they need to determine your entitlement to accident benefits, such as hospital records and family doctor records.
- If requested, within 15 business days, you must provide a health practitioner's disability certificate.
- If requested, you must provide a statutory declaration—a sworn statement describing the circumstances that gave rise to your claim.
- If requested, you may be required to attend an examination under oath, where you will be questioned by the insurance company. If required to do so, we urge you to have a lawyer present to represent you.

OTHER AVAILABLE BENEFITS INCLUDE REIMBURSEMENT FOR:

- The expenses of immediate family members and/or those living with the injured person who visit during treatment or recovery. These expenses can include the cost of meals, mileage, travel and hotel. Please remember to keep your receipts.
- In cases involving catastrophic impairment, or where additional optional benefits have been purchased, housekeeping and home maintenance expenses of up to \$100/week may be available, based on "incurred" expenses.
- Damage to clothing.
- Lost education expenses for students, to a maximum of \$15,000.

Please note – some of these benefits may be increased if your insurance policy includes additional optional coverage.

Making a claim against the at-fault driver

How do I proceed with a tort claim?

- Retain a lawyer from Thomson Rogers LLP.
- We will give written notice of your intention to sue.
- We will make sure that accident benefit claims are properly submitted to the insurer.
- We will start a lawsuit within the prescribed time limit.

What can I claim?

Pain and Suffering

- In a motor vehicle accident claim, in order to claim for your pain and suffering, you must suffer a permanent serious impairment of an important physical, mental or psychological function or permanent serious disfigurement, such as scarring. This is usually referred to as “the threshold test.”
- The law states that your claim for pain and suffering may be subject to a monetary deductible. This means that a portion of your claim may not be recovered.

Housekeeping and Home Maintenance Claims in Tort Action

- If you are unable to maintain your home as you did before the accident, you can claim reimbursement for expenses you incur or will incur.
- You must first seek reimbursement for housekeeping and home maintenance expenses from your accident benefits insurer, if available.



Health Care Expenses in Tort Action

All past, present and future health care expenses not covered by OHIP or by your accident benefits insurer are claimable if your injuries pass the “threshold test.”

Claims by Family Members

Family claims with respect to the loss of care, comfort and companionship in tort action

- Certain family members may be able to make a claim if your injuries pass the “threshold test.”
- The law states that the claims of your family members may be subject to a monetary deductible, although no deductibles are applied in cases involving a fatality.



LOSS OF INCOME AND INABILITY TO EARN INCOME

- From the first week after the accident until the time your case settles or reaches a trial, you can claim 70% of gross income loss. If you continue to be unable to work, future income loss can be claimed based on 100% of your gross income loss.
- In most cases, you must first seek compensation for income loss from:
 - any disability insurance; and
 - your accident benefits insurer.
- If the sources of income replacement are insufficient to pay for your actual income loss, then an additional amount may be claimable.
- No income loss is payable for the first week following the accident.

Frequently Asked Questions

1. How and when should I talk to the insurance company?

When you are claiming accident benefits, you need to notify the accident benefits insurer and provide information in support of your claim. In most cases, your insurance company will send an insurance adjuster to meet with you and talk about the accident and your injuries. Here are some important points to remember:

- Be aware that anything you say to the insurance adjuster will go into your file and can affect your future accident benefit and tort claims.
- Only talk to the adjuster when you are medically able.
- Get legal advice and know your rights before meeting with the adjuster. Why? Insurance companies deal with cases like yours all the time. This is likely your first time dealing with an adjuster. Keep the playing field level by knowing your rights.
- You have no obligation to speak to an adjuster from the insurance company of the at-fault person. However if you choose to, we recommend that you speak to a lawyer first.

2. How do I complete all of the forms?

When you are claiming accident benefits there are several forms that must be completed before any benefits are paid. Thomson Rogers LLP can help you complete the forms during the initial meeting.

3. What if the injured person cannot make decisions due to incapacity?

If an injured person has a severe injury that prevents the person from making his or her own decisions, then the family is entitled to make decisions regarding treatment while the person is confined to the hospital.

Thereafter, it is possible to appoint

a person as a substitute decision-maker on behalf of the injured person.

4. What if I am at-fault for the car accident – do I still have a claim?

Yes, regardless of how the accident happened or who caused it, your entitlement to accident benefits may be substantial, depending on your injuries.

5. What should I do if I am hurt in a car accident and can't work, go to school or take care of my children?

There are benefits available to replace lost income, recover school expenses, and in certain circumstances, to pay child care providers.

6. What if I was driving my car without car insurance and was involved in an accident?

You cannot pursue a claim against any at-fault driver if you were knowingly driving your car without car insurance. However, you remain entitled to claim medical, rehabilitation, and attendant care benefits.

7. How will the accident affect my insurance rates?

If the accident is your fault, your car insurance rates may increase. If the accident is not your fault, your car insurance rates should not increase – even if you make a claim for benefits.

8. What if the accident occurred while I was working?

We suggest you consult a personal injury lawyer to determine if the claim should be pursued through the insurance company or the Workplace Safety Insurance Board (WSIB).

9. Who chooses the case manager or treatment providers?

The injured person is entitled to select case managers and other treatment providers. We recommend that you interview qualified health care professionals before you make a choice. Lawyers, social workers and insurers can put you in touch with these professionals.

DEADLINES

There are time limits to all claims

How do I know how much time there is?

The law in Ontario places a number of rigid and unforgiving time restrictions on your right to pursue a claim. If you do not start a lawsuit within the time limit, it is possible that you will lose your right to pursue a claim. The following time limits apply:

Motor vehicle accident:

- Inform accident benefits insurer of accident within 7 days of accident.
- Complete accident benefits application within 30 days of receipt of the application package.
- File a dispute against the accident benefits insurer within 2 years of a denial of a benefit.
- Give written notice to at-fault driver within 120 days of accident.
- Sue at-fault driver within 2 years of accident.
- Loss or damage to vehicle – if not resolved, must sue within 1 year of accident.

Motor vehicle accident caused by slippery road or non-repair of road:

- Provincial Road – sue within 2 years of accident. Sue at-fault driver within 2 years of accident.
- Loss or damage to vehicle – if not resolved, must sue within 1 year of accident.
- Municipal Road – give written notice within 10 days of accident; sue within 2 years of accident.

Fall on private property caused by ice or snow:

- Give written notice within 60 days of the incident.
- Sue within 2 years of the incident.

Accident involving provincial streetcars or trains (GO Transit, etc.):

- Sue within 2 years of the incident.



Fall on a municipal (city) sidewalk:

- Give written notice within 10 days of accident, if caused by snow or ice.
- Sue within 2 years of the incident.

Fall on provincial property:

- Give written notice within 10 days of the incident.
- Sue within 2 years of the incident.

Lawsuit against the provincial government:

- Give 60 days notice before suing.
- Sue within 2 years of the incident.

Accident and sickness insurance:

- Check contract of insurance.

Fatal accidents (death):

- Generally, you must sue within 2 years of accident (unless a shorter limitation period applies).

Victims of assault:

- Sue within 2 years of assault.

Public authorities (OPP, municipal police, etc.):

- Give written notice within 10 days of accident.
- Give 60 days notice before suing.
- Sue within 2 years of accident.

Medical malpractice:

- Sue within 2 years from the time you knew or ought to have known of the facts giving rise to malpractice.

Why a Thomson Rogers LLP lawyer is right for you

1. Do I really need a lawyer?

Seeking compensation for injuries is a complicated process. You should not make any decision without being fully aware of all your rights. We specialize in personal injury cases. We can help you understand your rights, and we can assist you with the following:

- Early investigation of the circumstances surrounding the accident. This is very important, as witnesses move, memories fade over time, and records are not always kept.
- Your insurance company may not advise you of all the benefits to which you are entitled. We will.
- Your health care providers may suggest that you need services or goods for which your insurance company may not agree to pay. We will work with you and your treatment team to ensure that you obtain access to all reasonable and necessary treatment and rehabilitation services.
- We will assist you in obtaining a fair and complete settlement of your claims.
- Claims against someone at-fault for your injuries are processed through the legal system. This process is complicated and a lawyer is essential in order to resolve your case in your best interests. We have the resources, skill and determination to pursue your case through to trial.

2. What should I expect from my lawyer?

At Thomson Rogers LLP, when appropriate, our lawyers are prepared to come to the hospital or to your home to meet you and your family. There is no obligation or fee charged for the initial meeting. We have a thorough understanding of personal injury law



and we are able to explain your rights in clear language that you can easily understand. We will be frank and open about what we can achieve for you and what we will charge you. We will provide you with a complete written explanation about legal fees.

3. What should I ask my lawyer?

Ask us to explain the rights and obligations that you have and the claim that you may pursue. We are accessible and experienced, with a highly trained staff to assist with your case. You should ask us about our qualifications and depth of experience in handling cases like yours. Be assured a Thomson Rogers LLP lawyer will be available to answer all of your questions.

4. Where can I find more information about Thomson Rogers LLP?

The Thomson Rogers LLP website, **trlaw.com**, provides up-to-date information regarding our firm, lawyer biographies, events, community involvement, and a personal injury resource directory that will help you find health care and other relevant information.

Other Assistance

How do I access medical, government and community resources?

Workplace Safety and Insurance Board (WSIB)

Toronto: 416-344-1000

Toll-free: 1-800-387-0750

- If you were injured at work or during the course of your employment.
- Claims must be made within 6 months of the injury.
- In work-related accidents involving an automobile, you may have the right to elect to receive accident benefits and pursue a tort claim, rather than accept WSIB benefits.

Criminal Injuries Compensation Board (CICB)

Toll-free: 1-800-372-7463

Toronto: 416-326-2900

- If you are a victim of crime, a claim should be filed with the Board within 2 years from the date of the incident.

Ontario Human Rights Commission (OHRC)

Toll-free: 1-800-387-9080

Toronto: 416-326-9511

- If you have been discriminated against or inappropriately terminated from your employment.

Canada Pension Plan (CPP)

Toll-free: 1-800-277-9914

- If you have questions regarding retirement pensions disability benefits, death benefits children's benefits and survivor's pension.

Ontario Brain Injury Association (OBIA)

Toll-free: 1-800-263-5404

- OBIA will be able to put you in touch with appropriate, local brain injury associations located across Canada and the United States.
- These are not-for-profit organizations that can help you and your family deal with the effects of brain injury.
- They can provide resources for programs and services available in your community.

Spinal Cord Injury Ontario (SCIO)

Toll-free: 1-877-422-1112

Toronto: 416-422-5644

- A not-for-profit organization to assist people with spinal cord injuries.

Glossary of Terms

Accident Benefits – Benefits in the form of money or assistance provided to persons injured in a motor vehicle accident, regardless of who is at fault. Types of accident benefits include non-earner, income replacement, caregiver, attendant care, medical, rehabilitation, education, damage to clothing, visitation, housekeeping and home maintenance, funeral, etc.

Adjuster – A person who investigates and/or adjudicates insurance claims on behalf of an insurance company.

Attendant Care – A type of accident benefit an injured person receives to pay for care/assistance in his or her daily living. Assistance may take the form of cooking, cleaning, helping the injured person get dressed or supervising the injured person. The cost of providing attendant care may be paid by the insurance company to the person providing the care, whether it is a health care professional or a family member.

Case Manager (Qualified) – A rehabilitation professional who coordinates rehabilitation services following an injury.

Catastrophic Impairment – The most serious of personal injuries. Examples include: paraplegia; tetraplegia; severe impairment of ambulatory mobility; amputation; loss of vision in both eyes; certain traumatic brain injuries; physical impairments that result in a 55% or more physical impairment of the whole person; and mental disorders that satisfy specific criteria. A person having a catastrophic impairment becomes entitled to \$1,000,000.00 for medical/rehabilitation and attendant care.

Damages – The losses the plaintiff has suffered because of the defendant's conduct. These losses can take many forms including compensation for pain and suffering; loss of past, present and future income; health care costs; loss of social or familial relationships; etc.

Deductible – In lawsuits arising from a motor vehicle accident, after an award for compensation for pain and suffering is established in court or during the settlement negotiations, the award may in some case be reduced by statutory amount.

Defendant – A person and/or corporation that is being sued by a Plaintiff. Examples of defendant corporations include an insurance company, a leasing company, a municipality, a tavern, a property owner, a hospital, etc. Most defendants in personal injury lawsuits are insured. A defendant's insurer will usually appoint a lawyer to act on behalf of the defendant.

Health Care Expenses – A category of tort entitlement that includes goods and services for medical expenses, rehabilitation, and attendant care.

Incurred Expense - New definition of "incurred" requires the claimant to pay or promise to pay the expense and requires that the service provider provide the service in the course of the employment, occupation or profession, in which he/she would have normally been engaged, but for the accident, or that the person has suffered an economic loss in order to provide the service.

Insurer Examination/Section 44

Assessment – The insurer may appoint health care professionals of their choosing, to perform assessments in order to determine whether to pay a benefit.

Limitation Period – When a person suffers an injury, the law imposes a time limit in which to issue a Statement of Claim. If one fails to issue the Claim within the time allotted, all rights to compensation are lost.

Minor Injury – One or more of a sprain, strain, whiplash associated disorder, contusion, abrasion, laceration or subluxation and any clinically associated sequelae.

Optional Benefit – Additional benefits purchased by the Insured or in some cases a family member of the Insured.

Personal Injury Law – The area of law that involves persons who have been injured in an accident. Accidents include motor vehicle, slip and fall, medical malpractice, boating, assault, etc.

Pre-Claim Examination – The accident benefit insurer may request an assessment by health care professionals of its choosing, before you even apply for benefits. The injured person has the right to refuse this assessment and may do so without penalty.

Plaintiff – A person who has sued another person, corporation or insurer (the “defendant”).

Statement of Claim – A document that begins a lawsuit and claims “damages” from one or more defendants based on the defendant’s acts or omissions causing loss, injury or harm to the plaintiff. A Statement of Claim is generally prepared by the plaintiff’s lawyer.

Statement of Defence – A defendant’s response to the Statement of Claim. It is usually prepared by the defendant’s lawyer. Often, it will deny the allegations made in the Statement of Claim.

Threshold – A level of impairment or disfigurement that a plaintiff must prove in order to recover certain compensation in a motor vehicle tort claim.

This means that the injury must be either a permanent, serious disfigurement (like a scar) or a permanent, serious impairment of an important physical, mental or psychological function.

There are many court decisions that help a lawyer specializing in personal injury law to advise you about whether your injuries “meet the threshold.”

Tort – An area of law in which one party sues and seeks monetary compensation (money) for injuries and losses suffered because of the fault or negligence of another party. This contrasts with accident benefits (no-fault benefits) where benefits are paid without reference to fault.

Auto Insurance Claim Forms

(OCF Forms)

- OCF 1: Application for Accident Benefits
- OCF 2: Employer's Confirmation Form
- OCF 3: Disability Certificate
- OCF 6: Expenses Claim Form
- OCF 10: Election of Income Replacement, Non-Earner or Caregiver Benefit
- OCF 19: Application for Determination of Catastrophic Impairment



To access the Auto Insurance Claim Forms (OCF Forms), please visit:

www.trlaw.com/ocf



Your advantage, in and out of the courtroom

- When you or a loved one has been injured, the consequences can be overwhelming. Legal issues are probably the last thing on your mind.
- However, dealing with the legal and insurance issues surrounding automobile and other serious personal injury accidents is crucial. The issues are complex and often require prompt action due to strict time limits. This is the time when you need to understand your rights.
- Thomson Rogers LLP has created this guide to inform you and your family about your rights and entitlements to compensation. We have been helping injured people for over 90 years.
- Call us for a free consultation.



Legal assistance in other languages.

Many of our clients speak languages other than English. We are pleased to offer the services of an interpreter in your language.



Thomson Rogers LLP has garnered a reputation for taking on the most complex and challenging litigation matters and delivering results.

Capitalize on the experience and perspective of our lawyers. Seasoned advocates and savvy negotiators who have the expertise to help you secure the compensation and support you deserve.

Many of our lawyers are:

- Certified Specialists in Civil Litigation
- Listed in Lexpert® as experts in plaintiff personal injury
- Listed in Best Lawyers in Canada™

When Thomson Rogers LLP takes your case, you will be represented by one of the top law firms in Toronto. No one prepares more thoroughly than we do.



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