



# ACCESS TO JUSTICE

LEGAL ISSUES FOR THE INJURED AND PEOPLE WITH DISABILITIES

FAITH E. HAYMAN\*

TRIAL & APPELLATE LAWYER

\*law corporation

210 - 900 Howe Street  
Vancouver, B.C., Canada V6Z 2M4

telephone: (604) 602-1040  
facsimile: (604) 602-1030  
e-mail: fhayman@haymanlaw.com  
website: www.haymanlaw.com

## THE CLIENT-LAWYER RELATIONSHIP

**W**hen a person is injured and needs a lawyer to help them recover compensation for their losses, they hit a basic truth - most cases aren't won or settled overnight. After major injuries, a lawyer and

client may need to work together for many months or years to properly determine losses and build the evidence needed for a successful trial or settlement. Below are some ways to make that relationship as productive as possible.

### BUILD TRUST (Why lawsuits can take so long)

**B**eing injured is a frightening and highly distressing event that can push a person through all of the known phases of loss: initial denial, anger, bargaining, depression, acceptance. This can last several years. It will often be hard for clients to deal with lawyers and legal issues during these phases. In the first several months, and possibly years, it is often hard for clients to make informed decisions that are in their long-term best interests: in a denial stage, the injured person and his/her family may not accept that the problems are that serious. In a depression stage, they may think that there is absolutely no future left for them. Settling or trying a case before a client is ready to rationally understand the whole picture can lead to distorted and unsatisfactory results.

Further, to properly determine how much a person has lost (and therefore how much compensation to seek), the injured client must sometimes go through extensive therapy and recovery times before it's clear how their life has been affected. This is especially true of children, who may need to mature before the results of a brain injury or other trauma become clear.

A good lawyer will keep working with the client and the client's family throughout this difficult time, hiring experts, collecting evidence. A good client will learn to be patient, ensuring through periodic contacts that they're not forgotten, but trusting also in their lawyer's timing and directions if he or she seems on top of the case.

### COLLECT THE EVIDENCE

**T**he collection of evidence ideally starts from the time a person is injured. Memories and evidence of the person's life and functioning before the accident need to be gathered. Then begins the gradual collection of everything after - bills, treatment records, medical visits and assessments, efforts to work or do other things. The better the client can document all these things and help their lawyer collect the evidence, the clearer their case will be.

An injured child is a special case, requiring extra support and care both from their lawyer and their family. Because children's futures are less defined, everyone must carefully preserve all of the evidence of the child's development and achievements up to the time of the accident, look to family members to get a sense of what the child's future might have held, and track the child's post-accident issues very closely.

The older the child, the more important it is that they're involved in, and informed about, the litigation process (in much the same way that the

### BE HONEST

**T**hroughout, a good working relationship requires honesty on both sides.

The best lawyers explain to their client that the lawyer wears two "hats": when the lawyer deals with ICBC or whoever's on the other side, the lawyer wears an "advocate hat", fighting for the client on all fronts. But when the lawyer gives advice to the client, the lawyer must wear a "judge hat" - discussing both the strong and weak aspects of the case, assessing the risks in the lawsuit, and giving the client an honest and unbiased appraisal of the value of their claim.

It is equally important for the client to be honest with the lawyer. The client's health, work, and personal problems both before and after the injury are all relevant. The lawyer needs this information to put forward the claim in its best possible light, prepare for defense arguments, and give the client a reliable assessment of what the lawsuit is likely to achieve.

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law has recognized they should be involved in decisions concerning their health and medical treatment). However, with teens, the extra challenge may be distinguishing what behaviours are due to the accident (particularly where a

brain injury was involved) and what is just the difficult turmoil of moving from child to adult. Again, evidence from many different sources (e.g. family, friends, coaches, teachers, and even friends' parents) can be invaluable.

Where the extent of an injury is unclear because of the evolving picture, the lawyer may propose to resolve the issue of who caused the accident early in the process, and to wait until the child is a young adult before resolving damages.

### HANDLE EXPECTATIONS

**T**he lawyer should explain what will happen in the litigation process - the examinations for discovery, getting assessed by experts, possible scrutiny of the client's personal life and how to handle this, how the claim may be resolved at trial or settlement.

The client also needs to prepare for times when their finances may be tight. Spending settlement funds not yet received may mean they'll be forced to accept a small settlement because they

can't afford the risk of going to trial for a much larger amount.

Finally, in a good client-lawyer relationship, the expectation should not just be that winning the case will solve all the client's problems. Legally, and for the client's own personal health, the client has a duty to mitigate their losses - to do all they can to get better. Their lawyer often has access to key contacts and support systems that can help.

**A** good client-lawyer relationship is far closer than your average business relationship because often a client's whole life is involved - all their past, all their present and projected future. With courage and persistence, the client documents and presents it; with integrity and skill, the lawyer supports and fights for it. The better the teamwork, the greater the chance of success.

