

Personal Injury Information Checklist

Created by Gmeiner Actuarial Services Inc.

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The greater the extent to which the lawyer's office provides all necessary information in a clear & accurate way, the less time our office will spend on sorting through documents and information-gathering. This results in a lower fee.

1. Conflict Check

I should be provided with the name of the plaintiff(s), defendant(s) and third parties, as well as the name and firm of the lawyer(s) on the opposing side. This will allow me to check whether I have already spoken with another of the parties.

2. Timing Requirements

What is the deadline for completion of the assignment, if any?

The date of any scheduled mediation or settlement conference. Is the report needed prior to mediation? If so, how long in advance?

Has a trial been scheduled? If so, where? On what date(s)?

Requested effective date of calculations (separates the accumulated value of past financial loss from the present value of future financial loss).

3. Demographic Information

- a) Name, sex and date of birth of your client. Regarding the date of birth, please reference a birth certificate or other source document. Errors re dates of birth are common on documents such as tax returns or medical reports (month and day often reversed). Please spell out the month in letters.
- b) Date of the accident(s) or incident and date losses commenced (if different from the date of the accident).
- c) Information concerning your client's state of health:
 - i) As an actuary, I need to check the health status of your client to determine the applicability of using standard mortality tables and disablement tables without adjustment. There are a number of medical conditions and life style choices which can impact on life expectancy, including smoking, obesity, hypertension, heart problems, diabetes, asthma, etc. Other medical conditions can impact on an individual's ability to work. Medical information is also needed to determine the extent of your client's injuries, the likely prognosis and the impact of injuries on employment or hours worked.
 - ii) At a minimum, I need to be provided with one or two recent comprehensive medical report(s). A report of a physiatrist (specialist in physical medicine and rehabilitation) usually provides a comprehensive analysis of the client's health situation. Counsel should also provide details on other medical conditions of which they are aware which could affect life expectancy.
 - iii) Some lawyers prefer to provide me with the complete medical records of their clients so that no pre-existing conditions which impact on life expectancy or ability to work are overlooked. Review of extensive medical records will increase the time spent preparing the actuarial report.

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- iv) If there are substantial life expectancy concerns regarding the client, then counsel may be well-advised to seek the opinion of a medical doctor qualified to give life expectancy opinions. Such reports should almost always be obtained in cases involving quadriplegia, cancer, heart disease, or severe brain damage. If cancer or heart disease is involved, a specialist in this area (often, the specialist who was treating the client) can be consulted.
- v) If the case involves alleged medical negligence, I suggest counsel obtain a medical opinion regarding the client's longevity, and prospects for returning to/maintaining gainful employment, had the alleged medical negligence not occurred. In some cases, such medical opinion can be obtained from the expert who is providing an opinion regarding causation.

4. Loss of Earnings

- a) Your client's occupation at the time of the accident (or incident). Please provide a detailed resume of your client and/or employment history.
- b) Income tax returns or individual income tax summaries for at least five years pre-accident (incident) and all returns or summaries post-accident. Please note that Notices of Assessment are not sufficient for my purposes, as they do not provide a breakdown of income by source. Should your client not have retained copies of his/her tax returns, these can be obtained from CCRA with the appropriate authorization.
- c) Canada Pension Plan Contributor Statement. This provides a complete record of CPP pensionable earnings since the date your client joined the work force.
- d) Information as to what your client's earnings would have been from the date of the accident (or incident) up to present. This can be in the form of hourly, weekly, monthly or yearly rates of pay, together with the effective dates of pay increases. If the client had been employed on an hourly basis, I should be provided with hours worked per week and weeks worked per year, as well as overtime hours which would have been available and any extra pay applicable for shift work, etc. If the employee's work is governed by the terms of a Collective Agreement, providing the actuary with the agreements covering the entire loss period would be extremely useful, as agreements typically describe in detail hours of work and rates of pay for various classifications of employees, and other employment benefits.
- e) If your client's duties have been assumed by one particular employee, then that employee's earnings can be used as a projection of your client's earnings. However, it is important to check with the employer representative that the replacement employee's earnings really do coincide with what your client would have earned. Divergence may occur due to differing seniority, experience, education, subtle differences in job duties, etc..
- f) If your client was a long-term employee with a stable private or government employer, consideration may also be appropriate with regard to likely promotion in future, had the accident or incident not occurred. This can substantially increase the present value of loss of future income.

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SPECIAL CASES

Members of the Canadian Forces

- a) date of enlistment;
- b) type of engagement and length (projected ultimate release date, had the accident not occurred);
- c) likely medical release date and release benefits;
- d) if an enlisted member, trade group (Standard, Specialist 1, Specialist 2);
- e) date of most recent promotion;
- f) rank;
- g) current incentive pay category;
- h) information on likely future promotion to higher ranks; and
- i) type of occupation(s) for which the member would have been qualified upon return to civilian employment.

Our office has accumulated a significant database of information concerning pay rates and benefits for military personnel. Historical wage rates for various ranks can be found on the Internet at www.forces.gc.ca.

Self-Employed Individuals

- a) In addition to the personal income tax information listed above, I should be provided with the financial statements (and corporate tax returns, if the business is incorporated) of the business or company for several years preceding the accident, as well as all statements, post-accident.
- b) Spouse/partner's and children's income tax returns may also be required, if income splitting is involved.
- c) If your client's spouse was being paid a salary, to what extent was it for "income splitting" purposes, and to what extent was it justified by the work done?
- d) Since your client's injury, has a replacement employee been hired? If so, the replacement employee's rate of pay may provide some indication of the value of your client's work effort.
- e) Input from your client regarding business expenses that may have doubled as personal "write offs" (i.e., to what extent should the business income reported for tax purposes be modified upward to allow for expenses which, while deductible for tax purposes, contain an element of personal use and/or would have been incurred anyway even if there were no business).
- f) What trends might have affected the business after your client's injury (background of industry and discussion of proposed ventures, including key competitors).

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- g) Does your client's draw (in the form of salary and/or dividends) from the business accurately measure the value of your client's efforts in the business, and/or the profitability of the business? In situations where the client is 100% owner of an incorporated business, I value loss as the salary which the client had been paying to him or herself, plus the net income of the company prior to income tax.
- h) The basic goal is to develop a fair projection of the value of your client's work effort, through his or her business. In complex situations, counsel should consider retaining a business valuator (specialist accountant) to look into the annual earning power of your client through his or her business. The actuary is then retained to calculate the present value of the future loss of income stream.

Unionized Trades People

- a) From the union office, obtain copies of the relevant Collective Agreements (see discussion above), as well as various jobs and hours of employment, including overtime hours, which your client would likely have been offered, from the date of the accident forward.
- b) Very useful information would be the income tax returns of the person immediately below and the person immediately above your client on the seniority list, if this can be obtained. This may narrow the range of the likely projected earnings of your client, had he or she been able to continue working.
- c) If your client was an apprentice, I should be provided with the cumulative hours of your client at the date of the accident (or the date losses commenced) and the progressive scale of wages for apprentices (wages for apprentices generally increase as a percentage of journeymen's wages depending on completed hours of work).

Unreported Income

Your client may not have reported all of his or her employment income on his or her income tax returns, especially if he or she was self-employed. Should this be the case, you may wish to obtain estimates of the expenses of the family unit (rent or mortgage payments, utilities, food, etc.) and compare the expenses against the reported incomes of your client and your client's spouse. The excess of expenses over reported income may represent the unreported income of your client.

Children, Adolescents & Young Adults Who Have Not Yet Entered the Labour Force

- a) demographic data on parents and siblings (dates of birth, occupations of parents);
- b) occupations of other family members (grandparents, aunts, uncles and siblings);
- c) income tax returns for your client's parents;
- d) school grade of your client at time of the accident;
- e) school transcripts;
- f) report from guidance counsellor on the likely level of education that your client could have completed, had it not been for the accident;

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- g) at the time of the accident, did your client have any future employment / career plans, and what job(s) / career(s) might your client have ultimately pursued?
- h) what now (if any) are your client's future employment / career plans, post- accident?

5. Loss of Pension Income

Pension benefits are either "defined contribution" or "defined benefit". "Defined contribution" plans involve employer contributions being made to a fund, and invested for the employee's retirement. This arrangement is similar to an RRSP. The employer contributions are valued as if they were additional salary. "Defined benefit" pension plans provide a pension at retirement based on length of service (all plans) and pay (most plans). For these plans, the employer contributions do not determine the pension's value. Rather, the focus is on the eventual pension benefit at retirement promised by the pension plan. If your client participated in a pension plan at his or her place of employment, the following information should be provided:

- a) copies of client's pension statements (at least two pre-accident statements and all post-accident statements); note that all jurisdictions except PEI require that employees be provided with pension statements each year;
- b) copy of the pension plan text (preferred) or pension booklet provided to employees;
- c) If your client is receiving LTD benefits through an employer-sponsored plan, information on whether your client's pensionable service is continuing while he or she is receiving LTD benefits. Note that even when pensionable service is continuing, pension losses may be occurring, as many pension plans provide for continued coverage based on earnings at date of disability, and not the presumably higher earnings the employee would have had, had he or she been able to continue working. Further, even when pensionable service continues on the basis of what the employee would have earned, had they been able to continue working, some lawyers want us to value loss of pension commencing from the date LTD benefits commenced, as continued coverage may constitute a "collateral" benefit. The issue of what happens to LTD benefits upon settlement of a personal injury action should also be considered.

Your actuary may already be familiar with a wide number of pension plans. For example, pension plan texts for most government plans can be found on the Internet. In our office, we have up-to-date copies of the Canadian Forces Superannuation Act, federal and provincial Public Service Superannuation Acts, the NS Teachers' Pension Act, the pension plan for Canada Post employees, pension plans for various New Brunswick government groups, etc.

6. Loss of Other Employer-Paid Benefits

Your client may also have sustained loss of other employer-paid benefits. These can include loss of retirement allowance or severance pay (typically provided for Forces and Government personnel), loss of group insurance coverage, loss of medical and dental coverage, etc. To value loss of group insurance and medical/dental coverage, I suggest that your client obtain quotes to replace such coverages with similar individual policies.

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The resulting cost should be reduced by any amounts which your client would have paid toward the cost of the coverage, had they remained employed. When, because of the accident or because of pre-existing conditions, your client is refused private coverage, expected future costs should be valued under item 10., below.

7. Retirement Age

Please advise as to any intentions your client had in respect of the age when he or she would likely have retired, where it not for the accident. This may be contingent on the age and retirement plans of his or her spouse (please provide date of birth of your client's spouse). Where retirement plans had not been formulated prior to the accident, the actuary can provide present values for a range of different retirement ages in the report and some guidance as to retirement ages for various categories of employees in the general population. Where more specific estimates are required, information on average retirement ages for specific employee groups may be obtained from the employer or from the actuaries performing the valuations for employer-sponsored pension plans.

8. Residual Earning Capacity

In my opinion, unless the plaintiff is catastrophically injured and clearly incapable of any work, assessment of residual earning capacity is the most difficult aspect of a personal injury claim, particularly in those situations where the plaintiff has been precluded from his or her own occupation, but not any occupation.

If available, please provide us with the following:

- a) functional capacity evaluation;
- b) transferrable skills analysis; and
- c) neuropsychological testing / vocational assessment report.

In cases where a plaintiff is capable of being retrained for a more sedentary occupation, loss of future income may continue over the appropriate retraining period, followed by reduced loss after that point (in the event that the new occupation pays less than what the plaintiff could have earned in the old occupation). Retraining costs should be included as a loss in the actuarial report.

If the plaintiff is expected to recover to the extent of being able to fully resume the old occupation, then future loss would continue over only the expected recovery period.

Note that an injury may cause a delayed entry into the labour market. This may result in a significant loss of future income for your client, especially when he or she was delayed completing university training. As Census data shows that earnings for more highly educated groups vary by attained age, it may take years for the client's earnings to "catch up" to the earnings he or she would have enjoyed, had the accident not intervened.

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An injury may also cause the individual to have to retire earlier than he or she would otherwise have desired. For example, an injury causing paraplegia may not prevent a plaintiff from following their chosen pre-accident occupation. However, physiatrists generally hold that spinal cord-injured individuals generally have to retire earlier because of wear and strain on the upper body. Loss due to forced earlier retirement should always be valued and the opinion of a medical expert regarding the likelihood of this occurring is invaluable.

9. Loss of Valuable Services

Note that by "valuable services", I mean housekeeping and other related tasks.

In situations where a plaintiff has sustained significant functional limitations as a result of the accident, I strongly recommend that a rehabilitation expert be retained to provide a loss of valuable services report. This expert will visit your client in his or her home and will take into account the particular living arrangements, such as size of the home and layout, size of the property, etc. The expert will prepare a list of required replacement services, taking into account the needs of the client as well as the medical information. He or she will normally consult with the treating physician to determine the necessity and duration of replacement services. The expert will also determine the replacement cost of the services in his or her geographic locale. The actuary will provide present value multipliers in her report to value the annual costs as outlined in the loss of valuable services report.

Should you not wish to retain a rehabilitation expert to provide a loss of valuable services, then I should be provided with information on weekly hours spent by your client pre-accident and post-accident on the following tasks:

- a) meal preparation and cleanup;
- b) laundry;
- c) light housekeeping;
- d) heavier housekeeping, such as scrubbing floors, vacuuming, etc.;
- e) indoor maintenance and repair;
- f) outdoor maintenance and repair;
- g) shopping for goods and services;
- h) child care (provide dates of birth of children);
- i) hourly cost of replacement services for each category listed above in your client's neighbourhood; and
- j) adjust replacement hours for possibility skilled replacement worker can do work in fewer hours.

For outdoor maintenance tasks such as snow removal and lawn care, we should be provided with the number of weeks such services would be required in any given year. Other seasonal tasks which your injured client may be unable to perform, are spring and fall cleaning. Pre-accident estimates of time spent on these activities should be provided.

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As an alternative to the preceding, you may wish to provide me with estimates of your client's diminution in housekeeping capacity post-accident, compared to pre-accident levels for each category of household work listed above. I could then use these percentages and apply them to hours spent on household work for the average Canadian male or female, as the case may be. Such data is regularly compiled by Statistics Canada.

Note that the present value of loss of valuable services will need to be grossed up to allow for the impact of income tax on interest earned on a lump sum awarded under this head of damage. Accordingly, I should be advised as to any residual taxable income that your client may be receiving (CPP disability benefits, LTD benefits, any employment income, etc.).

10. Future Care Costs and Other Extraordinary Expenses

In a situation where a plaintiff is likely to incur substantial expenses in future as the result of ongoing difficulties, I strongly recommend that a rehabilitation expert prepare a cost of future care report (note that this is usually undertaken with a loss of valuable services assessment). Such a report will always be required for a catastrophically injured plaintiff. The actuarial report will contain present value multipliers which can be used to calculate the present value of future care costs and other extraordinary expenses. In the absence of such a report, some future care costs may be (and are not limited to) as follows:

- a) list of medications needed by your client as a result of the accident or incident, number of tablets per prescription, cost per prescription, and number of tablets required daily;
- b) any other medical supplies required by your client, together with cost and replacement frequency;
- c) number of physiotherapy sessions required weekly, biweekly or monthly by your client, and cost per session;
- d) number of massage therapy sessions required weekly, biweekly or monthly by your client, and cost per session;
- e) number of chiropractic sessions required weekly, biweekly or monthly by your client, and cost per session;
- f) if a gym membership is required, cost of a yearly gym membership;
- g) any expected future costs regarding treatment of a TMJ problem; and
- h) DURATION of need for various treatment modalities.

11. Section B Weekly Indemnity Benefits

Weekly benefit, start date, end date and total of Section B weekly indemnity benefits received by your client to the end date.

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12. Other Miscellaneous Information

Some lawyers prefer to provide our office with the following additional documentation:

- a) transcripts of the plaintiff's Examinations for Discovery;
- b) complete personnel file;
- c) complete Section B file;
- d) complete LTD file, if applicable; and
- e) Workers' Compensation file (if the plaintiff had one or more compensable injuries pre-accident, or if the accident in question is also a WC matter)

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