



## **REHABILITATION FUNDING: A FEW ALTERNATIVE SOURCES**

By: David H. Doig, LLB.

*Restraint, restructuring and just plain cutbacks seem to be the trend in healthcare funding. We live in a time where the need for healthcare funding is greater than ever while the available resources continue to shrink. In this environment it is important as it has ever been for the injured or disabled person to seek additional sources of rehabilitation funding to either supplement or replace government funding cutbacks.*

Private disability insurance or Canada Pension Plan (CPP) disability insurance held by the injured person or liability insurance held by the "at fault" person, such as ICBC or homeowner's insurance, may be sources of additional funding.

### **Disability Insurance:**

Many people are now carrying private disability insurance to cover them in the event they become disabled. The process usually starts with a medical examination. After this, an agreement is entered into with a private disability insurance company. The contract provides that the insurer will pay monthly disability benefits should the insured become disabled within the meaning of the contract. It is the insured's obligation to pay the monthly premiums. Generally speaking, disability insurance is relatively expensive with the cost of the premium varying with the amount of insurance required, the age and health of the applicant.

Insurance coverage, premiums and the definition of "disabled" may vary depending upon the insurance company underwriting the coverage.

To receive the benefits the person must be totally disabled within the definition set out in the insurance policy. A typical definition of totally disabled is: "...a restriction or lack of ability due to an illness or injury which prevents you from performing the essential duties of your own occupation (for two years immediately following your illness or injury)."

Once your disability has lasted for two years the definition changes, usually to the benefit of the insurance company. A typical definition of totally disabled after two years is: "...a restriction or lack of ability due to an illness or injury which prevents you from performing the essential duties or any occupation for which you are qualified or may reasonably be qualified by training, education or experience."

Typically, the availability of work will not be considered by the insurance company in assessing a person's disability.

It is incumbent upon the injured person to prove their claim to the disability insurance company. The disability insurer may refuse to accept the claim. They are entitled to continue to refuse payment until the injured person either obtains a court order or judgment or obtains medical evidence which causes the disability insurer to change their position. For many non-union or self-employed people, private disability insurance may be one of the few available sources of additional funding.

Another source of funding is the Canada Pension Plan (CCP) disability benefits. The CCP pays a monthly benefit to contributors who have become disabled. They also pay monthly benefits for their dependent children. To qualify for CCP disability benefits you must have contributed to CCP for a minimum numbers of years, have been disabled within the definition of the legislation, be under 65, and apply in writing. To be disabled within the meaning of the CCP plan means that your disabling condition is either physical or mental and it must be "served and prolonged." Severe means your condition prevents you from working regularly at any job, and prolonged means your condition is long term or may result in your death.

You must have contributed a minimum number of years. If you become disabled after December 31, 1997 you have contributed to CCP for the last six years. During that period you must have earned at least 10% of each Year's Maximum Pensionable Earnings (YMPE). The YMPE changes each year in 2003 the YMPE is \$39,900.

Disability benefits will run until your death or you are no longer disabled or age 65 when your CCP Retirement Pension Plan begins.

The amount of disability benefits is made up of two parts: the first is the flat rate amount and the second is based on how much, and for how long you have paid into CCP. There is a maximum amount of benefits that can be paid. These benefits are indexed for the cost of living. In 2002 the average CCP disability benefit was \$720 per month. The maximum as of January, 2003 is \$971.26 per month.

## **Liability Insurance:**

Another source of potential funding for an injured person may be a tort claim. Tort law encompasses the law of negligence which, in effect, provides that we all owe a duty of care to our neighbours, and if we breach this duty by behaving negligently and cause injury we may be financially responsible or liable for the injury we cause. In order to succeed in a negligence claim it is necessary to prove a duty of care, a breach of this duty and a resulting injury or loss. This almost always required the skill of an experience lawyer who will gather evidence and present the case initially to the insurance company and, if necessary, to the Court.

The majority of negligence claims involve motor vehicles. In British Columbia the Insurance Corporation of British Columbia is the mandatory insurer of all drivers. Each driver is required to carry a minimum of \$200,000 worth of insurance. As well, each driver has \$1,000,000 in under insured motorist protection (UMP) in the event that they are injured as a result of the negligence of a driver who is carrying insufficient insurance. In the event a negligent driver injures someone the automobile insurer will pay on the negligent driver's behalf a settlement or a judgment up to the policy limits carried by the negligent driver. The amount paid will be determined by negotiations between the lawyers for the injured person and the negligent driver's insurance company. Failing an agreement, the matter proceeds to trial where a judge makes a ruling. Any settlement reached is determined upon the amount a court would award in these circumstances.

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The law of negligence may also provide another potential source of funding to assist with rehabilitation expenses. If the injury occurred as a result of medical or rehabilitative malpractice, the injured person may be entitled to compensation. This claim relates to negligence on the part of a doctor or a rehabilitative professional (including hospitals). In order to succeed in this type of claim it is necessary to prove that the professional made a mistake that a reasonably competent professional would not make. There is no negligence simply for an error in judgment. It must be shown that the negligence actually caused the loss and that the loss would not have occurred but for the negligence. In some instances, negligence can be found where the medical/rehabilitative professional failed to properly inform the patient of the risks and procedures involved. With this type of situation, negligence will only be found when it is shown that with proper, informed consent the patient would not have had the procedure performed. Almost all of those claims required the skill of an experienced lawyer. Even then, most of these claims do not succeed at trial.

Another frequently overlooked source of potential funding is the negligence of individuals who carry homeowner's (or tenants/condominium) insurance. The typical homeowners/tenants/condominium owner's insurance will "Pay on behalf of the owner all sums the owner becomes legally liable to pay as compensation for loss caused by bodily injury or property damage." The scope of coverage include but is not limited to personal activities, ownership, use or occupation of the premises, as well as animals or pets in the owner's care.

As well, these insurance policies typically cover voluntary medical payments to persons that may have become injured as a result of the actions of the property owner or tenant. Usually these payments may be made even though the owner may not be negligent. They provide for the payment of reasonable medical expenses to people who have been injured accidentally by activities on the owner's premises, the maintenance or use of the premises, or animals or pets owned or in the owner's control. There is usually a limit of \$5,000 - \$10,000 for these payments.

## **Concluding Thoughts:**

These are but a few many potential sources of funding that may be available to an injured person. These funds may be used to supplement the Medical Services Plan (MSP). Frequently they make the difference between a decent, more substantial rehabilitation plan and the basic MSP coverage.

With many possible sources of additional funding, it is essential that injured person or their family consult a lawyer. After all, it is the job of an experienced lawyer to canvas all possible types of legal actions which may provide rehabilitation funds. Most experienced lawyers will do this at an initial meeting free of charge so why not take advantage of one of the few free things in life.

**David H. Doig, LLB** is a personal injury lawyer who's practice focuses primarily on major personal injury claims. A large portion of David's practice is traumatic brain injury cases. He is a frequent lecturer on the subject of brain injury and the law to the legal profession as well as the medical community, David's commitment to rehabilitation can be seen in his volunteer work on the boards of the BC Children's Hospital Foundation and the Sunny Hill Health Centre for Children.

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