



Compensation for Caregivers

This Info Sheet provides information on compensation for caregivers;
it is not meant to be a substitute for legal advice.

The family caregiver is a person who is often forgotten or ignored in the legal process. In a Personal Injury Claim, some remedy can be obtained for the caregiver of an innocent victim. However, little is available for those with only an ICBC Accident Benefits claim for medical care and income loss.

Rights and Responsibilities

If you must undertake care for a severely injured family member that is far more involved than ordinary care, it is important to recognize that you have rights too.

Most importantly, you will also need to ensure that the injured person is receiving all the benefits to which they are entitled. It will be helpful for you to know whether the appropriate medical team is in place and that treatment for your child, spouse or other family member is not falling between the cracks. It will also be helpful to know whether all of the available rehabilitation services are being accessed.

If you are dealing with a motor vehicle accident, one of the first things to do is ensure that the injured person's claim has been referred to the Rehabilitation Department of ICBC. The adjusters in this department are much more in tune with the realities of providing care for a severely injured person.

One of these realities is that simply hiring attendant care, such as Licensed Practical Nurses or licensed nurses (as may be required), does not do the whole job. There still has to be someone present to organize the work schedule, run the family, buy the groceries, feed the attending caregivers (who are usually entitled to meals, as part of their contract) and to house them, if 24-hour care is required. This can be a full-time job in itself.

In-Trust Claims

There are number of legal strategies that can ensure fairness for the caregiver. An "in-trust claim" can be made by the victim to compensate the caregiver for the care provided. This would be part of the victim's Personal Injury Claim and is recognized by the Court.

Example: in a situation where a husband performs his injured wife's housekeeping duties, the Court sees "economic value for which a claim by an injured party will lie even where those services are replaced gratuitously from within the family."¹

¹ Bystedt (Guardian ad litem of) v. Hay, 2001 BCSC 1735 (S.C.).

<p>In-Trust Claims: Factors considered by the Court</p>	<p>The factors which will be considered by the Court in the assessment of in-trust claims include:</p> <ol style="list-style-type: none"> 1. The services provided must be necessary for the care of the innocent victim’s injuries as a result of the vehicle accident; 2. The services rendered by a family member must be over and above what you would expect from the family relationship (for example, the normal care of an uninjured child); 3. The maximum amount that will be paid for the services is the cost of obtaining the services outside the family; 4. If the cost of the family member providing the care is less than the cost of obtaining the services outside the family, the lower amount will be paid; 5. The value of the services must be true and reasonable, and must reflect the time, quality and nature of the services (for example, the amount should reflect the wage of a substitute caregiver); 6. There should not be an undervaluing of the services because of the family relationship; and 7. The family member providing the care need not forego other income and there need not be payment for the services rendered.
<p>In-Trust Claims: Awards</p>	<p>Every situation is different. In-trust claims awarded by the Court can vary from \$15,000 to \$170,000 depending on the circumstances.</p> <p>Typically, with a serious injury there will be a very large claim for costs of future care. Part of that claim will be the cost of attendant care in the future. Once the claim is settled on that basis, the caregiver has the right to ask the Public Guardian and Trustee of British Columbia or the private trustee – whoever is administering the fund – for compensation. This alleviates some of the financial strain of providing care. It also allows the caregiver to buy respite time.</p>
<p>Respite Time</p>	<p>Respite time for the family caregiver is an essential component of maintaining the health of the family caregiver. It is in addition to the financial compensation that may be appropriate for attendant care and in serious cases, it should include replacing the family caregiver for four to six days on a 24-hour basis every month.</p> <p>Respite care for foster parents can serve as a model. Foster parents are given two to five days of respite care every month, paid for by the Government. Therefore, in addition to being paid for providing the care on a full-time basis, they can hire other people to come in and provide care while they have some days off.</p> <p>If the case is properly quantified at the time of settlement, there will be an allowance for respite care and those monies should be directed to the family caregiver by the trustee of the funds, where the injured person is unable to manage their own affairs. If they are able to manage their own affairs then they will be able to make the appropriate arrangements for the caregiver.</p>
<p>The Fund Trustee</p>	<p>What many caregivers do not appreciate is that they have a right to approach the Fund Trustee for financial help.</p>