

SPINAL CORD INJURY

— A GUIDE TO YOUR INJURY CLAIM —



CANTINI LAW | DROIT
Accident, Injury and Disability Law

CANTINI.COM **1-844-CANTINI (226-8464)**
NEW BRUNSWICK | NOVA SCOTIA | PRINCE EDWARD ISLAND

SPINAL CORD INJURY

A GUIDE TO YOUR INJURY CLAIM

4 ABOUT SPINAL CORD INJURIES

How the nervous system works

Complete vs. Incomplete

Traumatic Spinal Cord Injury

Is there a cure for spinal cord injuries?

6 SYMPTOMS OF SCI

Areas affected by damage to the spinal cord

7 SCI IMPAIRMENT SCALE

8 PARAPLEGIA AND TETRAPLEGIA

9 THE REHABILITATION PROCESS

Medically-Based Rehabilitation

Community-Based Rehabilitation

How can I help a family member during their rehabilitation?

12 TYPES OF THERAPY USED IN REHABILITATION

Around the home

14 MAKING AN INSURANCE CLAIM

Gathering evidence

What type of evidence does this include?

Act quickly

Expert analysis

I think the insurance company hired someone to follow and videotape me. Is this legal?

SPINAL CORD INJURY

A GUIDE TO YOUR INJURY CLAIM

18 WHICH BENEFITS ARE AVAILABLE?

- Workplace benefits
- EI Sickness benefits
- Long-Term Disability
- CPP Disability Benefits
- Motor Vehicle Insurance
- Upfront costs

24 LEGAL ACTION & SETTLEMENT

- Will I get an offer right away?
- What is the process involved in suing the insurance company?
- Do I have to go to court?

26 HIRING A LAWYER

27 10 REASONS TO CHOOSE CANTINI LAW | DROIT

ABOUT SPINAL CORD INJURIES

HOW THE NERVOUS SYSTEM WORKS

The brain controls the body's activity by using the nervous system to send and receive small electrical pulses. It sends signals through the nerves to activate muscles, and receives signals to process our sense of touch.

The spinal cord is the main "pipeline" for the nervous system – nerves run through it, up the neck and into the brain. An injury to the nerves in the spinal cord can limit or eliminate the brain's ability to communicate with parts of the body.

COMPLETE VS. INCOMPLETE

An injury is considered "complete" when there is complete loss of sensation and voluntary movement below the level of the injury. For example, paralysis is a complete injury. If there is still partial movement or sensation, the injury is considered "incomplete."

TRAUMATIC AND NON-TRAUMATIC SPINAL CORD INJURIES

There are two types of spinal cord injuries: traumatic and non-traumatic. Traumatic injuries are sustained in an accident, and non-traumatic injuries are caused by diseases or congenital disorders like Spina Bifida.

TRAUMATIC SPINAL CORD INJURY

Thousands of Canadians suffer an accidental spinal cord injury each year. The two types of accidents that cause the most spinal cord injuries are falls and motor vehicle accidents.

A SCI may cause you to miss weeks, months or years of work, or you may be unable to ever work again. Recovery from a SCI can also involve physical, occupational and psychological therapy, as well as extensive medical care. These things can cause a serious financial burden for you and your family.

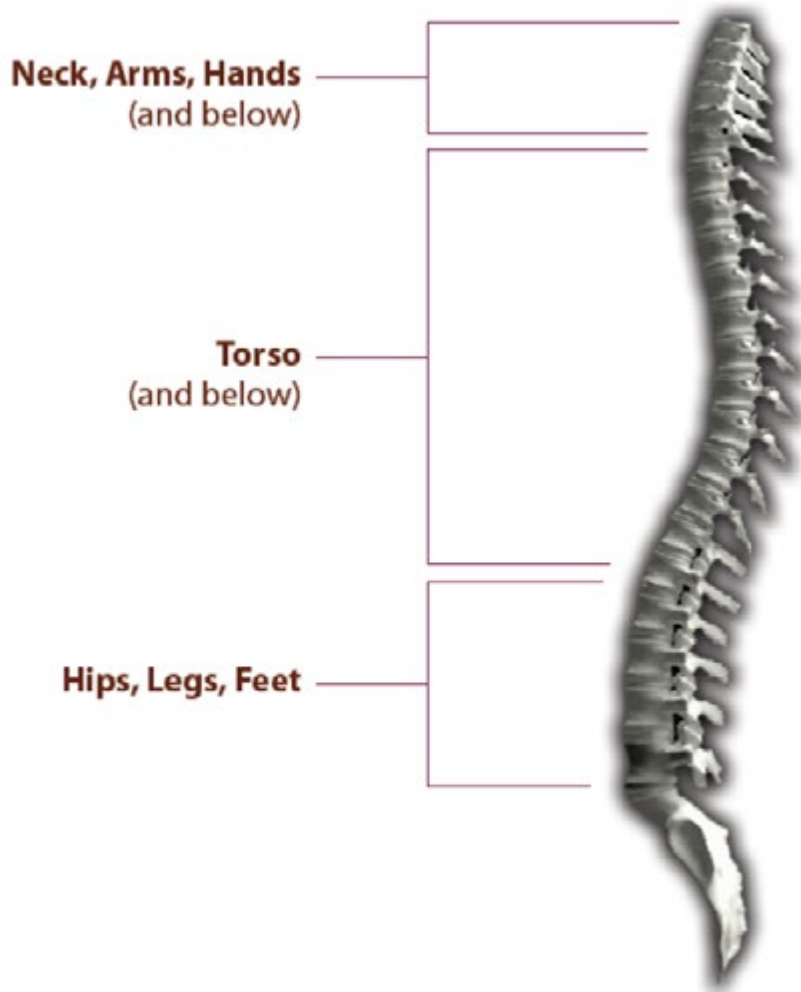
IS THERE A CURE FOR SPINAL CORD INJURIES?

Repairing damage to the spinal cord has been shown to be possible, but medical advances have not yet provided a cure for paralysis. Most current efforts therefore center on rehabilitation and improving the quality of life of injury victims.

SYMPTOMS OF A SPINAL CORD INJURY

Spinal cord injuries can present different symptoms based on the location and the severity of the injury. Symptoms may include pain, numbness or a complete loss of sensation in the affected areas. In some cases muscles may move uncontrollably, become weak, or completely unresponsive.

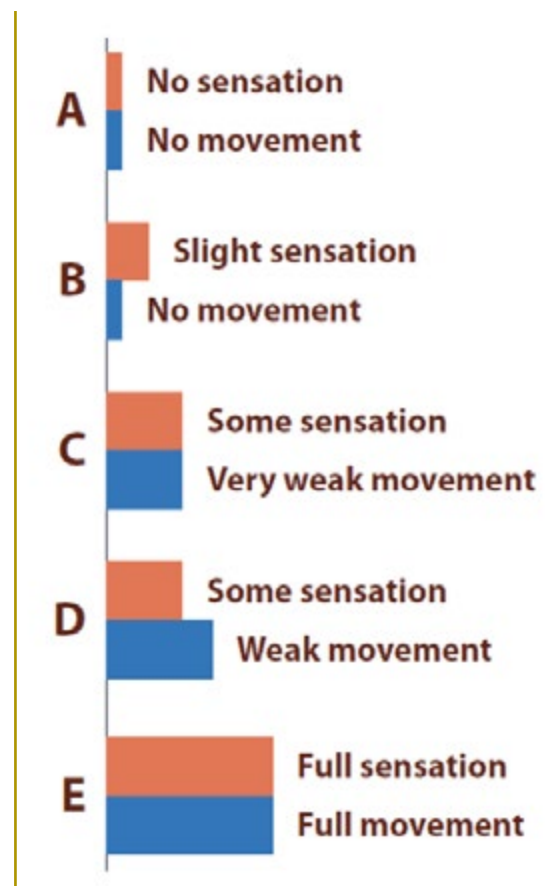
AREAS AFFECTED BY DAMAGE TO DIFFERENT POINTS IN THE SPINAL CORD



SPINAL CORD INJURY IMPAIRMENT SCALE

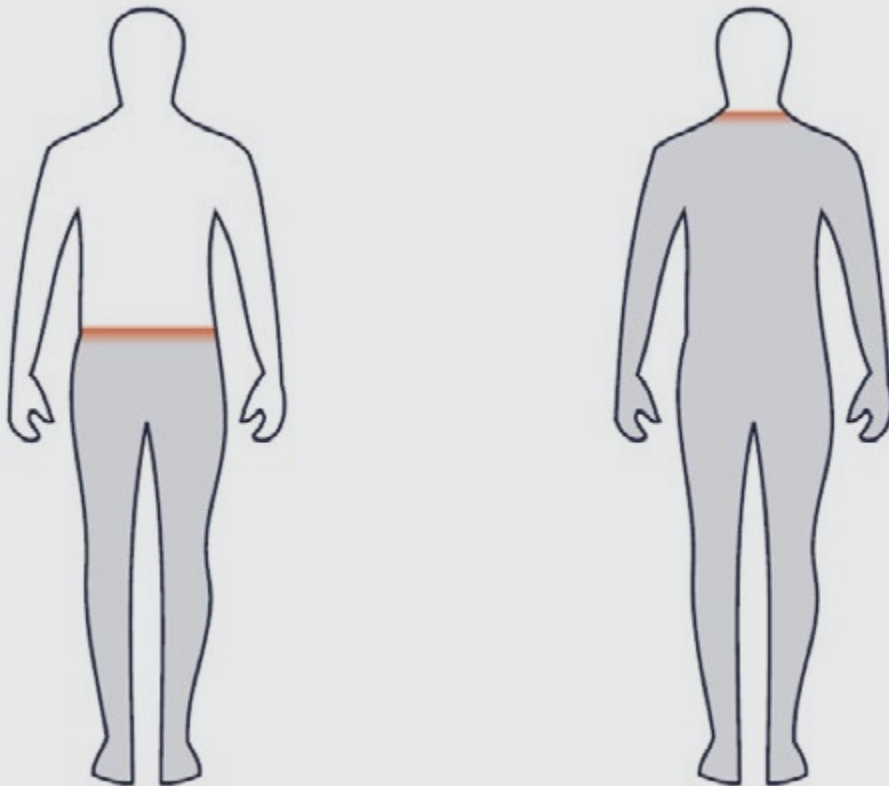
The severity of spinal cord injuries can be described using a scale developed by the American Spinal Injury Association. The scale is based on injury victims' responses to touch, as well as the strength of specific muscles.

- A indicates a “complete” spinal cord injury, with no remaining sensation or movement.
- B indicates an “incomplete” spinal cord injury where there is still a slight sense of touch, but no movement. This phase is often temporary, with victims regaining some movement and moving to a “C” or “D” on the scale.
- C indicates an “incomplete” spinal cord injury where at least half of muscles have mobility but it is much weaker than normal.
- D indicates an “incomplete” spinal cord injury where at least half of muscles have mobility but it is somewhat weaker than normal.
- E indicates “normal”; with complete movement and sensation. Note that it is still possible to have a spinal cord injury even with normal movement and sensitivity.



PARAPLEGIA AND TETRAPLEGIA (QUADRIPLEGIA)

Paraplegia and Tetraplegia (also called Quadriplegia) are two severe forms of paralysis that can result from a SCI.

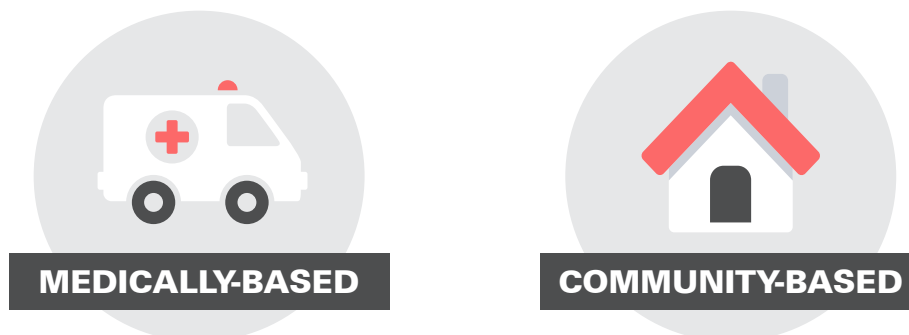


Paraplegia consists of paralysis from the waist down (loss of sensation and movement in the legs), which is usually caused by an injury to the lower back.

Tetraplegia is paralysis from the neck down (including arms, legs and the torso), which results from an injury to the neck.

THE REHABILITATION PROCESS

The goal of rehabilitation is to help SCI victims be as independent as possible. The rehabilitation process is different for everyone and must be adapted to each person's needs. Rehabilitation happens on two levels:



Medically-based rehabilitation is adapted to meet the needs of each individual. The most common examples of this form of rehabilitation include:

- **Early intervention:** Rehabilitation starts immediately after the injury and includes paramedics, trauma health professionals, family members and the intensive care unit.
- **Acute rehabilitation:** Once a person is medically stable, they are usually transferred to an acute rehabilitation facility where they will spend several hours a day in a structured rehabilitation program.
- **Sub-acute rehabilitation:** If an individual is medically stable and is unable to participate in acute rehabilitation due to limitations, a less intensive level of rehabilitation is implemented.
- **Day treatment:** Provides intensive rehabilitation in a structured setting during the day, and allows the individual to return to their residence at night.



Like medically-based rehabilitation, **community-based rehabilitation** also varies to meet the needs of each individual. The most common examples of this form of rehabilitation may include the following:

- **Rehabilitation facilities:** Additional rehabilitation in more specific areas may be provided in an outpatient facility.
- **Home-based rehabilitation:** Rehabilitation companies and/or individual professionals who focus on rehabilitation within the home and community settings.
- **Community re-entry:** Day programs which focus on developing a higher level of motor skills to prepare the individual for re-entry into the community. Day programs can also be at a less intensive level of rehabilitation for individuals with limited stamina.
- **Independent living programs:** Housing specifically for individuals with disabilities, whose goal is to regain the ability to live as independently as possible.
- **Spinal cord injury associations:** These offer support groups, peer support, information, and education.

THE REHABILITATION PROCESS

HOW CAN I HELP A FAMILY MEMBER DURING THEIR REHABILITATION?

There are some things that family members need to keep in mind during the rehabilitation process:

- Never give up hope.
- Maintain a journal and keep accurate records of all your experiences and changes you observe with your loved one.
- Include your loved one in discussions and activities.
- Communicate and advocate.
- Take time to care for yourself.

One of the most important things you can do for yourself (or a family member who has suffered a spinal cord injury) is to establish a good support system as soon as possible.

In addition to doctors and health professionals, your support system should include a legal team that will provide you with the best and most up-to-date legal advice.

TYPES OF THERAPY USED IN REHABILITATION

Therapy is very important in spinal injury cases, particularly those involving paralysis. Therapy generally centers on helping the injury victim learn to complete routine tasks, as well as the prevention of complications that may arise due to the injury.

Improving the mobility of affected areas is sometimes a possibility, but there are currently no treatments that provide regeneration of the damaged nerves. In incomplete injury cases (where the victim still has some movement and sensation) therapies involving treadmills and electrical stimulation may help restore some motor skills.

Prevention of complications is more important in cases of paralysis, particularly paraplegia and tetraplegia. Since entire parts of the body are unable to move, problems like muscle atrophy (muscle wasting away from lack of use) or osteoporosis (weakening of bones) may arise. Osteoporosis, for example, would increase the chances of breaking a bone in the affected parts of the body. Therapy to help avoid those issues can include training where weight is applied to the paralyzed limbs to help maintain muscle mass and bone strength.

Psychological therapy may also be necessary to help the SCI victim adjust to his or her new situation – this can address issues of self-confidence and also of sexual health, which is often affected in cases of paralysis.

AROUND THE HOME



Assistive devices (a wheelchair, for example) can greatly affect quality of life and allow a greater level of mobility. In such cases, modifications to the injured person's home may be required – adapting stairs and washrooms or adding grab bars, for example.

Therapy and training is useful to help the injured person learn how to transfer from different positions (such as from a wheelchair to a bed) and retain some mobility around the house. Some people will also be able to return to driving in an adapted vehicle.



MAKING AN INJURY CLAIM

If a spinal cord injury results from the negligence of another person, the SCI victim may be entitled to compensation for the injury and the resulting disability.

This is done by beginning a lawsuit against the negligent person, organization or business. In most cases, people and businesses will have insurance to cover them if they negligently hurt someone.

GATHERING EVIDENCE

Often in Traumatic Spinal Cord Injuries the insurance company will debate who was at fault in the accident rather than debate the injury itself. This is why providing strong evidence is important if the accident was caused by somebody else. This can involve hiring Accident Reconstructionists or Engineers to establish who was at fault in the accident using any evidence that may apply.

WHAT TYPE OF EVIDENCE DOES THIS INCLUDE?

To determine what happened in the accident, Accident Reconstructionists and Engineers may use the following:

- Evidence of physical damage to the exterior or interior of the vehicle
- Damage to the steering wheel and/or dash, including a deployed or nondeployed airbag
- Damage to the sun visors or windshield frame
- Damage to the windshield or side windows
- Damage to the seats (including headrests) or seatbelts
- Other vehicles or objects involved in the accident (fences, trees, guardrails, etc.)
- Skid marks at the scene of the accident
- Witness interviews
- On-site inspection of hazardous building or structure
- Assessment of building's adherence to safety codes and regulations

ACT QUICKLY

It is important to act quickly to gather evidence as soon as possible after the accident to ensure that the evidence is still available. Evidence may disappear or deteriorate over time (for example, in vehicle accident cases, skid marks will wash away), so a delay can reduce the amount of evidence on hand to help you prove your case.

EXPERT ANALYSIS

Analysis by experts can be very helpful in determining the impact your SCI will have in your life, and the insurance compensation that will be necessary. These experts may include:

- **A Vocational Expert** can determine your ability to work, whether it's in your current job or any other job.
- **A Neurologist** may be necessary to analyze nerve function after the injury.
- **A Physiatrist** specializes in diagnosis, treatment and rehabilitation of the muscular system.
- **A Life-Care Planner** can help determine the cost of long-term treatment and care, as well as the cost of the tasks you may no longer be able to perform because of the injury.
- **An Economist** can pull together and analyze all the costs and expenses that may apply to your case, including the value of household services (housekeeping, meal preparation, etc.)
- **An Accident Reconstructionist** can establish what happened at the scene of the accident and help determine who was at fault.
- **An Engineer** can assess issues with a building or structure that caused or contributed to your injury.

Rehabilitation can be expensive, both for individual treatments and for the duration of time that they may be necessary. Past and future rehabilitation costs should be included in your insurance claim.

I THINK THE INSURANCE COMPANY HAS HIRED SOMEONE TO FOLLOW AND VIDEOTAPE ME. IS THIS LEGAL?

Insurance companies often hire outside companies to follow, photograph and record people who make injury claims. They do this to ensure that you are truly disabled and to minimize fraudulent claims. Generally speaking, this type of surveillance is legal. Most investigative companies obey the law and do not engage in anything that could be considered trespassing or an invasion of your privacy. However, if at any time you feel in danger, you should contact the police.

WHICH BENEFITS ARE AVAILABLE?

There may be sources of benefits available to you during the time before you receive a settlement from the insurance company.

WORKPLACE BENEFITS

The first source you may have at your disposal is workplace benefits. You will have to use these before being eligible for benefits from another source.

These may include sick days, vacation days and any short-term disability plan, as well as any private medical plan that will cover the cost of medications, rehabilitation at medical clinics and other medical expenses.

EI SICKNESS BENEFITS

You may qualify for Employment Insurance or Sickness benefits through the Government of Canada. These can provide you with up to 15 weeks of benefits that usually provide up to 55% of your weekly income.

LTD INSURANCE BENEFITS

You may be eligible to make a claim for long-term disability benefits if you are insured under a long-term disability insurance policy. People sometimes buy these policies directly from a broker, while others have it as a part of their workplace benefits.

LTD insurance helps replace lost income if you can't work. There are deadlines that limit the time you have to apply; if you have LTD coverage, look into it as soon as possible.

CPP DISABILITY BENEFITS

If you have been a recent contributor to the Canada Pension Plan (CPP), you may be entitled to CPP disability benefits, which are a monthly payment made to you until age 65. The amount you receive is determined by how much you paid into CPP while you were working.

MOTOR VEHICLE INSURANCE

If your spinal cord injury was sustained in a motor vehicle accident, you would have access to benefits through your own insurance company (known as Section B benefits). These may include:

MEDICAL CARE

Your motor vehicle accident benefits can cover a wide range of expenses, including:

- Physiotherapy and chiropractic
- Massage therapy
- Psychology
- Prescription medications
- Medical equipment
- Ambulance bills
- Home modifications
- Gym memberships

If your injury prevents you from returning to work, your insurance company is required to pay for vocational rehabilitation, return-to-work programs, and modifications to your workspace.

Medical and rehabilitation benefits last up to 4 years or until you reach a maximum amount, whichever comes first (like a car warranty). The maximum benefits vary for each province:



WEEKLY LOSS OF INCOME PAYMENTS

If your injuries keep you from working, 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 province:



NEW BRUNSWICK
MAX \$250/WEEK

NOVA SCOTIA
MAX \$250/WEEK

PEI
MAX \$250/WEEK

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 you had arranged to start a new job soon), or you were employed for 6 of the 12 months before the accident.
- There were at least 7 days – out of the 30 days following the accident – when you were medically unfit to work
- You have not returned to work, or are earning less money because of your injuries

DURATION OF LOSS OF INCOME PAYMENTS

The duration of loss of income payments is determined by your ability to return to work. For the first two years, you must prove that you are unable to perform the essential duties of your own job.

After two years, it's up to the insurance company to prove that you can work in a job that you qualify for based on your experience, training and background.



HOUSEKEEPING AND HOME MAINTENANCE BENEFITS

If you were not employed at the time of the accident and you are a homemaker, then you may qualify for payments for housekeeping services – snow removal, mowing the lawn, etc. You cannot qualify for weekly loss of income payments and housekeeping expenses – it has to be one or the other.

UPFRONT COSTS

Spinal cord injuries are particularly expensive to treat, and medical benefits (from Section B or CPP) tend to be used up very quickly. In the case of a motor vehicle accident the other driver's policy may not provide enough compensation for your long-term care, in which case you should see a lawyer to determine which other sources of funds may be available. More than any other injury, with a SCI the legal process should start as soon as possible to obtain necessary funds.

LEGAL ACTION & SETTLEMENT

WILL I GET A SETTLEMENT OFFER RIGHT AWAY?

While it is possible that you will receive a settlement offer from the insurance company, we recommend you at least get a consultation with a lawyer before accepting it. Once you accept an offer it is final, and you cannot come back and get more money later if you find the compensation you accepted was not enough.

If the insurance company refuses to pay the benefits you are entitled to, your remaining option is to sue the insurance company to obtain them.

WHAT IS THE PROCESS INVOLVED IN SUING THE NEGLIGENT PERSON OR THE INSURANCE COMPANY?

Generally, the court process begins by delivering a Statement of Claim (commonly called a lawsuit) which sets out the claim you are making against the negligent person or the insurance company.

The insurance company will then file a defense against your lawsuit and documents will be exchanged. At some point you will be asked questions under oath and you will probably need to undergo medical assessments, both with your own doctor and the doctor for the insurance company.

Usually there are then settlement negotiations, where both sides attempt to come to an agreement. This may lead to a mediation or settlement conference. If that is not effective, the matter will go to court.

DO I HAVE TO GO TO COURT?

If the settlement negotiations (and mediation, if it happens) fail, your case will end up in court and a judge or jury will decide whether your benefits will be awarded and what the amount will be. However, most lawsuits settle before going to court.



HIRING A LAWYER

DO I NEED A LAWYER?

It may seem self-serving for lawyers to say that you should consult a lawyer, but the legal process is complex and requires a thorough understanding of the law, as well as experience with the important procedural steps that must be followed as part of a lawsuit. If you do hire a lawyer, you should look for one with experience in handling brain injury lawsuits against insurance companies.

CAN I AFFORD A LAWYER?

Lawyers do not all charge clients the same way for representing them in a personal injury lawsuit. Some lawyers will charge you by the hour, while some will take a percentage of the compensation you obtain from the insurance company.

There will also be expenses related to running your case - for example hiring medical experts. Some lawyers may have you pay for those expenses upfront (or while the case is ongoing), while others will cover them and seek repayment if the case settles.

In our case, we do not charge you any legal fees or expenses upfront. We are paid with a portion of your settlement only if your case is successful.

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.



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

**CANTINI.COM
1-844-CANTINI (226-8464)**

NEW BRUNSWICK

NOVA SCOTIA

PRINCE EDWARD ISLAND