

**Motor Vehicle Accident Claims:
What are your rights?**

If you or a loved one has been seriously injured in a motor vehicle accident, there are a number of critical decisions that must be made. Who will care for you or your loved one upon release from the hospital? How do you access future health care service providers such as nurses, physiotherapists or personal support workers? Who will pay for those services? What insurance benefits are you entitled to? What do you have to do to receive those benefits?

The lawyers and staff at Mackesy Smye are here to help put your mind at ease during this difficult time. We can help you get the benefits and compensation you are entitled to. The information in this booklet provides you with the first important steps to getting your life back on track. We hope you find it of assistance.

Mackesy Smye is considered one of the top personal injury law firms not only in the Hamilton and Burlington areas, but throughout Ontario. We only represent the injured victims of motor vehicle accidents, not the insurance industry. We focus only on the interests of our clients.

The personal injury lawyers of Mackesy Smye have a combined legal experience of over 175 years. We have successfully represented thousands of injured victims of motor vehicle accidents.

Our representations have been made at all levels of Courts and Tribunals concerned with motor vehicle accidents. We are highly respected by our peers, the Courts and the insurance industry.

We offer you a free consultation to openly discuss your rights following injury in a motor vehicle accident. If it is difficult for you to come to our office because of your injuries, we will come to you at the hospital or in your home.

What to do if you have been seriously injured in a car accident

Over the last 15 years, the various governments of Ontario have implemented a number of changes to the terms of automobile/motorcycle insurance policies. This legislation has provided a complex array of rules that must be followed if you suffer injuries in a motor vehicle accident. It is important that you obtain representation from an experienced personal injury lawyer. There are important steps that must be taken immediately following a motor vehicle accident to properly protect your rights and remedies:

If the police have not been notified, they must be informed of the accident. Contact your lawyer as soon as possible. Your lawyer will want to have a meeting with you in order to have proper investigations completed to ensure that fault for the accident rests with the responsible party. For example, witnesses must be located, statements taken, and perhaps photographs and engineering investigations undertaken as closely as possible to the accident date.

It is important that your own insurance company be advised of the accident. If you do not have an insurance company, you will need to contact an insurance company that is involved with the accident such as the company that insured the vehicle in which you were a passenger or the company that insured the vehicle that struck you if you are a pedestrian. Likewise, you should notify any other insurance company that may provide coverage following your accident such as any private disability insurance you may have or any insurance through your employment. Application for benefits under these policies must be made in a timely manner. In respect of automobile accidents, applications for insurance benefits must follow strict provisions and must be accessed immediately in order that you can obtain benefits regardless of fault and before your claim has even been commenced against any responsible party.

Your school or your employer should be notified that you have been involved and injured in the accident.

What are Accident Benefits?

Accident Benefits are benefits you are entitled to receive from an insurance company regardless of whose fault the accident was. The accident benefit insurer is one of the following:

Your own insurer,

The insurer of the vehicle in which you were a passenger,

The insurer of any other vehicle involved in the accident, or,

The Motor Vehicle Accident Claims Fund set up by the government of Ontario. It is important for you to understand that there is always an accident benefit insurer.

What Accident Benefits am I entitled to?

Regardless of fault for the accident or the seriousness of your injuries, you may be entitled to one or more of the following accident benefits;

If you are off work as a result of your injuries, you may be entitled to income replacement benefits to a maximum of \$400 per week.

If you were not employed at the time of the accident, you may be entitled to a non-earner benefit of \$185 per week commencing 6 months after your accident.

If you were the primary caregiver for a person in need of care, such as a child or a person who suffers from mental or physical incapacity, you may be entitled to a caregiver benefit to a maximum of \$250 per week and an additional \$50 per week for each additional person in need of care.

If you are in need of any medical service from a health care professional such as a nurse, physiotherapist, occupational therapist, chiropractor or psychologist, or if you require medication or medical aids, and if such needs arise as a result of your injuries from the motor vehicle accident, the accident benefit insurer is obligated to pay for such goods and services. These benefits are payable to a maximum of \$100,000 over ten years and, if the injury is catastrophic, for life, to a maximum of \$1,000,000.

If, as a result of the injuries you have suffered, you require the services of an aide or attendant, you are entitled to an attendant care benefit to a maximum of \$3,000 per month for up to two years following the accident.

If you were a student at the time of the accident, you may be eligible to receive a lost educational expense to a maximum of \$15,000.

If members of your family have incurred expenses in visiting you as a result of your injuries, they may be able to recover these expenses.

If you require housekeeping or home maintenance assistance by reason of your injuries in the accident, you are entitled to expenses to a maximum of \$100 per week for a period of up to two years following the accident.

If a family member has died as a result of injuries sustained in the accident, the spouse and dependants are entitled to certain death benefits as well as reimbursement for funeral expenses.

What are catastrophic injuries?

Catastrophic injuries include: quadriplegia, paraplegia, serious brain injury, or the combination of injuries such that the person suffers an overall impairment which exceeds 55%, according to the American Medical Disability Guidelines. If a person is deemed to be catastrophically impaired they are entitled to enhanced accident benefits which include:

Medical and rehabilitation benefits to a maximum of \$1,000,000 payable over the injured person's lifetime.

Attendant care benefits to a maximum of \$6,000 per month, to a maximum of \$1,000,000 over the injured person's lifetime.

Housekeeping or home maintenance benefits to a maximum of \$100 per week over the injured person's lifetime.

Case manager services to pay for a qualified case manager who will assist in the co-ordination of the goods and services required by the injured person.

How do you make a claim for accident benefits?

Your accident benefit insurer should be contacted within seven days after the accident. The accident benefit insurer is then obligated to provide you with an accident benefits package. Your lawyer will assist you with the completion of these forms. These forms also include a form to be completed by your employer as well as your doctor. You must ensure that the documents are completed in a timely way and forwarded to the Accident Benefit insurance company. It is of critical importance that the application be completed as soon as possible.

What are my rights against someone who may be at fault in an accident?

All motorists have an obligation to fellow motorists to keep their vehicle under proper control, obey the rules of the road, and to not expose their fellow motorists or passengers to reasonable risk of injury or harm. Likewise, road authorities and municipalities are required to make our highways reasonably safe. If these obligations are not met, you may have a right to bring a claim against such person or authority. This is a civil negligence claim, often referred to as a “tort”. As a result of such negligence, or tort, you are entitled to bring an action for monetary compensation for your losses arising out of that person’s or authority’s negligence. Essentially, the law provides that you are to be put back into the position that you were in before such negligence. The law has created a number of categories in order to give effect to that principle. These categories include:

A claim for pain and suffering and loss of enjoyment of life so long as you have suffered a serious enough injury to meet the “threshold test” as set by the insurance laws of Ontario. An experienced personal injury lawyer will be able to advise you whether you can make such a claim.

A loss of income claim after the first week following the accident. Up to the point of settlement or trial of your claim, you are entitled to claim 80% of your after tax income loss less the amounts you received from other sources such as the income benefits from your own insurance company or long term disability benefits. If your loss of income continues beyond the settlement or trial of your claim, you are entitled to compensation for future loss of income.

You can claim for housekeeping and home maintenance expenses to the extent that such expenses are not covered by your own insurance company.

Certain family members such as parents, spouses, siblings and children of injured persons may make a claim for the loss of the injured person’s guidance, care, and companionship, as well as a claim for housekeeping and other services provided for the benefit of the injured person. Family members may also claim other losses that may arise from the injured person’s accident in certain circumstances.

If your injuries are serious a claim may be made for past and future medical and care giving expenses.

Claims against a responsible party (tort claims) are difficult and complicated. The law is not straightforward. You should never try to handle a tort claim on your own. You should always retain the services of an experienced personal injury lawyer to proceed on your behalf.