



PERSONAL INJURY IN ONTARIO

Know your Rights

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The Personal Injury Group



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Information contained in this kit is current as of March 1, 2007

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Know your Rights

INTRODUCTION

Personal Injury – Personal Care

The Personal Injury Group at Ducharme Fox LLP offers free consultations without obligation to individuals and their families that have been injured in an accident.

Arrangements can be made to meet you at the hospital or at home. At this meeting we will explain what you should do to protect your rights and answer any questions you may have.

We take personal care with each case. We will listen to how the injury happened and assess your injuries. We will explain your legal rights, the legal system and the roles of the police, insurance companies, your employer and other agencies such as Workplace Safety and Insurance Board (WSIB), Canada Pension Plan (CPP), Ontario Disability Support Program (ODSP), Long-Term Disability (LTD), Employment Insurance (EI) and Sickness and Accident Benefits (S&A) etc.

We will also explain the role a lawyer plays in achieving compensation for your injuries. You may also have concerns about expense. In most cases, The Personal Injury Group at Ducharme Fox LLP does not require any payment until you receive compensation. When we meet, we will make sure that you are fully informed about legal fees.

It is important to consult a lawyer as soon as possible after your injury to best protect your rights and preserve available evidence.

TYPES OF INJURIES

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

- **Accidents involving cars, motorcycles, pedestrians, boats, trains, bicycles, snowmobiles, ATVs and other motorized vehicles;**
- **Slips and falls on public or private property;**
- **Assaults**

WHAT TO DO AFTER AN ACCIDENT

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

WHO TO CONTACT	WHAT TO DO
Personal Injury Lawyer	For legal advice before speaking to police, your insurance company or any other insurance company.
The police	To complete a report.
Your family doctor	Attend for a full and detailed examination.
Your employer	To advise if you will be absent from work. If the accident occurred while you were at work, you should file a WSIB report.
Your union	To advise if you will be absent from work.
Your school	To advise if you will be absent from school.
Your insurance company	To report property damage and to file for accident benefits (within 7 days).
Any other insurance company	You should contact any insurance companies that you may have additional coverage through your work, school or private plans.

PRESERVE THE EVIDENCE BY:

- Obtaining car insurance information from the other drivers.
- Taking photos of the accident scene and the damaged vehicles.
- Taking photos of your injuries on a regular basis.
- Getting the address and names of the owners, if the accident happened on private property.
- Obtaining the names and addresses of all witnesses.
- Keeping a list of the doctors and specialists that you have seen. Include the date and a summary of what they told you about your injuries.
- Keeping receipts for all related expenses. Family members should also record the dates and the amount of time they spend caring for the injured person so they can be compensated.

MOTOR VEHICLE ACCIDENTS

Ontario operates under a "no fault" auto insurance scheme. This means that your insurance company will be responsible for compensating you for damage to your vehicle and must provide you with statutory accident benefits, regardless of who was at fault for the accident.

TORT CLAIM

The tort claim is a claim brought against the at-fault driver.

If you do not have insurance	You cannot sue the at-fault driver, regardless of fault.
At-fault driver has insurance	Their insurance company defends and pays the at-fault driver's legal fees and compensates you. No money is paid by the at-fault driver.
At-fault driver does not have insurance or does not have enough insurance	It may be possible to sue your own insurance company.
No one has insurance	It may be possible to claim against the Motor Vehicle Accident Claims Fund, which is a government run program that acts as a safety net for people who are hit by uninsured drivers or hit and run drivers.

It is highly recommended that you retain a lawyer with experience in personal injury to advance a tort claim. In the tort claim you can sue for the following:

Pain and Suffering	<p>To make this claim you must suffer a "permanent, serious impairment of an important physical, mental or psychological function or a permanent serious disfigurement, such as scarring." This is referred to as the "threshold" test.</p> <p>Insurance law states that your claim under this heading will be reduced by the monetary deductible. For accidents after October 1, 2003 the deductible is \$30,000. If your claim under this heading exceeds \$100,000 you are not subject to the deductible.</p>
Your loss of income	No income loss is payable the first week following the accident. After one week, and until the time of settlement or trial, you are entitled to collect 80% of your net income. If you receive income from other sources this income is deducted.
Your ability to earn income	<p>Future income losses can be claimed based on 100% of your gross income loss.</p> <p>For both past and future income loss, you must first seek compensation from all sources available to you including SABS, work disability insurance including S&A, STD and LTD, any private disability insurance, social assistance, ODSP and CPP.</p> <p>A claim for the difference is advanced on your behalf against the at-fault driver.</p>

<p>Your extra housekeeping and home maintenance expenses</p>	<p>You must first seek reimbursement from your SABS carrier. If you cannot maintain your home as you did before the accident, you may be able to claim these expenses against the at-fault driver.</p>
<p>Your health care expenses</p>	<p>You may be able to claim for past, present and future health care expenses not covered by OHIP or your SABS carrier.</p>
<p>The effect of the accident on your family relationships</p>	<p>Family members may be able to claim for death benefits or compensation for loss of your care, companionship and guidance.</p> <p>Insurance law states that your claim under this heading will be reduced by the monetary deductible. For accidents after October 1, 2003 the deductible is \$15,000 per family member. If each claim under this heading exceeds \$50,000 then there is no deductible. It is recommended that you have a lawyer assess this type of claim.</p>



STATUTORY ACCIDENT BENEFITS

Statutory Accident Benefits (SABS) are benefits you have paid for through your insurance premiums. You have a right to these benefits regardless of fault or liability in the motor vehicle accident.

INCOME REPLACEMENT

If your motor vehicle accident causes you to lose income (or the potential to earn income), you may be eligible for an income replacement benefit. The amount of the benefit depends upon the type of income you were earning at the time of the accident.

To determine the amount of income replacement benefit you may be eligible for, locate the scenario in the following chart that best describes your employment situation at the time of the accident. The adjacent cell to that scenario indicates the general amount of income benefits available.

EMPLOYMENT STATUS AT TIME OF ACCIDENT	INCOME BENEFITS AVAILABLE
Employed	Up to 80% of your net income, BUT only to a maximum of \$400.00 per week.
Unemployed	\$185.00 per week. Benefit is not paid until 6 months after accident.
Primary caregiver for a person in need of care	\$250.00 per week, plus a further \$50.00 per week for each additional person requiring care.

HEALTH BENEFITS

A number of benefits are available in addition to income replacement. The SABS provider is required to pay for a wide range of medical and rehabilitation expenses; personal care services; and housekeeping and home maintenance expenses. The amount of these benefits will depend upon the severity of injuries sustained in your motor vehicle accident.

The following table illustrates the limits on the amount of benefits available. Some benefits are limited in the amount of money and time. This means that after the time limit expires, you will no longer have access to the money – even if you have not spent all the money available.

TYPE OF BENEFIT	NON-CATASTROPHIC INJURY		CATASTROPHIC INJURY	
	MONEY AVAILABLE	DURATION	MONEY AVAILABLE	DURATION
Medical and rehabilitation	\$100,000.00	10 years	\$1,000,000.00	Lifetime
Attendant care	\$72,000.00 (\$3,000.00 / month)	2 years	\$1,000,000.00 (\$6,000.00 / month)	Lifetime
Housekeeping and home maintenance	\$100.00 / week	2 years	\$100.00 / week	Lifetime

OTHER BENEFITS

The following table describes a handful of additional benefits that may be payable by your SABS provider.

BENEFIT	DETAILS OF BENEFIT
Death benefit	\$25,000.00 to the victim's spouse; \$10,000.00 to each of the victim's dependents; \$10,000.00 to the person upon whom the victim was a dependent.
Funeral expenses	Up to \$6,000.00.
Expenses incurred by family members of the victim	Expenses incurred by family members and/or those living with the injured who visited during treatment or recovery. This includes meals, mileage, travel expenses, and hotel. REMEMBER TO KEEP RECEIPTS
Lost education expenses for students	Up to \$15,000.00.

OPTIONAL COVERAGE

The limits on many of the benefits described above may be increased if you had purchased optional coverage with your motor vehicle insurance. Please refer to your own insurance documents for more information.

TIME LIMITS AND FORMS

The accident benefit claims process is very complicated. What is more, the process includes very specific time limits that must be met to avoid delay or denial of your benefits.

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

The following table highlights the important time limits that must be considered when making accident benefit claims. The left column in the table refers to the reference event for which a corresponding time limit will be calculated. For example, the date of the accident is a reference event. The middle column in the table refers to the number of days you have to complete the action required. The right column describes the action that must be taken in the required number of days.



EVENT WHICH STARTS THE CLOCK	TIME LIMIT	ACTION REQUIRED
Accident	7 days	<p>Must provide notice to the SABS provider that you will be claiming benefits.</p> <p>If unsure who your SABS provider is, see the preceding section on how to determine who your SABS provider should be.</p>
Receiving forms from SABS provider	30 days	<p>Complete application forms for accident benefits.</p> <p>Some of these forms may have to be completed by your treating health care professional, and by your employer. Be sure to give them adequate notice and time to complete the forms.</p>
Request by SABS provider for information needed to determine entitlement	14 days	<p>Comply with request for information needed to determine your entitlement to accident benefits.</p> <p>Examples of this type of request would include hospital records, and family doctor records.</p>
Request by SABS provider for disability certificate	21 days	<p>If you are claiming a disability, you must provide a health care practitioner's disability certificate.</p>
Request by SABS provider for a statutory declaration	variable	<p>Provide a sworn statement describing the circumstances that give rise to your claim.</p>
Request by SABS provider for examination under oath	variable	<p>Attend an examination under oath, where you will be questioned by the SABS provider.</p> <p>If you are required to attend an examination, it is strongly urged that you have a lawyer present.</p>
Request by SABS provider for a medical examination	variable	<p>Attend a medical examination conducted by a doctor chosen by the SABS provider. This may occur before you have submitted a claim.</p>
Denial of any benefit	2 years	<p>Commence an appeal for the benefit.</p> <p>If the SABS provider refuses to pay for any benefit, there is a dispute resolution process. It requires non-binding mediation, and failing that, either a trial or binding arbitration to determine entitlement to the benefit.</p>

When to Sue Your Insurance Company for Benefits

If the insurance company refuses to pay for any benefit, there is a dispute resolution process. It requires non-binding mediation followed by court or binding arbitration to determine entitlement to the benefit. This must be done within 2 years of any denial of benefits.

ALL OTHER ACCIDENTS

If your injury was caused by the negligence of another person or business you may be able to seek compensation.

Many buildings and the surrounding grounds on both public and private property are covered by insurance. The acts or omissions of others are also covered under various insurance policies.

It is best to seek legal advice to determine if your injury is covered.

You can claim for:

- Your pain and suffering.
- Your loss of income and ability to earn income.
- Your extra housekeeping and home maintenance expenses.
- Your health care expenses.
- The effect of the accident on your family relationships.

Unlike Motor Vehicle Accidents, there are no thresholds or statutory deductibles.

In most cases, you are able to claim your full losses from the negligent person.

Benefits such as housekeeping, home maintenance, health care expenses, assistive devices, medical and rehabilitative expenses may be covered by your employer, school or other private insurance.

In some cases, if you are out-of-pocket for these types of services, you can claim them against the negligent person.

In some circumstances, your lawyer may be able to negotiate advance payments from the negligent person to pay for some of your expenses.



TIME LIMITS

The law in Ontario places a number of rigid and unforgiving time restrictions on your right to pursue a claim. If you do not start a lawsuit within the time limit, it is possible that you will lose your right to pursue a claim. Below are general time limits depending on the facts of your case. Shorter time limits may apply. Please consult a lawyer for legal advice.

THE FOLLOWING TIME LIMITS APPLY:

Motor vehicle accident:

- Inform accident benefits insurer of accident within 7 days.
- Complete accident benefits application within 30 days.
- Sue accident benefits insurer within 2 years of a denial of benefits.
- Sue at-fault driver within 2 years of accident.

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

- Provincial Road – sue within 2 years of accident.
- Municipal Road, give written notice within 10 days – sue within 2 years.

Fall on a city sidewalk:

- Give written notice within 10 days.
- Sue within 2 years.

Accident involving trains:

- Sue within 2 years.

Fall on provincial property:

- Sue within 2 years.
- Give written notice within 10 days.

Lawsuit against the provincial government:

- Give written notice within 60 days.
- Sue within 2 years.

Accident and sickness insurance:

- Sue within 2 years of the date funds would have been payable.

Fatal accidents (death):

- Generally you must sue within 2 years.

Victims of assault:

- Sue within 2 years.

Public authorities (police, etc.):

- Sue within 2 years.

Medical malpractice:

- Sue within 2 years of the time you knew or ought to have known of facts giving rise to claim against doctors.
- Sue within 2 years of the time you knew or ought to have known of facts giving rise to claim against hospital or hospital staff.

Loss or damage to vehicle:

- If not resolved, must sue within 1 year of accident.



LAWYERS

You may be tempted to "wait and see" how your recovery progresses before you see a personal injury lawyer. We would encourage you to seek the opinion of a personal injury lawyer as soon as possible after your injury.

Seeking compensation is a complicated process. A lawyer from our Personal Injury Group can help you understand and protect your rights in the following ways:

	YOUR LAWYER MAY ASSIST BY:
Evidence	Preserving evidence at the accident scene. Taking witness statements. Having an accident reconstruction performed. Retaining forensic engineers. Collecting relevant information on liability and damages.
Protection	Putting the appropriate parties on notice. Tracking your timelines to seek compensation. Protecting your legal rights.
Disability Benefits	Advising you of what your benefits may be. Assisting you in accessing benefits from all available resources.
Treatment and Rehabilitation	Advising you of what your options may be. Ensuring that you are satisfied with the treatment and care you are receiving and assisting you in accessing a health care team that will work for you.
Information	Navigating you through the personal injury system by answering questions and offering advice throughout the process.
Maximize Compensation	Retaining a personal injury lawyer is highly recommended in order to receive benefits you are entitled to and to achieve a fair and complete settlement for your claims.

What should you expect when you meet with a lawyer from the Ducharme Fox Personal Injury Group?

- We will meet with you and your family at your convenience without cost or obligation.
- We will want to get an understanding of how the accident happened, determine who may be at fault and do an initial assessment of your injuries.
- We will advise you of your legal rights and obligations arising from the accident.
- We have a thorough understanding of personal injury law and will be able to answer your questions and explain your rights in a way you can understand.
- We will explain what compensation you may be entitled to.
- We will give you a complete explanation of legal fees.
- If we agree to take your case, you will be asked to sign a written retainer.

WE CAN HELP YOU

If you are asked to give a statement

You may be asked to give a statement to the police, your insurance company, the other party's insurance company or some other person or agency.

Whether you should give a statement or not depends upon the circumstances of your case. This decision should be made by a lawyer who is experienced in personal injury law.

Do not prejudice your case by giving a statement without first seeking legal advice.

There are many professionals in this area that can assist you in recovering from injury. You have the right to choose the lawyer you want to represent you as well as your health care team. You want the best team possible to help you heal and regain your quality of life. Do not allow the insurance company to choose your health care team.

Depending on your circumstances, you may be entitled to obtain the services of a case manager to help you best manage your particular injuries. The case manager works with your employer, school, your health care team, your doctors, the insurance company and your lawyer to customize a rehabilitation plan that works for you.

There are also many community resources that can assist you. Some of these include the Criminal Injuries Compensation Board, Ontario Human Rights Commission, The Canadian Paraplegic Association, The Ontario Brain Injury Association and the Workplace Safety and Insurance Board. We can put you in touch with the professionals at these agencies that can assist in your recovery.



CHAPMAN GORDON GARDIN THE PERSONAL INJURY GROUP AT DUCHARME FOX LLP



L-R Donald M. Gordon, Melanie A. Gardin, William C. Chapman

PERSONAL INJURY – PERSONAL CARE

The lawyers in our Personal Injury Group practice exclusively in the area of personal injury. For 30 years, they have been successful in achieving some of Canada's largest personal injury judgments and settlements.

William C. Chapman was called to the Ontario bar in 1978. Since then, he has practiced exclusively in the areas of personal injury, medical malpractice, negligence, tort and insurance law. Mr. Chapman is a member of the Law Society of Upper Canada, the Advocates Society, the Ontario Trial Lawyer's Association and the Essex Law Association. Mr. Chapman has served as a director of the Canadian Bar Association, Civil Litigation Section for Ontario and the Essex Law Association. Mr. Chapman has served as Chairman of the Windsor Police Services Board. In addition to his extensive trial experience, Mr. Chapman has lectured in the area of civil evidence for the Canadian Bar Association and the Ontario Trial Lawyers Association.

Donald M. Gordon was called to the Ontario bar in 1978. Since then, he has practiced exclusively in the areas of personal injury, medical malpractice, negligence, tort and insurance law. Mr. Gordon is a member of the Law Society of Upper Canada, the Ontario Trial Lawyer's Association, the Advocates Society, the Canadian Bar Association and the Essex Law Association. Mr. Gordon is a trained mediator.

Melanie A. Gardin was called to the Ontario bar in 2002. Since then, she has practiced in the areas of commercial and civil litigation. She now practices exclusively in the areas of personal injury, negligence, tort and insurance law. Ms. Gardin is a member of the Law Society of Upper Canada, the Ontario Trial Lawyer's Association, the Essex Law Association and is the Treasurer of the Essex County Association of Women Lawyers. Since 2002, Ms. Gardin has also been a team captain/canvasser for the Canadian Cancer Society.

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