



# **THOMSON ROGERS** **LUNCH + LEARN** **Q & A**

**BRIDGEPOINT ACTIVE HEALTHCARE**

**Wednesday, May 7, 2014**

## **FREQUENTLY ASKED QUESTIONS AND ANSWERS**

**THOMSON ROGERS**

**PERSONAL INJURY LAWYERS**

# **BRIDGEPOINT ACTIVE HEALTHCARE**

## **LUNCH AND LEARN**

**May 7<sup>th</sup>, 2014**

### **FREQUENTLY ASKED QUESTIONS AND ANSWERS**

The following is an attempt to document typical examples of questions asked by survivors and their family members and corresponding responses provided by lawyers to assist the survivor and their family members in the initial interview which they have with the lawyer whom they are contemplating hiring to assist in accessing benefits, treatment and ultimately improving the opportunity for recovery of the motor vehicle accident victim.

The answers to these questions that are provided are general in nature and may vary based on the circumstances of any particular client's needs.

#### **FACT SCENARIO**

Three Thomson, Rogers lawyers are meeting with a family member of a survivor of an acquired brain injury sustained in a motor vehicle accident. The family members are not aware of the nature or extent of the brain injury sustained, nor are they aware of the level of unconsciousness suffered by their injured relative.

They share that they have been told that witnesses found the injured survivor unconscious and that the survivor had been drinking alcohol before the accident.

They advised the injured survivor suffered from a pre-existing learning disability and depression.

#### **WHAT IS THE ROLE OF THE ADJUSTER?**

- Employed by Insurance Company.
- Duty to managers, shareholders and first party duty of good faith to insured.
- Adjust the claim means considering all expenses submitted.
- Gather information with respect to the accident.
- Source of denials for accident benefits which leads to Mediation and potential Arbitration.

**WHAT IS THE ROLE OF THE PRIVATE CASE MANAGER?**

- Facilitating patient's personal injury lawyer and paid by insurer
- To obtain recommendations from the In-Patient Team concerning client's needs.
- To work with client and counsel to locate private providers of care to meet discharge needs for services.
- Arrange for any devices required for discharge.
- Obtain documentation from Hospital to identify injuries so that the injuries can be dealt with by the appropriate medical professionals following discharge.
- Co-ordinate therapy following discharge and arrange team meetings.

**WHAT ARE THE ROLES OF THE FAMILY MEMBERS?**

- Often the trauma to the injured person affects the relationship the survivor will have with family members and relationships family members have with each other.
- The goal is to enable family members to, as much as possible, participate to the degree they wish with the injured survivor and the injured survivor's recovery while maintaining a healthy respect for the other priorities in family member's lives.
- As the accident will load additional responsibilities on family members, the lawyer's responsibility is to reduce that load to the extent possible by letting the family just concentrate on supporting the recovery of the injured survivor and the lawyer will address the mechanisms for investigating the accident, securing payment of benefits and all available compensation.

**WHAT IS THE ROLE OF THE INJURED SURVIVOR**

- The injured survivor deserves the opportunity to be single focused.
- The injured survivor should attempt pursuit of recovery in a holistic way, if amenable; the injured survivor should attempt to receive treatment from the health care professionals who recommend treatment.
- In a legal context, the injured survivor is entitled to communication on a frequent basis, often weekly, learning the status of the accident benefit and tort law suits and to help ensure funding has been obtained for the recommendations made.
- The injured survivor may wish to engage family members in the process of recovery.
- Should the injured survivor become stressed in relation to therapeutic or familial relations, the injured survivor should seek help to ameliorate the stress. Resources to help the injured survivor do so should include legal, other therapeutic and other family assistance or withdrawal.
- The injured survivor is not to:
  - a) Arrange treatment,
  - b) Pursue benefits or deal with paper work relating to same, or

- c) Suffer financial pressures where benefit and tort entitlements may intervene to remove those pressures.

#### **WHAT ARE THE BENEFITS THAT ARE AVAILABLE FROM THE INSURANCE COMPANY?**

- There are two categories of benefits: “Non-Catastrophic” and “Catastrophic”.
- **Non-Catastrophic Benefits** (see SABS summary in inside pocket of conference binder):
  - Medical/Rehabilitation \$50,000.00 for up to ten years.
  - Attendant care up to \$3,000.00 per month maximum for up to two years, maximum \$36,000.00.
  - Transportation to appointments over 50 km.
  - Income replacement benefits 70% of gross income up to \$400.00 per week.
  - Non-earner benefits \$185.00 per week after first 26 weeks.
  - Visitor expenses for two years.
  - Death benefit to spouse and dependents.
  - Funeral benefits up to \$6,000.00.
- **Catastrophic Benefits:**
  - Medical/Rehabilitation up to \$1,000,000.00 for life.
  - Rehabilitation Case Manager Services available.
  - Attendant care benefits up to \$6,000.00 per month, maximum \$1,000,000.00.
  - Housekeeping \$100.00 per week available for life.
  - Visitor’s expenses available for life.
  - Caregiver benefits.
  - Income replacement benefits.
  - Non-earner benefits.
  - Death Benefits.
  - Funeral Benefits.

#### **WHY IS IT MY INSURANCE COMPANY THAT RESPONDS?**

- The *Insurance Act* imposes the responsibility to pay accident benefits upon the insurer of the person injured.
- If not insured, injured survivor must seek benefits from insurer of the vehicle that struck him/her or in which the injured survivor was a passenger. If none: the insurer of any automobile involved. If no identified vehicle, then The Motor Vehicle Accident Claims Fund.
- If a party doesn’t know which insurer is responsible, the first insurance company that receives the Application for Accident Benefits is obliged to respond. If it takes the position that another insurer should handle the benefit claims, that priority dispute is determined after the fact.

**WHAT IF I DO NOT HAVE INSURANCE? WHO PROVIDES BENEFITS?**

- The insurer of the vehicle in which you were a passenger or were struck by, if not
- The insurer of any other automobile involved, if not
- The Motor Vehicle Accident Claims Fund.

**I HAVE BEEN CONTACTED BY AN ADJUSTER SEVERAL TIMES WHO WANTS TO COME AND MEET WITH ME. SHOULD I?**

- The adjuster has a responsibility to act with you in good faith; however the adjuster also has a responsibility to minimize the cost of claims. As a result of this duality, it is most helpful to involve legal counsel in advance of speaking to an adjuster.
- Adjusters often want to obtain written statements.
- Adjusters are not entitled to statements at any time, only Statutory Declarations which the lawyer can help to prepare.
- Adjusters may be acting for at-fault parties or for your own insurer. You should never meet or speak with the adjuster of an at-fault party without first consulting with a lawyer.
- Adjusters generally will seek information some of which may be used to approve but often which may be used to deny benefits.

**I HAVE BEEN SENT ACCIDENT BENEFIT FORMS BY AN INSURANCE COMPANY. SHOULD I COMPLETE THESE WITHOUT TALKING TO A LAWYER?**

- The forms seek answers to sensitive areas such as how the accident occurred. One should always be accurate in completing the forms.
- The lawyer will helpfully assist in completing the forms, first of all in order that the injured survivor may focus on recovery or rest or both and second to ensure that the forms are accurately completed and submitted so there is no delay in accessing benefits.

**I HAVE TO TAKE TIME OFF FROM MY WORK TO BE HERE TO TAKE CARE OF MY SON. I AM NOT SURE HOW LONG I CAN BE OFF WORK, WHAT SHOULD I DO?**

- Presuming the question is being asked by a family member, the family member who suffers an economic loss (any loss which is pecuniary or financial in nature but not trifling) the family member is entitled to be paid for the services provided to assist the injured survivor's recovery, in the form of attendant care.
- If the accident occurred after February 1, 2014, the amount of the attendant care payment is limited to the actual amount of the economic loss.
- If the accident occurred prior to February 1, 2014 the amount of the attendant care payment is to a maximum of the amount indicated on the Form 1, in the case of catastrophic injury - \$6,000.00, in the case of non-catastrophic injury - \$3,000.00.

**THE HOSPITAL SUGGESTED THAT I SPEAK WITH THREE LAWYERS. I SPOKE WITH ONE AND HIRED THEM BUT NOW I THINK I SHOULD HAVE MET WITH OTHERS FIRST. IS IT DIFFICULT TO CHANGE LAWYERS?**

- It is good advice to meet with several lawyers prior to choosing and retaining one.
- In choosing a lawyer, you will most likely enter into a lasting relationship which trust, faith and reliance are important features.
- In order to identify the individual who may best earn your trust, reliance and faith, it is wise to meet with more than one.
- That said, it is very easy to change lawyers.
- Should you wish to obtain a second opinion whether you have retained a lawyer or after you have retained a lawyer, you may do so.
- If you choose to hire a lawyer to replace a previous lawyer, once your new lawyer makes appropriate promises or undertakings, the first lawyer must surrender their file upon payment of any account for disbursements which he/she has incurred.
- The first lawyer is entitled to be paid an amount which is reasonable, as agreed or as determined by an Assessment Officer at the end of the case and not before.
- The new lawyer will undertake all communications with the previous lawyer.
- The previous lawyer is not entitled to make further efforts to communicate with the former client.
- The fee of the new lawyer, ordinarily fifteen percent of the amount of which the injured survivor recovers, will include payment of the previous lawyer's account in the ordinary course.
- As such there is no extra cost to the injured survivor at the time of change of lawyers.
- Most important, a client should not continue a relationship with a lawyer in whom they have lost confidence as that break-down in a relationship cannot be helpful, therapeutically, professionally or financially.

**THE DOCTOR SAYS MY SON DOES NOT HAVE CAPACITY TO MAKE DECISIONS RIGHT NOW. HOW CAN I HELP MAKE THE DECISIONS THAT ARE REQUIRED AT THIS TIME?**

- The *Substitute Decisions Act* and the *Health Care Consent Act* provide that where a person is incapable of making decisions concerning their treatment, family members may do so for the incapable person who is in hospital.
- Apart from the information presented to you by the medical professional to help you make the decision, most hospitals are staffed with a "Patient Advocate" who may assist.
- Other legal resources such as personal injury lawyers may assist in assuring that you obtain the information you feel is necessary to be able to make the decision that is required.

**AN OCCUPATIONAL THERAPIST FROM THE INSURANCE COMPANY CONTACTED ME AND WANTS TO HELP ME OUT SO THAT WE CAN GET THE EQUIPMENT REQUIRED WHEN MY SON IS DISCHARGED. WHAT ADVICE WOULD YOU GIVE ME ABOUT THIS?**

- You are entitled to choose your own Occupational Therapist.
- The insurer is obliged to pay for assessment and treatment by the Occupational Therapist of your own choice, presuming it is reasonable and necessary.
- The Occupational Therapist may often advocate for a patient's needs.
- An Occupational Therapist hired by an insurer is required to advocate for the patient's needs; however, the degree of advocacy is limited, potentially by the insurer, on pre-arranged funding or agreement.
- In addition, instances may present themselves where the hospital's recommendations for discharge needs have not been met by the insurer's Occupational Therapist for reasons associated with diverging opinions and/or funding.
- It is best to consult with more than one Occupational Therapist before deciding who you would want to be a reliable member of your treatment team.

**IS THE INITIAL CONSULTATION FREE? IF MORE THAN ONE CONSULTATION IS REQUIRED BEFORE MAKING A DECISION IS THAT FREE?**

- A lawyer specializing in personal injury should not, and no Thomson, Rogers lawyer would seek payment for any consultation required for the purposes of helping the patient choose legal counsel.

**WHAT SHOULD I THINK ABOUT WHEN CHOOSING A LAWYER?**

- Is the lawyer listening to me when I talk about my needs and my expectations?
- Has the lawyer spelled out what the cost would be?
- Does the lawyer specialize in civil litigation (Certified Specialist in Civil Litigation or equivalent)?
- Has the lawyer been ranked by his/her peers as a L'Expert in Civil Litigation?
- Has the lawyer gone to trial recently and regularly?
- Is the lawyer providing prompt and direct communication through e-mail and or cell phone?
- Has the lawyer provided case examples of having worked with other injured survivors with similar injuries?
- Has the lawyer provided you with an indication of his/her knowledge concerning private Rehabilitation Professionals who are specialized in assisting you in recovering from your specific injuries?
- Does the lawyer work with a firm that is large enough to have considerable financial resources to pay for the costs of disbursements (often hundreds of thousands of dollars) to properly develop your case.
- Will the lawyer agree to personally attend team meetings with your Rehabilitation Professionals?

- Will the lawyer personally attend on all steps in your law suit including: client meetings, examinations for discovery, mediations, pre-trials and trials?
- Do you feel the lawyer understands you as a person?
- Do you feel that the lawyer is demonstrating a personal commitment to do everything in his or her power to help you locate the best Rehabilitation Professionals to help with your recovery and to help you obtain compensation and payment for all of your current and future needs?

#### **I AM NERVOUS ABOUT HIRING A LAWYER AND GOING TO TRIAL. WILL I GO TO TRIAL?**

- When a law firm having a strong reputation for “going to the wall” for a client is retained and that law firm has a strong reputation with many generations of trial lawyers generating successful results at trial and at settlement, the greater likelihood is that the case will settle short of trial.
- Thomson, Rogers’ settlement rate is ninety-eight percent primarily because Thomson, Rogers is understood to be a well-respected litigation law firm and professional practice leader in personal injury litigation amongst all members of the bar and insurance companies.

#### **HOW CAN A LAWYER HELP WITH MY SON’S RECOVERY?**

- Obtain funding for all recommended needs from the responsible accident benefit insurer.
- Assist the family by locating rehabilitation team members who are the best in their field in helping injured survivors with similar impairments recover.
- Acting as a helpful liaison between in-patient health care professionals, insurers and family members and survivors to ensure proper implementation of treatment recommendations.
- Attending team meetings in order to ensure that a balance between rest and recovery is being reached and to ensure that each of the members of the team are fulfilling their roles.

#### **WHAT FORMS OF COMPENSATION ARE AVAILABLE TO MY SON FROM THE PERSON WHO CAUSED THE ACCIDENT?**

- The person who caused the accident is responsible for, in general, paying compensation for all losses sustained. Examples of these losses include:
  - a) Pain and suffering;
  - b) Loss of income;
  - c) Loss of ability to compete with others for economic positions;
  - d) Lost working years;
  - e) Post and future medical, rehabilitation and attendant care needs;
  - f) Housing needs;
  - g) Vehicle needs;
  - h) Prosthesis and other medical devices required;
  - i) Medication;



- j) Compensation for loss of ability to perform housekeeping or home maintenance responsibilities; and
- k) For family members, compensation for loss of care, guidance and companionship in their relationship with the injured survivor;
- l) Family members are also entitled to advance claims for expenses which they have incurred as a result of the injured survivor's injuries.

**MY SON WAS DRINKING AT A BAR BEFORE THE ACCIDENT. THE BAR TOLD HIM TO LEAVE AND HE DROVE AWAY. IS THE BAR RESPONSIBLE?**

- It is a breach of the *Liquor Licence Act* for a person to sell liquor to or for a person whose condition is such that the consumption of liquor would intoxicate the person or increase the person's intoxication, pursuant to Sections 29 and 39 of the *Liquor Licence Act*.
- If the bar contravenes the *Liquor Licence Act*, it may be liable for any resulting injuries occurring as a result of increasing the person's intoxication.

**WHAT FEES WILL THE LAWYER CHARGE AND WHEN?**

- If the personal injury lawyer is a Specialist in Civil Litigation at the initial interview it is likely that the lawyer will indicate that he or she will not expect to be paid initially, or during the course of the case but will wait until the conclusion of the case to be paid.
- Ordinarily the portion of the fee for which the client is responsible will represent fifteen percent of the amount recovered for the injured survivor and family members.
- Ordinarily the personal injury lawyer should not charge for the amount of benefits recovered on behalf of the injured survivor prior to the settlement of the accident benefit claim.

**ONCE THE LAWYER IS RETAINED, WHAT SHOULD BE THE "FAMILY'S FOCUS"? WHAT IS THE "LAWYER'S FOCUS"?**

- The family's focus should be helping the injured survivor recover.
- The lawyer's focus should be communicating regularly with the injured survivor and the family members of the injured survivor, the treatment team and insurer representatives.
- The lawyer should pursue funding for treatment requirements from the accident benefit insurer.
- The lawyer should focus on obtaining all documentation, hiring experts, obtaining reports, all at the lawyer's expense.
- The lawyer should also focus on having numerous meetings with the injured survivor and family members in order to fully understand the personality, life, goals and relationships of the injured survivor so the lawyer can best represent the injured survivor and most faithfully develop a case that provides adequate compensation for the unique losses that injured survivor has sustained.

**IF I RETAIN YOU, HOW WILL I BE COMMUNICATING WITH YOU? WHEN CAN I COMMUNICATE WITH YOU?**

- You will be communicating directly with the lawyer.
- The lawyer will ordinarily be available by telephone, work and/or cell and e-mail.
- The injured survivor and family members should expect the response from the lawyer within one hour of the injured survivor's communication.
- In-person communication should happen frequently.
- Certainly, at the beginning, weekly meetings should be anticipated.
- Once funding has been obtained for needs and the treatment team selected, monthly or quarterly meetings should continue.
- The lawyer should provide an initial letter which sets out the nature of the steps that lawyer will be taking and provides a full impression to the injured survivor and the family members of what is involved in the lawyer's pursuit of benefits and compensation.
- The lawyer will provide information about all steps taken and help the client prepare for any steps involving the client (example: Examination for Discovery).

**HOW AND WHEN DOES THE LAWYER RELY UPON THE IN-PATIENT REHABILITATION TEAM TO HELP WITH THE CLIENT'S NEEDS ONCE DISCHARGED?**

- The lawyer will communicate directly with a number of treating professionals, ordinarily, the responsible physician, social worker, occupational therapist, physiotherapist, speech therapist and psychologist/neuropsychologist, depending upon who is providing treatment for the facility.
- It will also be important for the lawyer to communicate directly with the nursing representatives.
- In a case in which the injured survivor is entitled to a rehabilitation case manager the case manager will also consult with these individuals to determine the needs.
- Through a combination of efforts, the lawyer and the private health care professionals chosen by the injured survivor and family members will act immediately and actively to pursue an agreement from the insurer to fund all of the recommendations from the treating facility.

**IF MY SON'S BRAIN INJURY DOES NOT MEET THE CATASTROPHIC CRITERIA NOW, CAN HE EVENTUALLY BECOME ENTITLED TO ENHANCED BENEFITS THROUGH CATASTROPHIC IMPAIRMENT DESIGNATION?**

- Yes.
- If a person has a GCS of 9 or less, whether confounded by intubation or intoxication, regardless the injured survivor meets the definition and is catastrophically impaired.
- The insurer may require a form to be completed and a report from a physician indicating the criteria upon which he is catastrophically impaired.

- The lawyer will pay for the cost of this report, which often may be tens of thousands of dollars.
- If injured survivor with brain injury does not have a GCS of 9 or less, then the Glasgow Outcome Scale, Whole Person Impairment or Chapter 14 of the AMA Guides - Mental and Behavioural Impairments may all qualify the injured survivor for enhanced benefits.
- The lawyer must actively pursue this designation. The lawyer must fund the process to result in this determination.
- The lawyer must have a strong reputation for pursuing all accident benefits available.
- See TAB 3 for a summary of all catastrophic impairment criteria and decisions made to date by Courts and Arbitrators.

**YOU MENTIONED THAT AN OUT-PATIENT PRIVATE REHABILITATION TEAM WILL BE ARRANGED. DO I HAVE A SAY IN WHO IS SELECTED?**

- Yes.
- It is extremely important that the injured survivor feels that he/she can work directly, honestly and faithfully with each member of the treatment team.
- Often this will mean you will wish to meet with more than one member of a treatment discipline in order to decide who you might feel to have the greatest connection with and with whom you are most comfortable.
- You should select health professionals who have at least five years of experience in clinical practice in dealing with other injured survivors who have suffered similar impairments as the injured survivor.

**DO I NEED TO SPEAK TO AN OCCUPATIONAL THERAPIST AND/OR CASE MANAGER WHILE I AM STILL IN HOSPITAL RECEIVING TREATMENT?**

- Yes.
- The Occupational Therapist will assess your current attendant care needs and those anticipated when discharged from the hospital so that you may be safe in your home.
- The Occupational Therapist will also arrange for a home visit in order to address what the needs are at the injured survivor's home in order for the injured survivor to be safe and mobile.
- The Case Manager will obtain information from all members of the treatment team to determine what the discharge recommendations are and, once those recommendations are provided, work to locate expert private health care professionals to meet the needs of every discipline identified by the treatment team in the hospital.

**WHAT DO YOU NEED ME TO SIGN IF I WANT TO HIRE YOU TO REPRESENT MY SON?**

- Retainer Agreement (see example).
- Medical Authorizations.

- Authorization to obtain police information.
- Authorization to obtain all insurance information.
- Authorization to obtain information from OHIP.
- Authorization to obtain employment/school information.
- Accident Benefit Forms

**YOU HAVE PROVIDED ME WITH A PERSONAL INJURY KIT – WHAT ARE THE CONTENTS OF THAT KIT?**

- Articles we have published concerning accident benefits and tort entitlements.
- Copies of all documentation which you have signed.
- Explanation of Costs.
- Our Firm's Privacy Policy.
- Summary of all benefits to which you are entitled.
- Confidential Instructions to the Client with respect to the development and progress of your law suit.
- Contact information for the lawyer.

**WHAT IS A TORT? WHAT ARE THE STEPS INVOLVED IN PURSUING A CLAIM AGAINST AT-FAULT INDIVIDUALS UNTIL SETTLEMENT? HOW OFTEN DO CASES GO TO TRIAL?**

- A tort is a harm resulting in personal injury caused to one individual by another entity. It causes the tort-feasor to be civilly liable for the consequences of the personal injuries caused to the injured survivor.
- Steps involved are:
  - a) Investigation.
  - b) Obtain medical reports and clinical records.
  - c) Arrange for assessments by experts to determine the injured survivor's needs and the damages suffered.
  - d) If necessary, obtain Experts to comment on liability and provide rationale and evidence to support a claim that another entity's fault has caused the injured survivor's injuries.
  - e) Issue a Statement of Claim.
  - f) Obtain a Statement of Defence.
  - g) Prepare and send an Affidavit of all Documents to all parties.
  - h) Receive Affidavits of Documents from all responding parties.
  - i) Arrange and attend Examinations for Discovery with clients (one-half to full day in length usually)
  - j) Pursue settlement of the case through negotiation, mediation and/or Pre-Trial.
  - k) Trial
- Most experienced personal injury lawyers proceed to trial in no more than two percent of their cases.

**IF THE INSURER SAYS “NO” TO PAYING BENEFITS, WHAT WILL THE NEXT STEPS BE?**

- Lawyer will call insurer.
- Lawyer will obtain additional reports supporting the recommendation.
- Lawyer will file for mediation, attend mediation with all evidence necessary to help insurer understand payment of the benefit is necessary.
- If the insurer refuses to pay benefit at mediation, lawyer will file for Arbitration or issue a Statement of Claim.
- To avoid delay, lawyer may bring an Interim Motion seeking payment of benefits that are urgently required.

**WILL BEING INVOLVED IN A LAW SUIT TAKE MUCH OF MY TIME?**

- Ordinarily a client’s most time intense activity will be preparing for and attending Examinations for Discovery.
- Preparation for Examination for Discovery will ordinarily take between one and three hours.
- An attendance at Examination for Discovery will ordinarily take between two and six hours.
- If the matter goes to trial, the client will be required to attend for preparation and then attendance at trial to give evidence and potentially to observe other witnesses and trial proceedings.

**HOW MUCH TIME DOES IT TAKE TO SETTLE A CASE? WHAT MIGHT MAKE A CASE SETTLE EARLY? WHAT MIGHT MAKE A CASE TAKE LONGER TO SETTLE? WHAT ARE THE FACTORS THAT INFLUENCE THIS?**

- Ordinarily a case can be settled within two years of the date of the accident.
- An accident benefit case cannot be settled before one year has passed from the date of the accident to the date of the settlement.
- A client’s recovery is the most important factor in determining when a case may settle.
- Ordinarily a longer recovery will cause the case to take longer in order that all the needs are identified and reported and appropriate compensation for all losses obtained.
- If a client’s lawyer does not specialize in personal injury, the case may settle too early before the losses are known or the case may take too long because the lawyer is not familiar with the most effective and efficient way to prosecute the case.

**HOW DOES ALCOHOL AFFECT MY BENEFITS?**

- Three Arbitration decisions and two Court decisions support the conclusion that a GCS reading of 9 or below is valid regardless of intoxication at the time of the accident.

- If a client is convicted of driving while impaired or another criminal offence, the client may not be entitled to income replacement benefits, housekeeping expenses or visitor expenses.

**IF THE GLASGOW COMA SCALE IS ABOVE 9 HOW DO I GET TO CATASTROPHIC IMPAIRMENT STATUS?**

- The valuation of the Glasgow Outcome Scale.
- The valuation of all injuries to determine if Whole Person Impairment exceeds fifty-five percent.
- The valuation of Mental and Behavioural Disorders to determine if injured survivor has a marked impairment.

**ARE MY MEDICATION COSTS COVERED BY BENEFITS?**

- Yes

**IF I AM NOT EMPLOYED AND CAN'T GO TO WORK CAN I GET PAID THROUGH ODSP COVERAGE?**

- Yes; however, ODSP may ask you to sign an Assignment Agreement in order that they are repaid all benefits paid to you from the monies obtained in the settlement of the law suit.
- An alternative would be evaluating whether or not you are entitled to non-earner benefits in the amount of \$185.00 per week which can become a maximum of \$320.00 per month two years after the accident.

**CAN YOU ADVISE ME ABOUT THE CHANGES IN THE LAW EFFECTING ATTENDANT CARE AS AT FEBRUARY 1, 2014?**

- A family member who provides attendant care to the injured survivor and sustains an economic loss is entitled to be paid for the attendant care that they render but only up to the amount of the economic loss he or she has sustained.

**CAN YOU ADVISE ME OF THE CATASTROPHIC DETERMINATION CRITERIA? HOW ARE PRE-ACCIDENT IMPAIRMENTS AND POST-ACCIDENT COMPLICATIONS CONSIDERED IN DETERMINING CATASTROPHIC IMPAIRMENT?**

- Please see paper Catastrophic Determination: From A to Z attached for full description of Catastrophic Impairment criteria.
- The pre-accident impairments may make the injured survivor more vulnerable to the effects of the accident-related impairments.
- If that vulnerability leads to a worse outcome for the injured survivor, pre-accident impairments may increase the likelihood of catastrophic impairment determination.

- The AMA Guides suggests that deterioration should be taken into consideration in evaluating the amount of the impairment. As such, if an injured survivor has Whole Person Impairments which may worsen, this fact or prognosis can be taken into consideration in determining what percentage a Whole Person Impairment the person suffers.
- Deterioration will likely lead to a higher Whole Person Impairment rating.

#### **HOW DOES THE QUESTION OF CATASTROPHIC VERSUS NON-CATASTROPHIC GET DETERMINED?**

- Obtain Ambulance and Hospital Records.
- Expert engaged to complete a Catastrophic Assessment and complete OCF 19.
- Insurer has the option to accept the injured survivor as catastrophically impaired.
- If not accepted, insurer will arrange for an Insurer Examination.
- If Insurer Examiner does not agree the injured survivor is catastrophically impaired, then the lawyer should pursue Mediation and thereafter Arbitration or a law suit to obtain a Declaration that he injured survivor has suffered a Catastrophic Impairment.
- The lawyer should fund the initial report (often thousands of dollars) and any rebuttal or supplementary reports that are required to address the comments of the insurer's examiner's reports.

#### **TO WHICH INSURER SHOULD THE ACCIDENT BENEFIT APPLICATION BE SENT?**

- Once your lawyer has assisted you in completing the forms, they should be sent to:
- Your insurer.
- If not insured, the insurer of the person who struck you or in which you were a passenger.
- The insurer of any automobile involved in the accident.
- The Motor Vehicle Accident Claims Fund.
- Any insurer that receives the Accident Benefit Application has the responsibility to pay in accordance with the SABS and, if it disputes that it is not the proper insurer to be responding, the insurer may apply for Arbitration to pursue transfer of that responsibility.
- That Arbitration cannot affect the continuation of the insurer's delivery of benefits to which the injured survivor is entitled: the first insurer receiving the forms must pay until another insurer agrees to assume that responsibility or an Arbitrator decides.

**WHAT FOLLOW-UP IS AVAILABLE FOLLOWING MY SON'S DISCHARGE FROM HOSPITAL BY THE DOCTORS AND HOSPITAL STAFF WHO HAVE HELPED ME HERE?**

- Bridgepoint is in a unique situation whereby Dr. Unarket will continue to follow an in-patient on an out-patient basis if the patient remains under his care following discharge from the hospital.
- In so doing, Dr. Unarket assures continuity of care and that members of the treatment team, past and present gain a full understanding of the nature and extent of the injured survivor's impairment and accident-related needs.

**AS A FAMILY MEMBER I FIND THAT I AM STRUGGLING EMOTIONALLY BECAUSE OF WHAT HAS HAPPENED TO MY SON. IS THERE ANY HELP AVAILABLE TO ME AFTER WE LEAVE THE HOSPITAL?**

- Definitely.
- Any person suffering an impairment as a result of an accident should start their own accident benefit claim.
- Ordinarily \$50,000.00 in treatment plans would be available to assist a family member for counselling, social work intervention, attendant care for you as a family member if required, medication expenses, family counselling or any other supports that are found necessary and reasonable.



# PERSONAL INJURY RETAINER

**TO:** THOMSON, ROGERS  
Barristers and Solicitors  
Suite 3100  
390 Bay Street  
Toronto, ON  
M5H 1W2

I/We hereby authorize and direct you to take the necessary steps on behalf of

\_\_\_\_\_

to recover damages and / or insurance benefits for personal injuries sustained as the result of an accident which took place on \_\_\_\_\_ and to commence a mediation, action or other proceeding and generally conduct the said matter in all respects.

**DATED** at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_ .

\_\_\_\_\_

\_\_\_\_\_

I/We acknowledge receipt of a written Retainer Agreement and Explanation of Fees and confirm that I/We have read and understand and agree to the terms contained in the Retainer Agreement and Explanation of Fees.

\_\_\_\_\_

\_\_\_\_\_

I/We confirm receipt of Thomson, Rogers' Privacy Policy. I/We consent to the collection, use and disclosure of personal information as may be required to provide all legal services contemplated by this retainer and set out in the Thomson, Rogers' Privacy Policy.