

Cycling and the Law: Know your Rights!

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Rights of The Injured Cyclist

When a cyclist is struck by a car or truck, the injuries to the cyclist can be significant. It can have a dramatic impact on them and their families. It is important for every cyclist that does get hurt to understand their rights and know where they can find help.

Ontario has one of the most complicated insurance systems in North America when it comes to dealing with cyclists when injured on our roads. The Insurance Act and the **Statutory Accident Benefit System** is complicated and filled with timelines, forms, procedural provisions and a host of sections that make it difficult for the cyclist to understand. Below are some basic rights afforded to the cyclist when they are injured. However, it is always recommended to get legal advice before embarking into this complicated system.

If you are a cyclist and hit by a car, are you entitled to compensation?

Yes you are. Not only are you entitled to sue the driver of the car or truck that hit you, but you can also make a claim for what are known as **no-fault benefits**. The ability to sue and claim benefits depends on the nature and extent of your injuries.

What happens if you caused the accident?

Even if you were at fault and a car is involved, you are still entitled to obtain no fault benefits. Many cyclists are under the mistaken impression that because they were not in a car, that no fault benefits under the auto insurance system do not apply.

Who do you claim no-fault benefits from?

If you have auto insurance, you can claim no fault benefits through your auto insurer even though you were on your bike.

If you don't have auto insurance, you can claim through the insurance policy of the owner of the car or truck that was involved.

If none of the above situations apply, for example in a hit and run accident where the car strikes you down, you can make your claim to the Motor Vehicle Accident Claims Fund. This is administered by the provincial government and the claims are handled for them through an independent adjusting firm.

The address of the fund is:

Motor Vehicle Accident Claims Fund

P.O. Box 85, 5160 Yonge St.

Toronto ON M2N 6L9

(416) 250-1422

1-800-268-7188

How do you claim no-fault benefits?

When making a claim for accident benefits, you must first notify the insurance company within 7 days or as soon as practical after the accident occurred.

The insurance company will then send you an Application package which you must complete within 30 days after receiving the forms and return them to the insurance company. No benefits will be payable until you complete the application and if it is outside the 30 days you will have to provide a reasonable explanation. If you have a private insurance policy or an employment benefits package, you should apply for these benefits as well since accident benefits only pay for what is not covered under these types of plans. Please remember, however, that the insurance company paying the accident benefits does not have a legal right to collect a statement, written or recorded from you about the accident. You do have to provide them with reasonable information relevant to the benefits being claimed. Since a written or recorded statement taken by the insurance company may be used against you or produced in your lawsuit, it is recommended that you do not give one.

Detailed instructions are on the Application Form and the timelines are also listed.

Since the process can be complicated and you may have additional rights, you should consult a lawyer who has expertise in this area to ensure you meet the deadlines, submit the proper forms, and obtain guidance on what benefits are available to you.

What if you cannot return to work because of your injuries?

Not only can you sue the driver for your inability to earn income, you can also apply and receive weekly income replacement benefits.

What if you were not working at the time?

There are also benefits available for cyclists who are hurt, but are not working. They are called non-earner benefits and they are paid weekly. As well, if your injuries impact on your ability to look after your children, you can also elect to claim a caregiver benefit.

What if you need medical and rehabilitation help to get better?

An injured cyclist is entitled, subject to certain restrictions, to sue for ongoing help caused by the injuries. They are also entitled to receive medical and rehabilitation benefits for expenses, which are not covered by OHIP or some other health or disability plan.

If the cyclist is catastrophically injured, as defined by the Insurance Act, such as a serious brain injury or spinal cord injury or some other kind of catastrophic injury, they are entitled to receive up to \$1,000,000.00 in medical and rehabilitation benefits and these are payable over the person's lifetime.

An injured cyclist can also receive attendant care benefits. In a catastrophic case, an injured cyclist can receive up to \$6,000.00 per month to a maximum of \$1,000,000.00 and there is no time limit.

In addition to no fault benefits, can you sue the driver of the car or truck that hit you?

Yes you can, but you will need to prove that the driver was partly to blame for hitting you. It is extremely important to make sure you have the names of the witnesses that saw the accident. They can be crucial to proving that the car driver was partly to blame. Witnesses at the scene often disappear and are difficult to find even when an investigator is sent out, so having multiple witnesses is better than having only one.

What can you sue for?

In a lawsuit, the amount of money awarded to you is called damages. Subject to certain restrictions under the Insurance Act, the cyclist can sue the driver and owner of a car for potential damages (compensation) that include the following:

- pain and suffering, loss of enjoyment of life, and loss of amenities.
- past and future loss of income or earning capacity
- loss of household and handyperson capacity
- future cost of care.
- certain out of pocket expenses not paid by the no fault benefit insurance company

The damages are to compensate the cyclist for the harms and losses that the negligent car driver caused.

What if you are the family of a cyclist killed? Is there help?

Yes there is. Once it is proven that the driver of the car was at fault, family members of the deceased cyclist have five potential categories of damages. These are as follows:

- loss of guidance, care and companionship
- loss of shared family income
- loss of the value of household and handyman services the deceased performed
- funeral expenses
- other expenses related to the death.

Your lawyer will advise you in more detail on how these potential damages will apply to you and your injuries.

Can you still make a claim if you were not wearing a helmet?

Yes you can. The fact one is not wearing a helmet does not preclude the cyclist from obtaining benefits or suing the driver for causing them injury. The Defendant driver may, however, try to prove that your injuries would be lessened if you had been wearing a helmet. This may or may not have any merit depending on the facts of the case and the nature of the injuries.

Is it hard to prove that the car driver was at fault?

This depends on the evidence. If the stories on how the accident happened are not the same, the case may be won or lost based on the witnesses. In many cases, independent witnesses are key to success. Timely investigation is crucial in allowing an investigator to find witnesses at the scene. In addition, the use of forensic reconstruction engineers assist in calling expert evidence to prove how the accident occurred. It is important to keep your damaged bike, helmet and clothing after being struck so that these can be inspected if necessary.

Whenever a cyclist is hit by a car, it is the car driver that must prove that they were not at fault. The *Highway Traffic Act* imposes a reverse onus on a driver whose vehicle collides with a cyclist or pedestrian. That is, the collision is presumed to be the consequence of the driver's negligence, unless the driver can prove otherwise. This provision of the *Highway Traffic Act* applies to collisions between motor vehicles and cyclists or pedestrians.

Canadian Courts have consistently held that the driver cannot prove that the collision was not his or her fault by blaming the cyclist or by saying that the cyclist was in part responsible for the collision.

Can you sue the City for causing the injuries to a cyclist?

Yes. The Ontario Court of Appeal has recognized that roadways are to be used by cars and cyclists on an equal footing. The City owes a duty to cyclists to provide Safe Passage. The City is responsible to keep the roadway in a state of repair. They have a duty to ensure that the road is "kept in such a reasonable state of repair that those requiring to use it may, exercising ordinary care, travel upon it with safety."

This standard of care has been recognized as the law in Ontario by our Court of Appeal in the 2008 reported case of *Johnson v. Milton (Town)*. The state of repair includes "any aspect of the road and its environs" including "the surface of the road, alignment of the road, obstacles on the side of the road and signage." The users of the roads include both cyclist and motorists on an equal footing.

Unfortunately the only time the City is put under scrutiny for carrying out this duty is when someone is either killed or injured and a civil suit is commenced. Even at the conclusion of the civil suit, the Courts can not mandate the City to change the road or its design to ensure future

safety. Our courts have held various municipalities partly responsible for failing to live up to their duty to cyclists. These include: failure to erect proper signage, failure to maintain proper surface and unsafe railway tracks on the street.

If you have a potential claim against the City, you need to act fast. You are required to give the City Clerk written notice of a potential claim within 7 days. Immediate contact should be made with a lawyer to get your notice in. For a sample letter see the [ARC site](#)