



Personal Injury Guide

Information about your legal rights, important next steps and other assistance that is available

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This guide was prepared by the personal injury lawyers at Nelligan O’Brien Payne. This publication is intended to provide general information only. Readers should not attempt to apply the information provided therein to their circumstances without seeking legal advice. The publication is not intended to provide legal advice or opinion as neither can be given without reference to the specific facts, events and situations of individual circumstances.

Information in this handbook is current as of June 2016.

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Where to begin

If you have been injured or someone close to you has been involved in a serious accident or fatality, we understand the significance of the losses being suffered, and the feeling of being overwhelmed.

We have created this guide to help you determine the necessary first steps in dealing with the legal aspects of your situation, and to ensure you receive the necessary compensation for your future needs.

Within the first few days, you should:

1. Read this guide and learn more about personal injury claims.
2. Start recording important information—refer to the enclosed “Personal Injury Workbook” for details.
3. Contact a personal injury lawyer to review your options and determine if you have a claim. Nelligan O’Brien Payne’s personal injury lawyers provide a free consultation to those who are seriously injured. For additional information, call 613-238-8080 or toll free 1-888-565-9912.

For additional copies of this publication please contact 613-238-8080.

This publication is also available in French.

Introduction

Nelligan O'Brien Payne has a long history of representing individuals and their families who have been injured as a result of an accident. This includes automobile or other motorized vehicle accidents, slip and falls, assaults, as well as injuries caused by the negligence of others.

Over the years we have seen many individuals who have not been aware of the various sources of financial support that are available; have missed important time limitations that prevented them from obtaining full benefits; or have jeopardized their rights by signing off too early on a settlement. For those who have been seriously injured, it is important for them to have this information.

It is our experience that the resolution of financial concerns plays a significant role in the recovery process. It is important in the short and long term to have as much access as possible to the assistance required to deal with the many changes to an injured person's normal living conditions and environment.

The legal problems in such cases are often complicated and require detailed information to be collected from the individual and his or her family members. The workbook included with this guide will facilitate the gathering of that information, will direct you to various sources of assistance and will identify important issues. The guide will hopefully also help reduce stress by providing key information in regard to personal injury claims and allow you to be more informed about the process.

This publication is comprised of two main sections:

1. Personal Injury Guide—information about your legal rights, important next steps and other assistance that is available.
2. Personal Injury Workbook—to assist you in recording relevant information.

Motor vehicle accidents

Have you been involved in a “motor vehicle accident”?

- If you are an occupant of a car, truck, motorcycle, snowmobile, or all-terrain vehicle, or if you are a pedestrian or cyclist who has been struck by any of these vehicles, you have been involved in a “motor vehicle accident”.
- If you have been involved in a motor vehicle accident, you may be entitled to receive “accident benefits” under an automobile insurance policy, and you may have the right to sue the at-fault party in court. Both of these rights are described below.

Accident benefits

What are “accident benefits”?

- Every automobile insurance policy (including all the vehicles described above) includes certain “accident benefits” that your insurance company will pay depending upon your needs following an accident.
- Accident benefits are available to you regardless of fault. It does not matter how the accident happened, or whether any other vehicle was involved.
- Accident benefits are available regardless of whether you were the driver, the passenger, or even a pedestrian. If an automobile was involved in the accident (and this includes all the vehicles described above), these benefits will usually be available.
- Accident benefits are also available even if you do not have your own insurance policy. (Please see below for further information.)
- Accident benefits may include the following: weekly benefits, medical and rehabilitation benefits, attendant care benefits, and miscellaneous benefits. Each of these are explained on the following pages.

Optional Benefits

- Your automobile policy may also include “optional” accident benefits. These are benefits that are not automatically included in your policy, but that you may purchase from your insurance company at an additional premium. Optional benefits include caregiver benefits, housekeeping and home maintenance benefits, and additional amounts for income replacement benefits and medical and rehabilitation benefits.
- We recommend that you inquire with your insurance company about your needs to determine if you require optional benefits.

Who can get accident benefits?

- Accident benefits are typically available to anyone who has been injured in an accident involving an automobile (including all of the vehicles described above). Whether specific benefits are available will depend on the nature and extent of your injuries.
- Family members who are not involved in the accident, but who suffer from a mental or psychological condition as a result of the injuries to the family member who was involved in the accident, are also entitled to receive accident benefits.

What about my weekly benefits?

- There are three types of weekly benefits available, depending on certain conditions:
 - a. income replacement benefits;
 - b. non-earner benefits; and
 - c. caregiver benefits

a. Income Replacement Benefit

- Income that you lose during the course of your recovery may be compensated for by weekly benefits.
- If you were employed or self-employed at the time of the accident and cannot fully return to work as a result of your injuries, you may qualify for an **income replacement benefit**. This benefit will compensate you for 70% of your lost gross income, up to a maximum amount set out in your policy. The maximum benefit is \$400.00 per week. You can purchase an optional income replacement benefit for a maximum of \$1,000.00 per week. No benefit is paid for the first 7 days after the accident.

b. Non-Earner Benefit

- If you were not employed at the time of the accident, and did not provide care for someone in need, but your injuries prevent you from carrying on a normal life, then you may qualify for a **non-earner benefit**. This benefit will pay a flat rate of \$185.00 per week, starting 4 weeks after the onset of the complete inability to carry on a normal life.
- If you are enrolled full-time in elementary, secondary or post-secondary education at the time of the accident, or you have completed your education less than one year before the accident and are not working in a capacity that reflects your education and training, you may also be eligible for a non-earner benefit if your injuries prevent you from carrying on a normal life.
- The insurer is not required to pay the non-earner benefit for more than 2 years after the date of the accident.
- In addition, if the insured person is a minor, the insurer is not required to pay the non-earner benefit before the insured person is 18 years of age.

c. Caregiver Benefit

- There is a third type of weekly benefits called **caregiver benefits**. You will only be entitled to caregiver benefits if you are catastrophically impaired or you have purchased the optional caregiver benefit. You may qualify for a caregiver benefit if you provided care to someone else at the time of the accident (a child or someone with special needs), and your injuries prevent you from providing that care. This benefit will compensate you for costs you incur in having someone else provide that care for you while you recover. Typically, the maximum amount for this benefit is \$250.00 per week for the first person you care for, and an additional \$50.00 per week for each additional person.
- The availability and duration of each weekly benefit will depend upon the nature of your injuries, the extent of your limitations, and the speed of your recovery.

Choosing between Income Replacement Benefits, Non-Earner Benefits and Caregiver Benefits

- If you fall within more than one of these categories, then you may have the right to choose the benefit you receive. However, that choice is final, unless you become catastrophically impaired. You should seek legal advice prior to making such a decision..

What about my treatment costs?

- Treatment costs that are not covered by OHIP, or from some other source, may be covered by medical and rehabilitation benefits.
- In most cases, the standard benefit combines medical, rehabilitation and attendant care benefits and will pay for up to \$65,000.00 over the course of 5 years for non-catastrophic impairments. The 5 year time limit does not apply to:
 - a. children who were under 18 at the time of the accident;
 - b. individuals who are catastrophically impaired; or,
 - c. individuals who purchased the additional optional \$1,000,000 medical, rehabilitation and attendant care benefit.

- Medical and rehabilitation benefits are intended to pay for treatment you need to recover from your injuries and return to a normal life. These typically include: physiotherapy, massage therapy, chiropractic therapy, assistive devices (such as walkers, wheelchairs, etc.), modifications to your home and psychological treatment. The amount of medical and rehabilitation benefits that are available will depend on the nature and extent of your injuries.
- Depending on the nature and extent of your injuries, you may require an attendant to help you with personal hygiene, dressing and other daily care. Attendant care benefits may be available to help pay for these costs.
- Attendant care benefits will typically pay up to \$3,000.00 per month, for up to 2 years after the accident. If you are found to be catastrophically impaired, the benefit may be increased up to \$6,000.00 per month. However, these amounts may change depending on the optional benefits you may have purchased with your insurance policy.
- In order to receive the attendant care benefit, you must “incur” attendant care expenses. This means that the attendant care services are either provided by a professional or, if the services are provided by a friend or family member, that friend or family member sustains an economic loss. An “economic loss” is a pecuniary loss such as missed work time. You will not receive the benefit unless you can demonstrate that the attendant care expenses were incurred.
- If you are catastrophically impaired, the total amount of combined medical, rehabilitation and attendant care benefits available is \$1,000,000.
- If you have been found to have suffered a “minor injury”, then your benefits may be limited to \$3,500.00 in treatment. Conversely, if you are found to have suffered a “catastrophic impairment”, the maximum might increase to \$1,000,000 over the course of your lifetime. However, these amounts may change depending on the optional benefits that you may have purchased with your insurance policy.
- Medical and rehabilitation benefits need to be pre-approved by the insurance company **before** you receive the treatment. You will need to have your doctor or other treatment provider complete forms that are then sent to the insurance company for approval.

Optional benefits

- You can increase the medical, rehabilitation and attendant care benefit limits by purchasing optional benefits. This includes an optional medical, rehabilitation and attendant care benefit of up to \$1,000,000 for a non-catastrophic injury. If an insured person purchases this optional benefit, the insurer may pay for medical, rehabilitation or attendant care benefits for more than 5 years. You may also purchase an optional benefit that extends the maximum coverage to \$2,000,000 for a catastrophic impairment.

What if I need help around the house?

- Depending on the nature and extent of your injuries, you may not be able to do your regular tasks around the home. If you are catastrophically impaired or you have purchased the optional housekeeping and home maintenance benefit, you may qualify for up to \$100.00 per week if you are substantially unable to perform your pre-accident housekeeping activities. Typically this benefit is only available for the first 104 weeks following your accident. This benefit may be payable for a longer period of time if you are catastrophically impaired.
- In order to receive the housekeeping and home maintenance benefit, you must “incur” housekeeping expenses. This means that housekeeping services are either provided by a professional housekeeper or, if the services are provided by a friend or family member, that friend or family member sustains an economic loss. An “economic loss” is a pecuniary loss such as missed work time. You will not receive the benefit unless you can demonstrate that housekeeping expenses were incurred.

What other benefits might be available?

- Depending on the severity of your injuries, and the optional benefits you may have purchased with your insurance policy, you may be entitled to the services of a case manager, who will co-ordinate your treatment.
- If you were enrolled in an education program at the time of the accident, and your injuries prevent you from continuing in that program, you may be entitled to a lost educational expenses benefit. This benefit will reimburse incurred expenses for tuition, books, equipment, etc., up to a maximum of \$15,000.00.

- Family members who visit you during the course of recovery may be entitled to recover the expenses that they incur during these visits for the first two years after the accident. In the case of very serious injuries, this benefit may be paid for a longer period of time.
- If any of your clothing, prescription glasses, dentures, hearing aids, prostheses, or other medical or dental devices were damaged in the accident, then you may be entitled to recover the costs of either repairing or replacing these items.
- Additional benefits, or increased amounts of benefits, may be available if purchased with the automobile insurance policy.

What if the person dies as a result of the accident?

- If the person involved in the accident dies either in the accident itself, or shortly after the accident as a result of injuries they suffered in the accident, then the surviving family members may be entitled to a death benefit. Typically, the amount of this benefit is as follows:
 - a. The spouse of the deceased person may receive a \$25,000.00 benefit (if the deceased person did not have a spouse, then this benefit is divided amongst any dependants);
 - b. Each dependent of the deceased person may receive a \$10,000.00 benefit; and,
 - c. If the deceased person was dependant on someone else, that person (or their spouse or any dependant) may be entitled to receive a \$10,000.00 benefit.
- If the person involved in the accident dies as a result of injuries they suffered in the accident, then the family is entitled to recover a benefit to help pay for the costs of the funeral. This benefit will typically pay for incurred expenses up to \$6,000.00.

Where do I get accident benefits?

- If you own an automobile, even if it was not involved in the accident, you will look first to your own insurer for accident benefits.
- Accident benefits are available even if you do not have your own insurance policy, and even if you were not an occupant of a vehicle at the time of the accident.
- If you were an occupant of a vehicle involved in the accident, the following order will determine which insurance company will pay for your accident benefits:
 1. Your own automobile insurance company. This includes any insurance company that provides you with coverage, such as your spouse or parent's insurance company;
 2. The insurance company for the vehicle you were in at the time of the accident; or,
 3. The insurance company for any other vehicle that was involved in the accident.
- If you were not an occupant of a vehicle involved in the accident, then the following order will determine which insurance company will pay for your accident benefits:
 1. Your own automobile insurance company. This includes any insurance company that provides you with coverage, such as your spouse or parent's insurance company;
 2. The insurance company for the vehicle that struck you; or,
 3. The insurance company for any other vehicle involved in the accident.
- If you do not have access to any insurance policy, and none of the vehicles involved in the accident were insured, you can still receive accident benefits from the Motor Vehicle Accident Claims Fund.

How do I claim accident benefits?

- From the above section, determine which insurance company you should contact to claim accident benefits. You must contact the insurance company as soon as possible, within 7 days of the accident.
- The insurance company will provide you with a package of forms that need to be completed, including an Application for Accident Benefits form. This form needs to be completed within 30 days of the accident. In some circumstances, you may still be able to apply for benefits later than 30 days after the accident.
- Depending on the benefits that you may be entitled to receive, the insurance company will also need various other forms to be completed by your doctors, other treating professionals, and your employer. Different forms will be due at different times, so it is important to have these forms completed as soon as possible.
- The insurance company may request various documents from the hospital, your business if you are self-employed, or your family doctor. These documents will have to be obtained as soon as possible, and you may be required to sign authorizations for these forms to be released.
- During the course of your claim, the insurance company will likely request that you participate in various assessments by doctors, occupational therapists, or other professionals. If you are self-employed, you or the insurance company may retain an accountant to help calculate your income. Depending on the circumstances, there can be significant consequences for failing to cooperate, which can include the suspension or termination of benefits.
- The insurance company may also request an interview, a sworn statement about the accident and your claim, or even that you submit to questioning under oath. You should consult a lawyer before you give a sworn statement or submit to questioning under oath.
- Over the course of your claim, there may be disputes with the insurance company over whether or not you are entitled to certain benefits. A dispute resolution process is available to resolve these disputes, but that process must be initiated within 2 years of any denial of benefits.
- You should seek legal advice with respect to various requests, as noted above, from your insurance company.

What if I have other insurance policies available to me, or was injured during the course of work?

- If you have other insurance coverage (short-term disability, long-term disability, or medical coverage), it may affect the accident benefits available to you. Depending on the nature of the coverage, you may have to apply for those benefits before you can receive applicable accident benefits.
- If the accident happened while you were in the course of your employment, you may be entitled to receive benefits from the Workplace Safety and Insurance Board (WSIB). Please see the WSIB section of this guide (page 21) for further information. If WSIB benefits are available to you, you will have to make an election as to which benefits you wish to receive. You should seek legal advice with respect to any such election as it can have serious effects on your rights to compensation.

What if my accident happened outside of Ontario?

- Different provinces have different insurance schemes to deal with automobile accidents. If you are involved in an accident outside of Ontario, but are insured in Ontario, then you may have an election as to which provincial insurance scheme will apply. You should seek legal advice prior to making any election.
- If you are injured in a motor vehicle accident in Québec, you can apply for accident benefits with the Société de l'assurance automobile de Québec [SAAQ] or you can apply for benefits with your own automobile insurer. You should consult a lawyer before you make this election.
- If you are injured in a motor vehicle in the United States of America, your Ontario insurer may be liable for a portion of your damages if the American driver is uninsured or underinsured. You can also apply for accident benefits with your own automobile insurer.
- If your accident occurred outside of Ontario, you should obtain legal advice before you choose the jurisdiction where you will be claiming benefits.

Suing the At-Fault Party

Do I have a right to sue?

- Depending on the nature of the accident and the extent of your injuries, you may have the right to sue the parties who are “at-fault” for the accident. This is a legal question and can involve different principles than those applied by police to lay charges.
- There may be more than one person who is “at-fault” for an accident. In that case, responsibility will be apportioned amongst those at fault.
- Depending on the manner in which the accident occurred, you may have some liability for the accident. However, this does not necessarily mean you do not have a right to sue, just that your own fault for the accident may reduce the amount of damages you can recover.

Who would I sue?

- Under the law in Ontario, the owner of a vehicle is liable to those injured by the vehicle. As a result, the owner(s) of the at-fault vehicle(s) would need to be named in a lawsuit.
- Additionally, you would also sue the at-fault driver(s). If you were a passenger, this may include the driver of the vehicle you were riding in.

What if the other driver can't be identified?

- Any insurance policy that insures you may also provide unidentified driver insurance coverage. If the other driver cannot be identified, then your own insurance company may provide coverage to you just as if it insured the unidentified driver.

What if the other vehicle and the other driver are uninsured?

- Any insurance policy that insures you may also provide what is called “uninsured automobile insurance coverage”. If neither the other driver nor the other vehicle are insured, then you may be able to recover benefits from your own insurance company just as if it insured the other driver or vehicle.

What if the other vehicle and the other driver are underinsured?

- In some cases, the owner of the at-fault vehicle may have less insurance coverage than you do. In that case, you may be able to access additional funds under your own insurance policy.

What can I recover?

- Depending on the nature and extent of your injuries, you may be entitled to recover damages for your pain and suffering. Under the insurance scheme in Ontario, you are only entitled to recover damages for pain and suffering if your injuries meet what is known as the “threshold”. The threshold requires that your injuries result in either permanent, serious disfigurement or a permanent, serious impairment of important physical, mental or psychological function.
- These criteria are constantly being refined through legislation and court cases. Additionally, even if you are entitled to recover damages for pain and suffering, the insurance scheme may prescribe a deductible for these damages. The amount of this deductible changes over time, and will be determined based on the date of your accident. Furthermore, the amount of the deductible may also change depending on the optional benefits you may or may not have purchased with your insurance policy. You should seek legal advice with respect to your potential right to recover damages for pain and suffering.

- Additionally, you may be entitled to recover the following:
 - a. Up to 70% of your past gross loss of income (to the extent that you have not been compensated through accident benefits or other means);
 - b. Your future loss of income or future ability to earn income;
 - c. Your future costs of care;
 - d. Extra housekeeping and home maintenance expenses; and,
 - e. Any out-of-pocket expenses that you have not already recovered.
- Your family members may also be entitled to recover damages if your injuries have harmed your relationship with them, and their out-of-pocket expenses. The availability of these damages may also depend upon the threshold described above, and may also be subject to a deductible.

How do I begin a lawsuit?

- Retain a lawyer with experience in motor vehicle accident claims. The motor vehicle insurance scheme is constantly changing, and specialized knowledge of these claims is very important.
- You need to provide written notice to all of the parties involved that you intend to start a lawsuit against them for injuries you suffered in the accident. This notice must be sent within 120 days of the accident.
- You must apply for accident benefits. (Please see page 3).
- You must commence the lawsuit within the limitations period (typically 2 years from the date of the accident).
- You should try and record details of your claim as much as possible. Take notes of how the accident happened, including the names, addresses, and telephone numbers of any witnesses if available. If the police attend at the scene of the accident, try to note the name and badge number of the investigating officer, and request a copy of the accident report. If possible, and appropriate, take photographs of your injuries shortly after the accident. Keep track of the doctors you have seen, and the treatment you have received.

Other types of accidents

- Personal injuries can also arise from a wide variety of other circumstances including: slips and falls, boating accidents, snowmobile and ATV accidents, assaults, injuries from the use of products, and exposure to toxic chemicals and moulds, to name a few. To receive compensation for these injuries, you must prove that another person or business is responsible.
- Compensation can include: pain and suffering, lost income, cost of required treatments, and other out-of-pocket expenses. Additionally, family members may also be entitled to their own compensation for treatment, such as counseling, loss of income, expenses they incur, and any loss of care, guidance and companionship from you.
- In all cases of personal injury, you should immediately seek medical attention to assess your injuries and obtain treatment. If possible, try to keep notes of the doctors you see and the treatment they provide.
- In all cases of personal injury, you should seek the advice of a lawyer as soon as possible. As is explained in the “Important Deadlines” section of this guide (page 26), there will be strict timelines that will limit your ability to bring a claim. If you miss those timelines, you may be stopped from seeking any compensation, regardless of the seriousness of your injuries. An experienced personal injury lawyer can help make sure that these timelines are met so that your claim can proceed.

What if I have been injured in a trip or slip and fall?

- Slips and falls can happen anywhere: public sidewalks, malls, stores, restaurants, private property, office buildings or even on the job. (If you have fallen while at your job, please also see the Accidents in the Workplace section of this guide - page 21.)
- There is a legal obligation on property owners to keep sidewalks, store aisles, office corridors and other public areas in safe condition and free of danger. When the conditions of these areas fall below reasonable standards, and you are injured, you may be entitled to compensation.

- If possible, you should try and take photographs of the accident site as soon as you can. The condition of the site will often change, and photographs can help document any dangers that were present when you fell.
- You should also notify the owner of the property about your fall as soon as possible. Owners will often make incident reports, and you should try to obtain a copy. Try to note the name of the person you spoke to, as well as his or her position if appropriate.
- If anyone else witnessed your fall, you should try and get his or her name, address and telephone number.
- If you slip and fall on City property, you must provide notice to the City by registered mail within 10 days of the incident.

What do I do if I have been injured in a boating accident?

- Boating, snowmobile, ATV, scooter, and motorcycle accidents can occur in a variety of different situations. These accidents can also happen for a variety of reasons, including: improper operation, fire, or even defects in the boat/machine itself.
- In order to advance a claim, you will have to establish that the owner, operator, or manufacturer is responsible for your injuries. To help you establish this, you should take notes about the details of the accident, including the name, address and telephone number of any witness(es).
- If you suspect that the boat/machine or other safety equipment may have been defective, you should try to take photographs and preserve the item(s) if at all possible.
- You should report the incident to police or coast guard officials. The police or coast guard officials will make a report of the incident, and you should request a copy. Try to make a note of the name and badge number of the investigating officer if possible.
- If you are injured in an snowmobile, ATV, scooter, or motorcycle accident, you may also make a claim for accident benefits with your automobile insurer.

What if I am assaulted?

- If someone touches you without your permission, you may have been assaulted. If you are injured as a result, then you may have a claim against the person who assaulted you. In some cases, you may also have a claim against people who could have prevented the assault.
- Assaults are also a criminal matter, and you should report the assault to the police as soon as possible. Try to make a note of the name and badge number of the investigating officer. The police will frequently ask you to give a statement, and you should request a copy. You should also ask the investigating officer to keep you advised of any charges that are laid against the person who assaulted you.
- If you have been sexually assaulted, you should report the assault to the police and go to the hospital as soon as possible for proper recording and preservation of any physical evidence of the assault.
- If you are assaulted in a bar, sporting arena, or inside any other public building, you should report the assault to the owner as soon as possible. Owners will often make incident reports, and you should try to obtain a copy. Try to note the name of the person you spoke to, as well as his or her position if appropriate.
- You should take notes of the details of the assault, including the name, address and telephone number of any witness(es).
- If you do not know the identity of the person who assaulted you, you should note a description of the person in as much detail as possible.
- In the case of an assault, you may be entitled to compensation from the Criminal Injuries Compensation Board. You should seek the advice of an experienced personal injury lawyer to assist you in making a claim for compensation to the Board.

What if I am injured while using a product?

- Generally speaking, there is a legal obligation on manufacturers and retailers to ensure that the products they sell are safe to be used by consumers. If you are injured as a result of using a purchased product, then you may be entitled to compensation from the manufacturer of the product, and/or the retailer who sold the product.
- In order to advance a claim, you will have to establish that the product you used was defective and that this defect caused your injury. To help you establish this, you should preserve as much of the product as possible for further testing. If possible, take photographs of the product as well.
- Additionally, you will have to establish who manufactured the product and where it was purchased. If possible, you should try and locate any receipts, warranties, or packaging for the product.
- You should also make notes of how you were injured, including details of how you used the product; how often you had used the product before; and how your injury occurred.

What if I am exposed to chemicals or other toxins?

- Exposure to chemicals and other toxins, even certain types of mould, can have negative health consequences. Often exposure can extend over long periods of time before you start to show symptoms.
- The question of who may be responsible for exposure to a toxin is complicated and varies in each case. Responsible parties may include: manufacturers, builders, owners, inspectors or employers.
- If you believe that you have been exposed to a toxin and have been injured as a result, the first step will be to identify the origin of the toxin. Your doctors should be able to assist you in identifying the toxin, where it may be located and whether it is the cause of your injury or symptoms.
- If the toxin is located at your workplace, please consult the Accidents in the Workplace section of this guide—page 21.
- The owner of the property where the toxin is located will have to be contacted immediately, as will various government agencies. Additionally, various legal steps may need to be taken immediately in order to preserve evidence of the toxin.

Accidents in the workplace

Have I been injured in the workplace?

- You have been injured in the workplace if your injury/exposure happened at work, while you were working, or while you were performing an activity incidental to your employment.
- If your injury occurred in a motor vehicle accident while you were working, you may also be entitled to elect to receive accident benefits from your insurance company. Please see the Motor Vehicle Accidents section of this guide for more details (page 3). If you elect to receive accident benefits from your own insurance company, you cannot also receive benefits from the Workplace Safety and Insurance Board (WSIB).

Am I entitled to Workplace Safety and Insurance Board (WSIB) benefits?

- You may be entitled to WSIB benefits if you are not capable of performing your pre-injury or modified employment.

Is there a time limit to apply?

- While you should apply for WSIB benefits as soon as possible, your application must be made within **6 months** of the accident, or of confirmation of your injury.

Can I recover my lost income?

- Depending on your level of impairment, you may be entitled to receive up to 85% of your net average earnings, up to a maximum rate that varies depending on the year of your accident.
- If you receive benefits for 12 continuous months or longer, you may also receive loss of retirement benefits. This benefit gets paid into a separate account that becomes available to you after age 65.

Will the WSIB assist me in returning to work?

- The WSIB may work with your employer to assist you in returning to work on a modified basis, if possible.
- If your injury prevents you from returning to your old job, or if suitable employment cannot be identified, the WSIB may offer work transition services, that may include retraining.

What about my pain and suffering?

- If your condition stabilizes, but you do not fully recover, you may be entitled to a Non-Economic Loss (NEL) benefit. This benefit compensates you for the physical, functional, or psychological loss you suffer as a result of your injury.
- The amount of this benefit is based on the severity of your injury, and your age at the time of the accident. Depending on the amount of this benefit, you may have the option to select either a lump sum or monthly payments. This benefit does not compensate for pain and suffering.

What about my treatment costs?

- The WSIB will pay for the costs of most treatments, such as: prescriptions, assistive devices, transportation to treatment, physiotherapy, chiropractic therapy, massage therapy and psychological therapy. Specific rates are applicable depending on the treatment.
- All treatment must be pre-approved by the WSIB.
- While there is no set maximum, the WSIB will only pay for treatment in the acute phase of your injury.

Does the amount of my benefits depend on my injury?

- Depending on the nature of your injury, you may qualify for the WSIB's Serious Injury Program (SIP). Many of the additional benefits associated with the program are determined subsequent to the Non-Economic Loss (NEL) rating. At this time, a 60% or higher NEL quantum must be awarded/expected to be admitted to the SIP.

- If you qualify for the SIP, you may be entitled to receive additional benefits, such as: an independent living allowance, unlimited prescriptions, financial assistance for hobbies, a clothing allowance, occupational assessments, and home modifications. Additionally, you may receive additional assistance in re-entering the workforce.

Can I sue my employer, or another party?

- Generally speaking, receipt of WSIB benefits will bar any lawsuit either against your employer or any other party.
- Depending on the circumstances of your injury, you may have the right to select whether to receive WSIB benefits or sue a party (other than your employer) responsible for your injury. It is important that you consult an experienced personal injury lawyer before electing to receive WSIB benefits. Once you have made your election, you may not be able to change your mind.

How do I apply for WSIB benefits?

- You must advise your employer about your injury. Depending on the severity of your injury, your employer will have to file a report to the WSIB within 3 days. If your employer refuses, you can contact the WSIB and file a “Worker’s Report of Injury”, which you will be required to complete in any event.
- As with all personal injuries, you should seek medical attention as soon as possible. When doing so, advise your doctor to file a report with the WSIB.

What happens if the WSIB denies my claim or issues connected to it?

- If the WSIB denies your claim, you must object to this decision within a specified time period. Typically, this time period will either be 30 days or six months, and will be clearly identified in the WSIB decision.
- The first step in objecting to the WSIB’s decision is an internal appeal. Depending on the circumstances, you may have a further appeal to the Workplace Safety and Insurance Appeals Tribunal.
- You must file an Intent to Object form with the WSIB within the prescribed time limit, identifying the issue in dispute and setting out all issues in the decision you disagree with. This form is available on the WSIB website.

The Claims Process

- You should consult an experienced personal injury lawyer before seeking compensation for your injury. The legal system imposes **strict deadlines** for giving notice of your claim and for starting a legal action against the parties responsible. Although you are not under obligation to do so, a lawyer can provide you and your family with expert assistance in the resolution of your claim.
- In Ontario, if you are injured as a result of an accident, you are generally entitled to sue any party that caused or contributed to your injury. However, as explained in other sections of this guide, this right may not be available in certain situations (some motor vehicle accidents or some accidents in the workplace, as examples).
- The first step is to put the responsible parties on notice of your claim. This typically involves sending them a letter setting out the details of the accident (date, time, location) and of your injury. Once the responsible parties receive notice, they will forward those details to their respective insurance companies.
- Although each insurance company may respond differently to your letter, it is typical for the company to investigate the circumstances of the accident and obtain more details about your injuries. The insurance company will typically assign an “adjuster” to conduct this investigation. This adjuster will usually try to contact you, any witnesses and any other parties involved during the course of their investigation. The adjuster will then report back to the insurance company about your accident.
- The adjuster may ask you to provide a signed statement or undergo an interview concerning your accident and your injury. They may also ask you to sign authorizations that allow the insurance company to access your medical records and employment files. **You should consult with an experienced personal injury lawyer before signing any authorizations.**
- Once the company has completed its investigation, it will either deny your claim or invite you to make a settlement offer. Obtaining a fair settlement for your injuries can be complicated and should be undertaken after your medical condition is stable and all of your injuries are known.

- In Ontario, your damages are assessed only once and those damages include all losses you have experienced to the date of settlement and any losses you may experience in the future.
- If the insurance company denies your claim, your only option is to start a legal action and sue the parties responsible.
- The steps in a legal action will vary depending upon the amount of your claim and the jurisdiction where it is commenced. Generally speaking, a legal action will involve the following steps:
 - a. Pleadings: where both parties file a document with the court that explains the facts of the accident, and the parties' positions;
 - b. Discovery: where both parties exchange relevant documents, and may question each other under oath;
 - c. Pre-Trial or Settlement Conference: where a judge will try and help the parties settle the action; and
 - d. Trial.
- Depending on the circumstances, there may also be a mediation, which is another method to assist the parties in settling the claim.
- The claims process, including a legal action, can take a long time to complete. It is not uncommon for claims to take several years before settling or proceeding to trial.
- In Ontario, a party must now set an action down for trial within 5 years of commencing the action in the court system.

Important deadlines (Limitation periods)

- As explained in other areas of this guide, there are various deadlines, also known as limitation periods, that apply to different steps. **Failure to comply with these limitation periods may result in your claim being completely barred.**
- Typically, the limitation period that applies to most claims is **2 years**. This means that, in most cases, a court action must be started within 2 years of the date of your accident. There may be circumstances where damage or an injury has occurred but you are not aware of it at the time. In such a case, the limitation period will not start to run until you knew or ought to have known about the injury.
- In the case of minors, the limitation period will not start to run until they attain the age of majority (in Ontario, it is currently 18 years old). However, if a Litigation Guardian is appointed for a minor, the regular 2 year limitation period applies to the minor's claim. You should seek legal advice before agreeing to act as a Litigation Guardian for a minor.
- If you are injured in a slip and fall on City property, you must provide notice to the City by registered mail within 10 days of the date of the incident. You must commence a legal action within 2 years of the date of the incident.

About Nelligan O'Brien Payne's personal injury lawyers

The primary focus of our Personal Injury Practice Group is to help our clients obtain the financial compensation that is greatly needed and deserved. This group primarily handles personal injury claims of a complex nature—death and catastrophic injury. The legal problems in such cases are complicated and require specialized knowledge to find the best solutions. We have represented many clients who have suffered:

- quadriplegia, paraplegia and other spinal cord injuries
- traumatic brain and closed head injuries
- loss of limbs
- loss of sight and hearing
- fibromyalgia, myofascial and other chronic pain conditions
- significant emotional and psychological disabilities

We have also represented many clients whose spouse, parent or child was killed by the negligence of another person or entity. And, we have also acted on cases where injury or death has been caused by:

- motor vehicle accidents (both in Canada and internationally)
- drunk driving
- boating, snowmobile, scooter, and motorcycle negligence
- ATV accidents
- slip and fall
- sexual abuse
- food poisoning
- commercial host liability
- product liability
- medical malpractice

To contact one of our personal injury lawyers, call **613-238-8080** or visit **nelligan.ca**.

Understanding legal fees

- At Nelligan O'Brien Payne our general policy is to charge an hourly rate for the time spent providing the legal services you require. However, in many serious personal injury matters, we offer **contingency fee arrangement** to our clients.
- With a contingency fee, whether or not fees are paid and how much is paid is 'contingent' on the result. Simply put, if nothing is recovered, you will not have to pay any legal fees. When funds are recovered, because we are assuming some of the risks associated with your case, our fees are generally paid as a percentage of the amount recovered. The percentage charged depends on a number of variables: the type of claim, the risk of whether there will be success, the potential recovery available and when recovery might occur.

Additional resources

Canadian Paraplegic Association of Ontario (CPA-O)

Telephone: 613-723-1033
Web site: www.cpaont.org

Council of Canadians with Disabilities

Telephone/TTY: 204-947-0303
Web site: www.ccdonline.ca

Criminal Injuries Compensation Board

Telephone: 416-326-2900
Toll free: 1-800-372-7463
Web site: www.cicb.gov.on.ca

License Appeal Tribunal

Telephone: 416-314-4260
Toll free: 1-800-255-2214
Web site: www.sse.gov.on.ca/lat/PAGes/default.aspx

The War Amps

Toll free: 1-800-250-3030
Web site: www.waramps.ca/home

Brain Injury Association of the Ottawa Valley

Telephone: 613-233-8303
Web site: <http://biaov.org>

Mothers Against Drunk Driving (MADD)

Telephone (National): 905-829-8805
Telephone (Ottawa): 613-236-6233
Toll free: 1-800-665-6233
Web site: www.madd.ca

Ontario Brain Injury Association (OBIA)

Telephone: 905-641-8877
Toll Free: 1-800-263-5404
Web site: www.obia.on.ca

Ontario Human Rights Commission

Telephone: 416-326-9511
Toll free: 1-800-387-9080
TTY: 416-314-6526
TTY Toll free: 1-800-308-5561
Web site: www.ohrc.on.ca

Additional resources

Ontario March of Dimes

Telephone: 416-425-3463
Toll free: 1-800-263-3463
Web site: www.marchofdimes.ca

Société de l'assurance automobile du Québec

Telephone (Québec): 418-643-7620
Telephone (Montréal): 514-873-7620
Toll free: 1-800-361-7620
Web site: www.saaq.gouv.qc.ca

Workplace Safety and Insurance Board (WSIB)

Telephone: 416-344-1000
Toll free: 1-800-387-5540
Ontario Toll free: 1-800-387-0750
TTY: 1-800-387-0050
Web site: www.wsib.on.ca

Potential funding sources for medical including special in-home services

- Ontario Health Insurance Plan (OHIP)
- Canada Pension Plan (CPP) disability benefits
- Community Care Access Centres (CCAC)
- Ministry of Social Services
- Assistance for Children with Severe Disabilities (ACSD)
- Ministry of Social Services—Ontario
- Disability Support Program (ODSP)
- Assisted Devices Program (ADP)
- Victorian Order of Nurses (VON)
- Trillium Foundation
- All group and private policy health insurance (physiotherapy, dental, vision, massage therapy, medications, etc.)
- Accidental death and dismemberment insurance
- Life insurance

Notes

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