



Fleury, Comery LLP
Barristers & Solicitors

ANATOMY OF A PERSONAL INJURY CASE

The following describes the general framework, or anatomy, of a personal injury file.

A personal injury claim usually proceeds in the following order:

1. Interview / Retainer
2. Investigation and Evidence Gathering
3. Pleadings (the Claim and the Defence)
4. Discovery
5. Pre-trial
6. Trial
7. Billing

1. INTERVIEW / RETAINER

It is important that an injured party retain a lawyer as soon as possible. Evidence, such as statements and photographs, should be gathered as soon as possible. We will come to the hospital or the injured person's home if necessary.

2. INVESTIGATION

Early and complete investigation is the key to many cases. A properly instructed and experienced private investigator can obtain invaluable photographs and statements. We generally order motor vehicle accident reports, hospital records and medical reports to substantiate the claim.

3. PLEADINGS

A court action is commenced by issuing a Statement of Claim that 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 of the date of the accident, and preferably quite a bit earlier. There are other limitation or notice periods for other types of claim, the most notable being the requirement to notify a municipality within ten days after a slip and fall on a roadway or sidewalk. Once the claim has been served, the other party will likely deliver a Statement of Defence giving some idea of how they intend to resist the claim.

4. DISCOVERY

After the pleadings, the parties will exchange the documents on which they rely. The lawyer for each party is then entitled to examine (question) the opposing party under oath. A transcript is produced from that examination that can be used later at trial.

Examinations for discovery are an opportunity to assess the credibility of the other party and an opportunity for the lawyers to attempt settlement.

5. PRE-TRIAL

The rules of court require a pre-trial. Both parties prepare a short document that sets up their claim at its best. A judge conducts the pre-trial and gives the parties an idea of how the case would be handled if that judge actually did the trial (which he/she cannot). The parties then have a better idea of their odds at trial. The judge also tries to get the parties to settle the matter.

6. TRIAL

Most civil trials can proceed before a judge or with a judge and a 6 person jury. At the end of the trial, a Judgment is issued by the court either ordering the defendants to pay the claim, part of the claim or dismissing the claim.

With this said, it should be noted that **the great majority of personal injury claims are settled before, if not well before, this stage.**

7. BILLING

In personal injury, fees are usually *contingent* ("contingency fee") on a successful outcome. If no money is recovered for the client, fees will typically be zero. The client is, generally, liable for disbursements (expenses), regardless of the outcome. The percentage of recovered damages that will go to Fleury Comery will vary based on factors that the lawyer will explain, but in most instances it will be between 20-25% of the award, plus costs. The client will know at the beginning what the percentage is and will be given a copy of the contingency fee agreement.

At Fleury, Comery, Don MacVicar (dmacvicar@fleurcom.on.ca) 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.

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