

ACCIDENT BENEFITS COVERAGE IN ONTARIO



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Accident Benefits Coverage in Ontario

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This document is intended as an overview of the accident benefits available to you under Ontario insurance laws. It does not contain every detail of the auto insurance legislation. For the precise wordings of the law, you should consult the Ontario Insurance Act and the Statutory Accident Benefits Schedule (SABS) made under that act.

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If You Are in a Motor Vehicle Collision

Who is eligible for benefits?

Any person who is injured in a motor vehicle collision or certain relatives or dependants of any person who is injured in a motor vehicle collision may be eligible for benefits.

If you are insured under more than one policy, there are special rules that determine under which policy you are eligible to receive benefits. You should contact the insurance company that you believe is liable.

You are not eligible to receive income replacement benefits, non-earner benefits, lost education expenses, expenses of visitors and housekeeping and home maintenance benefits if you were in contravention of the law at the time of the collision. Some examples of this would be:

- driving without a valid driver's licence;
- driving a vehicle when you knew or should have known you were driving without the owner's consent;
- being a passenger who knew or should have known that the driver did not have the owner's consent to drive the vehicle;
- driving when you knew or should have known you did not have valid insurance;
- driving while impaired or refusing to provide a breath sample;
- using an automobile in connection with criminal activity; and
- having knowingly misrepresented information when you applied for auto insurance.

What are the benefits?

Ontario's standard auto insurance policy provides you with benefits if you are injured in a motor vehicle collision regardless of who is at fault. These benefits are defined by regulation – the Statutory Accident Benefits Schedule (SABS) – under Ontario's Insurance Act. You have the choice of purchasing additional accident benefits to customize your policy to your needs. These additional benefits are potentially available to you, your spouse and any dependants if you or they are injured in a motor vehicle collision. When making a claim, ascertain whether you are covered under a standard benefits policy or a policy with additional benefits.

You may be eligible for the following types of benefits. For detailed descriptions and to determine if you are eligible for any of these benefits, you should contact your insurance broker, agent or adjuster.

INCOME REPLACEMENT BENEFIT

If you cannot work because of the injuries caused by a motor vehicle collision and if you are eligible, this benefit will partially compensate you for the loss of your income.

NON-EARNER BENEFIT

If you suffer a complete inability to carry on your normal activities because of the injuries caused by a motor vehicle collision and if you are eligible, this benefit will compensate you.

CAREGIVER BENEFIT

If you cannot continue as a primary caregiver and if you are eligible, this benefit will reimburse you for expenses you incur.

MEDICAL AND REHABILITATION BENEFIT

This benefit will pay for reasonable and necessary medical and rehabilitation expenses that are not covered by a government health plan or a private health plan that you may have through work or your spouse.

NOTE: The auto insurance industry in Ontario pays about \$150 million per year to the Ontario Health Insurance Plan (OHIP) to offset the cost of treating persons injured in motor vehicle collisions. You may access any available OHIP service to help you recover from your injuries.

ATTENDANT CARE BENEFIT

If you are unable to carry out certain personal care activities (such as bathing, toileting, dressing or feeding yourself) as a result of severe injuries sustained in a motor vehicle collision and if you are eligible, this benefit will pay reasonable and necessary expenses for an aide, attendant or long-term care facility.

OTHER EXPENSES BENEFIT

If you are eligible, this benefit may pay for expenses such as lost educational expenses, the cost of certain people visiting you during treatment and recovery and reasonable costs related to housekeeping or home maintenance required due to injuries sustained in a motor vehicle collision. You may also be covered for repairing or replacing certain items of your clothing that were lost or damaged in the collision.

DEATH AND FUNERAL PAYMENTS BENEFIT

There are lump-sum payments available for survivors of a person killed in a motor vehicle collision and to help pay for a funeral.

Applying for benefits

You must tell your insurance company within seven days of the occurrence of a motor vehicle collision, or as soon as possible, that you wish to apply for benefits. The insurer will promptly provide you with a benefits application package. You must send this application for benefits back to the insurer within 30 days of receiving the application forms.

If you are not sure which benefits you may apply for, contact your insurer to discuss what you are eligible to claim.

Where does the application go?

You should contact the insurance company that you believe is liable.

- **If you have your own automobile insurance or believe that you are covered under someone else's policy**, return the completed application to that insurance company.
- **If you do not have your own insurance policy**, return the completed application to your spouse's insurance company or to the insurance company of the person you are dependent on.
- **If you do not have access to insurance as described above**, send the application to the insurer of the car in which you were an occupant or, if you were a pedestrian, the insurer of the car that hit you.
- **If you were an occupant of an uninsured vehicle or if you were a pedestrian struck by an uninsured vehicle**, return the application to the insurer of any other vehicle involved in the collision. If you believe that there is no insurance company responsible for processing the claim, call the Motor Vehicle Accident Claims Fund at 1-800-268-7188 (or 416-250-1422 in the Toronto area).

Specified Benefits

Ontario's auto insurance laws

If you have been injured in a motor vehicle collision and, as a result, you are not able to work or carry on your normal activities as before, there are important facts you need to know when applying for benefits under your automobile insurance. This document will help you understand the Ontario laws concerning the payment of benefits to people injured in motor vehicle collisions, including:

- people who have been employed or self-employed;

- people who have no income from employment or self-employment (non-earners); or primary caregivers.

Income replacement benefit

If you are eligible, this benefit will partially compensate you for the loss of your income if you cannot work because of your injuries.

This benefit is for people who were employed at the time of the collision or, subject to certain conditions, during the year prior to the collision. You may be eligible to receive a payment at least every two weeks to partially replace the income you have lost if, as a result of the motor vehicle collision, you suffer a substantial inability to perform the essential tasks of your job. This benefit is available if you continue to suffer a substantial inability to perform the essential tasks of your job for up to 104 weeks from the onset of the disability. You may qualify for benefit payments if you can answer “yes” to the following questions:

- Did I suffer physical or psychological impairments as a result of a motor vehicle collision and, as a result, am I unable to work?
- Do any of the following statements apply to me?
 - I was employed or self-employed at the time of the motor vehicle collision.
 - I worked for at least 26 of the 52 weeks immediately prior to the motor vehicle collision.
 - I was receiving Employment Insurance (EI) benefits at the time of the motor vehicle collision.
 - I was not employed but was at least 16 years old or was excused from attending school at the time of the motor vehicle collision.

However, if you answered “yes” to the above questions and are qualified to receive an income replacement benefit but are eligible and elected to receive a non-earner benefit or caregiver benefit instead, then you will be disqualified from receiving the income replacement benefit.

HOW MUCH CAN YOU RECEIVE?

As long as you are eligible, you will receive a payment at least once every two weeks of 70% of your gross income based on your employment income history before the collision, minus income replacement assistance payable from other sources, such as your employer, to a maximum of \$400 per week. If you continue to qualify for the benefit after 104 weeks, your minimum weekly benefit will be \$185. The first seven days of your disability will not be covered.

When you bought your car insurance, you may have purchased the additional income replacement benefit from your insurance agent or broker, which pays up to \$600, \$800 or \$1,000 per week depending on your selection at the time of purchase. Please check to see if you are eligible to receive this increased benefit.

Your gross income is your income prior to deductions and taxes.

The amount you will receive will be calculated on the information you included on your application form. In general, benefits are calculated as follows:

- If you are employed at the time of the collision, the income replacement is based on gross income earned either:
 - in the 52 weeks before the collision; or
 - in the four weeks before the collision multiplied by 13.
- If you are self-employed at the time of the collision, the income replacement benefit is based on income earned:
 - in the last 52 weeks; or
 - in the last fiscal year completed before the collision.
- If you are unemployed at the time of the collision but receiving EI benefits, or had worked at least 26 weeks of the 52 weeks before the collision, the income replacement benefit is based on income earned in the 52 weeks before the collision including EI benefits.
- If you are over the age of 65, benefits are payable for up to 208 weeks and are gradually reduced over the period.
- If you reach age 65 while receiving benefits, the benefit is converted at that time to a lifetime pension at a reduced rate.

Non-earner benefit

You may qualify for the non-earner benefit if you suffer a complete inability to carry on your normal life and if:

- you do not qualify for the income replacement benefit;
- you were at least 16 years of age and a full-time student at the time of the motor vehicle collision; or
- at the time of the motor vehicle collision, you had completed your education in the previous year but had not yet secured employment related to your education.

HOW MUCH CAN YOU RECEIVE?

The first 26 weeks of your disability are not covered. After this period, you may be eligible to receive:

- a weekly payment of \$185, less the total of all other income replacement assistance; and
- if more than 104 weeks have elapsed since the onset of the disability and you continue to qualify for the benefit, the amount will increase to \$320 for each week that you are eligible to receive the benefit, less the total of all other income replacement assistance.

If you are over the age of 65, benefits are payable for up to 208 weeks and are gradually reduced over the period. If you reach age 65 while receiving benefits, the benefit is converted at that time to a lifetime pension at a reduced rate.

Caregiver benefit

A caregiver is someone who, prior to the collision, was the primary person responsible for looking after others, such as a dependent child or an adult in need of care.

You may qualify for the caregiver benefit under Ontario's automobile insurance legislation if you are an insured person and, as a result of the motor vehicle collision, you have sustained a catastrophic impairment and are substantially unable to carry out the caregiving activities you previously carried out. The law also says that at the time of the collision, you must:

- be living with a person in need of your care; and
- be the primary caregiver for the person in need of care and not be receiving any payment for engaging in caregiver activities.

HOW MUCH CAN YOU RECEIVE?

The caregiver benefit reimburses you for the expense of purchasing caregiving services for your dependants if, due to injuries you sustained in the motor vehicle collision, you are unable to care for your dependants as you did before the collision. If eligible, you will receive \$250 per week for the first person and \$50 per week for each additional person in your household for whom you were the main caregiver at the time you were injured.

As a caregiver, you may receive benefits for up to 104 weeks while you are substantially unable to perform your caregiver activities. Your insurer is not obligated to pay a caregiver benefit for any period longer than 104

weeks of disability unless, as a result of the motor vehicle collision, you are completely unable to carry on a normal life.

When you bought your car insurance, you may have purchased the additional caregiver benefit from your insurance agent or broker, which pays the benefit even if your injury is not catastrophic but you are substantially unable to perform your caregiver activities. You may have also purchased the additional dependant care benefit, which covers expenses for caring for your dependants if you are injured in a motor vehicle collision, employed at the time of the collision and not receiving caregiver benefits. The amount available is \$75 per week for the first dependant and \$25 per week for each additional dependant to a maximum of \$150 per week. Check with your insurer to determine if you are eligible to receive these optional additional benefits.

If you refuse treatment

Please note that your benefit(s) may cease if you refuse to participate in rehabilitation or treatments that are reasonable or, in the case of the income replacement benefit, if you are able to return to work or to obtain other employment for which you are trained but do not make a reasonable effort to do so.

Which benefit is right for you?

You may be eligible for more than one type of benefit; however, you must choose only one. If your application for benefits discloses that you qualify for more than one benefit, your insurance company will notify you.

Death and Funeral Payments

Ontario's auto insurance laws

There are important facts you need to know when applying for survivor benefits under your automobile insurance if you have lost your spouse, a dependant or someone on whom you have been dependent, as the result of a motor vehicle collision.

What are the death benefit and funeral benefit?

The death benefit is a lump-sum payment made to you if you have lost your spouse, a dependant or someone on whom you were dependent; the funeral benefit provides reimbursement for funeral expenses.

Do you qualify for payments?

Before you can receive the death benefit or reimbursement for funeral expenses under an automobile insurance policy, your situation must qualify under the statutory accident benefits coverage. You may qualify for payments if, as a result of the motor vehicle collision, one of the following persons dies within 180 days of the motor vehicle collision (or within 156 weeks if the injury sustained resulted in a continuous disability during that period):

- your spouse (or former spouse from whom you were receiving maintenance or support under a domestic contract or court order); or
- the person on whom you were dependent; or
- a person dependent on you.

HOW MUCH CAN YOU RECEIVE?

The amount of the death benefit you will receive depends on your particular situation.

If you are the spouse of a person killed in the motor vehicle collision, you may be entitled to a payment of \$25,000, or \$50,000 if the additional death and funeral benefit was purchased. If the deceased person had no spouse, the dependants of the deceased person will be entitled to share \$25,000 equally.

In addition, if you were dependent on the person who died, or if the person who died was obliged under a domestic contract or court order to provide support to you, you will be entitled to a benefit of \$10,000, or \$20,000 if the additional death and funeral benefit was purchased.

If a dependant died as a result of a motor vehicle collision, the \$10,000 payment will be made to the dependant's financial support or care provider or, in the case that this individual has died, to the spouse of the financial support or care provider if the spouse was the primary caregiver of the dependant. If the financial support or care provider and spouse do not survive for 30 days after the collision, the \$10,000 is shared by all dependants who survive for these 30 days.

Funeral expenses are reimbursed to a maximum of \$6,000, or \$8,000 if the additional death and funeral benefit was purchased.

Medical, Rehabilitation and Attendant Care Benefits

Ontario's auto insurance laws

If you are injured in a motor vehicle collision and you require treatment for your injuries, the insurer responsible to pay medical, rehabilitation and attendant care benefits is also responsible to ensure that any claim made on your behalf is reasonable and necessary and that the goods and services being recommended have a good chance of improving your health.

What is the medical benefit?

The medical benefit includes payments for reasonable and necessary expenses that are not covered by another health plan, such as OHIP or an extended health policy, and that are incurred by you or on your behalf as a result of a motor vehicle collision in which you were injured.

The coverage includes reasonable and necessary expenses for:

- medical, surgical, dental, optometric, hospital, nursing, ambulance, audiometric and speech-language pathology services;
- chiropractic, psychological, occupational therapy and physiotherapy services;
- medication;
- prescription eyewear;
- dentures and other dental devices;
- hearing aids, wheelchairs or other mobility devices, prostheses, orthotics and other assistive devices;
- transportation to and from treatment including transportation for an aide or attendant; and
- other required goods and services of a medical nature that are not covered elsewhere.

NOTE: Your insurance company is not obliged to pay for any goods or services that are considered experimental.

What is the rehabilitation benefit?

The rehabilitation benefit is the payment of expenses incurred by you or on your behalf, as a result of injuries caused by a motor vehicle collision. The benefit is to reimburse you for payments you have made for reasonable and necessary measures to:

- reduce and eliminate the effects of the disability resulting from the injury; or
- assist you in reintegrating into a family role or the labour market (if you had a labour force attachment) and also your community.

The coverage includes reasonable and necessary expenses for:

- life skills training;
- family, social rehabilitation, financial and employment counselling;
- vocational assessments;
- workplace, home and vehicle modifications;
- transportation to and from counselling and training sessions including transportation for an aide or attendant; and
- other goods and services required that are rehabilitative in nature.

Do you qualify for the medical and rehabilitation benefit?

It is important to understand that the expense incurred must be as a result of the injury you sustained in the motor vehicle collision, as well as being reasonable and necessary. There are three classes of injury: (1) minor injury; (2) non-minor injury; (3) catastrophic injury.

Generally speaking, minor injuries, which are defined by the SABS, include sprains and strains, cuts and bruises. Catastrophic injuries, also defined by the SABS, include amputation of a limb, spinal cord injuries and severe brain damage. Non-minor/non-catastrophic injuries are everything in between. These “in between” injuries would include broken bones or some kinds of internal organ damage, such as a ruptured spleen.

If it is determined that you have sustained a minor injury, your health care practitioner (such as your family doctor, physical therapist or chiropractor) can access immediate treatment without needing the insurance company’s approval. To obtain pre-approved treatment, your health practitioner must submit a Treatment Confirmation Form, called an OCF-23, which will permit you to start treatment right away. It is

up to your health practitioner to decide, with your informed consent, specifically what kinds of treatment you will receive.

If it is determined that you have a non-minor injury, your health care provider will submit a Treatment and Assessment Plan, called an OCF-18, which will include a description of the injury and resulting disability, if any, and a list of the goods and services and price of the goods and services to be used in the treatment. You must sign this form. Your insurer will respond to the Treatment and Assessment Plan within 10 business days of receiving it. If the plan meets the criteria of being reasonable, necessary and non-experimental, the insurer will pay for expenses within 30 days of receiving invoices.

NOTE: Do not sign a blank form. To ensure that you are aware of how your policy dollars are being spent, never sign a blank OCF-23 or OCF-18.

HOW MUCH CAN YOU RECEIVE FOR TREATMENT?

If you sustain a minor injury, as defined by the SABS, you could receive up to \$3,500 in the medical and rehabilitation benefit.

If your injury is not minor and not catastrophic, as defined by the SABS, the medical and rehabilitation benefit payments could be up to \$50,000.

If your injury is catastrophic, the benefit payments could be up to \$1,000,000.

You may have purchased additional benefits with higher limits. Contact your insurance representative, broker or agent for the amounts that apply to you.

Cost of examinations

Sometimes your doctor or treatment provider may seek a second opinion about your condition or the treatment that you require. The costs of these examinations are part of your medical and rehabilitation benefit. In addition, sometimes the insurer may seek a second opinion, but in this case, the costs are not part of your benefit.

Insurers are liable to pay reasonable fees, up to \$2,000, for health professionals to conduct an assessment or examination. This \$2,000 must include all associated costs, such as the cost of preparing a report.

Unless you have suffered a catastrophic impairment, travel expenses are only paid if you have to travel more than 50 kilometres, and then only for the amount in excess of 50 kilometres.

Your insurer will not pay for an in-home assessment if you sustain a minor injury.

What is the attendant care benefit?

In some cases, your injuries that resulted from the motor vehicle collision are such that you are no longer able to take care of yourself, and you require assistance for activities such as bathing, toileting, grooming, feeding and dressing. The attendant care benefit may reimburse you for reasonable and necessary expenses incurred to purchase personal care services supplied by:

- an aide or attendant; or
- a long-term care facility, including a long-term care home or chronic-care hospital.

Do you qualify for the attendant care benefit?

Persons who sustain minor injuries are not eligible for attendant care services.

If you have sustained a non-minor or catastrophic injury, the expenses must be reasonable and necessary and required as a result of the motor vehicle collision.

Either a registered nurse (RN) or an occupational therapist (OT) may assess how much assistance you need. They will complete and sign an Assessment of Attendant Care Needs form, called a Form 1, to verify your needs. Once the RN or OT has sent in the Form 1, the insurer has 10 business days during which they must respond to the form. If the insurer is persuaded that the services are reasonable and necessary, the insurer is required to pay for the expenses within 30 days of receiving invoices.

HOW MUCH CAN YOU RECEIVE?

For non-minor injuries, attendant care benefit payments may be up to \$3,000 per month and up to a total of \$36,000 for expenses incurred within 104 weeks of the collision.

For persons with a catastrophic injury, benefit payments may be up to \$6,000 per month and \$1,000,000 total with no time limit.

You may have purchased additional benefits with higher limits. Contact your insurance representative, agent or broker for amounts that apply to you.

Maximum fees for professional services

The Financial Services Commission of Ontario (FSCO) has set maximum fees and hourly rates that are payable by insurers for health services. Insurers are not required to pay more than the amounts listed in FSCO's Professional Services Guideline, Attendant Care Hourly Rate Guideline, and Minor Injury Guideline.

What if there is a dispute with your insurer concerning medical, rehabilitation or attendant care benefits?

Discuss your concerns with your insurance representative or adjuster. If the issue in dispute remains unresolved, there is a dispute resolution process available through FSCO. An application for mediation can be obtained from your insurance company.

For mediation inquiries, contact 1-800-517-2332 ext. 7210 (or 416-590-7210 in the Toronto area).

For arbitration inquiries, contact 1-800-517-2332 ext. 7202 (or 416-590-7202 in the Toronto area).

For appeal inquiries, contact 1-800-517-2332 ext. 7222 (or 416-590-7222 in the Toronto area).

Payment of "Other Expenses"

Ontario's auto insurance laws

If you have been injured in a motor vehicle collision, you may be eligible for the following benefits:

- lost educational expenses;
- expenses of visitors;
- damage to clothing, glasses, hearing aids, etc; and
- housekeeping and home maintenance expenses if you have sustained a catastrophic impairment or purchased the additional coverage.

Lost educational expenses

This benefit is available if, at the time of the collision, you were enrolled in an elementary, secondary, postsecondary or continuing education program and, as a result of the collision, are unable to continue the program.

The benefit covers expenses incurred before the collision for tuition, books, equipment or room and board. The expenses must be related to the program that you can no longer continue and for the school term in which you were enrolled at the time of the collision, to a maximum of \$15,000.

Your insurer may periodically require you to furnish a disability certificate to continue receiving this benefit.

Expenses of visitors

If you suffer impairment as a result of a collision, your insurance company will pay for reasonable and necessary expenses incurred by the following people when they visit you during your treatment or recovery:

- your spouse, children, grandchildren, parents, grandparents, brothers and sisters;
- an individual who was living with you at the time of the collision;
- an individual you are treating as a child of your family; and
- in the case of an injured child, an individual who is treating that child as part of the individual's family.

There is a maximum of 104 weeks after the collision during which these expenses can be claimed, unless the impairment is catastrophic.

Damage to clothing, glasses, hearing aids, etc.

Your insurance company will pay for reasonable expenses incurred by you to repair or replace clothing you were wearing at the time of the collision, and prescription eyewear, dentures, hearing aids, prostheses and other medical or dental devices that were lost or damaged as a result of the collision.

Housekeeping and home maintenance benefit

You may qualify for the housekeeping and home maintenance benefit if, as a result of the motor vehicle collision, you sustain a catastrophic impairment that results in a substantial inability to perform housekeeping and home maintenance that you normally performed prior to the motor vehicle collision. The amount payable for this benefit will be up to \$100 per week.

When you bought your car insurance, you may have purchased the additional housekeeping and home maintenance benefit from your insurance agent or broker, which pays the benefit for up to 104 weeks even if your injury is not catastrophic but results in a substantial inability

to perform housekeeping and home maintenance that you normally performed prior to the motor vehicle collision. Check to see if you are eligible to receive this optional benefit.

Getting the Process Started

How do you apply for accident benefits?

After you report the motor vehicle collision to your insurer, your insurer will send you an Application for Accident Benefits Package.

NOTE: You may not need to complete all the forms you receive. Check with your insurer to determine which forms you must complete.

The full package will include the following:

- Application for Accident Benefits (OCF-1);
- Employer's Confirmation of Income (OCF-2);
- Disability Certificate (OCF-3);
- Permission to Disclose Health Information (OCF-5); and
- Treatment Confirmation Form (OCF-23).

Some of the forms will require you to visit your family doctor or other health care practitioner, such as a chiropractor, physical therapist or occupational therapist.

Once you and your chosen health practitioner have completed and returned the appropriate forms to your insurer, you will be notified within 10 business days of the insurer's decision to do one of the following: pay the benefit(s), request more information, or request that you undergo an examination by a health practitioner designated by your insurer; this is often referred to as an insurer examination.

If you have sustained a minor injury, your health practitioner can approve and submit the Treatment Confirmation Form to quickly enter you into the pre-approved Minor Injury Guideline treatment process.

What is an insurer examination?

An insurer examination is a way for an insurer to get a second opinion on your condition and/or the treatment that you require to get better. These examinations are conducted by regulated health professionals, such as doctors, medical specialists, physical therapists, chiropractors or

occupational therapists, or by someone with vocational expertise if there are questions related to your pre-collision job or your ability to return to work. The examiner is chosen by your insurance company and performs either a file review or a physical exam.

What happens if your insurer requests an insurer examination?

If an insurer examination is requested, you will be notified of the following:

- the reason for the examination;
- whether your attendance will be required and, if so, the day, time and location of the examination (your insurer must provide you with at least five business days' notice); and
- information about who will be conducting the exam, including the regulated health professional's qualifications and accreditations.

Are you entitled to a copy of the examination report?

Yes. Your insurance company is obligated to send you and your own regulated health professional a copy of the report within 10 business days of the receipt of the report from the regulated health professional who conducted the insurer examination.

You should feel free to ask the examiner to whom you are sent any questions that you may have about the examination, the purpose of the examination and the findings.

What happens if you refuse the insurer examination?

If you refuse to comply with the request for an insurer examination, your insurer has the right to deny your claim on the basis of non-compliance and will inform you of such.

Can you choose to resubmit your application after a denial for non-compliance has been issued?

Yes. If your claim is denied for non-compliance, you have the option of complying with the necessary conditions. Your insurer is then obligated to reconsider the application. Your insurer will be obligated to pay benefits that would normally have been paid during the period of non-compliance only if you provide them with a reasonable explanation for your non-compliance within 10 business days of the original notification of non-compliance, or as soon as possible after that day.

If your insurer denies your claim after the insurer examination, do you have any recourse?

Yes. If an insurer examination has been conducted and, as a result of that report, your insurer denies your claim for benefits, you can access FSCO's dispute resolution services. FSCO oversees several services to help consumers and insurance companies settle accident benefit claims fairly and without delay.

FSCO's dispute resolution services include mediation, neutral evaluation and arbitration with an internal appeals mechanism. These services help resolve disputes about whether or not you qualify for accident benefits under the SABS and how much those benefits should be.

Paralegals (SABS Representatives)

Ontario's auto insurance laws

Effective May 1, 2008, there are new requirements for individuals who are not lawyers and who provide representation to claimants under the SABS.

SABS representatives require a paralegal licence from the Law Society of Upper Canada and must meet the requirements set out in the regulations. A representative is any person who:

- represents an injured person before FSCO's dispute resolution services;
- gives legal advice concerning legal interests, rights or responsibilities with respect to a proceeding or the subject matter of a proceeding;
- drafts or assists with drafting documents for use in a proceeding; and
- negotiates on behalf of a person who is party to a proceeding.

In addition to being licensed by the Law Society of Upper Canada, a paralegal must be a graduate from an accredited postsecondary institution, meet a "good character" requirement, carry professional liability insurance, comply with payment and trust account rules and abide by the Paralegal Rules of Conduct.

Generally, a person who acts for a family member or friend, without compensation, does not require licensing and may represent a claimant at FSCO's dispute resolution services.

Additional information about paralegals and legal SABS representatives is available from the Law Society of Upper Canada's website at www.lsuc.on.ca.

Right to Sue

All persons injured in motor vehicle collisions have access to accident benefits, which are available without having to sue anyone.

In addition to accident benefits, injured persons have the right to sue if the injuries resulting from the collision were caused by the negligence of another party. Speak to your insurer or your legal representative if you have questions about your right to sue a third party.

What can you sue for?

ECONOMIC LOSSES

Recovery of lost income and loss of earning ability is limited to 70% of gross income lost, beginning seven days after the collision until trial. After the trial date, recovery will be based on 100% of your gross income loss and loss of earning capacity.

Accident benefits and benefits from other sources, such as income continuation benefit plans, will be subtracted from court awards.

These also include:

- payments of disability pension benefits under the Canada Pension Plan;
- periodic payments of insurance for income replacement, if the insurance is offered by the insurer,
- only to persons who are employed at the time the contract of insurance is entered into; and
- only on the basis that the maximum benefits payable is limited to an amount calculated by reference to the insured person's income from employment.

You may also sue the at-fault party for most other economic losses suffered by you as a result of the collision and that are not covered by no-fault benefits.

HEALTH CARE EXPENSES

Recovery of health care expenses in excess of what the accident benefits package pays for is available to seriously injured collision victims whose injuries meet a legislated "verbal threshold" test (see below). Benefits from other sources will be subtracted from court awards.

PAIN AND SUFFERING

Seriously injured collision victims whose injuries meet a legislated “verbal threshold” test may sue for a pain and suffering (non-economic loss) award. A \$30,000 deductible applies.

As well, where the injuries of collision victims meet the “verbal threshold,” family members may also sue for any loss of guidance, care and companionship pursuant to the Ontario Family Law Act. A \$15,000 deductible applies.

You have the option to purchase an endorsement that would reduce the deductible for threshold claims for pain and suffering to \$20,000 and that would reduce the deductible for Family Law Act claims to \$10,000. See your insurance representative, broker or agent for the amounts that apply to you.

What is the verbal threshold?

To be able to sue for pain and suffering and health costs that exceed the accident benefits limits, the injury must result in permanent serious impairment of an important physical, mental or psychological function. This is referred to as the “verbal threshold.”

How do you begin?

The person you are suing must be, to some degree, at fault for the collision. If this is the case, you (the plaintiff) must notify your own insurer of the collision and apply for accident benefits. You must also notify the person being sued (the defendant) within 120 days of the collision that you intend to commence a lawsuit against him or her. That person has the right to information about your insurer and claims for statutory accident benefits and your medical treatment as a result of the collision. You may also be required to undergo an examination by the defendant’s health professional. You may be penalized for failing to comply with these procedural and disclosure steps.

You must launch your lawsuit against the defendant within two years from the date of your collision. At any time, either party can request mediation to help settle the claim.

You will be responsible for any legal fees if you hire a lawyer to represent you in the lawsuits. However, if the plaintiff is successful in the lawsuit, the court will often require the defendant to pay part of the plaintiff’s legal costs.

Additional Information and Help

Whether or not you have the right to sue, you may be eligible for accident benefits. If you need help understanding accident benefit payments, call Insurance Bureau of Canada at 1-800-387-2880 (or 416-362-9528 in the Toronto area).

- Application for Mediation www.fSCO.gov.on.ca/english/forms/drs/1217E.pdf
- Application for Arbitration www.fSCO.gov.on.ca/ENGLISH/forms/drs/1218E.pdf
- FSCO Consumer Information www.fSCO.gov.on.ca/english/insurance/auto/#consumer
- FSCO Auto Insurance Claims Forms
www.fSCO.gov.on.ca/english/forms/autoforms/claims/default.asp
- FSCO Auto Insurance Policy Application and Endorsement Forms
www.fSCO.gov.on.ca/english/forms/autoforms/endorsement/default.asp
- Insurance Bureau of Canada Consumer Information www.ibc.ca/en/Contact_Us.asp
- E-laws www.e-laws.gov.on.ca/
- FSCO Bulletins www.fSCO.gov.on.ca/english/pubs/bulletins/autobulletins

Selected FSCO Bulletins

- Changes to Automobile Insurance Regulations – No. A-01/10
www.fSCO.gov.on.ca/english/pubs/bulletins/autobulletins/2010/a-01_10.asp
- Transition to the New Statutory Accident Benefits Schedule – Effective September 1, 2010 – No. A-04/10 www.fSCO.gov.on.ca/english/pubs/bulletins/autobulletins/2010/a-04_10.asp
- Auto Insurance Reforms and Policyholder Communications – No. A-09/10
www.fSCO.gov.on.ca/ENGLISH/pubs/bulletins/autobulletins/2010/a-09_10.asp
- Revision to Auto Bulletin No. A-09/10 on Policyholder Communications Regarding New Business – No. A-15/10
www.fSCO.gov.on.ca/ENGLISH/pubs/bulletins/autobulletins/2010/a-15_10.asp
- Minor Injury Guideline and Revised Minor Injury Treatment Discharge Report (OCF-24) – No. A-10/10 www.fSCO.gov.on.ca/ENGLISH/pubs/bulletins/autobulletins/2010/a-10_10.asp
- Revised Professional Services Guideline and Revised Transportation Expense Guideline – Effective September 1, 2010 – No. A-19/10
www.fSCO.gov.on.ca/ENGLISH/pubs/bulletins/autobulletins/2010/a-19_10.asp
- Revised Accident Benefit Claims Forms and New Attendant Care Hourly Rate Guideline – No. A-13/10 www.fSCO.gov.on.ca/ENGLISH/pubs/bulletins/autobulletins/2010/a-13_10.asp

Questions about insurance?

Call us.

British Columbia, Saskatchewan and Manitoba

Toll-free: 1-877-772-3777 ext. 222

Hours: M-F 9:00 a.m. – 4:00 p.m.

Alberta and the North

Toll-free: 1-800-377-6378

Hours: M-F 8:30 a.m. – 4:00 p.m.

Ontario

Toll-free: 1-800-387-2880

Hours: M-F 8:00 a.m. – 5:00 p.m.

Quebec

Toll-free: 1-877-288-4321

Hours: M-F 8:30 a.m. – 4:30 p.m.

Atlantic

Toll-free: 1-800-565-7189 ext. 227

Hours: M-F 8:30 a.m. – 4:30 p.m.

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