

PERSONAL INJURY

Client care requires wise use of other professionals

By Todd Reybroek

No one practising personal injury law today is unaware of the value associate experts bring to their practice. A constellation of professionals can become involved in any personal injury case, and a smart law practice ensures that the right people are introduced into the care of clients early in the process. One task for counsel is to determine which professionals will offer their clients the assistance, help, advice and support they need.

Counsel can — and should — develop strong working relationships with the professionals involved in the medical, social and psychological care of their clients. A strong working relationship benefits clients and provides a strong foundation for the future, introducing counsel to experts who can be consulted in the future should the need arise.

Introducing other professionals into a client case means understanding the true nature of any injuries your clients may have sustained. The problem is that lawyers are not equipped or trained to assess injury, and fail in their responsibilities to their clients if they do not involve the appropriate expertise from outside sources.

The solution is to resist the urge for speed and allow time for the necessary medical and social professionals to do their job. The sad reality is that some injuries will take time to become apparent, and a prudent decision is to avoid rushing the process.

Cathie Percival, a social

worker with the acquired brain injury program at The Toronto Rehab Institute, understands first-hand the value a team of



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professionals working closely together can bring to an injured person and his or her family. Depending upon the injury, such a team can include a spectrum of expertise representing different disciplines and health-care professions. Percival's experience is such that she does not limit the role of counsel to legal advice and representation. "The lawyer can be the only long-standing person the injured person deals with," says Percival, "because other resources and professionals might be associated with a patient only for a specific amount of time, or until their particular expertise is no longer required for patient care."

Kristina Bosnar, a chiropractor at the Forest Hill Chiropractic Wellness Centre, has

experience with patients who have not felt their injuries until a few weeks after their accident. "Some injuries are not apparent immediately, and many patients who are without legal advice have missed an opportunity to file a claim by the time their injuries are causing them pain and trauma." So what is the solution for counsel?

The solution, according to Bosnar, is to "help injured clients understand that there can be a delayed time period before injuries will manifest themselves. Many people will deny their experience and refuse to believe they have been injured." Bosnar believes that "people are more willing to accept such news from a medical practitioner," a result of the faith and trust our society vests in health-care providers. Bosnar also notes that many people minimize their injuries "because of a fear of never getting better."

Depending upon the severity of an accident, patient comprehension might have to stretch to include a new definition of both "normal" and "healthy." Injured people might need to be coached to understand the true nature of their injury, particularly in the case of catastrophic injury. As Cathie Percival states, "you don't recover from an acquired brain injury — you adjust to it." The solution, according to Percival, is that patients need to develop "insight" into their injuries. A skilled team of therapists can help injured clients understand that their injuries have changed them and that there will be no

return to life exactly as it was before a traumatic or catastrophic accident. While a therapist can help a client come to this understanding, a team will be required to reintegrate such an individual back into life.

"The problem is that we think in terms of black and white when it comes to illness," says Percival, "and sick versus not sick." For some injuries, a state of wellness might be one where the client cannot resume all activities of daily living, as they existed prior to the injury. Associate experts and health-care providers become valuable to counsel in such a situation because they are skilled at dealing with such injuries and are familiar with the latest trends of rehabilitation health sciences.

One solution for personal injury lawyers is to develop a working relationship with an independent case manager. Such a professional is usually self-

employed and connected to a wide scope of services available to injured citizens.

Case managers today stress goal-oriented rehabilitation, where clients are always working toward a specific goal. For some patients a goal will be going home. For others it will be learning to walk, or entering retraining for a new career. Goal-oriented rehabilitation aids in client comprehension and acceptance of injury and the abilities they will — or will not — have after rehabilitative treatment.

The goal for all personal injury practitioners ought to be the same — introducing the best possible professionals into the service of their clients. Legal counsel cannot determine alone what course of therapy will benefit a client.

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Interplay between disability support and damage settlements can be confusing

By Bob Nigol

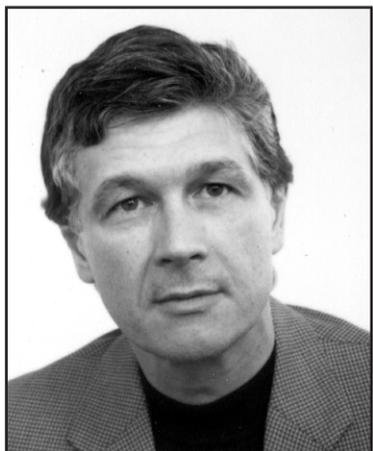
The interplay between the *Ontario Disability Support Program Act, 1997* (ODSP), compensatory damage settlements and structured settlements is somewhat confusing.

Typically, we are consulted about a structured settlement for an individual who was receiving ODSP income before the accident. The question counsel often ask us is whether the anticipated compensatory damage award, structured or not, will jeopardize the client's entitlement to ODSP income.

The answer to the question is equivocal. Income is defined very broadly under the ODSP. Any money received in settlement would be treated as income and an asset, the result being ineligibility and possible overpayment.

There is, however, an exemption to the extent that the recipient may receive up to \$100,000 as compensation for pain and suffering or expenses incurred or

to be incurred as a result of injury.



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Furthermore, the director of the ODSP is accorded the discretion to expand the exemption beyond \$100,000 where the settlement is for expenses to be incurred as a result of injury (e.g., future care costs). Interest earned by the settlement, how-

ever, would still be treated as income in the months it was received and thereby affect the receipt of ODSP income.

In short, then, under these circumstances, it would be in the interests of the parties concerned (and, indeed, concerned parties are encouraged) to provide, as soon as practicable, copies of all documentation specifying medical and future care needs (e.g., medical reports, future care cost analyses, etc.), along with the details of the settlement (i.e., the heads of damage or entitlements involved and corresponding amounts being considered in settlement) and a formal proposal of how these are to be used (e.g., a structured settlement illustrative payment schedule) to the director of the ODSP.

The director may then use this information to consider expanding the exemption.

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