



# A COMPREHENSIVE GUIDE TO LONG-TERM DISABILITY CLAIMS IN ONTARIO

Howie,  
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Henry

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# Contents

Introduction	4
An Unpleasant Surprise: When A Disability Prevents You From Working	5
Knowledge is Power.	5
What You Need To Know About Long Term Disability (LTD) Claims	6
Short-Term and Long-Term Disability	6
LTD Policy Considerations	6
Definition of Disability: “Own Occupation” vs. “Any Occupation”	6
“Own Occupation” or “Regular Occupation”	7
“Any Occupation”	7
Denial Based on Definition	7
Duration of Benefits: Time Limit on Benefits	7
Exclusions	8
Are You Even Eligible?	8
The “Pre-Existing” Clause	8
What is the Difference Between Individual and Group Disability Insurance?	9
Group Disability Insurance	9
Individual Disability Insurance	9
Are Disability Benefits Taxable?	10
What Types of Disabilities Qualify for Long Term Disability Benefits?	11
Mental Health Issues	11
Depression	11
Anxiety	11
Post-Traumatic Stress Disorder (PTSD)	12
Postpartum Depression	12
Central Sensitivity Syndromes (CCS)	12
Chronic Fatigue Syndrome (CFS)/Myalgic Encephalomyelitis	13
Multiple Chemical Sensitivities (MCS)	13
Chronic Lyme Disease	13
Irritable Bowel Syndrome (IBS)	13
Chronic Migraines	13
Autoimmune Diseases	14
Rheumatoid Arthritis (RA)	14
Multiple Sclerosis (MS)	14
Hashimoto Disease/Graves’ Disease	14
Myasthenia Gravis	15
Lupus	15

Guillain-Barré Syndrome	15
Narcolepsy	15
Endometriosis	15
Crohn's Disease	16
Demonstrating Disability	16
Traumatic Brain Injuries (TBIs)	16
Demonstrating Disability	17
Orthopedic Injuries	18
Cancer and its After Effects	18
Complications	19
Post Cancer Brain Fog	20
Demonstrating Disability	20
Cardiovascular Diseases	20
Demonstrating Disability	21
Long COVID (Post-COVID-19 condition)	21
Demonstrating Disability	22
Alcohol or Drug Addiction	22
CPP Disability Benefits	23
A "Severe" and "Prolonged" Disability	23
Should I Apply for CPP Disability Benefits?	23
What If I Already Have LTD Benefits Through An Insurance Plan?	24
Applied But Denied CPP Benefits	24
LTD and Severance: Be Careful What You Sign	25
Received An LTD Denial Letter? What To Do Next.	25
Reasons for Long-Term Disability Benefit Denials	26
The Long-Term Disability Denial Letter	26
Make An Informed Decision	27
About the Author	28
Contact Us	29

## Introduction

Whether it was caused by accident or illness, a debilitating injury or medical condition can seriously affect all aspects of your life, including your employment. If you become temporarily or permanently disabled and you are unable to work for an extended period, accessing disability benefits can help to cover some or all of your regular income as you rest and rehabilitate. However, applying for these benefits is not always straightforward and insurers may unjustly deny your application.

This Guide was created for Canadians who are planning to apply or who have applied for Short-Term Disability (STD) or Long-Term Disability (LTD) benefits. In this Guide, you will find:

- Information about the application process, types of insurance policies, and common terms or language you may encounter while reading your policy;
- A review of illnesses, conditions and other disabilities frequently covered by disability insurance;
- An explanation of Canadian Pension Plan (CPP) disability benefits; and
- Answers to questions about why some applications are denied, and how an experienced Howie, Sacks & Henry LLP disability benefits lawyer can help access the benefits you deserve.

## An Unpleasant Surprise: When A Disability Prevents You From Working

Few people ever envision a day when disability will prevent them from doing their job or working entirely, but it happens more frequently than you might imagine. [Statistics suggest](#) up to one third of people will face an illness or condition that affects their ability to work.

If you are suffering from medical conditions that prevent you from working, are experiencing unreasonable delays in getting your disability benefits approved or have received a letter denying your benefits, you still have options. We can help.

### Knowledge is Power.

This guide provides general information about STD, LTD and CPPD Claims. We encourage all individuals seeking disability benefits to speak to a disability injury lawyer with [expertise in these claims](#) about their unique situation.

At [Howie, Sacks & Henry](#), “Hope Starts Here.”

When you contact an HSH disability benefits lawyer for a no cost, no obligation initial consultation, we will listen with empathy.

We will clearly explain your rights and options, and offer to be your legal representative and advocate if we believe we can help you access benefits, negotiate a fair settlement, or obtain a successful trial verdict.

A debilitating injury or medical condition can create great uncertainty about the future.

With HSH on your side, you can feel confident about starting the next chapter of your life with the support and advocacy you need and deserve.

# What You Need To Know About Long Term Disability (LTD) Claims

## Short-Term and Long-Term Disability

If an illness or other medical condition affects your ability to work at your job beyond what your employer provides in terms of sick days, you may qualify for short-term disability benefits.

STD benefits typically commence within a few days of disability and can last between 16 to 52 weeks depending on the terms of the policy. Generally speaking, STD benefits cover a portion of an employee's regular income. Many plans cover 100% of a person's income.

STD benefits are usually contingent on reports from your medical practitioner. These reports would describe the nature of your disability, the extent of the disability, and an expected date when you will be able to return to work, if at all.

If there appears to be no immediate expectation of medical recovery and re-entry into the workforce at the end of the STD period, LTD benefits should be pursued.

Additional applications and medical examinations are usually required by insurance companies. It is important to start the application process early, and well before your STD benefits stop. It is best practice to start this process a month or two before the end of your STD period.

## LTD Policy Considerations

The most important element of an LTD claim is the policy itself.

The policy handbook sets out the rules, parameters and definitions of the disability benefit.

Some important things to consider in your policy include:

- the definition of disability, which will also outline whether the benefits are for “own occupation” or “any occupation”
- duration of benefits (typically to age 65)
- the benefit amount; and
- exclusions for pre-existing conditions, which may apply if you have not been employed for a minimum period of time (typically 12 months).

## Definition of Disability: “Own Occupation” vs. “Any Occupation”

Ah, the fine print. Lawyers always read the fine print because we need to refer to it in our cases so often.

The definition of disability in the policy will outline the test for disability you need to meet to qualify for benefits.

In most group policies, the LTD tests are two-fold: there is a disability test for your “own occupation” for the first 24 months, and a test for “any occupation” thereafter, usually until age 65.

### **“Own Occupation” or “Regular Occupation”**

Some plans use the term “own” or “regular occupation.” If your disability prevents you from doing (all or the majority of) the duties and tasks associated with your regular position, you would qualify for LTD benefits.

### **“Any Occupation”**

Many group plans require your disability to prevent you from working at “any occupation” for which your education, experience and skills are reasonably suited and where you can be “gainfully” employed.

The work within the “any occupation” test must fall within the parameters of your education, training and experience.

It’s important to note that insurers often become more active at this stage of adjudication. They often request additional medical information, initiate medical assessments and conduct vocational reviews.

### **Denial Based on Definition**

If your insurer terminates your disability benefits, don’t just take their word at face value. Call or email us. We will be able to advise you on whether you have a case for wrongful denial of benefits. More often than not, you will have a case.

### **Duration of Benefits: Time Limit on Benefits**

The expected duration of benefits is also important.

Let’s suppose the potential claimant is 62 and benefits are to be paid until age 65, (a “capped claim”). Since there are only three years remaining, these files are usually settled with the insurer’s counsel over the phone or through early mediation.

## Exclusions

### Are You Even Eligible?

Usually a policy provides exclusion of benefits for very rare circumstances such as illness from war, insurrection, rioting, or being injured while committing a criminal act.

However, some policies also disallow any disabilities related to addictions (alcohol or drugs), especially if an employee is not participating in a medically-approved treatment plan for their addiction.

### The “Pre-Existing” Clause

A “pre-existing” clause in a policy usually applies only when an individual becomes disabled within the first year of their employment.

If you become disabled within the first year of employment and the medical records for the three to six months prior to employment show that you were either treated or took medication for the same or similar illness during that period, you may not be eligible to receive disability benefits due to the “pre-existing” exclusion clause.



## What is the Difference Between Individual and Group Disability Insurance?

Love them or hate them, jobs are fundamental to our lives. They keep us busy, give us purpose and, unless you're independently wealthy, help us pay for essential items, such as food, shelter, and clothing.

While we expend much energy deliberating over the right car, home, travel and life insurance, we often don't think twice about obtaining the appropriate type and amount of insurance we would need in the event we are unable to work due to disability.

So, are you covered by a "group insurance" policy at work?

Do you need to purchase an "individual disability" policy?

And, what is the difference between the two, anyway?

### Group Disability Insurance

Most companies offer some type of short-term and/or long-term disability insurance plan to employees as part of their benefits package.

These disability policies provide a percentage of a person's monthly income if they are unable to work.

The level of coverage that you are eligible for is contingent upon your income and the specific policy chosen by your employer.

Since group insurance is structured in a way that allows the risk of making a claim to be spread across the entire company, these plans tend to be less expensive than individual insurance plans.

### Individual Disability Insurance

If you are self-employed or employed by a smaller company that does not have a disability insurance policy at all, investing in an individual plan is a good idea.

When purchasing an individual policy, you decide the monthly disability benefit that will be payable based on your income level and needs.

Typically, private insurance is set at a fixed premium for the type and term of coverage. That said, individual policies are generally more expensive.

Individual disability policies also often have more flexible terms. They are typically “own occupation” policies only, and may contain “partial disability” clauses as well.

Partial disability clauses often permit an individual to work (usually at a different job or at the same job with reduced hours) and earn a certain amount of income while still receiving some level of disability benefit top-up.

### **Are Disability Benefits Taxable?**

The short answer is – it depends.

When referring to a group insurance LTD plan, it all comes down to who pays the premium. If an employer pays 100% of the premiums on an insurance policy, the benefits received when disabled are taxable to the employee.

If, however, 100% of the premiums under a plan are covered by the employee, then the benefits are considered non-taxable. If the group premiums are shared between you and your employer, then it is important to look at the language of the policy to determine whether the benefit is taxable.

Under a private insurance plan, the benefits are typically non-taxable.

## What Types of Disabilities Qualify for Long Term Disability Benefits?

As always, your specific policy will dictate the coverage offered. However, there is usually a broad range of disabilities that are covered by most insurance policies. I have represented individuals seeking LTD benefits with a wide variety of conditions, including the following:

### Mental Health Issues

While mental health problems are often invisible, the impact of mental health in Canada is clear.

According to statistics, 40% percent of Canadians have had their lives disrupted due to mental health, with 17% of Canadians claiming they've had to take time off work and school to deal with the challenges. The Mental Health Commission of Canada (MHCC) estimates roughly 30% of short- and long-term disability claims in Canada are attributed to mental health illnesses.

Unfortunately, although public health campaigns have helped destigmatize mental health issues, some people are still disinclined to share their stories of struggling with mental health illnesses. Since signs of mental illness can often be difficult to see, it's not surprising that many suffer in silence and feel very much alone.

Some mental health conditions that may be covered by your policy include:

### Depression

Individuals experiencing depression typically have persistent feelings of sadness, hopelessness and/or loss of interest in previously enjoyable activities. Depression often presents as a combination of physical and emotional symptoms. These include irritability, agitation, sleep disturbances, changes in appetite, lack of energy, trouble concentrating, difficulty making decisions, headaches, body pain, feelings of worthlessness or guilt, thinking of death or suicide. These symptoms can disrupt a person's ability to engage in day-to-day activities including work.

### Anxiety

Anxiety disorders vary depending on symptoms and certain external factors that may contribute to the condition. Generally, people with anxiety disorders may feel unusually nervous, have uncontrollable worries or fears (phobias), experience a sense of fear or impending doom, have physical symptoms (elevated heart rate, rapid breathing, sweating, trembling, restlessness, muscle tension, sleep disturbances, gastrointestinal disturbances), feel tired or weak, have difficulty concentrating.

## Post-Traumatic Stress Disorder (PTSD)

A condition that can occur if a person experiences or witnesses a terrifying event (for example, a car accident, a physical or sexual assault, a natural disaster, or a mass casualty event) or is repeatedly exposed to trauma (for example, first responders, emergency room staff or crisis counsellors). Some PTSD symptoms include intrusive memories (flashbacks, nightmares, triggers), avoidance, mood disturbances (depression, anxiety, feeling numb), extreme vigilance, self-destructive behaviour and impulsivity, a heightened fight or flight response, sleep disturbances, and difficulty concentrating.

## Postpartum Depression

Often initially mistaken for postpartum “baby blues” that may cause short-term anxiety, mood swings, uncontrollable crying spells and sleep disturbances, postpartum depression symptoms are usually more intense and last much longer. Symptoms, which can begin during pregnancy, within a few weeks of birth, or even up to a year after birth, include intense sadness, negative moods, social withdrawal, appetite disturbances, sleep disturbances, challenges bonding with your child, feeling you are not a good mother, and recurring thoughts of harming yourself and/or your child.

## Central Sensitivity Syndromes (CCS)

Pain is an evolutionary necessity. Feeling pain when we come in contact with harmful stimuli tells our body to avoid those stimuli. When we feel pain after an injury, it reminds us to protect damaged tissue as it heals. But when pain becomes chronic, it's no longer useful to us.

Central Sensitivity Syndromes (CCS) is an umbrella term for conditions involving chronic hypersensitivity of the central nervous system (CNS).

When neurons in the CNS (the brain and spinal cord) are habitually overactive or sensitized, signals can become amplified or garbled. A gentle touch of the skin may now be read as intense pain. As researchers explain: “Prominent visceral hypersensitivity can affect every organ system and produce intolerable discomfort.” Moreover, plasticity within the cell systems can lead to increased pain levels over time.

Although some individuals may have genetic predisposition to CCS, often these syndromes manifest after being triggered by infections, physical injury, or psychological trauma or stress. CCS can cause damage to the body by abnormally affecting a person's hormones and immune system. They can cause harmful inflammation and damage mitochondria (a cell's energy source).

Some treatments have shown promise in reducing the frequency and intensity of symptoms. These treatments include exercise therapy, physiotherapy, medications and surgery.

The goal of these treatments is to desensitize the CNS.

Some conditions that fall under the CCS umbrella include:

### Chronic Fatigue Syndrome (CFS)/Myalgic Encephalomyelitis

CFS/myalgic encephalomyelitis is a disorder characterized by extreme fatigue or tiredness that doesn't go away with rest and can't be explained by an underlying medical condition. Other symptoms include post-exertional malaise, pain, dizziness, problems concentrating, and trouble sleeping. It is most common among women between 40-60.

### Multiple Chemical Sensitivities (MCS)

MCS is a multifactorial syndrome characterized by debilitating symptoms that manifest when a person is exposed to environmental chemicals at levels far lower than what is deemed to be harmful for most people. MCS affects many organ systems. Symptoms usually disappear when the environmental chemicals are no longer present - but this may not be possible in certain work environments.

### Chronic Lyme Disease

Lyme disease is an illness caused by the borrelia bacteria found in some ticks. If the initial infection is not effectively treated, within about one month of a tick bite early symptoms (rash, fever, headache, fatigue, stiff joints, muscle aches, and swollen lymph nodes) can worsen and include muscle weakness in the face, leg pain, irregular heart rate, swelling around the eyes, and neuropathy in the hands. A final stage of the disease can result in arthritis in large joints, and long-lasting pain, stiffness, or swelling. These symptoms may appear and disappear over time.

### Irritable Bowel Syndrome (IBS)

A gastrointestinal tract disorder affecting the stomach and intestines that causes abdominal pain, bloating, cramping, gas, and diarrhea and/or constipation. Symptoms frequently occur during bowel movement and the condition can change the appearance of stool or frequency of bowel movement. Certain types of food and stress are thought to trigger this condition.

### Chronic Migraines

Debilitating headaches that frequently cause throbbing or pulsating pain on one side of the head. Migraines can last from a few hours to days, and a migraine sufferer may also experience nausea, vomiting, and extreme sensitivity to light and sound. Warning signs that often precede a migraine include visual disturbances (flashes of light or blind spots), tingling sensations, trouble speaking, sudden mood changes, fluid retention, constipation, frequent urination, frequent yawning, neck stiffness and food cravings.

## Autoimmune Diseases

A person's immune system develops by learning to identify and destroy foreign or diseased cells. It should be one of our best defences to debilitating illnesses; but if it becomes confused, it can often hurt more than it helps.

Autoimmune diseases occur when the immune system attacks normal, healthy cells. This process can lead to destruction of healthy body tissues, uncontrolled inflammation or abnormal organ growth, and/or changes in organ function.

More than 80 types of autoimmune diseases have been identified, and medical researchers have found that other disorders or conditions may be linked to autoimmune disease.

Some examples include:

### Rheumatoid Arthritis (RA)

An autoimmune disease that causes inflammation and tissue damage, often around joints, and most commonly in hands, wrists and knees. The tissue damage may cause chronic pain, tenderness, weakness, fatigue, loss of balance or deformed joints. The condition may also damage other organ systems, including the lungs, heart, and eyes.

### Multiple Sclerosis (MS)

This autoimmune disease attacks myelin cells (the protective encasement that surrounds nerves in the brain and spinal cord) and disrupts nerve signals, eventually causing loss of function. Generally, first diagnosed in people between the ages of 20-40, MS affects more women than men. Common symptoms include: an altered gait (walking), loss of balance or coordination, muscle weakness, fatigue, muscle spasms, numbness or tingling in extremities. MS can be relapsing-remitting (flare ups followed by periods of remission), primary progressive (slow symptom development with little or no remission), and secondary progressive (where relapsing-remitting MS eventually no longer has periods of remission).

### Hashimoto Disease/Graves' Disease

Also known as Hashimoto's thyroiditis, chronic lymphocytic thyroiditis and chronic autoimmune thyroiditis, Hashimoto disease is an autoimmune disorder that attacks and destroys hormone-producing thyroid cells that regulate many organs. It creates hypothyroidism (underactive thyroid). Graves' disease similarly attacks thyroid cells, but instead results in hyperthyroidism (overactive thyroid). Both diseases share similar symptoms, and frequently include fatigue, muscle weakness, joint pain, and trouble concentrating. Hashimoto disease may also result in depression, unexplained weight gain, and decreased heart rate. Graves' disease may also result in anxiety, irritability, unexplained weight loss, irregular heart rate, trouble sleeping.

## Myasthenia Gravis

A neuromuscular autoimmune disease that causes weakness in muscles connected to bones. These muscles control movement in the face and extremities and allow for breathing. The condition is known to improve after a period of rest and worsen following activity. Symptoms may include eye weakness, double vision, drooping eyelids, changes in facial expressions, impaired speech, problems swallowing, shortness of breath, and weakness in the neck and limbs. In serious cases, it may result in respiratory failure.

## Lupus

Lupus is a multi-organ autoimmune disease that causes damaging inflammation. Although its symptoms frequently overlap with other conditions, a distinctive butterfly-shaped facial rash is often a telltale sign. Other symptoms include skin lesions that worsen with sun exposure, joint pain, chest pain, trouble breathing, headaches, memory loss, confusion, dry eyes, and Raynaud's disease (body parts turn white or blue in response to cold temperatures or stress).

## Guillain-Barré Syndrome

An autoimmune condition which affects the peripheral nervous system (which controls muscle movement, and transmits signals for temperature, pain and touch). The condition can cause muscle weakness, loss of sensation, problems breathing, difficulty speaking and/or swallowing, and in rare cases paralysis. Although most people recover from this illness, some will continue to experience varying degrees of muscle weakness.

## Narcolepsy

A chronic neurological sleep disorder known to cause excessive sleepiness or attacks of drowsiness during the daytime and potential disruption to nighttime sleep. Other common symptoms include sudden muscle weakness, hallucination while falling asleep or waking up, and brief paralysis when waking up. Although not definitively an autoimmune disorder, researchers suspect immune system attacks on brain cells that produce a peptide called hypocretin may be linked to narcolepsy.

## Endometriosis

Although not yet classified as an autoimmune disorder, endometriosis is associated with greater risk of autoimmune disorders. This disease causes inflammation in the pelvic area as tissue that is similar to uterine tissue grows outside the uterus. Inflammation and scar tissue can cause chronic pain. Other symptoms may include pain (during a period, during or after sex, when urinating), heavy bleeding during or between periods, bloating, nausea, fatigue, depression and/or anxiety.

## Crohn's Disease

Crohn's disease and ulcerative colitis are diseases that inflame the lining of the GI (gastro-intestinal) tract and disrupt your body's ability to digest food, absorb nutrition, and eliminate waste in a healthy manner. Signs and symptoms of Crohn's disease can range from mild to severe and include diarrhea, fatigue, abdominal pain, malnutrition, and weight loss. It's often painful, debilitating, and potentially even life-threatening.

## Demonstrating Disability

Understandably, people who suffer from autoimmune diseases may need to occasionally reduce the number of hours they work, modify their duties at work, or stop working for extended periods of time.

But to be successful with an LTD disability benefits claim, some policies require you to prove that your symptoms don't allow you to function in any workplace.

Keep in mind that, due to a lack of understanding, many insurers see some autoimmune diseases as minor conditions. This is yet another challenge to overcome. Your responsibility will be to provide detailed medical evidence and documentation to prove that your condition can, in fact, be very debilitating.

## Traumatic Brain Injuries (TBIs)

The brain is our most vital organ, so when it experiences a traumatic injury, the consequences can be dire.

Any incident involving head trauma, from accidental falls to vehicular crashes, to sports injuries, to violent physical attacks, can result in severe damage. TBIs can be "closed brain injuries" where the brain is damaged by shaking or rapid forward or backward movement that bruises or tears blood vessels and brain tissue, or "penetrating brain injuries" when there is a break in the skull.

TBIs are generally categorized on a scale based on the period a person was unconscious following the head trauma and/or the amount of time they experience post-traumatic amnesia (confusion, altered behaviour, inability to remember what happened).

For a mild brain injury or concussion, a person would either not lose consciousness or be unconscious for less than 15 minutes. The post-trauma amnesia would last for less than an hour. People with moderate brain injuries may be unconscious for 15 minutes to six hours and/or experience post-trauma amnesia for a period ranging from one hour to one day after regaining consciousness. Severe (or very severe) brain injuries can result in loss of consciousness that lasts between six hours to two days (or longer) and/or more than seven days of



post-trauma amnesia.

It's important to note, however, that even “mild” brain injuries such as concussions can have long-term impacts on a person's health - especially if they experience additional head injuries that damage the same part of the brain that had been previously injured.

According to the John Hopkins Center, depending on the categorization and the part(s) of the brain damaged, TBIs can cause:

- cognitive deficits (including confusion, memory problems, poor judgment, shortened attention span, trouble with abstract concepts, inability to comprehend multi-step directions);
- motor deficits (including poor coordination and balance, paralysis, weakness, tremors, problems swallowing);
- sensory deficits (including changes in sight, smell, taste, touch and hearing, lost or heightened sensation, favouring one side of the body);
- communication deficits (including difficulty speaking, reading, writing, working with numbers and knowing how to do some common activities, problems understanding speech and identifying objects and their functions);
- functional deficits (including impaired executive functioning and decision making);
- social difficulties (including difficulty making and keeping friends, and understanding how to use interpersonal skills to interact socially or to respond to nuanced social situations);
- regulatory disturbances (including fatigue, changes in sleeping and appetite, dizziness, headaches and incontinence);
- personality/psychiatric changes (including apathy and lack of motivation, irritability, onset of mental health conditions such as anxiety and depression, impulsivity and inhibition).

### Demonstrating Disability

TBIs have been called a “silent epidemic” because they are common and can be difficult for medical practitioners to diagnose – especially the most common and “mildest” form of TBI: a concussion. Yet, like any epidemic, these debilitating injuries can have short and long-term consequences.

The effects of TBIs can be detrimental to many aspects of a person's life. A person's ability to do their own job, or even any job for which their education and training would be suitable, may be irreparably harmed.

While some evidence of brain injuries may appear on CT scans and MRIs, damage is often microscopic and not always visible by diagnostic imaging.

Proving to insurers that your brain injury has resulted in disability can be challenging, but consulting medical practitioners and an LTD lawyer can help you to compile medical evidence for your applications.

## Orthopedic Injuries

Orthopedic injuries, which affect the musculoskeletal system, include fractures, tears to cartilage, ligaments and tendons, and dislocated joints.

Treatment options range from open surgery, arthroscopic surgery, orthopedic supports (braces and casts), and physiotherapy.

Orthopedic injuries from blunt force trauma, falls, or accidents can frequently cause disability in the short-term. If these injuries aren't treated quickly by orthopedic trauma specialists, or if treatment fails, chronic debilitating conditions and serious long-term effects are possible.

Some of these conditions or after-effects include:

- non-unions (fractures that did not heal properly);
- malunions (problems with bones or joints from incorrect alignment of treated fractures);
- joint deformities;
- infections.

If your job is physically demanding, orthopedic injuries may prevent you from working as you would normally. However, even less physical work can become difficult or impossible if you experience orthopedic injury complications.

An experienced disability benefits lawyer can help if your orthopedic injury requires a benefits application or if your application has been unfairly denied.

## Cancer and its After Effects

Cancerous disease occurs when gene mutations of DNA in cells cause them to develop abnormally, divide uncontrollably and infiltrate and destroy normal body tissue. Although it may be localized in one area of the body or in a single organ in early stages, it can frequently spread throughout the body.

Some cancers can be effectively treated through surgeries and medications. Others re-occur, may be incurable or may become incurable if the disease does not respond to treatment and grows to be widespread throughout the body.

Most cancers are grouped according to [TNM stages](#): tumour (T), lymph nodes (N), and metastases (M) or spread. Doctors will determine: the size, location and spread of the primary tumour; whether it has spread to lymph nodes and, if so, how many, and where; and whether the cancer has spread to other parts of the body. Based on this information, a cancer will be assessed to be between Stage I (sometimes Stages 0) and Stage IV.

The wide variety of cancers means each type will have its own unique symptoms. However, the Mayo Clinic notes there are some [general signs and symptoms often associated with cancers](#).

These include:

- fatigue;
- visible and/or tactile changes to the skin (lumps, areas of thickening under the skin, yellowing, redness, changes to moles, sores that won't heal, unexplained bleeding and bruising);
- weight changes;
- trouble breathing, persistent cough;
- hoarse voice, trouble swallowing;
- persistent indigestion, discomfort after eating and/or changes in bowels or bladder;
- persistent and unexplained muscle or joint pain;
- persistent and unexplained fevers or night sweats.

## Complications

Both cancer and cancer treatment can cause debilitating complications. These may include:

- pain;
- fatigue;
- difficulty breathing;
- nausea, diarrhea, constipation or frequent urination;
- weight loss;
- confusion from chemical changes in the body;
- brain and nervous system problems.

## Post Cancer Brain Fog

Post-cancer brain fog, also known as [chemo brain](#), is a side effect often reported when a person receives or has received chemotherapy. The cause of this cognitive impairment or dysfunction is not well understood by doctors, but it is known to be frustrating and debilitating to cancer patients and cancer survivors. Symptoms include:

- confusion, mental fogginess;
- short-term memory problems (verbal and visual memory);
- trouble with organization, multitasking;
- trouble concentrating, short attention span.

## Demonstrating Disability

The physical, mental and emotional effects that come with a cancer diagnosis can be debilitating and last well beyond the end of treatment. Insurance providers may want you to believe that “cancer free” also means “disability free,” but unfortunately that is not always the case.

If you are unable to work due to cancer symptoms, side effects from treatment, or post-treatment malaise, you may be eligible for disability benefits. We can help you with your application and/or help you fight an unfair denial of benefits.

## Cardiovascular Diseases

Cardiovascular disease is a leading cause of death in Canada. But living with a disease that affects the heart and/or blood vessels can be immensely debilitating in its own right.

Cardiovascular disease is frequently linked with arterial clogs and increased risk of blood clots. Damage to arteries connected to the heart, brain, kidneys and eyes is often associated with cardiovascular diseases. Some common types of cardiovascular disease include:

- coronary heart disease: when blood flow is reduced or blocked to the heart, the strain can lead to heart attacks, angina (chest pain), or heart failure;
- strokes: when the blood supply to part of the brain is stopped (stroke) or temporarily disrupted (transient ischemic attack or TIA), a person can experience temporary or permanent disability;
- peripheral arterial disease: blockages or disruption to blood flow in arteries to the limbs, most often the legs, can lead to limb weakness, pain related to exertion, and open sores of legs and feet that do not heal;
- aortic disease: most often results in aortic aneurysms, when the artery leaving the heart becomes weak and bulges. There are generally few symptoms, but left untreated aortic aneurysms can rupture, causing death.

## Demonstrating Disability

Cardiovascular diseases can severely limit a person's physical and/or mental capacity to work. Treatment for and rehabilitation from cardiovascular events such as heart attacks and strokes can be disruptive to a person's life.

If you are unable to work because of cardiovascular disease, you may be able to claim disability benefits. Contact us for assistance with your applications or if you've received a denial of benefits letter.

## Long COVID (Post-COVID-19 condition)

After several years of grappling with the COVID-19 pandemic, public fatigue and an intense desire for a return to normalcy prompted governments to loosen certain public health policies put in place to limit the spread of the virus.

Unfortunately, while we might want to be finished with COVID-19, it is not finished with us. New variants continue to emerge and COVID-19 reinfections increase the risk of death, severe disease, and long-term complications such as pulmonary, cardiovascular, hematological, gastrointestinal, kidney, mental health, musculoskeletal and neurological disorders and conditions such as diabetes.

When symptoms of COVID-19 persist for more than 12 weeks after an infection, a person is experiencing Long COVID. These symptoms, and other new or worsening symptoms, can last for months or years; some people who have experienced Long COVID improve while failing to regain the health they had before infection.

Among adults, the most common Long COVID symptoms include:

- fatigue;
- sleep disturbances;
- shortness of breath;
- general pain and discomfort;
- cognitive problems (memory loss, difficulty thinking, trouble concentrating);
- mental health symptoms (anxiety and depression).

However, more than 100 different symptoms have been reported among Long COVID patients. Increasingly, researchers are noting multiple-organ system damage, chronic inflammation, and autoimmunity disorders in Long COVID sufferers.

Approximately one in six Canadians with a COVID infection experience Long COVID symptoms of some degree. Women appear more likely than men to experience Long COVID.

## Demonstrating Disability

If you continue to suffer debilitating symptoms more than three months after a lab-confirmed or likely COVID-19 infection, you may be eligible to apply for LTD benefits. While there are currently no recognized tests used to objectively diagnose Long COVID, medical records can be used to demonstrate your illness is not the result of a pre-existing condition. It is especially helpful to communicate to your doctor about how your symptoms are limiting your ability to do certain actions or participate in certain activities.

If you are unable to work due to Long COVID symptoms, contact us to assist with your LTD application or to fight a denial of benefits letter.

## Alcohol or Drug Addiction

An addiction is generally recognized as an illness in society today.

Still, you must look closely at your insurance policy to see whether you are covered as a result of your addiction.

A group policy typically views an addiction to drugs or alcohol as a disabling condition that does indeed fall under its purview.

But, only on one condition: that the person demonstrates that they're compliant with a medical treatment plan. The type of treatment may vary but often includes actively participating in a drug or alcohol treatment program, or counseling.

## CPP Disability Benefits

When you see the words Canada Pension Plan, or its familiar acronym CPP, your mind probably turns to happy thoughts of retirement. The CPP deductions on your pay stub are a regular reminder that once you reach retirement age you'll have a dependable source of income based on your years of work.

But CPP also provides benefits for people who have not yet reached age 65 and who find themselves unable to work at any job as the result of a severe and prolonged disability.

### A “Severe” and “Prolonged” Disability

To qualify for CPP Disability benefits, you must:

- have a “severe” mental or physical disability that prevents you from doing any type of substantially gainful work on a regular basis;
- have a “prolonged,” long-term or indefinite disability or a disability likely to result in death;
- be under the age of 65;
- have paid into the CPP program for at least four of the last six years, or three of the last six years if you have made valid contributions for at least 25 years (there are some exceptions to the contribution requirements).

### Should I Apply for CPP Disability Benefits?

If you have a disability that is prolonged and where your prognosis is guarded, an application for CPP disability benefits should be made. However, it is extremely important to be in regular contact with your family doctor and ensure you have their full support before making an application.

If your doctor is not prepared to support your application, proceeding with a request for CPP disability benefits is much less likely to result in success. Reasons why a doctor may not support your application may include:

- not being familiar enough with your condition/illness to appreciate the extent of your disability;
- not believing you have exhausted all options in terms of therapies and accommodations to justify CPP disability benefits;
- being predisposed to deny any request for support.

Since medical support is essential for successful applications, consider consulting an experienced HSH disability benefits lawyer prior to filing an application. In reviewing your case, we may suggest steps to take to demonstrate the severity of your illness.

## What If I Already Have LTD Benefits Through An Insurance Plan?

If you have an insurance plan that provides LTD benefits, should you still apply for CPP benefits? It depends, but generally the answer is yes.

If you are unable to work and your prognosis is poor you should consider applying.

LTD insurance plans often make applying for the CPP disability benefit mandatory after a certain period of time. If you do not make an effort to obtain this benefit in good faith, some policies may even claw back your LTD benefits anyway.

Drawing the CPP benefit decreases the likelihood your LTD insurance provider will seek to terminate your benefits. It not only reduces the LTD insurers' financial obligation to you, but also makes it more difficult to justify ending LTD payments when CPP declares you to have a "severe" and "prolonged" disability.

## Applied But Denied CPP Benefits

While there are many advantages to applying for the CPP disability benefit, denials of legitimate claims do happen. A Globe and Mail article titled "[Seven reasons why disabled Canadians are losing CPP benefits](#)," reports about 60% of initial CPP disability applications are refused, giving Canada one of the highest disability denial rates in the Organisation for Economic Co-operation and Development (OECD).

Consulting a lawyer with expertise in handling disability benefits cases in advance of filing may help you to create an application that is more likely to be successful.

However, be aware: you have 90 days from receipt of the denial letter to appeal. If you miss this deadline you will not be allowed to appeal, unless under exceptional circumstances (which you should discuss with a lawyer).



## LTD and Severance: Be Careful What You Sign

If you are unable to continue to work for your employer as a result of a disability, and the likelihood that you will be able to return is low or non-existent, then your employer may begin the process of terminating your employment.

When entering into termination agreements you will be asked to sign a full and final release. Unfortunately, these releases could have clauses that exclude employer liability for payments related to “benefit coverage under the Company’s applicable plans and/or policies... including short-term or long-term disability benefits.”

An employment lawyer examining this agreement may be so focused on achieving maximum severance for their client that they might fail to see this clause as cause for concern. However, if you are likely to apply for the disability benefits, this oversight could have major implications for you. LTD lawyers have an eye for this kind of nuance in termination or exit agreements.

One simple solution is to ask your employment lawyer to have an experienced LTD lawyer review the release before it is finalized and signed. You might also opt to consult a lawyer who practices both employment law and LTD law. At HSH, some of our lawyers practice both LTD and employment law.

## Received An LTD Denial Letter? What To Do Next.

They say waiting is the hardest part. But it’s clear from my experience representing disability benefits claimants that receiving an LTD denial letter is one of the toughest and most nerve-wracking times in a person’s life.

When you learn you’ve been denied, you may fear what your life will look like if an illness, injury or medical condition is making it difficult or impossible for you to return to work. You may even lose hope that anything can be done.

But all hope is not lost when your insurer denies your LTD claim. At HSH, we say “Hope Starts Here.” Our team of disability benefits lawyers can help you if you’ve been unfairly denied LTD benefits.

At HSH, we have a strong record of succeeding on behalf of our clients in obtaining their disability benefits.

## Reasons for Long-Term Disability Benefit Denials

LTD claims may be rejected for a number of reasons. These often include:

- insufficient information/documentation in the long-term disability application (or clerical errors);
- not meeting the eligibility requirements set out in the policy (for example, length of employment), policy exclusions (often related to a pre-existing condition), or not meeting the definition of disability;
- treatment and assessment compliance (was the rehabilitation plan followed and did you complete the required assessments?);
- surveillance (a private investigator may have been hired by the insurance company to review your day-to-day activities – including your online presence – to determine if there is evidence contrary to your application declarations).

Unfortunately, many legitimate claims are denied across Canada.

## The Long-Term Disability Denial Letter

If you receive a letter denying your LTD benefits, but offering an opportunity to file an appeal, your very first step should be to consult a lawyer with expertise in these types of cases.

It is strongly recommended that you consult a lawyer as early in the process as possible. You will have a limited period in which to appeal or commence a lawsuit.

Depending on the reasons the insurance company provided for your denial, a lawyer may suggest considering a lawsuit immediately if there is justification, or using the appeal process. A lawyer with experience handling LTD cases can use their knowledge of the system (and often specific insurance companies) to begin the process of recovering your benefits.

You may even be able to receive more compensation than outlined in your policy. If the insurance company was acting in bad faith, a court may award compensation for aggravated damages, mental distress damages, or, in the most egregious cases, a punitive damages award.

While the internal appeals process may be appropriate for certain cases, I often recommend against filing an internal appeal. Here's why:

- An insurance company may seek additional medical assessments to strengthen a denial decision that is in appeal but which they expect to end in litigation;
- Time is not on your side. While an internal appeal works its way through the company, deadlines to begin litigation on your case may pass, leaving you with no recourse to sue the insurer;
- The longer the process takes, the more likely you are to become emotionally or physically exhausted, financially strapped, and you simply move on without completing an appeal or starting litigation.

### Make An Informed Decision

There may be legitimate reasons for an insurance company to deny LTD benefits. But if you believe your case deserves more consideration, whether through an internal appeal or lawsuit, it's always a good idea to have a lawyer with expertise in disability cases to review your file as soon as you've received word of your denial. That's where we come in.

At HSH, we can demystify the LTD claims experience, give you an idea of the strength of your initial application, and help you to decide the best way for you to move forward. We can help.

## About the Author

Many of Brad's clients come from people he has already represented. His loyal dedication to their well-being and health is evidenced by the referrals he receives from his clients and their families, along with professionals in the medical and legal community.

Brad's practice is devoted to short- and long-term disability benefits disputes against insurers, motor vehicle/motorcycle accident claims, fatal accident claims, and occupiers' liability cases.

Brad knows what it takes to get results.

That's what his clients say: that he is smart, compassionate, practical, and results-oriented – and he is proud to uphold the Howie, Sacks & Henry LLP reputation of relentlessly pursuing the rights of people throughout Ontario.

Brad and his team talk with you in terms that make sense and represent you with respect and compassion.

He is recognized as a leader in the legal community. He has been endorsed by his peers as both a leading long term disability and personal injury lawyer in the respected Lexpert, and Best Lawyers in Canada directories, and the Law Society of Ontario has recognized him as a Specialist in Civil Litigation.

Brad holds membership and leadership roles at several legal and community organizations and is regularly invited to chair or speak and lecture at their events and seminars, including the Ontario Trial Lawyers Association (OTLA), the Advocates' Society, the Ontario Bar Association, and others.

Brad is the former Chair of the Ontario Trial Lawyers Association (OTLA) Long Term Disability Section.

## Contact Us

**Disability Benefits Denied? Questions?**

Call or email anytime:

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