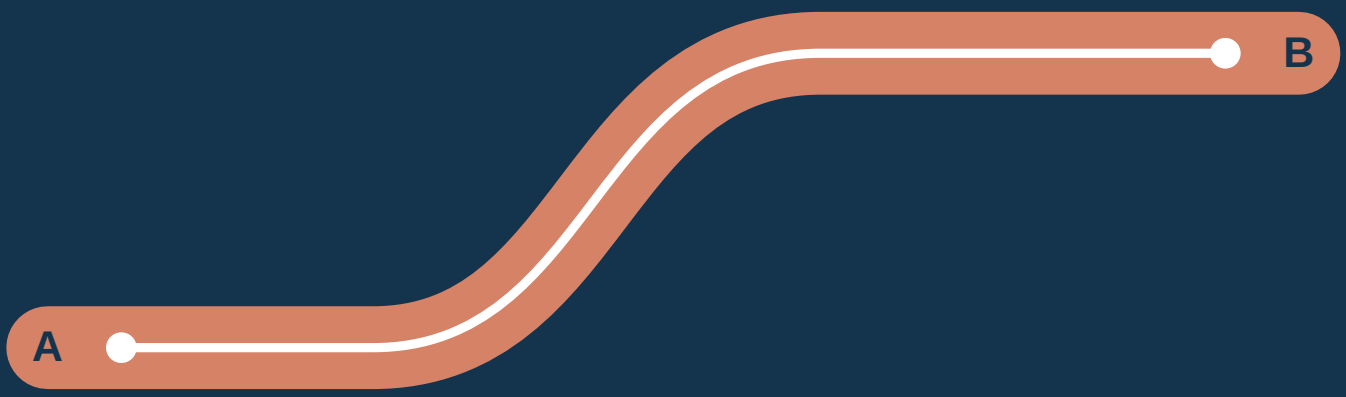
GRAHAM M. BENNETT, C.S.

AFTER AN INJURY:
WHAT COMES NEXT

Practical guidance for injured people and their families in Ontario



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A PLACE TO START



An injury can turn ordinary tasks into difficult ones. Getting to an appointment, answering an insurer's letter, or working out how the bills will be paid can take more energy than you have available.

This guide explains the decisions that tend to come first, the claims that may be available, and the work involved in bringing a case to a fair conclusion. You can read it a section at a time. If something is urgent, start with the first steps and time limits.

I am a lawyer and a partner at Lerners LLP, based in its Waterloo Region office in Kitchener, Ontario. I have practised law since 1993, and I am certified by the Law Society of Ontario as a Specialist in Civil Litigation.

My work focuses on serious personal injury and insurance disputes, including claims arising from motor vehicle collisions, falls, and civil sexual assault.

I have represented both injured people and insurers. That experience informs how I assess evidence, explain risk, and prepare a case. As a motorcyclist, I also take a particular interest in the legal and insurance problems riders face.

The starting point is a conversation about what happened and what you need. You do not need to arrive with an organized file or a complete understanding of your injuries.

Graham M. Bennett, C.S.

Lawyer and Partner, Lerners LLP
(Waterloo Region)

About this guide

This guide is intended as general information within the province of Ontario. It is not legal or medical advice and does not create a lawyer–client relationship. Laws, policy terms and benefit amounts change. Your accident date, policy dates and circumstances matter. Obtain advice about your own situation promptly.

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INSIDE THIS GUIDE

If an injury has just happened, turn to pages 4 and 5. If you have received a denial letter, read page 10 and arrange advice promptly. A deadline may already be running.

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THE FIRST STEPS

Get medical help for urgent symptoms and follow the advice of your treating professionals. If there is an emergency or immediate danger, call 911. The legal work should fit around necessary care.

Protect information while it is available

- Record the date, time and exact location. Save the names and contact information of witnesses, drivers, property managers and anyone who took photographs.
- Keep original photographs, video and messages. Ask promptly about nearby cameras: recordings may be overwritten. A lawyer can send preservation requests.
- Keep damaged clothing, footwear, helmets and equipment. Do not authorize disposal, repair or destructive testing before getting advice about preserving evidence. Do not reuse damaged safety equipment.
- Save hospital paperwork, insurance letters, receipts and the police or incident report number. A family member can help maintain one folder.

Open the right claims

Report the incident to the appropriate insurer promptly and ask what forms and information are required. After an automobile collision, ask about accident benefits even if you were at fault or do not own a vehicle. Report work injuries through the workplace process as well.

Be accurate. If you do not remember something, say so. Before giving a detailed recorded statement, signing a broad authorization or accepting a release, get advice. This does not mean ignoring an insurer’s lawful requests or letting a reporting deadline pass.

> **One useful question**
>
> Ask your lawyer which evidence could disappear first and which notice must be sent first. You do not need to wait for a final diagnosis to protect a claim.

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TIME LIMITS NEED EARLY ATTENTION

A notice requirement and a deadline to start proceedings are different obligations. The following are common Ontario examples, not a complete calendar. Ask a lawyer to identify the right recipients, calculate each date and confirm that the required step has been completed.

Issue	Usual rule or trigger
Accident benefits notice	Notify the insurer within 7 days after the circumstances giving rise to entitlement, or as soon as practicable afterwards.
Accident benefits application	Submit the completed, signed application within 30 days after receiving the application forms.
Municipal road or sidewalk disrepair	Written notice may be required within 10 days after the injury under the Municipal Act, 2001.
Snow or ice on premises	Written notice under the Occupiers' Liability Act is required within 60 days after the injury.
Automobile injury lawsuit notice	Written notice of an intention to sue is required within 120 days after the incident. Late notice can affect costs and interest.
Civil lawsuit	The basic limitation period is 2 years from discovery of the claim, subject to exceptions and other statutes.
Accident benefits refusal	The Statutory Accident Benefits Schedule (SABS) requires an application to the Licence Appeal Tribunal (LAT) within 2 years after a refusal to pay the amount claimed. The trigger and available relief need legal review.

The 10-day and 60-day notices have specific content and delivery rules. An incident report, telephone call or ordinary email may not satisfy them. There are exceptions for some late notices, but they should never be your plan.

Do not decide that you are too late

Children, incapacity, sexual assault, claims involving estates or government, workplace injuries and claims outside Ontario can raise different rules. Send any denial or deadline letter to a lawyer immediately. Negotiations and internal appeals do not necessarily stop time.

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START HERE

ONE INJURY CAN INVOLVE SEVERAL CLAIMS

Different claims answer different questions. They may run at the same time, but they have separate eligibility rules, paperwork and deadlines.

Route	What it asks	Where it usually leads
Accident benefits	What benefits are available under the auto policy and the SABS?	Application to the insurer; a disputed entitlement goes to the Licence Appeal Tribunal.
A tort claim	Did another person's wrongful conduct cause injury and loss?	A claim against those legally responsible, usually in court if unresolved.
Disability and other support	Does a policy or public program cover your inability to work or other needs?	Separate applications, appeals or proceedings under the relevant plan.

These routes are connected

A payment under one system may reduce what is payable under another. An insurer or public body may also have repayment or recovery rights. Settling one claim without considering the others can create a shortfall.

Give your lawyer every relevant policy and benefit decision: automobile insurance, workplace benefits, private disability insurance, WSIB, CPP disability and social assistance. Identify coverage held by a spouse or another household member as well.

> **A useful distinction**
>
> Accident benefits do not depend on proving that another driver was negligent. A tort claim requires a legal basis for holding someone else responsible. Neither route guarantees payment.

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WHAT CHANGED ON JULY 1, 2026

Which benefits were included, and who can claim them? Ontario's accident-benefit system changed substantially. Medical, rehabilitation and attendant care benefits remain mandatory, subject to eligibility and limits. Most other categories are now optional. The actual policy must be reviewed.

New policies and renewals

For contracts entered into or renewed on or after July 1, 2026, income replacement, non-earner, caregiver and other specified benefits must be offered as options. On renewal, the benefits previously provided under the relevant parts of the SABS are deemed to continue at the previous amounts unless the named insured (the person named as insured on the policy) and insurer agree in writing to decline or change them. Written midterm changes are also possible.

Who is covered changed too

From July 1, 2026, the optional categories apply only to the named insured, their spouse, dependants of either, and drivers specified in the policy. This restriction applies regardless of the policy's renewal date. Some people are deemed to be named insureds under special rules, including certain regular users of company vehicles.

A passenger, pedestrian or cyclist cannot assume that another driver's optional benefits cover them, even if that driver bought the benefits. Check personal, household and other potentially applicable policies before concluding that coverage is unavailable.

Which insurer pays treatment expenses first

For accidents occurring in Ontario on or after July 1, 2026, auto insurance pays eligible medical and rehabilitation expenses before supplementary health insurance. Medication expenses are excluded from this change. It is not a rule that auto insurance pays before every public or private source for every type of expense.

> **Bring the documents**
>
> Obtain the policy certificate, endorsements, renewal material and any written changes. Optional coverage cannot be purchased after an accident to cover that accident.

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TREATMENT AND PERSONAL CARE

Accident benefits can help pay reasonable and necessary expenses caused by an automobile accident. Treatment recommendations, the applicable benefit rules and the available coverage all matter. A funding limit is a ceiling, not a guaranteed payment.

Standard category	General financial limit
Predominantly minor injury	Medical and rehabilitation expenses: $3,500.00. The Minor Injury Guideline and exceptions require review.
Non-catastrophic injury outside the minor injury limit	Medical, rehabilitation and attendant care combined: $65,000.00.
Catastrophic impairment	Medical, rehabilitation and attendant care combined: $1,000,000.00.

Applicable optional coverage may increase the $65,000.00 and $1,000,000.00 combined limits. The separate minor-injury limit and its exceptions still need to be considered. The regulation provides for applicable HST in addition to the stated limits for qualifying accidents. Assessments and reports can use part of the available funding.

Attendant care is part of the combined limit

Without applicable increased coverage, monthly attendant care limits are $3,000.00 for a non-catastrophic injury and $6,000.00 for a catastrophic impairment, plus applicable HST. A needs assessment and the rules for incurred expenses govern payment. Help provided by a relative is not automatically reimbursable.

Time and classification matter

For adults under standard non-catastrophic coverage, the usual expense period is 260 weeks after the accident. For a person injured before age 18, it extends to the 28th birthday. These time limits do not apply to catastrophic impairment or specified enhanced coverage, although financial limits still apply.

“Catastrophic impairment” is a legal classification with detailed medical criteria. A serious diagnosis does not automatically establish it. If the classification or available treatment funding is disputed, obtain advice about the evidence and any necessary assessment.

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INCOME AND OTHER OPTIONAL BENEFITS

Start with two questions: was the benefit purchased or continued on renewal, and are you a person covered by it? Then consider the benefit's eligibility test, amount, duration and deductions.

Income replacement

This benefit addresses an eligible person's inability to work after an accident. During the first 104 weeks of disability, the test is a substantial inability to perform the essential tasks of the relevant employment or self-employment. After that, the stricter test is a complete inability to engage in suitable employment or self-employment.

The calculation starts with 70% of qualifying gross income, subject to the purchased weekly limit and deductions. There is no payment for the first week of disability. Self-employment, other disability income and retirement age need particular care. An older guide's weekly amount may not be your policy limit.

Non-earner and caregiver benefits

A non-earner benefit has a demanding test: a complete inability to carry on a normal life. It is not payable before age 18, during the first four weeks after that inability begins, or beyond 104 weeks after the accident. The amount is fixed by the coverage in place.

If this coverage applies, a caregiver benefit can help pay reasonable and necessary replacement-care expenses when the accident causes a substantial inability to carry out your usual caregiving activities. Eligibility includes having been the unpaid primary caregiver for a person living with you who needs care. If more than one weekly benefit may be available, get advice before electing one.

Other categories to check

- Housekeeping and home maintenance; lost educational expenses; and visitor expenses.
- Damage to clothing, prescription eyewear and specified devices.
- Death and funeral benefits, dependant care, and indexation.

> **Renewal preserves benefit categories and amounts**
>
> On renewal, the relevant pre-July 2026 benefit categories and amounts continue unless the named insured and insurer agree in writing to decline or change them. The new restrictions on who qualifies still apply from July 1, 2026. Under that earlier coverage, caregiver and housekeeping benefits applied only to a catastrophic impairment unless broader optional coverage had been bought. Check what was actually continued or selected.

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DENIALS AND INSURER EXAMINATIONS

A denial letter states the insurer's position; it is not a final ruling. It may be challenged, and it may start a deadline. Keep the complete letter, attachments, envelope or email, and a record of when it arrived.

Work out what is actually disputed

- Coverage: the insurer says the benefit is not included or you are not covered.
- Eligibility: the insurer says you do not satisfy the relevant disability or other test.
- Treatment or care: the insurer disputes the need, cost or supporting evidence.
- Procedure: the insurer relies on a missing form, information request or examination.

The response depends on the reason for the denial. More medical evidence may help with an eligibility or treatment dispute, but it will not add a benefit that the policy does not provide. Some disputes require both policy analysis and medical evidence. Ask for the reasons in writing and have the policy, application and correspondence reviewed together.

Do not skip an insurer's examination

The SABS permit an insurer to require examinations in specified circumstances. Send the notice to your lawyer promptly. Ask about the examiner's role, the scope of the assessment, accommodations and the records required. Missing an examination or failing to provide required information can affect benefits.

Answer honestly and describe what you can do, what you cannot do, and what happens after activity. If memory, language, pain or fatigue affects your participation, raise that before the appointment. The examiner's report is prepared for the insurer; it does not replace your treating clinician's advice.

The dispute route

Disputes about entitlement to accident benefits, or their amount, go to the Licence Appeal Tribunal's Automobile Accident Benefits Service. The SABS require an application within two years after a refusal to pay the amount claimed. The wording of the refusal, discovery of entitlement and possible relief need individual legal analysis.

> **Protect the date while seeking a solution**
>
> A complaint, request for reconsideration by an adjuster, or settlement discussion should not be assumed to preserve your right to bring a proceeding.

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MOTORCYCLE COLLISIONS

A motorcycle claim needs a careful account of the road, the rider, the machine and the other road users. Assumptions about speed or riding behaviour are no substitute for evidence.

Preserve the machine and riding equipment

Photograph the motorcycle and its damage before repairs or disposal. Keep the helmet, jacket, boots, gloves and protective equipment. Preserve original camera files, navigation records and relevant device data. Tell your lawyer where the motorcycle is stored and who controls access to it.

Look beyond the point of impact

A vehicle turning across a rider's path is only one possible scenario. Road defects, loose material, obscured sightlines, construction, maintenance and mechanical issues may need investigation. A single-vehicle crash can still raise questions about another person's responsibility. It does not, by itself, prove a viable lawsuit.

Record the lane position, traffic signals, road markings, weather and lighting as accurately as you can. Identify witnesses who saw what happened before the collision. If you do not know a speed or distance, avoid turning an estimate into a certainty.

Check coverage early

The July 2026 changes make optional benefits particularly important for anyone relying on income or family support after a crash. Check the motorcycle policy, household policies and any endorsements. Uninsured or unidentified drivers, underinsurance and accidents outside Ontario create additional issues.

> **From Graham**
>
> I have travelled extensively by motorcycle and have a particular interest in insurance law as it affects riders. My job is to examine the evidence and the coverage, and to explain the options in terms you can use.

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WALKING, CYCLING AND ELECTRIC DEVICES

You do not have to be inside a car to have an automobile insurance claim. A pedestrian or cyclist injured in an accident involving an automobile may have access to accident benefits and a claim against a legally responsible driver or another party.

Identify every possible policy

Your own policy or a policy connected to your household may matter even if you were walking. If you have no such coverage, another policy may respond for mandatory benefits. Insurer priority is a legal question. After July 1, 2026, access to optional benefits depends on your status under a policy, not simply on whether the vehicle that struck you carried those benefits.

Keep the evidence of how the collision happened

- The crossing location, signal sequence, direction of travel and sightlines.
- The original bicycle or device, lights, helmet, clothing, photographs and video.
- Witness information, vehicle details, incident reports and nearby camera locations.
- Changes to work, mobility, independence, caregiving and activities you regularly enjoyed.

An e-bike is not always treated like a bicycle

The label used by a seller does not settle the legal classification of an electric device. Its specifications, modifications and use can affect licensing, insurance, accident-benefit entitlement and the right to sue. Keep the purchase documents, model details and photographs. Obtain advice before assuming either that automobile rules apply or that they do not.

Older pedestrians and people who were already living with a disability should describe their actual activities and support needs before the incident. The effect of an injury on independence matters even where there is no claim for lost wages.

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FALLS AND UNSAFE ROADS

An injury on someone else's property does not automatically make that person liable. The question is usually whether the legally responsible person took reasonable care in the circumstances. Different rules can apply to roads, sidewalks, recreational property and other settings.

Private premises

The Occupiers' Liability Act generally requires an occupier to take reasonable care to keep people entering the premises reasonably safe. An occupier can include someone with control over the property, its condition or the activities there. More than one occupier may be involved.

For an injury caused by snow or ice, the Act requires written notice of the claim within 60 days, including the date, time and location of the occurrence. It must be personally served on or sent by registered mail to an occupier or the relevant snow-removal contractor. A lawyer should identify the proper parties and arrange effective notice.

Municipal roads and sidewalks

A claim based on municipal road or sidewalk disrepair may require written notice to the municipal clerk within 10 days after the injury. Statutory defences and minimum maintenance standards can affect liability. Snow or ice on a municipal sidewalk has a gross-negligence requirement under the Municipal Act, 2001.

These are not blanket rules for every incident on government-owned land. Toronto and provincial highways, for example, have separate statutes with their own 10-day notice requirements. The owner, location, alleged defect and governing legislation must be identified.

Evidence disappears quickly

Preserve photographs showing the precise hazard and the wider scene, the footwear you wore, weather information, witnesses and any incident report. Tell your lawyer about cameras, cleaning or inspection records and any changes made after the event. Do not put yourself at risk returning to photograph a location.

> **Late notice needs advice**
>
> Exceptions may excuse late or insufficient notice. The applicable statute and the reason for the delay must be reviewed. If a notice date may have passed, contact a lawyer rather than assuming the claim is over.

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SERIOUS INJURIES AND CHILDREN

With a serious injury, legal planning and day-to-day care often need to proceed together. A hospital social worker or discharge planner can help identify immediate services; your legal team can examine coverage, preserve evidence and consider longer-term funding.

Describe function as well as diagnosis

Tell your treating professionals about changes in memory, concentration, sleep, mood, pain, mobility and stamina. Record what happens when you try ordinary tasks and how much help you need. Avoid diagnosing yourself or assuming that a reassuring early test answers every question about recovery.

A future care assessment may address assistance, equipment, treatment, housing and transportation. Recommendations need clinical support and realistic costing. An insurer’s catastrophic-impairment classification and a tort claim’s assessment of future needs are related, but distinct, questions.

When a child is injured

School records, attendance, report cards and evidence of activities before the injury can help show changes over time. Keep notes about accommodations and support, and raise concerns with appropriate treating and educational professionals. Do not assume an early improvement resolves future learning or care needs.

A child usually needs a litigation guardian to conduct a lawsuit. For a child, or an adult who lacks the legal capacity required to conduct the claim, a judge must approve the settlement before it is binding. A physical disability alone does not trigger this requirement. The appropriate arrangement for receiving and managing the money must also be addressed.

When an adult cannot make decisions

Capacity is specific to the decision being made. A spouse or parent does not automatically have authority to make every medical, legal or financial decision. Powers of attorney, a litigation guardian or a guardianship application may need consideration.

> **Do not wait because of age or incapacity**
>
> Limitation-period protections may apply, but other reporting requirements and the need to preserve evidence remain. Obtain an individual deadline review.

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WORK AND DISABILITY BENEFITS

An inability to work can involve several sources of support. Each has its own test. Being approved under one program does not automatically establish entitlement under another.

Short-term and long-term disability

Obtain the complete policy or plan wording, not just the benefits booklet. Identify the disability definition, waiting period, exclusions, proof requirements, offsets and any change from an “own occupation” to a different test. The wording and timing vary.

If benefits are refused or stopped, keep the decision and the materials the insurer relied on. An internal appeal may be useful, but it should not be assumed to extend a court limitation period. Obtain advice before resigning, signing a severance agreement or settling a related employment claim.

CPP disability

Canada Pension Plan disability benefits are a separate federal program with contribution and disability requirements. The disability must meet the program’s severe and prolonged test. CPP payments can affect private disability or accident-benefit calculations. Ask about eligibility, application timing and offsets together.

An injury connected to work

Report the injury promptly and get advice about WSIB. Workplace legislation may remove a right to sue particular people or employers. Where an election between benefits and a lawsuit is available, it has its own requirements. A workplace benefits claim and an election about suing can have their own short deadlines. Get advice before committing to either route.

Keep useful work records

- Job duties, hours, earnings, tax returns and benefit documents.
- Medical restrictions and communications about modified work or accommodations.
- For self-employment: accounts, contracts, invoices and the cost of replacement help.

> **Coordinate the claims**
>
> Tell each lawyer about related insurance, workplace and employment matters. Inconsistent instructions or an overly broad release can affect more than one claim.

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CIVIL SEXUAL ASSAULT CLAIMS

A civil claim can seek compensation for the harm caused by sexual assault or abuse. It is separate from the criminal process. You do not need a police report, charge or conviction to get advice.

You can begin without telling everything at once

An initial discussion can focus on your questions, immediate safety, the people or institutions involved and the available options. You can raise preferences about breaks, a support person, how you communicate and the pace of interviews. Once proceedings begin, court deadlines and other parties' rights also affect timing.

Who may be responsible

The person who committed the assault may be a defendant. A claim against an employer, institution or another organization requires a separate legal basis, such as its own negligence or vicarious liability. An association with the person who caused harm does not, by itself, establish liability.

Time limits and evidence

Ontario's Limitations Act, 2002 sets no limitation period for a proceeding based on sexual assault. The same is true of other sexual misconduct against a minor, or by someone who had charge of the person, held trust or authority over them, or on whom they depended, and of assault against a minor, an intimate partner or a dependant. Other jurisdictions and claims involving a deceased person or an insolvent defendant need separate analysis.

Existing messages, diaries, records and possible corroborating witnesses may matter. Preserve what you have without editing it. You do not need to investigate the person responsible yourself. A lawyer can explain what evidence may be relevant and what disclosure could be required.

Privacy and a realistic assessment

Court proceedings are generally public. Anonymity or restrictions on access may be available in an appropriate case, but cannot be promised. Advice should also address the ability to collect compensation, insurance, bankruptcy issues and the emotional demands of litigation.

> **Your choices matter**
>
> A consultation is an opportunity to understand the options. It does not oblige you to start a lawsuit. Support services are listed on page 29.

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A FAMILY MEMBER'S INJURY OR DEATH

A serious injury affects the household as well as the injured person. A fatality can leave a family dealing with grief, lost income, practical responsibilities and unfamiliar legal processes at the same time.

Family Law Act claims

Where a person is injured or killed through another's fault or neglect, eligible relatives may have their own claims under section 61 of the Family Law Act. The legislation identifies spouses, children, grandchildren, parents, grandparents, brothers and sisters, subject to its requirements.

Depending on the evidence, recoverable losses may include reasonable expenses, funeral costs, travel to visit the injured person, income lost or the value of services provided while caring for them, and loss of guidance, care and companionship. A fatal claim may also require analysis of financial support and services the family has lost.

Keep a record of practical help

Record who provided care, what they did, how long it took and any income or expenses involved. Do not assume that every hour of help will be payable by an accident-benefit insurer. A family member's tort claim and a claim for attendant care are different.

When someone has died

Ask who has authority to act for the estate and who has a personal claim. These may be different people. The Trustee Act, insurance policies and other legislation can raise special deadlines. Obtain advice even while a police investigation or inquest is continuing.

After an automobile accident, death and funeral benefits depend on applicable coverage and eligibility. Following the 2026 reforms, they should not be assumed to be automatic. Other life insurance, workplace benefits or public programs may also need attention.

> **Avoid a rushed release**
>
> Before settling any part of a fatal or serious-injury claim, identify the estate, individual family claims, insurance benefits and any repayment obligations.

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WHAT MUST BE PROVED

A negligence claim usually requires proof that someone owed a duty of care, failed to meet the applicable standard, and caused injury and loss. Each part needs evidence. A serious injury alone does not establish another person's legal responsibility.

Responsibility for what happened

The investigation may include witnesses, photographs, video, police material, maintenance records, inspections and expert analysis. More than one person or organization may be responsible. If your own fault contributed to the injury or loss, your compensation may be reduced to reflect your share of responsibility.

The connection between the event and the loss

Medical records and clinical opinions help address whether the incident caused an injury or worsened an existing condition. Earlier health problems should be disclosed accurately. They do not automatically defeat a claim, but their likely effect on your life without the incident must be considered.

The effect on your life

A diagnosis is one part of the evidence. Work demands, household responsibilities, recreation, relationships and independence help explain what has changed. Records from before the incident can be as useful as records made afterwards.

Experts answer particular questions

A case may require a medical specialist, engineer, occupational therapist, vocational expert, accountant or future care specialist. Expert work should address a defined issue and be proportionate to the claim. A report is evidence to be assessed, not a guarantee of a result.

> **Accuracy helps your case**
>
> Report improvement as well as difficulty. Explain a good day, a bad day and the consequences of activity. Your account does not need to make every day sound the same.

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WHAT COMPENSATION CAN COVER

Compensation is assessed from the evidence of loss and the legal rules that apply. There is no reliable price list for an injury, and an amount reported in another person's case is not a promise about yours.

Pain and the effect on ordinary life

Non-pecuniary damages address pain, suffering and loss of enjoyment of life. Physical and psychological consequences can both matter. The evidence should describe the actual impact, without exaggeration or assumptions about what a person with a particular diagnosis must experience.

Work and earning capacity

A claim may include earnings already lost and a reduced ability to earn in the future. Pension loss, disrupted training, lost opportunities and the cost of replacing self-employed work may require analysis. Future losses depend on evidence about likely work and earnings with and without the injury.

Care and practical assistance

Reasonable care needs may include treatment, personal assistance, equipment, home or vehicle changes, and other support. Household work and maintenance can also be relevant. Preserve receipts and record who performed tasks you previously did yourself.

What changes the amount ultimately received

- The strength of the liability and causation evidence, and any fault attributed to you.
- Statutory restrictions, deductibles, insurance limits and the ability to collect.
- Payments from other sources and applicable deductions or repayment rights.
- Legal fees, HST, disbursements, litigation risk and the terms of settlement.

> **Ask for a reasoned range**
>
> A useful assessment explains the evidence, the assumptions, the risks and the likely net outcome. It should also identify what further information might materially change the assessment.

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SPECIAL RULES FOR AUTOMOBILE CLAIMS

The threshold

In many automobile injury claims, the Insurance Act limits recovery against defendants protected by the Act, including vehicle owners and occupants. Whether a particular defendant has that protection must be checked. Against these “protected defendants”, damages for pain and suffering are available only if the injured person has died or has sustained a permanent serious disfigurement or a permanent serious impairment of an important physical, mental or psychological function. Related threshold rules can affect health-care expense claims. This is different from the SABS catastrophic-impairment test. Special exceptions can apply, including in some public-transit incidents.

The deductible

2026 non-pecuniary category	Deductible	No deductible when damages exceed
Injured person’s claim	$47,913.01	$159,708.71
Family Law Act loss of guidance, care and companionship	$23,956.52	$79,853.70

These are the indexed amounts for 2026. They are not fixed by the year of the collision and must be checked when the claim is assessed or resolved. Statutory exceptions apply, including for non-pecuniary damages where the injured person has died as a result of the incident.

Income and other benefits

Automobile tort rules restrict recovery for income loss before trial, including a first-seven-days exclusion and, generally, a 70% gross-income approach for the applicable period. Future earning loss is assessed differently. Accident benefits and other payments can reduce recoverable damages or create repayment and assignment issues.

An uninsured driver, unidentified vehicle, insufficient liability limits or your own insurance status can change the available routes. Coverage for family protection or uninsured automobiles should be reviewed. A lawsuit does not automatically replace every benefit that was not purchased.

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CHOOSING A LAWYER AND UNDERSTANDING FEES

Choose someone who can explain the case, the risks and the proposed working relationship clearly. You should know who will be responsible for the file and how to obtain an answer when something important happens.

Questions worth asking

- What experience do you have with this type of injury, coverage dispute or defendant?
- Who will do the day-to-day work, and who will make the important decisions with me?
- What evidence do you need first? What could make the case difficult?
- How will you communicate with me about my case, and what do you need at my end?
- What happens if the claim does not settle and a hearing or trial is necessary?
- How are fees, disbursements, HST, interest and any insurance premium handled?

A contingency fee agreement

A contingency fee links legal fees to recovery. Lerners' published standard contingency fee is 33%, its stated maximum contingency percentage. HST, disbursements and any other agreed charges are separate. The agreement must explain how the fee is calculated, what it applies to, and how a contribution to costs from the other side is treated. Class actions can have different arrangements.

Ask how HST, disbursements such as records and expert reports, and any financing or insurance costs are calculated. Ask for a worked example of what would be deducted from a recovery and what would be paid to you.

Before signing, review the written agreement and the Law Society of Ontario's consumer guide on contingency fees. Ask what happens if the case is unsuccessful, you change lawyers, or the retainer ends. Do not assume that "no legal fee" means there can be no other financial exposure.

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COSTS AND LITIGATION INSURANCE

A contingency fee arrangement deals with your own lawyer's fees. It does not, by itself, remove the risk of an order requiring you to pay part of another party's costs.

What a costs order means

Courts can order one party to pay a contribution toward another party's legal fees and disbursements. The outcome, conduct of the litigation, proportionality and offers to settle can affect the order. An offer under Rule 49 can have significant costs consequences.

Ask about protection early

Adverse costs or litigation expense insurance may cover specified risks, subject to the actual policy. It is not automatic and does not cover everything. Availability, limits, exclusions, notice requirements, settlement conditions and the premium must be reviewed before relying on it.

- Does the policy cover an opponent's costs, your own disbursements, or both?
- What is the limit, and is it shared between different types of expense?
- What exclusions or conditions could affect payment?
- Does an insurer have rights concerning settlement decisions or trial?
- When is the premium payable, and who pays it if the case is unsuccessful?
- What happens if the policy is cancelled or the lawyer changes?

Understand borrowing before agreeing to it

A litigation loan can become expensive while a case continues. Ask about interest, fees, repayment terms and alternatives. Do not assume the defendant will reimburse the borrowing cost or that a future settlement will cover the balance.

> **Get the net picture**
>
> A settlement assessment should show what reaches you after fees, expenses and other obligations. It should also explain the financial risk of continuing.

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THE COURSE OF A LAWSUIT

Cases do not all follow the same timetable. The medical picture, available evidence, court scheduling and the positions of the parties affect progress. Several stages can overlap, and settlement can be discussed at different points.

Stage	What the work involves
Early advice and investigation	Identify parties, coverage and deadlines; preserve evidence; arrange appropriate applications and notices.
Starting the action	Prepare, issue and serve the claim. Defendants respond. The allegations still have to be proved.
Documents and discovery	Exchange relevant records. Parties may answer questions under oath or affirmation. Outstanding requests must be addressed.
Medical and financial evidence	Develop evidence about causation, recovery, earning capacity, care needs and other losses. Obtain necessary expert opinions.
Negotiation or mediation	Consider offers and, where appropriate or required, meet with a mediator to explore settlement. The mediator does not impose a result.
Pre-trial and trial preparation	Narrow issues, consider settlement and prepare witnesses, documents and expert evidence for trial.
Trial and what follows	A judge, or judge and jury where applicable, determines the disputed issues. Costs, enforcement and possible appeals may follow.

An accident-benefit dispute at the LAT follows a different process, with its own rules and directions. A court claim and a LAT proceeding should be coordinated without treating them as the same case.

> **A useful progress update**
>
> Ask what has been completed, what is outstanding and who is responsible. What is holding up the next step?

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DISCOVERY AND YOUR RECORDS

An examination for discovery is a formal opportunity for another party's lawyer to ask questions under oath or affirmation. Your lawyer will prepare you for the subjects likely to arise and explain how the examination will be conducted.

Answer the question you understand

Listen to the question and answer it plainly. Ask for clarification where necessary and do not guess. Distinguish what you remember from what someone later told you. If you need a break or an accommodation, say so. Preparation is about understanding the process and the records, not memorizing a performance.

Relevant records can include sensitive material

Medical, employment, financial, educational and other records may be relevant. Tell your lawyer about privacy concerns and earlier conditions. Relevance, privilege and the scope of production are legal questions; deciding alone to leave out an uncomfortable record can damage a case.

Social media and digital evidence

A photograph or short post may give a misleading impression without context, but it can still become evidence. Be thoughtful about future posts and avoid public discussion of the case. Preserve existing posts, messages, photographs and files. Do not delete, alter or ask someone else to remove relevant material without legal advice.

Undertakings require follow-through

An undertaking is a commitment given in the proceeding, often to provide information or documents. If your lawyer asks you for material needed to answer an undertaking, respond promptly and explain any difficulty obtaining it.

> **A personal diary may have to be disclosed**
>
> Keep factual, dated notes because they help you remember. Do not assume a diary is confidential merely because you created it for a claim. Ask your lawyer what should be recorded and how it should be kept.

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MAKING A SETTLEMENT DECISION

A settlement exchanges the opportunity to pursue a claim for agreed terms. It usually involves a release. Before accepting, understand exactly which claims, parties and future rights will be affected.

Look beyond the headline amount

- What is the realistic range at trial, and what are the principal risks?
- How much will be paid to you after fees, HST, disbursements and other deductions?
- What happens to future treatment, attendant care or disability benefits?
- Are there repayment claims, liens, benefit offsets or obligations to OHIP or WSIB?
- How long might continued litigation take, and what costs exposure comes with it?
- Is payment collectible, and when will the money actually be available?

Plan for life after the claim

Where substantial future care or income needs are involved, consider whether a lump sum, a structured settlement or a combination would fit those needs. A structured settlement can provide scheduled payments, but its terms require careful design and are generally difficult to change once placed.

Obtain appropriate tax, financial and benefits advice before finalizing the arrangement. ODSP, Ontario Works and other means-tested programs can require careful treatment of the payment, its allocation and reporting.

Settlements requiring court approval

For a child, or an adult who lacks the legal capacity required to conduct the claim, a judge must approve the settlement before it is binding. A physical disability alone does not trigger this requirement. The plan must address who receives the money, how it will be managed, any necessary guardianship arrangements and future accounting obligations. A parent's agreement alone does not make a child's settlement binding.

> **Take the time to understand**
>
> Ask for a written explanation of the proposed terms and the money you receive. Your lawyer advises on the decision; settlement instructions must come from the person legally entitled to give them, subject to any required court approval.

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QUESTIONS PEOPLE OFTEN ASK

Do I need to wait until I recover?

No. Early advice can protect evidence and deadlines while treatment continues. The best time to settle is a separate question and may depend on a clearer understanding of recovery and future needs.

Can I have a claim if I was partly at fault?

Possibly. Your own share of fault may reduce tort damages. Accident benefits do not depend on proving another person's negligence, although eligibility rules and exclusions still apply.

What if I do not have automobile insurance?

Do not assume that no benefits are available. Household coverage, another involved vehicle's insurer or a statutory fund may need consideration. Your status, the accident and the benefit claimed matter, particularly after the 2026 changes.

Will I have to go to trial?

A case may settle, but no one can promise that it will. Ask how the case will be prepared and what the trial risks are. Avoid relying on a promised settlement date.

Will an old health problem defeat my claim?

Not automatically. The issue is what the incident caused or worsened and what would likely have happened otherwise. Give your lawyer and treating professionals an accurate history.

Should I accept an early offer?

Only after understanding the evidence, the losses, the deductions and the scope of the release. A payment that solves an immediate cash problem may leave important future needs unresolved.

What if a deadline has already passed?

Obtain advice promptly. The date may have been misunderstood or a legal exception may be available. Neither can be assumed without reviewing the facts and the governing rule.

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YOUR FIRST MEETING CHECKLIST

Bring what is readily available. Missing documents should not delay a first conversation, particularly where an injury is recent or a letter mentions a deadline.

- Date, location and a brief account of what happened; names of people or organizations involved.
- Police or incident report details, witness contacts, photographs, video and information about possible cameras.
- Hospital and treating-provider information, current concerns and any immediate care or equipment needs.
- Automobile policy certificates, endorsements, renewal material and all insurer correspondence.
- Disability or workplace benefit documents, WSIB information and other benefit decisions.
- A summary of work, income, household responsibilities and changes since the injury.
- Any signed statements, authorizations, releases, offers or prior legal agreements.

Questions and priorities

The most urgent problem I need help with

Letters or dates I want checked

Questions I want answered

Before sending records

Start with a brief description and the names needed for a conflict check. Ask how to send detailed or sensitive records securely. A message or download does not, by itself, retain a lawyer.

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A SIMPLE RECORD KEEPING WORKSHEET

Use a notebook, spreadsheet or folder that is manageable for you. Record facts close to the time they occur, keep original receipts and note who supplied information. A family member can help, with your permission.

Date	What happened or was needed	Expense or time	Record kept

Useful things to record

- Appointments, treatment recommendations and questions for treating professionals.
- Tasks you could not complete, the assistance provided and any consequences afterwards.
- Work missed, modified duties, expenses and replacement help.
- Insurer calls, the person spoken to, what was requested and any response date.

> **Keep it factual**
>
> Include improvement and successful activities as well as difficulty. Do not edit an earlier entry to make it fit later information; add a dated correction. Personal notes may have to be disclosed in litigation.

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SUPPORT IN YOUR COMMUNITY

Your treating team can help identify services that fit your needs. The organizations below provide information or support; availability and eligibility vary. Listing a service is not a promise of funding or a substitute for clinical advice.

Brain Injury Association of Waterloo–Wellington

Local information, programs and peer connections for people affected by acquired brain injury and their families.
biaww.org

Ontario Health atHome

Information about home and community care and coordination of eligible services in Waterloo Wellington.
ontariohealthathome.ca/region/waterloo-wellington

Spinal Cord Injury Ontario

Services, peer support, information and advocacy for people living with spinal cord injury.
sciontario.org/contact-us/regions

Sexual Assault Support Centre of Waterloo Region

Counselling, advocacy and support for people affected by sexual violence. 24-hour support line: 519-741-8633.
sascwr.org

211 Ontario

A directory and navigation service for community and social supports, including practical needs such as housing, food and transportation.
Call 211 or visit 211ontario.ca.

> **Immediate help**
>
> Call 911 for an emergency or immediate danger. For non-emergency questions about your care, contact your treating professional or care team.

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TERMS YOU MAY HEAR

Term	Plain meaning
Accident benefits / SABS	Benefits under Ontario automobile insurance legislation. SABS is the Statutory Accident Benefits Schedule.
Attendant care	Assistance with personal care needs. Payment depends on the applicable benefit rules.
Catastrophic impairment	A defined SABS classification that can provide access to higher benefit limits.
Damages	Money claimed or awarded as compensation for legally recognized loss.
Disbursements	Expenses incurred in handling a case, such as records, court fees and expert reports.
Discovery	The exchange of relevant information; examinations for discovery involve questions under oath or affirmation.
LAT	The Licence Appeal Tribunal, which hears Ontario automobile accident-benefit disputes through its AABS service.
Limitation period	A time limit for commencing a proceeding. A notice deadline is a separate requirement.
Litigation guardian	A person who conducts a proceeding for a party under disability, subject to the court rules.
Mediation	A process in which an independent mediator helps the parties explore settlement.
Release	An agreement giving up specified claims or rights, usually as part of settlement.
Subrogation	A right of an insurer or public body to recover specified payments from a responsible party.
Threshold	A statutory test restricting certain automobile injury damages. It is different from a deductible.
Tort claim	A civil claim arising from a legal wrong, such as negligence.
Under disability	A court-rules term covering minors, people mentally incapable in respect of an issue in the proceeding, and absentees. A physical disability alone does not put a person in this category.
Undertaking	A commitment made in a proceeding, often to provide information or documents.

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YOUR NEXT STEP

TALK THROUGH YOUR NEXT STEPS

If you or a family member has been seriously injured, contact Graham to discuss what happened, the immediate concerns and the options that may be available.

Graham acts for clients in Waterloo Region and Wellington County, including Kitchener, Waterloo, Cambridge, Guelph and surrounding communities. Consultations are by appointment.

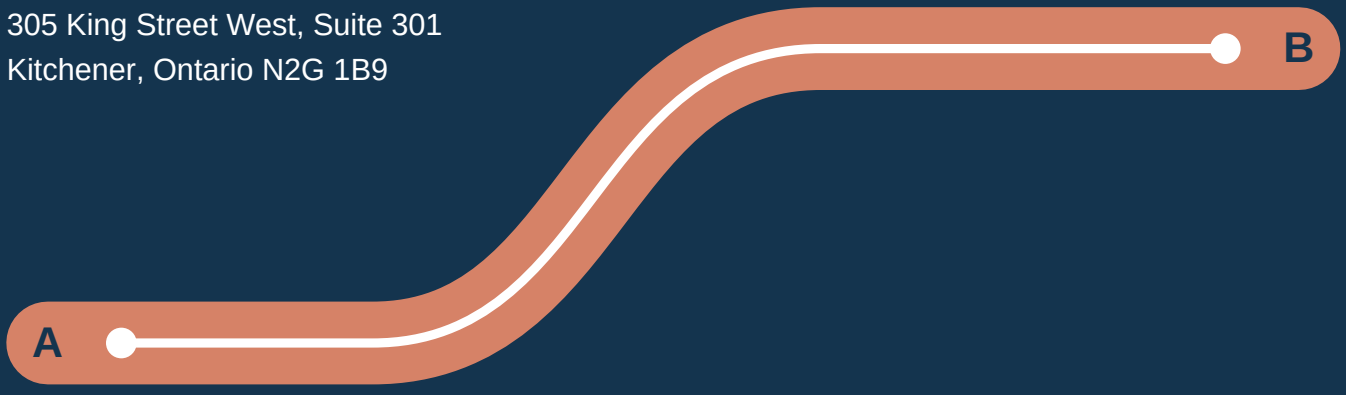
Begin with a short description and the names of the people or organizations involved. Ask how to provide sensitive records securely. Do not wait for a website or email response if a deadline is approaching.

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