



**CAMPISI LLP**

Personal Injury Lawyers  
CHAMPIONS WITH HEART.

Paediatric Brain Injuries  
**WHAT YOU NEED TO KNOW**



While many of the challenges that arise when our children suffer traumatic brain injuries (TBIs) are also encountered by adults, there are additional concerns that you and your child will face, including:

- difficulties detecting and diagnosing impairment in a child's developing brain and the resulting delays in treatment, and
- the additional strain it places on your entire family as you attempt to accommodate your child's rehabilitation and care needs, potentially oversee and participate in a lawsuit on your child's behalf and maintain your household.

## Traumatic Brain Injury

### An Overview

As the name implies, these injuries are suffered after a direct or indirect trauma to the head or brain from a car accident, slip and fall or other accident. In these situations, you may have the opportunity to claim compensation for your child's injuries through a lawsuit against an at-fault driver, property owner or other negligent party. If the trauma happened in a car accident, your child will also have access to "no-fault" accident benefits through your insurance company, or the other driver's if you are not insured. The amount of medical rehabilitation benefits that a no-fault insurer will pay depends on the severity of the injury.

TBIs are classified according to the severity of the initial trauma, ranging from Mild (Concussion) to Severe. This does not refer to the severity of the outcome for the child. Under Ontario's current Accident Benefits Regulation (called the SABS), if a child under the age of 18 is admitted to a hospital or neurological rehabilitation facility with a brain injury that can be identified through diagnostic imaging (CT Scan, MRI, etc.), the child will automatically be designated as Catastrophically Impaired (CAT) and have up to \$1,000,000 available for medical rehabilitation and attendant care. A CAT designation provides access to greatly increased funding for treatment, home care and other benefits that the child requires.



Remember that you are your child's best advocate, and often the best or only witness of the injury. If you believe there is a risk of brain injury, do not be afraid to seek a second medical opinion regarding a CT Scan or other test.

## Diagnosing a Child's TBI

**TBIs, and particularly mild TBIs, can be difficult to identify in the case of a child- the younger, the more difficult.** This difficulty relates to the tools we use to establish brain impairment, and the age and developmental stage of the child. Ordinarily, paramedics will apply a short test known as the Glasgow Coma Scale (GCS) to people that may have sustained a TBI. The test relies on the victim's ability to respond to verbal commands, which makes it useless for evaluating very young children. Similarly, it is impossible to test for post-traumatic amnesia until a child reaches an age where memory can be described to an assessor.

Unless there has been an Intracranial Injury (ICI), there is no definitive imaging evidence that can identify a mild TBI- which can occur in a low speed collision, without loss of consciousness or even direct head trauma. For example, in many "whiplash" type injuries, the head snaps back and forth, causing the brain to strike the ridged inner surface of the skull.

Several diagnostic tools are available including: Computed Tomography (CT), Magnetic Image Resonance (MRI), Single Proton Emission Computed Tomography (SPECT), Diffuse Tensor Imaging and others. However, recent Guidelines published by the US Centers for Disease Control and Prevention (CDC) **do not recommend** routine use for children in the absence of ICI. There are risks associated with these tools (including sedation and exposure to radiation), and a lack of evidence that they can effectively diagnose a mild TBI.

Instead, the CDC recommends that physicians use Clinical Decision Rules for children with low risk of ICI. A decision rule is defined as a decision-making tool that incorporates three or more variables from the history, physical examination or simple tests of the patient. Essentially, the physician examines the available evidence and exercises professional judgement based on experience and training.



A failure to diagnose the effects of a mild TBI (often called the "invisible injury") until obvious developmental, cognitive or behavioural impairments are recognized can lead to significant challenges in terms of treatment, and can compromise a child's potential for recovery. It is imperative that you monitor your child closely if you have any reason to suspect brain injury has occurred. The injury can be confirmed by a neuropsychology evaluation, even though it does not show up on an MRI.



## Post-Concussion - Symptoms vs. Syndrome



**The Ontario Neurotrauma Foundation publishes  
an online resource:**

***Guidelines for Diagnosing and Managing  
Pediatric Concussion - Recommendations for  
Parents and/or Caregivers***

***[http://onf.org/documents/guidelines-diagnosing-  
and-managing-pediatric-concussion](http://onf.org/documents/guidelines-diagnosing-and-managing-pediatric-concussion)***

These Guidelines are an excellent reference for parents and caregivers. They include a list of common post-concussion symptoms (p. 21), and offer a series of tools, with strategies and proposed accommodations for your child's return to school and other activities.

Thankfully, most mild TBIs resolve within the first three months. However, during this time, your child may experience a variety of disabling physical, cognitive and psychological or emotional symptoms. Occupational therapy is often recommended for the physical symptoms, which can include: headaches, lethargy, dizziness, and sensitivity to light and sound. Traditional treatments for these symptoms include education and training on self-management strategies, such as energy conservation, relaxation and sleep hygiene. All of these are important to your child's return to health.

Cognitive problems can be difficult to detect, especially in younger children. You must pay close attention to your child as they attempt to engage in normal activities. If they appear slow

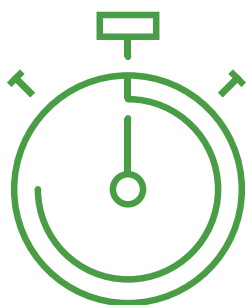


**Please feel free to consult  
Parachute's website at**

***[http://www.parachutecanada.org/  
injury-topics/item/2587](http://www.parachutecanada.org/injury-topics/item/2587)***

**They offer a free app addressing  
parental concerns.**





Generally, if you have been in a car accident or other event that leads to injury, you have 2 years to start a lawsuit against the at-fault party. However, to protect a child's interests and ensure that the full extent of the potential damages is understood, this time limit does not start to run until the child's eighteenth birthday. Therefore, you would have to issue a lawsuit before your child turns 20 years old.

or confused, or are unable to perform a previously learned task, this can be a sign of cognitive dysfunction. Speech and comprehension difficulties are also warning signs. In school age children, the teacher may be the first to notice challenges your child is experiencing. If you suspect that your child is suffering from impaired brain function, consult with your pediatrician. They can refer you to a neuropsychologist or other professional for testing.



**If your child appears anxious, depressed, or irritable, demonstrates unusual behavior, or describes nightmares or flashbacks, you should seek a psychological consultation.**

Counselling or medication may be recommended. A behavioural therapist or social worker can help you implement specific ways to manage behaviour problems.

In cases where traditional treatment fails to relieve your child's ongoing symptoms, innovative new technologies are available that use electromagnetic current or pulses, or low-level laser treatment to stimulate healing.

Despite recent advances in treatment, however, many children will develop long-term or chronic Post-Concussion Syndrome. Even in cases where there is clear evidence of brain injury, understanding the nature and extent of a child's impairment from the injury takes many years. Because brain functions develop at different rates and each child's development is unique, reliable neuropsychological testing cannot be performed until approximately Grade 3, and repeat testing is required as the child continues to mature.

## Impact on Caregivers

Too often, parents and caregivers of a brain-injured child feel selfish and petty for identifying and expressing their own needs or acknowledging the limits of their capacity to provide care. While it is not healthy to paint yourself as the “real” victim in this situation, it is essential to your child’s and your own long-term well-being that you treat yourselves with respect and patience. Grief, sadness, and guilt are natural reactions to such a drastic change in your life circumstances. Rely on each other and seek other forms of support through hospital, government and community resources. Make sure you continue to get appropriate rest whenever possible, so that you will have the resilience to face whatever challenges arise and can provide the love and support your child will need. You cannot afford to burn out. Your child needs you healthy to take care of them. It is both appropriate and important that you submit a claim for attendant care on behalf of your child.

If you have other children, you will have to strike a balance between relying on them for assistance and recognizing their need to be cared for as part of the family. Siblings might become resentful of the brain-injured child, or angry because their lives have been negatively impacted. These are also natural reactions and deserve to be dealt with compassionately. It may be beneficial for all of you to seek professional counselling to provide a sounding board and offer advice. Seek help from friends and family.



**If you are having trouble coping and feel that you need counselling, or find that you are unable to work, you are also entitled to make a claim for no-fault benefits even though you were not injured in the accident.**



## Our Role

At Campisi LLP, our guiding principle is **"Clients First, Excellence Always"**. We are committed to our clients as individuals and families.

### We will assist you in every aspect of your rehabilitation, including:

- setting up the accident benefits claims;
- ensuring that treatment providers are paid;
- arranging appointments; and,
- booking necessary assessments.

Often, your insurance company will deny treatment plans, or will seek second opinions regarding proposed treatment or assessments. We will work with the insurer, or challenge them if necessary, to ensure that your child's needs continue to be met.

If there is a potential lawsuit concerning your child's injuries, we will discuss it with you at the initial consultation and ongoing. We will begin to develop the case immediately, although several years may be required to understand the extent of the damages claimed.

### We will:

- order medical records;
- collect information regarding negligence;
- develop a theory of the case, and,
- establish a long-term strategy for winning the lawsuit.

We will continue to keep you advised of the progress of the case and will always consult with you before making any major decisions. We want you to understand the process so that you can make informed choices.

## Available Claims/Compensation

There are several potential sources of compensation:



Claims against these insurers can be settled. If you, as litigation guardian, choose to settle, your child exchanges their right to make further claims in exchange for a lump sum of money. The size of the settlement will generally be proportionate to the risk that the insurance company will have to continue making payments on the claim.

**For example, if your child is expected to need \$50,000 in future medical benefits, the settlement should take this amount into account.**



It is important to remember that a settlement is always a compromise between two parties who disagree about the value of the claim.



In a lawsuit, depending on the severity of impairment, your child can claim damages including amounts for:

- loss of future income or earning potential;
- cost of future medical rehabilitation;
- cost of future housekeeping;
- loss of future shared family income (if your child is unlikely to marry);
- out of pocket expenses;
- cost of future attendant care;
- pain and suffering;
- loss of care, guidance and companionship suffered by your child's immediate family; and,
- Economic losses incurred by family members.

In very serious cases, your child may never work, and may require ongoing supervision and care. We will work with leading experts to quantify these losses, which can be substantial over the course of your child's life. Pain and suffering damages don't have a direct monetary value, and in Canada are subject to an arbitrary limit imposed by our Supreme Court. As a result, these damages are comparatively small but still significant.

Usually, the defendants in a lawsuit will want to settle rather than go to trial. We will advise you on the best course of action as the claim develops.



The impact of any traumatic brain injury, whether it is classified as Mild, Moderate or Severe, can be devastating and permanent for all of you. At Campisi LLP, our experienced Personal Injury and Accident Benefits team will help you get through this difficult time as a family. We will fight to ensure you get the compensation and care your child deserves.





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## Campisi LLP Team


Our team has more than 50 years of combined experience helping clients through the complicated personal injury and accident insurance claims processes. Our founding partner Joseph Campisi teaches insurance law at Canada's largest law school. We all benefit from his cutting-edge knowledge and understanding.


“Campisi Law oversaw my daughters case, Joseph, Peter, and the team played a great part in her recovery process. They were very understanding, compassionate, and supportive throughout my daughters case and always looked out for her best interest. In the end, they ensured that she had the resources for ongoing as well as future treatment and support.”


~ **Alice Huang, parent**

## Contact us

At Campisi LLP, we represent clients the way we would want our families to be represented – with true caring and support. We make ourselves available 24/7, even on evenings and weekends, to answer questions, provide advice and help clients and their families at a difficult time.

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# CAMPISI LLP

Personal Injury Lawyers

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We will look at your case for free  
and you don't pay until your case is won or settled.

## We provide services in the following areas of personal injury law:

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