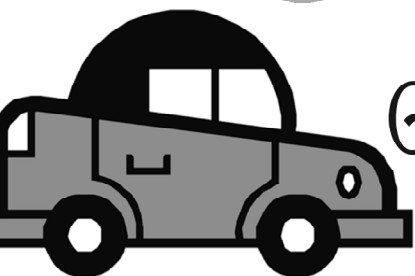


CRAASH COURSE



A Savvy Woman's
Guide to Ontario Car
Accident Claims

By Brenda Hollingsworth

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Introduction

In an ideal world, the worst part of a car accident would be the moment your vehicle is impacted by another. Once you've endured that unforgettable sound of crumpling metal and shattering glass, notified your next of kin and received a doctor's summary of your injuries there should, in all fairness, be nowhere to go but up.

And yet, here you are, most likely bed-ridden or suffering from aches and pains you didn't expect to experience for at least another 20 years. Your body is having a tough time adapting to the lack of movement – after all, it's used to running around from sports games to music lessons to grocery outings to work engagements without missing a beat.

The drastic drop in burned calories has caused an unattractive layer of flab to grow in places you didn't know were possible – and no amount of reassurance from your partner can camouflage this fact.

And let's not get into the effects of the accident on your social life – or lack thereof. That money you forked out for salsa-dancing lessons a few weeks back might as well have been money flushed down the toilet – after all, if your body could still move like a flamenco dancer, you wouldn't need the endless pain medications that are preventing you from enjoying that coveted bottle of wine that's been staring at you in the face from your wine rack.

Chances are your insurance company is not making things any easier for you either. The very industry that you've spent years supporting – in the hopes that a portion of your money would come back to you if you really needed it – is now making you jump

through hoops to collect the measly amount you need to afford rehab. As if juggling endless doctor's appointments, kids' lunches and carpooling schedules wasn't enough stress for a so-called 'recuperation' period.

Negotiating Compensation

If there's any comfort to be taken from these unfortunate life circumstances, it's this: You're not alone. Millions of people have gone through this exact situation – if not worse – and made it. In many ways, this book is to recount some of these experiences and highlight how you, too, can recoup some of the losses from this tragic event.

This book also seeks to shed some light on the big, dark secret of accident settlement. If you've taken a proactive approach and tried to demystify this nightmare yourself, it's not a surprise if your Google search has turned up empty.

In all likelihood, the bulk of information you dug up on the Internet was based on American law, which is different from the law of Ontario. Every jurisdiction in North America has a different *Insurance Act* that says who you can sue and under what circumstances. No other jurisdiction features the same no-fault benefits as Ontario.

As far as lawsuits go, there are also major differences from place to place. The damages you get for pain and suffering are capped in Canada but not in the US. In some US jurisdictions you get nothing if you're partly at-fault – unlike in Ontario, where you just get your damages reduced to the extent you are at fault.

To add to the complexity of the injury compensation landscape, most lawyer-generated advertising doesn't actually provide you with much substantive information either. There's a whole lot of "pick me, pick me" but not a lot of background to help you make a decision about whether or not you need a lawyer or – if you do need a lawyer – what qualities that person should have.

All of this is in addition to the pressure you're receiving from your insurance company to accept their offer to settle 'yesterday'. Understandably, you want to eliminate this added stress and get on with your life, but in many cases this can be a severe mistake.

I receive calls each month from injured victims who have received a 'final' offer to settle from an insurance company for a claim they have been handling on their own. The 'final offer' is typically very low and is offered under a strict time line. The adjuster has told the accident victim that they will "close the file" if the offer is not accepted.

A True Story

This happened to Jonah back in October 2008 when the accident benefit insurer laid down \$14,000 as its final offer. He was a young guy and, although \$14,000 seemed like a lot of money to him, the number was large enough that it led Jonah to get a second opinion – just to see what his case was worth. When I itemized all the types of claims he was eligible for, he was well over the \$25,000 mark, and that was on a conservative view of his expected recovery.

So how do you know if the settlement offer is worthwhile, or if you should pursue more? Well, if you've suffered minor injuries – such as a bruise to your elbow – taking your case any further doesn't make much sense. Most lawyers, myself included, require a certain level of severity to take on a case – if your injuries are limited, or if you're at fault, you really may not have a case.

On the other hand, if you were in a motor vehicle accident, either as a passenger, pedestrian, cyclist or driver who was not at fault, and you have been seriously and permanently injured, I can help – and there is no shame in asking for it.

One of the biggest barriers I have when representing injured women, or their child or older parent, is their fear that by suing they are claiming something they are not really entitled to. They act like, and feel that, their doctors, the insurance company, their co-workers and neighbours are suddenly going to think they are lying malingerers because they are claiming compensation.

In truth, there is absolutely nothing wrong with acquiring compensation for your – or a loved one's – injuries. Keep in mind that this exact situation is why you've been paying car insurance all these years.

Why I Wrote this Book

I'm hoping this book can be a solid starting point for anyone who has the misfortune of being involved in a car accident. It's to make up for the absence of adequate information available on the Internet. It's to outline the process required to navigate the world of insurance compensation and pick the right lawyer, if you choose to use one. Basically, my intention is to provide you with honest, useful information to review and study in the comfort of your own home. No hype. No pressure.

This book is also partially for me. I'm hoping that by answering some questions here, I'll be able to streamline the work in my office. We receive many calls from people asking me to represent them in their accident claims. Unfortunately, I cannot accept every case and if I gave a free consultation for each new potential case, there simply wouldn't be enough time to get any work done.

Instead, I'm using this book to share my years of legal experience to help you make informed decisions. It should be noted, however, that although I am a lawyer, this book does not constitute legal advice. Legal advice can only be given if you hire me and I agree, in writing, to accept the case.

Even if I cannot accept your specific case, I believe every woman should be educated as to how insurance companies and injury claims work. Arming ourselves with this information will hopefully not only eliminate the guilt and shame associated with pursuing legal action, but also ensure no one falls victim to these big-dollar businesses ever again.

Chapter One:

How the Insurance Industry Works

In the days after your accident, your head was spinning – and not merely from your pain medication. In addition to your throbbing headache and aching neck, you also had to deal with the insurance company – and a boatload of complex, detailed paperwork.

If you are in an accident in Ontario, there are three insurance regimes that come into play: your property damage claim for the damage to your car, your statutory accident benefits which are the no-fault benefits and the bodily injury claim you may make if you are hurt and the accident was someone else's fault.

To shed a bit of light on this overly-complicated process, below is a brief overview of the different components and steps.

The Property Damage Claim

This is the coverage you get to repair or replace the damage to your car. Most personal injury lawyers (like me) do not get too involved in the property damage part of the claim. Generally, unless you are driving a Lamborghini the dollar amounts are small enough that if you had a lawyer involved, you would get less than if you handled the claim itself.

The Statutory Accident Benefits

After you notified your insurance company of the accident and your injuries, they put you in touch with an accident benefit adjuster who immediately sent you a large collection of forms to fill out. Depending on when you're reading this book, those forms could still be sitting on a desk somewhere collecting dust. Don't let them. If you don't have the forms, call your insurance company and ask for them immediately.

Almost everyone involved in a car accident in Ontario is entitled to Statutory Accident Benefits, regardless of who caused the accident. In most cases, these benefits are paid by your own car insurance policy. If you don't have car insurance, and no one in your home has car insurance, you will likely be covered by the policy of the other car involved in the accident. There is a policy that covers almost everyone (including a government pot of last resort).

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Without completing and filing those forms, however, you will not get all of the benefits you are entitled to. Period. This could come back to haunt you if your injury forces you to miss work down the road and pinch pennies.

The Accident Benefits have three different streams of benefits depending on how hard you are hurt: Catastrophic, Non-Catastrophic and Minor Injury (“MIG”). If you become a quadriplegic, paraplegic, or suffer another form of serious injury you will be described as “cat”. If you are in that category, call a very experienced personal injury lawyer now. You should not be handling your file on your own.

Many people are in the middle category — you are not “cat” but you have more than a so-called Minor Injury. The most common types of injuries in this group are fractures and head injuries. Generally, if you are in this category, you will benefit from a free consultation.

Many people are in the Minor Injury stream, even though your injury does not feel minor. Certainly not everyone who is in the MIG needs a lawyer. Sometimes all you need is someone to pay for a few rounds of physiotherapy and you’re good to go. If that is all you need to get better then, by all means, deal with the adjuster directly.

If you’re having problems deciphering whether the Statutory Accident Benefits can help you with your particular injury, you’re not alone. A big problem injured Ontarian’s face is that it is very difficult to get a straight answer about what accident benefits will or will not cover. And the form letter sent by the insurance

company doesn't help – for many people, it's basically incomprehensible.

To help you, below is an outline of the major benefits that are offered through the accident benefits. (There are others! Speak to a lawyer.) The total amount of the benefits available (also known as the “policy limits”) varies depending on whether you are cat, non-cat, or in the MIG, as does the eligibility period. If you are still in doubt, contact a lawyer for a free-consultation to help you understand what you are and aren't eligible for. By the way, the amounts of the benefits and even the exact benefits themselves change from time to time. Depending on when you are reading this book, you will want to find out if there have been any changes.

- ⦿ **Attendant Care:** There is money available to pay someone to help you with your personal care. This can include dressing, bathing, wound care, leg shaving, hair drying, administering medicine and many other very personal types of care. To qualify for this benefit you need to be assessed by a health care professional, most often an occupational therapist. The insurance company pays for the assessment.
 - ⦿ **Housekeeping:** If you are cat, or have purchased optional benefits, there's no need to tolerate the mountains of dirty laundry piling up. Currently, there is an amount available for housekeeping and home maintenance so that not all household tasks have to be neglected while you're recuperating. Most insurers need receipts but the work can still be done by family members. You will usually, but not always, need an assessment for this too. Again, the insurance company will pay for the assessment.
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- ⦿ **Income Replacement Benefit:** If you are off the job for more than one week, this benefit will pay you 70% of your gross weekly earnings up to a fixed maximum that changes from time to time. The test that applies for you to be eligible varies depending on the length of time you are off work. There is a form your employer completes for you to get this money.
 - ⦿ **Caregiver Benefit:** If you are the primary caregiver for children or a disabled adult, and have purchased this benefit, there may be a weekly benefit available that you can claim if you can't claim the income replacement benefit. The amount varies depending on the number of people you are looking after. Your need for this benefit is something that is assessed, again usually by an occupational therapist.
 - ⦿ **Non-Earner Benefit:** If you were not working and you were not a caregiver there is a weekly benefit payable if you are not able to live a normal life after the accident. You don't get this benefit until 6 months post accident and you will be sent for an assessment before you qualify.
 - ⦿ **Medical and Rehabilitation Benefits:** There is a pot of money available to fund your rehabilitation and medical expenses. This is for those expenses that are not covered by OHIP and that are necessary to help you get better or reintegrate into your life. The benefits available under this category range from prescriptions and physiotherapy to an accessible car and home. The amount available and the time it is available varies on whether you are cat, non-cat, or in the MIG.
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- ◉ **Visitors Expenses:** Family members who visit you at the hospital or during your convalescence are entitled to be reimbursed for their mileage. There is no prescribed rate for this mileage. The only real test to qualify for these benefits are that they be reasonable and necessary.

You will submit all these expenses or requests for treatment funding to your insurance adjuster. If the insurance company wants to deny your claim, there is a procedure they have to follow. Sometimes that procedure involves conducting their own assessment of you. If they follow the procedure, and still deny your claim, you can mediate their denial.

Mediation of a denial of an accident benefit claim takes place through the Financial Services Commission of Ontario (FSCO), usually by telephone. It is a mediated telephone call between you and your lawyer if you have one, the adjuster, and a neutral person at FSCO.

If the issue is not resolved at mediation, you have the choice to go to arbitration at FSCO or to sue. Sometimes the accident benefit in dispute will be small enough to sue in Small Claims Court.

Following the first anniversary of your accident, you can try to negotiate a settlement from your accident benefits. In many cases, you can negotiate a lump sum payout of part or all of your accident benefits.

The Tort Claim (We're Talking Bodily Injury – Not Pie)

If you've been injured in a motor vehicle accident, you may have a claim against the driver and owner of the vehicle that hit you. Part of whether or not you have a claim will depend on who or what caused the accident.

If you and you alone, caused the accident, unless your vehicle malfunctioned or there was some other external issue that came into play, you will not likely have a bodily injury claim. In addition, to sue for pain and suffering in Ontario, you have to prove that your injuries are serious and permanent and important, or disfiguring. The legal "threshold" is not all that straight-forward. You may want legal advice about whether you meet that test before making important decisions about your case.

The other hurdle you must jump before suing for pain and suffering is the "deductible". In Ontario, there is a "deductible" that will come off your damages for pain and suffering if those damages are less than \$100,000. We will explore this in more detail a little later.

In addition to pain and suffering, the bodily injury claim can include your out-of-pocket expenses and loss of income and your future medical care costs, housekeeping, loss of pension, loss of competitive advantage and many other types of damages to the extent that those damages are not covered by the accident benefits. There can also be compensation for your family members who have lost your care and companionship because of the accident.

If you are going to bring a claim against the driver and owner of the car that caused your accident, you should give notice of your intention to do that within 120 days. You won't get interest on the damages until you give notice.

It is possible to negotiate a bodily injury claim with an adjuster directly; however, you have to keep your eye on the 'limitation period'. This 'limitation period' dictates that a lawsuit must be started within two years of the date of the accident. Sometimes it takes almost that long to know if your injury is serious and permanent.

If you start a lawsuit for your bodily injury claim you can bring it in Small Claims Court, or in the Superior Court of Justice as a Simplified Procedure case or a regular case. The monetary limits for the Small Claims Court and Simplified Procedure change from time to time. The website for the Ontario Courts can tell you the limit that applies to you.

Dealing With the Insurance Adjuster

As you sort through the paperwork and navigate the insurance claim process, you're going to be speaking with your adjuster a lot if you don't have a lawyer. This person will be a regular fixture in your life during the aftermath of your accident and your recuperation period. They might even show concern and empathy for your situation.

No matter how nice they are, however, it's vital to remember that insurance companies are businesses. They have shareholders who demand a positive return on their investments. Settling claims for

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the least amount possible is an important factor for the insurance company's bottom line.

Think About It...

Think about the cost to you of your annual car insurance policy. Most Ontarians pay about \$1200 per year, though there is fluctuation depending on options selected and demographic factors. Now consider that 12 sessions of physiotherapy alone costs about \$1200. The size of the premiums most of us pay, relative to the size an average injury claim is significant. As a result, to be profitable, the insurance companies must keep a lid on moneys paid out as injury claims.

Keeping this in mind, it's important to recognize that insurance adjusters are not on your side. They represent the insurance company, and this fact is true regardless of whether the adjuster is an employee of the insurance company or a so-called independent adjuster who has been contracted to look after your case. It is also true if the adjuster is called a "claims representative" or a "customer service representative".

I know this is hard to swallow, particularly when the insurance adjuster is bringing you flowers and paying for your parking expenses. But let me tell you – these actions are all part of the game.

The mandate of the insurance adjuster is to settle your claim as cheaply as possible – not to ensure you receive all the compensation you deserve. The nicer they are to you, and the more effort they put into earning your trust, the more likely you'll be to settle for a lower-than-face-value price – or worse, reveal information that could lead to a lower settlement.

Am I saying all insurance adjusters are evil? Absolutely not. The vast majority of insurance adjusters are decent professionals who are just doing their job. The fact remains, however, that their job is to settle your case, and all of the cases they are handling, for the least amount possible.

What to Look Out For

It's important, therefore, to always have your back up when dealing with adjusters – and not feel guilty for pursuing your settlement. Because, trust me, some of them will try to make you feel that way.

It's almost like they're expecting you to misrepresent yourself – they're looking for slip-ups, inconsistencies, basically anything that might save the insurer money – which is why it's imperative for you to have confidence in yourself, in your case and take the necessary precautions to protect yourself when communicating with the adjuster.

1. Watch What You Say Because adjusters are effectively trained to question whether you're injured – or not as injured as you claim to be – when you're speaking with them you must recognize that everything is “on the record”. If you say something that hurts your case, no matter how innocuous and no matter what the setting, it will come back to haunt you.

Adjusters make notes of everything you say. If they call you on a good day, or when your pain medication has kicked in, and you say you're feeling better, you can be sure that will come back to haunt you.

2. Avoid Recorded Statements Adjusters will also frequently request a recorded statement – something that I very rarely allow my clients to give. Insurance companies love recorded statements because most of the time, once people start talking, they don't stop. Adjusters are trained to pause, for example, so that you start blabbing to fill the awkward silence. In contrast, if

the statement is in writing, there is more time to pause, reflect and correct an answer that comes out wrong the first time.

There are certain situations when you have to give a statement by law. When this happens, however, it's a good idea to ask if you have a choice to give a statutory declaration. If the answer is no, ask them to provide you with a copy of the law or policy that says you must give a recorded statement. If you can't avoid it, make sure every question you answer is phrased in a clear, fair and narrowly-focused way. This might be a good time to consider getting legal advice.

3. Be Protective of Your Medical Records If you're handling your case on your own with the adjuster, he or she will ask you to grant access to all of your medical records, employment records and often other private records from third party sources. This effectively gives the adjuster unfettered access to your past.

Most people would be surprised to know what their medical records contain. Any mention to your family physician about marital difficulties, sexually transmitted disease, addiction issues, contraception or abortion will be in those notes.

While it may not be possible to conceal those records before settling the claim, it is better to see the records for yourself first so you know what they are getting. Ideally, you will have the advice of a lawyer who can make it clear to you that those kinds of private but embarrassing records are irrelevant.

Know Your Options

So, we've established that you and the insurance adjuster are not going to be best friends. She'll never hang out with you socially, just as she will never attempt to give you a penny more than what she has to. While it's important to be polite and respectful, you should never forget that your interests are not the same as the insurance companies' interests.

That being said, it's important to understand your options and decide on a plan of action early in the process. In most cases, this plan of action usually revolves around deciding whether you're going to handle the case yourself, or whether you're going to employ outside legal help.

If your injuries are relatively minor and your economic losses are fairly well defined, you may consider trying it on your own. Likewise, if you're an experienced negotiator, you may consider trying it on your own. However, if you're dealing with an injured child, or your own injuries have affected your livelihood or are going to involve expenses in the future for care and rehabilitation, you should strongly consider retaining a lawyer.

A True Story

Caryn had experienced a terrible string of bad luck. Between 2002 and November 2008, when she came into my office, she had been in four car accidents.

Her initial accident in 2002 was the most serious and had caused her to suffer a mild brain injury. At the time, she opted not to see a lawyer and instead dealt only with the insurance adjuster.

Unfortunately, given the severity of her injuries, that was the wrong move. Despite the fact that the medical professionals hired by the insurance company indicated her dire need for medical, psychological and social intervention, she received virtually none of these things.

After six years, she had received a single course of physiotherapy, no therapy for the brain injury, no housekeeping assistance, no non-earner weekly benefit and no settlement for pain and suffering. Unfortunately, by the time she saw me, the limitation period – the amount of time she has to file a claim – for her most serious car accidents had passed. No one had even explained what it was or whether she should consider legal advice.

Caryn came to me because the insurance adjuster had written to her offering a final settlement of all of her injury claims back to 2002. The settlement proposed was less than \$15,000 on a case that might have been worth high 6-figures, or more, if she had received appropriate advice back in 2002.

With the limitation periods expired, multiple intervening accidents and the failure to obtain medical care, there was very little I could do for Caryn. Where was the helpful insurance adjuster? She certainly didn't take any proactive steps to make sure Caryn's needs were met and to ensure that she was fully apprised of all of the benefits available to her under her insurance policy.

What happened to Caryn happens to many injured people every day. It happens slowly, as days and months slip by without proper attention paid to building the case and obtaining appropriate rehabilitation.

Chapter TWO: Common Mistakes When Handling a Case on your Own

For some people, haggling for a piece of jewellery on the beach of an all-inclusive resort is enough to send them into a cold sweat. These people are not going to make it in the cruel, hard world of insurance settlement negotiations.

On the other hand, if your fondest adolescent memories are of your high school debate team, and if you enjoy the thrill of high-pressure situations, it might just be for you.

If you make the decision to tackle the insurance company head-on, without the help of a lawyer, there are a few things to keep in mind at the onset of your communications and negotiations. Below are

the most common mistakes made by accident victims – and suggestions on how to avoid them.

Mistake #1: Settling too Quickly

Car accidents aren't fun. If you're like most people, you'll have a natural inclination to want to put the whole thing behind you, including dealing with the insurance company, the adjusters, and the medical assessments. A quick settlement of either your accident benefit claim or your bodily injury claim is rarely recommended. Here's why:

Not all Injuries Reveal Themselves Immediately

A True Story

The extent of many injuries is often not known for months or even years. This was the case with Sophie, a 40-year-old woman who recovered from her initial accident-related neck and back injury rather quickly, but was still suffering from some knee pain when she came into our office.

At the time, no one could figure out what the pain was. One doctor told her it was a sprain or strain, while another suggested it was a rare birth defect that was completely unrelated to the accident. In the beginning, this looked like a case to settle quickly because it seemed like her accident-related injuries were largely gone.

Fortunately, a third doctor finally took the time to perform more significant diagnostic testing on Sophie's knee which revealed a damaged meniscus resulting from the accident that required surgery. We settled this case (both accident benefits and bodily injury claims) for three times the amount we would have settled if we had not waited for the appropriate diagnosis.

If you haven't returned to work after your injury, or if you're working less than you did before the accident, you should definitely not settle your claim unless you are certain you have reached maximum medical recovery (MMR). In Ontario, where pain and suffering damages are capped, often the 'loss of income' claim makes up the largest component of a settlement.

If you don't know your final medical prognosis, how will you calculate your loss of income? When will you go back to work? When will you be back full-time? All of those questions will be unresolved. You can be certain that the insurance company will not make assumptions about your return to work that will *increase* the amount of your settlement.

Because of this reality, the insurance adjuster is likely going to pressure you to settle your claim earlier than you would like. If this is the case, simply tell the adjuster that you cannot reasonably settle before you have reached maximum medical recovery unless the adjuster is willing and able to provide you with all of the insurance available under the policy.

Investigating Liability Takes Time

Sometimes it's clear that another person is at fault in an accident. Usually, there will not be a big issue of liability when you are a passenger. However, if you were a driver or a pedestrian, there may be a question of liability or contributory negligence. The fact is that it can take months for liability reports to be prepared.

A True Story

When we represented Sue, a woman in her 50's who was involved in an accident with a pedestrian, a railway crossing and a transport truck, the police force responsible for the roadway took 18 months to complete its review and assessment of the accident site. None of the insurance companies involved were going to even start a settlement discussion until this report was available. So, even though the client's injuries had stabilized, no discussion was possible because that report was not complete.

Adjusters Love to Rush You

Many, many adjusters make time sensitive offers to settle the accident benefit or bodily injury claims. After the time expires, the adjusters will 'close their file'. Be aware: As long as the limitation period has not expired, your rights cannot be affected by the adjuster closing their file.

Most motor vehicle accident bodily injury claims on behalf of an adult must be started within two years of the date of the accident. This is the 'limitation period'. To preserve your right to pre-judgment interest, however, you are required to give a form of notice to the drivers against whom you may claim.

If it is a child who is injured, the limitation period extends until their 20th birthday. However, waiting until that time to consult a lawyer will make it difficult to collect evidence which may be ancient history by the time the matter goes to trial. It may also impact your chance to claim damages on behalf of family members who have been affected by the child's injuries.

There is strategy involved in negotiating as the limitation period gets closer. Your best bet to staying on the right side of the notice and limitation periods is to get legal advice.

You might be surprised to know that even if you are in negotiations with the insurance company, if the limitation period passes and you have not started a claim, you could be "statute barred", meaning your right to compensation is gone.

You should also know that many lawyers will not accept a case on the eve of the limitation period. Because lawyers generally get paid on a contingency fee basis (no win- no fees), the lawyers must investigate the claim to determine if it is winnable before they accept the case. Without time to conduct due diligence, many lawyers will regretfully decline your case.

Mistake # 2: Not Documenting your Damages and Losses

When you were healthy, your iPhone was probably your closest friend. Without it, it would be virtually impossible to keep track of meetings, deadlines, sports schedules and family events without losing your mind. The events surrounding your injury require the same diligent tracking.

We tell every client we meet to keep records of their losses as a result of the accident. The clients who enjoy the best outcomes are the clients who get this advice shortly after their accident and who follow it carefully.

I know tracking every little minute detail can be a pain but, as you've learned from earlier chapters, the settlement process takes time. If you don't keep accurate records, you won't be able to remember small losses that occur over time that can add up to significant amounts.

A very important component of the record-keeping process is to keep a calendar that records the following information:

- ⦿ All accident-related appointments such as medical and therapeutic appointments;
 - ⦿ Sleep disruption;
 - ⦿ Pain medications taken;
 - ⦿ Pain reduction steps taken (such as icing or elevating a leg);
 - ⦿ Activities missed or cut short (vacations, weddings etc.);
 - ⦿ Days with elevated pain;
-

- ⦿ Missed work due to accident if client is back at work; and
- ⦿ Time and activities performed by friends and relatives due to the accident.

Our clients find this type of recording challenging. However, it's just as challenging – if not more so – to try to remember how many nights' sleep you missed in the year after the accident. Or how many times you had to pass up sex due to accident-related pain. Or how many pounds you gained due to your medication for accident-caused depression.

It's also extremely effective to hold up a chart for a jury showing six medical appointments per week for nine months when the insurance company is suggesting that you did not “try” to get better. This is not something you can create after the fact from memory.

The Damage Equation

In Ontario, the calculation of damages for pain and suffering is not an exact science. Awards for damages and settlements are based on what other victims have received in the past for similar injuries.

For this reason, there will usually be a range of damages for a particular type of injury that can be drawn out from the written decisions of judges in other cases. Evidence that comes from your detailed calendar is very likely to push a case higher to the top of the range.

The possibilities aren't infinite, however. In Ontario the maximum you can be awarded for pain and suffering is currently about

\$350,000. Damages at the cap level are generally reserved for the most serious cases of catastrophic injury.

As I described above, for motor vehicle accident cases, there is also a financial threshold you must surpass before receiving damages for pain and suffering. What does this mean? Well if, after calculating the damages for your various injuries and the pain and suffering associated with them that number lands under \$100,000, you have to pay a deductible.

Assuming the deductible is \$30,000 at the time you are reading, here is how it works. If you're awarded \$70,000, the insurance company only has to pay \$40,000. If your damages are only worth \$15,000 you receive nothing. Many members of the legal profession think this deductible – which was set in the Insurance Act and passed by the provincial government – is absolutely ridiculous. It's the harshest in North American and considered by at least one judge as a "tax on pain".

Unfortunately, there's nothing much we can do except lobby our Members of Provincial Parliament (MPP) to voice our concern, and I encourage all my clients to do so. I, myself, met with my own MPP, Jim Watson (Ottawa West-Nepean) back in November 2007, and have written to his successor more than once.

In light of the deductible, it's very important to provide as much evidence as possible of the impact of the injury on your life. In some cases, the evidence from the calendar could push a case over the \$100,000 mark, which allows you to avoid the deductible all together.

Out- of- Pocket Damages or Economic Loss

Even if you are getting income replacement benefits through the accident benefit insurer, recovering from your accident-related injury, and making it through months of trial preparation on a reduced income can put a significant dent on your pocketbook. Luckily, the expenses you incur and the income you lose are often very significant components of your claim for compensation – and they can be calculated easily, if someone is keeping track.

Medical and Rehabilitation Expenses

Your injuries probably require health care services that aren't covered by OHIP, such as physiotherapy, occupational therapy, chiropractic, massage, prescriptions, prolotherapy, psychology, vocational rehabilitation, dentistry and, in catastrophic cases, additional services such as case management. If you have extended health care benefits that cover all or some of these services, you will have to submit your expenses to that insurer first.

If you don't have extended health care, if there is a deductible (for example, if they only pay 80%) or an annual limit that you exceed, or if a particular service isn't covered, you'll have access to the medical and rehabilitation policy of the Accident Benefit insurer. You and your treatment providers will make arrangements to have your services paid directly by the Accident Benefit insurer, in most situations.

If there are accident-related services that are not covered, however, you'll need to track those expenses to claim them from

the at-fault driver. In addition, there's a policy limit for Accident Benefits depending on the severity of the accident. Anything over and above the Accident Benefits' maximum limits would also be claimed from the at-fault driver in the bodily injury claim.

Loss of Income

Ontario accident victims are only entitled to 80% of their pre-trial loss of income, but they're entitled to 100% of post-trial losses. There is also a one-week deductible period.

If you had a straight salaried position that you can no longer do, it will be relatively easy to calculate your past loss of income. However, you will want to be aware of any raises or bonuses your co-workers received if you would have received the same.

Calculating your loss of income is trickier when your pre-accident work was irregular, your career was on an upward trajectory or market conditions in your position were changing, for better or for worse. It is also more challenging to calculate income loss for people who are self-employed or receive tips or commissions.

If you are retrained to work at another position, the income from your new position will have to be factored into your claim for losses.

It is vitally important to track, calculate, document, and fairly project your loss of income claim and any related loss of a future pension. We commonly use an economist, forensic accountant and/or an actuary to perform these types of calculations.

Other Types of Expenses

If you have to purchase anything else related to your injury, and you have to pay for it out of your own pocket, keep track of it. For example, if you're unable to drive for four months because of a leg cast, you'll have transportation expenses. Keep all the necessary receipts and records to prove those losses. If you were driven by a loved one, a record of that person's time will be important.

If you have to hire a babysitter to look after kids because you can't take care of them due to your injuries or to get to medical appointments, and you did not qualify for the caregiver benefit under the Accident Benefits, you can claim these expenses from the at-fault driver if you have accurate records and can prove your losses.

No matter what, don't exaggerate your losses. This goes for both pain and suffering and out-of-pocket expenses. To do so is the kiss of death for your case because you effectively play into the insurance company's premise that all claimants are fraudsters.

In our office, we repeatedly tell our clients that their number one job is to get better and to return, to the greatest extent possible, to their pre-accident condition. That means admitting when your injuries improve and to what extent and acknowledging that you had a good time on your family vacation.

Will making this type of admission reduce your settlement or jury award? Maybe. But on the flip side your settlement or jury award may be zero if a jury is confronted with a photo of you sipping a Pina Colada on the beach after you just told them that you'd been too ill to take a vacation after the accident.

It's also extremely harmful to your injury case to hide past accidents or past injuries. Your history comes out in the wash when you pursue an accident settlement, with or without a lawyer. A claimant who is not credible has very little bargaining power.

On the same note, if you are making an income loss claim, your past income tax returns will be relevant and will likely be produced. If your tax returns are not pristine, that can be a problem. Consider fixing any tax issues before embarking on settlement negotiations if possible. Use a reliable, credible professional for this purpose.

What about the damages when the injured person is a child?

Most parents focus on the bright side when their kids are injured. Unfortunately, the desire to be positive can undermine your child's claim for damages. In some situations, it can also stall the rehabilitation process.

For example, parents may turn a blind eye to changes in behaviour or academic achievement after the accident if the child is recovering well physically. The result is that these changes are not documented – and worse – the child is not getting the psychological or additional care they need.

Similarly, some parents do not tell the child's school about an accident, or minimize the impact on the child. You may do this with the best of intentions to help the child get back to normal as soon

as possible. However, the result can be that important signals that the child is suffering are missed.

In a bodily injury claim, the child's school records will be produced to the insurance company's lawyer. Teachers who know about the accident may want to encourage the child by painting a rosier picture than reality on the report card. On the other hand, teachers who do not know about the accident may be very critical of changes in behaviour and may treat a child who is suffering from post-accident woes as a trouble maker.

The Bottom Line

You need to prove your damages before the insurance company will pay them, whether you go to court or are negotiating a settlement.

Mistake # 3: Negotiating With the Adjuster While Unprepared

Maybe you're great at negotiating free entrees after a less-than-stellar serving experience at your favourite restaurant. Or maybe you received a standing ovation for your 'disgruntled customer' performance the last time your vet tried to overcharge you.

You might have the best poker face on this side of the Nevada border, but that's not going to help you when you're negotiating, one on one, with an insurance adjuster. Think about it. Even when you negotiated that below-asking price for your home, you weren't technically the one negotiating – it was your realtor.

Most people will never negotiate anything as important as their own personal injury case. On the other hand, insurance adjusters are specifically trained to negotiate with accident victims and conduct these negotiations day-in, day-out. That's true for both the accident benefit settlement and the bodily injury claim. How are you going to match their skill and expertise?

Preparation will certainly help. There are five key areas you should review before embarking on a negotiation with the adjuster:

1. The Strength of Your Case

You'll be better prepared to negotiate your settlement if you're aware of the strengths and weaknesses in your case. The evidence

you collect to negotiate your bodily injury settlement should include:

- ⦿ The Motor Vehicle Accident Report (available from the police station for a fee)
- ⦿ Witness Statements (witness names are on the Motor Vehicle Accident Report)
- ⦿ Photos of the accident site and your injuries
- ⦿ Documentation of your losses

Until you have collected and processed all of these items, you are not ready to negotiate a settlement of your case.

Once you have collected all of these items, prepare a cover letter summarizing what the evidence shows and calculating what damages you are seeking. In the letter, tell the adjuster how the accident happened and why it was the other driver's fault.

If there are aggravating factors that you think would impact a jury's assessment of the case, describe that in your letter. Remember to include a settlement number that is significantly higher than where you hope to arrive.

2. Determine the Case Law

As I mentioned earlier in the book, the amount that a particular injury is worth (say a torn rotator cuff or soft tissue injuries in the lower back), depends largely on what other judges' written decisions have said it's worth.

Non-lawyers are at a distinct disadvantage when it comes to finding similar cases. Lawyers have access to on-line databases (WestlawCarswell or QuickLaw are two examples) which can make case law research a breeze. These are products available only by paid subscription. However, you may be able to use these or other case law services at your local law library. A free case law site that will provide some past case decisions to assist you is www.canlii.org.

Another source of case law that is available on-line to the general public is the *Compendium of Damages Awarded in Personal Injury Actions across Ontario, January 1999 to October 1, 2012*. The document, which is now somewhat out of date, is available on the County of Carleton Law Association website, www.ccla-abcc.ca.

If you have not done so already, after you have done your research, consider getting a consultation with a personal injury firm to run your numbers by a lawyer. Most good lawyers will provide this consultation for free.

3. Develop your Goal Number

In our office we would never go into a negotiation without a target in mind and neither should you. This number cannot be pie-in-sky. It has to be something you can justify based on the evidence you have gathered and the case law research you have done. If you can make the case to support your goal number, this is an important step towards getting ready for your negotiation.

4. Develop your Line in the Sand

One question to ask yourself when determining your goal number is: Where is your line in the sand? What is the number beneath which you will not go without a fight? You should also have this number prepared. If you have thought through your bottom line, you will have more resolve if the first round of negotiations does not go well and you are tempted to pack it in or take a low ball number.

Remember, if you settle your case the settlement is final regardless of what the future holds so be fair to yourself in developing this number. Again, this is true for either the accident benefit claim or the tort claim.

5. Remember – You Don't Have to Settle

It will also help to understand what your options are if you do not resolve the case with the adjuster. Will you sue on your bodily injury claim in small claims court? You can run a small claims court trial on your own, or hire a paralegal to do it for you. Some lawyers may also handle a small claims case for you.

Out-of-pocket costs are generally quite low in small claims court. If you need doctors or experts to prove your case, however, you will have to get them to court and pay for their time. You will also have to attend small claims court for a pre-trial and the trial. Sometimes there are more than two attendances if there is an appeal of the verdict.

Another alternative is to simply wait and reopen negotiations in a few months, provided that the limitation period allows you that flexibility. Remember, in most cases there is a two-year limitation period in Ontario.

The adjuster may be more amenable to settling with you if your injury level remains constant over several months. The longer you remain injured, the more likely you are to secure a higher amount at a trial. The adjuster may also be concerned about new symptoms emerging. It will often be a smart strategy to try to negotiate again.

Obviously another option is to hire an experienced personal injury lawyer to start a lawsuit on your behalf. If you are considering this option, be sure to contact the lawyer at least four months before your limitation period expires if at all possible.

You also have the option of keeping your accident benefit claim open. Your medical and rehabilitation benefits are available until you reach the policy limits or for non-cat injuries, for 10 years from the date of the accident.

The Bottom Line

A little preparation will go a long way to helping you arrive at a fair number for your injuries.

Mistake #4: Negotiating Like an Amateur

So, you've completed your preparations and now you're ready to negotiate. What approach will show the adjuster that you mean business?

Well, for starters, don't make the first move if you can avoid it. We suggest that, if possible, you avoid making the first offer. You can ask the adjuster to contact you when he or she is ready to settle the case. However, try not to put a number on the table until you get one from the insurance company.

The first number from the adjuster will probably be a lowball offer. The adjuster will expect you to counteroffer. If the offer is made on the telephone, don't respond immediately with a rejection or a counteroffer. Thank the adjuster for the offer and let him or her know you will be back in touch.

Send the Demand Package

The demand package with all of your evidence and your cover letter can be sent to the adjuster after you receive an offer. And for once, it's okay to be demanding. In fact, the more demanding you are, the better.

Of course, everything has to be within reason. When you prepared for the settlement negotiations, you researched dollar values for cases like yours and you developed a goal and a bottom line. In your demand letter, two options to consider are specifying a

settlement amount or asking for the policy limits. These are not the only options but they are the only options that can be reasonably explained in a book like this without being too technical.

If you're not able or ready to put forward a number, consider asking for the policy limits. In Ontario, the minimum policy limits are \$200,000. However, it would be very unusual for an Ontario driver to have such a small amount of insurance. Most Ontario drivers have \$1 million and many have \$2 million. (As an aside, make sure you are adequately insured. I almost always recommend a minimum \$2 million liability policy to clients who ask).

The strategy behind the offer for the limits of the policy is that it puts some pressure on the insurance company to settle with you. If you offer the policy limits, and your case actually beats the policy limits, the insurance company could potentially be on the hook for more than the value of the policy.

Ask for More than You Want

If you do specify a settlement amount in your demand package, make sure it's significantly higher than your goal. Remember, the more demanding your demand package, the better!

Every negotiation is different, but think about the natural negotiating instinct to meet in the middle. For example, if the adjuster offered you \$30,000 and your goal is \$60,000, consider starting at \$90,000 or even \$100,000.

You want to leave some room for the adjuster to negotiate you down. Some people find this process nerve wracking, others find it

exciting. Either way it is an unavoidable part of the process. Like all human beings, the adjuster will want to feel like they have negotiated you down. They will likely have to report on the progress of the negotiation to one of their superiors. Giving them a chance to knock down your offer makes this process easier.

It is also possible that you will settle for more than your goal from time to time and is a great result when it does.

Don't be Afraid to Ask Questions

The adjuster will have the settlement he offers broken down into categories. With some variation, the adjuster will give you a breakdown as follows:

General Damages (Pain and Suffering), less deductible of \$30,000 = \$
Economic Loss = \$
Prejudgment Interest 5% times 1.5 years = \$

You should ask very specific questions about how the adjuster arrived at each of the numbers. For the general damages, ask him or her which factors were considered and what cases were relied on.

It's even more important to get to the bottom of the economic loss numbers. You should understand how much of the offer is for past loss of income, future loss of income, past care costs, future care costs, future housekeeping and home maintenance as well as the out-of-pocket expenses you have claimed.

Make very careful notes of everything that is said on every point so that you understand the negotiating points even after you are off the telephone. If you get an answer you do not understand, ask for clarification. You want to be able to challenge the adjuster in future negotiations if there is a change of position on a given point.

You also want to increase your education. The more you understand about the process, the better equipped you will be for any future round of negotiations.

Control your Give-and-Take

There's a universal rule that, if abided by, can assist you in getting what you want in life. Whether it's trying to get your husband to take out the recycling, or negotiating with an insurance adjuster, you really have to give a little to get a little.

It might be a little easier to decode the factors that motivate your husband, but insurance adjusters can be tricky. We've found the best strategy is to make smaller reductions, you increase the likelihood that you will exceed your goal.

While large concession can be seen as a "cut to the chase" manoeuvre, they can also create an impression that you have a lot of room to move. If you make smaller reductions, you increase the likelihood that you will exceed your goal.

Think about it. To negotiate well, the other party has to feel as if they're getting something too. If you provide yourself with room to make numerous concessions, you will be able to maintain goodwill by continuing to move on your offer. Cutting too much at once

reduces your flexibility and may bring you to an impasse more quickly. Consider making your concessions smaller each time to give the impression that you are getting closer to your goal.

Patience, Patience, Patience

Small concessions made over time send a message to the adjuster that you are not in a hurry or desperate. Most serious car accident victims are in fact desperate for money, a fact that is used by the adjuster as bargaining leverage. Along these lines, it is important not to tell the adjuster that you need the money with any urgency if at all possible.

Telling the adjuster you need money to make mortgage payments or that you have promised your family a trip will negatively impact your bargaining power.

If the final offer by the adjuster does not meet your goal or even your bottom line, do not accept. In your preparation for the negotiation, you mulled over the options you would consider if your goals were not met. Now is the time to consider those options.

Stay Cool, Calm and Collected

There is nothing to be gained by getting upset or angry if the negotiation does not result in the settlement you require. The adjuster has the upper hand in this area because the settlement result does not affect him personally.

Nothing says “desperate” like a claimant that is yelling or upset because of a failure of a negotiation. As we noted above, desperation gets you less in the long run, not more.

We have taken over settlement negotiations more than once where the adjuster has been relieved to be dealing with a lawyer rather than the client, simply because the exchanges were emotional and therefore not productive.

Keep your Cards Close to your Chest

It is almost as important to contain your emotions when the negotiations are going well. As soon as the adjuster sees or hears in your voice that glimmer of satisfaction, you are basically at the ceiling.

Practice telling the adjuster that you are “still disappointed with the number for general damages” or that you hope he or she has come to you “with a more authority to settle than that”. Thank the adjuster for the offer, but communicate calmly that you do not think that it will do.

Leave Yourself an Out

Lawyers have a natural advantage over lay people when negotiating because we can always tell the adjuster that we “have to get instructions from our client” before accepting or rejecting an offer. This slows down the negotiations, which is a good thing, as discussed.

You can set up this same dynamic by letting the adjuster know upfront that you are not making any decisions without speaking to your spouse, your parent, a friend who is a lawyer or some other trusted advisor.

In addition to slowing down the process, this dynamic also tells the adjuster that you have support behind you and that you are not likely to be pressured or tricked into an improvident settlement.

Can You Do This?

Many people do.

Assuming you are able to prepare properly and come up with an appropriate settlement number, the real advantage a lawyer has when negotiating is that the adjuster has to assume that your lawyer is prepared to go to trial if a viable settlement is not reached.

Because you have come this far without a lawyer, the adjuster is betting that you will not take that step. However, if you keep that door open throughout the negotiations, and follow the rest of the suggestions in this book, you may well reach an acceptable settlement. Good luck!

The Bottom Line

Approaching the negotiation systematically and giving yourself room to allow the adjuster to negotiate you down may improve your settlement outcome.

Chapter When to Hire a Lawyer Three:

When virtually every personal injury lawyer in Ontario offers a free consultation, I'm amazed by the number of injured victims who don't bother to take advantage of this service.

I know, I know – lawyers have a bad rep. Most people are afraid that if they step into a lawyer's office, even for a free consultation, they'll be given a high-pressure sales pitch and forced to sign the lawyer on.

Let me tell you right now that this is absolutely not the case. A good personal injury lawyer is not a high-pressure sales person who will stick a contract under your nose at the initial meeting unless you express a clear interest in hiring the lawyer. We understand you are

there to collect information and we will impart that information to you.

Even if you've read this book and still have some leftover questions, it's still wise to request a free consultation. A case that might be too small for one lawyer might be suited for another, so it's worth it to look around.

At a free consultation, an Ontario personal injury lawyer will explain to you the legal structure for auto claims in Ontario. Ontario has the most complicated system in North America with statutory, no-fault accident benefits, a verbal threshold and a monetary threshold. Why not have a lawyer explain that system to you directly rather than relying on form letters sent out by the insurance company?

She'll talk about issues relating to liability in your case (i.e. who is at fault) and whether there may be a claim against you for contributory negligence. If the other driver was charged, the lawyer can talk to you about what that means and how to use it to your advantage.

If your injuries are well-defined by the time of your consultation, the lawyer may even be able to give you a range of general damages. Certainly that will help you down the line when you go to negotiate.

Benefits of Hiring a Lawyer

There are many advantages to opt for lawyer representation. For starters, the lawyer and her team immediately assume responsibility for the prosecution of the case, the collection of evidence, obtaining medical records and reports.

For example, an important role a lawyer can play for you is to monitor your Accident Benefit claim. When you are injured in a car

accident in Ontario, you're entitled to Accident Benefits. If you qualify, these benefits cover your medical and rehabilitation expenses, visitors' expenses, attendant care and housekeeping expenses, to name a few.

In addition, the Accident Benefits may provide weekly amounts of income replacement, caregiver expenses or non-earner benefits. These benefits are not a fortune. However, for many families, these amounts ease the financial burden of an accident, making it possible to "stick it out" until the claim for compensation is resolved.

In most circumstances having a lawyer monitor your Accident Benefits while also working on your claim for compensation from the at-fault driver will help you ensure that you get the maximum out of these benefits while the other case is in the works.

A second benefit to hiring a lawyer with significant personal injury practice and experience is that you will benefit from the lawyer's reputation and experience both at trial and with negotiations. We

believe our expertise and reputation results in higher settlements for our clients.

That being said, higher settlements usually take time, so one of the downsides of working with a lawyer is that the case may not resolve as quickly as it would if you went to small claims court or simply took the best offer you could get with the adjuster.

How a Lawyer can Help with an Injured Child

You really owe it to your child to consult a lawyer before settling your child's case. For one thing, child settlements cannot usually be finalized without court approval. Secondly, children do not receive their settlement money until they reach 18-years-old.

Insurance adjusters also rarely tell you that a child's settlement has to be approved by the court until the very last minute. Court approval is required to protect the child to ensure the settlement appears appropriate relative to the injury and precedent cases and the legal fees and expenses charged by your child's lawyer are fair and appropriate in the circumstances.

An experienced child injury lawyer knows what steps to take to ensure that the proper approval of the settlement is obtained. If you're still uncertain as to whether you require a lawyer's assistance, don't be afraid to speak to a lawyer about the pros and cons of going it alone. Most injured victims decline to use a lawyer because they think they will not come out ahead when legal fees are factored in. Many, many clients are surprised to learn how much of the lawyers' fee is covered by the insurance company over and above the settlement amounts.

Armed with this information, you can make a more informed choice about the value a lawyer would bring to your case.

Keep in mind too that in most cases in Ontario, you cannot represent your child in court without a lawyer. So, if you do not

manage to settle with the adjuster, and you want to pursue your child's claim, you will need the help of a lawyer.

The Bottom Line

To be blunt, regardless of whether or not you chose to hire a personal injury lawyer, it would be foolish to embark on the important process of evaluating and settling your personal injury claim without getting free input from a personal injury lawyer.

About Auger Hollingsworth Professional Corporation

We are a different kind of law firm. We do not pretend to accept every case under the sun. We do not even take every accident case or even every serious accident case. We do not want to and, fortunately, we do not need to.

We handle fewer personal injury cases per lawyer than many other firms, by choice, because we spend a lot of time on the cases we do take. We are confident that fewer cases means better results and we know it means better service for you, our clients.

Brenda Hollingsworth has represented individuals like you since 1997. Most of her cases are referred to her by other lawyers or by happy former clients.

Sometimes, the best advice we can give you is that you do not have a winnable case or your case small enough that you would be better off settling it yourself.

But if your case is one we accept, you can be sure that we will aggressively represent you, keep you up to date on what is happening and that you will receive our personal attention.

Request a Free Consultation

We strongly recommend that accident victims consult with a personal injury lawyer. If you would like to meet with Brenda Hollingsworth or a member of Auger Hollingsworth, please call and request a free consultation. Our helpful and friendly staff will ask you questions about your case and your injuries on the telephone and then, if we think we can help you, we will book a consultation with you as soon as we can.

There is no obligation at a free consultation. In addition, we will provide you with a helpful chart to evaluate any personal injury lawyers you interview.

Free Newsletter

Auger Hollingsworth offers a monthly personal injury newsletter called "Recovery". It is available free of charge to all Ontarians, other than insurance company employees and insurance defence lawyers.

The newsletter is not canned or boring. Most of it is written by Brenda Hollingsworth and her staff. Guest writers are also featured regularly on topics like physiotherapy after an accident or fitness after injury.

If you would like to subscribe, visit www.personalinjuryottawa.ca. The icon for the newsletter is in the right hand column of home page. Alternatively, you can call us at 613 233-4529. You will never be billed and postage is prepaid.

**WE WILL NEVER SHARE YOUR PERSONAL
INFORMATION WITH ANYONE.**

Our Website and Blog

Our personal injury website and blog contain much more information than we can fit in a small book. We have hundreds of posts for people like you who are looking for information about what to do after a car accident or other serious accident. Please visit us at www.personalinjuryottawa.ca.

Our Videos

We have produced videos about “What to Expect at the Initial Client Interview” and “Why it is Important to Meet with a Personal Injury Lawyer Soon After Your Accident”. These videos can be viewed on You Tube by searching Auger Hollingsworth. They are also on the home page of www.personalinjuryottawa.ca.

About the Author

Brenda Hollingsworth, B.A. (Hons), M.A., LL.B., has been helping people fight for their rights since 1997. She spent the first four years of her career working on Bay Street – and learning from the finest litigators Canada has produced. When she realized the power of strong advocacy, she was determined to apply her knowledge to help ordinary people overcome the extraordinary circumstances created by injury. Today, the primary focus of her Ottawa-based practice is prosecuting injury claims for accident victims.
