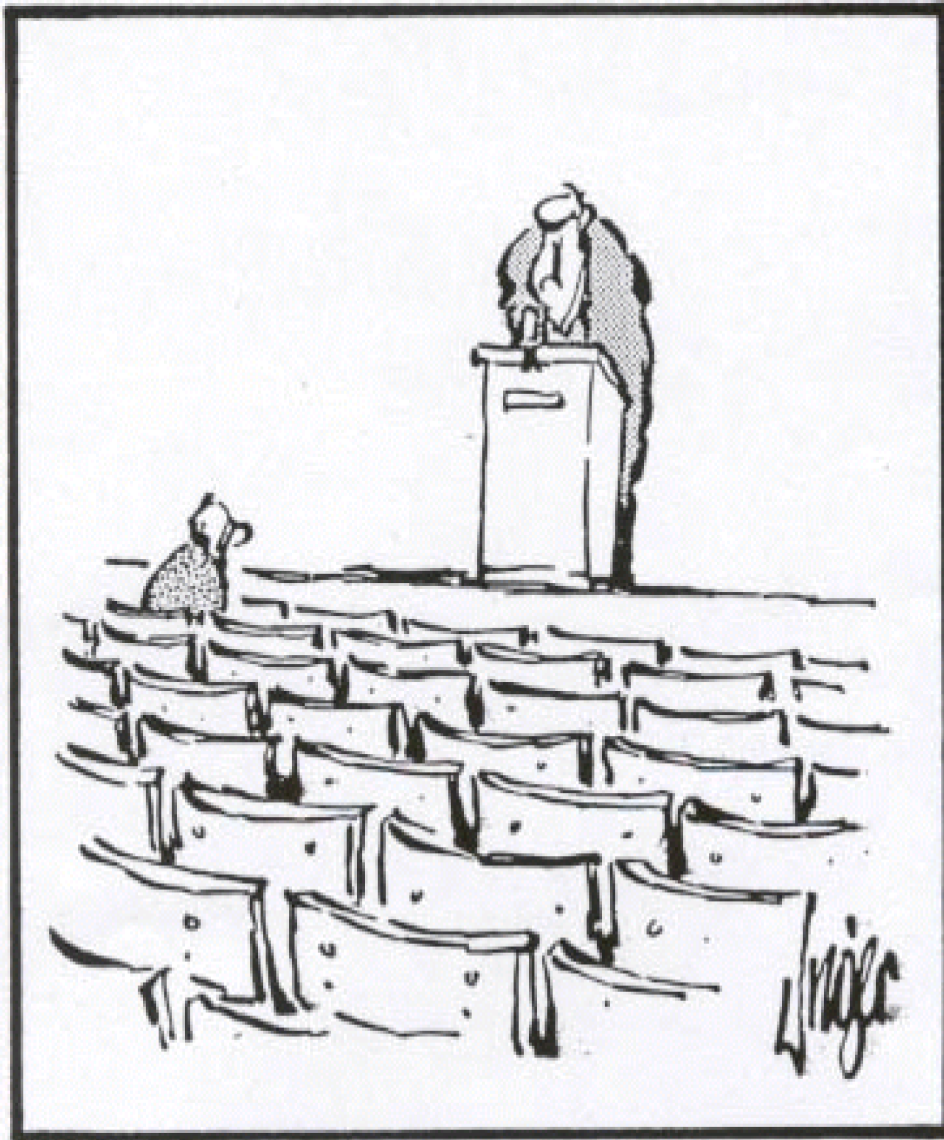


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**HELPING YOU HELP YOUR PATIENTS:  
Learning about Insurance issues  
in MVA cases**



**"Today's topic is 'public awareness.'"**



# **MOTOR VEHICLE ACCIDENT LEGISLATION**

**1. TORT CLAIMS**

**2. STATUTORY ACCIDENT BENEFITS**

**3. WHAT IS AN ACCIDENT**



# 1. TORT CLAIMS

## RIGHT TO SUE

- PECUNIARY LOSS
- THRESHOLD
- NON-PECUNIARY LOSS
- LIMITATIONS
- LEGAL PROCESS



## PECUNIARY LOSS

Can sue for pecuniary (out of pocket) loss under following rules:

- Income Loss (not covered by Accident Benefits)
  - Not for first 7 days;
    - Up to trial - 70% of gross;
    - 100% after trial;
- Non-medical expenses, if not catastrophic;
- Past and future care costs (not covered by Accident Benefits)



## **NON-PECUNIARY LOSSES**

If the injured person meets the threshold then he or she can sue for:

- 1) Pain and Suffering (General Damages)
- 2) Family Law Act Claims

There is a deductible on all claims made under this section in the amount of \$30,000. For any Family Law Act claim the deductible is \$15,000. except on fatal accidents and claims over \$100,000 and \$50,000 for FLA claims .



# THRESHOLD

When a person is injured they must meet the threshold to be able to sue for pain and suffering. This threshold is defined as any of the following:

- Death;
- Permanent serious disfigurement;
- Permanent serious impairment of an important physical mental or psychological function.



# LIMITATIONS

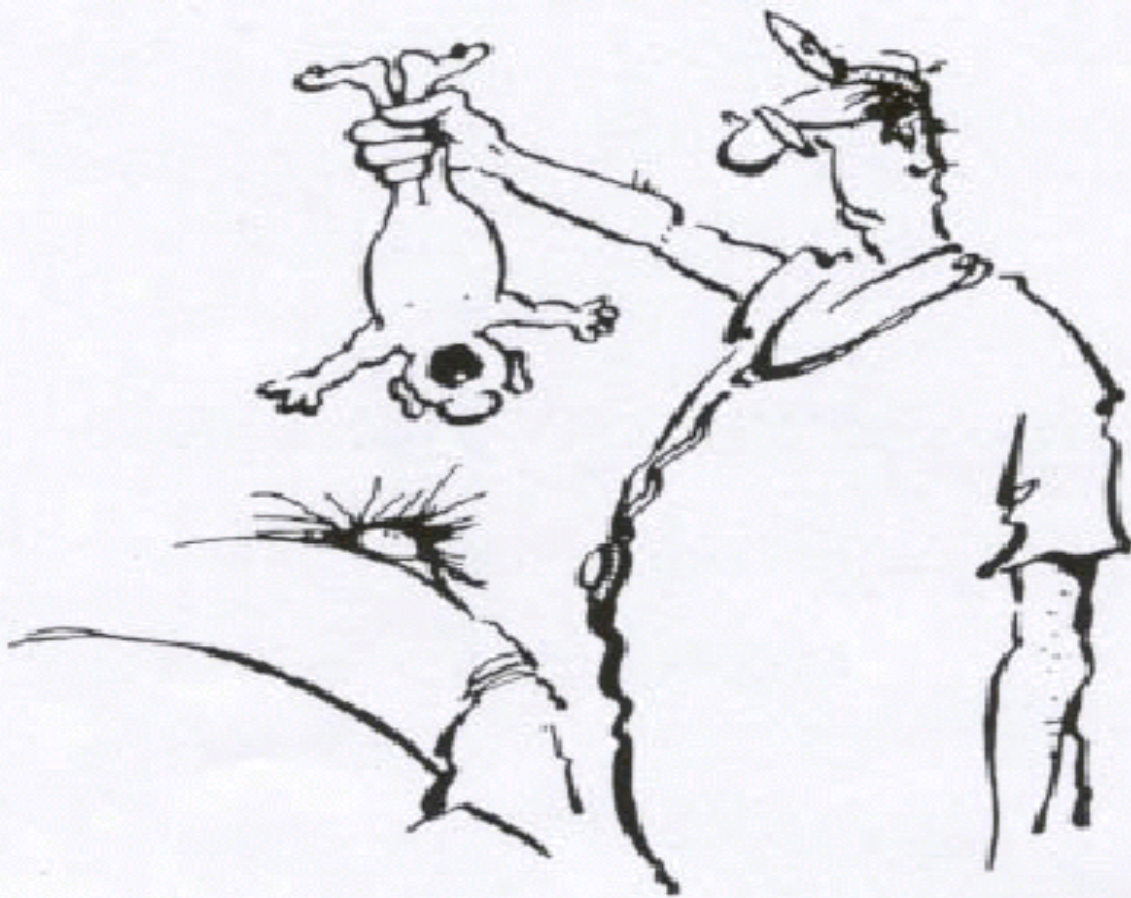
Motor Vehicle Accident - 2 years \*\*

Notice should be sent out within 120 Days after the accident. If there is a failure to do this it does not exclude a person from pursuing a claim within the 2 years;

There are certain circumstances where these times may be extended. Eg. Under 18 years of age.

\*\*there may be a shorter time period if the accident involved a municipality or government agency





Linger

"Get me a lawyer."



## **2. STATUTORY ACCIDENT BENEFITS**

- APPLICATION
- CATASTROPHIC vs. NON-CATASTROPHIC
- INCOME LOSS
- MEDICAL REHABILITATION BENEFITS
- ATTENDANT CARE
- OTHER EXPENSES
- EXCLUSIONS
- COLLATERAL BENEFITS
- FATALITIES



## APPLICATION

Injured person must notify the insurer one week after the accident regarding their intention of making a claim

- this contact can be made verbally
- no insurance – can apply to MVACF

The next step is to complete the Application for Accident Benefits (OCF- 1) - along with the Disability Certificate (OCF-3) and Employers Confirmation (OCF- 2 ). [www.fsco.gov.on.ca](http://www.fsco.gov.on.ca)



## CATASTROPHIC vs. NON- CATASTROPHIC

### CATASTROPHIC

- Paraplegia or quadriplegia;
- Amputation or total and permanent loss of use of an arm or a leg;
- Total loss of vision in both eyes;
- Brain impairment:
  - i) 9 or less Glasgow Coma Scale;
  - ii) Score of 2 (vegetative) or 3 (severe disability) on Glasgow Outcome Scale.



## Catastrophic - continued

Impairment or combination of impairments that in accordance with American Medical Association Guides to the Evaluation of Permanent Impairment results in 55% or more impairment of the whole person;

That as per - guides to Evaluation of Permanent Impairment results in a Class 4 Impairment (marked impairment) or Class 5 (extreme impairment) due to mental or behavioural disorder.

**IF THE ABOVE IS NOT MET THEN THE CLIENT IS NON-CATASTROPHIC**



## **Application for Determination for Catastrophic Impairment (OCF-19)**

- An insured may apply for catastrophic impairment by submitting a completed Application for Determination for Catastrophic Impairment (OCF-19) to the insurer. Only a physician can sign this form. The insurer has 30 days after receiving the Application for Catastrophic Impairment to give notice to the insured stating if the insurer has determined the insured has sustained catastrophic injuries or notice advising the insurer requires the insured to be assessed under Section 44. If the insured person does attend a Section 44 assessment, the insurer has 10 business days after receiving the report to provide a copy of the report to the insured person.**

## Comparison chart for benefits- Catastrophic vs. Non -Catastrophic

	<i>Catastrophically Injured</i>	<i>Non-Catastrophically Injured</i>	<b>Minor Injuries *see Minor Injury Guideline</b>
<b><i>Medical and Rehab benefits</i></b>	\$1,000,000 limit Payable for lifetime includes all fees and expenses for reports and examinations	\$50,000 limit Payable for 10 yrs - includes all fees and expenses for reports and examinations	\$3,500 limit includes all fees and expenses for reports and examinations
<b><i>Attendant Care</i></b>	\$6,000 monthly limit \$1,000,000 lifetime limit	\$3,000 monthly Payable for 2 yrs Maximum \$36,000	Not Available
<b><i>Housekeeping</i></b>	Available	Not Available	Not Available
<b><i>Case manager</i></b>	Available	Not Available	Not Available
<b><i>Right to Sue for Extra Health Care Expenses not covered by No-Fault Benefits in tort</i></b>	Available	Available	Available



## INCOME LOSS

Must be:

- i) Employed;
- ii) Employed 26 of 52 weeks;
- iii) Entitled to start work;

Test - substantial inability to perform essential tasks;

Duration - 104 weeks

What - 70% of gross income to maximum of \$400/week (unless optional benefits are purchased)

Calculate - prior 4 or 52 weeks;  
- self-employed prior 52 weeks or fiscal year;

Age 65 - adjustment





## Non-Earner Benefit

- complete inability to carry on a normal life;
- 26 weeks waiting period
- \$185.00/week
- if student after 104 weeks - \$320/week
- must be 16 years of age to receive

## ➤ Caregiver Benefit

- \$250.00/week + \$50.00/additional dependant;
- after 104 weeks - complete inability to carry on normal life
- this is an incurred expense
- This benefit is only available if client is deemed catastrophic



## MEDICAL BENEFIT

The insurer shall pay for all reasonable and necessary expenses incurred by or on behalf of the insured person as a result of the accident 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
- Transportation to and from treatment sessions
- Other goods and services of a medical nature that the insured person requires



## **REHABILITATION BENEFITS**

The insurer shall pay for reasonable and necessary measures undertaken by an insured person to reduce or eliminate the effects of any disability resulting from the impairment or to facilitate the insured person's reintegration into his or her family, the rest of society and the labour market.



## REHABILITATION - continued

- Life skills training
- Family counseling
- Social rehabilitation counseling
- Financial counseling
- Employment counseling
- Vocational assessments
- Vocational or academic training
- Workplace modifications/devices
- Home modifications
- Vehicle modifications
- Transportation
- Other goods and services that the insured person requires



## **Attendant Care - Form 1**

The monthly amount payable for Attendant Care shall be payable in accordance with the Form 1.

A Form 1 must be completed by an Occupational Therapist or Registered Nurse and submitted to the insurer. The insurer has 30 days to start payments.

The maximum amounts for this benefit are as follows:

Non-catastrophic - \$3,000.00 per month- max. \$36,000.00  
and limited to 2 years

Catastrophic - \$6,000.00 per month - max. \$1 million  
and unlimited in time



## **Payment of Other Expenses**

### **Lost Educational Expenses**

-if the insured person is unable to continue in their educational program incurred expenses.

- maximum payable under this section shall not exceed \$15,000.00

### **Visitors Expenses “family”**

-expenses incurred by loved ones (as defined by the SABS) for visiting the insured person during his or her treatment or recovery

-Available to loved ones for 2 years post accident – non- catastrophic and minor injury categories, but lifetime for catastrophic

-Mileage amount changed from \$0.34 to \$0.38 as of September 1, 2010.



## **Other expenses - continued**

### **Housekeeping and Home Maintenance**

- insurer shall pay for reasonable and necessary expenses incurred by the insured person for any housekeeping or home maintenance that the insured person normally performed.
- the maximum amount is payable is \$100.00 per week
- this benefit will not be payable for anyone other than a catastrophically injured person and is available for life.



## FATALITIES

The insurer shall pay a death benefit, to the following individuals upon the death of an insured person:

➤ Spouse - \$25,000.00

➤ Dependant - \$10,000.00

There may be an additional \$10,000.00 available to a spouse if he or she are deemed "dependant" .

➤ Funeral Expenses to a Maximum -\$6,000.00





## EXCLUSIONS

- no license
- no insurance
- no consent by owner
- use of vehicle for criminal offence and convicted

Can only obtain medical and rehabilitation benefits

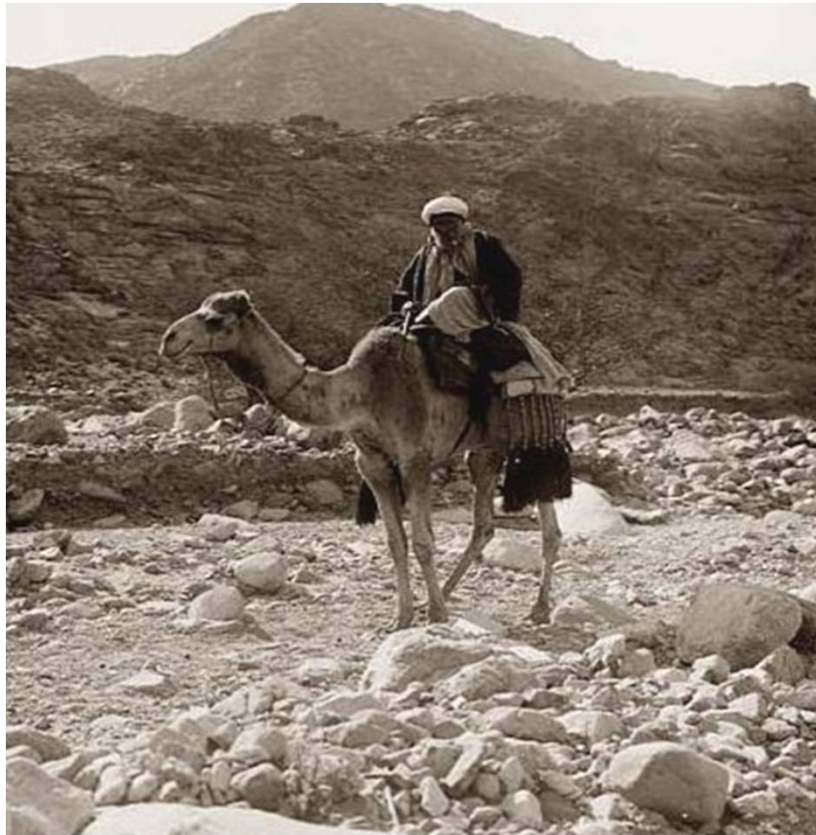
Can **not** access, income, caregiver, non-earner housekeeping/home maintenance, educational benefits or visitors expenses



## **COLLATERAL BENEFITS**

If the injured person has any other type of benefits through their employer or a private plan these benefits must be utilized first prior to any automobile no-fault benefits being accessed.

# WHAT IS AN AUTOMOBILE?





## WHAT IS AN “AUTOMOBILE”?

- **The following are obvious examples of automobiles where insurance is required by law:**
  - passenger cars;
  - pick-up trucks (including any trailers);
  - motorcycles;
  - transport trucks;
  - school buses;
  - coach buses;



## WHAT IS AN “AUTOMOBILE”?

- **The following are examples of motor vehicles that are not “automobiles” and may not require insurance:**
  - farm tractors (including trailers);
  - street cars;
  - motorized wheelchairs/scooters;
  - road-building machinery;
  - go-karts



## WHAT IS AN “AUTOMOBILE”?

- What about snowmobiles?
- The *Motorized Snow Vehicles Act* states:

**12. (1) No person shall drive a motorized snow vehicle unless the vehicle is insured under a motor vehicle liability policy in accordance with the *Insurance Act*, and the owner of a motorized snow vehicle shall not permit any person to drive the vehicle unless the vehicle is so insured.**

- Note that there is an exception for requiring insurance when a snowmobile is only being operated on land owned by a snowmobile’s owner.



## WHAT IS AN “AUTOMOBILE”?

- What about All-Terrain Vehicles?
- The *Off-Road Vehicles Act* states:

**15. (1) No person shall drive an off-road vehicle unless it is insured under a motor vehicle liability policy in accordance with the *Insurance Act*.**
- Note that there is an exception for requiring insurance when an ATV is being operated on land owned by an ATV’s owner.



## WHAT IS AN “AUTOMOBILE”?

- A person operating a snowmobile or ATV that is properly insured will always be able to recover no-fault accident benefits because of section 268 of the *Insurance Act*, which states:

**268. (1) Every contract evidenced by a motor vehicle liability policy...shall be deemed to provide for the statutory accident benefits set out in the Schedule and any amendments to the Schedule, subject to the terms, conditions, provisions, exclusions and limits set out in that Schedule**







**"I know you got 30 years! But you still have to pay my legal fees."**



Prepared by **LERNERS LLP**

This is a brief overview of the legislation, and is not intended to be relied on as legal advice.

Please contact **Nigel G. Gilby** or  
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