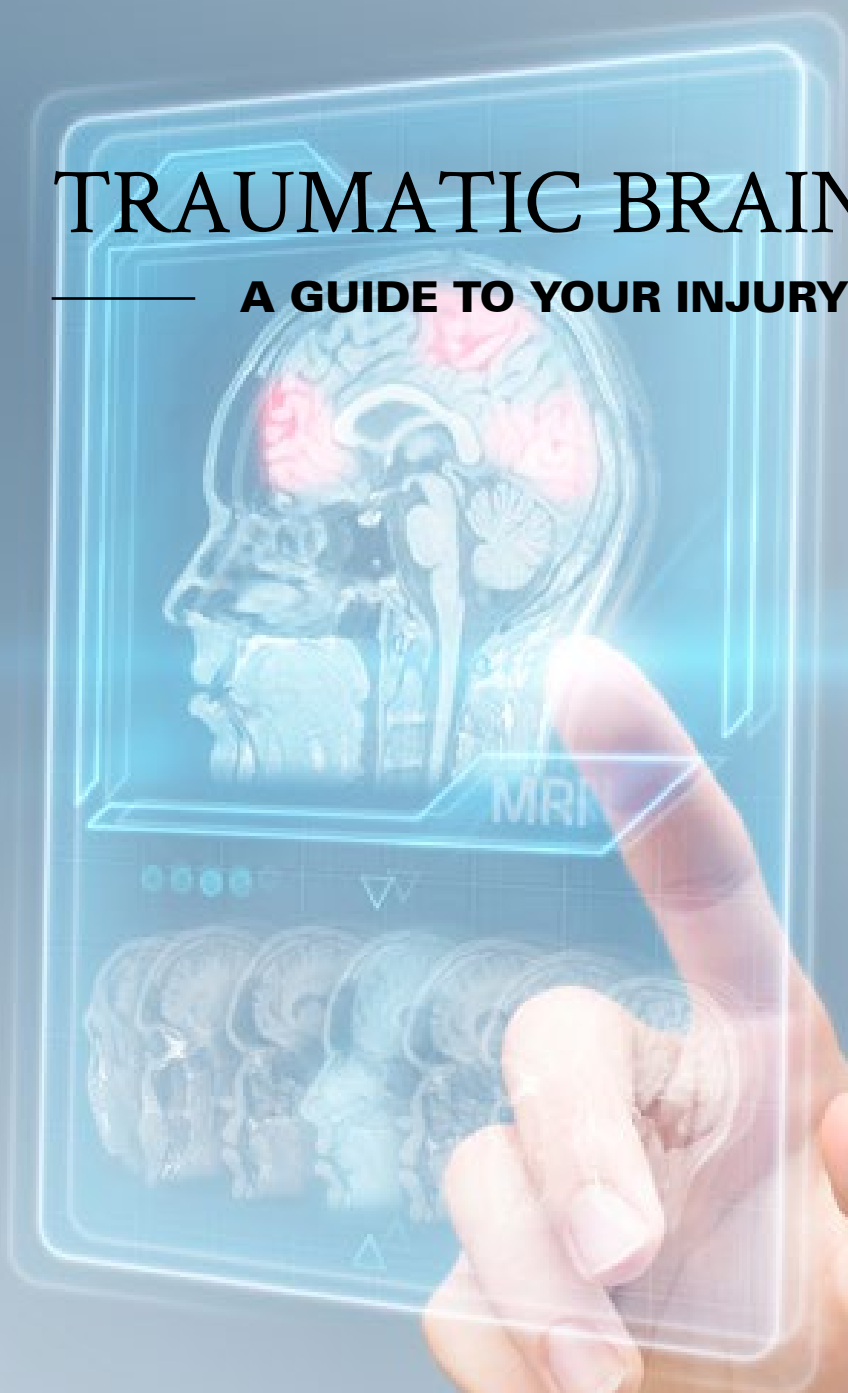


TRAUMATIC BRAIN INJURY

— **A GUIDE TO YOUR INJURY CLAIM** —



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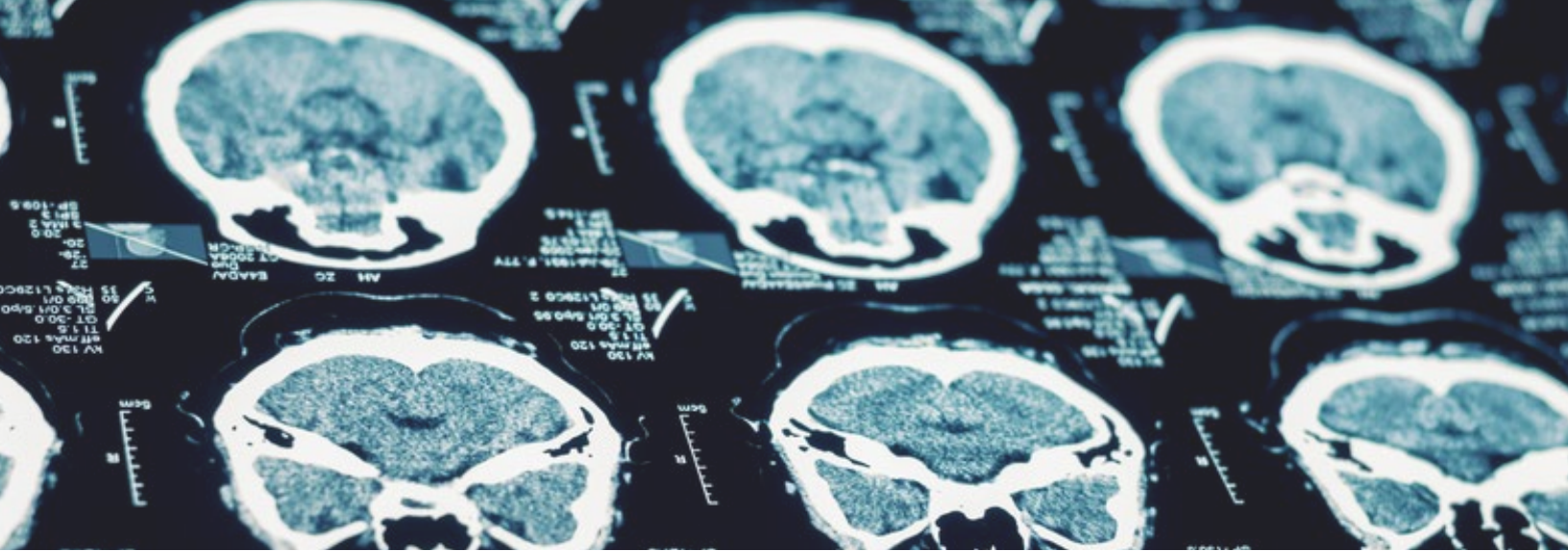
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BACKGROUND INFORMATION ABOUT BRAIN INJURIES

According to the Canadian Institute for Health Information, the two most common causes of brain injuries are falls and motor vehicle accidents. An estimated 17,000 Canadians suffer a Traumatic Brain Injury (TBI) each year.

A TBI can impact every part of your life. You may miss weeks, months or years of work, or even be unable to ever work again. Recovery from a TBI can involve physical, occupational and psychological therapy. These things can cause a serious financial burden for you and your family.

THE IMPACT OF A BRAIN INJURY

Because many brain injuries are invisible, victims often feel misunderstood and frustrated. It may be difficult to get people to believe there is any injury at all, since brain injuries will often not appear in tests (X-Ray, MRI, CT scan). There is sometimes still a mindset of “if you can’t see it, feel it or hear it, it doesn’t exist”.

Often a TBI victim will be treated as if they have lost their intelligence because of the injury. TBI victims do not lose their intelligence - they lose their ability to use it quickly and effectively.

WHAT HAPPENS WHEN THE BRAIN IS INJURED?

The brain is extremely fragile. It is made up of a complex system of interconnected neurons, much like the circuits in a computer chip. When a group of neurons is damaged and dies, the neurons with which they communicated no longer receive information. Once these neurons no longer receive signals from the damaged neurons, they become inactive and eventually die. This is a process known as the cascade effect, and it is how an injury to one part of the brain will, over time, result in damage to the surrounding areas. That is why treatment and intervention are critical during recovery after a brain injury.

THE DIFFERENT TYPES OF TRAUMATIC BRAIN INJURY

There are two types of TBI – open-brain and closed-brain. They are determined by the way the brain was injured.

OPEN-BRAIN INJURY

A gunshot wound is an example of an open-brain injury. The skull and the protective membranes are pierced, and the bullet destroys brain tissue.

CLOSED-BRAIN INJURY

A closed-brain injury is caused by a blow to the brain, such as from a vehicle collision, a fall, or a rapid acceleration. Closed-brain injuries tend to be less obvious than open brain injuries, and can be overlooked as there may be no visible signs of damage to the skull.



Coup



Countercoup

It is possible to suffer a TBI without being struck in the head. The inside of the skull has many bony ridges, and a violent acceleration or deceleration can cause the brain (which has the consistency of Jell-O) to impact them and cause significant damage.

If the impact is strong enough, the brain will bang against the inner wall of the skull and result in a coup injury. This can cause a contusion, or bruise. In some cases the brain will then rebound on the opposite side of the skull, causing another contusion on the other side of the brain – this is called a countercoup injury.

Depending on the force of the initial blow, these rebounds can happen several times. With each back-and-forth motion, the brain can sustain bleeding and tissue damage. **It is not necessary for a person to lose consciousness in order to sustain a TBI.** After sustaining the injury the victim may feel dazed or remain completely alert.



COMPLICATIONS FROM A CLOSED-BRAIN INJURY

EDEMA

Frequently, following a brain injury, the brain swells due to an increased flow of blood to the injured tissue. Often this swelling is accompanied by a collection of water inside the skull. This collection of water, or **edema**, causes the pressure within the skull to increase, which can cause further damage to the brain.

HEMATOMA

The brain is supplied with blood through an extensive network of blood vessels. Following a brain injury, some of these blood vessels may rupture, which can lead to the formation of a pool of blood known as a **hematoma**. Like the edema, a hematoma increases the pressure inside the skull and can damage the brain.

HOW DO I KNOW IF I HAVE A TBI?

DIAGNOSING A TBI

Most injuries, including some TBIs, can be seen in some way, either with the naked eye or with medical imaging tools like MRI or CT scans. Many TBIs, however, will not be visible in those scans – but that doesn't mean the injury is not there.

SYMPTOMS MAY NOT BE IMMEDIATELY VISIBLE

The symptoms of a TBI are not always immediately obvious after the accident. You may only feel different several days, weeks or months later, when you return to work or resume your usual daily activities.

POTENTIAL PROBLEMS CAUSED BY A TBI

- Pain in the head, neck or back
- Loss of ability to read, write, speak, hear or see
- Loss of mobility and muscle control
- Increased sensitivity to noise, touch, or certain types of lighting
- Loss of memory
- Confusion
- Poor or inappropriate language
- Sudden emotional outbursts
- Anxiety attacks
- Changes in personality

TBI IN CHILDREN



There is a myth that children recover from TBI better than adults. The myth rests on the idea that a developing brain can heal better than a fully mature one. In fact, because a child's brain is not completely developed, it may take years to realize the effects of the brain injury.

Children who suffer a TBI may actually face more long-term challenges than adults. Even if the child seems to have recovered physically and is doing normally in school, there may be difficulties that arise later.

THE LEVELS OF TBI SEVERITY

Medical professionals describe the severity of the injury by using three terms: mild, moderate and severe. The victim's awareness after the injury and the length of time that the victim may have suffered amnesia after the injury are the primary factors involved in using the rating system.

GLASGOW COMA SCALE

The Glasgow Coma Scale is a standardized system used to assess the degree of brain impairment and identify the seriousness of the brain injury. It is named for Glasgow, Scotland, where it was first described.

The system involves three factors: eye opening, verbal responses and motor response. Each one is evaluated independently, and the three numbers are then added together.

Eye opening	Score of 1 to 4
Verbal	Score of 1 to 5
Motor response	Score of 1 to 6
Total	13-15 Mild 9-12 Moderate 3-8 Severe

GLASGOW OUTCOME SCALE

The level of recovery is often graded with the Glasgow Outcome Scale. It is a five-point score given to TBI victims as a general assessment of their recovery.

- 1** Death
- 2** Persistent vegetative state
- 3** Severe disability
- 4** Moderate disability
- 5** Good recovery

CONCUSSION



MILD, MODERATE AND SEVERE TBI

The severity of the injury does not necessarily predict how severe an impact it will have in the victim's life. Most Traumatic Brain Injuries are classified as "mild", but that does not mean the impact on the person's life is any less serious. The size of the injury, its cause and most importantly its location are what will mostly determine the severity of the injury's impact on the victim's life.

MILD TRAUMATIC BRAIN INJURY

In the past, so-called "minor" brain injuries were often ignored. People would simply walk it off and were assumed to be fine afterwards. Public awareness of brain injuries has increased in recent years, particularly due to reports of professional athletes sustaining concussions that have put them out of work for an entire season, or even ended their sports career.

Furthermore, brain injuries are too frequently overlooked in the emergency room. The more obvious and visible injuries take precedence and it may be weeks, months or years before the patient notices issues, such as memory loss or personality changes, that are due to an undiagnosed TBI.

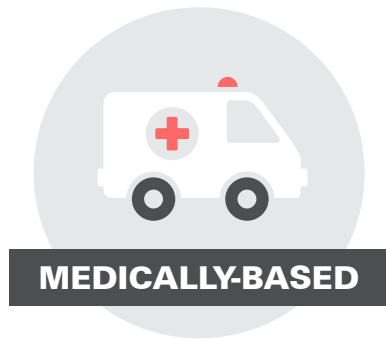
That means there is really no such thing as a “mild” brain injury – any injury to the brain is significant. The effects of a “mild” brain injury can be devastating, sometimes more so than with a “severe” brain injury.

DO ALL MILD TBIS HEAL?

There is a common misconception that all minor TBIs will heal in time – this is not true. A year after the accident, 10% to 15% of mild TBI victims have not recovered, and many even have worse symptoms than they did before. This is known as Chronic Post-Concussive Syndrome.

THE REHABILITATION PROCESS

The goal of rehabilitation is to help TBI 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- and community-based.



MEDICALLY-BASED REHABILITATION

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 and cognitive 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 attention and/or stamina.
- **Independent living programs:** Housing specifically for individuals with disabilities, whose goal is to regain the ability to live as independently as possible.
- **Brain injury associations:** These offer support groups, peer support, information, and education.



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 brain injury) is to establish a good support system as soon as possible. As well as including doctors with knowledge of – or a specialty in – brain injury, caregivers, physiotherapists, and others, this team may also include a legal team that will provide you with the best and most up-to-date legal advice.

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.



MAKING AN INSURANCE CLAIM

If a Traumatic Brain Injury results from the negligence of another person, the TBI victim may be entitled to compensation for the injury and the resulting disability.

GATHERING EVIDENCE

Brain injuries are considerably more difficult to prove than other injuries. Insurance companies often deny claims based on the following points:

- They could point out that the victim never lost consciousness
- They will try to show that medical scans do not show any visible injury
- They may also say that the victim's issues were not caused by the accident

Add to this the common misconception that Mild Traumatic Brain Injuries are not serious, and it can be a challenge for a TBI victim to be fairly compensated. That's why it's particularly important to properly document and gather evidence of the injury.

WHAT TYPE OF EVIDENCE DOES THIS INCLUDE?

PHYSICAL INJURY

Any and all trauma to the head and neck can be clear evidence of the blows or forces that caused the brain injury. Cuts, fractures and other evidence should be documented and, if possible, photographed.

The following should also be documented:

- Any loss of consciousness, whether it's for a second or several minutes
- Disorientation, including confusion
- Amnesia

VEHICLE DAMAGE

If the injury was caused by a motor vehicle accident, all the evidence related to vehicle damage should be preserved, including 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.)

If photographs were taken at the scene of the accident, keep copies of them for your case files. If you were riding a motorcycle at the time of the accident, keep your helmet as it may provide important evidence.

EXPERT ANALYSIS

Analysis by experts can be very helpful in proving you have a TBI as well as determining the impact it will have in your life. 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 Neuropsychologist** can analyze your brain functions as well as changes to your personality and emotional behaviour.
- **A Neurologist** is a doctor specialized in brain injuries and can give an opinion on the treatment and permanency of the injury.
- **A Neuro-otologist** may be needed if you suffer physical or mobility issues due to the injury (like dizziness or vertigo).
- **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.)

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.

With that said, surveillance may cause difficulties in brain injury cases, since a video would not show loss of memory or emotional damage, for example.

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.

MOTOR VEHICLE INSURANCE

If your brain 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:



NEW BRUNSWICK
\$50 000

NOVA SCOTIA
\$50 000

PEI
\$50 000

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 \$140 or \$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.

LEGAL ACTION & SETTLEMENT

WILL I GET AN OFFER RIGHT AWAY?

Since brain injuries are difficult to prove, insurance companies will rarely come out with a fair offer right away.

While it is possible that you will receive an 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 and the compensation you accepted was not enough.

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

WHAT IS THE PROCESS INVOLVED IN SUING 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 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.



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