

# Ontario Car Accident Insurance

**Wallace**  **Smith**<sup>LLP</sup>  
LAWYERS

# Car Accident Insurance in Ontario

## **I was injured in a car accident. What insurance is available to assist me as I recover?**

There are possibly two main sources of compensation available to you. First, you may be able to bring a lawsuit to obtain compensation if another person or entity (such as a municipality) is responsible for the accident. Second, you may be entitled to receive certain no-fault accident benefits, no matter who is at-fault for the accident. In addition to these potential sources of compensation you may have additional insurance available to you through private or work sponsored insurance policies.

## **What happens if the other driver does not have any or enough car insurance?**

Your insurance policy will protect your losses in this circumstance. It is commonplace for people to carry at least \$1 million dollar of this type of insurance. If neither you nor the at-fault driver has car insurance then there is an Ontario government fund that provides some insurance.

## **I was crossing the street when I was struck by a car. Can I still receive accident benefits?**

Yes. Pedestrians and cyclists who were injured as a result of a car accident are entitled to no-fault accident benefits. No-fault benefits may be payable by your own insurer, another insurer or by a fund set up by the Ontario government. You may also be entitled to sue the at-fault driver and receive compensation from that driver's insurance policy.

# Claims Against At-Fault Persons or Groups

In Ontario, if you are injured in a car accident that was caused by another person then you may be able to sue for your losses including:

- (i) Pain, suffering and loss of enjoyment of life
- (ii) Past and future loss of income and earning capacity
- (iii) Past and future health care expenses
- (iv) Past and future housekeeping and home maintenance capacity
- (v) Out-of-pocket expenses
- (vi) Compensation to certain family members in certain circumstances
- (vii) Other losses

## Pain, Suffering and Loss Of Enjoyment Of Life

You are compensated for the impact that your injuries have had upon your life. You will be compensated if your injuries are permanent and serious. Injuries may be either physical or psychological. If you awarded less than \$100,000 for pain and suffering then a \$30,000 deductible applies. You do not pay that amount that you pay but rather it is a credit to the insurance company responsible for payment of compensation to you. For example, if you are awarded \$70,000 for pain and suffering then the insurance company only has to pay you \$40,000. If more than \$100,000 is awarded to you for pain and suffering then you receive the full amount.

A deductible only applies to pain, suffering and loss of enjoyment of life and certain types of claims made by family members. No deductibles apply to any of the other types of compensation discussed below.

The deductible may not apply in certain circumstances. Some examples of where there are at-fault persons or groups and no deductibles include a bar over serving alcohol and then permitting the patron to drive and a crash occurs; or, a county does not adequately clear roads for winter driving and a crash occurs.

## Past and Future Loss of Income and Earning Capacity

You may have lost time from work, lost the opportunity to work overtime or are working fewer hours as a result of your injuries. If you are working less because you are injured you may be losing opportunities for promotion or other job opportunities. You are entitled to 100% compensation for all your future losses and up to 70% of your past, gross income losses.

You do not have to be employed at the time of the car accident to receive income loss compensation. For example, students and caregivers may have income losses due to a delay in entering or re-entering the paid workforce.

## **Past and Future Health Care Expenses**

You are able to recover money to cover the cost of your medical treatment, rehabilitation as well as care you receive from others that is not already paid by another source such as OHIP. Some examples of the type of expenses include physiotherapy, chiropractic care, medications, home renovations and devices to assist you in your home.

## **Past and Future Housekeeping and Home Maintenance Capacity**

You can be compensated for the value of the work you do around your home or apartment and would continue to do in the future had you not been injured.

## **Out-of-Pocket Expenses**

Examples of the types of expenses you can recover include money you have paid for any medical treatment, rehabilitation, medications and mileage to attend medical appointments.

## **Compensation to Certain Family Members in Certain Circumstances**

Certain family members are entitled to be reimbursed for their out-of-pocket expenses, income loss or time spent caring for you.

Close family members may be entitled to receive compensation for the impact that your injuries has had on your relationship with them. This is referred to a loss of care, guidance and companionship. If a family member is awarded less than \$50,000 for loss of care, guidance and companionship then a \$15,000 deductible applies. That is not an amount that your family member pays but rather it is a credit to the insurance company responsible for payment of compensation to him or her. For example, if he or she is awarded \$40,000 for pain and suffering then the insurance company only has to pay \$25,000. If more than \$50,000 is awarded then that person receives the full amount.

There is no deductible for your family member's other claims such as out-of-pocket expenses or income loss.

# No-Fault Accident Benefits

## What are no-fault accident benefits?

The types of benefits potentially available to you include:

- (i) Medical and rehabilitation benefits
- (ii) Attendant care benefits
- (iii) Income replacement benefits
- (iv) Caregiver benefits
- (v) Non-earner benefits (for people not eligible for income replacement)
- (vi) Lost education expenses
- (vii) Visitors' expenses
- (viii) Funeral and death benefits

## *Who can receive no-fault accident benefits?*

These are benefits available regardless of who is at-fault for an accident. You could be the driver of a car involved in a single car crash, or a pedestrian or cyclist who was struck by a car and still receive no-fault accident benefits. If you were injured in an accident that arose directly out of the use or operation of an automobile then you are entitled to no-fault accident benefits.

## *I have long term disability benefits available through my employer's insurance plan. Can I still receive no-fault accident benefits?*

Yes. The law in Ontario requires you to apply to those other insurance policies first and the no-fault accident benefits insurer then pays for amounts above that paid by the other policies. This applies to all private and work insurance policies for dental and health benefits as well as short term and long term disability benefit policies. Wallace Smith<sup>LLP</sup> can co-ordinate these insurance policies for you.

## *How do I access accident benefits?*

You must notify your insurance company with seven days of the accident of your intent to apply for accident benefits. The insurance company will send you a package of documents to complete and return within 30 days after receiving them. No benefit is payable until the insurance company has received the completed forms. Most insurance companies will accept the forms beyond the 30 day timeline but to avoid delays it is best to submit them as early as possible. Make this application even if you have benefits available to you through other plans since there will be a limited amount of funding available to you through those other policies. Accident benefits may "top up" the difference.

## **Medical and Rehabilitation Benefits**

### ***What types of treatment are covered?***

Examples of medical and rehabilitation benefits include:

- Treatment provided by medical and rehabilitation professionals (such as physiotherapy, chiropractic care and psychological counselling)
- Medications
- Assistive devices (such as wheelchairs)
- Transportation to medical appointments
- Employment counselling and re-training
- Modifications to your home and car

### ***How much money is available to pay for my treatment?***

Generally, you are entitled to receive up to \$50,000 for these benefits, unless additional coverage was purchased. These benefits are available where the treatment and rehabilitation are not covered by OHIP or some other health or disability plan and the expense is incurred within 10 years from the date of the accident.

If you have suffered catastrophic injuries then you are entitled to receive up to \$1,000,000 over your lifetime (there is no 10 year maximum) for these benefits, unless additional coverage was purchased to increase that amount.

In some cases involving very minor injuries, the benefit is capped at \$3,500. Wallace Smith<sup>LLP</sup> can assist in recovering money for your expenses beyond this amount.

### ***What do I need to do to get treatment?***

There are particular insurance forms called treatment plans that are required. An insurance company is entitled to deny payment for treatment unless a treatment plan is completed by a health professional or social worker.

## **Attendant Care Benefits**

### ***How do I know if I am eligible for this benefit?***

If you are no longer able to do certain personal care activities without some help (such as bathing, dressing, and feeding) then you may receive an amount of money to pay someone to assist you with this care. You are entitled to receive an attendant care benefit even while you are in hospital if family members or friends have assisted you and even if you have not paid the person, provided that you have promised to pay for the service in the future.

Since September 1, 2010, the person assisting you has to ordinarily be employed as an aide or attendant or experience an economic loss because they have provided you care. The type of information that insurance companies accept as proof of economic loss may be wide ranging and Wallace Smith<sup>LLP</sup> can assist you in providing that information.

### ***How much can I receive?***

You can receive up to \$3,000 per month (to a maximum of \$36,000) within two years of the accident. If optional coverage was purchased then the benefit may be higher and you may be able to receive it beyond two years.

If you have catastrophic injuries then you can receive up to \$6,000 per month to a maximum of \$1,000,000 and there is no time limit imposed. If optional coverage was purchased then the amount of this benefit may be even higher.

## **Income Replacement Benefits**

### ***How do I know if I am eligible for this benefit?***

Income replacement benefits are intended to partially compensate for your loss of income. You are entitled to receive weekly income replacement benefits for up to two years (excluding the first week) after the accident if one of the following applies to you:

- (1) You were employed or self-employed on the date of the accident but you are substantially unable to perform the essential tasks of your employment or self-employment.
- (2) You were not employed at the time of the accident but:
  - a. you worked at least 26 of the 52 weeks before the accident (or were receiving Employment Insurance at the time of the accident) but you are substantially unable to perform the essential tasks of the employment you spent most of your time engaged in during the 52 weeks before the accident, or
  - b. you are substantially unable to perform the essential tasks of employment in which you spent most of your time during the 52 weeks before the accident, or
  - c. you were excused from attending school at the time of the accident.

### ***Can I receive this benefit for longer than two years?***

You can still receive income replacement benefits for longer than two years after the accident if you are completely unable to work in any employment that is reasonable for you taking into consideration your education, training or experience. Wallace Smith<sup>LLP</sup> will work with you to determine whether you continue to remain eligible for this benefit.

If you continue to meet the eligibility test then this benefit is available to you until age 65 and at that point the amount is reduced on a gradual basis.

### ***How much will I receive?***

You cannot receive income replacement benefits for the first 7 days after a collision. After that, as long as you qualify you will receive 70% of your gross weekly income (before deducting taxes) and after deducting any benefits you may be entitled to receive from other sources such as a long term disability plan. The maximum entitlement is \$400 per week, unless optional coverage was purchased.

### ***What happens to this benefit if I try unsuccessfully to return to work?***

You may attempt to return to work within the first two years without affecting your entitlement to this benefit. Any income you earn simply reduces the amount of your income replacement benefit during the time you are working.

### ***How do I know which to choose: income replacement or non-earner?***

If you are not catastrophically injured then the insurance company may hold you to the first type of benefit you choose (for example income replacement or non-earner benefits). It is important to understand which is better for you as you may be eligible for both. Wallace Smith will assist you in making that decision at an early stage to ensure that you are receiving the maximum amount available to you.

## **Non-Earner Benefits**

### ***How do I know if I am eligible for this benefit?***

If you were a student (with some exceptions), not working at the time of the accident and you are completely unable to carry on a normal life then you are entitled to receive this benefit.

### ***How much will I receive?***

If entitled, you will receive \$185 per week for the first two years, however, no amount is payable for the first 26 weeks. The amount is reduced by any other income replacement assistance you are receiving from another source.

The benefits increase to \$320 a week after two years if you were a student at the time of the accident or if you had been a student within one year of the accident and were not yet employed.

### ***How do I know which to choose: income replacement or non-earner?***

Again, if you are not catastrophically injured then the insurance company may hold you to the first type of benefit you choose (for example income replacement or non-earner benefits). It is important to understand which is better for you as you may be eligible for both. Wallace Smith<sup>LLP</sup> will assist you in making that decision at an early stage to ensure that you are receiving the maximum amount available to you.



## **Caregiver Benefits**

### *How do I know if I am eligible for this benefit?*

If, at the time of the accident, you were the primary caregiver for another person but due to your injuries you are substantially unable to provide the same care then you may be eligible for this benefit. This benefit is available to you only if you have been catastrophically injured.

### *How much will I receive?*

You will be reimbursed up to \$250 per week for the first dependant and \$50 per week for each additional dependant who you cared for at the time of the accident.

## **Lost Education Expenses**

If you are unable to continue in a program that you were enrolled in at the time of the accident then you may be reimbursed for expenses such as tuition, books, equipment, and room and board up to a maximum of \$15,000.

## **Visitors' Expenses**

If your family members and others who lived with you at the time of the accident visit you then they may be reimbursed for reasonable and necessary expenses incurred as a result of your treatment or recovery. There is no payment after two years unless you have sustained a catastrophic injury.

## **Housekeeping and Home Maintenance Benefits**

This benefit is available in cases of catastrophic impairment only. An injured person is entitled to receive up to \$100 per week for reasonable expenses incurred for housekeeping and home maintenance. To be entitled to the benefit, the injured person must have performed the chores before the accident and following the accident is substantially unable to complete those same chores.

## **Funeral and Death Benefits**

When a person dies as a result of an accident then the insurance company may have to pay for funeral expenses up to a maximum of \$6000.

Each person who was dependant of the deceased is entitled to receive \$10,000. If the person was married then \$25,000 is paid to the spouse, however, if the person was not married but had dependants then the \$25,000 is divided between the dependants. If the deceased was a dependant then \$10,000 is paid to the person upon the person was dependant.

Greater amounts may be available if you purchased optional benefits.

## **Why do I need Wallace Smith<sup>LLP</sup> for either a lawsuit or my no-fault accident benefits claims?**

Insurance law is the only type of law we practice. We can help you assess whether you have a potential lawsuit. We ask the right questions and thoroughly investigate your claim to ensure that those persons or groups responsible for the accident are identified.

We offer something that many personal injury law firms don't provide their clients: we deal with the paperwork for insurance policies to ensure that dental, health, short and long term disability benefits are coordinated with accident benefits coverage. We assist you with other applications such as EI and CPP disability benefits. We take your instructions and represent you in all of these matters so you can focus on your rehabilitation.

We ensure that insurance companies receive only that information which is required to evaluate your claim and nothing more. We assess the reasonableness of insurer requested medical examinations so that you are assessed by the proper specialists.

**We provide sound legal advice and listen to your instructions.**



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