

Managing
Occupier's Liability
Claims Efficiently,
Effectively &
Expeditiously

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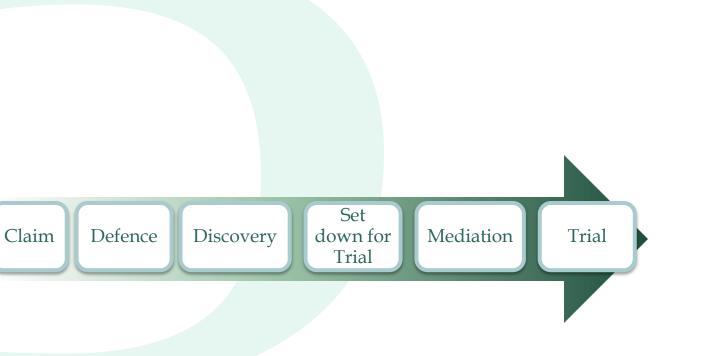
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Rogers Partners LLP

Outline

- 1. Retainer: Initial Review & Ongoing Communications
- 2. Pleadings: Responding to the Claim
- 3. Discovery Process (Documentary & Oral)
- 4. Potential Summary Judgment
- 5. Alternative Dispute Resolution
- 6. Pre-Trial and Trial Considerations
- 7. Settlement of Claims / Closing Documents





WHAT DID THE OCCUPIER DO WRONG?



1. Communications with...

- Representative(s) and Employee(s) (if business)
- Opposing Counsel



1. Opening Steps

Once retained, Initial Evaluation of the File

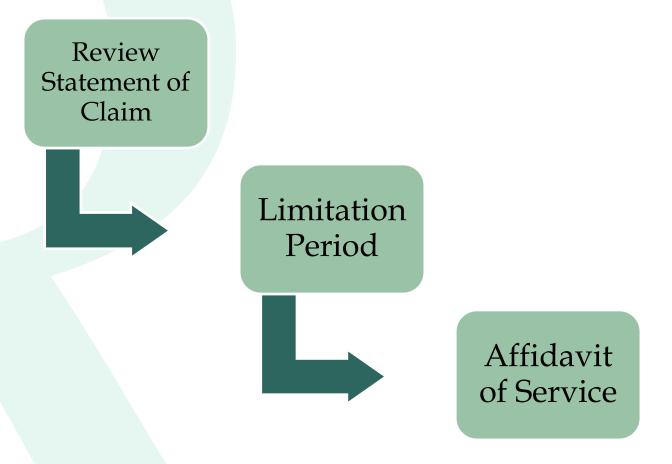


1. Considerations in an Initial Evaluation

- Review Liability & Further Investigations
- Expert Opinions and Assessments
 - medical & psychological
 - vocational
 - actuarial & accounting
- Investigations & Surveillance
- Settlement & Mediation
- Third Party Claims
- Potential for Summary Judgment



2. Pleadings: Responding to the Claim





2. Pleadings - Contribution Claims

- ✓ Consider other potentially liable parties:
- ✓ Landlords
- ✓ Contractors
- ✓ Manufacturers
- ✓ Suppliers
- ✓ Repairers
- ✓ Installers
- ✓ Other customers

Statement of Defence

- Declarations
- Crossclaims, Counterclaims
- Third Party Claims
- Jury Notice

✓ Consider whether insurance has been obtained

Coverage Application

- Duty to Defend
- Duty to Indemnify



2. Pleadings: Commonly Relied Upon Legislation

• Occupiers' Liability Act

- Negligence Act
 - Liability, impose joint and several liability, contributory negligence

• Limitations Act, 2002



3. Documentary Production: Plaintiff

- □ Liability Documents
 □ Plaintiff's statement to collateral insurer or employer
 □ Witness statements
 □ Medical Documents
 □ Decoded OHIP summary
 □ Ambulance records
 □ Hospital records
 □ Clinical notes and records of family physician
 - ☐ Prescription Summaries

specialists

☐ Clinical notes and records of

☐ Physiotherapy Records

5 years pre-accident to date

- ☐ Income Loss Documents
 - ☐ Income Tax Returns
 - ☐ CPP, ODSP files
 - ☐ Employment File
- ☐ Other Pecuniary
 - ☐ Particulars for out-of-pocket expenses
 - ☐ Particulars for housekeeping and home maintenance
 - ☐ Particulars for personal care
- ☐ Collateral Benefits File, STD, LTD
- ☐ WSIB File



6. Documentary Production: Occupier Affidavit of Documents

• Schedule A v. Schedule B

- Incident Reports
- First Aid Reports
- CCTV footage
- o Employee Statements
- Attendance Records
- Policies & Procedures



3. Discovery Plan

Affidavit of Documents

- Scope
- Service Deadline
- Format
- Costs

Examinations for Discovery

- Witnesses
- Corporate Deponent
- Timing
- Length



3. Examinations for Discovery

Preparing Deponents for Oral Discovery

- Identify Knowledgeable Representative of Occupier (if business)
- Prepare Representative by explaining purpose and process – Do's & Don'ts
- Review & Swear Affidavit of Documents



3. Examinations for Discovery of Plaintiff

- Liability: what happened and whose fault was it
 - What did the witness see/hear/feel/smell/think/do?
- **Damages:** what damages, losses and injuries are being claimed and how can they be proven
- Confirm documents and information as accurate
- **Explore** inconsistencies, gaps and information not found in documents
- **Obtain** Admissions, Undertakings, and an understanding of the case to be met
- Fence In the witness's answers
- Test Credibility and Evaluate Likeability



3. Post-Discovery

Consider:

- Credibility & likeability of the witnesses
- Key Facts
- Reassess liability
- Reassess damages
 - non-pecuniary general damages
 - income loss (past and future)
 - housekeeping & home maintenance
 - personal care
 - treatment expenses
 - out of pocket expenses
 - Collateral benefits
- Further Investigations & Action Plan
- Answers to Undertakings



4. Potential for Summary Judgment

Consider:

✓ No genuine issue requiring a trial where motion judge "is able to reach a fair and just determination on the merits".

✓ The summary judgment process:

- 1. Allows the judge to make the necessary findings of fact;
- 2. Allows the judge to apply the law to the facts; and
- 3. Is a proportionate, more expeditious and less expensive means to achieve a just result.



5. Alternative Dispute Resolution

Mediation

- Suitability
- Scheduling
- Selection
- Strategy



5. Mediation

What is Mandatory Mediation?

- Actions commenced in Toronto, Ottawa, and Essex
- Actions arising out of a motor vehicle accident,
 s. 258.6 of the *Insurance Act* (defence pays, if requested)
- Mandatory mediation does not mean mandatory settlement; however, mediations can still be productive if the parties do not settle.



6. Preparing for Trial

Pre-Trial Conference

- Pre-trial Memorandum
- Formal Positions
- Settlement
- Orders
- Trial Management



6. Preparing For Trial

Pre-Trial Conference Orders

- Timetable
- Witness Lists
- Motions / Discovery
- Will-Say Statements
- Oral Evidence Time Limits
- Summary of Opening Statement / Jury Questions
- Expert(s) Deadlines
- Defence Medicals
- Security of Costs



7. Settling Claims

✓ Full & Final Release

- ✓ Confidentiality Agreement
- ✓ OHIP's Subrogated Claim
- ✓ Court Approval where Parties under Disability
- ✓ Dismissal Order



Thank You!

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