



Fleury, Comery LLP
Barristers & Solicitors

ANATOMY OF A PERSONAL INJURY CASE

The following describes a general framework, or 'anatomy' of the conduct of a personal injury file which we hope will assist our clients in understanding the context of any particular step taken during the conduct of their personal injury claim.

A personal injury claim usually proceeds in the following order, naturally with some overlap.

1. Interview/Retainer
2. Investigation
3. Pleadings
4. Discovery
5. Pre-trial
6. Trial
7. Report and Billing

1. INTERVIEW/RETAINER

It is important that an injured party retain a lawyer as soon as possible after suffering an injury. We will certainly attend outside the office to review a matter with an injured party or their family. Evidence, such as statements and photographs, should be gathered as soon as possible after the incident. At this interview stage we prepare a detailed interview memorandum for future use.

2. INVESTIGATION

Early and complete investigation is the key to many cases but especially slip and fall incidents. A properly instructed and experienced private investigator can obtain invaluable photographs and statements. At this stage we also generally order police reports, hospital records and medical reports to substantiate the claim. We also usually do some preliminary legal research to assist in framing the case in law.

3. PLEADINGS

A court action is commenced by issuing from the court office a Statement of Claim which sets out the facts of your claim against the at-fault party (the defendant). For motor vehicle accidents, the Statement of Claim must be issued within two years after the date of the accident, and preferably quite a bit earlier. There are other important limitation periods for other types of accidents or injuries, the most notable being the requirement to notify a municipality within seven days after a slip on ice and snow. Once the claim has been issued, the other party will deliver a Statement of Defence giving some idea of how they intend to resist the claim.

4. DISCOVERY

After or even at the same time as the exchange of pleadings, the parties can exchange lists of the documents on which they rely by way of an affidavit of documents.

The parties are then entitled to examine one representative of

each party under oath and a transcript is taken of that examination which can be used later at trial if the party tries to say something different. Examinations for discovery are also an opportunity to assess the credibility of the other parties and an opportunity for the lawyers to meet with a view to negotiating a settlement.

5. PRE-TRIAL

The rules of court now require a pre-trial for all cases. Both parties prepare a short brief that sets up their claim at its best. Usually a judge conducts the pre-trial and tries to give the parties an idea of how the case will be handled if that judge actually did the trial (which he cannot), so that the parties have some idea of their odds at trial. The judge of course tries to get the parties to settle the matter at this stage.

6. TRIAL

The trial date is usually set at the pre-trial. Civil trials can proceed before a judge alone or by a jury trial. At the end of the trial, a Judgment is issued by the court either ordering the defendants to pay the claim and costs or dismissing the claim with costs.

7. REPORT AND BILLING

Our fees are based mainly on time spent but will increase or decrease on the basis of a "success factor" of up to 25% of the hourly rate. In a personal injury matter, your fees generally amount to between 20% and 30% of the claim. When judgment is made against the defendant for the claim "and costs" the said costs usually cover up to 15% of the claim. For example, a judgment for the plaintiff for \$100,000.00 "and costs" will result in a contribution by the defendant to the lawyer's bill in an amount of \$15,000.00 leaving the plaintiff with a net judgment amount of \$85,000.00 after payment of the plaintiff's own \$15,000.00 share of lawyer costs.

At Fleury, Comery, Greg McConnell has extensive experience in the conduct of personal injury matters. If you or someone you know has been injured through the fault of another, we urge you to contact us right away for a no-charge consultation. Please be advised, however, that as of 2010, we are no longer acting in motor vehicle cases.

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