

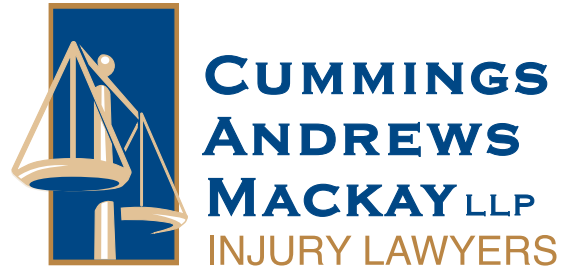


**CUMMINGS  
ANDREWS  
MACKAY** LLP  
INJURY LAWYERS

**INJURY LAW HANDBOOK**

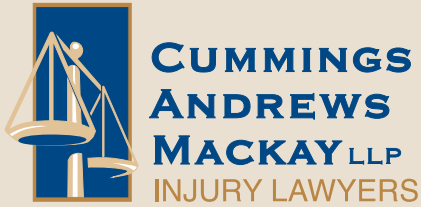
*Serious Injuries. Serious Lawyers. Serious Results.™*





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## HISTORY OF CUMMINGS ANDREWS MACKAY LLP BARRISTERS & SOLICITORS

What is now the firm of Cummings Andrews Mackay LLP was founded in 1915 by John F. Lymburn, Q.C. and Mayne Reid, Q.C. They were joined a short time later by Douglas Cobbletick, Q.C. and practiced for a number of years under the name Lymburn, Reid & Cobbletick. Mr. Lymburn eventually became the Attorney General for Alberta.

Throughout its early years, and continuing under the guidance of Paul Klingle, Q.C., who was with the firm from 1952 until his appointment to the CRTC in Ottawa, the firm practiced primarily in the area of corporate/commercial law.

The focus of the firm changed shortly after Ronald G. Cummings, Q.C. joined the firm in 1962. Mr. Cummings started a litigation department and, in 1965, conducted the firm's first personal injury trial involving a quadriplegic. Since that time, the firm has successfully argued many Canadian and British Commonwealth precedent setting personal injury cases including two of the three cases decided by the Supreme Court of Canada (commonly referred to as the "Trilogy of Cases") which literally set the law in Canada with respect to the assessment of damages in personal injury cases.

Today, the law firm of Cummings Andrews Mackay LLP continues to build upon its tradition of legal excellence. We take pride not only in the results that we achieve on behalf of our clients, but also in our caring, individualized service.

# What to do if you are involved in a *motor vehicle collision*

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***Even a minor motor vehicle collision can be a traumatic event. The following are some helpful hints about what to do if you are involved in a collision:***

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**1. At the accident scene obtain relevant information from the other party or parties involved in the collision including:**

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- a. Name, address and phone number of all drivers (*ask to see their driver's licences*);
- b. Name, address and phone number of the owners of the vehicle(s) if different from the drivers;
- c. The licence plate number and vehicle identification number of each of the vehicles, along with their make, model and colour;
- d. The name of the insurance companies and policy numbers for each of the other vehicles involved.

**2. At the accident scene obtain names, telephone numbers and addresses of any independent witnesses to the collision.**

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**3. Report the collision to the police:**

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In serious collisions the police will attend at the accident scene. If the police are unable to attend at the scene or if it does not appear to be a serious collision, attend at the nearest police station as soon as possible and report the collision. A collision report will be filled out and you will be asked to provide a statement. Give as detailed and as accurate a statement as possible.

**4. If injured, seek medical attention:**

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Obviously, if your injuries are severe this is something that will be done before any of the steps listed above. When seeking medical attention, ensure that you tell your doctor everything that is bothering you, even if it seems minor. Follow your doctor's advice and continue to follow up for further medical treatments as recommended by your physician.

**5. Report the collision to your insurance company:**

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This is something that should be done as soon as possible. There can be serious ramifications if you fail to report a collision to your insurer or if you delay an inordinate amount of time before reporting the collision.

**6. Report any injuries that you have sustained to your insurance company immediately:**

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Individuals sustaining a "minor injury" as a result of a motor vehicle accident who wish to be treated in accordance with the *Diagnostic and Treatment Protocols Regulation* introduced by the Alberta Government are required to provide their insurer with a completed claim form within 10 business days of the date of an accident or, if that is not reasonable, as soon as practicable after that to ensure that they are entitled to medical benefits.

For individuals sustaining an injury not defined as a "minor injury" or individuals choosing not to be treated in accordance with the *Diagnostic and Treatment Protocols Regulation*, a completed claim form must be submitted to their insurer within 30 days of the accident, or if that is not reasonable, as soon as practicable after that.



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## INTRODUCTION

In Alberta, the policy wordings governing automobile insurance are prescribed by legislation, giving rise to a standardized policy. Thus, the policy wording is the same for all motorists. The Standard Policy Form (SPF 1) is divided into three sections:

### SECTION A

#### LIABILITY INSURANCE

*(mandatory)*

### SECTION B

#### ACCIDENT BENEFITS

*(mandatory)*

### SECTION C

#### LOSS OF OR DAMAGE TO INSURED VEHICLE

*(optional)*

Additionally, an insured can augment the standard policy by purchasing additional coverages by way of endorsements to the policy. Examples of such modifications include Glass Coverage Waiver, Waiver of Depreciation, Vehicle Replacement Endorsement and Family Protection Endorsement (SEF 44).

# Standard *Automobile Policy*

## SECTION A

### THIRD PARTY LIABILITY (MANDATORY)

Third party liability coverage is mandatory for all motorists in Alberta. Each automobile must be insured for liability to a minimum of \$200,000.00.

Liability insurance is designed to protect the insured from financial ruin should he/she be responsible for a collision, and cause injury to others or damage to their property. Liability coverage is mandatory in order to ensure that accident victims have access to funds to compensate them for losses suffered in collisions. When an insured person is responsible for an accident, the liability insurer agrees to defend the insured against claims and to pay any amounts owing by the insured to the

other party, up to the limit of insurance in place on the policy. In fact, the insurer is, pursuant to the terms of the SPF 1, deemed to be the agent of the insured for the purposes of defending claims. As such, the insurer has the power to settle claims made against the insured.

Thus, while an accident victim technically has a claim against the at-fault motorist (and if suing, must sue the at-fault motorist rather than the insurer), his/her counsel will most often deal with the at-fault motorist's insurer in order to access compensation under Section A of the at-fault motorist's policy.

*Section B of the standard policy is also mandatory. It provides benefits to the insured, the insured's family members and other occupants of the insured vehicle at the time of the collision, as well as to pedestrians who are struck by the insured vehicle.*

*Section B benefits are available regardless of fault and include coverage for medical expenses, wage replacement for those totally disabled by their injuries, a weekly allowance for disabled homemakers, as well as death and funeral benefits.*

## SECTION B

### ACCIDENT BENEFITS (MANDATORY)

#### 1. Medical Expenses

All people injured in accidents are, regardless of fault, entitled to Section B benefits for medical expenses. As a result of new legislation introduced by the Alberta government for collisions occurring on or after October 1, 2004, there are differing benefits available depending upon the nature of one's injuries and the treatment protocol that they follow.

The insurer of an individual sustaining a "minor injury" who wishes to be diagnosed and treated in accordance with the *Diagnostic and Treatment Protocols Regulation* is required to pay for up to 21 medical, physical therapy, chiropractic and adjunct therapy visits in the 90 days following the accident, depending upon the nature of the injury and the treatment that is recommended by the insured's caregiver. If the injuries have not resolved within 90 days after the accident, any further treatment that is required will only be covered if it is approved by the insurer.

For an insured person sustaining an injury not defined as a "minor injury", or for an insured person with a "minor injury" who chooses not to be diagnosed and treated in accordance with the *Diagnostic and Treatment Protocols Regulation*, medical benefits are available

for up to two years following the collision to a maximum of \$50,000.00 per person. Expenses usually covered by Section B include ambulance bills, prescriptions, physiotherapy, occupational therapy, massage therapy (to a maximum of \$250), acupuncture (to a maximum of \$250), chiropractic care (to a maximum of \$750), psychological counselling and dental work. This list is not exhaustive. Any treatment deemed medically necessary by a doctor could be covered.

It is important to note, however, that in circumstances where the *Diagnostic and Treatment Protocols Regulation* does not apply, the Section B insurer may choose to have the insured person examined by a medical practitioner of the insurer's choosing, and will most likely rely on that doctor's opinion when deciding what treatment should be covered.

A decision as to whether or not an individual sustaining a "minor injury" should be diagnosed and treated in accordance with the *Diagnostic and Treatment Protocols Regulation* should be made in consultation with a health care practitioner. In doing so, it is important to bear in mind the provisions of the *Minor Injury Regulation*. Under that regulation, if an individual who sustains

a "minor injury" is, without reasonable excuse, not diagnosed and treated in accordance with the *Diagnostic and Treatment Protocols Regulation*, and the "minor injury" does not resolve and results in a serious impairment, the individual's non-pecuniary damage award in his or her personal injury action may still be capped in accordance with the amount set out in the *Minor Injury Regulation*.

With the exception of expenses covered under the *Diagnostic and Treatment Protocols Regulation*, Section B benefits are considered excess insurance. This means that if an insured has other means of paying for treatment (for example Alberta Health Care coverage, medical benefits available through work, private Blue Cross coverage, etc.) then those sources must be exhausted before Section B benefits can be accessed.

## 2. Wage Loss Benefits

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If an insured is injured in an accident to the extent that within 60 days of the accident he or she is unable to continue working, benefits are available to partially offset the loss of income. There is a seven day elimination period (the benefit is not available for the first seven days of missed work). The benefit payable is 80% of the insured's income to a maximum of \$400.00 per week, for a maximum of 104 weeks.

*Some important points to remember regarding wage loss benefits include:*

- a. To be eligible, the insured must have been employed at the time of the collision, or have been at least 18 years of age and have been employed for six of the preceding twelve months;
- b. To be eligible, the insured must be wholly and continuously disabled from performing his or her job;

- c. Generally, the insurer will demand that the insured's doctor confirm the disability. The insurer will require a form completed by the insured's physician as well as a form completed by the insured's employer. The insurer may also require periodic updates. Forms can be obtained from the Section B adjuster.
- d. The insurer may choose to have the insured examined by a doctor of the insurer's choosing to determine whether the insured is truly disabled.
- e. Section B wage loss benefits are excess to benefits available from other sources. Thus, if the insured is entitled to short term or long term disability benefits or CPP disability benefits, they must apply for such benefits. Any benefits payable under Section B would then be calculated pursuant to a formula set out in the policy.

## 3. Homemakers Benefits

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If an insured is married, living with his/her spouse, not employed for wages or profit, and unable to perform any of his/her household duties, he/she is eligible for benefits of \$135.00 per week for up to 26 weeks.

## 4. Death Benefits

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If the insured was a member of a household, and fatally injured as a result of a collision, then death benefits are payable as prescribed by the policy. The amount of the benefit depends upon the age and status of the deceased in the house at the time of death. Benefits are generally payable to the surviving head of the household, or the surviving spouse.

## 5. Funeral and Grief Counselling Expenses

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In addition to death benefits, funeral expenses to a maximum of \$5,000.00 and grief counselling expenses to a maximum of \$400.00 per family are covered.

## SECTION C

### LOSS OR DAMAGE TO THE INSURED AUTOMOBILE (OPTIONAL)

Section C coverage is optional coverage that the insured can purchase to protect against theft of or damage to the insured vehicle. There are four types of Section C coverage available: Collision, Comprehensive, Specified Perils and All Perils.

Collision coverage insures against damage to the vehicle caused by collision or upset. Generally, this means that if the insured vehicle comes into contact with another vehicle, or some other object, then, subject to a few exceptions, the insurer will pay to have the vehicle repaired, or if the vehicle is a total loss (cost of repairs exceeds the market value of the vehicle less salvage value) pay the value of the vehicle.

Comprehensive coverage insures the vehicle with respect to all perils other than collision or upset.

Specified Perils coverage insures against damage caused only by certain listed events such as fire, theft or storm.

All Perils coverage insures the vehicle from all perils including collision or upset.

Normally, Section C payments are subject to a deductible. This simply means that the insured pays for the

first part of the loss, while the insurer pays the balance. The amount of the deductible for any particular type of Section C coverage is negotiable with the insurer.

If an insured has All Perils or Collision coverage, and is involved in a collision for which another motorist is responsible, then he/she can demand that his/her own insurer repair the vehicle or pay the actual cash value (in the event of a total loss). Typically, the insurer would then demand that the insurer of the at-fault motorist reimburse them for the payment. In effect, the insurer steps into the insured's shoes to demand payment for the loss from the at-fault insurer. When an insurer makes a payment and then seeks to recover from the at-fault party, this is called subrogation. Often, the at-fault motorist's insurer will acknowledge responsibility to pay for the vehicle damage at an early stage, or may even agree to pay for the repairs directly. This enables the vehicle's insurer to "waive the deductible" as the insurer knows that the cost of repairs will be repaid in full. If the deductible is not waived, then it is up to the insured or his/her counsel to recover the amount of the deductible from the at-fault motorist's insurer.

#### 1. Endorsements

In addition to the three types of coverage set out in the Standard Automobile Policy, insurers can offer specific additions or modifications to the policy by way of an endorsement. The endorsement wordings are again in an approved format and are standardized throughout the industry. Endorsements can provide for such things as a waiver of glass coverage (to save premiums), a waiver of depreciation (to protect against depreciation for the first two years of new car ownership), or vehicle replacement (rental while vehicle is being repaired).

The most important endorsement is the SEF 44 Family Protection Endorsement. It is so important that most insurers place the endorsement on the policy as a matter of course. This endorsement provides coverage if the insured or a family member (living in the same house) is seriously injured in a collision and the at-fault motorist has insufficient insurance coverage. In essence, the endorsement ensures that the insured will have access to at least as much insurance as the limit of their own Section A coverage. Obviously, the Family Protection Endorsement is applicable only in serious personal injury cases, but in such cases, when the at-fault motorist has little coverage, the endorsement is invaluable.



## Sources Of Compensation Available *Following a Motor Vehicle Collision*

### **1. Property Damage**

After the initial treatment of any injuries sustained, the first concern most people have following a collision is dealing with the damage done to their vehicle. This will involve obtaining funding for any necessary repairs to the vehicle or, if the vehicle is written off, obtaining a lump sum payout for the value of the vehicle.

If you have collision coverage on your vehicle your insurer will be able to assist you. If you are at fault for the accident, they will pay for your property damage, less your deductible. If another party is at fault, and that party has insurance, your insurer will either pay for the property damage to your vehicle less your deductible and recover that amount from the at fault driver's insurer, or else refer you to deal directly with the at fault driver's insurer. In the first instance, your deductible should be reimbursed by the at fault driver's insurer and in the second instance you should not have to pay a deductible.

If you do not have collision coverage on your vehicle and you are not at fault for the collision, the at fault driver's insurer will be responsible for covering your property damage. It should be noted, however, that if you do not have collision coverage on your vehicle and the collision is caused by someone who does not have insurance

or by some unidentified party, there will be no coverage available to you for the property damage to your vehicle.

### **2. Medical Expenses**

If you are injured in a collision, there are often expenses associated with the treatment of your injuries, such as ambulance bills, prescriptions and any physiotherapy or other treatments recommended by your doctor.

If you have a "minor injury" and are being treated in accordance with the *Diagnostic and Treatment Protocols Regulation*, your treatment expenses will be covered by your Section B insurer in accordance with that regulation.

If your injury is not a "minor injury" or if you have a "minor injury" and are not being treated in accordance with the *Diagnostic and Treatment Protocols Regulation*, the first place to look for coverage of these expenses is through any private medical insurance you may have either personally, through your employer or through an immediate family member. If there is no private insurance available, or if that private insurer does not cover 100% of your medical expenses, you should look to your Section B insurer (see discussion on Section B benefits in the Standard Automobile Policy section of this brochure) to cover any expenses for which you are not reimbursed.

If you do not have private medical insurance and you have exhausted all of the benefits available to you under the Section B portion of your automobile policy, you may be able to obtain coverage for further medical expenses by making an application to the Motor Vehicle Accident Claims Fund. This is a fund set up by the Government of Alberta to assist people who are injured in motor vehicle collisions and are in need of medical treatment, but do not have any other form of insurance coverage for medical expenses available to them.

If the collision was caused by the negligence of someone else, any expenses not covered by one or more of the above sources can be claimed in a personal injury action brought against the at fault party or parties.

### **3. Wage Replacement/Disability Benefits**

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Often, as a result of injuries sustained in a collision, people are unable to return to work for a period of time and therefore can suffer extreme financial hardship. Fortunately, there are several sources of compensation available for victims of motor vehicle collisions who have suffered a loss of income as a result of their injuries.

Again, the first place to look for coverage for any loss of income that is being incurred is through any private insurance you may have either personally, through your employer or through an immediate family member.

If there is no private insurance available, or if you are not being fully reimbursed for your lost income by a private insurer, you should look to your Section B insurer (see discussion of Section B benefits in the Standard Automobile Policy section of this brochure) for further wage replacement benefits.

Other possible avenues that can be explored in relation to disability benefits are Employment Insurance - Disability Benefits, Canada Pension Plan - Disability Benefits and Assured Income for the Severely Handicapped (AISH) Benefits.

As with medical expenses, if a personal injury action is brought against the party or parties responsible for the collision, you will be entitled to claim for any loss of income that you have experienced as a result of the injuries sustained by you in the collision. In some circumstances, you will also have an obligation to put forward a claim on behalf of an insurer who provided you with wage replacement or disability benefits so that the insurer is indemnified by the at fault party or parties for the benefits that they had to pay to you.

### **4. Death Benefits**

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If a member of your immediate family is killed in a motor vehicle collision, compensation may be available through private insurance held by the deceased, either personally or through his employer, or by an immediate family member at the time of the collision. In addition, there are death benefits available through the deceased's Section B insurer (see discussion of Section B benefits in the Standard Automobile Policy section of this brochure).

Finally, a wrongful death claim may also be brought against any party or parties responsible for the collision which led to the death of the family member.

## 5. Workers' Compensation Board

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Under the Workers' Compensation legislation in Alberta, if you are someone who comes within the definition of a "worker" at the time of the collision, you may qualify for medical and disability benefits. Inquiries as to whether or not you qualify for these benefits should be directed to your employer and/or the Workers' Compensation Board.

In addition to medical and disability benefits, death benefits may also be available to the spouse and dependent children of a "worker" who was killed in a motor vehicle collision while in the course of his or her employment.

In most situations, even if you qualify for WCB benefits as a result of injuries sustained in a motor vehicle collision, you will also be able to bring a personal injury claim against the party or parties responsible for your injuries. There will, however, be some circumstances where, under the provisions of the Workers' Compensation Act, you will be covered by WCB benefits but will be precluded from bringing a personal injury action.

## 6. Your Personal Injury Claim

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In addition to all of the above sources which may be available to you, if you are injured in a collision as a result of someone else's negligence, you may bring a claim for personal injury damages against the at fault party or parties.

Although every personal injury claim will be different, some of the main categories of damages under which you may be entitled to receive compensation are:

- a. General Damages for Pain, Suffering and Loss of Amenities of Life;
- b. Past Loss of Income;
- c. Future Loss of Income;
- d. Past Cost of Care;
- e. Future Cost of Care;
- f. Past Loss of Housekeeping Capacity;
- g. Future Loss of Housekeeping Capacity;
- h. Miscellaneous Out of Pocket Expenses;
- i. Loss of Consortium (*available to the spouse of an injured person where the marital relationship has been seriously disrupted*).

In most situations, the at fault party will have insurance on their vehicle and the damages you are entitled to will be paid by their insurance company once a settlement has been reached or a Judgment has been obtained. In situations where the at fault party was either uninsured at the time of the accident or has not been identified, payment of any damages will usually be made by the Motor Vehicle Accident Claims Fund.

In serious cases, there are sometimes insufficient insurance proceeds available through the at fault driver's insurer or through the Motor Vehicle Accident Claims Fund to cover the damages that you are entitled to. In these situations, further compensation may be available from your own insurance company if at the time of the collision you had an SEF 44 Family Protection Endorsement on your automobile policy (see discussion on Endorsements in the Standard Automobile Policy section of this brochure).

## Standard Steps In *Your Personal Injury Claim*

*A personal injury claim may be settled at any stage of the proceedings. As the value of the claim is dependent upon the severity and duration of the injury, however, we usually recommend that a claim not be settled until the injury is fully resolved, or until a doctor has given a firm and reliable prognosis.*

### **1. Preliminary Steps**

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Typically, the first step we take is to gather information. Liability will be investigated by obtaining police reports, witness statements, vehicle damage information, etc. Later on, once your physicians and other caregivers have had an opportunity to fully assess your injuries, we will request medical reports. If the injury has resolved, these reports will outline the entire extent of the injury. If the injury is ongoing, the reports would be considered interim reports and final reports would be ordered at a later date.

In addition to liability and medical information, other information may also need to be obtained to substantiate any claims for loss of income, loss of housekeeping capacity, cost of future care or out of pocket expenses that have been incurred.

If necessary, we will retain experts to assist in valuing your claim. These experts might include accident reconstruction engineers, biomechanical engineers, medical specialists, cost of care experts, vocational consultants, economists, etc.

Once your injuries have resolved or your doctors have been able to provide a final prognosis, we will assess your claim and, with your instructions, enter into settlement negotiations with the at fault party's insurer. If an agreement can be reached the claim will be settled at that stage.

### **2. Statement of Claim**

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If your injury is prolonged and your physicians are unable to provide a final prognosis in a timely manner, or if an agreement cannot be reached with the at fault insurer, it will be necessary to start a legal action. This is done by preparing a Statement of Claim and filing it on your behalf at the courthouse. A Statement of Claim is simply a document that summarizes the facts giving rise to the claim and outlines the damages that are being claimed. In personal injury claims, a Statement of Claim must generally be filed within two years from the date of the incident that gave rise to the injury.

### **3. Service of Statement of Claim**

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Once the Statement of Claim is filed, it must be personally served upon the Defendant(s). This typically requires hiring a process server who personally hands the Statement of Claim to the Defendant(s). Usually, as a courtesy, a copy of the Statement of Claim will also be sent to the insurer.

If it is desirable to move the file into the litigation process quickly, a demand for a Statement of Defence will be made shortly thereafter. If, however, settlement with the insurer directly is still likely, negotiations may continue without a Statement of Defence needing to be filed.

### **4. Statement of Defence**

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Assuming a settlement cannot be achieved directly with the insurer, they will retain a lawyer to file a Statement of Defence. This is a document that is filed at the courthouse in response to your Statement of Claim. Typically, it will deny liability for the incident and deny that you have sustained any injuries.

### **5. Affidavit of Records**

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Once a Statement of Defence has been filed, the next step is for the parties to exchange relevant documentation. Despite the fact that our legal system is based upon the adversary process, it is not permissible to proceed to trial and take the opposition by surprise. In order to guard against such surprise, all parties are required to exchange Affidavits listing all of the relevant and material records (documents, computer records, photographs, video tapes, etc.) that they have in their possession or control. The records are then made available for inspection by the opposition. Although certain records are privileged and as such are not producible, most records must be disclosed. It is not permissible to conceal a record merely because it would have an undesirable effect on the outcome of your case.

## **6. Questioning Under Oath**

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Once Affidavits of Records have been filed and exchanged, all parties to a lawsuit must submit to a Questioning Under Oath. Simply put, a Questioning Under Oath is a process whereby you are required to answer, under oath, questions put to you by the Defendant's lawyer relating to your claim. The questions and answers are recorded by a Court Reporter and a transcript is created. This allows the opposition to obtain further information from you about your claim and learn what your evidence will be if your claim proceeds to trial. Ultimately, if your claim proceeds to a trial the transcript can be used by the opposition.

Questionings Under Oath vary in length. Some last less than an hour while some last several days. They are typically conducted in a lawyer's office and no judge or court official is present. In personal injury claims, the Plaintiff is usually asked about such things as how the accident occurred, their health before and after the accident, their employment and educational history and anything else relevant to their claim.

## **7. Undertakings**

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Often, at a Questioning Under Oath, a party is unable to answer a specific question, but has available a document which hasn't yet been produced to the other side that may help to answer the question. There may also be documents which have not been provided that the opposition feels they are entitled to. In those circumstances, the examining lawyer will ask the party being examined to give an undertaking to provide those records. If the party agrees to the request, they are compelled to make their best efforts to obtain the requested information. As a result, the next step immediately following Questioning Under Oath is usually to obtain and provide to the opposition answers to the requested undertakings.

Once the undertakings have been fully answered, opposition counsel may decide that they need to ask some additional questions of you in relation to the answers to undertakings that have been provided. If this is the case, a further Questioning Under Oath will be necessary.

It is important to note that before being examined, we will meet with you at length to fully explain the process and to outline for you the type of questions that the other lawyer is likely to ask.

## **8. Independent Medical Examinations**

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In personal injury claims, the Defendants may not agree with the opinions provided by your treating physicians or the specialists whom you have seen. In this situation, the Alberta Rules of Court allow a Defendant to demand that you submit to an examination by a health care professional of the Defendant's choosing. This is referred to as an Independent Medical Examination (IME). Depending on the nature of the injury, the Courts will occasionally require a Plaintiff to attend at more than one IME.

After the IME, the Defendant's health care professional will provide them with a report and they must in turn provide that report to Plaintiff's counsel.

## 9. Judicial Dispute Resolution and Mediation

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As trials have become more complicated and costly, and as waiting lists for trials have grown long, Plaintiffs and Defendants have both sought alternate methods of settling files which are often referred to as Alternative Dispute Resolution (ADR).

Mediation is one such method of ADR. At a mediation, an impartial mediator sits with the parties and their counsel and tries to bring the parties to agreement on some or all of the issues in dispute. The mediator's training, expertise and impartiality often enables him/her to keep the parties focused on settling their disputes and often results in the claims being resolved.

Alternatively, counsel can ask for assistance from the court to resolve disputes without the need for a full trial. This is called Judicial Dispute Resolution, or JDR. One form of JDR is a mediation. The only difference from a regular mediation is that in a JDR mediation the mediator is actually a Justice of the Court of Queen's Bench. The other form of JDR is a mini-trial. At a mini-trial, counsel present medical reports and other evidence to the Judge that they expect to be able to lead at trial, without actually having to call any witnesses. They then argue the merits of the case. On the basis of the information presented at the mini-trial, the Judge will indicate what he or she

would have done had the case been presented to him or her in a regular trial setting. The decision is generally not binding upon the parties, however, it is hoped that the opinion of an impartial judge might help move the parties towards settlement.

Mediations and JDR's have proven to be remarkably effective methods of settling disputes. As a result, new rules have been passed which provide that unless relieved of an obligation by a Judge, parties cannot set a matter down for trial without first having participated in an ADR.

## 10. Trial

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Most personal injury claims settle without the need of a trial. If a settlement cannot be reached, however, a trial may be necessary to resolve the dispute.

Once the Questioning Under Oath, Independent Medical Examinations, an ADR, and any other necessary steps are complete, the parties will request a trial date from the Court. Once a trial date has been obtained efforts can still be made to negotiate a settlement of the claim but if those efforts are not successful the parties will proceed to trial.

At trial, witnesses are called by the parties to give evidence on their behalf in front of the Trial Judge. Once all of the evidence has been presented, counsel will then argue the merits of the case to the Judge. After hearing all of the evidence and argument, the Judge will make a determination which is binding upon the parties, subject only to appeal. Unfortunately, trials have become quite complex over the years and many personal injury claims now require 10 days or more of trial time.



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## Things You Can Do To Assist Your Lawyer

*Your lawyer's job is to take care of the details surrounding your personal injury claim so that you don't have to worry about them and can focus your time and effort on recovering from your injuries. That being said, there are some things that you can do to ensure that your personal injury claim proceeds as smoothly as possible. Here are some suggestions:*

### **1. Follow Your Doctor's Advice**

It is our job to prepare your personal injury claim and present it in the best possible light so as to achieve a fair settlement from the at fault party or to obtain a judgment at trial. It is your responsibility to follow up with your health care professionals to ensure that you recover from your injuries as quickly and as fully as possible.

When visiting your doctor or any other health care providers, ensure that you advise them of all of the difficulties that you are experiencing so that they can treat you properly. It is also imperative that you follow any treatment recommendations that they make on a timely basis as failing to follow the recommendations of your health care givers may result in a reduction of the amount of damages that you are entitled to receive.

### **2. Keep Us Informed**

In order to properly represent your interests, we endeavour to stay in contact with you on a regular basis to get updates as to your status. It is imperative that you keep us updated about relevant developments such as changes in the treatment that you are receiving or changes in your work situation. In addition, if you are moving it is important that you provide us with your new address and telephone number so that we can continue to maintain regular contact with you.



### **3. Maintain Records in Relation to Out of Pocket Expenses and Your Loss of Housekeeping Capacity Claim**

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At the conclusion of your personal injury claim, you will be compensated for any out of pocket expenses that you have incurred as a result of the collision and the treatment of any injuries that you sustained. As a result, it is important that you keep track of these expenses including keeping any receipts or invoices that you have to substantiate them.

You may also be entitled to advance a loss of housekeeping capacity claim as a result of your injuries. It is important to keep track of how much you have paid someone to assist you in relation to your usual household chores or, if you have relied on the assistance of family and friends, how much time your family and friends have spent providing you with assistance. This information will make it easier for us to ensure that you recover the damages that you are entitled to.

It may also be advisable to keep a diary detailing the important events relating to the treatment of your injuries and your recovery.

### **4. Surveillance**

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It is important to be aware that in many personal injury cases private investigators are hired by the at fault party's insurer to record your movements utilizing a camera or a video camera or to interview neighbours, co-workers, acquaintances and family members. In addition, insurance companies will also search online social networking sites to try and obtain information about your activities.

As a result, it is important that you not discuss your case with anyone other than your lawyer and your health care providers and refrain from posting anything online that may negatively impact your claim. In addition, it is imperative that you follow your doctor's advice and not try to do any work or physical activity that goes against medical advice. As the insurer may be aware of your activities, it is crucial that you be honest and forthright with your physicians, your lawyer and the other lawyer during Questioning Under Oath.

### **5. Mitigation of Damages**

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As mentioned above, if it is found at trial that you have failed to follow up with the medical treatment recommended by your doctor and as a result your injuries did not heal fully or did not heal as quickly as they otherwise would have, a Court will generally reduce the amount of damages that you are entitled to.

On a similar note, if you are forced to miss work as a result of the injuries you sustained in the collision, it is advisable that you return to work as soon as you receive medical clearance from your health care providers. If you are unable to return to the job which you had at the time of the collision because of your injuries, it is your responsibility to attempt to find alternate employment that you are physically able to do, or, pursue retraining that will allow you to obtain a job that you are physically able to do. Failing to do this will also likely result in a reduction in the amount of damages that you will be awarded.



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