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## Mistakes, myths and missed opportunities: Revealing new book by Ottawa law firm gives Ontarians play-by-play for taking on the system of personal injury claims

*Road to Recovery (2022) by Brenda Hollingsworth and Richard Auger*

Ottawa, ON (January 24<sup>th</sup>, 2022) – A ‘how-to’ book by an Ottawa-based legal power couple promises to lift the lid on the personal injury law field and help Ontarians avoid high turnover ‘settlement mills’.

Written by Brenda Hollingsworth and husband Richard Auger of Auger Hollingsworth, ***Road to Recovery (2022)*** is a play-by-play for victims of car accidents, slips and falls or any other personal injury accident. The book is available from Amazon on January 24, 2022.

Over the past 25 years the couple have practiced personal injury law, they say they’ve seen far too many seriously hurt people miss out on much-needed financial support because of early mistakes, misunderstandings or taking the wrong advice, usually from family or the internet. In some cases, they sign up with so-called “settlement mills”.

“The words ‘I’ll see you in court!’ are uttered more in Hollywood movies than in real legal cases in Canada. Actually, 95 percent of personal injury claims are settled out of court and never go before a judge or jury,” says co-author, Brenda Hollingsworth.

“There are personal injury law firms that use a lot of advertising to get as many clients as possible, and then they settle claims quickly but at a lower value. Known as settlement mills ... they don’t always practise law. They refer your file out for a fee and reap the benefit of a quick settlement and move on to the next case. In short, their speciality is signing up clients, not prosecuting claims,” she says in the book.

Containing chapters like “The First Meeting: Come as You Are and Give It to Us Straight”, the tell-all book is part reassurance, part how-to guide, says co-author, Richard Auger.

“Mistakes about who to report the incident to, when to do it and what should be shared are really common. That’s the rationale behind this book: we wanted to share what we know so that before a single word is said, the client knows exactly when the process will be,” he says.

There are few surprising disclosures, too. If you’re awarded \$100,000 for a car accident by an Ontario court, you’ll only pocket \$58,496.50. A deductible of \$41,503 .50 is automatically given to the insurance company. Even more shocking is that if the award is made by a jury, they are not told there is a deductible and so believe the full amount is going to the claimant.

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**“Injured people are at a real disadvantage during the claim process because you don’t have nearly as much information as the insurance companies. If you don’t know the system, you are vulnerable to getting less than you deserve. We wrote this book to level the playing field, so people like you are treated fairly.”**

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Auger says that between a system often skewed against the injured, misinformation and a cap of just \$410,000 for pain and suffering in Ontario, claimants need all the information they can get. *Road to Recovery* by Brenda Hollingsworth and Richard Auger is available from Amazon from January 24, 2022.

For more information or an interview, please contact:

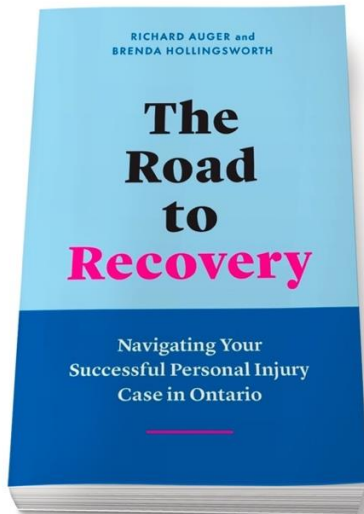
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Extract:

### **Beware of settlement mills**

The difference between one lawyer and another isn't always obvious. The first step is to learn how different firms approach your case.

You might assume when you hire a lawyer from a personal injury law firm that you will be dealing with a full-time lawyer who works at that firm and is committed to building your case through all the necessary steps to get you the best result. Sounds like a given. It's not.

These days, there are personal injury law firms that use a lot of advertising to get as many clients as possible, and then they settle claims quickly but at a lower value. Although these firms may keep some clients internally, many cases are farmed out to affiliate firms, junior lawyers, even paralegals or law clerks, in return for referral fees. This means that the lawyers you are meeting are not the lawyers you are getting. The people working your case may not even be full-time, actual lawyers.

Known in the industry as “settlement mills” (not a very complimentary term), these firms are really, really good at advertising and signing up clients. But they don't always practise law. They refer your file out for a fee and reap the benefit of a quick settlement and move on to the next case. In short, their speciality is signing up clients, not prosecuting claims.

### **The reputation of the firm matters**

There's another part to this story. When the insurance company and the lawyer for the defence receive the paperwork on your claim, they look up the lawyer (and firm) you have chosen. Surprise, surprise: the defence knows which lawyers and firms have a reputation for settling claims quickly for pennies, and which ones are going to build a case—that is, do the research, take it to discovery, take it to mediation, and, if the evidence supports the case, hold out for a higher amount and take it to trial.

The thinking goes something like this: “Firm A is always pushing to settle quickly. Let's give them a low-ball number, because we know they'll never go to trial. Firm B has a reputation for putting in the effort to get a higher value settlement. Darn. We'd better abandon the idea of a quick and low pay-off and get to work on a serious offer.”

### **Yes, there can be a big difference . . . and it's heartbreaking**

In our practice, we see the difference between types of firms, and the result can be heartbreaking. In one case, a multiple car pile-up left two victims in need of compensation for severe injuries. We were able to negotiate a one-million-dollar settlement for our client, whereas the other victim—represented by someone with less experience—ended up with \$50,000.

Sometimes we've had the opportunity to turn things around. In one instance we met with a new client who had been told by a settlement mill firm that his case didn't meet the threshold for a car accident in Ontario. Fortunately, he came to us for a second opinion. After carefully building his case, we were able to get him a six-figure compensation.

Okay, so you're going to do more than choose your firm off the side of a bus. Here are a few more tips to keep in mind.

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**“The idea of standing up for yourself is daunting to many Canadians who are taught to be polite, to forgive and forget. This book debunks many of the myths around claiming compensation that is rightfully yours. The main goal of this book is to help you protect your family and yourself after a serious injury has interrupted your life.”**

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#### **Lawyers are not interchangeable**

Different lawyers are trained and experienced in specific areas of the law. You don't want a real estate lawyer who dabbles in personal injury or a commercial litigator who does a few car crashes or slip and falls on the side. Think of the medical profession for a moment. If you break your leg, an ear, nose, and throat specialist isn't going to be much help. The same applies in the legal profession. Need further convincing? We are both lawyers, but we hire lawyers when we require advice outside of personal injury. For instance, to make our wills, we hired an estate lawyer, and when we need advice on employment law for our firm, we hire employment lawyers.

#### **They say they're the best; they've even won awards**

We'd love to tell you that we are the best, or even that we are experts . . . but we can't. It's not because we're modest. There are some statements lawyers are not permitted to make about themselves. We can tell you that we are personal injury lawyers, but that's it. We can't say that we are specialists. And as for those awards, such as “Voted World's Best” or “Award Winning”? Nope. Comparative statements like those aren't allowed either—by law.

Law firms that use this kind of advertising have been prosecuted by the Law Society of Ontario, but you'll still see these claims in promotional materials. Think of them like the late-night TV ads for exercise equipment that “melts fat away.” It's hype.

#### **You like the idea of a lower contingency rate**

While most personal injury law firms do not charge upfront legal fees (you've likely heard this already), there is something called a “contingency percentage” or a “contingency rate” to know about. It's the typical arrangement for how we get paid as your lawyer. We receive a percentage of the amount we

recover for you—and only after we recover the money. So, if we do not recover any money for you, we don't get paid.

Some lawyers promote the fact that their contingency rate is only a low percent. It sounds attractive, but if your settlement is significantly lower than you could get from a firm willing to put in the work to get a much higher settlement, that percentage won't leave you with more money in your pocket— quite likely the opposite.

## Story Starters:

### Five things surprising facts about personal injury in Ontario

### Five big mistakes people make in their personal injury cases

#### Five things surprising facts about personal injury in Ontario

1. In Ontario there is a deductible of \$41,503.50 that is applied to most car accident settlements or trial awards. That means that if a judge or jury decides that your pain and suffering has a value of \$100,000, you will only collect \$58,496.50. The insurance company gets to keep the rest. The deductible is indexed to inflation so goes up every year. This is the 2022 amount. Also surprising, if the case is being tried in front of a jury, the deductible is kept from them...it's a secret. So the jury thinks you are getting the amount awarded, but you are not.
2. In Canada, there is a "cap" on compensation for pain and suffering that is currently approximately \$410,000. It is indexed to inflation to increase slightly each year. That means that people with the most severe injuries you can imagine such as a catastrophic brain injury or a spinal cord injury will only receive that amount for their pain and suffering. When you see settlements or trial awards in the millions, it's because the lawyer has built up the loss of income and the health care cost aspects of the claims.
3. More than 95% of personal injury cases in Ontario result in an out-of-court settlement. Although your lawyer will prepare for trial, the odds are very good that you will not have to have trial. There are many settlement opportunities in your case.
4. You are not allowed to sue in Ontario for injuries and losses from a car accident unless you have also applied for accident benefits from your own insurance company. Even if you have excellent workplace benefits and don't need the accident benefits, if you don't send in the application form, you cannot get any compensation from the at fault driver.
5. In Ontario, family members of people who are injured or who died in accidents can be compensated for the care, guidance and companionship they have lost as a result of their family members' accidents.

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## Five big mistakes people make in their personal injury cases

1. Not going to a medical doctor immediately after the accident. Many people who have relationships with a physio or chiro clinic attend there before going to their family doctor, especially during COVID. It is very difficult to convince a judge or jury that your injuries are serious when you have waited three weeks to a month to see a doctor.
2. Giving a written statement to the insurance company for the person or company that is at fault. Insurance adjusters are trained to get people to say things that hurt their case. You do not have to give a statement to the other side, and you should not.
3. Denying there are pre-existing conditions. Many people believe that having a pre-existing medical condition hurt their case, so they try to conceal it or minimize it. This always hurts your case. You come across as dishonest. And often a pre-existing condition explains why the effects of the accident are so severe. It can help your case.
4. Not giving notice of a claim on time. In Ontario, there are many deadlines to give notice that you “might” sue for damages. If you miss the deadline, it is not always fatal to your case but it does create unnecessary risk that will require you to compromise on your settlement amount.
5. Posting on social media. Whether you are posting about the accident, your injuries or just what is going on in your life, the insurance company will use even the most innocuous photos against you at trial.