



## **THE LAWYER'S ROLE IN REHABILITATION: IS THERE ONE?**

By: David H. Doig, LLB.

*It was nearing the allotted time. The team members were beginning to congregate. Early attendees were participating in the idle banter that is normal for colleagues waiting for a meeting to start. Finally the doctor arrives. All are present and the meeting commences. Seated around the table are the physician, the rehabilitation nurse, the physiotherapist, the occupational therapist, the social worker, a speech and language pathologist, the psychologist, the recreational therapist, the teacher, the vocational rehabilitation counsellor, the recreational therapist and lastly and most importantly the patient and her family. The patient's lawyer, having not been made aware of the meeting or choosing not to attend, is nowhere to be found. This is a regular occurrence at hospitals throughout Canada.*

Should the patient's lawyer be at the team meeting? If so, what if any role is there for the lawyer? Should the lawyer simply focus on the legal issues and not become involved in rehabilitation or should the lawyer take the activist role in the client's rehabilitation? These are all questions that need to be asked.

Some lawyers and medical professionals are of the view that a lawyer should not be involved in the rehabilitation process, but rather should simply focus on advancing the tort claim to maximize the amount of recovery possible. Some members of the rehabilitation team may see the lawyer's questions in a team meeting as interfering or threatening. Finally, many lawyers lack the detailed medical knowledge to participate meaningfully in the rehabilitation process.

Some lawyers and medical professionals hold a different view. This group believe that the lawyer plays a crucial role in the rehabilitation process. It is the lawyer's responsibility to ensure that the patient receives full and fair lifetime compensation. Some lawyers believe the way to accomplish this is to rely upon expert witnesses retained specifically to give a medical opinion for legal purposes only. Much less emphasis is placed upon the treating team from the point of view of providing expert opinions for the purposes of litigation. One of the problems with this approach is that litigation tends to turn into a battle of experts. Both plaintiff and defence counsel retain their "usual" stable of expert witnesses who provide differing opinions. We now have a gun-slinging match which may require a judicial ruling to determine which set of expert opinions should be accepted. In some instances, the plaintiff's version is accepted and the plaintiff is compensated accordingly. On other occasions the defence experts prevail and the patient may be under compensated.

On the other hand, an experienced plaintiff's counsel who becomes involved in the rehabilitation process will spend the time talking to the treating experts in order to understand the patient's condition and continuing problems. Using these treating practitioners to provide expert opinions on diagnosis, treatment and prognosis has several advantages over the expert who sees the patient on one occasion and provides a report. What could be more convincing to a Court than the evidence of treating practitioners who have used their skill and experience over the past two or three years to treat and rehabilitate the patient. After the treating practitioners have canvassed all of the possible diagnoses and provided appropriate ongoing treatment, who else could be in a better position to provide a prognosis? Arguably, not the medical practitioner who has seen the plaintiff for a 45 minute visit years after the injury.

What the treating professional may lack in the form of a polished courtroom presentation, they gain in terms of the credibility that comes from being a treating practitioner.

From the point of view of doing the best job we can as counsel for the plaintiff, we should be doing everything in our power to assist the rehabilitation team in helping the plaintiff recover as much as possible and as quickly as possible

from their injuries. At that point any remaining deficits should be identifiable through the use of treating professionals supplemented by other specialists or other independent medical examinations as necessary.

Once a full and complete rehabilitation program has been attempted any deficits that remain will in all likelihood be permanent. It is now incumbent upon the lawyer to ensure that there is full and complete lifetime compensation for these permanent deficits.

Coming full circle to the question that was asked initially – Is there a role for the lawyer in the rehabilitation process? – The answer must be yes. Not only is there a role, but it is an extremely important one that requires the lawyers full participation in the rehabilitation process. This is necessary, not only to ensure that the plaintiff receives the best treatment possible (the lawyers will frequently assist with additional funding through insurance companies or other sources of funding) but also essential to ensure that the plaintiff's tort claim for ongoing and future disabilities is clearly provable. We have only one opportunity to ensure that the plaintiff is fully compensated for a lifetime of ongoing disability. This can only be properly accomplished through the lawyer developing the requisite medical knowledge as well as working with the treating rehabilitation team. This will ensure the plaintiff receives the best treatment possible while at the same time making it easier to prove in Court the ongoing permanent problems. Not only should the plaintiff's lawyer become involved in the rehabilitation process but they should be more of an activist and take a much more supportive role in this arena.

**David H. Doig, LLB** is a personal injury lawyer who's practice focuses primarily on major personal injury claims. A large portion of David's practice is traumatic brain injury cases. He is a frequent lecturer on the subject of brain injury and the law to the legal profession as well as the medical community, David's commitment to rehabilitation can be seen in his volunteer work on the boards of the BC Children's Hospital Foundation and the Sunny Hill Health Centre for Children.

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“ Our goal is to ensure that our clients receive the best rehabilitation available as quickly as possible while actively working to protect our client's legal rights to obtain the best possible lifetime compensation. ”