

BOGOROCH

& ASSOCIATES LLP
LAWYERS

Legal **INFORMATION** *Series*

WHAT TO DO IN CASE OF A CAR ACCIDENT



Dedicated to Improving the Lives of Injured Victims and Their Families

BOGOROCH
& ASSOCIATES LLP
LAWYERS



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INVOLVEMENT IN AN AUTOMOBILE ACCIDENT IS A TRAUMATIC EVENT.

Victims of motor vehicle accidents face many difficulties. Not only must they cope with the profound pain and loss resulting from their injury, but often they and their families must navigate through a complex and confusing maze of legal and insurance-related issues.

At Bogoroch & Associates LLP, we are committed to helping our clients through these difficult times by providing caring, compassionate and effective legal representation.

*“Never give in, never give in, never, never, never, never –
in nothing great or small, large or petty – never give in except
to convictions of honour and good sense”.*

SIR WINSTON CHURCHILL, BRITISH PRIME MINISTER

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FREQUENTLY ASKED QUESTIONS (& ANSWERS)

*Answers to some common
questions from those involved in
automobile accidents*

Q. What happens after I notify my insurer of the accident?

A. In addition to filling out and returning the claims forms provided by your insurer within the required time frame, the insurance company will likely send an adjuster to meet with you to discuss the accident and your injuries. You do not have to meet with the adjuster from your insurer until you are medically able, and you are under no obligation to speak with the adjuster from the at-fault person's insurance company. You may wish to speak with a lawyer prior to meeting with the adjuster.

WHAT YOU NEED TO KNOW ABOUT AUTOMOBILE INSURANCE.

Every automobile insurance policy contains mandatory accident benefits coverage, established in the Statutory Accident Benefits Schedule (SABS). If you have been injured in a car accident, you may be entitled to payment in accordance with the SABS.

The SABS have undergone significant changes as of **September 1, 2010**, and **June 1, 2016**. The chart highlights some of the important changes. **Any member of the injured person's family** and any of their dependants may be entitled to receive benefits if they suffer psychological or mental injury as a result of the accident.

It is not only car passengers who are covered by the SABS, **even pedestrians or cyclists injured by a vehicle may claim benefits**.

This coverage only pays for losses not covered by a private insurance policy or employment benefit plan. If other plans or policies cover

only part of the expenses incurred, the car insurer may pay the balance.

TORT CLAIMS

Bill 198, which took effect on **October 1, 2003**, allows injured accident victims and their family members to sue for their damages and losses as a result of a car accident. This claim, known as a **tort claim**, entitles an injured victim to sue for damages for:

- a) **Pain and suffering**
- b) **Past lost income**
- c) **Future lost income/loss of earning capacity**
- d) **Health care expenses/future care costs**

Please note, there are time limits that must be adhered to. As a **general rule**, the lawsuit must be filed in court within **2 years** of the date of the accident or the right to obtain compensation will be **eliminated**.

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Bogoroch & Associates LLP will help you complete all the forms in order to obtain accident benefits.

Q. What if the insured person is incapacitated by their injury?

- A.** A person may be appointed as **substitute decision-maker** where the victim's injuries are such that he or she is incapable of making their own decisions. Bogoroch & Associates LLP will help guide you through this process.

Q. If I caused the accident can I still claim benefits?

- A.** Yes. In Ontario we have what is called a "no-fault" system where an injured insured person is entitled to certain benefits under the SABS, **regardless of fault**.

Q. When can my insurer deny me benefits?

- A.** Your insurer is not required to pay income replacement benefits and non-earner benefits, among others, where you were the driver at the time of the accident and you:

OUR COMMITMENT TO YOU

- We provide a **free initial consultation**.
- We will **wait to get paid** when your case is concluded.
- We provide you with **regular status reports** on your case.
- We **pay for parking or reasonable transportation** expenses for out-of-town clients.
- We will **arrange appointments** for you with **leading physicians** and experts as required.
- Our dedicated **staff of over 40** will ensure that your case is handled with compassion and excellence.
- If you require **an interpreter** we will be happy to provide one for you.



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- (i) knew or ought to have known that the vehicle was not insured,
- (ii) were not licensed to drive,
- (iii) were an excluded driver under the contract of insurance for the vehicle which you were driving at the time of the accident,
- (iv) ought to have known that the vehicle was being driven without the owner's consent,
- (v) were engaged in the commission of a criminal offence,
- (vi) were convicted of impaired driving,
- (vii) were convicted of driving with a blood alcohol level exceeding legal limits,
- (viii) were convicted of failing to provide a breath sample, *or you:*
- (ix) misstated facts to the insurer in order to obtain motor vehicle insurance,
- (x) were an occupant of a vehicle, when you ought to have known that the vehicle was being driven without the owner's consent, *or*
- (xi) were an occupant of an automobile that was being used in connection with a criminal offence.

10 TIPS: AFTER THE ACCIDENT

The following are a series of straightforward tips compiled by **Bogoroch & Associates LLP** over many years of experience in protecting the interests of injured victims and their families:

1. **Notify police.**

Contact the police to report the accident as soon as possible.



2. **Notify your insurer.** To claim statutory accident benefits, you must notify your insurer that you wish to apply **within 7 days** of the accident, or as soon after as is feasible considering your injury.

3. **File benefit forms.** Benefit application forms must be filed with the insurer



within **30 days** of you receiving them. If your injuries prevent you from filing within the requisite 30 day period, you must file the forms as soon as is reasonably possible.

4. **Check for other insurance coverage.**

You may have coverage through your work, a private plan or other source.

5. **Don't delay.** Any lawsuit

to enforce the payment of benefits must be commenced within **2 years** from the time the insurer refused to pay the benefit, and only after mediation has been attempted.



6. **Keep copies of all documents that relate to your case.** This includes copies of your insurance policies, repair estimates or appraisals, prescription receipts, accident benefit proof of claim forms, doctors' notes, wage verification forms, T-4's etc.

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Q. When can the insurer stop paying my weekly benefits?

- A.** The insurer may require a **certificate** from a health practitioner confirming that you continue to **suffer from a disability**. The insurer may stop payment of weekly benefits **after 10 days** of its request for a certificate where the certificate is not provided. The insurer may also require that you be evaluated by a **health practitioner** of the insurer's choice. The assessment report arising from this examination must be provided to the insurer, and the insurer must then provide a copy of the report to you within 5 days.

Q. How do I arrange for treatment of my injuries under the SABS?

- A.** You must file a treatment plan with the insurer prior to starting any treatment. It must be prepared by a health professional and signed by a health practitioner. You may see your own health care specialist for this assessment.

7. **Record out of pocket expenses.**



Be sure to retain receipts for expenses, however small, as they are necessary to properly document your claim.

8. **Document any witnesses.** Record the names, addresses and telephone numbers of any **witnesses** to the accident.

9. **Document your injuries/medical condition.** Notify your family doctor of your injury and **retain all medical information from doctors or health care providers** who treat you regarding the accident.

10. **Consult a lawyer.** **Bogoroch & Associates LLP** encourages you to consult a lawyer who will help assess whether you have a suitable case for litigation, and the extent of your entitlement to benefits and compensation. Initial consultations are free.

B&A

CONTACT US

For further information, please feel free to call **Bogoroch & Associates LLP** at **416-599-1700** or toll free **1-866-599-1700**. You may also contact directly:

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**THERE ARE IMPORTANT TIME LIMITS
TO FILE APPLICATIONS FOR ACCIDENT
BENEFITS OR TO FILE A CLAIM IN TORT
FOR PERSONAL INJURY DAMAGES**

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Q. Can my insurer require me to go to their doctor or other health care professional?

A. Yes. The insurer may require that you attend an insurer examination with respect to your claim for benefits to determine your entitlement.

Q. Do I really need a lawyer?

A. A lawyer can help you assess whether you have a suitable case for litigation, and the extent of your entitlement to benefits and compensation. They can help protect your legal rights and ensure that you get what you are entitled to. At **Bogoroch & Associates LLP** our trained staff will help you complete the **accident benefit forms** and guide you through this **complicated** and **difficult** process.

UNDERSTANDING YOUR RIGHTS: THE LAW

The legal system in Ontario provides accident victims with **two possible sources of compensation**. Every automobile insurance policy contains mandatory accident benefits

coverage, as set out in the **Statutory Accident Benefits Schedule (SABS)**. If you have been injured in a car accident, you, your family members and those

ACCIDENT BENEFIT CLAIMS: The **Statutory Accident Benefits Schedule** provides no-fault benefits to all persons injured in car accidents regardless of fault. Detailed in the chart below are some types of benefits that may be claimed by any accident victim in Ontario under the current *Statutory Accident Benefits Schedule*. As of **September 1, 2010** and **June 1, 2016**, substantial and significant changes were made to the SABS. The Chart below outlines the benefits available under the SABS.

| BENEFIT | DESCRIPTION | BENEFIT PAYABLE: FOR ACCIDENTS FROM SEPT. 1, 2010 – MAY 31, 2016 | BENEFIT PAYABLE: FOR ACCIDENTS ON OR AFTER JUNE 1, 2016 | COMMENTARY |
|--|--|--|---|--|
| Supplementary Medical and Rehabilitation Benefits | <ul style="list-style-type: none"> Pays for the injured victim's reasonable expenses including medical, hospital and nursing care, etc. Pays for measures to lessen the effects of any disability, and to enable reintegration into their family, the labour market and society. | <ul style="list-style-type: none"> Non-catastrophic impairment: maximum amount payable is \$50,000 (excluding attendant care benefits) available for 10 years if over age 15 at the time of the accident, otherwise to age 25. Catastrophic impairment: maximum amount payable is \$1,000,000, available for life. Minor injury: maximum amount payable is \$3,500. | <ul style="list-style-type: none"> Non-catastrophic impairment: maximum amount payable is \$65,000 (including attendant care benefits) available for 5 years if over age 18 at the time of the accident, otherwise to age 28. Catastrophic impairment: maximum amount payable is \$1,000,000 (including attendant care benefits). Minor injury: maximum amount payable is \$3,500. | <ul style="list-style-type: none"> Minor Injury is described as a strain, sprain, and whiplash disorder. Catastrophic Impairment is a severe loss, including paraplegia, quadriplegia, blindness, loss of arm or leg, serious brain injury. Once the victim's condition has stabilized or two years have passed since the accident, they may apply to their insurer for a determination that their impairment is catastrophic, if they are not otherwise deemed catastrophic. |
| Attendant Care Benefits | <ul style="list-style-type: none"> Pays for the cost of providing an aide or attendant. Includes the services of an in-home care attendant or a long-term care facility. | <ul style="list-style-type: none"> Non-catastrophic impairment: maximum monthly amount payable is \$3,000 with a maximum amount payable of \$36,000 for up to 2 years after the accident. Catastrophic impairment: maximum monthly amount payable is \$6,000 with a maximum payable of \$1,000,000. | <ul style="list-style-type: none"> Non-catastrophic impairment: maximum monthly amount payable is \$3,000 with a maximum amount payable of \$65,000 (including medical and rehabilitation benefits) for up to 5 years if over age 18 at the time of the accident, otherwise to age 28. Catastrophic impairment: maximum monthly amount payable is \$6,000 with a maximum payable of \$1,000,000 (including medical and rehabilitation benefits). | |
| Funeral and Death Benefits | <ul style="list-style-type: none"> Insurer may be required to pay funeral expenses. Insurer must also pay death benefits. | <ul style="list-style-type: none"> Funeral expenses payable up to a maximum of \$6,000. Death benefits of \$25,000 paid to surviving spouse. If not married, \$25,000 split equally among dependants. Additional \$10,000 to every surviving dependant. If the deceased was a dependant, \$10,000 payable to the person on whom the deceased was dependent. | | <ul style="list-style-type: none"> Deceased must have died within 180 days from the day of the accident, or, if the deceased was continuously disabled as a result of the accident, within 156 weeks. To claim death benefits, must have survived the deceased by 30 days. |
| Weekly Income Replacement Benefits | <ul style="list-style-type: none"> Payable during the period the injured victim is suffering a substantial inability to perform the necessary tasks of employment. | <ul style="list-style-type: none"> Amount payable is 70% of the injured person's gross weekly income from employment, or \$185, whichever is greater, for the first 104 weeks of disability. After the first 104 weeks, only payable if the victim suffers a complete inability to participate in employment for which suited. Amount payable is not greater than \$400 per week, unless optional increased benefits were purchased from the insurer. | | <ul style="list-style-type: none"> Payable so long as the insured person suffers from the disability. Self-employed persons may be entitled. Not payable for the first week. |
| Non-Earner Benefits | <ul style="list-style-type: none"> Where the victim was either not working at the time of the accident, or was in school, or had completed his/her education in the year prior to the accident and was not employed in a job related to his/her education. | <ul style="list-style-type: none"> Amount payable is \$185 weekly. Not payable for the first 26 weeks. Where disability lasts for more than 104 weeks, subsequently entitled to \$320 weekly. Payable after age 16 and for life. | <ul style="list-style-type: none"> Amount payable is \$185 weekly. Not payable for the first 4 weeks. Payable after age 18 for a maximum of 104 weeks. | <ul style="list-style-type: none"> Payable for up to 104 weeks, so long as the insured person suffers a complete inability to carry on normal life as a result of the accident. |
| Caregiver Benefits | <ul style="list-style-type: none"> Not available unless impairment is catastrophic or optional benefit is purchased. | <ul style="list-style-type: none"> If catastrophic impairment or if optional benefits are purchased, the amount payable is \$250 per week for the first person in need of care plus \$50 per week for each additional person in need of care. | | |
| Housekeeping and Home Maintenance Benefits | <ul style="list-style-type: none"> Not available unless impairment is catastrophic or optional benefit is purchased. | <ul style="list-style-type: none"> If catastrophic impairment or if optional benefits are purchased, the amount payable is \$100 per week. | | |

dependant on you **may** also be entitled to receive benefits. Innocent accident victims and their family members also have the **right to sue** for damages and losses as a

result of the car accident. This action is called a **Tort Claim**. Tort Claims and the SABS are outlined in the charts below:

TORT CLAIMS UNDER BILL 198: Suing for Compensation Some of the types of damages that might be sought by the accident victim through litigation for accidents on or after October 1, 2003 are outlined in the following chart:

| DAMAGE TYPE | DESCRIPTION | REQUIREMENTS | DEDUCTIBLE* | COMMENTARY |
|--|---|--|--|---|
| Pain and Suffering | <ul style="list-style-type: none">• An award of money made to an injured person for losses that are not strictly financial and are not easily measured in financial terms.• Designed to be solace for misfortune. | <ul style="list-style-type: none">• Victim must establish that they have sustained “permanent serious disfigurement” or “permanent serious impairment of an important physical, mental or psychological function”. | <ul style="list-style-type: none">• \$37,983.33 for the injured person; \$18,991.67 for family.• No deductible where damages in excess of \$126,610.07 for victim and \$63,304.51 for family. | <ul style="list-style-type: none">• Must not be entirely at fault for the accident.• Maximum awarded to victim for pain and suffering in the most catastrophic severe cases is approximately \$375,214 (as of January 2018). |
| Wrongful Death, Loss of Care, Guidance and Companionship | <ul style="list-style-type: none">• The <i>Family Law Act</i> permits family members to sue for the injury or death of another family member.• Claimants can include the victim’s spouse, children, grandchildren, parents, siblings and grandparents. | | <ul style="list-style-type: none">• No Deductible for Fatal Accident Claims, for car accidents arising after Sept. 1, 2010. | <ul style="list-style-type: none">• Surviving spouse of a deceased victim is generally awarded 70% of the net take home pay in compensation for the deceased’s work life expectancy.• For the loss of a spouse, highest compensation has been approximately \$90,000 for loss of care, guidance and companionship.• Surviving spouses also compensated for the value of “non-cash” services such as homemaking and handy person services. |
| Excess Health Care Expenses | <ul style="list-style-type: none">• Injured victim can sue for extended health care expenses not covered by the SABS or other benefit plans. | <ul style="list-style-type: none">• Victim must establish that they have sustained “permanent serious disfigurement” or “permanent serious impairment of an important physical, mental or psychological function”. | | <ul style="list-style-type: none">• Victim must not have been entirely at fault in the accident. |
| Loss of Income | <ul style="list-style-type: none">• If the ability to work is impaired, the victim may sue for loss of income where it has not been fully covered by, or has been denied by, the SABS or other insurer. | | | <ul style="list-style-type: none">• 70% of gross of income prior to trial may be compensated and 100% thereafter.• Any income replacement benefits paid by the insurer will be deducted.• No compensation for income lost for the first 7 days after the accident. |

* An amount predetermined by the Insurance Act by which insurance companies automatically reduce the value of the claim.
Figures accurate as of February 2018 but will be revised annually for inflation.

The information in this brochure is not, nor is it intended to be, legal advice. You should consult a lawyer for individual advice regarding your own situation. Use of this brochure does not create a solicitor/client relationship between Bogoroch & Associates LLP and the reader.

WHO WE ARE

Founded by Richard M. Bogoroch & Associates LLP is a Toronto-based law firm which specializes in civil litigation. The firm concentrates on serious personal injury cases, acting on behalf of individuals who have suffered brain and spinal injuries, chronic pain, and/or other physical or psychological injuries as a result of negligence. Our practice areas are broad and include motor vehicle accidents, medical malpractice, wrongful death, product liability, slip and fall incidents, and other occupiers' liability accidents. We are also pleased to provide assistance with disability and accident benefit claims.

We pride ourselves in enabling injured victims and their families to obtain access to justice by accepting cases on a contingency fee basis. This means **we will only get paid if we recover money for you.**

Our staff of **40** is comprised of **10** lawyers and an accomplished team of professionals, including law clerks, legal assistants and other support staff. All of our staff believe in a **client-oriented approach** to litigation which ensures client **telephone calls** are returned in 24 hours or less, clients are **provided with copies** of all significant correspondence and

documents, and clients are provided with **regular updates** about their cases. We also ensure **translators and interpreters** are available if required, so our clients feel comfortable and secure in communicating with us

We are dedicated to obtaining excellent results for all of our clients. Every year, we achieve victories in many serious motor vehicle, medical malpractice, disability and accident benefit cases. Our exceptional quality of work and commitment to our clients has been recognised by Canadian Lawyer Magazine, which continues to name Bogoroch & Associates LLP as one of the **Top 10 Personal Injury Law Firms in Canada.**



RICHARD M. BOGOROCH

Victims of motor vehicle accidents and other traumatic events face many difficulties.

We understand it is a stressful time and are committed to making the litigation process as straightforward as possible. **Our goal is to achieve the best possible results for our clients and therefore when you retain Bogoroch and Associates LLP you can be certain you will be supported by an experienced team which will provide you strong and effective legal representation.**

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