

# YOUR RIGHTS

After an Automobile Accident



Bergeron | Clifford  
INJURY LAWYERS

# Your Rights After an Auto Accident

If you are injured in an auto collision, you have the right to collect compensation.

There are two ways to collect compensation:

1. If another person is at fault for the accident you may be entitled to recover an award of damages
2. No matter who is at fault you may be entitled to collect certain benefits called no-fault accident benefits

## 1. Claims against at-fault drivers

In the province of Ontario, if you are injured in a collision and another person is at fault you may be entitled to sue for losses you have suffered or expenses incurred, subject to certain conditions, such as:

- Loss of income
- Health care expenses
- Expenses to assist with housekeeping and home maintenance
- Pain, suffering, loss of enjoyment of life
- Other losses

## 2. Pain, suffering, & loss of enjoyment of life

You must prove that the injury you have sustained meets the threshold as defined in the Insurance Act, which is a matter of law and medicine.

- Permanent serious impairment of an important or psychological function; or
- Permanent serious disfigurement (eg. scarring)

If your injury meets the threshold you may be entitled to recover damages for pain and suffering. However, as of 2020 any award less than \$131,854.01 is subject to a deductible of \$39,556.53, and these amounts are adjusted for inflation annually.

## 3. Do family members have the right to sue?

Yes, in the event of death or injury to a person, damages may be awarded to family members who suffer a loss of care, guidance, or companionship.

Family members may also have claims for out-of-pocket losses, loss of income, or for the value of services rendered in caring for the injured person.

#### 4. Loss of Income

You are entitled to sue if you have lost income as a result of an accident. Under the no-fault benefits coverage of your auto insurance policy you may also be entitled to Income Replacement Benefits. Your claim will be reduced if you have received Income Replacement Benefits through your auto insurance policy or some other public or private plan.

To make a claim for loss of income your injury does not need to meet the threshold, and no deductible applies. However, you can only receive 70% of your income before trial, but 100% afterwards.

#### 5. Health Care Expenses

You are entitled to claim for expenses not covered by another source or plan, if your injury meets the threshold.

#### 6. What other losses can be claimed?

You may claim the costs of hiring someone to assist with daily activities which you are unable to perform due to your injuries, such as housekeeping and home maintenance other out of pocket expenses.

#### 7. How do I get access to no-fault accident benefits?



Within 7 days, or as soon after as possible, you must notify your insurance company that you can plan to apply for benefits. Your insurance company must provide you with application forms which must be completed and filed with the insurance company within 30 days.

You can still apply if you miss the 30 day deadline if you have a reasonable explanation for the delay, but no benefit is payable until a complete application has been approved.

## 8. What kinds of expenses will my insurance company cover?



All reasonable expenses incurred as a result of the accident may be covered by your insurance company, such as:

- Home renovations and vehicle modifications
- Transportation to and from treatment appointments over 50 kilometres
- Medical, hospital, and nursing care expenses which are not covered by OHIP
- Occupational therapy, chiropractic, and psychological therapy
- Medication, prescription eyewear, medical aids, and dental devices

## 9. Will my insurance company pay for an aide to help at home?

Your insurance company may be required to pay for the cost of an aide or attendant if you have been injured in an accident.

## 10. What are the limits on what I can receive for medical and rehabilitation benefits?

- Minor injuries are eligible for \$3,500 in medical and rehabilitation services. (This can be increased to \$65,000 if there is compelling evidence that a pre-existing medical condition will prevent the insured person from achieving maximal recovery with access to only \$3,500)
- Serious injuries (but not catastrophic injuries) are eligible for upto \$65,000 available for up to 5 years or until age 28 for minors in medical and rehabilitation services. (Combined total limit with any attendant care benefits)
- Catastrophic Injuries are eligible for up to \$1,000,000 maximum and are available for life. (Combined total limit with any attendant care benefits)

## 11. Can I arrange for my own assessment to determine the treatments I need?

Yes, your own health care specialists can complete the assessment under the regulation, and in most cases the insurance company is required to pay for costs associated with that assessment.

## 12. Weekly Income Replacement Benefits

Income replacement benefits will not be paid for the first 7 days after a collision. After this period and for as long as you qualify, you may be entitled to receive up to 70% of your gross weekly income, up to \$400 per week. You can receive \$600, \$800, or \$1,000 if optional additional coverage was purchased. If you are entitled to group or private benefits, you are still entitled to receive up to \$400 in addition to the group benefits.

## 13. If I attempt to return to work, will it affect my weekly benefits?

If at any time within the first 104 weeks after your accident, you return to work and find you are still unable to continue with your job, you will not have your entitlements affected.

## 14. Non-Earner Benefits

You may be entitled if at the time of the accident you were not working but were enrolled in school, or had completed your education within the year prior to the accident but were not currently employed in a job that reflected your education.

You are only entitled to this benefit if you are over the age of 16 and have suffered a complete inability to carry on your normal life.

You can receive up to \$185 per week for a maximum of 2 years; however this is not available for the first 4 weeks.

You are entitled to receive a non-earner benefit of \$320 per week after the first 104-week period has expired if you were enrolled in school or had completed your education during the year prior to the accident.

## 15. Lost Education Expenses



The insurance company may pay for lost education expenses up to \$15,000 if you were enrolled in a program and are unable to continue as a result of the accident.

## 16. Can the insurance company stop payment of benefits?

Yes, your insurance company may be entitled to stop payment under the following conditions:

- You have failed or refused to submit the completed disability certificate
- You have failed to attend the insurance company examination, or have not provided sufficient information for the assessment
- The insurance company's report states that you no longer suffer from your disability

## 17. When is my insurance company not obligated to pay benefits?



Your insurance company is not required to pay benefits if you were the driver of a vehicle at the time of the accident and if:

- You knew you ought to have known that the vehicle was not insured
- You were an excluded driver under the insurance policy for the vehicle driving or you were not licensed to drive
- You were driving or were an occupant of a vehicle and you knew or ought to have known that the vehicle was being driven without the owner's consent
- You were convicted of impaired driving, or of driving with a blood alcohol level which exceeded legal limits
- You were convicted of failing to provide a breath sample
- You were engaged in, or were an occupant of a vehicle which was being used in connection with a criminal offence
- You misstated facts or provided false information to the insurance company in order to obtain vehicle insurance
- You are convicted of committing a criminal offence or are an occupant of a vehicle being used for the commission of a criminal offence

## 18. Will I be required to take a physical or psychological exam by the insurance company?

The insurance company may require you to be examined “as often as reasonably necessary” in order to assist in determining your eligibility for benefits. However, if you are applying for a benefit that is provided for under the Minor Injury Guidelines the insurance company may not require you to attend an insurance examination.

## 19. Who is entitled to receive visiting expenses incurred while I am injured?

Expenses for visitors may be claimed by spouses, children, grandchildren, parents, grandparents, brothers and sisters of the injured person. Out-of-pocket expenses such as mileage, meals, parking, hotel accommodation, airfare, and child care costs. In some cases, car rentals may be considered to be reasonable and necessary. Keep receipts when possible. These expenses are not deducted from the injured person’s allowable medical, rehabilitation or attendant care limits under the SABS.

## 20. What is a catastrophic injury?

Some injuries may be deemed catastrophic by the medical experts who conduct your assessment such as:

- Paraplegia
- Quadriplegia
- Permanent loss of a limb
- Loss of vision in both eyes
- Certain brain injuries

If your condition meets one of the above you may make an application to your insurance company for a determination that the injury is catastrophic once two years has elapsed or your condition has stabilized.

## 21. What benefits am I entitled to if my injury is considered catastrophic?

You are entitled to a much higher level of rehabilitation and medical benefits if your injury is considered catastrophic as defined in the Insurance Act. The benefits are payable over your lifetime and carry a maximum of \$1,000,000 combined total limit for medical and rehabilitation benefits and attendant care benefits. Payment of housekeeping and home maintenance expenses may also be available.



## 22. Can no-fault benefits be paid as a lump sum?

Yes, however cases can not be settled until one year after the accident.

## 23. Do I need a lawyer for my lawsuit or no-fault accident benefits?

A lawyer can help assess whether or not you have a potential lawsuit and can assist in ensuring that you receive the proper no-fault benefits.

## 24. How will my lawyer get paid?



Our fee to you is calculated as a percentage of your award or settlement, plus HST. You are also responsible for payment of the expended incurred as a result of running your file (called disbursements) with HST thereupon as applicable but only if we are successful in obtaining you an award or a settlement, if we aren't successful in obtaining you a settlement or an award then we won't charge you anything.

If we are successful in your claim, the insurance company for the Defendant will likely make a contribution to your legal fees; these are called "costs". Costs are not the same thing as legal fees but represent a partial contribution to legal fees.

# Summary of Accident Benefits

In the Province of Ontario, no matter who is at fault for a car accident, you may be entitled to collect certain benefits, called accident benefits.

\*Not an exhaustive list of potentially available compensation

## Types of Accident Benefits



### Income Replacement Benefits (IRBs)

This benefit compensates for a lack or shortfall of income if one is unable to work, or work to the same extent, as a result of an impairment sustained in the accident.



### Non-Earner Benefits (NEBs)

This benefit provides compensation if one is entirely unable to carry on normal life and does not qualify for an income replacement or caregiver benefit. Typically applies when one is a student or senior or otherwise not working at the time of the accident.



### Caregiver Benefits (CGs)

Compensation for some expenses incurred when one cannot continue as the main caregiver for a household member who requires care. Typically applies to a stay-at-home parent with young children or one whose primary job is taking care of a family member with special needs.



### Medical Rehabilitation (Med Rehab)

This benefit pays for medical expenses incurred for rehabilitation where OHIP does not cover those modes of treatment. Typical examples are physiotherapy, massage therapy, chiropractic, acupuncture, prescription, medication and personal training.



### Attendant Care Benefits (AC)

This benefit compensates for some of the expenses of an aide or attendant to assist with personal care tasks such as washing, dressing, toileting, hair care, shaving and other essential self-care tasks.



### Compensation for Other Expenses

These benefits pay for some other expenses such as the cost of family travel for extended family to visit during treatment or recovery. It may also pay for some housekeeping and home maintenance, the repair or replacement of some items of clothing or eyewear lost or damaged in the accident and some lost educational expenditure.

If death occurs, family members may be entitled to:

### Death Benefits

Up to a maximum of \$25,000 is payable to the next of kin and up to \$10,000 per dependant.

### Funeral Benefits

This benefit pays for provable funeral expenses up to a maximum of \$6,000.

## Lawsuit/Tort Claim

This is a separate claim. This involves suing the at-fault party.

<b>ACCIDENT BENEFITS</b>	<b>MINOR INJURY GUIDELINE (MIG)</b>	<b>NON-CATASTROPHIC IMPAIRMENT (NON-CAT)</b>	<b>CATASTROPHIC IMPAIRMENT (CAT)</b>
Attendant Care Benefits (AC)	Are not available.	Available for 5 years (or until minor is age 28) \$3,000 per month limit	Available for life \$6,000 per month limit
Medical & Rehabilitation Benefits (Med Rehab)	Available—limited \$3,500 limit (can increase to \$65,000 with compelling evidence that a pre-existing condition would hinder recovery)	Available for 5 years (or until minor is aged 28) \$65,000 limit	Available for life \$1,000,000 limit
Combined AC & Med Rehab Limits	Are not available	Available for 5 years (or until minor is aged 28) \$65,000 combined total limit of AC and Med Rehab	Available for life \$1,000,000 combined total limit of AC and Med Rehab.
Caregiver Benefits	Not available	Not available	Available after 2 years from the date of injury \$250 per week for first individual and \$50 per week for additional individuals under the policy
Income Replacement Benefits	Payable after first week with a qualifying test after 2 years from the date of injury 70% of gross income to a maximum of \$400 per week	Payable after first week with a qualifying test after 2 years from the date of injury 70% of gross income to a maximum of \$400 per week	Payable after first week with a qualifying test after 2 years from the date of injury 70% of gross income to a maximum of \$400 per week
Non-Earner Benefits	Payable after first 4 weeks \$185 per week to a maximum of 2 years	Payable after first 4 weeks \$185 per week to a maximum of 2 years	Payable after first 4 weeks \$185 per week to a maximum of 2 years

# About Bergeron | Clifford LLP

At Bergeron Clifford, our team of personal injury lawyers has over 40 years of experience helping individuals and families following injuries caused by negligence.

We never represent insurance companies.

Based in Kingston, Ontario with offices also in Carleton Place, Ottawa and Perth, our team helps injured people throughout Eastern Ontario.

Our goal is to ensure that you and your family are safe, and to us that means:

1. Getting you proper care
2. Getting you proper compensation
3. Getting you justice

Recognised as:



## Our Lawyers



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Partner



Chris Clifford  
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## Practice Areas:



Brain  
Injuries



Spinal Cord  
Injuries



Car/Auto  
Accidents



Slip/Trip &  
Falls



Insurance  
Denials



Medical  
Negligence



Other  
Injuries