

———— *From* ————  
TRAUMA  
———— *to* ————  
TRIAL

*A Step-by-Step Guide  
to Ontario Personal Injury Law*

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CHAPTER ONE

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## **What to Do in the Days Following a Serious Personal Injury**

**F**amily and friends are often on hand at the hospital following a serious injury to a loved one. They may spend long hours feeling stressed out in cramped patient rooms and waiting rooms.

Communications with hospital staff are often frustrating. New doctors and nurses are constantly rotating in and out. Sometimes these people provide helpful information and other times...not so much. Unfortunately, this can leave an injured person and their family feeling rather helpless.

Positive action can be taken, however, during the hours and days that follow an injury. In fact, there are important things that injured people (if they are able) or family members of an injured person can do to protect their interests in this difficult and unfamiliar situation. This chapter is about all of these things.

## **1. Gather all Insurance Documents**

Despite a person's being seriously injured, their bills continue to roll in. The bank still expects the mortgage payment, and someone still needs to take care of car payments, household bills, and other monthly expenses.

Just as important, an injured person may require expensive community-based rehabilitation following hospital discharge. Someone may have to pay for this rehabilitation and it's important to understand whether or not insurance benefits are available.

Following an injury, it's helpful to look for insurance documents that describe any benefits that you may be entitled to following a serious injury. It's important to review all of the insurance documents so you can get the ball rolling on the application process for any benefits that you may be entitled to. Depending on your coverage, you may need to review the following:

### ***Extended healthcare coverage booklets from an employer***

These are usually available through the human resources department. They describe the benefits a person may be entitled to and clarify whether or not the costs of physiotherapy, psychological counselling, occupational therapy, or items like assistive devices may be covered;

### ***Short-term disability and long-term disability benefits booklets from an employer***

Short-term disability benefits are usually payable after a limited period following an injury—typically 120 days or less—if the person cannot return to work. These benefits, as their name suggests, do

not last for long. If the injured person cannot return to work for an extended period of time, long-term disability benefits may be available. Typically, short-term disability benefits pay between 70 and 100 percent of an injured person's salary, while long-term disability benefits usually pay approximately 66 percent of a person's pre-injury salary. The employer should be able to provide details of any available disability benefits.

#### ***Critical injury insurance***

These benefits are sometimes included in an employee's benefits package—particularly with unionized employees—or may sometimes be purchased privately. They usually provide lump-sum payments if the person has suffered certain specific injuries or impairments.

#### ***Mortgage insurance***

Some people purchase mortgage insurance, which covers their mortgage payments if they become injured and cannot work. A contact at the bank holding the mortgage should be able to provide this information.

#### ***A life insurance policy***

Life insurance is payable to beneficiaries—usually family members named by the person who passed away. This is most often payable in a lump sum.

#### ***Automobile insurance benefits***

If the person was injured in a car crash, they will be entitled to *Statutory Accident Benefits*, often referred to as “no-fault benefits.”

See Appendix A for a full listing of the benefits to which the injured person may be entitled. An experienced personal injury lawyer can assist you in completing the application materials for car insurance benefits.

Gathering and looking through these documents carefully will help you determine whether or not you are covered by insurance.

## **2. Takes Notes or Make a Diary for Future Litigation**

With the emotional turmoil involved, even family members will be hard pressed to recall the events that happened following a traumatic event. Yet they can make notes, and diaries may be helpful for the purposes of any future lawsuit.

Important information to record might include:

- the dates of significant medical events—both good and bad—such as regaining consciousness, seizures, and surgeries;
- observations of the deficits, impairments, and challenges experienced by the injured person, including the dates and times these observations were made; and
- doctors' comments about the injuries, including any prognoses (predictions about the future outcome of an injury).

## **3. Take Photographs of the Injuries**

Wounds heal and scars fade over time. Photographs of injuries, however, can be used later to bring to life the challenges you or your loved one faced in the days and weeks following the trauma.

Fast-forward your case four years down the road. A judge and

a jury need to understand everything you or your loved one have been through. The injury photos you took will be invaluable at this point. As the saying goes, “A picture is worth a thousand words.”

Scar and injury photographs can be used during future settlement discussions, mediations, pre-trial conferences, and trials. These events will be explained in detail in later chapters of this book.

#### **4. Take Photographs of the Scene or Any Property Damage**

If you think that someone might consider altering the scene of the injury following the event, it's a good idea to take some photographs right away. For example, if your wife suffered a severe ankle injury after falling on a poorly maintained walkway, take photographs of the area, just in case someone fixes the problem at some later time. Your photographs can serve to prove fault on behalf of the party responsible for maintaining the walkway.

Likewise, any warning signs or other evidence suggesting that the responsible party acknowledged the problem after the injury should be photographed. For example, in a case in which a heavy door malfunctioned and shattered someone's knee, the responsible party put up signs warning that the door was defective, and that it would be repaired shortly. Photographs of these signs could be very helpful in establishing fault.

Should an injury result in property damage (to a car or boat, for example), it is always helpful to have photographs of the damaged property. And the more photographs, the better. Photographs of the interior and exterior of the vehicle from different angles could be

helpful to any accident reconstruction expert your lawyer might retain to investigate the case. While the police or insurance adjusters may also be taking photographs, they are looking at things from a different perspective, so it is good to have your own.

### **5. Keep all Receipts and Mileage Records**

Keep a record of all of your out-of-pocket expenses arising from the injury. You and/or your family may be able to claim them in a future lawsuit, or through some form of insurance coverage. In particular, keep records and receipts from the following expenses:

- parking (from hospital parking lots or other medical facilities);
- meals purchased at the hospital;
- taxi or ambulance charges, as well as your own mileage records for travel to the hospital or other medical appointments;
- prescribed medications; and
- assistive devices (purchased or rented), including wheelchairs, scooters, walkers, canes, and braces.

### **6. Defer Speaking to an Insurance Adjuster Until After You Have Hired a Lawyer**

Insurance company representatives (also referred to as *insurance adjusters*) may call you or your injured family member, seemingly out of the blue, following a serious personal injury. It may not even be clear whether they are from your own insurance company (if you have been in a car crash, for example) or from the at-fault party's insurance company. They will ask for details about the incident and

the injuries, and they might even ask for a signed statement. Some insurance adjusters will actively try to dissuade an injured person or their family from hiring a lawyer. This is a self-serving practice that can leave vulnerable people at an extreme disadvantage down the line. Other insurance adjusters suggest that an injured person or a family member contact a personal injury lawyer. In any circumstance, it's important to be aware of your options and your rights.

My advice is simple: do not provide information to any insurance company representative until you have hired a lawyer. Making an insurance claim can be an uphill battle in which you and your future lawyer have to fight the insurance company for what is fair. You can protect yourself by having your lawyer handle discussions with the insurance company rather than doing this on your own. In the next chapter you'll learn how to choose the right lawyer for you.

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**TEGGART'S BOTTOM LINE**

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### **What to Do in the Days Following a Serious Personal Injury**

Following an injury, there is a lot of time spent waiting around. Capable injured people or their family members can use this time productively. There are a number of things they can do to help start with preparation, including the following:

- Gather all insurance documents and benefits booklets.
  - Take notes or keep a diary of important events following the injury.
  - Take photographs of injuries, scarring, and bruising.
  - Take photographs of the scene and any damaged property.
  - Keep all receipts for injury-related expenses and keep a record of mileage travelled as well.
  - Avoid speaking to any insurance company until you have spoken with an experienced personal injury lawyer.
-