



TIERNEY STAUFFER LLP

BARRISTERS & SOLICITORS

Your Legal Rights Following an Injury

Presented By:
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Overview

- **IF YOU HAVE A DISPUTE OVER THE DENIAL OR TERMINATION OF A BENEFIT**
- **HOW TO APPLY FOR INSURANCE-FUNDED TREATMENT**
- **DEADLINES AND LIMITATION PERIODS**
- **STARTING A LAWSUIT**
- **COMMON QUESTIONS AND ANSWERS**

COMMON QUESTIONS AND ANSWERS

1. If you have been injured in an accident, when should you retain a lawyer?

Motor Vehicle Accidents:

If you have been injured in a motor vehicle accident and your injuries appear to be serious and permanent, you should contact a lawyer immediately.

Other Accidents:

If you have been injured in a fall or by some other means, you should contact a lawyer immediately as a short limitation period or deadline may be applicable to the case depending on how or where the injury occurred. If the law firm that you have contacted specializes in personal injury, there will be no charge for the initial interview. The Personal Injury Group at Tierney Stauffer LLP has over 25 years of experience and would be happy to provide you with an initial free consultation to discuss your case.

COMMON QUESTIONS AND ANSWERS

2. When should you contact your insurance company?

If you have been injured in a motor vehicle accident, it is very important that you contact your own insurance company as soon as you are able in order to apply for no-fault benefits. In order to contact your insurance company, you should telephone your insurance broker who will direct the claim to the appropriate person at the insurance company.

If it is a serious accident, the adjuster for the at-fault driver of the other vehicle will undoubtedly try to contact you. There is no legal obligation for you to speak with a representative from the at-fault driver's insurance company.

COMMON QUESTIONS AND ANSWERS

3. Who can make a claim?

If you have been in a motor vehicle accident or have suffered an injury from any other accident, **you** can make a claim as can **members of your family** including spouses, children, grandchildren, parents, grandparents, brothers and sisters.

COMMON QUESTIONS AND ANSWERS

4. What is the legal process?

The legal process commences with an interview with a lawyer, after which the lawyer will attempt to settle your claim with an adjuster from the insurance company. If the lawyer is unable to settle the claim, he or she will then commence a lawsuit on your behalf. Ninety-nine percent of these claims will settle before trial. The legal stages that you will have to attend will be mediation, examinations for discovery, a judicial settlement conference and, if the matter does not settle, a trial.

COMMON QUESTIONS AND ANSWERS

5. How long does the process take?

Typically, an experienced personal injury lawyer will not attempt to settle the case until he or she has a final medical report or until he or she is satisfied that the medical experts have ensured that the diagnosis and prognosis is correct and final. It is only at that time that the personal injury lawyer can assess a claim properly. Depending on the nature of the injuries, it may take up to two years before the claim can be assessed. Following that, most cases are settled out of court. However, if the matter has to go through the entire court process to trial it will, in all likelihood, take another two years depending on the backlog of cases in the judicial system and the jurisdiction in which the case is being pursued.

COMMON QUESTIONS AND ANSWERS

6. How much will you have to pay?

Our personal injury lawyers work on a contingency or percentage basis. In other words, if we don't win or settle your case, we don't get paid. In all cases the initial interview is free.

COMMON QUESTIONS AND ANSWERS

7. If one is in an accident, how does a judge determine how much money one receives?

Compensation for injuries or “damages” arise from many different losses. Some obvious examples are pain and suffering for both physical and psychological injury, loss of income, medical expenses, loss of ability to work in the future, and loss of ability to compete against an uninjured person.

Basically, the approach of the courts is to put the person into the same position they would have been had they not been injured.

COMMON QUESTIONS AND ANSWERS

8. Between the time of the accident and time you receive compensation, how can you make ends meet?

If you have been injured in a motor vehicle accident, you will, in all likelihood, have an income replacement benefit paid to you by your insurance company. You may also have long-term disability benefits available to you through your employment or you may be able to apply for Workers Compensation benefits if the accident happened while you were working. There are other sources of financial assistance available. This is an area you will discuss with your personal injury lawyer at your initial interview.

COMMON QUESTIONS AND ANSWERS

9. Should you contact the police?

If you have been involved in an accident and have not contacted the police, it is imperative that you do so immediately.

DEADLINES AND LIMITATION PERIODS

A limitation period is the period of time between the accident and when an action must be started or a notice given. These limitation periods are extremely important since, if you do not meet the timelines, then your right to recover damages might be lost.

After a car accident there are a few limitation periods to keep in mind. For instance, with respect to making a claim against your own accident benefits insurer, you should put them on notice within seven days. With respect to completing the accident benefits application, this must be done within 30 days. In order for you to sue your own insurance company for accident benefits, this must be done within two years of the denial of benefits.

The ultimate limitation period for suing the at-fault driver is two years from the date of the accident.

DEADLINES AND LIMITATION PERIODS

Continued...

With respect to Municipalities, there are some very short limitation periods which apply. Specifically, a slip and fall on a sidewalk owned by a Municipality obligates one to put the Municipality on notice of the accident within 10 days.

The important thing to note, given the many different deadlines is that you should contact a lawyer immediately upon being involved in an accident to determine which limitation period applies.

STARTING A LAWSUIT

If you have been injured in a motor vehicle accident, you may have the right to commence a lawsuit for injuries that you received as a result of the accident.

You may be entitled to compensation for physical injuries, pain and suffering, emotional trauma, loss of income, increased domestic expenses, child care expenses, etc.

Your family members may also have a claim for compensation. Written notice of the intention to start a lawsuit should be given to the persons at-fault within 120 days of the accident. However, failure to do so will not bar the lawsuit.

STARTING A LAWSUIT

Generally, a lawsuit must be commenced within two years from the date of the accident. There are situations where this time limitation could be less than two years and it is recommended that you seek legal advice in that regard.

You need to both notify the Accident Benefit Insurer within seven days of the date of the accident and make an Application for Accident Benefits.

It is important that the patient retain an experienced personal injury law firm to provide advice and assist with the lawsuit. Most reputable law firms provide a free, no-obligation initial consultation.

CATASTROPHIC INJURIES

Some of the enhanced benefits available to a Catastrophically Impaired insured are:

- Attendant Care payable at \$6,000.00 per month (to a maximum of \$1,000,000.00) rather than \$3,000.00 per month.
- Medical and Rehabilitation Benefits of up to \$1,000,000.00 rather than \$100,000.00.
- Medical and Rehabilitation Benefits for life rather than 10 years.

CATASTROPHIC INJURIES

An Insured person who sustains an impairment as a result of an accident may apply to the insurer for a determination of whether the impairment is a catastrophic impairment (OCF-19 - Application for Determination of Catastrophic Impairment).

“Catastrophic Impairment” means:

- a) paraplegia or quadriplegia;
- b) the amputation or other impairment causing the total and permanent loss of use of both arms or both legs;
- c) the amputation or other impairment causing the total and permanent loss of use of one or both arms and one or both legs;
- d) the total loss of vision in both eyes;

CATASTROPHIC INJURIES

- e) brain impairment that, in respect of an accident, results in
 - i) a score of 9 or less on the Glasgow Coma Scale as published in Jennett, B. and Teasdale, G. Management of Head Injuries, Contemporary Neurology Series, Volume 20, F.A. Davis Company, Philadelphia 1981, according to a test administered within a reasonable period of time after the accident by a person trained for that purpose, or
 - ii) a score of 2 (vegetative) or 3 (severe disability) on Glasgow Outcome Scale as published in Jennett, B. and Bond, M., Assessment of Outcome After Severe Brain Damage, Lancet i; 480, 1975, according to a test administered more than six months after the accident by a person trained for that purpose.
- f) an impairment or combination of impairments that, in accordance with the American Medical Association's Guides to the Evaluation of Permanent Impairment, 4th edition, 1993 results in 55 per cent or more impairment of the whole person; or

CATASTROPHIC INJURIES

- g) an impairment that, in accordance with the American Medical Association's Guides to the Evaluation of Permanent Impairment, 4th edition, 1993, results in a class 4 impairment (marked impairment) or class 5 impairment (extreme impairment) due to mental or behavioural disorder.

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- 2) Medical and Rehabilitation Benefits of up to \$1,000,000.00 rather than \$100,000.00.

Thank You

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