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THE CASE FOR REPRESENTATION

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Cyclists involved in accidents with cars are immediately forced to make a number of important decisions.

In this unfamiliar post trauma world, seriously injured individuals must decide whether or not to retain a lawyer. I have written on a plethora of subjects, but loyal readers of this column will likely recognize that I have never addressed this threshold issue - when does a cyclist need counsel to pursue damages to person and/or property?

To be perfectly frank, my avoidance of the issue over the years has been deliberate. The feature of the legal profession which I find most disagreeable-and I know I'm not alone- is the way in which some lawyers market their services to victims of injury.

My sensitivity in this regard has made me somewhat less inclined to lead a horse to water, at least, in a BIG WAY.

Now that I've confessed, let me address the issue squarely. Should a seriously injured cyclist retain counsel? Unequivocally, yes. There are several reasons why.

Despite statutory entitlement to limited accident benefits, you, the injured cyclist, are not a premium paying client of the insurance company. Since everybody knows ICBC is the only third party liability insurer of automobiles in BC, let's speak plainly. ICBC is not a business to help someone making a claim in negligence against their own motorist client(s). Damages to person or property come out of their client's third party liability insurance. You didn't pay the premium for the coverage, so you can't reasonably expect the institutional bias to be anything but against you.

You are not qualified to educate ICBC on the law of liability or damages. If you try, you will strike ICBC as an actor trying to get a part in a movie without an agent. You may get a part, but it won't be a big one, and if you insist on a big one, you will strike them as immodest, presumptuous, and claims conscious. If a lawyer tries, it goes with the territory and conforms to institutional expectations. After all, everyone knows that





lawyers do not go to work to wear out their clothes.

Your direct communications to ICBC as an unrepresented claimant are not “without prejudice” and may be used against you in a court of law. Lawyers and insurance adjusters respect that some discussions are “off the record”. If you ask for the same respect you will not get it, and you will be regarded as unusual and possibly unreasonable.

If you are unhappy with ICBC’s disposition of your claim, what are you going to do about it? In theory, you can sue. In practice, you don’t know how to do that. And even if you manage to get the suit off the ground, can you actually fly it and, more importantly, land it. The *Limitations Act* requires that you sue the negligent motorist within two years of the accident. If that is necessary, you need counsel. It is better to prepare to avoid a lawsuit by retaining counsel to establish a properly balanced and fair relationship with ICBC long prior to the expiry of the limitation period, versus waiting until the relationship has soured to retain one.

Your focus as an injured cyclist needs to be on your recovery, not your claim. The demands of both, combined, are extraordinary. The irony is that experienced objective counsel achieve peace with ICBC a lot quicker than you can on your own because their approach to damages is based on precedent, not the significant emotion associated with being struck by a car and injured on a bicycle. Imagine trying to deal directly with the motorist who seriously injured you. Dealing with that person’s agent, without the benefit of any experience, or without any assurance that what you say will not jeopardize your legal interests, is in my respectful opinion, fraught with similar peril.

Finally, the proper proof of a claim for damages involves evidence pertaining to all aspects of the claim; pain and suffering and loss of enjoyment of life, past and future income loss, future care costs, are “heads” of damages which typically require expert evidence. Lawyers retain and pay for experts. Even if unrepresented and injured cyclists could properly instruct the experts so as to procure property opinions, the cost of doing so is usually prohibitive to individuals, whereas lawyers can “carry” these disbursements until the conclusion of the claim, of which they form a part.

Most lawyers will act on a contingent fee basis, which means their fees are based on a percentage of your recovery. In this way, your interests are aligned with those of the lawyer, and you don’t lay awake at night wondering if the meter is on.

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