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Standard Steps in *Your Personal Injury Claim*

A personal injury claim may be settled at any stage of the proceedings. As the value of the claim is dependent upon the severity and duration of the injury, however, we usually recommend that a claim not be settled until the injury is fully resolved, or until a doctor has given a firm and reliable prognosis.

1. Preliminary Steps

Typically, the first step we take is to gather information. Liability will be investigated by obtaining police reports, witness statements, vehicle damage information, etc. Later on, once your physicians and other caregivers have had an opportunity to fully assess your injuries, we will request medical reports. If the injury has resolved, these reports will outline the entire extent of the injury. If the injury is ongoing, the reports would be considered interim reports and final reports would be ordered at a later date.

In addition to liability and medical information, other information may also need to be obtained to substantiate any claims for loss of income, loss of housekeeping capacity, cost of future care or out of pocket expenses that have been incurred.

If necessary, we will retain experts to assist in valuing your claim. These experts might include accident reconstruction engineers, biomechanical engineers, medical specialists, cost of care experts, vocational consultants, economists, etc.

Once your injuries have resolved or your doctors have been able to provide a final prognosis, we will assess your claim and, with your instructions, enter into settlement negotiations with the at fault party's insurer. If an agreement can be reached the claim will be settled at that stage.

2. Statement of Claim

If your injury is prolonged and your physicians are unable to provide a final prognosis in a timely manner, or if an agreement cannot be reached with the at fault insurer, it will be necessary to start a legal action. This is done by preparing a Statement of Claim and filing it on your behalf at the courthouse. A Statement of Claim is simply a document that summarizes the facts giving rise to the claim and outlines the damages that are being claimed. In personal injury claims, a Statement of Claim must generally be filed within two years from the date of the incident that gave rise to the injury.

Service of

3. Statement of Claim

Once the Statement of Claim is filed, it must be personally served upon the Defendant(s). This typically requires hiring a process server who personally hands the Statement of Claim to the Defendant(s). Usually, as a courtesy, a copy of the Statement of Claim will also be sent to the insurer.

If it is desirable to move the file into the litigation process quickly, a demand for a Statement of Defence will be made shortly thereafter. If, however, settlement with the insurer directly is still likely, negotiations may continue without a Statement of Defence needing to be filed.

4. Statement of Defence

Assuming a settlement cannot be achieved directly with the insurer, they will retain a lawyer to file a Statement of Defence. This is a document that is filed at the courthouse in response to your Statement of Claim. Typically, it will deny liability for the incident and deny that you have sustained any injuries.

5. Affidavit of Records

Once a Statement of Defence has been filed, the next step is for the parties to exchange relevant documentation. Despite the fact that our legal system is based upon the adversary process, it is not permissible to proceed to trial and take the opposition by surprise. In order to guard against such surprise, all parties are required to exchange Affidavits listing all of the relevant and material records (documents, computer records, photographs, video tapes, etc.) that they have in their possession or control. The records are then made available for inspection by the opposition. Although certain records are privileged and as such are not producible, most records must be disclosed. It is not permissible to conceal a record merely because it would have an undesirable effect on the outcome of your case.

6. Examination for Discovery

Once Affidavits of Records have been filed and exchanged, all parties to a lawsuit must submit to an Examination for Discovery. Simply put, an Examination for Discovery is a process whereby you are required to answer, under oath, questions put to you by the Defendant's lawyer relating to your claim. The questions and answers are recorded by a Court Reporter and a transcript is created. This allows the opposition to obtain further information from you about your claim and learn what your evidence will be if your claim proceeds to trial. Ultimately, if your claim proceeds to a trial the transcript can be used by the opposition.

Examinations for Discovery vary in length. Some last less than an hour while some last several days. They are typically conducted in a lawyer's office and no judge or court official is present. In personal injury claims, the Plaintiff is usually asked about such things as how the accident occurred, their health before and after the accident, their employment and educational history and anything else relevant to their claim.

7. Undertakings

Often at an Examination for Discovery, a party is unable to answer a specific question, but has available a document which hasn't yet been produced to the other side that may help to answer the question. There may also be documents which have not been provided that the opposition feels they are entitled to. In those circumstances, the examining lawyer will ask the party being examined to give an undertaking to provide those records. If the party agrees to the request, they are compelled to make their best efforts to obtain the requested information. As a result, the next step immediately following Examinations for Discovery is usually to obtain and provide to the opposition answers to the requested undertakings.

Once the undertakings have been fully answered, opposition counsel may decide that they need a further examination in relation to the answers to undertakings that have been provided. If this is the case, a further examination for discovery will be necessary.

It is important to note that before being examined, we will meet with you at length to fully explain the process and to outline for you the type of questions that the other lawyer is likely to ask.

8. Independent Medical Examinations

In personal injury claims, the Defendants may not agree with the opinions provided by your treating physicians or the specialists whom you have seen. In this situation, the Alberta Rules of Court allow a Defendant to demand that you submit to an examination by a doctor of the Defendant's choosing. This is referred to as an Independent Medical Examination (IME). Depending on the nature of the injury, the Courts will occasionally require a Plaintiff to attend at more than one IME.

After the IME, the Defendant's medical expert will provide them with a report and they must in turn provide that report to Plaintiff's counsel.

9. Pre-Trial Conference/Setting the Matter Down for Trial

Once all Examinations for Discovery, independent medical examinations and any other necessary steps are complete, the lawyers will sign a Certificate of Readiness indicating that all pre-trial steps have been completed and the matter is ready for trial. They can then obtain a trial date from the Trial Coordinator's Office.

At this stage, a pre-trial conference is usually held. This is a meeting involving the parties lawyers and a Justice of the Court of Queen's Bench of Alberta. It is held to ensure that all necessary pre-trial steps are in fact complete and, if they are not complete, time lines are set to ensure that the steps are completed and the trial proceeds as scheduled.

10. Trial

Most personal injury claims settle without the need of a trial. If, however, a settlement cannot be reached, a trial may be necessary to resolve the dispute. At trial, witnesses are called by the parties to give evidence on their behalf in front of the Trial Judge. Once all of the evidence has been presented, counsel will then argue the merits of the case to the Judge. After hearing all of the evidence the Judge will make a determination which is binding upon the parties, subject only to appeal. Unfortunately, trials have become quite complex over the years and many personal injury claims now require 10 days or more of trial time.

11. Judicial Dispute Resolution and Mediation

As trials have become more complicated and costly, and as waiting lists for trials have grown long, Plaintiffs and Defendants have both sought alternate methods of settling files. Mediation is one such method. At a mediation, an impartial mediator sits with the parties and their counsel and tries to bring the parties to agreement on some or all of the issues in dispute. The mediator's training, expertise and impartiality often enables him/her to keep the parties focused on settling their disputes and often results in the claims being resolved.

Occasionally, counsel ask for the assistance of the court to resolve disputes, without the need for a full trial. This is called Judicial Dispute Resolution, or JDR. One form of JDR is a mediation. The only difference from a regular mediation is that in a JDR mediation the mediator is actually a Justice of the Court of Queen's Bench. Another form of JDR is a mini-trial. At a mini-trial, counsel present medical reports and other evidence to the Judge that they expect to be able to lead at trial, without actually having to call any witnesses. They then argue the merits of the case. On the basis of the information presented at the mini-trial, the Judge will indicate what he or she would have done had the case been presented to him or her in a regular trial setting. The decision is not binding upon the parties. It is thought, however, that the opinion of an impartial judge might help move the parties towards settlement. In fact, both mediation and mini-trials have proven to be remarkably effective methods of settling disputes.