

January 2023



# Injury Law Handbook

What to do if you are  
involved in a car accident

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# Cummings Andrews Mackay LLP ("CAM LLP") Barristers & Solicitors

Cummings Andrews Mackay LLP ("CAM 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 Cobbledick, Q.C. and practiced for some years under the name Lymburn, Reid & Cobbledick. Mr. Lymburn eventually became the Attorney General for Alberta.

Throughout its early years, and continuing under the guidance of Paul Klinge, 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 Ron 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 then, 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") which set the law in Canada on the assessment of damages in personal injury cases.

Today, CAM LLP continues to build upon its tradition of legal excellence. We take pride in our caring, individualized service and the results we achieve for clients.

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Personal Injury Litigation  
2023



**Top Choice Award**  
Top Edmonton Injury Law Firm  
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## What to do if you are involved in a motor vehicle accident

**Even a minor motor vehicle accident can be a traumatic event. Here are some helpful tips if you are involved in an accident:**

**1. IF INJURED, SEEK MEDICAL ATTENTION:**

If your injuries are severe, getting medical treatment is the first thing you should do. When seeking medical attention, make sure 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.

**2. AT THE ACCIDENT SCENE GET RELEVANT INFORMATION FROM THE OTHER PARTY OR PARTIES INVOLVED, INCLUDING:**

- a. Name, address, and phone number of all drivers (ask to see their driver's licenses).
- b. Name, address, and phone number of the owners of the vehicle(s) if different from the drivers.
- c. The license plate number and VIN (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.
- e. Names, phone numbers, and addresses of any independent witnesses to the accident.

**3. REPORT THE ACCIDENT TO THE POLICE:**

In serious accidents, the police will attend at the accident scene. If the police are unable to attend or if it does not appear that the accident is serious, go to the nearest police station as soon as possible and report the accident. The police will complete an accident report, and you will be asked to provide a statement. Be as detailed and accurate you can.

**4. REPORT THE ACCIDENT TO YOUR INSURANCE COMPANY:**

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

**NOTE:** You are not required to provide any information to the fault driver's insurance company. You should, however, talk to a lawyer as soon as possible about putting that insurer on notice of your intention to bring a personal injury claim.

## 5. REPORT YOUR INJURIES TO YOUR INSURANCE COMPANY IMMEDIATELY:

### Minor Injuries

If you have sustained a minor injury and you want to be treated under the *Diagnostic and Treatment Protocols Regulation*\*, you must provide your insurance company with a completed claim form **within 10 business days of the date of the accident** or, if that is not reasonable, as soon as possible after that to ensure you are entitled to medical benefits.

### Major or Serious Injuries

If your injuries are not defined as “minor,” or you choose not to be treated in accordance with the *Diagnostic and Treatment Protocols Regulation*, a completed claim form must be submitted to your insurer **within 30 days of the accident**, or if that is not reasonable (e.g., you are in hospital), then as soon as possible after that.

\* The Diagnostic and Treatment Protocols Regulation was introduced by the Alberta Government in 2004 to cap general damages for pain and suffering at a legislated amount for injuries defined as “minor” **and not resulting in serious impairment.**

On November 1, 2020, “minor injury” was redefined as sprains, strains or Whiplash-associated disorder (WAD) injuries that do not result in serious impairment **and** expanded to include any clinically associated consequences of the sprain, strain or WAD injury, whether physical or psychological, caused by the accident that does not result in serious impairment.

The intent was to increase the range of injuries caught by the cap, but the key remains whether:

- ▶ the injuries result in “serious impairment” such that you can no longer perform the essential tasks of your job, or of an education or training program, or other normal activities of daily life,
- ▶ this has been ongoing since the accident, and
- ▶ your situation is not expected to improve substantially.

An injury that initially appears minor may turn out to cause long-term problems. Learning how the cap applies to your injuries is a good reason to talk to a personal injury lawyer. We can explain what compensation is available in your situation.



# Alberta's Standard Automobile Insurance (SPF 1)

In Alberta, automobile insurance is prescribed by legislation. The result is a standardized insurance policy that is the same for all motorists.

The Standard Policy, Form (SPF 1), is divided into three sections:

## SECTION A

### Third Party Liability Insurance – Mandatory

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## SECTION B

### Accident Benefits – Mandatory

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## SECTION C

### Loss of or damage to insured vehicle – Optional

You can also purchase additional coverage by way of endorsements to your policy. Examples of additional coverage include:

- ▶ Glass Coverage Waiver
- ▶ Waiver of Depreciation
- ▶ Vehicle Replacement Endorsement
- ▶ Family Protection Endorsement (SEF 44)

A photograph showing the front end of a silver car that has been involved in a collision. The hood is crumpled, the front bumper is missing, and the engine compartment is exposed. The car is parked on a paved surface, and a piece of debris is visible on the ground to the left.

# Alberta Standard Automobile Policy (SPF 1)

## Section A: Third Party Liability – Mandatory

Third party liability coverage is mandatory for all drivers in Alberta. Each automobile must be insured for third party liability to a minimum of \$200,000.

### What is Third Party Liability Insurance?

Third party liability insurance is designed to protect you (the insured) from financial ruin should you be responsible for an accident, and cause injury to others or damage to their property. Liability coverage is mandatory to ensure that accident victims have access to funds to compensate them for losses suffered in accidents.

### How it Works

When you buy third party liability insurance, if you are responsible for an accident that causes loss (personal injury or property damage), your insurance company agrees to defend you against claims and to pay amounts you might owe to the other party, up to the limit of the policy. Many people choose to top up their insurance policies above the provincial minimum to protect themselves from damages claims in the case of a serious injury like a brain or spinal cord injury.

Your insurance company (your insurer), under the terms of the SPF 1, is your agent for the purposes of defending claims. This means that your insurer also has the power to settle claims made against you.

While an accident victim technically has a claim against the at-fault driver (and if suing, must sue the at-fault driver rather than the insurer), his/her lawyer will most often deal with the at-fault driver's insurance company to access compensation under Section A of the at-fault driver's insurance policy.



## Section B: Accident Benefits – Mandatory

Section B of the Standard Policy is also mandatory. It provides benefits to you, your family members, and other occupants of the insured vehicle at the time of the accident, as well as to pedestrians struck by the insured vehicle.

Section B benefits are available regardless of who was at-fault and include coverage for:

- ▶ medical expenses
- ▶ wage replacement for those totally disabled by their injuries
- ▶ a weekly allowance for disabled homemakers
- ▶ death and funeral benefits

### 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 accidents occurring on or after October 1, 2004, there are differing benefits available depending on the nature of your injuries and the treatment protocol that they follow.

#### Minor injuries

If you sustain a “minor injury,” and you wish to be diagnosed and treated in accordance with the *Diagnostic and Treatment Protocols Regulation*, your Insurance company is required to pay for up to 21 medical, physical therapy, chiropractic, and adjunct therapy visits in the 90 days following the accident, depending on the nature of the injury and the treatment that is recommended by your healthcare provider. You may also be entitled to additional dental, occupational therapy and psychological counselling treatments. If the injuries have not resolved within 90 days after the accident, any further treatment required will only be covered if it is approved by your insurance company.

### Serious injuries

If your injury is not defined as a “minor injury,” or you choose **not** to be diagnosed and treated in accordance with the *Diagnostic and Treatment Protocols Regulation*, medical benefits are available to you for up to two years following the accident to a maximum of \$50,000 per person.

Expenses usually covered by Section B include:

- ▶ ambulance bills
- ▶ prescriptions
- ▶ physiotherapy
- ▶ massage therapy (to a maximum of \$350)
- ▶ acupuncture (to a maximum of \$350)
- ▶ chiropractic care (to a maximum of \$1,000)
- ▶ psychological counselling, dental work and occupational therapy

This list is not exhaustive. Any treatment deemed medically necessary by a doctor could be covered. It is important to note, that where the *Diagnostic and Treatment Protocols Regulation* does not apply, the Section B insurer may choose to have you examined by a medical practitioner of their choosing, and will most likely rely on that doctor’s opinion when deciding what treatment should be covered.

Except for expenses covered under the *Diagnostic and Treatment Protocols Regulation*, Section B expenses are considered “excess insurance.” This means that if you have 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.

### Are your injuries “minor” or serious?

As noted on page 3 of this handbook, the nature of your injuries has an impact on compensation available to you.

Decisions about whether your injuries are “minor” or serious should always be made in consultation with your doctor. We can also help explain. It is important to know the provisions of the *Minor Injury Regulation*.



### 2. WAGE LOSS BENEFITS

If you are injured in an accident and become unable to continue working anytime within 60 days after the accident, benefits are available to partially offset your loss of income. Note that there is a seven day waiting period. That is, benefits are not available in the first week after the accident. The benefit payable is 80% of your income to a maximum of \$600 per week, for a maximum of 104 weeks.

Important points to remember about wage loss benefits include:

- a. To be eligible, you must have been employed at the time of the accident, or have been at least 18 years of age and employed for six of the preceding twelve months.
- b. To be eligible, you must be wholly and continuously disabled from performing your job.
- c. Your insurance company will require your doctor to confirm your disability and your employer to confirm your employment details. Your insurer may also require periodic updates. Forms can be obtained from your Section B adjuster.
- d. Your insurer may choose to have you examined by a doctor of their choosing to confirm you are truly disabled. Section B wage loss benefits are considered “excess benefits” in that they are available

after you have exhausted benefits from other sources available to you. Thus, if you are entitled to short-term or long-term disability benefits or CPP disability benefits, you must apply for such benefits. Any benefits payable under Section B would then be calculated under a formula set out in your insurance policy.

### 3. HOMEMAKERS BENEFITS

If you are 18 or over, not employed for wages or profit, and unable to perform any of your household duties, you are eligible for benefits of \$200 per week for up to 104 weeks.

### 4. DEATH BENEFITS

If you are a member of a household, and fatally injured as a result of an accident, then death benefits are payable as prescribed by the policy. The amount of the benefit depends on your age and status in the household 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

In addition to death benefits, funeral expenses to a maximum of \$6,150 and grief counselling expenses to a maximum of \$500 per family are covered.

## Section C: Loss or damage to the insured automobile – Optional

Section C coverage is optional coverage that you 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
- ▶ All Perils

### Collision

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, your insurance company will pay to have the vehicle repaired, or if the vehicle is a total loss (cost of repairs exceeds the market value less the salvage value of the vehicle) your insurer will pay the market value of the vehicle.

### Comprehensive

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

### Specified Perils

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

### All Perils

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

\* Upset covers damage to the vehicle due to events other than collisions.



### Deductibles

Normally, Section C payments are subject to a deductible. This means that you pay for the first part of the loss (the deductible), while the insurer pays the balance. The amount of the deductible for any particular type of Section C coverage is negotiable with your insurer.

If you have All Perils or Collision coverage and are involved in a collision for which another motorist is responsible, then you can demand that your own insurer repair the vehicle or pay the actual cash value (in the event of a total loss). Typically, your insurer would then demand that the insurer of the at-fault motorist reimburse them for the payment. In effect, your insurer steps into your shoes to demand payment for your 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 your insurer to "waive the deductible" as your insurer knows that the cost of repairs will be repaid in full by the at-fault insurer. If the deductible is not waived, then it is up to you or your lawyer to recover the amount of the deductible from the at-fault motorist's insurer.

### ENDORSEMENTS (ADDITIONAL INSURANCE COVERAGE)

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 insurance 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).

### SEF 44 Family Protection Endorsement (underinsured motorist protection)

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 you or a family member (living in the same house) is seriously injured in an accident and the at-fault motorist has insufficient insurance coverage. The endorsement ensures that you will have access to at least as much insurance as the limit of your 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 accident

## 1. PROPERTY DAMAGE

After the initial treatment of your injuries, the first concern most people have following an accident is dealing with damage 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, your insurer will pay for your property damage, less your deductible.

If another party is at-fault, and that party has insurance, your insurer will either:

- a. pay for the damage to your vehicle less your deductible and recover that amount from the at-fault driver's insurer, or
- b. refer you to deal directly with the at-fault driver's insurer.

In the first case, your deductible should be reimbursed by the at-fault driver's insurer and in the second case you should not have to pay a deductible.

If you don't have collision coverage on your vehicle and you are not at-fault for the accident, the at-fault driver's insurer will be responsible for covering your property damage. However, if you don't have collision coverage and the accident is caused by someone who does

not have insurance or by an unidentified party (e.g., hit and run), there will be no coverage available to you for the property damage to your vehicle.

## 2. MEDICAL EXPENSES

If you are injured in an accident, there are often expenses associated with 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 to 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 to cover any expenses for which you are not reimbursed (see discussion on Section B benefits in the Standard Automobile Policy section of this brochure).



### Motor Vehicle Accident Claims Fund

If you don't 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 help people injured in motor vehicle accidents who need medical treatment but don't have any other form of insurance coverage for medical expenses available to them.

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

### 3. WAGE REPLACEMENT/DISABILITY BENEFITS

Not being able to work for a period of time because of injuries sustained in an accident, can cause you extreme financial hardship. Fortunately, there are several sources of compensation available to you for loss of income that results from your injuries.

Again, the first place to look for coverage for any loss of income is any private insurance you have personally, through

your employer, or through an immediate family member.

If no private insurance is 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
- ▶ Assured Income for the Severely Handicapped (AIS) Benefits

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

#### 4. DEATH BENEFITS

If a member of your immediate family is killed in a motor vehicle accident, compensation may be available through the deceased's private insurance, either personally or through his/her employer, or by an immediate family member at the time of the accident. Also, 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 accident that led to the death of the family member.

#### 5. WORKERS' COMPENSATION BOARD

Under the Workers' Compensation legislation in Alberta, if you are someone who comes within the definition of a "worker" at the time of the accident, 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 accident while in the course of his or her employment.

Even if you qualify for WCB benefits as a result of injuries sustained in a motor vehicle accident, you may also be able to bring a personal injury claim against the party or parties responsible for your injuries. However, there will be some circumstances, under the provisions of the *Workers' Compensation Act*, where you will be covered by WCB benefits but will not be able to bring a personal injury action.

#### 6. YOUR PERSONAL INJURY CLAIM

If you are injured in an accident 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, you may be entitled to receive the following types of compensation:

- 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 injury 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 your damages. In these cases, further compensation may be available from your insurer if you had an SEF 44 Family Protection Endorsement on your automobile policy at the time of the accident (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 on the severity and duration of your injury, we recommend that you do not settle a claim until your injury is fully resolved, or your doctor has given a firm and reliable prognosis.

### 1. PRELIMINARY STEPS

The first step is to gather information about your claim. We investigate liability (who's at-fault) by obtaining police reports, witness statements, vehicle damage information, etc. After your doctors and other caregivers have fully assessed 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 are considered interim reports and final reports will be ordered later.

We may also need other evidence to prove your claims for loss of income, loss of housekeeping capacity, cost of future care or out of pocket expenses.

If your injury is serious or there are complicated liability issues, we may retain additional 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

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 this stage.

### 2. STATEMENT OF CLAIM

If your injury is prolonged and your doctors can't provide a final prognosis in a timely manner, or if an agreement can't be reached with the at-fault insurer, you will need to start a lawsuit.

You start a lawsuit by preparing and filing a Statement of Claim at the courthouse. A Statement of Claim is a document that summarizes the facts supporting your claim and outlines the damages you have suffered. The Statement of Claim must generally be filed within two years from the date of the incident that gave rise to your injuries. It is very important that you do not miss this deadline. If you do, your claim might end up getting dismissed.

Confirming deadlines and steps you must take to protect your rights are two reasons it makes sense to talk to a lawyer early on in the claims process.



### 3. SERVICE OF STATEMENT OF CLAIM

Once your Statement of Claim is filed, it must be personally served on the Defendant(s). This means hiring a process server who will personally hand the Statement of Claim to the Defendant(s) and provide you (or your lawyer) with proof that the Defendant(s) have been served.

If it is in your best interest to move your claim into the litigation process quickly, your lawyer will demand a Statement of Defence from the Defendant(s) shortly after your Statement of Claim has been served. If, however, it's likely that a settlement can be achieved directly with the at-fault party's insurer, negotiations may continue without a Statement of Defence needing to be filed.

### 4. STATEMENT OF DEFENCE

If your lawyer can't reach a settlement directly with the at-fault driver's insurer, the at-fault driver's insurer will retain a lawyer to file a Statement of Defence. Typically, a Statement of Defence will deny liability for the incident and that you have suffered any injuries.

### 5. AFFIDAVIT OF RECORDS

Once a Statement of Defence has been filed, the next step is for the parties to exchange documentation about your accident, injuries, and losses. This preliminary disclosure process is intended to help narrow the issues in dispute and get both sides thinking about a resolution.

Our legal system is based on the adversary process, but it is not permissible to take a case to trial and take the opposition by surprise. To avoid such surprises, all parties are required to exchange Affidavits (sworn statements) that list all relevant and material records (documents, computer records, photographs, videotapes, etc.) that they have in their possession or control that are related to the liability and damages issues in your case. Although certain records are privileged and do not have to be exchanged, most records must be disclosed even if they do not help your case.

### 6. QUESTIONING UNDER OATH

Once Affidavits of Records have been filed and exchanged, all parties to a lawsuit must submit to a Questioning Under Oath (a "Questioning"). A Questioning is a process where you are required to answer 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 other side to obtain further information from you about your claim and learn what your evidence will be if your claim proceeds to trial. If your claim proceeds to trial the transcript can be used as evidence.

Questionings can vary in length from less than an hour to several days. They are typically conducted in a lawyer's office, and no judge or court official is present.

You will usually be asked about things like:

- ▶ how the accident occurred
- ▶ your health before and after the accident
- ▶ your employment and educational history, and
- ▶ anything else relevant to your claim.

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

## 7. UNDERTAKINGS

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

Once the undertakings have been fully answered, opposition counsel may decide that they need to ask you some additional questions in relation to your answers to

undertakings. If this is the case, a further Questioning Under Oath will be necessary.

## 8. INDEPENDENT MEDICAL EXAMINATION ("IME")

In personal injury claims, a Defendant may not agree with the opinions provided by your treating doctors or the specialists you have seen. In this situation, the Defendant can demand that you submit to an examination by a healthcare professional of their choosing.

This is called an Independent Medical Examination (IME). Depending on the nature of the injury, the Courts will occasionally require you to attend at more than one IME.

After the IME, the Defendant's healthcare professional will provide them with a report, and they must, in turn, provide that report to your lawyer.

## 9. MEDIATION AND JUDICIAL DISPUTE RESOLUTION (JDR)

Going to court can be costly and time-consuming. As wait lists for trial dates continue to grow, Plaintiffs and Defendants have sought alternate methods of settling cases, often referred to as Alternative Dispute Resolution (ADR).

In personal injury cases, ADR usually takes the form of a regular mediation or a mediation under the Judicial Dispute Resolution process.



### Mediation

At a mediation, an impartial mediator sits with the parties and their lawyers and tries to bring the parties to agreement on some or all of the issues in dispute. The mediator's training, expertise, and impartiality helps keep the parties focused on settling their disputes and often results in the claim being resolved.

### Judicial Dispute Resolution

Your lawyer can also ask the court to help resolve disputes without the need for a full trial. This is called Judicial Dispute Resolution, or JDR, and it can take one of two forms: JDR mediation or a mini-trial.

JDR mediation is similar to regular mediation except that the mediator is a Justice of the Court of Queen's Bench.

At a mini-trial, your lawyer and the Defendant's lawyer will present to a judge the medical reports and other evidence that they expect to lead at trial. No witnesses are called, but the lawyers argue the merits of the case on the basis of the information presented. The judge will then indicate how he or she would rule, had the matter proceeded to trial. The decision acts as a "sneak peek" into how a court would decide the case, and while not binding, the opinion of an impartial judge usually helps the parties to achieve a settlement.

## 10. TRIAL

Most personal injury cases settle without the need for a trial. However, if a settlement can't be reached, a trial may be necessary.

Once the Questioning Under Oath, IMEs, an ADR, and any other necessary steps are complete, your lawyer will request a trial date from the Court.

Even after a trial date has been set efforts can still be made to negotiate a settlement of the claim. If those efforts are not successful the parties will proceed to trial.

At trial, witnesses are called by the parties to give evidence in front of the Trial Judge. After the evidence has been presented, your lawyer and the Defendant's lawyer will argue the merits of the case to the Judge. After hearing all of the evidence and argument, the Judge will make a decision, which is binding on 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.

# Things you can do to assist your lawyer

Your lawyer's job is to take care of the details of your personal injury claim so that you can focus on your recovery. That being said, there are some things that you can do to help your personal injury claim proceed as smoothly as possible. Here are some suggestions:

## 1. FOLLOW YOUR DOCTOR'S ADVICE

Our job is 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. Your responsibility is to follow up with your healthcare professionals to ensure that you recover from your injuries as quickly and as fully as possible.

When you visit your doctor or any other healthcare providers, tell them about all the difficulties that you are experiencing. If they don't know about a problem you are having, they can't assess you properly. Let your doctor or healthcare provider decide whether a symptom is minor or not.

It is also important that you follow any treatment recommendations that they make in a timely manner. Failing to follow the recommendations of your healthcare providers may result in a reduction of the amount of damages that you are entitled to receive.

## 2. KEEP US INFORMED

To properly represent your interests, we will stay in regular contact with you to get status updates on your recovery. 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 maintain regular contact with you.

## 3. MAINTAIN RECORDS ABOUT OUT OF POCKET EXPENSES AND YOUR LOSS OF HOUSEKEEPING CAPACITY CLAIM

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 accident and the treatment of any injuries that you sustained. It is important that you keep track of these expenses including keeping any receipts or invoices that you have to prove 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.

We will tell you if you should keep a diary detailing the important events relating to the treatment of your injuries and your recovery.

#### 4. SURVEILLANCE

In many personal injury cases, the at-fault party's insurer will hire private investigators to record your movements utilizing a camera or a video camera. The private investigator may also interview your neighbours, co-workers, acquaintances and family members. In addition, insurance companies will also search social media sites (e.g., Facebook, Twitter, Instagram, LinkedIn, etc.) to try and obtain information about your activities.

As a result, do not discuss your case with anyone other than your lawyer and your healthcare providers and refrain from posting online about your claim, your recovery process or anything that will impact your case. When in doubt, don't post. In addition, it is absolutely essential that you follow your doctor's advice and never 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 doctors, your lawyer and the other lawyer during Questioning Under Oath.

#### 5. MITIGATION OF DAMAGES

In personal injury law the doctrine of mitigation applies. Mitigation means that even if you have been injured because of the Defendant's negligence, you still have an obligation to take reasonable steps, where possible, to avoid additional injury or loss. If you do not, the amount of compensation you can recover may be reduced.

For example, if it is found at trial that you failed to follow up with 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 can be awarded.

On a similar note, if you are forced to miss work as a result of your injuries, it is advisable that you return to work but only as soon as you receive medical clearance from your healthcare providers. If you are unable to do the job that you had at the time of the accident 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.

## QUESTIONS?

## Call us for a free consultation

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