

Your guide to

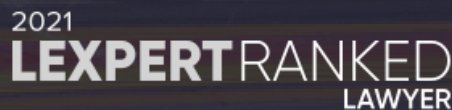
CAR ACCIDENTS

Who We Are

Boland Romaine Personal Injury Lawyers is one of Ontario's most respected injury firms with over 40 years of trial experience. Voted as one of the top 10 personal injury firms by Canadian Lawyer Magazine, Boland Romaine's lawyers have represented the province's most vulnerable injured victims in court and won.



CERTIFIED SPECIALIST
CIVIL LITIGATION



When Should You Contact a Lawyer After a Car Accident?

It's crucial not to delay seeking legal advice after a car accident injury. **The sooner you consult a personal injury lawyer, the better.**

It does not cost you anything upfront to retain a lawyer, as legal fees and expenses are only paid once your case resolves. There is no cost from our firm if we are unable to recover compensation for you. Consultations are always free, whether or not we take your case.

If you have sustained an injury from a car accident, there are two ways to claim compensation:

1. You may be entitled to receive accident benefits, also called no-fault benefits, from your insurance company, regardless of who is at fault for the car accident.
2. You may be entitled to receive an award of damages if another person is at fault or if you are only partly at fault for the car accident. This is called a "tort claim" and is commenced by way of a formal lawsuit.

No-fault accident benefits claim

When involved in a motor vehicle collision in Ontario, you can claim benefits from your own insurance company, regardless of who was at fault. Applying for accident benefits is among the first steps you should take. Depending on the specific policy in question, the benefits you can claim can include:

- Medical and Rehabilitation Benefits
- Attendant Care Benefits
- Income Replacement Benefits
- Non-Earner Benefits
- Caregiver Benefits
- Housekeeping Benefits
- Death and Funeral Benefits
- Other Benefits

You must notify your insurance company within seven days, or as soon as reasonably possible, that you wish to apply for no-fault accident benefits. To formally apply for accident benefits, you must file a completed Application Form (OCF-1) with your insurance company within 30 days after receiving it.



Understanding Tort Claims in Ontario

If you are a driver, passenger, cyclist, or pedestrian injured in a car accident due to someone else's negligence, you may have the right to pursue a tort claim. This legal action allows you to seek compensation for damages caused by another party's negligence. In Ontario, a lawsuit against the at-fault party must be filed through a Statement of Claim within two years of the accident.

What can you sue for?

An injured party may seek compensation for various damages, including:

- pain, suffering, and loss of enjoyment of life
- loss of income
- health care expenses
- claims under the *Family Law Act* (compensation for certain family members)
- housekeeping and home maintenance costs
- other quantifiable financial losses

What is the "threshold" in a tort claim?

The *Insurance Act* requires you establish that your accident injuries exceed a "threshold" in order for you to recover any compensation for pain and suffering, health care expenses, and housekeeping and home maintenance costs. The "threshold" requires you prove your injuries amount to either:

- a permanent serious impairment of an important physical, mental, or psychological function; or
- a permanent serious disfigurement

A personal injury lawyer can assess whether your case meets this threshold and guide you through the process.

What if my injury meets the threshold?

If your injury qualifies, you may be entitled to compensation for pain and suffering, loss of income, medical expenses, *Family Law Act* damages, and other losses. Our legal team can help you understand your rights and potential compensation.

What if the at-fault party has no insurance?

Most insurance policies contain an "uninsured" endorsement called the OPCF-44R that will compensate you if the at-fault driver is uninsured. A personal injury lawyer can help determine if you qualify for coverage under the OPCF-44R.



Understanding Accident Benefit Claims in Ontario

How do I claim accident benefits?

You should inform your auto insurance company about your car accident within seven days. After learning of your car accident, your auto insurance company will send you a benefits package with forms you need to submit. This package will include:

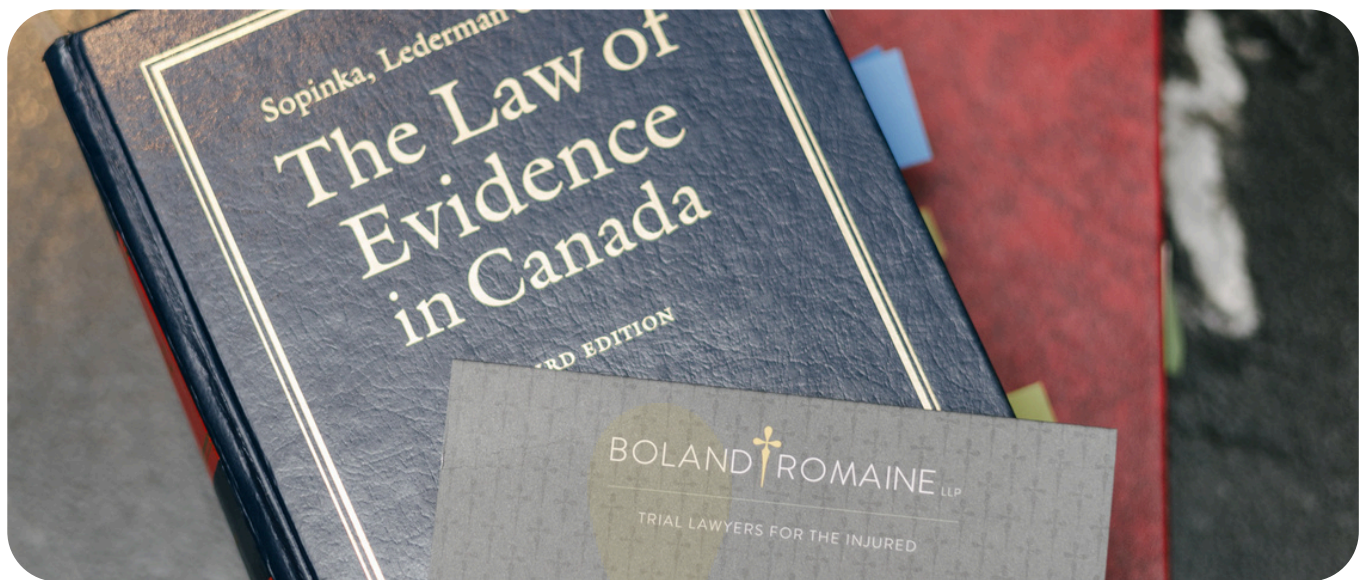
- **Application for Accident Benefits (OCF-1):** The OCF-1 is your initial application for accident benefits. It will ask you to provide some background information of your claim: your name, date of birth, date of the accident, employment, initial injuries, etc. You must complete and return your OCF-1 within thirty days of receiving the form. Your claim may be affected by any late submissions, which is why we encourage you to contact us soon after your motor vehicle accident.
- **Disability Certificate (OCF-3):** the OCF-3 is a form to be completed by your family doctor or treating healthcare practitioner that addresses any disabilities or impairments following your car accident. It must be submitted in order to claim income replacement benefits, non-earner benefits, caregiver benefits, and/or housekeeping and home maintenance benefits. It is important that you provide an OCF-3 to your family doctor and all your treatment providers as early as possible. The OCF-3 is an essential element of such claims, and your auto insurance company is not obligated to pay any disability benefits until after it is submitted. A more detailed overview of the benefits you can claim on the OCF-3 is provided below.

What accident benefits can I claim?

Depending on your insurance coverage and the severity of your injuries, you may have access to funds for medical treatment, attendant care, income replacement benefits, non-earner benefits, caregiver benefits, and housekeeping and home maintenance benefits, among others. The amounts and types of benefits you may claim depends on the severity of your injuries. The accident benefit scheme organizes injuries into three broad categories:

- Minor Injury
- Non-catastrophic injuries
- Catastrophic impairments

The amounts you can claim under each category of injury are set out in the *Statutory Accident Benefits Schedule* ("SABS") and the terms of the standard Ontario automobile insurance policy, called the Ontario Automobile Policy – (OAP 1) Owner's Policy.



Medical and Rehabilitation Benefits

How much medical and rehabilitation benefits can I access?

The amount of funds available to you depends on into which of the three categories mentioned above your injuries fall.

If you suffer a “minor injury,” your auto insurance company will fund a maximum of \$3,500 for medical and rehabilitation benefits pursuant to a treatment protocol called the Minor Injury Guideline. A “minor injury” means “one or more of a sprain, strain, whiplash associated disorder, contusion, abrasion, laceration or subluxation and includes any clinically associated sequelae to such an injury.”

If you are found to suffer an injury that falls outside of the Minor Injury Guideline, you may claim a combined total of \$65,000 for medical and rehabilitation benefits and attendant care benefits. See below for a description of attendant care benefits.

If you suffer injuries that render you “catastrophically impaired” under the accident benefit legislation, you may claim up to a combined \$1,000,000 for medical and rehabilitation benefits and attendant care benefits. See below for a description of catastrophic impairments.

It is important to note that your auto insurance company is not obligated to fund treatment up to the maximum policy limits, and may deny proposed treatment even if your policy limits are not exhausted. In other words, being eligible to claim \$65,000 or \$1,000,000 in medical and rehabilitation benefits does not automatically mean your auto insurance company will fund treatment up to that amount.

How do I claim medical and rehabilitation benefits?

Requests for treatment are submitted directly to your auto insurance company by your treatment provider (i.e. physiotherapist, psychologist, occupational therapist) via a treatment plan called an OCF-18. Your treatment provider will prepare the treatment plan (or OCF-18) after consulting with you. The OCF-18 will list the name of the provider, their diagnoses, the goals of the treatment plan, the types of the treatment recommended, and the total cost of that treatment.



What Evidence is Required to Build A Case?

Medical records: a detailed record of your medical treatment is crucial in proving that your injuries resulted from the accident. We help our clients gather medical bills, diagnostic test results, and any reports from doctors or healthcare providers. These documents serve as essential proof when filing a claim.

Witness statements: if anyone witnessed the accident or its aftermath, their sworn statement help your case. Their observations can provide valuable evidence in establishing negligence on the part of another driver.

Accident scene photos: photographs of the crash site and vehicle damage provide visual proof of your accident. If possible, take pictures of skid marks, road conditions, and any other indicators that may help reconstruct how the accident occurred.

Police reports: police reports contain an officer's official account of the accident, including vehicle positions, damage assessments, and witness or driver statements. This report can play a key role in establishing fault.

Steps To Take After A Car Accident

1

Check for acute injuries

You should perform an immediate check of yourself and any passengers in your car. It is important to call the appropriate authorities to obtain police, fire and/or medical assistance immediately. Even if your injuries appear minor, it is important to consult with a doctor as soon as possible, as some injuries, like concussions or brain injuries, may not be immediately apparent.

2

Remain in a safe location until police arrive

If possible (and safe to do so), it is helpful to turn on your hazard lights to alert other drivers to proceed with caution through the area. Depending on the severity of the accident, you should not move your vehicles before police arrive.

3

Remain at the scene

It is crucial to remain at the scene of the accident until after you have spoken with police. Failing to stay at the scene of the accident can result in criminal charges, including the possibility of a fine or imprisonment. However, in some cases, police may ask you attend a self-report collision centre.

4

Gather information

If possible, at the scene of the accident, be sure to gather key information that may be required at a later time. At a minimum, it is important to obtain details regarding:

- The location of the accident;
- The road and weather conditions at the time of the accident;
- The licence plate number, year, make, model, and colour of all vehicles involved;
- Driver's license and contact information for all parties involved;
- Photographs of the collision scene and injuries; and collect witness contact information (if applicable).

5

Call the police or report the accident

Under the Ontario *Highway Traffic Act*, you are required to inform the police of an accident if anyone is injured or more than \$2,000 in property damage has occurred. If you are unable to make the report, but there was an occupant in your vehicle, they are expected to inform the police on your behalf. When the police arrive, individuals must cooperate fully and provide them with details regarding the accident. The police will document the scene and circumstances surrounding the accident. Evidence obtained by police may be used in a personal injury claim.

If the police do not attend the scene of the accident, it is still important to exchange insurance information and contact details with the other party or parties involved and report the accident to a Collision Reporting Centre in Ontario within 24 hours. A collision report form can be completed, and photographs of your vehicle will be obtained.

6

Contact a personal injury lawyer

In our 40 years devoted to personal injury law, we have come to know the most effective rehabilitation teams in York Region and GTA, and will introduce you to the case managers, rehabilitation support workers, cognitive and behavioural therapists, physiotherapists, and occupational therapists, that will become instrumental to you achieving your recovery goals. Contact us today to arrange for a free consultation to hear more about how Boland Romaine can help.

7

Seek treatment for your injuries

To reiterate, even if you do not believe you initially sustained any injuries in the motor vehicle accident, it is often a best practice to consult with a medical professional. If you sustained injuries in the collision, it is crucial to seek medical treatment immediately and comply with your medical professional's recommendations, including when and whether you should return to work and which activities you can participate in.

Common injuries resulting from motor vehicle accidents include:

- Whiplash and soft tissue injuries;
- Cuts, bruises and contusions;
- Fractures and broken bones;
- Concussions or traumatic brain injuries;
- Spinal cord injuries and paralysis.

Unable to Return to Work After Being Injured?

There are a number of resources that an injured person may access if they are unable to work, including sick/vacation pay from their employer, short- and long-term disability (if a policy is in place), ODSP, Employment Insurance, and CPP disability benefits. In addition to these resources, those injured in a car accident may claim income replacement benefits through their accident benefits claim.

As a result, individuals injured in car accidents may advance multiple claims to recover lost wages, including:

- a claim for accident benefits against their own insurer;
- a claim for short-term disability (STD) and long-term disability (LTD) benefits;
- a claim for CPP Disability benefits;
- and a lawsuit/legal claim against the at-fault driver who caused the collision;

This is not an exhaustive list. Other benefits that an individual may claim include other forms of social assistance like ODSP.

What are Long Term Disability Benefits?

Long-term disability benefits are private insurance benefits that provide income replacement for disabled employees who meet the definition of “totally disabled.” Typically, long term disability benefits are paid on a monthly basis up to a maximum amount as outlined in the disability policy.

In addition to long-term disability benefits, there are several types of disability benefits available to Ontarians injured in car accidents, including:

- Canada Pension Plan Disability;
- Workers Compensation (in some cases); and
- Ontario Disability Support Program

What does “totally disabled” means for long term disability insurance

Each LTD policy is different. Generally, however, an LTD policy includes two disability definitions for “totally disabled” that depend on the length of time from the onset of the disability.

The “totally disabled” definitions focus on your level of functionality in relation to your ability to work. The medical diagnosis itself does not decide whether a worker is qualified for LTD benefits. In other words, it is the extent of your restrictions that will decide whether you qualify for LTD.

The meaning of “totally disabled” changes over time. When you first apply for LTD benefits, the assessment of total disability is based on whether you can perform your own occupation. This means that you are not able to perform the essential duties of your *own* occupation.

If you continue to qualify for LTD benefits after two years, your continued entitlement will depend on whether you can perform *any* occupation. This means you must show that you are unable to perform the essential duties of any job for which you are reasonably qualified.

Who qualifies for long term disability?

If an employee has long term disability insurance coverage at the time they become disabled, they are qualified to receive long term disability benefits. The conditions covered by a policy range from physical injuries to mental health illnesses. Read on to the next page for more.



“Insurers know which lawyers go to trial for their clients and which ones don’t. Shouldn’t you?”

Who Qualifies for Long Term Disability?

You are eligible for LTD benefits in Ontario if:

- you are an Ontario resident.
- have an LTD policy privately or through your employer.
- have worked for the requisite “qualifying period,” if identified by your insurance policy.
- have a long-term injury, illness, or medical condition preventing you from working.

Pre-existing conditions

Pre-existing conditions are a common exception to eligibility for long term disability benefits. Pre-existing condition clauses exclude or restrict you from receiving LTD benefits if the reason from your inability to work is grounded in a medical condition you had prior to the policy coming into effect. Where a disability occurs a short time after coverage begins, the insurer may investigate to determine whether coverage can be excluded under a pre-existing condition clause.

Exclusions and limitations

There is often a list of exclusions and limitations within the disability policy. If any of the listed conditions apply to you, you may not be eligible for benefits. For example, some common exclusions are self-inflicted injuries, including alcoholism.

Elimination period

The “elimination period” is the waiting period between the onset of the disability and the time you are first eligible to receive long-term disability benefits. You may receive short-term disability benefits (if available) during the elimination period.

Once this elimination period is over, you will be eligible to receive your benefits at the end of the following month. For example, if policy includes a 90-day elimination period, you may need to wait four to receive benefits.

How to Apply for Long Term Disability Benefits in Ontario

The first step in applying for long term disability benefits in Ontario is to see if you have coverage under a group medical plan. If you have coverage, then you should immediately speak with your doctor. You should not leave work to apply for disability benefits without first speaking with your doctor and getting their support.

To apply for long term disability benefits, you likely will have to complete a number of application forms. For instance, most insurance policies will have a notice of claim form, as well as a medical report form. You should confirm what you need to provide to the insurer in order to begin your access to benefits.

When completing the forms, take care to fill them out completely and accurately. You do not want to make a mistake and have your disability benefits denied. Your LTD insurer will also require your doctor to complete a form to accompany your application.

Once you have submitted your application, you may be required to attend an interview with a representative from the insurance company. This person will be the one who decides whether your claim is approved or denied. You should prepare for this call and be ready to answer any questions they may have accurately and confidently. There is a chance that the insurer might use this interview to find a reason to deny your claim for long term disability benefits, so you should be careful when speaking with them.



Common Car Accident Injuries

Traumatic brain injury (TBI)

A traumatic brain injury can range from a mild concussion to severe brain damage. TBIs often result from a direct impact on the head or sudden movement that causes the brain to collide with the skull.

Bone fractures

Broken bones are one of the most frequent injuries in Ontario car accidents. They can affect any part of the body, from fractured fingers to spinal fractures that require extensive medical treatment.

Whiplash

Rear-end and head-on collisions commonly cause whiplash, a painful soft tissue injury affecting the neck and upper back. Symptoms may take hours or days to appear and can lead to long-term discomfort.

Spinal cord injuries

The force of a crash can severely damage the spine, resulting in herniated discs, broken vertebrae, or even paralysis. Spinal cord injuries often require ongoing rehabilitation and medical care.

Eye injuries & retinal detachment

Eye injuries can occur when the face collides with the dashboard, steering wheel, or airbags. Flying glass can also cause severe damage, including retinal detachment, which may lead to permanent vision loss.



How Much Does Long Term Disability Insurance Pay?

The amount you can receive in LTD depends on the policy. You should review your long term disability benefits policy to see how much you are entitled to receive. Each policy is different, however most policies entitle an individual to claim 60% to 80% of the individual's salary or wages. However, there is often a maximum monthly amount that can be claimed under the policy.

How long can I stay on long term disability?

The maximum entitlement period is set out in the terms of your LTD policy. Although each policy is different, most LTD policies allow an individual to claim benefits until age 65, so long as the individual continues to meet the eligibility criteria. To be eligible, you must meet the disability test set out in your LTD policy. Each definition is different, but, generally, your condition or impairments must prevent you from performing the duties of your *own* occupation. It is common in LTD policies for the disability definition to change after two years, which may require you show that your impairments prevent you from performing *any* occupation.

What if my long term disability claim was denied?

Your LTD insurer may deny a claim for many reasons. One such reason may be your LTD insurer does not believe you satisfy the test for disability. Another reason may be more technical and related to specific provisions in the policy not having been met.

You generally have two options if your claim for LTD is denied:

1. **Appeal the decision:** LTD insurers commonly have an internal appeal process through which you can deny a denial. Be mindful of deadlines to commence an appeal. Your policy may limit the number of appeals you can make and require you bring your appeal within a certain number of days of a denial.
2. **Commence a lawsuit:** you can sue your LTD insurer for breach of contract, wrongful denial of benefits, and potentially bad faith. By doing so, you ask the court for a declaration that you are satisfy the requirements for LTD under your policy and claim damages for back-pay and bad faith. To achieve the best outcome, we suggest you speak with a lawyer.

If your long term disability application is denied, contact the long term disability lawyers at Boland Romaine LLP. You should act quickly. If you are to commence a claim in court, the Ontario *Limitations Act, 2002* requires you to commence a lawsuit within **two years** of the date of your denial.



Your future is worth fighting for.

Boland Romaine LLP are trial lawyers with over 40 years experience securing fair compensation for catastrophically injured individuals.

We believe it is crucial to hold negligent actors and insurance companies accountable. We do not back down when insurance companies treat our clients unfairly and confidently build our client's cases for success in court or at arbitration.

We are proud of our trial results. To us, they exemplify how hard we fight to secure funding for our client's future needs and compensation for their losses.

Frequently Asked Questions

Why do I need a personal injury lawyer?

Boland Romaine LLP will build your case to maximize recovery, ensure that your rights are protected, and will work towards obtaining the benefits and compensation to which you may be entitled.

How much can I receive for treatment in my accident benefits claim?

It depends on the type of injuries you have. Accident benefits categorizes injuries in three categories based on type:

- Those with “minor injuries” can receive up to \$3,500 towards treatment under the *Minor Injury Guideline*.
- Those with injuries outside the definition of “minor injury” (e.g. fractures, concussion, etc.) can receive \$65,000 for treatment and attendant care for up to 260 weeks after the accident.
- Those with severe injuries that meet the criteria for a “catastrophic impairment” can claim up to \$1,000,000 towards treatment and attendant care for the remainder of their lives.

How can I receive income replacement benefits?

If your injuries prevent you from working, you can claim IRBs by having your doctor to treatment provider complete a Disability Certificate (OCF-3).

If you meet the disability definition for an OCF-3, you can receive up to \$400 per week (or more if you purchased optional benefits). You are eligible to receive IRBs for your entire life, so long as you continue to meet the applicable disability tests.

Why Boland Romaine?

We have over 40 years experience obtaining fair compensation for those injured in car accidents. We have successfully resolved and tried cases involving severe brain, orthopaedic injuries, and psychiatric injuries.

How do I cope with feeling overwhelmed?

Contact Boland Romaine LLP for help. Dealing with insurance companies, medical appointments, and lifestyle adjustments or interruptions is an unwelcome burden. When we speak with clients, we aim to alleviate a significant part of that burden to allow you and your family to focus on your recovery.

What will happen at the initial consultation?

We do not charge any fees for consultations. When we first meet with you, we will gather information about your accident, injuries, and employment. We will then discuss the law with you.

If we can assist you, we will discuss our contingency fee agreement (CFA) and go over the authorizations required to gather your medical records to help immediately start working on your case.

We will then discuss our general strategy with you and answer any questions you may have.

“Your future will be decided based on evidence. So should the lawyer you choose to represent you.”

- Darcy Romaine





Our Commitment is to get you

Justice

**Tell Us What
Happend**

(905) 841-5717

BolandRomaine.com

info@bolandromaine.com