



CHAPTER SIX

Legal & Insurance





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Not every injury is associated with an insurance claim or settlement, but understanding your legal and insurance options is extremely valuable.

- Peter Athanasopoulos, SCIO Director of Public Policy



LEGAL AND INSURANCE MATTERS

The following section only applies to you if you were involved in a motor vehicle accident or some other “at fault” type of incident, or had a workplace accident and require WSIB coverage. If this is not the case for you, please refer to the section about SCIO’s Regional Services Program. Your Regional Services Co-ordinator will be able to help you problem-solve for your own specific situation.

This process may start before you get settled into rehab — don’t be surprised when you have people knocking at your door. It’s really important to know who they are before you talk to them. Keep records and don’t sign anything without getting another opinion. It is so important to get a free legal consultation from a lawyer who has been researched/recommended by someone you trust. We strongly recommend that you employ a personal injury lawyer (if your situation demands one).

Professional Points: Case Manager

What is a case manager?

You are now part of a team. With a team, there is always a coach and a manager. Your case manager will be both. They may or may not have a background in nursing, but they will have had experience in the medical field. They also will have an understanding of how both the legal and insurance fields work when it comes to personal injury.

Why do I need a case manager?

The case manager will assist with many tasks such as paperwork (and there will be lots), purchasing of equipment, finding the right physio clinic and being the intermediary between lawyers, insurance adjusters and therapists. While you are in hospital/rehab, they will work with your care team to establish your goals and help you start working toward them.

How do I hire a case manager?

Choose a case manager who is from your region — someone from the city is not ideal when you live in a small town, for example. You need someone who knows the area, the people and the services that they provide. The most important part of the decision about who you hire is that they have SCI experience. Talk to several before you decide who to hire and wait until you are discharged before you sign one on. A good nurse case manager will know what calls to make, purchasing to do and appointments to accompany you to.

Is there an advantage to hiring from a firm?

The most important factor in this decision is that they have experience. Ask them what they know about SCI cases, how many they have worked on and some non-specific examples of patients. Hiring from a larger company means that they will work with a multidisciplinary team and will be able to have quick access to information from an OT or SLP (Speech-Language Pathologist). They will also have a second set of eyes to help with reports and applications.

What if I don't have insurance? Can I be my own case manager?

You still could use the services of a case manager and would be able to access one through the LHIN (or Ontario Health Team). They will help you find services and funding in your local community for assistive devices, therapy and other needs. SCIO has Regional Services Co-ordinators that essentially do this job. They are problem solvers, know your community resources and are able to help navigate the system which is specific to SCI.

It is possible for you to be your own case manager, but you likely lack experience. Before you choose to go this route, consider your support system. Do you have friends and family who are willing to attend appointments with you and take notes? How well will you be able to advocate for yourself? There will be a lot of questions to ask about medications, therapy, legal issues and insurance. Are you comfortable doing research, making calls, sending emails and completing paperwork in a timely manner? Do you have a network of people willing and able to help you do this? When you are ill, will they be there for you?

Insights from the Case Manager: Kelly Gillis, RN

“Problem solving becomes very important in this new SCI world. Insurance treatment plans need to be written by someone qualified and claims can often be denied; a case manager can help make an alternate plan.”



Julie's Journey

ME, THE CASE MANAGER

About a month after I came home from Parkwood, we had a follow-up meeting with my nurse case managers. They had driven up to our house from London and we met for about an hour. By this point, I had worked out where I was doing physio, what kind of car we would buy and had submitted most of my extra expenses from my time in hospital to the insurance company. After they left, I turned and looked at my husband and said, “That was an expensive meeting!” We paid for their time to drive, for mileage and for the meeting time.

It was then that I decided to take on the role of the case manager. For over four years, I have been making appointments, taking notes, keeping and submitting receipts, paying bills and purchasing equipment. It made me feel productive and in control. Not that case managers don't have a role to play; they do, but I wanted to take it on and “cut out the middleman,” so to speak. In talking with others who have been their own case managers, they would agree that it was initially helpful to have someone to guide you, answer questions and make decisions about equipment and therapists.

If you are injured as a result of an accident, you will benefit from legal help. If someone else was at fault or you are covered by insurance, you can use a lawyer to help you get as much support as you can — you are going to need it. Choose a lawyer sooner rather than later because the responsibility for the accident may not be obvious and, in those cases in particular, an early investigation, usually arranged by a lawyer, is absolutely necessary.

How do I choose the right lawyer?

Take the time to research, interview and ask other people from your community (friends and co-workers) about their experiences with any personal injury lawyers. A lawyer's reputation in the community is usually a pretty good indication of his/her competence. Do not take the first lawyer who knocks on your door and make sure that they specialize in personal injury law. Remember, while in hospital and rehabilitation, medical expenses are being covered by OHIP for most people.

What will a lawyer do for you?

An experienced personal injury lawyer will assist the client and their family in obtaining funding and access to services and assistive devices that will assist in rehabilitation in the hope of minimizing accident-related impairments. It is their job to make sure you get as much of your insurance claim as is possible. If you have a spinal cord injury, most likely your injury will be deemed catastrophic by your insurance company. What this means is that you will be eligible to receive a higher level of support and a larger settlement than if you were not. A lawyer, however, may not be in a position to advise you what your claim may be worth until you have reached maximum medical recovery.

If you have chosen the right lawyer, you will be kept informed throughout the process so that there is no misunderstanding as to why it takes as long as it sometimes does. Always confirm the best way to make contact; phone or email through the paralegal or with the lawyer and ask what your family members can do to be involved (e.g., keep a diary of events/communication).

In the case of motor vehicle accidents, if you have a lawyer, do not contact the insurance company directly as often it leads to a lot of confusion. You, as a layperson, could misunderstand information on either side, due not only to the complexities of the issue, but also to the fact that you are suffering through a personal trauma.

What should you expect for the length of time and amount of settlement?

The surprise might be the time it takes to get matters resolved. Some cases take just over a year and others can take more than a decade. Some insurers take positions (regarding

reasonable and necessary expenses) that seem unreasonable. This is where your lawyer will step in. It is difficult to predict the amount of your potential settlement because the auto insurance system is always changing and not necessarily for the better. As of 2016, the limits are \$1 million for medical/rehabilitation and attendant care combined. Housekeeping remains available, potentially for your lifetime. You can use all of the limits for med/rehab or all for attendant care, or split it any way you want once you settle.

Can I sue?

It depends. If someone else was at fault for your accident (another driver, your employer, etc.), you can sue and you should. This is called Tort Law; your lawyer will seek damages in accordance with your injuries, age, need of assistance and need for financial independence. For some people, the Tort settlement can happen as quickly as one year; for others it may take many, many years.

How much will a lawyer cost?

The prospective client has the right to negotiate fees with the lawyer before retaining the lawyer. The lawyer's fees may be based on an hourly rate or on a contingency fee basis (a fixed percentage). In either case, the retainer agreement should be confirmed in writing. Before you sign any documents or contracts with your lawyer, be sure to understand what this fee would mean to your settlement. Most charge between 20 and 35%. You have to keep this in mind as talks of settlement begin because the amount of money you get will be 20 to 35% less, plus HST (13%) — another shocker if you are not prepared.

Insights from the Lawyer: Michael Lamont, LLB

"Trust and confidence are the cornerstones of the client/lawyer relationship. If you do not have trust and confidence in the lawyer, you are making the wrong choice."

INSURANCE

If you were in an accident, there is a good chance that the first “non-medical” person you are going to talk to will be the insurance adjuster. They will want to know all the details you know about what happened, exact timing, all the people involved; they will dig into your memory until they can dig no more. You can stop them, if you need to — you can say *enough*. Don’t be afraid to say, “Please come back later.”

You are about to travel into a world that no one really knows about unless they have been there before. Insurance claims are complicated — and for a reason. They want serious proof that you really need the money you are asking for. If your claim is viable, don’t accept NO for an answer.

Professional Points: Insurance

How can I make a claim to my own insurance company?

If you were an insured driver and a vehicle was involved (even if you were on your bike and were hit by a car), you can make a claim to your insurance company for both medical rehabilitation expenses (known as Med Rehab) and for attendant care expenses. If deemed catastrophic, the combined limit is \$1 million. While you are in hospital, you can also make claims for travel and lodging expenses for family members and for personal items destroyed in the accident; however, insurance policies are tricky contracts to understand, as is the law around them. With such a significant injury, getting a lawyer is likely a very wise choice.

When/how should I contact my insurance company?

Because you have a contract of insurance with your insurer, you both have obligations. One of yours is to contact your insurer as soon as possible. Have a family member contact the broker on your behalf to report the accident. Don’t be afraid to speak to your insurance company, even if you think you may be at fault.

What is Medical Rehabilitation?

Med Rehab will cover such things as physiotherapy, equipment, housing renovations (or new construction), vehicle modifications and medical expenses not covered under OHIP or workplace benefits (e.g., medications, catheters, bowel care supplies).

What is Attendant Care?

This part of your claim will cover the costs of an attendant — someone to provide you with assistance with your everyday tasks. In order for a family member to be paid to assist you, your family member must not only show an economic loss, but must also be qualified to supply the assistance. This is the latest legislation which simply states in order to collect this benefit, the person supplying the care has to *have experience and work in that field* (so for example, a PSW, nurse or paramedic). If they are staying home from their job to supply care and therefore are suffering an economic loss, they would be considered eligible by insurance for some compensation, but likely not the full amount of lost wages. On the other hand, a store clerk, insurance adjuster, lawyer or fry cook would not qualify, for example. If the family member was not working at the time of your accident, they will not be paid to look after you. Hiring a qualified PSW will require proper documentation (such as a college certificate). (See Personal Support Worker for more details.)



Julie's Journey

FUTURE COSTS

When someone says "insurance is paying for it," YOU are paying for it. It is amazing how different you will feel about that money when you are writing the cheques. It may seem like a lot of money, but \$1 million does not go very far when you have a major injury. Remember that it is in the best interests of the insurance company not to pay out the maximum on your policy, so you will have to fight. It will seem easy at the beginning; they will want to support you (as you have a "catastrophic" case) but, as time goes on, the insurance company will want to keep as much of that money as possible. After four and a half years, I have finally obtained a reasonable attendant care settlement from my insurance company.

How do I stretch my limits?

“Insurance is paying for it” is a phrase you will no doubt hear quite often. Think twice when this happens because, even though the cheques are being written by the insurance company, that money is coming from your policy. That money is your money – and there is an end to that money. Be VERY aware of your limits, which treatments you participate in and what is being billed. If one form of treatment is not as beneficial as another form, don’t be afraid to stop what is not working. If you get through part of a treatment plan and do not want to continue, make sure that the unused portion is withdrawn so that it does not take up any available limits. The same can be said about plans with assistive devices. If a treatment plan is submitted for a specific cost for exercise equipment, for example, but when the equipment is purchased it is less expensive than what was submitted on the OCF-18, withdraw the unused portion.

What happens if I am denied by my insurer?

As much as the auto insurer may state that they are there to assist and they are on your side, ultimately, you will have to be your own advocate. They will review everything that comes in to determine whether they find it reasonable and necessary. Understand that, even with such a significant and life-altering injury, you may still face some resistance from your insurer. That is another reason why it is so important to have an experienced lawyer; they will have the knowledge to challenge the insurance company on their decisions. You will often face “denials” which will be very upsetting and discouraging. For you, it is an unknown system. Don’t give up – and use your lawyer and their staff to fight for you and take off some of the burden and stress. Throughout the process, never be afraid to ask questions. Stay informed. Stay involved.

There is a lot of paperwork — where do I start?

Forms must be filled out before payments are made. This includes weekly disability benefits or medical benefits. Here are some examples of the paperwork:

OCF-1 — The Application for Accident Benefits (OCF-1) is part of the package you receive after reporting a claim. It can be delivered by mail or by hand.

OCF-3 — If you were employed at the time, you will also need to have the Disability Certificate (OCF-3) completed. This is usually completed by the doctors while you are still in hospital and sent to your insurance company very shortly thereafter.

OCF-2 — If you were working, your Employer's Form (OCF-2) should also be supplied to you. This should immediately go to your employer for completion. It will give the insurer your information on wages and any collateral benefits you may have an entitlement to through your employer. This is important for both sides so that payments are made in a timely fashion and in the appropriate amounts. It also assists in the calculation of any Income Replacement Benefit (IRB) that may be owed by advising the insurer exactly what amount, if any, is being paid by your employee benefits. This amount is entered into a calculation to determine if there is any shortfall owing by your Accident Benefits carrier.

Insights about Insurance: Donna A. Marry-Warren, CIP

"Insurance policies are tricky contracts to understand, as is the law around them. Getting a lawyer with experience is a wise choice; as well, keep your insurance company in the loop. Don't be afraid to ask questions. Insurers have an obligation to be clear and answer all your questions. Ask when you can reasonably expect a response to your expenses and treatment plan (timelines are regulated). If you are not satisfied with your insurance adjuster's answers, it is your right to speak to their manager. Beyond that, each company has an ombudsperson who is to liaise between the insured and the adjuster."

WSIB: WORKPLACE SAFETY & INSURANCE BOARD

This is the path you will travel if your injury occurred while you were on the job. WSIB is an Ontario government agency, where injured workers (who are covered by their employer) are compensated on a “no-fault” basis. This means that compensation is paid no matter who is at fault: the employer, the employee or someone else. In return for the compensation you receive from WSIB, you cannot sue your employer.

The main focus of the WSIB system is to get you back to work as soon as possible. Through co-operation between all parties involved, it is the goal of the system for you to return to work as soon as possible/practical. If you can't return to regular work, your employer may offer modified work. If the work is suitable, the injured worker must accept it.

From the WSIB website:

“The Workplace Safety and Insurance Board (WSIB) is an independent trust agency that administers compensation and no-fault insurance for Ontario workplaces. We are committed to delivering what matters to the workers and employers of Ontario: fast, accessible service and fair benefits at a fair price. The WSIB provides wage-loss benefits, medical coverage and help getting back to work — the best possible outcome following an injury or illness on the job.”

What do I need to know first?

It takes time to get everything set up; there are deadlines to meet and there will be delays. You are going to have to find your patience with the process and the people involved. Because you have an SCI, you will (most likely) be working with the “Critical Injury” program, which usually means you will have a smoother time working through the process. WSIB benefits are for life; unlike auto insurance, there is no limit for as long as you live, not just to retirement age.

Your employer must file the forms within 24 hours of the incident; the attending doctor must do so as well. You will start with Form 6 “Worker’s Report of Injury or Disease.” If you are critically injured (which is what an SCI often is), the employer *must* also notify the Ministry of Labour. You have six months to make the claim from the date of the injury. Report even if your

employer tells you not to, or says you are not covered by WSIB. The number to call is 1-800-387-0750, Monday to Friday 7:30 am to 5:00 pm.

What if I am not classified as Critically Injured?

If you are *not* classified as Critically Injured (which is possible with an SCI that does not result in permanent paralysis), you will be working with a different set of WSIB regulations. It is possible to ask for a second evaluation from a doctor.

I need a wheelchair and can't live in my home; does WSIB help with that also?

Yes, WSIB will help make modifications to your home; when you leave or sell that home, it is converted back to the way it was. WSIB will also help pay for home maintenance. You will have a team of OT/PT who does their own assessments and gets the home set up for your needs. If you are not able to live in your home, WSIB will pay for alternative accommodation until your home has been modified to meet your needs.

Does WSIB pay for physiotherapy?

You will have many assessments done by doctors and you will either receive a lump sum or a monthly benefit. This benefit will pay for physiotherapy treatment as well as transportation there and back.

Why don't I just sue my employer?

Claiming WSIB is not the same as suing your employer. If you don't want to go the route of WSIB, and think you should sue the employer instead, you can, but you are not guaranteed to win; plus you'll have (out of pocket) legal costs to pay. WSIB will provide benefits that you will not receive if you sue your employer.

I was in/driving a work vehicle – what do I do?

If you were in a work-related vehicle, you have two options — WSIB or MVA — but you must choose one; the Province of Ontario will not allow you to receive the benefits of both.

How will WSIB help me get back to work?

WSIB has vocational rehabilitation teams who will support your return to work, up to 85% of your previous salary. You can have the help of your SCIO Regional Services Co-ordinator, who will help you start thinking about modifications for your workplace. WSIB will look at what the physician is recommending as a “return to work” plan and will note what your limitations are.

Construction companies that do the workplace modifications will provide blueprints and estimates to the employer/WSIB. If the employer is not able to do the modifications, then WSIB will do them with their own team. Depending on your age, WSIB may pay for retraining.

What if I can't return to the job that I was doing at the time of the workplace accident?

WSIB has a complex return-to-work program. They may provide you with income replacement that stops at age 65. The closer you get to 65, WSIB may suggest that you put it into a pension type of investment.

What happens when I don't agree with the initial assessment from WSIB?

If you don't agree with the initial assessment ask (in fact, insist) for a second assessment. Be patient BUT persistent. If you don't hear from them, call them again. This kind of situation is best described as “the squeaky wheel gets the grease.” Find someone (friend, family, case manager, SCIO Regional Services Co-ordinator) who can advocate for you if you don't feel able to do it yourself.

Are there things that are considered “pushing the limits”?

Really, if you don't ask about it, you won't know; for example, if you are getting renovations done in your home and you have a second storey, ask for an elevator. If your approach is reasonable — assertive but not aggressive — you'll have a better chance of getting the help you need. Be patient. It is possible for denied claims to be finalized 10 years after an appeal.