




# CAR ACCIDENTS





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.

**We can help.** At Bogoroch & Associates LLP, we are committed to helping our clients through these difficult times by providing effective, efficient, and compassionate legal representation. You will find our advice and approach to be clear, straightforward and results oriented.

*“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, RIGHT FORMER BRITISH PRIME MINISTER

Since 1990, victims of motor vehicle accidents have been subjected to many legislative changes. Today, obtaining compensation for injuries sustained in car accidents is the exception not the rule.

Under the current law, in order to obtain compensation for pain and suffering in Ontario, injured victims must establish that they have sustained permanent, serious impairment of an important physical, mental or psychological function and/or permanent, serious disfigurement. This is known as the verbal threshold and requires that victims have an impairment that will affect their ability to work or substantially interfere with their activities of daily living.

Most cases today are subject to a monetary deductible on compensation for pain and suffering, which increases annually and in 2020 is **\$39,556.53**.

For more serious cases where pain and suffering damages are assessed at greater than **\$131,854.01**, the deductible does not apply. These legislative changes can act as a barrier to compensating victims of motor vehicle accidents. Only those who meet the requirements and have sustained serious injuries are likely to have a viable lawsuit. It is important, therefore, that injured victims seek legal advice and direction following injuries suffered in a car accident.

Most motor vehicle accident cases settle out of Court. Accordingly, we believe that it is essential that cases proceed through the litigation process efficiently, effectively and with minimal delay.

It is quite common for many of our cases to be settled either at a mediation or at a settlement conference within **two to three years** of the accident. We seek to attain these objectives by issuing a Statement of Claim generally within **six months** of becoming retained and by arranging examinations for discovery and mediation promptly.

By attending a settlement conference or mediation and obtaining the compensation our clients deserve as early as possible in the litigation process, the strain and stress of the litigation is reduced and you have the peace of mind of knowing that your case has been successfully resolved.

## 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) regardless of who is at fault for the accident. This is known as No Fault Insurance.

If you have been injured in a car accident, you may be entitled to payment of benefits for income replacement, medical treatment and care in accordance with the SABS. The SABS underwent significant changes between **September 1, 2010** and **June 1, 2016**. The chart on pages **4** and **5** highlight some of the important changes.

Members of the injured person's family and any of their dependants may also be entitled to receive benefits if they suffer psychological or mental issues as a result of their loved one's accident. It is not only occupants of motor vehicles who are covered by the SABS. Pedestrians and cyclists injured by a vehicle may also claim benefits.

SABS coverage 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 be required to pay the difference.

## Tort Claims

**Bill 198**, which took effect on **October 1, 2003**, allows injured accident victims and their family members to sue for 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 **two years** of the date of the accident.

# 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)**.

**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. Between **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 IF that optional coverage was not purchased.

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

If you have been injured in a car accident, you, your family members and those dependent 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 claimed 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  |
|---|--|--|---|---|
| <b>Pain and Suffering (General Damages)</b>                     | <ul style="list-style-type: none"> <li>An award of money made to an injured person for losses that are not strictly financial and are not easily measured in financial terms.</li> <li>Designed to be solace for misfortune, loss of enjoyment of life, and pain and suffering.</li> </ul> | <ul style="list-style-type: none"> <li>Victim must establish that they have sustained "permanent serious disfigurement" or "permanent serious impairment of an important physical, mental or psychological function."</li> </ul> | <ul style="list-style-type: none"> <li><b>\$39,556.53</b> for the injured person; <b>\$19,778.27</b> for Family Law Act claim.</li> <li>No deductible where damages are in excess of <b>\$131,854.01</b> for victim and <b>\$65,926.46</b> for Family Law Act claim.</li> </ul> | <ul style="list-style-type: none"> <li>Must not be entirely at fault for the accident.</li> <li>Maximum awarded to victim for pain and suffering in the most catastrophic severe cases is approximately <b>\$390,313.00</b> (as of January 2020).</li> </ul>  |
| <b>Wrongful Death, Loss of Care, Guidance and Companionship</b> | <ul style="list-style-type: none"> <li>The Family Law Act permits family members to sue for the injury or death of another family member.</li> <li>Claimant can include the victim's spouse, children, grandchildren, parents, siblings and grandparents.</li> </ul>                       |  | <ul style="list-style-type: none"> <li>No Deductible for Fatal Accident Claims, for car accidents arising after <b>Sept. 1, 2010</b>.</li> </ul>  | <ul style="list-style-type: none"> <li>Surviving spouse awarded between <b>60-70%</b> of the deceased breadwinner's net take home pay for her/his working life expectancy.</li> <li>For the loss of a spouse, approximately <b>\$85,000</b> for the loss of care, guidance and companionship.**</li> <li>Surviving spouses also compensated for the value of "non-cash" services such as homemaking and handy person services.</li> </ul> |
| <b>Health Care Expenses</b>                                     | <ul style="list-style-type: none"> <li>Injured victim can sue for health-care expenses not covered by the SABS or other benefit plans.</li> </ul>  | <ul style="list-style-type: none"> <li>Victim must establish that they have sustained "permanent serious disfigurement" or "permanent serious impairment of an important physical, mental or psychological function."</li> </ul> |   | <ul style="list-style-type: none"> <li>Victim must not have been entirely at fault in the accident.</li> </ul>  |
| <b>Loss of Income</b>   | <ul style="list-style-type: none"> <li>If the ability to work is impaired, the victim may sue for loss of income not covered by the SABS or another insurer or income benefits plan.</li> </ul>  |  |   | <ul style="list-style-type: none"> <li>Only 70% of gross income up to trial is compensated and 100% thereafter.</li> <li>Any income replacement benefits paid by other insurers, such as SABS or disability benefits, will be deducted.</li> <li>No compensation for income lost for the first 7 days after the accident.</li> </ul>  |

\* An amount predetermined by the Insurance Act by which insurance companies automatically reduce the value of the claim. Figures accurate as of January 2020 and are revised annually for inflation.

\*\*\$85,000 Awarded in 2000. With inflation now approximately \$127,000.







## FREQUENTLY ASKED QUESTIONS (& ANSWERS)

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

**A.** You must complete and return the accident benefits claims forms provided by your insurer within the required time frame. Your insurance company may 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 any adjuster.

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

**A.** A person may be appointed as substitute decision maker when the victim's injuries make them incapable of making their own treatment and financial decisions.

### 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 who is at fault.

### Q. When can my insurer deny me benefits?

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

- you knew or ought to have known that the vehicle was not insured;
- that you were not licensed to drive;
- you were an excluded driver under the insurance policy of the vehicle you were driving at the time of the accident;
- you were convicted of impaired driving, driving under the influence or failing to provide a breath sample;
- you misstated facts to the insurer in order to obtain motor vehicle insurance;
- you were an occupant or driver of a vehicle, when you ought to have known that the vehicle was being driven without the owner's consent; or
- you were an occupant or driver of an automobile that was being used in connection with a criminal offence.

### 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 weekly benefits payments after **10 days** of its request for a certificate if it is not provided. The insurer may also require that you be evaluated by a health practitioner of their choice. The assessment report arising from this examination is provided to the insurer, and they must then provide a copy of the report to you within **five days**. They may also stop paying weekly benefits if they require that you attend a medical assessment and the assessor determines that you no longer meet the test of disability as set out in the SABS.

### 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 and signed by a healthcare professional. You may see your own healthcare provider for this assessment. The insurer may require that you attend an insurer's examination with respect to your claim for benefits to determine your entitlement.

## 10 TIPS: AFTER THE ACCIDENT

The following tips have been compiled over many years of experience in protecting the interests of injured victims and their families:

- 1. Notify police.** Report the accident.
- 2. Notify your insurer of the accident.** To claim statutory accident benefits, you must notify your insurer of your intent within seven 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 your 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.** 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 two years from the time the insurer refused to pay.
- 6. Keep copies of all documents that relate to your case.** This includes copies of your insurance policies, repairs, prescription receipts, accident benefit proof of claim forms, doctors' notes, wage verification forms, T4 slips, etc.
- 7. Record out of pocket expenses.** Retain receipts for expenses, as they are needed to document your claim.
- 8. Document any witnesses.** Record the contact information of witnesses to the accident.
- 9. Document your injuries/medical condition.** Notify your family doctor of your injury and retain all medical information from your treatment team in relation to the accident.
- 10. Consult a lawyer.** A lawyer will help assess whether you have a case suitable for litigation, and the extent of your entitlement to benefits and compensation.

## OUR COMMITMENT TO YOU

Bogoroch & Associates LLP is dedicated to providing access to justice and obtaining the compensation you deserve. We work promptly and proactively to advance your case. We will arrange appointments for you with leading physicians and experts as required. We believe that respect is critical to the lawyer-client relationship. We treat all of our clients as we expect to be treated – with respect and compassion.

We accept car accident cases on a Contingency Fee basis. This means we wait to get paid until after your case is settled, and cover the expenses along the way, including fees for expert reports. If you do not win your case, you do not pay us anything. Moreover, if your lawsuit is successful, in Ontario, you are entitled to collect “costs” in addition to your award for damages, which are meant to offset your legal fees.

## WHO WE ARE

### Lawyers with Over 30 Years Experience

At Bogoroch & Associates LLP, we represent victims of car accidents in Ontario. Our law firm has been named by *Canadian Lawyer* magazine as one of the Top 10 Personal Injury Law Firms in Canada. You do not pay unless we recover money for you. Consultations are always free.

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