



## Successful Trial Tactics

### Early Stages: Tactical Choices and Key Witnesses

#### Opening the File

Having a great result at trial requires planning for the trial from the moment you open the file. The way that you have handled the file for the two years prior to trial is as important to the outcome as the time that you spend preparing to do your closing argument. If you approach every trial with an eye to what will happen at the trial your understanding of your case, the management of your client's expectations and the quality of the presentation of your case at trial will increase greatly.

Every case in my office is prepared for trial, not settlement. Preparing all cases in this manner does a number of things:

1. It ensures that I am able to give very good advice to clients on the true value of their case;
2. Assists with management of the emotional aspects of a case;
3. Increases the likelihood of settlement;
4. Increases the likelihood of a good outcome at trial.

#### Liability

Every step in my case preparation is done with an eye to what I ultimately hope to be telling a judge or a jury. This starts with preparing the liability portion of your case. As soon as I am retained I get all the information I can about the circumstances of the accident, from all possible sources. The earlier you get this information the better as memories fade over time:

- Client – I use an initial interview questionnaire that I obtained from a previous TLABC seminar
- witnesses
- police
- ICBC
- The Scene
- Intersection cameras
- Information about light sequencing
- Weather reports
- Media coverage
- Engineer



- The law – statutory and case law

### Damages

Preparing your damages case for trial requires a good understanding of how the injuries have affected the client. This is a process which requires a lot of communication with the client. At a previous TLABC seminar the materials included an update questionnaire which I send to clients on a quarterly basis. I also meet with clients at key points to get a thorough update and email communications have helped me stay on top of how my clients are doing.

A key part of trial preparation is identifying appropriate witnesses. I interview lay witnesses early, particularly employment or wage loss witnesses. I assess every witness with an eye to what evidence I will want to lead at trial.

With respect to the medical aspects of the case, my practice is to obtain a narrative report from the general practitioner at the one year point, regardless of where the client's recovery is at. This allows me at this juncture to assess possible defenses that we may be faced with at trial and allows me time to deal with those. This also helps me identify what other experts I need to have involved in the case as well as such things as whether I should be obtaining an MRI.

### Procedural Steps

When starting an action you now have a number of tactical choices to make. Do you want to proceed under one of the Expedited Rules or under the traditional rules? If you proceed under the traditional rules, do you want a jury trial? How many days are you going to need for trial? Given the changes to the rules which have already occurred with the additions of Rule 66 and Rule 68 and the changes that we will see with the new rules, you have to have a good understanding of your case as well as what your trial will ultimately look like before making the choice of how to file your case.

Prior to examination for discovery I ensure that my case in terms of liability is ready. I always do a discovery of the defendant, even where liability is admitted. Prior to the discovery of my client I ensure that I have all the pre and post motor vehicle accident records, employment and wage loss documents, documentation regarding special damages and witness statements from key witnesses. In my preparation meeting with the client we review all these documents as well as any potential defenses or problem areas so that the client is fully prepared. I treat the discovery as the beginning of the client's testimony at trial and prepare them accordingly.

With respect to document discovery, my personal approach is to disclose documents as they are obtained. In my opinion, the more that the other side knows about my case as it proceeds, the better. It is very difficult to get an adjuster or defense counsel to shift gears



in their thinking of a case once their views have become ingrained. Think of document disclosure as a way to control or influence the way in which the other side is viewing your case.

In a case of any size I am a believer in proceeding to mediation prior to trial. For the mediation my case is essentially ready for trial and everything that I would do in advance of a trial has been done. Regardless of whether the case settles at mediation my client and myself will have learned a lot more about the case that we are facing and I will have an opportunity to assess further how my client is likely to do at trial. Generally the only time that I will share witness statements at a mediation is when they are extraordinary statements or when they fill in a gap that cannot be filled in by the documents.

The most important element to a successful trial is beginning your trial preparation when you open your file. Create a good trial book format that you use throughout the life of the file and utilize some of the many great case management and document management software programs. Spend the time to get to know your client and the people around them so that you truly understand how the individual's life has been changed by the accident.