

NAVIGATING YOUR WAY TO FULL RECOVERY

— A GUIDE TO YOUR INJURY CLAIM —



CANTINI LAW | DROIT
Accident, Injury and Disability Law

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NEW BRUNSWICK | NOVA SCOTIA | PRINCE EDWARD ISLAND

NAVIGATING YOUR WAY TO FULL RECOVERY

— **A GUIDE TO YOUR INJURY CLAIM** —

IF YOU OR A LOVED ONE HAS BEEN INJURED IN AN ACCIDENT, THIS GUIDE CAN HELP YOU AND YOUR FAMILY PROTECT YOUR RIGHTS AND YOUR FUTURE.

Legal and insurance issues regarding motor vehicle accidents are complex and require immediate attention because of strict time limits. This is the time you need to know your rights.

We specialize in injury law and created this guide to inform accident victims about their rights and entitlement to full compensation.

Cantini Law | Droit has been helping injured accident victims since 1987 and does not charge any fees or expenses until your case is successfully resolved.



NAVIGATING YOUR WAY TO FULL RECOVERY

— A GUIDE TO YOUR INJURY CLAIM —

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AT THE SCENE

- 1.** Get help for anyone injured. Don't move the victim. Keep the injured person warm.
- 2.** Warn approaching traffic – don't let one accident cause another.
- 3.** Call an ambulance if you think someone may be seriously hurt.
- 4.** Call police if someone is injured or if there is substantial damage to the vehicles.
- 5.** Co-operate fully with the police and obtain the incident number assigned to your case.
- 6.** Obtain the driver's name, address, date of birth, telephone number, driver's license number, driver's license expiration date, insurance company name, insurance registration number and registration expiration date. Write down the year, make, model and license plate numbers of all vehicles involved in the accident.
- 7.** Obtain names, addresses and telephone numbers of any passengers and witness to the accident. Ask them to stay and talk to the police. If they cannot stay, ask them to explain to you what they saw and eventually write everything down.
- 8.** Identify people at the accident scene, even if they will not give you their contact information. If someone saw the accident and leaves the scene, you should make a note of his/her license plate number.
- 9.** Do not give any opinion about the accident to other people.
- 10.** Seek medical attention, as soon as possible.

AFTER THE ACCIDENT

- 1.** Inform your family doctor of your injuries.
- 2.** Call a lawyer for a free meeting so you may better understand your rights, obligations and options.
- 3.** Report the accident to your insurance company and ask them to send you the accident benefits forms.
- 4.** Fill out and send all 3 accident benefits forms to your insurance company (Automobile Accident Benefits Proof of Claim, Employer's Confirmation of Income & Benefits & Attending Physician's Form). Keep copies.
- 5.** Do not speak or meet with insurance adjusters or claims investigators until you have spoken with a lawyer.
- 6.** If placed off work, notify your employer or school.
- 7.** If you are off work for more than two weeks, contact employment insurance to make a claim for EI sick benefits. Call Service Canada – Toll Free: 1-800-206-7218.
- 8.** Take pictures of your injuries.
- 9.** Take pictures of damage done to your vehicle and possibly other person's vehicles.
- 10.** Record the names and contact information of health care professionals.
- 11.** Keep track of your expenses and make copies of all receipts.
- 12.** Family members should also record dates and times spent caring for the injured person.
- 13.** Check for other insurance coverage, such as long term and short term disability (i.e. through your work, school or private plans).
- 14.** Follow the recommendations of your doctors and try to get rehabilitation as soon as possible.



MAKING A CLAIM AGAINST AN AT FAULT DRIVER

If you have been injured because of someone else's carelessness or recklessness, then you may have the right to make a personal injury claim.

A claim against the at-fault driver is usually paid by the insurance company of the at fault driver. More than 95% of these claims are settled without going to court.

HOW DO I PROCEED WITH A CLAIM?

You should retain a lawyer who specializes in personal injury litigation and ensure your lawsuit is filed within the prescribed time limits in your province.

WHAT CAN I CLAIM?

The general rule of compensation is that you are supposed to be no worse off than is the injury or accident never happened. As such, you can claim compensation for the following:

- 1.** Your pain and suffering
- 2.** Your loss of quality of life
- 3.** Your loss of past and future income and ability to earn income
- 4.** Your health care expenses
- 5.** Your housekeeping and home maintenance expenses
- 6.** The effect of the accident on your family relationships
- 7.** Your loss of future earning capacity and the loss of competitiveness in the workforce

THE INJURY CLAIM PROCESS

The injury claim process begins by notifying the insurance company that you intend to make a claim.

The insurance company will want information, but it is important that you not provide them written statements or sign any forms until you speak with a lawyer.



The next step is to gather evidence to support your claim, including photos, written statements from witnesses, police records, medical records, and written reports from your doctor and other experts needed to prove your claim.

The insurance company has the right to pay your injury claim as a one-time payment. This one-time payment includes compensation for things that will happen in the future (i.e., future pain and suffering, future expenses, future loss of income).

Therefore, in order to receive full compensation you need to be able to predict how your injury will affect you in the future. This is called the prognosis. You need to know your prognosis, so it can be accounted for in your one-time settlement. This is done by getting opinions from doctors and other professionals.

With most serious injuries, doctors won't give you a final prognosis until 24 months after an injury. Once you have this final prognosis, you are in a position to sue for full compensation from an insurance company.

Most accident victims who make a claim will have to file a lawsuit. Almost all lawsuits are settled without going to Court. Most cases will resolve between 2.5 years and four years from the date of the accident.

TIME LIMITS & \$7,500 CAP LEGISLATION

Each province has deadlines for when a person must settle their injury claim or file a lawsuit. If you miss these deadlines, you may lose your right to compensation. There are many different deadlines that could apply in your case. We have summarized some of the most common deadlines below; however, you should speak with a lawyer to make sure you know all of the deadlines that apply to your case.

If you miss a time limit, call a lawyer right away. Sometimes it is possible to get around a missed deadline, but only if you act quickly.

IMPORTANT DEADLINES



NEW BRUNSWICK NOVA SCOTIA & PEI

Application for accident benefits - **1 Month** (from date of accident)

Begin lawsuit against accident benefits insurer - **12 Months** (from date of denial of benefits)

Start lawsuit against at fault driver- **24 Months** (from date of accident)

DOES THE \$7,500 CAP LEGISLATION AFFECT YOUR RIGHTS TO A FULL CLAIM?

The \$7,500 cap only applies to Pain & Suffering for MINOR injuries. It does not limit your claim for past lost wages, loss of future income, loss of earning capacity, medical expenses, cost of future care, loss of insurability, loss of housekeeping, home maintenance, and more.

Are all soft tissue injuries considered minor injuries under the legislation?

Don't let the insurance adjuster tell you your injuries are MINOR. Soft tissue injuries can be permanent and severe. It can take many months and sometimes years before you know the long term effects of your injuries. We make sure you receive full value for your claim.

CONSTITUTIONAL CHALLENGE

In Atlantic Canada, there is a challenge to declare the "cap" legislation unconstitutional on the grounds it discriminates against certain individuals suffering distinct types of pain; therefore violating S.15 of the Charter of Rights. The law not only discriminates against the physically and mentally disabled, but also against stay-at-home parents, children, seniors and the unemployed. These accident victims say their rights are not based on the injuries arising from the accident, but rather on their life circumstances before the accident.



ACCIDENT BENEFITS

If you were injured in a motor vehicle accident, then you have the right to get insurance benefits from your own car insurance company, or the insurance company or the other driver, no matter who is at fault for the accident. These benefits are called “Accident Benefits” and include payment for medical and rehabilitation expenses and weekly loss of income payments. Accident Benefits are meant to immediately help you, while your injury claim is ongoing.

WHO IS MY ACCIDENT BENEFITS INSURER?

If you are a driver or passenger, then your accident benefits are provided by the insurance covering the car you were in. If that car has no insurance, then you would be covered by your own car insurance policy, if you have one.

If you were a pedestrian, then your accident benefits are provided by the insurance covering the car that hit you. If that car had no insurance, then you would be covered by your own car insurance policy, if you have one.

MEDICAL AND REHABILITATION BENEFITS

Accident Benefits cover a wide range of expenses, including physiotherapy, massage therapy, psychology and chiropractic, prescription medications, medical equipment, walkers, wheelchairs, crutches, ambulance bills, home modifications, and gym memberships. If your injury prevents you from returning to work, then your insurer is required to pay for vocational rehabilitation, return-to-work programs, and modifications to your workspace.



WEEKLY LOSS OF INCOME PAYMENTS

If your injuries keep you from working, then you may qualify for weekly loss of income payments. The payments are 80% of your weekly income, up to a maximum of \$250 depending on your specific insurance policy. In order to qualify for weekly loss of income payments, you must meet the following criteria:

- You were employed at the time of the accident, or had arranged to start a new job soon, or were employed for 6 of the 12 months before the accident;
- Your injuries kept you from working for 7 days out of the 30 days following the accident; and
- You have not returned to work, or are earning less money because of your injuries.



NEW BRUNSWICK
MAX \$250/WEEK

NOVA SCOTIA
MAX \$250/WEEK

PEI
MAX \$250/WEEK



HOUSEKEEPING EXPENSES

If you were not employed at the time of the accident, and are a home-maker, then you may qualify for payments for housekeeping services. You cannot qualify for both weekly loss of income payments and house-keeping expenses – it has to be one or the other.



NEW BRUNSWICK
\$100 PER WEEK

NOVA SCOTIA
\$100 PER WEEK

PEI
\$100 PER WEEK

Up to a maximum of 52 weeks

APPLYING FOR BENEFITS

You will receive three forms from your accident benefits insurer:

NOTICE OF CLAIM FORM

Fill this Form out yourself and send it back to the insurance company right away.

MEDICAL FORM

This Form should be filled out by your family doctor. Make an appointment and take the Form with you. Have the doctor fill it out while you are there. Take the Form with you and send it back to the insurance company. The doctor may charge you a fee. Make sure your doctor writes down all his or her recommendations for treatment or medication. If your doctor wants you to stay off work for awhile, make sure that it is written on the Form as well.

EMPLOYER FORM

If you are going to miss time from work, then you must get your employer to fill out this Form. Send it back to the insurance company right away.

During your initial consultation with Cantini Law|Droit, we will help you fill out the Accident Benefits application at no charge. Visit our website www.cantini.com to download these forms.

TIPS FOR AVOIDING DELAYS WITH PAYMENT FOR ACCIDENT BENEFITS

- Always send original documents to the insurance company and keep copies for yourself.
- If your doctor gives you a referral slip, make sure he or she writes on the slip that it is because of the motor vehicle accident.
- Fill-out and return the accident benefits form as soon as possible.
- Submit all medical expenses to your private insurance plan before you submit them to your accident benefits insurer (the accident benefits insurer doesn't have to pay for things that are covered by your private medical plan).
- If your doctor is putting you off work, then his or her off-work note must give an estimate of the time you will be off, or at least when he or she will reevaluate your ability to return to work.
- If you plan to apply for loss of income payments, you must also apply for Employment Insurance Sickness Benefits (Call Service Canada – Toll Free: 1-800-206-7218).



CHOOSING A LAWYER

Legal and insurance issues are complicated. You should not make any decision without being fully aware of all your legal rights. A personal injury lawyer can help you understand these rights and assist you in obtaining full compensation.

THINGS TO ASK YOUR LAWYER

1. Do you devote 100% of your practice to serious personal injury cases on behalf of injured people?
2. Have you tried cases like mine successfully?
3. When is the last time you took a case like mine to Court?
4. Do you have a network of professionals that can help me get better, as well as get results?
5. Do you have a staff of professionals who can meet all of my needs?
6. Do your legal colleagues and client respect your work and your firm's reputation?

It is important for you to decide when, and if, you should hire a lawyer for your case. Making a claim for compensation is very complicated. Working alone, you are at a big disadvantage against an insurance company. You shouldn't make decisions without fully understanding your rights and obligations.

It is important that you choose a lawyer that has experience with representing people in injury cases. Ask the lawyer what percentage of their practice is devoted to injury cases. Ask the lawyer if their firm will pay for all the expenses of the case up-front.

10 REASONS TO CHOOSE CANTINI LAW | DROIT

- 1 Handling personal injury claims **since 1987**
- 2 **Results:** you will get fair treatment and full compensation.
- 3 Free interviews (office, home or hospital).
There is no obligation.
- 4 **No fee** if no recovery.
- 5 We devote **100%** of our practice to serious personal injury claims.
- 6 We never represent insurance companies;
we are on your side and your side only.
- 7 We help access and co-ordinate the **most effective** medical rehabilitation team.
- 8 We make certain you are kept **completely informed** every step of the way.
- 9 We negotiate settlements for you but **unlike many other law firms**, we are also Trial lawyers. We have the experience and resources to take your case to Court.
- 10 Our **outstanding track record** confirms you can expect a very prompt and professional service with excellent results.

RECOMMENDATIONS

GET LEGAL ADVICE BEFORE YOU TALK TO ADJUSTERS OR INSURANCE COMPANIES

You can be jeopardizing your rights just by talking to an insurance adjuster! Seek legal advice before you discuss the matter with the insurance representative.

DON'T SIGN ANYTHING

Insurance companies count on your not knowing your rights, so they will try very hard to get you to make commitments ASAP without legal advice.

BE AWARE OF TIME LIMITS

You have a limit time period to settle your claim or commence a lawsuit. You only have a ONE YEAR period to be reimbursed for medical expenses and more. In certain cases, you have 90 DAYS to give Notice of a lawsuit. If you fail to do so, you will be unable to pursue your claim.

MEDICAL EXPENSE LOG

Name				Date
Date	Item	Cost	Description	Who recommended and why?

MILEAGE LOG

Name			Date
Date	Description	Start Mileage	End Mileage



**TRAFFIC ACCIDENTS
SERIOUS INJURIES & FATALITIES
LONG-TERM DISABILITY**

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