



ACCESS TO JUSTICE

LEGAL ISSUES FOR THE INJURED AND PEOPLE WITH DISABILITIES

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COLLECTING THE EVIDENCE

LIABILITY

The need for various health care professionals to be involved with an accident victim right after a serious injury is obvious. The need for a lawyer is not. Yet there are times when retaining a lawyer quickly is critical, because without one, key evidence may be lost.

In our tort system, a plaintiff can only be awarded damages for injuries suffered as a result of the negligence of the defendant. And those damages will be reduced by the extent to which the plaintiff was responsible for causing the accident.

To put that in perspective, where a plaintiff has suffered serious, lifelong injuries, recovering 80% of his/her claim versus 25% could mean a difference of several hundred thousand dollars. It's a difference that may depend on the collection of solid evidence.

Yet sometimes, by the time a lawyer is brought into a case, the memories of important witnesses have faded.

Let's say a plaintiff is a passenger in a car driven by a drunk defendant and the car crashes. The relative fault or liability may be spread between plaintiff, the defendant, and the host or tavern owner who served them alcohol. The court will want to know:

- what alcohol was served and imbibed;

- whether the host had an opportunity to observe the state of the defendant and plaintiff;
- whether reasonable steps were taken for their care;
- what the plaintiff knew of the defendant's alcohol intake and whether the plaintiff could anticipate that the defendant was too inebriated to drive a vehicle;
- whether alcohol actually contributed to the accident;
- whether the plaintiff was wearing a seatbelt.

A lawyer can't rely strictly on a police investigation because police officers are focused on criminal, not civil, issues. For example, whether the plaintiff was wearing a seatbelt may be important in a civil action but is essentially disregarded in a criminal trial.

A lawyer needs to track down key witnesses before they disappear or forget what happened. Particularly because the *plaintiff* may not be able to remember the relevant events due to a brain injury or alcohol intake or both. And even if the plaintiff does remember, his/her memory must be weighed against the evidence of other witnesses, especially any independent witnesses.

It can require heavy-duty legwork. And the sooner after the accident, the better.

DAMAGES

In addition to assessing who caused the accident, a civil action examines the extent of the plaintiff's injuries. This requires close scrutiny of not only the plaintiff's injuries and post-accident state, but also their pre-accident status (health and career plans).

For example, was the plaintiff establishing a new business? Was the plaintiff a high school student who'd already made plans for university? Such findings could show the plaintiff was moving towards a promising career that's now lost as a result of the accident.

To establish the plaintiff's injuries, one might assume that all of the injuries would be fully documented in the medical records, but this is not always the case. Many times plaintiffs will be treated for significant orthopaedic

injuries, while the possibility they sustained a traumatic brain injury (TBI) is addressed poorly or not at all.

One reason is that a TBI may not be picked up by CT scans. It can be critically important to obtain reliable evidence of the plaintiff's immediate post-accident behaviour – whether there was any loss of consciousness, periods of disorientation, agitated behaviour, nausea, dysphagia and other potential signs of brain injury -- as soon as possible after the accident. Again, the difference in what facts are documented right after an injury lies in the different focus between health care professionals (whose initial efforts are directed to treatment of acute injuries) and lawyers (whose focus is on the extent and impact of all injuries, whether or not they require immediate treatment).

NON-EVIDENTIARY ASSISTANCE

Aside from collecting necessary evidence, a lawyer brought in early can:

Assist in collecting insurance benefits - Where an accident has occurred as a result of a motor vehicle accident, barring a legal exception, a plaintiff is entitled to rehabilitation expenses which can be critical in the weeks and months following an injury. Even in other cases, insurance may be available to cover the plaintiff's or the family's losses and medical expenses. Lawyers are able to assist in claiming these benefits at a time when the plaintiff or their family may find these tasks overwhelming.

Support the family - At a time of great stress, the injured person and/or their family can find comfort knowing that they have an advocate dedicated to advancing their interests and able to answer their questions about various legal issues.

Better understand the trauma - The lawyer will always find it helpful to get to know the plaintiff and his/her family from the outset. If the lawyer has a real sense of the plaintiff's pre-accident personality and style of life and his/her dreams and ambitions, this will inevitably give the lawyer a deeper appreciation of the impact of the accident. And the lawyer is able to portray the client's losses

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more poignantly and powerfully at trial if they have lived with their client's struggle to come to grips with devastating accident injuries.

The trial of a personal injury claim for losses which will affect the rest of an injured person's life will inevitably take place many years after an accident. Yet it must consider the entire story of a person's life and examine the events surrounding the accident in great detail. To make the plaintiff's case accurate and compelling, the process must start early. So even as the health care workers start the rehabilitation, it is invaluable to have the lawyer collect evidence which will form a solid foundation for the plaintiff's future claims.