

MOTOR VEHICLE ACCIDENTS IN ONTARIO

And How to Avoid Totaling Your Claim



Motor Vehicle Accidents in Ontario (And How to Avoid Totaling Your Claim)

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Introduction

How am I going to pay for this accident?

What happens if the accident was my fault?

This injury is going to be life-changing, what do I do now?

If you or a loved one has been seriously injured in a motor vehicle accident, it's likely these are just a few of the questions running through your mind. Most drivers know their auto insurance will be there to help pay for their property damage but few are aware to their entitlement to Statutory Accident Benefits and whether they can obtain compensation from the negligent driver.

The Preszler Law Firm has over 50 years experience handling motor vehicle accident claims, and we're sharing our knowledge with you. Through this book we want to explain the basics of how to handle motor vehicle accidents in Ontario and how we can help you file a successful claim.

Filing a claim, whether it is for Statutory Accident Benefits or a lawsuit or both, can be frustrating and complicated. We would much rather you focus your energy on healing and recovering from the accident – not dealing with paperwork and legal intricacies.

By requesting this book you've already taken an important step in recovering from your accident – you've started learning about your options. In this guide you'll learn:

- how your auto insurance provides you with Accident Benefits;
- how your auto insurance can provide you with compensation in the event that there is insufficient insurance or that the accident is caused by an unidentified or uninsured driver;
- how you can obtain compensation from the negligent driver;
- when you need to hire legal help to ensure you're being fully compensated for your damages;
- what options may be available to collect compensation for your injuries;
- how to handle a claim for the death of a loved one; and
- how to avoid ruining your motor vehicle accident claim.

Once you've read our guide, remember that we are here to help. Our team of accident lawyers is just a phone call away – contact us as soon as possible to learn more about your specific case.

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Chapter 1: Understanding Your Auto Insurance Coverage

Did you know?

It is illegal to drive without valid auto insurance. An insurer may cancel your policy for non-payment of premiums, so if you are looking to obtain a new policy you need to formally cancel your existing policy and begin a new one.

One of the best things you can do to protect yourself and your family is have the proper auto insurance coverage. Planning for the unexpected by purchasing the right policy will help you in the future should you need to rely on your auto insurance to pay for serious injuries from a motor vehicle accident.

You must carry the minimum auto insurance coverage in Ontario and should also consider purchasing more coverage and additional coverage types to ensure your family is protected.

Ontario's Minimum Auto Insurance Requirements

In Ontario you are required to have the following auto insurance coverage:

- Third-party Liability Coverage;
- Statutory Accident Benefits Coverage;
- Direct Compensation – Property Damage (DC-PD) Coverage; and
- Uninsured Automobile Coverage.

You must carry a minimum of \$200,000 in third-party liability coverage but you may also elect to purchase a higher limit. All other types of mandatory coverage can also be enhanced with additional options and higher limits.

Insurance Explained: Third-Party Liability Coverage

Your third-party liability coverage protects you from a lawsuit if the other parties involved in the accident are injured or killed or suffer property damage. When you carry the minimum coverage your insurance will pay up to \$200,000 in damages for lawsuits filed against you.

Insurance Explained: Statutory Accident Benefits Coverage

The Statutory Accident Benefits System – known as SABs – pays benefits to you, regardless of who caused the accident.

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The benefits include:

- **Income Replacement Benefit** - Compensates you for income lost due to the injuries you sustained in the accident.
- **Non-Earner Benefit** - If you do not qualify for income replacement, this benefit compensates you if you suffered a complete loss that prevents you from carrying on your normal life.
- **Medical and Rehabilitation Benefit** - Compensates you for reasonable and necessary medical expenses and rehabilitation costs not covered by any government or private health care systems.
- **Attendant Care Benefit** - Available if you are unable to take care of basic personal needs on your own and need to hire a professional caregiver or attend a long-term care facility.
- **Other Expenses Benefit** - If eligible, this benefit covers substantial losses such as educational expenses, expenses for certain visitors during treatment and recovery, and repair or replacement of clothing and medical devices damaged in the accident.
- **Death and Funeral Payments Benefit** - If the accident resulted in a family member's death, you may be eligible for a lump-sum death benefit and funeral expenses.

Did you know?

The SABS laws underwent substantial changes on September 1, 2010 that adjusted benefit caps and placed stricter regulations on determining what qualifies as a catastrophic injury.

If, however, your impairments are considered Catastrophic, then there are additional benefits which are available to you. These benefits are discussed in Chapter 2.

To qualify for all the SABS that may be available to you, you must:

- report the accident to your insurance company and request a benefits application package within 7 days of the motor vehicle accident;
- return the completed application package within 30 days of receipt;
- have a valid driver's license (if you were the operator of the vehicle) ; and
- own the vehicle or have the vehicle owner's consent to drive.

You cannot:

- be over legal BAC limit or refuse a breath test;
- be using the vehicle for criminal activity; and

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- have knowingly falsified information to obtain your auto insurance.

If you were a passenger or pedestrian, you must:

- report the accident to either your own car insurance company; the car insurance company of any other vehicle involved in the accident; the insurance company of a person whom you are dependent upon; or The Motor Vehicle Accident Claims Fund (1-800-268-7188)
- request a benefits application package within 7 days of the motor vehicle accident;
- return the completed application package within 30 days of receipt.

Insurance Explained: Direct Compensation – Property Damage (DC-PD) Coverage

This type of coverage will pay for damage to your motor vehicle and its contents, as well as the loss of use of the vehicle and contents. The coverage only applies when another person was at fault for the motor vehicle accident.

DC-PD coverage is known as direct compensation coverage because your own auto insurance company will pay for the damage, even if another party was at fault for the accident.

For DC-PD coverage to apply to your accident claim, the accident must meet the following conditions:

- The accident took place in Ontario.
- The accident involved at least one other vehicle.
- The accident involved at least one other vehicle insured by an auto insurance company licensed in Ontario or that has a special agreement with the Financial Services Commission of Ontario to provide this coverage.

In the event the accident does not meet these conditions, you still may be able to make a claim if you elected for the optional Collision coverage.

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Insurance Explained: Uninsured Automobile Coverage

Even though auto insurance coverage is the law, many drivers ignore this responsibility and drive without insurance. If an uninsured or hit-and-run driver strikes you, this coverage provides compensation. It protects you and your family in the event there is no other insurance company to hold liable for your injuries and vehicle damage.

Additional Types of Auto Insurance Coverage

Aside from the minimum required insurance coverage, you may also choose to enhance your required coverage or purchase additional types of coverage. For example, you may wish to increase the \$200,000 limit on your third-party liability coverage to ensure you can cover all the costs of a catastrophic accident that you cause, which can reach well over \$200,000 in medical expenses only, not to mention other financial losses.

You may also increase your Accident Benefits coverage by purchasing higher limits. The standard income replacement benefit coverage is 70% of gross income up to \$400 a week, but you can increase it in increments of \$200 up to \$1,000. You may also increase the limits on other Accident Benefits or purchase benefits that are not available under a standard policy, like housekeeping or caregiver benefit.

There are additional types of coverage that are available to add to your auto insurance policy to ensure all of your damages are covered in the event of a serious motor vehicle accident:

- **Specified Perils Coverage** – Pays for certain specified losses. These include those caused by fire, theft or attempted theft, lightning, windstorm, hail, rising water, earthquake, explosion, riot or civil disturbance, falling or forced landing of an aircraft or parts of an aircraft, or the stranding, sinking, burning, derailment or collision of any kind of transport in or upon which an insured vehicle is being carried on land or water.
- **Collision or Upset Coverage** – Pays for losses caused when the insured vehicle is in a collision with another object (such as another vehicle) or when the vehicle rolls over. An “object” is defined as “another vehicle or trailer that is attached to the vehicle that is covered by your auto insurance policy; the surface of the ground, and any object in or on the ground.”
- **Comprehensive Coverage** – Pays for losses not covered by Collision coverage or Upset coverage. It covers losses caused by

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the perils listed under Specified Perils, falling or flying objects, missiles and vandalism.

- **All Perils Coverage** – This coverage is a combination of Collision or Upset coverage and Comprehensive coverage. It even covers loss or damage caused if a person in your household steals the vehicle covered by your auto insurance policy. This coverage also covers your vehicle if an employee who drives, uses or services the vehicle, such as an auto mechanic, steals it.

Determining the Right Amount of Auto Insurance Coverage

When purchasing your auto insurance policy, do so from an experienced and licensed auto insurance broker or agent. By sitting down with a professional, he or she can assess your family situation and ensure you are purchasing the right types of coverage to ensure you are ready to face any future claims for motor vehicle accidents.

Buying auto insurance is not a one-time event. There are many changes in your life that may warrant changes to your policy over the years. Aside from shopping around for better rates when your policy is set to renew, the following life situations should trigger a review of your current policy:

- Moving to a new address (especially if moving to another province or territory).
- Having or adopting a child.
- Getting married.
- Any additions or departures of household members.
- Getting or losing a vehicle.

Remember that you have the right to modify your auto insurance policy at any time you feel necessary.

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Chapter 2: Three Types of Motor Vehicle Accidents

When filing for Statutory Accident Benefits for injuries sustained in a motor vehicle accident, your claim will be classified as one of three types: minor injury, non-minor injury, or catastrophic.

Minor Injury Claim

The Statutory Accident Benefit Schedule (SABS) defines a minor injury as: *a sprain, strain, whiplash associated disorder, contusion, abrasion, laceration or subluxation and any clinically associated sequelae*. Drivers may seek treatment for these minor injuries immediately and may not require approval from the insurance company.

Although most insurance companies will tell you that since you have a minor injury claim, you will not require the involvement of a lawyer, however, this is nothing farther from the truth. By having your injuries classified by the insurance company as minor, they are able to limit your medical and rehabilitation benefits to \$3,500.00. This is down from the \$50,000.00 of coverage that you paid for. Other benefits which you expected to have, like an attendant care benefit, will also not be available to you.

Based on the broad definition of a minor injury, a lawyer's assistance is almost always required in order for you to get the benefits that you paid for.

Non-Minor Injury Claim

A simple way to determine if you have a non-minor injury claim is if your injuries are more substantial than those listed in the minor injury definition but not as severe as those listed in the catastrophic injury definition below.

Examples of non-minor injuries include:

- broken bones;
- concussion;
- fully torn ligaments;
- disc herniation;
- chronic headaches;
- psychiatric impairments; and
- internal organ damage.

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Drivers should seek treatment for a non-minor injury immediately. These types of injuries often cause you to miss work or school and may result in longer term treatment than minor injuries. Non-minor injuries may require the injured party to undergo extensive physical therapy for months if not years.

Most importantly, by having a non-minor injury claim, your medical and rehabilitation benefit entitlement is \$50,000.00. In addition, you qualify for an attendant care benefit which will pay up to \$3,000.00 per month up to a maximum of \$36,000.00.

Again, it is very important that you have a lawyer on your side for non-minor injury claim as the costs of a non-minor injury can be in the tens of thousands of dollars when you add up the cost of medical treatment, potential lost wages, retraining, care etc. Therefore, it is important that you seek legal representation in order to obtain a full and fair settlement of your Accident Benefits claim.

Catastrophic Injury Claim

You will definitely want a legal professional on your side if you suffer a catastrophic injury to ensure you receive full and fair compensation. The SABS considers the following injuries catastrophic:

- paraplegia or quadriplegia;
- amputation of an arm or leg or another impairment that totally and permanently prevents use of an arm or leg;
- complete loss of vision;
- impairment that results in a score of nine or less on the Glasgow Coma Scale (if test is administered by a trained professional within a reasonable period of time after the accident);
- impairment that results in a score of two or three on the Glasgow Outcome Scale (if test is administered by a trained professional after six months following the accident);
- impairment or a combination of impairments that results in 55 percent or more impairment of the whole person in accordance with the American Medical Association's *Guides to the Evaluation of Permanent Impairment*; and
- impairment that results in a class four or five impairment due to mental or behavioral disorder in accordance with the American Medical Association's *Guides to the Evaluation of Permanent Impairment*.

Did you know?

According to the Ontario Ministry of Transportation, there were 215,533 accidents reported in 2010, 44,430 of which caused personal injury. There were 534 fatal accidents.

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This type of injury is the most life-changing of all. In most cases, a catastrophic injury will result in permanent disability and require life-long care. Increased benefits are available in the following amounts:

- Medical and Rehabilitation Benefits of \$1,000,000.00 for life
- Attendant Care Benefits of \$1,000,000.00 for life (paid up to \$6,000.00 per month)
- Housekeeping and Home Maintenance Benefits of \$100 per week
- Case Manager availability
- Caregiver Benefits of \$250 per week for the first person in need of care and \$50 for each additional person in need of care

The costs for recovering from and living with a catastrophic injury are staggering and should be guided by the knowledge of an experienced lawyer. Most importantly, in cases of catastrophic injury, you do not want to leave your settlement to chance.

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Chapter 3: What to Do after a Motor Vehicle Accident

There are two stages of action to take after a motor vehicle accident: securing evidence at the scene and starting your accident claim.

Securing Evidence at the Scene Immediately after a Motor Vehicle Accident

Your first step after a motor vehicle accident is to ensure safety. Get yourself and your passengers to a safe area. If you are able to safely move the vehicles from the road, do so; if not, use your hazard lights or flares to signal other vehicles to avoid your accident.

Did you know?

If you do not stop to render aid after a motor vehicle accident you may be subject to criminal prosecution. You may not need to report minor accidents if there are no injuries and property damage does not appear to exceed \$1,000.

Contact the police if there are injuries, significant property damage, or if you believe someone involved is guilty of a Criminal Code offense such as drunk driving. When the police respond to a motor vehicle accident, they generate a police report that can help you collect important details such as the contact information for other drivers involved, witnesses, and an official record of whether or not anyone was cited for traffic violations. If you are able, take photos or video of the accident scene, making sure to include the surrounding area, damaged property, and injuries. If you cannot safely do this yourself, ask a witness or uninjured party to help you document the scene.

Make sure someone has collected the contact information of any other drivers involved, anyone injured in the accident, and any witnesses to the accident. You may need to contact these parties later when you file an injury claim; they may provide evidence regarding who was at fault for the accident.

If your vehicle is removed from the scene of the accident, make sure it is transported to a secure location and held, not destroyed. In some cases, your vehicle damage could be important evidence in determining fault and contributing factors in the accident. Even if your vehicle is deemed a total loss, keep it secure until you are certain it no longer needs to be analyzed as evidence.

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Preparing To File an Accident Claim

Time is critical during the first week after a motor vehicle accident. To qualify for the Statutory Accident Benefit Schedule (SABS) you must report the accident to your auto insurance company within seven days of the accident and request your accident benefit application package. While waiting for your package, start setting up a consultation with an accident lawyer. Even though the insurance companies are experts in handling accident claims, they are not always attentive to your unique needs and will always skew things in their favour.

By working with a lawyer, you level the playing field – insurance representatives will have to answer to your lawyer if they attempt to deny your claim for unfair reasons or try to settle your claim for too little compensation.

Did you know?

Once you receive the benefit application package you only have 30 days from the day you receive it to return the completed forms to your insurance company.

Once you have your benefits application package, your lawyer can assist you with filling out the forms, or do it for you, as well as responding to requests for information. A lawyer can be a great asset to your situation – he or she can handle the paperwork and legal matters while you focus on healing and recovery with your family.

It is important to remember that you need to follow through with all medical treatment related to your accident. Failure to do so may result in denial of benefits and could damage your claim.

Once your Accident Benefits claim is up and running, a lawsuit against the at fault driver must be filed prior to the expiration of the two year anniversary of the accident a.k.a. the limitation date. A lawsuit is your only recourse to obtain compensation for your pain and suffering, lost wages and medical expenses into the future, not to mention many other damages.

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Chapter 4: Hiring an Ontario Motor Vehicle Accident Lawyer

A serious motor vehicle accident is frustrating for anyone. Regardless of whether you were at fault for the accident or another party was at fault, you have the right to legal representation to help you through this difficult time.

The Benefits of Having a Lawyer

After a serious accident, do you really want to be spending your time and energy filling out paperwork and dealing with insurance companies? You have just been through a traumatic experience and even if you're not the injured person, the victim may be a loved one for whom you are caring and must file the claim on their behalf.

If you seek help from an accident lawyer, you are drawing on their experience and training to help you recover a fair settlement. You have hopefully never had to handle a motor vehicle injury claim before, so you probably have little experience to draw upon except what you've researched and learned from others.

Your lawyer can help you in several ways, such as by:

- acting as your representative when talking to the insurance companies;
- helping complete your Accident Benefits forms and ensuring all documents are submitted within the appropriate timeframes;
- assisting in the collection and preservation of evidence;
- reviewing all settlement offers to ensure you are getting all appropriate settlements and benefits; and
- offering suggestions for other options for compensation, such as lawsuits.

How to Determine if You Need a Lawyer

Not every motor vehicle accident will warrant hiring a lawyer, however, most do. Minor, Non-minor and catastrophic injury claims will all benefit from lawyer involvement because all claims can be complex.

Depending on the complexity of your case, you will probably have to provide more evidence that your injuries are serious and your expenses are substantial and necessary.

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Did you know?

Most injury firms like the Preszler Law Firm work on a contingency fee – the attorney is not paid unless they win the claim for their client. Their pay is then calculated as a percentage of the settlement.

It is especially important to have lawyer on your side if the accident resulted in catastrophic injuries or the death of a loved one. These cases often have significant damages and will require the filing of both an Accident Benefits claim and a lawsuit.

The interplay between the two systems is very important and can impact you for the rest of your life. Your claims must be handled carefully as your Accident Benefits claim can affect your lawsuit. Remember that hiring a lawyer to represent your case does not cost you any money unless we win your case. There is no need to worry about getting stuck with the expense of hiring a lawyer if you don't win.

Finding the Right Lawyer for Your Accident Claim

You wouldn't see just any doctor to treat your heart disease; you'd see a cardiologist. The same goes if you're pursuing an accident claim. Personal injury is a broad area of law; it can mean any type of accident from a slip and fall at a coffee house to a surgical sponge left inside your body in a case of surgical malpractice.

There are hundreds of personal injury lawyers in Ontario and each one has the ability to pick and choose which types of cases they prefer to handle. Some law firms will only handle motor vehicle accidents, while others will focus their practice on dangerous products or drugs. Some focus on several areas.

Find a lawyer who handles and is familiar with the type of accident that caused your injuries or your loved one's injuries. There are many types of motor vehicle accidents such as:

- car accidents;
- truck accidents;
- motorcycle accidents;
- pedestrian accidents;
- hit-and-run accidents;
- bicycle accidents; and
- fatal (wrongful death) accidents.

A motor vehicle accident lawyer may handle all or only some of these accident types.

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Questions to Ask During a Consultation with a Lawyer

Have you handled any cases similar to mine? If so, what were the outcomes? This question helps you better understand your own situation and also tells you whether or not the lawyer has experience handling your specific type of case.

What types of challenges do you see in my case and how would you handle them? You need to make sure you have realistic expectations for how your case may progress. How the lawyer answers this question can help indicate how familiar he or she is with cases like yours.

What methods of communication do you use to keep me informed of my case's progress? Keeping you informed of your case's progress ensures that things are moving toward a settlement and your lawyer is not neglecting your case.

Do you have any relevant testimonials or cases you can show me from former clients? Of course lawyers will tell you they're great, but it means so much more to hear that from a former client. Their own clients' reviews can give you a candid look at the service you may expect should you choose the lawyer as your legal representative.

Do you take cases to trial? Not all lawyers take their cases to trial. Of course, not all cases need to go to trial, but a thorough lawyer will prepare each case as if it were going before a court. This helps document and prepare the case with the highest attention to accuracy. You don't want an unprepared lawyer who is not willing or able to go to trial should your case warrant it.

Have you ever been disciplined by the Bar? Just how doctors have public malpractice records, lawyers must disclose any punitive actions taken against their practice. Knowing your lawyer has a clean record can give you peace of mind that you have hired an ethical professional to represent your case.

How long do you expect my case to take to settle and what amount do you consider fair for a case like mine? The lawyer may not be able to generate these estimates immediately without a bit more review of your case file. But a competent lawyer should be able to give a basic estimate of the types of compensation you are entitled to seek and basic minimum benefits for which you may qualify.

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What are your fees? A lawyer should never be afraid to discuss legal fees and method of payment. Most accident lawyers work on a contingency fee basis – they don't get paid unless you win a settlement or are awarded damages. The bottom line is, you are only paying the lawyer from a settlement you would have not obtained had you not hired a lawyer, so you are only paying the lawyer with money you did not have prior to the settlement.

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Chapter 5: Types of Compensation Available in a Motor Vehicle Accident Claim

The list of potential losses and expenses from a motor vehicle accident can be astronomical. Your accident can have a great impact on your financial situation, and it is important to know all of the potential types of compensation to which you may be entitled via an insurance claim or tort action.

Did you know?

You may be able to receive compensation from your insurance company, the at-fault driver's insurance company, or directly from an at-fault driver through a lawsuit.

Medical Expenses

Your medical bills don't always stop after treating your initial injuries. Different injuries can take different time to heal and each person heals differently. Accordingly, some injuries, will take weeks, months, even years to heal – if they heal at all. Long-term or permanent impairment is always a potential in motor vehicle accidents, and the costs for medical treatment and care can continue to accumulate even after a settlement.

The settlement you seek should include compensation for both your initial medical bills not covered by OHIP, private insurance or your Accident Benefits claim and future health care expenses that are expected. Independent medical examinations and life care plans are necessary to help estimate these future expenses – a lawyer can help you gather this evidence and calculate your estimated settlement.

Your compensation may also cover medical devices necessary for your recovery or future needs. Temporary devices such as crutches or long-term use items such as prostheses can qualify, too.

Employment Losses

Lost wages top the list of potential damages related to your employment status after a motor vehicle accident. If you cannot work, you cannot earn a living. Whether temporary or permanent, you will be losing income while incurring bills you may not be prepared to pay.

You may even become unable to return to your previous job due to your injuries. For example, someone who was in a skilled trade such as carpentry who loses a hand in an accident may be unable to return to work.

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In such cases, if you secure a new form of employment earning less than you did prior to the accident, you may be entitled to compensation for the difference. You may also be entitled to vocational re-training in order to start a new career. If you are completely unable to work, you may also be entitled to compensation and benefits if you are disabled to the point where working is impossible.

Rehabilitation

Serious injuries may require long-term rehabilitative measures such as physical therapy to restore normal life functions and regain mobility, function, or use of your body. Your claim may also cover vocational training when it will allow you to either return to your previous job or seek another applicable career that can accommodate any new limitations due to your injuries.

Non-Pecuniary General Damages

Non-pecuniary damages are often known as “pain and suffering” or “non-economic damages.” They are related to the emotional and physical pain a victim and their family may face after a motor vehicle accident. Your claim must meet a particular threshold before you can file suit to pursue these damages. Your injuries must cause permanent impairment of physical, mental or psychological functions, or have caused a permanent serious disfigurement.

These damages are often difficult to calculate and pursue because there is no straightforward way to determine the price of emotional trauma after a serious accident.

Keep in mind that a \$30,000 deductible exists on the amount of these damages, unless the award is greater than \$100,000.

Death Benefits

The loss of a loved one creates both financial and emotional damages both of which can be immediate and long-term. Immediately, the family will experience the sudden loss of income if the deceased was a working member of the household. The family will also incur the costs of a funeral which may easily exceed the maximum death benefit from the SABS.

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Over time, you and your family will have to continue to meet your needs without the income of the deceased. There is also no way to replace the love, support and companionship of a family member. Spouses suffer loss of consortium and children suffer loss of parental guidance – both types of emotional damages that may never go away.

Through the Accident Benefits system, Death Benefits may be available to pay for funeral expense among other things. A formal Death Benefit is also paid to a spouse and any other dependants.

A lawsuit is required to replace the lost income of the deceased and any other household or care giving services provided for by the spouse. The survivors also entitled to an amount of damages for their loss of care, guidance and companionship. All other expenses not covered by the Accident Benefits system are payable via a lawsuit against the at fault driver. This will be further explained in the next chapter.

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Chapter 6: When a Motor Vehicle Accident Results in a Wrongful Death

Serious motor vehicle accidents often result in fatalities. Sometimes a victim is killed at the scene, while other accidents result in catastrophic injuries that later claim the victim's life. In either case, your family is entitled to file a wrongful death claim if a loved one is killed.

There are two matters to consider when filing a wrongful death claim: the wrongful death lawsuit and the Death Benefit and Funeral Benefit under the Statutory Accident Benefits Schedule (SABS).

Filing a Claim for the Wrongful Death of a Family Member

The Family Law Act provides the rights for certain family members to file a claim for damages incurred due to the loss of a loved one. The following family members may be eligible to collect compensation for their pecuniary loss:

- spouse;
- children;
- grandchildren;
- parents;
- grandparents; and
- brothers and sisters.

Collecting the damages from a lawsuit or insurance claim is only applicable to cases where another party's negligence resulted in the individual's death.

Wrongful death claims must demonstrate that the negligent actions of another party caused the death. Ontario follows a contributory negligence law which limits the family's right to collect damages based upon the contributing negligence of the deceased.

Qualifying for the Death or Funeral Benefit

The death benefit under the SABS is a lump-sum payment made to the family of the deceased, regardless of whether the deceased contributed to his or her own death. This benefit is payable to the surviving spouse (or ex-spouse in some cases), dependant, or a person to whom the deceased was dependent upon, such as a parent.

Motor Vehicle Accidents in Ontario (And How to Avoid Totaling Your Claim)

To qualify for the death benefit, the victim must have died within 180 days of the motor vehicle accident, or within 156 weeks if the individual suffered a continuous disability during that period.

The amount you qualify for will depend on the particular situation. The surviving spouse may receive a death benefit of \$25,000; if there is no surviving spouse, the benefit is divided among the deceased's dependants. Additionally, dependants of the deceased or those entitled to receive support from the deceased may be entitled to a \$10,000 benefit.

Did you know?

An average funeral can cost well over \$6,000. It includes expenses from funeral homes, flowers, coffin, and accommodations.

The funeral benefit is also a lump-sum benefit that covers reasonable funeral costs and expenses, up to \$6,000.

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Chapter 7: 10 Ways to Avoid Totaling Your Claim

1. Seek immediate medical attention and evaluation. Waiting too long could cause you to lose your right to Accident Benefits or could raise questions regarding the severity of your injuries. The insurance company may question whether your injury is minor, non-minor or catastrophic if you do not require immediate medical treatment.

Did you know?

Your benefits and coverage under the Ontario Health Insurance Plan (OHIP) and any private health insurance plans will be your first resource for paying medical expenses related to your accident. Insurance company settlements, Accident Benefits, and lawsuits are all second resort options for paying your medical damages.

2. Hire a lawyer. If you've never pursued an accident claim before, you are not expected to know all of the steps and requirements to file a claim. A lawyer who has handled cases similar to yours will have the knowledge necessary to evaluate and pursue your claim.

3. Keep detailed notes on your medical conditions and accident-related expenses. Documentation is a key to a complete and strong claim. Records of your expenses will help if submitting a claim for reimbursement for services such as housekeeping. Likewise, a pain diary can help keep track of the limitations and suffering your injuries impose on your daily life.

4. Save everything. Any object or document related to your accident may become critical evidence to prove the severity of your damages and the expense it has cost your family. Keep all receipts, preserve your damaged vehicle, and even keep clothing damaged during the accident. You can't be too thorough when collecting evidence; nearly anything can become a part of your accident record.

5. File your claim as soon as possible. You only have seven days following the accident to notify your insurer of the accident, and only 30 days after receipt of the application to return it. The longer you wait to file your claim, the harder it may be to keep and collect evidence or remember important details about the accident. The earlier you start your claim, the earlier you can reach a settlement.

6. Don't accept the first settlement offer. The insurance company often relies on the urgency of medical expense and income loss to get accident victims to agree to a low initial settlement. You have a right to seek the full amount of damages and benefits to which you are entitled. If the initial settlement does not cover all of your damages, seek a lawyer's help to negotiate a fair settlement.

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7. Don't give a recorded statement until you talk to your lawyer. If an insurance adjuster contacts you to give a recorded statement about your motor vehicle accident, do not do so until you've spoken to a lawyer. Frankly, even with a lawyer, you should never give a recorded statement as there is likely no benefit to you. If you do consider giving a statement, before doing so, ask the adjuster if you can take a statement from their client. If the answer is no, which is customary, that should tell something.

8. Follow through with all medical directions and treatments. Failing to follow your doctor's orders for treatment may be a signal to the insurance company that you are not as injured as you portrayed in your claim, or that treatment is complete. If you do not comply with medical orders, the insurance company may be able to decrease or cut off your payments and benefits.

9. Watch what you say on social media. We want to keep our loved ones informed of our health and recovery after a motor vehicle accident injury, but do so with caution. Posting any content to social media sites after your accident could be used as evidence against your claim if it is misconstrued. Beware of any new connection requests from unknown persons, and keep your profiles private – or just avoid posting about the accident at all!

10. Don't sign any paperwork until a lawyer has reviewed it. One of the most damaging things to sign may be a medical release form if you do not read the fine print. Some release forms will allow the insurance company to review your complete medical history. If adjusters find an old injury or pre-existing medical condition that you are claiming the accident made worse or are claiming returned due to the accident, the insurance company may argue that the injury is unrelated to the accident.

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Helpful Resources

Workplace Safety and Insurance Board (WSIB)

Canada: 1-800-387-5540

Ontario: 1-800-387-0750

Toronto: 416-203-4530

- 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

Toll-free: 1-800-372-7463

Toronto: 416-326-2900

- If you were 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

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 pension, disability benefits, death benefit, children's benefits and survivor's pension.

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The 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.

The Canadian Paraplegic Association of Ontario

Toll-free: 1-877-422-1112

Toronto: 416-422-5644

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

Financial Services Commission of Ontario (FSCO)

FSCO is an integrated regulator for a number of different financial services including motor vehicle insurance

Telephone: 416-250-7250

Toll free: 1-800-668-0128

Fax: (416) 590-7070

Human Resources Department of Canada (HRDC)

HRDC provides access to numerous government services including Employment Insurance and Sick Benefits.

Toll-Free: 1-800-206-7218

TTY: 1-800-529-3742