

DAMAGES MEMORANDUM
ACCIDENTS ON OR AFTER NOVEMBER 1, 2003

In a negligence claim (sometimes referred to as a tort claim) you are entitled to various types of damages against the party who is responsible for your injuries.

The damages you may be entitled to are as follows:

1. Non-pecuniary general damages. These are damages for pain and suffering, loss of enjoyment of life and loss of amenities;
2. Loss of income;
3. Loss of household and handyman capacity;
4. Damages called “Future Cost of Care” which depend on whether you have suffered a “catastrophic injury”, as defined in the *Insurance Act*; and
5. Damages for expenses you have incurred or will incur for health care expenses arising from your injuries. Your insurance company is only responsible for the first \$100,000.00 of these damages, unless you are declared “catastrophically impaired” in which case you are entitled to \$1,000,000.00 in medical and rehabilitation benefits. You may be able to sue the party who caused your injuries for any amount of past and future health care expenses that exceed these amounts.

In addition, you may be entitled to make a claim for a limited number of expenses that you incur which are not covered by no-fault benefits. We will discuss this with you further if this applies to you.

1. NON-PECUNIARY GENERAL DAMAGES (FOR PAIN & SUFFERING, LOSS OF ENJOYMENT OF LIFE AND LOSS OF AMENITIES)

Before you can successfully sue for this category of damages, you must prove that your injury “meets the threshold”. This can only be done if you can show that you have sustained one of two types of injury:

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

If it is proved that your injury meets the threshold there is a \$30,000.00, deductible which is deducted from the amount of non-pecuniary damages you would otherwise receive. In other words, if your injuries meet the threshold and your non-pecuniary general damages for pain and suffering and loss of enjoyment of life are assessed at \$100,000.00, after imposing the \$30,000.00, deductible, the net amount of your non-pecuniary general damages is \$70,000.00. The requirements of meeting the threshold and deducting the

deductible apply only to the extent that your injuries were caused by the negligence of other drivers and owners of vehicles. The principles of “meeting the threshold” and deducting the \$30,000.00, deductible do not apply to non-automobile Defendants such as municipalities (for negligently maintaining roads), taverns (for serving alcohol to a person who was obviously becoming impaired), mechanics (for not properly repairing a vehicle when asked to do so) or manufactures (for the defective design or manufacture of a product). We will discuss this with you further if this applies to you.

2. LOSS OF INCOME

With respect to a claim for loss of income, you should know the following:

- a. The “meeting the threshold” principle which applies to non-pecuniary general damages does not apply to a loss of income claim;
- b. The \$30,000.00, deductible which applies to non-pecuniary general damages does not apply to a loss of income claim;
- c. You can't receive any loss of income for the first 7 days after the collision; and
- d. You can only receive 80% of your net (after tax) loss of income before trial or settlement (less any accident benefits or collateral benefits which are received). After trial or settlement, you can receive 100% of your gross wage loss (before deduction for taxes).

3. LOSS OF HOUSEHOLD AND HANDYMAN CAPACITY

If, because of injuries suffered, you are unable to do such things as vacuuming, lawn cutting and gardening or snow shoveling or, if to attempt to perform these kinds of chores you suffer an unreasonable degree of pain during the particular chore or for a period of time after the chore is complete, you may be entitled to claim for loss of household and handyman capacity.

Under this category of damages, the “meeting the threshold” principle does not apply and there is no \$30,000.00, deductible.

4. FUTURE COST OF CARE

Examples under this potential category of damages are these: if it is anticipated that after the date of trial or the date of settlement you will incur additional expenses because of the injuries suffered, such as expenses for medication or for modifications to a vehicle, then you may claim such expenses.

To be able to make a claim under this category of damages, you must have suffered a “catastrophic injury” as defined by the *Insurance Act*. Under the category of damages,

the “meeting the threshold” principle does not apply and there is no \$30,000.00, deductible. We will discuss this with you further if this applies to you.

Categories of Damages for Family Members

Your close family members may have the right to advance what are referred to as *Family Law Act* claims. The claim of each family member is subject to a deductible of \$1,5000.00. The main categories of damages of a family member advancing a *Family Law Act* claim are as follows:

- a. Loss of guidance, care and companionship;
- b. The value of nursing, housekeeping and other services the family member has performed or will perform for or on your behalf;
- c. Loss of income; and
- d. Reasonable expenses incurred on your behalf.

There is no record keeping involved with the first category of family member damages noted above being loss of guidance, care and companionship, but record keeping is involved with the other 3 categories.

With respect to record keeping to determine the value of nursing, housekeeping and other services a family member performs for you, it is absolutely imperative that your family members keep two lists. The first list is new chores or services they perform for you. These kinds of chores include going to the pharmacy to buy medication, taking over vacuuming duties that you performed exclusively before the accident and so on.

The second list is chores your family members used to do before the accident, but now have to do more of. For example, before the accident your family member may have helped you with lawn and garden maintenance, but after the accident, either for a period of time or permanently, your family member must perform all of the work required with lawn and garden maintenance.

In addition to keeping these two lists, a record should be kept of the hours spent per week by your family members performing new chores or additional hours of chores that your family members must now spend more time doing. Without these two written lists and a written estimate of the hours involved on a weekly basis, it is very difficult for us to present an accurate claim on behalf of your family members for this aspect of your family member’s *Family Law Act* claim.

With respect to record keeping for loss of income, a family member who loses income because of your injury should try his or her best to insure that an employer knows the reasons for absences from work and any resulting loss of income or sick day credits.

With respect to record keeping for reasonable expenses incurred on your behalf, without receipts for these expenses your family members will not be able to obtain reimbursement.

Please read this memo several times. It is important that you understand your entitlements. If you have any questions please ask us.

