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REHABILITATION OPTIONS BEFORE TRIAL: ICBC AND INSTITUTIONAL SOURCES

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“Rehabilitation is the process of helping a person reach the fullest physical, social, vocational, avocational and educational potential consistent with his or her physiologic or anatomic impairment, environmental limitations and desires and life plans”

TAKEN FROM : REHABILITATION MEDICINE: PRINCIPLES AND PRACTICE / EDITORS JOEL A. DELISA, BRUCE M. GANS 1998

In my view, it is part of the role of counsel to take an active part in the rehabilitation of their brain injured clients. There can be little doubt that early, comprehensive rehabilitation efforts are the only way to ensure that the injured person will achieve the maximum recovery possible. Unfortunately, many family doctors have only a limited understanding of the subtle effects of brain injury and the therapy options available.

Also, the injured person is frequently a very poor historian who often lacks insight into the nature and extent of his or her problems. The fact that the families of the injured person are often viewing the person through “rose coloured glasses” and may be in a state of denial, further compounds the difficulty in ensuring that the injured person embarks on a suitable program of rehabilitation.

In this paper, I will provide an overview of the matters I consider and the steps I take to assist my client in obtaining the maximum recovery possible.

1. EDUCATE YOURSELF:

It is important for any lawyer representing a brain injured client to have a good understanding of the nature and effect of brain injuries generally. It is also vital that you obtain as much reliable information from all sources as early as possible regarding your client’s condition.

You must also do everything possible to acquire a broad general knowledge of the types of therapy available and sources for funding so that you at least know where to start to get the specific information you will need



to deal with your client as an individual with unique needs.

2. EDUCATE YOUR CLIENT:

Often the victim of a brain injury has little insight into their own problems. They have even less knowledge as to what treatment options are available and what the objectives and expected results from various therapies are.

In my view, it is important that you speak frequently to the care- providers, to determine what they are trying to achieve, whether your client is responding as expected, whether they would recommend other forms of therapy and other matters relating to the treatment. Then, discuss these matters with your client. Make sure that he or she understands what the various care-providers are trying to achieve. Make sure that he/she has realistic expectations as to how much progress they can expect in a given time. Make sure that they are getting along well with the care-givers and that they are not being overworked.

3. EDUCATE THE FAMILY:

In many cases, the most valuable support people are the immediate family members. Make sure that the family understands the challenges facing the injured person, that they communicate effectively with the professional care-givers and that they communicate their observations and concerns to you.

4. HIRE A CASE MANAGER

A good case manager is invaluable in ensuring that your client receives a well-balanced, comprehensive therapy program. I have often seen situations where, for example, the speech pathologist is so eager to have the person focussing on his speech therapy, that the injured person has no energy to devote sufficient effort to (for example) physical therapy or vocational therapy. A case manager can ensure that these "turf wars" do not erupt.

Case managers are also often invaluable links to ICBC Rehabilitation and other sources of funding.

I could go on at great length about the benefits of hiring a case manager, but I think it will suffice to say that I would hire one in every brain injury case.

5. DON'T BE AFRAID OF ICBC REHABILITATION

"The staff of the rehabilitation department of icbc help those who have suffered catastrophic and/or long term injury in an auto accident, where entitlement is available under part 7. the rehabilitation program provides payment for the medical and vocational assistance necessary for the injured person to achieve, in



the shortest practical time, the highest level of gainful employment or self-sufficiency that, allowing for the permanent effects of the injuries, is reasonably achievable.

it is incumbent upon the Rehabilitation department to ensure prudent use of the part 7 funds on behalf of the injured insured and the premium payers of the province.”

ICBC SERVICE PROVIDER GUIDE: REHABILITATION DEPARTMENT

In my experience, the ICBC Rehabilitation department can be a great ally, not a foe. It is important to establish your personal credibility with them early on and to let them work co-operatively with your case manager. Often, by working together, your case manager and the ICBC Rehabilitation representative can work wonders in getting your client funding and access to useful therapies.

In dealing with ICBC Rehabilitation in order to get Part 7 benefits, or in trying to get advances, in my view, it is important that you rationalize your request for funds in terms of value to ICBC. In other words, like the Fram. Oil Filter commercials, you should stress “pay me now or pay me later”. In other words, you should stress that the money that they may pay now for therapy etc. will result in savings down the road if your client requires less care in the long term or is able to return to meaningful employment.

6. TREATMENT OPTIONS TO CONSIDER

- Occupational Therapist
- Speech Pathologist
- Physiotherapist
- Psychiatrist
- Psychologist
- Massage Therapist
- Pain Management
- Vocational Counsellor
- Job Coach
- Personal Trainer
- Paid Companion
- Family Members
- Friends
- Church Groups
- Involvement in hobbies
- Volunteer work



- Community Service
- Supported or sheltered work.

The above are just suggestions. Every person has unique needs. Use your creativity.

CONCLUSION

In my view, the lawyer who fails to take an active interest in the rehabilitation of the client does the client a disservice. Not only will your client appreciate your efforts, but you may well get a better award.

How many times have you been confronted with medical reports delivered by the other side 60 days before trial saying things like “I believe this person will benefit greatly from treatment with anti-depressants...” or “This person’s problems will likely improve after 15 sessions with a psychologist...”

If you have made sure that your client has already tried the anti-depressants and the psychologist, you will be able to defeat these defence arguments.