



Spinning Out of Control

The Ontario Bicycle Accident Handbook

By Brenda Hollingsworth

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Legal Disclaimer

I cannot give legal advice in this book. The information in this book does not constitute legal advice. The suggestions and the warnings I provide in this book are not a substitute for consulting with or hiring a lawyer. Please remember that I do not represent you, and I cannot give you legal advice unless and until you hire me, and I have agreed in writing to accept your case.

Introduction

Why I Wrote this Book

As a personal injury lawyer, I have come to know a lot about bicycle accidents and the physical and emotional consequences these accidents can have for those involved. With serious bicycle accidents as prevalent as they are today, I wanted to write this book for two main reasons: to help prevent future accidents, and to help answer the common questions that I know most cycling accident victims have. I recognize that cyclists in Ontario are often confronted with drivers who are not interested in sharing the road. I know about the inherent risks of riding your bicycle. Quite frankly, cycling in Ontario can be a dangerous undertaking, especially in major cities, where 85 per cent of serious cycling injuries take place.¹

This book is not intended to scare people away from using their bicycles. Cycling is a fantastic form of exercise and it is as good for the environment as it is for your health. With that said, I do want to encourage people to understand what precautions and safety measures they should take to minimize the risk of being involved in a bike accident.

Unfortunately, accidents can still happen, no matter what precautions were taken. If you or a loved has been the victim of a cycling accident or injury, I hope this book will help you to understand your legal rights. The insurance world and the legal jargon used in any personal injury case are complex. In fact, Ontario has one of the most complex systems in North America, and it is a system that is in constant flux. There simply are not enough resources available for personal injury victims, and it is my hope that this book can help to fill the void.

Personally handling an insurance claim can be one of the most confusing, time-consuming and stressful things you ever undertake. Sometimes it may seem like you're reading an entirely different language! One of the goals of this book is to break down the legal complexities of bicycle accidents into plain, easy-to-read English. I hope to create awareness about common bicycle injuries and inform the reader about the specific Ontario laws that pertain

¹ CBC News, [Increasing your odds of avoiding bike injuries](http://www.cbc.ca/health/story/2009/07/22/f-bicycle-safety-avoiding-accidents-injury.html). <http://www.cbc.ca/health/story/2009/07/22/f-bicycle-safety-avoiding-accidents-injury.html>.

to bicycle accidents. This book will answer some of the questions injury victims might have and offer some general information about bicycle accidents and claims that will help victims decide how to pursue their case.

This book is divided into seven chapters, and I hope that through reading them, you will get a better understanding of many of the issues surrounding bicycle injuries in Ontario. In the first chapter, I offer strategies that you can use to help prevent being in a bicycle accident, and I include tips on how to help your children ride safe. In chapters two and three, I discuss the legal and insurance issues that are often a source of confusion for injured victims. In chapter four, I describe two of the most serious injuries that cyclists can suffer. In chapters five and six, I provide helpful hints that will help you better prepare for your personal injury claim, and I provide some insight on how to find the right lawyer for your case. The final chapter is comprised of testimonials from some of my past clients.

I am willing to share the information contained in this book because I do not like to see people accept a bad deal or give up on fighting for their rights simply because they do not know how to proceed. I have seen too many people not receive a fair settlement because they have been intimidated or confused. If you have been injured, this book will tell you what you need to know and what you must avoid in order to preserve your rights and get what you deserve.

I truly hope you will find this book beneficial. It may not answer all of your questions, and it cannot cover *every* aspect of Ontario bicycle laws, but it can serve as a good starting point for you. For more information or for a free consultation, please do not hesitate to contact me.

Best Regards,

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CHAPTER ONE: Bicycle Safety

Though much of this book pertains to those who have suffered a bicycle injury, I think it is important to include a chapter on bicycle safety. Everyone reading this book either cycles themselves or knows someone who cycles regularly. According to Transport Canada, between 2003 and 2007, 291 cyclists were killed on Canadian roads. This represents 2.3% of all road fatalities.² Approximately 7,500 cyclists suffer serious injuries each year and an estimated 70,000 are treated in hospital for cycling related injuries.³ If one of the tips or skill training exercises from this chapter can help one adult or child avoid a serious injury, then this book has done its job. Also, for those that have suffered an injury, the information in this chapter might help you get a better sense of what exactly happened in your accident.

Common Types of Collisions

Accidents can occur at any time and in any given situation. However, many cyclist injuries occur in similar circumstances. Some of these types of accidents are especially common for children and inexperienced riders. Be sure to pay extra attention in these situations, and to warn your children about the dangers of making the following common mistakes:

- **Driveway ride-outs:** In this scenario, a cyclist rides out of a driveway without stopping to check for traffic and is hit by a motor vehicle. This is perhaps one of the most dangerous mistakes any rider can make when riding a bicycle, but one that can easily be avoided.

There are several steps you can take to avoid this type of horrific accident. First, make sure your driveway does not contain view obstructions such as bushes and trees. These obstructions hinder a rider's ability to see oncoming vehicles and will prevent motorists from seeing the cyclist in the driveway. Make sure that every cyclist in your house knows to stop at the end of the driveway before entering the street.

² Transport Canada, 2007 Canadian Motor Vehicle Collision Statistics. <<http://www.tc.gc.ca/media/documents/roadsafety/tp3322-2007.pdf>>.

³ CBC News, Increasing your odds of avoiding bike injuries. <http://www.cbc.ca/health/story/2009/07/22/f-bicycle-safety-avoiding-accidents-injury.html>>.

Failing to stop at stop signs: Many cyclists choose to ignore stop signs because the constant starting and stopping makes their ride more difficult. Also, children are often less aware of traffic laws and signals. The importance of stopping at every stop sign cannot be overstated. Drivers expect cyclists to obey the rules of the road, and unexpected behavior can often lead to collisions. If a driver sees a bicycle coming to a stop sign, he/she is not going to slow down to let the cyclist across. It is the cyclist's responsibility to stop.

Left hand turns: A large number of all bicycle accidents occur when a cyclist makes a left turn without looking back to check for traffic. Since cyclists usually stay to the far right side of the road as they ride with the flow of traffic, a sudden left hand turn can result in a vehicle hitting a cyclist from behind. Children and inexperienced riders are more likely to fall victim to this, as they are not used to crossing in front of cars. When making a left turn, it is important to check the traffic behind you, use proper signaling technique, yield to traffic coming from behind or from the front, and proceed with caution.

Do not ever make sudden left turns on busy streets. If needed, take the time to walk your bike across the street at a proper cross walk.

Driver overtaking: As any cyclist knows, many drivers are impatient with bicycles on the road and so they attempt to pass when it is unsafe to do so. Collisions can occur when a driver tries to pass a cyclist on a narrow or twisting road, when either the driver or cyclist swerves suddenly, or if the driver misjudges how much room there is on the road. There is also the danger of feeling "run off the road" by a passing driver, causing an accident at the curb. To avoid this type of accident, make sure that you are visible to drivers. If you feel threatened or unsafe, cycle in the middle of the lane to prevent a driver from trying to overtake you. Although the law states that you should ride your bicycle as near to the right curb as possible, it is acceptable to come away from the curb in dangerous situations.

Driver right on red: It is very common for driver's turning right on red to accidentally collide with a cyclist travelling on a cross-street. This type of collision is particularly dangerous if the cyclist is travelling against the flow of traffic on the side street and is hit by the turning car head-on.

Safety Tips

Now that we know about some of the most common types of bicycle accidents, we can focus on some basic safety tips that can help you and those you love avoid being in an accident. Those who cycle in urban areas are especially susceptible to injury and should take extra precautions. While you can never completely prevent a negligent motorist from crashing into you as you ride, you can reduce your chances of being severely injured in a bicycle accident by following these basic guidelines:

- **Follow the rules of the road** – As I will discuss in detail in the following chapter, the most important thing to understand is that bicycles are considered vehicles in Ontario. As such, bicyclists are required to obey **all** traffic signs and lane markers. When riding, be sure to follow all traffic laws and ride in a designated bicycle lane where available.
- **Always ride with traffic** – Never ride against the flow of traffic, as motorists don't expect to see you coming towards them. Instead, cycle on the right-hand side of the road, as near to the curb as is safe.
- **Don't pass on the right** – Passing on the right-hand side of a motor vehicle puts you in serious danger. You will likely be in the driver's blind spot, and he/she will not expect you to be there. Any time a 4000 lb. car can't see you on your 20 lb. bicycle, you are in a dangerous situation.
- **Don't use headphones while cycling** – As nice as it is to listen to your music while cycling, it is very important that you are able to hear what is going on around you. Avoid listening to your iPod or MP3 player as it can compromise your safety, especially if you are cycling in an urban area with heavy traffic. With earphones in your ears, you can easily miss the sound of a car horn, or the voice of a driver.

- **Dress to be seen** – When you're riding your bicycle, wear bright-coloured clothing so motorists can easily see you. It is especially important to never wear dark colours if you're riding at night. You can purchase reflective clothing and accessories from most outdoor recreation stores.
- **Use lights at night** – When biking during the night, make sure your bicycle is equipped with a headlight in the front and a rear red reflector on the back. Motorists have a difficult time spotting bicyclists at night, and using lights and reflectors will increase your visibility.
- **Use your hand signals** – Hand signals are your way of communicating your intentions to motorists. If a driver knows where you are planning to go, he/she will be able to prepare better. Protect yourself by using appropriate and timely signals.

Children and Bicycle Accidents

We all know how much children love to ride their bicycles. A bicycle is often a symbol of freedom and adventure for youngsters, and though riding is an important part of growing up, the fact is that children are seriously injured and killed in bicycle accidents every year. Children ride twice as much as an average cyclist, and many older children use their bicycles as their primary mode of transportation. With all these children on the roads, there are obviously a considerable amount of accidents involving children every year. In 2008, 13 per cent of all bicycle-related deaths involved riders under the age of 16.⁴ With the risk of injury and even death, it is important for parents to teach their children safe bicycle-riding procedures.

The Importance of Helmets

First things first: your child should always wear a helmet. Ontario law dictates that all persons under the age of 18 must wear proper safety helmets. Teach your child from the very beginning that helmets are essential for safety. Do not budge on this issue! Let your child know that a helmet is **never** optional. In fact, you can be held responsible for your child riding without

⁴ Fatality Facts 2008: Bicycles. 2008. Insurance Institute for Highway Safety. 9 December 2010. <http://www.iihs.org/research/fatality_facts_2008/bicycles.html>

a helmet, as Ontario law states that a parent or guardian has an **obligation** not to knowingly allow a child to ride without a helmet.

Statistics show that helmets substantially help prevent serious injuries and death. Traumatic brain injuries account for 29% of all cycling-related hospital admissions⁵ and about three-quarters of cycling fatalities involve a head injury.⁶ According to the Ontario Ministry of Transportation, wearing a helmet can reduce your risk of head injury by up to 85%.⁷ In 2001, 88% of cyclists who died were not wearing a helmet.⁸ The decision to not wear a helmet just does not jive with the fact that they prevent injuries and save lives. Every cyclist, regardless of age or skill level, should wear a helmet every time they get on a bicycle.

If you have a child, it is even more important that you wear a helmet, as you should strive to a positive example. Do everything in your power to make sure your child wears a helmet every time he/she is on a bicycle. To get the right helmet, take your child to your local bicycle shop and have him/her try on several models. Bring the helmet level over your child's forehead and adjust the chin strap so that it fits snugly, but is also comfortable. The helmet should not slip forward or backward and should sit two finger widths above the eyebrows. As long as the helmet meets proper safety guidelines, allow your child to pick a helmet that has the design or colour he/she wants. This is just one way of ensuring the helmet will actually be used! You can purchase a helmet for as little as \$15 at your local Zellers or Wal-Mart, and this simple act could help save you or your child's life.

Helmets work by absorbing the force of any impact and spreading it over the whole helmet. This works to reduce the impact on your brain. Even though it cannot protect against all injury, a helmet does lessen the likelihood of brain bleeds, bruising, concussions, and many other types of head injury.

⁵ Safe Kids Canada, Child and Youth Unintentional Injury: 1994-2003 10 Years in Review. <<https://www.safekidsCanada.ca/enStore/tabid/59/List/1/ProductID/80/Language/en-CA/Default.aspx?txtSearch=unintentional+injury&SortField=ProductName%2cProductName>>

⁶ Ministry of Transportation, Frequently Asked Questions: Safety. <<http://www.mto.gov.on.ca/english/faq/safety-test.shtml#helmets>>.

⁷ Ministry of Transportation, Young Cyclists Guide. <<http://www.mto.gov.on.ca/english/safety/cycling/youngcyclist.shtml#protect>>.

⁸ Bicycle Helmet Safety Institute, Helmet Related Statistics from Many Sources. <<http://www.bhsi.org/stats.htm>>.

Common Myths

One of the most serious threats to a child's safety is his or her parents' lack of safety knowledge. Children are anxious to learn to ride their bikes so that they can play with their friends and enjoy their evenings after school. Make sure that you understand that the following commonly-held beliefs are plain wrong. Knowing about these myths and not believing them will help any parent make their child safer.⁹

- **Myth 1 - Cyclists should ride facing traffic.** As I have already outlined in this book, many novice cyclists believe it is safer to ride facing traffic because they can see oncoming traffic. This is highly dangerous! Motorists are not expecting bicyclists to ride against the flow of traffic and are less aware of bicyclists in that situation. In addition, most motorists do not look for oncoming traffic at intersections, creating a dangerous situation if the cyclist is riding against the flow of traffic. Teach your children to always ride on the right-hand side of the road.
- **Myth 2 - Children need bikes they can grow into.** This is another misconception that can lead to a serious accident. Kids have less control of bikes that are too big for them. They are more likely to wobble and swerve – actions that can lead to a potential crash. Your children should have bikes that fit them. A basic rule for the right size bike is to find one that your child is able to stand over with both feet flat on the ground.
- **Myth 3 - My child can handle a 10-speed bike.** This might not be the case. Young children and novice riders do not need complicated bikes. Most youngsters do not have large enough hands to properly control hand-brakes and can easily get confused with shifting procedures. Your child's first bike should be a standard one-speed bicycle with pedal brakes. Once he/she is older and a more experienced rider, you can bring out the high-tech bicycles.
- **Myth 4 - My neighbourhood is safe.** Complacency can lead to disaster. Yes, residential and neighbourhood roads are far safer than busy commuter streets, but they

⁹ Williams, John. *Bicycle Safety: What Every Parent Should Know*. Active Living Resource Center. <http://www.activelivingresources.org/assets/parents_pamphlet.pdf>.

still pose a serious threat to your child. Despite the reduced traffic flow, quiet neighbourhoods can be the scene of a tragic accident. Residential streets are the site of many accidents, primarily because this is where most children ride their bikes. Be sure to teach your children to obey all traffic laws and to be on guard no matter how busy or quiet the street may be.

How to Teach Bicycle Skills to Your Child

You are the key to your child's bicycle safety. Kids often want to jump on their bicycle and ride with their friends without the oversight of Mom and Dad. Allowing them to take their bikes unsupervised before they are ready is a risky move. Make sure your children are properly trained and skilled enough to handle a bicycle before allowing them complete freedom. Here are a few skills you should teach your children before you let them ride freely in the streets.¹⁰

- **Riding in a straight line:** This seems like common-sense, but too often children are allowed to ride on streets before they have the ability to ride in a straight line. Take your child to a quiet park or empty parking lot to practice this skill. Stand several yards away from your child and have him/her practice riding straight to you. Even better, if you are in an empty parking lot, have your child practice riding on the striped parking lines. This skill building exercise will be a lot of fun for your child.
- **Turning:** This is another basic skill many children lack. Turning can be very difficult for beginner cyclists to fully master. You want your child to have learned turning manoeuvres very well before heading out on the road. Without this skill, children risk losing control on a turn and sustaining an injury. To teach this skill, take your child to an empty parking lot or cul-de-sac and have him/her practice riding in "figure eights." In the beginning, have your child ride in large, sweeping figure eights. As turning skills improve, have him/her ride in smaller and tighter formations that will closely resemble turning out of an emergency situation.

¹⁰ Williams, John. Bicycle Safety: What Every Parent Should Know. Active Living Resource Center. <http://www.activelivingresources.org/assets/parents_pamphlet.pdf>

- **Looking back without swerving:** Once your child possesses basic cycling skills, it is time to teach more advanced riding manoeuvres. As mentioned before, cyclists must look behind their bicycles before making left turns. Therefore, it is important that your child have the ability to look backwards while continuing to ride in a straight line. You can practice this with your child using a simple game developed by the Active Living Resource Center.¹¹ Take your child to an empty lot or park and have him/her ride past you. As he/she rides passed you, either hold up a picture of a car or hide the picture behind your back. Shout “look!” and have your child look back and tell you if he/she sees the car.
- **Braking control:** Many injuries occur because of kids’ inability to brake properly. Children are often unable to properly judge the distance to an obstacle and, as a result, some do not brake in time. Other children brake *too quickly* and begin to skid and lose control of the bicycle. To practice proper braking, draw a line on your driveway or in an empty parking lot with sidewalk chalk and have your child practice riding toward the line and braking right in front of it. Have him/her start at slow speeds and gradually work up to faster speeds. Make sure your child brakes in a fluid manner, as sudden braking can lead to skidding and losing control.

¹¹ Williams, John. Bicycle Safety: What Every Parent Should Know. Active Living Resource Center. <http://www.activelivingresources.org/assets/parents_pamphlet.pdf>

CHAPTER TWO: Legal Issues

If you or a loved one has been injured in a bicycle accident, you probably have a lot of questions about what happened and what to do now. Many victims are unsure as to who was at fault in their accident and what laws are applicable in their case. It is normal to feel like you might be in over your head when trying to decipher the legal issues surrounding accidents. This chapter should help you get a better understanding of your situation.

The complexities of Ontario's legal system are astounding and they can be overwhelming for someone who is not trained in the legal profession. Many victims of bicycle accidents are confused by the law and are intimidated into giving up and avoiding a legal suit. Other victims rush into hiring a lawyer when their case does not necessitate legal representation. It is important to get as much information as you can, and then make the decision that is right for your case.

This chapter is designed to break down the complicated legal jargon into plain English and summarize some of the major legal issues facing Ontario bicycle accident victims. With this knowledge, you will be better able to decide whether you want to hire a lawyer for your case. If you are still undecided or would like more detailed information specific to your case, do not hesitate to call my office for a free, no-obligation consultation, or contact another accident lawyer. Virtually every personal injury lawyer in Ontario will offer you a free consultation. Speaking with an expert is extremely valuable, and with a free consultation, you really have nothing to lose.

Bicycle Laws

The laws for cyclists in Ontario come from a number of sources. There are municipal by-laws, the provincial *Highway Traffic Act*, as well as certain federal regulations particular to the National Capital Region that apply to cyclists in and around Ottawa. There are also some *Criminal Code of Canada* provisions that, in some instances, can apply to cyclists.

From all sources, it is clear that in Ontario, **bicycles are considered vehicles and are therefore subject to Ontario traffic laws.** While you may already be familiar with traffic laws

from driving motor vehicles, it can be confusing to follow the same regulations while you are riding a bicycle. Understanding bicycle laws, and thinking of your bicycle as a vehicle like any other, will help you avoid an accident. The following list outlines some of the basic, and most important, bicycle laws in Ontario. If you would like to read the laws in their entirety, visit the website of the Ontario Legislature at www.elaws.gov.on.ca.

The Ontario *Highway Traffic Act* (HTA):

HTA 144/136 - Traffic signals and signs - stop for red lights and stop signs and comply with all other signs.

HTA 153 - One way streets - ride in the designated direction on one-way streets.

HTA 147 - Slow moving traffic - any vehicle moving slower than the normal traffic speed should drive in the right-hand lane, or as close as practicable to the right edge of the road except when preparing to turn left or when passing another vehicle. For cyclists, you must ride far enough out from the curb to maintain a straight line, clear of sewer grates, debris, potholes, and parked-car doors. You may occupy any part of a lane when your safety warrants it. Never compromise your safety for the convenience of a motorist behind you.

HTA 142 - Signalling a turn - before turning, look behind you and signal your turn. Cyclists can use their right arm to signal a right turn.

HTA 140/144 (29) - Crosswalks - stop for pedestrians at crosswalks and walk your bike when crossing at a crosswalk.

HTA 166 - Streetcars - stop two metres behind streetcar doors and wait until passengers have boarded or departed and reached the curb.

HTA 175 (12) - Stopped School Buses - stop for stopped school buses when the upper alternating red lights are flashing and the stop arm is out.

HTA 62 - Lights - a bike must have a white front light and a red rear light or reflector if you ride between ½ hour before sunset and ½ hour after sunrise.

HTA 62 (17) - Reflective tape - a bike must have white reflective tape on the front forks and red reflective tape on the rear forks.

HTA 75 (5) - Bell - a bike must have a bell or horn in good working order.

HTA 64 - Brakes - a bike must have at least one brake system on the rear wheel. When you put on the brakes, you should be able to skid on dry, level pavement.

HTA 218 - Identification - cyclists must identify themselves when stopped by a police officer for breaking a traffic law. The police officer will ask you for your correct name and address and you must provide it. Failing to do so can result in your arrest.

HTA 185 - Expressways - bicycles are prohibited on expressway / freeway highways such as the 400 series, the QEW, Ottawa Queensway and on roads where "No Bicycle" signs are posted.

HTA 178 - Passengers - passengers are not allowed on a bicycle designed for one person.

HTA 178 - Attaching to a vehicle - cyclists are not permitted to attach themselves to the outside of another vehicle or streetcar for the purpose of "hitching a ride".

HTA 104 - Helmets - every cyclist under the age of eighteen must wear an approved bicycle helmet. Parents or guardians shall not knowingly permit cyclists under the age of sixteen to ride without a helmet.

HTA 179 - Dismounted bicyclist - cyclists are required to ride on the right-hand side of the road. If you are walking your bike on a highway where there are no sidewalks, you are considered a pedestrian and you should walk on the left-hand side of the road facing traffic. If it is not safe for you to cross the road to face traffic, you may walk your bike on the right-hand side of the road.

City of Ottawa Traffic and Parking By-laws (By-law):

By-law 62 - Reserved lanes - other vehicles shall not drive or stop in lanes reserved for cyclists.

By-law 84 - Sidewalks - cyclists shall not ride on sidewalks or curbs, except to directly cross them.

By-law 96 - Bus lanes - cyclists shall ride as close as practicable to the right hand curb, except if the lane is a reserved bus lane.

By-law 96(3) - Packages - cyclists shall not carry a package, which prevents the rider from keeping both hands on the handlebars or interferes with the normal operation of the bicycle.

By-law 97 - Restricted access - signs may exclude bicycles from a highway or a portion of a highway.

National Capital Commission Traffic and Property Regulations (NCC Reg.):

NCC Reg. 16 - Where to ride - on NCC property, cyclists must ride single-file on driveways or bicycle paths and nowhere else.

NCC Reg. 17 - Racing - no racing on NCC property is permitted.

Please note that this list may change over time because laws do change.

CHAPTER THREE: Insurance Issues

If you actively ride bikes on Ontario roadways, it is extremely important to have the proper automobile insurance coverage before going on a ride. That's right, *car insurance*. Most cyclists do not realize that if they are involved in a bike accident with an automobile, their car insurance could have to cover all damages, including lost wages and pain and suffering. Accordingly, it is important to ensure you have the right car insurance coverage, including accident family endorsement protection. All too often, cyclists believe they have "full coverage", only to learn later that they could have had better coverage and been more fully protected after a tragic accident. Because injuries from bicycle collisions with motor vehicles can be catastrophic or even fatal, it is necessary to review your insurance policy and make sure that you properly comprehend the coverage you are receiving.

Liability Coverage

Liability insurance covers the injuries and damages you cause to another person while in an accident that is your fault. For example, if a driver makes a left hand turn in front of your bicycle while you are crossing through an intersection, the negligent driver's liability insurance will be responsible for paying your damages. However, the law in Ontario only requires drivers to have this coverage with a minimum limit of \$200,000 per accident. Although most Ontarians have more than this amount of coverage, some do not. Since the injuries from a bicycle accident can be serious, the at-fault driver's insurance limits may be insufficient to cover all the damages. Once the at-fault driver's policy limits have been exhausted, your personal car insurance policy becomes applicable. In order to protect you and your family financially after a bicycle accident, it is important to have good car insurance with a high "Family Protection Endorsement".

Statutory Accident Benefits or No-Fault Coverage

** This coverage is mandatory for all Ontarians with car insurance. **

Under the law in Ontario, every car is required to have an insurance policy that includes statutory accident benefits. These are also called SABS, ABs, or no-fault benefits. This

insurance will cover medical expenses and lost wages, subject to certain limits, after a traffic accident. These benefits are available to you whether or not you are at fault for the accident, as long as the accident involves a motor vehicle. This law allows you to receive immediate medical attention after your accident without having to wait for the at-fault driver's insurance company to accept liability.

Even if you are not at fault for the accident, it is your own insurance company that pays for your SABS. If you do not have car insurance, you will be covered by the car insurance of any family member who lives with you and on whom you are dependant. If there is no one who meets those criteria, you will be covered by the insurance company of the other vehicle involved in the accident. In the worst case scenario, where there is no other insurance available, there is a government insurance fund of last resort.

CHAPTER FOUR: Injuries and Accidents

As bicycling becomes more popular as a primary means of transportation, serious injuries and deaths are becoming more prevalent. Each year, roughly 70,000 bicyclists visit the hospital, 7,500 of which have sustained serious injuries. In Canada, 65 bicyclists were killed in 2007 alone,¹² and an estimated 20 children die each and every year from bicycle related injuries.¹³

A bicyclist has little protection against the force of a two-ton car or truck, and when a speeding vehicle crashes into a cyclist, the results can be horrifying. In addition to common small-scale injuries, cyclists can suffer from highly debilitating and life-altering injuries and even face death. The following chapter contains a basic summary of two major types of injuries: traumatic brain injury and spinal cord injury.

Traumatic Brain Injury

Along with common and less serious injuries such as road rash and broken bones, many injured cyclists sustain severe head injuries after a fall or collision. Cyclists who do not wear a helmet run a much higher risk of incurring such an injury, though even cyclists wearing helmets are susceptible to head injury. Serious head trauma is often called traumatic brain injury (TBI) and can have long-term or even lifelong effects. According to the Brain Injury Association Network, an estimated 16,000 Ontario residents sustain a TBI each year. Motor vehicle collisions are responsible for over half of all acquired brain injuries and over 75% of all cycling deaths involve brain injuries.¹⁴ An estimated 26,000 Canadians are currently living with the long-term effects of a brain injury and almost none will *ever* resume full-time employment.¹⁵

Victims of severe TBI can suffer from a range of debilitating symptoms, including minor to severe amnesia, subdural hematomas, brain hemorrhaging, and seizures. Such injuries can permeate into almost every aspect of the victim's life, including his/her ability to work. Even

¹² Transport Canada, Canadian Motor Vehicle Collision Statistics, TP3322-2007. <<http://www.tc.gc.ca/eng/roadsafety/tp-tp3322-2007-1039.htm>>

¹³ Safe Kids Canada, Child and Youth Unintentional Injury: 1994-2003 10 Years in Review. <www.safekidsCanada.ca>.

¹⁴ Brain Injury Association Network, ABI Facts and Info. <<http://dawn.thot.net/brain/facts.htm>>.

¹⁵ Brain Injury Association Network, ABI Facts and Info. <<http://dawn.thot.net/brain/facts.htm>>.

minor head injuries can have painful and life-altering consequences. Victims of more minor forms of TBI often suffer from dizziness, short-term memory loss, blurred vision, depression, attention loss, or personality changes.

Of course, the physical implications and symptoms of TBI constitute only a portion of the overall effects of this serious injury. The mental and emotional toll from TBI affects not only the victim, but also friends, relatives, and loved ones. Symptoms incurred from TBI – whether minor or severe – can result in emotional repercussions, familial strain, and social stress. Such angst is only exacerbated by the hospital visits and medical expenses that result from such an accident.

A horrible aspect of TBI is that it can easily go undetected. According to the latest research, for every person who is hospitalized for TBI, roughly three to five more people go untreated for this devastating injury.^{16 17} This is especially dangerous due to the potentially life-altering consequences of TBI. If someone is suffering from memory loss, for example, but does not know that TBI is the root cause, he/she may not receive the proper medical treatment that could help ameliorate the symptoms. For this reason, it is best to check yourself into the hospital if you are involved in a bicycle accident where you sustain a blow to your head. Remember that in some cases, symptoms will not appear immediately after the accident. It is tremendously important to find out exactly what injuries you have as soon as possible after an accident.

As noted earlier, bicycle helmets substantially reduce the risk of TBI and other head injuries. However, you must know that even if the helmet prevents physical damage such as cuts and bruises to your head, you may still have sustained a TBI. This type of injury can come from internal damage, which can occur if you knock your head hard enough against a solid object, even while wearing a helmet. Most minor and severe TBIs can happen without any cosmetic bruising or cuts.

¹⁶ Bernstein, D.M. (1999). Recovery from mild head injury. *Brain Injury*, 13, 151-172.

¹⁷ Kraus, J.F., & McArthur, D.L. (1996). Epidemiologic aspects of brain injury. *Neuroepidemiology*, 14, 435-450.

Spinal Cord Injury

Along with head trauma, cyclists are susceptible to spinal cord injury. Damage to the spinal cord can be particularly harmful and life altering. The spinal cord consists of a large network of nerve tissue, which delivers signals from the brain to the entire body. Damaging the spinal cord or vertebral column (the part of the body that protects the spinal cord) can have devastating consequences.

Damage to the nerves of the spinal cord can lead to permanent disability or paralysis. The location of the spinal cord injury often dictates the extent of the injury. Some injuries can lead to quadriplegia, a loss of mobility/paralysis in the arms and legs, or paraplegia, the paralysis of the lower half of the body.

Victims of spinal cord injury suffer a broad range of symptoms, and depending on the extent of damage sustained by the nerves, symptoms can range quite a bit in severity. Complete spinal cord injury occurs when the spinal cord is severely damaged. These injuries typically lead to the total loss of feeling and motor function below the area of injury. Less severe damage can lead to incomplete spinal cord injury, where victims lose some, but not all, motor function and sensation below the injury.

According to the Rick Hansen Spinal Cord Injury Registry, the incidence of spinal cord injury in Canada is approximately 1,050 per year, approximately 40% of which are attributed to motor vehicle collisions.¹⁸ An estimated 36,000 Canadians are currently living with a spinal cord injury. Approximately 50% of spinal cord injuries result in quadriplegia.

As you can see, spinal cord injuries are incredibly complex and can usually have life-changing repercussions on a victim's quality of life and finances. Unlike many other types of injuries, damage to the spinal cord can have substantial long-term effects, leading to ongoing or recurring medical expenses for many years. Care and treatment for someone with a severe spinal cord injury is very expensive. This is why it is extremely important to make sure that if you or

¹⁸ Rick Hansen Spinal Cord Injury Registry, [Spinal Cord Injury Facts and Statistics](http://rickhansenregistry.org/sites/rickhansenregistry/files/SCI_Facts_and_Stats_2005.pdf).
<http://rickhansenregistry.org/sites/rickhansenregistry/files/SCI_Facts_and_Stats_2005.pdf>.

someone close to you has suffered this type of injury, you do everything possible to make sure a proper settlement is paid or awarded. Settling for anything other than full and exhaustive compensation is out of the question.

In most cases involving serious injury, it is in the victim's best interest to hire a lawyer that will help them through the situation and help them receive a fair settlement. An experienced lawyer who has dealt with similar cases will usually have a good understanding of what types of expenses will be required in the short- and long-term. They also have connections to experts in various medical fields, and so they can help a victim understand and receive compensation that takes into account *all* the damages that have been suffered.

CHAPTER FIVE: How to Prepare For Your Claim

If you have been injured in a bicycle –motor vehicle accident and you are considering making a claim or hiring a personal injury lawyer, there are several important things you should be aware of. This chapter describes the different types of claims that you might be able to make, explains the role of an insurance adjuster and outlines some of the key elements that must be present to make a successful claim.

As with anything involving insurance companies, bicycle accident claims can quickly become complicated. Having some basic knowledge about bicycle accident cases can help you navigate the rough waters and help you determine whether you need legal representation. This information can really help to guide you to make the right decision on how to proceed. Keep in mind that every accident case is different, and though the following information could certainly pertain to your case, some of it might not. The only way I can tell you specifically what is relevant to your case is if you contact my office for a free consultation.

Statute of limitations: The statute of limitations is an important timeline that designates your window of opportunity to file suit against the responsible party. If the statute of limitations expires, you may no longer bring a case to court. A lawyer can explain what the limitation period is in your particular case.

From which parties can I receive compensation? Many bicycle accidents are caused by the negligence of a motorist. In this type of accident, you can recover damages from the drivers of automobiles, buses, trucks, or motorcycles – as long as your injuries meet certain criteria. However, a common misconception concerning bicycle accidents is that the claim is only legitimate or worthwhile if the accident involved a motor vehicle. Bicycle accident claims can be brought forward in cases that do not involve a motor vehicle. There are many other causes of bicycle accidents for which victims can file suit and receive compensation.

For injuries resulting from a bicycle malfunction, you may be able to claim damages from the manufacturer or retailer of the bike. If you are involved in a cycling accident resulting

from unsafe roadways or the lack of maintenance of a street, you may be able to recover damages from the city or province (or the NCC in the Ottawa area). Likewise, if the accident is caused by negligent upkeep of private property, you are entitled to seek damages from the owner of the property. Again, every case is different, and the best way to determine if you have a legitimate claim is to contact a personal injury lawyer.

Types of compensation

Another common misconception in accident cases is that the injured person may only receive monetary reimbursement for medical expenses. This is certainly not how the legal system works, and depending on the details of your case, you may be entitled to compensation for a multitude of other damages you received in the accident. Here is a brief summary of some of the types of compensation that you may be entitled to:

- **Medical Expenses:** If you have been in a bicycle accident, chances are you suffered personal injuries. Although in Ontario, the Ontario Health Insurance Plan (OHIP) will cover most of your medical expenses, you may require certain treatments, medical devices, or encounter other expenses that OHIP does not cover. For example, physiotherapy and massage therapy are often recommended for individuals who have suffered personal injuries but these treatments are generally not covered by OHIP. As well, prescriptions and medications, ambulance bills, transportation expenses, and medical equipment (e.g., crutches or a wheel chair) are generally not covered by OHIP.

If you think you might have been injured, do not hesitate to check yourself into the emergency room after your accident. Injuries can manifest themselves without showing immediate visible symptoms. This is especially common with head injuries. Promptly receiving proper medical treatment could prevent serious repercussions. To help yourself in the future, be sure to **keep a complete record of your medical expenses**. I recommend creating a folder for storing your records and bills. File **everything** in this folder. If you are not sure if you need to save a document, keep it anyway. You never know what records and bills you will need to have on hand, especially if you decide to file a lawsuit.

If you have been struck by a motorist, you will likely be eligible for statutory accident benefits, either through your own car insurance or from the insurance of the driver who hit you. You may get these benefits even if you caused the accident. Accident benefits provide a certain amount of coverage for medical expenses. For amounts over the accident benefit policy limits, the at-fault driver's insurance company may be responsible.

- **Wage and income loss:** Loss of earnings compensation comes in many different types and sizes. For example, if you sustain injuries that prevent you from returning to work for more than one week, you are entitled to be reimbursed for your lost wages through the statutory accident benefits, up to a set maximum per week. In such cases, your compensation will include your normal wages, commissions, bonuses, and other fringe benefits. Accident benefits do not generally compensate for income not declared.

Some injuries can result in life-long debilitation. In these types of cases, the victim may be unable to work or may have to find a new job in a field where workers earn less income. In such cases, the victim may claim damages for the value of the reduction in future earning capacity. This includes compensation for salary, bonuses, commissions, and health benefits. You may also be entitled to an award for loss of competitive advantage. That is, a decreased ability to compete for employment in the labour market because of your injuries.

- **Disfigurement:** Some bicycle accidents may result in permanent scarring or disfigurement. This can naturally have a psychological impact on a victim's self-image. If a victim has suffered this type of injury, he/she may receive compensation not only for the medical expenses incurred, but for psychological pain and suffering as well.

This also applies to children who suffer disfigurement from bicycle accidents. For safety reasons, many surgeons will refrain from performing surgical revisions until the child is fully grown. While the victim may be able to receive plastic surgery later in life, he/she must go through the difficult years of adolescence with the scar or disfigurement. This can obviously lead to embarrassment and humiliation that can severely affect the child

emotionally. In many bicycle accident claims involving a child, such emotional and psychological damages will be taken into consideration.

- **Pain and Suffering:** You may have the right to receive compensation for pain and suffering. This is not limited to physical pain, but also includes psychological and emotional difficulties. Some bicycle accident victims suffer from post-traumatic stress disorder after a serious accident. This can be highly debilitating, causing the victim to refrain from social activities, driving, or returning to bicycling. This and other psychological pain and symptoms may result in monetary compensation. If your accident was caused by a motor vehicle, you can claim for pain and suffering if your injuries meet certain criteria – the most significant being “seriousness” and “permanence.” A personal injury lawyer can help you understand if your case meets the legal “threshold.”

Fatality Claim

In the most serious bicycle accidents, when the victim was killed as a result of the negligence of another party, family members are entitled to make a fatality claim. Many bicycle wrongful deaths in Ontario result from the reckless actions of car and truck drivers. A bicycle offers no protection against the force of a motor vehicle. It is a sad reality that because of the size mismatch, cyclists’ lives are in danger every time they share a road with a car. Unfortunately, as bicycling becomes more popular in Ontario, the rate of fatal accidents will increase.

When an Ontario bicyclist is killed because of a driver’s negligence, his/her family has the right to file suit against the responsible party under the *Family Law Act*. This is a separate and distinct claim than any criminal charges that the person who caused the death may face (e.g. Criminal negligence causing death). As with any legal case in Ontario, there are a few matters of which you should be aware if you are considering filing a wrongful death case after a bicycle accident.

Statute of Limitations: A claim following a bicycle fatality has a limitation period. You should be aware that the time limit may vary depending on the details of the case. If you are unsure as to

the length of the limitation period for your particular case, it is best to contact an experienced personal injury lawyer to discuss the situation.

SABS: The Statutory Accident Benefits offer specific death benefits to certain specified family members (i.e. spouse and children). There is also a fixed amount of funeral coverage.

Damages: Family members of a deceased may sue for monetary losses that result from the death, including medical bills not covered by OHIP or the SABS, and burial expenses. Where the deceased had dependants, there may also be a claim for the loss of a portion of that person's income and pension. Compensation is also available for the loss of guidance, care, and companionship that family members would have received from the deceased, had the death not occurred. In some circumstances, compensation may also be available for travel expenses, nursing, and/or housekeeping services.

Who Can Claim: The persons that can recover under the *Family Law Act* are limited to spouses, children, grandchildren, parents, grandparents, and brothers and sisters of the deceased.

Understanding the Insurance Adjuster's Role

Every month we receive telephone calls from Ontario accident victims who have been dealing directly with their insurance company in an effort to get fair compensation. As I have said throughout this book, it is possible for a non-lawyer to handle his/her own claim and come out just fine, especially if the injuries are small and the loss is straightforward.

However, the most serious mistake an injured victim can make is to believe that the insurance adjuster handling their claim is on their side. This belief is just plain wrong and it can lead to a victim not obtaining fair compensation in his/her case.

It is a fact that the insurance adjuster works for the insurance company. That 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". **The person**

sent by the insurance company to meet with you or who calls you on the telephone from the insurance company works exclusively for the insurance company.

The mandate of an insurance adjuster is to settle your claim as cheaply as possible. And while not all insurance adjusters are villains, their mandate simply is not to ensure that you receive all the compensation you deserve.

When the lawyers at our firm explain this to injured victims and their families, people are often skeptical. We are told: “The insurance adjuster seemed so nice.” “She came to the hospital with a cheque for our parking expenses.” “She sent flowers.” All of this may be true, but it does not change the role of the insurance adjuster. In fact, the nicer the adjuster, the more likely you are to agree to whatever proposal he/she makes.

The vast majority of insurance adjusters are decent professionals who are just doing their job, and our personal injury lawyers enjoy excellent professional relationships with many of them. The fact remains, however, that their job is to settle your case, and all of the cases they are handling, for as small an amount as possible.

CHAPTER SIX: Finding the Right Lawyer

If you have suffered injuries from a bicycle accident, you might be considering hiring a personal injury lawyer to represent you. Fighting the insurance company alone can be a challenging process and it can result in an unfair settlement. Having excellent legal representation can easily make or break your bicycle accident case. However, as I have said throughout this book, not all bicycle accidents necessitate hiring a lawyer. Whether you need a lawyer is a complicated question and one I cannot answer broadly in a book without the details of your accident.

Every bicycle accident is different, and it is difficult to determine if you need a lawyer to represent you. If your injury is serious and requires several thousands of dollars in current and future expenses, you will want to give heavy consideration to hiring a lawyer. Additionally, if you have suffered permanent scarring or disfigurement, a lawyer can help you obtain a substantial settlement, even if your expenses are relatively low. Most lawyers in Ontario offer a free consultation to determine if you have a viable case.

Proper legal representation is extremely beneficial in many accident claims. A good lawyer brings a wide range of useful and necessary services to his/her client. My law firm is dedicated to providing quality representation to all of our clients, and I am committed to giving personal attention to every case. Here are just a few of the services that I provide my clients:

- Conduct initial interview with the client in which we evaluate the client's claim, educate the client regarding the legal process for personal injury cases, and determine any deadlines that apply to the specific case
- Gather records and documents that will support the claim, including medical charts, police reports, and photographs
- Gather witness statements and perform an investigation of the client's claim
- Confer with the client's medical doctors to fully understand the client's injuries and conditions
- Help the client locate resources, such as local, provincial, and federal assistance programs, that will aid the client with his/her recovery

- Conduct negotiations with the insurance adjuster to settle the claim
- If the case goes to court, we prepare and draft the Statement of Claim and all other court documents to file
- Prepare the client for discovery
- Hire experts that will support the claim
- Prepare and attend mediation
- Prepare the client and witnesses for trial
- Try the case in court before a judge or jury

This is only a general list of services that we can provide to the client. Of course, there may be additional services required depending on the case and the needs of the client. Hopefully this list has given you a general idea of the tasks that a personal injury lawyer should perform in pursuit of a successful legal claim.

Who Should I Hire?

Ontario is home to many personal injury lawyers, but not all of them are experienced in every area of the law. You want to make sure to do your research before choosing a lawyer. It is important to find a lawyer who is experienced in bicycle cases and has a proper understanding of the laws pertaining to such claims. Hiring a lawyer who lacks the proper legal knowledge and expertise could cause you to lose your case or receive a settlement that is lower than what you rightly deserve.

Here are a few questions you will want to ask the lawyer or law firm representative before you hire the lawyer for your case:

- What percentage of your practice is dedicated to personal injury and bicycle accident cases?
- Are you experienced in negotiation and out-of-court settlement?
- Do you have a website with information on personal injury cases?
- What results have you achieved for your clients in the past?

MORE ABOUT US

Our clients receive personal attention because we are very selective in the cases we take. We decline many cases each year in order to devote personal, careful attention to the case that we do accept. We pride ourselves on taking the time to meet with clients' doctors and discuss with them how they can assist in your case. If we do not accept your case, we will be glad to provide you with free information and refer you to another lawyer who may be better suited to help you.

I have successfully handled many bicycle accident cases in Ontario and am aware of all the issues that are important to cyclists. If and when we need to, our firm will hire qualified bicycle experts for our injured clients. As we do in all our cases, we will obtain the best medical experts and specialists available to help diagnose our clients' injuries.

For bicycle accident cases, we have an expert private investigator who interviews every person who witnessed the accident. Sometimes, we videotape the scene of the accident or hire an accident reconstruction expert to study the case so that we can get the best possible result for our client.

Most importantly, we love to bike and so do our kids. It is this fact that makes me so keen to promote bicycle safety, to ensure that injured bicyclists' claims are taken seriously, and to do everything in my power to have victims receive fair compensation.

I have heard so many horror stories from cyclists. Past clients of mine have been victims of hit and runs, driver negligence and even intentional attacks. As a lawyer and an avid cyclist, I understand what you are up against and I will fight to get you the compensation you deserve.

CHAPTER SEVEN: Testimonials

What Our Clients Have To Say

“We are thrilled with the results of [Brenda Hollingsworth’s] commitment, legal knowledge and expertise. [She] worked for us, giving us feedback and up-to-date information. [She] responded immediately, thoughtfully, and concisely to our questions. Finding the right legal counsel to deal with insurance companies was of the utmost importance to us. No doubt, [Brenda] was just what we were looking for. Thank you.

Marie and William M, Ottawa

"Brenda Hollingsworth is competent, compassionate, knowledgeable and fully committed to supporting her clients through a very difficult and painful time, when personally injured. Her expertise in this field is unsurpassed and having her on your side will result in fair, successful representation in a professional but empathetic manner. I so highly recommend Brenda.

Motor Vehicle Accident Victim, “Lou”

“I would like to say thank you to Brenda and her staff for the excellent service in processing my claim. Everyone was very supportive and understanding and I would highly recommend your law firm.”

L.B., Pembroke

“Many thanks for your good work in resolving my recent claim. I just would not have had the energy or knowledge to have handled it myself. From the very beginning you impressed me with your pleasant and professional manner so I felt confident in leaving everything in your capable hands.”

“I'm totally satisfied with the outcome, and once again, my sincere thanks, to you in particular, and to the members of your staff, who were courteous and helpful at all times during the course of resolving my claim.”

Lilian Alyea, Ottawa

"I received my settlement funds. Thank you! The amount is great!!!! I will share it with my family and certainly pamper myself with many a thing! My daughter told me not long ago that when the accident happened, I would have settled for \$2000 from the insurance if they had

offered me. I'm so glad they didn't offer me anything. My daughter is the one who found your web site and encouraged me to contact you. I'm so thankful that you represented me. You did a wonderful job. You were always communicating with me and reassuring me. I appreciated everything you did. I can't thank you enough. I'm glad everything turned out so well, thanks to you Brenda."

A. G., New Brunswick (accident happened in Nepean)

"I am sincerely grateful to have shared my obstacles with such an exceptional and determined woman like you, Brenda Hollingsworth!! I am deeply grateful for your help Brenda. Thank you very much."

Safiya Abdillahi, Ottawa

"My lawyer, Brenda, gave me the chance to get what I deserved when I did not know anything about the legal system. She directed and supported me. She did not give up and encouraged me not to leave the process empty-handed. I was very happy with the services provided. I would send any of my friends to Brenda or her partner, Richard, if they needed help."

M.A., Ottawa

"Professional, comfortable, reliable, courteous and above all treated me with respect. Thanks so much Brenda for all you have done and continue to do for me."

Stuart Forbes, Ottawa

"As very naive clients and given that it was our first time obtaining the services of a lawyer, we really appreciated Brenda's patience and all her efforts on our behalf. We always felt comfortable with Brenda and were very impressed with her genuineness and caring nature. We would not hesitate to contact Brenda in the future for any of our legal needs. In fact, we would not even consider anyone else."

T.W. and K.P., Ottawa

Brenda Hollingsworth is a personal injury lawyer in Ottawa and a founding partner in the law firm of Auger Hollingsworth. She is a member of the Law Society of Upper Canada and is admitted to appear in the Ontario Court of Justice, the Ontario Superior Court of Justice, the Ontario Court of Appeal, all levels of the Federal Court, and the Supreme Court of Canada.

Brenda's legal expertise comes from years of study and practice in law. After earning her Bachelor of Arts degree with Honors in English at Queen's University in Kingston, she earned a Master of Arts Degree in English at the University of Ottawa. In 1995, Brenda earned a Bachelor of Laws from the University of Ottawa, graduating Magna Cum Laude. Since graduating, she has gained extensive experience and specialization in personal injury law involving serious motor vehicle accidents (ranging from orthopedic to brain injuries), cycling accidents, boating accidents, slip and falls and other accidents.

In addition to this book, Brenda has authored "The Injured Victim's Guide to Fair Compensation" and "Crash Course: A Savvy Woman's Guide to Ontario Car Accident Claims." These books provide detailed information to help answer common questions for accident victims. You can visit the Auger Hollingsworth website to order free copies of these books. Also, if you have been injured, make sure to use the videos, articles, blog posts and case studies on the site to learn about your options

\$14.95

Auger Hollingsworth

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