

## **WHAT TO EXPECT DURING THE LITIGATION PROCESS**

### **Introduction**

We have prepared this brochure in the hope that a little better understanding of the operation of Murphy Collette Murphy in its handling of your case will enable you to appreciate the effort that goes into each client's cause. It is not meant to be exhaustive but rather just a tool to supplement what you will get out of the candid discussions that will evolve between you and the lawyer representing you here at our firm.

### **In a Nutshell**

Once we have both executed the Contract to Employ Attorney the first month or so is spent contacting the insurers involved, the police for a police report, Medicare, hospitals, and doctors in order to amass the necessary information to start the lawsuit.

The lawsuit is started by the issuing of a Notice of Action with Statement of Claim. We prepare it and send it to the Clerk of the Court to have it issued. In New Brunswick, although you are entitled to prejudgment interest on special damages from the date of the accident to the date of settlement or judgment, you are only entitled to interest on general damages from the date of starting the lawsuit. Special damages are the ones for expenses such as loss of income and damaged items. General damages are the damages awarded or agreed upon for pain and suffering and loss of amenities of life, etc.

Prejudgment interest on special damages presently varies between 3% and 6% per annum simple interest. On general damages it varies between 6% and 12% simple interest in non motor vehicle cases. Failure to start the lawsuit on a timely basis can cost you big dollars. If your injury award (general damages) were \$10,000.00 and you delayed a year before commencing a lawsuit you will have lost entitlement to at least an additional \$800.00 in prejudgment interest.

In any event the lawsuit is started and the next thing we turn our attention to is monitoring your progress. It may take a couple of weeks, months, or even years, before your medical condition is such that a settlement can be considered. During this waiting period we continue to process your claims with the assistance of your monthly reports.

Once you, in consultation with your doctor, feel you are ready to settle or proceed you will be given a written opinion from us outlining our recommendations on settlement amounts. You will be asked to respond to us with your instructions or authority to proceed accordingly. It is in writing so that you can study it before having to give us your answer.

Settlement negotiations usually take place in writing between our office and the opposing adjuster or lawyer and will take several weeks to complete or breakdown.

If no settlement is likely at this stage then an Examination for Discovery will be set up. A Discovery is an informal procedure that takes place in a boardroom where only the lawyers and their clients are present along with a Court Reporter. We sit around a boardroom table and you are asked questions by the other lawyer concerning how the injury occurred, the type of injury suffered, and how it afflicts you. Your lawyer is present during this questioning and will object to any questions that are improper or harassing. Your lawyer will ask similar questions of the person who we have sued (the Defendant).

Again, following the Examination for Discovery, there is an opportunity to explore settlement. However, experience tells us that the surest way to achieve a good settlement is to seriously prepare for Trial.

The Trial is too complicated a topic to discuss here, however, suffice it to say that it is an opportunity for you to tell your side of the story to a Judge, without a jury, who will render a decision.