

Have You Been Injured in a Motor Vehicle Accident?

Have you been injured in an automobile accident? Every year thousands of Nova Scotians are injured in automobile accidents. For many this will be the first time they retain a lawyer. Although the legal process of resolving an accident can seem overwhelming, a lawyer can assist in explaining each step so that informed decisions can be made while you focus on recovering from your injuries.

THE ACCIDENT

Should you be injured in an automobile accident there are several steps which should be taken immediately. It is absolutely imperative that you get information about the driver and automobile which struck you as well as the insurance company which insures that vehicle. The accident should be reported to the authorities as well as to your own insurance company. Anyone injured in a motor vehicle accident should seek immediate medical attention. You should not talk or provide a statement to anyone other than the adjuster for your own insurance company. You should not sign any documents concerning the accident without first consulting your lawyer.

LIABILITY

In Nova Scotia, liability (legal responsibility) is apportioned according to each driver's role in causing the accident. For example, in a typical rear-end collision, the individual who caused the accident would usually be 100% responsible for the injuries and damages. In a situation where both cars hit head on and each car was partially across the centre yellow line at the time of impact, liability might be apportioned 50/50.

It is therefore extremely important that the names of any witnesses be obtained and provided to your lawyer as quickly as possible. Your lawyer will review the facts and give you an opinion on liability. If liability cannot easily be determined by the insurance companies and the lawyers representing those involved, it may be necessary to go to court.

THE "MINOR INJURIES" CAP

On November 1st, 2003, the Province of Nova Scotia made changes to the Insurance Act. The changes apply only to motor vehicle accidents that happen on or after

November 1st, 2003. The most significant change was a “cap” on “minor injuries” for general damages for pain and suffering.

Again, the cap only covers pain and suffering and does not include additional claims such as loss of income or out-of-pocket expenses.

You should consult a lawyer to determine how the cap affects your particular case.

SECTION B BENEFITS

Regardless of fault, injured parties may receive certain accident benefits from their own insurance company. These are known as Section B benefits, and are provided by the insurer of the automobile in which the injured party was a driver or occupant. Payment of these benefits does not mean that fault or legal responsibility for the accident has been decided. Section B accident benefits are meant to ease the financial burden a person might otherwise experience until settlement of the claim. Some expenses covered by Section B benefits include medical, physiotherapy, travel and funeral expenses. Perhaps the most important benefit allows for an injured party to receive the lesser of \$140.00 per week or 80% of their gross weekly income while disabled from work. Your lawyer can try and help you recover any remaining lost wages from the insurer of the vehicle of the driver who caused the accident.

THE ROLE OF YOUR LAWYER

An individual injured in an automobile accident is not required by law to retain a lawyer. However, it is certainly recommended that an individual consult a lawyer to obtain an opinion as to the merits of a claim and the amount of damages that might be of great assistance. The lawyers at Landry McGillivray provide free initial consultations to people injured in automobile accidents.

Should you choose to hire a lawyer, he or she will begin to document your file. Even though the majority of personal injury cases are resolved through settlement before trial, your lawyer will proceed as if the case will ultimately go to trial.

With this in mind, your lawyer will ask you to keep track of day-to-day expenses, keep a daily journal, keep regular contact with your doctor, and follow all medical instructions. Your lawyer will contact the adjuster who represents the insurance company of the driver who caused the accident and will keep the adjuster updated as the file progresses. Your lawyer will also meet with you on a regular basis and obtain medical reports as your file progresses. After your injuries have stabilized or resolved, your lawyer will prepare a settlement proposal. If a settlement cannot be negotiated with the adjuster, then your lawyer will discuss the possibility of proceeding to trial and having the courts determine what is fair compensation for the injuries and losses you have suffered.

Medical evidence is vital to the satisfactory resolution of any personal injury case. Usually on your initial visit with your lawyer you will sign a medical authorization which allows your lawyer to talk with your physician(s) and obtain medical reports as required. It is important that you stay in touch with your family doctor, your physiotherapist and/or specialist and follow the advice of your medical professionals. Reports obtained from doctors and health care professionals are an important part of the evidence upon which your claim will be based.

The medical reports obtained by your lawyer will describe the severity of your injuries and affect the level of compensation which you will receive. To ensure that the best possible medical reports are generated it is helpful for you to keep a daily journal and keep in regular contact with your physician. Update him or her on your condition on a regular basis and ensure that you keep scheduled appointments.

THE TRIAL PROCESS

If your claim does not settle then you may have to take the matter before the courts. The risk and merits of proceeding must be weighed to determine what is most beneficial for you.

Many factors must be considered, such as the time it will take to proceed to trial, costs, chance of success as well as the additional anxiety of dealing with the trial process. It is important to remember that you have only three years from the date of the accident to start an action for damages suffered in a motor vehicle accident in Nova Scotia. It could take many months before a trial date is obtained.

Once a trial date is obtained your lawyer will prepare you for trial. You will be called as a witness to testify about your injuries and any expenses or lost income that you have suffered. The medical professionals with whom you came into contact, including your doctor and physiotherapist, might also be called to testify.

Friends and family who can speak to the injuries that you have suffered might be questioned as well as your employer to confirm lost income. The Defendant might call witnesses who could say that you were responsible for the accident, that your injuries are not as severe as portrayed at trial or that your financial losses are not as significant as suggested. Basically, the defence will attempt to challenge the amount of your claim in the area of both general damages and lost wages. After hearing the evidence, the court will determine what is appropriate compensation given the injuries that you have suffered.

LEGAL FEES

It is important that you know how you will pay for your lawyer before retaining his or her services. Most lawyers will take a personal injury file on an hourly rate plus disbursements basis. Under this method the lawyer will calculate your fee based on the number of hours spent on your file multiplied by his or her hourly rate plus appropriate disbursements. This would ordinarily be paid out of the settlement or recovery at court.

Another method of payment is the contingency fee agreement. Under this arrangement a lawyer would receive a percentage of your award rather than working on an hourly basis. The percentage would vary depending upon when the matter was resolved. For example, the percentage is higher if the lawyer is required to go to trial. A possible benefit to the Contingency Fee Agreement is that you do not pay legal fees if your claim is not successful, although you would have to pay the lawyer's disbursements and expenses.

Talk to your lawyer about whether payment by hourly rate or on a contingency fee basis better suits your situation. Hourly rates vary among lawyers.

CONCLUSION

We hope that this Advisor will shed some light on the personal injury litigation process.

The foregoing is a simplified overview of a typical personal injury case. A lawyer should be consulted regarding the specifics of each of the issues raised above. Each individual's claim will vary depending on the nature of injuries, the type of losses incurred and the degree of fault which is apportioned to the parties.